

India: State Uses Death Penalty to Distract Us from Continuing Sexual Violence: Rights Activists

Monday 27 January 2020, by [The Wire \(IN\)](#) (Date first published: 25 January 2020).

Recommendations of the Justice Verma Commission, which could go a long way in making spaces safer for women, are yet to be implemented, they said.

New Delhi: It has been seven years since the gruesome December 16 gang rape and murder in Delhi, which stimulated spontaneous protests across the country. It has also been seven years since the Justice Verma Committee – set up in the aftermath of that brutal incident – gave its recommendations to the government.

On February 1, 2020, four men convicted in the Nirbhaya case are scheduled to be hanged. The clamour for the death penalty is high in sexual violence cases that make it to the public eye – but that does not mean the sentence provides a lasting solution to deep-rooted causes of such violence, activists have argued. At a press conference in New Delhi on Friday evening, gender and child rights activists reiterated their arguments, saying that the state simply used the harshest punishment to distract the public from everything else it wasn't doing to tackle sexual violence.

“Nobody is saying that those convicted should not be punished,” said All India Progressive Women’s Association president Kavita Krishnan. “We are on the side of women, of justice for survivors. But that means we want the focus to be on daily justice. Hanging convicted rapists is merely a distraction from this.”

Members of the panel referred frequently to the Justice Verma Committee recommendations, and lauded the commission for the hard work it had done of engaging with stakeholders. “Not all government commissions make history,” said the moderator, documentary filmmaker and women’s rights activists Vani Subramaniam. “This one did.”

But most of these recommendations are yet to be implemented, including increasing the number of judges to ensure the timely and fair disposal of cases, insulating the police from external influences, training police and medical personnel who investigate sexual violence cases, disqualifying electoral candidates who are accused pending trial, encouraging street vending so that public spaces are safer at night, etc. The committee was also against the death penalty as a punishment in these cases.

Tara Narula, a lawyer and member of the Women in Criminal Law Association, described how the investigative and legal process in India is riddled with hurdles for the complainant, lowering the chances of conviction and barely every ensuring a fair trial, particularly for accused who are from marginalised sections of society. “In a system so riddled with problems, can we ever give the irreversible death penalty? I believe not,” Narula said, after describing a poorly investigated sexual violence case in which DNA evidence was not collected even though it was available.

Subramaniam agreed that demand for punishment varies depending on who the accused is. For high profile and more well to do accused, the public outrage does not ensue. “We want the harshest punishment only when the convict is from the poorest strata.”

Neetika Vishwanath, who works with Project 39A at the National Law University, Delhi, said our focus on sentencing misses the larger picture, and sentencing is only the very last part of the case. “Only 30% of sexual violence cases in India end in a conviction,” she said. “And by only focusing on the death penalty, we are sticking by the idea that justice means revenge. Instead, we should be moving away from retributive justice [focused on punishment rather than rehabilitation].”

The panelists also argued against fast-track courts in their current form, saying that while speedy justice is important, no thought or training had gone into setting up these courts – they were only for the “glitz”.

Child rights activist Enakshi Ganguly also argued that the punitive nature of the law was coming in the way of justice. “In the POCSO Act, for instance, nobody is talking about changing other problematic areas, including the age of consent or penal action if there is no mandatory reporting.”

Sudeeti from Pinjra Tod said to challenge sexual violence, systemic oppression and precarity too had to be challenged. “Successive governments from different parties have dismantled social security. We need to look at the negative impact that has on women’s financial autonomy.”

Members of the audience pointed out that the panel’s discussion had been largely limited to the man-woman gender binary, thus excluding trans people and gender non-conforming people. However, cases of sexual violence against trans people are often ignored by both the police and society, so there is a need to broaden mainstream conversations. Members of the panel agreed with this assessment.

As Subramaniam pointed out, the Nirbhaya case is not the first time the death penalty has been given to convicted rapists – it has happened thrice in the past. Those death sentences did not end sexual violence, she argued, yet the public outcry for the punishment continues.

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