

The Dire Call for Better Implementation

Neha Maria Antony

The National University of Advanced Legal Studies, Kochi
Kerala, India

Law Murky streets shrouded in darkness. The vilest of intentions known to mankind. The scream of a lone woman. The most sanctified abode violated. And then, the long, arduous, torturous wait for justice to run its course, with no light at the end of the tunnel for the victim.

Rape. These four letters have been writ large across our collective consciousness as a society, and there is perhaps not one right-thinking individual who does not condemn rape. And yet, why is it that when a victim's entire life falls apart around her, where she might even be shoved through the doors of death, why is it that the hue and cry in the media dies down after a few days? Why is it that the candlelight vigils held for her slowly fade into darkness? Why is it that each instance instils fresh horror in us and yet the perpetrators are as safe as houses, growing fat in jails with the excuse that they are waiting for the processes of justice to unravel itself? Is this the fault of the lack of strict laws or a problem with its implementation? Or is it something else altogether?

An assessment of the rape laws¹ in India will reveal a rather sound framework for bringing the perpetrators to book. The current IPC provisions which have been reworked several times following certain incidents,² the special legislations that have been brought up in this regard along with the myriad of novel initiatives by several State governments, NGO's etc., have definitely created a much more conducive environment for safeguarding the victim and ensuring the punishment of the criminals, at least, on paper. There have been critics who have attributed the fluctuating numbers of sexual offences being committed to the fact that more cases are being reported rather than being hushed up. Even if we were to accept this, the daily newspaper brings with it a series of fresh crimes being committed while carrying smaller articles about how, even, decades later the perpetrators of a particularly gruesome case are yet to be adequately punished. Statistics³ reveal that in 2017 that for the offence of rape, the charge sheeting rate stood at 86.6%, conviction at 32.2% while pendency before courts⁴ stands at 80.75%. These numbers speak for themselves, revealing an altogether disturbing problem which requires revolutionary reforms to even begin to sufficiently address it.

¹ The Justice Verma Committee report of 2012, following the Nirbhaya incident, opened its remarks by holding that the present laws were adequate and improvements were suggested to make it sounder.

² The Mathura rape case, the Nirbhaya incident which prompted the constitution of the Justice Verma Committee and the subsequent amendments in the form of the Criminal Law Amendment Acts of 2013 and 2018, to name a few.

³ NCRB 2017

⁴ Pendency rate (courts) is reckoned as the number of cases pending trial at the end of the year relative to the total number of cases for trial.

If the experience we have had over the past centuries is anything to go by, we know that the evil tinged mens rea may operate even if there remained the threat of the harshest punishment that man could think of. Thus, it is abundantly clear that there is perhaps no point in going about trying to reshape the law when the real problem lies elsewhere. There is, as we have seen in recent times, a gross undercurrent of botched implementation of the laws, making it a pitiable situation where the case stews in the court for years with the average time taken for disposal of a case running for years on end. Thus, it is clear that a better implementation of the law is what we need as the primary basis, which may then be further fortified by having stricter laws. We find that in the current situation, many inherent problems are evident when it comes to implementation of such laws which would render even the most effective laws as toothless tigers. There needs to be a sensitisation on the efficient implementation of these noble-minded legislations aimed at all the concerned parties and stakeholders.

One of the more evident causes for the long, drawn-out process of justice delivery is perhaps the conundrum that arises when the law accords some rights to the perpetrator as well. While every human instinct may scream at us to do away with these vile offenders as quickly as possible, we cannot forego the considerations that we have built up as a civilised society. In the current scenario, as we have seen in the Nirbhaya case, the mechanism of law kicked in long back, but the offender seeking review has kept the case languid. Here, it is vital to take note of the fact that we cannot take away the offenders human rights, no matter how unworthy he may be. The tenets of law and Constitutional sanctity must be given its primal importance. By quick delivery of justice, we cannot point to the encounter killing of the offenders in the Hyderabad rape case by the investigating officers. Blind retribution is not the aim of justice. While we may laud the acts of the police, it is much more detrimental for the system in the long run. We have far to go as a society if we believe that a violation of Article 21, no matter whom it concerns, is a cause for applause. It may go against our instincts as a society to look upon such people as ones having rights when we may be forced to ask, didn't the brutally violated victim have rights too? But here, we need to quell our minds and look upon the law to eke out its own course as envisioned by the decisions like the *Salwa Judum*⁵ judgement which says- 'Modern constitutionalism posits that no wielder of power should be allowed to claim the right to perpetrate state's violence against anyone, much less its own citizens, unchecked by law and notions of innate human dignity of every individual.'

What then is the solution? There remains the possibility of rushing the entire mechanism itself by setting up permanent, dedicated investigative units, special fast track courts, the doing away with of the omnipresent red tape and propagation of better and better thought out policy measures to tackle the root causes and evolve other means for speedy disposal of cases. Though painful, as Ambedkar believed, public morality must be replaced by constitutional morality and this journey may well reveal the path that we ought to follow.

⁵ *Nandini Sundar & Ors v State Of Chattisgarh* (2011) 7 SCC 547

Ultimately, this problem is too multifaceted and deeply rooted to hack away in one stroke. Rather, the best approach would be to focus on better implementation of the laws that operate in this realm with a concerted effort cutting across strata to bring the criminals face to face with the consequences of their heinous acts. This should be accompanied by seeking out means and methods to ensure quick disposal of cases in order to ensure that the adage ‘justice delayed is justice denied’ does not come true, at least not here, where the law is the only flicker of hope. Long gone are the days where a woman was akin to a goddess. Today her entire being is violated by predator like men who see nothing but a mass of flesh. It is up to us, as a society, as the ones crusading for justice to bring out a change and ensure that her cries do not fade away or get smothered by forces operating to choke the law.