

*The quest for justice**

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The invisibility of sexual abuse in official records and the Herculean efforts needed to bring it into the domain of law and legal mechanisms are the primary concerns of this publication. While the immediate context is the communal carnage unleashed upon Muslim women in Gujarat, the issues raised are not confined to Gujarat. They raise questions of state structures, Constitutional provisions and the civil society at large. The barbarity of the crime reflects the debasement of an entire nation.

While the initial media reports shocked the nation out of its complacency, soon the incidents faded out of public memory and it was 'business as usual'. For the survivors and their relatives, it was another story. While trying to pick up the threads of their shattered lives, while negotiating schemes of relief and rehabilitation, the women carried with them, in the deep recesses of their mind, the shame and stigma, the trauma and humiliation.

This publication is about breaking the culture of silence beyond its immediacy, beyond spontaneous outrage to a more sustained strategy, about the ethics and morals of creating legal evidence, about the illogic of the criminal law and the price the system demands of victims in pursuit of justice, about lofty Constitutional claims and the harsh ground realities, about the constrained role of lawyering and professional dilemmas ... or to sum up, the inadequacy of the system and the illusiveness of justice.

A Gender Based Legal Initiative

After Sabarmati Express carrying a large number of Ram Sevaks was set on fire on 27th February, 2002, presumably by some Muslim miscreants and 58 people were burnt to death, the entire state of Gujarat broke out into an inferno extinguishing thousands of Muslim lives. The carnage continued unabated throughout March, 2002, resulting in the death of over 1000 people (the unofficial figure touched 3000).

During the initial trip to Ahmedabad in April 2002 to explore the possibility of a legal intervention on behalf of women, we were struck by the invisibility of sexual violence in official records despite the wide media coverage. Upon probing further, we tumbled upon a number of reasons / excuses / pretexts. In some cases, sexual violence was subsumed under the major event in the area. For instance in places like Naroda Patiya and Gulberg Society, scenes of major communal carnage, the police had filed a single FIR for the entire area. Sexual violence was either not mentioned or mentioned cursorily. Women's voices had been muffled and sexual violence had been glossed over by the state machinery externally and by the constraints of patriarchal norms internally. In the words of a young girl, barely in her teens, who whispered to my colleague Veena in a conspiratory tone, 'didi, there is an implicit pact between all of us. We will not talk about rapes in their family and they will not talk about rapes in ours' In yet another set of cases, after the initial media exposure, women were scared. Under threats of further violence,

they had retracted their earlier statements. At times retracting the allegation of rape, was stipulated as a pre-condition for local-level peace talks.

During discussions, organizers and managers of relief camps indicated that women would speak if they gained sufficient confidence in the interviewee. Drawing our own conclusions we also realized that women would speak only if they had a mandate from the community. The strategy then, would be, to approach women through camp organizers and gradually probe the issue of sexual violence. The legal options to be adopted could be worked out later. The task at hand was to collect basic information, stripped of all exaggerations and inconsistencies, which could withstand legal scrutiny,

Around the time of our visit, the immediate concern of many women in predominantly Muslim dominated areas was police atrocities. The police were engaged in 'combing operations' apparently to 'control violence', but in effect, it meant arresting the Muslim youth. The underside of these combing operations was gender violence. The police van would arrive, at odd and unearthly hours, apparently in search of criminals and offenders but in the process, specifically target women, defile them through words, gestures, touches and obscene acts. If they were in a more aggressive mood, women would be beaten up, on their thighs, breasts and pelvic region. They would then threaten that if they did not toe the line, their young daughters would meet a fate similar to the one's in Naroda Patiya.

