

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

CRL. M.P. NO. _____ OF 2020

IN

WRIT PETITION (CRIMINAL) NO. 296 OF 2020

IN THE MATTER OF:

SATYAM DUBEY

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

AND IN THE MATTER OF:

CITIZENS FOR JUSTICE AND PEACE
THROUGH SECRETARY
NIRANT, JUHU TARA ROAD,
MUMBAI.

...APPLICANT / INTERVENER

CRL. M.P. NO. _____ OF 2020: APPLICATION FOR INTERVENTION

CRL. M.P. NO. _____ OF 2020: APPLICATION FOR DIRECTIONS

WITH

I.A. NO. _____ OF 2020: APPLICATION SEEKING EXEMPTION FROM FILING DULY
AFFIRMED AFFIDAVIT AND VAKALATNAMA

PAPER – BOOK

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ADVOCATE FOR THE APPLICANT: APARNA BHAT

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APPLICATION FOR INTERVENTION

TO

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS LORDSHIP'S COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION
OF THE ABOVE NAMED
APPLICANT

MOST RESPECTFULLY SHOWETH:

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1. That the present matter is pending before this Hon'ble Court.

2. That the Applicant herein is a registered organization that has been working in the field of human rights for over 18 years. It is a human rights movement dedicated to upholding and defending the freedom and constitutional rights of all Indians. Amongst other human rights issues, the Applicant has been active in intervening in the courts and more particularly on aspects related to minority rights, freedom of expression, criminal justice reform and child rights. Apart from cases related to the Gujarat carnage of 2002, they have been active in the area of implementation of the Forest Rights Act, 2006 and on the issue of Citizenship vis a vis inclusion and exclusion of genuine Indian citizens in the National Register of Citizens in the state of Assam.

3. That the Applicant is seeking to intervene in the present matter to be of assistance to this Hon'ble Court so that the case encompasses all aspects of rule of law and to leaves no stone unturned in ensuring that justice is rightfully served upon the distressed Dalit family which is the subject matter of the present case. This case and several other such incidents that have occurred in the recent past and in the days following the incident, warrant serious intervention of this Hon'ble Court to reiterate and uphold rule of law in a manner that will lay down important and landmark precedents.

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4. That the present Application focuses on key issues that need this Hon'ble Court's attention as it has set out on its path to deliver justice to the Hathras victim and her family.

5. That the Applicant is intervening primarily since there are widespread news reports attributed to senior police officials and elected representatives who are trying to underplay the heinous offence and actually prejudging the issue. For example, there are reports of a senior police officer saying that there was no sexual assault. It is rather alarming that an officer at that level is making these public statements when investigation is still in progress and the final outcome would be post the trial. It is rather alarming that when this Hon'ble Court has repeatedly stated that cases of sexual violence have to be handled with utmost sensitivity, these brazen statements are being made in the public domain.

6. That the Applicant is intervening in these circumstances having had experience working with victims who were threatened and intimidated by the mighty state in the past.

7. That the present Application is bona fide and made in the interests of justice.

PRAYER

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In the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- A. Allow the present Application for Intervention and permit the Applicants to intervene in Writ Petition (Criminal) No. 296 of 2020.
- B. Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.

Filed by:



APARNA BHAT
Advocate for the Applicant
Email: aparna.bhat@gmail.com
Phone: (+91)9811113979

Place: New Delhi

Date: 07.10.2020

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

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5. That the Applicant is intervening primarily since there are widespread news reports attributed to senior police officials and elected representatives who are trying to underplay the heinous offence and actually prejudging the issue. For example, there are reports of a senior police officer saying that there was no sexual assault. It is rather alarming that an officer at that level is making these public statements when investigation is still in progress and the final outcome would be post the trial. It is rather alarming that when this Hon'ble Court has repeatedly stated that cases of sexual violence have to be handled with utmost sensitivity, these brazen statements are being made in the public domain.

6. That the Applicant is intervening in these circumstances having had experience working with victims who were threatened and intimidated by the mighty state in the past.

7. That at this stage the Applicants is making submissions on certain aspects which are critical and need to be addressed and necessary directions issued. These are:
 - I. Witness protection
 - II. Rights of deceased (focus on Dalits)
 - III. Admissibility of the Narco Analysis Test

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- IV. Statements by public authorities
- V. Dying Declaration
- VI. Relevance of Forensics reports and other medical evidence in Rape cases

I. Witness protection

- 8. That the uncertainty around the protection of the family of the victim is growing day by day especially as it appears from media reports that the socially powerful families allegedly associated with the accused, are intimidating the family. News reports are filled with news of the family stating that life has become difficult for them in the village. There was even a video of the District Magistrate of Hathras allegedly intimidating the family saying that while the media will go away in few days but they will still be here while also asking them if they want to change their statement. The video can be accessed at the following link:
<https://www.youtube.com/watch?v=OaT09MB0R-Y>.

- 9. That as the situation goes from tragic to grim, the larger question of "protection of the witness" has become of paramount importance here. It is submitted that the Allahabad High Court has suo moto taken cognizance of the matter and has aptly raised the question: "whether the economic and social status of the deceased's family has been taken advantage of by the State Authorities to oppress and deprive them of their Constitutional rights?", the aspect of witness protection needs to be stressed so the investigation and trial in the long run goes unhampered and best serves the interest of public justice.

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10. That the Applicant would like to humbly stress that taking in to consideration the economic background of the family of the deceased and the history of caste supremacy, while news reports have suggested that some protection has been extended to the hapless family belonging to the Valmiki caste, it may be in order for this Hon'ble Court to ensure that the personnel who do protect the family, including women also hail from a similar strata, to avoid further alienation and intimidation. This would not threaten the existence of a fair trial where witness from marginalised backgrounds can fearlessly come forward and testify in courts. These groups can be easily intimidated by the complex and hierarchical social structures in our country. For this reason, lack of effective witness protection right from the beginning of investigation and trial hampers deliverance of justice and results in many cases, in the witness turning hostile. The experiences of the Best Bakery Case [*Zahira Habibullah Shaikh v. State of Gujarat* (2004) 4 SCC 158], the Sakshi Case, [*Sakshi v. Union of India* (2004) 5 SCC 518] and the Domestic Working Women's Forum Case [*Delhi Domestic Working Women's Forum v. Union of India* (1995) 1 SCC 14] have all pointed to the need for urgent witness protection. The experience of all these cases shows that it is only when non state players and citizens, back witnesses, that the struggle for justice become meaningful and in some degree successful. It is only in such situations that witnesses have found the courage to speak out.

11. That this Hon'ble Court in *Zahira Habibulla Sheikh* has underlined the criticality of victims in a criminal trial as under:

“30. Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth is the main accepted underlying existence of courts of justice. The operating principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial, the interests of the accused and the public and to a great extent that of (the) victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences”.

“41. ...If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors, like the witness being not in a position for reasons beyond control to speak the truth in the court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by the court on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle truth and realities coming out to surface.... Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of the State represented by their prosecuting agencies do not suffer.... There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that the ultimate truth presented before the court and justice triumphs and that the trial is not reduced to a mockery”

This Hon'ble Court also highlighted the role of the state in protecting witnesses in criminal cases where parties involved are powerful in terms of money and political patronage:

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"41. ... As a protector of its citizens it has to ensure that during a trial in court the witness could safely depose the truth without any fear of being haunted by those against whom he had deposed. Every State has a constitutional obligation and duty to protect the life and liberty of its citizens. That is the fundamental requirement for observance of the rule of law. There cannot be any deviation from this requirement because of any extraneous factors like caste, creed, religion, political belief or ideology."

12. That although the 2018 Witness Protection Scheme has been around for close to a year now, on the ground, India's criminal justice system continues to reel without its implementation. This Scheme was drafted with the inputs from 18 States/UTs and the Central Ministry of Home Affairs. In the cases arising out of Gujarat riots, this Hon'ble Court had raised the issue of witness protection and a very critical case in which witness protection was identified to be a critical aspect of the administration of public justice was the one of the Gujarat 2002 related criminal trials, the Naroda Patiya massacre case. In 2011, the Special Trial Court set up under the monitoring of the Hon'ble Supreme Court directed the Special Investigation team (SIT) to provide more protection to 6 witnesses in the case after receiving an application from them to that regard and also because one important witness in the case, Nadeem Saiyed was killed in broad daylight by unidentified persons.

13. That in *Mahender Chawla v. Union of India* [Writ Petition (Criminal) No. 156 of 2016] while laying out the Witness Protection Scheme as per Article 141 and 142 of the Constitution of India, this Hon'ble Court held that:

“3. ... The present legal system takes witnesses completely for granted. They are summoned to court regardless of their financial and personal conditions. Many times they are made to appear long after the incident of the alleged crime, which significantly hampers their ability to recall necessary details at the time of actual crime. They are not even suitably remunerated for the loss of time and the expenditure towards conveyance etc.”

“(8) ...Whereas, on the one hand, it is to be ensured that no innocent person is convicted and thereby deprived of his liberty, it is of equal importance to ensure, on the other hand, that victims of crime get justice by punishing the offender. In this whole process, protection of witnesses assumes significance to enable them to depose fearlessly and truthfully. That would also ensure fair trial as well, which is another concomitant of the rule of law.”

This Hon'ble Court also interpreted Article 21 of the Constitution as follows:

“16. ... If one is unable to testify in courts due to threats or other pressures, then it is a clear violation of Article 21 of the Constitution. The right to life guaranteed to the people of this country also includes in its fold the right to live in a society, which is free from crime and fear and right of witnesses to testify in courts without fear or pressure.”

14. That according to the Scheme, in order to receive protection, an application in prescribed form is required to be made to the competent Authority (Standing Committee in each District chaired by District and Sessions Judge) which then calls for a Threat Analysis report from the ACP/DSP of the concerned police division. The report categorizes threat protection (as per the three categories, 'A', 'B', and 'C') and suggest protection measure. The application is to be disposed off within 5 days of receipt of said report and the order thus passed is to be implemented by the Witness Protection Cell which is also set up under this scheme.

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15. That the Scheme specifies that the protection should be proportionate to the threat and should be granted for 3 months at a time. The measures may include, inter alia, temporary change of residence, phone number, and escort to and from court, in camera trials, concealment of identity of witness and so on.

