

THE CONSTITUTION OF THE HATHRAS VICTIM'S BODY

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Abstract

This paper attempts to make sense of the spine-chilling crime committed in September 2020 against a young Dalit woman from Hathras, Uttar Pradesh who was brutally gang raped, mutilated and left to die in the fields. This was followed by the casteist and heartless behavior of the Uttar Pradesh police who burned the woman's body in the dead of the night while locking away her family in their house. The paper then questions if the treatment meted out to the girl and her family would have been the same if they belonged to the upper castes of the Indian society. The paper is divided in four sections. The first

part discusses the case and contextualizes the caste status of the victim in the village of Hathras. The second part scrutinizes the larger caste-class-gender nexus in India, particularly in relation to women's bodies. The third part of the paper situates the rape and assault in relation to the other debates around sexual violence in post-colonial India, particularly the extraordinary nature of the 2012 Delhi gang-rape case. In the fourth and final part, the paper describes the aftermath of the burning of the Hathras victim's body and the state's response to the crime.



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Part I – The Context of the Hathras Case

The 19-year-old Dalit woman was attacked on September 14, 2020 in the village of Hathras in the state of Uttar Pradesh and suffered multiple fractures, strangulation, paralysis and gashes in her tongue. She died two weeks later as a result of her injuries. In her statement, she told the local police that she was dragged by her *dupatta* (a long scarf-like accessory) into the fields from where she had been cutting grass with her mother and brother and was raped and assaulted by the four upper caste men. She was later found naked and bleeding in the fields by her family (Dongare & Pandey, 2020). This incident brought back the memories of the 2012 Delhi gang rape case with many drawing analogy between the two. The Congress party (the main opposition at the center level) president, Sonia Gandhi declared the victim as the ‘Nirbhaya of Hathras’ (Hindustan Times, 2020). The mother of the 2012 Delhi gang rape victim shared similar sentiments and said that the crime reminds her of her daughter’s case (NDTV, 2020). The Delhi rape victim of 2012, popularly known as Nirbhaya, was a 23-year-old female physiotherapy student who was brutally gang-raped and mutilated by a bus conductor and five other men in a private bus on 16th December 2012 and later died on 29 December 2012 due to the injuries she sustained during the assault. The lawyer who defended the rapists in the Delhi gang rape case represents the accused in this case too (India Today, 2020) while the same lawyer who fought to get justice for the Delhi victim is representing the current victim, (The New Indian Express, 2020) which has further strengthened the similarities between the two cases.

This paper explicitly diverges from this view and maintains that the caste-class location of the Hathras victim and her upper caste rapists distinguishes her from the Delhi victim whose rapists were working class migrant men. The paper, through examining various cases of sexual assault, argues that when it comes to matters of solidarity in cases of assault and rape, not everyone gets the same treatment. It elaborates on the state institutions and the pro-government media working in tandem to maintain the status quo of the caste system, to protect the rapists, deny the rape allegations, harass the family of the victim, and deny justice and accountability. The paper is divided in four sec-

tions. The first part discusses the case and contextualises the caste status of the victim in the village of Hathras. The second part scrutinizes the larger caste-class-gender nexus in India, particularly in relation to women’s bodies. The third part of the paper situates the rape and assault in relation to other debates around sexual violence in post-colonial India, particularly the extraordinary nature of the 2012 Delhi gang-rape case. In the fourth and final part, the paper describes the aftermath of the burning of the Hathras victim’s body and the state’s response to the crime.

The role of the Uttar Pradesh police needs to be scrutinized throughout the entire handling of the case due to its multiple lapses. From the very beginning the police was reluctant to pursue the allegations of rape. As the news outlet, NDTV reported, the girl’s family accused the police of not helping them and responding only after many days of public outrage. Initially, the police identified the assault as an attempted murder and only added the rape charges after the girl submitted a formal statement. On the same day that the girl died, the police denied the victim’s allegations of rape and its confirmation through medical examination (Dongare & Pandey, 2020) despite the victim’s formal statement. After her death, the police drove straight from Delhi with her body to the cremation ground in Hathras. They formed a human chain to keep reporters, the family and villagers away from the cremation ground and refused to hand over her body to the family. The family were not permitted even to view the body and was instead locked in their house. At approximately 2:30 a.m., the police burnt her body without the consent of the family or acknowledgement of the funereal rituals they wanted to perform, but claimed that the body was “cremated” with the family’s consent (Singh A., 2020).

