

The spate of rapes has sparked a debate on penalty. But it's the trials, loaded in favour of the accused and humiliating for the victim, that need a revamp.

■ by Shefalee VASUDEV

**L**AST MONTH, THE RAPE OF A Maulana Azad Medical College (MAMC) student in broad daylight left Delhi dazed. That it should happen at Khooni Darwaza, a place far from secluded, and that the accused is alleged to be a juvenile with a motive for murder, added shame to the shock. Adding to the wave of terror unleashed on urban women of late, not a day has passed since the MAMC case when rapes haven't made it to the headlines. The rape of a 60-year-old widow, of a minor by her own father, rapes by a policeman, a taxi driver, a servant. It is now a throttling, in-your-face possibility of violence waiting to happen to any woman, anywhere.

"Death for the rapist," thundered Deputy Prime Minister L.K. Advani after the MAMC rape. Impressive rhetoric, but devoid of action. The recent decision of the Union Cabinet to amend the Indian Evidence Act's objectionable Section 155, which allows a woman's character to be held against her in court, punctuated the outrage. But till it becomes a law, rape trials remain lopsided and fraught with loopholes providing escape routes for the accused.

Take the December 4 acquittal of the father of a 16-year-old girl who was raped seven years ago but deposed only last year. The man who deserved the harshest punishment was allowed to go scot-free. Rape is on the rise, and so it seems are acquittals. Angry debates seem to disguise the core issue that trials are heavily loaded in favour of the accused and are humiliating for the victim.

Last week, in a sessions court at Delhi's Patiala House Courts, a woman advocate defending a date-rape accused asked the victim why the entire blame for the "unpleasant act" should rest with the man. Didn't she know that if she was alone with him, this was a reasonable possibility? The victim, choked by sobs, shook her head. Outside another court, a panic-stricken, tear-streaked mother of an eight-year-old rape victim rushed out. "*Meri beti ko maar dalenge* (They will kill my daughter)," she shrieked. The little girl was being asked where the rapist

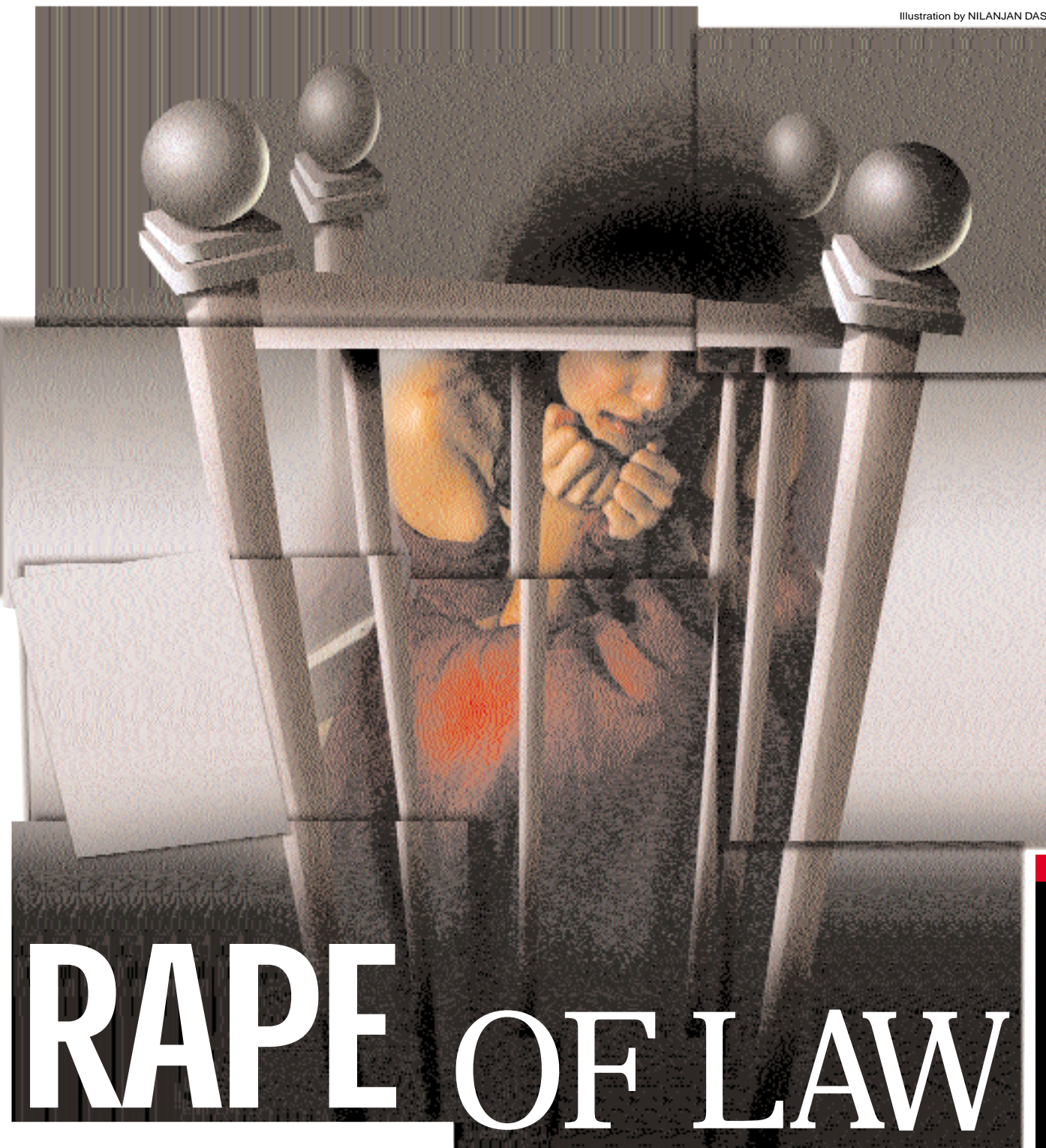


Illustration by NILANJAN DAS

had touched her after he unclothed her.

