

HUMAN RIGHTS VIOLATIONS AGAINST WOMEN AND THE STRUGGLES OF INDIAN WOMEN'S MOVEMENT

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ABSTRACT

Violence is an issue that has always given rise to moral controversies throughout human civilisation. Neither legal ideology, nor political ideology, not even religious ideologies have succeeded in eliminating the cultural roots of the cry for retributive justice. The National Crime Records Bureau reported in 1998 that the growth rate of crimes against women would be higher than the population growth rate by 2010. Earlier, many cases were not registered with the police due to the social stigma attached to rape and molestation cases. Official statistics show that there has been a dramatic increase in the number of reported crimes against women. It is widely accepted that the issue of violence against women has been the greatest rallying point of the feminist movement in the second half of the 20th century, often referred to as the second phase of feminism. This paper cannot trace the entire history of the women, violence and law debate in India in its entirety. I am restricting it to the few issues discussed so far, because between them they cover the major controversies within the movement and between the movement and the State and the general public.

KEYWORDS: Human Rights, Violations, Law, Women, Women's Movement, Politics

INTRODUCTION

It is widely accepted that the issue of violence against women has been the greatest rallying point of the feminist movement in the second half of the 20th century, often referred to as the second phase of feminism. The Report of the Committee on the Status of Women in India, however hardly emphasised this issue except for drawing attention to the declining sex ratio and the higher rates of female infant mortality as a composite index of the neglect, marginalisation and devaluation of women as continuing processes even after independence and the emergence of the Indian republic.

We should be mobilised to combat two social phenomena: (i) a rising trend of violence against women within and outside the family; and (ii) an extraordinary lack of sensitivity (e.g. in cases of crimes within the family) among the law making and enforcement agencies, and general public opinion, especially within the upper and middle classes - both urban and rural. On the issue of domestic violence we were accused by many of 'wanting to break up the family'. Even some older women's groups were critical and thought we were carrying the debates and agitations too far.

The Role of the Mathura Rape Case in Shaping Women's Movement's Ideology

In these days of loss of collective institutional memory, some of us have had to assume the role of chroniclers - to keep 'the politics of memory' alive. Most students and activists in the women's movement are aware of the protests against the Supreme Court's judgment on the Mathura rape case, as the start of the second wave of the women's movement. It was never centrally planned by any organisation - but spread spontaneously from one place to another, first Ahmedabad, then Nagpur, then Bombay and then Delhi. These four cities picked up the agitation over a period of nearly one year. In the process of the agitation new organisations were formed and new activists emerged. The fact that Delhi was the last to organise a joint march by twelve organisations, (not all women's organisations, but including students and trade union

groups, and many other passers-by) in the summer of 1980 led to the national press - which was very supportive of the campaigns - being totally dominated by the rape issue. "For many of the protesters this was their first involvement in agitational politics on women's issues. The Bombay march included the students and teachers of an elite women's institution, Sophia's college, led by their Principal, Sister Mary Braganza, a dedicated senior nun whom no one could have associated with 'agitational politics'

In consequence the United Nations mid-decade Conference at Copenhagen in July 1980 went virtually unreported in the Indian press, in spite of the fact that the Government of India's delegates to the Preparatory Committee and UN Commission on the Status of Women had played a major role in projecting Third World perspectives into the Programme of Action, incorporating many of the new strategies which were being developed by joint working groups of officials and women's studies scholars between the years 1977-80. After the Delhi march there were questions by opposition members of Parliament who joined the press in criticising the government for its inaction in changing the existing rape law. There were more press reports about incidents of rape and gang rape of poor women in many places. The government of Indira Gandhi, (who had returned to power in January 1980) was forced to take note of this spreading agitation after the Delhi march, and request the Law Commission to urgently undertake a study. Along with various women's organisations and activists, the Law Commission also summoned the law teachers for their advice.¹ The 84th Report of the Law Commission made a departure from its earlier practice by listing the names of the women's organisations and activists whom it had consulted. The Commission's recommendations started up an even wider public debate on rape and the role of public officials.²

