

# Never Say Die

## Fight for Justice from an Unjust Judicial System

by

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This is the story of a brave young girl called Tani (this is not her real name) and her equally courageous parents, Madan Gopal Kakkad and Elizabeth Kakkad, who decided not to be cowed down by societal, legal and other pressures and persisted in their fight against a child molester and rapist. In a recent judgement, the Supreme Court vindicated their struggle and sentenced the rapist, Nawal Dubey of Jabalpur (Madhya Pradesh), to seven years of rigorous imprisonment. This judgement of the Supreme Court by Justices Pandian and Fathima Beevi is unusual. Normally the Supreme Court does not reverse acquittals. In this case Dubey had been acquitted in the Sessions Court and a second time in the High Court. It is normally held that the court which has heard the matter is the final arbiter of 'facts'. The Supreme Court is only expected to interpret laws, it does not usually go into the facts of the matter. Still Pinky Anand and Geeta Luthra, who argued the case on behalf of Tani and her family, managed to not only get the petition admitted in the Supreme Court despite the two acquittals but also got the man convicted and sentenced to the maximum possible punishment. The Supreme Court created an important precedent by not limiting the definition of rape solely to instances of full penetration into the vagina and convicted Dubey of rape though he had not ruptured the girl's hymen.

Although this finally turned out

to be a successful prosecution while most rape cases end up going against the victim, the time it took for the man to get convicted, the manner in which the High Court and the Sessions Court treated the case, the human cost that Tani and her family had to pay, all point to the rot that remains at the core of our judicial system. It also shows that only when some courageous family like the Kakkads are willing to overcome false notions of *izzat* and family honour can men who abuse women and girls — sexually and in other ways — begin to be socially exposed and legally deterred.

### Facts of the case

Tani, an eight year old, was studying in the third standard when Dr Nawal Dubey sexually abused her on September 2, 1982. She and her family lived in a middle class colony of Jabalpur. Nawal Dubey, who had just graduated from medical college, was a neighbour of the Kakkad family. He lived with his parents, his two brothers, a sister-in-law and niece Richa Dubey, daughter of Nawal's step-brother, Niraj Dubey. One of Nawal's elder brothers was working as Superintendent of Police in a nearby district. Having a brother in the police may have given Nawal the feeling that he could get away with anything.

Tani used to come frequently to the Dubeys' house to play with Richa Dubey and her other neighbourhood friends. Nawal would be friend these

little girls by narrating stories and reading comic books to them. On September 2, 1982 between 4 and 5 p.m., Nawal sent his niece to call Tani over to their house on the pretext that Richa's mother wanted her. Tani came along with her younger brother. Nawal reprimanded her for bringing her brother along, as well as for coming to their house wearing jeans instead of a frock. When the two girls started playing in the drawing room, Nawal whispered something in the ears of Richa, who then told Tani that she had been asked by her uncle Nawal to take Tani's brother outside and narrate him some stories and that Nawal would 'make love' to Tani. As soon as Richa and the little boy went outside, Nawal bolted the door from inside, completely stripped himself and asked Tani to undress as well. When she refused, he unbuttoned and pulled down her jeans and underwear and asked her to suck his penis. She resisted. He then carried her on to the sofa, pinned Tani close to him, slightly inserted his penis into her vagina and began sucking her lips. Within a few seconds he ejaculated and freed the girl. Thereafter he put on his pyjamas and asked Tani to wear her jeans. But he didn't stop at that. He did the same thing to her twice more on the sofa. Tani protested and tried to get out of the room but the door was bolted.

When she stood against the door wanting to get out, Nawal told her to suck his penis saying "it was very sweet." She got angry and turned her

face away. He then asked her to lie down again on the sofa. When she refused, he took her to the sofa and lay down on top of her. She says in her testimony : “Nawal chacha pressed my mouth so I could not scream.” Finally when he opened the door, she ran out. However, as Tani was leaving, Nawal threatened that if she disclosed to anyone what he had done to her then his elder brother, a high ranking police officer, would mercilessly beat her parents. But little Tani somehow could not keep quiet. As soon as she came out she told Richa what had happened. On hearing this Richa told Tani that “her *chacha* was like a dog,” and said that when she [Richa] came from school and went to rest after lunch then Nawal *chacha* would come to her bed, take off her underwear and behave similarly with her as well. In addition, Nawal had told his niece Richa that Preeti and Sheri were fair because they sucked his male organ and if Richa also sucked his penis she would also become fair. That very evening Tani told her mother that Nawal was a dirty fellow and that he had { asked her to suck his private parts. Her mother scolded her and instructed her not to go to the Dubey’s house again. Because of the scolding she could not bring herself to narrate the full facts to her mother. The next day she narrated the incident to another neighbour friend, Tarunlata Joshi, and later to Varsha Nema. She says after telling her friends she got scared and did not at once tell everything to her mother. Two days later her mother, seeing Tani whispering in her friend’s ears, asked Tarunlata if Tani had told her something. Tarunlata was too embarrassed to say anything and asked Elizabeth to get the story from Tani herself.

