

Sexual Violence in Conflict Zones and State Responses in India

By Pooja Bakshi

FICHL Policy Brief Series No. 53 (2016)

1. Conflict and Security: Violence Against Women Less Visible

This brief examines sexual violence in conflict zones and state responses in India from a feminist and policy perspective. Feminist scholarship in the post-colonial South Asian context has played a provocative but useful role in highlighting that, in the process of consolidation of boundaries and territorial control in South Asian States, women's bodies have become markers of national identity and community honour. The objectification of the female body makes it the site of difference and the site of violence.¹ On this account, women have suffered sexual abuse, rape, violence and abduction. Caught in the storms of nation-building, religious majoritarianism, and neo-liberal globalization, women have too often been rendered insecure in between competing patriarchies. This is far from unique to India. But as an Indian citizen, it is only natural that I concentrate on challenges that I think we currently face in my country.

From the very inception of the Indian State, much like in other South Asian countries, women have been seen as sources of national or community pride. But regrettably the history of consolidation of nation States sees many instances of brutal violence inflicted on women's bodies. A part of the flip side of national security has been bodily insecurity experienced by too many women also in India, in one way or another. Parts of India have from time to time been functioning under the ambit of exceptional circumstances or states of exception. This includes areas within the federal states of Jammu and Kashmir; Manipur, Nagaland, Assam, Meghalaya, Mizoram, Arunachal Pradesh and Tripura (also inaccurately homogenized as the 'North-East'); and West Bengal, Bihar, Chhattisgarh, Jharkhand, Andhra Pradesh, Maharashtra and Odisha.

In the following I draw on the insightful and ever-rel-

¹ A.P. Chatterji and L.N. Chaudhry (eds.), *Contesting Nation: Gendered Violence in South Asia – Notes on the Post-Colonial Present*, Zubaan Publication, New Delhi, 2012.

evant analysis in the important book *State of Exception* by Giorgio Agamben.² He argues that "state of exception" can be understood as a disjuncture between public law and political fact, implying a set of political circumstances wherein the legal apparatus is used to suspend the legally accorded rights and liberties of people. He adds that one of the factors leading to the conceptual ambiguity associated with the "state of exception" is its close relationship with civil war, insurrection and resistance. Governments understand civil war as "opposed to normal conditions" and the framework of "state of exception" is often used by States as a response to extreme internal tensions in order to safeguard the continuity of State sovereignty. This leads to a situation wherein popular sovereignty (democracy) and due process of law may be compromised in the name of upholding State sovereignty.

On account of movements seeking autonomy from the Indian State, movements seeking reform, their violent activities have created conflict zones in India. In these zones people face visible or invisible violence by people's movements that use violent means to achieve their goals, or by the Indian State responding to such violence or terrorism. This has been very problematic for women as well. Violence against women in this context is often made invisible either in the name of 'collateral damage' or it becomes somehow sanctioned in the shadow of the extra-ordinary laws and the situations that bring them about.³

Ujjwal Kumar Singh has argued that anti-terror or extra-ordinary laws are promulgated by Governments with the intention of using them as instruments in response to trying circumstances for the State. Such laws are brought about to respond to extra-ordinary situations

² Giorgio Agamben, *State of Exception*, translated by Kevin Attell, University of Chicago Press, Chicago, 2005.

³ For more information, see Ujjwal Kumar Singh, *The State, Democracy and Anti-Terror Laws*, Sage Publications, New Delhi, 2007.

and threats faced by the State, such as terrorism. The laws are expected to be in place as long as the situation so requires. They contain exceptional legal provisions on issues such as terms and conditions of arrest, investigation and detention. The prevalence of such laws can in some situations blur the boundaries between criminal activity and political dissent, whereby forms of expression of political dissent can become excessively targeted. The increase in discretionary powers of armed forces and Governments, and the inefficiency of due judicial process and professional investigations, can even lead to the criminalization of voices that criticise a Government. Moreover, the ambit of extra-ordinary laws may not always be applied even-handedly against all terror groups, creating questions about the legitimacy of the implementation of the laws also when that could have been avoided. Selective use of anti-terror laws can strengthen majoritarian-religious, masculinist violence also at the expense of women, despite the responsibility of State institutions to report and check all such acts of violence.

