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Death Penalty for the Rapist is not Pragmatic Solution

INTRODUCTION ::

Rape of a Para medical girl student in capital, has justifiably caused deep concern among the citizen of Delhi and elite groups society across the country. School and College going girl student as well as working women have reasons to feel shaken and frightened. Incensed at the increasing incidence of rape and crime against women in capital, members of the parliament have also demanded that law should be amended to provide capital punishment for the rapists. The opposition leader Susam Swaraj has also favored death penalty for the rapists. However, righteous indignation is substitute for pragmatic response, which is needed effectively to deal the growing incidence of this horrendous crime. Mere provision of death penalty in the statute book will not act as a deterrent. Law enforcement officers as well as the criminologist know that the real deterrent against crimes is the certainty and not the severity of punishment. Experience shows that passing of stringent anti rape laws has not reduced the crime. The criminal law Amendment Act 1983, was passed as a response to the growing public opinion demanding stringent anti-rape laws. It amended section 376 of the IPC and enhanced punishment of rape by providing that it shall not be less than seven years, and if the punishment imposed is less than 7 years, the court will have to record in its judgment, adequate and special reasons for this amendment also provide, for the same offence, enhance punishment of minimum 10 years of imprisonment for police officers or the staff of jail or remand homes and other places of custody established by law. Unfortunately, passing of this stringent law has not reduced the incidence of crime which is increasing in different parts of country. A large number of cases go unreported and unregistered. Due to the shame and stigma attached to the victim, rape remains one of the most misunderstood and unreported crimes. The situation in this respect is not peculiar to India. The National crime victim survey in Australia found that only 32% of the victims of rape reported the assault.

It is wishful to think that mere provisions of death penalty will deter the perpetrators of the crime. On the other hand, there is every likelihood that because of enhanced punishment the court will analyze the evidence more closely and refrain from imposing the maximum penalty because of the fear of miscarriage of justice. All Indian conviction rates in rape cases are just about 28%. Some of the reason for poor conviction rates are shoddy investigation, negative medical opinion, inordinate delay in the disposal of the cases, thus allowing time to the accused persons to gain over the witnesses, etc. It is recorded that to the there is very often unfortunate delay in the disposal of cases in courts of law. According to sample study conducted by a study group of the Bureau of Police and Research and Development the trial of rape cases prolongs for years, though section 309 of Cr.P.C. provides for trial on a day to day basis. It is a common happening that cases usually take between 3 to 12 years to be decided because even after decision of the trial courts, appeals can be made to the High Court and Supreme Court that the defense lawyers often try to prolong the witnesses in the hope that lapse of time will not affect their recall.

Prolonging the trial only heightens trauma of the victims. There should be all out-efforts by the court to reduce the time frame in the disposal of the cases in view of the agony of the victims and their family members during trial stage. Bangladesh has passed an Act for prevention of atrocities against women and children, within 90 days. Further, the reports of the medical and forensic experts will be accepted as evidence by the court without asking them to appear in the court for tendering evidence.

Agony of the rape victims during trial is compounded by the fact that section 155(4) of the Indian Evidence Act 1872, permits the cross examiner to ask the rape victim questions about her past character. These questions about the character and antecedents of the victim can be very embarrassing. It is necessary to amend the section of this law as recommended by the law

commission, as it is patently unfair and discriminatory to the rape victim. Embarrassing cross examinations should not also be permitted by the courts. "As socially sensitive judge, in the memorable words of the Supreme Court". Is a better statutory answer against gender outrage than the long clauses of complex sections with all protection writes into it."

The court also imposes lenient punishment. In many cases maximum punishment is not imposed on Police officers for custodial rape by addressing some extenuating factors. In Suman Rani's case the doctor who had conducted the medical examination testified that the girl was used to sexual intercourse, and the court went to reduce the sentence of the three policemen to 5 years instead of the statutory minimum of 10 years. Many courts, view rape as a sex crime that occurs because of the "uncontrollable natural lust" of men and therefore tend towards leniency in sentencing. Recent research in the field has established that rape is motivated by aggression and the rapist is not succumbing into uncontrollable lust but proving his masculinity by degrading the victim.

Meacham Amir's study of the rape case from the police records of Philadelphia shows that rape cases were not sudden occurrence and had been carefully planned. In the US nationwide victim survey it was found that only 22% of the victims were raped by the strangers. Most of the rapes were committed by relatives and person known to the victim's.

To effective comeback this horrendous crime, a series of counter measures are called for:-

- There should be through painstaking investigation of the rape cases by professional and experienced investigations, who are sympathetic and supportive of the victims. Often investigation is done on a casual manner. The victims should be encouraged to provide as much as details as possible.
- DNA testing now can provide conclusive evidence in rape cases. At present, DNA testing is also lack of interest among the investigating officers to use this technique to fix the identification of the rapist.
- There should be quick disposal of the cases in the courts of the law and deterrent punishment of the offenders.
- The quality of prosecution and caliber of the prosecuting staff must improve. Overburdened public prosecutors of average ability are often outmatched and out maneuvered by more experienced advocates engaged by the accused persons.
- The victim should be encouraged to lodge complaints immediately as failure to lodge complaints is an indirect encouragement to the rapist. Fortunately, many women are now coming forward to report.
- Rape crises centers should be set up in countries like UK and USA to advice the victims.
- Instead of merely blaming the police, the members of the public have to step forward for the defense of the harassed women in the country.
- There should be provisions for the payment of compensation by the State to the victims of crime like rape. At present u/s 357 of the Cr.P.C., the fine leveled against accused can be ordered by the court to be given to the victims as compensation. In the Delhi Domestic Working Women's Forum case, the Supreme Court gave a direction to the government to set up a Criminal Injuries Direction Board. It further directed that compensation to the victim should be awarded by the Board not only on conviction of the offender, but also whether or not conviction has taken place.

Dr. Om Prakash Pandey
Assistant Lecturer,
Shri K. A. Pandhi Law College,
Rajkot