

# Campaign Against Rape by Women's Movement in India

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## INTRODUCTION

Women's rights movement in India gained a national character with an anti-rape movement in 1980. Its genesis lay in the excesses committed by the state repressive machinery during the Emergency Rule in India from 1975 to 1977. For many middle class women it came as a major shock. In the post emergency period, civil liberties organisations also highlighted rape of women in the police custody, mass rape of poor, untouchable and Muslim women during caste and communal riots and sexual molestation of tribal women by Central Reserve Police (CRP), State Reserve Police (SRP) and other para-military forces. The print media gave an enormous coverage to the testimonies of women victims of sexual violence. Many began to question the powers given to the police and State authorities in the control of people's lives. In 1980, when the Supreme Court of India gave its verdict on the Mathura Rape Case, there was a national outcry.<sup>1</sup>

Mathura, a teenage tribal girl was raped by two policemen, in the police station at dead of night while her relatives were weeping and wailing outside the police-station. The legal battle began when a woman lawyer took up her case immediately after the event in 1972. The Sessions Court blamed Mathura for being a woman of "an easy virtue", and the two policemen were released. In the High Court Judgement, the accused were given seven and half years imprisonment which was reverted by the judgement of the highest legal authority-The Supreme Court of India. It held that Mathura had given a wilful consent, as she did not raise any alarm.<sup>2</sup> The resulting nation-wide anti-rape campaign in 1980 demanded reopening of the Mathura Rape Case and amendments in the Rape Law.<sup>3</sup> Prominent lawyers took up the issue, as did the national and regional language press. New groups of women were formed around this campaign. They organised public meetings and poster-campaigns, performed skits and street-theatre, collected thousands of signatures in support of their demands staged rallies and demonstrations, submitted petitions to MLAs and the Prime Minister, and generally alerted the public to the treatment meted out to the rape victims. The initiative came

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<sup>1</sup> Vibhuti Patel: "Women's Liberation in India", New Left Review, No. 153, 1985.

<sup>2</sup> Tukaram and Ganpat versus State of Maharashtra, 1979, Supreme Court of India, Delhi.

<sup>3</sup> Neera Desai and Vibhuti Patel: *Indian Women-Change and Challenge in the International Decade, 1975-85*, Sangam Publications, 1990.

from the middle class, educated and urban women. Later on, the political parties and the mass organisations also joined the bandwagon.<sup>4</sup>

### **Debates on Reforms in the Rape Laws**

The demand of the amendments in the Rape Law touched wide variety of issues concerning social construction of sexuality that reflected in the assumptions in the law and in the civil society about women, past sexual history of the rape victim, procedures of the criminal justice system-First Investigation report (FIR), inquest, medical examination, rights of women in custody-in India. Two booklets represented the debates and discussions amongst the feminists and the democratic rights activists on gang-rape, custodial rape, rape in the family, burden of proof, etc.<sup>5</sup> When the national conference on 'Perspective for Women's Liberation Movement in India' was held in Bombay in November 1980, the proposed rape bill was the most controversial issue. As a result of rigorous debate amongst the feminists, it was resolved that demands of the women's organisations should be as follows:

1. A woman should be interrogated only at her dwelling place.
2. During interrogation by a police officer, a woman should be allowed to have a male relative or friend or women social workers present with her.
3. Women who are detained in custody should be kept in a separate lock-up meant for women only. If there is no such lock-up available then the women should be kept in a children's or women's home meant for the protection and welfare of women.
4. The medical report of a rape victim should state the reasons for arriving at the conclusions and should be forwarded without delay to the magistrate to avoid possibility of tempering.
5. During a trial of rape, the past sexual history of the rape victim should be excluded from the evidence.
6. A police officer who refuses to record a complaint should be guilty of an offence.

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<sup>4</sup> See Vibhuti, Sujata, Padma (Forum Against Rape): *"The Anti-Rape Movement and Issues Facing Autonomous Women's Organisations in India"* in Miranda Davies (Compiler): *Third World-Second Sex*, Zed Press, 4th Impression, 1987.

<sup>5</sup> See, Lawyers' Collective: *"Rape and the Law"*, Bombay, 1980 and Sudesh Vaid, Amia Rao and Monica Juneja: *"Rape, Society and State"*, People's Union for Democratic Rights, New Delhi, 1980.

