



RAPE AND REFORM: INDIA'S CHANGING ATTITUDES

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It has been just over a year since the Delhi rape case in which a female student was raped and died from her injuries. In its wake, massive protests and a media campaign ensured the perpetrators were sent to trial with amendments also consequently being made to Indian criminal law. However, in spite of welcome reforms and shifting attitudes toward rape, the handling and prosecution of such crimes within the Indian judicial system and police force remains slow and cumbersome.

Just over a year after the heinous gang rape of a female student on a bus in Delhi, the media is still flooded with news reports of rape and sexual assault targeted at Indian women as well as tourists. There have been 1330 registered complaints in the capital of India alone in 2013, up from 706 rape cases in 2012. The widespread media attention has thrown the spotlight on the plight of Indian women like never before. Increasingly emboldened to come forward and report such crimes, the stigma of rape has been partially broken. Furthermore, in the aftermath of the December 2012 rape that garnered international attention, the Indian government has undertaken welcome steps to attempt to address the issue through changes to the criminal justice system and police reform. However, judging by the low turnover rate of cases and the even lower conviction rates, it is clear that still more needs to be done.

Reform Measures

Following the landmark rape case in 2012, the Indian government created a Committee under Justice Verma to look into amendments of Indian criminal law so as to expedite quicker trials and impose longer sentences for criminals committing sexual assault against women; a comprehensive report was promptly delivered within just 30 days. While many of the report's recommendations have subsequently not been adopted, an amendment act to the Indian Penal Code (The Criminal Law (Amendment) Act, 2013) was nonetheless passed, which strengthened existing legislation concerning crimes against women and included new

offences.

New provisions cover acid attacks, sexual harassment, disrobing a woman with criminal force or assault, voyeurism, stalking, and even a section on the trafficking of persons for physical or sexual exploitation; thus not restricting itself to prostitution as was the case with the existing Immoral Trafficking Act from 1956. Stiffer prison sentences now range from one year to life depending on the crime and its severity—and even the death penalty for rape crimes leading to the victim's death or vegetative state. The latter runs counter to the above report's recommendations and has faced criticism from human rights groups. Unfortunately, moreover, the Amendment Act did not include rape within marriage (except during separation) as an offence, which thus also contradicts the recommendations of the report.

Aside from a greater focus on crimes of a sexual nature, the Delhi rape case also highlighted the slow response of the police at the scene of the crime, who argued over the jurisdiction of the case instead of immediately taking the girl to hospital for medical attention. In the wake of this another significant change has been made to the Indian criminal code. This now means that if a police officer refuses or neglects taking an injured victim to hospital for acute medical attention, he or she can, in theory, be more easily prosecuted in court without prior authorization from the state government.

In regard to specific changes undertaken in Delhi, furthermore, courses to sensitise the police on gender issues and gender equality have been run during the past year.



The police stations in the capital will also be provisioned with female staff members. These are also important steps outside of the legal sphere to contribute to a culture of rape awareness and promotion of women's rights more generally.

Problems of Implementation

Despite the good intentions of the Amendment Act and the strengthening of existing clauses, India faces a huge challenge in practically implementing the law: there is an enormous backlog of cases in courts as well as an insufficient number of judges, prosecutors, and police officers to investigate the cases and collect evidence to ensure fast and fair trials. Indeed, India has on average only 15 judges per one million people, with over 30 million awaiting trial on serious offences as of 2012, a quarter of whom have been waiting for five or more years.

After the Delhi rape case there was a public demand for "fast-track" courts in the capital for sexual assault to ensure speedy trials. Following this, six fast-track courts were set up in the beginning of 2013. But with an existing backlog of 1400 pending rape cases and with positions vacant in the high and lower judiciary, the turnover rate has been less than hoped for and far from the stipulated two-month limitation period for trials in rape cases, as stated in the Amendment Act. And while the average time for reaching a verdict in a rape case in a fast-track court has decreased from three or four years to just eight to ten months, it does not mean that the conviction rate has increased.

Simply changing the law is not sufficient if the police, prosecutors, and judiciary remain broadly the same. To improve the conviction rate there are a number of changes that have to be taken in the police force and prosecution, such as increasing the number of trained investigating officers with knowledge in gathering evidence and ensuring sufficient witness protection to the victim and family members. Furthermore, prosecuting police officers for not fulfilling their duty, despite the recent removal of prior government authorization, remains difficult with a lack of mechanisms for accountability or monitoring, with there being no ombudsman or police complaints authority.

In essence what is needed is comprehensive structural reform to the criminal justice system, not only small tweaking and minor changes, though these are welcome and necessary in the current setting. As is often the case in India, the laws, manuals, and guidelines set out are comprehensive; but

implementation suffers due to an archaic judicial structure, limited performance-based career opportunities, understaffing, and a lack of financial means, among a host of other factors.

Conclusions

Welcome changes have occurred in the past year in India. More women now dare to talk about and report sexual assault, with the media also playing an important role as watchdog. It is therefore crucial that media and civil society groups keep monitoring and reporting rape cases and crimes against women generally to ensure that the debate does not lose momentum.

However, it is also incumbent on the Indian public to put pressure on the government to make the necessary changes to the police service and judicial system. While a turning point has been reached in India with attitudes changing toward the mistreatment of women and some initial reforms made, this needs to be followed up with concrete measures that will enable the better handling and more efficient prosecution of such crimes.

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