II. Rights of deceased (focus on the marginalised Valmiki Caste who are among those called 'Dalits')

16. That it is submitted that this is not the first instance whereby Dalits have been denied dignity in death:

a. A 2011 report by *DNA* indicated that the Maharashtra Ministry for social justice stated that Dalit burial grounds have been usurped by upper castes in with 72.13% of the state's 43,722 villages. A true and correct copy of article titled "Where do we take our dead and go, as Dalits" dated 16.10.2011 published by DNA is marked and annexed hereto as ANNEXURE A-1 (Page No. 29 to 32).

b. In July, in Kakarpura village in Etawah district, UP, the body of a 26-year-old Nat woman who died of a uterus infection was already placed on the pyre when members of the more powerful Thakur community intervened and forced the family to take the body down from the pyre. The distressed family was forced to take the body to the designated cremation ground for people not hailing from 'upper' castes. A true and correct copy of article titled "Body of lower caste

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woman taken off funeral pyre after upper castes object in UP village" dated 29.07.2020 published by the Millenium Post is marked and annexed hereto as ANNEXURE A-2 (Page No. 33 to 34).

c. In March, in Puttaganal village of Davangere taluk, Karnataka, it was reported that oppressed classes were not allowed to bury their dead in graveyards belonging to other communities and were forced to bury their dead along the road. A true and correct copy of article titled "No graveyard for oppressed castes, bodies buried roadside in Davanagere village" dated 20.03.2020 published by the New Indian Express is marked and annexed hereto as ANNEXURE A-3 (Page No. 35 to 37).

d. In January this year, The New Indian Express reported that the Dalits of Vadachinnaripalayam village in Tirupur district, Tamil Nadu had approached the district Collector alleging that for 50 years they were denied a burial ground and were using spaces available along the roadside to bury the departed. A true and correct copy of article titled "Hello, 2020! Tamil Nadu Dalits burying departed along roadside for the last 50 years" dated 14.01.2020 published in the New Indian Express is marked and annexed hereto as ANNEXURE A-4 (Page No. 38 to 39).

e. A News18 report of November 2018 stated that Dalits of Veedhi village in Coimbatore, Tamil Nadu were forced to carry out funeral procession through

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garbage dump yard and sewers as they were denied access to the road used by upper castes. A true and correct copy of article titled "Dalits in a Tamil Nadu Village Carry Funeral Procession Through Sewers After Villagers Deny Passage to Crematorium" dated 01.11.2019 published by News 18 is marked and annexed hereto as ANNEXURE A-5 (Page No. 40 to 43).

17. That the present case too, which seems to be a forced cremation of which the court has also taken notice, is in violation of rights of a deceased, especially when the deceased and her family is a Dalit or belonging to Scheduled Caste.

a. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("SC/ST Act") is the legal recourse when it comes to offences against Dalits.

There are some sections of the Act that need to be necessarily invoked:

"Section 3(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe—

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(y) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any other section thereof have a right to use or access to;

(za) obstructs or prevents a member of a Scheduled Caste or a Scheduled Tribe in any manner with regard to—

(A) using common property resources of an area, or burial or cremation ground equally with others or using any river, stream, spring, well, tank.

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cistern, water-tap or other watering place, or any bathing ghat, any public conveyance, any road, or passage:

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

3(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.”

The Act also provides for enhanced punishment in case of subsequent conviction and provides for minimum punishment of 1 year. Further, Section 15A of the Act enumerate the rights of the victims and witnesses. Sub-section 2 clearly states that the victim “shall be treated with fairness, respect and dignity”. Under sub-section 11(d) it is also binding upon the State to “provide relief in respect of death”. Additionally, the provisions of the Indian Penal Code under section 297 that makes trespassing cremation/burial grounds or offering indignity to a human corpse or disturbing funeral ceremonies, a crime which can be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

- b. The United Nations Commission on Human Rights adopted a resolution in 2005 related to human rights and forensic science which underlined the importance of dignified handling of human remains, including their proper management and disposal as well as of respect for the needs of families. Needless to say, such

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deeds of discrimination against a deceased and harassment of the surviving kin is tantamount to violation of fundamental rights under Article 14 (right to equality), Article 15 (prohibition of discrimination), Article 17 (abolition of untouchability) as well as Article 21 (right to life) and hence warrants intervention of this Hon'ble Court that has already begun.

- c. There have been many occasions when this Hon'ble Court has passed various judgements in determining and upholding the rights of a deceased person.
- d. In *Ashray Adhikar Abhiyan v. Union of India* AIR 2002 SC 554, this Hon'ble Court had upheld the right of a homeless deceased to have a decent burial as per their religious belief and the corresponding obligation of the State towards such people.
- e. In *S. Sethu Raja v. the Chief Secretary* 2007 (5) MLJ 404, this Hon'ble Court had noted,
- “18. ... By our tradition and culture, the same human dignity (if not more), with which a living human being is expected to be treated, should also be extended to a person who is dead.”
- f. In *State of M.P. v. Madanlal* (2015) 7 SCC 681, this Hon'ble Court has firmly deprecated any compromise in cases of sexual offences. The relevant portion of the judgment is quoted hereunder:
- “18. ... We would like to clearly state that in a case of rape or attempt to rape, the conception of compromise under no circumstances can really be

thought of. These are crimes against the body of a woman which is her own temple. These are the offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the "purest treasure", is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error."

III. Admissibility of the Narco Analysis Test:

18. That on October 2, 2020, an Uttar Pradesh Government spokesperson informed that a polygraph and narco analysis test of the victim's family will be conducted. The government official said the tests will be conducted on all people, both from the the alleged accused and victim side, apart from police officers involved in the case and other persons related to the case.

19. That in *Selvi v. State of Karnataka* (2010) 7 SCC 263, this Hon'ble Court held that:

"No individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty."

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20. That subjecting the family members to such tests when they are neither accused nor booked under any charges in the matter is a great defiance of law. A study titled Supreme Court judgment on polygraph, narco-analysis & brain-mapping: A boon or a bane, published in the Indian Journal of Medical Research noted that:

“In the hypnotic stage, the subject becomes less inhibited and is more likely to divulge information, which would usually not be revealed in the conscious state. He or she may also divulge all his/her fantasies, personal wishes, impulses, instinctual drive, illusions, delusions, conflicts, misinterpretations, etc. The main drawback of this technique is that some persons are able to retain their ability to deceive even in the hypnotic state, while others can become extremely suggestible to questioning. This is especially worrying, since investigators may frame questions in a manner that may prompt incriminatory responses.”

A true and correct copy of study titled “Supreme Court judgment on polygraph, narco-analysis & brain-mapping: A boon or a bane” published by Suresh Bada Math in the Indian Journal of Medical research on 29.07.2011 is marked and annexed hereto as ANNEXURE A-6 (Page No. 44 to 47).

IV. Statements by public authorities

21. That on 01.10.2020, the Uttar Pradesh Additional Director General of Police (Law and Order) Prashant Kumar has told the media that the forensic report of the victim does not establish rape, citing the medical report, post-mortem report from Safdarjung Hospital and FSL forensic report:

“Postmortem report says the victim died due to her neck injury. FSL report hasn't found sperm in samples, making it clear that some ppl twisted the matter to stir caste-based tension. Such people will be identified & legal action will be taken.”

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22. That a report published by The Wire examined the medico-legal examination report (MLC) prepared by the Jawaharlal Nehru Medical College Hospital ("JNMCH") at Aligarh, where she was first admitted. In line with the Union health ministry's protocol for medical examination of victims of sexual assault which stipulates that examining doctors "should neither refute nor confirm" whether a sexual offence had occurred, the hospital reserved its opinion on whether the assault on the victim involved rape or not, and referred the case for further examination by the state government-run Forensic Science Laboratory (FSL) in Agra. A true and correct copy of article titled "Exclusive: Aligarh Hospital MLC Report on Hathras Victim Shatters UP Police's 'No Rape' Claim" dated 03.10.2020 published by The Wire is marked and annexed hereto as ANNEXURE A-7 (Page No. 48 to 58).

23. That the JNMCH claims that the victim informed the doctors about her sexual assault only on September 22 and on the same day the case was referred to FSL, Agra. FSL then collected samples from JNMCH only on September 25, which is 11 days after she was first examined. There are some serious questions being raised whether the police who admitted the victim had anything to do with the missing "sexual assault" mention at the time of admission and the claim of the assailants being unidentified. These doubts are being raised in view of three videos that have been extensively circulated on social media where the victim can be seen and heard speaking about the incident and clearly stating that the men raped her. The applicants crave leave to refer to and rely upon the transcript of the said videos at the time of hearing of the application.

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V. Dying Declaration

24. That additionally, the victim also gave a dying declaration to the Magistrate on 22.09.2020 in which she said that she had been raped and identified four men as the attackers.

25. That Section 32(1) of the India Evidence Act, 1872 states that:

“When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.”

26. That in *P.V. Radhakrishna v. State of Karnataka* AIR 2003 SC 2859, this Hon'ble Court held that:

“11. ... The principle on which dying declaration is admitted in evidence is indicated in legal maxim *nemo moriturus praesumitur mentire* – a man will not meet his maker with a lie in his mouth.” “(12)...The situation in which a person is on deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement.”

27. That as per law, where there are no material contradictions, the dying declarations can be completely relied upon without corroboration. A dying declaration need not be in spoken words or in writing, it can be a mere nod or even a gesture. In this case, if reports of her dying declaration are to be believed, of which this court will soon

get apprised, she has mentioned the name of the accused as well as made mention that the men raped her.

28. That in *Ashabai v. State of Maharashtra* (2013) 2 SCC 224, it has been held that the law does not insist upon the corroboration of a dying declaration before it can be accepted. In *Khushal Rao v. State of Bombay* 1958 SCR 552, quoting 'Phipson on Evidence' [9th ed. P. 335], it was held that:

"It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of the conviction unless it is corroborated."

29. That in *State of U. P. v. Ram Sagar Yadav* 1985 AIR 416, this Hon'ble Court observed that:

"13. ... The primary effort of the court is to find out whether the dying declaration is true. If it is, no question of corroboration arises. It is only if the circumstances surrounding the dying declaration are not clear or convincing then the court may, for its assurance, look for corroboration to the dying declaration."

30. That reliance on a dying declaration, of which the Court is convinced that it is true, is a rule of law and may not need any corroboration. Thus, the statement made by the Uttar Pradesh Additional Director General of Police (Law and Order) Prashant Kumar is completely misplaced and irresponsible.

VI. Relevance of forensics reports and other medical evidence in rape cases

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31. That the aforementioned report published in The Wire which claims to have accessed the MLC reported that in the Brief History section of the Post Mortem Report, it is mentioned that,

“Alleged history of strangulation by some unknown persons from behind with dupatta while she was doing some work in the field on 14.09.2020 at around 4:10 pm, where on examination she was conscious and oriented to time, place and person, ligature mark was present over front of her neck.” “The report says that the spinal injury which she had sustained was responsible for her paralysis and ultimately, her death. When the breathing stopped, CPR was performed.”

The said report accessed by The Wire also claims that the deceased who was admitted to JNMCH Aligarh informed the doctors about the sexual assault on 22.09.2020:

“As alleged by the informant, the survivor was sexually assaulted by four known persons of the same village when she was doing some work in the fields of the village Bulgarhi on 14/09/2020 at 9.00 a.m. There is history of loss of consciousness during the incidence.”

