

**SUBMISSION FROM
INSTITUTE OF OBJECTIVE STUDIES (IOS), NEW DELHI
TO**

HON'BLE JUSTICE USHA MEHRA COMMISSION

Suggesting measures to improve safety and security of women in NCT of Delhi and NCR in the light of the 16th December 2010 Delhi Gang Rape Case.

I-A look at circumstances

Coming out of women for work or any other social/human need cannot be stopped; it has to be rather facilitated to live life worth living. The criminalisation of society has taken place with following features:

1. A large number of people have adopted a mechanical mode of life resulting mostly into self care and least bothering about others; this is dangerous in the absence of any effective system for protection of vulnerable groups of society required by mechanical societies in view of general social insensitivity.
2. At the threshold of the transition of the society from local/national to global, the common people are met with tough economic settings, over pervading social pressures, non-bearable stress, non-availability of suitable education and skill development and vacuum of mentorship, absence of presentable leadership, disillusionment about working of public authorities with impunity who now only ensure their earning rather than doing the task they are assigned to.
3. Prevalence of disorder and hopelessness in law implementation and enforcement agencies because of corruption-gangs working in unison with responsible persons in departments/agencies or voluntary groups—even judiciary (judge and the lawyer) is in the same condition in the public eye because nothing remains hidden from the common man.
4. Ego and frustration have touched the higher limits of the continuum giving a breeding ground to vulgarity—this is seen alike in persons holding responsible positions and the ordinary citizens.
5. Pointing out an error is hardly done with the spirit of advice or received as advice even if it is done with that spirit---the only response from the other side generally is 'touch me not' and 'I am!...'
6. These and some other like shocking human displacements, whenever flourish in a society, lead to multiplicity of crime, caste and communal violence, peer bashing, family unrest, industrial distress and corruption—both moral and material—a medical doctor is found

stealing a kidney, a man is found raping a woman like a beast and a public authority (even a judge) is found desecrating his office, all with no sense of real remorse.

The **16th December 2012 Gang Rape** in Delhi invoked **unprecedented mass protests** from the people in an unprecedented way to remind the State its responsibilities under a shocking condition of all limits having surpassed. Nobody is sure about safety of women. It is a matter of chance, everyone believes. Even the other citizen nearby, standing or living, may not take cudgels to help a victim. In this disappointing situation, a question lurking in every mind is that: **Would women continue to be raped in India?** The question is invariably asked by everyone whether living with or without shelter, with or without two time meal, with or without the knowledge of law. The general answer is that **in the absence of strict measures the evil of rape can continue.** If that is so, **What measure should be taken** to curb the heinous assault on women? **We suggest the following multipronged strategy** to meet the desired end.

II-Up-gradation of criminal justice administration:

1. The colonial practice of police power and refusal to register an FIR should be replaced by the rule-of-law practice of compulsory maintenance of all information given to police with their response along with the names of the concerned police personnel on duty in office or in the area supposed to deal with the matter. Any lapse on the part of any person on duty should be taken as unauthorised absence from duty demanding appropriate disciplinary action. It is a shame for a citizen of independent India that he is told: "if police does not act on bringing an incident of crime to their notice, go the Magistrate or someone else to be further disappointed".
2. Duties of a police personnel should be displayed in writing at prominent place in all localities for the awareness of the people and any breach of them, observed and communicated by the people, should be followed by proper action. Portals for such communication should set up soon and maintained properly.
3. The pay of police should be commensurate with their duties.
4. Police training should be oriented with the principles of high dignity of the people and constitutional morality rather than caste mentality.
5. Security budget should be suited to policing requirements, especially enough to make police presence felt through use of modern technology, of course, without making the city look like a police state.
6. Many IT and B.Tech degree holders, willing to become police offers should be give a proportionate quota for appointment.
7. Genuine police-public cooperation should be promoted to deal with situations of crime rise and social and communal tension in any area.
8. Political workers, guilty of an offence, should treated as other offenders because discriminatory approach takes away faith of the people from the system and renders it worthless.
9. Record of each criminal case along with the name of the judge dealing with the case should be available for evaluation to researchers and scholars.
10. Number of Investigation Officers should be increased keeping in view the crime rise and they should be with necessary technical knowhow.

11. Social policing should be introduced after defining an appropriate mode of action for prevention of crime and dealing with released convicts, people with delinquent tendency, etc.
12. Civil society should be engaged with the process of crime prevention.
13. Research by genuine institutions on crime should be facilitated and a report of the work done by individuals or organisations who received funds for that from government or semi-government agencies for that purpose should be published. The funding for research on crime should be effectively monitored in future.
14. Accountability laws for police to be updated and made effective
15. New technology to be used as a tool for policing, investigation, prosecution and judging—expertise is available now.
16. Training programmes for police officers in relevant aspects of law should be conducted to increase their knowledge in finer aspects of law and their own accountability.
17. After the final disposal of a rape case the records should be made available to public.
18. Women police personnel should be appointed in appropriate numbers.
19. Drinking affecting other persons in the society should be properly regulated and standing orders should be given to police in this regard immediately.
20. Juvenile rapists should be tried normally like others but only put in separate jail compartments.
21. Special arrangements should be made to prevent assault on women during caste and communal violence.

