The New Rape Bill

— Legislating Rape "Out of Existence"!

This time, the case we present is so horrifying as to be almost unbelievable. It concerns a woman raped by three men who denied having had sexual intercourse with her. The supreme court judges constructed a case on behalf of the rapists, saying that intercourse must have taken place with the woman's consent since she was of "immoral character." As a typical example of how the law functions, this case stands in sharp contrast to the high-flown theory represented by the recent bill to amend the rape law which leaves untouched the essential anti-women slant of the law. Please do read this case this time and send us your response to the column.

THE Bill to amend the rape law leaves untouched two very important points on which most rape cases hinge – the questions of consent and of the woman's sexual history. We here present a typical case which highlights in a horrifying way how these two assumptions : "She must have consented" and "She is of immoral character" are used against the woman. This is a very important case because, as a recent supreme court judgment, it sets a precedent. This means that similar cases in lower courts can be similarly decided, using this case as a model. Interestingly, one of the judges is well-known for his "progressiveness."

AIR 1977, Supreme Court. Pratap Misra and others versus the State of Orissa. Justices P.N. Bhagwati and S.M. Faizal Ali.

Pramila Kumari Rout, aged 23 years was married to Bata Krishna Rout by exchange of garlands. Since Rout already had a wife Basanti, the high court decided that Pramila was his concubine. They lived in Dubagadra, Puri district, Orissa. Pramila was five months pregnant.

On April 19, 1972, they both went to Nandan Kanan for a pleasure trip. They reached in the afternoon, booked tourist lodge no. 4 and then went out. At the same time, a number of NCC students led by their commander had come to practise horse riding. Among them were Misra, Sahu and Paltasingh, the three accused, who were students of Orissa University of Agriculture and Technology.

Rout and Pramila returned to the lodge at 6.30. After nightfall, they bolted their door, spread sheets on the floor and started having dinner. The three accused appeared at the window, told Rout who they were and asked him to open the door as they wanted to talk to him. Rout asked them to come later as he was eating. They went away but returned soon after and insisted that the door be opened.

As soon as Rout opened the door, Sahu and Paltasingh forcibly dragged him through the verandah and took him about 15 feet away. Immediately, Misra entered the room, threatened Pramila, made her lie down on the sheet and raped her in spite of her protests. She felt pain all over her body. After he left the room, Sahu entered and also raped her. She shouted at the top of her voice but no one came to help her. The chowkidar arrived while Rout was being detained by Misra and Paltasingh. Rout was sobbing. The chowkidar asked him why he was crying and asked the other two why they were holding him by the arms. Rout only kept sobbing. As for his captors, in the chowkidar's words : "They said to me : 'He is our friend, it is none of your business. Go away.' The chowkidar went off to inform his officers.

When Sahu emerged, Paltasingh entered the room and raped Pramila. Just then, a while lot of forest employees arrived. Mishra and Sahu shouted to Paltasingh to come out as people had come. They released Rout and told him to go and bolt himself inside his room. One of the forest department men asked the rapists why they had left their lodge and come there. This led to a heated argument. Sahu gave the forest employee a blow on the nose and he fell down, badly injured. The forest employees then talked to Pramila who narrated her harrowing experience. The forest ranger Ali, called a police officer and Pramila lodged a report with him a 11.30 p.m. Next day, she was medically examined in the morning. In the evening, since she was bleeding, she was admitted into hospital for partial emptying out of the contents of the uterus. Four days later, a complete miscarriage took place, that is the unborn child in her womb died. It was alleged that this was caused by the rape.

The three accused completely denied all the accusations. They denied that they had ever touched Pramila Kumari. Their version was that they had quarreled with the forest employees as a result of which one of the employees had got injured. To take revenge, the employees had conspired with the police and with Rout and Pramila to prepare a false case of rape.

In the sessions, court, the three accused were declared guilty and were sentenced to five years rigorous imprisonment for rape. They were also awarded lesser sentences for having wrongfully confined Rout, caused miscarriage to Pramila, and grievous injury to the forest employee. The high court upheld these sentences and also refused the rapists permission to appeal to the supreme court. But the supreme court gave them special permission to appeal.

Judges or Advocates of the Accused?