That is how Tani came to describe the whole incident to her mother.

### Dubey Confesses

On hearing of this horrid episode, Elizabeth Kakkad conveyed this to her sister-in-law Veera and called her neighbours over to her house to share with them this disturbing piece of information. When her husband Madan Gopal Kakkad came home and learnt of the episode, he was so agitated that the Kakkads and the Bhasin family went over to the Dubey household and asked for Nawal who had gone out to see a film. His brother and sister-in-law sent Nawal’s younger brother to fetch him home. The Kakkads and the Bhasins waited till past midnight when Nawal returned home. Seeing so many agitated neighbours in his house, he confessed his crime not only towards Tani but also admitted that he had committed the same kind of sexual assault on earlier occasions with his

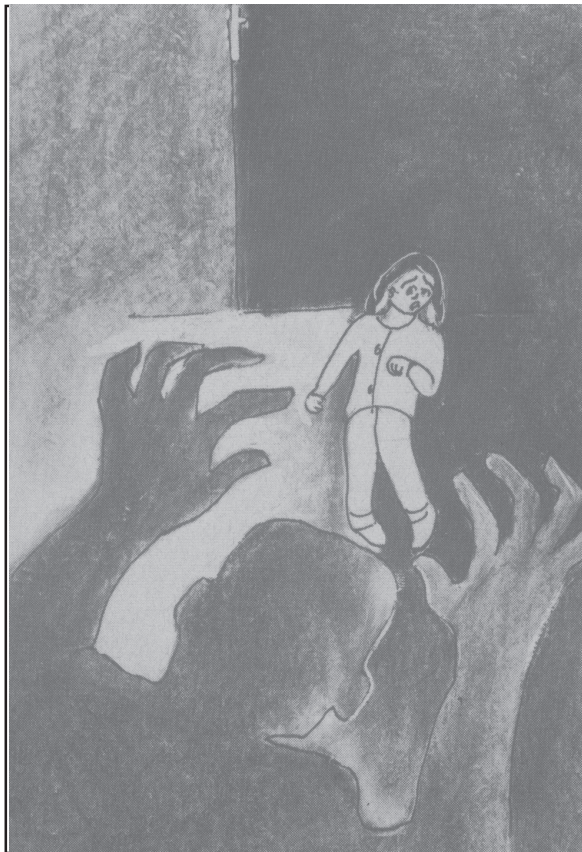
own niece Richa and other girls of the neighbourhood including Preeti, daughter of Sapna and Satish Bhasin. But he brazenly and bizarrely assured the parents not to worry because being a doctor he had been careful enough not to rupture the girls’ hymen. Madan Kakkad, in a fit of rage, rushed towards Nawal to attack him. Nawal’s brother and sister-in-law fell at Kakkad’s feet and begged him to restrain himself till the return of Nawal’s parents the next morning.

Next morning Nawal repeated his confession in front of his parents after attempts to deny it all at first. Nawal’s father Bhagwan Das asked his wife to bring a stick and offered it to Kakkad saying it was upto him to either show mercy or give Nawal a thrashing. But he appealed to Kakkad not to precipitate any legal action against Nawal. Kakkad refused to use the stick. They were rightfully apprehensive about initiating legal action considering that Nawal’s own brother was a Superintendent of Police and his family was politically influential in the area. In addition, there was the legitimate fear of the negative consequences on their daughter’s life if this episode became public

known. But their anguish and outrage did not let these parents rest in peace, especially since they knew that Nawal had brazenly molested and raped several other young girls in the neighbourhood.

### Criminal Case Lodged

On September 7, after further consideration, the Kakkads decided to lodge a criminal case against Nawal Dubey. A case was registered by the station house officer of Gorakhpur police station. During the course of the



investigation, Tani was examined by Dr Chitra Tiwari on September 7. On the basis of the Kakkads' complaint and the medical tests done on Tani and Nawal, the investigating officer filed a case of rape against Nawal Dubey.

