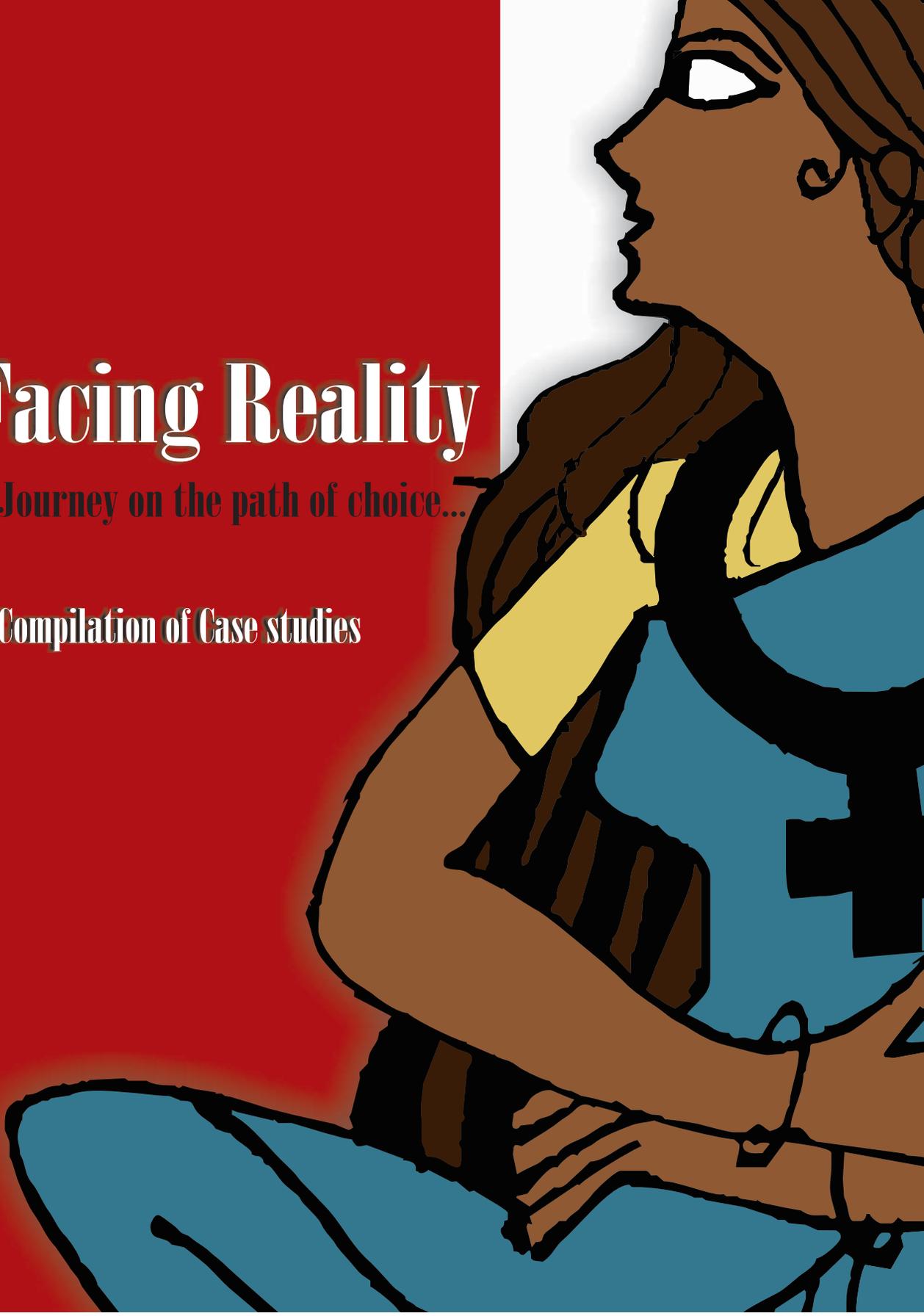


# Facing Reality

A Journey on the path of choice...

A Compilation of Case studies



# *Facing Reality*

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(A Compilation of Case Studies)



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by

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## Foreword

Where and when did we begin our journey to understand the right to choice? A journey that began with “supporting” a partner organization “technically”, to work the legal system in the favour of an adult, educated, professionally-qualified woman making an informed decision of her own choice. This first case set us on a road of discovering the very core of patriarchal control, women’s bodies and sexual decisions. It also helped us to understand ways in which men are equally controlled to serve the greater purpose of maintaining power hierarchies and material ownerships.

Today, as we look back on the road we have travelled, the faces that look back at us are those of the brave women and men who were determined to exercise their rights, in the face of great animosity, hostility, violence, and often certain death.

In actual fact we have travelled this distance as companions and comrades to these people who had such commitment to their own physical integrity and to each other. The stories narrated here document the struggles that they have undergone to claim and exercise their right to sexuality, and implement their choices and decisions.

What is the right to sexuality? Given the increasing impoverishment of communities and poor people, following the neo-liberal economic policies; it seems almost a luxury to talk about individual decisions about who to have a relationship with. However, the violations that are visited on these individuals, the torture and hardships borne by them in defending their own decisions; have moved the discussion powerfully beyond individual choices, and presented it as a human rights challenge to the social justice sector. Their struggles have demonstrated amply that these rights are as core to the human rights framework, as the right to life and to be free from detention.

This journey has thrown up many lessons, and continues to throw up many challenges. As we look back, we realize, that we have established the right

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to enter into a relationship of one's choice, however we are still grappling with the impact of choice on the individuals, their displacement, their livelihood and isolation.

This collection of lives of people is an attempt to re-look at the road we travelled, the stones, obstacles et al. To ensure we remember and bear witness to the violations suffered by those who survived and those who were denied.

We hope that you will be able to draw some lessons from it, as we have. These stories that you hold in your hands also encapsulate our lives and have inspired us to commit ourselves to continue to advocate and mobilize and struggle for the human right to self-determination and sexuality.

We are extremely grateful to Rajshree Dasgupta, who stepped in to help us understand our stories better and write them in a way to be accessible to all.



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**Kiran Dixit:  
Determined to Resist Pressure; January 2000**

*Assisting this courageous woman was also a hand-on lesson for the NGO in the legal loopholes and strategies for similar cases*

On January 6, 2000, when Kiran Dixit's family lodged an FIR accusing her husband, Faisal Ahmad and members of his family of having kidnapped their daughter, AALI stepped into the picture. Kiran was under tremendous pressure for having married outside her religion, feared for her life and was afraid that her husband and members of his family would be arrested or harmed.

Though Kiran Dixit was a 25 years old MBA graduate who knew Faisal for more than 10 years, her parents were opposed to her choice of husband because he was a Muslim. To break her spirit, her parents locked her up in a room for three months. In these circumstances, she found it impossible to get married under the Special Marriage Act, 1954 framed to facilitate marriage between people of different faiths without conversion, where a month's notice is required to be put up in the court premises for any opposition to the relationship. On January 3, 2000, she ran away from home, converted to Islam<sup>1</sup> and married Faisal the next day.

'Thinking on our feet' was the challenge Kiran Dixit's case posed to the organisation. It was the organisation's first case and foray into legal activism. The incident taught the activists, among others lessons, the importance of safeguarding the custody of the girl in a 'neutral place' away from the influence and emotional pressure of her family. It also taught them the need to devise back-up plans of action and to use the media judiciously and strategically.

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1. A non Muslim has to make a declaration before the qazi and three other Muslims that she/he believes in the faith by reciting the Kalama, declaration of faith by Muslims,

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Kiran's case immediately drew media attention because both the families were rich and well-connected in Lucknow. Moreover, since Kiran was a beautiful, English-speaking, highly educated woman and a *Brahmin*, her story was grist to the media mill. While the media has been an important ally to NGO activities and its coverage of cases has helped activists to highlight cases of human rights violation, in Kiran's case because excessive of the media hype, the NGO members realized, could actually do more damage non impede smooth facilitation of case work and negotiations between the two families.

To protect her husband, on January 4, the day of her marriage, Kiran made a statement before the Magistrate that she had married Faisal out of her own will. However, in a strange parody of justice, the Magistrate held the statement 'invalid' on grounds that since no FIR had been lodged against Faisal, there was technically 'no objection' to their marriage. However, Kiran's travails did not end with her marriage, instead it had just begun. What followed was a long phase of harassment and injustices on Kiran and her marital family, not only by her natal family, but also by the judiciary and the police.

The police revealed its religious and class bias when it began to harass Kiran's in-laws even before her parents filed the FIR against her husband and his family. On January 4 itself, the police arrested Faisal's maternal uncle and imprisoned him for more than a month. They locked up his house, and seized the furniture as well other household goods. Though the Circle Officer, Aliganj, was present during the raid, the police did not make a seizure list of the confiscated items including the furniture.

At the same time, the Dixit family began to build up pressure against Faisal and his family. On January 6, the Dixits lodged an FIR under IPC sections 363<sup>2</sup> & 368<sup>3</sup>, accusing Faisal and members of his family, including a minor cousin, of having kidnapped Kiran. In response, Kiran filed a writ

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2. Section 363 IPC (Indian Penal Code): Punishment for kidnapping

3. Section 368 IPC: Wrongfully concealing or keeping in confinement, kidnapped or abducted person

in the Allahabad High Court (AHC) asking for a change of jurisdiction from Lucknow to Allahabad Bench of the High Court (as her sister's husband is an advocate of the Lucknow Bench), and staying the arrest of her husband and her in-laws. On January 21, the Court finally released the stay order.

Out of sheer frustration with the system and fearing for their lives, the couple sought the help of the National Human Rights Commission (NHRC). The NHRC passed certain orders, essentially asking the state police for a report of the incident, but did not provide any substantial help to the couple. The couple then appealed to the Supreme Court (SC) for Kiran's statement under Sec 164 to be recorded and for a stay order to be granted against the arrest of Faisal and his family. Instead, the SC directed the couple to approach the AHC.

The stay of arrest was granted till February 11 and extended in phases to February 25. Finally, the AHC ordered that Kiran's statement under section 164<sup>4</sup> of the Criminal Procedure Code 1972 (Cr. P.C) should be recorded before the magistrate within 48 hours; moreover, if she wished she could give her statement either in front of the IO or a magistrate.

But Kiran's problems were far from over. The Magistrate twice rejected Kiran's application to give her statement. To harass the couple, the lawyer representing the Dixits argued that a private party (Kiran) could not approach the magistrate directly for recording her statement; she could do so only through the Investigation Officer (IO).

According to section 164, any victim can approach a Judicial Magistrate to record his/her statement. However, due to an SC directive<sup>5</sup> in a completely different case, it is the IO who has to present the victim before the magistrate in whose jurisdiction the case has been filed. Only then can the Magistrate direct another Judicial Magistrate to record the statement. In fact, a large majority of the bail applications fail because IOs deliberately do not

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4. Section 164: Recording of confessions and statements

5. Joginder Nahak vs State of Orissa, 2000 (1) SCC 272

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record the statement, a crucial legal step in securing bail for the victim.

Since Kiran and her husband felt that Lucknow was getting increasingly unsafe for them, they shifted to Kanpur. She was now required by the law to be produced by the IO before the magistrate to record her statement and to close the FIR against Faisal. As the recording of the statement had to take place in Lucknow, social activist and a member of the CPM party, Ms. Subhasini Ali, put Kiran in touch with AALI.

On March 29, when Kiran went to the Lucknow High Court to record her statement with members of AALI, they were in for a shock. Legally, the Magistrate who records the girl's statement is different from the Magistrate who issues an order based on her statement. But the Additional Chief Judicial Magistrate (ACJM) IV who talked to Kiran arbitrarily ordered that she should be sent to the State-run shelter home, Nari Niketan. The ACJM completely ignored Kiran's age and plea that she did not want to go to the protection home as she had married Faisal of her own free will. The Court argued that Kiran had been in the custody of the accused (Faisal), and was therefore, under duress and was not in any mental condition to record her statement. By doing so, the Court abandoned its obligation to support the rights of an adult to decide whom she wanted to marry, exposing its obvious bias by refusing to allow her this freedom.

The Court order came as a major blow. The activists learnt the hard way to be always prepared for any eventuality and never to be alone with a survivor in court. Since then, members have ensured they have the support of legal experts, and have engaged a team of lawyers for this purpose.

Kiran was literally dragged by four armed policemen and a woman constable into a jeep. When the activists tried to intervene with the magistrate, the police abused and physically threatened them. But the activists were determined not to allow Kiran stay even for one night in the Home. This was an important decision, they feared that Kiran's family, being influential and well-connected, could have access to her and pressurise her to return with them.

The NGO, therefore, immediately approached the higher judiciary. The District Judge (DJ) passed an interim order that allowed Kiran to leave Nari Niketan and be with anyone she wanted. Experience taught the activists that the higher courts rather than the lower courts are more inclined to protecting the individual's right to choice in marriage.

