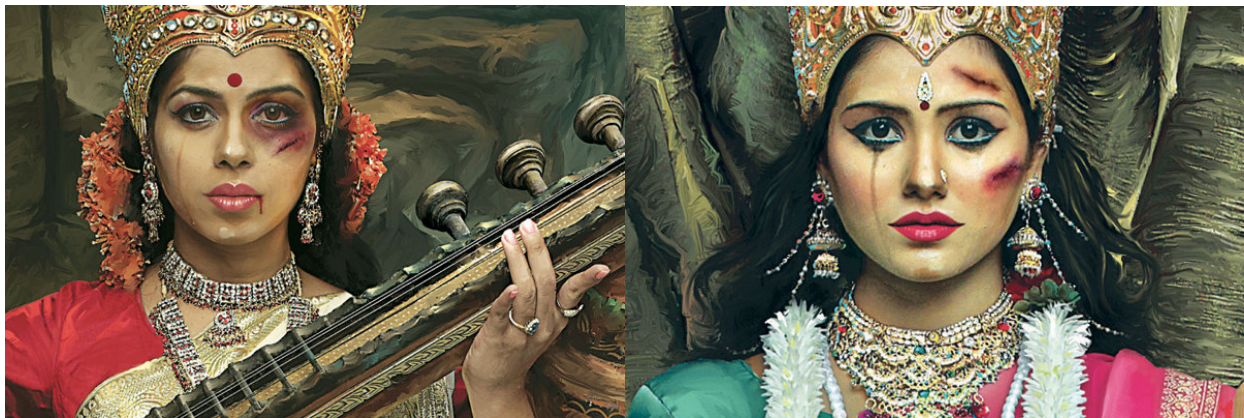


The Delhi Gang Rape – Addressing Women’s Safety and Public Outrage

It is little wonder that rape is one of the least-reported crimes. Perhaps it is the only crime in which the victim becomes the accused and, in reality, it is she who must prove her good reputation, her mental soundness, and her impeccable propriety.

Freda Adler



When ad agency *Taproot* re-created Indian goddesses, now tortured and abused, in a campaign to depict India’s most dangerous contradiction – that of revering women in religion and mythology, while abusing its women citizens, critics fumed: "Transforming the triumphant, red-toothed Durga into an abused wife does not empower Indian women, but reinforces their helplessness. What hope do mere mortals have when even a goddess cannot resist abuse or protect herself?"¹

Justice Verma woke up to a horror story on Monday morning. It was everywhere – the facts of the story being told on repeat mode by angry reporters on television news channels. Last night, 16 December, 2012, had been unusually cold in New Delhi. Nirbhaya, a 23-year old paramedical student, was returning home from a movie with her male friend. When the driver of a private bus pulled over offering to give them a ride to their locality, they agreed to hop on. Little did they

This case was written by Shriya Mohan under the guidance of Donald Low, Lee Kuan Yew School of Public Policy (LKY School), National University of Singapore; it was also funded by the LKY School. The case does not reflect the views of the sponsoring organisation nor is it intended to suggest correct or incorrect handling of the situation depicted. The case is not intended to serve as a primary source of data and is meant solely for class discussion.

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¹Lakshmi Chaudhry, Durga Ma as battered wife: A giant step backward, *First Post*, 9 September, 2013

know that the doors would be locked shut by the five other occupants inside and the journey would unfold into a ghastly nightmare.

Over the next 30 minutes, the two were brutally beaten into submission, stripped and Nirbhaya gang raped by all six men inside the moving bus, including the driver². During all this, the bus passed through police checkpoints escaping detection because of the dark-tinted glass on the bus windows³. Because Nirbhaya was fighting back, the rapists inserted iron rods into her private parts, ripping her intestines. They then threw the two unconscious, naked bodies out on the road⁴.

In the next 48 hours, while the boy managed to recover with no fatal injuries, the entire nation watched Nirbhaya battle for life at New Delhi's Safdurjung hospital as television media doggedly telecasted live coverage. On 21 December, hundreds of protestors thronged at New Delhi's Rashtrapati Bhavan, the President's residence, demanding justice. The protestors were largely students, civil society activists, and one opposition political party known as the Aam Aadmi Party (AAP) founded by former activist Arvind Kejriwal. Several activists of the AAP, including Kejriwal, staged a protest near 10 Janpath, the residence of Congress chief Sonia Gandhi, demanding speedy justice to the victim⁵. The police resorted to using water cannons and tear gas to control enraged protestors, further fueling public anger. National media roared in protest mode. The issue had now become political with parties blaming the ruling Congress for failing to prevent the rape. Would Nirbhaya live? And what about thousands of other women like Nirbhaya being raped and tortured, but who went unnoticed?

Two days later, Justice Verma's phone rang. He heard the urgent voice of P. Chidambaram, India's Finance Minister and former Home Minister informing him that he was calling to convey an important request made by Prime Minister Manmohan Singh⁶. Would Justice Verma head a commission that would give policy suggestions to the Home Ministry to come up with a strong anti-rape law that would act as a deterrent for such crimes? Yes, this was a face saving measure for the National Congress Party, no doubt. Justice Verma knew that he was being employed to assure the raging masses that the matter was going to be looked into seriously and by an eminent panel too. So, on 23 December, 2012, the Justice Verma Committee comprising Retired Justice J.S. Verma, former Chief Justice of the Supreme Court of India, Retired Justice Leila Seth, former high court judge and former Solicitor General of India, Gopal Subramaniam was constituted to

² Shubhomoy Sikdar, Delhi gang rape: victim narrates the tale of horror, *The Hindu*, 23 December, 2012

³ Kishwar Desai, In india, the law seems firmly on the side of the rapist, *The Guardian*, 20 December, 2012, Source: <http://www.theguardian.com/commentisfree/2012/dec/20/india-law-rapist>

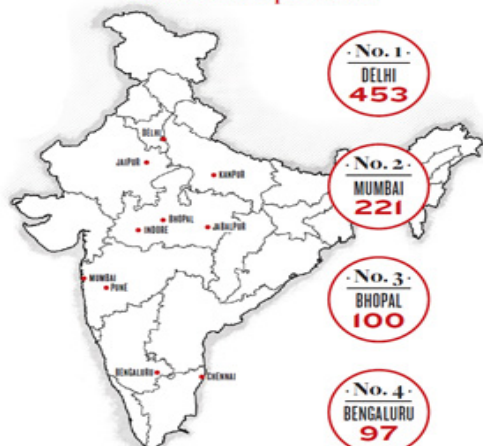
⁴ Frank Jack Daniel, India rape accused hunted victim, aimed to kill: police, Reuters, 11 January, 2013, Source: <http://www.reuters.com/article/2013/01/11/us-india-rape-charge-idUSBRE90A05G20130111>

⁵ Mohammad Ali, Outrage all over Delhi against gang-rape, *The Hindu*, 21 December, 2012

⁶ Interview with Justice Verma, Devil's advocate with Karan Thapar, CNN IBN, 27 January, 2013, Source: <http://www.youtube.com/watch?v=lfCsYGxC3sY>

RAPE CAPITALS

Top 10 Indian cities with highest incidents of rape in 2011



HANG THEM? COUNTRY-WISE PUNISHMENTS FOR RAPE

US Rapes involving violence accrue a sentence of life imprisonment and in some states castration is an option

UK If found guilty, a rapist is liable for a maximum sentence of life imprisonment

RUSSIA Violent rape draws a punishment of 4-10 years imprisonment

FRANCE Maximum punishment for rape, under extreme circumstances including the case of a minor, is 20 years imprisonment.

AUSTRALIA Maximum sentence is seven years life imprisonment

SOUTH KOREA While the maximum sentence is 15 years, a bill is pending to allow for castration of rapists

SAUDI ARABIA Death penalty

INDIA Imprisonment for a term not less than seven years, but which may be for life and shall also be liable for fine

DELHI: COPPED OUT

POLICE STRENGTH

76,000

COPS:VIP

3:1

POPULATION

1,70,00,000

COPS:CITIZENS

1:761

look into the possible amendments in the criminal laws related to sexual violence against women⁷.

