
Victimization of Sexual Assault victim: A Critical Analysis

“Rape is the only crime in which victim become the accused” Freda Adler

Dr. Neeti Pathak

Abstract

This paper has been written with a women centric approach, please read it like a victim. There is hardly a day when we don't read about a brutal rape case in the front page of our newspaper. In 2016, India recorded 106 rapes a day and In 2017, the numbers have dipped further and Delhi alone has registered 140 rape cases in January. Last year, the figure was 147 by January end. Now a question arise are these laws and punitive measures working as a deterrent.

Rape is one of the most heinous type of crimes and is often described as the “beginning of a nightmare” for the victim. This paper will highlight the legal approach, judicial approach and social approach towards a rape victim. India has witnessed so many cases and amendment, but present scenario is getting worst today.

Crime against Indian women are on the rise, and so is the pendency of such cases in the courts across the country. In the last three years, number of cases relating to sexual harassment, kidnapping and abduction

including rape has gone up from 2.28 lakh to 3.09 lakh. Over 31,000 rape cases are pending in high courts alone. Who is responsible for this delay? Such delay in proceeding, insensitive approach towards victim and lack of appropriate justice dispense system is tend to re-victimization of a rape victim and need greatest attention today.

Introduction

“That Monday after my rape... my best friend and his girlfriend took me to the ER...I painfully asked them not to call my parents or send them a bill, and then sat in a hospital gown. The nurse first yelled at me for showering... She said they would collect evidence, but I would have to talk to a police officer and report the crime right there. They wouldn't let my female friend come into the room with me. I was sitting barely clothed and freezing in a hospital gown and the nurse who had first yelled at me for showering only gave me a minute to make the decision. I said no – I didn't know what

else to do. I was terrified and ashamed and didn't want to talk to a police officer at that exact moment.”¹Statement of a rape survivor M

“How many times should I repeat what happened with my daughter and my wife? They have been raped. What else do you want to know? My daughter was better till last night. With all the people visiting, she is now being asked to recall everything again. She has fallen sick again. She cannot stop crying. Please leave us alone.” Statement of husband and father (the terrifying rape case of a woman and her 14-year-old daughter on Highway 91 in Bulandshahr, Uttar Pradesh, in northern India, on July 2016)²

Sexual assault is not like any other type of crimes, most incidents go unreported despite evidence suggesting that the rate of sexual assault is on the increase. Although the physical form of the act constituting the crime, but much harm is psychological or emotional in nature. The prosecution of rape

cases is unlike the prosecution of any other criminal offence. There is a penetrating focus on the character and motivation of the complainant. Traditionally, this emphasis has translated into a preoccupation, which is not immediately related to the circumstances of the offence. The complainant is subjected to marked humiliation which adds insult to the injury. Sexual assault is especially stigmatizing, a rape victim (especially one who was previously a virgin) may be viewed by society as being “damaged.” Victims may suffer isolation, be disowned by friends and family, be prohibited from marrying, be divorced if already married, or even killed. This phenomenon is known as secondary victimization³.

It is really heartening to know that there is a greater gender sensitivity and new emergent in the recent years while appreciating evidence in rape cases. It was a matter of shame that earlier ‘Two Finger Test’ (TFT), a primitive clinical procedure where the Doctor tests the laxity of vaginal muscles with his two fingers, was earlier permitted. The Doctor, for some reasons annoyingly, declares the features and gives a character

¹Available at:

<http://www.evawintl.org/library/DocumentLibraryHandler.ashx?id=656>, visited on 17 Feb 18

²<https://qz.com/751532/the-exploitation-of-rape-victims-by-indian-journalists/>

³ Campbell R, Raja S. Secondary victimization of rape victims: Insights from mental health professionals who treat survivors of violence. *Violence Vict.* 1999;4:261–75.

certificate to 'the wronged', testifying that she is habituated to sex or not. As late as in 2011 the Director General of Health Services issued an order to discontinue this practice. In fact, this practice has been banned in many countries. Pages and pages of judgments have been written over long years without condemning this medieval procedural practice, wildly followed by the Investigators.