These disturbing sequences of events were revealed through viral videos where the girl’s family can be seen arguing with police, female relatives throwing themselves on the hood of the ambulance carrying the body, the victim’s mother weeping helplessly as the police insisted on taking her daughter’s body to the cremation site and the police burning the body (NDTV, 2020). The burning of the body catalyzed national outrage regarding the case. As the videos and images became viral, protests broke out in



Delhi and Hathras and on national social media expressing anguish over the continued deterioration of women's status in the country and demanding justice for the victim and her family. People drew attention to the Dalit caste status of the victim as being central to her treatment before and following her death. Politician Yogendra Yadav claimed on Twitter that the burning of the Dalit girl's body without her family members was the "George Floyd moment of India" (NDTV, 2020)

The victim belonged to the Dalit sub-caste of Valmiki, otherwise also known as Bhangis, a traditionally untouchable caste associated with cleaning toilets, sweeping and scavenging. The four accused men are from the upper caste group of Thakurs, who form the majority in that village, followed by another upper caste group of the Brahmins. At the time of the assault, there were only four Dalit households in the village; all belonging to Valmi caste and living within a half kilometer radius (Ara, 2020b). These Dalit families own some small lands, cattle and depend on India's National Rural Guarantee Act, selling their cattle and underpaid cleaning jobs for their livelihood. The Thakurs possess political influence in the state and the Chief Minister of Uttar Pradesh Yogi Adityanath also belongs to the same caste. According to the National Crime Records Bureau of (2019) Uttar Pradesh had the highest number of crimes against Dalits around 25.8% of the total cases in India with over 95% pendency rates for these crimes. The state also has the second highest number of rapes of Dalit women.

The Dalit families are keenly aware of the caste oppression they face and its effects on the crime and the consequences of the crime. They were confined to their home by the district administration and the police and from communicating with people (Sarin, 2020). Their phones were also taken away and they were stopped from speaking to the media (NDTV, 2020). The media was banned from entering the village with the justification of imposing a ban on large gatherings due to COVID 19 (Chaturvedi, 2020). In interviews the victim's mother stated that her daughter was unlucky to have been born in a village of Thakurs (Ara, 2020a) while her brother said that the upper castes do not acknowledge them and behave as if they don't exist (Jaiswal, 2020). Another Dalit youth claimed that they eat,

talk and live by themselves and have nothing to do with the upper castes and that the children of the upper castes do not play with the Dalit children (Jaiswal, 2020). In the same interview the village priest admitted that Dalits are not welcome in their homes and that living with them in the same village should be enough while the son of the village headman freely admitted that they can't eat and drink with Dalits (Jaiswal, 2020). A relative of the victim admitted to the inequality in the village and to them being thrashed by the upper castes for refusing to do the dirty work like cleaning the drains for which they are not adequately paid.

A Dalit father recalled an incident involving his son who while playing in the streets accidentally touched a Thakur child's polythene packet. The Thakur kid made a scene about a Bhangi (used here as a casteist slur) polluting his food and thirty Thakur men assembled with sticks to beat up the Dalit child (Ara, 2020b). His wife recalls that when they are invited to functions of the upper castes to receive the extra food, they have a separate dirty space assigned for them, far away from the upper castes. The food is given to them in such a way that ensures no contact is made which sometimes leads to the food falling to the floor, and the fallen food too is expected to be eaten by the Dalits (Ara, 2020b). The caste animosity between the girl's family and the family of two rapists (who belong to the same family) was at least two decades old when the grandfather of the victim complained about the latter's family for assaulting him, under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) (SC/ST Act) Act of 1989. As a result, the father of one of the accused was jailed for three months under the said act. The SC/ST Act lists offenses and penalties for the offenses against people from these communities. One of the accused had also previously harassed the victim so badly that she had stopped going out of the house (Ara, 2020b).

Part 2 – Caste-class-gender nexus

Caste in India is a unique cultural phenomenon, which performs the task of identity formation and social status stratification. It at once refers to a hereditary membership of inequality, difference, discrimination, and an ideological system with ideas of pollution-purity, notions of hierarchy, and segregation. It affects division of labor and occupa-



tion, rules of marriage, interpersonal relations, and necessities endogamy and the inter-generational pursuit of a particular occupation necessitated by a distinct status in the hierarchical system.

The origins of the caste system can be traced in the division of Hindu society into four *varnas* (groups) in Rigveda, a Hindu scripture dating back to 1500-1000 BCE. These groups were arranged in a hierarchical manner, with the Brahmins (priests) at the top, followed by the Kshatriyas (warriors), which were followed by the third group of the Vaisyas (the farmers and artisans). At the bottom are the Shudras who were responsible for serving the three groups above them. The Dalits (untouchables) fall outside this system (Kumar, 2019). The higher castes – Brahmins, Kshatriyas, and Vaisyas – are considered *dwija* (twice-born), with an *upanayana* (initiation ceremony) being held for the male members, which is seen as a second spiritual birth. This enables them to participate in Hindu rituals and ceremonies and to be considered as “pure”. The lower castes of Shudras and Dalits on the other hand are considered “polluting” and their touch as defiling to an upper-caste Hindu. This concept of pollution has historically governed the interaction between the members of different castes so much so that even the sight of an “untouchable” is considered polluting. As a result, the lower castes have been barred from all forms of social interaction with upper castes, including dining and marriage, entering temples, and drawing water from wells. In contemporary India, Dalits perform “impure” caste based occupations like manual scavenging, collecting household waste, cleaning human waste from toilets and tanks, and getting rid of dead animal remains.