Jubilant, the activists rushed to the Home with the order. But the Protection Home requested an order by the CJM, in view of an earlier interim order passed by the High Court. The CJM passed the requisite order on the evening of March 29 and Kiran was finally released. It was decided, in view of the pending FIRs, that it would be strategically safer for Kiran to stay with AALI members.

On March 30, Kiran recorded her statement under sec 164. The DJ, Lucknow passed an order, recognizing Kiran's right to choice and decision-making, and dismissed the objections of the Dixit family against Faisal Ahmad. The order also recognized AALI as an independent party, and Kiran's right to choose to be with this organization.

Looking back, though AALI was a little over-cautious at times (since this was its first case), every single move turned out to be precise, correct and appropriate for the case. At that juncture, the members did not realise the impact Kiran's case would have on others and how its experience would help them address similar cases in the future. Since Kiran had told the Court of her desire to be with AALI, the decision of taking responsibility of her custody was thrust on the organization. In the process, it gave the organisation heightened media publicity, but at the same time exposed it to a certain amount of unspoken tension between different women's groups.

It took more than a year for the FIRs against Faisal Ahmad to be dismissed. His family was never compensated for the harassment they faced.





**Shabeena-Imran:  
Neighbourliness or Moral Policing? 2000**

*The couple was engaged with the permission of their families, yet their fellow-villagers felt it was their duty to condemn the relationship*

It was a case of moral policing of the worst kind. In the name of upholding the “moral standards” of the village, a group of young men did not bat an eyelid in sexually humiliating a young couple. Shabeena, 17 years old, lived with her family in a small village in Muzaffarnagar district, an area infamous for incidents of violence against young couples. She, too, did not escape the most humiliating behaviour in the hands of her own village men.

Shabeena’s father had died a few years ago, and she lived with her mother, brothers and sisters. Theirs were the poorest household in the village; their primary livelihood was from a small piece of land and some livestock. Her mother was under constant pressure from villagers to sell her land and resettle somewhere else. Further, the younger men of the village would harass Shabeena every time she stepped out of the house.

Shabeena’s family had got her engaged to her paternal aunt’s son, 22-years old Imran, who lived in the neighbouring village. He was a truck driver and would often visit Shabeena and her family during his trips.

On one such trip, at around 8 pm, Shabeena and her younger siblings were alone with Imran in the house as her mother was away visiting her sister. The young men of the village decided that the meeting of the young couple in the house in the absence of an older guardian violated traditional norms and harmed the morals and prestige of the village. They planned to teach them a lesson. While two of them jumped over the mud wall of the house and opened the main door, 5 or 6 men forcibly entered the house and dragged both Shabeena and Imran outside. The younger siblings kept screaming for help.

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The entire village gathered to watch the spectacle, but did not lift a finger to stop the shameful incident that followed. The attackers declared that the two would be punished for their “shamelessness”. They stripped both Shabeena and Imran and made them sit naked on the highway for more than three hours. Shabeena kept crying pitifully and pleading for help, but no one came to her aid. In fact the village Pradhan, Kallan Khan, was present at the scene and refused to intervene, though Shabeena practically threw herself at his feet seeking shelter from her humiliation.

Shabeena’s mother returned the next morning and heard about the shocking incident. She immediately sent Shabeena to Imran’s village. Based on her FIR, five people in the village were arrested, including the village Pradhan.

Women activists learnt of the case from the newspaper reports and from the police station. By the time the fact finding team (FFT) heard of the case and reached the village, the couple had been married off. AALI tracked the case in court for some time, where it was transferred to the fast track court. In the meantime, the accused had approached Shabeena’s brother to negotiate a “compromise” and withdraw the case in exchange of monetary compensation. He agreed, probably because he and his family had to live in the village and could not afford to maintain hostile relations with his neighbours.



## **Lata Maurya-Dileep Gautam: Caste versus Choice; November 2000**

*Even today, Hindu families cling to an outdated social system rather than allow their daughters to marry partners of their choice*

The Mauryas of Lucknow knew how to use physical and emotional pressure to browbeat their daughter into giving up her relationship with her lover. Lata Maurya was 22-years-old and was studying for her graduation when she met 25-years-old Dileep Gautam, who was doing a course in Computers. Though she was educated and an adult, when Lata's father came to know about her friendship with Dileep, he was furious. The Mauryas were Savarna\* Kurmis, while Dileep was a Kevat, caste-wise and financially much below their status. Lata's father knew how to put pressure on Lata — he threatened her with suicide. Lata succumbed to his emotional blackmail and promised not to meet Dileep again.

Traditional Hindu society is divided into 'jatis' or endogamous caste units within which one must marry to maintain the status and purity of the caste group. Its members have also traditionally occupied certain professions over the years, so that each "jati" have a hereditary occupation. With time, the more lucrative professions came to be taken up by certain castes, which therefore, became stronger through their status and financial clout. Other castes involved in relatively menial or labour-intensive professions saw their status and prestige diminished.

In the caste system as it stands today, Lowering down the scale of one's caste, the less the respect and status a member of that caste can expect, whereas the Savarnas enjoy prestige and status often purely by virtue of their position in the caste scale. Families have a major role in maintaining the purity of the caste system through endogamous marriages, so that any

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\* See page-81.

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breach of this unwritten code through inter-caste marriages is seen as a threat to the status of the caste group.

On November 2000, the Maurya family placed Lata under strict surveillance. For one whole year, the couple had no contact and though Dileep tried several times to meet Lata, he failed. Once when he sent Lata a note, her father discovered it and all hell broke loose. His reactions were worse than before; he beat Lata up, locked her up in a room and even had Dileep thrashed by goons.

When Lata heard that Dileep had been attacked and roughed up, she managed to sneak out of the house to see him. Within an hour, her absence was discovered. When her close friend immediately called to caution Dileep, Lata became frightened, aware of what her father and family was capable of doing to them. Dileep reassured her, promising to marry her right away. They both hid in another friend's house and the next day married in an Arya Samaj Temple. They later sent information to Lata's father about their marriage and left for Jhansi.

In the meantime, Lata's father lodged an FIR against Dileep and his elder brother, who had nothing to do with the entire episode accusing them of kidnapping and abducting his daughter. The police immediately arrested the elder brother and launched a search for Dileep who had escaped. Since the elder brother was a government employee, he was suspended from his job since service rules stipulate that any person who has been in police custody for more than 24 hours must be suspended.

A lawyer correctly advised Dileep to get Lata's statement recorded before the Magistrate under 164 Cr.P.C. According to the section, a victim can approach any judicial magistrate and record her "consent" to marry her husband. The law requires that the investigating officer of the case under which the FIR was filed must produce the woman before the magistrate to close the FIR, in this case against Dileep. The lawyer also took the couple to meet a women's rights organization.

The activists immediately met the Circle Officer (CO) of the police station

where the FIR had been lodged. The CO asked the activists to bring Lata so that he could take her statement under Section 161 and later she could give her statement before the Magistrate (Section 164). During the discussion, it became clear that the CO too did not approve of women exercising their right to choose their own husband. The CO argued that the girl's father had reasoned that he had looked after his daughter for 17 years, 11 months and 29 days. 'What is the magic that happens on the 30<sup>th</sup> day that she can be now allowed to dishonor him?'

Concerned about Lata's safety, the activists were determined that she should come to the Court only to appear before the magistrate. In the court, the activists found that Lata's father was already waiting for them with some relatives. The family was not one to give up and tried to make a last-ditch effort to put pressure on Lata by threatening mass self-immolation. In the midst of the chaos, the Investigating Officer (IO) managed to present Lata before the Magistrate, who according to rules referred her to another magistrate to record her statement of consent.

It took Dileep almost three months to get his brother released from jail and it took his brother another two months to get his job back.





**Suman Kashyap:****Victim of Guardians of the Law; January 2001**

*A marriage of choice becomes a nightmare when the father-in-law, a Thakur and a policeman to boot, uses his power and contacts to harass the couple*

When Suman Kashyap and Naresh Kumar Singh fell in love and married each other, little did they imagine that family pressure could be exerted to such an extent as to break up their relationship. The couple did not take into account the fact that Naresh's father, Subash Singh, would not leave any stone unturned to use his position as a head constable in the police force to harass the couple in every possible way.

Both Suman Kashyap and Naresh Kumar Singh were 22 years old and loved each other. They knew that though they were adults, their families would not accept their marriage because Suman was a Kahar, considered a backward-caste while Naresh, a Thakur and a Savarna and belonged to the powerful social and political landed gentry. Such marriages are violently resisted by the families and communities because on the one hand, it is perceived as a threat to the caste privileges and status of the upper castes while on the other, it brings trouble to the families from the lower castes who have to endure daily contempt and disdain with which they are treated by the powerful upper castes.

So when Suman and Naresh got married on October 1, 2001, they did not inform their families, and quietly returned to their respective homes as if nothing had occurred. One major mistake the couple made was to get married in a Temple, a form of marriage that is not recognized by law. This was to cost the couple dearly, and Suman paid the heaviest price for her ignorance and for trusting Naresh's word of faith.

When Naresh's father, Subash Singh, a head constable posted at Rampur, near Lucknow, came to know of his son's marriage, he was furious and asked him to leave the house immediately. Naresh decided to go to Gujrat

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on November 2002, to work and Suman joined him a few days later. But the couple had to return to Lucknow and began to live in a rented house together; by this time, Suman had become pregnant with Naresh's child.

Subhash Singh began to work on a plan relying on his extensive network of contacts in the police stations, and on the police system itself. What happened thereafter was a grave and repeated misuse of his role as a police officer, the guardian of the people, using his contacts as a senior constable to harass the couple and break up their marriage. The subsequent events demonstrate how unsympathetic the police, — even some senior officers — are to issues of marriages of choice, reflecting its class and caste bias. It also reflects how the police network even helps to support misuse of the law by its own members. What followed was a series of events calculated to browbeat Suman into backing out of the relationship with Naresh.

One day, along with a few men posing as police officials, Subash Singh picked up Naresh from the house. When Suman approached the Hasanganj police station to lodge a complaint, the police refused to note down her complaint. Not one to give up, Suman, through an acquaintance, then approached the Circle Officer (CO) who initially refused to help her. But on December 23, 2002 when the CO came to know about Suman's pregnancy, he sent two constables to fetch Naresh from his father's place, and the same night the couple escaped to Madhya Pradesh. But after five days, when the couple heard that Subash Singh was harassing Suman's aunt, they were left with no alternative but to return to Lucknow.

This time, Subhash Singh along with three men physically assaulted Suman and Naresh, and once again forcibly took Naresh away. After a few days, Subhash Singh threatened Suman and asked her to terminate her pregnancy or face dire consequences. Terrified of her father-in-law, she ran from pillar to post to seek help and security, but failed. On January, 2003 Suman approached AALI through an acquaintance.

On January 10, two members of AALI, along with Suman, went to meet the Superintendent of Police (SP), Rampur, where Subhash Singh was posted. However, the SP refused to take any action against Subhash Singh and instead referred Suman to the Family Counselling Centre (FCC), Rampur where she was told to visit the Centre again on January 18, 2003.

On January 11, the team members met Subhash Singh in his house to thrash out the problem. But he was extremely rude, bragged that he had kept Naresh confined in Madhavgarh, his hometown, and refused to call his son to Lucknow to give a statement. The team then went to Hasanganj police station and submitted a complaint.

On January 18, 2003, as advised by the SP, Suman, along with the team members, went to the FCC, Rampur. They were in for a great shock. Suman's father-in-law drew a completely different picture of the entire episode. He pleaded that he himself had no objection to his son living with Suman since both were adults. On the contrary, he said that Suman and the organization were threatening him. The FCC decided to hear the case again on February 1, 2003, and Suman was asked to bring her parents along. But the team members realized that the visit to the Centre would be futile since Naresh was not keen on reconciliation. Counseling would work only if both parties were keen; in this situation Suman decided not to re visit the Centre.

A week later, the team accompanied Suman to the Hasanganj police station to lodge a complaint that Naresh was "missing". The police were extremely rude and indecent with Suman; they did not even lodge an FIR, that would have obligated the police to take action on the complaint, but simply received the copy of her complaint. Later, the organization also approached the Additional Director General of Police (ADGP), Law and Order, who promised to provide all possible help.

By this time, other women's groups had also got involved and provided immense support to Suman. On January 27, members of All India Democratic Women's Association (AIDWA) and Kriti Resource Centre along with AALI went to Suman's locality and met her neighbours. The team found that Subhash Singh had been abusing Suman's neighbours and had threatened them with dire consequences if they tried to provide her help or support.

On January 28, members of women's groups went to meet the CO, Mahanagar who was in charge of Hasanganj police station. After hearing the entire story and taking down Suman's statement, the CO promised to take appropriate action. Two days later, two police officials visited Suman's

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neighbourhood and spoke to four of her neighbours. All four clearly stated that Subhash Singh had been harassing Suman since a long time. One of the neighbours also alleged that Subhash Singh had given her Rs.1000/- to offer Suman to get her pregnancy terminated; but when Suman refused, she had returned the money to Subhash Singh.