Thankfully, the new judgments condemn this practice showing the right direction to the investigators. In her entire history India would not have witnessed the kind of upsurge we witnessed in the aftermath of December 16 gangrape in a moving bus and killing of a 23-year-old woman in New Delhi. The unfortunate incident gave a platform for an inclusive debate for better laws and greater gender sensitivity. Rape as an offence has grown beyond mere 'law and order' situation. It can no longer be just another offending act in Indian Penal Code and lookout of law makers and judiciary. Post the Delhi gang-rape, rape penalties have been toughened and promises have been made to police better. But, the trend of assault continues unabated, with brutal attacks on women everywhere in the country.

Although in 2013 the government came with the Criminal Law (Amendment) Act, 2013, which consequently amended Indian Penal Code, Indian Evidence Act and Code of Criminal Procedure, there is no decline in sexual assaults. Contrary to popular perception of delayed trials, we have proved that quicker justice is possible within our system. A special fast-track court took just seven months to pronounce the verdict in the Delhi gang rape case. According to human rights lawyers', the reason for this exception to the rule of a protracted criminal justice system that fails thousands of rape victims in India, is the public outrage. Legal system should not be the one which get charged only on public demand.

Adv. Rubina Nasim, a Supreme Court lawyer, points out "There are so many survivors out there who are neither getting any kind of media attention, nor getting any kind of judicial attention, which results in languishment of their cases in courts with no signs of justice being done". So, what is the reason for this delayed justice and denial of it? According to legal experts, one of the biggest hurdles in achieving justice for rape survivors is the protracted trials. For a population of 1.2 billion, India does not have the sufficient number of courts, judges

and prosecutors which leads to a backlog of millions of pending before the High Courts. Since the conviction, in many cases, depends on testimony of victims, the accused make of use lengthy trial period to win over the prosecutor. Apart from coercive methods there are many instances where the witness is forced to accept illegal “out-of-court” settlements on consideration. There exist ingenious methods to earn judicial sympathy or to ‘resolve’ the ‘dispute’ in the community by pressurizing the victim’s family into marrying their daughter to the accused. A compromise entered between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence, an offence against the society and is not a matter to be left for the parties to compromise and settle. The accused may use all his influence to pressurize the victim for a compromise. In the interest of natural justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe to consider the compromise arrived at between the parties in rape cases as a ground for the Court to exercise the discretionary power under the proviso of Section 376(2) of IPC.

Jurisprudence of Rape Laws

The complexity of sex abuse laws derives from a historical background of biasness against women. The legal history of rape is particularly ignominious. Under English common law—from which our laws developed—rape was a crime against property, not person.⁴ A woman’s reproductive capacity, in the form of her chastity, was considered property and was essential to establishing patriarchal inheritance rights.⁵ A woman’s sexual preferences was owned by her father and transferred to the man who became her husband. Rape laws was basically meant to protect the economic interests of men; therefore, rape was originally considered the theft of this property. The bodily integrity of the woman was immaterial. The consequences of the reinforcements of rape law were that (a) unmarried women could only be considered to have been raped if they were virgins; and (b) rape of married women by her spouse was not a crime because the law presumed a broad notion of

⁴ 5 Michelle J. Anderson, Marital Immunity, Intimate Relationships, and Improper Inferences: A New Law on Sexual Offenses by Intimates, 54 HASTINGS L.J. 1465, 1478 (2003)

⁵ See, Michelle J. Anderson, Diminishing the Legal Impact of Negative Social Attitudes Toward Acquaintance Rape Victims, 13 NEW CRIM. L. REV. 644, 656 (2010).