The caste-based exclusion reflects people's and groups' inability to interact freely with others and to realize fully their economic, social and political potential. The Dalits are among the poorest of Indian citizens, have high illiteracy, usually lack landed property, tend to be malnourished, lack access to health care and work in very poor conditions. The caste-based discrimination has meant lower wages, reduced income and compulsory involvement in works due to traditional caste obligations, which make them vulnerable to exploitation and often lead to unpaid labor, causes high poverty and low human development. The lower

castes are also denied services offered by government and government supported public institutions, like education, health facilities, water and face social ostracism and segregation in other civic amenities and common resources like roads, electricity, sanitation and housing. (Thorat & Sabharwal, 2010).

Manual scavenging which had been legally banned in India continues to be a common practice across the country due to caste oppression and poverty. It involves the manual removal of excreta from “dry toilets”, that is the toilets without the flush system. Regardless of the fact that manual scavenging is done by different caste names in different parts of the country – Bhangis in Uttar Pradesh and Gujarat, Sikkaliars in Tamil Nadu, and Phakis in Andhra Pradesh – one thing that remains common is their place at the bottom of both the caste hierarchy and Dalit sub-caste hierarchy. Their refusal to do such tasks often leads to physical assaults and social boycott. As the manual scavengers are unprotected from many viruses and bacteria, their respiratory and gastro-intestinal systems, skin and eyes get affected. Furthermore, as a result of working under such dehumanizing conditions, tuberculosis, alcoholism and drug addiction are very common among the community. A study conducted on manual scavenging in Ghazipur district, Uttar Pradesh found that nearly all the scavengers belonged to the Mehtar caste (Singh R. K., 2009), a sub-caste of the Valmiki caste and had inherited the occupation from their forefathers. The study found that many who tried to challenge their socio-economic status by changing their occupation were boycotted and faced a lack of support from both private and governmental agencies and so had to return to cleaning toilets. As in the case of the Hathras, the houses of these Dalits were also away from the main residential area of the village and were very depleted and unhygienic. As dictated by the caste system, these Dalit people also are not allowed to dine and interact with the upper caste people (Singh R. K., 2009).

In caste hierarchy, the upper caste men are the most privileged, followed by the upper caste women and the lower caste men respectively (Chakravarti, 2003). The worst marginalized of them all are the lower caste women. The upper caste men have greater control over women from



both upper and lower castes and over men from lower castes. Lower caste men do not have much control over their women. Upper caste women are therefore in a better position when compared to lower caste women as they can be exploited by only upper caste men while their lower caste counterparts suffer a form of double exploitation by men of both castes. The Dalit women, then are oppressed thrice: as subject to caste oppression at the hands of the upper castes; as laborers subject to the class-based oppression at the hands of the dominant castes; and finally as women experiencing patriarchal oppression at the hands of all men, including men of their own caste (Chakravarti, 2003). Beyond this, ideals of upper caste femininity have amplified many of the differences between upper and lower caste women's roles and responsibilities.

Gender is an important factor in maintaining and replicating caste inequalities through marriage and caste endogamy. Feminist historian Uma Chakravarti (1993) was one of the first to highlight the intersectionality of caste and gender. She has framed the social stratification and discrimination against women and lower castes in terms of brahmanical patriarchy, which describes the need for sexual control over women to ensure patrilineal succession and caste purity. The sexual control of women ensured the sexual purity of women, which in turn, provides the base for maintaining the birth-based social stratification of caste. Under brahmanical patriarchy, female sexuality is "channeled only into legitimate motherhood within a tightly controlled structure of reproduction which ensured caste purity (by mating only with prescribed partners) and patrilineal succession (by restricting mating only with one man)" (Chakravarti, Conceptualising, 1993). This obsessive need for controlling women's sexuality is usually associated with the dominant sections of the society where women uphold traditions by conforming to them and men uphold them by enforcing them upon women; the men are authorized to use coercive methods to chastise and punish the women who violate the norms (Chakravarti, 2003). The most unforgivable violation is the issue of a caste woman involvement with a lower caste man.

Contrary to the upper caste woman who needs to stay pure and chaste, the rules for the lower caste women are

less strict, as the numerous rules placed on inter-caste interactions are designed to prevent lower caste men's access to upper caste women. The less stringent controls on the mobility and sexuality of lower caste women who labor outside their homes add to their impurity. The lower caste women, unlike her upper caste counterparts, are perceived to have no modesty, honor or property. They are not entitled to either respect or bodily autonomy. Hence, the upper castes are entitled to humiliate them and "get justice" on lower caste women's bodies according to their whims. It is not uncommon to hear of the disrobing and parading of naked Dalit women around the village, of rapes and sexual assault of Dalit women. The stripping, parading and rape of Dalit women is a double insult, indicating the power of upper caste men to use the bodies of lower caste women and to humiliate the masculinity of lower caste men by appropriating lower caste women (Kannabiran & Kannabiran, 1991).

