

# Judgements Galore

## Yet Justice Eludes A Child Victim of Rape

○ Deepa Agarwal

**O**n April 24, 1986, an eight year old girl was returning home around 9.30 in the morning from tuition in the town of Kolhapur in Maharashtra. She noticed a Maruti car standing in the middle of the road. The owner, 35 year old Rajendra Jawanmal Gandhi approached her for help to start the car which he claimed had stalled. It seems a ludicrous request to make of an eight year old, but the girl complied. The moment she entered the car she got a horrible shock. The man locked the door, overpowered her and raped her. When he was through with her he abandoned her on the road and sped away.

The traumatised girl made her way home somehow and told her parents what had happened. Her father, an engineer in the Maharashtra Electricity Board immediately filed an FIR with the police. As luck would have it, the girl was able to recall the number of the car which was traced through the RTO. The police arrested the rapist right away. But Rajendra Gandhi, an

industrialist, was a man of influence, one of the five or six richest men in Kolhapur, itself one of the richest districts of Maharashtra. He often gave generous donations to political parties and the general feeling was that the matter would be hushed up and buried. Such fears were vindicated when after her medical examination the

government hospital report stated that no rape had taken place. Worse, the doctors took almost a week to release the report.

But the press did not let the matter rest there and covered it fully, pointing out the heinousness of the crime, particularly since Rajendra Gandhi himself had a daughter of the same age. The people of the

town became extremely agitated and formed a Citizens' Action Committee. P.D. Hankare, a well-known social activist, working for women's cause, was made the convenor of the Action Committee.

When Hankare decided to fight for justice for the eight-year-old rape victim, little did he know that 12 years later he would be still making the rounds of the courts while the perpetrator of the crime would be going around scot free. That he himself would lose his bank job while Rajendra Gandhi would get away to pursue a profitable calling as a builder in Mumbai. That the girl's family, worn out by the rigours of the case, would fall by the



wayside and he be left to fight a lonely battle.

Whoever else may have abandoned the cause, P.D. Hankare is still fighting against all odds. He wants to prove, he says, that money power cannot subvert justice. But his long tortuous battle has demonstrated once again how difficult, next to impossible, it is for a rape victim to get justice.

To return to the course of events, the strong public outcry eventually forced the authorities to take notice. When thousands of people came out on to the streets and demanded that a three doctor panel be called and a proper medical examination be performed Kolhapur's senior gynaecologists were asked to do the needful. Their examination proved beyond doubt that the girl had actually been raped, totally contradicting the other report. The police were compelled to file a charge-sheet and the matter came to the Sessions Court.

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Ironically, however, the working of the legal system went on to demonstrate how easy it was for an influential individual to manipulate it to his own advantage.

The case was in progress at the Sessions Court when on the second February 2, 1987, the accused applied for a transfer of the case to Greater Mumbai as he claimed that he would not receive justice in Kolhapur because of the public agitation against him. In the meantime Hankare requested the advocate-general of Maharashtra that Shyamrao Samant, a senior lawyer of Bombay High Court, be specially appointed to pursue the



**P.D. Hankare: crusader for women's rights**

case for the government since he did not have sufficient faith in the local lawyer. The high court rejected Rajendra Gandhi's application on November 30, 1987. The accused then applied to the Supreme Court. Realising that matters would not move otherwise, Hankare himself became a party to the case now, along with the government. Eminent lawyer V.M Tarkunde pleaded on his behalf.

The Supreme Court, too, rejected Rajendra Gandhi's application and in September 1988 the hearing began in the Kolhapur Sessions Court. The accused again resorted to the same tactics and applied for a transfer to Mumbai saying that his lawyer was being

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threatened and since he could not get a lawyer of his choice in Kolhapur the case should be transferred. The high court admitted his application and the case was transferred to a Mumbai sessions court. P.D. Hankare and the government both filed public interest litigation (PIL) in the Supreme Court now. His lawyers were again V.M. Tarkunde and Manik Karanjiwala.

He pleaded that only 5 per cent of rape complaints come to the court and if they too are transferred even these will stop. The other issue he raised was that there were numerous witnesses involved in this

case, from the eight-year old to 60-year old and it would be difficult for them to go to Mumbai each time to attend the hearings. The judgement was made on February 28, 1989. The case was transferred to the Satara Sessions Court and a special order was passed that both the lawyers be present on Mach 17, 1989 and the hearing begin. It actually began on May 5, 1989 and on October 6, 1989, Rajendra Gandhi was sentenced to seven years rigorous imprisonment and a fine of Rs 5,000 and one year under the Bombay Children's Act of 1948. He was sent to the Yerawada prison on the same day from where he made an appeal to the Mumbai High Court three days later. The appeal was admitted on October 11, 1989 and he was freed on bail after having spent barely four or five days in prison.

