

The Concerns of the Public with the Functioning of the Legal System with reference to Rape / Sexual Assault cases

INTRODUCTION

Sexual violence, as a tool for dominating women, is a norm of patriarchal societies. Statistics pertaining to sexual and physical violence against women in India are alarming as around one in three is likely to face such violence in her lifetime. Needless to say, such forms of violence cause irreparable psychological and physical damage to the woman. Insensitive and prolonged investigations and trials only further the trauma faced by the survivor. In these situations, there is an immediate need for adequate, effective, prompt and appropriate response, as well as, reparation for acts perpetrated against them.

The incident of December 16th 2012 in Delhi, where a young girl was brutally gang raped in a public bus, galvanized a spontaneous mass movement rarely seen in the context of women's rights in India. What was unique about this movement was that it was youth led, with the social media acting as a catalyst. This incident brought to fore the inadequate counter-response of the criminal justice system functionaries to sexual violence.

KEY CONCERNS OF THE PUBLIC

An analysis of the NCRB data for 2010-2012 shows that the conviction rate for all major crimes against women under the Indian Penal Code have declined. The conviction rate for rape declined from 26.6 in 2010 to 24.2 in 2012; for molestation, from 29.7 to 24 in the same period; and for 'eve teasing', from 52.8 in 2010 to 36.9 in 2012. Data from Delhi alone shows that the number of rape cases reported in 2013 has more than doubled from those reported in 2012.

The low rate of conviction in cases of VAW points to women/prosecutrix dropping out during the trial proceedings due to delays in the process or acquittals due to lack of evidence. The Judiciary plays a leadership role in preventing sexual violence, by encouraging women to pursue the case until its logical conclusion.

Some of the concerns of the public with the functioning of the legal system with regard to sexual assault / rape cases are:

- **Judicial Delays:** Delays is a major deterrent for many women pursuing a case. Delays take place at all stages of the process. Following the CLA 2013, as per Section 309 Cr.P.C, when the inquiry or trial relates to an offence under Section 376, 376A, 376B, 376C, 376D, of the IPC, the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet. The prosecution must insist on this clause being complied with.

- **Medical Examination:** Insensitive medical examination or medical evidence that is not recorded properly can lead to the woman dropping out of the process or in acquittal of the accused. Justice Verma highlighted the need to standardize medical evidence collection during the survivors treatment process. The “two-finger test” was held to be unconstitutional by the Supreme Court of India in *Lillu @ Rajesh and Anr v. State of Haryana* 2013 (6) SCALE.
Delays in completion of medical examination and collection of medical/physical evidence is a reason for delay in recording the FIR, as well as a major challenge, faced by the police.
- Institutional or infrastructure related issues – in particular – lack of adequately trained women police officers, limited number of Special Courts with trained judges for VAW cases, inadequate remuneration for public prosecutors are key issues.
- **Multiplicity of agencies:** Women drop out during the trial proceedings due to delays in the process; or turning “hostile” due to fear of the accused; or acquittals due to poor investigation, prosecution or lack of scientific evidence, including forensic evidence. Currently, the survivor is required to visit different agencies being the hospital, police station, Child Welfare Committee (in the case of a minor) and the court at different stages of the law enforcement/judicial process. Due to lack of coordination among these agencies and their lack of accountability, the survivor suffers re-victimization leading to her opting out of the system.

UNDERLYING REQUIREMENTS

The Criminal Law (Amendment) Act, 2013 brought in a host of changes to rape and sexual assault laws in India. Some of the recent pertinent changes brought about in statutory laws are:

- The definition of ‘rape’ has been expanded to include other forms of penetration, including digital rape.
- New offences such as sexual harassment, assault or use of criminal force to woman with intent to disrobe, voyeurism, and stalking were introduced;
- Section 166A of the Indian Penal Code mandates penal provision for failure to record information related to a sexual offence by a public servant;
- All hospitals, public or private shall immediately provide medical treatment free of cost, to the survivor.
- In order to encourage prosecution of sexual offences, mandatory reporting was introduced by the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act”). Section 357C of the Cr.P.C was amended in 2013 to introduce mandatory reporting by hospitals in rape cases.

However, in the absence of committed police and judicial services extended to the survivor, it is likely that many survivors will remain disillusioned with the system and not report the offence. Even if the offence is reported, attrition at the stage of investigation and trial is likely to continue due to the hurdles posed by the criminal justice system if re-victimisation is not addressed.

- Prevention of re-victimisation: Re-victimization of the survivor occurs in the form of delays at every stage, lack of sensitivity by the actors and lack of a coordinated mechanism leading to the survivor being expected to communicate with multiple personnel for various services. In addition, Public Prosecutors responsible for representing the victim in court have enormous case loads and often do not have expertise in rape cases. As a result, they often lack the time and the sensitivity needed to deal with rape cases.
- Witness Protection: In case a witness needs protection, this information must be communicated to the Public Prosecutor. Lack of communication can lead to a witness turning hostile, which in turn leads to acquittal.

These barriers can be overcome by having a unified, well coordinated mechanism with legal assistance made available at the stages where it is direly needed, being the police stations and the courts. A well coordinated system will further allow for efficient monitoring of each functionary and will stipulate proper reporting from each functionary, thereby enhancing accountability of every actor. It will also allow challenges to be identified and resolved expeditiously.

In India, hospital based 'One Stop Crisis Centres' have been working effectively in some cities (for example, the Dilasa model in Mumbai), and such a model can be extended to the police stations and courts as well. Provision of a case worker/para legal worker at the police station, right from the stage of filing of FIR, investigation and medical examination can facilitate guidance to the police on what evidence to collect. Similarly, provision for a legal aid lawyer in the Court, to assist the victim and coordinate with the Public Prosecutor can provide guidance to the police. Presently in Delhi, the Delhi State Legal Services Authority if required to depute a paralegal worker at the police station to provide assistance to rape survivors. Due to unavailability of legal assistance, FIR's often do not include relevant information such as dates or particulars of the offence. Further, the survivor does not know the range of legal options available to her.

It is hoped that greater coordination, efficient and sensitive justice response system to survivors of sexual offences, the secondary trauma that survivors experience will be reduced. Ultimately, the aim should be to prevent the survivor from dropping out of the court system and to pursue her case to its conclusion.