

Are Strict Laws the Need of the Hour or Is Better Implementation of Existing Laws Enough

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ABSTRACT:

Crimes against women have been on a rise. In 2012 the Nirbhaya Rape Case shocked the collective conscience of the entire nation and yet the convicts haven't been taken to the gallows on account of the legal recourses still available to them. And in 2019 yet again the Hyderabad Rape Case followed by the Unnao case of setting the rape victim on fire has generated furore over the need to improve the current position with respect to the crimes against women. Many think that strict laws for crimes against women can act as a deterrent whereas some feel that the effective implementation of the current laws can ameliorate the situation. This article exclusively deals with the question that whether strict laws are the need of the hour or better implementation of the existing laws is enough.

A rape culture typified and perpetrated through male sexual entitlement and impunity thereof has gained significant intensity in spite of various laws in place as can be seen by the cases which are reported in the newspapers everyday. But the number of cases which are reported is not even close to reality. According to unit level data by National Health Family Survey (2015-16), 99% of sexual violence cases go unreported.¹ In light of the public outrage in reaction to the bestiality of the Nirbhaya rape case, the government, on recommendations of the J.S. Verma Committee, introduced the Criminal Law (Amendment) Act, 2013 which widened the scope of offences committed against woman. Then in response to the public outcry against the Kathua and Unnao rape cases, the government introduced the Criminal Law (Amendment) Act 2018 which increased the stringency of punishment for rape, stipulated death penalty for raping girls under 12 years and prescribed a time frame within which the investigation and cases had to be disposed off. And now after the Disha case yet again the government has carefully shifted the attention to the magnitude of punishment. Introduction of better laws for rape is often equated with death penalty for rapists and increase in the severity of punishment. But if the example of Saudi Arabia and the 262nd report of the Law Commission of India and the reports of the Verma Committee are to be considered, meting out death penalty to rapists is not going to act as a deterrent against rape instead it is the rape culture which needs to be addressed. Increasing the stringency of the punishment alone is not going to significantly deter rapes instead likelihood or high probability of meting out the punishment upon conviction is also imperative. And this is where the problem lies, the conviction rate for crimes against women is dangerously

¹ Ministry of Health and Family Welfare, Government of India, National Family Health Survey (NHFS 4) 2015-16, (Dec. 20, 5:04 PM), <http://rchiips.org/nfhs/NFHS-4Reports/India.pdf>.

low. According to NCRB report, the conviction rate in rape cases stood at 32.2%.² For a law to play the role of deterrence, its strict implementation becomes essential.

The data on the number of unreported cases and the conviction rate can be ascribed to the police authorities and the courts for vitiating the process of delivery of justice. Section 154 of the Code of Criminal Procedure stipulates that a woman police officer should record information and register the F.I.R. for rape complaints. The Criminal Law (Amendment) Act, 2013 also provides that failure on the part of police officials to register sexual assault complaints will entail imprisonment for upto 2 years. In spite of these provisions, police authorities do not comply with these rules and resist filing the F.I.R. on one pretext or another, as was done in the Disha rape case and especially when the complaint is against a powerful politician, like in the Unnao rape case or when the victim belongs to a socially marginalized section, like in the Kathua rape case. Also Section 164(A) of CrPC, which provides for medical examination of the victim within 24 hours of receiving the information and the 2014 medico-legal guidelines for rape victims issued by the Ministry of Health and Family Welfare are flagrantly disregarded by the police officials. The Supreme Court in the case of State of Karnataka vs. Shivanna@Tarkari Shivanna³ issued certain directives to the police authorities for fast-tracking the procedure of investigation in rape cases which included recording the statement of the victim preferably before a Lady Judicial Magistrate and recording of the evidence by the victim and other witnesses should be avoided as they unnecessarily delay the procedure. The Supreme Court in the case of Prakash Singh & Ors. Vs. UOI & Ors.⁴, had issued seven directives for the states and union territories in order to establish accountability of the police which included constitution of a State Security Commission, separation of investigation and law and order functions of the police and an autonomous complaints authority against the police. Despite various laws and judgements in place regarding the procedure to be followed in cases of rape, poor response and non-adherence on the part of the police authorities delays the process.

For a law to serve its purpose, the execution of the punishment inflicted upon conviction in a timely manner is equally important. In the Nirbhaya rape case which shook the collective conscience of the society, the trial court took 9 months to dispose the case but the Supreme Court took 3 years for appeal and another year for review. Seven years have passed and yet the accused have not been executed on account of non-exhaustion of their legal remedies. Section 309 of CrPC specifies that trial proceedings should be conducted on a day-to-day basis unless the Court finds the adjournment of the same necessary. But this provision is conveniently ignored by the courts and the lawyers which again stymies the attainment of the objective of the provision. The Apex Court in the case

² Ministry of Home Affairs, Government of India, National Crime Records Bureau, Crime in India 2017, (Dec.17, 8:21 PM), <http://ncrb.gov.in/StatPublications/CII/CII2017/pdfs/CII2017-Full.pdf>.

