

## **LAW AND GOVERNANCE IN THE FACE OF PUBLIC PRESSURE: A perspective in the backdrop of public outrage over the New Delhi gang rape incident**

The public outrage over the recent gang rape in New Delhi raises serious questions about the consequences of putting the government in a situation that compels it to play to the galleries. Do such demands bordering on 'an eye for an eye' justice provide a perverse incentive to some in the administration to forego its obligation to act in good faith and without malice, in the facts here, in saving the life of the victim?

Many well meaning among us demanded the death penalty for the gang rape accused. We know that jurisprudentially speaking, '*we, the people*' made the law. Under the law, the role of the State is limited to investigating and prosecuting. We have not given it the power to impose punishments. We have made it the business of the courts to impose punishments, again, in accord with the letter of the law and not otherwise.

Under the law, it is provided that while prosecuting, it is within the powers of the State to urge the court to impose the maximum punishment on the accused in appropriate cases. However, even so, the State cannot urge the court to impose a punishment that is not provided for under the laws. Therefore, the public pressure on the government notwithstanding, even if it wanted to, the State could not have sought a penalty greater than that is provided under law at the time of the commission of the offence.

It is noteworthy that a greater penalty cannot be imposed even by bringing about a retrospective amendment of the law enhancing the currently prescribed punishment to one of death penalty. This is because, there is a constitutional provision which (among other matters) prohibits increasing the severity of a punishment after a crime is committed. The said prohibition is contained in Article 20 (1) of the Constitution of India that mandates as follows:

*"No person shall be convicted of any offence except for violation of the law in force **at the time of the commission** of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force **at the time of the commission** of the offence"*

The short point is that at the time of the commission of the offence that is being discussed, no death penalty was provided for under our law, be it for rape or gang rape. Therefore, no matter the pressure, the government could not have tried to appease the public by seeking capital punishment for the accused or even tried to bring about amendment of law to provide for capital punishment to those accused.

However, now the hapless victim has breathed her last. The capital punishment demand can at last be met. A charge of murder can be brought against the accused and death penalty can be sought since the victim passed away as a direct result of the injuries sustained in the course of commission of the crime.

Is it over for us, the public? The accused stand charged with murder and faces the death penalty. Clearly justice seems to be on its way for the victim.

In this context, with reference to the days the victim was still fighting for her life, I begin to doubt the wisdom and advisability of the public demand for capital punishment for the accused, heinous as the act was. The victim might have been doomed from the day the first of us started screaming for nothing short of capital punishment.

On the one hand, the government had to do everything to save the life of the girl; it was its moral duty. Such duty also ran concurrent with political expediency of course since the public was watching. On the other hand; it is incontestable that the demands for capital punishment might have provided illicit incentive, at least in theory, to the administration to wish that the victim succumb to her injuries. This is because it was clear that if the victim eventually died as a consequence of the crime, the case would become one of murder as well. Capital punishment could then be sought for the accused and the public might be appeased.

It is not my point or proposition that someone in the administration succumbed to public pressure and deliberately handled the victim's medical care such that she did not survive. While it is certain that while the vast majority at the top would not even dream of letting this happen no matter the immeasurable political benefit, one cannot be equally certain that there would be absolutely no one occupying positions of responsibility that are capable of wishing this happen. History is replete with deeds of such men and there is no room to rule out the possibility that some men of such moral fibre might be found occupying high positions in our administration as well.

In any event this paper is not one that seeks to convict or acquit the administration. This paper is not intended to start a conspiracy theory. All this seeks to do is highlight the responsibility we bear even as we seek accountability of the administration. It is first necessary to determine what is possible and what is not.

Let us hope that in our demand for justice we did not inadvertently jeopardise the chances of survival of the unfortunate victim. That said, the events of the past few years in India are a clear indica that irresponsible governance will soon be a relic of the past and days of strict scrutiny of administrative action will soon be the order of the day. Those that can adapt to it will prevail and the others must perish. May there be good governance, better accountability and justice all round.