

ON March 4, 1985, *Manushi* organised a demonstration at Tis Hazari sessions courts, Delhi, in protest against two recent judgments acquitting the people accused of murder in dying declarations by the victims.

The two cases are very similar. In each case, the woman had been fatally burnt in her husband's house, and had given several dying declarations accusing her husband and in-laws of having killed her. Yet the judges had acquitted the accused, primarily on the ground that since the victim was unhappy in her marriage, she may have committed suicide and given a false declaration in order to take revenge.

The judgments were briefly reported in the newspapers. We decided to investigate the cases and met the families of the two women and also of their in-laws. The women's families, being financially not well off, were not in a position to appeal against the judgments, although they were grieved by the injustice they felt had been done. The state had not appealed either. We felt that the judgments set very dangerous precedents and apart from being appealed against, they should also be publicly highlighted.

### **Strangled And Burnt**

The first case is that of Janak Kumari, aged 25 when she died in 1982. She was married six years before to Om Prakash, resident of house 3650, Gali Ram Nath Patwa, Pahar Ganj, Delhi. They had one daughter, who is now about seven years old, and is living with her maternal grandparents.

Relations between husband and wife were strained, and Janak Kumari spent about three years of her married life with her parents in their house at Kingsway Camp. Her parents are, however, quite poor and keep ill health. In 1980, she filed a case under the Dowry Prohibition Act, accusing Om Prakash, his sister, Shakuntala, and his mother, Ram Piari, of harassing her for more dowry.

Om Prakash then filed a suit for divorce. The judge ordered him to pay interim maintenance to his wife. Om Prakash then arranged a compromise

## **Is It Normal For Women To Commit Suicide ?**

### **-A Manushi Protest Demonstration**



**“Akhri bayan bhi na mana jaya, Kahan ka kanoon, kahan ka nyay?”**

**The demonstrators in Tis Hazari compound**

and called Janak Kumari back to live with him. About three months after she returned to his house, on March 7, 1982, at about 7.20 a.m., Om Prakash informed the police on the telephone that his wife had set herself on fire in an attempt to commit suicide. The police conveyed her to J.P. hospital where she died the following day.

She gave five dying declarations — to police officers Shiv Charan and Garg, to Ajit Srivastava, the then sub divisional magistrate of Punjabi Bagh, to Dr. Khanijau who took her case history, and to her brother, Kishan Lal. In each of these declarations, she accused her husband, mother-in-law and sister-in-law of having burnt her.

The post mortem report showed that she had incurred 85 percent burns. Mark

of strangulation were found on her neck.

Yet, additional sessions judge K.P. Verma, in his judgment delivered on January 31, 1985, acquitted all the three accused persons

### **All Unhappy Women are Liars?**

Although judge Verma agrees that “a dying declaration does not require any further corroboration” if it “inspires confidence”, he concludes that Janak Kumari's declarations do not inspire confidence.

The main reason he gives for rejecting her statements is his opinion that she had “attempted to commit suicide and to implicate the accused persons falsely for her murder because her marriage was a failure ..” Janak's in-laws' defence lawyer had argued that Janak did not “receive love and affection

from her husband and in-laws” so she was “frustrated.” He then went on to argue that any girl who is unhappy in her marriage “feels unwanted in this world” and is “prone to suicide.”

Thus, the mere fact that Janak had an unhappy marriage becomes the basis for the speculation that she would have been prone to suicide, therefore her dying declarations are rejected.

This way of thinking is ridiculous. There is no evidence that every woman who has an unhappy marriage is prone to suicide. Such proneness varies from individual to individual. Some men and women are more prone to suicide than are others. There is no evidence of any kind that Janak Kumari was more prone to suicide than Om Parkash, who was also, presumably, unhappy in his marriage, since he had sued for divorce.

Further, in every case of wife murder, the death is bound to be preceded by unhappiness in marriage. It is not possible that a happy marriage should result in murder of a woman by her husband and in-laws. Therefore, if unhappiness in marriage alone is to be treated as sufficient ground for the assumption that the woman was prone to suicide and could have falsely implicated her husband and his family, then all dying declarations of murdered women will be rendered invalid.