Naroda Patiya the very sound was enough to send shivers down the spine of the entire community. The head count in this predominantly Muslim settlement, in the outskirts of Ahmedabad city, on the first day of violence i.e. February 28, 2002, was around 150. The crimson rays of the setting sun lit up the puddles of blood in narrow bylanes, human flesh lay scattered all over, a nearby well brimmed over with the charred remains of dead bodies. A quarter of the 1100 tenements were in cinders. The rest ransacked. Entire families had been wiped out, without a trace either of their bodies or of their residence. Half burnt dupattas, pyjamas, kurtas, utensils, kitchen gadgets, schoolbooks and uniforms lay in a forlorn heap. In this macabre dance of death, the attack on women was particularly gruesome. Out of the 96 bodies buried in a mass grave on March 6th, 46 were of women. The dead and the living were subjected not just to gang rapes, but every conceivable form of sexual torture.

Logistics of the Project

We decided to plug in our efforts with the legal initiatives programme situated at the Behavioural Science Centre (BSC) of St. Xavier's Institute which was part of the broader NGO network, Citizens' Initiative. At the community level, we worked with two local groups, which form part of Citizens' Initiatives Sahr Waru and Vikas Adhyayan Kendra. Sahr Waru, in particular, had an on going programme in Muslim bustis and the dedicated band of field workers had worked consistently during the days of carnage to keep the women's morale up and provide basic support. They were in tune with the pulse of the community. Sophia Khan of Vikas Adhyayan Kendra who worked in Bapu Nagar area, did not have a group and welcomed the volunteers who could also help her with relief work, documentation and programmes for children.

Upon our return, the hard reality struck us that we did not have resources, both in terms of finance as well as personnel, to back up the commitment we had made. But we had faith. Faith, that if we are serious and consistent, resources could be mobilized. Faith that the secular fabric of our country is as yet intact and that there would be enthusiastic volunteers who would be willing to brave the heat, hardships and human tragedy and contribute their mite.

We were heartened by the overwhelming response we received to our appeal. The appeal sent out to a small group of activists and friends had been forwarded by them far and wide. The donations started trickling in and within a short period we had collected around Rs.100,000/-. The Dhorabji Tata Trust, a philanthropic group also gave us an institutional grant. While the monetary contributions were most welcome, the response from lawyers, law students, social workers, social work students, college lecturers, journalists and a host of others from varied professional backgrounds was far beyond our expectations. The scheme was to send out groups of volunteers for a period of eight to ten days and provide them the support and guidance to carry out the task of recording testimonies. Veena, with over six years of experience behind her, took on the task of co-ordinating the project. So week after week, from April to June, volunteers set off to Ahmedabad, as part of this project.

Initially, the group would be involved with varied activities as the moment demanded - helping in relief distribution, organizing activities for children, bringing a smile to a desolate face, accompanying women to the site of their ravaged homes for official surveys, helping with documentation work for the host group, helping an odd child here and there to reach the exam center without fear and anxiety or joining in the gaiety and celebrations of a marriage in a relief camp. Through all this gently navigate the conversation and reach that focal point for which were here in the first place.

Reaching out to women

Gradually the stories unfolded, each one more horrendous than the other. Just when you think you have heard the worst, there would be yet another, more horrendous than the previous one. One had heard Partition stories of women being ripped apart, breasts being cut off, bodies being defiled by inscribing the revered names of respective gods. We lived under an illusion that one had heard (or rather read) the worst. No one born in independent India would ever have the misfortune to hear eyewitness accounts of such depravity and debasement.

For the young volunteers hailing from cushioned middle class backgrounds, coming to terms with barbarity of such scale and magnitude was extremely taxing. Not every one could cope. Shireen, a law student from Pune opted out. She was more comfortable spending time with children. So did Lalit from Delhi, one of the few male volunteers on this project. But the others persisted despite the obstacles.

Initially women were reluctant and answered in one-liners, 'meri bahen ki izzat loot liya, phir usko jalaya' (They defiled my sister and then they burnt her). How does one make out a legal case of such one-liners? The volunteers would have to get back for more details. When ... what time of the day ... how many men ... can she identify them ...

from where did she watch ... how clearly could she see ... how long did it take ... Then the cross checking, is she sure ... did she see with her own eyes ...

