



Sentencing Sex Offenders in India: Retributive Justice versus Sex-Offender Treatment Programmes and Restorative Justice Approaches

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Abstract

Since December 2012, hundreds of people of all ages have protested both within India and around the world, demanding justice for twenty-three year old ‘Nirbhaya’ (‘fearless one’), who lost her life after being brutally assaulted and gang-raped in a running private Bus at Delhi. Her father and brother have publicly called for the execution of those responsible, while other rape victims have suggested that India should introduce chemical castration as a punishment for sexual assault. In light of this, and other similar rape cases in India, this article questions whether punitive methods, such as the death penalty and chemical castration, offer the best way forward. Exploring sex offender treatment programmes and the use of restorative justice, this article sheds light on a range of strategies likely to prove more effective for addressing the problem of sexual violence in India.

Keywords: ‘Nirbhaya’ (fearless one), sentencing, rape, sex offenders, death penalty, chemical castration, preventive detention, sex offender treatment programmes, restorative justice.

Introduction

The horrific sexual assault of twenty-three year old ‘Nirbhaya’ (fearless one) shocked India in December 2012, drawing attention to the prevalence of sexual assault in the country. Perhaps, more shocking, however, were two further cases of rape in April 2013, in which the victims were only five years old. Such cases have illuminated the gaps in India’s legal system: gaps that allow the majority of sexual crimes to go unpunished, creating an atmosphere of impunity. In this context, it is not surprising that sexual violence is so commonplace. Only when victims receive a measure of justice through

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concerted efforts to convict those responsible will Indian society, as a whole, begin to treat sexual assault as a heinous offence. This, in turn, will pave the way for the changes necessary to ensure that the country stops condoning any type of violence against women and children.

In India's patriarchal society, the lives and dignity of women are under constant threat. In Delhi alone, there were 393 rapes between January and March 2013: a staggering number, especially given that incidence for the same period of time in 2012 was 152 (Hindustan Times, 2013). The Government's National Crime Records Bureau estimates that crimes against women have increased significantly over the period 2006 to 2010. In comparison to 1,64,765 cases in 2006, a total of 2,13,585 incidents were reported in 2010 (Chhibber, 2013): this is at best a conservative estimate as many crimes are known to go unreported. Most of the reported incidents related to cases of dowry violence, rape, molestation or trafficking committed by private individuals; however, this is only part of the story. Violence against woman takes on a particularly sinister character when state functionaries themselves violate the constitutional guarantees provided to women by various legal provisions and the constitution itself. For instance, thirty-five year old Soni Sori was tortured while in police custody and jail in Chhattisgarh. The former warden of a government-run school for tribal children in Jabeli, Dantewada, Soni Sori was arrested in October 2011; while in custody, she was verbally abused, given electrical shocks, stripped, beaten and sexually assaulted. A medical examination conducted by Nil Ratan Sircar Medical College Hospital in Kolkata, following an order from the Supreme Court, found that she had been tortured. From her cell in Dantewada Jail, she continues her fight against the injustices committed against her (IBN Live, 2013).

The situation in India has become untenable, sparking protests for justice not just in India but around the world. The family of 'Nirbhaya' have publicly called for the execution of those responsible – a call echoed by the public with increasing frequency. Notably, on September 13, 2013 a Delhi Court sentenced the five of the four accused of the "Nirbhaya" Case to Death (One accused committed suicide in the prison) (The Hindu, Sep. 14, 2013). Meanwhile, other rape victims have suggested that India should introduce chemical castration as a punishment for sexual crimes. This article questions whether punitive options, such as the death penalty and chemical castration, offer the best way forward for India. Through exploring sex offender treatment programmes and the use of restorative justice, this article sheds light on a range of strategies that are likely to prove more effective for addressing this problem from the perspectives of victims, offenders and Indian society as a whole.

Punitive Options

The punishments set out for convicted sex offenders in India have recently been reformed, largely in response to the 'Nirbhaya' case. Reacting to the widespread public protests, on 22 December 2012 the Government announced that it would set up a judicial commission (the Justice Verma Commission) with two key objectives: (i) to look into Nirbhaya's case and (ii) to suggest measures for improving the safety of women. The Government also used this as an opportunity to indicate that the death penalty might be adopted. Following a period of intense debate about the most appropriate penalties for rape and sexual assault, the Criminal Law (Amendment) Ordinance 2013 received presidential assent on 2 April 2013; this assent brought the Ordinance retrospectively into force as of 3 February 2013.

