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| DELHI DOMESTIC WORKING WOMEN’S FORUM V. UNION OF INDIA |
| CASE ANALYSIS |
| By ARYAN SARMA |

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**BACKGROUND**

In the words of the then Justice S. Mohan who was one of the judges on the bench listening to the case, the background is as following:

The incident, with a filmy background, has outclassed even the movies. On 10th of February, 1993, six women, by name, Usha Minz, Shanti, Josephine Kerketta, Rosy Kerketta, Nili and Lili, domestic servants, were traveling by Muri Express. The journey was from Ranchi to Delhi. One of the victims Miss Lily described the incidence graphically as follows:

I was coming from my home town to Delhi by Muri Express. On 10.2.93 at about 11.00 PM, the Muri Express was at the Khurja Railway Station. At that time, I along with my village girls (1) Usha Minz d/o John Minz (2) Shanti. d/o Siri Anuas Minz (3) Josephine Kerketta d/o Junus Kerketta (4) Rosy Kerketta d/o Remis Kerketta (5) Nili Ross d/o Boas Minz, was traveling in SHI Coach. I slept at Berth No. 50. Our friend, Shanti, woke up and told that some persons were teasing her. When, I and my remaining friends got up, we saw that about 7/8 army 'jawan' had come near us. Then we all friends got up and sat on our respective seats. Then all those army men began to molest us. First they - two Sikhs and 6 cleaned saved men made me and my five friends sit on lower seats and then kissed and hugged us and lured on our body and breasts. On our objection they caught us from our hair and began to beat us. When we tried to cry, they shut our mouths. Then they threatened me and my friends that in case we will make any hue and cry they will throw us out of the running train and will kill us. On this we got frightened and sat there. From these 8 army men- two Sikhs and 6 clean shaved, one sardar and one clean shaved man forcibly made me to lie down on the lower berth and on the other adjacent lower berth another sardar took another girl and one clean shaved fauji took Rossy to bath room. Two other army men made Shanti to lie down on the nearby seat. Another two men tried to take Usha and Nili but both sat under the seat to hid themselves. Thereafter, first Sardar Fauji (whose name has been disclosed in the court as Dhir Singh s/o Puran Singh, PO: Dostpur, PS : Kalanaur, Dist: Gurdaspur (Punjab)) forcibly put off my cloth and removed underwear, raped me. After him, another clean saved fauji, whose face is round and height is about 5'8" raped me. My friends, Shanti and Rosy were also forcibly raped by remaining army men. Thereafter, we tried to lodge a report with the police on the way, but nobody listened us. When the train stopped at New Delhi Railway Station, then I and my friends attempted to catch these persons. They all got down and ran here and there. However, I and my friends could catch hold of aforesaid Sardar Dhir Singh, who had raped me. We all caught him. In the meanwhile, some persons gathered there. Some Army Officers and Policemen overpowered him and took him to MCO office. Then after a while they came in Station and handed over Shri Dhir Singh to you. Sardar Dhir Singh has raped me and his colleagues have raped my friends.[[1]](#footnote-2)

**FACTS**

The incident described in the background formed the basis of the FIR against the Army Men and the Police officers which was registered at the Police Station New Delhi Railway Station. All the rape victims were then sent for their medical examination.

The members of the petitioner Forum wanted to visit the victims. They were provided the address of all the victims by the police. Nowhere were they allowed to enter and meet the victims even though the employers there knew that the rape victims were with them. According to the petitioner- Forum, the victims were its members and they needed social, cultural and legal protection. They also claimed that the victims were helpless tribal women belonging to Bihar at the mercy of the employers and the police. They were vulnerable to intimidation. The petitioner-forum claimed that inspite of such a heinous act against the dignity of poor tribal women, neither the Central government not the State government has given any serious attention for the need of provisions of rehabilitatory and compensatory justice for women. Hence they filed a writ petition under article 32 of the Constitution of India.

**PETITIONER’S ARGUMENT**

• Speedy trail is one of the essential requisites of law. In a case of this character such a trail cannot be frustrated by prolongation of investigation.

• Court has to spell out the parameters of expeditious conduct and investigation of trail; otherwise the rights guaranteed under Article 14 and 21 of the Constitution will be meaningless.

• National Commission for Women (respondent) must engage themselves in exercise of drafting an appropriate scheme to provide inter alia compensation and rehabilitation to the victims of such crimes and violences and impress upon Union Of India (respondent) to frame a scheme as early as possible.

**RESPONDENTS’ ARGUMENT**

• National Commission for Women was constituted by the National Commission for Women Act, 1990. This Act came into force on 31-1-1992, as per Notification No. SO 99(E) dated 31-1-1992. The functions of the Commission are set out in Chapter III of the Act. The prayer that the Commission must engage itself in framing appropriate schemes and measures is beyond the mandate given to the National Commission for Women.

**INTERNATIONAL LAW**

Women have been mistreated for centuries throughout the globe. They were often regarded as 'sex-machine'. So in order to equalise the status and stature of women in society we need some special laws and regulations to uplift them.

