

THE rape case of Hamida (not her real name), a 10-year-old Bangladeshi girl — which has been making headlines lately — is a grim example of the reality that is likely to confront anyone who is committed enough to the cause of justice to risk getting involved in a process which might mean conviction of those who are part of the system of law enforcement. In this case, the repeated rape of Hamida was established without doubt, not only by the girl's own testimony, but also proven by medical examination. The perpetrators, eight in all, five of whom are policemen, were identified by Hamida. However, when it came to proceeding against the wrong-doers, only two of the suspects were taken into custody. Even though two years have passed since the event occurred, no further action has been taken. One of the men is absconding. More notable is the fact that the five policemen are at large without any action having been taken against them. To add to this nightmare, it is the traumatised girl who was locked up in a children's home, ostensibly for her own safety. As for the witnesses and the translator who helped record her testimony — it is they who are suffering harassment. They have been physically assaulted, their families threatened, and their integrity questioned just because they have made an honest attempt to assist the rule of law.

When Hamida was first brought to India by Rashid Khan from her native Bangladesh in February, 1993, she may have been excited at the prospect of earning some money, having enough to eat and proper clothes to wear. Rashid, who called Hamida's father Mamoo or Uncle, frequented her father Abdul Majid's house in Barisal District and often talked about the opportunities available in Delhi where he had lived for a long time. He claimed he could offer her a better

Hamida's Nightmare

Courts Bend Backward to Protect Police Rapists

Deepa Agarwal

life if she came with him. A report in *The Daily Star*, a Dhaka newspaper, says Hamida lost her mother when she was five and her father has two other wives with several children. It also mentions that Rashid lured her with all kinds of promises.

The Nightmare Begins

For Rashid, even an undernourished Bangladeshi girl was an asset. She was a female body and females have many uses. Rashid didn't waste much time in disillusioning Hamida. He started sexually abusing her soon after they arrived at Trilokpuri, a resettlement colony in Delhi where he lived.

Rape is not only humiliating and terrifying but also physically painful, especially if you are only 10 years old. Though Rashid's neighbours in Trilokpuri heard Hamida screaming

in pain, three months went by before they acted against him. They finally pulled him out of his *jhuggi*, beat him up and made him promise to take the girl back to her parents in Bangladesh.

But Rashid was not planning to lose out on this deal. In June of 1993, he moved Hamida to New Seemapuri and passed her on to Mehtab, an acquaintance of his, perhaps a business associate, who was supposed to enjoy good rapport with the local police force.

If Hamida entertained any hopes that her ordeal was coming to an end, she soon discovered the truth. One night, when she was asleep, Mehtab shook her awake and told her to get up and come along with him. The terrified girl refused, but he gave her a hard slap and told her that she had better step sharp. She was taken to a police booth where she was raped by

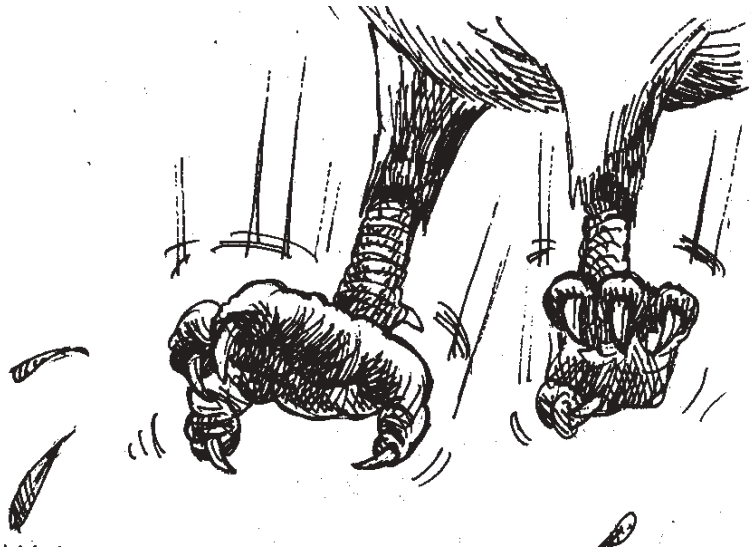


Mehtab and two policemen. Two or three days later, she was again taken in the night by Mehtab, but this time the destination was a double storeyed house in the locality, belonging to Om Prakash, called Pradhan, an influential and a comparatively affluent man in the neighbourhood. He had two wives. One of them, Vimla, was away. Hamida was taken to Vimla's room and Mehtab, Om Prakash and one policeman raped her. When she screamed they told her to be quiet or they would beat her. The next night she was taken to the police booth again where two policemen and Mehtab raped her. The following night she was taken to yet another police booth and raped again by two more policemen and Mehtab. Hamida told her translator that Mehtab always raped her first, before letting the policemen have their turn, and he used to put some oil in her vagina to prepare her for the rest. She also said that the policemen used to spit between her legs for lubrication.