32. That ADG Kumar had discounted rape on two grounds. One, that the FSL report has said that “no sperm or ova were found in the samples collected from vaginal swab”. And two, the post mortem report has suggested that the cause of death of the deceased was because of trauma following injury in the neck. However, the reliability of the Forensic Science Laboratory report is debatable as the sperm was collected 11 days after the sexual assault. According to the Guidelines and Protocols (Medico legal care for survivors/victims of sexual violence) issued by the Ministry of Health and Family Welfare, Government of India, the likelihood

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of finding evidence after 72 hours (3 days) is greatly reduced; The spermatozoa can be identified only for 72 hours after assault." Hence, the reliance must be on the statement made by the victim and other physical evidence. In any event whether she was raped or not can be conclusively established post the trial and it is highly irresponsible and is also malafide for persons especially those holding official positions to make such statements. Moreover, according to the mother of the victim, the girl was found naked at the time the mother saw her.

33. That the audio and transcript of her statements that are being circulated indicate clearly that the victim speaks of forceful assault, rape. The third video, recorded in a hospital setting at a later date, also leaves no doubt about the nature of the crime she describes. The now dead hapless Victim also made a dying declaration to a magistrate on September 22 wherein she said that she had been raped and identified four men as the attackers. Surprisingly, the UP police have sought to undercut that statement by claiming she did not mention she was raped when she first went to the police on September 14. The transcript of two of the videos – which appear to have been taken on September 14, 2020 at what seems to be Chandpa police station and a local clinic in Hathras -- clearly contradicts this claim. The videos begin and end abruptly so their transcripts at best constitute a fragment of what the woman said and not the complete record.

34. That it has been quoted that the mother of the deceased victim who was the first to see the victim post the assault stated this. "My daughter was lying naked with her

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tongue protruding from her mouth. Her eyes were bulging out and she was bleeding from her mouth, her neck and there was blood near her eyes. I also noticed bleeding from her vagina. I quickly covered her with the pallu of my saree and started screaming." These words clearly indicate certain degree of sexual violence. Considering the fact that samples were taken after many days and the manner in which it was taken remains questionable, the aspect of extent of sexual violence is best left to the trial conducted fairly under the supervision of this Hon'ble Court. It is also critical to note that sexual violence has a large expanse and this has been recognised by the criminal justice system post the 2013 amendments to the Penal Code. In view of this and in view of the fact that the victim was found naked with vaginal bleeding indicates that sexual violence had indeed taken place. The statements being made to the contrary are irresponsible and indicated malafides as well as complicity.

35. That the State of Uttar Pradesh has indicated that the investigation will be handed over to the Central Bureau of Investigation ("CBI"). While this is a positive development, it has been the experience of the Applicant that even when cases are referred to the CBI, it is only when this court monitors the process that the transfer of investigation has any meaning.

36. There are multiple dimensions to the present case given the fact that a dalit girl was brutally assaulted by men belonging to the so-called upper castes. While that itself is a difficult case to pursue for the family given the dynamics of the village social



structure, it has been made even more complicated by the deplorable behaviour of the state. The applicants believe that there has to be an investigation into the line of command as to who ordered the cremation. Mere suspension of the officers at the threshold will not really address the problem. It is extremely clear from the manner in which an entire police force as well as the District Administration was present, intimidating/persuading the family, preventing them from being present at the funeral, systematically preventing the media, that there would be clear instructions from a higher level for the same. The decision was not spontaneous but well planned and organised. This is an independent offence to be investigated and tried and the investigation will require a certain level of autonomy. This autonomy and independence would be only possible if this Hon'ble Court monitors the whole process and reports get filed in this Hon'ble Court.

37. That there have been innumerable instances where this Hon'ble Court, despite the matter transferred to the CBI has continued to monitor the progress. In *S. Gurlad Singh Kahlon v. Union of India* [W.P. (Crl.) No. 09 of 2016], vide order dated 11.01.2018, this Hon'ble Court considered appropriate to constitute a three-member Special Investigating Team (SIT) to proceed to investigate as many as 186 cases in which further investigation had not taken place. In *Paramjit Kaur v. State of Punjab* (1996) 7 SCC 20, this Hon'ble Court had been pleased to direct the CBI to conduct investigation and file interim reports before the Court after every 3 months. In *Nivedita Jha v. State of Bihar* [SLP (Civil) No. 24978 of 2018], vide order dated

20.09.2018. this Hon'ble Court had been pleased to direct the CBI to further investigate certain other aspects of the case.

38. That the Application is bona fide and made in the interests of justice.

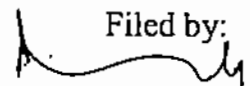
PRAYER

In the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- C. Transfer the investigation to the Central Bureau of Investigation (CBI) with specific directions that the team would file progress report before this Hon'ble Court and report to this Hon'ble Court;
- D. Provide protection to all the witnesses from the central para military forces and not include any cadre from the state of Uttar Pradesh;
- E. Appoint a retired judge of this Hon'ble Court to investigate the circumstances which led to the cremation of the victim in the middle of the night in open fields;
- F. Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.

Filed by:



APARNA BHAT

Advocate for the Applicant

Email: aparna.bhat@gmail.com

Phone: (+91)9811113979

Place: New Delhi

Date: 07.10.2020

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
CRIL M.P.NO. _____ OF 2020
IN WRIT PETITION(S) CRL NO. 296 OF 2020

28

IN THE MATTER OF:

SATYAM DUBEY

... PETITIONER

VERSUS

UNION OF INDIA & ORS

.... RESPONDENTS

AND IN THE MATTER OF:

Citizens for Justice & Peace (CJP)

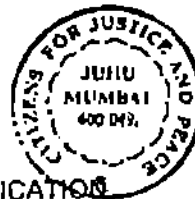
... APPLICANT / INTERVENER

AFFIDAVIT

I, Teesta Atul Setalvad, Secretary, Citizens for Justice & Peace (CJP), age 58 years, address at Nirant Bungalow, Juhu Tara Road, Juhu, Mumbai 40049, do here by solemnly state and affirm as under: 1. That I am the Secretary of Applicant in the above – mentioned matter and in such capacity I am well conversant with the facts and circumstances of the case and am competent to swear this affidavit on my behalf and the other respondent.

2. I have read and understood the contents of the accompanying Cril. M.P's and I say that the contents thereof are true and correct to the best of my knowledge and belief and nothing material has been concealed.

3. That the annexures annexed to the Cril. M.P's are true and correct copies of their respective originals.



VERIFICATION

Teesta Atul Setalvad
DEPONENT
SECRETARY,
CJP

Verified that the contents of paragraph 1 to 3 of my above affidavit and I say that the same are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

Verified at Mumbai on this the 7th day of October, 2020.

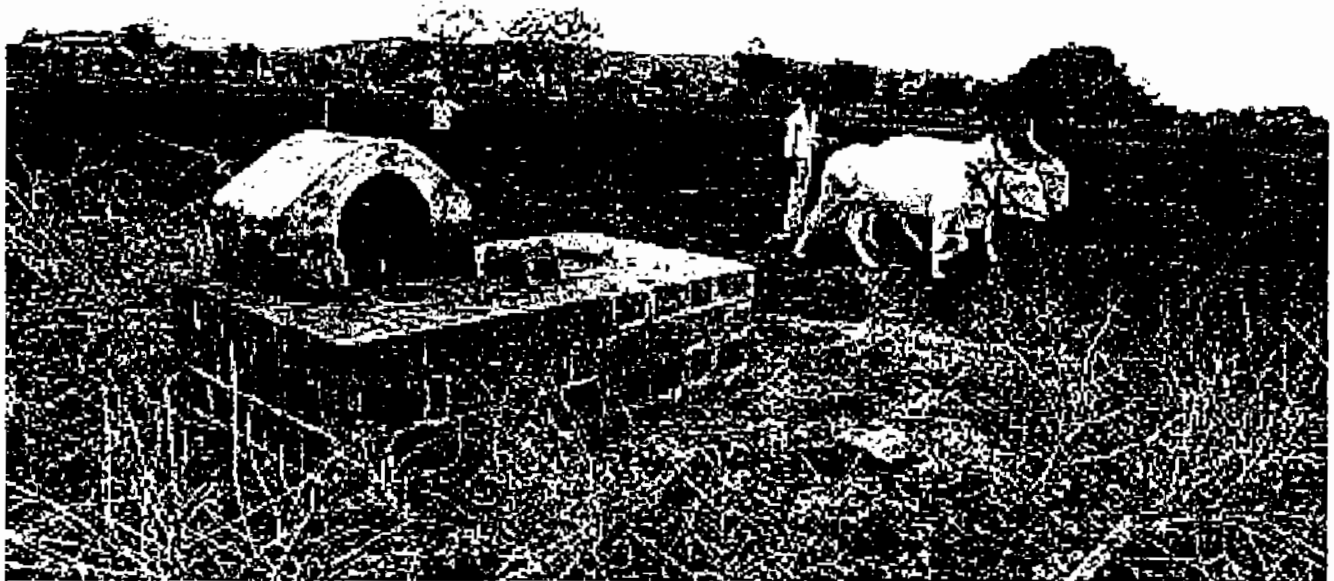
Teesta Atul Setalvad
DEPONENT
SECRETARY,

Exclusive: Where do we take our dead and go, ask Dalit:

In villages across Maharashtra, Dalit burial grounds are being usurped by upper castes; families trying to access them face brutal reprisals.

ANNEXURE-A-1

29



- Pramod Thakur, DNA

SHARE



WRITTEN BY




Yogesh Pawar

SOURCE

DNA

Updated: Oct 16, 2011, 03:07 PM IST

If pain had a face, it could be Narayan Sonawane's. The 45-year-old Dalit farmer keeps scratching a shaving wound on his face till it bleeds, and makes him flinch. The pain, perhaps, momentarily takes his mind off the gruesome reality outside his hut – a seven acre plot that used to be a Dalit cremation ground until a year ago.

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"I buried my father here two years ago. And my mother a year before that with my own hands," says Sonawane, fighting back tears. "Would upper castes let this happen to their own dead?"

As a crowd gathers around, a nonplussed Khandu shouts, "Don't listen to him, he's lying." But he quickly changes tack. "Come now... We are all from the same village. Why take such petty differences to the media?" Seeing that his words have had no effect, he adds, "I'll build a shed for you to cremate your dead. I don't even want money for building it."

We soon discover the reason for Khandu's generosity: the appropriated land is worth Rs30 lakh at market rates, while the steel shed with asbestos sheet roofs will cost a mere Rs30,000!