consent to all of a wife's sexual activity with her husband through her wedding vows.⁶ Under these theories, men could not be raped, rape of orifices other than the vagina was not legally recognized, and rape of non-virginal women was not a crime. As incorporated in American jurisprudence, the basic elements of rape were generally: carnal knowledge (male (penile)-female (vaginal) penetration), use of force beyond the rape itself, and "against her will" (lack of consent)⁷. To establish that the act was against the will of the woman, it was mandatory to establish that force was used, and to establish force, it was necessary to show how much a woman resisted. This historical view of rape and its categorization as a property crime also perpetuated the belief that women may lie about being raped. Sex crime statutes were enacted that incorporated the historic goal of protecting male interests and led to numerous procedural anomalies unique to rape. These included: requiring prompt complaint to law enforcement; requiring the corroboration of the victim's testimony by independent testimony and/or evidence of serious physical injury; allowing information

regarding the victim's past sexual history and character to be admitted into evidence; and permitting cautionary instructions which impugned the victim's credibility to juries. With these legal compliance and procedural problems, a victim get raped again again and cannot forget this experience lifelong. The legal system's hostile treatment with sexual assault victims marked contrast to its response to other assault crimes. With respect to rape, the legal system emphasized the victim's character, behavior, and words in order to ascertain whether the victim consented. Rape, on the other hand, under the traditional view, occurred not because of the action of the assailant, but on the basis of the victim's perceived influence upon the offender's action.

Justice Varma (Committee appointed to find measures for prevention and prosecution of sexual assault on women) observed, ".....that the need of the hour is to ensure speedy justice. The abysmally low conviction rates for crimes against women are worrisome. Apart from implementing police reforms, we also need to ensure that there are adequate number of judges to hear the rape cases and other cases involving crime against women. Thus, the need is to

⁶ Ibid

⁷ State in Interest of M.T.S., 129 N.J. 422, 432 (1992).

augment the number of judges to make sure that justice is delivered in a prompt manner. We are in dire need of fast track courts to ensure speedy justice in rape and cases of sexual harassment and domestic violence. We also need a time-bound action plan by states to deal with pending cases of crimes against women. It is heartening to note that the constitutional courts in India have developed a fine feminine jurisprudence but unfortunately, the principles and rules developed by the courts for the protection of women against sexual assault have not been implemented in true letter and spirit⁸. Thereafter India witnessed Criminal law (Amendment) Act 2013 amendment with a women centric approach.

Present Scenario

According to the latest data released by the National Crime Records Bureau, “U.P and Delhi have got the dubious distinction of recording the maximum number of murders and rape cases respectively. In the national capital alone nearly 40 per cent of rape cases registered among 19 major cities. Uttar Pradesh also saw the highest number of

crimes against women. It registered 14.5 per cent (49,262 cases) of total cases of crime against women. Meanwhile, Delhi reported 33 per cent (13,803 cases out of total 41,761 cases in 19 cities) of total crimes against women, followed by Mumbai at 12.3 per cent (5,128 cases) last year among the 19 cities with a population of above two million”.⁹

Overall, rape cases saw an increase of 12.4 per cent from 34,651 cases in the country in 2015 to 38,947 in 2016. Madhya Pradesh and Uttar Pradesh reported the highest incidence of rape with 4,882 cases (12.5 per cent) and 4,816 (12.4 per cent) followed by Maharashtra 4,189 (10.7 per cent) last year, according to the NCRB data.¹⁰

In 2016, India recorded 106 rapes a day, once again highlighting the continuing rise in crimes against women in the country despite a series of court rulings and toughening of laws to deal with the menace. A large number of those raped (2,116) were girls in the age-group of 0 to 12 years and in 36,859 (94.6%) of cases,

