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Nirbhaya:A Historic Chain of Rephrasing Legislations

By Shatakshi Srivastava,Shivi Dwivedi and Shashwat Saxena

Abstract

“While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female.”- Justice ArjitPasayat. It is no secret that India is among the countries with most number of crime rates against women. To curb such criminal activities, the government, year after the other has tried to amend and add several laws regarding these offences. But the question is how far they are successful? This paper talks about the horrendous 2012 Delhi gang rape and murder case of Jyoti Singh(Nirbhaya case). It will also throw the light on the landmark impacts and the changes which followed after this case.

Introduction

In the night of 16th December, 2012 in Munirka, a neighbourhood in South Delhi,an inhuman and shattering crime took place. A female physiotherapy intern, aged 23 years, and her male friend became the victim of this gruesome incident. While travelling in a bus, having six other men, with her male friend back to her home, she and her friend were brutally assaulted. Not only she was gang-raped by those six men, but her body parts were mutilated beyond the imagination of a prudent man. When her male friend tried to save her, he was brutally beaten too. Following the incident, the girl finally succumbed to her injuries, on 29th December. This occurrence shook the whole of mankind and triggered media outrage, resulting in mass protests against the Government of the State along with the Central Government for the gruesome failure in offering protectionto the women of our nation. The case was concluded with justice being delivered, 7 years later to the incident when the four convicts of this inhumane incident were hanged to death on 20th March 2020.

TheIncidentandFacts

On the night of 16th December, Nirbhaya (the female physiotherapy intern) with her male friend were waiting for a bus at Munirka to Dwarka at 9:30 PM, when a bus having tinted glass arrived carrying six men, including the driver, a boy, who was later proved to be juvenile. They called them and convinced them that the bus was going towards their destination. Being convinced that the bus was going towards their destination, they boarded the bus. After some time, Nirbhaya's male friend became suspicious as the bus driver diverted the bus from the normal route. When they objected, on why the bus has deviated from the normal route, all the six men on board including the driver, started taunting Nirbhaya and her male friend as to what they were doing at this hour of the day alone, following which argument broke out between the Nirbhaya's male friend and the other men on board. During the argument, they got into a scuffle, after which he was beaten mercilessly and was knocked unconscious with an iron rod.

After this, the men went to Nirbhaya and dragged her to the rear of the bus while beating her, where they gang-raped her, while the bus kept on moving. She tried to resist and fight her assailant, biting three of the assailants and which made a mark on the assailants' body, but failed. She was not only raped by them but her body parts were mutilated mercilessly. Her intestines were pulled out, and as per the medical reports, an iron rod was penetrated in her genitals. And as per the police report, the iron rod which was used was rusted. After beating and raping her, the attackers threw them out to the moving bus. The victims were found partially naked by a passerby at 11 pm, who later called the police and took the victims to Safdarjung Hospital. In the hospital, Nirbhaya was given emergency treatment and was immediately kept on mechanical ventilation. According to medical reports, she was found with several injuries and bite marks all over her body.

The police started the investigation, it was found out from the CCTV of the highway that the bus was a White Private School Bus. The operator was identified as being contracted by a private school in South Delhi, Ram Singh. The police team rushed to Guru Ravi Das Camp, a slum in South Delhi, the residence of Ram Singh, on 17th December, he was nabbed and was taken to the bus which was parked there. The forensic team was called immediately and they found two bloodstained iron rods, a debit card carrying the name of Asha Devi, mother of Nirbhaya. There were traces of blood, and hair inside the bus. Police also recovered a T-shirt and a pair of bloodstained slippers. After which he was taken to the police station. After interrogation the

police came to know that Mukesh, brother of Ram Singh, had fled to their village, about 300Km away from Delhi in Rajasthan. Mukesh was arrested on 18th December from his village, Karoli, where he was hiding with his parents.

In the afternoon of 18th December, Pawan Kumar, a fruit vendor, was arrested from Guru Ravi Das Camp, where he resides, later on, the same day at 6 pm, Vinay, the gym instructor, was arrested from outside of his gym, again in the neighborhood of Guru Ravi Das Camp in South Delhi. Later, during the interrogation, Ram Singh told the police that Akshay Kumar Singh, the fifth accused, who worked as a cleaner of the bus, was a native of Aurangabad, Bihar. Akshay was arrested from his village on 21st December 2012. The juvenile accused, Mohammed Afroz, who was a native of Badayun in Uttar Pradesh, and was the one who convinced the victims to board the bus, was finally arrested on 21st December, from AnandVihar Terminal, when a spotter identified him on a bus returning from Noida, Uttar Pradesh to AnandVihar Terminal. With the arrest of the juvenile accused, all the six accused were in the custody of the police.

