

# WOMEN HELP WOMEN

**Berit Lakey of the WOAR talks to Vibhuti Patel**



RAPE as an issue defines the common predicament of all women. It is a conscious act of intimidation which is used to keep women in constant fear and anxiety. Even though rape is a crime committed by individual men on individual women, yet it is an issue concerning all women, because it is the fear of a real or potential rape which keeps all women dependent for their protecting on men. It is not as if one set of men act as “protectors” while the others violate women. The same man who forbids his wife or daughter to move out alone – who protects them as his personal “property” – violate with impunity the wives and daughters of other men.

Women are forced to believe that they are safe only as the property of this or that man. All male-dominated societies enforce this dependence in women. Thus the man-woman relationship becomes one of power and domination. Therefore, the fight against rape has to be a collective fight of all women against all forms of male domination and oppression of women. It is thus that rape becomes a political issue.

In the West, rape is the crucial issue around which feminist organizations unite and fight. Among these feminist bodies is the Women’s Organization Against Rape (WOAR). Berit Lakey, director of WOAR was recently on a lecture tour of India.

*Berit, what are your views on rape?*

Rape graphically conveys that “we are unfree” and keeps women in their place – always terrified, subdued and oppressed. Yet nothing is done about it. The social stigma attached to the victim of rape makes her feel further demoralized, ashamed, guilty and isolated. Much theoretical work has been done on issues like class struggle and economic injustice, but little importance is given to this specific form of women’s oppression.

*To which strata of society do women who face this problem acutely, belong ?*

From our (WOAR’s) experience of two years in which we have seen 1500 cases in Philadelphia, we can say that rape happens in all social and socioeconomic strata. In India, also, rape and sexual atrocities are committed on women – whether they are adivasis, harijans, typists, college students, rich women or housewives from any economic background. But women from lower economic strata have fewer resources, so they have to come to a government hospital if they have been raped. Rich women consult the best doctors if they are raped and the matter is kept secret. Women from the middle classes don’t report the crime because of the social stigma.

*Can you throw some light on the relationship between the rapist and the rape victim ?*

In 50 per cent of cases, the rapist is a person the woman knows – friends, acquaintances, bosses and sometimes even near relatives like cousins, uncles, father-in-law, rape. In 10-12 per cent of cases brothers, fathers and other family members are involved. Fifty per cent of rape-victims are under 18. Many are sexually molested at home. School-going boys and girls are often made

the victims of forcible sexual intercourse. Four out of ten rapes result in pregnancy.

*How do you analyse the psychological aspect of rape?*

There have been many myths relating to rape like, “because women wear provocative clothes they are raped”, “women like to attract males”! I might wear fashionable clothes because I would like to be admired, this does not mean that I would like to be attacked. Some Freudians say women have a phobia of being raped. To me the word “phobia” means an “Irrational psychological condition” while rape is a “political condition”. Its victim is any baby, girl or woman, from the age of nine months to 96 years.

Rape kills a woman’s self-confidence in her destiny and her body. Thus rape is not sexual engagement but sexual violence. Both men and women can be victims of psychological rape, which is harassment by words or gestures such as obscene phone calls, whistles and pinches. Both physical and psychological rape have as direct objectives dominations, aggression, degradation and humiliation.

As regards rapists I would like to tell you that statistics from various studies have shown that 71 per cent of all rapes were well-planned prior to actual practice. Rapists know their target. And it is not only the sex-urge that forces men to rape. Studies of rapists show that most are mentally “normal” with tendencies towards aggression and violence. Many are married or have girlfriends and other sexual outlets and are not “sex-starved”. So WOAR says, “The major motive for rape is aggression, violence, humiliation, domination.

*What are your views on marital rape?*

Laws in the USA now state that a woman can't be raped by her husband. Forcible intercourse without the consent of the wife does take place but such instances of domestic sexual violence do not become public knowledge. The institution of marriage gives the male partner a freehold over the woman partner's body. Violation of a woman's dignity by her husband is as much a crime as when she is violated by X, Y or Z. Even in marriage, "domination dynamics" are at work.

*How does WOAR function? What are its aims and objectives?*

WOAR's activities is not confined to helping women only. It wants to raise people's awareness. To us it does not seem social work because the eradication of rape requires political work.

We are working in five different areas. The work is divided among (a) administrative teams (b) voluntary development teams (c) legal system teams.

When a rape-victim rings us up, we give her emotional shelter, listen to her experience. We have hot line services which are open for 24 hours of the day. WOAR is connected with hospitals, the police, the courts, psychiatrists and public education institutes. Our volunteers accompany rape-victims to the hospital, they stand beside the victim while a gynaecological examination is going on.