7. Section 375 of the Indian Penal Code which clarifies that the consent of the woman in order to be considered as consent must be absolutely free and voluntary must be amended in view of the Mathura case.
8. The provision about 'burden of proof' in Section 111a of the Indian Evidence Act must be changed and it should be added that in cases where the accused in a rape trial is a public servant, police officer, superintendent or manager of a jail or hospital or remand home, where sexual intercourse is proved and the woman makes a statement on oath that she did not consent to the sexual intercourse, then the court shall presume that she did not consent.<sup>6</sup>

The last point raised a major controversy as many feminists felt that in all cases of rape the burden of proof should be on the accused and not on the victim, given the nature of the offence, the dominant position of men over women and the impossibility of proving lack of consent except by stating that she did not consent. While women activists from the background of the mass movements felt that such provision could be abused to victimise the male members of the trade-unions by the management and the male activists of the dalit, tribal and peasant organisations by the local vested interests.

### **The Criminal Law Amendment Act (1983)**

After three years of heated debates in the women's groups, media and the Law Commission of India, the parliament passed the Criminal Law Amendment Act (1983). This Act amended the Indian Penal Code, The Code of Criminal Procedure and the Indian Evidence Act with respect to the law relating to rape. As per this Act, revealing the identity of a rape-victim is an offence. Though this Act maintains more or less the same definition of rape, it introduces many new categories of offence of sexual intercourse by persons in custodial situation-such as superintendents of hospitals, remand homes, prison and police officials-with women in their custody. In cases of custodial rape, burden of proof lies with men and if a woman victim makes a statement that she did not consent, the court would believe that she did not consent. Feminists had demanded that marital rape should also be considered a punishable offence, but this demand was rejected and thus the government supported the popular social belief that a married man has the right to have sexual intercourse with his wife, with or without consent. The rejection certainly meant that the Act did not

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<sup>6</sup> Vibhuti Patel: *"Needs and Rights: Experiences of Women's Movement in India"*, United Nations University, 1984.

meet the aspirations of the women's movement. In spite of this limitation, popular debate on the subject enhanced self-confidence and sense of solidarity within the women's movement.<sup>7</sup>

### **Definition of Rape**

The Act defines rape as being sexual intercourse with a woman under either of the following Descriptions:

- A. Against her will.
- B. Without her consent.
- C. When her consent is obtained by putting her or any person in whom she is interested in fear of death or of hurt.
- D. With her consent, when the man knows that he is not her husband and her consent is given because she is under an impression that he is her husband.
- E. With her consent when she is incapable of giving consent because of unsoundness of mind or intoxication.
- F. With or without her consent when she is under sixteen years of age.

The Act makes it clear that "Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape."<sup>8</sup>The only change made by the amended Act, is in provision that sexual intercourse with consent, when it is obtained by putting any person in whom she is interested in fear of death or hurt is rape.

### **Punishment for Rape**

As per section 376 of the Act, the minimum punishment for rape is seven years and the maximum life imprisonment. If the judge finds valid reasons he/she can impose a sentence of less than seven years. In the cases of 'custodial rape' or 'gang rape' the minimum sentence is of ten years and the offence is cognisable and nonbailable. Sexual intercourse by a man with his wife, who is living

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<sup>7</sup>. Susie Tharu: "Slow Pan Left: Feminism and the Problematic of Rights", paper presented at National Seminar on "Indian Women-Myth and Reality" on March 9, 10, 11 1989 at School of Women's Studies, Jadavpur University, Calcutta. Also see, Neera Desai and Vibhuti Patel, 1990.

<sup>8</sup>. Flavia: *Journey to Justice-Procedures to be Followed in a Rape Case*, Majlis, Bombay, 1990.

separately from him under a decree of separation or under any custom or usage without her consent, is punishable with imprisonment which, may extend to two years. This offence is cognisable and bailable. This definition of rape makes it clear that the husband has a right to have sexual intercourse with his wife with or without her consent. The underlying notion in this provision that does not see a man guilty of raping his wife is that a woman is the private property of her husband and he can use/abuse her the way he wants.

