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Sexual violence

The Current Mobilizations over Rape

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As a historian, I know that the actions very often have highly unintended consequences. Historical turning points occur, not because deep planning willed them into existence, but at the intersection of many cross-currents. So it is today. Activists of our generation have been campaigning for long over rape, demanding changes in rape laws, changes in attitudes, and a wide range of demands. But it was not our repeated campaigns, nor even the over a decade long epic protest of Irom Sharmila, that managed to shake the entire country. It was, on the surface, a single incident, the Delhi bus gang rape of early December 2012. We are aware of the vast numbers who have come out and demanded punishment, government action, who have protested repeatedly and vigorously.

Accordingly, we need:

- To understand, why this tremendous anger, and how do we relate to it? There are reasons for taking this approach, because at some important points, the approach of the feminist movement may not be the same as the approach of a part of the current movement.
- To reflect and ask ourselves, where do we go from here? What will our long term demands be?
- To discuss ways and means, by which the movement can develop.

The anger is the result of growing hostility of the people of India, including of the well-to-do middle class which has been much more looked after by all the regimes – UPA, NDA, United Front – and not just the most exploited social layers. This anger and rejection was earlier displayed by the support given to Anna Hazare. I do not thereby express my support to him. I am pointing out that Hazare received mass support because he seemed to represent an alternative to round and round of corruption, criminality, violence, by all the mainstream parties. Regardless of his own motivations, which were quite authoritarian, the social base that was behind him was not finished when his movement seemed to die down.

And this means, when we discuss rape and struggle against rape, we need to discuss politics, as well as legal issues. There are two distinct dimensions to the politics of rape. One is the party level, the other at a deeper social level. All parties and their spokespersons and ideologues have been trying to see how best to use the current crisis. Being at the government both in Delhi and in the Centre, the Congress has had the most difficult time. Its approach has been to call for calm, to promise that things will be done, to put up Sonia Gandhi on TV with a puffy face (you see, she too had been crying at the tragedy) – a move sadly let down by Man Mohan Singh not realizing he was still being recorded and asking handlers, Theek hai?

The Sangh Parivar has of course sought to cash in on the issue. It has done so in different voices, since it wants to talk to different constituents. The Sarsanghchalak has announced that rape occurs in India, not in Bharat. Return to “our traditions” and there will be no rape. And Swapan Dasgupta, the western trained ideologue who uses tools of analysis taken from western discourses to support the Sangh cause, has argued that as a result of liberalization, a confident young India has emerged which is demanding, not supplicating. Only Narendra Modi can be its role model, since he too is anti-establishment.

The demand for the death penalty has been raised for rapists. This was of course raised long back by Advani in

2002. But only selected rapes of course. V.D. Savarkar had long ago argued that in order to teach Muslims the proper lesson, it was necessary to rape Muslim women in a big way. This agenda was put to practice in Gujarat. Even before 2002, it was in Surat (1992) that Hindutva rioters not only raped Muslim women but videotaped the act. A decade later, there were mass scale rapes, sexual violence as well as murders when of course Narendra Modi was the CM then. And of course, now we have had Babu Bajrangji and Maya Kodnani convicted for masterminding some of the pogroms. And again of course, it was Modi who made Kodnani a minister, AFTER the pogroms.

When we are asked to campaign only for death penalty, or when we are asked to put the entire focus on law change, these are dimensions we are asked to forget. Who are we asking to change the laws? Parties that have supported pogroms and rapes. Parties that have not only kept criminals in their backyards, but have actually made criminals, including people with rape and sexual molestation charges against them, MLAs, MPs and ministers.

Caste, Communal and Custodial Rapes

There are also other politics involved, beyond the Congress trying to save its votes and the BJP trying to garner them. There is a class, caste, gender linkage which is complex. Rape, Arundhati Roy pointed out, has become part of India's political culture. Police attack villages and gang rape. Upper castes attack dalits and as part of that rape dalit women. At this point let us look at some of the images that haunt us.