Meanwhile, Dalit men are beaten, lynched and killed for disrupting caste norms, for entering temples (The Wire, 2020), for not prostrating to the upper castes (Rehman, 2020), for touching their food (Kakvi, 2020a), for denying a matchbox (Kakvi, 2020b), for attending an upper caste garba (a traditional dance) event (Firstpost, 2017), for touching upper-caste person's two-wheeler (Goudar, 2020), eating near and in the presence of upper castes (Khare, 2019), resisting assaults of Dalit women, and intercaste relationships (Chauhan & Jyoti, 2019). As a report from the news outlet *India Times*, other such reasons include letting goat graze, riding a motorcycle, cutting hair of Dalits, sitting crossed-legs, jumping into well, riding a horse, and wearing shoes in upper caste roads/villages (Sengar S., 2018).

Part 3 – the legal discourse on sexual violence in postcolonial India

The Delhi gang rape of 2012 evoked an imagined community of citizens around the iconized figure of the raped woman", mediated by various media and social networking sites (Roy, 2014). The protests that followed were not unitary in nature but represented different interests. There were two sections in the protests based on ideological variations – one that favored masculinist protectionism for



women and the other the progressive groups consisting of supporters of left parties, women's organizations and human rights organizations. Those favoring masculinist protectionism invoked the role of the state as the protector of women, just like the patriarch of a family, as women are believed to be the cultural upholders of families' and national honor (Roy, 2014).

In the media, debates were held about the low status of Indian women, reminiscent of the colonial and Indian nationalist discourses that hinged on women being construed as the bearers of the nation, who needed to be restored as symbols of national honor. This restoration was to be brought by men who would decide what honor was and take steps to preserve it. Invoking state protection in the protests affirmed the domestic space as a place of security from the violence of dangerous men in the public spaces; the compliance of the women to masculine protection; and the reaffirmation of a 'masculinist solidarity' where the protection of 'their' women was a male privilege (Roy, 2014). Most importantly women, were to be made safer through women's domestication and more disciplinary codes of gendered behavior on women. This was to be achieved through increased surveillance, stifling of dissent, and enactment and application of security laws and legitimization of security regimes, non-accountability, and legal impunity of the state, and would remedy the restoration of men's honor and their emasculation which was brought by the violation of women's bodies and purity who were under their protection.

The progressive groups tried to open up a larger dialogue around sexual violence in India, one that included issues like marital rape, end of victim blaming and the rape of women by Indian army officers in the disturbed areas of India (Roy, 2014). They situated the gang-rape within the gendered hierarchies of the nation, state and citizenship and the extensive, reiterative structural normalized violence on the lines of caste, religion, ethnicity and language. These targeted the Dalit and Muslim women, the working classes, those who dissented from their families, communities and in the states of north-east India, Jammu and Kashmir, Chhattisgarh, Jharkhand and Orissa, where extraordinary laws have created regimes of impunity and the state

is in war against its own citizens. However, these demands were drowned out by calls of the protectionist stand who called for the death penalty and chemical castration of the rapists; claims of a decline of Indian culture and increasing influence of the West; and stricter regulation of women's sexuality and mobility; and demands for the safety of women through surveillance (Dutta & Sircar, 2013).

It is necessary to situate the Delhi rape protests in the post-colonial context of India since the demonstrations follow a trajectory of protests against sexual violence and legal reform. The first major mobilization in postcolonial India against sexual violence was in the Mathura rape case judgment (1978) which was a case of custodial rape of a 16 year old tribal girl. Custodial rape refers to rape by a state officer on a victim who is in custody in state institutions like in police stations and jails. The outrage from the judgment saw the historic moment of the first amendment to the rape law in 1983, since its enactment in the colonial times of 1860. The Sessions Court and the Supreme Court of India had declared that the girl could not have been raped as she had a sexual history, was 'habituated to sexual intercourse', and there were no visible injury marks on the bodies of the rapists. The passive submission of the survivor was taken as consent by the judiciary (Agnes, 1992). As a result, the police officers accused of the rape were acquitted. In this case, the caste status of the girl who was a tribal added to her being labelled as having a free and wild sexual nature and hence the court could assume presence of consent. This judgment highlighted the difficulties in proving that a woman did not consent 'beyond all reasonable doubt' as is required by the criminal rape law. The campaign that launched to question the sexist assumptions of the rape law focused on rape as violating women's autonomy, shifting the burden of proof onto the accused, of dismissing a woman's sexual history and character as evidence, and challenged the colonial provisions of the Indian Penal Code which decided consent from the absence of injuries.