Many women's rights organisations had demanded that forcible sexual intercourse by a man with his wife should also be defined as an offence of rape. But the Law Commission of India refused this demand. At the same time it introduced a new section, which makes forcible intercourse by a man with his judicially separated wife an offence. Commenting on this, a progressive legal activists' organisation Lawyers Collective commented; "This new section is a small step forward in the direction of recognising the rights of the wife not to be raped by her husband."<sup>9</sup>

### **Rape Victim and the State Enforcement Machinery**

According to the criminal justice system in India, rape is an offence against the state not a crime against an individual. The matter has to be reported by the rape-victim to the police and First Investigation Report (FIR) prepared by the police, inquest and identification parade conducted by the police and medical examination report prepared by the recognised government hospital have major bearing on the judgement. After the police file a charge sheet, the trial is conducted in a Sessions Court. During the trial the victim has no choice to select a lawyer to defend her case. The state appointed public prosecutor represents her. The rape-victim is merely the prosecution witness. Hence during investigation and rape trial she is completely at the mercy of the state.

### **How Does a Woman Experience the System of Law?**

In a book by a retired Inspector General of Police, Mr. S. K. Ghosh there is an admission to the fact of police involvement and connivance in the cases of rape as a generalized phenomenon.<sup>10</sup> In cases of custodial rape such as rape of prisoners by the jailer and other staff of the prison or of a patient by her doctor or of a woman employee by her employer or of the women hostilities or inmates of remand homes by the members of the management; the state apparatus in most of the cases chooses

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<sup>9</sup> A Lawyers Collective Publication: *Recent Changes in Laws Relating to Women*, Bombay, 1985.

<sup>10</sup> S. K. Ghosh: *Women in Policing, Light and Life Publication*, Delhi, 1981.

either to maintain a conspiracy of silence or to hush up the case.<sup>11</sup> In many parts of the country where remand homes for minor girls do not exist, minor victims of rape are kept either in police custody or in prison, sometimes for 8 to 12 years without any legal redress. In such cases the rapists lead free, 'respectable' lives and the victims stay confined in institutions. In West Bengal, the Association for Protection of Democratic Rights has taken up the cases of such victims.<sup>12</sup>

When an individual woman accompanied by her relatives or neighbours approaches the police stations she has to meet with either hostile or indifferent attitude of the custodians of law and order. Lewd remarks, jokes, double-meaning sentences, weird smiles and cynical laughter are used by the police force to generate fear and uneasiness in the minds of the victim seeking legal redress. Comments on her dress, hairstyle, looks, figure, sex appeal and overall physical attributes are considered to be a part of normal behaviour by the police officials. National Conference of Rape in 1990 declared that "A woman victim of rape is raped twice-first by the culprit and then by the criminal justice system."<sup>13</sup>

### **Experiences of Women Activists while Dealing with Rape Cases**

As a member of Forum against Oppression of Women (FAOW) since 1980 one has been experiencing the biases and misogyny of the criminal justice system that sees rape-victim as an offender.

In response to a news item about the rape of a teenage construction worker by the three policemen and a bootlegger in 1980, FAOW (at that time known as Forum against Rape) decided to follow up the case. To get the case filed in the FIR we had to organise a demonstration in front of the police station. The police charged the women activists and the local social workers with 'riot, trespass and dacoity'.<sup>14</sup> This event happened before the amendments in the Rape Laws were made; the situation has not changed even after the enactment of the legal reforms.

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<sup>11</sup> Maithreyi Krishnaraj (ed): *Women and Violence-A Country Report*, A Study sponsored by UNESCO, Research Centre for Women's Studies, SNDT Women's University, Bombay, 1991.

<sup>12</sup> *ibid.* See, the section on Women's Action Groups and the State Machinery.

<sup>13</sup> Report of National Conference on Rape, Forum Against Oppression of Women, *kali for Women*, Delhi, 1990.

<sup>14</sup> See an evaluation report of one decade (1980-1990) of Forum Against Oppression of Women: *Moving... But Not Quite There*, Bombay, 1990.

In 1983, when a six-year-old girl was raped by her neighbour, her uterus was ruptured and she had to be hospitalised. In spite of repeated plea by the victim's mother, the police refused to register a case because there was no penis penetration. As the rapist did not succeed in penetration, he had inserted an iron rod and his fingers.<sup>15</sup> Penis penetration remains the only and exclusive concern of the authority while deciding the rape case.

### **Police Attitude**

\* "Do you know the definition of Rape?"