On the face of it this should have been an open and shut case. Since little Tani was only eight years old, the accused, his lawyers and the judge could not possibly take recourse to the rapists' commonly used defence that she had "asked for it", that is, Nawal was simply obliging a consenting or demanding female, or that she provoked him into the sexual act. In addition, Nawal had himself confessed to having sexually abused Tani and several other minor girls of the neighbourhood. Their parents should have had an interest in making common cause with the Kakkads in fighting the case. Since Nawal's own niece was being routinely molested by him, one would assume that his own brother's family would also like to see him deterred. But that's not what happened. Nawal's family gave him all the help he needed to fight his case. They even arranged a marriage for him while this criminal case was going on against him. The Kakkads say that his police officer brother went so far as to take Nawal along with him to whichever city he was transferred to, so that he had the protection of living under a police officer's roof. Nawal's marriage and the "settled life" that he was then supposed to be leading began to be used as an argument for his defence.

### **Kakkad Isolated**

Tani's family was left fighting their case all alone. None of the other parents in the neighbourhood whose daughters had likewise been sexually abused, came forward to fight the case jointly with the Kakkads or by themselves. In fact, the Kakkads were made to feel as though they were jeopardising the life of their daughter



by pursuing the case. Recently in an interview with **Manushi**, Tani told us that over the years even those of her friends who had themselves earlier on talked about having been sexually abused by Nawal Dubey began to pretend as though no such thing had happened to them, that she was the only unfortunate victim. She didn't get much sympathy. On the contrary she began to be isolated and feared.

However, the weight of social opinion would probably have stood more firmly in their favour had the judiciary not behaved as irresponsibly as it did. For one thing, the case dragged on for 10 years despite the fact that the Kakkads followed it up rigorously and persevered right up to the Supreme Court when they found the two earlier courts only added insult to injury. Even the Supreme Court had to acknowledge that both the courts had indulged in miscarriage of justice.

### **Judge Defends Rapist**

The judgement of the Sessions Judge, Sh. R.K. Srivastava is deeply distressing, apart from reading like gibberish. It is surprising how a man who lacks basic linguistic skills, let alone legal competence came to be appointed a judge. The judge did not just exonerate Nawal of the rape charge but went as far as to conclude that the rape allegation "is only the

outcome of enmity between the two families" and there was "no evidence on the basis of which it could be arrived at that the accused had raped Kumari Tani."

To justify his coming to this conclusion the judge not only conducted a series of defence exercises on behalf of the accused but went out of his way to level serious charges against the aggrieved Kakkad family:

"By these witnesses an unsuccessful effort has been made to tell this that the accused had himself accepted the offence committed by him on his arrival and he had no threat, temptation or coercion to confess the offence. But as far as the question of threat is concerned he had knowledge about the presence of Madan Gopal etc. and probably he would have not come under the threat that he may be assaulted by Madan Gopal etc, and they were searching the accused from the morning. In such a terrible circumstance the confession made by the accused in regard to the offence, how can it be regarded without any threat? On confession in regard to the offence, Madan Gopal had attempted to cause assault on the accused and all these facts only narrate one fact that at the time of confession of the offence the accused was terrorised." [sic] (p. 14).

This despite the fact that Nawal Dubey made the confession in his own home, surrounded by his own brothers, sister-in-law, parents and the assurance of being the brother of a senior police officer, whereas the Kakkad and Bhasin family were unarmed and even the lawyer defending Nawal had not alleged that either Kakkad or any of the others who came with him to Nawal's house used violence or abusive behaviour against Dubey. Though no such evidence was presented at the trial, the judge was convinced without

explaining on what basis that “the accused was given all sorts of assurances and temptations and promise that nothing would be done with the accused” in order to extract his confession.

The judge is also convinced that as the respondent was a well educated man and a medical doctor to boot and “brought up in the present age”, it is unlikely that he would have confessed everything. **I give below a verbatim sample of his linguistic and legal acrobatic:**

“Besides all these, how it seems to be unnatural that the thing for concealing to which the accused was hiding himself here and there and was frightened in coming home, on call only he came to the house, on coming not before anybody else, except before those persons who were bent upon to punish him immediately and further were furious on him and tried to assault him, and who should have sent him in jail for the statement given by him against himself, has confessed before them his offence willingly. In the back ground of this, the accused who is not only literate but is doctor and is living in the present atmosphere, and confession of such offence by him in this manner seems to be unnatural in itself..... More unnatural to these all is the confession of the offence before his father which he made before his father Shri Bhagwan Das Dubey... in presence of five persons stated above. The family of the accused is also the family of the learned persons. On account of the last night’s incident they would have not become perturbed rather they had so much time they would have come under the influence of the shock as of the family of Madan Gopal Kakkar and would have thought of the saving themselves, and out of them at least one would have been who would have not admitted the offence again. In this way the story of confession of

the offence by the prosecution by the family of Kakkar and Bhasin family is wholly unnatural, fabricated, and product of legal advice. This could not at all be trusted.” [sic] (pp. 20,21).