Sitting in the comfort of our office in Mumbai, browsing through the drafts of affidavits forwarded through email, the queries seemed logical. Out there, under the scorching sun in the midst of squalor and despair, putting them across to a woman who was sick with worry as to whether she would ever be able to pick up the threads of her shattered life, whether she would ever be allowed to return to her chali and rebuild her burnt down tenement, it was a nerve wracking exercise. At times the volunteers would give up, 'no we cant go back ... we cannot ask her any more questions'.

The answers to the queries would be included in the next email. The horrifying graphic details would amount almost to hard porn. At times the interviewer would be in her early twenties. The interviewee even younger, may be in her late teens. Together they would sit in a quiet corner of the camp and go over the details. The women would have to relive these moments in order to give the factual details. Without them, the testimonies would have no value. 'Don't be mechanical ... try to get in the emotions ... the trauma ... the shame and humiliation ...' I knew from my long experience of defending women that if ever the testimonies reached the echelons of justice, facts and emotions would have to be dished out in correct proportions, to tug at the heart strings of judges in their ivory towers.

Some would clamp down. Others would protest, ... I don't know, ... I don't remember ...I don't want to talk ... I don't want to sign I will not come to court Young girls in their teens crumbled with the shame of having to graphically describe the defilement of their mothers. Older women broke down while re-living the trauma of watching the rape and dismembering of their beloved daughters, old men in their seventies, recalled the slitting of their pregnant daughters' stomachs, camp organisers awkwardly narrated how women came in, naked and bleeding and how they had to take out splinters of wood ... Many times the team members themselves would breakdown and abandon the task for the day, only to return after a sleepless night, the next day.

In search of 'Justice'

'Next day' would be a different story. Some would back out and apologetically state that they have been advised 'not to speak'. 'But didi tomorrow if we are marked, then who is there to protect us? No didi, we just want to live in peace. We don't want to complain against anyone.' It was their lives, after all. The work continued with those who were willing to stake, who had the strength to fight for justice.

But where does justice lie? What legal strategies would vindicate the humiliation and the trauma suffered by the women? What provisions in law could we invoke to punish the guilty? Each strategy would meet with a dead end. The initial FIRs did not specifically mention rape. Should separate FIRs be filed now, to bring sexual violence to the forefront? What legal validity would these have in our criminal justice system? Would they not be dismissed as 'after thoughts' and 'tutored testimonies'? When the conviction rate for rapes in more congenial circumstances is as low as 2%, what hope can we give to the women who dare to fight?

The narratives followed a routine pattern. Gang rapes, dismembering and then burning. No evidence of rape left. Or could it be that the sexual narratives can be recounted only through the lips of dead women? For the others, their sanity lay in feigning amnesia, by burying the memories in the deepest recesses of their mind and carrying on.

Would a Writ Petition in the Supreme Court or High Court help? But the manner in which the judiciary was disposing off the hordes of Writ Petitions already filed, did not induce confidence to adopt this path. The judiciary itself had lapsed. Even when one of their own, a sitting judge, was constrained to leave his official residence and take shelter elsewhere, the judiciary did not awaken from its slumber and take suo motto action against the state executive for dereliction of duty and Constitutional lapses.

Should we seek specific directive from superior courts for special procedures and time bound hearings? Would that repose the faith of the afflicted? But the hard fact remained, like a thorn in the flesh, that there were only two survivors who stood by their initial testimonies. We salute them for their courage and conviction. But along the way there is every possibility of either or both retracting their testimonies. If they do, can we hold it against them? One of them was five months pregnant at the time of rape. She survived only because the rioting mob thought she was dead. Confronted with this reality, we abandoned the idea of seeking a mandate for special courts and time bound hearings.