Khandu and Sonawane belong to Mhalsapur-Zavla village in Beed district, which falls in the Marathwada region of Maharashtra. Such casual take-over of Dalit lands by upper castes is fairly common, not just in this district, but all over Maharashtra. According to figures compiled by the Maharashtra ministry for social justice, Dalit burial grounds have been usurped by upper castes in with 72.13% of the state's 43,722 villages.

About 150 km from Mhalsapur-Zavla, in Parbhani district's Devalgaon village, the tension is palpable. It has been less than a week since violence erupted over a Dalit's attempt to bury a deceased family member in the demarcated cremation ground. Upper caste men stopped the funeral procession, brutally attacked the pall-bearers and flung the body of 39-year-old Shevanta Pawar to the ground. The pall-bearers, including Pawar's husband, Mahesh Pawar, 42, barely escaped with their lives.

Recalls a bitter Mahesh, "Upper caste men attacked us and threw my wife's body into the bushes nearby. After we lodged a complaint with the tehsildar, the police arrived, and only then could we recover the body from the bushes and do the last rites."

Despite the violence, and the tension in the village on account of it, the upper castes are unrepentant. "This is our way of life. Those who don't like it here are free to leave," says Dhanajirao Kale, an obviously well-to-do upper caste farmer. Kale even has a word of advice for us, "It is better that you city folks stick to what you know and understand."

Adding insult to injury Nearly 60 km away, the Dalits of Malegaon still can't forget November 22, 2008. On that fateful day, upper caste men led by priests of the local Khandoba temple, Sanjay and Ganptrao Naik, attacked a funeral procession with sticks and swords because they were taking a dead body to the designated crematorium. "They beat up everyone and forced them to flee with my father's body, which then lay in our house for two days," remembers Urmila Waghmare, daughter of the deceased, Ramchandra Waghmare. "When the body began to decompose and smell, we had to cremate it on the roadside," she adds, tears welling up in her eyes.

When Dalit rights organisations like Samajik Nyay Andolan forced a reluctant police to lodge an FIR, reprisal from the upper castes was swift —the Waghmares' home was burnt down. Urmila's distraught mother Mandubai suffered severe burn injuries but survived. While the culprits, thanks to their political patrons, move around freely Urmila and her mother live without a roof over their heads. Promises from the then collector, Radheshyam Mopalwar, that they will get a house under Indira Awaas Yojana have remained promises. "Every time I go to the social welfare officer, he asks me to come later," says Urmila.

There are, of course, instances where official apathy has reduced even death to a farce. Like in Madalmoi village of Georai tehsil in Beed, where the 0.275-acre crematorium (Survey No 357) was first given to the Dalits by the Nizam

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Complaints from the Dalits led to a law suit, which is still pending in court. So after every death, the Dalits take the dead body and lay it in the middle of the busy highway for a rasta roko. "Once we create a traffic jam, the cops and the tehsildar scurry to the spot, and only then are we allowed to perform the last rites on the allocated land," says Sarjerao Shinde, a resident of the village.

The Marathas are calling it blackmail. "Why can't they wait for the case to be decided by the court if they know they are right?" asks an angry Harkut.

Marathwada is worst These are by no means isolated incidents. In fact, since there have been several such incidents in the constituency of BJP general secretary and deputy opposition leader in the Lok Sabha, Gopinath Munde, and in Dehu village in NCP chief Sharad Pawar's constituency.

When contacted by *DNA*, Munde admitted that the problem existed in his constituency, but was quick to add that it was prevalent across the state.

"I have myself raised this issue several times, first in the state assembly and then in the Parliament, but the government is not serious about addressing this long-standing issue," he said. When asked why the NDA government did nothing about the issue during the Sena-BJP reign in the state, he said, "Undoing what the Congress had allowed to fester for 45 years is not an easy task," adding, "If the Dalits unite, mobilise and take to the streets on this issue, I will gladly join them in their fight."

Article 17 of the Constitution abolishes all forms of untouchability. But the reality is otherwise even when it comes to burying/cremating the dead. In hundreds of villages and hamlets across Maharashtra, Dalits are not only denied access to the common burial/cremation ground but prevented from using even the burial grounds specifically demarcated for them.

"The level of friction over the issue is the highest in Marathwada, where over one-fifth of the population is Dalit," explains Eknath Avhad of the Manavi Hakk Abhiyan, which has been fighting for Dalit rights in the region.

"Dalit youth of today do not want to wait endlessly for justice to prevail. Their increasing aggression is seen by upper castes as a challenge to their social and economic status."

Will justice ever be done? Dalits have traditionally had separate tracts of land to dispose of their dead as a part of the caste system. "In Maharashtra, these are on the eastern side of the village, so that the whole village is not 'polluted' by the winds blowing from the direction of the Dalit cremation ground," points out Ganpat Bhise of the Samajik Nyay Andolan, a Parbhani-based organisation fighting for the restoration of these cremation tracts to Dalits.

"The upper castes want to usurp Dalit cremation grounds, and they also do not want us to cremate our dead anywhere else. Where do they want us to take our dead and go?" asks Bhise. "Why then don't they allow us to use the same crematoria that they do?"

He says claims of progress on integration and mainstreaming of Dalits ring hollow on the ground, and remembers how the then Nanded collector had mocked him during a protest against the Malegaon incident, asking, "Do you expect the Collector to go to every Dalit's house and help him fight for justice?"

Access to cremation/burial grounds has become an increasingly sensitive issue over the last decade, as population has grown. Land, always a contentious resource, is more so in this arid belt, which has the lowest per capita income in the state. "It is ironic that in the birthplace of BR Ambedkar, Dalits continue to be denied dignity even in

32

Same story across the country

Punjab: A paradox of Sikhism Though Dalits form 30% of Punjab's population, and though Sikhism frowns on discrimination in the name of caste or creed, untouchability against the Mazhbis and Ramdasias, the two Dalit castes among Sikhs, is well established. They have been forced to live in separate settlements, contemptuously called thhattis or chamarhlees, and forced to reside on the western side, away from the main area of the villages, so that the winds blowing over them don't pollute the upper castes. All the Sikh organisations, from Sikh temples to the political parties, are under the control of the Jat Sikhs, who refuse to consider Dalit Sikhs equals even after death. The former disallow cremation of the latter's dead in the main cremation grounds. Over the years, such harsh discrimination has forced Dalits to establish separate gurdwaras, marriage places and cremation grounds. This, in many ways, is the biggest paradox of Sikhism, which is often characterised as 'emancipatory' and 'revolutionary'.

Tamil Nadu: Evidence of atrocity A study by the Tamil Nadu Untouchability Eradication Front (TNUEF) shows problems relating to burial and burning grounds in over 75% of the state's 30,000-odd villages. The NGO Evidence found that Dalits had faced atrocities over burial/cremation in 208 of the 213 villages covered by their survey. In 153 villages, Dalits were not allowed to carry their dead through areas where the dominant castes lived. In 132 villages, Dalit graveyards do not have water, power or a cremation shed.

Gujarat: it's 'wasteland' According to the Ahmedabad-based Behavioural Science Centre (BSC), of the 18,100 villages in the state, 5,000 have no legal burial grounds for Dalits. Though the Dalit custom of burying the dead is an age-old one, the government doesn't recognise it. As a result, the unregulated lands are classified as wasteland. Despite the fact that the Revenue Department had passed a GR in September 1989 to consider 1972 as the year for earmarking land for burial, nothing has been done so far.

Also Watch

- NDA Congress NCP Gujarat Maharashtra Lok Sabha Parliament Gopinath Munde Dalit NGO BR Ambedkar
- Marathwada Nanded Maratha BJP bhartiya janata party Malegaon Dehu Sikhism Revenue Department

f t in

http://dnai.in/ads7

Handwritten signature and initials (TC) in a circle.

ANNEXURE-A-2

<http://www.millenniumpost.in/nation/body-of-lower-caste-woman-taken-off-funeral-pyre-after-upper-castes-object-in-up-village-414062>

33

**Body of lower caste woman taken off funeral pyre after upper castes object in
UP village**

LUCKNOW: The body of a 26-year-old lower-caste Dalit woman was taken off a funeral pyre in Uttar Pradesh's Etawah district by a group of upper-caste men who said she could not be cremated on communal land, police said on Tuesday. The funeral was being held in Kakarpura village last week when just as her four-year-old son was about to light the pyre, about 200 men stopped the cremation going ahead, saying the site was not meant for lower-caste villagers. "My family and I... begged them to let us perform the last rites but no one listened to us. The police were also called but nothing was done," said Rahul Bajaniya, the woman's husband. "We had to take the body to a different cremation ground, which is about four kilometres (2.5 miles) away, and perform the last rites there," he was quoted as saying in a news report. Bajaniya said caste discrimination in the village was so entrenched that people from higher castes "even object to us when we fetch water from the (community) hand-pump". No FIR has been registered in the case so far. The circle officer said no FIR has been registered as the family of the woman has not filed any complaint against the Thakur men. Circle officer BS Veer Kumar also said the matter was resolved "peacefully". An online video showing men removing firewood from the pyre as a body lay on the ground had been viewed nearly 200,000 times by Tuesday. The incident sparked anger on social media, with politicians and campaigners demanding justice for the woman's family. BSP president Mayawati on Tuesday demanded an inquiry into the incident. In a tweet, she said: "In UP near Agra, the body of a Dalit woman was removed from the funeral pyre by people of upper classes having casteist

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mentality because the cremation ghat belonged to upper castes which is most shameful and most condemnable." In a related tweet, she said: "In this casteist and most disgusting incident, a high-level inquiry should be done by the UP government and the culprits should be given harshest punishment so that such an incident is not repeated in the state, this is the demand of the BSP." With agency reports


(ATC)