Background

In India, a woman is molested every 26 minutes, raped every 34 minutes and kidnapped every 43 minutes, according to the Home Ministry's National Crime Records Bureau (NCRB)⁸. (See box on left: Rape Capitals⁹.) In 2012 alone, there were 24,923 registered rapes with police stations across the nation, representing only a fraction of the actual rapes¹⁰, given that less than 2% of women who have been sexually assaulted in India report the crime to police¹¹. These figures are alarming, especially when one looks at the larger gambit of crimes against women nationwide, which have steadily increasing from 195,856 cases in 2008 to 244,270 in 2012¹². According to NCRB, these include kidnapping/abduction, dowry deaths¹³, molestation, sexual harassment and cruelty by husband/family, apart from rape.

And yet it was Nirbhaya's story that struck a chord with the middle class, mobilising tremendous public support in campaigning for women's safety. As Shoma Chaudhary of *Teelka* magazine writes, "Why did it need an incident so unspeakably brutal to trigger our outrage? What does that say about our collective threshold as a society? Why did hundreds of other stories of rape not suffice to prick our conscience?" Media analysts might say that the story of Nirbhaya was a tipping point unleashing much pent up anger in women about their sexual abuse in Indian's patriarchal society. The positive

⁷ Resources, Full text of Justice Verma's report (PDF), *The Hindu*, 24 January, 2012, Source:

<http://www.thehindu.com/news/resources/full-text-of-justice-vermas-report-pdf/article4339457.ece>

⁸ Emily Wax, In India, new opportunities for women draw anger and abuse from men, *Washington Post*, August 25, 2008, Source: <http://www.washingtonpost.com/wp-dyn/content/article/2008/08/24/AR2008082401665.html>

⁹ Teelka Bureau, The rapes go on. How do we?, *Teelka*, January 19, 2013, Source: <http://www.teelka.com/cover-story-rape-and-how-men-see-it-2/>

¹⁰ Nisha Susan, What do you do if you have been raped, *Yahoo India*, 2 July, 2013, Source:

<http://in.news.yahoo.com/what-do-you-do-if-you-have-been-raped--050017083.html>

¹¹ Emily Wax, In India, new opportunities for women draw anger and abuse from men, *Washington Post*, August 25, 2008, Source: <http://www.washingtonpost.com/wp-dyn/content/article/2008/08/24/AR2008082401665.html>

¹² Ibid

¹³ Dowry deaths refer to the deaths of young women who are murdered or driven to suicide by extreme mental and physical harassment meted out by the husband and his family relating to matters of the money, goods, or estate that a woman promises to bring to her husband in marriage.

outcome in this, if any, was the unanimous cry for change – in social attitudes, policy and laws.

Being born a girl in India

Justice Verma knew that the root of the entire issue of women's safety stemmed from how the birth of the girl child was decoded in Indian society. Despite being a nation that carried a strong cultural tradition of worshipping the mother goddess in various avatars across all sub-cultures, having a girl child in India was seen as a burden for the family¹⁴.

Compared to the sex ratio of 972 females per 1000 males in 1901, 2011 figures showed 914 females per 1000 males. The skewed sex ratio had been worrying policymakers for long. In addition to traditional factors, the strong preference for a male child over a female was known to stem from the desire for social mobility¹⁵. While having a boy implied he would be a wage earner and look after the parents during their old age, a daughter was seen as a liability driving the parents to indebtedness as they scrounged to pay for her marriage and dowry¹⁶. Traditional Hindu and Sikh beliefs held the view that the funeral rites of a parent should rather be performed by a criminal son than a noble daughter. In much of north India, especially states like Punjab and Haryana, the gender ratio was alarming, with the 2011 census showing a sex ratio of 895 and 879 females respectively for both states per 1000 males, while the national average was 940¹⁷.

In 2007, when the sex ratio had dropped to 874 females per 1000 males, the Government of Punjab had called the situation a social emergency, with the health minister Laxmi Kanta Chawala famously stating that it was a matter of great shame that while a buffalo was sold for Rs. 30,000, a woman could be bought for as cheap as Rs. 3000. She said after 1947, the Punjabis had killed more daughters than the number of people killed during partition.¹⁸ According to a study conducted by the Chandigarh-based Institute for Development and Communication for the Punjab Government, in 2006 every seventh household revealed it had practiced female foeticide and 89% of those interviewed revealed that there was no harm in gender selective abortions stating “a male child is our need.”¹⁹ According to a study published in the British medical journal *The Lancet* in 2006, almost 10 million female fetuses were aborted in India in the preceding 20 years²⁰.

¹⁴ Charan Singh, Implications of skewed sex ration in India, *The Hindu Business Line*, 6 May, 2013, Source: <http://www.thehindubusinessline.com/opinion/implications-of-skewed-sex-ratio-in-india/article4689636.ece>

¹⁵ Ibid

¹⁶ BBC Ethics Guide, Source: http://www.bbc.co.uk/ethics/abortion/medical/infanticide_1.shtml

¹⁷ Punjab population census data 2011, Source: <http://www.census2011.co.in/census/state/punjab.html>

Haryana population census data 2011, Source: <http://www.census2011.co.in/census/state/haryana.html>

¹⁸ ‘Buying’ woman is easier than Buffalo, TNN, November 19, 2007, Source:

http://articles.timesofindia.indiatimes.com/2007-11-19/chandigarh/27970614_1_female-foeticide-daughters-punjab-ig

¹⁹ History of Bias, Hindustan Times, November 19, 2007. Source: <http://daughtersofindia.wordpress.com/tag/skewed-sex-ratio/>

²⁰ Emily Wax, In India, new opportunities for women draw anger and abuse from men, Washington Post, August 25, 2008, Source: <http://www.washingtonpost.com/wp-dyn/content/article/2008/08/24/AR2008082401665.html>

There had been several government measures to curb female foeticide across India – from Tamil Nadu Chief Minister Jayalalitha’s controversial cradle baby scheme²¹ which left cradles at public spaces such as hospitals for parents to drop their unwanted baby girls to be sent to adoption centres, to several state governments rolling out schemes to compensate families of girl children for their education and wedding/dowry expenses. Yet these measures were slow change agents. To tackle the public mindset of a billion plus population was no easy task.

Redefining the law against rape

Justice Verma’s team decided to begin approaching the problem by looking at the three key sections of the Indian Penal Code that concerned sexual crimes against women – section 375 and 376 that pertained to rape, section 354 that concerned physical molestation, and section 509 that dealt with verbal and other types of non-physical harassment²².

Section 375 of the Indian Penal Code defines rape as "sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation or fraud or at a time when she has been intoxicated or duped, or is of unsound mental health and in any case if she is under 16 years of age." Section 376 defines the punishment for rape. If the rape is proven, then punishment can be up to seven years of imprisonment for raping an adult and up to 10 years for raping a minor²³.

In a nutshell, penetration was sufficient to constitute the sexual intercourse necessary to the offence of rape.²⁴ The only exception to this was sexual intercourse by a man with his wife – the wife not being under fifteen years of age, would not be considered rape.

Women’s rights groups and civil society had for long been campaigning for change in the archaic IPC definition. Some of the issues that were placed before the Verma committee were as follows:

A broader definition?

Rape was still being defined primarily by penetration. If a rapist was somehow stopped/caught before the act of penetration, all his actions leading up to it such as using physical force on the victim, harassing her or undressing her, only qualified as “attempt to outrage the modesty of a woman” under section 354 of the IPC, for which the accused would face a minimal punishment of

²¹ ‘Cradle Baby’ scheme to be extended, *The Hindu*, July 24, 2011, Source:

<http://www.thehindu.com/news/national/tamil-nadu/cradle-baby-scheme-to-be-extended/article2290679.ece>

²² The weekly infographic, Data busts some myths on sexual violence, *The Hindu*, 3 September, 2013, Source:

<http://www.thehindu.com/news/national/a-rape-capital-somewhere-in-central-india/article5089690.ece?ref=sliderNews>

²³ The law on rape, *India Today*, 9 September, 2002, Source: <http://indiatoday.intoday.in/story/section-375-of-the-indian-penal-code-defines-rape/1/221154.html>

²⁴ Justice J.S Verma, Justice Leila Seth and Gopal Subramaniam, Report of the Committee on amendments to the Criminal Law, 23 January, 2013, Source:

http://www.thehindu.com/multimedia/archive/01340/Justice_Verma_Comm_1340438a.pdf

two years in prison, and that too bailable²⁵. Civil society organizations protested, pointing out that the attempt to murder (section 307), attempt to commit culpable homicide (section 308), attempt to commit suicide (section 309) and attempt to commit robbery (section 393) were criminal offences under the IPC, but not the attempt to rape.²⁶

National Commission for Women (NCW) had been campaigning for long to factor in what it termed as 'Sexual Assault' which would include: "the introduction to any extent by a man of an object or a part of the body (other than the penis) into the vagina or anus or urethra of a woman" or child, as well as "manipulating any part of the body of a child so as to cause penetration of the vagina anus or the urethra of the offender by any part of the child's body."²⁷ In the instance of the Delhi gang rape case, iron rods were inserted into the victim's private parts, ripping her intestines.