The supreme court judgment is a truly unique piece of work. The judges begin by saying that they cannot accept the defence put up by the accused that they did not touch Pramila Kumari. To quote the judges: "On a perusal of the evidence, we are fully satisfied that there can be no doubt that the appellants had sexual intercourse with Pramila Kumari…" that is, they begin by recognizing that the three men had put up an absolutely false defence and had lied consistently in court.

However, the learned judges then go on to create a defence case for the accused. They create a case which the rapists' own lawyers had not dared to put up. And on the basis of this case which is totally dependent on "might-have-beens" they proceed to declare the accused not guilty!

The case so kindly constructed by the judges on behalf of the rapists is as follows : sexual intercourse did take place between Pramila and the three men. (There was proof of this such as blood and semen stains and testimony of witnesses). But where is the evidence to prove that she did not consent to this sexual intercourse? The question would of course arise : why should a woman consent to intercourse with three strangers, one after another, on the first day of a vacation with her husband? To this the judges have a ready reply: Pramila was a woman of "bad character." After all, she was not Rout's legally wedded wife since he already had a wife!

The judges then proceed to show that it was in any case near impossible for anyone at all to rape Pramila. Why? Because, to quote them again, "The admitted position is that the prosecutrix is a fully grown up lady, habituated to sexual intercourse and was pregnant. She was experienced… It is also admitted that she was a midwife and had served in that capacity with a doctor." Let us examine this statement. Are the facts of her being a grown up woman and a midwife so self-condemnatory of her that they have to be "admitted"? Do they amount to an "admission" of guilt? The description of her as "grown up and experienced" is repeated at least five times in the course of the judgement.Does this mean that grown up and experienced women cannot be raped?

Men's Opinions Versus Women's Experience

The distinguished judges go on to say precisely this, and to quote distinguished experts in their support: "The opinions of medical experts show that it is very difficult to rape single-handed a grown up and experienced woman without meeting the stiffest possible resistance from her." So the opinions of male experts are used to deny the everyday experience of millions of women.

The sessions judge had remarked that since the rapists were NCC students and sturdy persons Pramila may have found it futile to put up resistance and may have decided to submit to the attack on her rather than take the risk of further violence and

** Midwives are usually poor, low caste women. They are hated, despised and feared by men because they help women not only in childbirth but also in such matters as abortion and contraception which give women some control over their bodies. Women tortured and burnt as witches are often midwives – this is true of all countries including India.*

WHAT THE LAW SAYS

Indian Evidence Act, 1872

Section 155 The credit of a witness may be impeached in the following ways:
1. by evidence of person who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;
2. by proof that the witness had been bribed;
3. by proof of former statements inconsistent with any part of his evidence…;
4. When a man is prosecuted for rape or an attempt to rape, it may be shown that the prosecutrix was of generally immoral character.

Indian penal Code, 1860

Section 375 A man is said to commit rape who had sexual intercourse with a woman…
Against her will; without her consent, with her consent, when her consent has been obtained by putting her in fear of death or hurt; with her consent when the man knows that he is not her husband and that her consent is given because she thinks he is another man to whom she is or believed herself to be lawfully married; with or without her consent when she is under 16 years of age. Exception : sexual intercourse by a man with his own wife when she is over 15 years of age, is not rape.
Section 376 Whoever commits rape shall be punished with imprisonment for life or with imprisonment for a term which may extend to ten years (*this is the maximum)* and shall also be liable to fine…

injury. To this the supreme court judges say: "Such a course of conduct is wholly improbable particularly in the case of a grown up and experienced woman."

They even used the fact of Pramila's pregnancy against her: "She was a fully grown up lady, experienced in sexual intercourse and in the art of midwifery. She knew she was pregnant and any violence might result in abortion. This circumstance would naturally impel her to put up stiffest possible resistance." Why does it not occur to the judges that one way of saving herself and the child from extra violence would be for her to avoid physical combat with the rapists?

The judges also mention that the men attacked her "single and unarmed." This is a deliberate distortion of fact. Three or more men raping a woman in furtherance of a common intention amounts to gang rape. And would a distance of 15 feet make them single? While one was raping her, the other two were 15 feet away, holding her husband fast. As in most rape cases, the judges then proceed to point out that there was no injuries on the woman's body and again quote their medical "authority": "A false accusation of rape may sometimes be exposed by marks of violence being wholly inadequate or absent."

Inadequate! One wonders how bruised and battered a woman would have to be for these authorities – medical and judicial – to consider her "adequately" attacked! Perhaps dead – like Sita?