ANNEXURE-A-3

35



Wednesday, October, 07, 2020 08:24:06 AM

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Home > States > Karnataka

No graveyard for oppressed castes, bodies buried roadside in Davanagere village

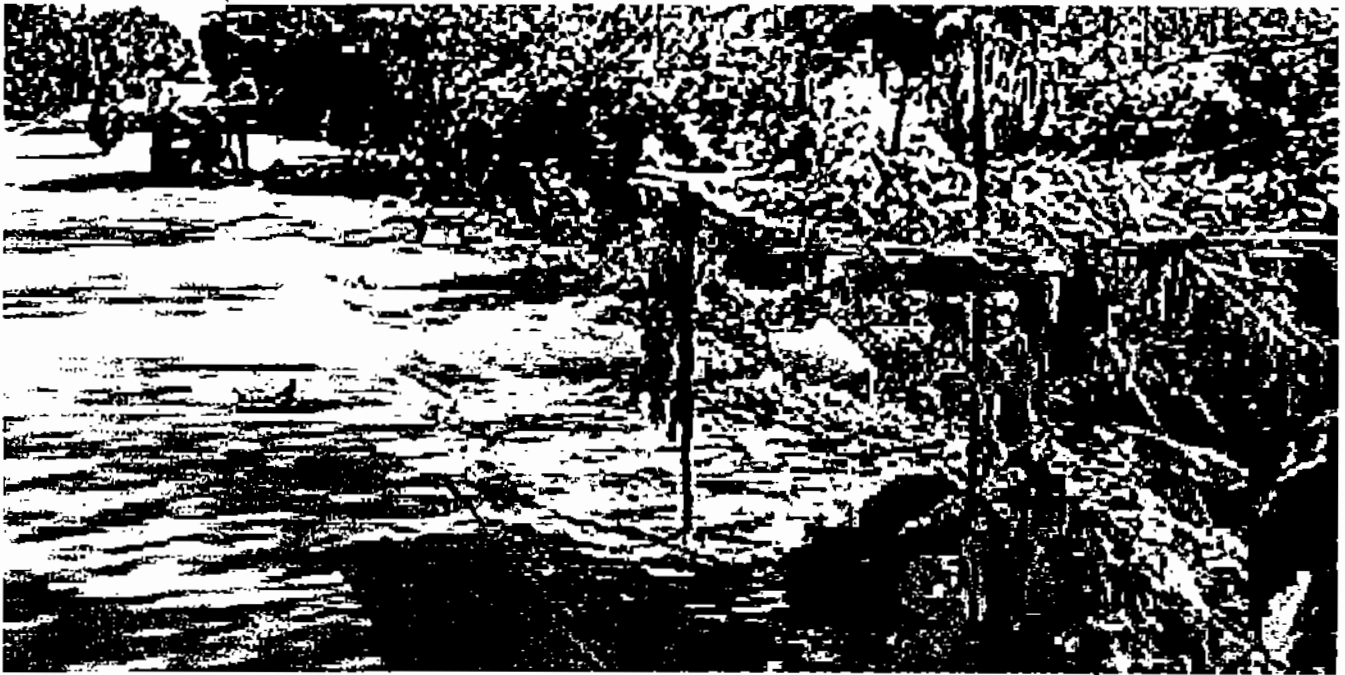
People from the oppressed sections are burying their dead by the road side at Putaganal village, as they are allegedly not being allowed to do so in the places belonging to the other communities.



Published: 20th March 2020 06:57 AM | Last Updated: 20th March 2020 06:57 AM

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By G Subhash Chandra

Express News Service

36

DAVANGERE: Several incidents of dead bodies, belonging to those from the oppressed classes, being buried by the side of the road have been reported from the Puttaganal village, near Kadajji village of the Davangere taluk, recently. If one is passing by Kadajji, several burial sites can be seen adjacent to the roads, along with some temporary shelters made using coconut leaves.

People from the oppressed sections are burying their dead by the road side at Putaganal village, as they are allegedly not being allowed to do so in the places belonging to the other communities. The villagers said that they used to bury their dead in a nearby field, but as it was taken over by someone who also fenced it, they have no other place except the road-side to use as a burial ground for the bodies of their deceased relatives.

The burials are bringing fear in the public. Four days ago, a body was buried in the same place and the commuters on that road are now scared to use it. It is also affecting the health of the public, hence, the villagers are demanding public cemeteries.

Public cemeteries are set up in various parts of the district using the asset creation project under the flagship programme of the Centre's Mahatma Gandhi National Rural Employment Generation Act (MGNREGA), wherein the entire cost of levelling of the land, fencing it and fixing of the board to the cemeteries are done using the funds from the programme. However, this has not been completed

in 91 villages, as there was no government land present in those villages and the villagers are not interested in sharing their lands for setting up of the Public cemeteries. When someone from an oppressed sections, SC or ST passes away, he or she gets buried in these places.

ZP CEO Padma Basavanthappa told The New Indian Express, "About 91 villages in the district have no public cemeteries for burial, hence, we have not set up cemeteries in these places and we will initiate setting up public burial grounds across the district in the coming days."

She also said that at places where government lands are not available, no one has come forward to hand over the lands for setting up of cemeteries and the issue will be taken up with the district administration.

On the issue of cremation being carried out on the side of the road at Puttaganal, she said that it will be discussed with the respective Gram Panchayat and ensure that a separate cemetery is set up on government land.

More from Karnataka.

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TAGS Caste discrimination

India Matters



ANNEXURE A-4
(38)



Wednesday,
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Hello, 2020! Tamil Nadu Dalits burying departed along roadside for the last 50 years

In a petition, one of the residents of the village, alleged that around 50 Dalit families in the village, mostly Christians, are denied a burial ground by those belonging to dominant communities.



Published: 14th January 2020 05:56 AM | Last Updated: 14th January 2020 09:55 AM | A+ A A-



For representational purposes

By Express News Service

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TIRUPUR: Claiming that they have never had a separate burial ground, Dalits of Vadachinnaripalayam village here in the district said that for the last 50 years they have been using spaces available along the roadside to bury the departed.

In a petition submitted to the Collector on Monday, Raja, one of the residents of the village, located in Kundadam panchayat union in Kangeyam taluk, alleged that around 50 Dalit families in the village, mostly Christians, are denied a burial ground by those belonging to dominant communities.

He claimed that the villagers, mostly daily wagers, have been residing for many generations despite being subjected to oppression.

But, due to unavailability of burial space, Raja claimed that they have been burying the dead along Kaadaiyur-Kullampalayam roadside, near Coimbatore-Karur National Highway.

"But the problem didn't end there. Since people visit the graves to pay respects during religious occasions, new owners of the spaces also have expressed their opposition," he said.

Corroborating Raja, another villager Thiyagarajan said they were allotted a 'Natham Porumboke' land tucked in the corner of the village by an official, adding, "however, even that land is encroached by wealthy and powerful individuals."

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Dalits in a Tamil Nadu Village Carry Funeral Procession Through Sewers After Villagers Deny Passage to Crematorium

Dalits in a Tamil Nadu Village Carry Funeral Procession Through Sewers After Villagers Deny Passage to Crematorium

The Dalit community in Veedhi village in Tamil Nadu alleges that they are not allowed to carry the dead through the route where the upper caste community resides.

NEWS18

LAST UPDATED: NOVEMBER 1, 2019, 4:28 PM IST

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Chennai: In another case of caste discrimination, residents of Veedhi village in Tamil Nadu denied passage to Dalit residents to carry out a funeral procession forcing them to take the procession through garbage dump yard and sewers.

The shocking incident came to light after a video surfaced online. It shows the Dalit residents of Coimbatore district walking through sewer and garbage dump yard to reach the crematorium after being denied permission to use the road.

Around 1,500 Dalit families residing in the area said that they have submitted memorandums on several occasions to the authorities that they need a passage to take the dead to cremation ground, but did not receive any response from the officials.

The community alleges that they are not allowed to carry the dead through the route where the upper caste community resides.

Vinodh, a resident said, "The upper caste community have proper roads and access to the crematorium. It is a challenge for us to reach the cremation ground. During the monsoon season, it is even worse and we have to take a much longer route. There is no facility like water and power in the ground allocated for our community."

"For a half kilometer route to the ground, we have to travel for over 2.5kms to reach the crematorium. All we ask for is a proper passage and power to be provided for the crematorium," adds Raja, another resident.

In August this year, a similar shocking case of caste discrimination from Tamil Nadu's Vellore was reported where villagers belonging to the upper caste allegedly denied permission for the funeral procession of a Dalit man to be taken through their agricultural fields, forcing members of his community to lower his body from a 20-foot-high bridge.

PHOTOGALLERY



COVID-19 Patient Donald Trump Returns to White House, Takes off Mask For Photos

+15

41

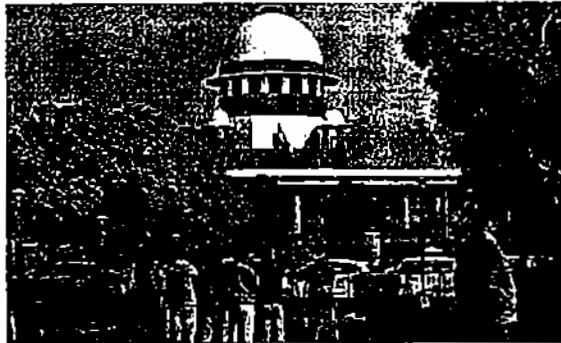


Alex Pettyfer Secretly Weds Model Toni Garrn in a Hush-Hush Ceremony

+29 PHOTOS

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Facebook, Its Officials Can't Pick and Choose Where to Appear, Delhi Assembly Panel Tells SC



Television journalists are seen outside the premises of the Supreme Court in New Delhi, on January 22, 2020. (REUTERS/Anushree Fadnis/s)

About managing director Ajit Mohan's right to remain silent, the Delhi government maintained that such rights are available only in criminal proceedings where self-incrimination has to be discouraged, but not to someone who has been called as a witness.

CNN-NEWS18

LAST UPDATED: OCTOBER 7, 2020, 8:03 AM IST

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Gajendra Chauhan Blasts Mukesh Khanna for Calling Kapil Sharma Show 'Vulga'



IPL 2020: Virat Kohli Almost Applies Saliva on Ball; Sachin Tendulkar Call it 'Million Dollar Reaction'



JEE Topper Wants to Skip IIT to Go to MIT, Indian Parents Flood Him With Advice on Twitter

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Non-appearance of a witness after summons is also an obstruction of a legislative function, said the Delhi government in the Supreme Court as it criticised Facebook and its managing director Ajit Mohan in "picking and choosing" which law and whose notices to obey in India.

The NCT government has filed its affidavit in response to a petition by Mohan and Facebook, in which they have maintained that a Delhi legislative committee looking into certain aspects of the Delhi riots can't compel Mohan to show up and testify.

While their petition asserted the right to remain silent, the Delhi government called it "frivolous" and "misplaced" that Mohan, who chose to appear before a parliamentary committee of Lok Sabha, has been questioning the rights of a legislative committee to summon him as a witness.

It pointed out that Mohan has already deposed before the Parliament on some other issues and that Facebook representatives regularly depose before legislatures across the world, including in the United States of America where the social networking company is incorporated.

"Therefore, the attempt to press and engage some fundamental rights in the present facts is prima-facie not genuine or bonafide, and the fundamental rights claimed are not at all engaged in the present facts. The Petitioners cannot be allowed to pick and choose which constitutionally empowered body they will appear before, as per their own convenience," stated the affidavit, filed through advocate Shadan Farasat.

About Mohan's right to remain silent, the Delhi government maintained that such rights are available only in criminal proceedings where self-incrimination has to be discouraged, but not to someone who has been called as a witness.

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The NCT government also sought to refute that Mohan could exercise his right to be left alone as a matter of privacy.

