



**Full Length Research Article**

**UNDERSTANDING SOCIAL AND LEGAL IMPACTS OF NIRBHAYA MOVEMENT, INDIA (2012)**

**\*Monika Narang**

B-64, Parijat Apartments, West Enclave, Pitampura, Delhi-110034, India

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**ABSTRACT**

Protests... peaceful and violent erupted across India after the brutal gang rape of a young girl in a moving bus in the heart of India's capital, Delhi. Masses, with simmering anger, across all sections and classes and age groups, erupted in absolute disgust over the apathy of the police, political class and government. Demonstrations were held in all major cities. The Nirbhaya movement across the country certainly foxed the authorities. They were wondering how so many people could come out and protest, there must be someone organizing all this, trying to foment trouble. The authorities did not know how to respond and the public anger justifiably grew. There was no leader for this movement, there was no common ideology shared by all the protestors, yes there was outrage but there was no ideology or concrete solutions and yet the protests gained more strength. This paper aims to study the recent history of sexual violence against women, sometimes constitutionally supported and at other times culturally propagated. This paper aims to understand the Nirbhaya incident and its social and legal impact in India.

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**INTRODUCTION**

“.....the principle which regulates the existing social relations between the two sexes- the legal subordination of one sex to the other – is wrong in itself, and now one of the chief hindrances to human improvement;.....it ought to be replaced by a principle of perfect equality, admitting no power or privilege on the one side, nor disability on the other”.

- J.S. Mill and Harriet Tylor Mill

Delhi has the highest number of sex crimes among India's major cities. Police figures show a rape reported on average every 18 hours; reported rape cases rose by nearly 17 percent between 2007 and 2011. Only one of 706 rape cases filed in Delhi in 2012 ended in conviction. Between 16 December and 4 January, 501 calls for harassment and 64 calls for rape were recorded by the Delhi Police, but only four were followed up by inquiries. The protests, post 16 December 2012 were expressions of middle-class angst arising out of a collapse of a social contract between them and the liberal state. Having suffered decades of discrimination and violence often justified in the name of religion or culture, apathy of the police and government, Nirbhaya was the last straw and this was a volcano waiting to erupt.

Sandhya Arya in her book, “Women, Gender and the State” (Deep & Deep, New Delhi, 2000) mentions that the constitutional commitments to gender equality and a spate of legal changes since the beginning of 1980s have not helped to improve the conditions and image of women in Indian society. Four major conclusions that emerge from state efforts in the arena of law reforms are:<sup>1</sup>

- Law reform was not taken up from the point of view of granting complete legal equality to women. Despite official commitment to gender equality, the Constitution and laws of the country are a source of perpetuating inequalities between women and men especially with regards to their rights in family and marriage.
- Laws have contributed towards reinforcing the image of women as wives and mothers and dependants on male members of family, through legal definition of man as head of the household, through male lineage, through unequal property rights and no share in matrimonial property.
- Laws have also been source of promoting sexual stereotypes, i.e., creating women's identity as chaste, loyal and ideal wives, self-sacrificing mothers and dutiful daughters, thereby creating two types of moral standards for women and men.

**\*Corresponding author: Monika Narang**

B-64, Parijat Apartments, West Enclave, Pitampura, Delhi-110034, India

<sup>1</sup>ArunaGoel, Violence and Protective measures for Women Development and Empowerment:Deep & Deep, New Delhi, 2004, pg 4-5.

- Laws also became the basis of extending protection to women, i.e., only good women need to be protected. Laws on rape, prostitution and adultery specifically promote this. The most disturbing feature of many laws is – treating women victims as offenders by stipulating punishment for women. The prostitution, anti-Sati, anti-dowry and sex-determination laws are blatant examples, where the law considers women as guilty and therefore liable for punishment, thereby reinforcing societal and anti-women notions.

The workshop conducted by NIPCCD, on 25-26 November, 1988, identified the following major limitations and constraints of the enforcement machinery with regard to prevention of crime against women:

- Social legislation is enacted without assessing the readiness of society to accept it, due to which their implementation becomes tardy: Sati and dowry legislations for example.
- The working of the police and the judicial system in the last four decades, particularly in the context of the socio-economic and political changes that have come about, have led to a crisis of faith in the criminal justice system as a whole. The crisis has its origin largely in the failure of the police to function strictly within the parameters of law, and increasing political pressure.
- The present nature of tasks assigned to the police does not give them time to thoroughly investigate crimes against women. In fact, crimes against women ranks low in their priority.
- The inadequacy of support services in terms of adequate homes, access to legal recourse /counseling makes the task of enforcement personnel difficult.