The judges also say that the medical examination of the accused did not reveal any injuries around the penis. They conclude : "This is rather an important circumstance which negatives the allegation of rape." The medical examination of the accused was most inadequate – as the whole body was not examined, the doctor did not mention whether other parts were injured. Here we may quote Taylor, the "authority" so often quoted by the judges : "Injury is most unlikely to the penis," that is, women do not normally manage to attack the rapist's genitalia, though this form of attack would be the most effective self-defence. We should notice how the absence of evidence or the non-recording of possible evidence such as injuries to the accused, leads the judges to a definite position against the woman; "The medical evidence clearly discloses that she does not *appear* to have put up any resistance. From this the only *irresistible inference* can be that she was a consenting party."

Two more equally illogical arguments are put forward by the judges on behalf of the accused. Firstly, that Pramila did not bolt the door after she was raped by Misra. The learned judge does not seem to realize that the other two were standing at a distance of 15 feet and had her husband in their grasp. Should Pramila be expected to spring up immediately after being raped, and lock the door? The judges say: "As an experienced woman (they almost make it sound as if she was experienced in being raped – and in most men's mind the distinction between a woman's experience of sexual intercourse and rape is very vague – for men the essence of both is penetration and little else matters. Hence the inadequate definition of rape as penetration though other kind of sexual violence could be equally humilitating for a woman) the first natural instinct on her part would be to shut the door. The fact that she allowed the door to remain open so as to *allow* the entry of the other two clearly shows that the whole thing was a pre-arranged show."

Secondly, the fact that when Rout was questioned by the chowkidar, he did not at once narrated the story but only kept, sobbing is thus interpreted by the judges: "he chose to remain silent. Such a conspiracy of silence could only mean that the sexual intercourse was done with the consent of Rout and Pramila." The trump card produced in favour of the rapists is that Pramila Kumari had a complete abortion not immediately after the rape but four days later. The doctor's opinion was that the abortion she had could not have been caused by the rape.* From this the judges conclude that if she had been raped, she would definitely have had an abortion immediately. Since she did not, this proves that she was not raped : "If Pramila Kumari had been raped, the inescapable conclusion would be that she would have abortion immediately. Thus on this ground alone the accused would have been entitled to an acquittal."

Judging or Fiction Writing?

In their final analysis, the judges dismiss the case of rape as "full of inherent improbabilities" and outline what "must have" actually happened. They say that Misra, Sahu and Paltusingh "may have entertained some suspicion that Pramila was not of a good character and was merely a concubine of Rout. They therefore wanted to negotiate with Rout, the husband of Pramila, and that is why they asked him to come to their lodge. Having done so it is difficult to believe that they would suddenly try to get the door opened and drag him out, when the matter could he settled if possible by negotiation."

It is clear that this imagined sequence of events – more suited to the pen of a film script writer than of a judge – rests solely on the supposed "bad character" of Pramila. The judges are quite ready to call her a prostitute but are unwilling to call Rout to call her a prostitute but are unwilling to call Rout a pimp. Notice that while she is termed his "concubine", he is referred to as her "husband." The judges say: "We do not mean to suggest for a moment that Rout was a pimp but the fact that the appellant wanted to negotiate with him…shows that Rout himself connived at the sexual intercourse committed by the appellant with his concubine." Thus, all the men are exonerated. The rapists are of "good character" because they wanted to negotiate a prostitution deal (which incidentally is also a legal offence); Rout is not a pimp. The only villain of the piece is the "experienced" 23 year old woman who cried rape to harass innocent men!

We should notice that there is not a shred of evidence to support this concocted case put up by the judges. The fact that

** We consulted several women doctors who said that abortion caused by rape could quite well take place a few days later. Shock might endanger the blood flow, affect the placenta, a partial abortion might take place and complete abortion follow later.*

Don't worry, they are settling the matter by negotiation—he is not a pimp but she is a prostitute

the accused disclosed their identity to Rout is made much of by the judges, as if it showed their honest intentions. But after all, this could have been to assure him of their respectability as NCC students or to intimidate him with their credentials.

