

Crime and Punishment

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Seven persons are alleged to have raped a 23-year old woman in a moving bus in Delhi at about 2130 hours. The gentleman accompanying the lady was brutally beaten up and ultimately he and the lady, who was unconscious because of repeated assaults on her, were stripped naked and thrown out of the bus. The victim of this crime has suffered serious internal injuries and is battling for her life in a hospital. The extent of trauma she must have suffered is yet to be assessed, but it would not be surprising if she is mentally and physically scarred. The gravity of the offence, the sheer barbarity of the behaviour of the seven accused, has shocked the nation and brought angry demands in Parliament and on the streets to make rape a capital offence so that people are deterred in future from committing this crime. The Indian Penal Code provides the death penalty for a number of offences. Under section 194 IPC for fabricating evidence which can lead to the conviction and execution of an innocent person, under section 121 for waging war against the State, for murder under sections 302 and 303 and for an offence under section 27(3) of Arms Act, the death penalty can be awarded. In cases under section 303 IPC and 27(3) Arms Act this is mandatory. The question is how effective has been the death penalty to deter murder, treason, etc.

Except in the two types of cases where the death sentence is mandatory, the trial court has the option of awarding imprisonment for life on conviction. Generally speaking the courts avoid awarding the death penalty and the Supreme Court itself has ruled that death penalty should be imposed only in the rarest of rare cases. The offence should have been premeditated, preplanned, motivated by extreme personal greed, committed with savagery which indicates the vengeful nature of the perpetrator of the crime, or have resulted in such outrage in the community that such a criminal should not be allowed to escape the noose. The case of Ajmal Kasab is one of the rarest of rare circumstances and the death penalty was rightly imposed and executed. In the case of Afzal Guru the circumstances are even worse. He masterminded an attack on Parliament, the very institution which symbolises our democratic polity. Nine innocent persons, including policemen, were killed by the terrorists and Afzal Guru was rightly given the death penalty, a sentence upheld by the High Court and subsequently by the Supreme Court. Despite this, for political reasons, he has still not been executed. A delayed execution, if it ultimately comes about, is no deterrent and it can lead to political exploitation by the nation's enemies against our interests.

Rape is horrible because it violates the body, the mind, the honour and the dignity of the victim and thereby is a direct attack on all womanhood. The offence of rape is defined in section 375 IPC and is punishable under section 376 IPC. Section 376 provides a minimum prison sentence of seven years, though the court may award an enhanced penalty of anything between ten years to life imprisonment. The penalty for rape is already just short of death and because life imprisonment for rape is equivalent to the penalty awarded in the vast majority of murder cases raising this penalty one notch to death is hardly likely to make any difference. Because a sentence of death and its execution thereafter is irrevocable the courts would be very reluctant to award it. Murder, that is, permanently depriving a person of life, will always be a more serious offence than rape, regardless of what women activists might say. Despite this,

generally speaking, in murder cases life imprisonment is the norm and death penalty is the exception. Is rape so much more serious than murder that we should insist on a mandatory death penalty in rape cases?

What deters a person from committing a crime? Is it the quantum of punishment or is it the absolute certainty of punishment in the shortest possible time after commission of the offence? Let us take the case of a traffic offence, say, jumping a red light. If a traffic offence brings immediate punishment the habit of obeying traffic laws becomes ingrained. Most British drivers follow the law faithfully, partly because this is now a part of their character but also partly because they know that there is a very strong possibility of their violation is being noticed and punished. In other words, the fear of penalty does act as a deterrent and ultimately leads to obedience of law becoming a habit. If the law is enforced strictly and the offence is punished soon after it is committed, the penalty will have a deterrent effect. If detection of the offence, its trial and outcome of the trial are all long delayed, respect for law reduces, the delay may itself result in evidence being destroyed or tampered with and the deterrent effect of penalty would be lost.

After the Delhi rape everyone is shouting for fast track courts to try rape cases. I have carefully gone through the Code of Criminal Procedure and the Rules and Orders (Criminal) of the Madhya Pradesh High Court. The general tenor of the Code of Criminal Procedure is that cases should be tried with due dispatch. Under section 309 Cr.P.C. it is provided that "In every enquiry or trial the proceedings shall be held as expeditiously as possible and, in particular, when the examination of witnesses has once begun, the same shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded". Every court in India is supposed to follow the same procedure as a fast track court, that is, it must hold a day-to-day trial. If, however, as is being demanded, there should be separate fast track courts for rape, it only means that we accept that our trial procedure is defective and that our courts are incapable of dispensing justice. It is alright for murder cases, or a trial for treason, to be indefinitely delayed. It is only rape cases which must be tried swiftly. This is not a proposition acceptable to me because all trials must be expeditious. That is what the law provides.

Rape cases must be detected and prosecuted vigourously and swiftly and an effort should be made to obtain a conviction within three months of the offence. The law already provides for a minimum sentence of seven years imprisonment. Awarding the death penalty will not stop rape, but swift and harsh punishment will certainly deter would-be rapists. That should be our objective.