P.D. Hankare then put in an appeal that the case should be decided soon because the girl, who was just eight when she was sexually abused, was growing up and beginning to understand all the implications of what had happened which would increase the trauma of

the trial. But the High Court did not pay heed to his petition. The matter remained pending till September 27, 1994 when the High Court passed an oral order and merely imposed a fine of Rs 40,000 on Rajendra Gandhi. This was unusual since a written judgement is the practice. Sections 376 and 354 of the IPC were set aside on the ground that what was applicable to a mature woman like Rupan Deol Bajaj could not be applied in the case of an eight-year-old-child. Between 1994 and May '96 P.D Hankare applied for an appeal five or six times. The government did not co-operate, however, even though he went and met the chief minister several times as well as the law secretary, S.V Kalmankar and the joint secretary in charge who gave him the false assurance that the government was appealing. In the meantime it so happened that the girl did not identify the accused in an in-camera proceedings. Later the court accepted the argument that she had been confused because Gandhi had a beard at the time of the incident. However, it was apparent to P.D. Hankare that some kind of pressure was being brought upon the family to withdraw from the case.

Meanwhile he kept pressurising the government to appeal in the Supreme Court. He was finally given a written reply that the state government did not consider this a fit case for appeal. But Hankare was not ready to give up so easily. He filed a PIL on May 8, 1996. Indira Jaisingh and Sanjay Parikh were his lawyers. The petition was admitted in the Supreme Court on July 10, 1996 and the government and Rajendra Gandhi were issued notices asking them to furnish reasons why they had delayed the case.

The government was also asked why it hadn't put in an appeal. It replied that it would do so.

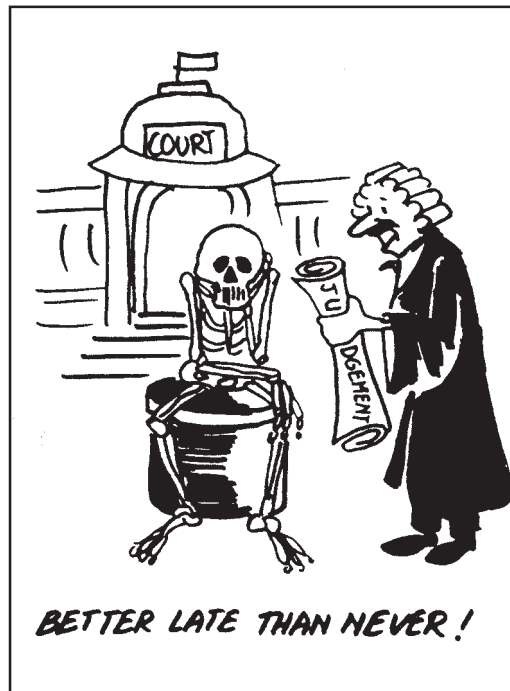
On April 29, 1997 after a year's delay, the petition was filed by the state government along with Hankare on the very last day before the Supreme Court was to pass judgement. The final hearing was held on August 20, 1997 but judgement was reserved. Eventually on September 11, 1997 the judgement was issued. Attempt to commit rape was the crime established and five years rigorous imprisonment was awarded along with a fine of Rs 40,000. The accused had already paid the earlier fine levied by the Bombay High Court. Of this Rs 25,000 had already been given to the girl's father.

But, despite the ruling the accused has not yet been arrested. P. D. Hankare had come to Delhi a few months ago to file a petition for contempt of court against the Maharashtra police. Notice had also been given to them for the same reason. This landmark case has got extensive coverage in *The*

*Times of India* and the *Maharashtra Times*. The Satara Sessions Court has issued summons three times but in spite of that the convict wasn't arrested to serve the sentence. He has finally been declared as absconding. However, the fact is that he has become a builder in Mumbai and enjoys patronage of powerful people.

It has been a long weary battle for Hankare, but he is determined to carry on till the criminal is brought to justice. Already he has spent more than 600 days following the case in the Bombay High Court, the corridors of the Law Ministry and in the Supreme Court. The expenditure on the case has been around Rs 97,000. While he borrowed Rs 40,000 the rest has been donated. The lawyers representing his case have not charged him any fees so the main expenses have been the charges for filing the papers.

