When 'Protector' Becomes the Perpetrator: Justice vs Impunity

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In 2004, Thangjam Manorama’s post mortem reports found gunshot injuries in her vagina. In 2011, Soni Sori’s medical examination showed that stones were lodged in her vagina and rectum. Both were subjected to sexual brutalities by state actors. While Manorama did not survive to tell the world her ordeal, Soni Sori continues to languish in jail within reach of the very police that has subjected her to repeated and horrific forms of torture. In both instances, the perpetrators are still at large.

Have no doubt that these may be exceptions! In 2002, 11 women testified before the Sadashiva Commission about the sexual brutalities perpetrated on them by members of Joint Special Task Forces (JSTF) established for anti-Veerappan operations. The Commission found the testimony of 10 women unconvincing because they did not mention it to the remand judge! (Sadashiva Commission report, 2 December 2003, Chapter IV, para 44)

In 2008, an NHRC team dismissed the testimony of five victim-survivors, who alleged sexual brutalities by members of the Salwa Judum, as untrue and unsubstantiated. Why? Because they did not remember the number of SPOs who took them away to the camps, the number of officials who had allegedly raped them and their identities! (‘Chhattisgarh Enquiry Report’, National Commission for Human Rights, at para 6.25)

After months of investigation by varied authorities, we were told by the CBI that in May 2009, Asiya and Neelofar from Shopian had neither been raped nor killed, but drowned of their own accord in ankle-deep water on the Rambiara Nullah. (http://articles.economictimes.indiatimes.com/2009-12-15/news/28382529_1_cbi-report-neelofar-cbi-investigation)

In instance after instance, state actors commit such atrocities with full knowledge that the law and institutions would shield them in myriad ways. The women’s testimonies are dismissed as lies, using creative reasoning. The state actors are rewarded for their ‘gallantry’ (Ankit Garg of Soni Sori incident and A Ravi Kumar of Vakapalli incident are examples). We are told that national security and territorial integrity are sacrosanct – justifying the need for draconian laws – while there is not a whimper about human security; that the acts of officials were “in discharge of official duties”, and hence they cannot be prosecuted unless the government sanctions the same (S. 197 of Criminal Procedure Code); that the NHRC cannot directly inquire into violations by armed forces but can only seek an explanation from the Central government (S. 19, Protection of Human Rights Act); and further, that the ignominy that the victims / survivors were subjected
to does not amount to the offence of ‘rape’ under the Indian Penal Code, because there was no penile penetration of the vagina (S. 375 of Indian Penal Code).

When ‘protectors’ transform into ‘perpetrators’, state-appointed investigators and prosecutors have little motivation in ensuring conviction of errant officials. This reduces the criminal trial to a farcical exercise, making a mockery of justice.

An archaic penal code that fails to recognize various forms of sexual violence contributes to subjugating women’s struggle for justice. In contrast, international jurisprudence recognizes as crimes a range of acts including rape, forced pregnancy, enforced prostitution, sexual slavery, enforced sterilization and other acts of a similar gravity. Experience from other jurisdictions indicates that laws on victim and witness protection, reparations, as well as command and superior responsibility are imperative, both for pinning accountability and for justice to victims / survivors. Further, contexts of mass crimes warrant substantive, procedural and evidentiary laws that take into consideration the specific ground reality.

Through its participation in advocacy initiatives on the Torture Bill, Communal and Targeted Violence Bill and the Criminal Law (Amendment) Bill, the women’s movement seeks to bridge the gap between law and reality, address the challenges faced by women in their struggle for justice, and to incorporate international jurisprudential developments to strengthen domestic law.

Ultimately, even the best of laws cannot deter or render justice to women for sexual and gender-based violence, particularly by state actors, unless there is a political will to end impunity for such crimes.

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