The next option, a much watered down, was via the commission of inquiry, instituted through an executive direction. What validity will it have? Is there a scope for it to be neutral and independent within the overwhelming anti-Muslim fever which had gripped the state executive and bureaucracy? Will it merely reflect the biases of the party in power and become a means of ratifying its actions? The answers are illusive.

There is yet another question lurking beneath. Even the best of them, the Srikrishna Commission, which made a political dent¹, did not translate into criminal prosecutions. Despite its bold and unbiased findings, the report did not bring about any redressal for the afflicted.

Despite knowing all the lacunae, the loopholes, the inadequacies of the legal system we persisted, changing our strategies as we encountered newer dilemmas. The project was shaped and moulded through these dilemmas and confusions. But then, violence of this scale and intensity would essentially need a continuous exploration if it has to have any link at all, to those afflicted by it.

Lurking Self Doubts

There are several other legal options which could yet be explored - International Conventions on Human Rights, the Convention on Genocide, International Criminal Court, an international women's tribunal, civil claims for state lapses, damages and compensations for the failure to protect life and liberty.

So many options. Some may even succeed. Even if they don't, for us, legal activists ... human rights advocates, the process in itself would be rewarding. A unique experience of pushing further the boundaries of law. But our concern was that each of them would have to be mounted upon the backs of already broken women. Would these myriad legal

gambles only prove to be the proverbial last straw? We would gain personally as lawyers, as an organization, as a movement. But what if the gains would only be ours and not theirs? What if ?

We would go over each of these options a thousand times, debate, discuss, ponder over and strike them out one by one. This, amidst peer pressure to live up to the reputation of a 'fearless feminist lawyer'. Amidst pressure to 'do something' from the host groups. They too had staked. They wanted some results. They wanted to watch 'law in motion', to witness 'justice' happen. They wanted to go back to the women who had narrated their stories over and over to all and sundry, with 'something'. The watered down option of filing affidavits before the commission was a let down.

Knowing all these hurdles, why did we venture out into the legal domain, in the first place? In our minds we have worked out a miniscule justification. So that the 'generation next' does not dismiss the media reportage as 'mere exaggerations'. To remain as mute testimonies for the barbarity that was inflicted upon innocent women at the advent of the twenty first century. In order that violence of a scale such as this is not undermined or normalized as did Defence Minister, George Fernandes on the floor of the house (Parliament) on that black day in May. To expose the hypocrisy of the then Home Minister, L. K. Advani, advocating death sentence for rapists in case of individual instances on one hand, and justifying and sanctioning mass rapes and defilement of women by his party men at the other.

In order to answer the queries raised in a dismissive manner by the woman minister, Uma Bharati, 'who is this woman whose stomach was slit and foetus taken out. No one has heard of this woman. She is a fiction created by the media.' To respond to the report of the National Commission for Women that cases of rape had been highly exaggerated by the media and peace will be restored only when women forget and live in harmony with their aggressors.

So that the brutality is not subsumed and buried under the more acceptable crime of murder. So that no other city, town or village in India would have to witness it. To guard against the danger of the motive of gorging out a full-blown foetus out of its mother's womb and roasting it alive does not become a recurring one in popular cinema in the decade to come and become normalized. To forewarn that, if this gender hatred remains unchecked and becomes normalized, it would not be confined to the 'other' - the Muslim, the minority, the marginalized. In 'peace times' it would turn inward and unleash upon the women 'inside'

The writing is already on the wall. The tornado of communal violence swept away the lives of a few Hindu women as well. Gajraben, Geetaben, Sarojaben and many others, targeted only because they had Muslim partners, were in mixed marriages. Who knows which other category of Hindu women will be marked next?

In a society, which holds such scant respect for its women and where every category from wives and widows to female children and fetuses have not been spared, gendered violence is a foregone conclusion. But these riots have scaled new heights and have reached a peak in sadism and barbarity. The question we wish to pose is, 'How many

more young girls' vaginas have to be slit open? How many more rods inserted into the as yet unformed uteruses, for our government to take note of the scale of sexual violence.'