In return, while a section of the press paid him glowing tributes, papers like the *Dainik Satyawadi* have accused him, referring to him as "the bearded social worker", of collecting thousands of rupees from people for his own purposes. He in turn filed a defamation case against the paper in the Satara Sessions Court in October 1989. The case carried on till 1992 and finally the chief editor and the reporter were fined Rs 500. Hankare, on the other hand, had spent about Rs 15,000 on the case and had to pursue the case for 99 days in the court. It was essential for him to be present while there was no necessity for the accused to do so. He had filed a criminal case not a civil one in which he could have got extensive damages. But his intention was to have

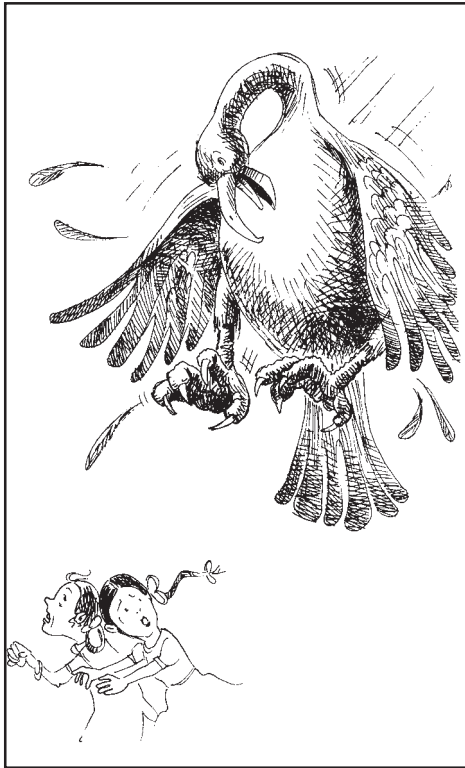


them punished, not to gain materially. His lawyers Dahashe Patil and Deepa Patil did not charge him any fees.

Neither did any of the other lawyers who represented him at various times—V.M. Tarkunde, Meenakshi Arora and Manik Karanjwala, V.A. Jadhav and Shyamrao Samant. Arvind Bhopade was the government counsel. In spite of all the time and money spent and the manpower pressed into action, the outcome of 11 years litigation has been five years imprisonment for the utterly despicable crime of child rape, which, too, hasn't been enforced.

When asked what his motivation is, Hankare says simply, "Someone has to do this work, specially when the government won't do it. When I take something up, I follow it through to the end." Even if it has meant his losing his livelihood, his job in a co-operative bank in 1991 due to his constant absences while pursuing the case.

A single person, he lives simply in his village and his needs are few, he says. He also adds that when he was young he noticed the atrocities being committed against women and reacted to them strongly. His own mother's suffering in marriage played a very important role in remaining unmarried and working for the cause of women. He has devoted his life to bring redress to women victims of injustice. He began to get involved in social work when he was around 18 and worked for women's organisations in Maharashtra. Hankare also played a very important role in expanding the reach of MANUSHI in Maharashtra by collecting numerous subscribers and organising an extensive speaking tour for Madhu Kishwar in order to popularise MANUSHI. He did this all at his own cost.



After he began to pursue this child rape case, many other matters have been brought to him, including four or five more rape cases recently. He says, that with the experience that he has gained of the law, he sees to it first of all that the documents are properly prepared, so that the case would not falter because of this deficiency. The girl in question in this particular case (who has grown up and is a young woman now) is keen that the rapist be brought to justice. But the father has turned against P.D. Hankare. Revealingly, he has put in an application in the Bombay High Court that the Rs25,000 that he was awarded as damages, should be given to him with 15 per cent interest from the date of the crime. It is also possible that now that the girl has grown up, the family do not want to keep the issue alive for obvious reasons.

While Hankare has received threats from goondas, the response of the public has been heartening. Even women who never left their

homes came out to demonstrate in the streets. At the same time a rape case is very hard to prove, he says. He has had to fight not only against the accused but the very government agencies who were supposed to be providing protection to the victim. He had to battle official apathy, the anomalies in the legal system which permit the perpetrator to delay the cause of justice and the all pervasive cancer of corruption which favours the criminal while denying redress to the victim.

Even to get official documents released has been a battle. While the accused could afford the best lawyers, Hankare had to struggle to get a good lawyer to appear from the government's side. The police were not interested in investigating the case either. Just 10 per cent of the rape cases reach the higher courts, he says and only 1 per cent get to the Supreme Court. For him this is a test case against the corrupt system and against crime which goes unpunished, which he has fought for 11 years and will continue to fight to teach a lesson to moneyed people that they cannot commit a crime and just get away. Even if he is not behind bars, Rajendra Gandhi cannot relax and feel complacent because someone is there seeing that he cannot altogether escape the consequences of his crime. Hankare is trying to get Rajendra Gandhi's passport impounded so that he cannot flee the country which is also possible.

At the end he says regretfully that the courts can at best provide judgements but not justice and wishes more committed people would come out to pursue the cause of justice in this country. □