The trouble begins outside the courtroom where a conditioned response decides the rape cases. Within the court premises thronged by lawyers and policemen, the mention of rape is met with lecherous smiles, suggestions of false allegations and hints about the victim's "character". Like a rolling drum, everyone labels rape a "heinous" crime. But if

you are looking for sensitivity, forget it.

"Why should the victim's character not be taken into account?" asks criminal lawyer Ram Jethmalani. "If a sex worker has decided to blackmail her customer, why shouldn't he prove that she is a woman of ill repute?" Adds another defence lawyer without the slightest embarrassment: "In many cases, sexual

relationships are later turned into rape accusations. The entire society has become promiscuous. Look at films and pornographic magazines. Who are we to stop man-woman relationships?"

A lawyer who calls rape a "relationship" or another who attributes increasing rapes to "modern films" are but tiny specks in a broader social mindset that

stays hopelessly stuck in rigid assumptions—a woman has been raped, so she is bad. Rape trials only play out these societal beliefs, aided by a law that treats assumptions as evidence.

Flavia Agnes, a Mumbai-based lawyer-activist of the women's group Majlis, says that both trials and sometimes even judgements are so vivid in sexual detail that they are like a pornographic story. Agnes is analysing the way rape has figured in Indian courtrooms. She has also testified as a witness in a sexual assault case of a friend when she asked for an open court with the Mumbai metropolitan magistrate. "We were publicly humiliated by lawyers, clerks, even peons of the court. Every bystander came into the courtroom for free fun," she recalls.

Similarly, a Mumbai journalist from the Women and Media group who filed a case against a Marathi daily that ran a headline "How to Rape", was asked in an open court whether she was married, had a boyfriend or sexual experience. This, as onlookers whistled in sadistic glee.

The law abets this mindset. The ultimate shocker is a clause that sits unamended since 1872 in Section 155 of the Indian Evidence Act. This is where the "consent" of the victim is shown as an issue (see box). "The fact that the victim is of immoral character leads to the inference that she was a willing party to the act. Any evidence which further proves this is receivable evidence," says the law.

This allows many rape complaints to be treated as suspect if they

#### INDIAN EVIDENCE ACT

- Clause 4 of Section 155 of the Indian Evidence Act, 1872, says that when a man is prosecuted for rape, it may be shown that the victim was of an immoral character.
- If the woman is proven to be thus, it leads to the inference that she was a willing party to the act.
- This creates the possibility of misuse of law leaving escape routes for the accused.

occurred during a date, if the accused is a past associate, if the act is not penetrative or if the victim is a sex worker or a woman who has had sexual relationships in the past. "Often, the defence provides evidence to show the accused is the victim's boyfriend," says senior Delhi-based advocate Ranjana Kaul. She says that evidence becomes weak largely

because of corrupt investigators, and that the woman's "character" has been used to acquit many rapists in the past. Take the *Tukaram vs State of Maharashtra* (1978) case. The victim, Mathura, was raped by police officers in a police station toilet after an interrogation in a complaint filed by her brother. The sessions court ruled that since Mathura had a boyfriend, her dignity could not have been "violated". The accused were acquitted. While the high court gave a conviction, the Supreme Court upheld the sessions court sentence and the accused were acquitted. In the 1989 Suman Rani case of Haryana, the victim was gangraped, but the sentence was reduced by half because Rani's conduct was proved to be "immoral" as she had eloped and got married.

**R**APE also needs medical evidence—crucial in conviction—but lawyers admit of the record that doctors are either trapped or blackmailed. Cuts, injuries, bites, even those near the private parts, are not taken into cognisance for sustaining a conviction, especially if there is no penile penetration. This happened in the case of an eight-year-old girl raped at a woman's home in Mumbai. "The girl went into convulsions because of the trauma and despite several bites all over her body the defence lawyer proved that the child was mentally deranged and had bitten herself," says Agnes. Explains Baldev Malik, additional public prosecutor in the Delhi High Court: "It is the slow pace of trials that allows the law to be misused." A prominent defence lawyer confesses that prolonging a rape trial is his best bet: "The wound heals, the social blackmail system starts working, parents or relations of the victim can be bought and conviction becomes remote."

Besides, the fact that victims shy away from testimonies proves a big hurdle in the pursuit of justice, says Reny Jacob, member, Delhi Commission of Women. Even while recounting the rape in women's organisations, the victims often break down, says Jacob, "so an in-camera trial is worse because the perpetrator is present, which intimidates the victim".

"Speedy trials, separate courts and a ban on embarrassing questions is a dire need," says Malik. Kaul, on the other hand, feels "it is the social mindset that needs evolution and revolution. The law will follow suit." Today, however, rape trials continue to be a farce which is why the conviction rate is only between 2 and 10 per cent. Till that changes, the debate on capital punishment for rapists will linger on. Much like the rape cases. ■