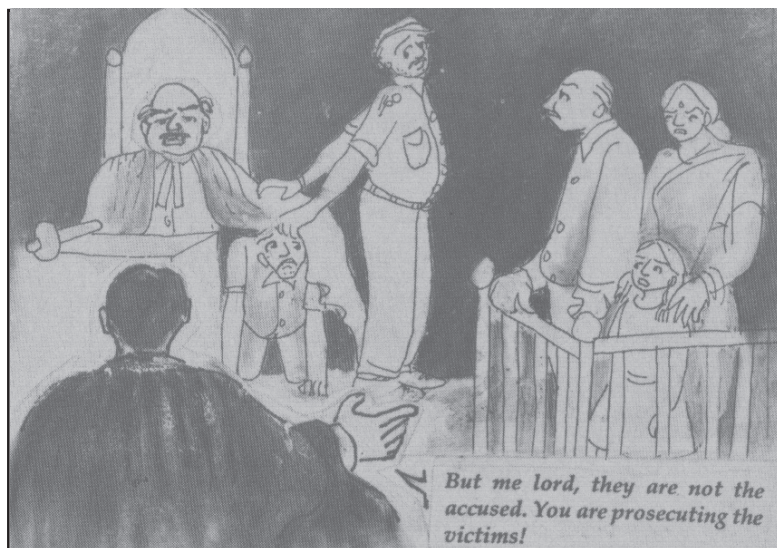
The judge is categorical that “Not a single witness is such who could be stated as free witness and by whom the confession stated to be made by the accused could be proved. Often the confession of the offence by the accused is not [meaning got] manufactured by the prosecution by temptation. [He doesn’t explain how it applies in this case]. For these reasons such evidences are treated as most weak evidence. ... In any point of view the confession made by the accused neither seems to be real nor it is proved, nor it could be said being confessed willingly. ... such confession of offence as had been done by the accused had been stated, the same cannot be said free of any temptation, promise, threat or coercion.”(sic) (p. 19).

#### **Victims on Trial?**

And then the judge comes to what he calls “the most important evidence”— that of Tani. Had she been a grown up woman, the judge would in all likelihood have put the entire blame on Tani insisting that she seduced Dubey and that she was a woman of loose character and so on—

arguments used routinely in courts of law the world over to let rapists go scot free. But since Tani was only eight years old, the judge finds other ways of insulting the victim and exonerating the rapist. Even her candid intelligent answers are held against her: “I have found that the answers to the questions have been given after well thought but mental development has not developed completely.”(p.21). Even though Tani has candidly described all that Nawal did with her, the judge insists a good part of the story is cooked up by Elizabeth:

“Tani herself does not say to have told all these things to Elizabeth but Elizabeth says about the putting off the pant and Chaddhi (underwear) herself with her own mind... From the statement of Elizabeth Kakkar the statement Tani only gets this much gets support that Tani told her that the accused was asking her to suck his penis.” Thus he asserts that the description of the rape “is without any basis and has been stated on her accord.”(p.24). In short the judge is accusing Elizabeth of lying and is taking the view that no offense was committed by Nawal Dubey because he had not penetrated Tani sufficiently to tear her hymen. Therefore, all that Nawal Dubey himself confessed to—



namely pressuring a child to suck his penis and other sexual acts—are not seen as constituting a criminal offence against the eight year old child.

The judge also asserts that Tani's testimony in her own rape case cannot be relied upon because she is a child. Witness the convoluted logic: "I am satisfied with the argument of the prosecution that while admitting the statements of the child witnesses prior to punishing the accused there is no legal necessity of getting support from other independent witnesses...." Yet in the next sentence he goes on to insist that, "the courts should not base their decisions till the evidence of the child witness is supported by some evidence of independent witness." in his view Tani's rape charge cannot be taken seriously unless of course Dr. Nawal Dubey had raped her in the presence of an adult who is willing to testify against Dubey. "...child witness being of undeveloped mind and tender age can easily be tutored and often the grown people taking disadvantage of the tender age of the child witness they tutored them and try to fulfill their desired end." [sic] (pp.27-28).