Volunteers also go to the police and to the court when the victim is cross-examined. Sometimes a victim is asked questions which make her feel humiliated and too ashamed to speak out in public. Our volunteer just asks the woman to forget that there are other people in the court-room. She suggests that the victim concentrate on her while making her statement. In this way we try to prevent the woman from breaking down in court.

WOAR also organizes education classes which try to make people more sensitive to this issue. Traditionally, a rape-victim kept the experience to herself and everyone who knew about it treated her as untouchable. But these attitudes are changing. People now show a willingness to talk about rape and sexual atrocities.

WOAR is a legal institution. There have been "illegal

organizations" of women against rape and sexual assault. One of them is the SOS (Save Our Sisters). This organizations's main activities is to expose the name of the rapist through wall posters like "so and so raped a woman at such and such place" This campaign really creates a stir.

*Can you tell us something about WOAR's activists ?*

At present we have 12 full timers who devote themselves to the cause of WOAR. Many women, including rape-victims, have volunteered for the work. But it is very difficult to continue such work for more than two or three years because women find WOAR's experience very traumatic and emotionally disturbing.

*Why do you consider rape to be a political question?*

One, because the only solution to the problem is political. We will have to link the fight against rape with our struggle against capitalism under which women are mere sex objects of the capitalist economy-market. Only organized women can help.

Moreover, other social factories are involved in rape cases in America. Among the 450 men so far executed for rape, 405 were black and poor men. The blacks are always punished. But not one white man has ever been executed for raping a black woman.

*Do you have any experience of police connivance? In our country it is the usual thing. If a rape-victim or her relatives go to the police to lodge a complaint, they are beaten up, and sometimes women are raped by the police themselves. In the cities things are no better. Do such things happen in your country?*

There is always police connivance in cases of sexual atrocities and rape. Usually the police try to avoid registering a case; they ask the victim humiliating, irrelevant and insulting questions and put the victim and her relatives off. But because of WOAR things have changed to a great extent. But neither the police nor the law can help us women unless we are organized. So sister, I repeat again that we will have to treat rape as a political issue, not an individual act. We must fight in a united way.

**ONLY ORGANIZED WOMEN CAN HELP.**



## Our Rights and Wrongs

IN this new column, we will reproduce legal cases, concerning women. This is to educate ourselves about legal provisions as they exist, but also about how in reality law operates. We invite readers to send in their comments, suggestions, and also the citations and details of any cases they may have in mind.

In this issue we present a case of bigamy, that is, the offence of remarrying within the lifetime of one's wife or husband. As a Supreme Court decision, this case has the force to precedent, which means that in all similar cases hereafter, the judges of High Courts and other lower courts are bound to follow the principle laid down in this case. Only the Supreme Court can overrule its own decision.

### **Bigamy Legalized ?**

**Bhaurao versus State of Maharashtra, All India Records, 1965. Supreme court Records, page 1564. Justice J. Raghubar Dayal.**

**Why Bhaurao was sued.** Bhaurao Shankar Lokhande married Indubai in 1956. In February 1962, during the lifetime of his wife, he married Kamalabai. He was convicted under Section 494, Indian Penal Code. His appeals to the Sessions Judge and the High court failed. He then appealed to the Supreme Court.

**What was said in defence of Bhaurao.** The only argument put forward by the/lawyers in defence of Bhaurao was that the essential/ceremonies for a valid marriage were not performed when Bhaurao married Kamalabai. Since the case fell under the Indian Penal Code, it was necessary for the prosecution (in this case, the State on behalf of the first wife) to prove beyond reasonable doubt that the offence had been committed. It has to be proved that the necessary religious rites had been performed and that the marriage



*“Sorry Ma’am, in the eyes of the Law every man is equal”!*

was, therefore, a “valid” one. Otherwise, it could not be assumed that Bhaurao was legally married just because he had gone through some form of marriage and was now living with the woman concerned.

**What was said against Bhaurao.** In reply to this, it was pointed out that Bhaurao had knowingly gone through a form of marriage while his first wife was still living and had not been divorced from him. He and Kamalabai were living as husband and wife and were regarded by society as a married couple.

Second marriage was a *gandharva* marriage. This particular form of marriage is accepted under the Hindu system of marriages. It is a kind of love marriage, and the ceremonies for it are different in different communities. Bhaurao's second marriage had been conducted according to the custom prevalent in his community for *gandharva* marriages.

**The Judgment.** The Supreme Court acquitted Bhaurao of the charge of bigamy. In coming to this decision, the learned judges used the Shorter Oxford Dictionary to interpret the statute. The meaning of the word “solemnize” in this dictionary is “to celebrate with proper ceremonies and in due form”. “therefore,” the judgment declared,

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#### WHAT THE LAWS SAYS

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##### **HINDU MARRIAGE ACT, 1955**

**Section 17. Punishment of Bigamy.** Any marriage between two Hindus solemnized after the commencement of this Act, is void, if at the date of such marriage either party had a husband or wife living, and the provisions of Sections 494 and 495 of the Indian Penal Code shall apply accordingly.