On June 16, when Mehtab was not at home, Hamida seized the opportunity to escape, but she lost her way in the neighbourhood. She was unable to communicate with anyone because she did not know any Hindi. Luckily, the bewildered girl encountered some Bangladeshis and was able to tell them what had been happening to her.

Shamim, who runs a *paan* shop in the neighbourhood, saw the crowd forming and heard that a girl had been raped. When she joined the group of curious onlookers, she was shocked to discover that the girl was only 10 years old. As the girl's story unfolded she became even more horrified. Shamim, Raju, a mason, Kajol Dutta and Maulana Naseem, along with several other residents of New Seemapuri, took her to the police station. When the people insisted, the police agreed to make an on-the-spot enquiry. The

Kaushal Shrivastava



girl led them to Om Prakash's house, went upstairs and pointed out the room where the rape had taken place. She said that a white sheet had been placed on the ground. After that she led them to the first police booth where she was raped. When questioned as to how they committed rape in a place which was open all around, she said that they had placed a *chatai* across the windows. She also led them to the other police booth where she said a sheet had been used. When asked why she didn't shout for help, Hamida said they threatened to kill her. After all these enquiries were complete, the people returned to the police station. But the police refused to register a case, saying that the girl was mad and was talking nonsense.

Kaushal Shrivastava



At this stage, since the Bangladeshis who had discovered the girl could not play an active role in the matter, being illegal aliens, Shamim, Raju and Kajol Dutta decided to take the matter to the well-known Hindi daily, the *Jansatta*. They contacted Kumar Sanjay Singh, who first brought this incident to light in the *Jansatta*. Apparently the local police was perturbed enough at this point to ring up the *Jansatta* office to find out if the raped girl was there. Now that the press had entered the picture, they had no choice but to register the case. Hamida could not give the names of the five policemen, but she did give specific physical descriptions, saying that one of them had extremely hairy arms and a very hairy chest and another had missing front teeth (descriptions which tallied with those of two of the policemen on duty at the police booths mentioned). She was able to give the names and addresses of Om Prakash and Mehtab. Rashid Khan was not arrested as he could not be traced. Om Prakash and Mehtab were brought to the police station, identified by Hamida and arrested. Witnesses state that at this time they admitted to the crime. The

next morning, Shamim and the others took the girl for a medical examination to G.T.B. Hospital. The report confirmed rape and stated her age as being around 10-11 years. Hamida's chest was also bruised and had nail marks as though she had been mauled. After this she was sent to Nirmal Chhaya, a juvenile detention home. This was the beginning of her incarceration, which has continued for two years.

The Court Run-around

The news item, as reported in *Jansatta*, instantly created an uproar. After having reluctantly lodged the complaint the police did not show much interest in pursuing the case. In routine course, on June 21, 1993, Om Prakash and Mehtab were produced in the court of D.K. Malhotra, the district magistrate of Shahdara. The duty magistrate asked Investigating Officer (IO) Ramachandran why the other accused, the policemen, were not produced. He replied that in the presence of police officials Hamida was unable to identify the five policemen in an identity parade in the New Seemapuri police station. The judge asked who had given him the authority to have the identity parade in a police station when it should take place in a court or jail. Ramachandran could not reply to that. What was worse, Hamida's statement could not be recorded for want of an interpreter. On June 23, Kumar Sanjay Singh offered his services but was refused because he was considered an interested party. The case was transferred to the Special Branch and K.L. Meena was appointed IO. June 24, 1993 was announced as the next court date but

the police did not bother to appoint a translator. The court then ruled that by June 25 the police must appoint one.

At this stage, Roma Debabrata, a reader in the Department of Modern Indian Languages, Miranda House, Delhi University, read about the case in the newspapers. She was deeply perturbed by the girl's plight and was shocked that the case was suffering for want of a translator. She went to the Karkardooma District Courts to offer her services. But that day, K.L. Meena



A police booth like the one Hamida was raped in

brought R.K. Choudhary as a translator, a retired school teacher who had been giving tuitions to some police officials' children. The court accepted Choudhary as the official translator.