- Rape and murder of Thangjam Manorama of Manipur (2004) by Assam Rifles personnel. No punishment for the crime. Protection of the criminals because according to the Armed Forces Special Powers Act, army personnel in areas where this act has been invoked cannot be subjected to trial under the regular laws of the country.
- The Shopian Rape and Murder of Niloufer and Aasiya (Kashmir 2009). Cover up and denial of rape. Nobody punished despite massive struggles.
- The arrest of an adivasi social movement activist Soni Sori on the charge of being in the CPI (Maoist) in 2011, and actions against her including stripping during interrogation, insertion of stones in her vagina and rectum. The SP of Dantewada who had ordered this, Ankit Garg, subsequently awarded the Police Medal for Gallantry on 26th January. Soni Sori is still in Raipur jail, in the custody of that same police force.
- Rape as a part of communalism – The Anti-Sikh riots, arson, murders, and as part of that cycle of violence, rapes of Sikh women, following the death of Indira Gandhi, in 1984. Prime accused included Jagdish Tytler, H. K. L. Bhagat, Sajjan Kumar and other Congress(I) leaders. There have been numerous anti-Muslim, anti-Christian communal attacks, promoted by the RSS or other members of its extended network of organisations, usually called the Sangh Parivar. These include Surat 1992, where rapes were videotaped and shown, and Gujarat 2002, where a very large number of rapes were committed.
- Rapes by upper and intermediate castes on Dalits. They include the Khairlanji rapes and mass murders (2006) case.

The protests in Delhi were legitimate. The woman who died, contrary to Arundhati Roy's claim, in fact came from a rural background though she was working in Delhi, according to a news published by *The Hindu*. She earned hardly enough to be counted as middle class. So the kind of left wing argument that simply slotted the protests as middle class, just because a large number of middle class women were present, is questionable. Middle class is a vague term. There is an ideological pressure from the ruling class for working people in urban, non-factory jobs to imagine

themselves to be middle class. Rather than a Marxist concept of class, dress code, "culture", and other factors are worked in here. So old petit bourgeoisie, professional and managerial layers who are close to the ruling class, and salaried employees who by any objective definition, are clubbed together under this category. Attempts to marginalize the protests by saying they are middle class, leads one to a position close to that taken by Congress (I) leaders who have commented that the protestors do not have a grasp over reality and other comments.

But one point Arundhati Roy and others make does need to be taken seriously. The rapists in this case were lower class, and it happened in South Delhi. I do not make this comment in order to argue in the least that therefore the rapists should be let off. But I raise the point, because we have not seen such massive outrage when dalit women, working class women in unorganized sectors, etc are raped. Trade unionists and women activists connected to labour issues know quite well, for example, that there are sectors (one can mention brick-kilns in West Bengal for example) where women have to provide sexual services to contractors and overseers in order to get or retain their jobs. Since rape even in its current definition includes sexual intercourse under pressure, this is certainly rape – but never reported. We, activists in the women's movement, have more often been accustomed to rallies and meetings where a hundred people attending were often taken as a good sign. I do not therefore blame those who were out on the streets. I just want to stress, that unless we are active in all cases, a class/ caste/community bias will inevitably creep in. And also, unless we are clearly aware of the politics of rape, we will not be able to understand just why, for example, the governments at state and centre want to bring in death penalty for rape, but only in very rare cases. After all, there have been very many rapes committed by men uniform. Soldiers protected by the Armed Forces Special Powers Act, police protected in various ways, have to be sheltered. The moment we take up such cases, we go beyond looking at rape as action by a few criminals or so called perverts, to looking at rape as part of the use of elite power or using women's bodies to gain political mileage.

Participation first, critiques afterwards

It is however necessary to know how to make critical comments. What we have seen is a massive public show of anger and a rejection of government cynicism. We have to be a part of such a movement, we have to be out there, on the streets, with the predominantly young people who have come out, before our critical voices make sense to them. In other words, our first practical task is to continue to build the movement. Our task is to reject all platitudes, all tall promises to the effect that we can go home since the duly constituted authorities are looking after the question of rape, and punishment of rapists.

After we have come out once, twice, thrice, we also have to start asking, where do we go from here? And that immediately raises questions of theory, strategy and tactics.

In order to ask what practical demands are needed next, we must start with the overall picture of rape and sexual assault in India, as well as the legal and administrative reflections of the same.

In 2010 there were over 22,000 rapes. In 2011 the figure was above 24,000. But this is just the number of recorded rapes. There are far greater numbers of rapes that are not recorded compared to the ones recorded. Legal experts point out that many rapes go unreported. Due to "family honour" many complaints are not made, or are withdrawn and in many cases the police do not give a fair hearing. Medical evidence is often unrecorded making it easy for offenders to escape without any conviction, under prevailing laws. And finally, existing laws marginalize many actions. Law is a representation of the social order. Our society is deeply impacted by four types of hierarchies – class, gender, caste and community. And these interact with one another. Rape is seen as loss of honour, chastity, modesty. It is not seen as violence inflicted on women. As a result, rape is defined so that it excludes all torture of a woman's sexual organs, unless there is non-consensual peno-vaginal sexual intercourse. Moreover, it is held that there is no rape in marriage. In other words, a woman who had stones inserted in her vagina, as was the case with