The delivery system is based on a stereotype concept of women's development where women are object of pity or welfare and given some benefits in a sporadic and haphazard manner.

### Violence against Women

“It is important to walk a mile in another person's shoes. As it is possible to grow up in the same family, neighborhood school, etc. and yet have totally different experiences depending on whether you are a man or a woman. The way to resolve differences therefore is not to suppress those who are different but to notice them and not try to see our reflection in them.”

-Justice L'Heureux, Supreme Court of Canada

Gender-based violence has only recently emerged as a global issue extending across regional, social, cultural and economic boundaries. As a near universal phenomenon, gender-based violence threatens the well-being, rights and dignity of women. Women victims need to be treated with sensitivity. Victims of sexual violence suffer from a sense of shame, self-guilt, and fear and feel humiliated, abandoned, traumatized and stigmatized. In recent years, the issue of violence against women has been recognized as a basic human rights issue and the elimination of gender-based violence has been seen as central to equality, development and peace. Violence against women includes not only physical violence, but also sexual, psychological and emotional abuse. Many forms of violence are not even recognized as such and are ignored, condoned or

justified by involving religious, cultural and traditional beliefs. There is increasing evidence to show that women regardless of age, educational level, class, caste, community and family living arrangement, are vulnerable to violence. They face violence both inside and outside the family, at all stages of their lives. The national Crime Records Bureau reported in 1998 that the growth rate of crimes against women would be higher than the population growth rate in 2010 (Sen and Shivkumar, 2001).

### Gap between Enactment of Laws and their

#### Implementation: Need of Sincerity in Enforcement

Only very few cases are reported. Women suffer silently. We have to make our system active so that no man who has done violence goes unpunished. R.D Sharma in his article, Violent imbalances, in Hindustan Times, dated 3<sup>rd</sup> May 2001 states that the objectives of preventive laws may not be faulted, but what is of crucial importance is their enforcement. A wide gap exists between laws with high social and economic purposes and their implementation on account of police inefficiency and widespread corruption all around. In this climate, the cutting edge of laws, both as an instrument of crime prevention and of social change, is bound to get blunted. The position further gets aggravated when the culprits are seen by the populace flouting, perverting or getting round the latter and spirit of the law. So long as these laws are not accompanied by the empowerment of women at all levels and sense of accountability in the enforcing agency, they will serve little purpose.

### Rape and Indecent Representation

#### The Incident

The victims, a 23-year-old woman and a male friend, were on their way home on the night of 16 December 2012 after watching the film *Life of Pi* in Saket, South Delhi they boarded an off-duty charter bus at Munirka for Dwarka that was being driven by joyriders at about 9:30 pm (IST). There were only six others on the bus, including the driver. One of the men, a minor, had called for passengers telling them that the bus was going towards their destination. The woman's friend became suspicious when the bus deviated from its normal route and its doors were shut. When he objected, the group of six men already on board, including the driver, taunted the couple, asking what they were doing alone at such a late hour. When the woman's friend tried to intervene, he was beaten, gagged and knocked unconscious with an iron rod. The men then dragged the woman to the rear of the bus, beating her with the rod and raping her while the bus driver continued to drive.

According to police reports the woman attempted to fight off her assailants, biting three of the attackers and leaving bite marks on the accused men. After the beatings and rape ended, the attackers threw both victims from the moving bus. Then the bus driver allegedly tried to drive the bus over the woman, but she was pulled aside by her male friend. One of the perpetrators later cleaned the vehicle to remove evidence. Police impounded it the next day. The partially clothed victims were found on the road by a passerby at around 11 pm (IST). The passerby phoned the Delhi Police, who took the couple to Safdarjung Hospital, where the female victim was given

emergency treatment and placed on mechanical ventilation. She was found with injury marks, including numerous bite marks, all over her body.

