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How India Failed Aruna Shanbaug

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Nurses of KEM hospital, Mumbai, gather to pay their last respects to Aruna Shanbaug, who died on May 18, 2015, after living comatose for 42 years as a victim of brutal assault and rape. PHOTO: Vivek Bhendre

*The life and death of Aruna Shanbaug, comatose for over four decades after she was raped, calls for a reexamination of India's policies towards victims of rape and violence against women. In this article, **Vasundhara Sirnate**, throws the spotlight on state inadequacies, which, along with systemic apathy, trample upon any fight for justice for victims of rape and other forms of gender-based violence. Unless there is improved forensic capacity to prosecute sex offenders, and an efficient apparatus to fight sexual assault, the new laws may continue to be ineffective in deterring violence and delivering justice to the victims.*

On November 27, 1973, Aruna Shanbaug, a nurse at the King Edward Memorial (KEM) Hospital in Mumbai, was changing her clothes in the basement. A ward boy, Sohanlal Bhartha Valmiki, attacked her, choked her with a dog chain and sodomised her. She passed away on 18 May 2015, after being in a comatose state for 42 years. Her attacker had not only choked her, but in doing so had cut off the supply of oxygen to her brain leaving her in a

persistent vegetative state. She had also been rendered cortically blind by the attack. While her eyes could technically “see”, her brain could no longer register images.

Pinki Virani documented Shanbaug’s story in a book called *Aruna’s Story: The True Account of a Rape and its Aftermath* (1998), following which Virani tried to get a euthanasia plea for Shanbaug, which was denied by the Indian Supreme Court in 2011, but endorsed passive euthanasia¹. The ward boy was not tried for rape because he did not penetrate her vaginally. He was instead tried for robbery and attempted murder. He served only six years in jail and later moved to New Delhi and was not heard of again. Her family abandoned Aruna Shanbaug to a hospital bed at KEM. Her fiancé at the time, married someone else a few years later.

The script of Shanbaug’s story is a deeply troubling one. A working woman was raped, her rape was possibly covered up by the doctors to maintain her dignity and honour since she was engaged at the time. Because of this, the conviction process did not proceed as it should have and the rapist was tried for other crimes, but not the act of rape.

Invisibilising rape is common in India, but how does it happen? Data compiled by The Hindu Centre for Politics and Public Policy recently, show that it was only after the implementation of the Protection of Children from Sexual Offences Act (POCSO), 2012, the anti-rape agitation in 2012-2013, and the implementation of the Criminal Law Amendment Act, 2013, which substantially broadened the understanding of sexual assault, that the reporting of rape shot up in places like New Delhi by 131 per cent². There are good reasons to believe that the numbers reported in India as rape are just the tip of the iceberg. In fact, Shanbaug’s case, because it was never registered as rape, would never have made it to the National Crime Record Bureau’s annual statistics. Similarly, many cases of rape, molestation and assault committed against young girls and boys by family members do not make it to any statistical or legal reckoning and are invisibilised.

The reasons for this are manifold. First, 'honour' and 'dignity' are still tropes cited by rapists and internalised by Indian society as good reasons for not reporting rape. Second, many victims don't come forward because they do not believe any action will be taken against their rapist(s), who may be economically or socially more powerful than them. Third, many victims are also reluctant to come forward because they do not want to be re-traumatised by the police, who are not trained in trauma management and dealing with rape victims as a special category of crime. Fourth, many victims lack the emotional, social and financial resources to step forward and report crimes against them.

Structural inadequacies

In India’s existing legal universe, there could be no justice for Aruna Shanbaug. Just like there was no justice for Bhanwari Devi, a social worker who was raped by upper caste men. The district court ruled that it was unlikely that upper caste men would want to have sexual relations with a lower caste woman. Hence, the rape, said the court, could not have taken place. There was also no justice for Phoolan Devi, a known dacoit who was abducted, locked up and allegedly repeatedly raped at the age of 18 for about 21 days before she escaped and returned to massacre 22 upper caste men in the village of Behmai as revenge. There was also no justice for Mathura³, a young tribal girl raped in police custody in Maharashtra. Her rapists, two policemen, were let off because the highest court of the land upheld the verdict of a local court, that she was “habituated to sexual intercourse” and so the court could only establish intercourse (consent implied), not rape.

What these cases point to is one common thread: It is not as if people in India do not know what rape is or how it happens or to who it happens. But there is a serious apathy about bringing perpetrators to justice. This apathy is found at the very instance that a rape victim steps forward to report the crime. Often police personnel will mis-record the crime and re-traumatise the victim, simply because they can. Most doctors in India, or emergency physicians are not trained to recognise signs of rape, unless the rape has been so violent and so brutal that the intercourse could not possibly have been consensual.

Even then, there are no proper rape kits that allow authorities to collect prosecutable evidence. Clothes are not collected, DNA samples are not taken and stored, marks on the victims bodies are not photographed and catalogued. Where DNA samples may exist, they are often not tested or used as evidence in actual court cases. This is also because forensic testing capacity is severely limited in India. This means that many rapists get away with the crime because of lack of evidence.

Since Aruna Shanbaug's time, every single successive government has claimed to be committed to women's safety and empowerment. But such claims are rendered a shibboleth if the requisite financial outlays are not sanctioned and if the mechanism of justice itself remains a tool, which can be twisted to just as easily deny justice. The current government has reduced the planned 660 rape crisis centres to just 36 across the country, averaging one per State or Union Territory. The budget for it has been downgraded from Rs. 244.48 crores to Rs. 18.00 crores.

Systemic apathy

This again stems from apathy towards the female condition. This apathy towards women's issues is necessarily scripted into our social dynamics, our language, our policies and our politics to maintain the superiority of men over all others. It is thus scripted because to be interventionist in changing the women's condition in India, means recognising that the biggest perpetrators of violence against women are the men that they live with and are surrounded by. It means taking on local patriarchies that are still embedded in feudal structures and disestablishing them in favour of a society, which does not rest on cheap labour and the suppression of women as its economic model.

Shedding this apathy means recognising in personal spaces that women are rights-bearing individuals and that a crime against them carries consequences that will follow a perpetrator. It means being strongly committed to prosecuting any crime against women. It also means re-educating women to not take violence as a given, as routine, or, as something they must ritually accept.

Aruna Shanbaug lived until the age of 67. But she did not live her life as she had originally planned. She lived at the mercy of strangers on life support, feeding tubes and paid nannies. An act of rape cut short her life choices and left her incapacitated. The Indian state must ensure that consequences are generated for persons that indulge in sexual violence. Aruna Shanbaug's case may have been treated differently had it occurred in 2013 after the new Criminal Law Amendment Act came into effect.

However, for every step forward (like the new Act) many Indians and their legal counsels resort to victim blaming (like in the famous Tarun Tejpal case) and in the Nirbhaya case. Incidents of rape being reported are said to be part of a global conspiracy to defame India, while women who report rape are often accused of falsely reporting. None of these are true viewpoints and we can possibly demonstrate this. However, what these viewpoints do is that they elide not only the extent of sexual violence in India, but also discourage victims from stepping forward.

References:

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²Sirnate, V., and Nagarathinam, N. 2015. *What enables rape reporting?* The Hindu Centre for Politics and Public Policy. April 28. Accessed May 19, 2015. <http://www.thehinducentre.com/the-arena/current-issues/article7150584.ece>

³*Tuka Ram And Anr vs State Of Maharashtra* on 15 September, 1978. (Supreme Court of India, September 15). Accessed May 19, 2015. <http://indiankanoon.org/doc/1092711/>

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