

Submissions to Justice Verma Committee by Ved Kumari, Professor of Law, Faculty of Law, University of Delhi and former Chairperson, Delhi Judicial Academy

Date: 4th January 2013

To

Justice J. S. Verma

Former Chief Justice of India

Chairperson of the Committee constituted to give report regarding changes in law for faster trial and proper punishment in case of sexual offence of extreme nature against women

Dear Justice Verma,

Thank you very much for asking suggestions from various quarters before finalizing your report on the possible amendments to the criminal law for faster trial and proper punishment for criminals accused of committing sexual assault of extreme nature against women.

The current case of brutal gang rape and subsequent struggle of the victim for survival and her death has left all of with lot of anguish and desire to bring about changes in the law so that women can be safe and the heinous offence of rape may be prevented. However, involvement of a child in this brutal offence has also led to some persons demanding modifications in the Juvenile Justice Act so as to exclude children committing serious offences from the purview of the JJA or lower the age of juvenility in the JJA.

The call by Ms. Krishna Tirath to send him to prison till he dies as an exceptional measure, reflects vengeance and retribution which does not have place in civilized society. I do not think that making an example of the accused in one case are going to solve the problem of rape and no safe spaces for women in our society. One needs to remember that 90% of the rapes are committed by relatives, neighbours, friends, persons women trust. Rapes by strangers are not the rule but exception. So if we are worried about safety of women, the discussion has to be about making homes safe for women. In education, the issue of equality of women has to be integral from the primary to higher education.

In the law faculties, Gender Justice is still an optional course and women's perspectives are not included in the other courses taught. Students from Law Faculty go to become legislators, judges, lawyers, senior bureaucrats, police officers. If the future judges, law makers, lawyers – all go without awareness and sensitisation about women's issue, how do we expect the future laws and their implementations to be gender sensitive?

This case has given us the occasion to make some long term changes in the way we approach the issues of gender discrimination and make it a subject of continuous focus rather than result in a quick fix approach to assuage public sentiments by making an example of a child by giving him very harsh punishment or changing the law to punish children for serious offence rather than

ensuring protective and preventive care to children so they do not end up like this due to the brutality they have experienced in their short lives.

I strongly believe that exclusion of children below the age of 18 years from the JJA by reference to this case is completely unjustified and undesirable for various reasons given below. I request the Committee to strongly recommend that no changes must be made in the law so as to subject children to penal consequences by reference to this case.

The involvement of a child in the barbaric rape of the girl has left many of us questioning the sufficiency of the JJA to deal with cases like this. I believe that it is time to remain focused on the key question “ why was this child without proper supervision of responsible adults for long five years?

Why did the system not respond / took care of him when he left his home five years ago?

While I fully condemn the perpetrators of this offence, I believe that we need to consolidate our approach of protection and preventive care for children who may end up like this.

The whole system gets shaken when one child commits a serious offence and we can see only the offence but not the child who ended up there because we were not there to look after him when he gave us a signal seeking help.

I believe that children end up committing crimes like this when the JJA focuses only on children committing offences (the absolute number has not been more than 32 thousand in any year in a country with 1.25 billion population) but forget that there are more than 15 crore children who need care and if left unattended and uncared for, many of them end up like this.

We need to focus on ensuring that no child is left uncared for. We need to own up our failure in preventing commission of crimes like this. Punishing this child is not the answer.

I believe that first of all, we need to be convinced that all children are entitled to care irrespective of the offence they are found to have committed “ offences by them are the result of our failure and we cannot shift the burden of it on them.

While condemning the ghastly brutality of the rape of Nirbhaya, I want to focus on the child involved in the offence. Let our outrage at the absence of safe spaces for women, not blind us to the absence of care to children too. This boy was all of 13 years when he left home. Why did he leave? What was his home like? What happened to him in the last five years? What all has been responsible for turning him into this beast? Why juvenile justice system in place in our country did not reach out to him and prevented him from being what he has become today?

Can we absolve ourselves from the responsibility for turning him into a demon?

It is also important to ask the question – whether decreasing age of juvenility provide better and secure future to us or children like him in future?

A person age 17-18, sent to life imprisonment will be released somewhere in their mid-30s. Prisons are not known to make responsible citizens but only breed more criminals. Hence, taking the route of punishment is not going to help us secure a safe future for us or to the young offender.

It is time to think and reflect how the other accused in the case have demonized this young man. Our focus needs to be to ensure care to all children in time to prevent their brutalization.

I have looked at law and its implementation from gender perspective and have been long involved in child rights issues in my research and teaching. I was very much torn when the Maulana Azad student was raped by a child, not knowing how to balance the two. After lot of emotional and intellectual turmoil, I have learnt to balance the two apparently conflicting rights and believe that while I stand by all rape victims and survivors, I do not believe that women's rights are better protected by punishing children for offences they commit against women or anybody else.

One bad case is not the reason for changing the law though many a times that happens because of the political exigencies. Many political decisions are made not because they are needed on ground data but because of public sentiments – many a times fanned by the media. Even prior to this case, the government had proposed a provision for sending children found to have committed an offence to 'correctional institutions for adults' – a euphemism for jail – after they attained the age of 18. This proposed amendment was opposed by all present in the meeting called by the Ministry. This case has only given a handle to the government to promote its proposed penal approach towards children.

I do hope that better sense will prevail and we will be able to see beyond our grief at the loss of the precious life of this young woman. We have to take care of many future lives of both young women who should be safe in and outside their homes as well as young children who need care and protection and environment to grow up to become responsible citizens.

With your deep understanding and empathy to women and children's rights and plight, I am sure that you will be suggesting appropriate measures for long protection of women and children. All criminological research around the world has shown that fast trials and certainty of punishment have a much more deterrent affect rather than the quantum of punishment. The existing punishments may prove to be sufficient deterrence when coupled with effective implementation of law and certainty of punishment to the persons found guilty.

Kindly share my response on the subject with other Committee members.

I will be happy to clarify anything further if so desired by you or other members of the Committee.

With warm regards,
Ved Kumari