In the meantime, Suman began receiving anonymous phone calls threatening her not to seek police help against Subhash Singh, otherwise her husband Naresh would be murdered. When informed of the calls, the CO Mahanagar did not believe that Subhash Singh would go to that extent to harass Suman. On February 3, the CO once again made an attempt to catch hold of Subhash Singh and his son in his house. But it was obvious that Subhash Singh had received prior information, and by the time the police reached his house, he had left the area along with his son for Madhavgarh.

A few days later, Naresh rang up Suman and told her that he was in Madhavgarh and had somehow managed to call her. He advised her to seek the help of women's groups to get him out of his father's clutches. He told Suman that he had tried to run away a number of times but failed as two men were constantly guarding him. Based on this, on February 14, Suman submitted an application to the CO where she stated that Naresh had called and requested to be rescued.

The activists did not leave any stone unturned. They approached the State Commission for Women, but the Chairperson was not sure how the Commission could help her. After much persuasion, the Chairperson decided to call and listen to both the parties. On February 27, Suman went to the Commission but Subhash Singh failed to turn up. The Chairperson simply expressed her helplessness in the matter and thereafter, took no other initiative. The team, in these circumstances, thought it pointless to pursue the matter with the Commission.

Events took a dramatic turn when Subash Singh again went on the offensive to terrorise Suman. On March 27, at around 4:30 in the morning, when Suman went to the public toilet in the slum, Subhash Singh attacked her. He caught her on the narrow path way and sexually assaulted her; but let her go when she shouted for help. But the incident had left Suman

completely shaken and terrified; she realised that Subhash Singh could go to any extent to harm her and her unborn baby.

When Suman along with the women activists reported the incident to the SSP, he assured them that the matter would be investigated immediately. However, before the police could reach Subhash Singh's house in the evening, information had reached him and he had fled. Considering the trauma Suman was undergoing, the team decided to send Suman to a shelter home for safe custody in another city till her baby was born.

On May 27, Suman gave birth to a boy and after two and a half months returned to Lucknow. Her woes were not over. While Suman was fighting against the atrocities of her father-in-law and simultaneously looking after her newborn baby, she got another major shock. Naresh denied being married to Suman and had surrendered to the pressures from his family. The couple had "married" in a Temple and had signed on an affidavit thinking it had legal value. Like most couples who sign on notarized paper, Suman had thought her marriage was registered. She was now left with few options to provide evidence for her case, since her marriage was neither a registered marriage nor performed in an Arya Samaj Temple that provides valid legal certificate of marriage.

The activists were determined to fight on, if Suman was willing. They advised her to take action against Naresh, since he had misled her to believe that he was her husband, and was now trying to take recourse to a technical point to deny her legal rights. On September 10, Suman filed an FIR under section 493 IPC<sup>1</sup> against Naresh for cohabitation and deceiving her on the belief of marriage.

More important, Suman is today struggling to re-establish herself. She is in search for a new life for herself and her child, and is at present working in a Women's Support Center in Lucknow. The misuse of power by Subash Singh and the final betrayal of trust by Naresh have made Suman's fight for justice not only protracted but even more complex.



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1. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage



## **Rashmi Srivastava and Adil Samad: Young, but Undeterred; January 2001**

*Astute legal activism by the NGO helped the young woman to marry the man of her choice*

On January 11, 2001, the day Rashmi Srivastava turned 18 years old, the legal age for marriage, she converted to Islam, eloped and got married to Adil Samad. Both their families had been vehemently against the inter-religious marriage and though Rashmi's parents had locked her up in the house and had imposed a complete ban on phone calls, letters and any communication with the outside world, Rashmi escaped from home to live life her own way.

In retaliation on January 13, Rashmi's father lodged a false FIR against Adil accusing him of kidnapping his daughter, a common tactic used by the girl's family to pressurise the boy. To avoid arrest, Rashmi and Adil went into hiding. Unable to find the couple, the police instead began to harass Adil's family to create pressure so that Rashmi could be pressurised to return home. On January 15, the police swung into action and took Adil's mother and sister to the Ghazipur police station.

The case of Rashmi Srivastava and Adil Samad of Lucknow is memorable to AALI for multiple reasons. If Rashmi, 18 years old, will be remembered for her single-minded determination to marry 29-year-old Adil, the case spurred the organisation into the arena of legal activism. AALI's experience reinforced its belief in collective action and taught them the paramount importance of having control of the girl's custody in a contentious marriage.

It was only when a group of activists in Lucknow intervened collectively and created pressure that the police released Adil's mother and sister. Leading activists like Dr. Roop Rekha Verma, members of AALI, All India Democratic Women's Association (AIDWA), and of Women's Association for Mobilisation and Action (WAMA) met the police top brass, the Senior

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Superintendent of Police (SSP), Lucknow, knowing that the police in the lower ranks would be ineffective. The move paid off.

Two days later on January 17, Rashmi formally approached WAMA and AIDWA seeking their support to exercise her right to decide and choose her own partner and to stop the harassment of her husband and his family. She produced her birth and the ICSE certificates, confirming her age as an adult.

The women's groups immediately informed both the local Ghazipur police station and the SSP about Rashmi's age and her decision to choose her own partner; an important strategy to ward off pressure on the couple. The police assured them that since Rashmi were an adult, her statement under section 161<sup>1</sup> Cr.P.C<sup>2</sup> and under section 164<sup>3</sup> Cr.P.C would be recorded the next day, January 18.

In the meantime, the police also informed Rashmi's parents. But Rashmi did not trust her parent's intention and refused to meet them alone; her suspicion was not baseless as the later events proved. The activists had advised Rashmi to meet her parents under two conditions: first, the meeting should be held in a 'neutral' space like in AALI office and second, it should be in the presence of members of women's groups so that they could not harm her or whisk her away against her wishes. Despite the presence of the activists, her parents threatened and cajoled Rashmi to return home with them. When she refused to go back, Rashmi was quietly moved to the house of one of the social activists. Rashmi's determination not to return to her parents at that juncture and her seeking shelter with the social activists turned out to be an intelligent move.

The partisan role of the police and its support to Rashmi's parents became clearer. On the night of January 17, the police, led by the Circle Officer, initiated a hunt for Rashmi and at 1 am tried to raid the residence of advocate and social activist, Tulika Srivastava. The AALI office was also

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1. Section 161: Examination of witnesses by police

2. CrPC: Criminal Procedure Code

3. Section 164: Recording of confessions and statements before the magistrate

placed under surveillance and two trustees were threatened at gunpoint. This was the only time when AALI has tried to help a girl's family meet their daughter and involve the police. But the move backfired, with the police attempt to forcibly 'rescue' Rashmi and thereby, posing a serious threat to the AALI office and its members.

The activists realised the police were not to be trusted in the case, though for legal and strategic reasons they had kept the police informed of all their moves. The next day, the activists decided to take Rashmi immediately to the High Court instead of the police station, to seek the court's protection through a written application. The move paid off. The activists had friends who were lawyers in the High Court and knew they would come to their help if necessary. The Station Officer (SHO), Ghazipur, on the other hand, insisted that Rashmi be brought to the police station, but when AALI members bluntly refused, he threatened that their office would be attacked. In fact, he had informed Rashmi's parents that she would be brought to the police station, and they could pick her up from there.

Rashmi's distrust of her parents' intention proved to be correct. Her parents turned up at the police station with 400 BJP workers led by a BJP<sup>4</sup> Corporator to take her back home. They set up road blockades and burnt tyres outside the Ghazipur police station and demanded action against the SHO for his alleged involvement in helping a Muslim man abduct a Hindu girl and making arrangement for their marriage in court. They also sought 'protection' for the girl and demanded that she be handed over to her father, her 'natural' guardian. However, the mob dispersed after four hours when they heard that the girl had given a statement in favour of the 'accused,' Adil.

Meanwhile, on the insistence of the women's groups, the investigation officer (IO) was forced to record Rashmi's statement on January 18 under Section 161, Cr.P.C in the premises of the High Court, and present her for her statement under section 164 Cr.P.C before the concerned Magistrate. While

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4. Bhartiya Janta Party; A right wing national political party, which was a leading part of then ruling coalition in the country

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Section 161 is an investigatory statement taken by the IO and cannot be produced as evidence before the court, Section 164 is recorded in Court before the Magistrate. AALI learnt in the course of its work that for Sec 161, a girl does not have to give her statement to the IO in the premises of a police station but in any neutral place where she feels comfortable and safe; in Rashmi's case, the activists felt safe in taking Rashmi to the High Court because of their contacts and friends in the legal community.

AALI also learnt that they could not afford to let down their vigilance even in court. At the time of presenting Rashmi before the Chief Judicial Magistrate (CJM), the IO suddenly moved an application that Rashmi should be sent to the State-run shelter home, Nari Niketan, as she was in "grave moral danger". The application was completely unnecessary and was beyond the IO's constitutional duty. As a result, the CJM insisted that the girl be sent to Nari Niketan as a 'law and order' problem had arisen.

The role of the judiciary as an adversary in siding with the girl's family became clear. The role of the lower courts is important as it is considered the Court of Fact, where facts are heard, recorded and settled on the basis of the law. This is not only the first stage where the case is heard but it closely works with the police and supervises the investigation of the case. A biased court along with the police can increase the pressure on the couple, making their conjugal life difficult.

It was only when the activists vehemently resisted, and Rashmi made a separate application stating that she was an adult and wanted to go with the activists, did the CJM, Mr. Ramashraya Singh, order that Rashmi could go wherever and with whomever she wanted to. Interestingly, the case against Adil was still pending despite the final report by the police filed after one year. During the period, both Adil and his father were in hiding in fear of arrest.



**Dr. Farzana:  
A Wasted Life; March 2001**

*She had to pay with her life in the end, murdered by her own community for having both brains as a doctor and guts as a woman to choose her own life partner*

It was a murder most chilling. A double murder of a newly-wed couple committed in broad daylight in the centre of the town, with literally hundreds proudly claiming to be the murderers! On March 30, 2001, six months after their marriage, Dr. Farzana, a doctor, qualified as a Bachelor of Medicine and Unani Surgery, and Jehangir, a small-time entrepreneur, were stabbed to death in the centre of a shopping mall in Muzaffarnagar, Uttar Pradesh.

When the police began investigation, hundreds of men in the locality came proudly forward to accept the onus of the crime reflecting the blatant community approval of the double murder. A few days after the crime, Jehangir's first wife, Tarannum, filed an F.I.R against Farzana's brother, Sadiq under section 302 of the Indian Penal Code. The police acted on the FIR and arrested Sadiq.

Farzana, a Qureshi, had recently settled down in Muzaffarnagar along with her family. Her father had faced community resistance for allowing her to study medicine, as the community disapproved of higher education for women. He also helped her to set up her own clinic in the town. On the other hand, Jehangir was from the Sayyed community, a married man with children (before he met Farzana), and did not follow a regular profession, although he had learned die-making.

The report is based on the findings of the fact-finding team (FFT) with members of AALI and WAMA who visited Muzaffarnagar immediately after the crime. The team met Jehangir's first wife, Tarannum, his parents, Farzana's brother Sadiq, the main accused in the murder case lodged in the

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district jail, and the District Magistrate. What emerged from the interviews was chilling: the family and community members were not concerned so much about Jehangir's "bad character" or his second marriage as they were angry at Farzana for having the audacity to exercise her right to choice in marriage.

Farzana knew Jehangir briefly before she married him. According to Sadiq, the family opposed the marriage not because they disapproved of Jehangir, but feared that once the relationship became public, they would face serious problems in marrying off the four younger girls in the family. Despite the strong disapproval of her family, Farzana married Jehangir and continued to reside in her natal home as Tarannum was unwilling to accept the relationship.

The FFT members came away with the distinct impression that community members were almost certain about the impending murder. They were not so much concerned about Jehangir's character as they were angered at Farzana's temerity in daring to desire a man. The fact that *both* were murdered indicates that members of the community had disapproved of their relationship and took upon themselves the responsibility to punish them. No one in the crowded shopping mall came forward to help the couple, and even later, not one in the crowd gave evidence against the culprits. Tarannum alone took on the fight.

The police, looking for an easy way out, found a temporary solution by arresting Sadiq. The fact that a single person could not possibly have committed the double murder in broad daylight in a crowded market seemed to escape the police's reconstruction of the case. Also, the fact that people came forward defiantly confessing to the crime should have spurred the police force to deepen the investigation and look for clues of community involvement.

Given the simmering anger, the reckless attitude of the community and Muzaffarnagar's notorious history of vicious resistance to relationships of choice, the state administration must have been aware of the involvement of the larger community in the crime. The inertia and inaction of the police in investigating the case and making arrests makes it appear that they condoned the crime.