### **Insulting the Injured**

On the basis of all these unsubstantiated speculations the Sessions Judge dismissed the evidence of Tani on the ground that she narrated the incident mentioning every detail. Since she was so clear and lucid (unlike the garbled gibberish that the judge himself writes, running into dozens of almost unreadable pages) the judge alleges that she was "tutored" as she gave her testimony" like the tone of parrot." (p.30). Tarunlata Joshi is also accused of being a tutored witness. We are not told why he thought so. Likewise, he dismisses the medical evidence as unreliable even though the doctor had testified that Tani's private parts had abrasions. The judge is of the view that an abrasion can be

caused by only a "hard and *khurdari* thing" and a penis of a man in his view could not be described "in those terms." He displays a truly bizarre determination in defending Nawal, seeming to play Dubey's advocate even to the point of suggesting that a "real" man would have not left Tani without a full penetration that would have torn her hymen. Nawal had confessed that he avoided rupturing the hymens of the little girls he sexually abused. The judge argues on Nawal's behalf: The medical report had testified that "the accused is competent to carry out sexual intercourse. In these circumstances when the accused had become sexually so mad and blind that for the fulfillment of his desire he called Tani from her house and made her naked and placed his penis with her vagina then I do not understand that a person having sound physique could restrain himself in these moments in the capacity of Doctor and could remember that 'Hymen' could not tear off. If the accused would have slightly gone ahead then the Hymen of Tani would have completely torn out No one could possibly keep so much control in these hours, as has been alleged against the accused."(sic) In other words he considers it an "allegation" against Dubey's manhood and potency that he did not go even further in the sexual abuse of Tani. (p. 36).

But he doesn't stop at defending the rapist. He goes on to make unsupported allegations against Tani's family. He asserts that the rape story was concocted due to "enemical term between the two families." Even though there is no history of any such enmity, the judge chooses to believe the accused's story that the rape charge was levelled against him because the Kakkad family was afraid of Dubey letting it be known that the Kakkads were spies on behalf of the German Embassy —

a 'fact' Dubey says he got to know through Tani. Thus, the concocted allegation of the accused is accepted as being correct even though the accused rapist does not offer any proof or evidence of it nor is he called upon by the court to do so. Thus Nawal Dubey is acquitted even though he had himself never denied that he had forced certain sex acts on Tani. Madan Kakkad in an interview to Manushi alleged that the sessions judge had delivered such a biased judgement because Kakkad refused to meet with the judge's demand for a bribe of Rs 35,000. Kakkad also alleges that the judge was bribed by Nawal Dubey. The judgement certainly shows crass disregard for law and a shameless insensitivity towards the violations of a little girl's body. If we had a civilised judicial system, this session judge would not just have his judgement reversed, he would have been tried for contempt of justice.

### **"Miscarriage of Justice"**

The Kakkads appealed against this obnoxious judgement in the High Court. The case dragged on for some more years. At the end of it all, the High Court came up with a no less astounding judgement. After having conceded that the charge was genuine and admitting that "it is beyond comprehension that the complainant would have laid a false and reckless charge against the respondent by involving his own minor daughter Tani in such an unsavoury incident for nothing but caring about her future and his own reputation and honour" and after asserting categorically that it was inconceivable that "a small innocent girl would have laid such a serious charge against the respondent, if it was not true", the judge takes a complete U turn. He admits that the act of Nawal Dubey "is most reprehensible, he was attempting to corrupt innocent and unwary minor girls and his activities were a menace to the neighbours", yet

he acquits Dubey of the rape charge. The reason : "Though there can be penetration without rupture, the absence of any sign of injuries, negatives a case of rape with a small girl." Even though the High Court was fully satisfied with the evidence of Tani and found sufficient corroboration on all material particulars from the witnesses examined in the case, and was also convinced that the confession given by Nawal Dubey was true and voluntary, that it was not obtained by any inducement or coercion or threat, yet Nawal was acquitted by means of yet another bizarre route. Having accepted the entire evidence adduced by the prosecution *in toto*, yet the High Court held that since there were no signs of injuries on Tani, Nawal could not be held guilty of rape. He had only "outraged the modesty of Tani" because he "felt pleasure in getting himself and his victim made naked and asking unwary [meaning unwary] minor girls to fiddle with his organ." (p.21). The exoneration doesn't stop at merely underplaying the gravity of the offence committed. Without producing any real proof that - Nawal had changed his ways except that he had got married, the High Court defended him further from punishment saying : "... since he is now gainfully employed and there is nothing to show that he is indulging in his nefarious activities, no useful purpose will be served by again sending him to jail and sentence of fine will meet the ends of justice."