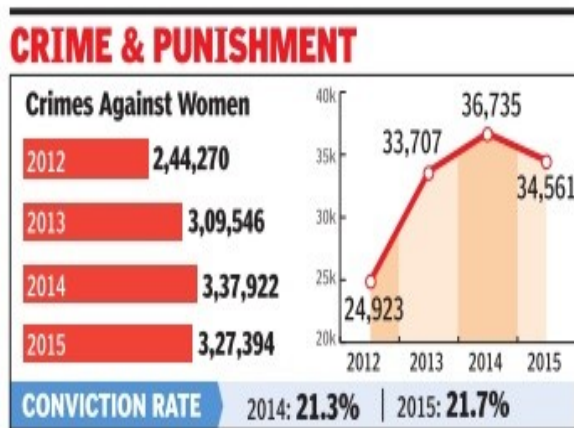
⁸Report relating to prevention and prosecution of sexual assault on women submitted before Hon’ble Mr. Justice J.S. Verma Commission Judicial Reforms.

⁹<http://indianexpress.com/article/india/ncrb-data-2016-delhi-uttar-pradesh-rape-murder-top-crime-list/>, Visited on 17 feb. 18

¹⁰Ibid

offenders were known to the rape victims including neighbors, family members, relatives, husband/live-in partner, employer/co-worker etc.¹¹

Even though registration of crimes against women dipped marginally in 2016In 2017, the numbers have dipped further. Delhi Police registered 140 rape cases in January. Last year, the figure was 147 by January end.



¹¹ ibid

According to police data, 96.4% of the accused in rape cases were known to the victims. Overall, Delhi Police registered 2,155 cases of rape in 2016 as against 2,199 registered in 2015.¹²

In the annual review of the cases of crime against women, police said that of all rape and molestation cases registered, 85.09% of rape and 70.60% of molestation were solved within 48 hours. The chargesheets in these cases were also filed within 20 days.¹³

During the crime mapping exercises conducted last year, police found that almost 95% of cases of crime against women were reported from JJ clusters, resettlement colonies and areas where civic amenities were poor. In 2016, cops registered 4,166 cases of molestation as against the 5,367 registered in 2015. 3,033 cases of molestation were solved in 2016. This year, 238 cases of molestation have been registered so far.¹⁴

Legislative approach

¹²http://indpaedia.com/ind/index.php/Rapes_in_India:annual_statistics, visited on 17 feb 2017

¹³ Ibid

¹⁴ Ibid

The history of Rape laws in India begins with the enactment of the Indian Penal Code (IPC) in 1860 (45 of 1860)¹⁵ covered under Section 375 and 376. According to the original provision as in Section 375, a man is said to have committed rape who, except in the case hereinafter excepted, has sexual intercourse with a female under any of the five following descriptions: (1) Against her will, (2) Without her consent, (3) With her consent, when her consent has been obtained by putting her in fear of death or of hurt, (4) With her consent when the man knows that he is not her husband, and her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married, and (5) With or without her consent when she is under 16 years of age. The offence of rape under Section 375 of IPC, have made both penile and nonpenile insertion into bodily orifices of a woman by a man an offence. The definition is broadly explained in some aspect, with acts like penetration of penis, or any object or any part of body to any extent, into the vagina, mouth, urethra, or anus of a woman

¹⁵ Tandon MP, Tandon R. 15th ed. Allahabad: Allahbad Law Agency; 1982. The Indian Penal Code; pp. 300–4.



or making her to do so with another person or applying of mouth to sexual organs (Cunnilingus or fellatio) without the consent or will of the woman constitutes the offence of rape.¹⁶

The section has also elucidated that penetration means “penetration to any extent,” and lack of physical resistance is immaterial for constituting an offence. Except in certain aggravated situations, the punishment will be imprisonment for not less than 7 years, but which may extend to imprisonment for life, and shall also be liable to fine. In aggravated situations, punishment will be rigorous imprisonment for a term, which shall not be less than 10 years, but which may extend to imprisonment for life, and shall also be liable to fine. A new section, 376A has been inserted by the amendment which states that if a male committing the offence of sexual assault, inflicts an injury, which causes the death of the person or left the person to be in a vegetative state, shall be punished with rigorous imprisonment for a term of 20 yr. to life imprisonment, which shall not be less than 20 yr, but which may extend to imprisonment for life, which shall mean the

remainder of that person's natural life, or with death. In case of gang rape, persons involved regardless of their gender shall be punished with rigorous imprisonment for a term, which shall not be less than 20 yr, but which may extend to life and shall pay compensation to the victim, which shall be reasonable to meet the medical expenses and rehabilitation of the victim.

