

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

HON'BLE JUSTICE J.S.VERMA COMMITTEE

for suggesting possible amendments to criminal laws and other relevant laws to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault of extreme nature against women.

I-Main issue: Desire to protect women from rape

The 16th December 2012 Gang Rape in Delhi invoked **unprecedented mass protests** from the people, in no way less than that could have been, given the situation, on the raping incidence during the 13th December 1937 Rape of Nanking exactly 75 years ago in Nanjing or as can happen during a communal violence anywhere in the world.

A question lurking in every mind in India is: **Would women continue to be raped in India?** The question is invariably asked by everyone all whether living with or without shelter, with or without two time meal, with or without the knowledge of law. The situation speaks for itself though there is a possibility of any opinion to get a political colour. But **braving all controversies many say 'yes', if the situation is not dealt with care** by an objective evaluation of options available as solutions.

In this regard the following observations may be given a consideration.

II-Suggested punishments: Need for careful choosing

Wondering in despair, the People of India in large numbers expectedly call for **capital punishment** for the rape of woman, definitely trying to ensure a safety at least for their own siblings which they no longer can afford to be preserved as precious items within the four walls of their homes. There is another thought of existing punishments of **10 years rigorous imprisonment up to a life term** being sufficient to deter a person from the guilt provided we make our system work better for ensuring certainty of punishment. The answer by a law maker will have to be searched for between these two limits because to propose anything less than that would neither be accepted by the society nor can that be effective in the given phase of transition of Indian society under the influence of agents of cultural shift/change from within and without. A suggestion of **30 years rigorous imprisonment and chemical castration** has also been given.

The expert panels to find an answer to the basic question about prevention of the most heinous assault to women have **a tough task to perform to satisfy the protesting millions**. This is also a serious question about human realities reflected through ages which will need

further care. But, it should be clear that we cannot be complacent with the situation in any way. Some outbursts emerging from real depths of human conscience against rape of women (daughters, sisters, mothers of anyone and everyone) have called even for the **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.**

The **other side of the picture in the form of false registration of cases** makes the decision taking further 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.

III-Need for clear defining of the offences of rape

The law should sufficiently define and classify the offence of rape with reference to its patterns and circumstances in which it occurs. 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. 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. 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. The various forms of rape may be put as follows:

Rape

Rape followed by death is a separate category of the offence and has to dealt with reference to the background and the aftermath.

The rising trend of **acid attacks as a form of sadistic extension of will to rape a woman** will also have to be seen.

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.

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-Social response

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.

Some other societies have shown absolute intolerance for rape and have adopted very stringent measures to prevent incidence of rape in any form.

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.

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.

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-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. Gangrape 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 with 10 years rigorous imprisonment.

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.

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

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

VII-Justice Administration Reforms

1. Accountability laws for police to be updated and made effective
2. New technology to be used as a tool for policing, investigation, prosecution and judging—expertise is available now.
3. 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.
4. After the final disposal of a rape case the records should be made available to public.
5. Women police personnel should be appointed in appropriate numbers.
6. Drinking affecting other persons in the society should be properly regulated and standing orders should be given to police in this regard immediately.
7. Juvenile rapists should be tried normally like others but only put in separate jail compartments.

Note:

These submissions are submitted within the given time frame. If some more assistance by way of research in the field is required in a special area, the IOS would be ready to render its services without any claim for finances.