Protests, the Justice Verma Committee and the Government Ordinance

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The government's response to the protests led by the youth against the gang rape incident in New Delhi, in the form of an ordinance has not met the aspirations of the many protestors and the woman rights’ organisations. It can in fact be accused of being vindictive, having ignored the thoroughgoing recommendations of the government appointed justice Verma committee's report.

Being part of the first protest by the Jawaharlal Nehru University Students’ Union against the brutal gang-rape of the 23 year old student outside the Vasant Vihar police station in New Delhi and the next morning’s “chakka jam” where students spontaneously caught on to the slogan of “aazadi”, one witnessed the evolution of the protest against gang-rape into a massive outpouring on India Gate and the country. The sheer impunity and brutality of the crime shook everyone. With rape in particular, and crimes against women in general growing faster than all other crimes in India, these protests were perhaps just waiting to happen. The movement was an eye-opener to the extent of brewing discontent among the youth.

Three significant aspects of the protests stood out. Usually, every incident of rape or molestation is followed by many advisories to women - not to go out, to change the way they dress, to choose their company carefully, etc. - in short accept a series of restriction for their safety. This time, young students and women asserted their freedom proactively. The most powerful slogan on the streets was – “mahilaein mange azadi, sadak pe chalne ki, raat mein nikalne ki, kuch bhi pehenne ki, and so on” [women demand freedom, to walk on the streets, to go out at night, to wear anything, etc]. Placards were equally expressive – “nazaret teri buri, chehra main chupaun?” [you are the one giving the bad eye, why should I hide my face?], “meri skirt se uunchi meri awaaz hai” [my voice is higher than my skirt], “don’t tell me what to wear, tell your sons not to rape”, “men karein to stud, main karoon to slut?” [If men do then ‘stud’, if I do then ‘slut’?]. It was this ideologically loaded expression for freedom that irked the likes of Abhijit Mukherjee, Asaram Bapu, Mohan Bhagwat etc. who tried to dismiss, humiliate or discipline these “irreverent” women.
Second, since the 1970s and the 1980s, the women’s movement of our country and its reaction to the Mathura rape, Bhanwari Devi gang rape, the dowry issue or Roop Kanwar’s sati, had involved only women raising their voice on women’s issues. Powerful mobilisations that resulted in changes in rape and dowry laws in 1983 involved women mainly. But this time, young students from universities and colleges, both males and females, came out demanding women’s rights. Men were certainly equal if not more in many of the gatherings. This may be a turning point in our country, wherein, women’s issues have transitioned into gender issues. With both men and women beginning to become stakeholders in wanting to change our country for women, the solidarity holds great promise for the future.

Third, with the youth demanding end results – a country without rape and violence against women- the protests have given rise to one of the most widespread and democratic debates in our country on women’s rights with individuals and organisations making respective charter of demands. The country has never been witness to so many people getting involved in finding solutions for the menace of crimes against women. The fact that justice Verma Committee received nearly 80,000 submissions within 5th January 2013, speaks volumes about the unprecedented democratisation, participation and involvement of the people. The tragic death of the 23-year-old brave student, who did not go into shock or coma despite her massive injuries and fought till the end, has left the country richer by many degrees in awareness about women’s rights.

The response from the cynics and status-quoists in the government was to deride the youth and paint them as directionless. The initial announcements by the government were so trivial that they added insult to injury. Repression through tear gas, lathi charge and the imposition of Section 144 was further provocation upon the protestors. Only after sustained protests was the announcement of the appointment of the Justice Verma Committee made. It was the people who invested their hopes in the Committee through their massive response. It goes to the credit of Committee members that they decided to live up to the expectation of the youth.

**Kudos to the Committee**

The Committee deserves due credit for the following - for completing their report within the stipulated 30 day; for interpreting the narrow terms of reference provided by the government to rightly recommend drastic changes in Constitution, law, policing, governance and society in order to stop such crimes; for making the report public; and for doing all this by involving a team of very young lawyers, many of whom were standing shoulder-to shoulder with us in the movements, to flesh out the report with sheer dedication and motivation.