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Soni Sori, cannot bring a charge of rape. What she can bring, at best, under existing law, is a charge of molestation. She was stripped, according to her own assertion, but this according to existing law, can only be called “outraging the modesty of a woman”. And even if Ankit Garg, the then Dantewada Police Superintendent, subsequently awarded the Police Medal for Gallantry, were to be convicted for these crimes, what would he be given? According to law, for molestation and outraging the modesty, these are the provisions:

Section 509 of IPC when there is an intention to insult the modesty of any woman by the offender by uttering any word, making any sound or gesture or by exhibiting any object, with the intention that such word or such sound be heard, or that such gesture or object be seen by such a woman, or by intruding upon the privacy of such a woman.

Punishment: simple imprisonment for a term which may extend to one year, with fine or with both.

Section 354 of the IPC considers the assault or criminal force to woman with the intention to outrage her modesty. This offense is considered less serious than Rape.

Punishment: Upto two years imprisonment or a fine or both.

Section 323 IPC punishes anyone causing voluntarily hurt(non cognizable)

Punishment: Upto one year or Rs. 1000 or both.

So the maximum punishment will be four years' imprisonment, plus an unspecified fine. A more likely scenario, even if he was to be convicted, is just some fine.

Let me connect this with certain other issues. This is where class and caste and community become so important. The legal terms used here are significant. We are talking about the modesty of a woman, and about molestation. Given a hierarchical society, patriarchy does not have an identical impact on all sorts of women. Bhanwari Devi, a Sathin in Rajasthan, a low caste potter by social origin was raped because she was actively campaigning against child marriages. I do not want to go into all the details of her case. But it shows insensitivity by police, insensitivity by magistrate, and a deeply caste-ist attitude of the court. The district sessions judge pronounced that upper-caste men could not have raped a Dalit!!! The State Government formally decided to move the High Court, but till 2007, fifteen years after the rape, the HC had managed to hold only one hearing.

In another case, in a judgement delivered this December, Delhi district judge J.R. Aryan said, “IPC does not recognize any such concept of marital rape. If complainant was a legally wedded wife of accused, the sexual intercourse with her by accused would not constitute offence of rape even if it was by force or against her wishes.” In simpler language, after marriage a woman has no bodily integrity vis a vis her husband. It is his to take when and how he chooses.

While there cannot be any hierarchy of victimhood, according to which the rape of dalit women, or the rape of working class women, is more heinous than the rape of middle class women, the media blitz in the Delhi case highlights the existence of other hierarchies. By separating this one case from the many thousands of cases (572 rape cases recorded in Delhi alone in 2012) the media and the mainstream political parties have consciously sought to draw attention away from rape as a systemic matter. And our demands and movements have to take these into accounts.

Justice and the Social Order

The crucial point where socialists need to intervene is in moving attention away from talk of vengeance, hanging, castration, to concerns for the victims, and the causes of rapes. First, we need to take a look at what kind of a society we live in, that constantly creates rapists. It is of course necessary to demand punishment for crimes. But when we talk about individual criminals and punishments, and when the cases highlighted by the Barkha Dutts and the Arnab Goswamis are cases where lower class rapists rape individuals, the full picture does not emerge. It means, on one hand, we are not trying to find out what drives such people to violence. On the other hand, it also means that we are hiding rapes that are created, promoted, and orchestrated by the state, or by powerful social and political groups. Perhaps the clearest evidence comes from the media endorsement of Narendra Modi in recent times, ignoring the convictions of Maya Kodnani and Babu Bajrangji. Rapes in Gujarat do not matter, since Modi has won elections thrice in a row and the GDP has grown.

It is also necessary for us to campaign about rape survivors and helping them overcome their trauma. When we talk about justice, we need, therefore, to focus on first, justice in ensuring that the woman is able to live with dignity, and second, that the social causes of rape are addressed, instead of merely retributive justice, that is, getting vicarious pleasure at long sentences handed out to a few among many rapists.

Finally, historical experience suggests left wing activists need to be involved within the social movements themselves, stressing that rape and sexual harassment is not permissible within the oppressed either. If we do not want to condone any rape, and at the same time want to ensure widest class unity of the oppressed, we need to take our campaigns among the oppressed, not just to point out that the ruling class is hand in glove with patriarchy, but also to stress how patriarchy influences the toiling people, and building up a struggle against it. To reject or minimize such actions as feminist irrelevancies, as large sections of the left once tended to do, and as it is still a tendency that reduces serious campaigning, is to ensure that patriarchy will remain and revive within the oppressed.