The government did not accept all the recommendations of the Commission or all The principles (e.g. marital and power rape) demanded by women's groups and the Legal experts. But the Criminal Law Amendment of 1981 did prescribe a differential treatment for cases of custodial rape : (a) by transferring the onus of Proof of innocence to the accused rather than the victim; and (b) through a Mandatory higher minimum punishment (7 years imprisonment). These indicated a sign of acceptance of the movement's Constitutional ideology:- that the Indian republics' claim to recognition as a welfare state required higher accountability of public servants; second, that the principle of equality before law became meaningless unless courts took into consideration the socio-political inequalities that often affected the victims in such cases. Another significant departure in this amendment was a shift to viewing rape as a violation of woman's human rights and not an attack on her chastity, modesty or respectability. Courts were directed not to admit evidence regarding the woman's previous sexual history or character unless compelled by norms of a fair trial.

The judiciary or legal professionals have not always followed this direction. Neither has it significantly affected the incidence of rape, because enforcement continues to be poor. For the women's movement however, the unanimity achieved on this issue was an ideological break-through. The pursuit of equality hereafter could not ignore the context of unequal power relations - not merely within the domestic or economic realms but include the gray regions of socio-political relations complicated by the institutions of class, caste, religion, ethnicity and the often undependable character of State power. While marginalising and impoverishing the majority of the poor; in opposing legislation or policies that threatened the legal or Constitutional rights either of the poor section, minority women's rights, e.g. the Muslim Women's (Protection of Rights on Divorce) Act, 1986; the Defamation Bill, 1988, which would have severely crippled freedom of the press; and certain proposed Constitutional Amendments as a part of Population or Social Policy.

Women activists and organisations have become involved in far larger numbers in various activities to assist poorer women - to become literate, to improve their economic position, to obtain access to legal or other essential services, and above all, to organise for empowerment. Since 1980 it has been impossible for the women's movement to ignore cases

of violence against poor women in rural or urban areas even to the point of condemning women from the upper classes who were party to such acts. Similar ideological unity has been growing in opposing communalism and fundamentalist violence or the use of violence against women as an instrument of political action.³

Dowry Violence

In the case of dowry however, the agitation took a longer time to develop. Initially it was against the institution of dowry itself and its impact on the position of daughters within the family. However, with the discovery of dowry related violence, the thrust of the agitations changed into a demand for retributive justice rather than preventive measures to eradicate the practice itself - the approach recommended by the Joint Select Committee of Parliament in 1981.⁴

To quote one of the Members of the Committee:

'When we began we functioned mainly as members of different parties. As the review proceeded through our travels across the country all the women began to think together and our ultimate recommendations presented only minor differences. It was one of those rare experiences when all women members came together cutting across party differences'.

The Law Commission had suo motto taken up a study on the Dowry Act and examination of dowry deaths. In their very thorough examination they went far beyond the original Act of 1961 and recommended not only how the substantive law on dowry should be changed, but also what changes were necessary in the Evidence Act to facilitate the prosecution against persons who had committed a murder in cold blood.... or driven a woman to taking her own life. While the Commission had little to say about preventive measures it recommended the following insertions in the Penal Code: 'who ever by persistent acts of cruelty drives a member of his family living with him to committing suicide shall be punished with imprisonment of either description which may extend to 3 years, and be also liable to fine.' Many of us have been asking ourselves why in spite of some of the revisions in the criminal law brought about by the agitations, the movement has failed to improve their enforcement or to reduce the incidence of crimes of violence against women. This failure reflected an underestimation of changing social norms with rising living standards and economic expectations and inadequate mobilization and debates over the causes. It has also been argued by some who got involved in providing supportive services to women facing such distress that 'case work' often became an end in itself, forcing some organisations to devote all their time and human resources to it, leaving very little time to sustain the campaigns or organisational work.

On the issue of dowry, the class and social status claims, the expectations of kingroups and official, business or even political friends have pressured even many participants in the women's movement to deviate from the ideology of rejecting ostentatious celebrations of weddings of their children, even if they avoided payment of actual dowry. The only effective strategy would have been to empower younger women to resist such celebrations. The State's failure to accept the Joint Select Committee's recommendations regarding a ceiling on marriage expenditure or to appoint dowry prohibition officers has indicated lack of seriousness. Some states had made dowry a cognisable offence even before the national amendments in 1984 and 1986, and attempted to limit marriage expenditure - the national laws instead of strengthening the states' efforts, weakened them.⁵

