

Understanding and overcoming sexual violence in India

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The December 2012 gang rape and subsequent death of a 23-year-old female led to a phenomenal consciousness and increased momentum in the country's discourse on sexual violence. For the first time, the discourse shifted the blame from victim to perpetrator, fostering phenomenal changes in the colonial era criminal laws; earlier, the prevalence of gender discrimination meant that victims of rapes were more likely to be held responsible for their suffering than victims of theft. The momentum, however, failed to provide crucial protection and redress for the survivors. News headlines depicting brutalized sexual violence have barely changed since then. The reason for this is that crucial recommendations and changes in the legal system suggested at that time, such as recommendations on police reforms, reduction of the age of consent, amendments to the Armed Forces (Special Powers) Act 1958, reforms in the country's education system as forwarded by the three-member committee¹ formed after the incident, were all ignored. Similarly, recommendations related to the management of crimes against women through an online complaint system, bringing all police stations under CCTV surveillance, nonharassment of public for helping rape victims, increase in the number of police and special training of police to deal with cases of sexual violence were also ignored. Without these basic changes in the country's criminal justice system, crimes of sexual violence are bound to continue unabated.

Since December 2012, there have been media reports of the hanging of brutally raped victims, the sexual assault of a female judge in her official residence, the pumping of bullets into her private parts after the assault, burning dead bodies after gang rape; all of these conclude that India's criminal justice system has failed systematically. While the gruesome assault and violence subjected to thousands of women may shake the human conscience, it continues to leave the criminal justice system cold and unaffected. It is a fact that every 20 minutes a rape is committed in India, with only four out of 10 cases proceeding to the country's justice system for redress. The possibility of justice for even these cases is uncertain due to legal complexities and social notions such as 'honour'.

Legal aspects

The question that arises in this scenario is why is the state unable to curb sexual crimes? The answer to this is not merely about the inefficient criminal justice system; it must also include India's prevalent cultural norms. According to Dr. Vandana, violence is not a natural or biological phenomenon: "the existence of sexual violence is, therefore, a political question, which requires an analysis of the institutions of the state and the society, the conditioning and socialisation of individuals and the nature of economic and social exploitations" ². Similarly, eminent feminist writer Catherine MacKinnon explains that "patriarchal values and sexual mores guarantee reproductive ownership, sexual access and control over women, to men as a dominating group. The state incorporates these facts of social power in and as law."

All law must be seen in two parts—the substance of the law and its implementation. The amendments to India's laws dealing with sexual assault after December 2012 made legal literature more favourable to women. The definition of sexual assault was expanded to go beyond vaginal penetration for instance, punishment for acid attacks was introduced and clarification was provided to section 197 of the Criminal Procedure Code concerning 'prior sanction' for initiating legal proceedings against armed forces.⁴ No changes were made to the implementation of these laws however. Victims of sexual assault face enormous challenges in accessing the justice system, from legal to cultural. While filing a First Information Report (FIR), the first step in seeking justice, is hard in any instance in India, it becomes a Herculean task when a woman wants to complain of sexual assault. India's culture of law enforcement is such that legal text alone does not determine her rights and entitlements, or the space available to her to claim justice.

Common practice before the police register an FIR, is for officers to satisfy themselves that the victim wears the 'right' clothing, eats the 'right' food, keeps the 'right' male friends, and also her use of 'questionable' modern electronic addictions like mobile phones. This kind of negative stereotyping as well as attacking complainants' self-esteem is one of the prime reasons for not reporting sexual crimes and accessing the criminal justice system. Burgess and Holmstrom have rightly pointed out that "going to the Court, for the victim, is as much of a crisis as the actual rape itself."⁵ It is unfortunate that the 2013 legal amendments retained discriminatory concepts like 'insult' and 'outrages to women's modesty', which project emphasis on women as a symbol of honour, undermining the criminal liability of the offence.

