References


FOUR

Challenging the Collusion of Caste, Class and Patriarchy Embodied in the State

Kanchan Mathur

No justice system in the world can match our strength. Our power is immense. If we unite who can put us down? Our struggle to stop violence against women must continue and I am committed to fighting for this cause no matter what.

Bhanwari Devi
December 10, 2012, Jaipur
(Human Rights Day and launch of One Billion Rising)

Introduction

The Bhanwari case in September 1992 became a rallying point for the women's movement in the state of Rajasthan and in India. The name of Bhanwari Devi, a sati of the Women's Development Programme of the Government of Rajasthan, has since become synonymous with the arduous legal battles faced by women fighting against violence. Bhanwari's struggle is a milestone for the Indian women's movement. The protracted struggle, the countrywide campaign led by feminist activists, attracted national and international attention, and resulted in the historic Vishakha judgment — wherein the Supreme Court
used international framework/principles of CEDAW to formulate guidelines for the redressal of sexual harassment at the workplace.  

For the women’s movement, it was important not only to provide support to Bhanwari but to maintain its united voice and to challenge the caste/class politics of those in power, especially when this power is used against a poor woman from a marginalized community in order to deny entitlements and rights. The state not only reneged on its responsibility towards a state employee who was entitled to state protection but also failed to understand the strength of character of the woman it was dealing with. Bhanwari refused to give up her struggle for justice for all women despite the fact that she lost her own legal battle. Support for her came from all over the country in the form of agitations/protests, dharnas and mass mobilizations. What happened to Bhanwari resonated with previous histories of rape around which there had been major struggles, such as that of Mathura and Rameez Bee, which had created an alliance of women’s movements across the country and which had also drawn in other progressive forces, primarily from the academic corridors of the law faculty in Delhi.  

This essay explores the intersectionalities of caste, class, gender and patriarchy, in an effort to highlight the factors that have enabled Bhanwari and subsequently many women like her to assert their right to live with dignity in the face of an indifferent and non-responsive state machinery. At another level it attempts to capture the series of events that shaped the struggle of the women’s movement and the ensuing support which, in turn, helped redefine the understanding of rape, justice and injustice, and the success and failures thereof.  

The Delhi rape case of 16 December 2012 and the subsequent death of the young victim gave rise to unprecedented outrage. There was also extensive coverage by the media, both local and global. The Bhanwari rape case provides many parallels as it inspired both urban and rural women to come out in large numbers and stage protests across the country. The lessons learnt during the campaign for justice for Bhanwari helped initiate a process to put in place many of the extra-legal strategies to fight violence against women that exist in the country today.  

I have been witness to the public and private protests following Bhanwari Devi’s rape case. In this essay I provide a brief backdrop to the Women’s Development project of the Government of Rajasthan launched in 1984. Following this I attempt an analysis of the role of the patriarchal state and its collusion with caste and class and the campaigns initiated by the women’s movement to attain justice for Bhanwari. The concluding section of the essay underscores both the gains garnered by the women’s movement and the challenges confronting it.  

The Women’s Development Project  

Bhanwari, an oppressed caste Kumhar (potter) woman from Bhateri village in Bassi tehsil, 45 kilometres from Jaipur, was around 40 years old when she was selected and trained as a sathin in the Women’s Development Project (WDP) of the Government of Rajasthan in 1985. The WDP was initiated in 1984 with financial support from United Nations fund for Children (UNICEF) in six districts of Rajasthan viz. Jaipur, Ajmer, Bhiwara, Banswara, Udaipur and Jodhpur.  

The trainings in WDP, primarily conducted by feminist trainers, sought to demystify the process of women’s subjugation by unpacking the multiple power relations that have a bearing on women’s lives. They also aimed at strengthening the self-confidence of women and enhancing their collective capacities for the transformation of their own lives. WDP enabled rural women to translate and link their personal experiences of gender subordination to the larger systemic forces of gender inequality in society.  

With the programme still awaiting a full-fledged take-off, a beginning was made with the first sathin training in August 1984 at Bada Padampura (Jaipur district). It gave centrality to the issue of violence. This was the first time that women who participated in the training recognized domestic violence as an act of violence per se, for they discovered that 20 out of the 22 sathins were victims of domestic violence (Banerji 1984). Such discussions helped to
arrive at a clearer understanding on why violence against women is endemic in society and how it is sustained by patriarchal forces that subordinate women.

The programme functionaries subsequently took up several cases of extreme violence - rapes, domestic violence, dowry murders, incest, labelling of women as witches, compulsion to wear a chastity belt and forced incarceration - apart from the denial of rights to food, education, economic resources and healthcare. The forms of violence meted out to women in each of the cases discussed might have been different; however, the strongly embedded notions of 'honour' and 'shame' were central to them. In the context of the state, honour and shame have been highly effective tools for perpetuating the conspiracy of keeping women from speaking against different patriarchal forces and acts of outrage meted out to them (Mathur 2004). WDP used innovative strategies to reach out to women sufferers of violence by drawing on the strength of the collective.

Bhanwari’s Story

Sathin Bhanwari’s sensitivity to women’s issues and her overall commitment to ensuring justice, made her especially respected in the WDP group. In May 1986, as part of project activities, the issue of child marriage and its implications were discussed in Bhateri village. Bhanwari and other sathins who had got their children married before they joined the programme agreed to postpone the gauna. In 1987, Bhanwari took up a major issue of attempted rape of a woman from a neighbouring village and elicited substantial support.

Bhanwari’s alienation in Bhateri began specifically with the issue of child marriage just before Akha Tej in 1992. That year the state government had decided to observe the fortnight preceding Akha Tej as an anti-child marriage fortnight. The Chief Minister issued a public appeal, and the Chief Secretary wrote to all district collectors to conduct a campaign in this regard (Mathur 1992). The stopping of child marriage became a challenge for the programme. Bhanwari, along with the pracheta (block level worker) and Project Director of the District Women’s Development Agency (DWDA), tried to persuade people in the area against child marriages. It was clear that, along with some of the families belonging to different castes in the village, some influential Gurjar families were also planning child marriages and were determined to perform them. Bhanwari visited Ram Karan Gurjar of Bhateri and tried to convince him not to get his one-year-old daughter married; she met with a hostile and aggressive response. The vidhnyak (Member of Legislative Assembly – MLA) of the area also strongly opposed Bhanwari. Perhaps he felt that since 40 of the 100 households in the village belonged to Gurjars, his support to the issue would have serious implications for him politically. Some of these families were financially well-off and had political connections.