Additionally, to consider was the recommendations from Women and Child Development Ministry for sexual harassment to be included. The idea initially stemmed from the various ragging and 'eve-teasing' cases on the rise among Indian youth. "Eve-teasing" is the slang term for sexual harassment and includes anything from lecherous glances to unwanted touching²⁸. The humiliation felt by girls who have been victims of eve-teasing has long been a driver for their committing suicide.

Who could forget the famous case of 14-year-old Ruchika Girhotra, a budding tennis player from Haryana who had been molested by the Inspector General of Police S.P.S Rathore in 1990²⁹? Because Rathore was the powerful top man in the police department, her family's attempt to file a complaint was met with humiliation and harassment to her and her family. Ruchika was mysteriously expelled from her school on false grounds, her brother was beaten up, handcuffed and paraded, and her father was fired from his bank job slapped with, what media claimed as, false charges of corruption. On 28 December, 1993, unable to fight any further, Ruchika committed suicide by consuming poison³⁰. After 19 years, 40 adjournments, and more than 400 hearings, on 22 December, 2009, the court finally pronounced Rathore guilty under the same Section 354 of the same IPC (attempt to outrage the modesty of a woman) and sentenced him to six months imprisonment and a fine of Rs. 1,000. This was seen as a grave injustice to the crimes he had committed.

December 2012 itself saw several eve-teasing cases tucked away in between newspaper columns. The girl in Ranchi, who was upset over being eve-teased by some boys, came home, poured

²⁵ Sunilias, Section 000, Indian Penal Code: Attempt to rape, 30 June, 2012, Source:

<http://www.womensweb.in/2012/07/rape-attempt-crime-in-india/>

²⁶ Ibid.

²⁷ National Commission for Women (NCW) Amendments to laws relating to rape, source:

<http://ncw.nic.in/PDFFiles/Amendments%20to%20laws%20relating%20to%20women.pdf>

²⁸ Riane Menardi, 'Eve-teasing' in India: Fighting for change as sexual violence grows, *Politics Daily*, Source:

<http://www.politicsdaily.com/2010/03/03/eve-teasing-in-india-fighting-for-change-as-sexual-violence-g/>

²⁹ Supriya Bhardwaj, Ruchika Girhotra Case: Molestation of minor, abuse of power, *Times of India*, 23 December, 2009, Source: http://articles.timesofindia.indiatimes.com/2009-12-23/india/28076879_1_rathore-ruchika-girhotra-haryana-law-n-tennis-association

³⁰ Aman Sharma, How the CBI botched up Ruchika case, *India Today*, 27 December, 2009

inflammable substance upon her and set herself ablaze³¹. Mumbai claimed to witness a 69% jump in eve-teasing cases within the local trains in 2012, with men entering exclusively ladies' compartments³².

Stalking, voyeurism and acid attacks

Out of the 70,000 public recommendations that came from civil society and ordinary citizens to the Verma committee, there were a large number of them demanding for stalking and voyeurism to be recognised under the sexual harassment law. The colonial IPC law didn't have a specific place for it. With the increased flush of cheap video camera enabled mobile phones in India, more Indians were turning into voyeurs. At colleges, schools and all public spaces it was a common sight for a man to just hold out his mobile phone, zoom into the woman passerby of his choice and record. Mobile phones allowed men to sneak their devices into private spaces such as toilets or changing rooms and catch footage of the most private acts of women. Cheap quality 2 to 5 minute clips were then known to be sold in the underground porn markets of Indian cities such as Mumbai³³ from where it would be further circulated. Several MMS scandals had broken out in the news recently, making the issue relevant to address.

Acid attacks were known to be a problem throughout South Asia, with cases also reported in Bangladesh, Pakistan and Afghanistan. Most of the victims are women and campaigners said women who reject boyfriends, husbands or employers were often targeted by men using easily available and cheap chemicals that can permanently disfigure a woman's face for life. The Acid Survivors Trust International estimates that there are as many as 1,000 acid attacks a year in India³⁴. Mohammad Jawad, a plastic surgeon who worked with victims in South Asia, said the crime is about trying to destroy someone's identity. "The attacker is saying: 'I don't want to kill her, I am going to do something to distort her.' It's a walking dead situation for the victim and often a grey area in the eyes of the law."³⁵ Women groups in India had for long been advocating that for victims to recover, they may need dozens of expensive surgical procedures while still undergoing the psychological trauma of being ostracised from society.

Consent

Non-consent is a key ingredient for commission of the offence of rape. The definition of consent is therefore crucial to the outcome of a rape trial, and has been interpreted systemically to degrade and discredit victims of rape. Studies show how frequently rape judgments conclude that the sex

³¹ PTI, Haryana girl commits suicide after being eve-teased, *Hindustan Times*, 16 December, 2012

³² Express news service, 69% jump in cases of eve-teasing, *Indian Express*, 18 January, 2013

³³ Asit Jolly, Porn in a pocket, *India Today*, 5 July, 2013, Source: <http://indiatoday.intoday.in/story/porn-in-smartphones-pen-drives-easily-available/1/287084.html>

³⁴ India Supreme Court demands action on acid attacks, BBC News India, 9 July, 2013, Source: <http://www.bbc.co.uk/news/world-asia-india-23244525>

³⁵ Tom de castella, How many acid attacks are there?, BBC News, 9 August, 2013, Source: <http://www.bbc.co.uk/news/magazine-23631395>

was consensual, based on various factors, including that: the victim was not a virgin, that there were no injuries to show that she put up a stiff resistance, that the victim was ‘habitual to sex’, that the victim willingly took a ride with or accompanied the accused, that she was acquainted with one of the accused, that she mingled with male friends and so on. Rather than focus on the conduct and actions of the accused, rape trials have historically put the rape survivor under moral scrutiny. An amendment to the Indian Evidence Act in 2003 barred the use of previous sexual history of the victim to discredit the survivor’s testimony in rape trials. Despite this change, sexual history, real or perceived, has continued to inform every step of the rape prosecution to the survivor’s detriment.³⁶

The United Nations recommends that the definition of rape should require the existence of ‘unequivocal and voluntary agreement’ as well as proof by the accused of steps taken to ascertain whether the complainant was consenting. This has the advantage of shifting the burden to the defence to prove that such steps were taken.³⁷

Bollywood and porn to blame?

Some Indians felt that the origins of the entire problem could be traced to how Bollywood’s portrayal of women reinforced sexist stereotypes. Speaking about Bollywood’s plotlines and characters, Independent Indian filmmaker Onir said, “They are suggesting that women being molested is entertainment. You treat her badly, you humiliate her, but at the end of the day she will come around.”³⁸ With item numbers becoming a must in every film, “Goal” director Vivek Agnihotri was of the opinion that songs with sexual innuendos did affect the psyche of people. More than rape scenes it’s the subliminal messages which affect the psyche. These come from perverted songs, dances, gestures, dialogues which are meant to titillate the audience,” Agnihotri said to the media³⁹.

Take the controversy around rapper Yo Yo Honey Singh. Singh was a London-based Punjabi rapper, known for his lewd sexist lyrics and was gaining tremendous popularity amongst the youth. His notorious song, “Ch**t,” or “Cu*t” had the following lyrics:

³⁶ Madhu Mehra, Taking stock of the new Anti-rape law, Kafila.org, 5 May, 2013, Source: <http://kafila.org/2013/05/05/taking-stock-of-the-new-anti-rape-law-madhu-mehra/>

³⁷ Justice J.S Verma, Justice Leila Seth and Gopal Subramaniam, Report of the Committee on amendments to the Criminal Law, pg. 73, 23 January, 2013, Source: http://www.thehindu.com/multimedia/archive/01340/Justice_Verma_Comm_1340438a.pdf

³⁸ Tehelka Bureau, The rapes go on. How do we?, *Tehelka*, 19 January, 2013, Source: <http://www.tehelka.com/cover-story-rape-and-how-men-see-it-2/>

³⁹ IANS, ‘Don’t blame Bollywood for rapes’, *Hindustan Times*, 25 December, 2012, Source: <http://www.hindustantimes.com/Entertainment/Tabloid/Don-t-blame-Bollywood-for-rapes/Article1-980510.aspx>

*“They say the whole village has had you’re a**/my d*** is prepared today/If I don’t have you today then I’m not a jatt/You love sex but you scream when I thrust/Your panties will be drenched in blood as you scream ‘Badshah’.”*⁴⁰

In the verses that followed, Singh rapped about beating her with a shoe and then moving on to other things⁴¹.