International Organizations like United Nations, Red Cross, Amnesty International, etc. have been proactive about the rights of women in general and especially against sexual offences.

**UNITED NATIONS**-

•UDHR

The Universal Declaration of Human Rights adopted by the UN general assembly on December 10 is the most prominent document when it comes to the human rights. It explicitly mentions that everyone should be entitled to all the rights without any discrimination. Whether it's a man or woman, doesn't matter.

Article 2-

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.[[2]](#footnote-3)

• CEDAW

Convention on Elimination of all forms of Discrimination Against Women (CEDAW) is an international treaty adopted by United Nations General Assembly in 1979.

The rights covered in CEDAW include many aspects of women's lives, including women's political participation, education, health, employment, marriage and legal equality.

For instance article 6: Governments must take action, including making new laws, to end trafficking and prostitution of girls and women.[[3]](#footnote-4)

Disappointingly, CEDAW did not include violence against women and girls (VAWG) but the UN has made important moves to remedy this by passing the Declaration on the Elimination of Violence against Women in 1993 and the CEDAW committee has made several, authoritative, “general recommendations” on VAWG.

•VAWG

Article 2:

Violence against women shall be understood to encompass, but not be limited to, the following:

( a ) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

( b ) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

( c ) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs. [[4]](#footnote-5)

•VDPA

The Vienna Declaration and Program of Action is a human right declaration adopted by consensus at World conference on Human Rights on 25 June 1993 in Vienna, Austria. Its part 1, section 18 talks about women right against sexual offences:

. The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safematernity and health care, and social support.

The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women.

The World Conference on Human Rights urges Governments, institutions, intergovernmental and non-governmental organizations to intensify their efforts for the protection and promotion of human rights of women and the girl-child.[[5]](#footnote-6)

**RED CROSS**-

“Rape and other forms of sexual violence that amount to serious violations of international humanitarian law entail individual criminal responsibility and must be prosecuted. All States are obliged to criminalize these violations under domestic law, and to effectively investigate and prosecute any instance of sexual violence.”

***—*** International Committee of the Red Cross (ICRC).[[6]](#footnote-7)

**BRITISH LAW**

UK, like every other country in the world is very strict when it comes to sexual offences. The Sexual Offence Act, 2003 is a remarkable attempt to curb the sexual offences. It includes both, rape and assault and mentions a clear distinction between assault by penetration and sexual assault.

•Rape-A person (A) commits an offence if—(a)he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,(b)B does not consent to the penetration, and(c)A does not reasonably believe that B consents.

•Assault by penetration-Person (A) commits an offence if—(a)he intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else,(b)the penetration is sexual,(c)B does not consent to the penetration, and(d)A does not reasonably believe that B consents.

•Sexual assault-

A person (A) commits an offence if—(a)he intentionally touches another person (B),(b)the touching is sexual,(c)B does not consent to the touching, and(d)A does not reasonably believe that B consents.[[7]](#footnote-8)

**LEGAL ASPECTS**

•**PROLONGED INVESTIGATION**

Delayed investigation or prolonged investigations by police/ authorities have been an unremitting issue when it comes to providing justice in India. Section 173 of the Crpc also prohibits police to unnecessarily delay the investigation. This delay in investigation results in delay in trail which amounts to the violation of the fundament right encompassed in article 21 of the Indian constitution, i.e. the right to speedy trail. The Supreme Court of India in its landmark judgment of Hussainara Khatoon v. Home Secretary State of Bihar held that right to speedy trail is a part of article 21.[[8]](#footnote-9)

The courts have criticized the delay investigations numerous times. In Selvi J. Jayalalithaa vs Central Bureau Of Investigation, Madras High Court remarked that “it is needless to state that the delay would not only amount to denial of justice, but also would result in serious miscarriage of justice apart from causing grave prejudice to the petitioners.”[[9]](#footnote-10)

There are various occasions when the courts have quashed the police/authorities for not working hastily. For example, in Sajjan Kumar vs C.B.I. on 19 July, 2010, Delhi High Court observed that the conduct of Delhi Police prima facie appeared to be far from satisfactory.[[10]](#footnote-11)

But at the same time it is not necessary that the fault is always of police/ authorities when it comes to delayed investigations. Sometimes the situation is not in their control and unwillingly they have to delay the investigations. There can not a general rule which could be applied on all the investigations. Same was observed by the Supreme Court of India in State Of Andhra Pradesh vs P.V. Pavithran. The apex court held that “The determination of the question whether the accused has been deprived of a fair trial on account of delayed or protracted investigation would also, therefore, depend on various factors including whether such delay was unreasona- bly long or caused deliberately or intentionally to hamper the defense of the accused or whether such delay was inevitable in the nature of things or-whether it was due to the dilatory tactics adopted by the accused. The Court, in addition, has to consider whether such delay on the part of the investigating agency has caused grave prejudice or disadvantage to the accused.