"The right to be let alone is not available to a witness. The right to privacy is not at all engaged in the present facts. It is completely unimaginable how a summons to a representative of a company to depose in respect of the public impact of that company can even remotely be said to engage the right to privacy," it contended.

The affidavit further rebutted that the Peace and Harmony Committee is examining issues such as policing and law and order, which are exclusively under the domain of the Central government in the NCT.

The reply said that first it cannot be the prerogative of a witness to decide by himself about the powers of a legislative committee without even bothering to appear before it.

Next, the Delhi government denied that its committee is examining issues that are in the domain of the Central government and cited multiple subjects such as criminal law, courts, prisons, local government, public health etc to buttress that its house panel was focussing on these subjects.

It said that Mohan was called as a witness since Delhi has lakhs of Facebook users and the committee deemed it necessary to ascertain if the platform was used to flare up the violence in February during the riots and also how these platforms could be used to strengthen the unity among the citizens of Delhi in the future.

"The petitioners are not disinterested or unattached persons... Given the terms of reference of the Committee, it is erroneous to conclude that the social media, particularly Facebook, has no capability of maintaining or disrupting communal harmony and peace, given its huge userbase," it said.

The affidavit further maintained that there has been no finding of guilt by the Committee nor has any breach of privilege motion been initiated against Mohan, and therefore, these apprehensions in the petition are simply premature.

The Delhi government also questioned the maintainability of petition filed jointly by Mohan and Facebook, arguing the company isn't even an Indian citizen and hence can't say in the Supreme Court that its fundamental rights have been violated.

The government sought dismissal of their petition while asserting it possesses right to summon Mohan as a witness and that he must show up and assist.

The Supreme Court, which had on the last date restrained the Delhi government from proceeding against Mohan, will hear this case next on October 15.

TAGS: AJIT MOHAN · DELHI LEGISLATIVE COMMITTEE · DELHI RIOTS · FACEBOOK · RIGHT TO PRIVACY · SUPREME COURT

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Seoul (AP) South Korea has reported 114 new cases of the coronavirus, its first daily jump of over 100 in a week. Health officials had raised concerns that infections will rise because of increased travel during the five-day Chuseok harvest holiday that ended Sunday.

The figures released by health officials Wednesday brought South Korea's case total to 24,353 for the pandemic, including 425 deaths. Ninety-two of the newly confirmed cases were in the Seoul metropolitan area, which has been at the center of a viral resurgence since mid-August. Health officials have been struggling to track transmissions linked to various places, including hospitals, churches, restaurants and an army unit in Pocheon, north of Seoul, where 37 soldiers so far have tested positive. (AP).

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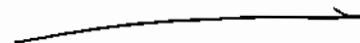
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Hathras Rape Case LIVE Updates: The main accused in the case was reportedly in touch with the brother of the 19-year-old till 'very recently'. It is said that there were at least

ANNEXURE-A6



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Indian J Med Res 134, July 2011, pp 4-7

Viewpoint

Supreme Court judgment on polygraph, narco-analysis & brain-mapping: A boon or a bane

Introduction

The deception detection tests (DDT) such as polygraph, narco-analysis and brain-mapping have important clinical, scientific, ethical and legal implications¹. The DDTs are useful to know the concealed information related to crime. This information, which is known only to self, is sometimes crucial for criminal investigation². The DDTs have been used widely by the investigating agencies. However, investigating agencies know that the extracted information cannot be used as evidence during the trial stage. They have contested that it is safer than 'third degree methods' used by some investigators. Here, the claim is that, by using these so called, "scientific procedures" in fact-finding, it will directly help the investigating agencies to gather evidences, and thereby increase the rate of prosecution of the guilty and the rate of acquittal of the innocent². Recently, these methods are being promoted as more accurate and best to none, without convincing evidence. In a landmark judgment, the apex court of India has clearly stated that DDTs cannot be administered without consent³.

Debate

The core debate arising out of the DDT is its legality of using inhuman degrading methods to confess the crime. The interrogation of the accused plays a vital role in collecting evidence. If the accused remains silent and does not answer any questions of the investigating agencies then to what extent the investigating agencies can coerce or force the accused to reveal information. In a civilized world police torture is unacceptable to extract information about the crime. Even in the court of law, confession made to a police officer is not valid. Now, the question is, "Can police use DDT to extract information from the accused"? There are many who support the view that in this age of ever increasing crime rate, such tests often help to the investigating

agencies but others rejecting it as a clear violation of constitutional provisions. This viewpoint looks into the earlier court's view, recent Supreme Court judgment and scientific basis of DDTs.

Earlier Judgments on DDTs

In a landmark judgment⁴ the Madras High Court conveyed that investigating agency is required to complete investigation within a reasonable time, if not, the benefit of delay is given to the accused. If accused fails to co-operate with the investigation process undertaken during custodial interrogation, to unravel the mystery surrounding the crime, scientific investigation methods may have to be carried out to find the truth⁴.

Keeping the same spirit in another judgment, the court had held that the narco-analysis test is a step in aid of investigation⁵. It forms an important base for further investigation as it may lead to collection of further evidences. Therefore, with reference to the proliferation of crimes against society, it is necessary to keep in mind the necessity of the society at large and the need of a thorough and proper investigation as against individual rights while ensuring that constitutional rights are not infringed. Consequently, in the court's opinion, the narco-analysis test does not suffer from any constitutional infirmity as it is a step in aid of investigation and any self incriminatory statement, if made by the accused, cannot be used or relied upon by the prosecution. The court ordered the accused to undergo the narco-analysis test in stipulated period⁵. These judgments were clearly supporting the use of DDTs in investigations.

Recent Supreme Court judgment on DDTs

The Supreme Court judgment³ on May 5, 2010 related to the involuntary administration of DDT for the purpose of improving investigation efforts in criminal

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cases was questioned on the account of violation of fundamental rights such as:

(i) 'Right against self-incrimination' enumerated in Article 20(3) of the Constitution, which states that no person accused of an offence shall be compelled to be a witness against himself/herself, and

(ii) Article 21 (Right to life and personal liberty) has been judicially expanded to include a 'right against cruel, inhuman or degrading treatment'.

DDT also raises serious concerns related to the professional ethics of medical personnel involved in the administration of these techniques and violation of human rights of an individual³. Concerns regarding human rights violations in conducting DDTs were raised long back and the National Human Rights Commission had published Guidelines in 2000 for the Administration of Polygraph tests⁶. However, only few of the investigating agencies seen to follow these guidelines.

Scientific evidence of DDTs

- **Narco-analysis:** This test involves the intravenous administration of a drug (such as sodium pentothal, scopolamine and sodium amytal) that causes the subject to enter into various stages of anaesthesia. In the hypnotic stage, the subject becomes less inhibited and is more likely to divulge information, which would usually not be revealed in the conscious state. He or she may also divulge all his/her fantasies, personal wishes, impulses, instinctual drive, illusions, delusions, conflicts, misinterpretations, etc. The main drawback of this technique is that some persons are able to retain their ability to deceive even in the hypnotic state, while others can become extremely suggestible to questioning. This is especially worrying, since investigators may frame questions in a manner that may prompt incriminatory responses. The drugs used do not guarantee that the subject will speak only the truth. The statements made in a hypnotic state are not voluntary and are also not in a clear state of mind; hence these have not been admitted as evidence in the court of law. Narco-analysis "without consent" raises certain issues such as (i) a physical assault on the body by giving injections and also multiple painful stimuli such as slapping, pinching, pushing, hitting, shaking the body and so forth to wake a person from hypnotic state to answer the questions, and (ii) mental assault through the effect of the injection on his/her mind and also an unrestricted access to the utmost privacy, the privacy of his/her own mind. In the era of evidence-

based medicine, it does not have any significant role in the treatment of any psychiatric conditions. Though this technique is known since the Second World War⁷, it has not been supported with adequate research to justify its claim.

Polygraph: This is also called a lie detector test, but this term is a misnomer. The theory behind polygraph tests is that a guilty subject is more likely to be concerned with lying about the relevant facts about the crime, which in turn produces a hyper-arousal state which is picked up by a person trained in reading polygraph results. Measurement of hyper-arousal state is based on a number of parameters such as heart rate, blood pressure, respiratory rate, skin conductance and electromyography. The principle behind these tests is questionable because the measured changes in arousal state are not necessarily triggered by lying or deception. Instead, these could be triggered by nervousness, anxiety, fear, confusion, hypoglycaemia, psychosis, depression, substance induced (nicotine, stimulants), substance withdrawal state (alcohol withdrawal) or other emotions. This state has also been attributed to the way the questions are asked by the investigating officers. At the same time, it is not difficult to beat polygraph tests by a trained person, who is able to control or suppress his/her arousal symptoms through relaxation exercises, Yoga, meditation, etc. Hence, the reliability of the polygraph test has been repeatedly questioned in empirical studies.

Brain mapping: It measures the changes in the electrical field potentials produced by the sum of the neuronal activity in the brain by means of electrodes placed on the surface of the skin covering the head and face. The changes directly related to specific perceptual or cognitive events are called event-related potentials⁸. In simple words, it is based on the finding that the brain generates a unique brain-wave pattern when a person encounters a familiar stimulus^{9,10}. Commonly used method in India is called as Brain Electrical Activation Profile test, also known as the 'P300 Waves test'.

During the test, subjects are exposed to auditory or visual stimuli (pictures, videos and sounds) that are irrelevant to the facts being investigated alongside other irrelevant words and pictures. Such stimuli can be broadly classified as material 'probes' and neutral 'probes'. The underlying theory is that in the case of guilty suspects, the exposure to the material probes will lead to the emission of P300 wave components which will be duly recorded by the instruments. By examining the records of these wave components, the



examiner can make inferences about the individual's familiarity with the information related to the crime¹¹. However, this measures only the memory or knowledge of the crime scene and nothing else. For instance, a bystander who witnessed a murder could potentially be implicated as an accused if the test reveals that the said person was familiar with the information related to the same. Similarly, little is known about the impact of viewing portrayal of crime scene in the media such as television, movies and newspaper on brain mapping. Hence, this test cannot be used to prosecute an accused but can be used by an innocent as an 'alibi' by proving that he/she does not have any memory about the crime on this test.

