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PRIME CONCERN: RAPE

Cry for freedom

By Aditi Tandon

When even the law and its delivery system expect the woman herself to be responsible for her safety, the challenge is to transform the very outlook of society that shackles women

INDIA stands frozen today, shaken from its slumber by the savage gang rape of a 23-year-old in the National Capital, leading to her tragic and painful death. As we mourn the loss of the girl who met the most horrible end, old familiar questions are back to haunt our conscience: Is a woman's dignity and life worth anything in this country?



Girls vent their anger at cops in a police jeep during the agitation against the gang rape of the 23-year-old in New Delhi. — AFP

The answer is no. How else could six men on a joyride through the heart of New Delhi have the spine to brutalise a woman in a way that even doctors are forced to admit, "We have never seen such brutality all over lives." The painful run of the physiotherapy student who had expressed her wish to survive ended with multiple organ failure at a Singapore multi-speciality hospital.

Back home, everyone is asking, "Where was the police when she was being raped?" Even as the anger simmered over the past week, a 42-year-old was gang-raped and dumped in Delhi while another 17-year-old gang-rape victim in Punjab's Patiala district ended her life due to police humiliation during the registration of an FIR.

CAPITAL PUNISHMENT IN RAREST OF RARE CASES



While the debate on death penalty will continue, courts can award life imprisonment in heinous crimes like gang rapes and clarify that the sentence would mean imprisonment for the rest of life. — **AS Anand, former CJI**



There is no evidence of death penalty serving as a deterrent. The need is fast-tracking of cases and speedy justice. We must socially exclude those who indulge in crimes bordering on depravity. — **Ashwani Kumar, law minister**

The pandemic of rising crimes against women and children in India hasn't built up overnight. It has grown gradually, fuelled by a lethal combination of factors — negative stereotypes against women in society, lack of gender sensitivity in police training, complete disregard for minor crimes like molestation which sometimes become fatal, absence of victim and witness protection schemes and an acutely deficient criminal justice system. There's 20 to 25 per cent vacancy in high courts and seven years is the average time a rape trial takes for conclusion!



The call is populist. It's a way to let the state avoid its responsibility of proper investigation and trial of sex crimes. — **Vrinda Grover, SC lawyer**



Don't want sick men to stay in jails on tax-payers' money as state guests. Death penalty will help if it is made un-appealable once awarded.— **Sunitha Krishnan, gang rape survivor**



More than this debate, we must make our criminal justice system work and deliver its three ingredients to bring deterrence to crimes — certainty of punishment, severity of punishment and timely punishment. — **Navniet Sekera, DIG Lucknow**

In 2010, as per the National Crimes Record Bureau, India saw 22,171 reported rapes and only 26.6 per cent convictions; 40,613 molestations were reported with 29.7 per cent convictions — a trend so disturbing it discourages the already reluctant victims of sex crimes from bringing the perpetrators to justice.

"The legal system is so victim unfriendly that for every 100 victims of rape, 95 never report the crime. From the FIR to trial, the process is too traumatic for victims to go on," says 40-year-old Sunitha Krishnan, a rape survivor, who now runs Prajwala in Hyderabad to prevent human trafficking. She herself never filed a case.

Gang-raped by eight at the age of 15, Sunitha cautions against calls for death penalty for all rapists. "Do we want more sick men to live off tax-payers money as state guests? Execution of a death sentence takes so long in India it can hardly be a deterrent. We need enforcement of existing laws and outrage at every level for every case, making the lives of perpetrators so miserable they can't walk in public without fear. But we shame the victims," she says, demanding a database of sex offenders and fast-tracking of reported cases.

Calloused cops

But for any trial the prosecution must work to collect evidence and file charge sheets in time. In 80 per cent rape cases, FIR registration is a challenge and police harassment a norm. There are numerous cases where girls who went to lodge a case ended up being raped by the police.