The High Court had no evidence to show that Nawal was not indulging in his nefarious activities any more except perhaps that no more legal cases were registered against him. The judge rules out putting Nawal Dubey on probation: "...this is not a fit case for release on probation. We are of opinion that for such offences probation should not be granted because such offences are dangerous

to the society." (p. 26). Thus a man who is not considered fit for probation because of his dangerous activities is let off after a symbolic conviction. The High Court sentences him "to pay fine of rupees three thousand or in default simple imprisonment for six months. Out of the fine amount rupees two [meaning two] thousand be paid as compensation under section 357 CrP.C. to complainant Madan Gopal Kakkad." (p. 27).

### **Convicted by Supreme Court**

In 1988, Madan Kakkad appealed to the Supreme Court against the judgement of the High Court questioning the legality of the order of acquittal. In addition one Jay Rao of New York (USA), on the basis of an article relating to this incident that appeared in a German magazine *Der Spiegel* and after a visit to Jabalpur, sent a petition of grievance addressed to the Chief Justice of India.

Pinky Anand, Kakkad's lawyer in the Supreme Court, argued that the High Court had erred in finding Dubey guilty of a minor offence under section 354 IPC when there was sound evidence that he had committed an offence punishable under section 376 IPC (i.e., rape had been committed). It was argued that it was a travesty of justice to hold an accused guilty of "outraging a woman's modesty" which is covered under section 354 IPC when all the facts and circumstances unequivocally proved that the accused had committed rape—a far more serious crime under IPC. Ms Anand also stressed that this crime became doubly heinous because it was committed against a child. This would demoralise her for the rest of her life and leave an indelible mental trauma. It was argued that if justice was to be denied to such a victim, the miserly compensation of Rs 3,000 should be returned to the accused.

The Supreme Court in its judgement, even while setting aside

the judgement of the High Court, still focuses a great deal on the extent of vaginal penetration and cites a number of Indian, British and American legal authorities to assert that even partial penetration of the vagina can be termed as rape : "... to constitute the offence of rape it is not necessary that there should be complete penetration of penis with ejaculation of semen and rupture of hymen. Partial penetration of the penis within the Labia majora or the vulva or pudenda with or without ejaculation of semen or even an attempt at penetration is quite sufficient for the purpose of the law..." (p.30). Therefore, the Supreme Court convicts him for "rape" rather than "attempt to rape" or "outraging" Tani's "modesty" as the High Court had done and sentenced him to seven years of rigorous imprisonment. Pinky Anand and Geeta Luthra feel that the judgement might well have been different had the case come up before a different bench.

### **Law Inadequate**

This judgement is no doubt an important development, but not an adequate one. What happened to Tani (and is commonly experienced by vast numbers of girls and women all over the world) cannot be covered under such a narrowly defined concept of rape. Sexual abuse is a much larger category and occurs in a variety of forms, all of which need to be treated no less seriously than forced penetration of the vagina. For instance, how would the judges deal with forced penetration in other parts of the body? What if Nawal had forced only oral sex on Tani? Would that be considered less serious an offence because her vagina was not touched? What if a man uses an instrument or other body parts, his fingers, for instance, instead of his penis? What about sexual abuse committed on male children? What about such abuse when committed by

an adult woman against a child of either sex?

Section 377 IPC is supposed to cover “unnatural” sex acts. But that was introduced with typical Victorian zeal to punish homosexuality rather than sexual violence. It legislates that whoever voluntarily has carnal intercourse against “the order of nature” with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend upto 10 years and is also liable to fine. Thus two consenting adult homosexuals could be punished with a life term under IPC but a child rapist gets a maximum of seven years imprisonment. All of these questions point to the need for changing not only the antiquated and absurd Victorian attitude towards treating loss of virginity as the major and sole form of serious rape and sexual abuse, but also making our laws more comprehensive and sensitive in combating sexual abuse and violence.

### **Unfortunate Comments**

Even though the Supreme Court judgement vindicates the Kakkad family, the Supreme Court judges make some rather unfortunate comments while expressing their sympathy for Tani: “We are told at the bar that the victim who is now 19 years old, after having lost her virginity still remains unmarried undergoing the untold agony of the traumatic experience and the deathless shame suffered by her. Evidently, the victim is under the impression that there is no monsoon season in her life and that her future chances for getting married and settling down in a respectable family are completely marred.” (pp. 35-36).

It is noteworthy that Tani is only 19 years old—only one year past the legal age for marriage for girls. But the judges consider her being unmarried at 19 a tragedy. Are they advocating child marriage? No less distressing is the assumption that a victim of sexual

violence or abuse can never hope to lead a normal life.