One of the proposals of the Bill behind the Ordinance was to increase prison terms for rapists to a minimum of seven years to life. However, the public and some politicians, including the Minister for Women and Child Development, have called for even harsher punishments, ranging from chemical castration to execution. Home Minister Sushil Kumar Shinde stated that all suggestions put forward by the Chief Secretaries and the Director Generals of Police would be considered by the Government (The Times of India, 2013). The new Ordinance covers a number of areas relating to violence against women including stalking, voyeurism, and assault or use of criminal force with intent to disrobe a woman. It also covers punishments for sexual assault. Sexual assault is the new umbrella term for all sexual offences (s. 375 Indian Penal Code) and includes penetration of the vagina, anus, urethra or mouth of a person with a penis; penetration of the vagina, urethra or anus with an object or body part other than a penis; manipulation of any part of the body to cause penetration; cunilingus and fellatio; and sexual touching.

Sentences for sexual assault are divided into categories based on the presence of aggravating factors. For example, for 'standard' sexual assaults, sentences range between a minimum of seven years and imprisonment for life. This increases to a minimum of ten years (s. 376 Indian Penal Code) when the offender was in a position of authority (e.g. as a police officer or public servant) or when the offence is committed against a pregnant woman, a person under eighteen, or someone suffering from a mental or physical disability or who cannot give consent. Sexual assaults committed by a group of people are punishable by not less than twenty years for each offender and the term can be extended to life. Here (s. 376D Indian Penal Code), life is said to mean life without parole, as discussed below. When the offender not only commits a sexual assault but also causes death or causes the victim to be in a persistent vegetative state, the sentence increases to twenty years to life without parole. The sentence can also include death (s. 376A Indian Penal Code). A repeat offender will automatically receive life without parole, which can also be extended to include death (s. 376E Indian Penal Code).

1. The Death Penalty

Public calls for the death penalty are not unusual when heinous crimes are committed. One woman from Delhi, writing on her husband's blog, spoke passionately about her fury and the need for stronger deterrents:

Of course one wants to live in a civil society that believes in redemption and the rehabilitation of its worst members but you have no . . . idea what you're dealing with in Delhi. These are men who operate on an animal instinct. You need a brutal deterrent, employed continuously and consistently in the short term to let them know we mean business ("The subjugation capital", 2012).

However, a joint statement issued by The People's Union for Civil Liberties, the Tami Fish Workers Forum, the Citizen's Collective against Sexual Assault, and Jagori argued that:

The logic of awarding [the] death penalty to rapists is based on the belief that rape is worse than death. Patriarchal notions of 'honour' lead us to believe that rape is the worst thing that can happen to a woman. There is a need to strongly challenge this stereotype of the 'destroyed' woman who loses her honour and

who has no place in society after she has been sexually assaulted. We believe that rape is a tool of patriarchy, an act of violence (Menon, 2012).

Garland (2001), and Simon (2007), argue that states often turn to symbolic practices of punishment designed to express outrage over crime, rather than focusing on those practices likely to change the crime rate itself. Garland (2001), in particular, argues that states make this choice because they often lack the power to eliminate the relevant crime, even though politicians strive to be *seen* to be taking action to alleviate the anxiety that citizens feel over crime, particularly rising crime rates. Often efforts to change the social norms and difficulties – inequality and poverty key among them – that underpin crime take a backseat. This is especially common in countries, like India, that are already undergoing rapid and sweeping change. By punishing perpetrators, society can achieve a collective catharsis of anger and fear while avoiding the challenging work of fixing more systemic social ills.

Simon (2007), posits that politicians facilitate this process by appealing to idealised notions of the “innocent crime victim” when they discuss criminal policy (2007, p. 15). This rhetorical device inevitably creates a zero-sum game in which a given penal policy is either ‘for victims’ or ‘for offenders’, which invariably tips the balance in favour of punitive outcomes. Thus, Tonry (2004) posits that cultural sensibilities about punishment have shifted from a general rehabilitative mentality to a retributive one. As a result, countries have reacted to moral panics about crime with increasingly harsh criminal justice policies. The death penalty is often seen as an option when a country wants to shine a spotlight on a particular crime as the death penalty embodies the notion of justice as the ultimate deterrent. However, the connections between the policy, practice and the philosophy regarding punishment are neither straightforward nor close.