Last year, as a member of an investigation team concerning the gang-rape of a middle-aged woman worker living in one of the slums of Bombay, we had several meetings with the police officer in charge of the case. We had found out from the victim and the community that the police did not help them in any way. The rape victim accompanied by her neighbour and social workers approached the policemen to file an FIR; the police were not only indifferent but also very hostile. It was past midnight. The police station was busy making accounts of drugs they had captured in their raid. First of all the police did not believe that a rape had taken place. When the victim kept on repeating that she was raped and other witnesses also supported her statement, the police officers and constables had a hearty laugh. They then cynically asked the victim, "Do you know the definition of rape?" The victim was totally dazed. She showed her injuries on the forehead, head, neck, hand, chest, etc. Without doing any paperwork, they just told the victim and her friends to go to the government hospital without any note or accompanying constable. In the hospital she was just given first aid, diazepam and pain-killer tablets. In the morning she approached a woman activist. Once again they went to the police-station and after a great deal of verbal exchanges between middle-class women activists and the police officer, finally the FIR was filed but in the meantime all important evidence was lost.

\* "If you pursue this case, no one will marry your daughter."

Every police officer has an obsession with the crime record in his area. He has to see that it does not exceed certain 'limits' or else his chances of promotion will be jeopardised. Hence many a time he shows a reluctance to file cases of crimes against women. In 1982 we were involved in support work of a minor girl who was raped by a teenage boy. The victim's mother was in a state of shock

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<sup>15</sup>: *ibid.*, p. 7.

and deep anguish and wanted to see that the culprit was punished. In a slum where all communities live, the victim's community who are migrant 'untouchable sweepers' from Haryana, face the most discrimination. The police officer who conducted the inquiry was humane while dealing with the victim and her mother. But he kept on insisting that the case should not be filed as it would involve a long drawn, tiring and humiliating legal battle. Moreover the girl would get defamed no one would marry her etc. The victim would be kept in the government remand home, as she was a minor, till the case ended. But the mother wanted us to take up the case as it would teach all other miscreants in the slum a lesson. We argued endlessly with the police to convince him of the necessity to file a case. Finally he confided to us that if the crime record in his jurisdiction increased, it would reflect on his career.

\* "After all she is a petty thief."

When a 16-year old poor girl was taken into custody, unlawfully confined, repeatedly gang-raped by the Bombay Suburban Railway Police, she became pregnant. The policemen quietly arranged her abortion in the government hospital. When this girl managed to reach her home after some weeks she was bleeding profusely. Her relatives approached a feminist group. While conducting an inquiry we had verbal exchanges with the bosses of the rapist policemen. When we alleged the higher authorities of collusion with rapists they retorted back by saying "Why are you so worried about this girl? After all she is a petty thief, a pick-pocket. It is good that our men taught her a lesson."

\* "There cannot be smoke without fire."

In the urban as well as rural India as a result of lumpenisation of socio-cultural life; in college and school campuses, on lonely roads, in buses and trains, in middle class neighbourhoods and in slums, incidences of eve-teasing have increased. Earlier the law enforcement machinery was not taking any cognisance of it. Women's groups in Delhi played a very important role in making this issue officially recognised. Eve-teasing and ragging during certain festivals (like Holi, the kite-flying festival of Gujarat or balloon throwing during the month of Shravan) have provoked many individual women as well as women's groups to protest against the law enforcement machinery. Eve-teasing of women by bus conductors and bus drivers, railway police, road traffic police are still not paid attention to, in spite of the legal provision. Most often women or girls do not report incidents of harassment such as obscene phone calls or lewd remarks by miscreants for fear of

getting into trouble. When the protectors of 'law and order' have a reputation of themselves being eve-teasers in the public eye, how can we expect women to approach them? Class, caste and communal biases along with gender bias of the police and other bodies of the state are responsible for apathy, inertia, indifference and hostility faced by women when they seek support in the cases of eve-teasing.