Advocate Pradeep Tyagi pleaded on Roma's behalf but the court accepted R.K. Choudhary's credentials. It took three hours to record the girl's statement in a retiring room in the judge's improvised chamber. After that she was sent back to Nirmal Chhaya. The next hearing took place in Magistrate A.K. Handa's court, at which point the judge noticed a

discrepancy between the FIR and the recorded statement. R.K. Choudhary's version was different from the original one. It became apparent that the interpreter had deliberately altered the girl's statements.

R.K. Chowdhury was removed as translator and Roma was called to the office of the Special Branch in Shahdara to act as translator. Little did she know at the time that by offering her services, she was letting herself in for a harrowing ordeal which would be dragged on for two years.

She could hardly have imagined that her sympathy for a rape victim would mean harassment, physical assault, threats to her life, to her family members and total disruption of her normal life. Nor could she have dreamt that the manipulations of the defence, though often frivolous and groundless, ultimately would lead to her being removed from the case even though she had discharged her duties faithfully (On one occasion, even Mehtab, one of the accused who knows Bengali, had acknowledged in the court that her translations were accurate and truthful).

On June 28, Roma accompanied Hamida to once again identify those places where the rape took place. Hamida identified Om Prakash's house and had to point out the room again where the rapes took place. She was also made to go over all the details of the rape while she was in the room. Then she showed the IO the two police booths, after which she was sent back to Nirmal Chhaya. Five separate identification parades were held at Tihar jail, each containing eight to ten uniformed policemen from separate districts. At each of the five

parades, Hamida identified one policeman and all of the five policemen she identified happened to be posted in the New Seemapuri police station at the time of the incident. Roma was present at this time, however, the magistrate ordered her not to disclose any details of the proceedings as it was supposed to be highly confidential. No action was taken against the policemen, leaving them free to threaten and intimidate the translator and the witnesses. The following reason was given for not detaining the policemen. Om Prakash and Mehtab, when first taken into custody, named five men: Subhash, Damodar, Satish Kumar, Bhopal Singh and Mehmood Khan. No one except for the police and the magistrate at the Tihar jail during the parades know the names of the five men that Hamida identified. This is kept as "highly confidential" information and not available to the public. Even the faces of the five that Hamida identified are unknown to Roma as she was made to face the judge with her back to the policemen when Hamida identified them. As reported by the *Jansatta*, Subhash was the first one Hamida identified at the first identification parade. At that point, the IO was supposed to have been informed immediately as to which officer was to be detained, but the magistrate did not inform him until 45 minutes later, when the police van containing all the policemen in that parade had left. The police van was taking the men back to their stations, but after crossing the boundaries of the Tihar jail, Subhash simply got down out of the van at an intersection and fled. After two days, he was found in Loni area and was brought back for interrogation. At that time, he named four of his colleagues, but the names he gave were different from the ones given by Om Prakash and Mehtab. Subhash's testimony was used to set Om Prakash's, Mehtab's



Roma Debabrata

and Hamida's testimonies at night and leave the others at large. Later Subhash was also let free, though it is not known on what grounds he was acquitted. The fact that all the men identified by Hamida had been on duty at the New Seemapuri station at the time of the crime was never taken into account.

It seems strange that the mere process of recording Hamida's statement has dragged on for two years and is still not over. On March 21, 1995, a weary Hamida burst into tears during a hearing in the court of Additional Sessions Judge B.N. Chaturvedi, crying out, "Why are you asking me all these things? Haven't I told you everything earlier?" Public interest in the case was heightened when several newspapers reported the incident and women's groups like Janawadi Mahila

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Samiti, Sakshi, and a social worker from Ankur, Shanta Devi, came forward to give support to Roma who had, until then, been fighting this battle single-handed. Tarun Bose also highlighted the story in the journal *Resource Scan* and another free-lance journalist, Tarun Kumar Bose, provided help to Roma. M.P. Malini Bhattacharya (CPI-M) brought up the matter in the Lok Sabha and M.P. Guru Das Das Gupta (CPI) also supported her in pursuing the matter with the Home Ministry. The Home Minister, S.B. Chavan said, as reported by the Times of India: "I will try my best to rehabilitate the girl, and will knock at the doors of the judiciary to put the accused behind bars."