Executions for rape were common place in early societies, not only because rape was seen to represent an affront against a woman’s chastity, but also because it was regarded as an act against a husband’s exclusive ‘ownership’ of his wife (Reilly, 2013). On both counts, rape was considered worse than death for the woman concerned (Rayburn, 2004). In modern times, however, it is extremely rare for offenders to be put to death following a rape conviction. For instance, the death penalty has not been applied in a rape case in America since 1964 (Rayburn, 2004). Indeed, in 1978 the Supreme Court held that a sentence of death for rape was grossly disproportionate and excessive in the case of *Coker v Georgia* (433 U.S. 584 (1977)) and, on this basis, that it breached the Eighth Amendment of the US Constitution. This decision was challenged in 1995 when the State of Louisiana introduced capital punishment for rape against a child under the age of twelve, sparking five other States to do the same (Rayburn, 2004). This too has now been struck down by the Supreme Court. In *Kennedy v Louisiana* (128 S.Ct. 2641 (2008)), the Court held that while a sentence of death was not disproportionate to the severe nature of the crime in question, it was nonetheless unconstitutional to execute someone who had raped a child but had not intended to kill or assist another in killing that child. The Court’s reasoning relied on the belief that the public at large felt that death was inappropriate in cases of rape.

While some in India have called for the death penalty in rape cases, it is unlikely that there is national consensus. Many politicians have remained silent on the issue, with most Indian States supporting life imprisonment without parole (Deccan Herald, 2013). Similarly, protestors around the world have focused not on the need for capital

punishment but rather on the need both to strengthen women's rights within India and to ensure that victims receive swifter and fairer treatment from the criminal justice system. Indeed, many women's and human rights groups across India have campaigned *against* the introduction of the death penalty for rape cases, arguing that it is "neither a deterrent nor an effective or ethical response to these acts of sexual violence" (Arora, 2012). Their key argument is that punishment through the death penalty is not necessarily the best way to send a strong message about the fact that sexual violence must no longer be tolerated in Indian Society. As one Feminist India contributor to the on-line discussion about the Nirbhaya gang rape case argued (20 December 2013): "A nuanced position on this clamour for the death penalty from all kinds of places is important" (Chakravarti, 2012).

Nevertheless, supporters of the death penalty point to its symbolic value: its ability to communicate collective condemnation. The problem with this argument, especially in a country such as India, is that it ignores the fact that this form of retribution might well result in victims and witnesses being silenced through murder or intimidation, worsening rather than improving the current situation by driving sexual violence underground, where it cannot be addressed (Gill, 2013). This problem is compounded by the fact that, according to the National Crime Records Bureau (2011), nearly 95 per cent of offenders are known to their victims. This is borne out by the recent spate of rapes of women and girls in Delhi and neighbouring Haryana, where the perpetrators were mainly relatives or powerful upper-caste men from the area. If the death penalty is mandated in 'standard' cases, it will become even more unlikely that these women will even be allowed to register their cases against neighbours, relatives, friends, and men who wield immense local power. As such, while bringing in the death penalty might aim to strengthen women's rights, it might unintentionally result in further violations of these rights.

Moreover, there is no evidence to suggest that the death penalty actually acts as an effective deterrent to rape (Donohue & Wolfers, 2006). In general terms, there is a low rate of conviction for rape cases around the world, irrespective of the use of the death penalty. Indeed, adopting the death penalty might well lower existing conviction rates as juries may be reticent to find suspects guilty when they know that execution will be the punishment. Moreover, where the death penalty is already an option, judges may be unwilling to hand down this sentence except in the rarest of cases. Also of concern is the fact that, in those countries that have the death penalty, men from minority communities make up a disproportionate number of death-row inmates. In the context of India, a review of crimes that are punishable by death reveals the discriminatory way in which the relevant laws are selectively and arbitrarily applied to disadvantaged communities, religious and ethnic minorities, and Dalits: perpetrators who come from a disadvantaged background make up the vast majority of those against whom the death penalty is imposed.

Ultimately, the notion of the fundamental 'right to life' implies that even the state should not have the right to take a life, irrespective of who the person is or what he (or she) has done. Human rights-based approaches argue that punishment should not involve the taking of life, but instead should focus on making punishment meaningful in the context of both the victim's and offender's lives. Justice mediated by the state should not seek shortcuts in addressing the complex socio-political issue of violence against women: far-reaching social change is needed to tackle the cultural norms that allow men to rape with impunity. Simply using the death penalty to quieten public anger, without changing society, will not address the fundamental underlying issues.

