

INVESTIGATION REPORT

**SEXUAL ASSAULT OF A DEAF MUTE JUVENILE
IN OBSERVATION HOME, UMERKHADI (OHU)
ON SEPTEMBER 21, 1997**

The investigation was conducted by

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Investigation Team appointed by:

FACSE

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Rights of the Child:

*The convention on the **Rights of the Child**, adopted by the United Nations General Assembly and later ratified by the Government of India , provides in Article 19 that State parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Such protective measures, Article 20 states, should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child, as well as for other forms of prevention, and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.*

The Juvenile Justice Act, 1986:

This Act provides for the care, protection, treatment, development and rehabilitation of neglected and delinquent juveniles. Juveniles are girls below 18 years and boys below 16 years. A neglected juvenile includes a juvenile who is either found without having any house or settled place of abode and without any ostensible means of subsistence and is destitute; or, is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain.

Incident Investigated:

Place: The Observation Home at Umerkhadi (OHU)

Nature of Incident: Sexual Assault

Date: September 21, 1997.

Survivor: 15 year old neglected juvenile, housed in the OHU for last two years, and referred to as Billa number 31 in all available documents pertaining to her case. Only recently she has been given a name.

Offender: Shivaji Laxman Nanavare, employed as cook at the OHU.

Process of Investigation:

Different members of the investigation team had meetings with the following persons :

1. The then Acting Chairperson of the Children's Aid Society (CAS) and Chairperson of the Juvenile Welfare Board (JWB).
2. Members of the JWB and Governing Council of CAS.
3. Superintendent and other officials of OHU.
4. Police Officials of Dongri Police Station.
5. District Social Welfare Officer of the Women and Child Welfare, Government of Maharashtra.
6. Experts from the Mazgaon School for the the Deaf and Mute Children who interrogated the survivor on January 10, 1998.
7. Records at the OHU and Dongri Police Station.

As the investigating team did not have the expertise of efficiently communicating with a deaf mute child, nor did we want the child to recount the traumatic experience unnecessarily, we decided to obtain information from the experts who had already interrogated the survivor.

Summary of the case:

The survivor, Billa No. 31 conveys that when she went into the kitchen of the OHU in the afternoon of September 21, 1997, Mr. Shivaji Laxman Nanaware, the cook offered her fruit, pushed her down on the floor, pulled open the '*nada*' that holds her *salwar* and got on top of her. Three inmates of OHU, Razia Sultan aged 15 years, Sagira Parvin aged 12 years and Nasreen aged 15 years, who are in search of the Billa No. 31, enter the kitchen and witness the cook Nanaware lying over the survivor. When they came in, the cook got up, zipped up his trousers and offered the three girls some fruit. They refused taking the fruit, took the survivor with them and rushed to report the incident to the *mausis*.

The survivor clearly indicated in the interrogation conducted by the Dongri Police on 11th October 1997 that this was an incident of sexual intercourse without her consent. This amounts to *statutory, custodial rape*. **She also conveyed that she was assaulted sexually by the same person twice earlier on the same premises**

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Sequence of Events:

September 21st 1997: On the afternoon of September 21st while the *mausis* (female attendants) of OHU are sitting for lunch, they realise that the girl, Billa no. 31, is not to be seen. *Mausis* ask three other girls to go in search of her. The three girls immediately set out to look for their companion and when they reach the kitchen, they see the cook, Nanaware, lying on top of her. They report that 'as soon as he saw them and realised that he had been seen, he got up, zipped his trousers and offered them fruit'. They refuse to take the fruit and quickly take their friend away to where the *mausis* are sitting.

The three witnesses report what they have seen immediately to the *mausis* who in turn report to the Matron on duty. The Deputy Lady Superintendent is informed by 8 p.m. on the same day, by the Matron. Beyond this, nothing is done by the officials of OHU on the day of sexual assault.