Members of the FFT met the District Magistrate (DM), Muzaffarnagar, who told them that he had circulated a memorandum directing Sub-Divisional Magistrates (SDM) and police stations to help couples in “contentious” relationships to marry under the Special Marriages Act 1954 (SMA). He also said that following the publicity in the wake of the memorandum, seven couples had applied to get married under the SMA. The SDM and officer in-charge of the local police station were said to be coordinating the marriage of these couples by ensuring confidentiality and their personal security as far as possible.





## **Rani and Ganesh: A Misleading Twist; March 2001**

*Behind the incident of stripping a woman was not land dispute, as was claimed, but a hidden affair*

On March 16, 2001, the media reported a shocking incident of a middle-aged woman being stripped, assaulted and paraded naked in Bhatara village, Amethi tehsil, Sultanpur district, Uttar Pradesh. According to the reports, the woman, Roopkali had implored the bystanders for help but no one came forward till a villager, Mithilesh gave Roopkali a sari to cover herself.

Roopkali had gone to one Baliram's house because her 22-year old son, Ganesh was missing and suspected he had a hand in it. Instead, Baliram, his two daughters and wife physically attacked her and stripped her naked. To add insult to her injury, when Roopkali went to the Amethi police station to complain against Baliram and his family, the police did not register the complaint, nor followed up the case as they had promised.

Following the media reports, the administration and the police were spurred into action. It was only after the Sub Divisional Magistrate, RP Singh and the Circle Officer (CO), RK Singh called the local police station and visited the village, that Roopkali's complaint was finally registered. On March 17, Roopkali filed a FIR against Baliram accusing him of kidnapping her son and assaulting her (sections 364/354/452/323/506)<sup>1</sup>. In retaliation, Baliram filed an FIR against Roopkali and accused Ganesh of abducting and raping his daughter Rani (sections 504/343/376/)<sup>2</sup>.

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1. **364**: Kidnapping or abducting in order to murder, **354**: Assault or criminal force to woman with intent to outrage her modesty, **452**: House-trespass after preparation for hurt, assault or wrongful restraint, **323**: Punishment for voluntarily causing hurt, **506**: Punishment for defamation ...if threat be to cause death or grievous hurt, etc)
  2. **504**: Intentional insult with intent to provoke breach of the peace, **343**: Wrongful confinement for three or more days, **376**: Punishment for rape.

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On March 20, Baliram, along with his wife, Savitri and daughters Kamlesh and Rani were taken to the police station. Baliram and Kamlesh were immediately released since there was no substantive evidence to detain them. Savitri and Rani were placed under arrest, so was Roopkali. Three days later, on the basis of a statement made by 17 year old Rani in police custody; section 376 (charge of rape) was added against Roopkali's son, Ganesh.

On April 10, much against Rani and her father's wishes, Rani was sent for medical examination for rape. The police assumed that since Rani was allegedly abducted by Ganesh, she must have been raped. When the fact finding team (FFT) voiced their concern to the CO about forcing Rani to undergo medical examination, he did not see the violations but replied that the team members as women should be "concerned about Rani's plight."

It is significant that in the complaint, the date of Rani's 'abduction' stated was one week *before* Roopkali was stripped. Yet, Baliram did not file a report with the police nor did his brother, a watchman (chowkidar) in Amethi police station and working in the police inspector's house, have any knowledge about his 'missing' niece. The reason given for the delayed FIR (after Roopkali filed hers) was the fear of social stigma attached to an abducted woman, making the entire 'Rani Abduction' episode suspect.

According to several people FFT spoke to, the villagers were afraid of Baliram as he possessed a licensed gun. They corroborated the incident of 'stripping' but were unwilling to give evidence against Baliram because he was more powerful than the widowed Roopkali. According to Mithilesh's father, people did not intervene because it was an issue of caste conflict, a fight between the Yadavs, and he being a Brahmin, was not concerned.

The villagers also confessed to the FFT that the police threatened them to say that the men were not present in the village during the stripping incident. It grew clearer that the local police used their authority to serve vested interests, especially that of Baliram, since his brother is a police chowkidar. The police even set Baliram free, who then promptly tried to suppress evidence and create fear among villagers and intimidate Roopkali's younger son, Luvkush.

It was only after several weeks of the stripping incident that AALI realised that it was grossly misled in the case. There were truths and half-truths that blurred the complex case. Members of the FFT initially viewed the case as a violation of human rights against Roopkali, a widow victimized by the community, and were preoccupied in trying to help her cope with her physical and emotional trauma. Roopkali had consistently maintained the image of a victimised woman. She had alleged that Baliram was angry with her because she refused to sell him a part of her agricultural land; in fact he had failed to grab her land due to the intervention by the district authorities. Since that 'land episode', Roopkali claimed, the families were not on talking terms with each other. What Roopkali did not tell the FFT was that Rani and Ganesh, who lived in the same village and belonged to the same backward community, were in love with each other.

Ganesh worked in Mumbai, and would return to the village during the harvesting or the sowing seasons. He was in the village on March 2001 and was to return to Mumbai at the end of the month. The FFT discovered that Rani and Ganesh had decided to elope to Mumbai. On March 12, Rani quietly moved to Ganesh's house at the edge of the village; they decided to lie low for some time as they felt no one would suspect them of hiding in Ganesh's house.

Rani's parents immediately launched a search for her. On March 14, Baliram received information about Rani and raided Ganesh's house. Roopkali had locked the couple in the house and was sleeping outside with the keys. At about 1 am Baliram, along with his wife, elder daughter, a cousin brother, a village guard, and a brother who was employed as a domestic servant by the Station Head Officer of the local police station, attacked Roopkali. They beat her up and started searching for Rani inside the house. They beat up Ganesh, found Rani hiding in the loft and forcibly took her away.

Following this incident, Ganesh 'disappeared' and Roopkali suspected that Baliram had a hand in his disappearance. When her son did not return even the next day, she went to Baliram's house at about 11am to enquire about him, when she was attacked.

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On March 21, 2001, the FFT met the Director General of Police (DGP) and presented him with a report of their findings. On their insistence, on April 29, the DGP set up a special inquiry to look into Ganesh's 'disappearance'. On May 6, the investigation was transferred to special investigation staff (SIS), Lucknow zone and Roopkali and her younger son, Luvkush was provided police protection. A year later, on May 2002, Ganesh returned and surrendered to the police and on August 6, 2002 was granted bail by the Lucknow Bench of the Allahabad High Court.

Not once did the FFT members suspect that behind the chain of events, the main cause of tension between the two families of Yadavs was the love affair between Rani and Ganesh. If the team had dug deeper into the incidents, they would have understood that the issue of land was marginal to the tension, the young couple's right to choice was in reality the main reason behind the attack by Rani's family on Roopkali. Had AALI known, they would have handled the case differently; they would have tried to protect Rani's custody and helped the couple to marry. Unfortunately, at that juncture they did not see the discrepancies in the case and was swayed by Roopkali's tale of land dispute. It was many months later that the NGO learnt that Rani was married off by her family to someone else.



**Reena Bakshi:****Born Free, Chained to Custom; June 2001**

*This woman had to tread a tortuous path to break free of social and familial obligations, including lying when telling the truth repeatedly had no effect*

It is a story of forced marriage, emotional parental pressure followed by an unhappy relationship that resolved unusually amicably. Reena Bakshi, 25 years old, Savarna Hindu, was in love with a Christian man. Though she was an adult, her family refused to respect her wishes and was vehemently against her friendship. Reena's mother, a widow, shamelessly resorted to emotional blackmail and threatened to kill herself if she did not marry the man she had chosen for her. In the end, Reena gave in. On July 10, 2000 she married Mahesh Rao, the son of a family friend and a senior Police Officer in Lucknow.

From day one, Reena's marriage was doomed, not because her husband mistreated her but because her heart and soul were elsewhere. Reena was honest with Mahesh and told him about her affair. He extremely understood and handled the situation with great maturity. He felt that they should move on and focus on each other, as the earlier relationship was of the past. In the meantime, Reena's former boyfriend had got in touch with her and continued to profess great love for her.

Mahesh decided to shift to New Delhi. Reena found herself in a quandary because it would mean severing once again all ties with her boyfriend. She told Mahesh that she could not continue with the marriage. On March 24, 2001, barely nine months after their marriage, he agreed to give her a divorce. But Reena's natal family again created problems and was upset with her decision. Her family pressurized the couple to continue with the marriage.

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At this juncture, Mahesh asked Reena to move with him to Delhi to give herself some time to rethink her decision. Desperate, Reena went to a women's organization in Delhi, alleging that Mahesh had been harassing her for more dowry and that she wanted to leave him. The organization made independent inquiries and found that her complaints were baseless. They asked Reena to tell them the truth so that they could help her. Once they heard her out, they spoke to Mahesh; after about a month of discussions between the three parties, Mahesh agreed to the divorce.

The divorce suit was filed on July 12, 2001, delayed partly due to family pressure, but also due to the legal requirement that a couple could file for divorce only after one year of marriage. Reena got her divorce decree in January 2002, and she married her boyfriend two months later in April 2002.

To AALI, Reena's case reinforced the importance of talking to *both* the contentious parties to get to the crux of the matter. For a legal aid group, it is vitally important to be impartial, factual and non-judgmental while talking to the couple, even as it empathizes with the woman and her problems and fights for her rights.



## **Dipti Joshi & Alok Srivastav: Caste no Bar; July 2001**

*Timely NGO intervention coupled with a cooperative police helped save her marriage*

Two men from two families were office colleagues and very close friends. So much so, they built their houses side by side so that they could continue their deep friendship outside their workplace. But when it came to the marriage of their children, the issue of caste loomed as a major barrier between the two households and became the cause of rift. When Alok Srivastava, expressed his desire to marry his neighbour, 21-year old Dipti Joshi, there was tremendous opposition from both the families. Dipti's father even threatened Alok with violence and police action.

Alok had qualified for the post of Deputy Superintendent in the Border Security Forces (BSF), while Dipti was a graduate and working in a computer institute as a counsellor. Though the two were adults and well-educated, Dipti's father refused to allow his daughter to marry Alok on the ground that they belonged to a 'different' caste.

In the caste system, endogamy — the rule that prescribes marriage within a specified group — is crucial for maintaining the cultural discreteness, status, hierarchy and privileges of each social category. One major means of sustaining the caste system is through marriage, arranged within the caste. A 'breach' resulting from Dipti and Alok's marriage would have upset the hierarchy and social privileges enjoyed by the members of the caste system. Therefore, exogamy ensures the success of the system by setting up various obstacles, as in Dipti's case, to inter-caste marriage. Since women are regarded as entry-points into the caste system, their sexuality is well-guarded and intra-caste marriage enforced by their elders; likewise, men of the "so called lower" castes are perceived as threats to upper so called caste purity and are prevented from marrying women of higher so called castes.

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Taking recourse to this norm, Dipti's father argued that according to the Hindu Shastras or holy laws, the couple's marriage would be 'illegal'. He reasoned that as *Brahmins*, they were 'superior' to the Srivastavs who were *Kayasths*. He also used emotional pressure and threatened his daughter that he would stop taking food and water if she even met Alok again. Dipti was put under strict family surveillance; a brother would drop her to college and bring her back home, and her phone calls and friends were monitored.

Unwilling to be forcefully separated, on July 23, 2001, Dipti and Alok eloped and got married in an Arya Samaj Temple, a form of marriage accepted by the Supreme Court. When Dipti's father learnt that she had not returned from the institute where she was studying and had probably eloped, he lodged a complaint at the Gazipur police station, naming Alok as the possible "kidnapper".

Fortunately, Alok, being himself in the quasi-police service was aware of the possibility of being accused of 'kidnapping' Dipti against her will. When he approached AALI for help, the members immediately informed the Gazipur police station that his marriage was legal and handed over a copy of the marriage certificate and photographs to them. Despite the evidence, the police, instead of censuring Dipti's father for filing a false complaint, threatened Alok's father with arrest if Dipti did not return to her parents.

However, the intervention and support of an NGO proved to be very effective in the case of Dipti and Alok. Since the organisation had taken up cudgels on behalf of the couple, the case had acquired certain legitimacy in the eyes of the police. As a routine measure, members met the Superintendent of Police (SP) to apprise him about the case and seek his support. Past experience had taught the members that it was more strategic to approach senior-ranking officers, given the deep empathy and bias for perpetrators of violence at the lower level of the police force. Moreover, since Alok was from the services, was not a Dalit or from a backward community, he enjoyed a certain status and acceptance among the police force.

When activists took Dipti to the SP, he intervened immediately. He ordered the Gazipur police station officials not to proceed any further against Alok, advised that the couple should register their marriage under the Special Marriage Act 1954 and leave Lucknow for a while till the tempers of the elders in the two families cooled down. The activists did not think that in Alok and Dipti's case it was necessary for the couple to leave town, though in similar cases they give the same advice. They reasoned that Alok's socio-economic background and his job in the BSF would ensure his safety. Dipti stayed for a brief period in a safe house and left after a few days for Manipur where Alok was posted.



