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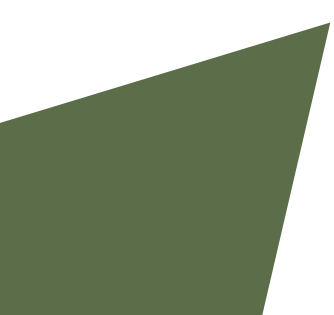
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Defending the wrong?

Shaswat Mimani

It's a common notion that one may hear before entering the legal profession – “You won't defend the guilty, will you?” For starters, every advocate's reply is usually filled with denial but as we progress towards becoming a real time advocate, most of them take a contrary view. This contrast in perspective may often be attributed to the monetary value and the fame attached to fighting a case. They say justice only serves the lower section of society and lets the affluent walk scot free. The entire profession is often considered to be run for those with power and money. This is what corrupts the profession when the guilty walks free and the aggrieved has nothing to fight for.

Article 22(1) of the constitution of India gives every citizen accused of crime a right to be defended by a lawyer. One may question the very validity of this right in cases wherein the wrong may be held not guilty. Amidst all this run behind money and defending the wrong, no one has ever questioned the reason behind the wrong and whether defending the wrong is correct if the reason is justified. It might be correct to say that no wrong can be justified but certain exceptions to most of the wrongs exist. The bigger question is whether one should defend a wrong for a reason other than money and fame.

Rape for instance is considered to be one of the biggest wrongs in today's day and age. The judicial system does not hold any exception for cases of rape apart for insanity and mental incapacity and leaves no stone unturned for punishing the guilty. The Indian judiciary has also called for punishment for minors in cases related to rape and further passed judgments calling for capital punishment. The Indian judiciary can be said to be quite proactive towards this crime in this post modern era. The contention is now on the advocates whether the accused should be defended or not. The judiciary and the public both view rapists in bad light and hold no regard for them. Despite this image that the general public hold, what is missing is the understanding of the reason behind the crime. It is a general belief that rape is something that can never be justified but is punishment the only form of deterrence that will prevent it completely.

A crime is constituted by two parts – an actus rea (guilty act) and a mens rea (guilty mind) and for rape as well both these conditions are pre requisite. Rape always fulfils the condition of actus rea but determining the mens rea is something that cannot be attributed to a specific reason. It is often attributed to male dominance, vengeance and other such reasons. These are some reasons that are commonly taken into consideration but one such reason that is never taken into consideration is personal background. Statistics show that most number of rapes take place in places with a very low education rate and places with prevalence of conservatism. A region's culture, traditions and common norms is what defines a human's personality and makes a person who he or she is. Taking this into consideration a child born in such regions, growing up witnessing things, experiencing

things, understanding things and living things which are socially and ethically very wrong. In such regions, it's a common belief that women are inferior to men and men can do anything that they feel like. Women are considered to be property of men and dominance is considered to be their birth right. These are some notions with which children in these regions are brought up. When these minors grow up, the problem arises when they are unable to differentiate between a wrong and what has been imbibed into them. These children are usually the ones who end up indulging in such kinds of wrongs due to their incapability of understanding the wrong. They might not hold a mens rea or rather they might not do it out of purpose or a guilty mind but because of their upbringing that they could not have altered. This is the personal background of these wrongdoers that is often not taken into consideration and it can also be somewhat attributed to mental insanity.

It is also not right to say that the wrong committed by them is justified but being ignorant of the fact that their mental development has been done in such a way that is out of their own hands is not correct as well. A label of a rapist is given to all such people, which in the perspective of most is justified. The reason behind the label is what is ignored and instead to harsh forms of deterrence such as capital punishment for such people, other means of deterrence should be taken into consideration. Other such means that not only prevents the wrong doers but further sensitizes other such people who share this common problem of personal background. Other means such as involving the wrong doers in educating others in such regions and spreading awareness about gender neutrality is what needs to be done.

A distinction must be made between those who grow up in educated backgrounds and yet commit this wrong and others who are unaware and unable to make a distinction between the right and the wrong due to their personal background. In no way does this article support any form of rape committed by any person but a distinction must be made in the form of punishment and deterrence. An uneducated rural man committing rape is not justified but instead of deterring that man through a harsh punishment, sensitizing the uneducated society is what will bring a change. So the final question lies on the advocates as to whether the wrong should be defended. If one may ask, defending someone with adequate resources and education committing such a crime for something as small as money might not be the right way to proceed forward but defending someone for their lack of education can be something that can looked upon.

The legal industry is filled with dirt not only because of the ones being defended but also because of the ones defending them. The profession will only start to cleanse itself when those involved in the profession leave the race for money and fame and rather help serve justice the way it should be.