

The spate of recent rapes in the capital exposes the brutal truth that laws and attitude towards sexual crimes only encourage the perpetrators

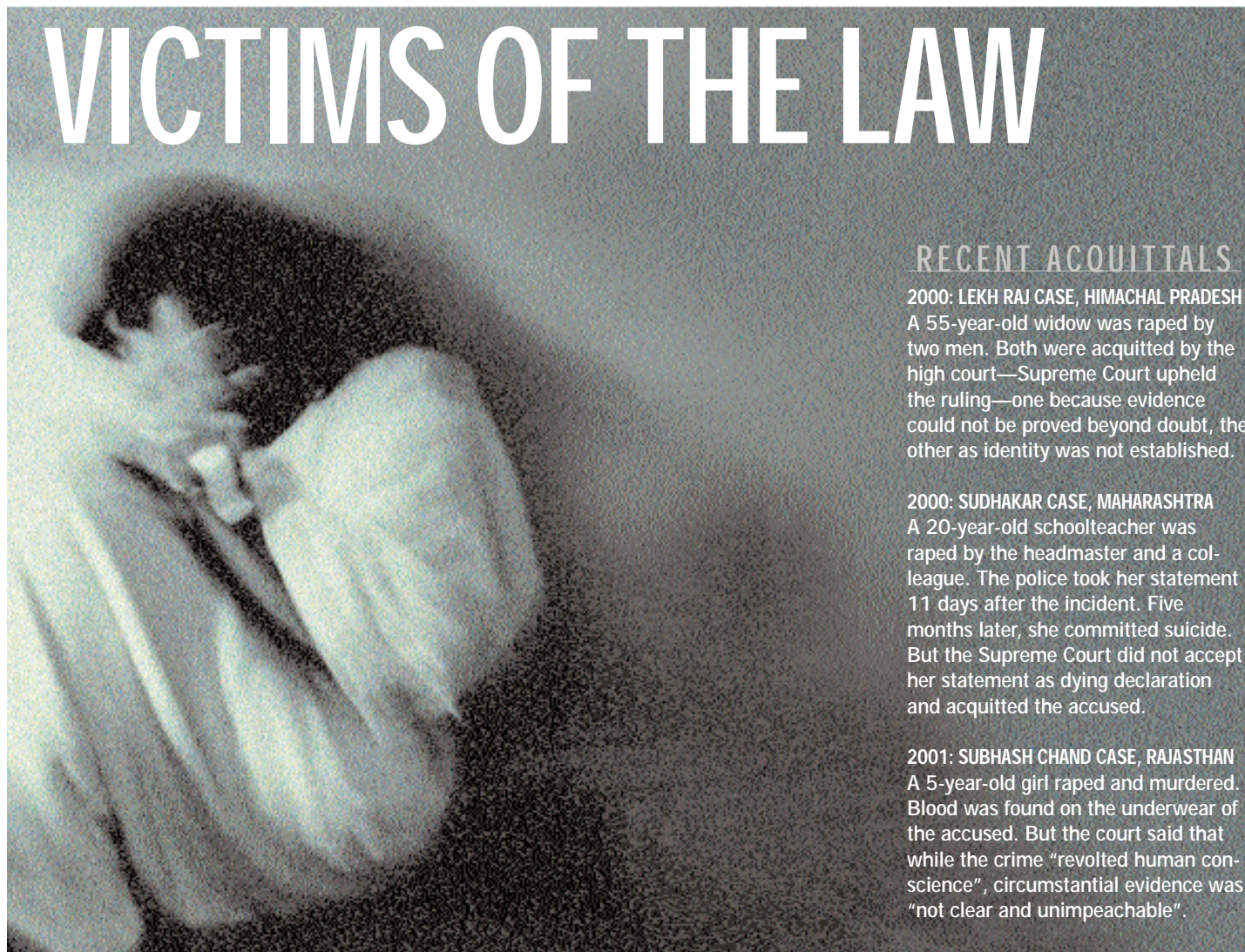
■ By Shefalee Vasudev

Last week, at Delhi's Kamani Auditorium, a select audience sat to watch ad and theatre personality Alyque Padamsee perform scenes from Arthur Miller's *Death of a Salesman*. Just before the curtain went up, the compere announced a Delhi Police exhortation for women to be careful. She paused, and added: especially in the parking lots. Several male members in the audience guffawed. Sadly but truly, it typifies the nonchalance to the crime in India. It is often displayed in Indian courtrooms too when after prolonged questioning of an emotionally drained victim, the accused are acquitted.

The belief that most people can get away with it is one of the main reasons why sexual assault of women is so common in the country, more so in Delhi, infamous as the rape capital of India. The recent rape of a Swiss diplomat forced Prime Minister A.B. Vajpayee to admit before a women's gathering in Bhopal that it had created ripples in international circles.

Facts corroborate the laxity towards the crime. The records of the Crime Branch of Delhi Police show that despite arrests in 90 per cent of rape cases, 77 per cent of the accused are acquitted. Inordinate procedural delay and the complex nature of the laws have made rape trials in India resemble the theatre of the absurd. The word "doubt", banded about in rape cases, is what wreaks the maximum damage. As senior advocate Indira Jaising says, "Decision-makers begin with the assumption that the woman is lying." It often happens that in spite of concrete evidence, the victim's testimony and identification of rapists, the accused are acquitted by courts.