2. Chemical Castration

Another form of punishment that has gained popularity in India as a possible ‘solution’ to the prevalence of rape is chemical castration. Chemical castration involves the use of anti-androgens and psychotropic medications to lower, and in some cases eradicate, testosterone levels in men. Although anti-androgens and psychotropic drugs work differently, the end result is to inhibit the hormones that stimulate the body to produce testosterone; this, in turn, commonly reduces sexual desire (Harrison, 2007). Full effects include a reduction in potency, orgasm, sperm production, sexual frustration, and the frequency and pleasure of masturbation (Craissati, 2004). As chemical castration uses medication to control sexual urges, the term pharmacotherapy is more accurate – and less emotive – though chemical castration is now common parlance (Harrison and Rainey, 2009).

In addition to the intended effects of this form of pharmacotherapy; there are also many side effects. Side effects of Medroxyprogesterone acetate (a ‘chemical castration’ drug used in America) include weight gain, migraine, gallstones, the formation of blood clots, serious allergic reactions, depression including suicidal thoughts, hypoglycaemia, insomnia, difficulty in breathing, hypertension, shrinkage of the prostate vessels, and diabetes (Spalding, 1998). Other reported side effects include breast enlargement, which is not only said to be common but also irreversible, abnormal spermatozoa, which is thought to be reversible, mood changes, and altered liver function (Craissati, 2004). Thus, the use of such drugs can undermine the physical integrity of a person, exposing him to long-term adverse health consequences and for this reason; the use of chemical castration is open to human rights challenges (Harrison & Rainey, 2009). Indeed the European Court of Human Rights has held that the use of chemical castration is only lawful where the offender has given his free and informed consent (see *Janiga v Usti Nad Labem Regional Court, Czech Republic* [2011] EWHC 553 (Admin)).

While there have been many studies (Lösel & Schmucker, 2005; Harrison, 2007; Basdekis-Jozsa et al., 2013) that show the efficacy of using medication to lower testosterone levels and, consequently, sexual desire in men, the preventive efficacy is only clear with regard to certain classes of sexual offenders (e.g. paedophiles). Indeed, there is evidence to suggest that it is only useful for preferential paedophiles: those who are sexually aroused by children but never adults. Harrison (2007) argues that such offenders can be considered ‘addicted’ to children and this is why pharmacotherapy may be useful though it is unlikely to work with rapists who attack adults. Rape involving adult victims is typically not about sex *per se*, or the inability to control one’s sexual urges, but rather about power and feeling that one is entitled to sexual control over the victim. For this reason, one Feminist India online contributor argued that “Chemical castration is senseless since so many serial rapists in the world have been known to be impotent – rape is an act of patriarchal power, not sexual urge” (Uma, 2013)

Leaving these arguments against pharmacotherapy aside, it is unclear whether India’s criminal justice system possesses the resources and institutional capacities required to effectively administer the complex and long-term individualised medical treatment involved in chemical castration. The country’s public health system is already struggling, especially with regard to dealing with mental health challenges, while the health infrastructure of the prison and probation services is woefully inadequate. In 2011, India’s National Institute of Mental Health and Neurosciences published a report using the Bangalore Central Prison as a case study to show that the criminal justice system is not

able to deal with even the most basic health issues confronting it (Math, Murthy, Parthasarathy, Kumar, & Madhusudhan, 2011) Foisting the complex and demanding procedures involved in chemical castration on India's current prison system is therefore a recipe for failure. If such a sentencing option was implemented, it might well do little more than provide a false sense of security while exposing victims, offenders and the wider community to further risks.

3. Life Imprisonment without Parole

Another option that has now been mandated for serious cases of sexual assault is the sentence of life imprisonment without parole. Many states in India looking for a "stringent punishment" for convictions of rape favour "life till death without leniency and parole . . . instead of the death penalty" (Deccan Herald, 2013). In the Indian Penal Code, life without parole is defined as "imprisonment for the remainder of that person's natural life" (s. 376D Indian Penal Code). In the United States it is a relatively common sentence following rape convictions, especially if the victim was a child or the crime was particularly heinous. For example, Jared Len Cruse was given life without parole in November 2012 for participating in the gang rape of an eleven year old (Horswell, 2012), while Steven Mark Johnson received the sentence for the rape of a twenty-three year old (savannahnow.com, 2012). In England and Wales, however, all offenders sentenced to full-life tariffs for rape have also committed murder. The justification in England and Wales for usually allowing the possibility of parole is the belief that people can change and that education and rehabilitation can be effective. The Indian government appears to agree with this approach given that the Ordinance restricts life without parole to cases involving murder or other aggravating factors.