Further, in many other cases of murder, strained relations do precede the act of murder. Yet the existence of strained relations does not invalidate the dying declaration of the victim. Why should it do so only in the case of a married woman?

### **Burn Victims Unfit ?**

The second reason given by judge Verma for rejecting Janak’s declarations is that since the doctor who had certified in writing that she was fit to make a statement was not present in court and could not be cross examined, therefore his certificate could not be accepted. The judge declares that Janak’s fitness to make a statement remains unproved.

He then goes on to give his own opinion that Janak Kumari was “neither mentally nor physically fit to make any



**Janak Kumar (left) with sister-in-law, Shakuntala, and daughter**

statement” because the medical reports show that her mouth, lips and neck were burnt, that she was in intense pain and was gasping for breath. Since her hands were burnt, the judge thinks she could not have signed the statements.

The implication of this is that the statements and signatures are fabrications. The judge does not explain what motive the police, the SDM and the hospital doctors could have had for entering into a conspiracy to forge these documents or how they could have managed the whole conspiracy so quickly, in one and a half days.

These two main reasons given by the judge for rejecting Janak’s dying declarations are mutually contradictory. If Janak Kumari was unfit to make a statement, she would also have been unfit to make a false accusation.

In fact, all her declarations are clear and coherent. Had they been fabrications, they would have betrayed signs of faltering. It is much more likely that she was able to give clear, unflinching statements despite being in pain, because she was speaking the truth, than that she concocted a story and repeated it five times without a mistake.

The mere fact that she was badly burnt is no evidence that she was unfit

to make a statement. Such a generalisation would amount to ruling out any dying declaration made by a seriously injured person.

The doctor, who is a qualified and experienced practitioner in a government hospital, had certified her fit to make a statement. His opinion was based on his medical examination of her. The judge says that the doctor’s certificate is merely his “opinion” which cannot be accepted unless he is cross examined. On the other hand, the judge’s own opinion is not based on any evidence whatsoever. It is merely a general statement that no severely burnt person can make a reliable statement. No medical authority is quoted in support of this opinion.

### **Why The Police?**

Judge Verma betrays complete insensitivity to the context in which Janak Kumari, like thousands of other women, lived and died. With regard to the dying declarations she gave to the police officers, the judge says they should be viewed with caution because the police are untrustworthy.

He argues that if Janak Kumari was speaking the truth, she would not have waited to make a statement to the police, but would have spoken to her neighbour, Trishla Kumari, who had seen her burning, or “to any other person who would have been available near her at the time of the incident.” Since she did not give any statement until the police arrived, the judge feels that her statements are not genuine.

What he does not realise is that Janak Kumari could not be expected to make a statement in the house of her husband in the presence of her murderers until she had outside protection. It is clear from the testimony given by her husband’s neighbours in court that they are sympathetic to him and hostile to her. They mention that they know Om Parkash and his family for years. Some of them were born in the same locality and have spent their lives there.

Therefore, Trishla Kumari or any other neighbour could not be relied upon to protect Janak from further attack by her husband and in-laws. It is perfectly

understandable that she would not dare accuse her husband and in-laws in the presence of their neighbours until the police arrived.

Judge Verma refers to a supreme court ruling that a dying statement made to the police should be viewed with due caution. But he forgets that the context has also to be taken into account. For instance, when a person dies in police custody under suspicious circumstances, there is a probability that the police may have coerced the victim to make a false declaration or may have fabricated a declaration to exonerate themselves.

However, in this case, there is no reason to believe that the police would have been more interested in shielding Janak Kumari than Om Parkash. There is no evidence that the police have ever betrayed any bias towards acting on behalf of aggrieved women.

### **Whose Prejudice?**

Another reason given for rejecting the declarations is that it is "just possible" that the five persons to whom declarations were made met each other and came to know about the first declaration made to assistant subinspector, Shiv Charan.

This is strange reasoning. Since Janak Kumari died the day after she was burned, anyone who recorded her declaration would have had to go to the hospital, and it would of course be possible, although it was not proved, that they should briefly have met each other there. By this logic, no declaration after the first one can ever be accepted.

