

EDITORIAL

**Sexual abuse in women and Anti Rape bill: Lesson to learn from success and failure**

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The recent rape case was an eye opener for whole world specially India. Of late, we have psychiatrically assessed 3 rape cases in Wardha District and assisted the police department for charging the accused. This made us to discuss the issue in length. Women have been psychologically conditioned to believe in what society has defined as their own promiscuity. Women have been led to believe for long that they have an uncontrollable sexuality which victimizes men and make females innately promiscuous (remember the typical reaction, “she should not have worn such a provocative dress or why did she take a private bus at night?”) a myth that we must believe at the same time that we believe all women are frigid. There is reason to believe that rape is encultured.

In the Upanishad scripture (advocating rape): *“Surely, a woman who has changed her clothes at the end of her menstrual period is the most auspicious of women. When she has changed her clothes at the end of her menstrual period, therefore, one should approach that splendid woman and invite her to have sex. Should she refuse to consent, he should bribe her. If she still refuses, he should beat her with a stick or with his fists and overpower her, saying: “I take away the splendor from you with my virility and splendor”.*<sup>(1)</sup>

The eminent writer Mahashweta Devi in her historical story ‘Draupadi’<sup>(2)</sup> quotes, *“Suddenly, she hopes against hopes. Perhaps they have abandoned her for the foxes to devour. But she hears the scrape of feet. She turns her head, the guard leans on his bayonet and leers at her. Draupadi closes her eyes. She doesn’t have to wait long. Again the process of making her’ begins. Goes*

*on. The moon vomits a bit of light and goes to sleep. Only the dark remains. A completely spread eagled still body. Active piston of flesh rise and fall, rise and fall all over her.”* This is a poignant and horrifying depiction of modern day Draupadi’s nightmare. The mythological Draupadi of Mahabharata sought divine assistance who wrapped her in a saree, (the same saree which till today proves a hindrance in her attempt to run or escape molestation!), but Mahashweta Devi’s Draupadi has no Krishna as her savior.

**Gravity of problem**

One of the incidence of rape which occurred in India in 1972 was very much highlighted by media, when in Mathura, 16-year-old tribal girl, was raped by two policemen inside a police station. The court set free accused saying she would have voluntarily consented to sex. Angry protest led government amend the anti-rape law in 1983 to include the provision that if a victim says that she did not consent to sex, the court will believe her. Way back in 1999 the law commission had recommended replacing ‘rape’ with ‘sexual assault’ in IPC thus making it gender neutral.<sup>(3)</sup>

An increasing trend in cases of rape has been observed during 2007-2011.<sup>(4)</sup> According to national crime record bureau 2011, Madhya Pradesh has highest number of Rape cases (3,406) accounting for 14.1% of total such cases reported in the country. Mizoram has reported a crime rate of 7.1 as compared to National average of 2.0 in crime against women in year 2011. Maharashtra (44 cases) has accounted for the highest (15.3%) of the total incest cases reported in the country.

There were 24,270 victims of rape reported in the country in 2011. Highest women were in age group of 18-30 years which constituted 54.7% (13,264 victims), second highest were in age group of teenage girls (14-18 years) which constituted 19.0% (4,646) of the total victims of rape. However, 15.0% (3,637 victims) victims were in the age-group of 30-50 years. Offenders were known to the victims in 22,549 (94.2%) cases. It means offenders are either close friends or relatives.

There are some 15,423 rape cases registered in country in year 2011 of which 4,072 (26.4%) are only convicted. Delhi has registered highest number of cases closely followed by Mumbai on second place. Small north-eastern state of Manipur recorded 100% conviction rate. Unfortunately, there is delay in case to be started in court which varies from 6 to 12 months.

#### **Indian Panel Code Laws<sup>(5)</sup>**

Definition of rape and its punishment are discussed under IPC 375 and IPC 376 respectively.

1. Punishment for Rape varies from capital punishment to seven years or life imprisonment.
2. Intercourse by a man with his wife during separation is discussed under 376 A of IPC and punishment varies from two years imprisonment with or without fine.
3. Intercourse by superintendent of jail, remand home, etc is discussed under Section 376 C of Indian Penal Code punishment and is liable for punishment for five years or fine.
4. Intercourse by any member of the management or staff of a hospital with any woman in that hospital is discussed under Section 376 D. Here the punishment varies from imprisonment of five years or fine.