In response to an appeal by the district collector, the sathins prepared a list of villages where child marriages were rampant in the district. The Sub-Divisional Officer (SDO), and the Deputy Superintendent of Police (DySP) started making rounds of the villages to prevent child marriages. This added to the tension. On May 5, 1992, the SDO and the DySP visited Bhateri to stop the marriage of the one-year-old girl in Ram Karan Gurjar’s family. The latter was also a ward panch. As was the case with all the other marriages in the area, the state machinery only succeeded in preventing the marriage from taking place on the day of Akha Tej itself. The marriage, however, did take place at 2 am the next morning and no police action was taken against the family. People in the village, however, connected Bhanwari’s efforts to convince them against child marriage with police intervention.

According to Bhanwari, around 6 pm on September 22, she and her husband, Mohan, were working in the fields. While Mohan had gone to relieve himself in the neighbouring field, five men – Ram Sukh Gurjar, Ram Karan Gurjar, Badri Gurjar (Ram Karan’s uncle), Gyasar Gurjar and Shrawan Sharma – attacked him with lathis and beat him up. On hearing his screams, she rushed to the spot. Taking advantage of Mohan’s temporary unconscious state, two men – Shrawan and Ram Karan Gurjar – bodily held Mohan down. While Ram Sukh Gurjar caught hold of Bhanwari, Badri and
Gyarsa took turns to rape her. To prevent her from screaming her odhni\textsuperscript{10} was stuffed into her mouth. Bhanwari was threatened with dire consequences were she to speak about the incident.

Despite being in a state of shock, Bhanwari drew on what she had learned in the WDP trainings she had attended and refrained from bathing, washing or changing her clothes. The next morning she and Mohan reached Patan, Krishna sathin's village, still in a somewhat dazed state. With her help they reached Bassi and contacted pracheta Rasila, a senior colleague. While Bhanwari and Mohan waited at Bassi, Krishna went on to Jaipur DWDA to mobilize support. On her return they all went to the Bassi police station to lodge a First Information Report (FIR). For the next hour, they had to argue with the DySP and thanedar (police officials) who were sceptical about the incident.

\section*{Caste, Gender and Patriarchy}

When it came to the medical examination, the male doctor present at the Primary Health Centre (PHC) refused to conduct the examination and neither of the two woman doctors posted at the PHC was available. Bhanwari was referred to the Sawai Man Singh (SMS) hospital at Jaipur. Interestingly, it was later revealed that the doctor at the PHC had requested the doctors at SMS through his prescription to conduct a medical examination for confirming the age of the 'victim' rather than rape.

The medical jurist at the SMS Medical Hospital, Jaipur refused to conduct a medical examination without orders from the magistrate. By the time the magistrate was contacted it was past five in the evening. The magistrate refused to give them any orders, saying that they should return the following morning and meet him in court. The police then left Bhanwari and Mohan at the women's police station (mahila bhana) for the night. Finally, although the Indian law requires a medical examination to be conducted within 24 hours the vaginal swab was taken 52 hours after the incident. The trial in a lower court began only two years later.

From the moment Bhanwari went to lodge the FIR to the time the medical examination was conducted, the police subjected her to inhuman treatment. Even the MLA (Member of the Legislative Assembly) of that area made a statement in the state legislative assembly that Bhanwari was lying. It was very clear that the Gurjars had both political and financial backing. Bhatari had only three families who were Kumhar (potters) and hers was one of them. They were poor, dependent on others and could not be confident of receiving any support from the village community. Hence, poverty intersected with caste to render Bhanwari helpless at the hands of the legal and police system.

Both Bhanwari and the rapists belonged to a larger group defined as 'Other Backward Castes' (OBC). However, within this group too there are hierarchies and Bhanwari, as part of the minority potter caste, was at the bottom of this group. Thus, stringent intra-caste hierarchy colluded with patriarchy to become the single most important factor in denying justice to Bhanwari — something that is not uncommon where women belonging to lower castes are concerned. Within the OBCs, the rapists belonged to the majority dominant caste which was economically and politically sound. The village community who had decided to support the Gurjars because of their position felt angered that 'Bhanwari ne gaur ki issat ko bharar uchchal diya' (Bhanwari has shamed the village by making public a private matter of the village). This was the irony of caste hierarchies: the dominant Gurjars could rape a lower caste woman and get away scot free, but if the woman, in this case Bhanwari, made public her rape, she was seen as having betrayed the honour of the village community. The fact that Badri — one of the perpetrators — was a prominent local politician, and in Bassi block the Gurjars were extremely powerful, and the local MP, Rajesh Pilot, was not only a Gurjar but a cabinet minister in the central government, combined to work powerfully against Bhanwari. In 1993 a state election was due, and no party could win seats in the area if they alienated the Gurjar vote. It was evident that political pressure had been exerted on the police to delay Bhanwari's medical examination as well as to clear Badri.
The interplay of caste politics and patriarchy also became apparent when the then Chief Minister of Rajasthan not only failed to acknowledge state responsibility in the case but also refused to accept that Bhanwari had been gang raped. He made a public statement against Bhanwari: ‘Dhulu baal nahi mahila se khun balakthar karega’ (Who will rape a grey-haired woman?). He and other members of his cabinet—primarily upper caste and class males—tried their best to suppress the case.

It became apparent to the WDP functionaries and to all those associated with the case that there was a need to expose the nexus of intra-caste hierarchy and patriarchy. This was essential to gain a better understanding about the forces that were constantly confronting them, and if they were to counter the already fraught relationship with the state and its anti-women and casteist system that it implemented with its many institutional arms—the judiciary, the police, the executive, the medical and political systems.

The Quest for Justice

What followed was Bhanwari’s long quest for justice, in which she was fully supported by the entire WDP machinery in various ways, as well as by local and national level women’s groups. For them, it was no longer just a matter of removing the stigma from one woman’s name; the stakes were much higher as the incident would deter all women workers from working in the state and no rape victim/survivor in Rajasthan or anywhere in the country would ever dare to come out in the open and seek justice. They decided to create a political lobby to rival the influence of the Gujars by organizing a new wave of marches and petitions and to gain wide public attention on the issue by sending a series of articles in the press.