### **Molestation of Madhushree Dutta**

Two years back, a noted film and stage director Madhushree Dutta was badly molested by two railway policemen who were in plain clothes in the railway station at the midnight. At the time of molestation she was not alone. Ms. Flavia, a feminist lawyer was with her. Both of them being involved in the women's rights movement for over a decade and fully aware of the legal provisions immediately prepared a notice against the molesters. When they went to submit their write-up at the appropriate police station, the police officer in-charge refused to co-operate. Madhushree being well-known in media circles, the news of the incident appeared the very next day on the front page of the leading newspapers of the country. In response to the news reports a strong protest demonstration was organised by women's groups to demand suspension of the police officer as well as the molesters. To make her withdraw the case, the policemen kept on making anonymous and threatening phone calls to her lawyer's office. The court trail was an extremely humiliating experience as the defence counsel hired by the policemen kept on shooting questions after questions implying that for a budding artiste like Madhushree it was a cheap publicity gimmick to get a lime light. If a woman, so articulate, visible and well connected with the media world, aided by an equally strong and articulate feminist lawyer, has to face such terror-tactics by the police. One can imagine what must be happening to "ordinary" and "helpless" women victims of sexual violence? This incident happened in Bombay anti-rape campaigns have been consistently taken up since 1978. In spite of wide media coverage on the issue of sexual violence, the attitude of both the state as well as the civil society, as reflected in readers' reaction in the newspapers, was not sympathetic to the victim. Many asked why Madhushree was there at such a late hour.

An analysis of the judgements of the Sessions Courts, The High Courts and the Supreme Courts since 1980 done by Ad. Flavia reveals an extremely negative view of the judiciary of women's sexuality. She gives several examples of rape-cases where stereotypical arguments of victim-baiting were used liberally to reduce punishment to the culprits. Supposedly pro-women judgements in

cases of rape of minors were also coloured by a conservative concern for 'chastity' and 'purity'. Flavia states, "The positive judgements which are reported involve rape of minor girls resulting in multiple injuries where the question of consent does not arise. But even these judgements have a conservative reasoning for the conviction. Here is an example of how the judiciary looks at the issue: "Virginity is the most prized possession of an unmarried girl. She would never willingly part away with this proud and precious possession. "<sup>16</sup>

### **Mass Rape of Women during Caste and Communal Riots**

The human rights organisations and the women's groups have provided detailed testimonies of mass rape of Dalit women during caste riots in Marathawad (1978), Ahmedabad (1983), Bhojpur (1985), Nagpur (1988) and communal riots in Delhi and Bombay (1984), Bhagalpur (1988) and Surat, Bhopal and Surat (1993) to the government. In most of the above mentioned cases the state enforcement machinery was either indifferent to the plight of the victim or directly involved in perpetrating violence against the victim in collaboration with the anti-social elements. But, in none of the above mentioned cases the criminal justice system has brought the culprits to book. Raising an issue about the role of Indian military and para-military forces in torture and rape of women in Assam, Tripura and Nagaland, Punjab and Kashmir, tribal regions of India and in Srilanka generates great deal of hostility in the government circles.

### **Efforts to Activise the State Apparatus**

During the decade of eighties the women's movement in India was concerned mainly with fighting against sexist behaviour of the state enforcement machinery but now its efforts are more in direction of creating pro-women environment so that the victims of sexual violence can get legal redress and societal attitude towards women's sexuality can change. Articulate women journalists, researchers, academicians, independent consultants and activists attend the government sponsored training programmes and act as resource-persons for 'gender-sensitisation' of police officers, administrators, judges, etc. Initially the women activists were reluctant to have a dialogue with them as, while dealing with day-to-day practical issues, the government bureaucrats, forest officials and police officials were not found helpful to women's cause.

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<sup>16</sup> Flavia: " *A Critical Review of Enactments on Violence Against Women During the Decade 1980-1989* ", Economic and Political Weekly, April 25, 1992, w.s. 19-33.

In the beginning of the anti-rape movement, many women's groups had put forward the demand to the state that it should increase its number of women judges to ensure gender-justice and more police-women to ensure sympathetic treatment to women victims. But the last one decade has given ample evidence that just by virtue of being women; they are not going to be more sensitive or judicious about women's issues. Women judges and women police being representatives of the state do not behave differently from the male judges when it comes to taking sides. After all Maya Tyagi was inhumanly tortured by a woman police constable who also encouraged her male colleagues to rape her. Women officials in jails and remand-homes behave as inhumanly with women in their custody as their male counterparts behave. The government had set up several judicial inquiries to contain public fury after an individual case of rape or cases of mass rape were reported. Reports of the inquiry Commissions gather dust in the government offices, not circulated or discussed widely. None of their recommendations are implemented. To the government, this exercise is a safety valve tactics to contain public fury.