The assessment of the above factors necessarily vary from case to case. It would, therefore, follow that no general and wide proposition of law can be formulated that wherever there is inordinate delay on the part of the investigating agency in completing the investigation, such delay, ipso facto, would provide ground for quashing the First Information Report or the proceedings arising therefrom.”[[11]](#footnote-12)

•**WOMEN DISCRIMINATION**

Women have been mistreated for centuries throughout the globe including India. They were often regarded as 'sex-machine'. Even today there is apparent discrimination towards women in many parts of our society which is a clear violation of fundamental rights of women (right to equality, article 14 and right to life, article 21 in constitution of India).In Vasantha R. vs Union Of India (UoI) And Ors, Supreme Court observed that “The human rights for woman is inalienable and it is an integral and an indivisible part of human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development and growth.[[12]](#footnote-13)

So in order to equalise the status and stature of women in society we need some special laws and regulations to uplift them.

Some special initiatives for women:

(i) National Commission for Women: In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc.

(ii) Reservation for Women in Local Self - Government: The 73rd Constitutional Amendment Acts passed in1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas.

(iii) The National Plan of Action for the Girl Child (1991-2000) : The plan of Action is to ensure survival,protection and development of the girl child with the ultimate objective of building up a better futurefor the girl child.

(iv) National Policy for the Empowerment of Women, 2001 : The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a “National Policy for the Empowerment of Women” in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women.[[13]](#footnote-14)

**•ABUSE OF AUTHORITY & RAPE**

Being good or bad is a trait of humans, not of a community. Talking particularly about police, there are two main schools of thoughts. One believes that all police officers are corrupt and its counterpart believes that police/ army can never do anything wrong. This idea of over-generalising things to such a great extent is completely wrong. This should not be misunderstood as it is wrong to respect army/police. No. Absolutely not. Rather, the idea is to make people understand that anyone can do wrong. If someone is in army then that doesn’t mean that he/she can’t do anything wrong. There are various cases where abuse of authority by army, police or any other authority can be seen. In Shri D.K. Basu, Ashok K. Johri vs State Of West Bengal,State Of U.P, Supreme Court observed that “ "Custodial violence" and abuse of police power is not only peculiar to this country, but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1984, which market the emergency of worldwide trend of protection and guarantee of certain basic human rights, stipulates in Article 5 that "No one shall be subjected to torture or to curel, inhuman or degrading treatment or punishment." Despite the pious declaration, the crime continues unabated, though every civilised nation shows its concern and takes steps for its eradication.”[[14]](#footnote-15)

And when it comes to rape, Supreme Court regards rape as the most hated crime. In a similar case where the petitioner was raped by two army men[[15]](#footnote-16), the High Court of Guwahati recited the comment on rape made by the Supreme Court in the case of Shri Bodhisattwa Gautam vs Miss Subhra Chakraborty as: "Rape is a crime not only against the person of a woman, it is crime against the entire society. It destroys the entire psychology of a woman as pushes her into deep emotional crises, Rape is, therefore, the most hated crime. It is a crime against basic human rights and is violative of the victim's most cherished right, namely, right to life which includes right to live with human dignity contained in Article 21.”[[16]](#footnote-17)

**JUDGMENT**

• Broad parameters in assisting the victims of rape:

(1)The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well-acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counseling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case.

(2)Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.

(3)The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.

(4)A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

(5)The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained.

(6)In all rape trials anonymity of the victim must be maintained, as far as necessary.

(7)It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatised to continue in employment.

(8)Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape.

• National Commission for Women will have to evolve such scheme as to wipe out the tears of such unfortunate victims. Such a scheme shall be prepared within six months from the date of this judgment.Thereupon, the Union of India, will examine the same and shall necessary steps for the implementation of the scheme at the earliest.

**OVERVIEW OF THE JUDGMENT**

The court issued some board parameters to assist the victims of rape. It is justifiable because the majority of rape cases in India are of women of rural areas. The literacy rate of rural areas is way below than the average and talking particularly about women of rural areas, they are anyway less literate than the men there. They are unknown about how things go on in police station, courts, etc. So it was important to make them acquainted with their rights and other options that they have during the time of reporting of crime. Another thing to notice is the anonymity of the victim. One of the parameters talked about maintaining the anonymity of the victim. In a country like India, what society think of us is given more importance than what we truly are. We can't change the psyche of the society that easily. People in rural areas just outcast the rape victims. They don't accept them. So it was very much needed to maintain the anonymity of the victim throughout the trail.

The police, the government, the commission (National Commission for Women), etc. are more for our betterment rather than the criminals'. The primary focus of them should be to help the victims, rather than harassing them by unnecessarily troubling them and by neither having sympathy nor empathy towards them.

This judgment is, to a great extent, very much helpful to the victims of rape and at the same time it doesn't harm the rights of the accused and the authorities too.

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3. CEDAW, a6 [↑](#footnote-ref-4)
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