The published literature on this technique is very sparse. The term 'Brain Fingerprinting' has not yet entered the Medical Sub-Headings (MeSH) term of PubMed (Medline). On conducting a literature search in PubMed by combining two MeSH terms "Event-Related Potentials, P300" and "Forensic Medicine" yielded only 23 publications and another PubMed search by combining two MeSH terms "Brain Mapping" AND "Forensic Medicine" (1966-June 2011) yielded only 72 publications. On reviewing this published literature, it was found that results were inconclusive. The sample sizes were small. Majority of the studies were open label and with poor methodology. Sample studied were from the normal population rather than forensic population. Each study has used a different protocol to interpret the data. There was one interesting study which reported that deception detection based on P300 amplitude as a recognition index may be readily defeated with simple countermeasures that can be easily learned¹². Non availability of data on the effect of brain wave mapping on neurological conditions (such as stroke, dementia, delirium, head injury, amnesic syndromes, etc.) and psychiatric conditions (such as substance intoxication or dependence conditions, schizophrenia, mood disorders, anxiety disorders) makes matters worse. There is a paucity of data on this technique, and applicability of this technique in the forensic field is remote at this point of time^{9,10}. There are several ongoing research studies using functional brain imaging studies in the field of brain mapping, however, results from these studies are also inconclusive and researchers have recommended that the functional brain images in brain mapping also should not be admitted as evidence in the court of law¹³.

In conclusion, DDT has faced a number of criticisms and it is still unclear to what degree lie

detectors and brain mapping can be used to reveal concealed knowledge in applied real-world settings. The Supreme Court judgment on involuntary DDTs is that it has no place in the judicial process. On the contrary, it will disrupt proceedings, cause delays, and lead to numerous complications which will result in no greater degree of certainty in the process than that which already exists³. Contemporary DDT needs to undergo rigorous research in normative and pathological populations. Premature application of these technologies outside research settings should be resisted. The vulnerability of the techniques to countermeasures also needs to be explored. It is also important to know the sensitivity and specificity of these tests. There should be standard operating guidelines for conducting DDT. The recent Supreme Court judgment on DDT is admirable from the scientific, human rights, ethical, legal and constitutional perspectives.

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Conflict of interest: none.

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ANNEXURE - A-7

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WOMEN

Exclusive: Aligarh Hospital MLC Report on Hathras Victim Shatters UP Police's 'No Rape' Claim

Official document notes use of force against woman, notes the detail she provided of penetration by penis. Curiously, the sexual assault forensic exam was only conducted on September 22, eight days after she was admitted and examined.



Hathras Police.



Ismat Ara

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CASTE RIGHTS WOMEN 03/OCT/2020

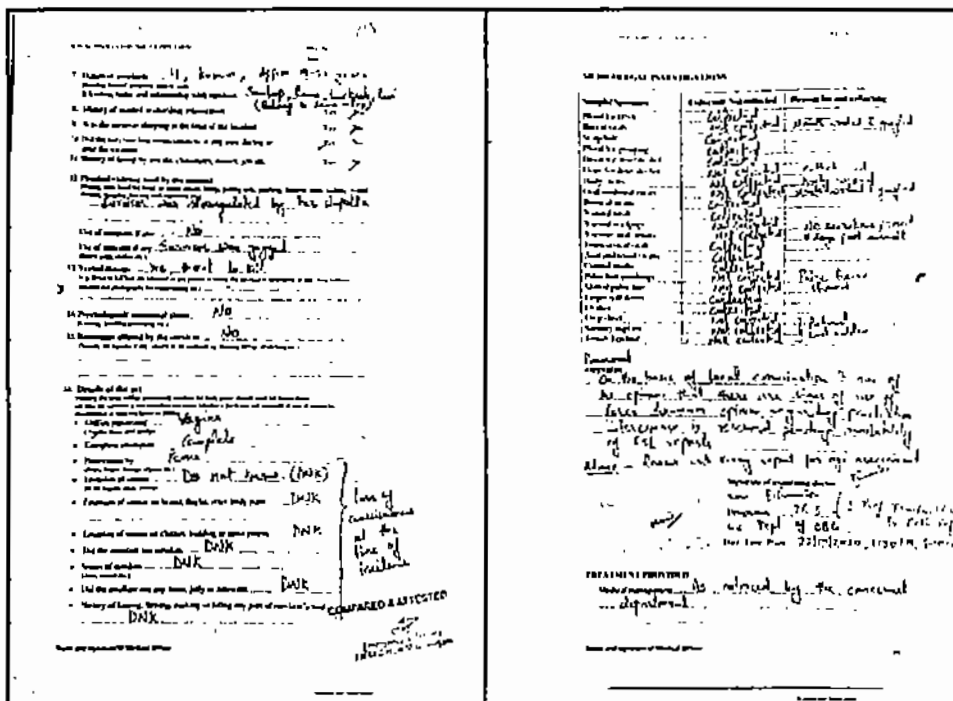
New Delhi: Contrary to the Uttar Pradesh Police claim that the Dalit teenager at Hathras who succumbed to her grievous injuries on September 29 was not raped, the medico-legal examination report (MLC) prepared by the Jawaharlal Nehru Medical College Hospital (JNMCH) at Aligarh, where she was first admitted, reveals that doctors had recorded the detail provided by her of the “complete penetration of the vagina” and indicated the use of force in their preliminary examination.

In line with the Union health ministry’s protocol for medical examination of victims of sexual assault which stipulates that examining doctors “should neither refute nor confirm” whether a sexual offence had occurred, the hospital reserved its opinion on whether the assault on the victim involved rape or not, and referred the case for further examination by the state government-run Forensic Science Laboratory in Agra.

The medical examiner Dr. Faiz Ahmed, assistant professor at the JNMCH, concluded, “On the basis of local examination, I am of the opinion that there are signs of use of force. However, opinion regarding penetrative intercourse is reserved pending availability of FSL reports.”

The 54 page JNMCH report, which *The Wire* has accessed, recorded various details of the crime that the 19-year-old woman who died after battling for life for two weeks, provided, including “penetration by penis” and that she was “strangled by her dupatta”. It also found “quadriplegia” – a condition characterised by weakness in all four limbs (both arms and both legs) – and “paraplegia” in the woman’s body that caused “sensory loss” in lower limbs up to the level of her hips.

SO



Key pages from the MLC report on the Hathras rape victim, produced by the Jawaharlal Nehru Medical College Hospital at Aligarh.

The report claims that the victim, who was admitted to the hospital on September 14, informed the doctors about her sexual assault only on September 22. On the same day, the JNMCH referred the case to FSL, Agra.

“As alleged by the informant, the survivor was sexually assaulted by four known persons of the same village when she was doing some work in the fields of the village Bulgarhi on 14/09/2020 at 9.00 a.m. There is history of loss of consciousness during the incidence,” the MLC said.

The subsequent FSL report, for which samples were collected from the JNMCH only on September 25 – that is three days after JNMCH referred the case to FSL and 11 days after she was first examined – has become the basis for UP police officials to deny the possibility of rape in the case. On Thursday, Prashant Kumar, additional director general (law and order) of Uttar Pradesh police, cited the absence of sperm in samples that the FSL collected as proof that the victim was not raped and the matter was “twisted to stir caste tension.”



Speaking to *The Wire* on Friday, Kumar, however, indicated that he knew of the presence of the JNMCH report when he had made this claim.

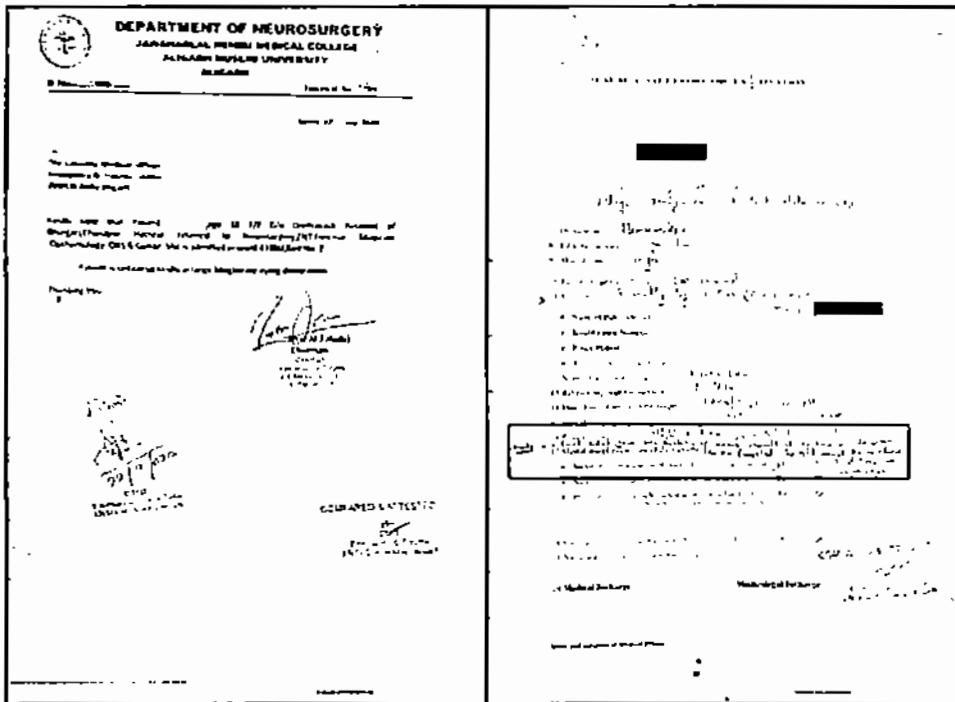
Inexplicable delay in sexual assault forensic examination

Curiously, the MLC report which begins with an account of the hospital's first examination of the woman at 4:10 pm on September 14, describes the 'present illness' of the woman as merely 'strangulation' and records the claim that assailant was unknown.

Given the fact that she had already stated on video that she had been raped and had named her attackers, the omission of this incident in the initial MLC raises doubts about the efforts put in by the policemen who brought her there and the hospital authorities examining the grievously injured woman to establish the full picture.

Ironically, these videos have been circulated by BJP leaders on Twitter in order to suggest the woman was not raped, whereas she clearly speaks about 'zabardasti', or force, being done – a well-known euphemism for rape – and also names some of the attackers. These videos were apparently shot by unidentified persons in the Chandpa police station before she was taken to the Aligarh hospital.

The MLC report includes a note dated September 22 from Prof M.F. Huda, chairman, department of neuro surgery at



Two pages from the Jawaharlal Nehru Medical College Hospital, Aligarh, in which the head of neurosurgery recommends on September 22 that a magistrate be called to take the Hathras victim's dying declaration. This is the same date the hospital claims it came to know about the rape incident and conducted a sexual assault forensic examination – eight days after the assault.

the hospital in which he says 'Patient is critical so kindly arrange magistrate dying declaration'. The magistrate recorded her declaration that day in which she described the rape and, coincidentally, the hospital finally conducted its sexual assault forensic examination on September 22 too – claiming, "Patient didn't gave [sic] any history of sexual assault at the time of admission to the hospital. She told about the incidence [sic] first time on Sept 22".

Also read: What the UP Police Hopes to Gain With Its 'No Evidence of Rape' Claim in Hathras Case

Details of the MLC

In section 16 of the MLC performed by the JNMCH, the doctors record that the victim's vagina had been penetrated by a penis during the incident. In the next column, the doctors said that the penetration was "complete".

