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Cry Rape

Are false accusations of rape common in India? Do the accused get a fair chance to defend themselves?



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Last October, A 24-year-old lecturer at an engineering college in Greater Noida got a phone call from his father. Sahir, who has requested his last name be withheld, had moved to the city from a

village in western Uttar Pradesh four years earlier, and had spent less than a year on his first job; about a year ago, his parents moved in with him. He remembers his father's voice on the telephone. It was thick with shame. A woman, his father said, had visited home and was saying that Sahir had slept with her and reneged on his promise of marrying her. "I was shocked and appalled by the allegation.

I told him, 'Don't worry. I will explain when I get home'," Sahir says.

Sahir did not get the chance. A few hours later, he was summoned to the police station and arrested. He was charged with rape and criminal intimidation.

There is no way of verifying the veracity of Sahir's claims. The case is currently being tried in a fast-track court in Delhi and its judgment is awaited. According to him, however, although he was romantically involved with the girl levelling the allegation for more than two years, they never had sexual intercourse, let alone his forcing his girlfriend to undergo an abortion (as he says she has told the police). He claims he never promised to marry her. What he cannot understand is the charge he faces—that of rape. He says he has committed no act that could have him arraigned under Article 375 and 376 of the Indian Penal Code, the country's anti-rape laws.

Sahir's case is like those of many others that various men's rights groups in India frequently point to. False rape cases are on an exponential rise, they say, and few take note of it. According to these groups, fraudulent allegations of rape make up the bulk of 'rape' reports in India. They point out that in 2011—according to the National Crime Records Bureau—only 25.9 per cent of rape cases resulted in convictions, thereby implying that the rest of the cases were based on false accusations.

While that may not necessarily be a valid assumption, given that the principles of jurisprudence dictate that an accused must be held innocent until proven guilty—and proof is always tricky in rape cases and so several individuals are acquitted on lack of evidence—there is reason enough to believe that false charges of rape are on the rise.

A Delhi sessions court made an observation to this effect in March this year while acquitting four individuals of rape. In the words of Additional Sessions Judge Virender Bhat: ‘It is becoming a very difficult job, nowadays, for the courts to differentiate genuine rape cases from false ones. Cases like the present one create a well-founded belief among the public as well as the judiciary that the rape related laws are misused with impunity.’ In this particular case, as the court determined, the husband of the alleged victim had made her file a rape case against two brothers and their parents (for abetment of the crime) to settle a personal grudge.

Two months later, the Delhi High Court made similar observations and directed trial judges to be vigilant on mala fide charges. Justice GP Mittal stated then, ‘Rape causes the greatest distress and humiliation to the victim, but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implications.’

Sahir had to spend 14 days in Tihar Jail before he was granted bail. He lost his job. He had to change his apartment. And, since his arrest, he has not visited his native village in UP because news of his arrest has ruined his reputation there. He and his parents keep away from all social events in fear of being asked about the status of his case. “I finally got a job as an assistant professor a few months later—but by keeping my past secret,” he says. “I wish the case is resolved soon. But I’m also afraid. What if I am convicted?”

Feminists argue that false accusations make up only a tiny fraction of such charges, and that public discussions on this phenomenon only detract attention from the serious problem of men forcing themselves upon women. No doubt, this is a serious issue. However, men's rights groups assert that the cause of justice is ill-served by ignoring what is now an equivalent malaise: the use of rape charges, with its heavy penalties, as a tool of mala fide intent.

How common false accusations are is hard to assess. Swanchetan, a New Delhi-based organisation well known for aiding survivors of violence, abuse and trauma, carried out a five-year-long study from 2003 onwards that examined several rape cases lodged. In all, the group studied 113 cases, the number it was called in for during this period by various police stations to counsel rape survivors. Swanchetan found that 18.3 per cent of all cases in the sample—almost every fifth, that is—were fake. On investigation of the reasons, the researchers learnt that 25 per cent of the fake rape complainants had animosity towards the accused as their motivation. Another 25 per cent had filed cases at the behest of family members. In about a fifth of the false cases, the individual was 'coached' to allege rape to settle a family dispute. In about 15 per cent of cases, the individual panicked and alleged rape after she had consented to sexual intercourse. And the remaining 15 per cent, according to the organisation, defied categorisation.