Singh was wildly popular in Punjab and Delhi NCR. In September 2012, he ranked number one on the iTunes world charts. In one month, Singh had performed for packed houses in Mumbai, Bengaluru and New Delhi as well as Patiala, Raipur and Bhopal. His fans now included top Bollywood stars. Singh had signed up to perform for a packed audience at a hotel in Gurgaon on New Year’s Eve 2012. But when Nirbhaya was gang raped and could not be saved, the nation watched aghast and something changed. The introspection that followed led to several civil society groups wanting to ban Honey Singh.

An FIR was also registered in Lucknow against the controversial singer for the explicit and demeaning lyrics of two of his songs, “Rape rap” and “C*** t”. IPS officer Amitabh Thakur, on whose complaint the FIR was registered, said: "These songs are vulgar, lewd, indecent and act as catalysts for crime against women." Demands for banning the concert, the tickets of which ranged from Rs.14,000 to Rs.25,000, gained ground as activists shot off emails to the general manager of The Bristol hotel⁴². With all the negative publicity, the hotel finally decided to call off the show, much to the disappointment of his fans.

“Bollywood should and must portray reality, including the dismal treatment of women. But surely portraying reality or realistic situations is different from inviting your audience to leer and demean with you?” wrote a Reuters reporter in the aftermath of Nirbhaya’s death⁴³.

Was the solution then to have a stringent censorship committee for the entertainment industry as some were suggesting? And what about the porn industry that was the crux of much heated debate in India off late?

The porn debate had recently reached new heights when it was found that there was a positive correlation between porn and rape. A report in the Rice Standard was of the opinion that porn played a significant role in creating rapists and abusers⁴⁴. It said: “Women continue to live in a rape culture which eroticises violence and the degradation of women. Pornography has evolved

⁴⁰ Nishita Jha, The honey trap, *Tehelka Magazine*, 20 October, 2012, Source: <http://www.tehelka.com/the-honey-trap/>

⁴¹ Nivedita Bhattacharjee, Responsibility or censorship: why Bollywood should pick, Reuters India, 2 January, 2013, Source: <http://blogs.reuters.com/india/2013/01/03/responsibility-or-censorship-why-bollywood-should-pick/>

⁴² Priyanka Srivastava, Rapper Honey Singh’s New Year concert cancelled, *India Today*, 1 January, 2013, Source: <http://indiatoday.intoday.in/story/honey-singh-new-year-show-cancelled-in-gurgaon-obscene-lyrics/1/240309.html>

⁴³ Nivedita Bhattacharjee, Responsibility or censorship: why Bollywood should pick, Reuters India, 2 January, 2013, Source: <http://blogs.reuters.com/india/2013/01/03/responsibility-or-censorship-why-bollywood-should-pick/>

⁴⁴ Millimet, Moharam, Rassa, Velasquez, Waddell and Wilson, Pornography: Creating rapists and abusers, *The Rice Standard*, 19 January, 2011, Source: <http://www.ricestandard.org/authors-sp-authorspornography-creating-rapists-and-abusers/>

from the soft Playboy images of “the girl next door” to sadomasochist movies ridden with bondage and violence. Technological advancements have aggravated this epidemic.”

Nine million-plus Indians download and view proscribed adult content (pornography) on their mobile phones, according to a 2012 report on telecom portal Themobileindian.com. Although possessing or watching porn was permitted in India, distributing it was illegal. And now, the authorities were moving to crack down on web porn — even as the country seemed to be growing more liberal in its attitude toward sex⁴⁵.

News magazine *India Today* reported that mobile phones were used nearly 4.1 million times a month on average to search with the keyword “rape” over the past year, according to Google AdWords. Search keywords included "Indian girls raped", "raping video", "raping stories", "raped in public", "little girl raped", "raping mom", "father raping daughter" and "raped to death". This again didn't include people who went out and buy their fix of sleaze-on-the-go from mobile repair shops, the street corner DVD rental stores or the overly friendly cyber cafe owner.⁴⁶

In February 2013, a year-long survey of 964 collegians by Rescue, a Mysore-based 'moral consciousness' group, concluded that 75% of all male undergraduate or pre-university students regularly consumed porn. The study also reported that the boys were "six times more likely" to view the proscribed adult content on mobile phones. The nine million Indians estimated to be using mobile devices to download porn, spent an average of Rs.5,500 every year on procuring content. The US-based Strategy Analytics estimated that smartphone penetration in India would touch 33% of all mobile users by 2015. The Bangalore-based Convergence Catalyst, another mobile industry watchdog, predicted that India's smartphone market will double over 2013 crossing 44 million handsets.

While people still debated the lack of concrete evidence on whether the use of mobile phones resulted in more voyeuristic behaviour, there was an increasing number of rapists who not only raped, but videoed their act to circulate or even sell on the underground porn market. In January, 70-year-old Niyaz Raza of Govandi, Mumbai, was arrested after he allegedly raped a 13-year-old girl, his sixth victim, and circulated a 12-minute mobile phone video of the teenager performing oral sex on him. More recently, a 22-year-old garment factory worker, Manoj Sah, and 19-year-old, Pradeep Kumar, admitted in police custody that they had watched porn on Sah's mobile phone before raping a neighbour's five-year-old child in East Delhi⁴⁷.

⁴⁵ Jason Overdorf, Smart porn: India's other mobile revolution, *Global Post*, 29 July, 2013, Source: <http://www.globalpost.com/dispatch/news/regions/asia-pacific/india/130726/smartphones-india-mobile-porn-rape-debate>

⁴⁶ Asit Jolly, Porn in a pocket, *India Today*, 5 July, 2013, Source: <http://indiatoday.intoday.in/story/porn-in-smartphones-pen-drives-easily-available/1/287084.html>

⁴⁷ Ibid

But was the flood of smut really to blame for an epidemic of violent gang rapes? Should porn be banned?

The defenders of porn refused to agree. Anja Kovacs, the founder and director of the New Delhi-based Internet Democracy Project, “Sexual expression is a part of free speech and the Internet does give space for people to experiment with these things. So that's another important avenue of expression that you're closing down. But the right to freedom of expression is also the right to receive information. And [with a ban], people can no longer make those choices [of what information to access] themselves.”⁴⁸

Psychology of a rapist

According to leading clinical psychologists, rape was a behavioural crime, not a passion crime. It was not about a spur-of-the-moment sexual fulfilment. It was about the need to dominate through a planned crime, with a strategy to trap the victim. Sexual predators typically assumed that they would not have to face any consequences. Dr Rajat Mitra, a clinical psychologist and director of the Swanchetan Society for Mental Health in New Delhi analysed that in cases of gang rapes, at least one of the rapists was not a first-timer. He was typically the initiator who plotted the assault and also the first rapist, the one who used force to subdue the victim. Once the traumatised victim gave up resistance, her mind having gone numb under the assault, the others took turns⁴⁹.

Journalist Mihir Srivastav wrote in the aftermath of the Delhi Gang rape case:

Their (The rapists’) sense of impunity would seem to be heightened by two factors in particular. One, being part of a gang of rapists—with a perverse legitimacy sought to be drawn from joint action. And two, being aboard a moving vehicle. Cars in motion have been the site of some of urban India’s most brazen cases. While the sense of mobility lets rapists feel they can literally get away, the vehicle’s cabin enclosure—especially if it has tinted windows—perhaps gives them the illusion of being in a sort of free-for-all zone beyond the reach of law⁵⁰.

On the other hand, a 1991 study, the results of which were published in the suggested that the majority of rapists were common men with a normal sexual orientation who raped impulsively as the opportunity presented itself⁵¹. The findings confirmed that most *New York Times* men were not ordinarily aroused by depictions of sexual violence – that was a capacity successful rapist had. In research with convicted rapists, Dr. Gene Abel, a psychiatrist at Emory University, found that the more a rapist became aroused by scenes of forced sex, the greater the number of his victims, and the more physical injuries the victims were likely to have suffered.