The other sub-sections which seek to know whether there was 'emission of semen', 'did the assailant use condom', and 'status of condom,' have been marked 'DNK', an acronym for 'do not know'.

S3

Against the sub-section which seeks to record whether there was use of any weapons during the assault, the doctors have written, 'no' but added that the 'the survivor was gagged'. The document also mentions that the victim was given a threat of murder during the incident.

The JNMCH had performed the initial medical examination on her, in order to file a medico-legal case (MLC) report. This MLC report also mentions the names of the four accused persons, all members of the Thakur community, whose names were disclosed to the hospital by the victim's family.

UP Police's contention

The Aligarh hospital record furthers the claim made by journalists, activists and opposition parties that the Adityanath government in Uttar Pradesh has been attempting to downplay the gravity of the crime.

After the woman's body was cremated without her family's consent by district police, reports have shown that the administration has attempted to intimidate the victim's family and prevent media and political leaders from entering Boolgarhi, her village in Hathras.

ADG Kumar had discounted rape on two counts. One, that the FSL report has said that "no sperm or ova were found in the samples collected from vaginal swab". And two, the post mortem report has suggested that the cause of death of the deceased was because of trauma following injury in the neck.

"The post-mortem report says the victim died due to her neck injury. FSL report hasn't found sperm in samples,

making it clear that some people twisted the matter to stir caste-based tension. Such people will be identified and legal action will be taken." Kumar said.

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With the JNMCH report leaning towards the possibility of rape, it is not clear why the UP police is insisting there was no rape.

Speaking to *The Wire*, a JNMCH official said, "This (MLC) is the final report we prepared after examination of the victim. This is the same document that will also be presented in court."

The MLC was examined and attested by the CMO (Chief Medical Officer) of the hospital, Dr. Obaid Imtiyazul Haque.

The report also clearly shows the Hathras superintendent of police Vikrant Vir was being economical with the truth when he told the news agency ANI earlier that the report by the Aligarh hospital, where she was admitted before she was brought to Safdarjung hospital does not confirm rape. "The medical report from the Aligarh Muslim University Medical College (JNMCH) mentions that there were injuries but it does not confirm forced sexual intercourse. They are waiting for a report of the forensics. As of now, doctors say that they're not confirming rape," he had said. The report could more accurately be characterized as neither confirming nor denying rape but Vir chose to play it one way.

Indeed, under the Ministry of Health and Family Welfare guidelines and protocols for medico-legal care of survivors/victims of sexual violence, "The examining doctor should clarify in the court that normal examination findings neither refute nor confirm whether the sexual offence occurred or not. They must ensure that a medical opinion cannot be given on whether 'rape' occurred because 'rape' is a legal term."

Also watch | Hathras Brutality: Village Barricaded, Media Barred; Victim's Family Sends Message



'FSL considered sperm collected 11 days after crime'

The forensic report, according to reports, had not found any traces of sperm. Doctors from JNMCH have told *The Wire* that the sample for the FSL (Forensic Science Laboratory) report which has been cited by the ADG, was collected as late as September 25, 11 days after the incident. It is, therefore, unreliable, they said.

"There are no chances of finding sperm, as its life cycle is hardly 2-3 days. If a sample is collected within 72 hours, that too with the condition that the girl has not used the bathroom to relieve herself or hasn't taken a bath... only then it will be valid," Hamza Malik, junior resident doctor, at the JNMCH hospital said.

He added that it is not necessary for ejaculation to have occurred for the offence to be considered rape.

Dr Asrar-ul-Haque, assistant professor at the forensics department of AMU hospital, confirmed the same to *The Wire*. "Given the fact that that the life cycle of a sperm is not more than 3 days, it is highly improbable that would be found in the FSL report."

He also said that in order to probe rape, all the swabs should be taken.

Although the JNMCH officials collected the vaginal swabs only on September 22 – the date the hospital claims the victim informed them about her sexual assault – the doctors pointed out qualitative concerns about those samples.

Apart from the delay in collecting swabs, the MLC mentioned that the woman had washed herself before reporting to the hospital, and that she changed clothes, wore

cleaned or washed clothes, and also changed her underwear at the time of admission.

The Wire has been able to confirm that the samples for the FSL report were indeed collected on September 25.



In any case, say lawyers, the police's statement concerning the requirements of presence of sperm to prove rape is patently erroneous and contrary to settled law, which considers even the slightest of non-consensual penetration as an act of rape.

The victim's post mortem report, which the ADG Kumar referred to, was made at Safdarjung Hospital, New Delhi, where she was shifted on September 28 – 14 days after the incident.

The report did not specify if rape had occurred. However, it says that there were multiple old, healed tears in the victim's hymen. The uterus contained blood clots and the anal orifice showed old, healed tear. It also mentions that blood was present in the vagina, calling it 'menstrual blood'. The victim's mother had initially alleged that the bleeding had occurred due to the rape. The report also held that the spinal injury sustained by the victim was the cause of her paralysis and ultimately, death.

When *The Wire* reached out to the ADG (law and order) Prashant Kumar, he said he had only stated a fact about the FSL report but was not exonerating the accused.

"I only stated a fact about the FSL report: that sperm was not found. I insisted that the investigation is still ongoing, who are we to give a clean chit to anybody," he told *The Wire*, adding that the media reports had cherry-picked his statements to create a false narrative.

In fact, an official note of the UP Police formally circulated to the media on October 1 says categorically, "Putting to rest all the speculation, the Forensic Science Laboratory (FSL)

report on the vaginal sample of the 19-year-old girl of Hathras has revealed that she was not raped.”

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On being asked about the JNMCH report, ADG Kumar appeared to underline the significance of the FSL report over the initial MLC. “The AMU report has been formed on the basis of local examination. AMU hospital is a semi-autonomous body,” he said.

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Curiously, however, he did not mention the JNMCH medical report at this press briefing, and chose to only speak on the FSL and post mortem reports while discounting the possibility of rape in the Hathras assault case.

He went on to say, “Some people are projecting this as a case of mass rape even though the victim's brother himself gave us in writing that there was only one person involved. We have believed the victim's version from the very beginning and also arrested the accused immediately. We have nothing to hide and we know the definition of rape.”

Legal Experts speak

Lawyers well-versed in cases of sexual violence said, that the victim's claim that she was sexually assaulted would hold greater significance over laboratory tests which were possibly done on contaminated samples.

Senior advocate Rebecca John says that an FSL report is not the legal requirement to constitute rape and is hence irrelevant. She says, “In the facts and circumstances of this case, the FSL report is largely irrelevant. Collecting a vaginal swab after 8 days (at the JNMCH) – after she has urinated, washed her vagina, where is the question of any semen to be found? It was an irrelevant exercise that was conducted.”

She also believed that “given the circumstances, the FSL report can be corroborative, not substantial.”

She said that contrary to what the UP police has claimed, the FSL report cannot be used to discount the possibility of rape. “You cannot rule out rape by the FSL report, but you can affirmatively confirm rape in case the FSL finds something. The provisional opinion is not ruling out rape,” she said.

She added that the MLC in its conclusion clearly mentions the use of force, which is a reference to sexual assault.


“The effort on part of the police authorities has been to establish that there was no rape. Whereas the effort should have been to establish the opposite. Far from the UP police’s version of the AMU hospital report that it has ruled out rape, it is leaning towards it,” she told *The Wire*.

“The Supreme Court has been consistent on the fact that the victim’s statement is of sterling quality. That’s the only test you have to pass,” the senior advocate added.

Vrinda Grover, lawyer in Delhi, has also raised concerns over the swabs for the FSL report being collected almost two weeks after the incident. “Why were the vaginal swabs been taken only on 22 September? There was a young woman who was found lying without her clothes, in a mutilated condition. The first response should have been to collect all possible samples. This is a dereliction of duty at all levels.”

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IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
CRL. M.P. NO. _____ OF 2020

IN
WRIT PETITION (CRIMINAL) NO. 296 OF 2020

IN THE MATTER OF:

SATYAM DUBEY

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

AND IN THE MATTER OF:

CITIZENS FOR JUSTICE AND PEACE
THROUGH SECRETARY
NIRANT, JUHU TARA ROAD,
MUMBAI.

...APPLICANT / INTERVENER

**APPLICATION SEEKING EXEMPTION FROM FILING DULY AFFIRMED
AFFIDAVIT AND VAKALATNAMA**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS LORDSHIP'S COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION
OF THE ABOVE NAMED
APPLICANT

MOST RESPECTFULLY SHOWETH:

1. That the Applicant is filing the accompanying Application for Intervention and Application for Directions in Writ Petition (Criminal) No. 296 of 2020.
2. That it is prayed that in the prevailing circumstances of the COVID-19 pandemic, exemption from filing duly affirmed and notarized affidavit be granted for the time being.

3. That it is prayed that in the prevailing circumstances of the COVID-19 pandemic, exemption from filing duly signed vakalatnama be granted for the time being.

4. That the present Application is bona fide and made in the interest of justice.

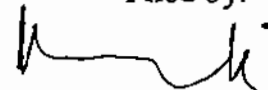
PRAYER

In the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- A. Grant exemption from filing duly affirmed and notarized affidavit in the prevailing circumstances;
- B. Grant exemption from filing duly signed vakalatnama in the prevailing circumstances;
- C. Take on record the scanned affidavit and vakalatnama;
- D. Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.

Filed by:



APARNA BHAT

Advocate for the Applicant

Email: aparna.bhat@gmail.com

Phone: (+91)9811113979

Place: New Delhi

Date: 07.10.2020

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IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
CRIL M.P. NO. _____ OF 2020
IN
WRIT PETITION (S) CRL NO. 296 OF 2020

IN THE MATTER OF:
SATYAM DUBEY

...PETITIONER

VERSUS

UNION OF INDIA & ORS.
AND IN THE MATTER OF:

...RESPONDENTS

Citizens for Justice & Peace (CJP)

...APPLICANT / INTERVENER

VAKALATNAMA

I, Teesta setalvad secretary of Citizens for Justice & Peaces, Applicants in the above noted petition do hereby appoint and retain MS. APARNA BHAT, Advocate Supreme Court to act and appear for us in the above petition and on our behalf, to conduct and prosecute/defend the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in taxation and application for Review, and to file and obtain, return to documents, and deposit and receive any money on our behalf in the above petition and in application of review, and to represent us, and to take all necessary steps on our behalf in the above matter. We agree to pay his fees and our pocket expenses, agree to ratify all acts done by the aforesaid Advocate in pursuance of his authority.

Dated this the 11th day of October, 2020.

ACCEPTED



(MS. APARNA BHAT)

ADVOCATE FOR THE APPLICANT



Applicant

Secretary
CJP.