It is evident, however, that somewhere in the course of making this report, the government parted ways with the justice Verma Committee. Perhaps the government wanted the Committee to remain restricted within a narrow purview or just be a rubber stamp for its
premeditated proposals. Only those involved would know the true story. However, the fact that state director generals of police or even major government departments and ministries did not get their acts together to respond to the invitation of the Committee for discussion speaks volumes about the extent of apathy. Only a handful interacted with the Committee. In the era of RTIs and debates on transparency, the Committee has rightly appended many of its unfulfilled requests and invitations at the end of the report.

The essence of the Verma Committee report is that it holds the state responsible and accountable for the condition of women in the country and calls for motivated change in priorities of governance. Among the most significant recommendations of the Committee, therefore, is a “Bill of Rights” for women wherein the state shall commit itself to provide right to life, security, and bodily integrity; democratic and civil rights; equality and non-discrimination; right to secured spaces; special provisions for elderly and disabled women; and protection of women in distress.

The Committee notes the deep gender bias and neglect of women. It identifies the police, the first door at which any victim knocks for redressal, as a focus for reforms. The Committee notes that the police are not guided by the principles of the Constitution or the rule of law, but routinely act as arbiters of “honour/shame”, viewing all women who wish to lodge complaints of rape or sexual assaults as essentially shameless. The refusal to lodge complaints, hostility towards complainants and unethical attempts to engineer conciliations are identified as an outcome of deep rooted patriarchy. The Committee proposes thorough police reforms, gender sensitisation, as well as establishment of detailed protocols for response and enquiry, especially in cases of rape and sexual assault. Any breach is grounds for action. Oversight or apathy by seniors also invites action under law by their recommendations.

The Committee has proposed detailed amendments to the Indian Penal Code and Criminal Procedure Code and redefined rape from the point of view of the woman who experiences it. The premise is the full and unequivocal bodily integrity of a woman. Therefore exceptions in marriage are not granted. Consent is also redefined as the absence of “unequivocal voluntary agreement” so that passivity under shock or trauma is not construed as consent. The Committee has retained the word “rape” in law and proposed amendments and/or new laws on graded offences like rape and gang-rape, sexual assault, acid attacks, stalking, disrobing, voyeurism, sexual harassment in the workplace. Punishments are enhanced to a maximum of the rest of natural life of the culprit without remission, i.e., without the possibility of early release.

The Committee also holds that offences become graver if they are committed by public servants or those in custody/guardianship positions. So if the protectors of law like police or armed personnel, public servants or guardians like teachers or managers of juvenile homes etc. engage or participate in crimes, then the punishment must be more severe. A new law on “command responsibility” is proposed wherein deliberate action/inaction by senior public
servants/policearmed forces is liable for punishment. The Armed Forces (Special Powers) Act and other special laws that deny recourse to justice are sought to be amended. The Committee, thus, turns state apathy and insensitivity towards crimes against women into a crime. The proposed electoral reforms vis-à-vis elected representatives also emerge from the same spirit wherein those making laws must uphold the highest conduct in public/private life.

The rise in trafficking of women and children for labour, organ transplant, commercial sexual exploitation and slavery is met with alarm. With a child going missing in our country every eight minutes, and thousands remaining untraced each year, the inability of police and investigation agencies in tracing any “organised gangs” is interpreted by the Committee as culpability. An amended law is therefore proposed on trafficking and all district magistrates are advised to maintain records of missing persons in their area. The exploitation of juveniles for labour or sexual exploitation in juvenile homes under state protection is also dealt with sternly. Recommendations are made for better protection of children including against child sexual abuse.

The reluctance on part of the state to curb the extra-constitutional authority exercised by Khap panchayats is severely reprimanded. Detailed recommendations are also made on medico-legal examination of victim, rehabilitation of victims, and education reforms. A constitutional body (similar to the Comptroller and Auditor General) is also proposed for gender-audit of the entire system. While many aspects of the report can be discussed or even debated, it can be clearly said that the Committee has been guided by the understanding that “The scope of criminal law is not only to punish for transgressions but also to prevent commission of transgressions.” It may be noted, however, that more categorical and comprehensive recommendations for reforms in the judiciary were certainly in order in the report.

