

# Unsafe At Any Age

## A Preliminary Discussion of Child Rape in India

By Ritu Menon

*L'article signale que les derniers développements dans la législation indienne concernant le viol n'ont pas réussi à juguler le viol de mineures. Ce crime est courant dans tous les milieux sociaux. De plus, le soutien légal nécessaire pour permettre aux victimes de se faire rendre facilement justice fait défaut; ce qui rend plus difficile la tâche de protéger les enfants contre ce crime.*

For the last two decades or so, the issue of rape has been significant in the women's movement in India. A series of shocking incidents of police rape in the 70s and 80s—the Mathura, Maya Tyagi, Guntaben and Rameeza bi cases—galvanized women's groups and lawyers into mobilizing a sustained campaign that focussed attention on violence against women in general, and called for changes in the rape law, in particular. These would take into account the question of marital and custodial rape; reconsider onus of proof; review issues of circumstantial and corroborative evidence, consent, the woman's "character," and so on.

As a result of their efforts, the rape law was amended in 1983. For the first time, it acknowledged the fact of custodial rape and shifted the onus of proof in such cases to the assailant. Despite women's demands, however, marital rape, and a host of other rapes—political, military, caste, gang—were passed over more or less in silence. In Bombay in 1990, a national conference on rape was held by several women's organizations who met to recount their experiences in dealing with the issue over the last ten years, and to strategize for the future. Individual and collective action was exhaustively reviewed; successful and unsuccessful campaigns analyzed; definitions discussed and

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reformulated; and the relevance of legal action assessed.

But, somehow, the issue of child rape never quite found a place on the agenda. It is an indication of the general invisibility of this gruesome crime against children that even the women's movement has neglected to give it the consideration it deserves. In a way, one can understand this. It's a difficult subject to deal with. Horror and revulsion give way to averted eyes and acute discomfiture, to an uneasy feeling that somewhere, we ourselves are implicated in society's, and the law's, shocking disregard for our children.

Yet we avoid the issue at our peril. Let us look at a few figures. Recently, within the space of three weeks, three young girls, two aged three and one aged six, were raped in the Delhi area by youths between the ages of 12 and 25. Also, Jaharlal Das, a villager from Mayurbhanj (Orissa), who had been sentenced to death for raping and then murdering a five year old girl in 1988, appealed his sentence and

was acquitted by the Supreme Court. The three-judge bench maintained that the entire prosecution was based on circumstantial evidence, and "while conscious that a grave and heinous crime has been committed, there is no satisfactory proof of the guilt, and we have no other option but to give the benefit of the doubt to the accused." In Ahmedabad, however, seven people accused of the rape and murder of an eight year old girl have been awarded life sentences.

In April 1992, the Supreme Court of India sentenced a medical practitioner of Jabalpur to seven years' imprisonment and a fine of Rs.25,000 for having raped an eight year old girl from his neighbourhood *ten years earlier*. His victim is now 19, and would have seen little justice if the apex court had not overruled an earlier High Court judgement that awarded the accused only a fine of Rs.3,000 on the charge of "merely outraging her modesty."

Facts like these, corroborated by relentlessly mounting figures obtained from crime records bureaus, hospitals, and social welfare organizations are a grim echo of the smothered scream of violence that often surrounds the lives of very young girls, especially in the cities—and especially in our own homes.

Over the last fifteen years, there has been an increase in the reporting of cases of child rape, particularly from inner cities and squatter colonies, but it would be a mistake to think that child abuse is confined to the socially and economically deprived. The experience of social workers and the police suggests that it is common to all sectors of society and that much of it takes place within the family.

Poverty and unemployment in our inner cities might well provide fertile ground for criminality, but two other disturbing



features have been noted by the police: the age group that indulges in violent sexual abuse has dropped from the earlier 30 to 40 years to 18 to 25 years. Over the last decade or so, the increase in violent crime seems to correspond to the increasingly violent and pornographic content of many films, magazines, posters, and cassettes. Senior police officers say that ever since the release of *Sholay*, they have been sending memoranda to the central government, drawing its attention to the link between violence on the screen and rising crime rates, but have had little success. Cause and effect is difficult to establish on an issue like this, but the power of suggestion can hardly be discounted. Two boys aged 8 and 12, who were accused of raping their eight year old playmate in Najafgarh last year, supposedly told their social worker in the remand home that they had often seen such acts on television and thought they'd try it out themselves.

Very preliminary findings reveal the following: until June 30, 1990, Delhi Police had registered 93 rape cases—57 were of children under 17, the majority between the ages of 12 to 17 years. In 1989, they registered 152 cases—over 90 were minors; 41 were between ten and 15 years, 14 between five and ten years, and 13 under five. In 1988, 127 cases were recorded, 87 of which were girls—59 between ten and 15 years, 20 between five and ten years, and 6 under five. In Bombay in 1988, over 60 per cent of the total number of cases involved children under 17, and in 1989, more than 90 of the total cases registered were of minors, 22 of them under the age of 12. In Ahmedabad for the years 1987 to 1989, of the 500 cases registered, more than half were of girls under 17, while reports from the Crime Research Bureau in Patna indicate that in Bihar, many cases of child rape also involved their deaths.<sup>1</sup>

Since most rapes go unreported, one cannot assume that the actual incidence of the rape of minors is higher than adult rape; nevertheless, only *reported* rapes constitute a criminal offence, and here the incidence of the former *is* higher. Children don't report, so who does? Senior police officials say that most cases come to their notice only when the families concerned are unable to work out a mutually beneficial arrangement, or when there are scores to be settled. One example is

the particularly chilling rape of an 18 month old baby girl by a landlord in Shahdara to terrorize his tenants into leaving the premises. But families don't always report. In fact, a majority of cases never come to light because the offenders are often friends or relatives of the victims, and police estimate that over 70 per cent of such rapes take place in the victim's 'residential area'. A confidential report of the CRO (Delhi) studying rape cases in the union territory during 1988-90 has found that in *most* cases, the culprits are known to the children. In 1990, of the 70 cases in which the accused were named, 48 were either family friends or relatives; in 1989 of the 132 named, 68 were neighbours and 64, either relatives or friends.