Given the size and complexity of Indian demography, and the scope of terrorist and violent acts that we have suffered in the country, the role played by the State in communal violence affecting women is particularly important. In conflict zones there exist axes along which women experience abuse and violence on a daily basis. These include caste and class discrimination, sexual harassment at the work place, violence experienced by disabled women, and violence against sex workers. As the women's movement in India has realized, the list of axes along which women face discrimination and abuse in conflict zones is not exhaustive insofar as some forms of violence against women become invisible in these areas.

2. Situating Sexual Violence in Conflict Zones in India

India has responded to violence by armed groups in Kashmir and North-Eastern India through the use of force as well as extra-ordinary laws for long periods of time. In order to ensure national security, certain groups of populations may in some situations have been seen as a suspect community capable of threatening the security of the Indian State. Dissident movements which have challenged the Indian State ideologically and militarily, such as the Naxal movement, have also been met with a combined strategy of use of force by the State and attempts to reduce the geographical areas that are affected by these movements.

It is important to examine the nature of problems pertaining to sexual violence arising in areas affected by violence and terrorism in India. Seema Kazi claims that women have been sexually abused and raped also by security forces stationed in conflict zones such as Kashmir,

and that such crimes regrettably often go unpunished.⁴ It has been argued that it is difficult to quantify the scale of sexual assault against women in conflict zones, but in her study Kazi concludes such sexual abuse is rampant in Kashmir, including by security forces. Since many men have died in the fight between the militants and the Indian State, especially in the 1990s, a considerable number of women have become widows. Women whose husbands or sons have died or disappeared (either at the hands of Islamic militia or Indian security forces), are rendered economically vulnerable as they have to financially support their families in addition to provide care-taking for them. These women become physically vulnerable to sexual violence. Women's education has also suffered as their mobility is reduced due to the prevalence of armed conflict in Kashmir; to such an extent that many women feel compelled to stay at home for their own 'safety'.

Anuradha M. Chenoy argues that internal militarization in the Indian context needs to be understood as a process of strengthening extra-ordinary powers of the army over civilians in situations of conflict, increase in the use of the army by the Indian State to resolve civilian issues, and the evolution of State practices that accept the use of military and paramilitary forces in domestic crises.⁵

In the areas where the Naxal movement is strong in India, women are rendered vulnerable to violence at the hands of armed men active in the areas. A 2011 report written by Women Against Sexual Violence and State Repression ('WSS') re-establishes that women and children in conflict situations are extremely vulnerable to abuse and exploitation.⁶ Cases examined in the report suggest that women and children are subject to use of arbitrary violence by the Maoists and also the police. In the cauldron of fear created as a result of this, women feel pressurized to stay at home, their mobility in the public is severely restricted, and their bodies become more vulnerable. India has not termed its actions in the context of the protracted Naxal insurgency as an internal conflict in clear terms. It has been called a law and order problem. The lives of civilians are being adversely affected by the conflict caused by non-State actors. Even if the Indian security forces are there to protect fundamental interests of the Indian State, it is very important that India fully acknowledges any violation of rights that may be committed by security personnel in the field in execution of their challenging mission.

⁴ Seema Kazi, *Between Democracy and Nation: Gender and Militarization in Kashmir*, Women Unlimited, New Delhi, 2009, pp. 134-190.

⁵ Anuradha M. Chenoy, *Militarization and Women in South Asia*, Kali for Women, New Delhi, 2002, p. 5.

⁶ Women Against Sexual Violence and State Repression, *In the Eye of the Storm: Women in Jharkhand Facing Operation Greenhunt*, India, WSS, 2011, p. 42.