As a first step, the newly set-up National Commission for Women (NCW) was requested to intervene. The Commission conducted an independent enquiry and reached the conclusion that Bhanwari had indeed been raped. It recommended an immediate inquiry by the Central Bureau of Investigation (CBI), an interim relief payment of Rs. 50,000 to be sanctioned to her by the state government, immediate arrest of the accused and conferring on sathins the status of Special Police Officers (SPOs). The NCW also published its report and circulated it widely through the media. Medical experts in Delhi were highly critical of the 52 hour delay in getting Bhanwari medically examined and questioned the value of the evidence. All through this, the local police and state authorities remained unmoved.

A massive rally was organized in Jaipur on October 22, 1992. The sathins were joined by social action/feminist groups from within Rajasthan, Delhi, Gujarat, Himachal Pradesh, Uttar Pradesh, Maharashtra and several other parts of the country. Many sabhais and sabhyoginis (women workers) of the Mahila Samakhya (MS) programme from UP and Karnataka also participated in the rally. Over 1500 women marched through the streets of Jaipur to express solidarity with Bhanwari and against the issue of rape, demanding the arrest of the rapists. Numerous telegrams and letters of support were received by the organizers and there were a number of petitions and resolutions that were sent to the state government to build up pressure.

The Gujars retaliated by alleging even more vociferously that Bhanwari had fabricated the story and shamed the entire village community of Bhateri by speaking about her rape at public forums, and therefore she should be condemned. In complete contrast, WDP functionaries and the women’s groups who joined them felt that Bhanwari had shown tremendous courage by not remaining silent and speaking about the gruesome act. The larger issue for the women’s groups linked with Bhanwari’s case remained much the same as during Roop Kanwar’s inculmation, also in Rajasthan, some years earlier: ‘Sawad hai naari ki peehchan, sawad hai naari ke samman ka!’ (The issue is one of a woman’s identity, of her self-respect).  

Some of the political statements and slogans used at the time were:

- Jab tak sunaj chand rehega
- Bhanwari tera naam rehega
- (Till the sun and moon light up the sky
Bhanwari you shall be remembered.

Naak kati kiski, kiski?
Bhateri ki, Bhateri ki
(Who's the one who has lost face? Bhateri not Bhanwari)

Naak kati kiski, kiski?
Police aur kacheri ki
(Who's the one who has lost face? The police and the courts, not Bhanwari)

Izzat bari kiski, kiski?
Bhanwari ki, Bhanwari ki
Izzat ghari kiski kiski Badri aur Gyarsa ki
(Bhanwari has gained respect while Badri and Gyarsa have lost all dignity and respect)

These statements captured the essence of the struggle and succeeded, to some extent, in subverting the prevalent thinking in Rajasthan and all over the country that a woman can be battered, raped, molested but should not break the culture of silence – for that brings shame and dishonour to her family and community. The campaign strongly underscored the fact that the responsibility of rape and the izzat (respect) of Bhateri lay, not with Bhanwari but with the accused and all men who were party to such heinous crimes. Ideologically, the women's movement reiterated its demand that it was the rapist who was at fault, not the victim/survivor. Above all, the campaign asserted that the responsibility for the violence perpetrated on women lay with the state level bodies who needed to act to protect their citizens and guarantee them a secure environment within which to live.

The CBI harried Bhanwari into making her statements nine times. It was due to the continuous pressure of women's groups in Jaipur and Delhi that the top officials of CBI intervened. Bhanwari and her husband's statements were finally recorded by a magistrate under Section 164 and that ultimately became the basis for the CBI to charge sheet the accused after a full year.

The repercussions of the agitations impacted other mainstream programmes at the national level as well. In November 1992, a discussion note was prepared by the then National Project Director of Mahila Samakhya12 (MS) on the Bhanwari incident and its subsequent developments for the consideration of the District Implementation Units (DIU), State Office, Executive Committees and the National Resource Group of MS. It was subsequently widely circulated and discussed in all MS forums i.e. village, cluster and district level meetings in three different states of the country. The note highlighted the expectations from social change agents (particularly women) who are involved in community-based action and how this can often lead them to experience immense hostility from the powers that be. The note underpinned the difficulties faced by many of the grass root workers in remote areas i.e. women teachers, Adult Education supervisors, ICDS (Integrated Child Development Support) workers, especially the Auxiliary Nurse Midwives (ANMs) in travelling alone – especially at night – when they are expected to attend to women during childbirth. It stated that what happened to Bhanwari could happen to any of the workers in any of the states where Mahila Samakhya programmes were being run, or to any of the development workers. Debates and discussions within MS were thus initiated, reiterating the importance of building a support group in each district.13

In January 1993, the National Resource Group (NRG),14 discussed Bhanwari's case in a meeting. They passed the following resolution:

It is resolved that in the event of any worker – Sahyogini, Sahhi, Sahayki or Sangha member of MS programme – in any state being abused, threatened, molested, physically attacked or intimidated in any manner in the course of carrying out her responsibilities, the MS programme at the state and national levels will extend full assistance to them – be it physical, legal, emotional or financial – in their quest for justice and redressal.15

None of this, however – the massive protests, the condemnation of the police by the NCW, the various resolutions and considerable media attention – resulted in the arrest of the accused. Nevertheless, the campaign did ensure that the state was unable to remove Bhanwari from her post as sathini. Despite its considerable strength, pressure by feminist activists rendered the state helpless. A symbiotic
relationship thus developed between WDP — a mainstream development programme — and the women's movement in India. Until then, feminist activists had tended to keep a distance from such programmes. Subsequently, the Mahila Samakhya programme was architected by feminists and the training and hand-holding of its workers was done by women’s groups in many states. Mobilizing women on such a large scale for this programme was a heady and exciting experience and the synergy developed through this impacted programme functionaries as well as the large number of rural women’s groups, activists and urban women, who came together for the first time to lend strength to the campaign.