4. Preventive Detention

For less serious cases, the Ordinance proposes minimum sentencing tariffs, often with the possibility of life imprisonment. The legislation is not explicit but it is assumed that life imprisonment means life with the possibility of parole. A number of countries, including England and Wales, and many other European and British Commonwealth nations, use this approach for dealing with violent and/or sexual offenders. Instead of sentencing being for a fixed duration that is proportionate to the seriousness of the crime, preventive detention of this kind often involves an indeterminate sentence with a minimum basic tariff; this allows for offenders to be held for longer than would otherwise be the case in order to ensure that the public is protected against further offending. Unlike when a person is sentenced to imprisonment without parole, release may be warranted if and when the offender has shown a reduction in his risk of reoffending and is thus deemed to be safe to live within the community again. However, the new Indian Ordinance does not state how such sentences will work, what offenders will do whilst in prison, or how they will be released. These are important issues that need careful consideration if these sentences are to be effective in terms of public protection.

Preventive sentences can be said to have two parts: a punitive element and a preventive element. The punitive element is designed to serve the goal of retribution and generally involves a minimum period of imprisonment commensurate with the seriousness of the offence. The appropriate period of time, in England and Wales, is determined by the sentencing judge, using sentencing guidelines and case law. Once the minimum tariff has been served in full, regardless of any good behaviour or progress, the offender can be

considered for release. If the Parole Board does not consider the offender's level of risk acceptable, the prisoner will be held until such time as the Board considers release to be appropriate; this is the preventive part of the sentence.

When deciding whether to release a prisoner held under preventive detention, the Parole Board must be satisfied that "it is no longer necessary for the protection of the public that the prisoner should be confined" (Crime (Sentences) Act 1997, s. 28(6)). This has been referred to as the 'life and limb' test: "whether the lifer's level of risk to the life and limb of others is considered to be more than minimal" (Directions to the Parole Board, para. 4, under the Criminal Justice Act 1991, s. 32(6)). The risk in question relates specifically to the person's potential for serious sexual or violent offending, regardless of the offence for which the person was imprisoned. If the Parole Board believes that an offender is safe to be released, they will make a recommendation for release to the Secretary of State.

If the Secretary of State agrees with the Board's recommendation, the prisoner will be released on probation under a number of set conditions. There are six standard license conditions; these stipulate that the released prisoner must (i) report to his supervising probation officer according to a set schedule, (ii) receive visits from the supervising officer at home, (iii) undertake work, (iv) refrain from travelling outside Britain, (v) refrain from offending behaviour, and (vi) reside in an appropriate place. The parolee may also be subject to additional, non-standard conditions: these may include exclusion conditions aimed at keeping the offender away from a former victim or victim's family, and/or mandatory visits to a psychiatrist, psychologist or medical practitioner (The Parole Board, 2012). While on license, the Probation Service will supervise the offender for a period of time determined by the type of sentence originally imposed; if a released offender was sentenced to either mandatory or discretionary life imprisonment, which is likely in serious rape cases, then he may remain under supervision by the authorities for the rest of his natural life. Moreover, such offenders may be recalled to prison at any time, and made to serve the rest of their sentence in a custodial setting, if their risk is considered by the Probation Service and/or Police to be no longer manageable within the community. Recalls usually occur because a license condition has been breached or the offender has committed another criminal offence.

The work undertaken with offenders whilst they are in prison is crucial to reducing their risk of reoffending. In order to show a reduction in risk of reoffending, many prisoners serving indeterminate sentences complete accredited offending-behaviour programmes. Ideally, these programmes work to change the beliefs, behaviours and attitudes that underpin offending. It is change of this sort that needs to occur on a societal level if violence against women and girls is to be eradicated.

A different way forward

1. Sex offender treatment programmes

As mentioned above, in order for a sexual offender to be released from preventive detention in England and Wales, he must show that his risk of reoffending is at an acceptable level. One of the main ways this is achieved is through the completion of an accredited sex-offender treatment programme (SOTP). Most of these are based on the cognitive behavioural therapy model, which is generally considered an effective approach for this group of offenders (Brown, 2010; for a review see Vennard et al., 1997) because it

requires offenders to actively participate in and engage with the treatment process (Brown, 2005).

