

30th September, 2020

To

Hon'ble the Chief Justice of India
And
Companion Hon'ble Judges of the Collegium
Supreme Court of India
Tilak Marg, New Delhi- 110001

Respected Lordships,

We are writing to you out of much anguish and distress over the manner and procedure in which situation has been progressing with respect to the tragedy that struck a 19 year old dalit girl from Hathras, U.P.

The news articles, videos and information circulating in the media are not of a reassuring nature to the country's citizens and its law officers. We would like to highlight the series of incidents as have been widely reported, for the sake of convenience, with a focus on the police response.

The unfortunate incident took place on 14th September 2020 in Hathras, and, according to an NDTV report¹, she gave a statement saying that she was dragged by her dupatta into the fields from a spot where she had been cutting grass with her mother and brother. The victim's brother alleged that they were helped only after a public outrage. The report also states that initially the police registered an attempted murder case, but added rape charges only after the woman's formal statement was taken. Aligarh Inspector General of Police, Piyush Mordia declared that the victim's allegations of rape were not confirmed as the medical examination did not reveal anything related to rape, and are waiting for forensic report. The victim's family believes the attack had been planned as the accused men, who all belong to Hindu upper castes, had beaten up members of their family earlier. The report also stated that the victim's body was taken to Delhi without the family's consent.

According to detailed article published by The Newslaundry², the mother of the victim described how she had found the body of the victim – “My daughter was lying naked with her tongue protruding from her mouth. Her eyes were bulging out and she was bleeding from her mouth, her neck and there was blood near her eyes. I also noticed bleeding from her vagina. I quickly covered her with the *pallu* of my saree, and started screaming”. The same article further stated that immediately her brother and mother drove the victim to the Chandpa police station on their motorcycle and her brother alleged that “the police kept saying, “Just take her from here. She's being dramatic and lying here. Do you want to trap

¹ <https://thewire.in/women/hathras-gangrape-dalit-woman-dies>

² <https://www.newslaundry.com/2020/09/29/help-us-get-justice-please-dalit-girl-assaulted-in-ups-hathras-succumbs>

us?”. A cousin of the victim, the article further stated, said that the family took the victim in an ambulance to a local hospital where she was kept for two hours before being referred to the Jawaharlal Nehru Medical College and Hospital, Aligarh, and further said that, “A policeman accompanied us halfway to the hospital and then left.” The article further stated that the victim was shifted to ICU after passage of six days. Dr Shahid Ali Siddiqui, principal of the JNM College and Hospital, said, due to spinal cord damage, the victim was suffering from quadriplegia, meaning complete paralysis in all four limbs. And the injuries on her neck, he added, were causing her “breathing problems”. Thirteen days after the victim had been admitted to the hospital, the doctor said that they were yet to confirm if sexual assault had taken place. “The girl is serious but we cannot confirm sexual assault as of yet. A sealed report from our end has been sent to the district administration”, he told Newslandry.

As per an article published in the Indian Express³, the four upper caste men, charged with gangrape and attempt to murder, apart from charges under the SC/ST (Prevention of Atrocities) Act, were arrested on a statement given by the victim when she briefly regained consciousness on September 23rd. The family further alleged as per the same report that the main accused, Sandeep, and his family had “always harassed Dalits in their area”. Nearly two decades ago Sandeep’s grandfather had been booked under the SC/ST Act for thrashing the victim’s grandfather over a petty issue.

As per one report published by The Hindu⁴, leader of the Azad Samaj Party, Chandra Shekhar Azad, met the girl in JNMCH, and alleged that the administration had delayed in referring her to Delhi, as the facilities in Aligarh were inadequate. One Harpal Singh, head of the Agra division of the Azad Samaj Party, as per the same report, said, “From delay in the arrest to dilly-dallying in shifting her to Delhi, the administration’s role is questionable”. The report furthermore stated that one Brahm Singh, Circle Officer, Sadabad, who recorded the statement of the victim on September 22, said her physical examination to determine if she was raped was done after she alleged gang-rape by four men. Upon pointing out to the circle officer the circumstances under which the victim was found, he refused to comment, and said samples had been sent to the forensic lab in Agra and results were awaited. The Hindu article also reported, it is worrisome to note, that “sources in JNMCH also indicated that there had been “procedural delays possibly because of pressure from the administration”. “It could hamper the forensic investigation,” said a doctor who was part of the process.”