And what, according to the judges, was the motive behind this cooked-up charge of rape? "It seems to us", they say, "that the forest department employees must have resented the conduct of Rout in allowing his wife to have sexual intercourse with the students in the lodge. This may have led to an altercation as a result of which an employee was seriously injured. The department employees felt humiliated and persuaded Rout and Pramila to construct a case of rape." That is, the forest employees objected to Rout's behaviour but ended up conspiring with him against the students! Also, we are not told when exactly the conspiracy between Rout and the forest department could have been laid – since Rout and Pramila started having dinner only after nightfall and the report was lodged at 11.30 p.m.

Having satisfied themselves of the guilt of the woman, the supreme court declared all three men not guilty and set them free. No appeal is possible after a supreme court decision. In this case, it would not have been possible to try and argue against the defence put up by the judges because the rapists had been arguing all along that no intercourse had taken place. This version that the woman consented, was put up by the judges at the last moment, as part of the final judgment. And this judgment was passed without the judges as much as seeing the face of either the woman or the accused because in this as in most cases, when no fresh evidence is to be presented, the high court and supreme court only reconsider the same evidence which was presented in lower courts and decide on the question of "fact" – did rape take place or not on the basis of this evidence ? The woman's life is decided, her character passed judgment upon, by a few men to whom she is nothing but a name – a member of an inferior species. The highest court in the country is also the most alienated court.

If the proposed bill to amend the rape law comes into force, a case like this one can still be decided in exactly the same way – against the woman. Because the decision was made on the basis of her supposed "consent" due to her supposed "bad character."

Burden Remains With Women

The Law Commission appointed by the government to suggest changes in the rape law, had suggested two very important changes – one, shifting of the burden of proof of consent and two, that the woman's sexual history and general character be not admissible as evidence.

The shifting of burden of proof has been wrongly understood by many to mean that any woman can say she was raped and the man she accused will automatically be punished. And therefore this can be misused to victimize innocent men. This is not at all the implication of the amendment. As of today, only the woman has to prove that she did not consent. In the absence of injuries, this becomes almost impossible to prove, and her sexual history, real or concocted, is brought against her to "prove" that she was a bad woman and hence might have consented. The man does not have to prove anything. He is not even cross-examined. If the burden of proof is shifted to the man, it will only mean that *after* sexual intercourse is proved, *after* all other evidence is presented (the man can show, for example, that he was elsewhere at the time or rape), *then* if the woman says she did not consent, she will not have to present proof of this. Instead it will be up to the man to prove that she did consent – if this is his defence. If he is saying no intercourse took place, then the question of his proving consent does not arise. The burden of proof is shifted only on this point of consent – not the proof of innocence or guilt. It is still up to the woman's lawyers to prove that the man was guilty. He is assumed to be innocent till proved guilty. It should also be remembered that it is much easier to establish the presence of a fact (consent) than its absence (non-consent). There are other offences such as adulteration and smuggling in which the burden of proof rests with the accused. So it is not as if this change would be setting an unheard-of precedent.

Yet this vitally important change has not been included in the bill. The burden of proof has been shifted only in cases of rape by police officers, public servants, superintendents or managers of jails and hospitals. Very few cases of rape by such persons are likely to come to court unless certain procedural changes are introduced, as discussed below. The burden of proof has also been shifted in case of men who rape a woman knowing her to be pregnant. But knowledge of this kind is very difficult to prove-unless the woman is in an advanced stage of pregnancy. It has also been shifted in cases of gang rape. Gang rape has been defined as rape by three or more men in furtherance of a common intention. Again, to prove a common intention is far from easy.

Cases of mob violence or police running amok are not likely to fit into this definition.

Secondly, the Law Commission suggested that the Indian Evidence Act be amended so that the "general immoral character" of a woman should not be allowed as evidence. But the bill has totally ignored this crucial suggestion.

Why No Preventive Measures?

The bill focuses on custodial rape – a strange new category invented by it. The term should include all cases where the woman is in the custody of the rapist. But actually it includes only cases of rape by police, public servants and managers of hospitals. It does not include rape of minor girls in the custody of older men or rape within the family – which are the most widespread forms of "custodial rape."

Rape by a man having public authority is considered to be a more heinous crime because the man is misusing his power. The question is: how does he do this ? Does he merely use it to intimidate the woman at the moment of rape? No. **Every rapist uses his power as a male in male-dominated society to intimidate and terrify the woman he rapes.** But men in public authority misuse their *extra* power in two ways : 1. To isolate the woman either in a space where they have control such as a police station or in a space where they take over control, as when police terrorize a village community and break into homes. To destroy real evidence, create false evidence, bungle records, buy off witnesses by applying pressure or offering bribes – so that the woman has already lost her case much before it gets into court. Since it is so well known that police conspire with criminals to bungle cases, most people hesitate to enter a police station, much less report a rape case.