Even though coming from the mouth of such a notable and powerful man, these turned out to be empty words. While Hamida was being shuttled back and forth between the court and Nirmal Chhaya, where she was unhappy due to the fact that she had acquired TB and she was being harassed by other inmates, the perpetrators were roaming free. In the numerous court proceedings, the defence used the classic tactics to wear down a rape victim. Over and over again she was asked to describe the act: if the light was on or off, if she was made to lie down on the ground, if she knew what *balatkar* [rape] was. She was made to relive the horror of the crime that had been committed against her, while being further demoralised and traumatised. Little by little she was being worn down, while the actual criminals were growing more and more secure in the knowledge that the law would protect them and everything would turn in their favour. Even the demand for in-camera proceedings, which was made after she broke down in court, was not to her advantage, as people concerned about her welfare could not be present to observe

the proceedings. At the age of 10, Hamida was not fully aware of the implications of *balatkar* or *izzat lootna* [robbed honor]. She had simply protested against something which she found painful and mortifying.

Consider the following facts: the additional public prosecutor who is Hamida's lawyer did not attend eight successive hearings; these eight days Roma had to take leave from her job and neglect her family to attend court and the witnesses, Shamim and Raju, lost out on their daily earnings, a loss they can ill afford. Hamida's incarceration was also extended. The additional public prosecutor is supposed to be Hamida's lawyer but he could not communicate with her because he does not know Bengali. How can he effectively represent her? Despite all the evidence in his hands, he has not been able to make a strong stand against the defence lawyer

Hamida could not have access to a lawyer of her own because she is a minor with no guardian, and she is illiterate, which bars her from signing a *vakalatnama*. The Bangladesh High Commission initially refused to acknowledge that she is a Bangladesh citizen and would not do anything to come to her aid. However, two years later, when a Bangladesh Supreme Court lawyer, Ms Seema Zahur, came to Delhi and visited Hamida at Nirmal Chhaya with special permission from the judge, she returned to her country and got the truth publicised through the Bangladesh National Women Lawyer's Association.

Who's the Criminal?

Hamida's incarceration in Nirmal Chhaya denied her some basic rights that even the Indian Penal Code permits to prisoners. She could not have any visitors. The only person with whom she could communicate and



who provided her with moral support, Roma, is still not being allowed to meet her. The excuse given is that she is likely to "influence" the girl.

Hamida did not receive any education or acquire any worthwhile skills at Nirmal Chhaya. She has not learned to read or write nor has she acquired sufficient knowledge of Hindi to communicate in it properly. She was kept under lock and key like a criminal and if she needed any kind of help there was no way she could contact anyone who would be inclined to give her a sympathetic hearing. When she came to attend the hearings she was kept in the judicial lock up, along with criminals. When she was first admitted to Nirmal Chhaya in 1993, she was sexually abused by other inmates, as has been reported in several newspapers, and also beaten and bullied. Before the courts barred

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Roma from meeting Hamida at the home, Hamida said to her, "Where have you sent me, *Bua*? Everything that those men did to me, these older girls are doing to me again every night. They keep asking me to show them what the policemen did to me."

As if it were not enough, Roma has now been accused of taking a 'special interest' in the case by the judge. One of the reasons has to do with an incident that took place in the courtroom in April of this year. Roma was physically attacked by supporters of the accused on two separate occasions. The first occurred in full view of the court, on April 21, 1995, before the proceedings were switched to in-camera, when Hamida pointed out her attackers to the judge. As Roma translated Hamida's words, a group of people pounced on her, and she turned her back on them to shield Hamida, who was clinging to her chest in terror. One of the attackers gouged Roma in the back with a sharp implement before the judge was able to clear the court. The fact that Roma put her arms around the girl at this time is one of the determining factors of her "unsuitability" as a translator due to her "special interest" in Hamida. She is guilty of the kind of behaviour any decent, humane person would adopt towards a traumatised child who was being threatened by the people who had already caused her grievous harm. The fact that the terrified girl clung to her a couple of times when confronted with the rapists has also been used against her. It is said she is 'influencing' Hamida. Roma was removed from the case on May 4, 1995 by magistrate B.N. Chaturvedi because, in addition, to all these accusations, the defence counsel claimed that she was the sister of Kumar Sanjay Singh, the journalist who exposed the case, and thus an interested party (Kumar Sanjay Singh also received

threats to his life after he reported on the case in the *Jansatta*). Judge Chaturvedi directly asked Roma if she was the sister of Singh and she replied: "How could I be his sister if he is a Bihari and I am a Bengali?" He further asked if she was in any way related to Singh and she vehemently denied this, saying that she first met him in the courtroom. The judge turned to the defense lawyer and asked where they have gotten this idea, but the defence lawyer just folded his arms, cast his eyes downward and said nothing. This is a totally baseless and untrue allegation, but apparently one which carries weight in the eyes of the law. The other grounds mentioned were: she is a woman and a Bengali and thus likely to be sympathetic towards the girl. The defence claimed that her job is to translate the girl's testimony, not to provide moral support. The final accusation was that she visited the girl at Nirmal Chhaya to influence her against the accused.