Proving the rising trend in rapes or dowry deaths was difficult without long-term data, which was not available to the general public. Pressure through Parliament started regular collection and reporting of statistics, which proved beyond doubt that various types of crimes against women were mounting. The next charge we had to face was that because of the agitations and the changes that were brought about in Criminal Law under pressure of the movement, far more women/their families were reporting such cases. If this charge was true, then at least the legal reforms had served one

purpose. But failure of the reforms was revealed by the long delays in investigations, trials and in the very low rate of conviction. There is a general tendency among feminist scholars to look at the failures of law in a very simplistic manner, placing the blame either on the 'biased judiciary' or a 'patriarchal state'. Such analysis ignores that like any other functions of government the legal process involves various actors and without adequate information and examination of the legal system as a whole one cannot fix the blame on any one or more set of factors. Apart from the conservative notions about women's sexuality, chastity, virginity etc. amongst most sections of the judiciary (with a few exceptions), some women's movements points to the harsher penal provisions introduced in the amendments as a cause of the negative reaction of the judiciary, because these provisions went against broader trends in legal reform, particularly when the offender was young in age. But can we only blame the 'conservative notions' of the judiciary?

Population Policy and the Women

The third major area of violence against women that the movement uncovered was the sharp increase in use of sex determination and sex selection tests with the use of new reproductive technology, which were followed by abortion of female foetuses. Very soon after this India Today brought out the story of female infanticide among the Perumalai Kallar community in Usilampatti Taluk in Tamil Nadu. In both these issues the movement ran into resistance from (a) the very favored and high priority policy of population control of the government; and (b) the social impact of thirty years of the population debate within the better off section of the Indian population, which included also the various professional classes like doctors, and the medical education establishments, development advocates, and even some sections of women's organisations which had moved from the original demand for birth control services put forward by women in the 1920s and 1930s as a women's right - to a wholehearted support for the government's policy for population control.

The Committee on the Status of Women in India had to confront two critical questions. Examination of health allocations indicated clearly that from the Third Plan onwards the proportion of resources allocated for family planning was increasing at a much faster rate than all the other sectors of public health, including maternal and child health. Mortality statistics showed widening gender gap between males and females across all age groups. The Health Task Force appointed by the CSWI ordered a review of available studies on health, with a focus on women and children. This study, increased the Committee's distress and outrage which is reflected in the Committee's report.⁶ The second critical issue was the Medical Termination of Pregnancy Act, 1972 legalising abortions. The Committee had to face some very serious criticism from a law expert⁴⁰ and a senior Professor of gynaecology, Prof. Krishna Menon. The former thought the law contained both unethical and discriminatory features.

The latter had pleaded with the Government to decriminalise abortion, restoring the right to the medical profession to perform such abortions when they were necessary to save the life of the mother, arguing that criminalisation had only promoted increase of abortions by unqualified or unethical persons under unhygienic conditions leading to high loss of life of women. 'A few cases that come to us after such operations are already in extremis, when it is too late to save them'. However, he had totally opposed the government's decision to include 'failure of contraception' as one of the conditions under which abortion could be performed by recognised medical personnel/ establishments. 'As it is, the commercialisation of medicine is sadly crippling medical ethics. Introducing this provision to the policy, and medical education will totally erode all ethical values from coming generations of doctors'.⁷ The Committee concluded that while legalisation of abortion was necessary to save women's lives, it should not be used as an instrument of population control and the warnings from ethical medical personnel and teachers should not be ignored. The debate however was not pursued because many feminists viewed abortion as a woman's right to voluntary maternity. Others who had tried to assist unmarried mothers after their rejection (or worse) by their families, also supported this view from humane convictions. The

CSWI supported the strength of their argument that a large section of criminal abortions had belonged to this category. In the period after the Emergency the practice of forced sterilization of men (believed to be a major cause of Indira Gandhi's losing the election of 1977) was abandoned, but the Population Policy adopted during the Emergency remained, increasing pressure on the sterilization of women. Within one year after the lifting of the Emergency, female sterilization rose to over 90% of the total. By the early 1980s new reproductive technologies like amniocentesis had appeared on the scene.