Tani could very well do without this kind of sympathy which forecasts a living death for her. If anything she needed to be assured that not only the court but even society would be on her side. However, I was very impressed to see that she did not share the obscurantist attitude of the Supreme Court judges.

When I asked Tani was she not afraid that this legal case would negatively affect her future life, including marriage prospects, she replied with conviction: “I don’t want to live a coward’s life and I don’t want to marry a man who is so stupid as to hold it against me.”

### **Judicial Accountability**

However, the more important question is that of judicial accountability. Justifying their reversal of the High Court judgement, the Supreme Court judges quote ex-Chief Justice Ranganath Mishra: “No man should suffer because of the mistake of the Court.....” (p.36). They also admit that in their “considered view, the High Court was not at all justified in reaching a distorted conclusion which has resulted in miscarriage of justice.” (p.22). Had they been called upon to comment on the Session Court judgement they would have probably condemned it in even stronger terms for it is no less than criminal abuse of law by the judge. But these two are by no means exceptional or solitary cases of “miscarriage of justice” by our country’s judiciary. This happens routinely.

As far as rape cases are concerned, a majority of victims do not even report them to the police, leave alone fight them in courts because they know they will be further traumatised and humiliated, as was the Kakkad family. Since Tani could not be called a whore, on account of her age, her parents were baselessly

accused of being spies by the Sessions Court for having dared to fight for justice for their daughter. Is there to be no accountability for judges even when they have acted irresponsibly as in this case? Not many families can persevere as long as the Kakkad family did. What if the Kakkads did not have the resources to reach the Supreme Court and get the judgement reversed? Should our courts be allowed to get away with prolonging the trauma of victims for so long and making their position socially so much more vulnerable?

When Nawal Dubey was acquitted by the Sessions and then the High Court, the position of the Kakkad family became far more open to all kinds of attack and slander.

The Dubey family even managed to influence the local press in their favour with the strength of the two court judgements in their favour as well the political influence they wielded. Seeing the fate of their legal battle, even many of their well wishers, who knew and believed the facts, kept telling the Kakkads that they were unnecessarily jeopardising the life of their own daughter.

### **Courage Pays**

It is indeed creditable that Elizabeth and Madan Kakkad did not let their daughter’s life get marred by this unhappy episode, even though they themselves have lived a traumatised life. Both husband and wife have suffered a series of stress related illnesses. Their business went down as most of their energy went into fighting a prolonged social and legal battle against the politically influential Dubey family. At times, the social pressure was so intense that they even contemplated leaving India. But since they were determined to fight this injustice to the end they decided to stick it out till this case was finally decided.

Had they, in the end, not been fortunate enough to get the highest

court's judgement in their favour, they would have probably felt too demoralised to go on living in Jabalpur. But the perseverance of the Kakkad family shows that standing up with courage does slowly begin to change social opinion.

Madan Kakkad told me that their refusal to be cowed down and give up the case did begin to tilt the scales against the Dubey family. The Dubey's began to be socially ostracised. Even though they had the connections and resources to fight the case legally, they could not continue to live normal lives in the same neighbourhood. Nawal Dubey moved to another city when his police officer brother got transferred. His other brothers and their families would never come to visit their Jabalpur home during the day. Even if they came, it was always after dark, so that they remained unnoticed by the neighbours. This kind of social ostracism was perhaps due to the fact that so many little girls of that neighbourhood had been Nawal's victims.

### Operation Hush Up

Yet it is very disturbing that none of the other families joined the Kakkads in their fight even though Nawal Dubey had openly confessed to having sexually abused their daughters. Tani told me that all the other girls of her neighbourhood act as if nothing had ever happened to them, as if Tani was the only unfortunate victim. These girls have obviously been forced, as far as possible, to expunge the whole thing from their memory and pretend that nothing ever happened to them. Unfortunately, this is often the only kind of "protection" parents provide their daughters, that is, they

teach them from a very early age to put a veil of silence over wrong done to them, all in the name of protecting family "izzat" and the girl's "honour". It is noteworthy that Nawal Dubey was not reluctant to confess what he had done to these girls. He even acted as though not rupturing the girls' hymens was an act of great consideration on his part. He was not altogether wrong in assuming that the parents of these girls would be more anxious than even his own family to hush up the matter. All except the Kakkads did actually connive, through their silence, to cover up his crime even though such actions could lead to further harm to the Kakkads as well as more sexual assaults by Nawal Dubey. Even his half brother, whose daughter was being routinely molested by Nawal, joined the

operation hush up.