Satyabrata Pal, Member, National Human Rights Commission, agrees, "There is a pattern to police reluctance in registering cases. Very often, depending on the status of assailants, the police are found siding with the accused rather than the victim. By the time the FIR is lodged, critical medical evidence has been lost." Pal says the law must provide punishment for policemen who don't register FIRs.

But that's a far cry. Today, absence of gender training of constables is also hampering investigation of sex crimes. Politicisation of forces is so acute that victims are afraid to seek justice. The case of Anjana Mishra in Cuttack is still alive in public memory. She faced attempted rape in 1999 by the serving Advocate General and ended up being gang-raped when she complained. Her fault: she went after a man who enjoyed the patronage of the then Orissa CM JB Patnaik. Things haven't changed much since then.

"The police behaviour leaves much to be desired. Gender training is lacking and politicisation a huge issue," says Miloon Kothari, head, Working Group on Human Rights for India and the UN.

Securing the streets



Lack of preventive policing remains the single most important reason for rising crimes against women. Even in the Delhi case, the girl and her male friend had been hailed into the private bus which was illegally plying at night. Meant to drop schoolchildren, it had no business ferrying passengers. Earlier that day, the accused had robbed two passengers before they embarked on their “fun ride” and ended up brutalising the hapless couple. After raping the girl and assaulting the boy with iron rods, they stripped them naked, and left them on a busy road to die. Their brazen disregard for law notwithstanding, prime accused Ram Singh returned to work next morning.

“It’s this lack of fear of being caught which emboldens the perpetrators. A while ago we rescued a four-year-old from rail tracks in Hyderabad. Her intestines were visible due to repeated sexual assaults. She died recently of AIDS. Time has come to acknowledge these crimes have to be addressed,” says Sunitha.

The West adopts naming and shaming of sex offenders as a regular policing strategy. The US has social security numbers for citizens, detailing their criminal and general history. The police alert neighbourhoods if a paedophile goes to reside there. Sex offenders are under constant surveillance.

In India, we are only now waking up to the urgency of a directory of sex offenders. After the Delhi rape, the government has asked the NCRB to prepare the database. Such systems have existed in the past — such as the rogue’s gallery in Maharashtra police stations — which were discontinued following court rulings on PILs by human rights activists.



Weak in law

While policing is an issue, the bigger issue is the anti-rape law itself. Today the IPC definition of rape covers only peno-vaginal penetration and not the kind witnessed in Delhi, where the accused used an iron rod to violate the victim, damaging her intestines. Life imprisonment is already prescribed for and in the rarest of rare cases, death penalty is the norm.

The strange part, however, is this – the government in a kneejerk reaction to the Delhi case has formed yet another committee under former Chief Justice of India J.S. Verma to review the criminal law on sexual assault when a specific Bill is pending before Parliament to amend the IPC, Criminal Procedure Code and the Evidence Act in this respect. Women’s groups recently petitioned the National Advisory Council headed by UPA chief Sonia Gandhi, saying the amendment bill is grossly deficient. But no one is debating that.

The Criminal Law Amendment Bill, 2012, introduced in the Lok Sabha on December 4, replaces the term ‘rape’ with ‘sexual assault’, defining it as “penetration for sexual purpose of the vagina, anus, urethra or mouth of another person with any part of the body or any object.” For the first time, it also prescribes 10 years to life imprisonment and Rs 10 lakh fine as punishment for acid attacks.

But it dangerously formulates sexual assault as a gender-neutral crime, implying both women and men can be raped and can rape. Women have termed the move as a disaster in an unequal society like India. In the sexual assault Bill, perpetrators have to be gender specific — men. We agree young boys are vulnerable but for them Parliament has already passed the Bill for protection from sexual offences,” argues Vrinda Grover, a Supreme Court lawyer. The Home Ministry, however, seems unaware of the new Bill and is pushing to make rape gender neutral.

Grades of assault

Besides, the amendment Bill doesn't recognise the continuum of sex crimes — from eve-teasing and stalking to assault. It defines aggravated sexual assault (by policemen, public servants, remand home in-charges and hospital management), but doesn't treat non-penetrative crimes like molestation as separate offences though it enhances punishment for them to a maximum of five years instead of two.

