

# The fatal flaw in the anti-rape campaign

Flavia Agnes

Cover Story

*Let's shift the focus from a conviction driven system to a victim-support one*

As we approach the second anniversary of the horrific gangrape in New Delhi, which became a symbol of our national shame, it is time for reflection. To take stock of the gains of the sporadic movement — public protests, candlelight marches, talk shows on television channels and articles in newspapers — which broke out in the national capital, but soon spread across the entire country. The common refrain: stringent laws and death penalty. The underlying presumption is that stringent punishment will act as a deterrent and bring to an end sexual violence in the country, despite evidence to the contrary. So, every time a fresh incident of rape is highlighted in the media, the demand for stringent laws gets reiterated.

A similar demand was also raised during the first phase of the anti-rape campaign in the early 1980s, following the adverse Supreme Court ruling that acquitted two policemen who had raped a poor, 16-year-old tribal girl in a police station. The acquittal was based on the grounds that since there were no marks of injury on her body, she must have consented. The girl was dubbed a liar and her character was called into question. The public protests, though smaller in scale, also resulted in reforming the antiquated rape laws in the country. In the intervening three decades, while there was a steady rise in the number of reported cases, the conviction rate continued to be dismal.

Overriding this clinching evidence, the government enacted a stringent law to bring solace to the campaigners and justice to the victim. The publicity given to the 16 December gangrape and the mandate to record all cases of sexual violence had the predictable result of scaling up the figures of rape and sexual violence in the country. However, the moot point is, has the conviction rate improved correspondingly? That is a difficult question, the answer to which eludes us. Then, where is the deterrent value of the amended law? Despite this, the clamour for even more stringent laws continues.

Of course, we have had some showcase type of convictions in certain high-profile cases, but here conviction was a foregone conclusion — the New Delhi gangrape case, which triggered the campaign, and the Mumbai Shakti Mills case. Both ended with death penalty to the rapists. In the first case, the pre-amendment law had to be applied. Invoking the legal maxim of 'rarest of rare' in cases of rape and murder was nothing new. What was new was the death penalty awarded in the Shakti Mills case, where the victim was alive, by using the legal premise of 'repeat offender', a new provision brought about by the recent amendment.

As an outcome, three young men, including a 19-year-old, from poverty-stricken backgrounds were awarded the death penalty and the rest condemned to imprisonment for the remainder of their life, as per the provisions of the amended law.

Has this proved to be a deterrent and brought down the incidents of rape in the city of Mumbai or the country at large? I am afraid not. The incidents of rape continue to be as brutal. In September 2012, a 40-year-old ragpicker



Familiar refrain The demand for stringent laws and death penalty gets reiterated after every rape, Photo: Vijay Pandey

in Mumbai was raped by 10 men, who brutalised her by inserting twigs into her vagina. While conducting medical examination on a four-year-old survivor, broomsticks were found inside her vaginal cavity. Even in the most recent case of rape in a Uber taxi in New Delhi, the accused threatened to insert rods if the victim raised an alarm. These are chilling reminders of the legacy left behind by the 16 December gangrape. Awarding death penalty has had no impact on these brutalities.

Though rapes by strangers receive maximum media publicity, they are not the norm, and any law that takes into account only this type of brutality is bound to fail as most rapes are by known persons. They occur within our homes, in our neighbourhoods, in our schools. The sexual violence inflicted upon girls, who already suffer from multiple vulnerabilities, hardly gets noticed by our media.

To cope with the emerging concerns, we need a shift in our approach from a conviction-driven one to a victim-centric one. Perhaps then, and only then, will the conviction rate improve, as the victim is able to depose with confidence and without fear and intimidation. Perhaps this approach is worth a try, as our own experiment in Mumbai reveals. As part of a victim-support programme, we have engaged with more than 350 reported cases, studied chargesheets, observed court proceedings, interacted with stakeholders — the police, hospitals, prosecutors — and, most importantly, have travelled the journey with ‘victims’ from investigation to trial and in the process have helped some to become survivors. This has given us newer insights about the needs of victims and the state of rape trials in our courts.

What would such a programme entail? To begin with, a viable financial support programme. Some states have done this under Section 357A of the Criminal Procedure Code, giving the responsibility to the legal aid department, where the amount is disbursed after the victim deposes in court, or after the conviction. The very purpose of awarding financial support is lost in this process. Perhaps, [Maharashtra](#) is the only state that has brought into effect a financial support scheme, Manodhairya, which has proved to be beneficial to more than 600 rape survivors.

This innovative scheme is designed as per the Supreme Court guidelines of 1994, in the Delhi Domestic Workers Union case where the Department of Women and Child Development was entrusted with the responsibility of bringing into effect a comprehensive survivor support scheme.

While the efforts at the Centre were throttled over and over again, in [Maharashtra](#), working closely with the state government, we were able to give effect to this scheme as the first step in providing support to the survivor.

Under this scheme, compensation is to be paid within a few weeks of lodging the FIR. District Criminal Compensation Boards have been set up under the Collector. This unique scheme, which takes into account the needs of the victim and places the least burden on a victim/survivor, is being closely monitored for its timely and efficient disbursement of funds. This positive model could be emulated by other states as a best practice.

Even among activists and support groups, most view the support as hospital-based, and have attempted to medicalise the issue rather than providing socio-legal support, which must extend beyond the one night spent in a public hospital following the incident of rape. It is thereafter that the actual trauma of rape begins to descend on the victim. What the victim needs is long-term support to help her to reintegrate into the system, a school re-entry mechanism, educational support, help in shifting residence as the stigma attached to rape makes it impossible for the survivor to continue in the same vicinity, healthcare, help in coping with pregnancy-related issues, a caring State-run home to help her to recoup, and support during the trial to face the rigorous cross-examination.

Today, none of these are part of any victim support and rehabilitation programme. In a conviction-driven system, these can easily be overlooked or relegated to the background. But it is these concerns that we need to foreground today. Rather than the proposed, one-stop crisis centres, the need is to flesh out the concept of a District Trauma Team comprising experts from different departments, and a local NGO member, who can reach out to the victim within the least possible time and provide the necessary support. This proposed model could, perhaps, help to shift the focus from a conviction-driven system to a victim-support one.

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*(Published in Tehelka Magazine, Volume 11 Issue 51, Dated 20 December 2014)*