##### **INDIAN PENAL CODE, 1860**

**Section 494. Marrying again during the lifetime of husband or wife.** Whoever, having a husband or wife living, marries, in any case in which such marriage is void by reason of its having taken place during the lifetime of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

**Section 496. Marriage Ceremony fraudulently gone through without lawful marriage.** Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

“Unless the marriage is celebrated with proper ceremonies and in due form, it cannot be said to be solemnized.”

In deciding what the “proper ceremonies” are, they used Mulla’s *Hindu Law* which is a commentary on the law, and not the law itself. In this book, the two ceremonies essential to the validity of a Hindu marriage are said to be (1) Invocation before the sacred fire, and (2) *Saptapadi*, that is, the taking of seven steps by the bridegroom and bride jointly before the sacred fire. However, Mulla goes on to say, a marriage may be completed by other ceremonies, where this is allowed by the custom of the caste to which the parties belong.

When Bhaurao married Kamlabai, the ceremony included a *puja*, exchange of garlands and striking of foreheads together by bride and groom. The witnesses against Bhaurao who belonged to the same community as he did, stated that the touching of foreheads completed the customary form of marriage and that the other ceremonies were not required according to the custom of their community.

However, the court was not satisfied with this, as they had discovered that, according to Clause (a) Section 3 of Hindi Marriage Act, “custom” means “a rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family.” Some of the witnesses had attended marriages in which the same ceremonies had been performed as in Bhaurao’s second marriage, but this was not considered sufficient to prove that the two “essential ceremonies” had been given up by “custom” in the community.

It was decided that the prosecution had failed to establish that invocation and *saptapadi* were not required for a valid marriage in Bhaurao’s community. Since these ceremonies were not performed in Bhaurao’s second marriage, the Supreme Court decided that Bhaurao’s second marriage did not come within the expression “Solemnized Marriage”, and Bhaurao was allowed to go scot-free.

### **When is a marriage not a marriage ?**

There is no doubt that the judgment in this case defeated the purpose of the law. The validity of a marriage lies in its recognition by society, not in the inclusion or omission of some ceremony or the other. This decision has left the way open for any married man to enter into a second marriage, deliberately omitting one so-called “essential ceremony” and thus escaping prosecution. The judgment says, “The marriage between Appellant No. 1 and Kamlabai does not come within the expression “solemnized marriage”... even though the first wife of Appellant No. 1 was living when he married Kamlabai in February 1962.” In other words, the second marriage was a marriage but not a “solemnized marriage”. And for this we have the authority of not even a

full-length dictionary, but the Shorter Oxford Dictionary!

In any case of bigamy, the second marriage is likely to be a quieter affair than the first, and there will not be many witnesses. The few witnesses would be relatives and friends of the bridegroom, who would not be ready to testify against him. The first wife, her relatives and sympathizers, are most unlikely to be eye-witnesses of the ceremony. How then will it be possible for them to prove that all the essential rites were performed?

Under the present law, only the “aggrieved parties” can sue a man for bigamy. These parties are defined as the first wife, her father, mother, sister, brother, son, daughter, father’s or mother’s brother or sister. Even if one happens to know that one’s next-door neighbour is committing bigamy, one is not entitled to sue him, nor can the State take action till the aggrieved parties file a complaint. Usually, an illiterate and non-working woman is not in a position to go to court and her family would hesitate to sue a son-in-law for fear that the daughter would be worse treated. As it is, the legal provisions are needlessly complicated. The decision in this case provides another loopholes and makes it almost impossible for a woman to legal redress.

### **What needs to be done?**

In 1975, International Women’s year, the Committee on the Status of women in India submitted a Report. In the section on “Women and the Law”, they recommended that “the word “solemnized” be replaced by the words ‘goes through a form of marriage’. Further, an explanation should be added to the section that an omission to perform some of the essential ceremonies shall not be construed to mean that the offence of bigamy was not committed, if such a ceremony gives rise to a de facto (in fact) relationship of husband and wife.” The right to prosecute for bigamy should be extended to persons other than the wife and her immediate family. Special Family courts should be set up to deal with family law cases so that decisions are not delayed for years.

These recommendations have not been acted upon, and the decision in Bhaurao’s case remains the Supreme Court’s last word on the subject.

But the problem seems to be far more deep-seated – related to the complete dependence, economic and otherwise, of women on men. The insecurity of a woman is not just in a situation when her husband marries another woman. If he chooses to live with another woman, or to visit other women, and neglect his wife, is she not equally helpless? What remedy can the law offer for this? As long as double standards of morality prevail in our society – one for men and another for women – the law is bound to reflect these standards and to be weighted against women, both in what it says and in what it does. □