"Section 354 of the IPC dealing with the archaic notion of outraging the modesty of women has been left untouched. The Bill doesn't recognise the graded nature of sexual assault based on hurt, harm, injury and degradation. Remember the Guwahati mob molestation of a girl in full public view? It could have become a gang rape had it not been prevented. The accused got only two years in jail," says Madhu Mehra of Partners for Law in Development, working on women's rights.

This is a glaring gap, considering the evidence that eve-teasers can become potential sex offenders. In Priyadarshini Matoo's case, Santosh Singh, her rapist and murder started out as a stalker.

"Eve-teasing must be taken seriously. We must also ensure that in rape trials, public prosecutors are appointed on merit like in high-profile corruption cases," former Punjab and Haryana High Court Chief Justice Mukul Mudgil says.

Moral judgement

Another problem with rape trials is the interpretation of victim's consent by courts. The current law and the amended version consider non-consensual penetration for sexual purpose as sexual assault. But determination of consent is hampering justice. "Courts often judge women's conduct while interpreting consent. We analysed 82 acquittals and found a pattern. In one case, the court let off the accused on grounds that the raped minor's pubic hair had been shaved off and so the victim, being 'such a loose girl', would have consented to intercourse," says Mehra.

The Supreme Court has expressed strong disapproval of courts casting a stigma on the victim's character, but stigmatisation continues, leading to acquittals.

Setting aside one acquittal by a Ludhiana court that labelled the victim with 'loose character' while interpreting her consent to sex, the Supreme Court in a 1996 judgment said, "The trial court interpreted that the victim was habituated to sexual intercourse just because the speculum the doctor used entered her vagina easily and hence she was of loose character. These observations lack sobriety expected of a judge. No stigma should be cast against a victim of sexual assault by courts for, after all, it is the accused and not the victim of sex crime who's on trial."

The apex court has directed trial courts to effectively control the recording of evidence in rape trials and not let defence counsels intimidate the victim with offensive questions. "A murderer destroys the physical body of a victim but a rapist degrades her very soul," former CJI AS Anand said in one judgment.

The sentence

On the raging clamour for new laws and death penalty for rapists, Justice Anand (retd) says, "Socially sensitised judges are better statutory armours than long clauses of penal provisions containing complex exceptions. While the larger debate on capital punishment would continue, the courts can impose imprisonment for life as the sentence for heinous crimes like gang rape and clarify the expression shall mean imprisonment for the rest of the life."

In his landmark January 11, 1994, judgment upholding death penalty for security guard Dhananjay Chatterjee, who raped and murdered a schoolgirl in a Kolkata apartment in 1990, Justice Anand had ruled, "Punishment must depend upon the atrocity of the crime committed, the conduct of the criminal and the defenceless state of the victim."

The history of rape law shows changes have always followed public outcries. The first amendment to criminal law came in 1983, when the Evidence Act was changed to state that if a rape victim says she did not consent to sexual intercourse, the courts will presume so. 'Custodial rape' was also introduced in the IPC and rape victims were given the right to in camera trials.

The change followed the rape of Mathura, a 16-year-old tribal girl, who was raped by policemen to whom she had gone to complain about her missing husband. The accused were acquitted on grounds that Mathura was habitual to sex, indicating consent in the act. Post 1983, SC rulings clarified, "Even if a rape victim has been promiscuous in the past, she has the right to refuse to submit herself for a sexual intercourse to anyone and everyone because she is not an object".

But in India, objectification of women fuelled by societal attitudes continues to contribute to crimes against them. "We need a dispassionate debate on societal attitudes towards women," the Prime Minister said on Friday, just days after the Congress president in Andhra Pradesh, Botsa Satyanarayana, said the now-dead Delhi victim should have been more careful.

Everyone feels women's safety is her own problem. And that's the challenge.

LINK: <http://www.tribuneindia.com/2012/20121230/kal.htm>