In light of the campaign a Law Commission was set up which recommended demands for shifting the onus of proof, the irrelevance of women's past sexual history, recommended to treat the refusal of police officers to



register a rape complaint as offense, and recommended pre-trial procedures like not arresting women at night (Agnes, 1992). However, the bill passed in the parliament ignored the recommendations regulating police power and disregarding a woman's past sexual history and general conduct as evidence in a rape trial. The reformed law of 1983 in cases of custodial rape shifted the burden of proof onto the defendant and imposed a minimum punishment for rape for the first time, that was – 10 years in custodial rape, gang rapes, rape of pregnant women and girls under 12 years of age and 7 years for the rest of the cases (Agnes, 1992).

The feminist legal scholar Ratna Kapur writing about the interconnectedness of international law, and human rights in laws about gender and sexual rights in the Indian context, has highlighted the colonial creation of the category of the “other” during colonial times which justified colonial territorial acquisition and its power and sovereignty to maintain the colonies. This worldview saw natives/non-Europeans as primitive and backward, as the ‘other’ who were different from Europeans and in need of civilization. In the contemporary times, this civilizing mission has been replaced by the notions of good governance and development. Gender is a primary category used in the construction of the “other” by creating distinctions and assumptions about their femininity and masculinity (Kapur, 2013).

The gendered notions of sexuality, the gendered ‘other’ and the image of the third world woman as a victim in need of protection from men of their own country has sustained in postcolonial legal discourses, ideas of governance, and the ‘neoliberal political rationality’ of international laws. These laws filled with agendas of globalization and neoliberal market reforms, collapsed the various complex multi-layered histories of the world and different geographies into a single framework and demands surveillance, regulation, and normalization where the disciplining of people's lives is consonant with the demands of the market. This control mechanism is most stringent on those who are seen as threatening this neoliberal mechanism and creates an equal citizenship for them (Kapur, 2013). In India, such laws can be seen working in the frontier states

of Manipur and Jammu and Kashmir, where militarization, special provisions of the Armed Forces Special Powers Act (AFSPA), and structural violence negates the guarantee of fundamental rights given by the Indian Constitution to its citizens (Kikon, 2009).

The AFSPA gives extraordinary powers to the armed forces in order for them to maintain the territorial integrity of India in response to the calls for the Right to Self Determination from several communities in the Northeast (Kikon, 2009). A culture of terror and militarized societies exists, as suspicion by security personnel is cause enough for them to take action which has legal impunity against suspicious person/s even if it causes death. There are also provisions in the Act to ‘arrest, without warrant’ and to ‘enter and search without warrant’ resulting in repression, intimidation, illegal arrests, custodial deaths, ‘disappearances’, ‘extra-judicial executions’ and rapes (Bora, 2010). Sexual violence in Jammu and Kashmir, the states in north-eastern India, and across eastern and central India in states like Jharkhand and Chhattisgarh, breeds under extraordinary laws like the AFSPA, and other detention and anti-terrorism laws. One such incident of illegal arrest, custodial rape and death was that of Thangjam Manorama, a Meitei woman who was raped and killed by the soldiers of the Assam Rifles in 2004. Manorama was picked up by the troops of 17th Assam Rifles in July 2004 from her home in Imphal East District, and was later found dead with multiple gunshot injuries on her private parts and thighs (Rajagopal, 2016). To protest the extrajudicial killing and the Act that approved it, a group of women protested naked, holding banner of ‘Indian Army Rape Us, Too’ and “We are all Manorama's mothers”, in front the Assam Rifles Head Quarters in Imphal (Banerjee, 2018).

The problem with invoking a masculinist protectionist approach to sexual assault is that only specific women – those who are ‘good’, ‘respectable’, ‘chaste’ deserve protection as these women are symbolic of the honor of men, their community, and the nation. The rape thus becomes symbolic of losing the honor of men, community, and the nation. For this reason, rape is used as a weapon of terror and subjugation in conflicts of caste, class and communal disharmony, custodial and state-sponsored rape by the



army and police. Such rape maintains the social hierarchy, power relationships, and gendered divisions (Agnes, 2002).

Following the 2012 Delhi rape protests the Indian government appointed a judicial committee headed by retired Chief Justice Verma to review and recommend amendments to the criminal law on sexual violence and assault (Iyer, 2016). The Justice Verma Committee (2013) framed the discourse on a rights based framework, and called for the criminalization of marital rape, opposed the death penalty for rape, recognized the right to sexual orientation as a human right, and recognized and categorized various forms of sexual offences such as stalking, voyeurism, forced stripping, and acid attacks. It also called out the 'masculinist regime of impunity' of security regimes like the AFSPA and recommended a withdrawal of said impunity arguing that army officers guilty of crimes of sexual violence should be tried under ordinary criminal law (Justice Verma Committee on Amendments to Criminal Law, 2013). However, as in the previous case of the 1983 law amendments, the law that eventually came out included almost none of the Committee's key recommendations on gender equality. The Criminal Law (Amendment) Act, 2013 instead retained and maintained the dominant understanding of gender binary, did not recognize marital rape, included provisions for the death penalty in the 'rarest of rare case', and surveillance and regulation of sexuality by the masculinist state. (Kapur, 2013).