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## **Meena-Vikas: Murdered by their Own Kin; August 2001**

*Although the couple died a horrible death in the hands of their own families, immediate administrative measures could avert similar tragedies*

On August 7, 2001, the villagers of Rampur, Muzaffarnagar U.P. participated in a crime most foul and bizarre. It was the parents who took the initiative to hang to death their daughter, Meena and her lover, Vikas, both 17 years old, for being in love with each other.

Following wide-spread media coverage and several versions of the story, a four member fact-finding team<sup>1</sup> visited Rampur and conducted interviews with a large number of people in the area. The report is based on numerous interviews, piecing together several pieces of information to get as close to the facts as far as possible.

The villagers knew that Meena, a *Jat*<sup>#</sup>, and Vikas, a *Brahmin*<sup>\$</sup> were involved in a relationship, reasons for strong disapproval because they perceive inter-caste alliances as a loss of honour for the family and community. According to the caste system, as one goes up the system, the power and status increases and as one goes down the scale, the degree of contempt for the caste increases as these castes are of low status, have little power and are regarded as “dirty”. Traditional Hindu society is divided into ‘jatis’ or endogamous units within which one must marry to maintain the status and purity of the caste group. Members are also assigned to a specific occupation and each jati boasts a cultural tradition. Moreover, localized hierarchies in a region are based on control or lack thereof of productive resources and power.

Therefore, Meena’s father, Mahendra, a Jat who is also said to be the richest and most powerful man in the hamlet of 20 families, took the lead

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1. Malini Ghosh, Nirantar; Huma Khan, Vanangana; Rehana Adeb, Disha; Tulika Srivastava, AALI

# See page-81.

\$ See page-81.

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to punish the youngsters with the approval and complicity of the village community. Though Brahmins are so called "higher" in the caste hierarchy, in Rampur, the Jats command greater social and economic status and power.

To reclaim the family and community honour, Meena's parents first tried to hang the young couple; when they did not succeed, they placed wooden planks on their throats, and then stood on them to asphyxiate them.

Since the small hamlet consists of a few families only, it is likely that the villagers knew about the murder; there is no evidence that any villager tried to prevent the crime, in fact there is evidence that they participated in the cremating the couple.

The house of Kulpreet, whose family is the poorest in the village, was the site of the double murder. Her house is the first in the cluster of hamlets as one enters the village. Apparently, Kulpreet found the couple in a compromising position and immediately informed Meena's father. Mahendra and his wife, Arvinder brought both Meena and Vikas to Kulpreet's house, allegedly because they had guests in their house. There seem to be various reasons for the murder to take place in Kulpreet's house:

- Kulpreet's husband was not present as he had gone to the city
- Kulpreet's family was economically the weakest in the village and was compliant to pressure
- Kulpreet was the informant. Having asked for action, she could not refuse to provide space for the punishment.

The role of Vikas's family is ambiguous. Though the family members were not as proactive as Meena's in initiating the murder, they did not do anything to prevent it. The news regarding Meena and Vikas reached, Vikas's brother Siddharth, who is said to have arrived at Kulpreet's house along with his wife, Shyama and his mother. Vikas's mother is said to have implored Mahendra to forgive the couple but he was adamant. When Mahendra refused, Vikas's brother and mother left the place saying Vikas should not be treated any differently from their daughter. They left behind Shyama as their representative, as Mahendra wanted someone from Vikas's family to be present. Kulpreet and Shyama waited outside the room, while Meena's parents executed the double murder.

Meena and Vikas did not try to cry out for help, probably knowing that no one would come to their rescue. After the murder, villagers accompanied the families to dispose off the body. The bodies were not accorded proper funeral according to the Hindu rituals, but were burnt using old tyres, tubes and dung cakes. After this, the men of Rampur village went on with their daily routine and even attended a rally organized by the well-known peasant leader, Tikait, as if nothing had happened.

The police was informed of the double murder the next day through an anonymous phone call. When Sub-Inspector Raj Singh Rathor, Jhijnhwana Police Station, went to the village, he lodged the FIR under sections 34<sup>2</sup>, 114<sup>3</sup>, 201<sup>4</sup>, 302<sup>5</sup> of IPC and arrested 13 people out of the 16 named in the FIR.

AALI has always believed in the culture of collective action. Being the only feminist organisation in Lucknow at that juncture, it was the organisation's agenda to build on sisterhood and consensus. It set up a fact-finding team (FFT) and as a result of its continuous and active interest in the case, built a conducive environment for the case to proceed. The District Magistrate took deep interest in the specific case and in addressing similar cases of choice relationship. The committed and sensitive reporting by a local journalist, Rajeev Saini, contributed largely to the accused going on trial. Within a year, a fast-track court on August 7, 2002 sentenced four of the accused, including Mahendra Singh and Siddharth to life imprisonment.

Though the tragic set of events had occurred and the couple was dead by the time AALI intervened, the organisation realised it was important to understand the dynamics of the events and the way society perceives such issues. Along with other groups, the organisation also put pressure on the state administration to ensure the case was not unnecessarily delayed or the guilty set free.



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2. Acts done by several persons in furtherance of common intention - each of such persons is liable in the same manner as if it were done by him alone.
  3. Abettor was present when offence is committed—he shall be deemed to have committed such act or offence.
  4. Causing disappearance of evidence of offence, or giving false information to screen offender—is liable to imprisonment of either description for seven years, and also to fine.
  5. Punishment for murder—with death, or imprisonment for life and shall also be liable to fine



## **Archana Mishra: Love's Labour Lost December 2001**

**A haunting example of when collective intervention, though well-intentioned, is not well-planned and cohesive**

When the news of 29-year old Anil Rawat's cold-blooded murder by his two brothers-in-law hit the media headlines, members of several activist organisations decided to intervene. On June 2001, Anil had married his neighbour, Archana Mishra. Six months later on December 10, he was dead. Anil with his brother had gone to Lucknow to buy a gas cylinder. Archana's brothers shot Anil to death on the spot, while his younger brother was hit in the leg.

Archana Mishra, 24 years, and Anil Rawat, 29 years were both residents of Krishna Nagar, Lucknow. The two were neighbours and had known each other for some time before they decided to marry. Since Archana's family was vehemently against the relationship, the couple was forced to elope to Punjab after their marriage.

Theirs was an inter-caste marriage as Archana was a Savarna (Brahmin) and Anil belonged to the Dalit (Pasi) community. In education too, Archana was better qualified as she had completed her Masters in Sanskrit while Anil was a graduate. In the caste system, endogamy or the custom of marriage within the caste is seen as essential to maintain caste status and privileges. Exogamy, or marriage outside the caste, is actively discouraged since the woman is looked upon as an entry point into a specific caste. Men of "lower" so called castes, like Anil Rawat, are likewise regarded as threats to a caste's purity and a woman's sexuality such as Archana's is well-guarded for this reason.

Archana's brothers, Amit and Ram Mishra were closely affiliated to the Bharatiya Janata Party (BJP), a right wing political party believes and thrives in sustaining the caste system and the so called 'purity and superiority' of

## *Facing Reality*

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the Hindu race. It therefore, opposes any inter-caste or inter-religious marriage.

The duo used their political and social contacts to procure the support of the local police in harassing Anil's family. Though Archana was an adult and married Anil of her own choice, the police exposed its caste bias and opposition to this relationship of choice when they arrested. Anil's father and younger brother. They were brutally tortured, hung upside down and hit with buckets of water to extract information about the couple. When the couple learnt about the ordeal Anil's family was suffering at the hands of the police, they decided to return to Lucknow.

Archana's family insisted she return to her natal home. They told her that they were willing to honour her decision and resolve differences about her marriage. But this was a mere pretence to trap her. As soon as she reached home, she was locked up in a room for three days without any food. Out of pity, her mother helped her to escape to Anil's house where they decided to leave for Kalli village. Archana's brothers never forgave her nor abandoned the idea of teaching the couple a lesson for defying them. On December 10, they got their chance and murdered Anil.

For AALI, Archana's experience was a major learning curve in collective functioning, case follow-up and accountability, and supporting the survivor of violence. Intervention in the case was limited because the activists had got involved only after the tragic event had occurred. Despite this, since several groups and individuals came forward in support of Archana, the organisations succeeded in mustering support for her and building up awareness and public consensus on the issue.

When members of AIDWA met Archana after Anil's murder, she was determined to have her brothers charged with her husband's murder and punished. Her father-in-law, on the other hand, was interested only in getting compensation for his son's murder; moreover, whenever he visited the AIDWA office, he never brought Archana along with him, making it difficult for the activists to keep contact with her. He kept approaching the AIDWA members to press for compensation but as the case took a long

time, he gave up. When Archana's family moved out of Lucknow, unfortunately, the activists lost contact with the family.

Members of AALI were caught in a dilemma between the spirit of working through consensus and pressing for speedy resolution. At one point, the group felt constrained by the slow pace of collective functioning. Responsibilities taken up by some organisations were not executed. Regular and systematic follow-up, so vital in every case, was slow and erratic leading to important links and contacts being lost. Since a sister organisation of the network had introduced Archana's case and taken it up before the larger network got involved, it was difficult for AALI to 'take over' the case to speed up the process without violating the norms of collective functioning. The experience in Archana's case taught AALI that even while functioning through networks, responsibilities should be clearly delegated with practical time-frame drawn up; and most important, the organisation taking up the major responsibility in a case should be held clearly accountable and responsible for the outcome of the case.





**Ekta Srivastav:  
Holding her Head High; June 2002**

*Her choice of a younger partner attracted vicious retaliation from society; even her job was taken away to pressurise her*

On December 20, 2000, life changed drastically for 36-years old Ekta Srivastav when she married 24 years old Vipin, 12 years her junior. Suddenly her status as a respected teacher in the community and Vice Principal of a school was ignored and forgotten, she and her husband were treated by the family, school colleagues and even the police as pariahs, criminals to be hounded and punished. The couple were physically harmed, abused, threatened, thrown out of the house and driven out of town. Worse, Ekta's son was penalised in school and both she and husband lost their means of livelihood.

In 1984, Ekta was married to a sculptor and had a son. Ten years later, when her husband walked out of her life, she never had any contact with him; neither of them initiated any legal proceedings for divorce. In 1988, Ekta had become the vice principal of the Rajendra Nagar Branch of Model Montessori School, Lucknow, where she had been a teacher for a number of years.

One day, In 1997 Ekta met with an accident and seriously injured her spine. She could not move and needed help even at home. This is the time she met Vipin, who along with his younger brother Rajesh, a student of Ekta's, visited her when she was recovering after her accident. With his father's permission, Vipin stayed on in Ekta's house for almost two months to help her. Even after this, the two were in constant touch with each other as Vipin visited her almost daily. Three years later, they finally decided to get married, though it was not an easy decision considering Ekta was 12 years older to Vipin.

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On December 20, 2000, the couple married in an Arya Samaj temple, a form of marriage accepted by the Supreme Court; Rohit and a cousin were the two witnesses. Vipin continued to live with his father, and a year later moved into Ekta's house. When Vipin's father learnt about his son's marriage, he was enraged and did everything possible within his means to harass the couple.

Vipin's father first disowned Vipin from the family business and severed all ties with him. Despite this, till February 2002, Vipin continued to visit his family. But when his uncle viciously abused Ekta, Vipin was forced to end his relationship with members of his family. For the couple, the only source of stable income became Ekta's salary.

Vipin's father then began to systematically erode Ekta's position in the school. He approached the school authorities of Model Montessori School, printed pamphlets attacking Ekta's character and distributed them among the guardians. Instead of rebuking Vipin's father for maligning a teacher of their school, the authorities played along.

As a result, on February 2002, the Director of the school asked Ekta to submit her 'resignation' to avoid bad publicity for the school. She assured Ekta that she would treat the break as 'paid leave' and that she could rejoin once the situation calmed down. Without thinking of the consequences and believing the Director, on March 1, 2002, a beleaguered Ekta resigned.

The harassment did not stop. Once Ekta's livelihood was squeezed, Vipin's family increased the pressure on the couple by involving the police. The police misused its power, revealed its bias against choice relationship by playing a strongly partisan role instead of providing the couple with protection.

Despite knowing that the couple was legally married, the police did everything within their means to break up the relationship. One week after Ekta's 'resignation' in school, about 7-8 policemen went to her house and summoned Vipin and Ekta to the local police station. At the Naka police station, Lucknow the Police Inspector J. P. Singh threatened and abused the

couple, thrashed Vipin and forced the couple to give in writing that they did not have any relationship with each other and would not enter into one in the future. The humiliation continued when Inspector Singh directed Ekta to 'hand over' the adult 24-year old Vipin to his father against his will. Ekta was then ordered to leave town.