The culture of impunity for sexual violence is widespread and has contributed much to propagate the crime. This impunity is both de-jure and de-facto. De-jure impunity is propagated through several legal instruments that validate immunity for state actors. The provision of 'prior sanction' was incorporated in several security legislations for this purpose. Sections 45, 132, 197 of the Code of Criminal Procedure, sections 125, 126 of the Army Act 1950, section 45 of the Unlawful Activities (Prevention) Act 1967 and section 6 of the Armed Forces Special Powers Act (AFSPA) 1958, hold that no court shall take cognizance of any offence committed by certain state actors unless previous sanction thereof is granted by the appropriate government. It has been observed that procuring 'sanction' for prosecution occurs in the rarest of cases, with most applications rejected by the authorities at their discretion. This is one of the reasons that the perpetrators of Manorama's rape and murder have yet to be brought to justice. Arrested by the Assam Rifles in July 2004, Manorama was found dead with bullet injuries in her private parts within hours. Public outcry led to an inquiry commission into the case, whose reports were challenged by the armed forces for violating the immunity section under AFSPA. The matter is yet to be disposed of by the judiciary even after ten years of litigation. A legal proceeding against the accused armed forces can be filed only after that.

De-facto impunity is equally prevalent in the criminal justice mechanisms and its enforcement institutions. Police authorities often deny or block access to justice by refusing to register complaints. The investigation and trial process remains extremely slow and unscientific. Moreover, routine practices of torture by security enforcement agencies create a fear psychosis and discourage formal complaints against them, propagating a culture of impunity at all levels of justice administration. This culture is tolerated through various legal provisions and practices with the state's full knowledge and acquiescence.

The principle of due diligence is too narrowly adopted in the legal system to hold private actors accountable for violence against women. While states have a duty under the due diligence obligation to prevent and protect women from violence, punish perpetrators of violent acts and compensate victims of violence through affirmative action, its application to date has been limited to responding to violence when it occurs. Prevention, compensation and responsibility of the non-state actors are all neglected.⁶

Women face enormous legal hurdles to access justice, as reflected in a study on sexual violence by state agencies in Assam conducted by the author earlier, entitled "Sexual Violence and Impunity in the Conflict Zones of Assam":

- Filing of FIR by victims/survivors against armed forces is very difficult due to the culture of impunity enjoyed under the Armed Forces (Special Powers) Act, 1958. In several cases, despite rape being a cognizable offence, police refused to register an FIR, or only did so after protests by the local community. This resulted in delayed investigation and medical examination.

- In one case, legal proceedings into rape allegations were blocked by a politician with promises of employment and compensation to the survivor. When these were not fulfilled, the survivor had to pay the price; her husband would release his frustration through physical violence upon her.
- Intentional delays in investigations by the authorities
- In another case the trial was stopped as the accused could not be identified
- Inadequate compensation was awarded in cases where the crime was proved.

Sociologically speaking, a patriarchal society prescribes male dominance and promotes authoritarian personalities. Law enforcement agencies are traditionally based on masculine ideologies, and the police and military institutions provide ample space for exhibiting dominating and authoritarian personalities. Additionally, women comprise little more than six percent of the Indian police and armed forces, which are dominated by a disproportionate male presence. The tendency to impose power and control over women and their bodily autonomy is thus commonly manifested within these institutions. It is under these circumstances that police often deny registering cases of sexual assault. And the few that are registered have minimal chances of success.

The country's judicial system is also victim to dominance ideologies over women's bodily autonomy, and administers law accordingly. Judicial pronouncements have deep rooted gender bias. The judiciary has been observed to be less than congenial to women victims of sexual assault.⁷ In October 2013, a Delhi High Court judge said in his court order that 'girls are morally and socially bound not to indulge in sexual intercourse before a proper marriage, and if they do so, it would be to their peril and they cannot be heard to cry later on that it was rape'. This pronouncement is judicially biased, derogatory and against the interest of the victim. The judge ignored the law of the country for which he was trained and undermined the principle of rule of law as per the Indian Constitution. In the case of Bhawri Devi, who was gang raped in 1992 by five men while working in a field, the District and Session court delivered an order stating that dominant caste men would not rape a women belonging to the oppressed caste.⁸ Examples of such evil judicial pronouncements are not new and have been persistent in India from Mathura⁹ to Manorama and beyond.

Furthermore, the inadequate number of judges, prolonged period of litigation, manipulation of medical reports, intimidation of victims and witnesses are barriers in the road to justice in all types of violations; cases of sexual assault are no different. Corruption and political influence are equally to blame for the country's dysfunctional justice system.