As Brown (2010) explains, cognitive behavioural therapy:

requires the client [or offender, in this case] to be alert, to be motivated to some extent to learn and take on board the messages/skills/ideas of the programme and to actively implement these thoughts, skills, behaviours into their lives, in many instances into all aspects of their lives for very long periods of time (p. 83).

The aim is to teach individuals new skills and life management techniques that can be employed on a daily basis. These skills and techniques help offenders to avoid reoffending both inside and outside prison.

In terms of the 'behavioural' element of cognitive behavioural therapy, current English and Welsh SOTPs focus on showing offenders that all behaviour has consequences, while emphasising the importance of repeating positive behaviours. In terms of the cognitive element, SOTPs explore offenders' distorted beliefs in order to help them change their attitudes towards sexually-deviant behaviour and, often, their attitudes towards children, women and sexual entitlement. SOTPs also engage with how these issues relate to offenders' self-esteem, ability to empathise with others (especially victims), offending cycles (including thoughts that lead to offending behaviour), social functioning, and sexual preferences. Most SOTPs ask offenders to discuss (i) their crimes, (ii) what led to their offending, (iii) what its consequences were, and (iv) what their thoughts and attitudes concerning their crimes are (Brown, 2010). Relapse prevention is key, especially if the offender is residing within the community; this is where the development of positive social functioning and the modification of offenders' sexual preferences is most important.

In terms of comparing such programmes with the punitive options discussed above, the evidence suggests that positive reinforcement of good behaviour is a much more effective way of changing maladaptive behaviour than either punishment or negative reinforcement (Brown, 2005). This key finding has been emphasised through the introduction of the Good Lives Model (GLM), which is used in Canada, the UK, Australasia and other countries around the world. It works on the premise that all individuals, including convicted rapists, want to live good lives: that everyone wants "material well-being, health, productivity, intimacy, safety, community, and emotional well-being" (Ward, 2002, p. 514). Ward argues that programmes that instil knowledge, skills and the resources to live different kinds of lives have the greatest chance of rehabilitating offenders.

While there is much debate regarding both the effectiveness of such strategies and the methods used to assess them (Brown, 2005; Rice & Harris, 2013), some studies of effectiveness do hold some credence with both academics and practitioners. One such study was Lösel and Schumucker's 2005 meta-analysis of all studies of efficacy reported in English, French, Dutch, Swedish and German up to 2003. From the sixty-nine studies located, they concluded that SOTPs did produce a treatment effect, with treated offenders reoffending at a rate of 11.1 per cent compared with 17.5 per cent for the untreated group. In summary, they stated that "the most important message is an overall positive and significant effect of sex offender treatment" (2005, p. 135). Likewise, Robertson et al. (cited in Brown, 2010) found a recidivism rate of 9.4 per cent for treated offenders compared with 15.6 per cent for untreated offenders; while Reitzel and Carbonell (2006), found recidivism rates of 7.4 per cent for treated offenders and 18.9 per cent for untreated

offenders. Although caution is needed, it is likely that SOTPs in conjunction with both work on relapse prevention and the GLM can have a positive effect on recidivism rates involving rapists. The current belief in India that rapists cannot change and, thus, that life without parole is warranted for public protection should be reconsidered in light of this.

2. Restorative Justice Approaches

Another important option that many human rights organisations are lobbying the Indian government to consider is the use of restorative justice techniques and, more specifically, Circles of Support and Accountability (COSA). While these are generally only suitable as an adjunct to imprisonment and SOTPs, they do serve an important role in managing the risk sex offenders present once they have been released into the community. The main difference between restorative and more conventional criminal justice approaches is the formers' emphasis on reintegration, restitution and reparation (Kemshall, 2008); McAlinden (2007), adds to this reconciliation and community partnership, which together allow for earned redemption.

Sherman (2000) argues that restorative justice is different to traditional psychological interventions in that there is no set model on how reintegration is to be achieved, with "offenders becom[ing] law-abiding through acts and relationships rather than through a personality change or 'treatment'" (p. 269). Thus, restorative models prioritise processes of reintegration as opposed to shaming: the hallmark of many traditional criminal justice models. Shaming often results in the offender being marginalised by his community and this often leads to further offending. Thus, restorative justice shames the offence, rather than the offender, focusing on reintegration as a way to reduce the likelihood of reoffending (McAlinden, 2007).