⁴⁸ Z.Sayre, Like your porn? Now is the time to jump to its defence, Yahoo India, 30 July, 2013, Source: <http://in.news.yahoo.com/like-your-porn--now-is-the-time-to-jump-to-its-defence-053939707.html>

⁴⁹ Mihir Srivastava, The illusion of immunity, *OPEN Magazine*, 30 August, 2013, Source: <http://www.openthemagazine.com/article/nation/the-illusion-of-immunity>

⁵⁰ Ibid

⁵¹ Daniel Goleman, New studies map the mind of the rapist, *New York Times*, 10 December, 1991, Source: <http://www.nytimes.com/1991/12/10/science/new-studies-map-the-mind-of-the-rapist.html?pagewanted=all&src=pm>

It was no wonder that serial rapists only used more brutal force with each rape. Take the case of 36-year-old Jaishankar from Bangalore, also known by the name Psycho Shankar, who was convicted for 20 rape cases, murder and kidnapping. He always carried a black handbag with a machete inside it. He trapped women in farm houses and sex workers near *dhabhas* (highway eateries), and killed many of them brutally with his machete, after having sex with them⁵².

Furthermore, according to the study, rapists often recalled being intensely angry, depressed or feeling worthless for days or even months leading up to the rape. The trigger for the rape was when a woman made them angry, usually by rebuffing a sexual overture, insulting to their manhood and intensifying their emotional misery.

In the Delhi gang rape of Nirbhaya, it seemed true that most of the rapists were from the bottom strata of society. Among the six of them was a bus driver, a cleaner, a fruit seller, an assistant gym instructor and two others who were doing odd jobs between spells of unemployment. According to media reports and the police, in a slum cluster not far away from the bus stop, the six young men had gathered earlier that day to drink.

As journalist Shoma Chaudhury narrated in an article for *The Daily Beast*:

*One can imagine how the booze must have smudged their heads, erased the squalor of their lives, made them feel zesty, reckless, bold. It uncorked a deadly cocktail boiling inside them. They were sick of being matchstick men, sick of the shining alien city always bustling outside their reach. They wanted a piece of the action. They wanted to feel like kings of the road. One of them was a bus driver. He drove schoolchildren by day; the vehicle lay with him by night. According to the police, he urged his raucous friends out for a joyride: "Let's have some fun," he said.*⁵³

The trigger for the rape, so to speak, happened once the couple boarded the bus. When the six men began passing lewd comments at the girl, Nirbhaya's friend objected. The gang asked what was the couple was doing so late in the night and the male friend asked him to mind their own business. Then they picked up a fight and the boy was hit on his head. When Nirbhaya fought back, they were enraged and dragged her to the backseat where they sexually assaulted her⁵⁴.

According to a 1988 study by Ann Burgess, a researcher at the University of Pennsylvania, 56% of the convicted rapists who accounted for the most victims – an average of 30 – had been victims of childhood sexual abuse. The findings suggested that the more men were abused as children, the more they were likely to rape as adults. In addition, the researched proved that these men typically

⁵² Deepshika Ghosh, Serial rapist who escaped from Bangalore prison arrested, NDTV, 6 September, 2013

⁵³ Shoma Chaudhury, The girl who fired an outcry in India, *The Daily Beast*, 3 April, 2013, Source: <http://www.thedailybeast.com/newsweek/2013/04/01/nirbhaya-the-woman-who-ignited-a-fire-in-india.html>

⁵⁴ PTI, Rapists carried on with normal work after crime, police say, *Times of India*, 18 December, 2012, Source: http://articles.timesofindia.indiatimes.com/2012-12-18/india/35889535_1_bus-pawan-vinay

had "an earlier sexual initiation, sometimes forced, and endorsed myths about rape such as the notion that if you know the woman, it's not rape."⁵⁵

Details of the accused: How to try the juvenile?

On 25 December, Nirbhaya's condition was termed critical. On the following day, she had a cardiac arrest after which the Government decided to fly her to Singapore's Mount Elizabeth hospital in a last attempt to save her life. After being in a state of coma for three days, on 29 December, 2012, at 2:15 a.m., Nirbhaya succumbed to her injuries and breathed her last, leaving the nation shell shocked⁵⁶. The Police now added murder to the charge of the six accused in their FIR.

Among the six accused was 17-and-a-half-year-old juvenile—known as Raju—who worked odd jobs at roadside eateries. Media reports claimed that Raju was the most dispossessed of them all⁵⁷. He had left home as a boy many years earlier. His father had become a vegetable after a brick fell on his head and injured his brain. His mother could barely scrape together a living for her children, living under plastic sheets yoked together. Raju used to send 600 rupees (\$12) twice a year to her. For a few years, he had not done even that. Today, she couldn't afford the ride to the city to meet her son.

After he left home, Raju worked odd jobs for years at *dhabas*, India's ubiquitous roadside eateries, mostly washing dirty plates. The media had a telling story to tell about Raju's thwarted ambitions:

One of his employers was fond of him and found him to be a very efficient worker. Raju came to him abruptly one day and asked to be made a manager of the eatery; he could not bear to wash another dirty dish ever again in his life, he said. Unable to make him a manager, but wanting to keep him, the manager raised his salary by 1,000 rupees (\$20) a month to do the same job. The next morning the boy had packed his bag and gone. He did not even take his last salary. For a couple of years, there was no news of him⁵⁸.

And then came the headlines about that demonic night. Among the six of them, it was Raju who had suggested they push a rusted iron rod inside her all the way up her diaphragm ripping her intestine. An intestine is 23 feet long. Barely 5% of it was left intact. The doctors who treated her said they'd never seen a rape victim so brutalised.

⁵⁵ Daniel Goleman, New studies map the mind of the rapist, *New York Times*, 10 December, 1991, Source: <http://www.nytimes.com/1991/12/10/science/new-studies-map-the-mind-of-the-rapist.html?pagewanted=all&src=pm>

⁵⁶ Zee media bureau, December 16 gang rape case Timeline, *Zee News*, 10 September, 2013, Source: http://zeenews.india.com/news/nation/december-16-delhi-gang-rape-case-timeline_875409.html

⁵⁷ Shoma Chaudhury, The girl who fired an outcry in India, *The Daily Beast*, 3 April, 2013, Source: <http://www.thedailybeast.com/newsweek/2013/04/01/nirbhaya-the-woman-who-ignited-a-fire-in-india.html>

⁵⁸ Ibid

The public protests had reached new heights after Raju's heinous crime was disclosed by the police. Nirbhaya's parents and the youth roared with rage demanding that all six accused be given the death sentence. Several television channels also campaigned for death penalty for all the rapists and that the juvenile, in light of the brutality of the crime perpetrated, be tried as an adult, to set fear in the hearts of all rapists.

According to India's Juvenile Justice Act (JJA), a guilty juvenile, up to the age of 18, cannot be subject to imprisonment in the adult justice system but instead will be subject to advice/admonition, counselling, community service, payment of a fine or, at the most, be sent to a remand home for three years, after which he would roam the streets as a free man⁵⁹.

The JJ Act was passed in 2000 with the purpose of incorporating into domestic law India's obligations under international law as a signatory of the U.N. Convention on the Rights of the Child of 1989, the U.N. Standard Minimum Rules for Administration of Juvenile Justice (1985) (known as the "Beijing Rules") and the U.N. Rules for the Protection of Juveniles Deprived of their Liberty (1990). Underlying these international texts was the legal principle that juveniles lacked 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 rehabilitated⁶⁰.

The Verma committee also found scientific evidence of neurological changes that occurred between 16 and 18 years of age. The ego state usually crystallised at 18, justifying why adulthood is pegged at 18. The reason why boys were allowed to marry only at 21 or one was allowed to vote only at 18 was because of the need for cognitive maturity for all these. Sexual immaturity was part of the overall immaturity of a juvenile. Gopal Subramaniam, one of the co-panellists of the Verma panel suggested they looked at Indian boys, not from the elites, and tried to see if they have got the best that society has to offer. "The ability to judge does not come naturally. It is a skill that has to be taught by peers at school. Then you find poverty, lack of nutrition and direction – situations in which the adult ego state, which processes value systems, is missing. Few people know that lack of direction can cause depression. Have we as a society done our best for the less privileged so we can say everybody deserves a fair chance and the age of adulthood should be reduced to 16?" asked Subramaniam⁶¹.