The Law Commission realized that in case of custodial rape, changes in pre-trial procedure are most urgently needed. What is the use of prescribing a minimum punishment of ten years imprisonment for a policeman rapist, when we all know that most cases of police rape go unrecorded or fall through for lack of evidence, the simple reason being that a policeman is not likely to record evidence against himself or his colleagues. Therefore the Law Commission suggested the following changes;

1. If a police officer in charge of a police station refuses to record any information relating to a cognizable offence which is reported to him, he shall be punished with imprisonment of one year or fine or both.

2. The man accused of rape and the victim shall be medically examined without delay. This is important because very often medical examination is deliberately delayed so that bruises held up and evidence is thus lost. Also the report shall give details such as age, marks of injuries. Usually medical examination of the man tends to be cursory; the doctor only looks for signs of recent sexual intercourse and not for injuries. The woman's consent should be asked before she is medically examined. The report should be forwarded to the magistrate without delay. This is so as to avoid bungling.

The Law Commission also recommended certain changes in procedure to lessen the possibility of rape by police. A woman is most vulnerable to police rape when she is arrested, interrogated or detained for questioning. It is easy for the police to terrorize her relatives and isolate the woman. Very often, she is the only woman in a place full of men. This is what happened to Mathura. So the Law Commission suggested the following changes :

1. No woman should be arrested at night. If it is absolutely necessary to arrest her at night, permission of a higher police officer should be obtained.

2. A policeman should not actually touch a woman when he is arresting her.

3. A woman shall not be asked to appear for questioning or to give a statement at any place other than her dwelling place.

4. If the statement of a girl under 12 is to be recorded, a police woman or representative of a women's welfare organization should do the job.

5. When the statement of a woman is being recorded by a male police officer, a relative or friend of the woman and a representative of a women's welfare organization shall be present.

6. When a woman is arrested, and there is no separate women's detention centre in the locality, she shall be sent to a women's or children's welfare institution or a protection home.

7. A public servant who disobeys the procedure laid down for investigation shall be punished with a year's imprisonment or fine or both.

Clearly, all these provisions are of the first importance as they are designed to give the woman some minimal protection from police brutality. If anything, much more needs to be done along these lines. **But the government has totally ignored these suggestions. Not one of them is included in the bill.** Instead, a new clause is introduced providing a minimum punishment for rape and a higher minimum punishment for rape by police.

Minimum Punishment, Maximum Acquittals ?

Why is it that the government does not want to take any measures to try and *prevent* police rape ? No doubt at first sight it seems that the provision of minimal punishment is anti the individual rapist if not pro-women. But will it really work against the individual rapist? If one goes through rape cases as they have been decided in court till date, one notices a uniform pattern. Judges are most reluctant to declare a man guilty. When they do, they look for one excuse or other (he was young, he was oversexed, he had a psychological problem, he can turn over a new leaf) and let him off with a mild a sentence as possible. In the law as it now stands, it is possible to declare a man guilty of rape and let him off with six months' imprisonment. And this is what judges often do.* But if the bill is passed, it will mean that once a man is declared guilty, he automatically gets seven years' imprisonment and ten years if he is a policeman. The judge cannot give him a lesser punishment. So far, even though the judges tended to be sympathetic to the man, they could declare him guilty and let him off with a mild sentence, but if once a judge knows that the

** See Manushi No. 5.*

punishment is already decided, and all he can decide is guilt or innocence, he is most unlikely to declare a man guilty as long as there is the faintest shadow of doubt in his mind (and in most men's minds there is always the lingering doubt that she may well have wanted if after all). Therefore this provision of minimum punishment is most likely to result in fewer rapists being declared guilty, fewer men being convicted of rape.

The Law Commission suggested that if a public servant compels or seduces any woman in his custody to illicit intercourse, he shall be punished with two years' imprisonment or fine or both. This rule should also apply to a man holding a post of authority in a women's or children's institution and to managers of hospitals who have illicit intercourse with a mentally disordered patient. This provision has been accepted and included in the bill. We should note that such cases are extremely unlikely to come to court. How is the woman to get out of the rapist's control and file the case?