On 29th September 2020, the victim succumbed to her injuries at Safdarjung Hospital. It is from this point onwards that the actions of the police officials seem unfathomable and raise many questions which intertwine between our rule of law and our nation’s humanity. Barely had the victim’s family begun to process their loss, when actions of the UP police officials

³ <https://indianexpress.com/article/india/hathras-dalit-gangrape-victim-dies-6629876/>

⁴ <https://www.thehindu.com/news/national/other-states/dalit-girl-gangraped-by-upper-caste-men-in-uttar-pradesh-hathras-dies-in-delhi-hospital/article32721406.ece>

left one and all enraged. As per one article published by Times Now News⁵, the victim's body has been cremated by the police officials without the consent of her family. The relevant extract from the article is as under:

“...The Delhi police and UP police took the victim's family in their car to Hathras at about 9.30 pm from Delhi Safdurjung hospital...The body was also taken in an ambulance at the same time... Later, the family was dropped at their home. However, the ambulance in which the body was kept was never taken to the home and instead directly taken to the cremation ground...The residents, villagers and relatives of the victim resisted the body being directly taken to the cremation ground. They requested the police to allow the body to be taken to her home... The police then forcefully took the body to the cremation ground. It all happened under the supervision of the District Magistrate and Superintendent of Police. The family has also alleged that they were beaten up for resisting the cremation. And that's why the family said they locked themselves up in their house. At about 2.45 am the body was cremated without the consent of the family.”

As per the Huffington Post⁶ and Asian News International (Twitter Handle - @ANINewsUP), the brother of the victim stated that they wanted to take the body home and do the cremation in the morning, but police forced them to take it to cremation ground. The article contains videos where police can be seen forming a human chain to keep the media and the woman's family from entering the cremation ground. The same report also has links from NDTV's twitter handle, to more disturbing videos, where the victim's family can be seen in front of the ambulance, begging the police to let them take her body home. The police not only denied that the cremation was done forcefully, but also claimed that there was no proof of rape yet.

As per Hindustan Times⁷, regarding the steps taken by the police, Superintendent of Police (SP) Vikrant Veer denied any “urgency” in cremation despite the fact that cremation usually does not take place in night. In a report published by India Today⁸, the same officer, Vikrant Veer, said "no signs of sexual assault was confirmed by doctors in either Hathras or Aligarh. The matter will be probed by doctors through forensic help. No signs of abrasion were found on the victim's private parts.”

Even though all four men accused of the crime were arrested, the manner in which the police officials have dealt with the family of the victim, especially after her untimely death, is very worrying and leaves much to be desired. The picture which emerges after reading through

⁵ <https://www.timesnownews.com/india/article/hathras-gangrape-up-cops-forcibly-cremate-victims-body-family-thrashed-for-resisting-hurried-cremation/660122>

⁶ https://www.huffingtonpost.in/entry/hathras-rape-dalit-woman-family-up-police_in_5f74052ac5b6d698bb2563b5

⁷ <https://www.hindustantimes.com/india-news/hathras-rape-victim-s-body-forcibly-taken-away-for-cremation-by-up-police-alleges-family/story-mFbRkp7cwMLbZlzcMjAgVL.html>

⁸ <https://www.indiatoday.in/india/story/no-proof-of-rape-tongue-being-cut-in-hathras-case-up-police-1726707-2020-09-29>

the many reports, leave the readers feel encouraged to not come forward and report such incidents for fear of being denied something so fundamental as conducting the last rites of a family member. Maintenance of law and order of the state cannot justify all of this, and as citizens and law officers we believe that state machineries should be much more efficient, strategic and humane, than the image which has sadly emerged now.

It is well settled that the question whether it is obligatory for the police to register FIR on information given by an informant has been answered in the affirmative by the five-member bench of Hon'ble the Supreme Court of India in *Lalita Kumari v. Govt. of U.P.*⁹ It has been categorically ruled that the provisions of Section 154(1) CrPC is mandatory and the officer concerned is duty bound to register the case on the basis of information disclosing commission of cognizable offence.