Since the December gang rape, Delhi had seen six petitions – one by Janata Party president Subramaniam Swamy – filed in various courts that sought to challenge the age bar set for trying juvenile offenders and draw "gravity of the crime" into focus as a key determinant of the punishment due⁶². Civil society and several lawyers were of the opinion that the interest in

⁵⁹ Aanchal Bansal, When a juvenile rapes, *OPEN Magazine*, 9 March, 2013, Source: <http://www.openthemagazine.com/article/nation/when-a-juvenile-rapes>

⁶⁰ Aparna Viswanathan, Balancing the Juvenile Act, *The Hindu*, 9 September, 2013, Source: <http://www.thehindu.com/opinion/lead/balancing-the-juvenile-act/article5107620.ece>

⁶¹ Revati Laul, Gopal Subramaniam Interview, *Tehelka*, 9 February, 2013, Source: <http://www.tehelka.com/the-verma-panel-report-is-a-blueprint-for-transforming-society-it-is-a-blueprint-for-equality/>

⁶² Aanchal Bansal, When a juvenile rapes, *OPEN Magazine*, 9 March, 2013, Source: <http://www.openthemagazine.com/article/nation/when-a-juvenile-rapes>

protection of juveniles had to be balanced with the interest of protecting particularly vulnerable members of society from violent crimes committed by persons under 18 years of age and amending the law when societal conditions changed over time⁶³.

A look at the NCRB statistics relating to violent crimes by juveniles against women were troubling. The number of rapes committed by juveniles had more than doubled over the past decade from 399 rapes in 2001 to 858 rapes in 2010. The total number of rapes committed by juveniles had more than doubled from 485 in 2002 to 1149 in 2011. Between 2011 and 2012 alone, there was a massive increase in instances of rape by juveniles by nearly 300, which was almost as much as the increase in such cases over the entire previous decade⁶⁴.

Several other countries such as the U.S. and the U.K., which were both signatories to the U.N. Convention, had also faced an increase in violent crimes by juveniles. They had chosen to act tough. In most U.S. States, the jurisdiction of juvenile courts was automatically waived when a juvenile above a certain age, usually 13 or 15 years, committed a violent or other serious crime, and the case was automatically transferred to an adult court. A certification hearing took place in which an adult court prosecutor was required to convince the adult court that the case should be transferred. The juvenile was entitled an attorney at the hearing to present any evidence which stood against the transfer. For example, in Indiana, South Dakota and Vermont, children as young as 10 years, could be tried as adults.

According to an assessment by Manav Foundation on 170 juvenile boys who were counselled over the past six months, 56% had disturbed family backgrounds. Children from broken or dysfunctional families often display weak cognitive development⁶⁵.

According to Anant Asthana, a lawyer who frequently represented juveniles at Board hearings, socio-economic factors play a significant role in delinquency. “The distress, tension and chaos that exist in dysfunctional and abusive families affect the behaviour of children,” he says. Delinquency afflicts urban-industrial societies the most. In reaction to the police claim that the juvenile was ‘the most brutal’ of the lot, Asthana said it was a “brutal” child who was most in need of help⁶⁶.

Low reporting and conviction rates

Justice Verma found that shockingly in as many as 98% of rape cases in 2012, the perpetrators were neighbours, friends and relatives, according to a research study published by NGO Delhi

⁶³ Aparna Viswanathan, Balancing the Juvenile Act, *The Hindu*, 9 September, 2013, Source: <http://www.thehindu.com/opinion/lead/balancing-the-juvenile-act/article5107620.ece>

⁶⁴ Ibid

⁶⁵ Aanchal Bansal, When a juvenile rapes, *OPEN Magazine*, 9 March, 2013, Source: <http://www.openthemagazine.com/article/nation/when-a-juvenile-rapes>

⁶⁶ Ibid

Policy Group⁶⁷. It was a well-known fact – knowing your rapist was a big deterrent to reporting on him. The Indian police estimated that only 4 out of 10 rapes were reported, largely because of the deep-rooted conservatism, in which many victims feared being "shamed" by their family and community if they reported a rape⁶⁸.

Broadly speaking, research showed that for an Indian rape victim to get justice she faced five difficult hurdles, causing her to want to retract her steps at each stage, threatening her to change her mind about proceeding with reporting:

1. *A dirty secret – Hiding it from family and friends*

Rape is seen as a dirty incident that stains a family's honour in society and the girl's dignity and future prospects of getting married. Victims are scared to come forward for fear of being "shamed" by their family and community. The common questions that families ask the victim is "Who is going to marry you if you have such a reputation?" Given that arranged marriages were still the most common set up for marriage, reputation and honour held great value in the case of unmarried girls being raped. The police and village elders often saw their first duty after a rape as protecting a woman's modesty and a family's honour, instead of giving her justice⁶⁹. In small towns and villages, rape victims still had only two options to uphold her family's honour – either to commit suicide, or worse, get married to her rapist, a common suggestion offered by the police and village elders.

On 26 December, an 18-year-old Punjabi woman committed suicide after police officers refused for five weeks to arrest the men who were suspected of gang raping her and instead pressed her to marry one of the men. So many Indian women end up marrying their rapists that the police often squander the first hours and days, crucial to collecting evidence, after a woman reports a rape seeking just such a resolution⁷⁰.

2. *Not reporting to the police*

Often if a girl has crossed the first barrier and shared the incident with her family, they would not allow her to report it to the police for fear of a further attack from the rapist or even worse, having to go through the ordeal of dealing with an inconsiderate police, set to shame you further.

In the case of Suzette Jordan, a 40-year-old Anglo-Indian single mother who was picked up from Kolkata's Park Street in February that year and gang raped in a moving car, thus earning her the name "Park Street rape victim", her family had vehemently opposed her from registering the case.

⁶⁷ Gender Scorecard 2013, Summary of findings, Delhi Policy Group, Source:

<http://www.delhipolicygroup.com/pdf/Summary-of-Findings.pdf>

⁶⁸ Nita Bhalla, Analysis: How India's police and judiciary fail rape victims, Reuters, 16 January, 2013, Source:

<http://in.reuters.com/article/2013/01/16/india-delhi-gang-rape-women-safety-police-idINDEE90F0AY20130116>

⁶⁹ Gardiner Hariss, For rape victims in India, police are often part of the problem, *New York Times*, 22 January, 2013

⁷⁰ Ibid

“My father warned me of the consequences of reporting a rape...that the police were going to make a fool of me. He warned me of all the humiliation that would come,” she said. “The thought that made me want to go (to the police) was that they were going to get away with this. And do this to how many more?” she had said then in an interview.⁷¹

On the evening of 9 February, Jordan walked into the Park Street police station to report the rape. When she began telling the events of that night, the policemen laughed and asked her how she could be sure it was rape. The station’s officer-in-charge pointedly asked what positions the rapists had taken to rape her. Later, as they listened to her horrific story, the policeman asked one another if they too were going to go for a drink that night. Then they laughed, looking lewdly at Jordan; one of them said, “Who knows, we could get lucky tonight.” “I had seen this happen in Hindi movies. Trust me,” says Jordan, “reality is much worse⁷²”.

3. *Police not registering a rape case*

A 2010 study done by investigative journal *Tehelka Magazine*’s undercover reporters discovered disturbing attitudes that existed among the Indian police force⁷³. The two week long investigation revealed how many top cops felt that it was instinctively the woman’s fault or that she somehow “asked for it” by dressing inappropriately or venturing out on the streets late into the night. The policemen have admitted to not taking all cases seriously. There is a sweeping consensus in listing ‘indecent’ clothing as a primary cause for rape, followed closely by ‘behaviour’, says the report. Dharamveer Singh, Additional SHO at Indirapuram Police Station in Ghaziabad was quoted saying: “It’s very rare that a girl is forcefully picked up by 10 boys. A girl who gets into a car with boys is never innocent. If she does, she definitely has a relationship with at least one of them.” When asked about sensitisation in the police, Inspector Sunil Kumar of Delhi Police shrugged away the query, saying, “No rape can happen in Delhi without the girl’s provocation.”

What was undeniable was that the pay was poor and opportunities for advancement were rare, leaving police officers dependent on bribes to support their families. People without money or political connections were often ignored. “If you’re a woman in distress, the last thing you want to do is go to the police,” said Vrinda Grover, a human rights lawyer based in New Delhi⁷⁴.