### **Public Interest Litigation (PIL) by the Women's Groups**

Women's groups have filed PILs to activate the state enforcement machinery and to sensitise the masses. Manushi, a women's magazine files a PIL in the Supreme Court of India after the Delhi riots in 1984 in which hundreds of Sikh women were raped and who are still languishing in the refugee camps. So far, none of the culprits have been charged. When a tribal woman, Guntaben was raped by eight policemen, paraded naked, brutally beaten and verbally abused; the concerned police station, district magistrate and the hospital staff got together to hush up the matter. There was an atmosphere of terror in the community. In this situation, two women's groups and democratic rights organisations filed public interest litigation and also continued their campaign. The government responded by setting up a tribunal which, declared that the rapists must be punished. Amnesty International also took up this case. Finally, the culprits were punished.

### **Role of Media Publicity in Activising the State Apparatus**

Media publicity has proved to be the most effective tool in activating the state apparatus. In the post-emergency period, investigative journalism got pride of place in the mainstream media. On the one hand plethora of sensational articles trivialised the issue but on the other hand several sensitive portrayals of the issue were also given space in the media. Many protest actions by the women's groups and mass organisations against rape of poor, dalit, tribal or minority women without media

coverage would have been ruthlessly crushed. Thus media publicity can be double edged. Gender sensitisation programmes for journalists and other mass communication personnel are viewed seriously by the women's groups.

## CONCLUSION

The existing rape laws do not recognise the unequal power relations between the rape victim and the rapist. The victim is not given a choice to get her voice heard by her own lawyer. She faces sexist biases and hostility at every step- inside the family, within the community, at the police station, at the time of medical examination in the government hospital and in the court-rooms. The criminal justice system expects the victim not only to get over the trauma and be calm and composed at the time of prosecution but also shed all her inhibitions and give a vivid description of the event in the court-room. After the act of rape, if the victim washes herself (but naturally), important evidence will be lost. In this situation, the women's movement and the concerned authorities need to direct their energies to amend the procedures so that the case can be handled speedily and the victim does not face humiliation at the hands of the administration that is known for its inertia, indifference and antipathy towards women. Attitude of the judges in cases of rape is another deplorable area. Some feminist lawyers have put forward a demand of special courts for rape trials to ensure speedy dispensing of justice. Majority of judgements in rape cases are coloured by the preoccupation of the judges with 'past sexual history' of the victim and their notions of 'virginity', 'purity' and 'chastity' of women. Gender-sensitisation programmes for judges must be given top priority by the state.

About redefinition of rape there is a consensus among the women's rights groups that 'rape', 'attempt to rape' and 'violating women's modesty' as they are defined at present must be clubbed together under a heading of 'sexual offence'. It is also suggested that the redefinition of rape must be brought out of the patriarchal confines where 'penetration of penis' only is taken into consideration while defining rape.<sup>17</sup>

The most controversial issues for which there is no consensus amongst the women's groups are marital rape, punishment for rape and demand of monetary compensation to the victim. Women's groups providing support to women in distress have found that sexual assault by husband is the most common and blatant form of rape. But those who oppose to recognise existence of rape within

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<sup>17</sup> Report, op. Cit., 1990.

marriage put forward an argument that when a woman enters matrimony she knows that it is her duty to fulfil the desire of her husband. Many experienced lawyers have expressed their concern over the fact that stringent punishment codified in the law results in fewer convictions. While the women's groups have always demanded higher punishment in rape-cases. Some women's groups have asked for a compulsory monetary compensation either from the state or the culprit looking at the fact the rape victim faces tremendous social stigma, employers shun her and in most of the cases even her own family disowns her. After decade and half years of struggle against rape, the most of the women activists are feeling that they have reached a square one position so far as changing the situation of rape victims or prevention of rape is concerned.

An international campaign initiated by Centre for Global Issues and Women's Leadership to include 'violence against women as violation of human rights' in the UN Charter on Human Rights has become a rallying point for women's rights organisations in India. In the context of the recent developments in Somalia, Bosnia and India, this campaign is also focusing on the issue of 'Rape as a war-crime'.