Furthermore, the victim should have been taken for medical examination immediately and an MLC would have clearly stated all the injuries on the person of the victim, which then could have directed the sections to be added in the FIR and guided further investigation. However in the present case the ambiguity as to whether or not there was sexual assault, does not seem to inspire confidence.

The Criminal Law Amendment Act, 2013, lays emphasis on examination as well as treatment, both physical and psychological, in addition to mere evidence collection. As per MOHFW guidelines, it is mandatory for a doctor to inform jurisdictional police (local police station) regarding the case of sexual violence, unless the survivor does not give consent, in which case such fact is written on the MLC by the examining doctor. Furthermore, explanation 2 to section 375 of IPC states that if someone does not resist sexual violence, that alone cannot be construed as offering consent to the sexual act. This clearly indicates that presence of resistance injuries is not required to prove a case of sexual violence, which again brings into question the weightage being given by the police officers for waiting for forensic report.

The need for a midnight cremation and denying the victim's family their right to their religious beliefs, has to be accounted for, especially keeping in mind the circumstances and behaviour of the police force. So much more could have been done to assist the victim and her family, and its lack cannot be tolerated for any reason. The fundamental and human rights of the victim and her family were to be upheld by one and all.

Keeping faith of the citizens of the country in the rule of law, and to reassure the women that they are secure, and that they will not be denied justice for any reason whatsoever, is of pivotal importance, and the judiciary must be seen to take steps in order to play its very significant role to communicate to the nation that their faith in the system is for good reason.

⁹ (2014)2SCC1

We, thus, together, pray that Hon'ble the Supreme Court of India may take cognizance of the matter and pass such directions as it may deem fit, for:

- Constitution of a High Court monitored investigation and trial to ensure strictest and swiftest possible punishment to the accused in this crime; and
- Immediate inquiry and suspension or any punitive action against all erring police, administrative, and even medical officers, who tried to manipulate the facts and evidence in this case; and
- setting up of adequate institutional mechanisms and guidelines so no other victim or their family need to feel lost regarding our law and order, and suffer the same fate

As lady advocates, who repose faith in this country's justice system, we shall remain obliged if our prayers are answered. We are always at the disposal of the Hon'ble Court to provide any possible assistance in our capacity.

With prayers for urgent intervention,

Most sincerely,

Kirti Singh, Advocate	Iram Majid Advocate	Ritu Bhalla, Advocate
Nandita Rao, Advocate	Aditi Gupta, Advocate	Firdaus Moosa, Advocate
Iti Pandey, Advocate	Anuradha Dutt, Advocate	Shahrukh Alam, Advocate
Swaty Singh Malik, Advocate	Kriti Kakkar, Advocate	Mrinalini Sen, Advocate
Ekta Kapil, Advocate	Malavika Rajkotia, Advocate	Jhum Jhum Sarkar, Advocate
Pooja Saigal, Advocate	Zeba Khair, Advocate	Amita Gupta, Advocate
Sanjoli Mehrotra, Advocate	Sangeeta Bharti, Advocate	Aathira Pillai, Advocate
Kaveeta Wadia, Advocate	R.R. David, Advocate	Satakshi Sood, Advocate
Anshika Sood, Advocate	Warisha Farasat, Advocate	Naomi Chandra, Advocate
Jyoti Babbar, Advocate	Shweta Kapoor, Advocate	Deepika Pokharia, Advocate
Anjali Sharma, Advocate	Kajal Chandra, Advocate	Kiran Kalra, Advocate
Shreya Agrawal, Advocate	Shalini Sati Prasad, Advocate	Prachi V. Sharma, Advocate
Anasuya Chowdhary, Advocate	Tanvi Asthana, Advocate	Neha Dhir, Advocate
Kritika Gupta, Advocate	Surya Rajappan, Advocate	Neha Pandey, Advocate
Megha Katheria, Advocate	Nidhi Mohan Parashar, Advocate	Suruchi Suri, Advocate
Atishree Sood, Advocate	Manali Singhal, Advocate	