Prior to the Criminal Amendment of 2013, rape as an offense was governed by penis penetration. The concept of 'penis penetration' is based on the control of men over 'their' women and rape by other men. Agnes (1992; 2002) showed how this phallocentric norm dictated the judgments. As the injuries caused by the vaginal penetration of iron rods, bottles and sticks did not amount to rape (Agnes, 1992), such sexual violence which caused multiple injuries and risk to life, were swept away as 'violating modesty' which carried a maximum punishment of two years. The legal explanation given was as the male sex organ was absent, the offenses could not be rape, regardless of how gruesome the sexual assaults were (Agnes, 2002).

As the middle classes sympathized with the rape victim of Delhi, she was seen as a "worthy" "legitimate victim" whose rape deserved to be protested against. She was made out to be a fighter who was struggling for life in the hospital and was iconized by names like Damini (lightning), Nirbhaya (fearless) and Amanat (something precious). Since Indian laws disallow the rape victim's name from being made public, these names were used by the media and the protesters to address her in "a consciously devised ascription connoting a distinct positive attribute" (Roy, 2014). Numerous places in Delhi were made as altars dedicated to her, like—the Munirka bus stop where the woman and her friend boarded the bus, the hospital where she was treated, and Jantar Mantar, where candle lighting and vigils were held (Roy, 2014). The Indian media in particular erased the history of sexual violence across India and presented the Delhi rape as an exception. The migrant working class rapists were presented as the 'enemy other' of the middle classes and the rape victim was made into India's national property by naming her as 'India's daughter'.

It is necessary to be cautious of the amendments to the rape laws as the post-amendment phase in courtrooms shows the reality of the workings of the amended law. In the years following the amendments of 1983, the theory of punishment as a deterrent was proved to be a sham and the rate of convictions fell (Agnes, 2002). Agnes (1992) has shown how in the decade after the 1983 rape law amendment, the courts were being more concerned and sympathetic to young offenders and first time offenders and awarded them less than the minimum prescribed punishment. The only positive judgments were reported in rapes of minor girls with multiple injuries where the question of consent is not a factor. But even those judgments had a conservative reasoning for the convictions in the notions of virginity and chastity (Agnes, 1992). In reality, though, the hastily done legal reforms may be actually be harmful to women and other marginalized sections as they primarily just hide or rearrange the fundamental problems (Agnes, 2002).

Yet the Criminal Law (Amendment) Act, 2013 were imagined as the main solution to reduce the number of instances



of sexual violence. It works on the assumption that just enacting laws intending to protect women will actually work as expected. It doesn't consider how these laws operate in day-to-day operations or their unintended consequences (Kotiswaran, 2013). Further, this insistence to punish perpetrators of violence by incarcerating them disproportionately lands the marginalized and minorities behind bars and undercuts their rights. For instance, in the case of the 2019 Hyderabad gang rape case, the four accused were gunned down by the police in an encounter. The victim, a 25 year old veterinarian doctor in a government hospital, was an upper-caste middle class woman who lived in a gated community in Hyderabad while the accused were lorry workers aged between 20 and 24 (Economic Times, 2019). This was celebrated by politicians and citizens alike, who hailed the extra-judicial killings as an act of justice. These calls for justice border on getting revenge for the victims. It becomes blind to other interests and forms of power relations. As in the Hyderabad case of 2019, it unfairly undercuts the rights of defendants to fair trial and exposes them to brutal punishments by the state.

Part 4 – The Aftermath of the Burning of the Body

Often victims and survivors of rape do not meet the identity criteria of the middle classes sufficiently to prompt collective outrage due to differences in caste, class, religion, ethnicity, language, race, and sexuality. State sanctioned rapes, sexual assaults, and killings against marginalized women also seldom generate any mass public outrage. The importance of an imagined community and the market in creating rape victims worthy of middle class and media outrage can be deduced from the lack of national outrage for the gang-rape of Bilkis Bano in 2002 in Gujarat by the Hindutva groups, of Bhanwari Devi a Dalit woman by upper caste (Gujjar) men in Gujarat in 1992 and numerous other violent rape and rape/murder cases that occur daily.

The rape victim's socio-economic profile often dictates her treatment and the outcome of the case. The members of the survivor support programme who assisted both the survivors of the Shakti Mills gang rape case in August 2013 have described the difference in the treatment of the two women by the state, the judiciary and the media (Ag-

nes, D'Mello, & Sidhva, 2014). Two different women were raped at the same place and three of the rapists were also the same. The case of the 22 year old photojournalist who was an intern at a prestigious magazine was the first high profile gang rape case after the 2013 amendments. She was seen as "an ideal survivor" as she was educated and her interests and lifestyle resembled that of an urban middle class young woman (Agnes, D'Mello, & Sidhva, 2014). The second victim was a 19 year old school dropout who worked as a telephone operator and her trial was not high profile as compared to the photojournalist.