Members of the media too exposed their bias and sensationalised the entire episode. The crime reporter of an electronic channel, *City Hulchul*, Rajesh Shukla who was present in the police station, joined hands with the inspector to abuse Ekta. Among the many abuses, the inspector said to Ekta: "*Sharirik Sambandh banaye rakhti aur parde ke pichey rahti, Shaadi karne ki kya zaroorat thi?*" (You should have maintained physical relations with him, why did you have to get married to him?) The channel then ran a programme about the case in an extremely demeaning manner.

The final blow came when Ekta's landlady asked her to vacate the house immediately. Ekta was rendered jobless, homeless and without any support. On March 21, 2002, Ekta, along with her son, was forced to leave Lucknow to live with her sister. After a few days, Vipin again moved out of his father's house and insisted that Ekta return to Lucknow to live with him.

The harassment did not stop. Siddhu, Ekta's son by her previous marriage, was now targeted. But Ekta was not one to give up. It was at this juncture in June 2002, she approached AALI to seek help on two matters. First, she wanted her job back in her old school, which the authorities refused; and second, her son Siddhu was refused readmission in class XI, because of Ekta. Siddhu was in the same branch of the school in which Ekta was earlier the Vice Principal. The reasons cited by the school for refusing Siddhu's readmission were indiscipline and a low percentage in Mathematics. The Director did not consider Ekta's impeccable work record and the years she had devoted to the school. It was clearly an expression of the school authorities' disapproval of Ekta's personal affairs.

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The case worker at AALI came up with an ingenious way to beat the system. She also kept up the pressure on the school authorities by continuously engaging with them through letters and meetings. Most important, to ensure that Ekta did not suffer from pangs of guilt or lack of self-esteem (common among women who are victimized) the members of the NGO provided sustained counseling.

When Ekta argued with the authorities that students with less than 60 percent marks had been admitted in class XI, they assured her that Siddhu would be admitted if she could provide even *one* such case. The AALI member immediately accessed the internet to procure a copy of the mark sheets of all the students who were admitted; then as evidence they placed before the authorities mark sheets of those who had got less than 60 percent and yet been admitted to the school.

Regarding Siddhu being an undisciplined child, AALI sought information from the school authorities whether they could show any letter or complaint slips that are sent to parents in such cases; they failed to produce any. Finally, Siddhu was admitted in the school but was continuously harassed by the teachers and the school authorities. Unable to bear the pressure, Ekta got her son transferred to another branch of the school.

Ekta eventually got back her job with the help of the AALI who used all possible pressures and contacts, including personal ones, since it was dealing with a private institution. Ekta was not given the earlier post of the Vice Principal, she was placed in the Inspection department of the school though her salary was protected. After AALI put tremendous pressure, the Director promised to reinstate Ekta to the post of Vice Principal at an “appropriate” time. In July 2003, once again AALI was forced to intervene since Ekta’s colleagues were misbehaving with her, and also to remind the Director of her promise. The Director refused to reinstate Ekta but agreed to transfer her to the Innovations wing. The school being a private institute, the AALI could not initiate any legal proceedings against it.



## **Rehana-Karim, Richa-Prateek: Heads for Shame; September 2002**

*Had it not been for timely and astute intervention tactics, the two couples might well have discovered that to love could also lead to losing their heads in the very literal sense!*

When Rehana and Richa of Sonapur village, Muzaffarnagar district, fell in love with two different men and got married, their natal families and the villagers treated their love as a criminal activity. The two women were forcibly dragged away from their husbands and the Caste Panchayat ordered that the couples should be beheaded.

The shocking incident was first reported in the *Rashtriya Sahara* on September 17, 2002. Two days later, some women's groups set up a fact-finding team (FFT) and visited the two villages of Sonapur and Atrali where the two men lived. They talked to the two couples, their families and the local villagers, and found that the story was, chillingly, all too true.

The two couples had met in April 2002, in a brick kiln in Punjab where they were working as labourers. The parents of the two women, Rehana, 20 years old, and Richa, 21 years old, had sent them to work there as migrant labourers. But when Rehana and Richa fell in love with Karim and Prateek, respectively, of Atrali village, Muzaffarnagar, all hell broke loose. The families of the two women and the villagers of Sonapur thought it was more so called 'honourable' to kill the women rather than allow them to marry the men of their choice.

A series of events led to the mounting tension. In August that same year, when Rehana and Richa returned to Sonapur, they overheard their fathers plotting to sell them off for Rs. 3000 each. On August 29, both Richa and Rehana ran away and reached Atrali 12 days later. The families of Prateek and Karim and other community members immediately informed their parents, who arrived on the same day with a group of villagers from Sonapur.

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To avoid unnecessary trouble, Prateek and Karim's families were keen that the two women return home with their parents. But Rehana and Richa were adamant, and Prateek and Karim too wanted them to stay on in Atrauli. That same night, the two couples got married in a Temple before the village Pradhan's husband. However, he later denied having witnessed the wedding. After the ceremony, the two couples put their thumbprints on "required" papers in order to give their marriage a semblance of legality hoping that the move would provide them protection in the eyes of the law.

For a few days, both Richa and Rehana lived peacefully with their husbands' homes in Atrauli village. But on September 14, the parents of the two brides arrived in the village with a mob of villagers and created a huge commotion in Atrauli. They insisted on taking their daughters back, though both Richa and Rehana were unwilling, and forcibly dragged them into the tractor.

At Sonapur, the traditional Caste Panchayat was convened to decide on the contentious issue. In Uttar Pradesh, this self-appointed, extra-judicial body is particularly notorious for breaking up and preventing marriages on the grounds that these marriages violate existing and prescribed marriage practices of exogamy, the rule of prohibiting marriage outside a specified group. The Panchayats are a significant source of social control and enjoy wide-ranging dictatorial powers.

According to the media report, the Caste Panchayat decided to behead both the couples. Though most of the villagers later denied this to the FFT, a few women admitted that some villagers had suggested beheading the couples as a solution to the problem. Richa, too, confirmed that villagers of Sonapur had made the atrocious suggestion.

When the villagers of Atrauli resisted the punishment, the fathers of the women filed a complaint against them at the Devbandh police station. Instead of taking serious note of the Panchayat's illegal order, the Devbandh police began to harass the villagers of Atrauli; they also took the girls away with them since they were unwilling to go back with their parents. As there was no proof of evidence that the girls were above 18 years, the legal age for consent, the police sent them to the state government shelter home in Chutmalpur.

On September 19, the FFT first went to Atrauli. The members could not meet Karim and Prateek as they were on the run. The team learnt how the police had been harassing them, their families and other villagers. When the team reached the village, the two families were very apprehensive and initially mistook them as agents of the police. However, the FFT assured the families of their real intent and were able to meet and talk to Prateek and Kareem the next day. Later the team went to Sonapur, met the parents of Rehana and Richa and also talked to the villagers, who refused to pardon the two women for breaking traditional norms and marrying on their own. The FFT also went to the state shelter home to find out what the women themselves wanted.

Since Richa and Rehana were determined to be with their husbands, the FFT had to think of a way to help them out. They met the District Magistrate, Sub-Divisional Magistrate and the police to persuade them to change their perspective on the case. They spoke about the right to choice in marriage and argued with the officials about the illegality of keeping two adults in a shelter home for 'safe custody' against their will. The administration argued that since Rehana and Richa were illiterate, had not been to school and had neither birth nor school certificates as evidence of their age, they had no option but to send them to a Home. The FFT insisted that the administration should immediately conduct a bone ossification test on the two women as proof of age, and to get their statements recorded as soon as possible.

As a result of FFT's persistent efforts, on November 11, 2002, the Chief Medical Officer (CMO) conducted the ossification test and certified Rehana to be 20 and Richa to be 21 years old. After the CMO's report, the girls were presented before the Chief Judicial Magistrate (CJM), Sadar, Muzaffarnagar and their statements were recorded. On the basis of their statements that they willingly got married, the CJM observed that though the girls were not able to present any proof of their marriage, considering the fact that they were adults, they should be released from the shelter home and be free to go wherever they wished.





## **Ankita Singh: Marriage At All Cost; November 2002**

*Parents treat their daughters as disposable property, as passports to social status, even condoning the violence meted out to them.*

Ankita Singh, 23 years old, was at the end of her tether. Ever since her marriage three years ago, her husband had been brutally beating her up and mentally torturing her. Her natal family was totally unsympathetic of her situation because it was her parents who had forced her into the marriage, continuing to coax her to maintain the relationship in the interest of “family prestige”.

On November 29, 2002, Ankita could not take the violence any longer, and she approached AALI for help. That morning, her husband had thrashed her and destroyed all her personal belongings. She somehow managed to escape with her life, leaving behind her one-year-old baby girl, Methan. That day was her third wedding anniversary.

Ankita told the AALI how three years ago, she was forced by her parents to marry Dharmendra Pratap Singh. The relationship was absolutely against her wishes, as she was in love with another man called Mukesh. To Ankita’s further dismay, the marriage proved to be an extremely violent one. After three years of facing continuous physical and psychological agony, she finally decided to end her ordeal by walking out of her marriage.

Following the standard procedure in similar cases, the AALI members immediately informed the Senior Superintendent of Police (SSP), Mr. Anil Kumar Agarwal about Ankita, how she was a victim of domestic violence and had left home to seek support. However, other than treating the letter as a piece of information, the police took no initiative to talk to Ankita, her husband or her parents regarding the allegation of violence.

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As is the norm, the organisation also informed Ankita's husband as well as her parents about her whereabouts and asked them to come to the office the next day, November 30, 2002, to meet Ankita. For the night, Ankita was sent to a safe house.

What became clearer during the interaction was that if Dharmendra Pratap Singh was violent with Ankita, her parents condoned the abuse with their silence and inaction. The family failed to support Ankita when she needed them most. Instead, their unsympathetic behaviour further aggravated her sense of frustration. When Dharmendra Singh admitted that he had been physically abusing Ankita, her mother agreed that she knew about it. Once, after her husband thrashed her, she had run to her parents for shelter, but they sent her back saying that it would be difficult to get her brother married if she stayed on with them.

The family felt that Ankita's marriage should be saved at all cost to uphold the honour of the family and conform to the norms of 'public morality'. Her mother tried to emotionally blackmail her by saying women were not born to live for themselves, they should live to make others happy. So when both her mother and husband pleaded with her to return home, and tried to use her daughter, Methan as bait, Ankita stood by her decision to end the marriage.

The organisation supported Ankita and respected her views to leave her husband. That evening Ankita was sent to Sahayog Legal Cell, Allahabad, a shelter home recognized and aided by the State government of Uttar Pradesh. Sahayog is an advocacy group working on woman's rights issues and works closely with AALI. Ankita's parents, sister and husband would come to AALI office a number of times to talk to Ankita on the telephone. Members of the organisation did everything within their means to help the family keep in touch with Ankita.

But the situation changed dramatically when one day Ankita declared that neither did she want to maintain any relationship with her family nor did she want to be in contact with them. So the next time when her family members came to the office with the intention of talking to Ankita, AALI

members refused to put them in touch with her. Ankita's family was furious, they became abusive, accusing the organisation of trafficking women and girls. Ankita's father even threatened the members that if his daughter did not return home, he would commit suicide by jumping into the river Gomti.

In accordance with Ankita's wishes, the members talked to Dharmendra Singh for mutual divorce. Initially he agreed and even prepared the divorce petition. However, a few days later, Singh changed his mind. Fed up with her husband trying to pressurise her, on December 31, 2002 Ankita decided to move out of the shelter home to live with her partner, Mukesh.

Ankita's parents filed a habeas corpus<sup>1</sup> petition against AALI, stating that the organization had kidnapped their daughter and grandchild. The organization through a Lawyer appeared before the court, and stated the facts, pointing that the organization could not be charged, as it had complied with due process, and was not responsible for adults unwilling to have contact with their families, for whatever reason- and was under no legal obligation or duty to either produce the girl or ensure her appearance. Further, the parents were well aware of the decision of their adult daughter, who did not want to be in contact with them, as they had met the girl when she was in the organization's office, and there is an official record of the same.

The divorce proceedings were kept pending for around a year, after which time, the husband conceded the petition, and at present Ankita is married to Mukesh, and lives with him and her child.



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1. A Writ that allows the Court to command any person (state or non-state) to produce any other person said to be in his/her custody or control.



## **Lata Singh: Orphaned, and Yet Not Free; 2003**

***Lata Singh was treated as a burden by her brothers, yet to leave her family for the partner of her choice needed nothing short of the intervention of the Supreme Court!***

Lata Singh was an orphan and considered a burden by her natal family. Yet when she decided to marry the man of her choice and leave her brothers' family, they not only tortured her but also abused the procedures of the courts and administrative machinery to harass the couple. In a clear case of caste bias and muscle power, the police, instead of arresting Lata's brothers and supporting the couple, arrested her in-laws and refused them bail.