Two cases to further illustrate these aspects:

1. Jonali (name changed), narrated that the army men used to come to her village to carry out 'operations'. On April 22, 1997, night she was sleeping along with her husband and daughters. She said, 'Four men in camouflage uniform entered our house and took me behind the house. I thought they will kill me. But they raped me one by one. They were masked and were muttering 'ghumo, ghumo.. hum karega, hum karega.. [turn around, turn around, my turn, my turn]'. A case was filed with the police and a medical test was also conducted, however, both remained inconclusive. Jonali's life after the incident became a haunting saga. 'Local women said that it would have never happened if I were a woman of good character,' she narrates. The incident increased domestic violence at home and Jonali was forced to compromise with that: 'My husband too believed that I am a bad woman and that's why it happened to me. I did not ask for this to happened, so why is my character being blamed?'

2. Thirty-eight years old Monika (name changed) protested against the arbitrary detention of her husband by the armed forces in April 2011 in Kokrajhar district of Assam. She moved from pillar to post in order to free her husband from the custody of the armed forces, an act treated as something against the national security. Arbitrary detention in the region has often led to disappearance or extrajudicial killings. Subsequently Monika was sexually assaulted by six armed personnel as retaliation and in order to teach her a lesson. Monika could recognise them as members belonging to 15th Dogra Regiment as they were known to the family due to the facts mentioned above. Monika with the help of her husband could manage to file an FIR to Kokrajhar police station on 21 April, 2011. Investigation into the case is still not completed. In 2012, Chief Judicial Magistrate, Kokrajhar issued an order asking the investigating officer to complete the investigation as soon as possible and submit the report. As per section 167 of the Criminal Procedure Code, the investigating officer is to complete the investigation within three months and submit the report but in this case, it has been about nine months and still investigation is not completed. Since the incident, Monika's husband has refused to have any physical relationship with her. Monika believes that if she receives compensation her husband may accept her and love her again.

Political and cultural will

India's political leaders, who exert significant influence over common citizens, also play a role in pronouncing and promoting misogynistic ideologies regarding sexual assault, and reinforcing impunity. Madhya Pradesh's Home Minister Babulai Gaur for instance, went so far as to say 'rape is sometimes right, sometimes wrong'.¹⁰ Ramsevak Paikara, Home Minister of Chhattisgarh, was reported to say 'no one commits rape intentionally, it happens by mistake'.¹¹ Prominent politician Mulayam Singh Yadav meanwhile, outrageously noted that, 'Boys make mistakes, why hang them?'.¹² He was supported by fellow politician Abu Azmi, who opined that 'women who were raped should also be hanged'.¹³ The latest in line is Arun Jatley, who termed the December 2012 gang rape and subsequent death of the young woman in Delhi as 'one small incident of rape' costing billions of dollars in terms of global tourism.¹⁴ While these statements and views are unfortunately only the tip of the iceberg, they are significant in understanding how the country's institutions and public officials are mired in authoritarian, misogynistic and gender biased norms. These views and norms are then filtered down to ordinary people.

Socially, India provides little space to be a sexual being, particularly for women. Talking of sex or sexuality is taboo and unwelcome in the public domain. Young children largely grow up in a gender segregated environment, and often suppress their willingness to play or mingle with children of the opposite sex due to parental or social disapproval. Repressive sexuality is often quoted by Indian authors like Sudhir Kakar as a reason for sexualized and gender based violence. Society prescribes women to be chaste and celibate before 'marriage', thus suppressing her sensuality and sexuality. At the same time, women are advised to take 'precautions' against sexual violence, ranging from wearing certain clothes, travelling at certain times, in certain areas, to keeping 'good company'. Men meanwhile, are free to express their sexuality, even in violent ways, and these are blithely justified with the explanation that 'boys will be boys'. Homosexual sex is still criminalized as "unnatural" under section 377 of the Indian Penal Code. This encroachment in the private space of citizens exhibits a narrow construction of people's freedom over their bodily autonomy and their choice of life.