In compliance with Indian law, the real name of the victim was initially not released to the media, so pseudonyms were used for her by various media houses instead, including *Jagruti* ("awareness"), *Jyoti* ("flame"), *Amanat* ("treasure"), *Nirbhaya* ("fearless one"), *Damini* ("lightning", after the 1993 Hindi film) and Delhi braveheart. The man who was attacked, a software engineer from Gorakhpur, Uttar Pradesh, who lives in Ber Sarai, New Delhi, suffered broken limbs but survived.

On 19 December 2012, the woman underwent her fifth surgery, removing most of her remaining intestine. On 21 December, the government appointed a committee of physicians to ensure she received the best medical care. By 25 December, she remained intubated, on life support and incritical condition. At a cabinet meeting chaired by Dr. Manmohan Singh on 26 December, the decision was made to fly her to Mount Elizabeth Hospital in Singapore for further care. Mount Elizabeth is a multi-organ transplant specialty hospital. On 28 December, at 11 am (IST), her condition was extremely critical. The chief executive officer of the Mount Elizabeth Hospital said that the woman suffered brain damage, pneumonia, and abdominal infection, and that she was "fighting for her life." Her condition continued to deteriorate, and she died at 4:45 am on 29 December, Singapore Standard Time (2:15 am, 29 December, IST; 8:45 pm, 28 December, UTC). Her body was cremated on 30 December in Delhi under high police security.

#### After the incident

##### *Protests at Raisina Hill, Rajpath, New Delhi*

Public protests took place in New Delhi on 21 December 2012 at India Gate and Raisina Hill, the latter being the location of both the Parliament of India and Rashtrapati Bhavan, the official residence of the President of India. Thousands of protesters clashed with police and battled Rapid Action Force units. Demonstrators were lathi charged, shot with water cannon and tear gas shells, and arrested. Similar protests occurred throughout the country. More than 600 women belonging to various organizations demonstrated in Bangalore. Thousands of people silently marched in Kolkata. Protests occurred online as well on the social networking sites Facebook and WhatsApp, with users replacing their profile images with a black dot symbol. Tens of thousands signed an online petition protesting the incident. Yoga guru Baba Ramdev and former Army chief General Vijay Kumar Singh were among the demonstrators who clashed with Delhi Police at Jantar Mantar. Police used water cannon and tear gas to try and break up the protestors. Seven metro rail stations in New Delhi were closed on 22 December to discourage protesters from gathering at Raisina Hill. On 24 December, police blocked roads leading to India Gate and Raisina Hill to prevent possible mass protests, and closed nine metro stations, affecting thousands of transit patrons. News reporters were not allowed to reach India Gate and Raisina Hill. In addition to IPC section 144, which disallows assembly of groups larger than five, curfew was imposed near the presidential residence. The Hindustan Times accused police of using excessive force against the

protestors, reporting that 375 tear gas canisters were used at India Gate and elsewhere in Delhi to disperse the crowds. An article in First Post criticized the Indian government as well, saying that they failed to act positively or give credible assurances to the protesters and instead used police force, lathi-charging, pushing the media out of the scene, and shutting down metro rail stations. Many of the mourners carried candles and wore black dress; some pasted black cloth across their mouths. New Year's celebrations were scaled down to a large extent, with the Indian armed forces and some clubs and hotels in Delhi cancelling their New Year parties.

#### International

The Indian protests also sparked protests across south Asia, including marches and rallies in Nepal, Sri Lanka, Pakistan and Bangladesh. In Nepal, hundreds of demonstrators in Kathmandu called for legal reforms and an overhaul of attitudes to women. In Bangladesh the human rights group Ain o Salish Kendra (ASK) said the protests in Delhi had given fresh impetus to protests against sexual violence. According to an ASK spokesperson, "although previous demonstrations on similar issues were largely dominated by women, men were now protesting too. The protests had also drawn people from a broad range of society." In Paris, people participated in a march to the Indian embassy where a petition was handed over asking for action to make India safer for women.

The American embassy released a statement on 29 December 2012, offering their condolences to the woman's family and stating "we also recommit ourselves to changing attitudes and ending all forms of gender-based violence, which plagues every country in the world". The female victim was posthumously awarded one of the 2013 International Women of Courage Awards of the US State Department. The citation stated that "for millions of Indian women, her personal ordeal, perseverance to fight for justice, and her family's continued bravery is helping to lift the stigma and vulnerability that drive violence against women." UN Secretary-General Ban Ki-moon stated, "Violence against women must never be accepted, never excused, never tolerated. Every girl and woman has the right to be respected, valued and protected". UN Women called on the Government of India and the Government of Delhi, "to do everything in their power to take up radical reforms, ensure justice and reach out with robust public services to make women's lives more safe and secure".