According to Dr Rajat Mitra, director of Swanchetan and a clinical psychologist by training, "One should not look at those who falsely accuse [men] as liars. In most cases, they are being forced by someone else to file such a case." Among the cases Dr Mitra discusses is the case of a woman who was gangraped by three men in Dwarka. However, she filed a case against three other individuals because her rapists had threatened to kill her if she pointed them out to the police. In another case, a 13-year-old had falsely accused a policeman of raping her because her father bore a grudge against the cop. "There are so many occasions when the girl breaks down during counselling and confesses that she had consented to sex with the accused," says Dr Mitra, "But she could not dare tell her parents this."

The clinical psychologist admits that the study had a small sample and the figures are based on what accusers confided to him during counselling sessions. “The number otherwise could be larger,” he says. In April 2010, the Pune Police claimed that around 74 per cent of reported rapes involved consensual sex where the accused had later reneged on a marriage promise. According to *Pune Mirror*, a local paper, Crime Branch officials had put three years of rape cases registered in the city to scrutiny before arriving at this conclusion. The figure evoked outrage among women’s groups, which accused the police of distorting facts to shrug off their responsibility for the safety of women. Himanshu, a singer and guitarist, is embroiled in one such case. He was arrested as an alleged rapist two years ago. His then girlfriend had accused him of sleeping with her on the pretext of marriage. According to her, they had been in a live-in relationship for over three years, but he had later moved out and started avoiding her. “I want the police to punish [him] so that he doesn’t spoil any woman’s life by making false promises,” she was quoted as saying in *The Indian Express*.

Himanshu claims that while he was romantically involved with the woman, he was neither living with her nor in a sexual relationship. He shows a medico-legal document of the medical examination conducted on the woman after her allegation that mentions an intact hymen. “See,” he says, “she was lying.” This report, Himanshu’s lawyer has told him, is why he is likely to be acquitted by the Judiciary.

According to the singer, their relationship first ran into trouble when the two went to the UAE for work. Himanshu got a three-month long contract to sing at a hotel, and he took her along as a co-singer.

However, he claims, she did not put the required effort and the hotel refused to pay the duo. She was unhappy with him about this, he says. After a few months of their return to India, he found that a case of rape and cheating had been filed against him.

“The slur of a ‘rapist’ is not easy to live with,” says Himanshu, who has spent three nights in Mumbai’s Malwani Police Station lockup and another 21 days in a Thane prison. On his first night in the Thane jail, he was slapped by other undertrials as part of a custom that all rapists must be dealt with this way. No one, apart from his lawyer, came to visit him during this period. After he was eventually granted bail, he found his family members keeping away. All he could do was live alone in the city, visit his lawyers and try to get work. “On the day I returned, I googled my name,” he says, “Earlier, I would find links of my performances. This time, there were news reports about my being a rapist.” Work has been tough to come by, and he has not got a single gig with his former band members.

In 2010, a pilot with Jet Airways was arrested for having allegedly raped his stewardess girlfriend. Both were originally from Uttarakhand and had been in a live-in relationship. According to the woman, she had agreed to live with the pilot, Varun Agarwal, because he had promised to marry her. This, however, was a promise he did not keep. On her complaint, Agarwal was arrested at Mumbai’s domestic airport and put behind bars for 14 days. It was widely reported in city newspapers. “The arrest was not fair,” says Laxman Kanal, his lawyer, “The case was quashed two years later, but the damage to his reputation was done.”