### Community Punishment

The manner of Nawal's confession and his own father's response in offering a stick to Kakkad to beat up Nawal gives us an insight into how such issues are commonly settled in India. Nawal probably expected that he would be "forgiven" after a sound thrashing. He probably calculated that his statement regarding leaving the girls' hymens intact would get him some leniency and his family would be able to get the matter settled at the *mohalla* level by offering a verbal guarantee of good conduct on Nawal's part. This is a fairly common way of settling such issues in India. In **Manushi's** own neighbourhood in Lajpat Nagar, a similar case was settled in this manner. A young man in his late 20s molested a twelve year

old girl of his neighbourhood. When her family got to know of it either through the girl or her friends, they came with their relatives as a gang, dragged him out of his house, stripped him off all his clothes (excepting his underpants), blackened his face and made him go around in the neighbourhood, rubbing his nose on the ground, repeating the following apology with folded hands: "It was my sister that I molested." (All neighbourhood girls are supposed to be treated as sisters. But his punishers also forced him to imply a self abuse, that he was a sister molester). Hundreds of people witnessed this drama. Nobody, including his own family members, dared come to his defence. Most people of the neighbourhood considered it an appropriate punishment. However, no one ever got a clear picture





of what exactly had happened. After this public humiliation and apology, everything was hushed up again. No police case was registered and nobody condemned the aggrieved family for taking the “law into their own hands.” While the culprit’s attitude towards women or girls did not undergo any major change, after this episode he did not dare to repeat such an act in his own neighbourhood. In addition, the message had also been driven home to all the other young men of the neighborhood. Cases of sexual abuse are rarely openly recorded in our part of Lajpat Nagar. Young men of our locality may well indulge in all kinds of offensive behaviour elsewhere in the city, but in their own neighbourhood they ordinarily behave with restraint towards girls and women. I was told by some of the old residents that the type of treatment they gave the abuser doesn’t have to be resorted to frequently to keep young men under control. The last time someone in the neighbourhood was punished in this manner was about 25 years ago.

This kind of treatment at the local level is resorted to not only because it ensures quick, inexpensive and speedy redressal but also because it acts as a social deterrent in cases where there is a stable population, some sense of community life and commonly shared social norms. It certainly has several advantages as compared to a long drawn out and costly legal battle whose outcome is usually uncertain. However, it can easily lend itself to abuse unless monitored carefully by socially respected community leaders and a well established community based arbitration procedure which ensure it does not become a tool in the hands of unscrupulous people out to settle personal scores. Unfortunately, even this traditional community based arbitration system is also in a poor

state of health due to the encroachments made by the state imposed ineffectual legal machinery. Both the systems need to be radically reorganised so that they can act as effective watch-dogs on each other. P.S. At the time this issue went to press Nawal Dubey had still not been arrested even though he had been sentenced to seven years imprisonment by the Supreme Court in May 1992. On August 7, 1992, Madan Kakkad through his lawyer Ms. Anand brought this to the notice

of the Court requesting that the Supreme Court order the government of Madhya Pradesh to expedite Dubey’s arrest.

He seems to be absconding and evading arrest. His whereabouts are not known. In the meantime Dubey has filed a review petition through his lawyer but this cannot be admitted unless he appears to get arrested. The Kakkads fear that Dubey will try to surreptitiously escape from India and have petitioned the Government to cancel his passport. □

## Strangers Less Dangerous



Sexual violation of women and girls takes place primarily at the hands of their near and dear ones — often the very men who are supposed to “protect” them from the outside world.

For example, *Time* magazine of May 4, 1992, reported on a survey funded by the US Federal Government and published by the National Victim Centre that 6,83,000 adult women were forcibly raped in the US in 1990. That figure is five times the number reported by the US Justice Department for the same year.

Tabulating the answers from a cross section of 4,000 women, the survey authors estimated that more

than 12 million American women have been raped at least once in their life, but the true shocker is that:

- 61 per cent of the rape victims were younger than 18 at the time of their attack.
- Three out of 10 had not yet reached their eleventh birthday.
- In almost 80 per cent of cases, the women knew her rapist. As testimony to the continued stigma of rape, only 16 per cent of the assaults are reported.
- Half of the victims surveyed said they would be “much more likely” to go to the police if assured their name would not be used.

The situation is likely to be much worse in India. Far fewer women are likely to report if raped because in India a raped woman is far more severely stigmatised. Also the behaviour of the police and judiciary is often such that the victim ends up being put on trial rather than the offender.

If in the US 80 per cent of females are raped by people they know, rather than strangers, the figure is likely to be even higher for India where most women live circumscribed lives and are not allowed a free interaction with the outside world.