It was at this moment, as part of the larger challenge to give visibility to sexual violence against women, that women’s groups all over the country decided to conduct workshops on the crime of rape and all other forms of sexual violence faced by women in their daily life. It was as though a campaign had been launched, where feminist legal activists and others joined hands to conduct sessions with rural and urban poor women on the issue of rape and the inadequacy of rape law to ensure justice. It provided an opportunity for women to analyse the patriarchal bias within the law and to fully confront the complete apathy of the patriarchal state machinery in addressing the issue of violation, ensuring justice and yet using every opportunity to use the law to one’s advantage. Through this process, many women learnt about the need to take precautions to save evidence, file an FIR as well as to gather courage to face and challenge the propaganda spread by the patriarchal family and society.

The First Legal Victory

On 27 September 1993 — a year and five months after Bhanwari’s rape, the women’s movement achieved its first victory when the CBI was finally forced to issue arrest warrants for the five accused. When Badri, Gyara and the others disappeared from the village, the CBI threatened to confiscate their property, and on 24 January 1994, all five men surrendered to the police. A fortnight later, a second and even more important victory was won when the bail application of the accused was rejected by Justice NM Tibrewal, the High Court judge who was hearing the case. His concluding statement made it apparent that he believed what had happened:

From the above details it is quite clear to me that Bhanwari Devi was gang raped, and that despite her appeals for help the local villagers did not come to her aid for fear of the accused. Prima facie it is case of gang rape which was done to take revenge against Bhanwari for her success in preventing the child marriage.16

Justice Tibrewal was also highly critical of the police response to the case which he described as ‘highly dubious’.

In April 1994, however, the Rajasthan High Court divided the accused as co-accused and main accused and granted bail to the three co-accused who had assisted the two main accused to perform the act of rape. Women’s groups, mostly based in Jaipur and in other districts of Rajasthan, closely followed the court proceedings in all three courts. It is recorded that they attended more than 180 hearings in the sessions court.

Bhanwari was continuously under pressure to withdraw the court case. When a special leave application was filed in the Supreme Court for cancellation of the bail, the Gurijars were taken by surprise. Between the months of August to October 1994 the Gurijars, with other prominent people of Bharatpur, made several efforts to convince Bhanwari to settle the case out of court. Some of the Gurjar men also approached her supporters and met representatives of women’s groups who were active in the case, as well as the Project Director of WDP in Jaipur district. They invited Bhanwari to a meeting in the village in which the three accused (Ram Karan Gurjar, Ram Suhk Gurjar and Shavan Panda) laid their turbans at Bhanwari’s feet begging her to ‘compromise’ on the case and declare in court that she had not been raped. Bhanwari maintained that she would do so provided they accepted their crime openly in a larger public meeting in the village. However, the accused refused this demand and became even more hostile towards her. Bhanwari’s subsequent statement in the court that she was raped increased their rage and
created tension in the village. At this point, the women’s group
decided to centrally send a regular bulletin from Delhi to all other
NGOs and women’s groups on the progress of the case and expose
anti-Bhanwari arguments to keep up the momentum of the protest.

The Trial and its Aftermath

The trial in the lower courts commenced in the month of October
1994, and five judges were changed during the course of trial, the
judgment being finally delivered by the sixth. Thus, each got only a
partial picture of the case. The judge who had heard Bhanwari and
her husband Mohan’s case was not the one who finally delivered
the judgment. Bhanwari’s statements in court were recorded in-
camera. However, ‘in-camera’ was a bit of a misnomer. Bhanwari
had to narrate her story in the presence of 17 men. In an attempt to
intimidate and humiliate her, she was continuously cross-examined
about the position of her body during her alleged rape and who held
her arms and legs during the act etc. Since Bhanwari described the
act of rape explicitly in the presence of the accused, the matter was
reported in the village and she had to suffer the abusive taunts of the
villagers even for this.

On 21 February 1995, the newly elected panchayat met for the
first time in Bhateri. On this day the panchayat meeting was open to
all villagers and the group secretary was to hand over charge of the
panchayat to the sarpanch and welcome all the members. Though
no formal invitation was extended to the villagers, there was general
enthusiasm about interacting with the newly elected members.
Bhanwari, along with twelve women from Prempura, a neighbouring
village, and Bhateri, also participated in the meeting to welcome the
newly elected representatives, especially the women. She was taken
by surprise when the sarpanch, after garlanding the elected members,
garlanded her saying that she was a mukhiya sadasya (respected
member) of the village.

In retaliation for the above, on 23 February 1995 the then
Development Officer of Bassi Panchayat Samiti (PS), called a
meeting of all 39 newly elected sarpanches at the PS headquarters.
The meeting was also attended by the pradhan (local head), the
Member of the Legislative Assembly (MLA), the Block Development
Officer (BDO), the tehsildar (revenue administrative officer) and
the Child Development Project Officer (CDPO). The MLA was an
uninvited guest and came with several villagers who were not
supposed to be there. Ram Sukh Gurjar, one of the accused in the
case, hung around outside the meeting premises throughout. Since
the main agenda of the meeting was ways of stopping child marriages,
the concerned pracheta, Bhanwari and other sarthins of the area
were also invited. The sitting MLA of Bassi, Kanhaiya Lal Meena,
chaired the meeting. He appealed to the sarpanches to involve WDP
functionaries in their drive to stop child/early marriages. However,
the sarpanches refused to do so, asserting that by lying about her
rape, Bhanwari had shamed Bassi in the country as well as the world
over. Despite loud protests from Bhanwari as well as from the samiti
pradhan and BDO, a resolution was passed boycotting the sarthins.

Following this event, an urgent meeting of the civil society
organizations and concerned citizens of Jaipur and Rajasthan was
held in Jaipur on 28 February 1995. The group discussed the
humiliation and boycott suffered by Bhanwari and other sarthins
in detail. It concluded that the move was not only symbolic of
an entrenched, stringent patriarchal and feudal mindset but also
an aggressive step by the elected political representatives to usurp
political power in their favour. This decision also reflected how the
latter, rather than strengthening women and other marginalized
sections of society, were using their power against them. The group
said that the move to boycott and alienate the sarthins was an attempt
to pressureize and intimidate Bhanwari to withdraw the rape case
and demoralize all the sarthins of that area. A press note stating this
was released in the local press and two prominent newspapers the
Rajasthan Patrika and the Navbharat Times carried it in their edition
of 2 March 1995.
The Judgment of the Session’s Court

On 15 November 1995, the sessions and district court (rural) acquitted all the five accused, Gyarsa Gurjar, Badri Gurjar, Ram Sukh Gurjar, Ram Karan Gurjar and Shrawan Panda against the charge of gang rape, although they were sentenced to six months in prison on other minor charges such as conspiring and beating up Mohan and manhandling Bhanwari. Since Badri and Gyarsa had already spent about two years in jail, they were exempted from imprisonment.