Nirbhaya remained critical and underwent several surgeries, on 19th December. She underwent her fifth surgery, through which her remaining intestine was also removed. On December 21, a committee of best doctors was constituted, in order to ensure that she received the best medical care. Till 25th December, she remained intubated and was kept on life support and her condition remained critical. On 26th December, a cabinet meeting was held, headed by then Prime Minister, Dr. Manmohan Singh, and it was decided to take her to Mount Elizabeth Hospital in Singapore for further treatment. She was then taken to Singapore on 27th December through an air ambulance, during the six-hour flight she suffered a cardiac arrest and was in a near "collapse situation". She was without pulse and blood pressure for about three minutes and became unconscious. She never regained her consciousness in Singapore, on 28th December, her condition became extremely critical. The chief executive officer of the Mount Elizabeth Hospital reported that the victim suffered brain damage, pneumonia, and had an abdominal infection and that she was "fighting for her life". On 29th December, she succumbed to her injuries and her long-fought battle came to an end, at 4:45 am (Singapore Standard Time). She was cremated on 30th December in New Delhi.

Timeline and the Verdict of the Case

2013, January 2 to 2013, March 22

On 2 January 2013, fast track courts were inaugurated by Hon'ble Chief Justice of India, Altamas Kabir for speedy trial in cases of sexual offences. The charge sheet against five accused of such monstrous act was filed under Sections 302, 376(2)(G), 120B, 366, 365, 307, 201, 395, 397, 412 of IPC. Court took the cognizance of charge sheet and ordered the proceedings to take place in camera. On 17 January 2013, fast track courts started proceedings against the five major accused. The Juvenile Justice Board declared that the juvenile involved was a minor at the time of commission of act and framed charges against the minor accused. On 11 March 2013, one of the five adult accused Ram Singh committed suicide in Tihar Jail. Media was allowed to track the entire proceedings of the court so as to keep it transparent to the common people.

2013, July 5 to 2013, September 23

On 5 July 2013, Juvenile Justice Board (JJB) concluded the trial against the juvenile and reserved the verdict for July 11. Juvenile was held guilty of illegally confining and robbing a carpenter on December 16, 2012. The Fast Track Courts heard the final arguments on 22 August 2013 and the verdict was reserved. The Juvenile was convicted for gang rape and murder and was awarded three year term at probation home. However, Mukesh, Vinay, Akshay and Pawan were convicted of 13 offences including unnatural offences, gang rape, murder of the girl, attempt to murder victim's male friend and dacoity. On 13 September 2013, court awarded death penalty awarded to all 4 adult convicts.

2014, January 3 to 2014, April 15

On 3 January 2014, High Court reserved verdict on convicts' appeals. After this, High Court upheld the death penalty to the 4 convicts. On 15 March 2014, Supreme Court stayed execution of 2 convicts, Mukesh and Pawan after they filed the appeals and later, stayed the execution of other convicts as well. Supreme Court ordered police to present the dying declaration of the victim.

2017, February 3 to 2017, December 15

After the convicts filed appeal with respect to the death warrant, Supreme Court ordered to start fresh hearing about the death sentence. Since this offence created series of shocks because of its heinous and brutal manner, the Supreme Court considered it to be the “**rarest of rare**” case and upheld the death penalty for the 4 convicts. On 8 November 2017, Mukesh moved to Supreme Court for the review of capital punishment but the Delhi Police opposed his review plea. Later, Vinay Sharma and Pawan Gupta also moved to Supreme Court for the review of capital punishment verdict.

2018, July 9 to 2019, December 19

On 9 July 2018, Supreme Court rejected the review plea of the 3 convicts. Later on 10 December 2019 Akshay Thakur moved to Supreme Court for the review of death punishment verdict which was rejected on 18 December 2019. Delhi Court directed Tihar authorities to issue a notice to convicts to avail their remaining legal remedies. On 19 December 2019, Delhi High Court dismissed the plea of Pawan Gupta of him being a juvenile at the time of commission of offence.