September 22nd: Superintendent of OHU is informed of the incident of sexual assault in the morning. Medical examination is carried out by the doctor on duty at OHU on request of the Superintendent.

Medical examination results recorded on a note of paper with OHU stamp on it reveal that there were at the time "*no abnormalities detected on systemic examination. The gynaecological examination showed an old tear of the hymen, no evidence of injuries, abrasions or tears of the genitalia. Examination of the skin similarly revealed there was no evidence of injuries on the body of the girl*". Barring this much medical record, the doctor did not conduct a thorough medical examination, and interestingly, did not collect any forensic record/evidence mandatory for doctor examining such cases. There is also no record on whether survivor had taken bath/washed herself in nearly 24 hour between the sexual assault and the medical examination. However the survivor's clothes are sealed and kept for forensic examination.

Medical examination of the cook, Nanaware is not requested on this day, nor have his clothes been kept for forensic evidence.

September 23rd: There is no record of any action taken.

September 24th: Acting Chairperson of the OHU, who is also a member of the Juvenile Welfare Board, who was hitherto on leave in Pune (a telephone call away) returns to Mumbai. Superintendent immediately informs the Acting Chairperson about the incident. The Chief Officer of Children's Aid Society (CAS) is also informed about the incident. The cook, Shivaji Laxman Nanavare, is suspended from duty. He, however, is allowed to remain in his quarters on the premises of the OHU.

September 25th: There is no record of any action taken.

September 26th: The Acting Chairperson and one other member of the OHU, interview the survivor and two of the three witnesses (The third witness is not interviewed as the Acting Chairperson claims that she is a "habitual liar"). The statements given by all of them strongly suggest that sexual assault of the girl has indeed taken place. Detailed report ready. No further action taken. No explanation for inaction.

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September 27th: Acting Chairperson also asks a member of Governing Council of the CAS, to make inquiries into the incident at the OHU, with special reference to the accused. There is no documented follow up of this request except for a letter dated 16th October, 1997 from the same member saying that the inquiry could not be conducted.

September 28th: and 29th: No record of any action taken.

September 30th: Executive Committee meeting of CAS is held as per regular schedule. No representative of Department of Women and Child Welfare and Juvenile Aid Police Unit (JAPU) attended the meeting, although their routine attendance is expected. In this meeting, this Case is discussed. However, no action is planned, no explanation given or sought for inaction.

October 1st: Juvenile Welfare Board (JWB) was 'officially' informed of the incident by letter signed by the Superintendent (a member of the JWB is the Chairperson of the Children's Aid Society which was already asked to investigate the matter!). Inquiry into the incident is ordered.

The conclusion of this inquiry is also that the girl, Billa no 31, was sexually assaulted by the cook of OHU on the premises of OHU on 21st September and that a police complaint **would be appropriate**. It was decided that JWB would take up the matter.

October 2nd to October 8th: No record of any action taken.

October 9th: District Social Welfare Officer (**DSWO**), Department of Women and Child Welfare, Government of Maharashtra, receives an anonymous call at the Worli office in Jamboree *maidan* about the incident of an inmate of OHU being sexually assaulted by the cook. He visits the OHU on the same day and makes his own inquiry by speaking to the survivor and taking a 'statement'.

Between 9th and 10th October there is some verbal communication by the District Officer with members of CAS & JWB about (i) filing a police complaint about the incident; (ii) threats about withdrawing funding to the CAS; and (iii) organising arrest of key persons of the CAS.

October 10th: Acting Chairperson finally gives "permission" to make the police complaint. The management of the CAS and the staff of the OHU insist that the inquiry by police should be carried out in daylight, i.e. before 6 p.m. However, the police complaint is not filed by CAS immediately after the permission. The DSWO files a complaint at Dongri Police Station. Dongri Police reach OHU at around 9 p.m. to interrogate the survivor and the three witnesses **without a female constable**. Interrogation of the survivor is done with the assistance of two experts from the School for Deaf and Mute Children, Mazgaon. In this inquiry, it was concluded that the girl survivor was sexually assaulted. The DSWO was present with the police all along when this took place. The complaint was filed vide Cr. No 177/1997 dated 11th October 1997 at Dongri Police Station under section 354 and 376 of the Indian Penal Code (Outraging a woman's modesty and rape).