The first case received much media recognition with the journalists hounding the victim's family and the poor families of the accused who lived in the Mumbai slums. The second case, however, lacked the same response, both in terms of the state support and media coverage. The photojournalist's medical bills at an expensive private hospital were paid by the state of Maharashtra while the telephone operator was examined at the government hospital and her treatment was not provided or paid for her. Even after a month had passed since the rape, she was made to go through vaginal tests, including the banned two finger test. The support group noted that the same public prosecutor who served both the women treated them differently. He was less patient, irritated and disrespectful to the telephone operator and also asked her to beat the accused in the court with her footwear (Agnes, D'Mello, & Sidhva, 2014). The balance between the rapists and the photojournalist were also misbalanced as the accused belonged to impoverished slum-dwelling families and could only afford inexperienced defense lawyers whose main arguments centered on conventional clichés, like the girls covering up about having sex with their male friends by putting the blame on the accused, while being pitted against a high profile public prosecutor. Even the poor illiterate mothers of the accused were made to plead with the court about "mitigating circumstances" to avoid the death penalty for their sons (Agnes, D'Mello, & Sidhva, 2014). The difference between the two victims can be further deducted from the judgments. While for the telephone operator's case, the sentencing was life imprisonment (which is the maximum punishment awarded for gang



rape under the 2013 amendment), an additional charge of declaring the accused as “repeat offenders” warranting the death penalty under Section 376E of the Indian Penal Code (IPC), was added in the photojournalist’s case. To plead his cause for death penalty, the public prosecutor fell back on arguments of rape being a state worse than death, and the victims being scarred for life and never recovering from the “vegetative state” (Agnes, D’Mello, & Sidhva, 2014). Finally, the support group remarks that the survivors were relegated to the background as the state’s concern for retributive justice became the prime concern.

Consequently, the violent practices faced by women depend on their socio-economic status. Even though upper caste women face stringent control over their sexuality and mobility, the comparative lack of these controls in the case of lower caste women makes them vulnerable to rape, sexual harassment and public violence. The instances of rape of Dalit women are not considered rape because upper caste men have had continued sexual access to Dalit women’s sexuality. Additionally rape popularly translates to *issat lootna* (stealing honor) and since lower caste women have no honor to speak of, the punishment or redressal of the rape is denied. (Rege, 1995). Moreover, the Indian judicial system maintains caste and gender as two separate issues, which renders invisible the interconnectedness between violence against women and lower caste standing.

For instance, in 2006 in the village of Khairlanji in Maharashtra, four members of the Bhotmange family— a mother, her daughter and two sons—were massacred by people from the Other Backward Classes. They were stripped, beaten to death, their genitals mutilated and their bodies dumped in a canal. The police, which was not initially willing to start an investigation, fudged the evidence. The character of the mother was maligned in order to justify the murders. The Bombay High Court in 2010 commuted the death penalty awarded to the convicts to a 25-year imprisonment jail sentence. The court refused to acknowledge rape and to recognize the case as a caste-based atrocity under the SC/ST Act and held that the murder was based on revenge and the caste was not at work here (The Hindu, 2010).

Coming back to the Hathras case as protestors flooded the streets, the police cracked down on them at various sites. Protestors were beaten up in an attempt to stop them from marching to Hathras and visiting the victim’s family. Even the opposition leaders were not spared. The accusations of rape were constantly denied by the state machinery. The right-wing, upper caste Chief Minister of Uttar Pradesh from BJP declared the outrage against the gang rape and burning of the body as a conspiracy to organize a communal riot (Pandey, 2020). The state police further doubled down on the protestors by making several arrests and filing FIRs across the state on charges of sedition, criminal conspiracy, promoting enmity, and creating caste/communal conflict (Mishra, 2020). The state even hired a PR firm to claim that the forensic investigation, preliminary medical and post-mortem has revealed that the girl was not raped, and that there was a ‘conspiracy to push the state into caste turmoil’ (The Wire, 2020).

Many BJP leaders who control both the state and the central government held large rallies in support of the accused men with the relatives of the accused in attendance. The rapists also received support from upper caste groups who demanded an “unbiased” investigation of the Central Bureau of Investigation (CBI) which falls under the purview of the central government (Ara, 2020c). The Akhil Bharatiya Kshatriya Mahasabha, an upper-caste body, did a crowd funding to hire the defense lawyer for the rapists as they felt that the caste angle was being misused to slander the upper castes (India Today, 2020). As the Print (Taskin & Mondal, 2020) reported, the upper castes in the village claimed that they are paying the price for being upper castes and that in reality the Dalit woman was killed by her own family, and the Thakur men are being framed under SC/ST Act for money. A cousin of one of the accused claimed, “Everyone knows how Dalits have always targeted upper castes using the ‘Harijan Act’ (SC/ST Atrocities Prevention Act). Thakurs are scared of these Valmikis. They use the Act as they like – to earn money and put us in trouble. *Upper caste hona paap ho gaya hai aaj kal ki duniya mein* (it’s a sin to be an upper caste in today’s world)” (Taskin & Mondal, 2020). All the upper castes had “heard” that the accused men were at different places at the time of the crime; some alleged an affair between the victim and one of the accused.