The judgment, delivered by the sessions court judge Jagpal Singh on November 15 1995, ignored the testimony of Bhanwari and her husband, the prime witness. It revealed a patriarchal and prejudiced mindset that unquestioningly accepted the defence counsel’s fanciful arguments that ‘the case itself is against Indian culture and human psychology’. It observed that the alleged rapists were middle-aged and as such were ‘respected persons’. The 26-page judgment further stated, ‘It isn’t possible in Indian culture that a man who has taken a vow to protect his wife, in front of the holy fire, just stands and watches his wife being raped, when only two men almost twice his age are holding him,’ and that rape is ‘usually committed by teenagers’. It was argued that, ‘Since the offenders were upper caste men and included a brahmin, rape could not have taken place because Bhanwari belonged to a lower caste’. The judgment was countered by prosecution lawyer Virender Godika and his assistant R.S. Chauhan.

The court, in its anxiety to acquit the alleged rapists, also cast aspersions on Bhanwari’s husband Mohan by raising the question, ‘In our society how can an Indian husband whose role is to protect his wife stand by and watch his wife being raped?’ Nowhere in the judgement does it explain why Bhanwari should have fabricated this story and why a woman would trump up false charges against anyone. The court commented adversely on the inordinate delay caused by Bhanwari in recording her complaint against the rapists. It ignored Bhanwari’s plea regarding bureaucratic and procedural barriers in getting herself medically examined. The most appalling aspect of the case was that whatever was recorded in the medical report needed scrutiny by medical experts, which was denied to the prosecution. The stained ghagra (skirt), produced in the court as an exhibit, was found to be too short to be Bhanwari’s. It was also argued that the forensic report could not identify the alleged rapists. It was clear that the original skirt had been replaced by the investigating agencies in order to destroy evidence. Such manipulation and scuttling of procedures shielded the rapists. The court also obligerly cast aspersions on her character by suggesting the presence of a third man and implying that Bhanwari was an adulteress.

The judgment deterred many women in rural areas who were being encouraged by government to act as agents of change in a caste-ridden and male dominated society. WDP’s statewide effort to bring down the number of child marriages also suffered a major blow. As an immediate effect, the verdict discouraged thousands of sufferers of sexual assault, who would think twice before speaking out, let alone fight a court case. The strong realization that emerged was that if feudal Rajasthan cruelly subordinated women, the modern nation state, with its organized legal, policing and political systems, under the garb of order and justice, subjugated them further. However, most significantly, the judgment undermined the spirit behind the changes in the rape law in the mid 1980s.

At the village level also, a large majority of people were surprised by the judgment. Bhanwari had never withdrawn support to the local community over issues of social justice despite her personal battle. She had also begun to symbolize the assertion of rights; hence, they felt she had been denied justice by the court.

Following the judgment a press conference was organized by several women’s groups and organizations in Delhi on 24 November 1995 in which Bhanwari announced her decision to fight on a criminal revision petition in the state High Court, challenging the lower court’s decision. The organizations that joined hands to lend support to her viewed the matter as a ‘test case’ of a brave woman fighting for justice – one which would set the parameters for women’s rights in the country. According to Delhi-based lawyers present at the press conference, the incident raised the issue of Bhanwari’s credibility as
a witness. They declared the judgment “gender-biased, unethical and full of loopholes.”

The Post-judgment Scenario

The appalling judgment by the session’s court in Rajasthan came as no surprise as far as the low rate of conviction in rape cases goes but it came as a rude shock to Bhanwari and all who had supported her and been involved in her struggle. However, she was acknowledged for her courage and strength in many different ways: she visited Beijing for the Fourth World Women’s Conference and received numerous awards including the Neerja Bhanot Bravery Award in November 1994 which carried a Rs 100,000 cash prize, for her “extraordinary courage, conviction and commitment”. Bhanwari was also felicitated by a small group, the Stree Adhikar Samiti in North campus, Delhi University on December 27 2002 (Stree Samman Divas or Women’s Dignity Day). Her courage in fighting her rapists for more than a decade was yet again recognized and applauded. She received Rs 10,000 from the then Prime Minister, Mr. Narasimha Rao. In 2002, with a change of political leadership and the coming of a new government, the then Chief Minister allotted a residential plot to Bhanwari and announced a grant of Rs 40,000 for construction of a house on the plot. He also sanctioned an additional amount Rs 10,000 for the education of her son.

Support continued to be mobilized in favour of Bhanwari, both at the national and international levels, and on a number of other fronts. WDP functionaries once again extended support to Bhanwari.

The director of the state programme and the DWDA both wrote to the Collector to ensure Bhanwari’s safety and security. A rally was organized to express solidarity with Bhanwari on December 15, 1995 — one month after the sessions judge acquitted the five accused in the case. Various women’s organizations, social action groups, civil society organizations of Rajasthan as well as from different parts of the country participated in the rally. In an expression of solidarity with Bhanwari, about 5000 women and men from rural and urban areas came together to unleash their anger and anguish over the judgment. They marched through the streets of Jaipur with black arm bands, condemning state inaction over the case and demanding fair and fast justice.

Bhanwari’s articulation of the issue on a public platform at the end of the march strengthened her as well as many other rural women who came forward and spoke about the violence and sexual harassment they had been facing for a long time. It was the first time in the history of Rajasthan that they spoke about balatkari (rape) openly, shared their anger and anguish but emerged emboldened for having spoken in public about it. Bhanwari’s case led every woman to resolve that the issue of violence against women has to be kept alive and the struggle against patriarchal structures, be it the family, the workplaces, the community or the state, has to continue, thus breaking the silence around sexual violence.