#### **Shortcomings of Indian Panel Code Laws<sup>(6)</sup>**

The ordinary criminal laws are totally inadequate to protect the women, who are victims of sexual abuse. The restrictive interpretation of 'penetration' in the explanation to section 375 is an obstacle to cases. Explanation to section 375 does not treat force sexual intercourse by a

husband against the wife (above 15 years) as an offence. Section 376 (A) also has the same reasoning. The Indian Panel Code needs to be reviewed. The existing definition of rape and molestation should be suitably amended to adequately address the various types of sexual assault. In fact, sexual assault on women should be made a specific offence requiring stringent punishment. *There is no provision to deal with psychological trauma of the women.* There are several cases pending in the court as the trial goes on for years. In several cases the girls have become adults by the time the final judgement comes through. The investigation of trial of sexual offences have to be made time bound. There is a need for special provision relating to medical examination of victim in the criminal procedure code. The mental health of victim needs to be attended too, as the trauma has to be reduced.

#### **Chemical castration risk and benefits<sup>(7)</sup>**

1. Person undergoing castration can commit rape.
2. It is seen that offender could reverse castration with other drugs.
3. Failure rate in chemical castration is seen quite high.
3. Making sex offenders come for weekly injections is not practically possible. However, it also violates human rights to some extent. Thus it seems that castration is more about punishing offender rather than safety of society. It creates false impression of punishment as castration doesn't mean that it is safe to release an offender.

#### **Justice Verma committee recommendations<sup>(8)</sup>**

The committee suggested ways to make rape laws stronger in country, and has submitted its report recently (23 Jan 2013). It is a 630 page report to government, suggesting amendment of criminal law to provide for higher punishment to rapists, including those belonging to police and public servant:

1. Every complaint of rape must be registered by the police and civil society.
2. It suggests that the punishment for rape should be rigorous imprisonment from seven years to life.
3. Voyeurism, Acid attacks is punished by imprisonment up to seven years in jail.

4. Protocols for examination of rape victims for sexual abuse have been suggested. 5. Special procedures for protecting persons with disabilities from rape and requisite procedures, 6. It suggests various measures for complete reformation of political and judicial system is equally responsible for it. 7. Thus, there is as urgent need to review the continuance of armed Forces Special Powers Act (AFSPA) and also recommends posting special commissioners for women's safety in conflicting areas.

### **Anti Rape Bill or Criminal Law (Amendment) Bill 2013** <sup>(9)</sup>

The bill was approved by Rajya Sabha on 21<sup>st</sup> March 2013. The salient points suggested: 1. The Bill provides stringent punishment for rapists and repeat offenders; it also includes offences like stalking, voyeurism, disrobing and acid attacks. 2. The age of consent for sex has been increased to 18 years. 3. This Bill replaces the existing anti-rape ordinance, provides capital punishment for rapist if the act causes death of victim or leaves her in a permanent vegetative state. Repeat offenders may also get death penalty under the new law. 4. Bill keeps rape as a gender-specific crime where only a male can be punished for committing such offence. 5. The first offence will be bailable; a second offence will become non-bailable. 6. The Bill prescribed a punishment ranging from 10 years to life imprisonment if someone is involved in trafficking a minor and a jail term of 14 years that may be extended to life term if the offender is involved in trafficking more

than one minor. 7. For acid attack that caused harm to the victim, the offender will get a jail term of minimum 10 years, which can be extended to life term.

### **Future Suggestions**

1. Bail should not be granted to the person who has committed rape. 2. Duration of imprisonment should be decided on individual basis accordingly. 3. Age bar defining child should be liberalized according to motive of criminal. 4. Centralized register should be maintained to keep records of criminals convicted of rape.

Finally, thus law can never be the entire answer. But framing laws and getting them perfect should not take up all our time. One also needs to build the political will to implement such laws. Sexual abuse is a multi-dimensional problem having legal, social and psychological implications. Hence, a team work is needed to assess and approach the problem. Detail assessment should be done by multidisciplinary team which includes. 1. Social worker: For victim in community who did not confront. 2. Child and welfare committee officer: For victim's support. 3. Police officer: Safety of other girls in community. 4. NGO'S: Helps in rehabilitation of victim. 5. Medical professionals: Medical checkups. 6. Psychologist/Psychiatrist: Counseling the victim.

Many Gurus have given various suggestions which have its own limitations. This is a serious matter and needs serious considerations for protection of females including children in the community.

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