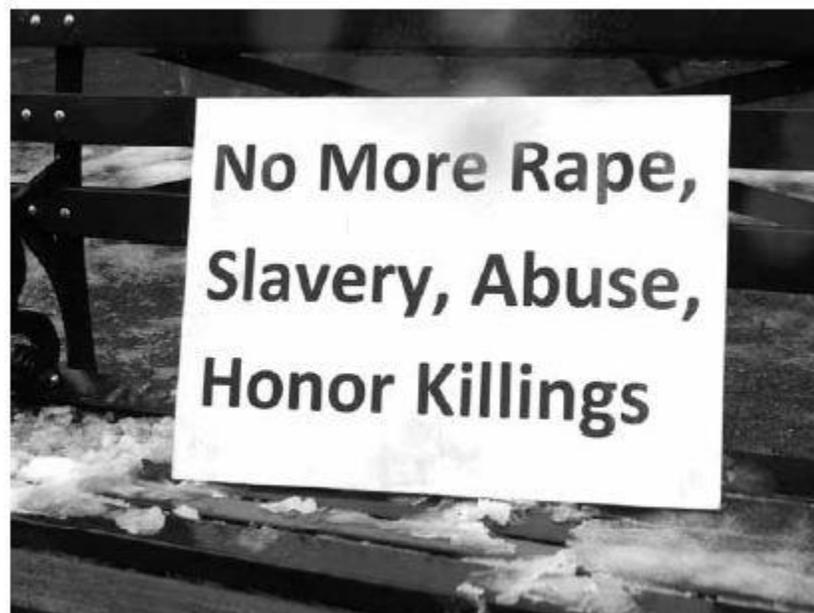
Social, political and legal change

Violence against women in India will remain unabated due to the pervasive prevalence of discrimination against women and girls, which starts at birth and continues till death. Law if enforced properly is undoubtedly an instrument to control and modify human behaviour. Not only does India need to reform its laws to make them gender equal, but it also needs to enforce these laws effectively. The entire criminal justice system—the police, prosecution and judiciary—needs to be retrained so as to be cognizant of

gender issues. As has been clearly demonstrated above, the views and attitudes of police officers, judges and other public officials at present are severely detrimental to enforcing laws that protect women's rights.

Only when public officials, politicians and society alike hold these laws and their corresponding legal norms as valuable and worthy, can effective enforcement occur. And this can only happen when there is social and political change in the views towards women. It is thus crucial that the state and society work towards seeding this change. Social and cultural patterns of conduct towards gender need to be modified. Not only should the state focus on improving the lot of women, but it must also work on changing the attitudes of men, and garner the support of men. Gender discrimination and violence against women is not to be treated as only women's issue. Men have as much to lose and as much to gain.

Placard in front of the UN building in New York during a demonstration in March 2013. Picture by Anjuman Ara Begum null



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1 The Committee has recommended certain steps to reform the police, including the establishment of State Security Commissions to ensure that state governments do not exercise influence on the state police. Such Commissions should be headed by the Chief Minister or the Home Minister of the state. The Commission would lay down broad policy guidelines to ensure the police acts according to the law. A Police Establishment Board should also be established to decide all transfers, postings and promotions of officers. The Director General of Police and Inspector General of Police should have a minimum tenure of two years. For details see Justice Verma Report Summary, available at <http://www.prsindia.org/parliamenttrack/report-summaries/justice-verma-committee-report-summary-2628/> as on August 14, 2014.

2 'Sexual Violence—Concept and Determinants: Feminist and Human Rights Perspective', Lexis Nexis publication, 2009, page 15

3 'Towards Feminist Jurisprudence', *ibid*

4 For details visit <http://indiacode.nic.in/acts-in-pdf/132013.pdf>

5 Ann Wolbert Burgess and Lynda Lytle Holmstorm, 'Rape: Victims of Crisis', as quoted in 'Sexual Violence—Concept and Determinants: Feminist and Human Rights Perspective', Lexis Nexis publication, 2009, page 145

6 Report of the Special Rapporteur of Violence against Women, 20 January 2006, E/CN.4/2006/61

7 As reflected in, 'Law on Violence: Against Women', by Charu Walikhanna, Serials Publication, New Delhi, 2009

8 For details of the case, read Vishakha vs. State of Rajasthan, 1997, (JT 1997 (7) SC 384)

9 The Mathura rape case was an incident of custodial rape in India on 26 March 1972 which later prompted legal reform making custodial rape punishable and shifting the burden of proof to the accused in 1983.

10 Reuters news, June 5, 2014

11 Times of India, June 7, 2014

12 Times of India, April 10, 2014

13 NDTV, April 11, 2014

14 NDTV, August 22, 2014