When Janwadi Mahila Samiti, a Delhi-based women's organisation, petitioned the court to be allowed to appoint a lawyer for Hamida and to be allowed access to the imprisoned girl, the petition was dismissed. It was said that her needs were being adequately attended to. This, in spite of the fact that the assistant public prosecutor (Hamida's lawyer) had been absent for eight scheduled hearings, contributing significantly to the endless delays in the court.

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provide food for the undernourished Hamida. This was after she discovered that she had developed tuberculosis in the children's home while the case languished for one year. During her two years at Nirmal Chaya, she also began to suffer from seizures, most likely trauma-related, as she had not exhibited this condition prior to her detention.

Reading about Hamida's ordeal, the Janwadi Mahila Samiti demanded that this rape case trial be carried out in-camera. While in-camera proceedings are supposed to shield rape victims from the unpleasantness of describing the humiliating details in front of a packed courtroom — in Hamida's case this turned to her disadvantage. The particular details of

her situation were not considered. This case involves a child victim without command of the language, and without any guardian to consider her interests. In-camera proceedings require her to face her attackers at close range, who are an obvious source of terror to her, and expose her to the bullying tactics of the defence counsel with little support. Hamida's case required a closer look before such a demand was made because the accused were members of the Delhi police, which alone is a red light signal requiring a careful watch that justice is served without foul play. The investigating officer was also a member of the Delhi police. Hamida's lawyer has shown himself to be disinterested in the case, by failing to show up for eight successive hearings and even the judge seems to be more kindly disposed towards the accused than towards the injured party. Another problem with a closed court is that the public is denied access to factual information, and independent human rights organisations cannot be present to assure that there is no foul play.

The frequent adjournments and postponements have made it more difficult for the witnesses and the translator, and the ordeal much more harrowing for the girl. The two year delay of the conclusion of this case has confused Hamida and made her recollection of events foggy. At times both the witnesses and the translator were misled as to the times of hearings so that they missed being present. During a series of trials in 1994 in which all five policemen were acquitted, Roma was never informed that these were even being



Kaushal Shrivastava

held, though she was the official translator at the time. She found out about these after the fact, when Hamida asked her where she was during those hearings and why she hadn't come to translate. While I was present at two of the hearings at which the accused were produced their arrogance and confident bearing seemed obvious. They even bragged aloud of the *kheer* [rice dessert] they were enjoying in jail and claimed they were suffering no discomfort. Their confidence is not misplaced since as past trials of rape cases show, conviction is extremely rare. The way rape laws are implemented ensures it.

Speaking of the witnesses, it is obvious that they have been terrorised. When some **Manushi** volunteers went to New Seemapuri to take photographs of the witnesses (who had agreed to it earlier) we were told that they were too afraid to come forward. None of them appeared, even though we waited for an hour. That night, Shamim, one of the three witnesses, was badly beaten, her paan stall destroyed and her money looted. She was initially offered a bribe to withdraw from the case, but she refused. She had also been harassed by the police soon after she agreed to be a witness. The men who assaulted her threatened her that her 13-year-old daughter would receive the same treatment as Hamida. When she tried to register a complaint, the local police did not cooperate. Her written complaint was ignored and dismissed as a mere case of 'eve teasing'! Though she is a widow with four children and an old blind mother to support, Shamim, who has been regularly threatened by Om Prakash's and Mehtab's relatives, is not giving up. Recently she deposed before the Human Rights Commission and said that a few days back Mehmood Khan came and threatened her again and told her to withdraw from the case or suffer the consequences.

The police high-ups are reluctant to act against the offending policemen. It seems that they want to maintain the morale of the force at the victim's expense. The public prosecutor, Ramesh Kumar, stated on May 24 in a press report that the five policemen were not identified. This is an outright contradiction of the facts as Hamida identified all five policemen, even the two who attempted to alter their appearances.