2020, January 6 to 2020, January 31

Delhi Court ordered the four convicts to be hanged on 22 January 2020 at 7 am in Tihar jail. After this order Mukesh Singh and Vinay Sharma moved a curative petition before Supreme Court and Mukesh Singh also went before the President with the mercy petition. The respective curative petitions filed by the 2 convicts, were rejected by Supreme Court. On 15 January 2020, Mukesh Singh approached the Delhi Court to postpone the date of capital punishment because of his pending mercy petition before the president. The mercy petition was rejected by the president on 17 January 2020 and Delhi Court issued the fresh date of punishment for February 1 at 6 am. After this, Pawan Gupta moved to Supreme Court, filing a Special Leave Petition which claimed that he was a juvenile at the time of commission of offence and the same SLP was rejected by Supreme Court on 20 January 2020. Vinay Sharma filed mercy petition and the convicts moved to Delhi Court seeking stay on the execution scheduled on February 1 and hence the Delhi Court postponed the execution of death warrant until further order.

2020, February 1 to 2020, February 29

Akshay Thakur filed mercy petition and later mercy petition of Akshay Thakur and Vinay Sharma were rejected. Since no pending petitions were there, the Tihar Jail authorities approached the trial court to issue fresh date for execution. On 17 February 2020, Delhi Court issued a death warrant for March 3 for all the four convicts of Nirbhaya gang rape and murder case. Pawan Gupta, one of the convicts moved Supreme Court with a curative petition for the commutation of his death sentence to life imprisonment and Akshay Thakur moved a “complete” mercy petition, stating that the previous one was “incomplete”.

2020, March 2 to 2020, March 20

Court dismissed the curative petition filed by Pawan Gupta and the mercy petition filed by him was also rejected. On 5 March 2020, Delhi Court again issued fresh date for death warrant for March 20 2020 at 5:30 am. The three convicts moved to International Court of Justice to seek stay on the execution. Akshay Thakur again moved to Supreme Court challenging the rejection of his mercy petition but Supreme Court again rejected it on the same date. On 19 March 2020, Delhi Patiala House Court refused to stay execution scheduled for 20 March so as to provide no way for delay in execution. And finally after waiting for 7 long years all the four adult convicts of Nirbhaya gang rape and murder case were executed on 20 March 2020 at 5:30 am in Tihar jail.

Impact and Changes The Case Brought Along

Reaction of the people

The case brought several developments and changes in the law and perspective of society. The immediate impact of the case was the protests and petitions issued by various groups, organization and even by the common man, on national and international levels. Although protests always remained an important part of showing the rage and dismay to a concerned system, this time it was different, for these rallies and protests were so prominent that it pushed the government and judiciary to take quick action, unlike the other times.

Meanwhile, when the incident came under the media light, the whole country condemned this inhuman and brutal act. Protest from every corner of the nation uproared in solidarity with the victim. Public protests started on 21st December in New Delhi at Raisina Hills and India Gate,

thousands of protestors gathered there against the police and the Rapid Action Forces, demanding death penalty for the accused and criticizing the Government's carelessness towards the safety of women in the country. The protestors were subjected to 'lathi charge', and were shot with tear gas shells and water cannon, some were even arrested.

On the other hand in Bangalore, around 600 women gathered to protest against this inhumane incident. Thousands of people in Kolkata marched silently. Similar protests occurred across the nation, at many places people carried out candle march to show solidarity with the victim. On 24th December, an activist, Rajesh Gangwar went on a hunger strike, saying that, "If my death shakes the system and gets them hanged, I am ready to die". Another protest in Chandigarh, Middle Finger Protest, was started by an NGO which was headed by human rights and social activist Prabhloch Singh. On 29th December, when the news of the demise of Nirbhaya came to light, the protest showed more outrage, mourners across the country carried out candle march, and marched wearing black. On 30th December, a large number of people gathered near JantarMantar in New Delhi to protest against the government and to demand a speedy trial. The New Year's celebration was also scaled-down, many clubs and hotels cancelled their New Year events, parties across the country. Not only on domestic, but the public on international levels showed their anger on the matter. This case also brought safety and security condition of a woman once again under severe limelight.

Changes in Law and Judicial System

Observing the need of the time and rage from the public, law and policymakers of our country of that time took rapid action to develop and introduce new regulations for strengthening the remaining system. The first step in this direction was the establishment of Fast Track Courts. On 2 January 2013, fast track courts were inaugurated by Hon'ble Chief Justice of India AltamasKabir for speedy trial in cases of sexual offences.