Uma Chakravarti argues that sexual violations have become widespread in North-Eastern India.⁷ Groups of women and men have emerged in each of these contexts to raise their voices on these significant issues. For instance, in the North-East of India in 1984, the Naga Women's Association ('NMA') was formed by women in Kohima to negotiate with the Government for compensation for the death of family members, damage caused to them during conflict, pensions and jobs, and towards opening up a space for dialogue between communities on matters of collective social concern.⁸ Over a period spanning decades, the NMA has raised various social issues such as submitting a 1994 memorandum to the Nagaland Human Rights Commission on atrocities committed by armed forces against women, men and children under the purview of the Armed Forces Special Powers Act ('AFSPA') in Nagaland, militarization of children (use of guns as play-time activity), drug addiction and spread of HIV/AIDS, environmental degradation, and arguing for more space for women in decision-making processes in the family and the state. In 2004, security personnel posted at Imphal (Manipur) arrested a 32-year old woman and within a day her body was tragically found abandoned, naked, bearing signs of brutal sexual assault. A group of Manipuri mothers stripped themselves naked and protested in Imphal.⁹ The Jeevan Reddy Committee was formed to review AFSPA, and in 2006, it recommended that the law should be scrapped. I note, however, that the law is still in force.

3. Assessment of the Response of the Indian State

The Indian State has developed a nuanced understanding of the reasons fuelling the above-mentioned violence and conflicts as threats to national security. This should come as no surprise given the remarkable analytical capacities of India. Being a democratic country, the Indian State is conscious of the need to generate legitimacy for the ways in which it responds to the violence and threats against the State. Based on the Ministry of Home Affairs Reports from 2003–2014,¹⁰ it can be argued that the Indian State has developed a multipronged approach to tackling internal tensions and violence. Aspects of this approach include attempts made to support economic development of affected areas, providing relief packages to families affected by conflict, deployment of secu-

rity forces to ensure law and order, and implementing extra-ordinary laws in these areas. The Indian State has also taken significant initiatives in this regard such as conducting workshops with public officials by the National Human Rights Commission on issues of trafficking of women and children, bonded labour, lack of public health facilities especially regarding HIV-affected persons, and on the need for protection of rights of disabled persons. Even though attempts have been made by the Indian State to take account of or redress the human rights violations occurring in the conflict zones, concerted efforts still need to be made to identify and help victims of sexual violence in these areas.

As can be read through the above-mentioned Ministry of Home Affairs Reports, the State's position has been that in order to avert or respond to the threat of violence on account of militant groups, the Indian State ought to continuously expand its security apparatus or forces, develop better mechanisms of surveillance, and use extra-ordinary laws. The development plans proposed for areas of conflict have more often than not been defined mostly by State experts. There have been popular demands by people's groups to participate in the policy-making process.

In the Indian context, it has been argued that the following features of State practice should be carefully examined:

- i. The continued reliance on extra-ordinary laws for the purposes of governance in conflict zones.
- ii. An increase in the ambit and forms of surveillance.
- iii. Use of force in dealing with individuals or groups who protest against State policies and norms.
- iv. The attitude towards political dissent and those who seem to disagree with the government's understanding of national interest and national security.
- v. Marking out groups of people based on religion or ethnicity or region as potential threats to security.

These processes can create circumstances of insecurity. The current approach does not seem adequate to check instances of sexual violence in conflict zones in India. Further policies should be explored in search of approaches that can reduce sexual assaults also in the areas that are affected by terrorism and organized violence against the Indian State.

4. Some Suggested Policy Options

Given the remarkable legal and administrative resources of India, it is imperative that the country continues to turn every stone to evolve her policies with a view to reducing and redressing the problem of sexual violence in conflict zones. We should never be content with what has been achieved as long as such sexual crimes

⁷ Uma Chakravarti, "Archiving Disquiet: Feminist Praxis and the Nation-State", in Ujjwal Kumar Singh (editor): *South Asian Peace Studies: Volume 4. Human Rights and Peace: Ideas, Laws, Institutions and Movements*, Sage, New Delhi, 2009 pp. 49-73.