We obtained some field study reports on the emergence of female infanticide in Tamil Nadu - which to the best of my knowledge had no history or tradition of female infanticide before unlike many of the northern states. What came out was –

- The recent emergence of this phenomenon mainly in the prosperous part of the Usilampatti Taluk while in the undeveloped arid parts women still outnumbered man.
- Ethnographic studies on the particular community - Perumalai Kallars - done in the '1950s and 1960s⁴⁴ had still noted them as women-dominated communities.

During the last two decades both sex-determination and sex-selection tests and female infanticide has spread to many other regions, indicating a marked decline of the juvenile sex-ratio stimulating the demand for more studies and intervention strategies. But in spite of the shocking disclosures both government and public reactions have been extremely muted. The efforts of the movement to implement the laws have been weak and ineffective. But, women's groups have also been in touch with their counterparts outside the country to identify the role played by manufacturers of these products (mostly multi-nationals) and donor agencies from the developed countries who have aided and abated the government in its relentless pursuit of population control. A section of population experts have also argued against the use of coercive methods for population control or using women's ignorance to promote use of hazardous contraceptives. It is against this background that the movement went into a confrontation with the Government of India to prevent a new population policy and some proposed Constitutional amendments that the movement considered anti-democratic, anti-women and anti-poor.

The 79th Constitutional Amendment Bill, 1992 proposes to deprive persons who do not voluntarily accept the two child family norm, of their democratic right to stand for elective offices. The amendment was drafted on the basis of a recommendation of a Sub-committee of the National Development Council in 1991. The Committee was headed by Bhairon Singh Shekhawat then (and now) the Chief Minister of Rajasthan - who promptly proceeded to introduce the principle in the Rajasthan Panchayat Raj Amendment Act without waiting for the passage of the amendment at the national level. The Government of Haryana followed suit, while the government of India - without informing the nation of the drafted Bill, appointed an Expert (Swaminathan) Committee to draft a national population policy towards the end of 1993. Some information regarding the proposed Constitutional change reached some women's organisations and activists through allies within the government - beginning a direct approach to influence the Expert Group, and joint meetings to offer concrete suggestions for a more positive population policy which would promote more democratic, cooperative and egalitarian social development, abandoning the negative and coercive. The Expert Committee's philosophical attempt to propagate a 'pro-poor, pro-women, and pro-nature' policy however foundered in the face of the determination of the government.⁴⁸ Though the Swaminathan Committee did not directly support the Amendment already drafted - its reference to the Haryana and Rajasthan Acts as 'demonstrations of political will' has enabled the Government of India to claim that its new draft policy, including the amendment (and other proposed legislation) is based on the Expert Committee's Report, though the latter's entire analysis of the problem and related issues advocating a social development

focused, rather than mere population control focused approach is missing from the new draft. In November 1996, a Cabinet Note enclosing the new draft policy suggested that the 79th Constitutional Amendment Bill was now ready for passage through Parliament.

Fortunately, a belated reference to the National Commission for Women for its comments - as required under the National Commission for Women Act, 1990 - brought forth a straight negative after consulting women's organisations and population experts. The Bill has not so far been passed but 'population control' figures in the present government's national agenda, so it may still be revived. Another proposed Constitutional Amendment being resisted is the 83rd, which, in the name of making elementary education a fundamental right, proposes to reduce the state's responsibilities to the population between 6 and 14 thus absolving itself of all responsibilities for the children upto the age of 5. Interestingly enough, the draft population policy statement of 1996 had one positive feature - to initiate a national programme of child care services for all children in this age group which had been the constant demand of the women's movement since late 70s. Another objectionable legislation proposed in the new population policy, which is also being resisted by the women's movement and the National Commission for Women - is a law to improve enforcement of the Child Marriage Restraint Act 49 by disqualifying the victims of such marriage from all public employment.

CONCLUSIONS

This paper cannot trace the entire history of the women, violence and law debate in India in its entirety. I am restricting it to the three issues discussed so far, because between them they cover the major controversies within the movement and between the movement and the State and the general public. Violence is an issue that has always given rise to moral controversies throughout human civilisation. Neither legal ideology, nor political ideology, not even religious ideologies have succeeded in eliminating the cultural roots of the cry for retributive justice. Women's movement - in India or elsewhere - certainly want peace and security, but feminist ideology, or the distinction that it seeks to make between 'body politics' or other types of 'politics' has not resolved the basic conflict over the nature of justice.

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