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Victim Perspectives in Criminology in the Post Delhi Gang Rape
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Delhi Gang Rape : A Turning Point for Victim Justice in India

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Describing the Delhi Gang Rape Incident(DGR)

A fate-less ride by a public transport bus at 9:30 p.m on the 16th December, 2012 on the streets of Delhi proved disastrous for the two friends, a 25 year old male engineer and 23 year old female paramedics, who were mercilessly beaten, the girl was raped and brutally injured in her genitals which ultimately led to her death, by a gang of five, including the driver, conductors and the cleaner (a juvenile) of the bus. What made this rape incident unique and unusual was its happening in the national capital city, not at an unearthly hour, in the part of the town said to be relatively better protected. The horrific rape incident would have passed unnoticed and un-heard, but for the unprecedented revision and condemnation from the politically sensitive civil society dissenters, particularly the teenage students, who staged a massive demonstration within Delhi, which held the State and the Union Government in a state of emergency for over a week. The demonstrators demanded stern action against the perpetrators, the lax administration and even the Government. The rape incident did not die down without producing equally strong and almost desperate Government response by going in into frantic law reform action, after setting up Justice Verma Committee, followed by an Ordinance and finally the enactment of the Criminal Law (Amendment) Act, 2013 in a record time of less than four months. The energy generated by the unique and unusual DGR has been so strong and unending that almost

three years after the incident, on the eve of release of the Juvenile after three years custodial disposition last month the parents of the victim have preferred a Petition before the National Human Rights Commission for directing the Union Government to prepare a plan to protect other citizens from such dangerous juveniles. (**The Hindu. Allad. ED. 25/11/2015**).

Why do we describe DGR as the 'Turning Point'?

- (i) It was exceptional for the society comprising of persons of diverse and independent interest to rally round in a matter of an isolated crime against individual bodily interest.
- (ii) This was the first time that a 'gender issue', particularly one relating to sexual aggression and atrocity against women, became a cause around which a public demonstration of such a magnitude had been organized.
- (iii) This was the first time when the demonstrators and the administration seemed to be in sync on several vital issues such as zero tolerance to injustice and crimes against women.
- (iv) This was the first time that such an expeditious legislative reform was resorted to and rape law reform that was pending since 2006 was implemented in a record time of four months.
- (v) The DGR has compelled the investigation, prosecution and trial agencies to think afresh and re-cast their functions relating to crimes against women.
- (vi) The DGR has generated immense academic and intellectual interests on crimes against women and sexual crimes leading to a spurt in researches and writings on gender and sex crime themes.
- (vii) The post DGR media, both print and visual, is replete with sex related news and discourses, which display a welcome tendency to discuss sex more scientifically and candidly.

Victim Justice Fall-out of the DGR

Normative reforms are a significant fall-out of the DGR. In

the post DGR period the Criminal Law, at the substantive and procedural law levels, was significantly changed with the enactment of the Criminal Law (Amendment) Act, 2013. The thrust of these amendments was to ensure the victims of sexual and other bodily crimes, a greater measure of justice, in the matters of reporting and investigation, prosecution, guilt determination and sentencing. The following are the notable normative reforms :

Substantive Law Level

- (i) Criminalization of non-recording of an F.I.R. pertaining to sex offences under section 354B, 370A, 376, 376A, 376B, 376C, 376D and 376E, by adding section 166A(C) of the Penal Code, The offence is made punishable for a term of imprisonment from six months to two years.
- (ii) Criminalization of non-treatment of Victim Intentional refusal to treat a victim by a public or private hospital or doctor is made an offence under section 166B, which is punishable up to 1 year imprisonment.
- (iii) Acid attack is made a new form of grievous hurt under section 326A and voluntary throwing or attempting to throw acid is an offence under section 326B.
- (iv) Creation of four new kind of assaults against women under section 354A, 354B, 354C, and 354D are designed to protect victimization of women through intentional acts of sexual harassment of four kind, namely (a) unwelcome physical contact, (b) demand or request for sexual favour, (c) showing pornography against her will and (d) making sexually coloured remarks and assault or use of criminal force to women with intent to disrobe similarly the other new offences such as 'Voyeurism' and 'Stalking'. However, Assault with intent to disrobe is treated as more serious offence that entails imprisonment up to 7 years, while sexual harassment, voyeurism stalking are made punishable with up to 3 years imprisonment. sexual harassment, voyeurism and stalking are designed to punish criminal intent in the initial stages itself, that may not be in consonance with the liberal tradition.

- (v) New offences of trafficking persons and exploitation of the trafficked persons are added in sections 370 and 370A.
- (vi) The ambit of the offence of rape has been widened considerably and sections 375 and 376 changed in the following three respects :
- The mode of commission of rape is now to include not only vaginal penetration but also penile penetration in the urethra, anus, mouth. Similarly the instrument for penetration of vagina, urethra or anus could be any object, manipulated body part in addition to penis.
 - The age for valid consent has been raised from 16 years to 18 years and a new clause seventhly had been added to include situations of inability to communicate consent.
 - Four categories of rapes, namely ordinary rape (Section 376(1)), aggravated rape (section 376(2)), Gang rape (Section 376D) and intercourse by husband with separated wife (Section 376B) have been introduced.