Dr. Leelaben Trivedi, Chief of Gynecology at the Civil Hospital, Ahmedabad, who has studied several such cases, says she treated five girls below the age of 16 who had been raped by their

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fathers, all while their mothers were in hospital giving birth. Two others had been raped by their brothers, and another 17 by maternal or paternal uncles or cousins. In none of these cases were the mothers willing to report the crime. Zarina Gupta, medical social worker at the government run JJ Hospital in Bombay, says that an increasing number of child rapes are coming to light, although "only those in need of medical aid come here. Otherwise there would be little indication of child abuse on such a large scale." She adds, "when I talk to the girls, they do not understand anything—it is only through play therapy that I can get them to communicate. They go blank, the moment is so painful, and most do not know what has been happening." In the case of a nine year old who needed suturing, she said that it was only later that she realized that the father had been sexually abusing the child.<sup>2</sup>

It would appear then, from the above, that the notion of "safe custody" is an elusive one for many children. It is presumed, by children of course, but also by society at large, that any adult can assume the role of guardian vis-a-vis a child, a responsibility supposedly of trust. Yet from the case histories recorded, it emerges that it is through a manipulation of this trust by adults—often family members—that renders their custody of the child perilous and leads to the brutalization of the children.

Here, then, is a variation on "custodial" rape that has remained unnamed by legal and other activists, unwritten in the law books, and scarcely examined by social scientists or women's groups. I do not have the space here to discuss how patriarchy is so powerfully entrenched that even raising the issue of fathers/brothers/uncles/cousins raping their young daughters or siblings largely meets with denial or dismissal. Indeed, I have space only to make a few points and ask a few questions.

Legally speaking, anyone below 18 is defined as a minor and therefore in need of guardianship. The rape law, however, makes no distinction between the rape of minors and adult rape as criminal offences, with the same judicial, investigative and evidentiary procedures being followed for both. Bail and acquittal for child rape are as common as for rape in general; cases can, and do, take years to be disposed of; and convictions are made in less than 15 per cent of them. In Delhi in 1988 and 1989, only four men have been convicted in a total of 280 cases, 97 accused offenders are still pending investigation, and 500 are awaiting trial.

Considering that more than half of these are child rape cases, the implications are staggering. How does the law view the question of consent and benefit of doubt to the accused in the rape of minors? How far should it assume innocence until guilt is proven? How much weight should be given to corroboratory evidence, bailability, and judicial custody? Does the rape of children below the age of ten not constitute an aggravated form of the offence? When child rape can result in death, should the law not take cognizance of its special nature?

In a review of judgments over the last ten years on the rape of minors, Flavia



Agnes, a Bombay advocate and activist, noted predictable prejudices on the part of male judges. Too often, when the girl's age was difficult to establish—it could be 13, 14, 15, or 16—they quibbled over “age of consent”; if the offender was a “youth” of 18 or 20, they reduced the sentence because it was “not in the interest of justice to enhance the sentence of five years” for raping a seven years old; if the medical examination revealed no external injuries, it was often assumed that the child had “consented”; if the defence counsel could persuade the learned judges that “enmity” between the families was the reason for the charge, they could reasonably acquit the accused for want of “conclusive” evidence. In one case from Orissa in 1985, a 16 year old rapist of an 11 year old girl was convicted of “kidnapping, abducting and rape”; the sentence: a fine of Rs.5,000 and “imprisonment till the rising of the court.”<sup>3</sup>

The legal domain is only the most obvious domain in which change and redressal are imperative. Of equal—indeed, greater—importance is a close and careful examination of the sociology and pathology of such violence; of our criminal and judicial procedures when dealing with juvenile offenders, and subsequently their rehabilitation; and of the intersection of patriarchy with the increasingly violent ambience of our inner cities from where most—although by no means all—such cases are reported. Unless we unravel these strands and question the impact of such violence on children, we will be unable to unmask the seemingly random and violent conjunction of lives that the rape of minors represents.

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<sup>1</sup> All figures are taken from data compiled by the Crime Records Office and the Crimes Research Bureau Police Headquarters, Delhi.

<sup>2</sup> As stated in personal interviews with Meena Menon, Bombay; Amitam Arehta, Ahmedabad; and from police records in Patna.

<sup>3</sup> Flavia Agnes, unpublished manuscript.

## JAYA MEHTA

### The Museum

Step gently. Within me there is a museum.  
Stand silently. So silently that you can  
hear your own breath.

This is a museum. In it is the note  
frozen in the throat of the koyal  
stuffed with sawdust and the colourful  
fluttering of the pallid wings of the  
butterfly lying curled on its side.

Stand silently:

If you watch you will see the pigeon's  
neck puffed up with its cooing and  
the tremor in the red eyes of the  
timid rabbit when it hears the lion's  
roar. No, no, no, don't keep looking at it.  
It may again palpitate with fear.

Look at that deer...it seems to be  
springing—leaping—running, doesn't it?  
But no, look properly, its fleeting hooves  
are firmly buried in the ground.

And on this side...do you recognize  
this face? Do the lips seem to be  
quivering? No, no, don't touch it.

Have you forgotten? This is a museum.

*Jaya Mehta was born in 1932 in a village in Saurashtra. Until her retirement in 1992, she taught in the Gujarati Department of SNDT Women's University.*

*This poem was translated into English by Dr. Shirin Kudchedkar.*