The Right Wing Discourse on Rape

The role of the state all too often is obliterated when we look at each rape case in isolation. And when we focus only on the loss of chastity and modesty. Take the Delhi Case and the reason for public anger. The rape occurred in a bus, which was taken over by a gang of six persons. What exactly was the police doing? Where were they when a public vehicle was de-facto hijacked? Instead, they and the other arms of the state were visible against public protests. The use of water canons is not my sole point. The core area of Delhi was shut down. The Metro could not be used between a number of vital stations. All in the name of security. Whose security was being protected? Not that of ordinary citizens – not the woman who would die soon, nor her male friend who was badly injured.

The demand for changing the law from rape to sexual assault is at the same time the easiest to explain and among the hardest to achieve. Based on events I have already recounted, and many other events we know, such as the use of lathis or other implements to insert into the vaginas of women accused of being Naxalites, separatists, terrorists, Maoists, etc, if we do not provide for adequate punishment for these, we are ensuring gross miscarriage of justice. But it is difficult, because of the mindset of a society which is deeply patriarchal. It is a woman's loss of honour or chastity that matters for this patriarchy. If raped, she is supposed to have suffered a fate worse than death.

A woman who has already "lost" her chastity and modesty by having sexual relations before or outside of marriage, is not considered to have suffered too much harm; and the perpetrator is therefore not required to be punished too severely. Till 2003, the defence could try to cast doubts on the victim's evidence by raising the question of her past sexual history. The Indian Evidence Act was amended in 2003 to stop this, but the amendment appears to have

impacted only the guilt determination phase of the trial, and not the sentencing phase. The stereotypes have an adverse impact on rape sentencing. In cases where the woman's behaviour does not adhere to stereotypical constructs, the men who raped them end up getting lower sentences.

Once we have a category of crime called sexual assault, and with clearer guidelines for standards of punishment, it would be more difficult to let off rapists/assaulters who are socially higher up, or where the survivor is/was not someone who fit the stereotype. This can be seen very clearly with the Park Street Rape Case. Even now, a TMC leader can openly say that it was not a rape case at all, but a conflict between a sex worker and her clients. The sole "reason" if you want to honour the ridiculous argument with that term, was of course that she had been drinking in a bar late at night. In other words she was not the ideal woman. Ensuring principled sentencing, one that is in tune with our constitutional values, is a better guarantee for justice to rape survivors, rather than legislative steps providing for capital punishment, chemical castration and the like.

That we have had 24206 recorded rape cases in 2011, and that we have over 9000 past rape cases yet to be disposed off in West Bengal alone, show things about state machinery – police, civil administration, and judiciary. Police show reluctance or even hostility to take FIRs and file charge sheets on time. Medical examinations are not always properly performed nor is there adequate provision. Cases move excruciatingly slowly. As we noted, even in well publicized cases like that of Bhanwari Devi, the trial has been agonizingly long. And here, once again, we need to note that while class and caste are not the sole factors, how far cases move, how they are handled, are also not totally delinked from them. I want to stress that there is nothing wrong in student youth being angry at the Delhi case, or the Park Street case. But we need to ensure that regardless of their class, caste or community identity, all women get equal protection. This means campaigning as hard over the rape of a woman who works in an unorganized sector industry, as for middle class women. And this will not be done by mainstream parties, by the police, or by judiciary, without relentless pressure on them.

This pressure has to be built up and integrated with any socialist strategy. Today, we find a large scale attacks on the women themselves. According to the RSS supremo Mohan Bhagawat, rapes occur in India not in Bharat, i.e., among "Westernised" women. Factually this is false, since nearly a quarter of rapes occur in rural India. More important, this puts the blame for the rape on the women. It is they who supposedly invite rape for having gone out after dark, for having worn the wrong clothing. And obviously, rape as a political action by Hindutva advocates against Muslims or Christians is excluded from this notion of rape. Then it becomes "just retribution".

Another figure, a widely known "Godman" named Asaram Bapu, has stated that you cannot clap with one hand. That is, rape is not something only the males do. The women too are responsible.

