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THE HUMAN FACE OF LAW

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The Supreme Court's decision to uphold the death sentence of the four men found guilty of the gangrape and torture of a 23-year-old physiotherapist in a moving bus in Delhi — which led to an excruciatingly painful death in December 2012 — is making headlines yet again. This time it is the date of the execution that is making news.

The debate on whether or not death penalty is a deterrent for rape has been overshadowed by a ghoulish fascination with the technology to execute the punishment. In anticipation of the execution of the four men, the media has lamented the lack of executioners and bemoaned the fact that the Tihar jail has had to borrow an executioner. The architecture of the scaffold has been described in forensic detail — the idea of the simultaneous hanging of four men on a scaffold, especially constructed for them, produces nervous excitement. And, the delay is seen as irritating, as if the hangings would satiate the public thirst for vengeance. Justice is conflated with vengeance and the public gaze is fixated on the gallows.

The judiciary, abashed by the accusations of delay, has turned the blame on the Tihar bureaucracy. And the Tihar bureaucracy inches towards the gallows by moving the death row convicts to Jail Number Three, where the hanging will reportedly take place. Legal procedures, especially those related to the rights of the death row convicts, are seen as tactics to prolong the inevitable. Media columns are not concerned with the question of how state violence is staged to obfuscate difficult questions of law and life. State killing is, in fact, made cinematic.

The anticipated hangings have also attracted the energies of NGOs and reformers. The court turned down the plea of an NGO, RACO, which wished to induce remorse in the convicts. A jail reformer wants to recite the Garuda Purana to the convicts to remove their fears of being put to death. The NGO is directing its energy at scavenging the bodies of the irredeemably condemned to blackmail them into remorseful consent to harvest their organs. The jail reformer takes upon himself to read the Hindu text to prepare the condemned, as if he knows that the residual legal remedy of a "mercy petition" is an empty formality.

The President has turned down the mercy petitions. The President's statement, "Rape convicts under the POCSO Act should not have the right to file mercy petition. Parliament should review mercy petitions" is troubling. The right to file a mercy petition is a constitutional right of a death row convict. While child sexual abuse deserves condemnation and strict liability laws should be implemented, the suspension of mercy in such cases cannot be justified on the grounds that such abuse is exceptional violence.

Death penalty is not a feminist demand. Feminists have consistently argued for feminising procedure and fair trial. They have contended that more victims will be killed by rapists if death penalty was written into the rape law. This was also the view of the Verma Committee in 2013.

The problems with the implementation of POCSO are overshadowed by such populist and constitutionally-puzzling statements. The provision for mercy allows for rectifying miscarriage of justice or doubtful conviction or errors of the legal system as a result of which the law can become a killing machine. It allows for rectifying errors in the face of a lawyers' boycott and poor legal representation. It also allows for recognition of remorse and reformation, acknowledges the sanctity of life and recognises that when the law kills, it sacrifices its own humanity.

It is important for law to remind itself of humanity because it has the monopoly over lawful killing.

Law's violence is distributed at different institutional sites, mostly wielded by the police and the prison officials in the field of criminal law. Such violence also lends validity to other forms of violence, encounter killings for example. The so-called "encounter" killings of the suspects in the rape and murder of a woman in Hyderabad recently was justified on the grounds that the death row convicts in the December 2012 case were yet to be hung. This flimsy excuse for state killing of suspects operates on two planks: Blaming the delay in executions and exceptionalising rape.

Today, more than ever, death penalty is justified by evoking sexual violence. And, sexual violence is framed as an exception. But with the rise of death penalty, states like Uttar Pradesh have seen the worst ways of killing rape victims. Death penalty does not deter rape.

It is also not a coincidence that the number of extra judicial killings of rape-accused increases with the increase in capital offences in the rape law. The abolitionist argument becomes even more important in relation to extra-judicial violence. This is because the justification of state violence — judicial or extra-judicial — also tells us of the law forgetting its own quest for humanity. While the victim's family may find closure only through the hanging, collective healing cannot be found through spectacles of state violence.

When society celebrates an encounter killing of rape suspects, our judiciary should worry.

It should remember that there are no briefs without petitioners. Without any briefs of injustice, there is no doctrine or jurisprudence. And constitutionalism emerges only when petitioners approach the courts. The jurisprudence on the rights of death row convicts cannot emerge without appeals to the court. In turn, one expects the judiciary to engage with constitutional issues of life and dignity, especially when it activates law as a killing machine and agrees to sacrifice law's humanity for the conscience collective.

When feminist lawyers such as Rebecca John and Vrinda Grover approach the courts to represent the death row convicts, they do so with ethical responsibility. They teach us to think of law's quest for humanity. While abolitionists cannot appeal to the traumatised parents of the dead victim to forgive the accused, it is ethical to insist that an execution is a sacrifice of law's humanity.

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