The declaration made by Janak to her brother is rejected on the ground that he was "already prejudiced against the accused persons on account of the strained relations between the accused and his sister." Yet, earlier, the judge had argued that since Trishla was a neighbour of Janak and claims to have been her friend, she was "the best person to whom any dying declaration should have been made."

On the one hand, the declaration made to Kishan Lal is rejected on the ground that he is prejudiced, because

he was related to her but on the other, the declaration made to an unrelated person, a policeman, is rejected on the ground that it should have been made to Janak's friend, Trishla.

### **Inhuman Approach**

The declaration made to the subdivisional magistrate, Ajit Srivastava, is rejected on the ground that he was "new to the job of recording of the dying declarations of the deceased Smt Janak Kumari."

First, any person would have been new to *this* "job" since it was the first time Janak Kumari was making dying declarations. Second, even if the judge



**Janak's daughter with a photo of her father, Om Parkash**

means to say that Srivastava was new to the job of recording dying declarations in general, because he had just been appointed SDM, the question is whether this job requires great expertise or experience.

The SDM is a qualified person, with knowledge of the Law, and Janak Kumari spoke in simple Hindi. In law, any person, even if illiterate, may take a dying statement. If this is to be treated as a professional job, only the notice will be qualified to record statements, but the judge has already said that statements recorded by the police should be viewed with caution.

Judge Verma goes on to say that "without being directed by his superior and without being requested by ASI R.C. Garg through any formal writing, the learned SDM should not have gone to record the dying declaration." Thus, the SDM is criticised for his exceptional devotion to duty and his humane action of having gone to the hospital on a holiday when requested by Garg.

If he had waited until the next day to get instructions from a superior and to go through all possible bureaucratic delays and technicalities, Janak Kumari would not have been in a position to make any declaration to him, since she died the next day at noon.

### **Malicious Lies**

The strongest argument proving the guilt of Om Parkash and his family is that they had fabricated a false case of adultery against Janak Kumari. Judge Verma states that Om Parkash and his family had produced a diary and letters supposed to be Janak's but not proved to be hers.

They accused her of having had an affair with the police officer who had investigated the case filed by her under the Dowry Prohibition Act. Judge Verma says: "The theory of any illicit affair between SI Ram Nath Nagar and the deceased Smt Janak Kumari appears to have been invented by the accused persons, with a view to save themselves."

In fact, Om Parkash's sister, Shakuntala, repeated these inventions in court, saying: "I am innocent. This is a false case. Janak Kumari was characterless and she had illicit relations with police officers also. Janak Kumari used to threaten us that if we would check her illicit activities she would commit suicide and would falsely implicate us in that incident."

Though judge Verma acknowledges that Om Parkash and his family concocted this malicious story to defame Janak and "save themselves", yet he accepts their still more unbelievable story that Janak committed suicide just to take revenge on them.

He states that they “invented” the theory of an illicit affair. Thus, he admits that they are liars. There is no evidence that Janak Kumari invented any such lie. Yet she is accused of having invented the story of their having murdered her.

In fact, Om Parkash’s neighbours, who appeared in his defence, stated that they had advised him to call back Janak Kumari even though they thought she was “characterless”, because they felt her presence would be necessary for him to arrange his sister’s marriage. Their statements show that the compromise was not genuine on his part, and that he had called her back for an ulterior motive even though he held her in contempt.

### **Flights Of Illogic**

With regard to the marks of strangulation on Janak’s neck, the judge indulges in various flights of fancy. He speculates that these could have been caused by a chain she may have been wearing.

Then the question arises as to where the chain went. The judge says there are three possibilities. Either she could have thrown away the chain “which could have been picked up by any greedy person” or Om Parkash, who changed her clothes after she was burnt, may have kept the chain in “safe custody” or “the chain could have been of gold and silver and any police official could have pocketed it” ! One fails to understand why he limits himself to three possibilities. By his logic, the chain could have been flown off with by any passing crow or the fire been kindled by a stroke of lightning.

The most interesting argument offered by the judge in favour of the accused are reserved for the end. He says that if Om Parkash had any intention to kill Janak, he would not have made any attempt to extinguish the fire. But when Trishla Kumari arrived on the scene, she saw him trying to put out the fire.