The development of COSA can be traced back to the work carried out by the Canadian Mennonite Church in 1994 in response to sex offenders being released from prison into their communities (Hanvey & Höing, 2013). Centred on the pillars of safety and support, COSA offer public protection and reintegration; the key idea is that communities should accept responsibility for all their members and, thus, for addressing sex offenders' problems (McAlinden, 2007). The aim is to "control wrong doers within a communitarian society and informally sanction deviance by reintegration into cohesive networks, rather than by formal restraint", with the community becoming an important "resource in the risk management process" (McAlinden, 2007, p. 171). This requires a certain level of tolerance and understanding from the community and is linked to a need for cultural change.

Circles in England and Wales consist of four people who act as a support network to an offender, referred to in this context as the 'core member'. The group is known as the 'inner circle' in contrast to the 'outer circle', which comprises criminal justice professionals who have expert knowledge in risk assessment and management and can thus offer support to the inner circle (Hanvey & Höing, 2013). The size of the circle is important in that it must be small enough to facilitate communication and trust, but large enough to share responsibility for the needs of the offender. All members are volunteers who are asked to sign a covenant that specifies the type of assistance each member will give. The offender also signs the covenant to signify his agreement to the conditions. COSA require the core member to accept responsibility for his behaviour and so it is preferable for him to have already completed either an SOTP or community-based alternative. The core member must also be motivated not to reoffend and be willing to engage with the circle.

Work within the circle often focuses on accommodation, employment, developing social skills, finding appropriate hobbies, and achieving acceptance by the community, although support is individualised depending on the offender's needs (Circles UK, 2010). This support is coupled with disapproval concerning inappropriate behaviour, thoughts and feelings, which the circle is expected to challenge. Through the circle's support, it is hoped that the core member will grow in self-esteem, develop healthy adult relationships, and maximise his chances of successful reintegration into society (Circles UK, 2010). The circle will initially meet weekly, with accompanying mid-week telephone calls. Future contact depends on the individual needs of the offender, with most circles lasting twelve months, although this can be extended if deemed necessary and worthwhile.

Research on COSA from Canada, and England and Wales, has been largely positive regarding studies involving matched controls. In one Canadian study, those involved in COSA showed a 70 per cent reduction in sexual reoffending, a 35 per cent reduction in general reoffending, and a 57 per cent reduction in all types of violent reoffending compared to the matched control group (Wilson et al., 2005). Similar results were also found in a second study where recidivism rates were 2 per cent versus 13 per cent for sexual reoffending, 9 per cent versus 32 per cent for violent reoffending, and 11 per cent versus 38 per cent for general recidivism (Wilson et al., 2008). More recently in England, the Hampshire and Thames Valley Circles Project reviewed their first 60 core members. Checking their own reconviction data with the Police National Computer, just one reconviction was identified for a sexual offence (Bates et al., 2011). COSA do not offer a cure, but they can help in managing the risk that sex offenders pose when living in the community. Thus, COSA may offer an effective way forwards for India as they can help to challenge and change cultural beliefs about the rights and values of men and women.

Recommendations

As an activist from Feminist India online forum (6 January 2013) argued:

No doubt the efficient policing, stringent punishments and legal measures would reduce the incidents of crime against women but it cannot eliminate this malaise unless and until the mind-set of the society is changed and women stop playing second fiddle to men (Menon-Sen, 2013).

It is vital that measures are introduced to end India's tolerance of violence against women and girls. Policy and legal reform are needed to address the pervasive and damaging stereotypes surrounding rape. For instance, the Government needs to change the nature of the medical evidence collected in rape cases. The 'two finger' test, which is widely used to determine whether victims are "habituated to sexual intercourse", should be explicitly prohibited ("Representation to the Justice", 2013). In 2011, the Director General of Health Services ordered the practice discontinued, but it continues to be used, contributing to India's low conviction rate for rape cases through allowing the victim's sexual history to be considered, often as a way of undermining the victim's testimony ("Representation to the Justice", 2013). Sentencing principles also need to be reformed in this regard: factors that should *not* be considered in sentencing rape offenders (such as the victim's sexual history) should be listed. Currently, a large number of offenders whose victims do not adhere to common stereotypes receive relatively low sentences, if they are convicted at all. Moreover, most cases suffer from improper and delayed investigation.

More efficient, timely and thorough investigative procedures are needed to ensure that more cases go to court and more convictions are obtained.