Similar protests were organized in different parts of the country. In Raipur, the Chhattisgarh Mahila Jagriti Sangathan staged a three hour long dharna in the campus of Raipur district headquarters in support of the rally in Jaipur. A street play based on Bhanwari’s case was organized by them. Besides, they also wrote a letter to the Chief Minister of Rajasthan through the district Collector of Raipur, condemning Bhanwari’s rape and demanding justice for her.

In 1995 the seventh Indian Association of Women’s Studies Conference on the theme ‘Looking Forward, Looking Back: In Search of Feminist Visions, Alternatives, Paradigms and Practices’ was held in Jaipur. The conference saw a mix of grassroots women’s organizations along with women’s groups and academics. Several rounds of discussion were held on Bhanwari’s case and the judgment pronounced by the lower court, leading to the passing of a resolution where the participants stated that they have been deeply disturbed by the decision of the Sessions Court in Bhanwari’s case. ‘Physical and mental violence against women is on the increase because the present systems have failed in providing justice to women. It is time to start a nationwide movement against violence against women, to create public pressure against it through mass media. To attract the attention of the judiciary towards it in order to make the desired
change and so we resolve to run a campaign against it through the following:

- To provide forums to rape victims and their families to articulate the violence done to them.
- Hold discussions on physical violence at various levels and help rehabilitate the victims and to create a consensus that sharing one’s violation does not tarnish one’s image.
- To collect extensive information about the barriers that prevent their access to justice
- Record extensive case studies of rape victims.
- Share experiences through interstate meetings.
- Prepare a code of conduct for the investigator and for judges dealing with rape cases.
- Recommend changes if required to make the judicial process more sensitive to women.22

A special event was organized by some of the feminist activists to honour Bhanwari where she pledged the prize money that she had received in various awards to a fund that would be used to take up such cases in the future. Justice V. R. Krishna Iyer (former Supreme Court Chief Justice) participated and condemned the judgment of the Court, and said that it was a black day in the history of Indian courts and the Constitution. He added that, ‘I have nothing personal against the judge himself – he is ignorant of the law as well, unfortunately’ (Ghosh and Srivastava, 1995)

The Vishakha Guidelines

The appalling injustice in Bhanwari’s case, together with her fighting spirit, prompted several women’s groups to file a Public Interest Litigation (PIL) in the Supreme Court of India, under the collective platform of Vishakha.23 The petition was filed by four women’s groups. However, it came to be called Vishakha judgment as Vishakha’s name was first in the list of petitioners.24 They demanded justice for Bhanwari Devi and urged action against sexual harassment at the workplace. In 1997, the apex court took cognizance of the case and delivered a historic judgment.25 It used international principles to formulate guidelines to address sexual harassment at the workplace and recognized such incidents as violations of the fundamental rights as guaranteed in the Constitution. It defined sexual harassment as any one or more unwelcome acts or behaviour like physical contact and advances, a demand or request for sexual favours or making sexually coloured remarks or showing pornography. The acts whether directly, or by implication, include any other unwelcome physical, verbal or non-verbal conduct of a sexual nature. The court, for the first time, drew upon an international human rights law instrument, the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), to pass a set of guidelines known as the Vishakha guidelines. In the prefatory comments as part of the judgment, the Supreme Court stated:

The immediate cause for the filing of this writ petition is an incident of alleged brutal gang rape of a social worker in a village of Rajasthan. That incident is the subject matter of a separate criminal action and no further mention of it, by us, is necessary. The incident (rape of Bhanwari Devi) reveals the hazards to which working women may be exposed and the depravity to which sexual harassment can degenerate, and the urgency for safeguards by an alternative mechanism in the absence of legislative measures.26

Anti-woman and Casteist Reactions

As a result of the agitation/protest by the women’s movement over the Bhanwari case, the environment in the state became blatantly anti-woman and casteist, as it had done several years ago at the time of the widow immolation case of Roop Kanwar in 1987. Male brotherhood, which is validated only by the suppression of women and revitalized as long as it can assert its superiority, was not prepared for a rational debate; instead, it indulged in a show of strength. Many politicians had vociferously supported the right to worship sati and glorify the immolation of Roop Kanwar in Deorala, Rajasthan. In a similar turn
of events, the Bhartiya Janta Party (BJP) openly supported a rally organized by the five accused in Jaipur on 18 January 1996. The key person involved in organizing the rally was the then BJP MLA from Bassi (Jaipur district). He chaired the meeting after the rally and women from the BJP’s women’s wing—which was in the forefront of mobilizing women—addressed the rally. This was an attempt to put pressure on Bhanwari to not file an appeal against the judgment of the session’s court acquitting the accused of the charge of gang rape. It was also an attempt to discredit Bhanwari and mobilize public opinion against her. The rally was vicious and aggressive. The mood was one of rabble-rousing, with the organizers asking for Bhanwari to be hanged and burnt alive. A number of inflammatory speeches were made. The speakers vented their anger against Justice Krishna Iyer and the National Commission for Women. The rapists were sitting on stage throughout the meeting and were garlanded. As a consequence there was fear for the life and security of Bhanwari and it was not unfounded. She was attacked and beaten up by a few villagers at the behest of these powerful men. Despite these pressures Bhanwari refused to leave her village.

Soon after the BJP rally, a number of Delhi-based organizations working on women’s rights issues sent a press release on January 21, 1996, strongly condemning the rally organized against Bhanwari and the aggressive and violent manner in which elected representatives, together with the five accused, had used their power to intimidate and obstruct one of the most significant struggles against sexual violence. They:

- Condemned the BJP’s tactics to use the issue of caste to obstruct, influence and bias the judicial process against Bhanwari;
- Demanded that the leadership of the BJP and the Congress curb the activities of their party members;
- Called upon all political parties to denounce the BJP for using this issue to capture votes and the manner in which it used the Panchayati Raj institutions to this end; and

- Asserted that the BJP and Congress need to affirm their commitment towards the fight against sexual violence on women. This is due to the fact that Bhanwari’s case was no longer one individual’s fight but had become a rallying point for a much larger struggle against violence experienced by women.

The press release at the event said that if the women’s movement were to allow the misguided and vicious politics of the rapists and the BJP to snuff out women’s voices, it would be a sad day for the women’s movement and other democratic voices of this country.