Rapes in the family

Advocacy of chemical castration is based on an argument that not real men but sexual perverts are the rapists. This has to be contested. Rape is not about sex. It is about display of masculine power. Castration as a punishment supposes it is only the bad individual who needs to be punished, so why not deprive him of the power to rape. In the case of the Delhi rape, as I have already pointed out, the rapists were lower class. Now it is being insinuated, and in cases like the Marathi chauvinist Raj Thackeray, openly stated, that poor migrants are at fault. These people, you see, are sex starved, so they rape. This is a class cum regionalist targeting that we need to combat.

According to the National Crime Records Bureau data for 2011, "Offenders were known to the victims in as many as 22,549 (94.2%) [cases out of 24,206]" and "Parents/close family members were involved in 1.2% (267) of these cases, neighbours were involved in 34.7% cases (7835) and relatives were involved in 6.9% (1560) cases." So the

rapists are around us. They are created by a society that devalues women. And a “typical” rapist is then created as an illusion, with “acceptable” class-caste-community configurations.

Some Demands

Many of the issues have led us, along with others, (many women organized in the network Maitree) to formulate demands, some of which are:

- Time-bound trials in rape cases through fast-track courts in each sub-division of every district of all states needs to be ensured.
- Sessions courts must be established in the geographically remote or otherwise backward sub-divisions where such courts do not exist. Concurrently, fast-track courts for trial of sexual assaults needs be in place in all sub-divisional courts.
- Wide publicity from time to time in all local languages across the country of the State’s provisions for shouldering liabilities involving legal procedures (including financial ones) in cases of sexual violence against women is essential for ensuring victims and survivors, especially from disadvantaged backgrounds, seek redress through law.
- A code of conduct needs to be in place to prevent stigmatization of survivors of sexual assault. Character assassination of survivors of sexual violence during trial or at any time anywhere by elected representatives, other politicians, public servants and the media, should be made a punishable offence.
- Extensive gender and sexuality sensitization programmes for the police and judiciary at all levels starting from the lowest tier, and irrespective of sex, is a must for doing away with patriarchal biases, making the legal system gender-friendly and helping in the de-stigmatization of survivors of sexual violence.
- The police stations and police personnel should be rigorously trained in human rights and women’s rights irrespective of the gender of the personnel. There should be intensified trainings to police personnel to handle cases of sexual assault on cis gendered women, transwomen, transmen. These trainings should include previous cases to make them more sensitive in their handling and not moralistically judge the victim. There is a need to provide for penal measures of police personnel violate such training and ill-treat victims.
- The Gender sensitization program must include disability component for the police and judiciary at all level so that sensitization and a clear understanding about the difficulties of Girls and Women with Disabilities is developed among the police and judiciary and the system become disabled friendly and helps to reduce the stigma, negative and apathetic attitude towards such women and are able to take appropriate action in case of sexual violence on them.

The most important question is, however, how do we want to achieve all this?

The protests in Delhi were sought to be shut down. Protestors were compared to Maoists and terrorists. The CP of Delhi called attacks on them collateral damage, using rhetoric from the biggest imperialist power on earth. Unless we understand that this class dimension of the state is also there, and will not go away, we will be fooling ourselves. Of course we must demand reforms. But we must not give in to any illusion that incremental reforms will end up by

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creating a good and just society. The reforms will be won only if we are out there, mobilizing and fighting. Why has the Verma Commission been set up now? The NCRB data is first of all available to the state. It knew better than us how many rapes occur in a year. If it did nothing then but has moved now, that is because huge masses were out on the streets. And unless we plan our mobilizations, if we simply feel tired and go back home, or if we are happy with a speedy disposal of the case in the Delhi issue, with hanging being handed down, especially with the woman dead, and forget the other 571 rapes in Delhi in 2012, the 9000 pending cases in West Bengal, and so on, then in the long term nothing positive will emerge. As Meena Kandasamy reminds us "In handling rape cases, several judges have proved themselves to be incarnations of khap panchayat chiefs. Two years ago, in dealing with the case of a gangrape of a minor girl, Justices H.S. Bedi and J.M. Panchal of the Supreme Court of India held that "there can be no presumption that a prosecutrix would always tell the entire story truthfully". The above bench also shamelessly said, "In rape cases, the testimony of the victim cannot be considered to be the gospel truth." This inherent suspicion by the judiciary is another act of silencing. The system tells you, speaking out will be a disgrace since you have to be disbelieved." The idea that only the rapists are perverts, ignores the system which creates rapists and promotes rape as part of its political culture. We have to make this struggle part of wider struggles for human rights and for a better social order.

Author's note:

This is based on several speeches delivered and discussions held with various groups in late December 2012 and early January 2013. As a result, it bears the imprint of a specific discussion and debate, though some attempts have been made to situate it in a wider context.