Also, if he was guilty, he would not have been “the first person to inform the police.” A few sentences later, the judge says : “Admittedly, the original report to the police was that Smt Janak Kumari

had attempted to commit suicide”. On the basis of this original report, the judge then proceeds to conclude that she had committed suicide.

But who made this “original report”? Om Parkash, on the telephone. His purpose in doing so has been admirably served since his telephonic report has been given precedence over Janak’s dying declarations, and treated as the truth.

### **Are Only Women Abnormal ?**

Judge Verma concludes that while quarrels go on between husbands and wives, “hardly the differences between the husband and the wife normally reaches the extent that one may decide to kill the other.”

One does not know on what evidence this generalisation is based. If what is “normal” in any society is what happens routinely and on a large scale, then maltreatment and murder of women by husband and in-laws has long been normal or at least, not abnormal, in our society. By acquitting the accused even when there is clear evidence against them. Judge Verma merely reinforces this pattern of “normality.”

Also, he does not explain whether it is normal for women to commit suicide and falsely accuse their husbands of having murdered them. Judge Verma states : “...if from the evidence of a case, two alternative possibilities are established then that possibility should be accepted which may be favourable to the accused persons.”

Again, he ignores the specificity of the circumstances under which wife murder usually takes place. The victim is in the power and the custody of her husband and in-laws in their private home. The house is surrounded by neighbours of the in-laws, to whom the victim is a stranger. The victim is isolated and distant from her own family and friends.

This combination of circumstances renders her very vulnerable, and the murderers are almost always in a position to suppress evidence, to exclude witnesses and to suborn false witnesses.

Therefore, in almost all such cases, two possibilities will come before the court since the accused uniformly claim that the death was an accident or a suicide,

### **Merciless Torture**

The second case is that of Shani Kaur, aged about 23, who died in Lohia hospital on February 11, 1983, of 100 percent burns which she had incurred two days earlier in the house of her husband, Udham Singh, at B-III 37 Vishnu Garden.

She gave three dying declarations, to Dr N. Sarmah, chief medical officer at Lohia hospital, to subinspector Bachan Singh and to Ajit Srivastava, then subdivisional magistrate. In all three declarations, she accused her husband, his mother., Harbans Kaur, and his sister, Kuldip Kaur, of having burnt her. She also mentioned that her father-in-law had thrown water on her after she was burnt\* causing large blisters to appear on her body.

A number of witnesses, including neighbours of Shani’s in-laws, testified that she used to be mercilessly harassed by her husband and in-laws, ever since her marriage two years earlier. Shani’s mother told us that Shani used to be beaten severely with rods, branded with heated irons, and repeatedly thrown out of the house when her parents were unable to meet in full her in-laws’ demands for more cash.

She had several times returned to her parents, and had finally returned to her husband only after a compromise arranged by community elders, in whose presence he had signed an agreement to treat her properly.

On the night of Shani’s death, a neighbour saw her being dragged into the house by her hair. In her declarations, Shani said that she was not fed that night, was beaten with cooking implements and was prevented by her in-laws from running out of the house. Her mother told her that when Shani lay dying, she repeatedly asked to see her baby son, but her in-laws callously ignored her request, so her parents had to show her another baby from a

distance, to satisfy her.

On November 28, 1984, additional sessions judge K.B. Andley acquitted all three accused persons.

Judge Andley puts forward almost identical arguments, namely, that since Shani was unhappy in her marriage, she may have committed suicide and falsely accused her husband and in-laws in order to take revenge on them, that she was in shock and agony, and crying in pain, when admitted to hospital therefore she could not have been in a fit state to make a reliable declaration, that a declaration made to a police officer must be viewed with caution, and that since Shani's in-laws lamented loudly after she was burnt and took her to the hospital, therefore they could not have been guilty.

### **Fair Or Unfair ?**

Judge Andley also adds certain interesting arguments of his own. He says that since Udham Singh was dark while Shani was fair and beautiful, he would have "felt lucky" to have such a wife and would not "normally" have liked to kill her. The simplistic and speculative nature of this argument is evident. What Udham Singh would "normally" have liked to do would depend on what kind of man he was. Since he was the kind of person who "normally" liked to beat his wife and throw her out of the house, there is no reason to think that he felt lucky to have her for a wife.