#### The Political apathy in India

It is shocking to note that even after the horrific incident of gang rape, many political leaders, including members of Parliament/State legislatures, spiritual gurus with large followings and other eminent persons have been making statements reinforcing the gender bias. Some have even blamed the victim for having facilitated the rape by her own behavior. Some of the worst examples are:

- (i) Anisur Rahman (Communist Party of India (Marxist) – West Bengal): "We have told the chief minister in the assembly that the government will pay money to compensate rape victims. What is your fee? If you are raped, what will be your fee?"

- (ii) Asaram Bapu: "Only 5-6 people are not the culprits. The victim is as guilty as her rapists... She should have called the culprits brothers and begged before them to stop... This could have saved her dignity and life. Can one hand clap? I don't think so,"
- (iii) Om Prakash Chautala (INLD – Haryana): "We should learn from the past... specially in Mughal era, people used to marry their girls to save them from Mughal atrocities and currently a similar situation is arising in the state. I think that's the reason Khap<sup>2</sup> has taken such a decision and I support it."
- (iv) Prakash Jaiswal (Congress): "New victory and a new marriage have their own significance. The memory of your victory fades with time, the same way one's wife becomes old and loses her charm".
- (v) Asha Mirje, a Nationalist Congress Party (NCP) leader: "Did Nirbhaya really have to go to watch a movie at 11 in the night with her friend?" Mirje also commented on the gang rape of a photojournalist who was on assignment at a disused mill in Mumbai last year, asking why the victim had gone to such an isolated place. "Rapes take place also because of a woman's clothes, her behavior and her presence at inappropriate places," she said, adding that women must be "careful" and think about whether they are inviting assault.
- (vi) Mulayam Singh Yadav (Samajwadi Party): while addressing an election rally (10/4/14): "Boys will be Boys. They make mistakes. That does not mean they should be hanged. Our Party if it comes to power will repeal the new rape laws in India."

Many of them have reflected this gender bias contrary to the constitutional mandate after swearing 'to bear true faith and allegiance to the Constitution of India', in addition to their fundamental duty 'to abide by the Constitution and respect its ideals'. These deep rooted prejudices have to be eliminated for the efficacy of any laws on the subject. The time has come to enact laws providing for the subsequent disqualification of elected representatives on this ground alone.

### Justice Verma Committee

Justice Verma Committee was constituted to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women post the Nirbhaya Case and protests thereafter. The Committee submitted its report on January 23, 2013. It made recommendations on laws related to rape, sexual harassment, trafficking, child sexual abuse, medical examination of victims, police, electoral and educational reforms. We summarize the key recommendations of the Committee.

**Rape:** The Committee recommended that the gradation of sexual offences should be retained in the Indian Penal Code, 1860 (IPC).

The Committee was of the view that rape and sexual assault are not merely crimes of passion but an expression of power. Rape should be retained as a separate offence and it should not be limited to penetration of the vagina, mouth or anus. Any

non-consensual penetration of a sexual nature should be included in the definition of rape.

The IPC differentiates between rape within marriage and outside marriage. Under the IPC sexual intercourse without consent is prohibited. However, an exception to the offence of rape exists in relation to un-consented sexual intercourse by a husband upon a wife. The Committee recommended that the exception to marital rape should be removed. Marriage should not be considered as an irrevocable consent to sexual acts. Therefore, with regard to an inquiry about whether the complainant consented to the sexual activity, the relationship between the victim and the accused should not be relevant.

**Sexual assault:** Currently, "assault or use of criminal force to a woman with the intent to outrage her modesty" is punishable under Section 354 of the IPC with 2 years imprisonment. The term outraging the modesty of a woman is not defined in the IPC. Thus, where penetration cannot be proved, the offence is categorized as defined under Section 354 of the IPC.

The Committee recommended that non-penetrative forms of sexual contact should be regarded as sexual assault. The offence of sexual assault should be defined so as to include all forms of non-consensual non-penetrative touching of a sexual nature. The sexual nature of an act should be determined on the basis of the circumstances. Sexual gratification as a motive for the act should not be prerequisite for proving the offence. The offence should be punishable with 5 years of imprisonment, or fine, or both.