The Ordinance as Government’s Response

At a time when protestors were demanding a special session of Parliament to debate an entire gamut of issues relating to women, the response of the union government through the non-transparent promulgation of “The Criminal Law (Amendment) Ordinance, 2013” by the president of India on 3rd February 2013 has given cause for serious concern. The ordinance is clearly not based on recommendations of the Verma Committee which sought to retain the word “rape” in law, while the ordinance collapses it with “sexual assault”. The question however is not of terminologies but content. Questions have been raised by women’s groups over whether the ordinance is a step in the right direction at all.

Few basic aspects of the ordinance are truly alarming. Penetrative and non-penetrative sexual assaults are conflated under one definition. However, the definition of sexual assault (including rape) in the ordinance is based on the child sexual abuse law. There is a qualitative difference between sexual assaults against children and adults. While there can
be no consensual sexual contact with children, there can be consensual sexual contact among adults. The ordinance, by criminalising even consensual sexual contact in law, provides a powerful weapon in the hands of Khap panchayats, moral policing brigades, police and family for regulating sexual activity, especially among the youth. Since Sec. 375 is applicable to young people under 18 and punishable by seven years to life in the first instance and a minimum of ten years up to rest of natural life for repeat offence, the motivations behind the law are indeed anti-youth.

The “gender-neutral” definition of sexual assault (including rape) in the ordinance is another cause for major concern. The Verma Committee had dealt with this vexed question at length since people of other sexual orientations and transgenders also experience rape and sexual violence without any dignified recourse to justice in law. Opinion is divided on whether same-sex sexual offences should be criminalised without first legalising and legitimising consensual same sex-relations. The concern of women’s organisations has been that if the perpetrator is recognised as a “person” (including women) then each complaint of rape by a woman will be met with counter charges of rape by the accused, thereby, creating enormous hostility, complication and difficulty for the victim. The Verma Committee proposed that the perpetrator in rape be recognised in law as “male”, and the victim be “persons” (including females, males, transgenders). This was an acceptable proposal in law. However, the government’s ordinance is distinguished by its thrust on viewing women as potential rapists. This is has no basis or rationale and can create serious perversions in the process of law.

The Verma Committee recommendations were based on unequivocally safeguarding the bodily integrity of women, i.e., respecting and upholding the complete right of a woman on her body. However, by excluding marital rape or refusing to amend the permission required to prosecute armed personnel in regions under AFSPA or other special laws, the government has again made exceptions. The new ordinance is clearly not founded on correct principles and continues to treat women as subordinate to husbands or the armed forces. How can such an anomaly be explained? How can a law that is steeped in the understanding that a woman’s bodily integrity is subordinate or expendable when it comes to safeguarding the territorial integrity of the nation, or which presumes that sexual relations in marriage can be non-consensual as a matter of right for husbands, claim to be free of the same deep rooted gender-bias that continues to plague the entire state and polity? India continues to be the only democratic country in the world not to include “marital rape” within the ambit of law.

The ordinance fails to provide for rehabilitation of victims/survivors by the state, thereby, continuing a faulty approach wherein rape, acid attacks etc are viewed as matters between individuals rather than a general phenomenon and State responsibility. The language of “outraging the modesty of a woman” is retained in the new law, thereby, keeping the onus of proving modesty and good character upon women. Through the ordinance, the government has of course, denied urgency to issues of reforms in Constitution, governance,
policing and education.

The government so far has not responded in the spirit of meeting the aspirations of the youth or women of the country. It can in fact be accused of being vindictive. The need of the hour is to fight the proposed perversion of law that may make matters worse for women in many aspects. A better informed youth will have to continue the struggle to build a more gender just state and polity. The gap between democratic aspirations and entrenched state biases is still very stark. But there can be no turning back the tide.