A motivating reason perhaps was the government pressure to keep the statistics artificially low so make each state look good. Being in denial of a rape was a common government response as was the case with Chief Minister Mamata Banerjee of West Bengal. In the case of Jordan, Banerjee had accused her of cooking up the story. The West Bengal sports minister Madan Mitra said on a

⁷¹ Shriya Mohan, How do you survive being named ‘The park street rape victim’?, Yahoo India, 3 July, 2013, Source: <http://in.news.yahoo.com/how-do-you-survive-being-named-%E2%80%98the-park-street-rape-victim%E2%80%99--054758334.html>

⁷² Ibid

⁷³ Abhishek Bhalla, G Vishnu, The rapes will go on, *Tehelka Magazine*, 20 December, 2012, Source: <http://www.tehelka.com/the-rapes-will-go-on/>

⁷⁴ Gardiner Hariss, For rape victims in India, police are often part of the problem, *New York Times*, 22 January, 2013, Source: <http://www.nytimes.com/2013/01/23/world/asia/for-rape-victims-in-india-police-are-often-part-of-the-problem.html?pagewanted=all>

television show, “She has two children, and so far as I know, she is separated from her husband. What was she doing at a nightclub so late at night?” Kakoli Ghosh, an MP from Banerjee’s Trinamool Congress party and a medical doctor, contemptuously explained the case as “not a rape but a misunderstanding in a professional dealing between a lady and her client.” The police, naturally, were not immune from this top-down attitude of nonchalance.

Last month, in December 2012, a 17-year-old village girl was drugged and gang-raped by two men in a field in the northern Punjab region. The police allegedly failed to take her complaint seriously and the victim ended up killing herself⁷⁵.

4. *The humiliating two finger test and lack of emergency care*

If a girl had managed to get to this point, having convinced the police to register her rape, she needed to go through the humiliating process of taking “the two finger test” at a hospital where a gynaecologist would try to establish her veracity, her victimhood and her character by inserting two fingers into her vagina. If her vaginal muscles widen under pressure from these fingers, then she was “habituated to sexual intercourse” thereby proving that the case might not have necessarily been a rape.

Women’s groups had fought tooth and nail to get rid of the humiliating and ridiculous two-finger test. Forensic doctors like Bangalore-based Dr Jagdeesh Reddy had campaigned against it. Sangeeta Rege, a senior researcher at Mumbai-based NGO Centre for Enquiry into Health and Allied Themes (CEHAT), which has pushed for years to shift the focus of rape intervention towards the physical and psychological welfare of rape survivors, said about the absurdity of the situation, “We now find that the medical fraternity have adapted swiftly and are [instead] using euphemisms like: “test to establish the elasticity of the vagina and the anus.” The test is irrelevant and unscientific, said some lawyers, adding that it amounted to the “re-rape” of the victim⁷⁶.

A 2010 Human Rights Watch report called “Dignity on Trial” cited cases where victims were made to go from one government hospital to another for medical examinations subjected to many uncomfortable tests. Others had been forced to sit for hours in bloodied clothes, even after an examination, without being allowed to change or shower. Some were publicly identified as “rape victims” in hospital corridors. There was often no medical care available such as treatment for injuries or infections, or to address the possibility the victim has contracted HIV/AIDS or become pregnant. In most cases, no trauma counselling was given. The World Health Organisation’s guidelines for medico-legal care for sexual assault victims state that the health and welfare of the victim was “the overriding priority” – yet this was rarely followed in India⁷⁷.

⁷⁵ Nita Bhalla, Analysis: How India’s police and judiciary fail rape victims, Reuters, 16 January, 2013, Source: <http://in.reuters.com/article/2013/01/16/india-delhi-gang-rape-women-safety-polic-idINDEE90F0AY20130116>

⁷⁶ Nita Bhalla, Analysis: How India’s police and judiciary fail rape victims, Reuters, 16 January, 2013, Source: <http://in.reuters.com/article/2013/01/16/india-delhi-gang-rape-women-safety-polic-idINDEE90F0AY20130116>

⁷⁷ Ibid

5. *Low convictions and the endless wait for justice*

Assuming a girl mustered the courage to go through all the above points, the next step was to wait for justice that may or may not stand a chance. There were believed to be about 95,000 rape cases pending nationwide, according to Ranjana Kumari, a women's activist and director of the Centre for Social Research⁷⁸.

NCRB figures told a damning story of a 26% rape conviction rate for 2011, which meant that out of 100 cases brought to court, a judgment was finally pronounced only on 26 of them. The conviction rate was just another reason why victims were reluctant to go to court and rapists were undeterred.⁷⁹ One of the biggest reasons for this was the length of the trials. In an average case, it could take a court five to 10 years to reach judgment. India had far too few courts, judges and prosecutors for its 1.2 billion people – a fifth of the number of judges per capita that the United States had. This meant that cases were often dropped, and the accused acquitted, long before all the evidence was heard and a judgment given. The victims often became tired and disillusioned, unable to spend the time and money required to attend court hearings, and some just wanted to get on with their lives. Lawyers said victims and their witnesses were sometimes intimidated during lengthy trials by the accused, which were, in some cases, granted bail by the court, although rape was a non-bailable offence. As a result, victims could be pressured into accepting illegal "out-of-court" settlements such as a small cash payment, or marrying the rapist⁸⁰.

Many Nirbhayas

The year 2012 had been nightmarish for women across India.

The year began with the rape of two year old toddler in January, by a 25-year-old daily wage worker who lived in the vicinity in Colva. The worker raped the child after finding her alone at home and absconded immediately. The police who had initially registered the case as molestation later changed it to rape upon finding medical evidence⁸¹. In February, 38 year old Suzette Jordan was gang raped in a moving car as she was returning home from a night club. The prime accused was still roaming free, with an administration in denial mode. In July, in a horrific incident a young girl was groped and harassed in public on the streets of Guwahati to the open gaze of passers-by, none of whom stepped forward to stop the harassment. The entire episode was filmed and broadcast by a local Guwahati television channel. Moments after the video was uploaded in the net, it went viral. With pressure from national news media the journalist lost his job and the police claimed their search for the accused was "still on". In August, a 26-year-old PHD student

⁷⁸ BBC News India, Delhi gang rape: Panel backs reforming trials, 23 January, 2013, Source: <http://www.bbc.co.uk/news/world-asia-india-21156283>

⁷⁹ Tehelka Bureau, The rapes go on. How do we?, *Tehelka*, 19 January, 2013, Source: <http://www.tehelka.com/cover-story-rape-and-how-men-see-it-2/>

⁸⁰ Nita Bhalla, Analysis: How India's police and judiciary fail rape victims, Reuters, 16 January, 2013, Source: <http://in.reuters.com/article/2013/01/16/india-delhi-gang-rape-women-safety-police-idINDEE90F0AY20130116>

⁸¹ TNN, 25-year-old rapes toddler in Colva, *Times of India*, 22 January, 2012, Source: http://articles.timesofindia.indiatimes.com/2012-01-22/goa/30652725_1_colva-rapes-police-station

studying in IIT Powai was raped on the campus of India's premier Institute of Technology in Mumbai. Civil society raised its voice but the case was still pending.

The month of September saw three harrowing nights for the women of India. While a young school girl was returning from her evening tuition classes, she was raped in the streets of Dabra in Haryana, a state known to have the lowest number of women. Struggling to get justice for their daughter, when the family approached the police, they refused to file a rape complaint, blaming the girl's character. Unable to protect the "honour" of his daughter, the father committed suicide. Within days of this incident, the region witnessed the gang rape of a married woman. She was also described as being a woman of "loose character" by the police. A third incident followed when a young school girl was raped in broad daylight. In October, two young girls were raped by their college staff in their institute in Rajasthan. Like many others they had come to the institute to round off their education and to establish their careers after finishing their studies at Banasthali Vidyapeeth⁸². There were also others, ranging from toddlers to school girls to college students to working women to married middle aged women. Women across all ages, locations and socio-economic statuses were equally unsafe in India.

Finally the year ended with Nirbhaya, shocking the nation, waking it up to the brutality that had never reached such heights earlier. The Verma committee had to give its recommendations keeping in mind all cases of sexual assault in the recent past. It was not just one Nirbhaya who died fighting her rapists. That was the story everywhere.