Use of criminal force to disrobe a woman should be punishable with 3 to 7 years of imprisonment.

**Verbal sexual assault:** At present, use of words or gestures to "insult a woman's modesty" is punishable with 1 year of imprisonment or fine or both under Section 509 of the IPC. This section should be repealed. The Committee has suggested that use of words, acts or gestures that create an unwelcome threat of a sexual nature should be termed as sexual assault and be punishable for 1 year imprisonment or fine or both.

**Sexual harassment:** Some of the key recommendations made by the Committee on the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 that is pending in Parliament are provided below:

- Domestic workers should be included within the purview of the Bill.
- Under the Bill the complainant and the respondent are first required to attempt conciliation. This is contrary to the Supreme Court judgment in Vishakha vs. State of Rajasthan which aimed to secure a safe workplace to women.
- The employer should pay compensation to the woman who has suffered sexual harassment.
- The Bill requires the employer to institute an internal complaints committee to which complaints must be filed. Such an internal committee defeats the purpose of the Bill and instead, there should be an Employment Tribunal to receive and adjudicate all complaints.

<sup>2</sup> Khap: Traditional governing bodies in Haryana villages.

**Acid attack:** The Committee opined that the offence should not be clubbed under the provisions of grievous hurt which is punishable with 7 years imprisonment under the IPC. It noted that the offence was addressed in the Criminal Laws Amendment Bill, 2012 which is currently pending in Parliament. The Bill prescribes a punishment of imprisonment for 10 years or life. It recommended that the central and state government create a corpus to compensate victims of crimes against women.

**Offences against women in conflict areas:** The continuance of Armed Forces (Special Powers) Act (AFSPA) in conflict areas needs to be revisited. At present, the AFSPA requires a sanction by the central government for initiating prosecution against armed forces personnel. The Committee has recommended that the requirement of sanction for prosecution of armed forces personnel should be specifically excluded when a sexual offence is alleged. Complainants of sexual violence must be afforded witness protection. Special commissioners should be appointed in conflict areas to monitor and prosecute for sexual offences. Training of armed personnel should be reoriented to emphasize strict observance of orders in this regard by armed personnel.

**Trafficking:** The Committee noted that the Immoral Trafficking Prevention Act, 1956 did not define trafficking comprehensively since it only criminalized trafficking for the purpose of prostitution. It recommended that the provisions of the IPC on slavery be amended to criminalize trafficking by threat, force or inducement. It also recommended criminalizing employment of a trafficked person. The juvenile and women protective homes should be placed under the legal guardianship of High Courts and steps should be taken to reintegrate the victims into society.

**Child sexual abuse:** The Committee has recommended that the terms 'harm' and 'health' be defined under the Juvenile Justice Act, 2000 to include mental and physical harm and health, respectively, of the juvenile.

**Punishment for crimes against women:** The Committee rejected the proposal for chemical castration as it fails to treat the social foundations of rape. It opined that death penalty should not be awarded for the offence of rape as there was considerable evidence that death penalty was not deterrence to serious crimes. It recommended life imprisonment for rape.

**Medical examination of a rape victim:** The Committee has recommended the discontinuation of the two-finger test which is conducted to determine the laxity of the vaginal muscles. The Supreme Court has through various judgments held that the two-finger test must not be conducted and that the previous sexual experience of the victim should not be relied upon for determining the consent or quality of consent given by the victim.

**Police reforms:** The Committee has recommended certain steps to reform the police. These include establishment of State Security Commissions to ensure that state governments do not exercise influence on the state police. Such Commissions should be headed by the Chief Minister or the Home Minister of the state. The Commission would lay down broad policy guidelines so that the Police act according to the law. A Police Establishment Board should be established to

decide all transfers, postings and promotions of officers. Director General of Police and Inspector General of Police should have a minimum tenure of 2 years.

