Justice and redemption

When a child faces brutality, in or outside the family, society’s contract with its own spirit is violated

Judicial hearing in the Kathua rape and murder case has been shifted out of Jammu and Kashmir, where the incident occurred, to Pathankot in Punjab. This has raised the hope that justice will be served. However, it is worth examining what justice means in cases where the victim of a heinous crime is a child. After each case of rape, including the rape of small girls, the demand for justice is raised. This demand is, of course, right. In the media, one often hears and reads that the victim’s parents want justice to be served without delay. In many cases, people are known to have come out on the streets to demand police action and justice. Now that an ordinance has been issued to enable the judiciary to award the death penalty to rapists of small girls, we can expect quicker protests for demanding justice.

The meaning of justice

In general, the idea of justice does not sit well with childhood, which is a formative but also vulnerable period of life. These two characteristics make the delivery of justice to a child victim difficult. Sexual abuse during childhood presents a particularly hard case. It has been recognised all over the world that nothing is tougher to leave behind than sexual assault in early life. Justice in such a case usually means public identification of the perpetrator, followed by adequate punishment. When rape has been committed by a person who enjoys fame and power, justice may bring the victim a sense of vindication. This seems to have happened in a recent case where a girl went through a prolonged legal struggle against a famous ‘godman’. Her victory at the level of a local court is impressive, and one hopes that it will be sustained through the legal battle at higher levels of the judiciary.

When rape is followed by murder, as in the Kathua case, the meaning of justice is quite different. No matter how long and strong the arms of law become, they cannot reach out to an eight-year-old who is no more. We can’t even refer to her with dignity as the National Commission for Protection of Child Rights has forbidden the mention of her name. Having failed in its job to protect this child, the Commission is trying to give her the dubious dignity of anonymity. Apparently, the rule it is applying is meant to protect the girl’s parents. In all such cases, justice seems to mean little more than giving the satisfaction to parents that law will not forget their loss and grief.

For the rest of society, this meaning of justice carries two kinds of value. One is the value of deterrence. If the rapists and murderers of a child go untracked and unpunished, this might encourage the tendency to commit such crimes. The second value served by justice in such cases resides in the recognition of a child’s right to justice. This value governs all rights granted under the United Nations’ convention on this subject to which India is a signatory. This convention recognises children as beneficiaries of universally applicable human and civic rights. By punishing those who rape and kill small girls, the judiciary posthumously imparts the significance to their lives that they ought to have received as children.

The social fabric

The experience of the child in Kathua, however, leaves a big question for us to address. No one will deny that with such violence, the social fabric has ripped apart. Children cannot grow up and become sane adults unless they feel secure and protected, and parents alone cannot protect a child. Safety and security during childhood is a responsibility that society as a whole shares with the biological parents. Therefore, when a child encounters violence, the protective fabric of society shreds. The responsibility to protect children is embedded in the very idea of society. When a child faces brutality, in or outside the family, society’s contract with its own spirit is violated. Punitive justice cannot redeem this contract, although it may constitute the first step towards redeeming the contract and the collective spirit it signifies.

Redemption is a concept borrowed from ethics. It has several meanings, two of which are especially relevant to the application of justice in a society witnessing a steep rise in cases of previously unimaginable cruelty to children, especially girls. One meaning of redemption is the recovery of something damaged as a result of neglect or bad intention. The other meaning is to fulfil a pledge. The first meaning is specific to the kind of crime we are witnessing today. The rape of small girls on the scale at which it is currently taking place, especially in the north, signifies a breakdown of the ethical order of common living. Each incident of rape of a baby or small girl communicates that society is going through a change it does not understand. Fabric is an apt metaphor to refer to social relations, as they involve the tacit acceptance of a norm to govern the upbringing of children. Incidents of rape of small girls have been reported from cities as well as villages, suggesting a much wider crisis than traditional wisdom might be able to recognise. No simple analysis can help us grasp the factors that have enabled the crisis to deepen and erupt. There can be no doubt that these factors are rooted deep in culture, but they are also tangled in the new technological environment. They are being nourished by an ethos marked by an acceptance of casual, collective frenzy.

The fear of the death penalty cannot restrain this kind of frenzy. Hatred for the weak and rejection of their right to be treated as fully human are ingredients of this ethos. In such an environment, society seems to have lost its collective self-awareness. Forgetting about its responsibility towards children — everyone’s children — is a consequence of the loss of self-awareness. Can the state help society in such a dire moment? Of course it can, but first it must radically improve its own apparatus to serve children.

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