

The Rape Case in India: Evidence for the Globalisation of Human Rights?

Written by Vinodh Jaichand

This PDF is auto-generated for reference only. As such, it may contain some conversion errors and/or missing information. For all formal use please refer to the official version on the website, as linked below.

The Rape Case in India: Evidence for the Globalisation of Human Rights?

<https://www.e-ir.info/2013/02/11/the-rape-case-in-india-evidence-for-the-globalisation-of-human-rights/>

VINODH JAICHAND, FEB 11 2013

The recent rape of a physiotherapy student in Delhi brought a global focus on the horror and barbarity of the crime, usually committed in the presence of few or no witnesses, and solicited high empathy for the victim. The details of the gang rape and subsequent death in a Singapore hospital of a young woman, duped into taking a bus home after watching a movie in the company of a friend, shocked India and the world.[1] The dissemination of the details of the rape story can be largely attributed to the globalisation of news that informs us of sensational events at an astonishing speed. The demonstrations within India and beyond[2] in the aftermath of the case articulated a deep frustration about the silence and injustice that rape is generally shrouded in Indian society. The protesters who turned out in large numbers demonstrated for justice for the victim because of the apparent failure of the state to attend to this crime as a matter of utmost public concern.

Despite the fact that India is touted as a global power in international economics, as a part of BRICS and in its own right, the rape case in India illustrated that the globalisation of economic issues was taken more seriously than the globalisation of human rights. The rise of India as an economic power began in the 1990s when the liberalisation of economic policy took place.[3] Ironically, it was about the same time, on 9 July 1993 to be specific, that India ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which it had signed nearly 13 years earlier. It is unclear why the ratification took so long. On the same date India also lodged declarations against two articles in CEDAW, one of which was against Article 5(a) which calls upon India to “modify the social and cultural patterns of conduct of men and women” that deals with gender stereo-typing and prejudice against women based on customary practices. The Indian government declared that it would give effect to that article in keeping with its practice of “non-interference in the personal affairs of any community without its initiative or consent”. That declaration appears to be incongruent with the utterances of Prime Minister Manmohan Singh who identified the social challenges to economic growth as “a polity which is inclusive, equitable, caring and just...”[4] Yet in 13 years, compared to the same period when India was silent on its ratification of CERD, after the liberalization of economic policy the country became an established economic power. On the implementation of equal rights of women, the Indian record does not appear to match the rhetoric as the state felt itself constrained to educate its communities about the rights of women.

When a society fails to take adequate measures to protect women, in keeping with its international human rights obligation against heinous crimes like rape, the blame for the commission of the crime may fall on the victim. Newspapers reported that a large number of Indians believed that victims bring the crime of rape upon themselves. Women are accused of ‘inviting trouble’ because of their dress or being ‘adventurous’. [5] Indeed, the lawyer for three of the defendants in the Delhi case blamed the victim and has been reported to have said that he never heard of a ‘respected lady’ being raped in India[6] as he set out his clients’ defence by pandering to the populist view. Presumably, the lawyer’s defence strategy is directed at the generalisation that all rape victims in India have questionable reputations. Prior to that articulation, a religious leader was reported to have said that the victim was equally responsible for failing to have chanted God’s name and fallen on the feet of the attackers to prevent the rape while a politician blamed women’s adoption of western lifestyles for rapes occurring in Indian cities. [7] Arguably, those ‘lifestyles’ include many of the rights contained in CEDAW that are not adequately protected in India.

The Rape Case in India: Evidence for the Globalisation of Human Rights?

Written by Vinodh Jaichand

The statistics on rape in India do not indicate any alleviation but a steady rise. According to the National Crime Bureau there is a rape committed every 22 seconds in the country. [8] One newspaper reported that Delhi was the 'rape capital of India' and in 2009 outnumbered the combined total of the five major cities of India [9] and the police appear unable to stem the tide. The reluctance of the Indian state to interfere 'in the personal affairs of a community without its initiative or consent', stated nearly two decades ago in the declaration to Article 5 (a), perhaps through human rights education programme on prejudices against women based on customary practices, constitutes a failure to fulfill the rights in CEDAW. Rape is not only a part of personal affairs of a community but is a matter of public concern. It is a violation of the rights of Indian women and, in the ostensible Global Village it may be perceived to be a violation of the rights of men and woman everywhere. That might be one issue the Indian government would have to respond to the UN Committee on the Elimination of All Forms of Discrimination shortly.

One of these so-called customary practices that is prejudicial to women, which is termed "Eve teasing", is known to the globalised world as sexual harassment. But the Indian terminology trivialises the practice and is dismissive of the harm done to the woman and her dignity. Was the Indian declaration against Article 5(a) of CEDAW not colluding against the protection of women from violent crimes? Some might argue that the Indian state was an accessory to the crime of rape through its omission.

The frequency of rape in India and the treatment of women do not provide convincing evidence for the globalisation of the protection of human rights. But they do provide an opportunity for the whole world to stand in solidarity against that practice. Indeed, many of the accommodated practices against women are anachronistic today, more than 30 years after India's signature of CEDAW. This is evident in the wide Indian support for effective laws and their predictable enforcement against rape. The call for the death penalty displayed on the numerous placards of demonstrators illustrates the anger, not their understanding of another global trend: the decline in capital punishment and its enforcement around the world.[10]

The resulting negative global publicity points to a state that has failed to protect the rights of its citizens. Women comprise the majority of the world's citizens. That is a notoriety that a global economic power should work constructively to avoid.

—

Vinodh Jaichand is a Professor of Human Rights and the Director of the International Human Rights Exchange in the School for Social Sciences at the University of the Witwatersrand, Johannesburg. He is a co-editor of '60 Years of the Universal Declaration of Human Rights in Europe' and has published two other books, two major reports and several articles in Chinese, German, Spanish and Portuguese, apart from English. His current research focuses on land rights with an article on the Belo Monte dam in Brazil due to be published in the May 2013 issue of the *Human Rights Quarterly*.

[1] Reports of a teenager who took her life as a result of an alleged rape followed in January 4, 2013.

[2] Jason Burke, *Rape protests spread beyond India*, The Guardian, 4 January 2013

[3] Umma Salma Bava, *New Powers for Global Change? India's Role in the Emerging World Order*, Friedrich Ebert Stiftung Briefing Paper 4, March 2007, p.2

[4] Ibid, p.3

[5] Anjana Menon, *India's rape problem needs a rewiring of society's attitudes*. CNN Opinion Report, January 3, 2013.

[6] *Victims in Delhi Rape case are to blame, defendant's lawyer says*, Sydney Morning Herald, January 10, 2013

The Rape Case in India: Evidence for the Globalisation of Human Rights?

Written by Vinodh Jaichand

[7] Ibid

[8] Anjana Menon, note 5.

[9] *Why New Delhi is Rape Capital of India*, Orissa Post, December 23,2012

[10] UN Doc. E/2010/10 Report of the UN Secretary General, *Capital Punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty*.