Some other suggestions made by the Law Commission have been included in the bill – but with very significant alterations :

1. The definition of rape has been slightly changed from "intercourse without her consent" to "intercourse without her free and voluntary consent." This change loses much of its meaning if the burden to prove the absence of consent still remains with the woman. In cases of custodial rape such as that of Mathura, this change will help the woman.

2. The words "criminal intimidation" have been included, which means that if a woman consents to be raped because the rapist threatens to hurt or injure or kill any other person if she does not consent, the offence will still be counted as rape. The Law Commission had suggested that if the woman is mentally unsound or intoxicated or has consumed any unwholesome substance so that she is not able to understand what she is giving consent to, or is unable to offer effective resistance, the offence will be considered rape. This change has been accepted, with addition of the words "administered by him" which means that if the woman had been given sleeping tablets by the rapist, it will count as rape but no if she had taken them herself. It will be very difficult to prove that it was administered by him and that she did not take it herself.

See No Evil, Hear No Evil ?

There is however one part of the bill, which, if passed, is likely to have an impact – a disastrous one, in fact. This is the clause which makes it illegal for anyone to print any information which can reveal the name of the rape victim. This means that no newspaper or magazine can print details of a rape case because details such as name of accused or the locality where rape took place, are likely to disclose the identity of the woman even if her name is not used. Women's organizations will not be able to protest publicly against rapists or print pamphlets denouncing them. All this under the pretext of protecting the woman's "reputation" and also of protecting the accused until he is proved guilty. After all he may turn out to be an innocent as Misra, Sahu and Paltasingh!

We all know that once a case gets to court, it is extremely unlikely that the woman's immediate neighbours and social circle will not know about it. Her reputation will suffer in the place where she lives and where it can affect her. Rumour, not newspapers, carry the facts around in a distorted form. As for the man, it is very necessary that he be defamed in his place of residence and work. In fact this is one of the most effective forms of action a women's group can take. And it is precisely here that the bill proposes to shut our mouths and ears, to deprive us of information and prevent us from diffusing it. As it is, the rape cases we get to hear of are a tiny fraction of the total number. Most cases go unreported. This bill tries to make violence against women even more invisible and unspoken of than it already is, tries to isolate us still more from each other.

The other new clause declares that all rape trials will be held in camera, that is members of the public, the press and women's or social organizations will not be allowed to witness the trial. It is true that in the lower courts the woman has to face a great deal of ridicule and hostility from the men who crowd around just to watch a "sensational" trial. But we must also remember that the judges, advocates and other witnesses are not likely to be any less hostile or contemptuous towards her. Still more important, at high court and supreme court levels, no fresh evidence is usually

We need Your Response

WE find that some of our readers tend to avoid reading the law column in detail because they feel it might be too difficult to understand or too remote from their lives.

It is true that the law givers deliberately surround the legal process with such a fog of red tape and tongue-twisting language that any sane person would want to keep a distance from it. But we feel that this is a part of the conspiracy to deprive us of control over our own lives. What could be more ironical than the fact that the people fighting the case do not state their own case – as if any man, however well trained, could know better than a raped woman does, what she has suffered!

Most of the time we only know that such and such a law exists-we are not told how it operates in actual practice. So in this column we try to expose not just how the laws passed by parliament are biased against women but how the whole legal system from the police who record the case to the courts which judge it to the legal books which interpret it, conspire to keep us opressed as women. We try to write as simply and clearly as possible but we would like you to tell us what if anything you find is tedious or needs to be explained in more detail. We can carry this effort further only if you read the column and send us your ideas, suggestions, criticism.

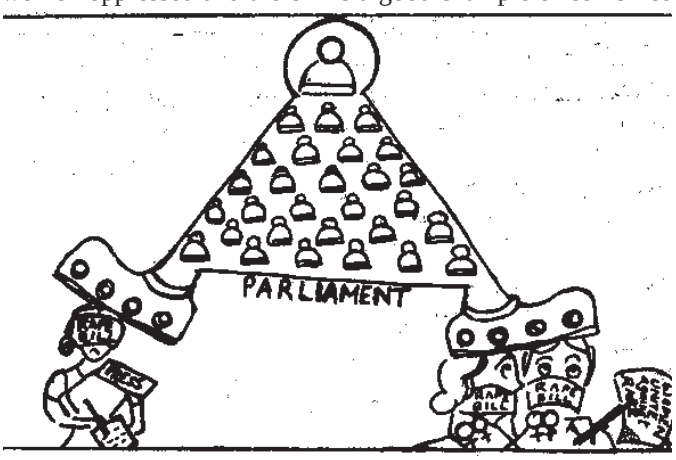
considered, so the woman and the rapist do not appear in court.