Since there is no written evidence of dowry demands having been made, Judge Andley overlooks verbal testimony of a number of witnesses, and states that there was no motive for the accused to murder Shani.

Even if dowry demands are not proved, this argument shows an extremely narrow understanding of the genesis of marital violence. It is rarely, if ever, generated by greed for dowry alone. The murder of a wife is usually the culmination of a series of acts of violence, escalating over a period of time. A number of witnesses testified that Shani used to be violently maltreated. The psychology of perpetrating violence

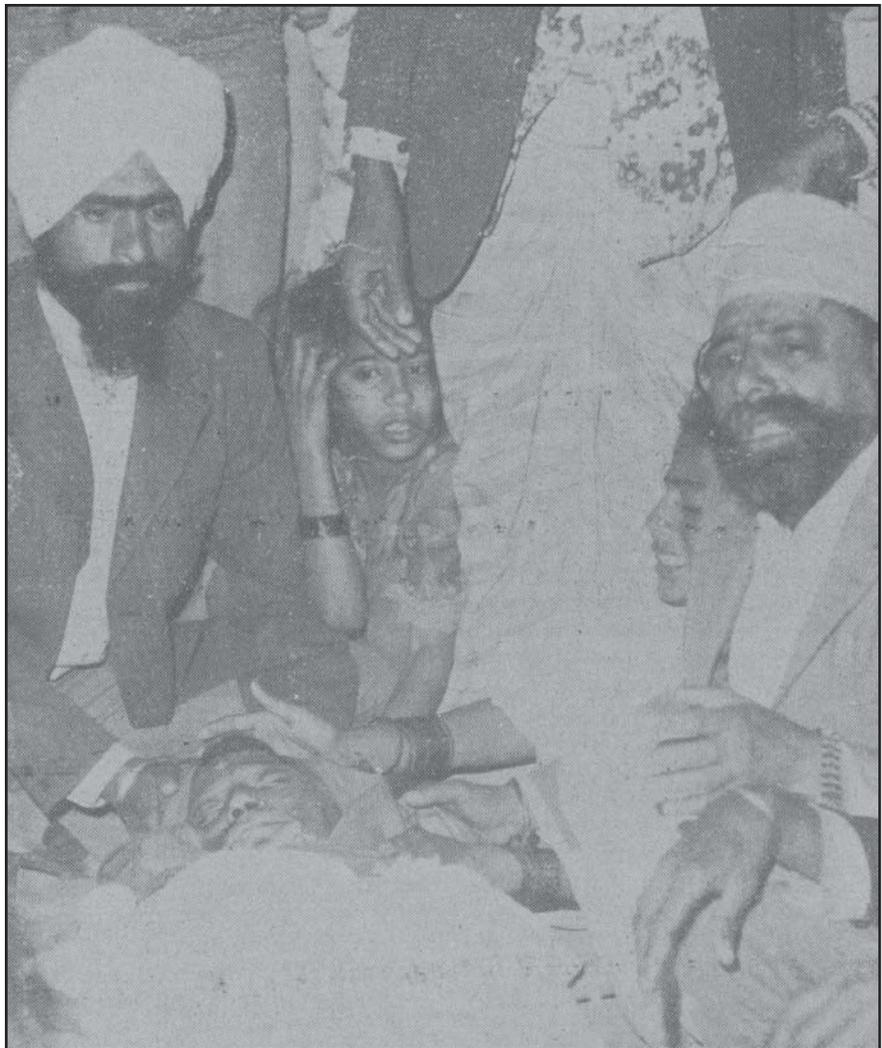
on a helpless victim who is at the mercy of tormentors is such that it builds up to a point of no return. The motives of such behaviour are not always explicable in simplistically "rational" terms.

### **The Victim's "Motives"**

Apart from thus clearing the accused of blame, Judge Andley doubts the truthfulness of Shani's statements. He says that although in all three statements Shani accused her husband, Udham Singh, of having burnt her, in the second and third statements she also mentioned the part played by her mother-in-law and sister-in-law, and added certain details such as Udham Singh's having threatened her.