III-Re-defining of the offences of rape for sentencing

1. The law should sufficiently define and classify the offence of rape with reference to its patterns and circumstances in which it occurs.
2. The traditional concept of rape meaning '**intercourse with penetration**' has already received some attention and has resulted into the widening of the definition of rape to include range of activities amounting to molestation of women and rape.
3. The **rape in various situations like police custody, work place etc.** also has received some attention and certain provisions have been inserted into the law in that regard.
4. The **gang rape** too has been very much a subject of judicial action and there is not a total absence of law on that. However, a consolidated view of these sexual offences against women is needed to be given in the form of a law resulting into an intelligible understanding and classification of these offences and proportionate punishments are prescribed for each one of them.
5. **Rape followed by death** is a separate category of the offence and has to dealt with reference to the background and the aftermath.

6. The rising trend of **acid attacks as a form of sadistic extension of will to rape a woman** will also have to be seen.
7. **Rape by married person, raping an infant or minor, rape by repeating offender, of a person sharing shelter, incest etc.** cannot be treated alike for sentencing purposes.
8. **Adultery cannot** be always excluded from the definition of law. This should not **be allowed to be a standard defence** available to a rapist.

IV-Variied social response to sentencing

1. While it may be difficult to find any society that might have in any way approved rape as such, but there are many practices prevalent in various societies which have resulted into a kind of tolerance of the incidence of rape, at least in particular dispositions. These societies are shaken only by latest type of 16th December 2012 Gang Delhi Rape.
2. Some other societies have shown absolute intolerance for rape and have adopted very stringent measures to prevent incidence of rape in any form.
3. There still another kind of societies, like Islam who consider even consensual sex as rape punishable as the rape with coercion or force is punished.
4. **Present Indian society is a mix of all these situations. However the society and the legal system calls for action on rape with use of force only**, which can be exemplified by the 16th December 2012 Delhi rape case.
5. **Since many rape cases take place after drinking, the law on drinking affecting public life should be revisited is an important demand of all invariably.**

V-Enhancement and appropriate imposition of punishments

Under a severe shock, there are very high pitched demands from people for **capital punishment** for the offence of rape of woman. There is another thought of **rigorous imprisonment for a life** and a suggestion of **30 years rigorous imprisonment and chemical castration.**

There is a need for careful choosing of the sentences which fulfil the requirements of justice in different circumstances. The commission should take note of the following facts while fixing the penalty:

1. The real Indian ethos, as reflected in the outbursts emerging from the depths of human conscience against rape of women (daughters, sisters, mothers of anyone and everyone), has called even for the **rape culprits' public hanging and public stoning to death. As a natural voice that cannot be put in the oblivion. Even if not adopted as law needs to be explained.**

2. The **other side of the picture in the form of false registration of cases** makes the decision taking difficult especially in the context of prevalent deficiencies in the systems of investigation and prosecution coupled with dilution of values.

The matter, thus, needs a cool juristic consideration of the nature of the offence in the psycho-social settings of the milieu to which the law is required to address. The under currents in the transformation of society, multicultural likings of cultures, changing patterns of rape, emerging trade in sex cannot be ignored along with creating a broader and safer space for women in society.

VI-An illustrative account of rape-types and punishment

The proposed punishments for different types may be looked into as follows:

1. Simple rape.....punishment as existing, but to be ensured by reforming the system of investigation and prosecution.
2. Rape followed by death....capital-punishment by hanging till death.
3. Gang rape not followed by death.....capital punishment by hanging in public view through electronic media.
4. Gang rape followed by death.....capital punishment by publicly hanging with public view through electronic media.
5. Rape of an infant or a minor.. ..capital punishment by publicly hanging with public view through electronic media and confiscation of property to be used for victims' welfare like education etc.
6. Rape of a physically disabled person or blind... capital punishment by hanging in public view through electronic media.
7. Rape by a married man.... .capital punishment by hanging to death.
8. Rape in police custody..... capital punishment by hanging with public view through electronic media.
9. Rape by a person as public authority or a politician as a consequence of exploitation....publicly hanging to death in public view through electronic media also.
10. Rape during communal violence.... capital punishment by publicly hanging to death.
11. Rape by a drunk person.....Capital punishment by hanging to death---Drinking affecting others should be seriously regulated to reduce the possibilities of such a crime.
12. Acid attack on woman's not accepting sexual intercourse... Rigorous Life imprisonment.
13. Juvenile rapists should be punished at least with 10 years rigorous imprisonment.

Note.--Some more situations can be described, but the illustrative situations explain the way an objective study of the solutions can be carried out for the satisfaction of the society and the ends of law.

VII-Clemency should be well screened to ensure that the effectiveness of law is not affected.

This should be through a careful process with strong reason in negligible instances with judicial scrutiny.

VIII-Juvenile delinquents

1. A juvenile rapist must be covered by the penal laws appropriate to his guilt and punished with 10 years RI up to life term.
2. Maturity of mind and level deviant inkling of the juvenile should be considered while fixing the quantum of punishment.
3. Age of 14 years should be fixed invariably for treating a child as 'child' for the juvenile justice though there should be separate jails for offenders up to the age of 22 years for providing the educational opportunities and reformative counselling.
4. A juvenile rapist, whenever released must be put to strict after processes.
5. The mode of rigorous imprisonment should be both punitive and reformative.

IX-The education system should be put to severe social audit by appointing a commission to look to its moral content.