In 1999, Director Jugmohan Mundra made a film named Bawandar (Sandstorm) based on Bhanwari’s story. The film was released in different parts of Europe in the year 2000 and women’s groups in London collected approximately 3000 pounds (valued at approx. Rs 210,000) for Bhanwari after the film and sent it to Jaipur. The women’s groups in Jaipur held several meetings over the issue and finally Bhanwari did not accept the money but donated it to the fund set up earlier. The movie was released in Jaipur in the year 2001 and Bhanwari and her family faced further repercussions post its screening. Her son, a college student, had to face taunts like ‘Kumbhari raud la beta’ (potter whose son) and subsequently left the college where he was studying.

What We Gained and What We Lost

Looking back at this historic campaign one realizes that it had its contradictions and the victories did not come without a price, especially for Bhanwari. Despite all efforts to gather support, Bhanwari felt alienated at times. She won many monetary awards like the Neerja Bhanot Bravery Award and received benefits from the film Bawandar. In July 2016 she also received the Ambedkar award of Rs 50,000 by FFEI. This caused differences amongst the sathins. She increasingly began to feel the loss of the collective.
While Mohan, her husband, stood by her side throughout, unfortunately, both her sons. Satyanarayan and Mukesh, and their wives stopped interacting with her, as they felt that Bhanwari had shamed them overtly and covertly. Probably their anger was also due to the fact that she was not keen on spending the award money for personal use. Satyanarayan does not live with her, while Mukesh lives with her but refuses to communicate with her. At times Bhanwari feels she should not have raised her own issue though her commitment to the cause, she feels, was right.

It is a matter of pride that Bhanwari has remained strong throughout and never surrendered to the adverse publicity. Her commitment is so genuine that no matter what her personal sufferings have been, she has not withdrawn from the cause of supporting every single individual woman who is victimized or faces violence. She expresses deep gratitude for the support she has received throughout from her husband and daughters on the one hand, and the women's groups and several feminist activists within Rajasthan and at the national level on the other.

Despite the groundswell of support, justice still eludes her. The Rajasthan High Court refused to transfer the case to the fast track court and till 2012, twenty years after the incident, it had held only one hearing on the case, by which time, one of the five accused had died.

On another front, the state could not shut down WDP; it could not expel the satthins from the programme. Presently Bhanwari continues to live in Bhateri and work on women’s empowerment issues. She refuses to move out of her village despite the land allotted to her by the state government. Her struggle for gender justice goes on unabated, as does her determination to counter the forces of women’s oppression and exploitation. She has systematically reclaimed her dignity and respect within the village community and neighbouring villages and many women cutting across caste lines approach her when they need advice, especially over issues of domestic violence. Women and men of her village and nearby villages have benefitted from her information levels regarding how to deal with the police and forensic reports when a rape takes place.

There are several answers to the central question: What did Bhanwari and the women’s movement achieve through the campaign around Bhanwari’s struggle?

Bhanwari’s case became a catalyst in strengthening the movement and creating large scale awareness around issues of sexual violence. Ironically, the failure of the state to provide justice to Bhanwari through its legal mechanisms led to a renewed outrage within the feminist movement and thus resulted in further nation-wide debates and protests. A national solidarity was built and the campaign succeeded in drawing global attention to the issue of violence against women/girls. The movement also succeeded in subverting the stereotypical understanding by asserting that a woman who is raped or physically assaulted does not lose her self-respect and dignity, but it is the accused who loses his dignity and self-respect.

The campaign helped the women’s movement evolve feminist methodologies and feminist rethinking on the definition of rape. Three clear strategies have emerged:

1. Protesting against the state to demand justice for Bhanwari and all women who had faced similar harassment and violation;
2. Negotiating and creating spaces by working with the system, e.g. a monthly/bi-monthly coordination mechanism was set up with the home secretary and the police department which succeeded in reopening many cases; and
3. Putting pressure on the existing system to fulfill the demands of women’s groups. Owing to constant pressure, the police was forced to deal with some cases differently. For example, the infamous J/C Base case* came under scrutiny after fifteen years. The Justice delivery system was compelled to relook at the case by opening the case files and punishing some of the perpetrators.*

To some extent, the campaign also helped break the silence around rape and masculinity. By refusing to feel either defiled or ashamed by the act and by continuing to speak about it, Bhanwari has essentially
recast the discourse on the self and identity, and shifted it away from shame, which is central to a survivor's self-definition. The most important message was that unless women come out and speak about their violation, there can be no change. The campaign following Bhanwari's rape played a crucial role in creating that atmosphere of sustaining it. The Bhanwari case became a beacon of the women's movement and helped to strengthen the network of feminist activists and academics.

The campaign also helped focus attention on the processes through which men are conditioned to believe that they must express their power through aggressive and violent behaviour (rape) and succeeded in establishing that it is not a 'natural' inclination that makes them violent, but a flawed construction of masculinity that thrives due to the way society promotes patriarchy. It highlighted the need to address issues around women's entry into the workforce and the public arena. It also led to the realization that there was a need to put in place mechanisms for the protection of women and girls in the state. An informal network of more than 40 organizations under the Mahila Anyanchar Virodhi Jan Andolan (MAVJA) banner was formed in Rajasthan in June 1996. They have since been working on several rape cases and other cases of atrocities against women. In January 2002 eight women's and human rights organizations of Jaipur collaborated with the Rajasthan police and established the Mahila Salah Evam Suraksha Kendra (MSSK) to help and support women sufferers of violence. It is located at the Gandhi Nagar Mahila Thana in Jaipur. The venture was the first ever example of the Rajasthan police accepting the challenge of new experiments to provide assistance to women facing violence. It has opened spaces for the incorporation of women's experiences in police work with violent women. Later a second MSSK was established within the walled city of Jaipur.

As an offshoot of the campaign following Bhanwari's rape, there was tremendous pressure from women's groups to expand the network of the MSSKs. In February 2003 the Rajasthan police issued a state-wide circular acknowledging that women's access to justice, security and relief is significantly enhanced when there is a coordinated effort in this regard on the part of the police, NGOs and the community. In response to this order, the organization Vishakha, inspired by the Special Cells for Women and Children model initiated by Tata Institute of Social Sciences (TISS), Mumbai, took up the responsibility of setting up MSSKs in ten districts of Rajasthan. The MSSKs thus initiated aimed to evolve processes for women facing violence to negotiate their lives in a non-threatening and non-judgmental space.