Kanal is seated on the fifth floor of Bandra’s Family Court in a room full of lockers with names of owners on them. Agarwal’s parents, he says, were against the match and he did not want to disobey them. “In anger,” he says, “she had him booked under sections 376 (rape), 420 (cheating), 323 (causing hurt) and 506 (criminal intimidation).” While the pilot did not lose his job, the airport confiscated his airport entry pass until his name was cleared. “He could not work for almost two years,” says the lawyer, “It was also a shameful period for him and his family. His name was there almost every day in the papers.” During this period, Kanal mentions, Agarwal was resolute on filing defamation charges against the complainant once he was acquitted. Since his acquittal, Agarwal has married and resumed his job with Jet Airways. He refuses to talk about the case. “It turned out unfairly for me, I know,” is all he has to say, “I

wanted the person who caused this to be held accountable. But once I was acquitted, I was just happy to have my name cleared. I let it be.”

Men’s rights groups contend that India’s rape laws have a glaring loophole: the absence of a ‘misuse clause’ that could deter false accusations. According to Amit Deshpande, a member of Save India Family Foundation, a men’s rights group, innumerable presentations had been made to the Justice Verma Committee, which was set up last year to recommend amendments of sexual assault laws, for the inclusion of such a clause. But the plea was entirely ignored.

Many believe that such a misuse clause could work against the casue of justice overall. Padma Deosthali, a coordinator with CEHAT, a research and health advocacy group that works closely with rape survivors, points out that rape remains highly unreported in India. “We need to understand that because of the stigma associated with rape, very few women report it,” she says, “In such a scenario, if one brings in such a clause, fewer victims will likely come forth to seek judicial redressal.”

Since the 16 December Delhi gangrape case and the subsequent protests and demands for tougher penalties for sexual assault, some lawyers fear that the public campaign has adversely impacted justice in rape cases. Sitting in a cabin on the first floor of a South Mumbai building crammed with lawyers’ chambers, Parvez Ubharay, a senior advocate, opens a newspaper with a page full of rape news. “Look,” he says, “Every report almost assumes that the accused is guilty. That’s unfortunately what’s happening now. The media presumes every accused is guilty, the police don’t want to take a chance, and the judges want to appear tough.” According to him, even bail in rape cases is increasingly difficult to get.

A month ago, a sessions court in Delhi, while acquitting a 75-year-old man accused of rape by his domestic help, observed that since the 16 December gangrape, such a climate of opinion has

been generated that ‘the mere statement of a lady that she has been raped, came to be taken as gospel truth, on the basis of which the accused was arrested and chargesheeted’. The judge, Virender Bhat, further stated, ‘It is these false cases which play havoc with the crime statistics, leading to the labelling of Delhi as a ‘rape capital’. Nobody bothers to see in how many cases are the accused in fact convicted. Media turns a blind eye towards acquittals. The acquittal of an accused is not noticed at all and he continues to be labelled as a ‘rapist’ even after his honourable acquittal.’

As demands for speedy justice peaked after the Delhi gangrape case, as many as six fast-track courts to deal with sexual assault cases were set up in January this year. According to a report in *Free Press Journal* in February, around 500 cases of sexual offence were transferred to these courts. However, in the first month, of the 27 cases that had been disposed of, only 12 led to convictions. Acquittals were ordered in 15 cases. The judges found that the testimonies of most victims were either unreliable or they had turned ‘hostile’ during trial.

In 2011, a primary school teacher in Thane’s Asangaon region—married with two children—was arrested for the alleged rape of a colleague. According to him, he was involved in an extramarital relationship with the complainant when she joined the school as a teacher in 2006. The affair, he says, carried on even after the complainant got married in 2007. A couple of years later, fearing repercussions, they terminated their relationship. He claims that when the complainant’s husband learnt of the affair, he made her file a case of rape against him.

The teacher was imprisoned for seven months before being granted bail. He’s also been suspended from work. When we meet at Thane Railway Station, he wants to learn how he can conduct a sting operation to reveal the truth. “Let’s do it. Let’s do it,” he says repeatedly, keen to trap the police and complainant on record speaking of how they framed charges against him. Once I dissuade him, he leaves dejectedly. Sahir, on the other hand, claims he is regularly approached by his former girlfriend. She recently called to invite him for her sister’s wedding.

“She says she is in love with me and that she will withdraw the case if I marry her,” he says.

“We were considering this, me and my family. But it will be wrong.”

ABOUT THE AUTHOR



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