Since each declaration does not repeat every detail in the same words, judge calls them inconsistent and contradictory. This shows a misunderstanding of these words. A contradiction would exist if a person accused in one statement was absolved in another. Addition is not contradiction.

Dr Sarmah of Lohia hospital had certified Shani fit to make a statement. He was also present in court, and was cross examined. He maintained that Shani was fit to make a statement. But the judge chooses to reject his opinion on the ground that he conducted the medical examination after recording her statement. When Shani was admitted, the



**The severely burnt body of Shani Kaur**

doctor recorded her case history as narrated by her, and then examined her. The judge says that technically, the doctor, when he recorded the statement, did not know whether Shani was fit or not, since he examined her, and then certified her fit only afterwards. He also says that since Dr Sarmah “admitted” under cross examination that Shani was in great pain, it is clear that she was not in a fit state of mind to make a reliable statement.

Judge Andley further argues that since Shani “had the opportunity to meet her relations” before she died, it is possible that they, particularly her mother, influenced her mind. This, of course, is pure speculation. Shani met her relatives in the hospital where the staff and her in-laws were present. When Shani’s mother reached the hospital, Udham Singh was already there.

If anyone was in a position to influence Shani, it was he, since he had custody of her baby son. As often happens in such cases, she would have been in fear lest vengeance be wreaked on her son. The fact that she took this risk shows that she was speaking the truth.

If the mere fact of Shani having been visited by her mother in hospital is to throw doubt on her dying statements, this would create a most unnatural and inhuman precondition for acceptance of a dying declaration, namely, that a dying person’s relatives should not go to meet her or him for fear that their presence will be used as a pretext to cast doubt on the truthfulness of the person. Judge Andley suggests that Shani’s “motive” for committing suicide was that she wanted to live with her husband away from her in-laws and her wish was not granted. He argues that if Udham Singh had made dowry demands or been violent, Shani would not have wanted to live separately with him.

This, again, shows a deplorable ignorance of the condition of women in many families. Often, even if a man is violent, his wife would prefer to live



**Janak’s mother, Lakshmi (extreme right) speaking at the rally, which shani’s mother, Mahinder Kaur, looks on**

separately with him rather than with his family, because she would prefer to have only one violent person to deal with rather than a number of violent persons. The husband’s violence gets encouraged and reinforced by his family while she is rendered much more vulnerable and isolated. Alone with him, she would have a better chance of resistance, since she would not be hopelessly outnumbered.

In fact, more cases of burning occur in joint families for the simple reason that a person can be overpowered more easily by many people acting in collusion than by one person, however vicious.

### **What Do Judges Want ?**

The question now arises: since Shani’s and Janak’s very clear and

coherent dying declarations do not satisfy the judges, what kind of declaration would satisfy them? Under what circumstances would they accept a woman’s accusation of her husband and in-laws?

By a process of elimination, it would appear that to be acceptable, a dying declaration should be given by a woman who has never been unhappy in her marriage, has had no previous dispute with her husband and in-laws and therefore can have no reason to take “revenge” on them. However, their motives for killing her should be proved by written evidence that they demanded dowry.

The woman should not be severely burnt, should not be in shock or agony,

or suffering from breathlessness. The declaration should be given to a person who can have no prejudice in her favour yet is highly experienced in the job of recording dying declaration but is not a policeman. This person should go through all procedures first, including consulting his or her superiors and receiving orders from them in writing.

The woman's relatives should not see her before she dies nor should the persons who record the declarations see each other. She should repeat exactly the same details in the same words in each declaration. Her husband and in-laws should show no sign of grief and should not contact the police or make any pretence of saving her. If they do, it would show their innocence.

Finally, the judge should be convinced that the killing of wives by husbands is normal, and that the accused person is also normal. Clearly, these conditions can never be fulfilled, perhaps not even in a Bombay film.

### **No Declaration Will Stand**

In most wife murder cases, the victim dares not accuse her husband of murder, often because she is still in his power or her children are in his custody. She succumbs to threats or social pressures or the feeling that she ought to shelter her husband like a good wife. Often, such a woman gives a statement that her death was caused by an accident or an attempt at suicide. In many other cases, the woman dies before anyone can get to her to record a statement.

