

Rape forces spotlight on Indian Courts

By Amy Kazmin

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NEW DELHI: In 2009 a young professional woman in one of India's biggest cities went to have lunch at the home of a well-to-do male acquaintance. The man, she later told a court, sent his domestic servant out to buy food, and then suddenly pinned her down and brutally raped her.

Afterwards, the woman went to a hospital, where doctors noted bruises on her abdomen, thighs and legs, and internal cuts consistent with rape. Deeply distraught, frightened for her own safety and worried about the impact on her family, the woman hesitated for two days before seeking counselling, then going to the police to report the incident.

Two-and-a-half years later, after a harrowing trial in which defence lawyers repeatedly accused the woman of lying and forging evidence, the young man was acquitted.

Ruling, the judge wrote that the woman did not appear to fight back against her attacker and thus the sex seemed consensual as the alleged rapist had not been injured. "(The accuser) admitted that she had not slapped or kicked or scratched the accused with (her) nails," the judge wrote. "Absence of any injury (to the alleged attacker).???.?indicates the alleged intercourse was a peaceful affair and the story of resistance is false." The verdict is now being appealed.

In New Delhi on Thursday, six men are expected to be formally charged with murder and rape for the savage attack on December 16 of a 23-year-old physiotherapy student, who died last weekend from severe internal injuries.

That case has drawn an outpouring of public anger and India's Congress-led government has pledged swift justice. The accused face the possibility of the death penalty and the court proceedings are being steered to a special fast-track court.

But the case has also cast the spotlight on a judicial system that struggles to deal with rape cases and is in dire need of reform.

For most Indian women seeking to prosecute rapes or other sexual assaults, navigating the country's criminal justice system is a harrowing experience. Women are subjected to aggressive, humiliating questioning about their own conduct and physical examinations that hinge around a "two-finger" test to determine whether a woman is, in the words often used in court, 'habituated to sexual activity'.

Justice is rarely swift and too often missing. In 2011, more than 24,000 rapes were reported in India. The alleged assailants were convicted in just 26 per cent of those cases. Thousands of other rapes were never even formally registered.

"It takes great courage for a woman to go to court," one gang-rape victim, whose assailants were acquitted after a four-year trial, told an Indian television channel last week. "Then she is insulted and raped again by the entire system."

The government has said it wants to reform the system. Amid last month's street protests, it established a judicial committee to consider how to accelerate rape trials, which often drag on for years, and to examine the potential for stronger punishments for convicted rapists.

But activists say far more fundamental reforms are needed, starting with an overhaul of the laws themselves.

Aside from rape, India's only other recognised sexual offence is "outraging a modesty of a woman", which in its very definition introduces the highly subjective assessment of whether the victim had any "modesty" to begin with.

At police stations, officers often refuse to report rapes or other sexual assaults and instead pressure women to "compromise" with their attackers. Lawyers say that even when cases are filed, investigations, including the forensic analysis, are often so shoddy as to fail to support the prosecution.

"The preliminaries necessary for a conviction are never in place," says lawyer Madhu Mehra, director for Partners for Law in Development, which works on women's rights. "Complaints are not registered, investigation is poor, the girl is intimidated, and the proceedings are hostile so she falls out of the legal system."

Vrinda Grover, a prominent human rights lawyer, says forensic samples often languish for months or years in India's overstretched criminal laboratories. By the time many are analysed

the samples are no longer usable and result in inconclusive tests. “If you are such a burgeoning superpower could you please set up a few forensic labs,” she says.

Once in court, women are also subjected to aggressive cross-examination, which play on deep-rooted social attitudes that suggest a virtuous woman would never allow herself to be in a position where she would be vulnerable to an assault. “The biggest battle ideologically is the mentality that ‘if you are good, you simply don’t get raped or touched’,” Ms Mehra says.

Many judges also have their own ideas about how a rape victim should behave – both during an attack and afterwards. In the recent acquittal of one alleged rapist, a judge interpreted the woman’s weeping during her testimony as “remorse” at accusing “her lover”. A true rape victim would be “vengeful”, the judge decreed.

India’s extreme social hierarchies also play a role, says Avninder Singh, an advocate who has both prosecuted and defended accused rapists, with the standing of the accused and accuser often having a huge influence over cases.

“The person who has less resources, less backing, less standing, and less ability to influence the police, ends up at the receiving end,” he says. “In the end, when people committing the offence are more middle class or more powerful, they often get away.”

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