Undoubtedly, police responsibility needs to be questioned but so too the role of the judiciary. It has let rapists off for a variety of flimsy reasons. In some instances, the "intention" of the accused were found "harmless", in others blood-



VICTIMS OF THE LAW

RECENT ACQUITTALS

2000: LEKH RAJ CASE, HIMACHAL PRADESH
A 55-year-old widow was raped by two men. Both were acquitted by the high court—Supreme Court upheld the ruling—one because evidence could not be proved beyond doubt, the other as identity was not established.

2000: SUDHAKAR CASE, MAHARASHTRA
A 20-year-old schoolteacher was raped by the headmaster and a colleague. The police took her statement 11 days after the incident. Five months later, she committed suicide. But the Supreme Court did not accept her statement as dying declaration and acquitted the accused.

2001: SUBHASH CHAND CASE, RAJASTHAN
A 5-year-old girl raped and murdered. Blood was found on the underwear of the accused. But the court said that while the crime "revolted human conscience", circumstantial evidence was "not clear and unimpeachable".

stained underwear of the accused was dismissed as "insufficient" evidence. Who can forget the famous Bhanwari Devi case in which the court ruled that since the victim, a tribal woman, was from a lower caste she "could not" have been raped by upper caste men? In another case (*Mohammed Habib vs the State*), despite a ruptured hymen, bite marks on the body of the raped seven-year-old and statements of witnesses, the court ruled that since the accused had no injuries on his penis, it implied zero resistance and hence no rape.

"Rape is not a priority for the keepers of justice," says advocate Naina Kapur, director of Sakshi, a Delhi-based organisation that works for women's rights. "It is just good, sensational news, whereas morality is a luxury." In 2000, Kapur was one of the experts who submitted suggestions to the Law

Commission of India on redefining rape and seeking an altered handling of rape trials. But, she says, so discriminatory are attitudes, so pointless the idea of in-camera trials and so repugnant the questioning about the crime, that she herself would not encourage a woman to report a rape.

"A victim's testimony makes the case prima facie and only one corroborative evidence is required," points out Amod Kanth, joint commissioner of Delhi Police. "The statement given to a senior police officer should be treated as admissible evidence in court, even if she backs off from it during trial." Kanth, who is also general secretary of Prayas, an institute for juvenile justice, says those who are powerful get trials delayed, whereas judges who ought to work harder to convict don't do so.

"There is a reluctance on the part of

the decision-makers to convict," says Jaising. "They don't understand the psychological impact of this crime on women." The court rulings are so rigidly based on the technicalities of the rape law that related violations like penetration with foreign objects, oral and anal sex, assault and intimidation are glossed over in the wait for "a chain of individual and collective" evidence. Then there is the case of class. A majority of the victims belong to the underprivileged classes. And in a battle between an articulate defence lawyer and a poor nervous woman, the victory is almost always predetermined.

Not surprisingly then that it takes anything from two to 15 years for cases to be settled. As of now, over 56,000 rape cases are pending nationwide. Tejdeep Kaur Menon, IG, Hyderabad, who is doing research on crime against

CAPITAL CRIME



NOVEMBER 17, 2002: A student of Delhi's Maulana Azad Medical College was raped in broad daylight. Status: Two minors were convicted by a juvenile court. The main accused (above) is fighting to prove he is a minor. Trial still on despite the DNA test showing a positive match.



MARCH 6, 2003: Retired colonel S.K. Parthy raped a 17-year-old pregnant domestic help. Status: Accused in judicial custody.

SEPTEMBER 4, 2003: An employee of a posh south Delhi restaurant raped a 14-year-old girl, aided by many colleagues. Status: In judicial custody.

SEPTEMBER 6, 2003: A 17-year-old nurse was raped by a ward boy in Shanti Mukund Hospital. Status: Accused in judicial custody.

SEPTEMBER 23, 2003: A 13-year-old TB patient was raped by Dr V.K. Nigam of Holy Angels' Hospital. Status: Accused recently given bail.

OCTOBER 6, 2003: A 17-year-old college student was raped by four members of the President's Bodyguards at a park. Status: In judicial custody.

women underlines the significance of the prosecution. "They have a crucial role in saving the hapless victim, but they are the most ignored link," she says. "Their skills are never upgraded nor are they ever sensitised."

However, the Indian judicial system doesn't only need a bold and empathetic prosecution. It also requires judges who will ensure protection of fundamental rights instead of playing the never-ending tennis game of trying to prove rape "beyond reasonable doubt". "The judiciary must incorporate intelligent, empowered people as judges, who will not tolerate an unhealthy environment in court," says Kapur.

It is like a wrestling ring with lop-sided rules. Defence lawyers get away with intimidation by tainting the victim's character. But no one explains why the same rules don't work for the accused. Studies prove that many offenders are serial rapists or habitual criminals, but their "past history" is seldom used against them.

This bias is not confined to courts. Even the media, police and politicians have a skewed view of the cases. The rape of a seven-year-old girl by her schoolteacher in Delhi was drowned in the attention given to that of the Swiss diplomat, both of which occurred on the same day. "The way we consider some victims more deserving of attention than others is unhealthy," says Kapur. Kanth admits that the police are under pressure to perform when there is a high-profile case though the majority of cases are from the lower classes.

The point that is missed here is that a rape is a rape, whether it is of a Swiss diplomat or of a powerless 17-year old nurse who lost her vision after the incident. Despite three police teams probing the foreigner's case, the accused is on the run. However, rapists like the President's Bodyguards who sexually assaulted a college girl, are awaiting a fair "trial".

The police cannot shirk its responsibility, but it is at the courts where the buck must stop. And unless the rape law is amended, rape redefined in the Indian Penal Code, and all rapists convicted when found guilty, human rights will remain conference-room rhetoric, not courtroom justice. ■