Is not this blatant press censorship the real purpose of the bill and the only measure which is likely to be effective? All the other clauses of the bill give with one hand and take away with the other. **The thrust of the bill is to censor women's issues and struggles out of existence.** The established media and the alternative media have played an important role in generating an awareness of women's issues. Even though newspaper reports do distort and sensationalize the issues of rape, yet they have helped to generate an awareness that rape is on the increase. This is far better than a complete silence – **for women, the dangers of invisibility are far greater than those of publicity.** The shrouding of rape trials will strengthen the false notion that rape is a shameful secret for the woman – that it is something to be hidden rather than a crime of violence like say, murder. Are murder trials conducted in secrecy to save the reputation of the murdered persons?

This bill would completely disarm women's organizations, disarm all of us and destroy the very anti-rape campaign to which it is supposed to be a favourable response.

Only Policemen Can Rape ?

A bill introduced by the government as an anti-rape bill turning out to be anti-women should not surprise us. After all, the whole state machinery and laws operate subtly and blatantly to keep women oppressed and the bill is a good example of combined



Legislating rape out of existence!

subtlety and blatancy – on the one hand pretending to respond to the women's campaign and thus projecting a liberal image of itself; on the other hand, seizing the occasion to repress anti-rape agitations.

However the question arises: has not the bill taken advantage of a flaw in our own anti-rape campaign over the last one year? Have we made a systematic enough attempt to understand and re-define rape from women's point of view? Have we not, too often, in the interests of quick joint action such as morchas and public meetings, sacrificed joint understanding which is, after all, a much slower, more painful process? Why is it that our campaign ended up being anti-police and anti-Rape as an abstraction but not clearly pro-women? We need to understand why many of our organization find themselves floundering for fear of going too far. Is it possible to go too far in our own defence when we are being raped and killed every day? For instance, it is disappointing that there is confusion as to whether the burden of proof of consent should be shifted only to policemen accused of rape, as the bill proposes, or to all men accused of rape. Even many of us who are involved in organizations are unsure whether to acknowledge what any woman, even one not so involved, knows from her experience and is ready to state : "Any man can rape."

The main argument used by so-called "progressive" political groups against the idea of shifting the burden of proof of consent to the man, that is of asking the man to prove that the woman consented to sexual intercourse, rather than asking the woman to prove that she did not consent, is that false cases of rape can be invented to discredit male political activists.

This argument is based on the same old myth that women are liars, that they first willingly sleep with a man and then accuse him falsely of rape. How is this attitude any different from that of the judges in Pramila's case ? Firstly, cannot cases of smuggling and theft be planted on activists? Why this special fear of rape cases being concocted? Why this great fear of suggesting a change in a blatantly anti-women law?

Secondly, are political activists incapable of rape? What have women not suffered at the hands of these "activists"? What have women not put up with in the name of camaraderie? At the recent conference in Bombay, some Left groups had sent their women members specifically to voice their male comrades' and leaders' opinions, and vote against the shifting of the burden to rapists. We were interested to find from conversations with these women individually later, that many of them had been victims of male sexual violence at the hands of those same male comrades – to protect whom they were willing to bargain away the rights of millions of women.

One woman activist who voted pro-women, had been working with a Left group in Bangalore. She was pursued and constantly harassed by a comrade. When she persistently refused to sleep with him, he set fire to her house one night. She had a miraculous escape but after that had to leave the city and her work there, because this man was after her blood. Now he is regularly sending out letters full of obscene slander against her to people all over the country. We also receive these letters from him.

Another woman activist was insulted and harassed by a comrade who was staying in her house. When she protested, her own husband, also an activist, said the comrade could not be turned out so she left and stayed on her own for several months. Yet another found herself literally shadowed by a comrade as she went about her work in the city. All her protests were futile and finally one evening he cornered and attacked her. The list is endless. Every woman who has worked with a Left group could add her own experience.