Certain changes have been introduced in the CrPC, 1973 and IEA, like the recording of statement of the victim has been made more friendly and easy, character of the victim is irrelevant for consideration, presumption of no consent where sexual intercourse is proved and the victim states in the court that there has been no consent, etc.

The age of consent has been increased to 18 years, which means any sexual activity irrespective of presence of consent with a woman below the age of 18 will constitute statutory rape.

The Criminal Law (Amendment) Act, 2013 has been strongly criticized by several human rights and women's rights organizations for not including certain suggestions recommended by the Law

¹⁶ Section 8, Criminal Law (Amendment) Act. 2

Committee Report ¹⁷like, marital rape, reduction of age of consent, amending Armed Forces (Special Powers) Act so that no sanction is needed for prosecuting an armed force personnel accused of a crime against woman.¹⁸

Judicial Approach

Judges are applying the discretionary power to provide better justice to women in the new context of the Socio-Economic conditions. Judiciary has played an active role in enforcing and strengthening goals towards protection of rights of the women of the land. The courts in India have tried to interpret laws in consonance with the international treaties and conventions. Some of the major cases are enumerated below¹⁹: From 1860 to 2002, the colonial law based on the moral history of a woman remained in application while looking at a rape victim, which meant that a woman's

sexual history would have a say on the writing of the verdict. Despite deletion of this clause, unfortunately, not much has changed in the courtrooms. Even after the much talked about Mathura case²⁰, which led to the amendment of Evidence Act in 1983, (114-A), which allowed the woman's word to be trusted for her non-consent; there has been no monitoring of judgments, if the reformed law is followed to the word. Mathura was a sixteen-year-old tribal girl, who was allegedly raped by two policemen on the compound of Desai Ganj Police Station in Chandrapur, Maharashtra, while her relatives sat outside to file a police report against a theft. Both the High Court and later Supreme Court acquitted the policemen on the ground that Mathura was habitual of sexual activities and did not raise alarm²¹.

It was only in 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

¹⁷ Women groups protest anti-rape ordinance. DNA. 4 February 2013. [Last accessed on 2013 Feb 5].

¹⁸ Despite protest, ordinance on sexual offences promulgated. The Hindu. 3 February 2013. [Last accessed on 2013 Feb 5].

¹⁹ Vandna Shukla, Rape of Collective Conscience, The Tribune, December 25, 2012, p.9.

²⁰ Subhashree Mukherjee, Judicial Activism in the Area of Women Empowerment, http://en.wikipedia.org/wiki/Judicial_activism

²¹ Tuka Ram v. State of Maharashtra, AIR 1979 SC 185.

she is not an object²²”. 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 trials²³.

In 1992, Vishakha Judgement, came about after the case received unprecedented media attention and for the first time the Supreme Court defined ‘Sexual harassment at work place’ And the Apex Court laid down landmark guidelines.

In *State of Punjab v. Gurmit Singh*,²⁴ the Supreme Court has advised the lower judiciary, that even if the victim girl is shown to be habituated to sex, the Court should not describe her to be of loose character.

The Supreme Court has in the case of *State of Maharashtra v. Madhukar N. Gardikar*²⁵, held that “the unchastity of a woman does not make her open to any and every person

to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate her person against her wish. She is equally entitled to the protection of law. Therefore merely because she is of easy virtue, her evidence cannot be thrown overboard.”

In *B. Gautam v. Shubra Chakraborty*²⁶ it was held that Rs. 1000 per month should be given to rape victim as an interim compensation.