The Verma Committee

A week later after the attack on Nirbhaya, a judicial committee headed by Justice J. S. Verma, a former Chief Justice of India was set up on 22 December 2012. The main object of this

Committee was to review and amend the Indian criminal laws as well as ensure speedy trials and renew punishment degrees. The 644-page report of the committee published within a month, set the basis of the Criminal Law (Amendment) Act of 2013.

The Verma Committee indicated that failures on the part of the government and police were the root cause behind the safety of the women. It added certain acts as new offences. Report also recommended criminalizing the marital rape, but this recommendation was not accepted.

The Criminal Law (Amendment) Act, 2013

The Criminal Law (Amendment) Act, 2013 (Nirbhaya Act) was passed by the Lok Sabha on 19 March 2013, and by the Rajya Sabha on 21 March 2013. Laws related to sexual offences in Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973 got amended through this Act. The Bill received Presidential assent on 2 April 2013 and came into force from 3 April 2013.

The Act brought several changes in the existing laws and added few acts as new offences.

New Offences added under IPC:

- Acid attack (326A)-Imprisonment not less than ten years but which may extend to imprisonment for life and with fine which shall be just and reasonable to meet the medical expenses and it shall be paid to the victim.
- Attempt to Acid attack (326B)-Imprisonment not less than five years but which may extend to seven years, and shall also be liable to fine.
- Sexual harassment (354A)-Rigorous imprisonment up to three years, or with fine, or with both in case of offence described in clauses (i), (ii) or (iii). Imprisonment up to one year, or with fine, or with both in other cases.
- Act with intent to disrobe a woman (354B)-Imprisonment not less than three years but which may extend to seven years and with fine.
- Voyeurism (354C)-In case of first conviction, imprisonment not less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

- Stalking (354D)-Imprisonment not less than one year but which may extend to three years, and shall also be liable to fine.

Amendments in IPC Laws:

- Section 370 of Indian Penal Code (IPC) has been substituted with new sections, 370 and 370A which deal with trafficking of person for exploitation, minor or adult.
- Definition of rape expanded. It further included oral sex as well as the insertion of an object or any other body part into a woman's vagina, urethra or anus. (Section 375 IPC)
- Changed the age of consent- With or without her consent, when she is under eighteen years of age. (Section 375 IPC)
- Also consent should be clearly communicated, and lack of physical resistance will not assume as consent. (S375)
- Whoever, except in the case provided for in sub-section (2), commits rape, shall get the punishment of imprisonment not less than seven years but which may extend to imprisonment for life, and shall also be liable to fine. Whoever falls under the sub-section (2) shall get the punishment of rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine. (S376)
- Section 376A- Punishment for causing death or resulting in a persistent vegetative state of the victim shall be imprisonment not less than 20 years or may extend life imprisonment to the criminal's natural death.

Amendments in Criminal Procedure Code and the Evidence Act:

- Process of recording the statement of the victim made more victim-friendly and easy.
- The 'character of the victim' presented is now totally unrelated.
- In a case where sexual intercourse is proved, and the victim states in the court that she did not give consent, there is a presumption of 'no consent' by the court.

Changes in Juvenile Law

Nirbhaya case also laid the foundation of the major and drastic changes in Juvenile and delinquency law, which was later amended in the year 2015.

The Juvenile Justice (Care and Protection of Children) Amendment Bill 2015 came into force in January 2016 and formed an Act. It was so introduced, because of the need of the changing society and the public outrage after one of the offenders of Nirbhaya case gets easily over the law and justice because he was a few months short of to be 18 years old.

Following are the changes in the Juvenile Justice (Care and Protection of Children) Act, 2015 regarding offences and punishment, which were different in the act of 2000:

- The minor accused of age between 16-18 will be present before the Juvenile Justice Board, and it depends on the discretion of the Board to decide whether the accused should face the trial as an adult or not. The board will include a psychologist and a sociologist too and will judge the charged person on the mental and physical ability.
- Children between 16–18 years of age who commit a “heinous offence” like rape, murder, etc. will be tried as adults.
- "Serious offence" committed by 16-18-year-olds, may be tried as an adult, but only if they are apprehended after the age of 21.
- No juvenile offender (including the ones, tried as adults) can be sentenced to death or life imprisonment without the possibility of release.

How Far We Have Come?

As a matter of fact, the law is a tool of social engineering, and its application in society takes time to show up the results. But let's look back and see if anything around us has changed after the implementation of laws following the Nirbhaya case.