**Fast Track courts are to be set up to for cases of sexual violence.**

**Reforms in management of cases related to crime against women:**

- A Rape Crisis Cell should be set up. The Cell should be immediately notified when an FIR in relation to sexual assault is made. The Cell must provide legal assistance to the victim.
- All police stations should have CCTVs at the entrance and in the questioning room.
- A complainant should be able to file FIRs online.
- Police officers should be duty bound to assist victims of sexual offences irrespective of the crime's jurisdiction.
- Members of the public who help the victims should not be treated as wrong doers.
- The police should be trained to deal with sexual offences appropriately.
- Number of police personnel should be increased. Community policing should be developed by providing training to volunteers.

**Electoral reforms:** The Committee recommended the amendment of the Representation of People Act, 1951. Currently, the Act provides for disqualification of candidates for crimes related to terrorism, untouchability, secularism, fairness of elections, sati and dowry. The Committee was of the opinion that filing of charge sheet and cognizance by the Court was sufficient for disqualification of a candidate under the Act. It further recommended that candidates should be disqualified for committing sexual offences.

**Education reforms:** The Committee has recommended that children's experiences should not be gendered. It has recommended that sexuality education should be imparted to children. Adult literacy programs are necessary for gender empowerment.

## Legal Impact

**The Criminal Law Amendment Act of 2013 and the Announcement of the Nirbhaya Fund:** While the women's movement in India had been demanding stricter rape laws for several years, it was not until the brutal Nirbhaya gang rape in December 2012 that the issue grabbed the collective consciousness of the nation. The spontaneous outburst of the public's anger, fuelled in good measure by ill-conceived media-bites by politician and self-styled godmen alike, put the government under pressure like never before leading to the passing of an ordinance by President Pranab Mukherjee in February 2013, which would go on to receive a nod from the Lok Sabha and the Rajya Sabha shortly after in March 2013. While the new law is by no means a perfect one, it was a game-changer nonetheless. Most significantly, the new law expanded the definition of rape to include non-peno-vaginal intercourse which was not the case earlier. Under the new law, all forms of non-consensual penetrative sexual acts by men on women, now constitute rape. Furthermore, the new law

eloquently defined consent as an 'unequivocal agreement to engage in a particular sexual act' rubbishing once and for all the 'lack of resistance implies consent' argument. The new law also, for the first time, made note of, and specifically defined, acts such as forced disrobing, stalking, voyeurism and acid attacks, and making Sec 354 of the Indian Penal Code much more potent. A year past the Delhi gang rape, the Nirbhaya Fund – a Rs. 1000 crore corpus to support initiatives towards the safety of women, is yet to reach the grassroots. The corpus nonetheless has the potential to make all the right changes to better the lives of women in India. While time only will tell how well the new law performs and if the Nirbhaya fund sees the light of day, there is no denying that this was a step in the right direction – which shall hopefully be followed by action

### ***The debate on the age of the Juvenile***

Is the punishment commensurate with the crime committed? Why should someone be treated as a juvenile when they have committed a heinous crime? Shouldn't there be a change in the legal system to contain rising youth crime?

The Juvenile Justice (JJ) Act was enacted in the year 2000 with an aim for incorporating its international obligations under international law into its domestic legislations. India is a signatory of the United Nation Convention on the Rights of the Child of 1989, the United Nation Standard Minimum Rules for Administration of Juvenile Justice 1985 i.e. "Beijing Rules" and the United Nation Rules for the Protection of Juveniles Deprived of their Liberty 1990. The JJ Act 2000 is a law in compliance to its obligation to the aforesaid international treaties. The principle behind the legislation is that juveniles lack the physical and mental maturity to take responsibility for their crimes; and because their character is not fully developed, they still have the possibility of being rehabilitated. The amendment to the JJ Act 2000 brought both male and female below the age of 18 years within the ambit of the juvenile justice system, but prior to it was male below the age of 16yrs and females below the age of 18 years as per JJ Act 1986.

The Justice Verma Committee had recommended against the lowering of age of criminality under the JJ Act. The committee cautioned, "Any attempt of reducing the age of juvenility, or excluding certain children from the purview of the Juvenile Justice (Care and Protection of Children) Act 2000 on the basis of nature of the offence and age, will violate guarantees made under the Constitution and international instruments, the United Nation Convention of Rights of the Child (UNCRC).