In *Chairman, Railway Board v. Chandrima Das*²⁷, in which a Bangladesh woman was raped by the railway security men, the Supreme Court observed: “Where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the remedy would be avoidable under public law. It was more so, when it was not a mere violation of any ordinary right, but the violation of fundamental rights was involved- as the petitioner was a victim of rape, which a violation of fundamental right of every person guaranteed under Article.21 of the Constitution.” The Supreme Court also held that the relief can be granted to the

²² Supra note 17

²³ Ibid

²⁴ SC1996 AIR 1393, 1996 SCC (2) 384, available at: Indiakanoon.com, visited on 17 feb 18

²⁵ State Of Maharashtra And Another vs Madhukar Narayan Gardikar on 23 October, 1990, available at: Indiakanoon.com, visited on 17 feb 18

²⁶ SC 1991 AIR 207

²⁷ SC 1996 AIR 922



victim for two reasons- firstly, on the ground of domestic jurisprudence based on the Constitutional provisions; and secondly, on the ground of Human Rights Jurisprudence based on the Universal Declaration of Human Rights, 1948 which has international recognition as the 'Moral Code of Conduct'- adopted by the General Assembly of the United Nation.

*Suo Motto v. State of Rajasthan*²⁸ popularly known as German Lady rape case. It is a landmark judgment laying down principles and guidelines for the protection of dignity of the women. Hon'ble Mr. Justice N.N. Mathur, who wrote the judgment, took *Suo Motto* cognizance of a rape case of a foreign tourist in Rajasthan in May 2005 which had hit the headlines of State and national newspapers. In this case, court laid down certain highly relevant guidelines for criminal investigation and trial of offences against women in rape cases. The court opined: "In order to combat the increasing crime against women and to ensure protection and preservation of their human rights – the criminal justice system needs to be addressed from the point of view of systemic victim support service. There is

need to promote proactive role of police as well as trial courts".

*Birju Ram v. State of Rajasthan*²⁹ relating to abduction and rape, the same court headed by Hon'ble Justice Mathur, emphasized on prevention of crime more than prosecutor culture of the administration. The court directed the State to evolve mechanism to check unwarranted activities of people exploiting caste, creed and cultural sensitivities of the people and creating crisis situations in the society where women and children suffer the most. The court further directed the government to take stern action against persons inside and outside the administration who attempt to patronize and protect the accused or in any manner interfere with the natural flow of due course of justice.

In *State of Punjab v. Gurmit Singh & Ors*³⁰, "The expression that the inquiry into and trial of rape "shall be conducted in camera" as occurring in sub- section (2) of Section 327 Cr. P.C. is not only significant but very important. It casts a duty on the Court to conduct the trial of rape cases etc. invariably "in camera". The Courts are obliged to act in

²⁸2000 AIR 988.

²⁹MANU/RH/0063/2006, 2006 4.L.J 1794.

³⁰Supra note 22

furtherance of the intention expressed by the Legislature and not to ignore its mandate and must invariably take recourse to the provisions of Section 327 (2) and (3) Cr. P.C. and hold the trial of rape cases in camera.”

Additionally, it would be essential to enforce the guidelines imposed in *Sakshi v. Union Of India (UOI) And Ors.*³¹“In holding trial of child sex abuse or rape:

(i) a screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;

(ii) the questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;

(iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.”

The apex court has directed trial courts to effectively control the recording of evidence in rape trials and not let defense 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 A.S. Anand said in one judgment.³²

“The court must hear the loud cry for justice by society in cases of heinous crime of rape and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court,” said by the court.³³

Problems faced by rape victims

- Deprivation of right to life and personal liberty
- Forced to undergo uncomfortable procedures and inquiries both inside the court as well as from the people outside.
- Ostracized by the society and at times, prohibited from right to education as well.
- Exploitation by media and the people concerned by making her a public figure.
- Interference of various political parties into the matter or changing it as a political issue.