So severe is the violence on women in similar cases that on July 7, 2006, the Supreme Court,<sup>1</sup> ruled in response to Lata Singh's case that there is no bar on inter-caste marriage under the Hindu Marriage Act or any other law; and anyone who harasses; or threatens couples who have undergone inter-caste or inter-religious marriages would be prosecuted. The Court observed that "this is a free and democratic country, and once a person becomes a major he or she can marry whomsoever he/she likes". If the parents of the boy or girl do not approve of the relationship, the maximum they can do as a mark of disapproval is to cut off social relations with that couple. "But they (the family) cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage." The Court also directed that the administration and the police authorities throughout the country should ensure that there are no threats and acts of violence against couples who have undergone inter-caste and inter-religious marriage.

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1. Lata Singh versus State of UP 2006 (6) SCALE 583

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On May 2003, organisations like AALI were involved in rendering help to Lata Singh and her husband, Brahmanand Gupta. Both Lata and Brahmananda belonged to the village Bharka, Farukhabad and had known each other since childhood. Over the years, they developed a liking for each other. Yet, they could not dream of marriage because Lata was certain that her brothers would never agree to an inter-caste marriage.

Lata had lost her father at a very young age and after her mother died, she became a burden for her brothers. There were frequent quarrels in the family about who should bear Lata's expenses. Unable to take any longer all the tensions at home and humiliations heaped on her by the members of the family, Lata decided to leave home. Brahmananda was only too willing to marry her and on November 7, 2000 they got married in an Arya Samaj Mandir administered by the Tees Hazari Court, New Delhi, as it comes under its jurisdiction.

As expected, Lata's brothers, being Thakurs, did not approve of their sister getting married into a Baniya (Gupta) family. To harass and teach the Gupta family a lesson for even daring to marry into an 'upper' caste woman, they falsely lodged a first information report (FIR) of kidnapping under sections 366<sup>2</sup> & 368<sup>3</sup> against Lata's in-laws, namely her two sisters-in-law and two brothers-in-law.

In a show of audacity and muscle power, the Singh brothers forcibly picked up three of the Gupta members named in the FIR from their residence in Delhi and handed them over to the Sarojini Nagar police station in Lucknow. The police did not even question the Singh brothers about their illegal act of 'picking up' ordinary citizens and without making any inquiry, placed the Gupta family members under arrest. This was followed by Lata's brother, Pratap Singh, forcibly taking over Brahmananda's entire non-moveable property in Farukhabad.

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2. Section 366: Kidnapping, abducting or inducing woman to compel her marriage, etc.

3. Section 368: Wrongfully concealing or keeping in confinement, kidnapped or abducted person

Desperate, Lata sought the help of the Rajasthan State Women's Commission. The Commission referred the matter to the National Human Rights Commission (NHRC), which failed to view the case as a human rights issue, nor did it award the couple compensation for the violations and harassment they faced. On May 10, 2001, the NHRC merely instructed the then Senior Superintendent of Police, Lucknow, Mr. B.B. Bakshi to ensure that the case is resolved. As a result, Lata Singh was able to give her statement under Section 164<sup>4</sup> Cr.P.C. in front of the Magistrate in Lucknow that she was an adult and had married her husband with full consent. Until the NHRC intervened, the police did not even take Lata's statement under 161 Cr.P.C.<sup>5</sup> or produce Lata under 164 Cr.P.C before the Magistrate.

On May 31, 2001 the police submitted the final report on the case. A few months later on November 2001, Pratap Singh filed a protest petition for reinvestigation of the FIR in the Court of the Special Judicial Magistrate, Lucknow, claiming that Lata was not mentally fit and out of fear had falsely claimed before the Court that she had willingly married her husband. But when the Board of Doctors of the Psychiatric Centre, Jaipur, examined Lata, they clearly stated that she enjoyed perfect mental health.

Lata and her in-laws were now under the impression that the case was over and stopped attending the Court dates. This was a dreadful mistake because as a result, on July 2, 2002 non-bailable warrants were issued against Lata's sisters- in-law and brothers-in-law declaring them absconders, with the order of attaching the property of the absconders under Sections 82 and 83, respectively. A new round of harassment had begun.

One of Brahmananda's brothers immediately surrendered before the Court; on April 8, 2003 he was arrested from the Court and two days later granted bail. On April 30, 2003, since Brahmananda's sister, Geeta was also named in the FIR; her husband's property too was attached due to her non-appearance in the court. The non-bailable warrant against Geeta further complicated the case as Brahmananda's younger sister, another accused in

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4. Section 164: Recording of confessions and statements

5. Section 161 Cr.P.C.: Examination of witnesses by police

## *Facing Reality*

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the case, had since been married and was pregnant. Her in-laws had no knowledge of Lata's case and the family feared it might jeopardise her marital life.

In May 2003, when Lata approached AALI, the organisation took her case to a lawyer who waived his fees. By this time, Lata and her husband had exhausted all their savings on the protracted legal proceedings. The lawyer filed a petition under section 482<sup>6</sup> Cr. P.C. in the Allahabad High Court, Lucknow Bench since legal technicalities in Lata's case have been exploited to harass the couple.

The judge initially expressed his bias when he commented, "aukat ke bahar kaam karange to yehi hoga" (If one acts out of one's limits, this is bound to happen). However, he disposed off the petition under section 482 Cr.P.C directing the applicants to appear before the Session Judge who would himself scrutinize the charges against the accused. This provided Brahmanada and Lata the opportunity to be heard in court.

Till then, the legal interventions in Lata's case had been piecemeal. The issue of violation of choice and decision-making as a human right guaranteed by the Constitution, had not been addressed by the Courts, and the couple kept running from pillar to post with their two year-old son for their right to be married and to have a family. It took four years for the case to reach the Supreme Court, which gave a landmark judgement that clearly stated that adult couples had the right to marry irrespective of caste and religion.



6. Section 482, Cr.P.C: To prevent abuse of the process of any Court or otherwise to secure the ends of justice

## **Shakuntala Misra & Meena Singh: Fatal Friendship; May 2005**

*One of AALI's first cases of same-sex relationships, it taught members to question every assumption in the media's sensationalized reports*

On May 8, 2005 the Indian Express published a tragic report on the marriage of a lesbian couple who entered into a suicide pact. One of the girls, Meena Singh died on the way to the hospital while Shakuntala Misra survived the suicide attempt.

The report further alleged that the two girls had decided to commit suicide as Shakuntala's marriage had been fixed. Meena, 19, was a student while Shakuntala, 22, was teaching in the junior section at the Arya Kanya Memorial Inter College, Kanpur. The report claimed that Shakuntala had told the police that she had taken Meena to be her husband, but no one in their families could either understand or accept their relationship. The news report also claimed that Shakuntala's forehead was marked with sindoor<sup>1</sup>.

This was the first case of lesbian relationship where AALI intervened. By coming out publicly to support same-sex couples, the NGO was making a political statement in support of couples exercising alternative sexual choice. Since heterosexuality is considered the norm in India, it is not surprising that same-sex relationships remain largely 'invisible' in the country. As a result, those who find themselves outside the accepted codes of behaviour like Shakuntala and Meena face isolation, fear, and constant pressure to hide the truth about their sexuality.

Given the NGO's focus of work on the right to choice, the organisation felt the need to intervene in similar cases but was unable to do so earlier due to lack of time and human resources. Following Meena's death, members

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1. Vermillion or red powder, is a symbol of marriage and is worn only by married Hindu women

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strongly felt that since Shakuntala, one of the partners had survived, it was critical to reach out to her. It did so with the two-fold objectives to

- learn the facts of the case, and
- Assess the nature of support Shakuntala may require.

The investigation by the fact-finding team (FFT) was an eye-opener. It was to become a lesson for activists on thorough investigation and need to maintain a healthy scepticism about police and media reports and question every assumption to arrive at the facts. The team found serious gaps, wrong assumptions and fabrication in the report on the 'suicide pact of the lesbian couple' that violated the basic ethics of media reporting.

It was difficult to trace Shakuntala since the FFT did not have her address and in fact failed to meet her during their visit to Kanpur. Later, based on a telephone number, they finally found her, though the neighbours initially misled them into thinking the family had left the area. Based on the interviews with Shakuntala and her family, the FFT pieced together the following report.

Shakuntala Misra and Meena Singh were friends and shared a history of physical pain due to their ill-health. According to Shakuntala, Meena was perhaps inclined towards depression, as she kept feeling that death was better than pain. Shakuntala's family members said that they had heard that Meena had earlier attempted to commit suicide twice. On May 8, she convinced Shakuntala to drink the poison with her.

There seems to be no immediate reason as to why the two suddenly decided to enter into a suicide pact. Also, there is no apparent reason for Shakuntala to agree to be part of this pact. One possibility is that she did it out of a commitment to her friend. The FFT felt that a psychological evaluation of Shakuntala was certainly necessary.

The team found several lacunae on part of the police and the hospital. The attempt to commit suicide is covered under Section 309 IPC, a criminal offence; however, there was no complaint filed against Shakuntala. Further,

Meena's suicide was also not recorded, and even though her body was brought to the hospital, no post-mortem was conducted. Strangely, there are no police records either of Meena's death or Shakuntala's attempt to commit suicide.

The hospital was aware of the existence of Meena Singh's body, it was declared dead by them, but there are no records in its books. Moreover, Shakuntala, who survived the suicide attempt, was not provided any counselling, nor was she advised to see a doctor. The FFT surmised the 'loopholes' were deliberate so as to sweep the event under the carpet to prevent any scandal regarding a possible lesbian relationship.

The above loopholes seem minor compared to the role played by the media. It violated every ethical standard of a person's privacy and confidentiality, wrote a fabricated and biased report on a sensitive and complex issue and passed it off as facts. The report is written in a manner that is misleading and irresponsible, doing far more damage to the people concerned than in clarifying issues or providing information to the readers. As a result of the media hype, Shakuntala lost her job and found it difficult to return to her family and community.

The press reporter who 'broke' the story did not even meet Shakuntala or speak with her. He did not know where she lived or any other details of her life. The doctors did not permit the media to speak with her; in fact the three days she was in hospital, she was in no condition to talk to the press. She complained to the FFT that the media harassed her.

The reporter quoted the police as the 'source' of information, though the police deny even speaking with Shakuntala. The FFT found the media report wrong on the three counts:

1. Shakuntala's impending marriage precipitated the suicide
2. Shakuntala had sindoor on her forehead. The doctor denied this
3. She gave a statement about taking Meena as her husband

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The FFT after talking to Shakuntala, observed that

1. Shakuntala does not view herself as a lesbian
2. Shakuntala shared a close relationship with Meena and deeply felt her loss
3. Shakuntala had gone through a very traumatic experience and required extensive counselling. On the one hand was the loss of a friend and on the other, her poverty-stricken family has had to suffer greater financial loss and social prestige with the unwelcome media hype.
4. Shakuntala sees herself responsible for the family and as someone who must support her father since she has no brother
5. Shakuntala needs a job, not only for financial reasons but also so that she can regain her self-esteem.

Shakuntala-Meena's case taught the NGO that if women are not comfortable in declaring themselves as lesbians or in accepting that they are in a same-sex relationship, the decision must be respected; otherwise, it can cause them heightened anxiety and aggravate the situation. Learning from past mistakes, the NGO did not delay sending a FFT to investigate the case. Later, with the help of other support groups like Aanchal, Shakuntala found employment in an NGO so that she could live a life of dignity.



## **Nazia-Ramesh, Renu-Punita: A Tale of Two Cases; August 2005**

*It is necessary to be alert and go to the heart of the matter as sometimes, one case gets entangled in another*

It's a story about three young women and one man- Nazia, Renu and Punita, and Ramesh who ran away from their home to live together. They had lived in the same neighborhood in Varanasi, had grown up together and knew each other to become close friends. But the bitter disapproval of their families and the fear of community backlash forced them to run away from home. In the case of the same sex couple in this group, fearing rejection, they denied their relationship even to the activists who were willing to help them. Eventually, the mounting pressure from various quarters on the two couples was enough to break up both the heterosexual and lesbian relationships.

The families found it impossible to accept that Ramesh wanted to marry Nazia. He was a Hindu while she was a Muslim, an alliance that was anathema to Hindus and doomed from the start. The couple did have some support, as they were helped by Ramesh's sister Renu and even more so by her friend, Punita, a smart, well-informed woman who knew how to beat the system.

When the situation grew impossible in their neighbourhood, the four left Varanasi and literally landed on the doorstep of AALI, a women's organization in Lucknow. AALI was known to help and support couples who faced resistance from their families for exercising their right to choose their partners. The Team Leader and Board member of AALI, Tulika and Jashodhara assured Ramesh and Nazia the organization would do everything in its capacity to help them.