Public cries for justice

There were reasons why Nirbhaya's case caught fire in the public imagination more than any other rape in recent times, garnering widespread national and international media coverage.

As Shoma Choudhury wrote:

There was, most of all, the unfathomably brutal violence involved. But many other things coalesced: the location of the crime, in upper-class South Delhi; the impunity of the attack; the fact that it was early evening; that she was accompanied by a male friend; that there were no complex caste or feudal hierarchies at play; that this was just random urban crime. That she was an average "wholesome" girl making her way in the world. Women across the country felt, "but for the grace of God, that could have been me." She was Everywoman⁸³.

The protests outside New Delhi's India Gate were getting louder. The protestors sought extreme measures such as naming and shaming, a public hanging, chemical castration and capital punishment. The Indian Government wanted to come up with a series of rapid-fire measures to attempt to quell some of the outrage. On 2 January, Delhi Chief Minister Sheila Dikshit flagged

⁸² Debarati Mukherjee, 2012: A terrible year for women in India, *DW*, 3 January, 2013, Source:

<http://blogs.dw.de/womentalkonline/2013/01/04/2012-a-terrible-year-for-women-in-india/>

⁸³ Shoma Chaudhury, The girl who fired an outcry in India, *The Daily Beast*, 3 April, 2013, Source:

<http://www.thedailybeast.com/newsweek/2013/04/01/nirbhaya-the-woman-who-ignited-a-fire-in-india.html>

off a silent march from Bal Bhavan to Rajghat, demanding justice for the 23-year-old⁸⁴. “We are very serious about dealing with the problem and taking all possible action as early as possible,” Prime Minister Manmohan Singh had said⁸⁵.

Authorities offered to “name and shame” convicted rapists by listing their photos, names and addresses on online public platforms. Protesters called for far worse punishments — including execution and chemical castration. To appease popular fury, the ruling Congress put up a proposal demanding chemical castration for the convicted rapists. This move was backed by the BJP and Tamil Nadu Chief Minister Jayalalithaa’s party AIADMK, both of whom additionally demanded for death sentence⁸⁶. The Congress also seemed actively discussing a proposal to reduce the juvenile age from 18 to 15 given how heinous the crime was.

Some journalists and members of civil society worried that policies were being cooked up in an overheated chamber of righteous popular outrage to give the appearance of swift action.

Amnesty International opposed the death penalty saying it was the ultimate cruel and inhuman punishment, and a violation of a fundamental human right – the right to life.

“There is no evidence to suggest that the threat of execution works as a special deterrent. This is reflected in a clear global trend moving towards the abolition of the death penalty. Today, 140 countries in the world have abolished executions in law or practice. What India needs now is not revenge, but to address the many underlying issues that are perpetuating endemic violence against women,” said Ananth Guruswamy, director of Amnesty International India⁸⁷.

Some suggested positive rehabilitation measures. There was one particular instance of a rapist, Ashok Rai who was serving a life sentence for rape in Tihar Jail. But in 2009, after seeing tremendous improvement in his behaviour through active participation in all the rehabilitation programmes, the jail authorities allowed him to write the Indian Civil Services qualifying examination. Rai surprised everybody by clearing it. The Delhi High Court then set him free by reducing his sentence to the period of five-and-a-half years he had already undergone stating that the convict has “redeemed” himself in the jail by qualifying in the Union civil services examination. Rai had gone to become a successful IAS officer⁸⁸. Of course these were rare cases of successful rehabilitative measures that few inmates responded to. There were others who escaped or became serial rapists after serving their term, posing a threat to society.

⁸⁴ PTI, Delhi gang rape case: Sheila Dixit flags off silent march, *Times of India*, 2 January, 2013

⁸⁵ Olga Khazan, How India’s rape name-and-shame database could backfire, *The Washington Post*, 28 December, 2012, Source: <http://www.washingtonpost.com/blogs/worldviews/wp/2012/12/28/how-indias-rape-name-and-shame-database-could-backfire/>

⁸⁶ Headlines Today, Jayalalithaa demands death penalty and chemical castration for rapists, 1 January, 2013, Source: <http://indiatoday.intoday.in/video/jayalalithaa-death-penalty-chemical-castration-rapists-gangrape/1/240340.html>

⁸⁷ Ananth Guruswamy, Indian rape debate: Why death penalty is no solution, CNN, 3 January, 2013, Source: <http://edition.cnn.com/2013/01/03/opinion/india-rape-amnesty/index.html>

⁸⁸ Staff reporter, Relief to Tihar inmate after he makes it to IAS, *The Hindu*, 11 February, 2009, Source: <http://hindu.com/2009/02/11/stories/2009021157300100.htm>

Mob justice

Nirbhaya's death saw some radical fall outs in the way the Indian public responded to any injustice against women. Primarily, it was an uncontrollable seething anger and a pent up desire for revenge. Some women lawyers in court suggested that Nirbhaya's was an "open and shut case" and the accused should be "handed over to the public".

Writing in *First Post*, journalist Sandip Roy wrote:

*Yes, temperatures are white hot. Yes, this crime was particularly brutal. Yes, there is a need for some cases to become exemplary cases. But this is not a gang for a gang. The answer to gang rape cannot be gang justice*⁸⁹.

On 22 December, five alleged eve-teasers were beaten to death by villagers in Jharkhand's Khuti district. "We were fed up with their misbehaviour with women of the villages," a villager told a news channel. On 28 December, a woman was lynched by locals in Kolkata's Topsia area. Locals suspected she was a trafficker after several young women went missing in the area. The woman was hit on the head with blunt objects and died in the hospital. "She broke down and confessed to have trafficked girls," a local told the media⁹⁰. All of this was worrying not just because it was mob justice going out of control. It was worrying also because it clearly showed how people had absolutely no faith in the system of governance to deliver justice.

The situation needed to be controlled urgently. The nation was waiting for the recommendations from Justice Verma and his team.

⁸⁹ Sandip Roy, No trial by mob: The answer to gangrape cannot be gang justice, *FirstPost*, 7 January, 2013, Source: <http://www.firstpost.com/living/no-trial-by-mob-the-answer-to-gangrape-cannot-be-gang-justice-578096.html>

⁹⁰ Ibid

Epilogue

On 23 January, 2013, Justice Verma and his team submitted their recommendations report to Dr. Manmohan Singh. A summary of their recommendations is attached and is available online⁹¹.

Acknowledging the Verma committee report, the Government finally passed the Criminal Law Amendment Bill (2013) commonly referred to as the Anti-rape Law on 21 March, 2013.

While some of the recommendations were incorporated into the law, a few were left out. In May 2013, Rashida Manjoo, the UN Special Rapporteur on violence against women, expressed regret that the landmark legislation did not fully reflect the recommendations of the Justice JS Verma committee as it “did not go far enough”⁹². Recommendations on criminalizing marital rape, reviewing the age of consent for sex and reviewing controversial sections of the Armed Forces Special Powers Act which made human rights violations rampant in the armed forces were ignored in the legislation. Also where the Verma Committee did not recommend the death penalty for rape, the anti-rape law allowed for death penalty to be given in the “rarest of rare” cases causing mixed responses⁹³.

Timeline Summary of Events

22 April 2013: Justice Verma passed away. He was 80 years old.

1 March 2013: Ram Singh, the prime accused in the Nirbhaya case committed suicide while still in Tihar jail.

31 August 2013: Raju, the minor was convicted for gang rape and murder and was awarded three years term at a probation home, after which he would roam the streets of Kolkata as a free man.

10 September 2013: Court convicts Mukesh, Vinay, Akshay and Pawan of 13 offences including gang rape, unnatural offence and murder of Nirbhaya and attempt to murder her male friend.

13 September 2013: Court awards death to all four convicts.

⁹¹Source:<http://www.prsindia.org/administrator/uploads/general/1359132636~~Justice%20Verma%20Committee%20Report%20Summary.pdf>

⁹² ‘Opportunity Lost’ as new anti-rape laws in India fail to address root causes – UN expert, UN News Centre, 3 May, 2013, Source: http://www.un.org/apps/news/story.asp?NewsID=44818#.UjfSOj_oP6A

⁹³ IANS, UN regrets anti-rape law not reflecting Verma panel views, *The New Indian Express*, 1 May, 2013, Source: <http://newindianexpress.com/nation/UN-regrets-anti-rape-law-not-reflecting-Verma-panel-views/2013/05/01/article1570456.ece>