

Gendering Justice

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# Gendering Justice

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*What the Rupan Bajaj verdict has accomplished, in an important sense, is the subversion of the patriarchal traditions of the Indian state and a rupture of the boundaries between the political sphere and society, between the home and the world, between the workplace and the street, between classes, forcing us to re-examine our realities and the categories through which we comprehend these realities.*

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THE recent judgment in the Rupan Deol Bajaj-KPS Gill case is a landmark judgment for more reasons than one. It sentences a national hero to rigorous imprisonment. Further, that the FIR was quashed by the Punjab and Haryana High Court and it needed a Supreme Court order to force the trial in the Chief Judicial Magistrate's court. A Supreme Court order and eight long years. Obviously a judgment that will generate a lot of hysteria all around.

The easily recognisable one is one of feminists gloating and rubbing their hands in glee while they mentally count the number of reputed men they can get sentenced in quick succession. You can almost see the skin scraping off their hands and the heads rolling into baskets at their feet while they grin wickedly, cackling and hooting in unholy glee, muttering curses on their unfortunate class of victims. The other not-so-well recognised or named variety of hysteria is the male variety. It consists of balanced praise of the fact that no one is above the law. That no matter how highly placed, the long arm of the law will reach and sentence the offender impartially. Then the hysteria starts. It would be crossing all limits of propriety if a hero of this stature actually has to go to jail. Bajaj should not make statements about working women in general. Feminists should not gloat or score brownie points. Self-control is preached. Otherwise no man of reputation is safe. Nothing will remain sacred. The pillars of our very society will crumble, the nation will become a laughing-stock, etc. And that is also in a sense justified.

It is perhaps time to reflect on the trajectory of public discourse on this case especially over the last week. This exercise will force us to re-examine our own assumptions and discomforts on the women's question generally and the implications of this case for our individual private lives. One of the primary reasons for discomfort, in our view, is that this case is somehow too close to the lives of the middle classes, and the signals the verdict sends out are also primarily for that class of people. While all these years it has been possible to espouse the cause of

women who have been raped or abused while at the same time distancing oneself from the cause one was espousing, we have suddenly moved to a situation where a man, a hero at that, is up on trial for something that in mainstream discourse is a joke, frivolous behaviour, certainly not offensive.

For those of us who have been active campaigning on issues of human rights and women's rights, the public discourse on this specific case is an eye-opener. All at once it has become clear to us why we have had so much difficulty securing convictions in rape trials or in being able to initiate punitive action in cases of sexual harassment across caste and class. The explanation all these years has revolved around a sometimes inactive, mostly biased judiciary and state apparatus that has consistently undermined and subverted women's interests and the interests of marginalised groups. Here is a case where the judiciary has actually taken a stand upholding women's rights, yet the predominant response in the English press is about how the judicial system can afford to be unbiased or neutral in the face of Gill's excellent record as a remarkable public servant. Enough is enough and a simple apology graciously accepted should end the matter once and for all. And speculation on how ugly the feminist response to this verdict will be: gloating and hysterical (editorial, *The Indian Express*, August 7, and Swapna Dasgupta, 'Enter Sexual Harassment: Awaiting the Feminist Inquisition', *The Indian Express*, August 10). And this reaction from an enlightened section of the press.

It might be useful to recapitulate briefly the facts of the case for those who might not know: On July 18, 1988, at an official dinner party hosted by the then home secretary-cum-financial commissioner of the Punjab, S L Kapoor, K P S Gill, the then director general of police, Punjab, was accused of sexually harassing a woman in the presence of other senior officers of the government. The woman who made the allegation was Rupan Deol Bajaj, a senior IAS officer of the Punjab cadre. The very next day after the complaint was made, Rupan Bajaj and her husband B R Bajaj, also