Isolating the Victim

Thus, all attempts to gain justice for a rape victim have been effectively stymied in a systematic manner. Those who have attempted to give her

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support have been harassed and threatened. Apparently it is a worse crime to assist the cause of justice — worse than a crime as heinous as child rape. It is universally acknowledged by experts that child victims of rape need special counselling to overcome the trauma, yet none was given. The fact that Hamida has suffered physical and mental harm and is being treated like a criminal has been ignored by the concerned authorities. The law exists only for those with the right connections which in this case are the five members of the police force and two slum *dadas*.

As for Roma, she has not been the only member of her family who has been adversely effected by her voluntary personal involvement in this case.

Her whole family has been drawn in. Rie Debabrata, Roma's daughter, says, "Hamida was cut off from her only emotional anchor when one evening mother told me that the court had barred her from meeting Hamida and had accepted the accused's demand for a different translator on the ludicrous ground that Hamida 'clung' to mother while giving her statement — clarifying painful and embarrassing details, facing the accused sitting a mere two feet away from her! The court, however, had to concede that it was not questioning mother's professional competence but was instead ensuring that the accused should not feel victimised, pointedly omitting instances when their families threatened mother in court and hired goons to intimidate key witnesses."

But Roma has not given up. Along with the Janawadi Mahila Samiti, Sakshi (an organisation working with victims of child rape) and the People's Union for Civil Liberties, she has filed a case under public interest litigation (PIL) in which they have petitioned for the following: a speedy trial, a re-investigation of the circumstances leading to the acquittal of the five policemen, counselling and proper medical treatment for Hamida, rehabilitation of the child, transfer of the child from incarceration to a child welfare home, permission for members of women's groups to be present at the trial and to visit the child, personal protection for the key witnesses and translator, and reinstatement of Roma as translator.

The case came up for hearing before a division bench of Justice A.B. Saharya and M.S.A. Siddiqui at the Delhi High Court. The court ruled that she be moved from Nirmal Chhaya since it is a remand home where children are supposed to be kept for a maximum period of three months before being moved elsewhere

(Hamida has been languishing here for two years without any attempt being made to trace her father or other relatives). The judges asked the organisations who filed the PIL to suggest some voluntary agency who could look after the girl. But the suggestion to hand over the girl to a Jangpura-based voluntary organisation was strongly opposed by Standing Counsel P.S. Sharma on the ground that a case was pending against that organisation. The second option offered from the petitioners was that she



Kaushal Shrivastava

be shifted to a neglected children's home run by the government on an interim basis where she will be allowed free movement within the compound and will receive education. Hamida has been moved to the government home and is awaiting further court proceedings in July of this year. Though it is her right to be allowed visitors, until now she has not been allowed by the judge to have any visitors until Hamida has made her statement in court.

In terms of Hamida's best interest, the dragging out of her case has been so traumatic that even if all the rapists were convicted, she would not be benefited in any way. She has described the details of the incidents so many times, that there is no reason that she should be detained in India any longer, as she is a Bangladeshi who has had two years of her life

ruined, not to mention the psychological scars she will carry with her into adulthood. While other illegal aliens that end up in the hands of the government are deported, Hamida has been held, after being brutally assaulted, simply because her case is still pending after two years. There is no way to tell how much longer it could be dragged out at her expense.

Her testimony can be videotaped, and if her father or relatives don't want her back, she should at least be sent back to her native land, as she has repeatedly asked to go home, claiming she is terribly homesick. Once a safe place for her is secured, there is no reason for further delays. While a children's home in Bangladesh is not necessarily better than one in India, at least there are now some concerned Bangladeshis who can look after her interests and she will be surrounded

by a familiar culture and language. With the perpetrators at large, there can be no guarantee that she is safe as long as she is detained in Delhi.

This matter has also been placed before the Indian Human Rights Commission which is looking into the matter. But is Hamida any closer to receiving justice or even normal, humane treatment? Will she really receive the kind of counselling she desperately needs to overcome the effects of her traumatic experiences? Will she ultimately be reunited with her family — and do they really want her back? Whatever

the final end to Hamida's story may be, nothing can wipe out the memory of her ordeal or erase the fact that we live within a system where laws are so easily manipulated by criminals. As facts have revealed over and over again, even if a crime has been proved and the wrong-doers identified, the whole judicial process is negated if the roles of law-breaker and law-enforcer overlap or merge into one. Even exposure by the press, or the concern voiced by supposedly powerful individuals cannot free a victim from the tangled maze of what passes for law in our country. □

We call upon our readers to protest against the handling of this case to: Additional Sessions Judge B.N. Chaturvedi, Room # 2, Karkarduma District Court, Shahdara, Delhi.