³¹ AIR 2004 SC 3566, 2004 (2) ALD Cri 504

³²Ibid

³³Dalveer v. State of U.P. SC 1996 AIR 922.

- Deprivation of the victim from certain rehabilitative and aftercare treatment.
- Delay in the trial proceedings which results in delay in delivering justice.
- Delay on the part of investigating agency in finding out the real culprits.

Who is responsible for delay? The Supreme Court's anguish over the tardy progress of controversial godman Asaram's trial in a rape case will certainly embarrass the Gujarat government. But it also reflects a dysfunctional system. The Supreme Court should have come into the picture only when the case came before it on appeal against the trial court and high court judgments. Such monitoring and micromanaging of lower court business raise questions of why the trial court is unable to do its job without handholding from above. Further, do only high-profile cases merit such monitoring? Imagine a nightmarish scenario where Supreme Court has to weigh in on every trial. In an ideal world, the trial court assisted by the state government should do its work without being reminded of its responsibilities. Trial court judges have

adequate powers and mechanisms to prevent inordinate delay but are they using them?³⁴

Asaram was arrested four years ago, on September 1, 2013. According to the government's submission in SC only 45 of 91 material witnesses have been examined despite a number of witnesses being killed since Asaram's arrest. In April, the Gujarat government had promised to complete the trial in six months, but it does not appear to have made any headway since then. The most important testimony, of the rape survivor, remains to be recorded. One would assume that in a case where witnesses are in peril the government would take all steps to expedite the trial.

The Criminal Procedure Code states that the trial in rape cases "as far as possible, be completed within a period of two months from the date of commencement of examination of witnesses". The CrPC also directed judges to reject pleas for adjournment, except in circumstances beyond the control of the requesting party and even allowed judges to record the statement of witnesses when the pleader was

³⁴<https://blogs.timesofindia.indiatimes.com/jibber-jabber/who-is-responsible-for-delayed-trials-in-rape-cases/visited> on 17 feb 2018



absent or unwilling to examine or cross-examine witnesses. The CrPC also makes provisions for a protection scheme for witnesses and video recording of witness testimony during the investigation process to ensure that witnesses do not turn hostile.

While the two-month trial is not mandatory, Parliament was clear that rape cases must be tried and completed at a faster pace than other cases. But few states have taken the initiative to follow the CrPC though some of them have set up fast-track courts to exclusively try sexual offences against women. Unlike Ram Rahim who was out on bail during the entire trial, Asaram has been denied bail during the pendency of the trial. While bail is the norm it must be denied to accused in cases where witnesses are under threat and attempts have been made to destroy evidence.

Not surprisingly, the two women who Ram Rahim raped have been living in fear and in undisclosed locations for 15 years. This is secondary victimization. They should be given a chance to return to normal life, perhaps under a new identity. Those who have posed a threat to their life must be identified and charged for criminal intimidation. The state has a lot of work to

do to reclaim ground lost to Ram Rahim's goons and the parallel administration they set up. The pushback should not end merely with Ram Rahim's conviction or action against those responsible for the Panchkula violence.

Unless the accused is absconding, or evidence is inconclusive, there is no reason that charge sheets cannot be filed in 90 days, trials completed in one session and the judgment delivered within another two months, as mandated by the Criminal Procedure Code. It is time Parliament reviewed the CrPC and created mandatory timelines that police and courts must follow to ensure swift disposal of cases. Swift disposal of criminal cases is the best deterrent to crimes. They will ensure higher conviction rates, fewer witnesses turning hostile, and instill the fear of the law in wrongdoers.

For this to happen vast areas of the criminal justice delivery system need reform, investment and infrastructure upgrades. Appointing more judges and prosecutors, creating more courtrooms, separating investigating and policing responsibilities – in short, considerable investment in legal infrastructure – is needed. Chief Minister

Vijay Rupani has the opportunity to create a Gujarat Model in this arena that can act as a template for other states. Not just Rupani, the onus is on every Indian chief minister. Even PM Modi may want to ramp up budgetary allocation and push amendments to CrPC.