The Supreme Court had dismissed the petitions seeking direction to the Central Government for amendment of the Act and reducing the age of criminality. It was of the view, "The age of 18 has been fixed on account of the understanding of experts in child psychology and behavioral patterns that till such an age the children in conflict with law could still be redeemed and restored to mainstream society, instead of becoming hardened criminals in future." But in one aspect there can be amendment to the JJ Act for a maximum limitation period for sentencing, i.e., maximum three years as per the present Act. This period is very short and is neither justifiable on grounds of deterrence nor adequate for any kind of reform programme, i.e., the main objective of the Act.

Therefore, it can be finally said that enhancement of the period of custodial sentence and increasing it to its maximum limit would lead to a proper reformation programme and work as a deterrence among the juveniles in conflict with law. While rehabilitation is certainly an important legal and societal objective, this surely has to be balanced with creating a legal deterrent to protect women and girls from the increasing incidence of rapes by juveniles.

### **The Current Status**

Ram Singh, one of the main accused was found hanging in his cell at Tihar Jail. Two days after the Delhi high court confirmed the death penalty awarded to 4 convicts for brutal gang-rape-cum murder of Nirbhaya, the Supreme Court stayed the extreme punishment for two in a special sitting after one of them alleged that he was coerced to accept a lawyer chosen by police during trial. The Juvenile was tried under the JJ Act 2000 and awarded the maximum punishment of three years in a correctional facility. He will soon walk free.

### **Social Impact**

#### ***The youth and the social media***

The Nirbhaya movement across the country has certainly foxed the authorities. They are wondering how so many people could come out and protest, there must be someone organizing all this, trying to foment trouble. The authorities do not know how to respond and the public anger justifiably is just growing. There is no leader for this movement, there is no common ideology shared by all the protestors, yes there is outrage but there is no ideology or concrete solutions and yet the protests are gaining more strength. So how can this happen? How can leaderless, organizationless masses still bring the government to such a hopeless situation?

Malcolm Gladwell, talks about a fundamental shift that is happening in society, he calls it the Generational Paradigm Shift. He makes the argument that there is a strong shift happening from the notions of a social organization based on hierarchy and expertise, to a social organization around the network. A shift from individuality to being connected to a community and need to participate with the community.

The Delhi gang rape and society's reaction to it has also revealed cleavages of class and caste in addition to institutionalized sexism and deeply rooted sexist beliefs across Indian states. The growing independence, both financial and social, of young women in India, has yet to be digested by many young men, who continue to believe that women should 'know their place'. But many of the protestors in Delhi were middle-class students and professionals who clearly identified with Nirbhaya's aspirational middle class identity and values.

Dalit women in India have long been the targets of systemic rape by upper caste men, particularly in rural areas, where traditionally some upper-caste men have considered sexual access to women their 'birth right'. Due to poverty and lack of land, Dalit women are far more likely to work outside the home for economic survival than their upper caste rural counterparts, making them more vulnerable to sexual abuse. The entire caste system rests on the edifice of gendered caste

boundaries between 'pure' and 'chaste' upper caste women on the one hand and 'sexually available' Dalit women on the other. Caste hierarchies thus depend both on the racialization of Dalit communities and the extreme sexualisation of Dalit women. A Dalit woman or girl who is gang raped in a village in one of India's "backward" states might receive media attention, but her life is far removed from the fast-paced, globalised lifestyles in India's large cities.

### ***Crackdown on women?***

Insensitive comments from politicians have been widespread since the Delhi gang rape, an even more worrying trend has been the attempts to address sexual violence through cracking down on the freedoms and rights of women and girls. In May last year, six villages in the northern state of Haryana decided not to send their daughters to school due to instances of sexual harassment of teenage girls. After much criticism, the decision was reversed. Village councils in the same region had also earlier called on the government to lower the age of marriage of girls to 16 from 18, saying that it would stop rapes occurring. More recently, Delhi's law minister was accused of moral policing when he allegedly led a mob which illegally detained and harassed a group of Ugandan women on the suspicion that they were involved in a drugs and prostitution racket. The Delhi Chief Minister Arvind Kejriwal has defended the actions of his minister saying that "rape tendencies start from drug and sex rackets." A mobile police unit named after Nirbhaya – launched in the central state of Madhya Pradesh to protect women – was found to be targeting young couples and women wearing Western clothes. The unit raids bus stops, women's colleges and tourist spots and dishes out punishments such as forcing young couples to do sit-ups and reporting them to their parents and educational institutions.