The girl survivor also conveyed that twice earlier she was sexually assaulted by the same person (the Cook) at the same place (the kitchen).

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At 11 p.m. on October 10, 1997, the three witnesses along with the survivor are taken out of the OHU in a police van, by the police. It is reported that the OHU officials protested and resisted this action of taking girls at night, alone and without having any women police. The two experts from the Deaf and Mute School, who interrogated the survivors are given lift back home in the same van and informed that the survivors and witnesses were being taken to J. J. Hospital. No woman police accompanies the children nor are OHU staff permitted to accompany them. There is no explanation why witnesses were taken to the hospital. The Investigation Team could not have an opportunity to examine the medical records prepared by the J. J. Hospital. Interestingly, all these things happened in presence of the DSWO, who should have made efforts to protect girls from being taken away by male police so late at night.

October 11th: The police return girls in early hours of the morning to the OHU. The accused, Nanaware, is arrested by Dongri Police.

October 13th: District Social Welfare Officer (DSWO), Mumbai, of Women and Child Welfare Board, writes to the CAS for a detailed report of the incident and explanation on the delay of 20 days in complaining to the police.

The Chairperson, Juvenile Welfare Board (JWB), demands an explanation from the police for taking away girls, in the manner they did, at 11 p.m. on October 10. The Dongri police apologises for the same. The apology is accepted by the JWB.

October 15th: Chief Officer (CO) of CAS replies with details about the case to the DSWO. The letter states that the Superintendent on duty on September 21st, 1997 claimed to be confused about the procedure to be adopted in such cases. The delay in reporting the case to the police is stated to be because the **JWB had 'many other serious and urgent cases to deal with during the weeks after the incident took place'**. Further, the CO claims that directly informing the police without permission of the Juvenile Welfare Board amounts to **'contempt of Court'**. This was stated to be one reason for the delay.

History of the Survivor:

The girl was taken under custody of care by the police from Mumbai Central railway station in 1995 as a neglected juvenile and placed in the OHU. Initial medical examination at J J Hospital reveals that she is deaf mute and has an IQ of 80. Her age assessed at the time of entry to OHU was 13 years.

During her two year stay at OHU she has not been taught any communication/language skills although there is a child guidance clinic and referral facilities and ironically, the Chairperson (now not there on this post) of CAS is the general secretary of an institution which runs school for deaf mute children.

CONCLUSIONS AND CONCERNS

For long, there has been public concern about the condition of children at the institutions where they are supposed to get care and protection. Thus, the prime concern of the Investigation Team has been the care needed for the survivor and the existing inmates of the Observation Home, and indeed to aid in the process of getting justice for the survivors. Further, it is also true that long term efforts are needed for affecting changes in policies towards these children and for improving systems at these institutions. The Forum Against Child Sexual Exploitation (FACSE) would indeed continue making such efforts as a part of the follow up.

(A) CONCERNS REGARDING THE CHILD SURVIVOR

The way children are treated at the OHU:

- The survivor has been at OHU for *two years*. Section 27 (3) of the Juvenile Justice Act 1986 states that any enquiry of a child taken under care shall be held expediently and shall ordinarily be completed within a period of *three months* from the date of commencement unless for special reasons to be recorded in writing by the competent authority. The “competent authority” in the case of neglected juveniles is the Juvenile Welfare Board. We would like to know what were the efforts made to locate the parents/guardians of the survivor and if they were not located for so long, why was she not transferred to a suitable institution?
- In these two years the girl has *not yet been given a name*. Official sources claim that names are to be given only when the child's case is disposed off, i.e. at the time of leaving the home (in this case OHU). This should have been within three months. But for two years the survivor has been there, her case has not been disposed off, and she is still referred to as Billa No 31. This is not only shameful, but utterly insensitive to the social and emotional needs of the child.
- In two years there has been no effort to teach the child the basic communication skills for a deaf and mute. The Child Guidance Clinic on the premises has no staff or facility for teaching children these skills. No effort was made to refer the child to the nearby hospitals or schools for differently abled children. Ironically, the chairperson of CAS (now no longer there as chairperson) is the general secretary of an institution which runs school for deaf mute children.
- Staff of CAS voice their inability to care adequately for these children due to understaffing. There is no recorded evidence of networking with institutions and NGOs who are capable and indeed willing to take the children under their care or advocating for the required provisions within the institution.

Sexual Assault of the Survivor and Concerns for Her Well-being:

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- The medical examination, ordered by the Superintendent of the OHU on September 22, 1997 for investigation of sexual assault and conducted on the same day by the doctor on duty at the OHU, was inconclusive because it was incomplete. The medical record scrutinised by the doctor assisting the team, clearly shows that although the doctor was supposed to investigate sexual assault, no attempt was made to collect any forensic evidence aside from the clothes she was wearing. For instance, the doctor did not care to find out and record, whether the survivor had taken bath or washed herself as it was nearly a day after the sexual assault. There was no attempt to collect specimens from the vagina to establish whether there was semen as a result of the sexual assault previous day. Indeed, there was no attempt to collect the forensic evidence.
- Was the doctor unaware of the procedures to be followed while investigating a case of sexual assault? In that case, the doctor should not have accepted to do the medical examination, and the ethically and legally correct way would have been to refer the case to appropriately qualified doctor. To accept the case and not collecting forensic evidence, raises ethical and legal questions about the doctor's behaviour and intentions. We feel that this conduct of the doctor should be investigated by the competent authority like the Maharashtra Medical Council.
- There is no recorded evidence of diagnosis, prevention or treatment of Sexually Transmitted Disease or Pregnancy which are highly likely to occur in such cases.
- Every assault, more so in sexual assault, inflict physical and emotional trauma on the survivor. Care must be given to the survivor to cope with the trauma. In this case, there has been no attempt to deal with the trauma the survivor suffered from the sexual assault which was not the first suffered by her from the same offender (first two assaults were not reported). For twenty days after the third sexual assault of her became known, she was kept on the same premises, where the offender, suspended on the third day after the incident, still lived in his quarter provided by the OHU. It was only after the police complaint was made that on October 11, 1997, the offender was arrested and thus removed from the premises, and the survivor sent to another institution. Thus, for twenty days after the known sexual assault, the victim was made to stay in the same premises where the assault took place and the offender was residing. As far as we know, at least till December 3, 1997, no referral has been made to a clinical psychologist. We strongly feel that the child survivor must be provided such care by properly qualified clinical psychologist immediately.
- The institution also failed to provide legal aid to the child. According to the Maharashtra State Project Rules, 1993, No. 35 Duty Counsels should be available for the purpose of providing legal assistance to the children.