Ultimately, ensuring principled sentencing in tune with India's constitutional values would offer better guarantees of justice than the introduction of capital punishment or chemical castration. Fair procedures and access to justice for all will represent far more significant deterrents.

Conclusion

Talking about the recent outrage in India regarding the prevalence of sexual violence against women, Shilpa Phadke argued "When we call for our cities to be safer for women, we must realise that our fight must be against all kinds of violence. Only an inclusive struggle can hope for success" (Phadke, 2012). Meanwhile, in her address to protestors in Delhi, Kavita Krishnan, National Secretary of the All India Progressive Women's Association, stated:

The government has to listen. Just shedding a few crocodile tears within the confines of the Parliament is not enough, it is not enough to scream 'death penalty' ... I find it funny that the BJP [Bharatiya Janata Party] is demanding death penalty for the rapists, when within its [*sic*] own constituencies it gets goons to chase down girls who wear jeans or fall in love with members of minority communities – saying that women must adhere to 'Indian sensibilities', or else. We need to create a counter culture against this ultimatum. We need to create a counter politics, one that asks for the right for women to live freely without fear ("APIWA National Secretary" n.d.).

Furthermore, as Menon argues:

Feminists have long tried to build an understanding that desexualises rape – in law and everyday life. If you take rape out of patriarchal discourses of honour, it is an act of violence that violates bodily integrity. It is not a fate worse than death but it is traumatic, like any act of physical violence, and it should be punished as such (Marik, 2013).

The Justice Verma Commission was set up following the murder of 'Nirbhaya' to create recommendations regarding how India might curb violence against women and strengthen rape laws. In its 630-page report of 23 January 2013, the Commission suggested amendments to the law to provide for quicker trials in rape cases and enhanced punishments for sexual offences. By identifying Indian society's patriarchal frameworks as the foundation upon which crimes against women occur, the Commission has given Indian statutory agencies cause to reflect on the extent to which social attitudes and norms contribute to the climate of misogyny that feeds the commodification of women and, ultimately, violence against women. The Commission underlines the Indian government's responsibilities under the country's Constitution to protect the "right to life with all aspects of human dignity for women"; in turn, every citizen of India has a "fundamental duty", under Article 51A, "to renounce practices derogatory to the dignity of women" (Raza, 2013).

The Commission's report makes concrete recommendations in respect of electoral reforms, police reforms, "education and perception" reforms, measures to deal with extra-

judicial authorities (e.g. *khap panchayats*), child sexual abuse, trafficking in women, stalking, cyber-stalking, sexual harassment in the workplace, and medico-legal examinations of victims that violate their human rights (Justice Verma Commission, 2013). Justice Verma stressed that the Commission does not suggest introducing the death penalty for rapists because of the overwhelming opposition from women's organisations. The Commission also held that chemical castration would be unconstitutional and inconsistent with a number of human rights treaties that India is party to in that it would expose citizens to potentially dangerous medical procedures, possibly without their consent (Justice Verma Commission, 2013).

Although only some of these recommendations have been adopted, many proved key to the development of the Criminal Law (Amendment) Ordinance 2013. However, women's groups have raised concerns about the value of the Ordinance. Some have objected to the fact that the Ordinance does not make marital rape a criminal offence, as the Commission recommended; others have argued that waivers of sanctions in sexual offence cases are not acceptable. Moreover, despite the recommendations of the Commission, the Ordinance includes measures to introduce the death penalty in 'extreme' cases of sexual assault. The Ordinance also replaces the word 'rape' with the term 'sexual assault' and includes acid attacks and stalking under this umbrella concept. Furthermore, it includes no reference to the review of the Armed Forces Special Powers Act recommended by the Commission, which suggested that sexual crimes committed by members of the armed forces should be tried under ordinary criminal law.

The groundswell of public and media fury over recent high-profile rape cases may have precipitated a political moment, providing impetus for much needed reforms in the law, policing practices, and other aspects of India's criminal justice system. However, in seeking to seize the political moment there is a distinct danger of acting in haste, ignoring the experience of the women's movement and civil liberties activists about what reforms are most likely to prove effective in tackling sexual assault. The entry into force of the 2013 Ordinance demonstrates that India has made some progress and that the country is starting to take sexual assault more seriously; however, restructuring the law to enable more effective punishment of such crimes is not enough. It is therefore vital, as we have sought to show, that India looks beyond the natural human desire for retributive justice to seek comprehensive solutions, including sex-offender treatment programmes and restorative justice approaches that provide a true and lasting legacy of change.

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