### ***Public discussions about violence against women***

The conversation has changed in India since that horrific night in December 2012. The crime – which triggered outrage amongst urban Indians who took to the streets to protest – acted as a turning point, forcing many in India to face up to the widespread violence inflicted on women and girls in this largely patriarchal nation. Discussions about rape, acid attacks, sexual harassment, molestation, dowry murders and female feticide are now no longer just confined to civil society groups, feminists and academics but are being widely debated in the mainstream media and even amongst the usually apathetic political classes. While this has helped create greater awareness and social intolerance towards gender crimes, it has also led to a conservative backlash which has over the past year manifested itself through a series of disturbing incidents – some of which can only be described as an attempt at moral policing.

Observers agree that the victim's ordeal has brought a change to public conversations about women's issues, with men joining in the discussions as well. A young woman who had taken part in the protests at the time of the rape said a year later, "A welcome change is that the taboo on discussing rape and sexual violence has been broken. The protests brought debates and discussions to our homes." She also said that since the rape and protests the media is now providing coverage of sexual violence. However, she saw "absolutely no change in

the rape culture and related brutality. The streets are not safe. Teasing [Eve teasing] and catcalling or worse are to be found everywhere. Sexual harassment in public places as well as inside the home is still rampant." She added, "I do acknowledge, however, that a year is too less to undo what patriarchy has done over centuries. It is too embedded in our homes, our institutions and in our laws. The police may be a little more receptive, but it is not out of a sense of duty but out of the fear of censure".

### **Conclusion**

"Woman is the companion of man, gifted with equal mental capacities. She has the right to participate in the minutest details in the activities of man, and she has an equal right of freedom and liberty with him. She is entitled to a supreme place in her own sphere of activity as man is in his. This ought to be the natural condition of things and not as a result only of learning to read and write. By sheer force of a vicious custom, even the most ignorant and worthless men have been enjoying a superiority over woman which they do not deserve and ought not to have. Many of our movements stop half way because of the condition of our women."

Mahatma Gandhi <sup>3</sup>

Indira Jaising in her article, "Violence, the Language of Rights" states: Law by itself cannot deliver social justice, but it can empower women and encourage them to resist violence. While we have explored the use of criminal law in such situations, we have not made imaginative use of the civil law. Civil justice is far more accessible and democratic. It enables the women to choose her remedies, depending on her needs, and have more control over the case. If we are serious about our commitment to eliminate gender-based violence, we need to put a wide new range of laws in place which will economically empower women."

While the Delhi gang rape has already led to significant progressive legislative change and structural change has been promised, such as the commitment of the Delhi Police Force to hire more female police officers, much deeper cultural changes will be required in order for these legislative and structural reforms to be effective. In order to stem rape and make public space safer for half of its population, deeply-rooted sexism and the low status of women needs to be tackled. In order to transform traditional mentalities among all classes and communities, it is important to leverage popular culture as well. Films, especially in regional languages which reach all Indians, could portray heroes who condemn rape and sexual harassment and show women in positions of authority, such as police officers; posters in highly transited places can proclaim the message that sexual harassers and rapists are not 'true men' in order to promote new forms of masculinity, and sexual harassers publicly shamed and ostracized. Undercover 'eve teasing' or sexual harassment monitors can be hired to police both bus/train transport as well as transport in rickshaws. Police officers who refuse to register rape/sexual harassment cases, encourage victims to remain silent or marry

<sup>3</sup> M. K. Gandhi, Speeches and Writings. G. A. Natesan & Company, Madras, 1933.

their attackers should be promptly sacked, and those who set an example in pursuing convictions, promoted. In order for the extraordinary solidarity and gender consciousness that emerged in the wake of the Delhi gang rape to continue, citizens must be prepared to take to the streets to demand action from a complacent political class in order to keep the pressure on to effect real change. The greatest danger is that the initial momentum unleashed by the Delhi gang rape is lost with time. There is also the danger that parents will now exercise even greater control over the mobility and choices of their daughters in order to protect them from potential sexual violence, thereby restricting their educational and career opportunities. The tragic death of Nirbhaya has stirred the nation's consciousness like never before; her memory will live on, but in order for future generations of girls to grow up in a safer and more egalitarian India, gender equality needs to become a national priority and a collective responsibility of government, culture and civil society.

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