I am compelled here to narrate an incident, which occurred towards the fag end of our project, to bring before you the horror of it all. It was the last week of June. Around 9.00 a.m. Veena called from Ahmedabad. An unusual call, as Veena is not an early riser. By the tone of her voice, I knew something was wrong. 'What's wrong Veena?' I asked. Her voice was shaking. She said, 'Today they released six more bodies, disfigured beyond recognition, brutally dismembered. All from Naroda Patiya. All women. During the ritual bathing before burial, the hand of the woman who was preparing the bodies for their burial, got cut and started bleeding. A part of the sword inserted was jutting out. The woman started screaming. The whole community is in panic. Even Ginny and Raj from Sahr Waru are crying. Flavia, I just can't take this any more.' It took a while for the words to sink in. Then my stomach started churning. Through these months, I have not been able to shake off this imagery.

It is this horror, this extreme sexual perversion unleashed upon women during times of conflict, in order to defile the entire community, that needs to be recorded. Within the patriarchal scheme of social structures, sexual violence remains hidden through a conscious design. No one - the victim, her family, the community, the state - wants to admit the crime. Sanity at a personal level, integrity at the familial level and harmony at the social level can be maintained only when this crime is negated. It can only be spoken of in absentia. Unlike murder, theft, arson and looting, this crime has no sanctimony, no legitimacy, no visibility. But it continues to hover silently like a foreboding shadow.

It has taken 50 years for the stories of rape and abduction during Partition to be told in all its shocking details. Only when the women's movement legitimized sexual violence and brought it out of its closeted existence, could these stories become part of the nation's historiography. If only for this reason, the stories had to be documented, an official record had to be created, through a conscious and focused probing. So that in the master narrative of nation and its historiography, the brutality unleashed upon women does not remain 'incidental'.

In the process, did we raise hopes in the quest for 'justice', knowing fully well that justice is illusive? Did we entangle the illiterate and unassuming women into a legal mesh, which they would find difficult to disentangle? Did we expose them to newer and greater risks? Perhaps we did. In our defense all we can say is that, even as the work was in progress, we were haunted by these concerns. We addressed them critically and unflinchingly. It is due to this that in the final analysis, only 26 affidavits on sexual violence and around 20 on police atrocities could be filed, just the tip of the iceberg.

As self-doubts persisted, the vibrancy of our volunteers kept the project going. Reaching across the chasm of religious and class divide, they were able to build bridges and restore a fraction of the women's dignity. The essays capture the moments of self doubts and disillusionments, concerns and reflections, hopes and aspirations. I thank the volunteers who took the trouble to reflect upon their experiences and pen their thoughts. It didn't come easily. It needed much coaxing and goading. But streamlining their stray thoughts into an essay, I am sure, helped them to gain the maximum from the exposure. Though

the overall exposure was similar, the concerns they carried back with them are individual and weave a rich tapestry around the central theme.

Veena's interview, as the co-ordinator of the project is pitched at a different level. Theorising from the experiential, she raises uncomfortable questions about the efficacy of law and legal mechanisms, about Constitutional claims and notions of justice. The two perspective affidavits reflect the ideology within which the individual affidavits were formulated.

While every one at Majlis helped, I take this moment to specially thank two of my colleagues. Madhusree Dutta, for her razor-sharp critique, for helping to pull up the sagging morals and for her incisive interview of Veena. Daisy Rodrigues, the lawyer who co-ordinated the project from the office end, for being there when you needed her most and for holding the project together even when we let go of it. The co-ordination among volunteers and the task of raising funds was shouldered primarily by her.

Many other people helped in many different ways. Without these collective effort the project could never have been completed. I thank each of them. This compilation is the culmination of this collective effort. If it sheds some light in the path of future claims for justice of vulnerable and marginalized sections, the project and the compilation would be worth their while.

*Editorial to *Lofty Claims and Muffled Voices* (Majlis, 2002)