⁸ Anuradha M. Chenoy, *Militarization and Women in South Asia*, op. cit., pp. 133-136.

⁹ Nivedita Menon and Aditya Nigam, *Power and Contestation: India since 1989*, Orient Longman, New Delhi, 2007, pp. 146-147.

¹⁰ The Annual Reports of the Ministry of Home Affairs of India are available at <http://mha.nic.in/AnnualReports>.

persist. It is the role of Indian academics and civil society to help us reach new levels of professionalism in this area. Feminist critique can play an important role in this process. The State needs to protect the vital interests of territorial integrity and the ability of the public institutions to act. These fundamental duties cannot be diluted or overlooked. But it must also be ever-vigilant in providing security to civilians such as women facing the risk of sexual abuse.

In this context, it is suggested that the following four aspects need to be considered further:

- India is a State Party to important international conventions such as the Convention on the Elimination of All forms of Discrimination Against Women.¹¹ It is of great importance that national standards and programmes fully implement State obligations contained in such international instruments insofar as reducing and redressing sexual violence in conflict zones is concerned. Multilateral treaties such as these, enjoying significant support in the international community,¹² are unique resources that spell out common standards of achievement of nations and peoples around the world. But their potential is not fully used until their specific standards and provisions permeate national laws, regulations and executive practice. A review should be initiated by the Indian State to examine the extent to which this has been done with regard to these treaties. In India such review processes should be undertaken by relevant government actors, but with the participation of academics and civil society. International law is there to help India and Indians. Let us not be strangers to this resource.
- It is important to rework existing laws and practices that may provide impunity to persons who commit sexual violations, to enable effective investigation and prosecution in cases with clear evidence of sexual violence. Such accountability is necessary for the dignity of the victims of these crimes and to ensure there is a deterrent against future violations. Without proper accountability, it is hard to imagine sustainable reduction in the levels of sexual violence. Impu-

nity may create an incentive for more violations and victimization.

- Public officials in State organizations such as the police, military, medical establishment and government administration should be sensitized towards the concerns of victims of sexual violence. This can be done by conducting training workshops on gender and sexual violence with such officials. This would enable the agencies to respond better to the concerns of the victims.
- The objective and policy of the government of India should be to ensure justice and to provide holistic rehabilitation and re-integration assistance to the victims of sexual violence. More analysis and research should be done on how victims can return to their lives and society, pursuing education, work and family obligations, despite their traumatising experience. Victims of sexual violence should not be treated as if they are marked for life, unable to assume the normal obligations and opportunities as citizens of India. Cultural and religious factors often play a role after sexual violence has occurred. More emphasis needs to be placed on genuine re-integration into society after incidents of sexual violence so that the injustice of the crimes does not linger on for years, ruining entire lifespans.¹³ In order to do this, the State and civil society must come together to provide victims with medical, psychological, social and economic assistance. This would help the victims to eventually become self-dependent and reintegrate meaningfully into society.

Pooja Bakshi is a Ph.D. candidate at the University of Delhi.

ISBN: 978-82-8348-032-0.

LTD-PURL: <http://www.legal-tools.org/doc/62bbfc/>.

¹¹ The text is available at <http://www.legal-tools.org/doc/6dc4e4/>.

¹² The 1979 Convention on the Elimination of All Forms of Discrimination Against Women has 179 States Parties. India became a State Party on 9 July 1993.

¹³ The first academic initiative to raise the issue of societal reintegration of victims of core international crimes in general – that is, in the context of the discourses of international criminal law and justice – was the FICHL conference in the Nobel Institute in Oslo on 7 June 2012, see <https://www.fichl.org/activities/societal-reintegration-of-victims-of-core-international-crimes/>. This policy brief goes beyond core international crimes and considers sexual violations more broadly.