In wife murder cases, the specificity of the context wherein the murderers are in a position to destroy evidence before the victim's family can arrive on the scene, makes the dying declaration even more crucial.

Crimes against women are often perpetrated in the family. The woman's isolation renders her very vulnerable. For that reason, it has been recently laid down in law that in certain cases of rape and marital cruelty, if the circumstances are such as to rule out the presence of witnesses or other evidence, a woman's uncorroborated statement may be

accepted.

Considering that wife murder occurs at an alarming rate in our society, and that a majority of cases are not prosecuted for lack of evidence, it is unfortunate that so strong a piece of evidence as a dying declaration should be overruled in such a callous manner.

### **Blaming The Victim**

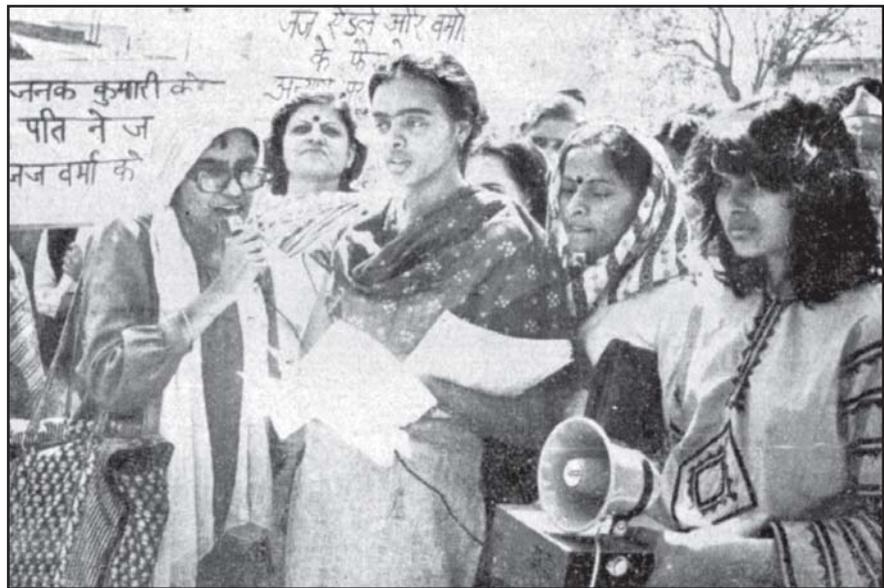
Both judgments betray a clear bias against the woman, a tendency to put her in the dock and examine her "motives." When a man is murdered, one does not hear of his possible "motives" for wanting to die. The idea that a woman could kill herself to spite someone else springs from a strong preconception that women are irrational, untrustworthy beings. So, judge Verma says, Janak

grounds, particularly on the grounds that she was unfit to make a statement and that she was unhappy in marriage so she had a motive to take revenge. These two conditions would exist in almost any case of wife murder.

### **Demanding Justice**

While we were demonstrating at Tis Hazari, we were approached by four other families who happened to be in court at that moment, to take up cases of their daughters who had been similarly murdered.

A large crowd, among them a number of lawyers, gathered and listened sympathetically as the demonstrators explained the cases, sang songs and raised slogans in Hindi such as "We have come to ask for justice for Janak Kumari



Kumari must have been carried away by "strong emotions." The argument is very similar to that which assumes that a rape victim must have provoked the attack upon herself.

These two judgments set an extremely dangerous precedent whereby almost any case of wife murder can be dismissed, if the judge so desires.

So varied and generalised are the judges' reasons for rejecting the dying declarations that almost any woman's declaration can be rejected on these

and Shani, We have come to ask for justice from all of you"; "The dying statement is not accepted. What kind of justice is this?"

The mothers of Shani and Janak were present. They narrated their daughters' suffering and expressed their sense of outrage at the judgments which had declared the dying women liars.

**Manushi** lawyers have filed appeals in Delhi high court on behalf of the mothers of Shani Kaur and Janak Kumari.

—**Manushi**