(B) CONCERNS ABOUT THE DELAY IN REPORTING THE CRIME AND BEHAVIOUR OF CONCERNED OFFICIALS, INCLUDING POLICE

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- While JWB/CAS/OHU may have a right to hold their own inquiries for their internal matters, can they take up the work of police investigation in a grave criminal offense like rape? More so, when their internal inquiries are not *in addition* to the police investigation, but, as happened in this case, are meant to *substitute* the work of police. Legally, a member of the JWB is not empowered to try the offense of rape against an inmate of the Observation Home. Rape is triable by a Sessions Court and the inquiry must be conducted by the police. Attempting to conduct local inquiry amounts to assuming jurisdiction where there is none. A Magistrate who is not empowered by law cannot take cognizance under Section 190(c) of the Cr.P.C. On receiving a complaint of this nature, a Magistrate who is not competent to take cognizance of the complaint must direct the complaint to the Court which has the jurisdiction to do so. In the case of rape this is the Sessions Court. In the case of offenses committed in the OHU, the Dongri Police has jurisdiction to investigate an offense. Also, the 2nd Additional Metropolitan Magistrate's Court at Mazgaon has jurisdiction to take cognizance of all offenses in that area.
- Can we disregard the fact that the minor is the survivor and the accused is an employee of the OHU, an adult over whom the JWB has no authority? The claim that directly informing police without permission of JWB would amount to contempt of court is a serious matter as JWB cannot hinder any proceeding against crime. It is against the interest of the survivor especially when they do not have any system of efficient, timely communication, nor mechanisms to respond immediately as seen in this case.
- If the inquiry was being conducted locally, why was the accused not taken into custody immediately? Why did the inquiring authority not have the accused examined immediately and have his clothing and other specimens sealed for forensic examination?
- There is a lapse of twenty days between the date of the assault and the report to the police. The JWB claims that they were busy with more serious cases. A list of these 'serious' cases would perhaps explain why other matters have taken priority over a grave and cognizable offense.
- The police have taken away minor girls for interrogation in the absence of guardian and after the permissible time? Why were the girls who were only witness to the sexual assault also taken away by the police in this manner and reportedly subjected to medical examination? Who takes responsibility? Is an apology by the police, solicited by the Acting Chairperson, sufficient to absolve all persons in charge of the minor girl, and the police? Why the legal guardians of the girls have just accepted the apology and not taken full action available under the law against the police?
- Failure to report the accused to the police and failure to have the accused medically examined immediately, amounts to suppression of evidence in a case of sexual assault. Suppression of evidence is a punishable offense. Section 202 of the Indian Penal Code states that '*intentional omission to give information of offense by a person bound to inform shall be punished with imprisonment of either description for a term which may extend to 6 months or with fine or both*'. Section 212 states that '*it is an offense to harbour or conceal a person who one knows or has*

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reason to believe is an offender shall be punished with imprisonment upto 3 years and fine.' In this case, for twenty long days, the police was not informed. Instead of preserving and collecting evidences, an in-house incomplete medical examination was conducted in which the doctor made no attempt to collect forensic evidences, and the accused, though suspended from the work, was harboured in the premises, not arrested, nor subjected to medical examination.

- According to Cr. P.C. any citizen may report a cognizable offense to the police. Thus, in this case, the Acting Chairperson, CO of CAS, all official who knew of the crime, all other members of CAS who happened to attend the Executive Committee meeting of September 30th, 1997, Superintendent, Deputy Lady Superintendent, Matron and *Mausis* are answerable for omitting to report the incident to the police whenever they were informed about it from any source. It has been reported that some of these officials have resigned or suspended. But is the suspension from work sufficient? Should they not be tried for the cognizable offense of suppression of evidence?
- CAS were informed about the event but did not deem it appropriate to prepone the executive committee meeting held on 30.10.1997, six days after reporting incident to the Acting Chairperson.
- Lastly, when JWB is expected to oversee the functioning of CAS, is it procedurally correct to appoint a member of the JWB in the place of the Chairperson of CAS?

We, the members of the Investigation Team, and all who assisted us in this work, hereby place this report to people of Mumbai and the country. We hope that this report will throw light on how the unfortunate children of this country are treated in the institutions specifically established for their care and welfare. While the whole system does need great amount of change, let us also keep in mind that there is a minor girl survivor who is in need of care and is demanding justice. We appeal to all concerned individuals and organisations to come forward for this daunting task, and also join the efforts of the Forum Against Child Sexual Exploitation in bringing about changes in the system so that no child has to live with a name "Billa No. 31", and no child is sexually assaulted as she was.