However, in tangible terms, the prime achievement of the campaign following Bhanwari's rape has been the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, which has given more teeth to the Supreme Court directives in Vishaka's judgment of 1997. The passage of the Act is an admission of state responsibility for preventing and prohibiting sexual harassment at the workplace, and providing legal redress for the same—a core issue in Bhanwari's rape.

Notes

1. 'Sathini' literally means 'friend'; the word was used to describe women workers at the grassroot level appointed by the Rajasthan government under its Women's Development Programme (WDP). For more details, see note 5 below.


3. The rape incidents of Mathura and Rameez Bi, the Open Letter to the Chief Justice of the Supreme Court written by four law professors, and the manner in which protests around the incidents galvanized the women's movement are discussed in greater detail in the paper by Mahfu Mehra in this volume.

4. The sathini or the village level active change agent was the key player in the struggle against patriarchy, class and caste inequalities around whom all the WDP activities evolved. She was responsible for forming women's forums at the village level and discussing issues related to their development. She was supported in all such activities by the block level worker i.e. pradehas, and functionaries of IDARA (Information Development and Resource Agency) and Project Directors of the District Women's Development Agency (DWDA).

5. Formal send off of the bride.

6. A day considered auspicious for marriages according to the Hindu calendar.

7. The District Women's Development Agency (DWDA) was a body set up under the chairpersonship of the Collector at the district level.
8. The Gujars are an ethnic group, classified under the Other Backward Class (OBC) category in Rajasthan and some other states in India. Gujar at state took its name from the Gujar, the land of the Gujars, who ruled the area during the 700s and 900s. http://www.gujaratindia.com/about-gujarat/history-1.htm

9. ‘Ward panch’ is an elected member of the gram panchayat – the local self-government body at the village level.

10. Oddhi, also called ‘dappata’ – a stole/shawl worn by women in India, often to cover their chests and/or head.

11. Roop Kanwar, an 18 year old girl, was murdered on her husband’s funeral pyre on 4 September 1987 in Deoraha village, Sikar district of Rajasthan. This was based on sati – the practice of a widow burning herself or being burnt on the funeral pyre of her dead husband, largely prevalent in Rajasthan. The incident was a reflection of social oppression of women and led to public protests all over the country.

12. Mahila Samakhya is a programme initiated by the Ministry of Human Resource Development in 1988 under its Department of Education; it emphasized the need for achieving gender equality through women’s education, and has sought to pursue the objectives of the National Policy on Education 1986. More information on the programme is available at http://mhrd.gov.in/mahila, accessed on 8 November 2013.


14. The National Resource Group has been constituted under the Mahila Samakhya programme and plays an advisory role, to look at larger programme processes, interventions, directions and trends.


18. IDSJ Women’s Studies Unit, PUCL, RUWA, Bodh Shilesh Samiti, BGVS, Mahila Punarvaso Samooh, Muslim Women’s Welfare Society, Samagra Sena Sanataan, Ujala Chadi, Sanskaar, Vikas, Umol Trust Bikaner, Charkha, New Delhi.


20. Some of these groups were Sakshi, Forum on Violence Against Women, Nirantar, Kali, Action India, Shakti Shantri, Media Storn, Jagori and Centre for Feminist Research.


23. Vishalatra (Group for Women’s Education and Research) came into being on January 28 1991. The group came together due to the events that followed the Roop Kanwar incident detailed above in this paper, which gave an impetus to the women’s movement in Rajasthan. In the initial years the group was intensely involved in working towards empowerment of women with an emphasis on building, sustaining and strengthening links among rural women. Many of the members were earlier working in the WDP but became disillusioned due to the discrepancies that crept into the programme structure.


25. Ibid.

26. Ibid.

27. This included the National Commission for Women, All India Democratic Women’s Association (AIDWA), National Federation of Indian Women (NFIW), Joint Women’s Programme, All India Government Nurses Federation, Progressive Students Union Delhi University, Nirantar, Jagori, Sakshi, Abhiyan, Purogami Mahila Sangathan, Shakti Shalini, All India Progressive Women’s Association, Charkha, Women’s Political Watch, Kalari for Women, Indian Institute of Social Studies Trust, Action India, Anukul, Centre for Social Research, Indian Social Institute and the YWCA.

28. FFEI is a small organization running with the support of a few concerned individuals in Andhra Pradesh.

29. In September of 1997, 25-year-old Pragati revealed how she had been gang-raped, coerced and blackmailed into sexual bondage over the past few years. The last act of sexual exploitation took place in the JC Bose boys’ hostel of the University of Rajasthan, Jaipur. As a result of appeals and protests by women’s and other social groups in the state and exposure in the media, public pressure was built to keep the case alive (Ujala Chhadi, Dec. 1997).

30. The final judgment of the fast track (sessions) court was delivered on 26 October 2012 by Judge N. R. Singh.

31. RUWA, AIDWA, AIPWA, NFIW, PUCL, Vividha, Mahila Punarwas Kendra and the National Muslim Women’s Welfare Society.

32. Ajmer, Alwar, Bharatpur, Bhilwara, Bikaner, Barmer, Chittorgarh, Jaipur (Rural), Jodhpur and Udaipur.

References

FIVE

The Women's Movement and Legislative Reform on Violence Against Women

Madhu Mehra

Introduction

Issues of violence against women and the law have been of continuing concern over decades for the contemporary women's movement in India. Soon after independence, it became clear that the constitutionally guaranteed equality and affirmative action were not shaping the law, policy or development programmes; and that systemic forms of violence against women would remain mere 'social evils' that attracted no legal consequences. In fact, the law's blindness towards gender-specific violence, in public and private domains, was striking in the face of increasing reports of dowry deaths and custodial rapes in the 1970s, around which the initial campaigns for law reform began. These campaigns set off the first phase of legislative reform, that began with a focus on specific forms of violence to grow into broader movements — from rape to sexual violence and from dowry to domestic violence. Both campaigns gained momentum from public outrage against cases that became symbolic of blatant impunity, institutional bias and apathy in their time. The movements for law reform focussed for the most part on criminal law remedies, dedicated courts and special mechanisms in