³ State of Karnataka v. Shivanna @ Tarkari Shivanna, (2014) 8 S.C.C. 913 (India).

⁴ Prakash Singh & Ors. v. UOI & Ors., (2006) 8 S.C.C. 1 (India).

of State of UP vs. Shambhunath Singh & Ors.⁵ expressed its dissatisfaction on the failure of the trial courts in following the mandate of Section 309 of CrPC in letter and spirit. According to NCRB data, the backlog of rape cases which were pending trial was more than 133,000 at the end of 2016.⁶ The Criminal Law (Amendment) Act 2018 stipulated completion of the investigation by police authorities within 2 months, disposal of the case by the trial court within 2 months and disposal of the appeals within 6 months. But the implementation of the same poses a challenge given the history of lethargy of the police and judicial authorities in implementing the previous laws. A report submitted by an NGO named Partners for Law in Development with support from Union Law Ministry and United Nations Development Programme stated that the average time taken by fast-track courts in disposing rape cases was 8 months against the stipulated time of two months.⁷ Recently, the Unnao rape case victim died after she was set ablaze and her parents cremated her only after being assured of a speedy trial from the UP government. Moreover, the father of the victim had clamoured for the encounter of the accused which clearly showed the lack of trust in the judicial system.

The Verma Committee Report stated that the present rape laws will not translate into action lest outdated practices are replaced by professional ones and the gap between policy and implementation is bridged.⁸ According to the World Development Report, likelihood of prosecution, apprehension and conviction affects the behaviour of potential offenders and also the reporting of cases.⁹ According to a report by United Nations Office on Drugs and Crime (UNODC), states are obligated to exercise due diligence in formulating effective measures for prevention of violence against women but weak implementation often results in inadequate protection and justice to the victims.¹⁰ According to a report by the United Nations, implementation of justice is said to have a cascading effect wherein prosecution of past crimes deters future violations especially when combined with awareness and training. The report also states that in order to ensure accountability for past crimes and for prevention of future crimes, the capacity of the national institutions must be strengthened.¹¹ The laxity of the police, delay in trials, low conviction rates and lack of accountability on part of the authorities frustrates the deterrent aspect and objective of the law. A huge backlog of pending rape cases despite measures to expedite the process has had the

⁵ State of UP v. Shambhunath Singh & Ors., (2001) 4 S.C.C. 667 (India).

⁶ Supra note 2.

⁷ Prakash K Dutta, Death for rape? Why lawmakers need to get realistic and not fan public sentiments, India Today, (Dec.20, 3:51 PM), <https://www.indiatoday.in/news-analysis/story/death-for-rape-why-lawmakers-need-to-get-realistic-and-not-fan-public-sentiments-1625043-2019-12-04>.

⁸ Government of India, Report of the Committee on Amendments to Criminal Law January 23 2013, (Dec. 17, 8:34 PM), <http://prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committee%20report.pdf>.

⁹ Jeni Klugman, Gender based violence and the law, Background paper for World Development Report 2017, (Dec.20, 4:02 PM), <http://pubdocs.worldbank.org/en/232551485539744935/WDR17-BP-Gender-based-violence-and-the-law.pdf>.

¹⁰ Eileen Skinnider, Ruth Montgomery, Stephanie Garret, The Trial of Rape, (Dec. 18, 3:56 PM), https://www.unodc.org/documents/justice-and-prison-reform/Gender/Trial-of-Rape_YC_27-Sept-2017.pdf.

¹¹ Report of Secretary-General on Conflict-Related Sexual Violence 15 April 2017, (Dec.20, 1:15 PM), <https://www.un.org/en/events/elimination-of-sexual-violence-in-conflict/pdf/1494280398.pdf>.

effect of erosion of public trust in law which in turn has encouraged support for extrajudicial justice, as was seen when the accused in the Hyderabad rape case were encountered. The inefficacious implementation of the present anti-rape laws has failed to instil a sense of fear among the perpetrators which gives them the audacity to commit such heinous crimes in the first place.

Introduction of better laws like increase in the stringency of punishment or enactment of an altogether different legislation for crimes against women or laws pertaining to basic safety measures can prove to be useful in deterring crimes against women only when implemented in an effective manner. How can one warrant the implementation of better laws when strict implementation of the present laws cannot be guaranteed. Non-implementation of the existing laws causes an irreversible damage to the deterrence capacity of the laws. The government is rather keen on enacting better laws but the problem arises when it comes to implementing these laws. The police and the judicial authorities have an unfortunate tendency of treating laws in place as mere recommendations. In such a case, enacting a better law to add up to the pile of other laws just to ignore them all is in no way going to help in ameliorating the current situation. Efficacious implementation of the laws will ensure prosecution of the perpetrator in a timely manner which will in turn strengthen the trust of the public in the judicial system and also expedite the process of delivery of justice. Hence, strict implementation and not better laws is the need of the hour.