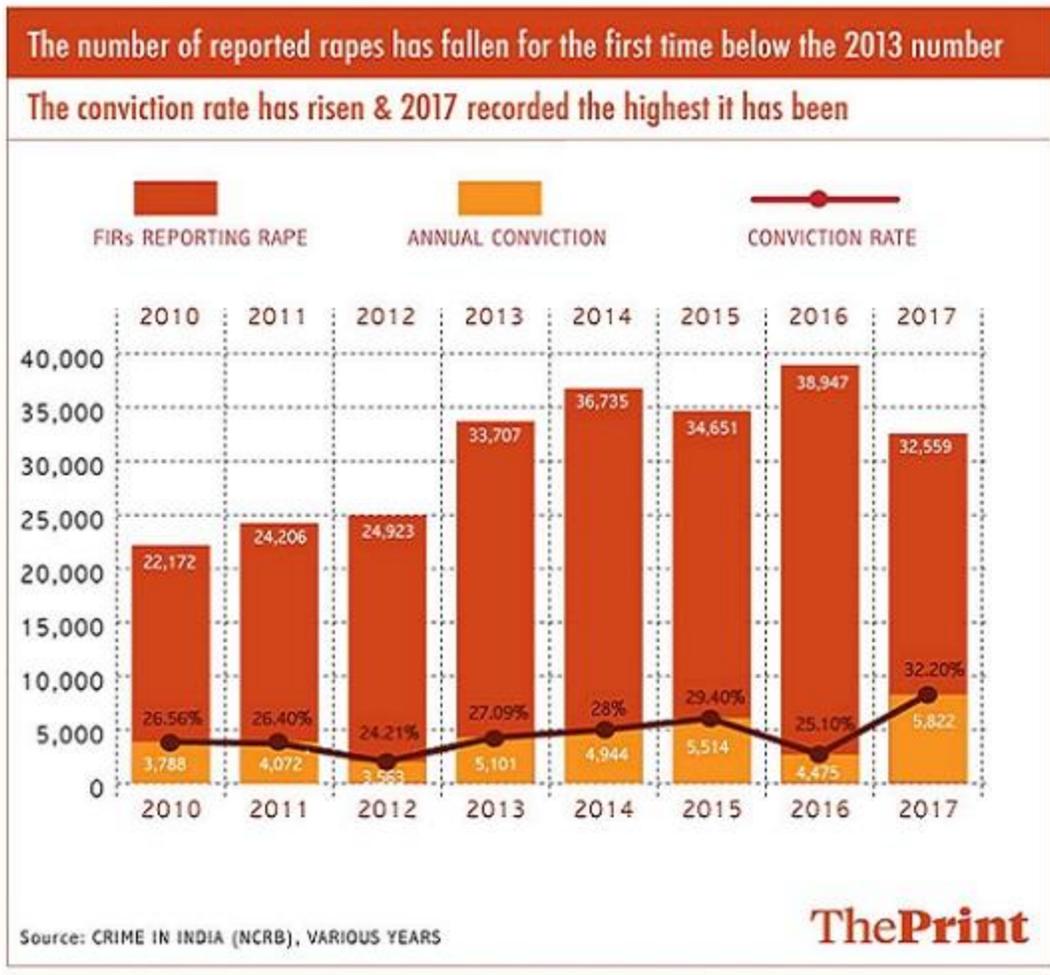


Image credit: [ThePrint](#)

The above chart clearly shows that the reported cases remained high after the implication of law and the continued awareness about the issue. Only in the year 2017, the reported cases went down for the first time below the levels of 2013, while the convictions rise a bit.

This will lead us to two conclusions- 1. Cases kept on increasing even after suggesting the strict laws, and 2. Cases are being more reported now than it used to before. While both the outcomes are right in their places, we should not forget that the main motives of all these laws were to make a better and safe atmosphere. But the regular media reports and surveys continue to prove that although Nirbhaya case inspired our system to make more rigid laws, the empathy for human life and dignity is still a foreign concept for many. Its example is how the government had

once again needed to bring the Criminal Law Amendment Act, 2018 after witnessing other gruesome act of violence in rape cases like Kathua rape case and the Unnao rape case.

Conclusion

We have started the drive but have a long road to go. Society as a whole needs to know and acknowledge its part in upbringing the mindset of people. Law alone cannot do anything until the executive body, police, and the public do not join hands in scrapping this filth away from our civilisation. Every fire needs a small ignition, and we are abundantly capable of lighting that fire through our small efforts. Actions as fundamental as to respect a fellow human life shall be the basic essence of us being a social creature.

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