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It was at this juncture that a parallel story unfolded. Tulika and Jashodhara long suspected that Ramesh and Nazia were not the only lovers on the run; Renu and Punita might be involved in same-sex relationship, although the two did not reveal anything to her. When Tulika and Jashodhara had thanked Punita for her help and told her she could leave, Renu panicked and blurted out that she wanted to be with Punita. But Renu and Punita initially kept insisting that they were “just friends,” though Tulika and Jashodhara repeatedly reassured them that AALI would be only too happy to also help them. It was only after Renu case worker employed many tactics — sometimes gentle, sometimes harsh — to draw out the truth, the two confirmed that they too were indeed in love and wanted to live with each other.

Women activists, despite their laudatory work, at times exhibit reservations about same-sex couples. This prevents women, who are elsewhere victims of discrimination and violence, from seeking their help. AALI members had helped the four friends and had reassured them time and again of their support. Yet, even they initially could not win their confidence because of deep-rooted fear and bias same sex couples have encountered in the past. Later, Renu and Punita confessed to the NGO that an activist based in Varanasi had strongly advised them, “Whatever you do, keep the story focused on Ramesh and Nazia. Do not let even women’s groups know about the two of you. They will not like it”. Some may argue that it is more important to render unconditional help to those facing discrimination and violence. However, it is also true that it would not possible to offer practical help without a clear picture of the entire situation.

In the meantime, the situation in Varanasi was hotting up. Family resistance to Nazia and Ramesh’s relationship had by now taken on a communal tone egged on greatly by a political party. The possibility of a communal clash was palpable, more so since in a similar case a year before, violence had erupted in the city. When the political party encouraged one of the communities to stage a demonstration outside the police station, the police was only too happy to cooperate. A FIR<sup>1</sup> was filed against Ramesh and

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1. First Information Report

Punita for kidnapping Nazia. The complaint also claimed that Nazia was under the age of 18 years and handicapped. The offence was non-bailable.

AALI immediately conducted a bone ossification examination to establish Nazia's age. The test showed that she was above 18, although there can be a margin of error of one or two years. To complicate matters further, Nazia was pregnant. AALI tried hard to get a maulavi to marry the couple, but failed.

At this juncture, AALI was determined at least to separate the two cases so that there was no further complication. They contacted support groups in Delhi working on same-sex relationships and enquired whether Renu and Punita could be sent to Delhi. The groups readily agreed to help but the problem was, where would the young women stay? Sakhi Sthal, the shelter run by a women's organization in Delhi, had in the past refused to allow women couples to stay. They felt that other women in the shelter would feel uncomfortable in the presence of lesbian women. A Home that finally, quite readily, agreed to give the women shelter was Sahayog, a rehabilitation centre for drug- and alcohol- dependent women.

Initially, things were fine but after some time, tensions starting building between Punita and Renu, as Punita tended to dominate over Renu, trying to control her behavior. This was aggravated by the situation of displacement. Punita felt acutely the loss of her identity in Varanasi. From someone who was accustomed to being in control of her life, she was now confined within the four walls of a Home, always in fear of the midnight knock of the police with an arrest warrant for her.

In the meantime, to diffuse the communal tensions, Ramesh was helped to "disappear". The organization had to inform Nazia's family that she was with them and safe. When the Varanasi police came to Lucknow to take Nazia back to Varanasi for deposing her statement in front of a Magistrate (under Section 164 Cr.P.C), AALI sent two of its members to accompany Nazia, along with a lawyer. However, when they reached Varanasi, they found a mob from a certain community surrounding the police station and demanding the arrest of AALI members. The police were forced to separate Nazia from

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the AALI members, and the latter had to return to Lucknow fearing for their lives. AALI then came to know that the Magistrate had sent Nazia to Nari Niketan. AALI thereafter filed for Habeas Corpus in Allahabad High Court.

During the Court proceedings, it was established that Nazia was above the age of 18 years. At the same time, the judge also acknowledged the need for Nazia to have an independent space so that she could decide quietly without any pressure what she wanted to do with herself and relationship. Nazia ultimately chose to return to her family.

PS: Nazia is with her family, she gave birth to a baby. There is no news of Ramesh or of Renu and Punita, though the two women who had left for Delhi had since returned to Varanasi.



## **Four Men: Victims of lies and bias; January 2006**

**The targeting of gay men by the police have sent shock waves through the sexual minorities and driven them underground**

The history of state intolerance to sexual rights of citizens is a grave issue of public concern. On January 4, 2006, national and regional newspapers reported that in Lucknow, four men were caught allegedly while having sex in public. The men, labeled as homosexuals, were arrested under Section 377 of the Indian Penal Code (IPC), which criminalizes what is deemed to be carnal intercourse against the order of nature and is used to target people indulging in non-procreative sex.

As in other similar cases, section 377 IPC was used in the Lucknow case to target an already stigmatized section of Indian society in a manner, which indicates a flagrant violation of basic human rights by a moralistic state. This is not the first such incident in UP. In 2000, members of an NGO working on HIV/AIDS were arrested under the National Security Act in Almora under Section 377 of the IPC. In times where gays, lesbians, bisexuals, hijras, kothis and other sexual minorities are being increasingly vocal and struggling to establish their rights, the UP state administration is attempting to push the state back to the dark ages by infringing on the dignity and rights of adult citizens. The arrests, in fact, have sent shock waves through the sexual minority population across India and driven sexual minority groups underground.

The arrests raise serious questions about the perception of homosexuality as 'unnatural'. In fact, 'Operation Majnu', launched by the police in a park in Meerut, U.P. in 2005 where young couples were harassed, arrested, beaten and humiliated, also throws into stark relief the grotesque forms that moral policing can take even in the case of consensual, heterosexual intimacy among adults.

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On the basis of the media reports, the National Campaign for Sexuality Rights (NCSR) set up a fact-finding team (FFT) to unearth what happened in Lucknow and to demand remedial action. The FFT consisted of Elavarthi Manohar of the National Campaign on Sexuality Rights (NCSR), Tulika Srivastava of Association for Advocacy and Legal Initiatives (AALI), Lucknow, Jashodhara Dasgupta of Sahayog, Lucknow, Maya Sharma of Parma, Baroda, Vivek Divan, a human rights lawyer from Bombay, and Arvind Narrain of the Alternative Law Forum, Bangalore. Between January 9 and 11, 2006, the FFT met the following people:

1. Alok Sinha, Principal Secretary, Ministry of Home Affairs, Government of UP
2. R.K Tiwari, Additional Director General Police (ADG-Crime), U.P.
3. Anil Kumar Yadav, Station Officer, Gudamba Police Station, Lko.
4. A.P. Singh, Head Mahazar, Gudamba Police Station, Lucknow
5. Rajesh Sharma, Advocate
6. Representatives of various social activist groups and NGOs including National Alliance of People's Movement (NAPM), Vigyan Foundation, Action Aid, Naz Foundation International (NFI), Bharosa Trust, Men's Action for Stopping Violence Against Women (MASVAW), SFR Varanasi, Health Watch UP-Bihar and Citizen's Forum for HIV/AIDS.

The FFT failed to meet the Senior Superintendent of Police (SSP), Lucknow Ashutosh Pandey, who was unable to keep the prior appointment and later excused himself on grounds of ill-health. The team also attempted to meet the four men who were detained in Lucknow Jail but they were unwilling to talk. They appeared to be nervous and unsure of meeting strangers, which is understandable following the harrowing experience they had faced earlier.

According to the FIR lodged by the Lucknow police at Gudamba police station on January 4, 2006 at 12.40 am, they arrested 4 men, Nadim,

Pramod, Santosh and Pushkar, charging them under Section 377 IPC. The four men were supposedly indulging in 'unnatural sex' in a picnic spot and were arrested at 8.30 pm the previous day that is January 3, 2006. Nadim supposedly divulged to the police that he met the other three on the Internet and that they had indulged in 'homosexual sex'. Apart from these three people, Nadim allegedly gave the names and phone numbers of 13 men whom he had contacted on the Internet and with whom he had sex, all of whose names and mobile phone numbers were listed in the FIR. The FIR also stated that the men were members of an association of more than 1600 who discussed homosexual sex and related issues. The report stated that the group allegedly met frequently and identified themselves in public places by using mobile phones and a white handkerchief.

Following the arrest, the media published reports that were both sensational and moralistic. The reporters did not try to probe, understand and inform the readers about the issue of homosexuality, the contentious section 377 of IPC, or raise concerns about the violation of human rights by the State. In fact, most of the media reports violated the ethical practice of good journalism. The photographs of the four men with their faces easily identifiable were displayed prominently and their names and occupations were provided as though they were criminals. The tone of the media coverage was salacious, with sensationalizing headlines like '4 members of International homosexual club held' (Dainik Jagran, 5.1.06), 'Gay Club running on Net unearthed- 4 arrested' (Times of India) and 'Cops bust gay racket...' (Hindustan Times-5.1.06). The use of the word 'international' implied a large criminal network; while adjectives like 'busting', 'unearth,' 'racket' succeeded in giving the impression that something illegal and dangerous was going on, creating fear and suspicion about same- sex associations.

The effect of the police action, combined with sensational media coverage, was to deny the men the right to a fair and free trial. The police, in collusion with the media, judged them and pronounced them guilty even before the judicial process started. A meeting with the lawyers and family members of one the accused revealed that the FIR was a complete

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fabrication. The FFT learnt that none of the four arrested men were having sex in public. More shocking, the four accused were not even present at the alleged spot of the crime.

What transpired was that the police under the supervision of the SSP arrested Nadim on January 3 close to midnight from his home. The police then had easy access to his mobile phone and forcibly extracted the names and mobile numbers of the three other men mentioned in the FIR. The following day at 10.30 am, he was forced to call the other men and request them to meet him at Restaurant, Mahanagar, on the pretext of ill health and the need to fix up a business appointment. Two of the accused responded to the call immediately only because Nadim had a heart attack earlier, and as friends, they were worried about him. So much so, one of the men left the house in a hurry wearing only his bathroom slippers and without taking any warm clothing, though it was a chilly winter month.

The police on January 4 arrested the three men on their arrival at the restaurant. It is important to note that the FIR was lodged on the previous night, 12.40 am, a full 10 hours *before* the entrapment drama at the restaurant. Further, at the time of the alleged arrest (at 8.30 pm on 3 January) at the picnic spot, one of the men was actually watching a movie with his family. Additionally, there is nothing to corroborate the police story other than the complainant, himself a police officer. Also, as per the FIR there was no member of the public who could testify as a witness to the alleged incident.

It is also highly unlikely that there is any medical or other evidence based on the examination of clothes worn during the alleged act, though the possibility of doctoring and producing false evidence can never be ruled out. The FFT was told that all four accused were beaten up in police custody and asked to sign on blank sheets of paper. It was also clear that the only reason Nadim called his friends to the restaurant was because he was beaten, threatened and forced to make the calls.

The interviews by the FFT with the Additional Deputy General, Crime (ADG) and the Home Secretary indicated the deep-rooted bias of homophobia

within the state machinery. The ADG expressed surprise that the issue of homosexuals could be a concern of human rights and questioned whether members of the FFT “approved” of same-sex relationships. He added that by enforcing Sec 377 he was in fact ensuring “socially acceptable norms.”

The Home Secretary pointed out that the accused were urban middle class men and insinuated that the NGO, instead of focusing on the rights of the poor, upheld their human rights of middle class men. Both the ADG and the Home Secretary declared that they were unaware how the prosecution of homosexual men ran counter to the central government policy with respect to providing an “enabling environment that reduces vulnerability of men having sex with men (MSM)” under the National AIDS Control Policy. By and large, the state officials were clear that that they were implementing section 377 ‘impartially’.

Senior police officers in UP are yet to realise that enforcing Section 377 IPC and criminalising homosexuality is fundamentally a regressive step specially in today’s context as :

- There is an all-India movement to repeal Section 377. The movement is based on the Constitutional premise of the right to equality, dignity, liberty and expression and the country is beginning to understand that the state has no role in intervening in the private lives of consenting adults.
- It is not illegal to be homosexual/bisexual in this country and the state should not play a role in moral policing.
- The position of the UP police is at dissonance with HIV/AIDS interventions wherein the government, through its various policy interventions, actually promotes the use of condoms for penetrative sex between consenting adult men.
- It showcases UP as upholding a fundamentally archaic positions at odds with well-accepted human rights positions.

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### *Based on the above, the FFI demands:*

- Withdrawal of cases against the four men and their immediate release
- Immediate suspension pending inquiry of the SSP Ashutosh Pandey, Anil Kumar Yadav (SHO Gudamba Police) and other police personnel for their illegal actions
- Stop moral policing and protect of the rights of all individuals including sexual minorities
- Stop extra-legal measures like torture by the Lucknow police in implementing the law
- Responsible and ethical media reporting which protects the dignity and privacy of all people
- Repeal of Section 377 of the Indian Penal Code



## **Reference**

- \* Savarna-So called upper castes.
- # Jat-A Indo-Aryan tribal groups native to Punjab, Haryana, Rajasthan and Western Uttar Pradesh.
- \$ Brahmin-So called upper caste, Savarna.