We too have had to face all kinds of violence from so-called "progressive" political men. Violence on the streets is one thing but so far it has only been political activists who have dared to attack us in our own homes, while they are enjoying our hospitality! We have been insulted in the most unbelievable ways by such "progressive" men – have been subjected to demands, threats, pawings, vicious slander.

And where are women to seek redress from this special brand of men? Our most recent experience clearly revealed that as far as sexual violence is concerned, all male judges, whether they be in law courts or in political groups, are unanimous in declaring us guilty as women.

A member of a well-known group of "socialists" in Delhi University, had for a long time been pursuing and physically harassing two of us. In spite of our categorical refusal to comply with his demands, we were repeatedly subjected to pawing and misbehaviour. Since we resisted and began to keep a distance from him, he started spreading vicious rumours, personal and political, against us. Though this particular man is notorious for his anti-women jokes, comments and behaviour, yet when we presented a *written* statement to the group, asking them to hold him accountable for his conduct, they refused to even give us a hearing or to discuss the matter. On the contrary we were advised to leave the matter there because the mud would stick to us and also how could the group go into the "personal" actions of a member. Such is the justice which numberless women have received within the various communist parties – when they were first raped by comrades and then advised by other comrades to keep quiet about it in the "larger interests" of the party! Many women have written and talked to us about such experiences within parties.

Whenever we are told to sacrifice our rights for a "larger interests" – whether that interest be of the nation, the community, the party, we can be sure that the larger interest is basically that of keeping intact an anti-women structure. How is it that even those of us who know from our own bitter experience that male activists are not a unique species but are as capable of committing rape as any other men, are still confused as to whether a mere legal shift can result in the victimizing of these poor men?

We know that our supporting or asking for such a change would not mean that the government is likely to introduce it. We also know that a mere change in law would not mean more practical justice for women or fewer rapes. But the least we can do is to not take anti-women positions and call them "progressive" positions. It is no new argument to say that women concoct false cases of rape. The bogey of political activists being victimized is only a cleverer way of saying the same thing.

After all why protect only political activists? Why not protect honest policemen as well? Why support the shifting of burden of proof in cases of police rape alone? Either we recognize that in society as of today, women are victims of violence and therefore if a woman says she was made a victim, the probability is overwhelmingly on her side. Or we say that women are fickle, tell lies and enjoy rape anyway. Either we are for women or against women. Let us not confuse the issue by trying to categorize rapists into the more excusable and the less excusable.

We need much more systematic discussion among ourselves so that we can link our own experience of sexual violence to that of the women whose cases we may take up for protest action. This is perhaps the only way we can ensure active participation and decision-making in the campaign by the women victims of rape. Often the dalit and working class women whose cases are taken up, remain alienated from the process of organization. Unless we link our struggles as women, our activity could well remain at the level of do-goodism to women "out there".

It is worth noticing that most of the cases which got publicity last year were reported not because the woman herself took the initiative to demand justice but because the men of her community or the local citizens got agitated and fought on her behalf. The woman has often been seen as a symbol of the desecrated honour of her community. And usually she has been a mute symbol. Think of Shakilabee, Rameezabee, Mathura, Seema and Darshana. Would these women have willingly spoken about the rape if it had not been spoken about inspite of them? Where are these women now? Has our campaign been of support to them? Has our campaign been of support even to the women who participated in it or helped organize it? The bill not responding to women's needs and the very alarming fact that women are not certain whether it answers these needs or not, is somewhere linked to the fact that these needs have not yet been articulated through our agitations.

We seriously asked ourselves the question: If tomorrow one of us is raped, would we want to make it a public issue – would we want to make it a public issue – would we want it to be publicized as the Mathura case was – would we feel sure of enough sisterly support to do that with confidence? And we were not able to answer the question with a definite yes. Neither were any of the women activists with whom we have discussed this question (except for one in Bombay). Fragmented morchas from one March 8 to another or from one case here to another there, may leave us more alienated from each other, from ourselves and from our own issues. Should it not be the purpose of a women's campaign to built a structure of support between women, between ourselves ? Should we not undertake the process of slow steady work and discussion together, so that we reach the point when law makers will not be able to hand out an anti-women bill under the pretext of doing us good and if they do, we will be better prepared in our collective reaction to it? ❐