The upper caste men defending the accused were caught on camera shouting threats in the presence of policemen to Bhim Army (a pro-Dalit group) chief Chandrashekhar Azad who visited the victim's family. The Uttar Pradesh police filed a case against Azad and others, for violating a ban on large gatherings in the area (Sengar & Shukla, 2020). No action, however, was taken against the hundreds of upper caste men who had gathered in support of the accused. The central government followed a similar route to the state government in dismissing the severity of the case with the Ministry of External Affairs dismissing the United Nations comment on the case as "unwarranted" and "unnecessary". A representation of the UN has referred to the rape and murder in Hathras as a reminder of the vulnerabilities and risk of gender based violence that women from disadvantaged social groups face (The Hindu, 2020). After much protest, the state government formed a three-member SIT to probe the case and later recommended a CBI investigation. The rape was continued to be denied by the state machinery and attempts were made to dissuade the charges.

The Additional Director General of Police claimed that the victim's family did not mention rape in the initial complaint, and cited a forensic report that found no semen in her viscera sample (Chaturvedi, Hathras case: Cops contradict victim's statement, 2020). However, the said sample was taken eleven days after the attack while protocols say that any evidence gathered after four days after a rape is useless. The police also claimed that the victim did not mention rape until nine days after assault, despite the existence of video footage of the victim taken within hour of the attack in which she alleges rape. The victim also made a dying declaration in which she admitted to being gang raped and strangled and named the perpetrators (BBC, 2020). It should be noted that the logic of masculinist protection of the family and the state was consistently absent from the narrative.

The pro-government right wing upper-caste Indian media was quick to dismiss the rape allegations, including the victim's statements and frame it as a conspiracy. Many programs across the news channels maligned the family and cited multiple conspiracy theories, suggesting that

the family took money and directly or indirectly raising doubts on the Dalit family and reflecting the government's stance on "caste riot conspiracy" theory. *Times Now*, for instance, claimed that as per phone the caste angle was "severely dented" because the victim knew the culprits, as if acquaintance of the rapists precludes a rape. Another news channel *News18 India* aired a show on the supposed "Hathras Naxali connection", which insinuated that a woman helping the victim's family was connected to the Naxalites. *Zee News* questioned the victim's character based on the opinions of the upper caste villagers and her affair with one of the accused. Another news channel *Republic Bharat* alleged that the Congress party (the main opposition party at the center level) had taught the victim's family and offered them Rs 50 lakh (Shinde, 2020). Republic Bharat channel, in a show titled "*Hathras mein Shaheen Bagh wali saazish*" (the Shaheen Bagh conspiracy of Hathras), tried to prove that the victim was a liar by pronouncing the assault as "*manohar kahaniyan*" (a popular fiction series). They spread unsubstantiated theories that the rape allegations were a clear attempt to spread terror in Uttar Pradesh and Hathras as part of a larger conspiracy that involved the Congress Party, and the Shaheen Bagh protests against the Citizenship Amendment Act (2019) in Delhi (Vaishnav, 2020).

The chargesheet filed by the CBI faulted the police for ignoring the victim's statement in which she named her rapists and for not conducting an immediate medical examination after she alleged sexual assault. The chargesheet has been filed under IPC Sections 376 (rape), 376 (D) (gangrape), 302 (murder) and relevant Sections of the SC/ST Act, against the four accused (Bhatnagar, 2020). On 5th March 2021, while court proceedings were in progress, an advocate stormed into the courtroom and charged towards the applicant and the complainant's counsel, shouting and threatening them. Simultaneously, a large mob, including lawyers, also entered the courtroom and surrounded them and threatened them. The disturbance was so that the Presiding Officer had to stop the proceedings (Upadhyay, 2021).

In conclusion, I would like to pose a set of unanswered questions about the contrasting treatment of the 2012



Delhi rape and cases involving the rapes of Dalit women like in Khairlanji and Hathras. Did the so-called justice in the form of capital punishment in the case of Nirbhaya spring from some hidden agenda of controlling the unrest in the state, or because the protest was of a different caste? Why is the treatment of reporting and handling of the cases not the same for the mother-daughter of Khairlanji, the Young woman of Hathras, or the thousands of

Dalit women who are regularly subjected to rape and torture by upper-caste rapists? Is it sufficient to punish defendants in a few high profile cases to quell protests while, at the same time, preserving the powerful hold of caste in society by allowing Dalit women to suffer? Is there some kind of balance and status quo that the state is indirectly or directly favoring so as to keep everything the way it was?

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