Procedural Law Level

- (i) A statutory definition of 'Victim' has been introduced for the first time under section 2(wa) that reads : 'Victim' means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "Victim" includes his or her guardian or legal heir".
- (ii) Victim under section 24(8) Proviso has a right to engage an advocate of his choice to assist the prosecution, with the permission of the court. Similarly under section 301(2) the complainant party may instruct a pleader to prosecute any person who shall act under the direction of the public prosecutor and act as a 'Watching Advocate'.
- (iii) Victim has been given a special right to appeal under Section 372 proviso that reads : "Provided victim shall have right to

appeal against any order passed by the Court acquitting the accused or conviction for a lesser offence or imposing inadequate compensation and such appeal shall lie to the Court to which appeal ordinarily lies".

- (iv) Victim has been accorded a statutory right to compensation under sections 357A to 357C as follows :

Section 357A

- (1) State to constitute Victim Compensation Scheme.
 - (2) Quantum to be fixed by a proceeding before the Legal Services Authority
 - (3) The Trial Court competent to recommend compensation.
 - (4) The identified victim can file an application even in those cases where the accused is not identified.
- (v) Section 375B provides that the compensation under 357A shall be in addition to other compensatory payments.
 - (vi) Section 375C confers on the victim a right to receive treatment at any hospital, public or private.

In addition to the aforesaid direct rights of the victim, there are several incidental rights of the victim that flow from the State level Witness Protection, Schemes.

Evaluating the Trends of Victim Justice

- (i) At the normative level significant changes in the substantive and procedural laws in the post DGR period appear to have set the stage for decisive movement towards victim justice.
- (ii) However, at the implementation level the things have remained, more or less, the same as before. This is evidenced by the data released by the Delhi Police that shows a constant rise in registration of F.I.R. and chargesheets but decline in the conviction rate as per the data reported in The Hindu (Allad. Ed. 10/10/2015) as follows:

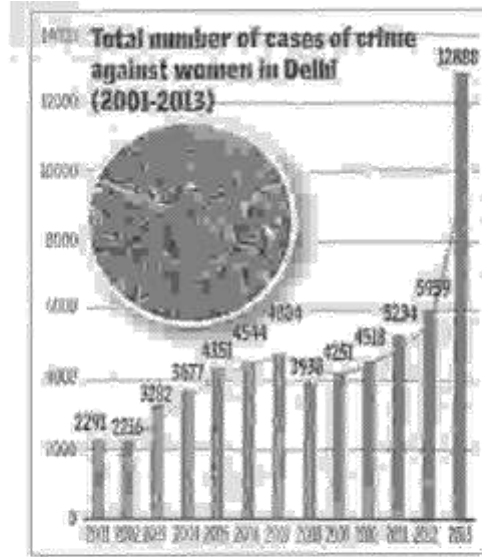
Post DGR Crimes Against Women in Delhi

Year	2012	2013	2014	2015
Number of F.I.R. registered	3842	9271	11209	7124
Cases Charge sheeted	2733	6053	3893	324
Number of Cases of Conviction	71	65	9	1

- (iii) In The post DGR period in Delhi registration of cases rose substantially and doubled between 2012 and 2013, which is drawn out in the following table and chart :

Year	Number of Cases Registered
2001	2291
2002	2216
2003	3282
2004	3677
2005	4351
2006	4804
2007	4334
2008	3938
2009	4251
2010	4518
2011	5234
2012	5939
2013	12888

Interpreting the higher rate of reporting in 2013 Vasundhara Sirante and Nithya Nagathinam opine thus. "We suggest that the reporting of rape in New Delhi has increased markedly because of a cluster of variables. First, we think that the anti-rape agitation pulled of a remarkable coup-it turned rape into something that carried lessor



stigma. Rape victim traditionally seen as "bad girls" begin to be seen as actual victims of heinous crime and less as women who "got what they deserved" ("What enables rape reporting?", **The Hindu, Allad, Ed. 25/092015**)

- (iv) Despite higher reporting of rape in Delhi the reporting of rape in Delhi the reporting of rape and other sex crimes in still very low in Mumbai, Chennai, Bengaluru, Lucknow and Kolkata. See the following comparatives statistics presented by S. Rukmini in her article "(The Hindu Allad. Ed. 02/10/2015



Source : The Hindu, Allad Ed. 25/09/2015

The variations in the reporting of rape can be attributed to

factors : First low faith and confidence of the victims about quick and effective remedial action. Second, lack of professionalism in the police and investigating official. Third, attitude of prosecutors, lawyers and judge about the stereotype image of sex victims that lacks required professional empathy. Therefore, improved victim justice requires not only vigilante social action, but sustained sensitization and education for building a pro-victim mind set.