Impact on psychology of the rape victim

Minor and major female victims of rape are more likely to attempt suicide³⁵. The stigma remains, even after controlling for sex, age, education, symptoms of posttraumatic stress disorder, and the presence of psychiatric disorders³⁶. The experience of such incidents can lead to suicidal tendency as early as adolescence. In a study of raped school girls, 6% reported having attempted suicide. Rape-victims feel embarrassed to talk about what had happened to them³⁷. A study on adolescents found that prior sexual abuse to be a leading factor predicting several health risk behaviors, including suicidal thoughts

and attempts³⁸. Rape and other forms of sexual assault on a child can result in both short-term and long-term harm, including psychopathology in later life. Psychosomatic, emotional, physical, and social effects include depression, posttraumatic stress disorder, anxiety, eating disorders, poor self-esteem, dissociative, and anxiety disorders; general psychological distress and disorders such as somatization, neurosis, chronic pain, sexualized behavior, school/learning problems; and behavior problems including substance abuse, destructive behavior, criminality, and suicide.³⁹

The risk of lasting psychological harm is greater if the perpetrator of the sexual assault is a relative (i.e., incest), or if threats or force are used. Incestual rape has been shown to be one of the most extreme forms of childhood trauma, a trauma that often does serious and long-term psychological damage, especially in the case of parental incest. Apart from judicial awakening; what

³⁵ Davidson JR, Hughes DC, George LK, Blazer DG. The association of sexual assault and attempted suicide within the community. *Arch Gen Psychiatry*. 1996;53:550–5.

³⁶ Nagy SI, Adcock AG, Nagy MC. A comparison of risky health behaviors of sexually active, sexually abused and abstaining adolescents. *Pediatrics*. 1994;93:570–5.

³⁷ Mulugeta E, Kassaye M, Berhane Y. Prevalence and outcomes of sexual violence among high school students. *Ethiop Med J*. 1998;36:167–7

³⁸ Anteghini M, Fonseca H, Ireland M, Blum RW. Health risk behaviors and associated risk and protective factors among Brazilian adolescents in Santos, Brazil. *J Adolesc Health*. 1999;28:295–302.

³⁹ Freyd JJ, Putnam FW, Lyon TD, Becker-Blease KA, Cheit RE, Siegel NB, et al. Psychology. The science of child sexual abuse. *Science*. 2005;308:501.



is primarily required is generation of awareness. 'Educating people to view women as valuable partners in life, in the development of society and the attainment of peace are just as important as taking legal steps protect women's human rights'. Men have the economic, moral, political, religious, and social responsibility to combat all forms of gender discrimination. In a country rife with misconceptions of rape, deeply ingrained cultural and religious stereotypes, and changing social values, globalization has to fast alter the letter of law⁴⁰

Conclusion

At this point of time, it has to be stated that we are responsible for the current situation in which a girl is not even safe in her home. Police, government, and media have to look into the matter in a much more serious way so that apart from benefitting themselves, such machinery must look into the matters of the common people so that people need not gather at streets for protests. Medical practioners should handle victim more responsible and should adopt victim friendly

approach. It is the responsibility of the government and law enforcing agencies to make sure that each and every citizen is safe in this country, media need to behave more responsibly and look after the cases involving infringement of the rights of the people rather than building controversies. There must be a change in the attitude of the society so that when a girl is alone, it must not be an opportunity to others but rather a responsibility of others to look after her safety. Changes needed not only in the laws but also in the outlook of the people so that sexual assault victims will no longer be victimized. Government should made provision to provideeffective mental and phycological help to the rape victim too.

⁴⁰Bulick CM, Prescott CA, Kendler KS. Features of childhood sexual abuse and the development of psychiatric and substance use disorders. Br J Psychiatry. 2001;179:444-9.