a senior IAS officer of the Punjab cadre made a complaint to senior officials in government about Gill's conduct. On July 20, two days after the above incident, Ribeiro put up a note to the then governor, Siddhartha Shankar Ray that action be taken against Gill. In this note, Ribeiro had stated that Gill was in the habit of getting drunk and misbehaving with women. Siddhartha Shankar Ray then asked Gill to apologise to Bajaj. But clearly, neither the governor nor any of the other senior functionaries in government at that time pressed the matter any further, in large measure because of Gill's outstanding contribution to the elimination of terrorism in the Punjab, especially in Operation Black Thunder. (Further, this note was made confidential and sought to be suppressed in court). Not deterred by the unsympathetic response she got from the government, Rupan Bajaj went ahead and lodged a police complaint, and a little while later a private complaint. Predictably, the Punjab and Haryana Court quashed both the FIR and the private complaint. After battling it out for six years, finally the Supreme Court of India on October 12, 1995 directed the chief judicial magistrate of Chandigarh to initiate proceedings against Gill. This ruling came when Gill was still in service. Eight months after the proceedings were initiated, the chief judicial magistrate Darshan Singh announced his verdict: Gill was convicted under Section 354 IPC [outraging of modesty] and Section 509 IPC [use of force or intimidation or making sexual gestures to insult a woman]. The punishment: Three months rigorous imprisonment and a fine of Rs 500 under Section 354, and two months simple imprisonment and a fine of Rs 200 under Section 509, both sentences to run concurrently, which meant that Gill would spend a total of three months in prison, unless he went in appeal. It is worth noting at this point that both sentences are consistent with the seriousness of the offence under the relevant sections.

Yet there is a general sense of shock at the severity of the sentence. A national hero to undergo rigorous imprisonment? Things are getting out of hand. Bajaj should learn her place and call it a day. Neither she nor the feminists should gloat over a vicarious victory. The issue at stake here is not Gill's reputation as a national hero whose aberrations must be sympathetically glossed over, or Bajaj's power and privilege that have fuelled her vindictiveness. The question we need to ask ourselves today is, what is the measure used to assess the seriousness of an offence involving violence against women, or the legitimacy of the allegation of violence? Who sets this measure? In Rupan's case this becomes contested terrain because both the accused and the petitioner are functionaries within the same establishment. Public

discourse on this issue has so far been totally trapped within individualistic personalised frameworks, where everybody is very deeply affected by the verdict, some deeply disturbed, but nobody is actually able to move out of the specifics of the case ('be fair to Gill'), to the general questions the entire issue raises. Where there has been a concern with the general, the concern is that of the middle and upper class man (exceptions like Tavleen Singh notwithstanding) who identifies himself, in his vulnerability and his temptation, totally with Gill, as opposed to the 'pathological bottom pinchers in public buses', the 'riff raff', the nameless, faceless man on the street. This identification and this opposition essentially has to do with class.

In this article we hope to unpack the assumptions behind the current articulations on the Gill-Bajaj case and examine the implications of this verdict, as also the implications of the responses to the verdict that have come so far. The main purpose behind this exercise is to recapitulate the two-and-a-half decade long debate on the question of women's rights generally and the whole question of sexual harassment.

In addressing the issue of sexual harassment, we are also foregrounding the issue of women's civil and human rights. We are asserting women's right to work, their right to an environment that is free of aggression and violence. Free of sexual harassment. For a long time there was no name to this practice. It was just women talking about dirty old men or drunken lechers. It was the feminist movement that gave it a name. Called it sexual harassment. And by the simple act of naming it, resurrected the violence hidden in the game of eve-teasing. A game that it is assumed men and women equally enjoy. A game where the rules are decided and laid down by men. Be a sport. Smile and show you like it. And so it was until it suddenly became evident that women didn't think so.

It is a recognised reality that women at work can never quite escape being defined as sexual objects. Gender is never absent. Either for their colleagues or others. Sexual access, ranging from small intimacies right through to actual intercourse is often assumed to be a part of the working relationship, whether the woman wants it or not. It was around 1975 when feminist organisations in the US organised speak-outs on sexual harassment at work that a flood of testimonials poured in telling of thousands of women who fled their jobs because of sexual demands and many thousands who lose promotions, raises and other benefits. The stress women suffer due to sexual harassment causes innumerable skin diseases, breathing and circulatory disturbances, chronic cystitis, gastric ulcers and depression.

Characteristically when urban women actually complain of sexual harassment it is the victim rather than the harasser who is seen as the problem. As in rape. Her perception and her sanity is at once questioned and there are hints of paranoia and hysteria. One needs, when looking at sexual harassment, to see that it is not just unpleasant drunken or aberrant behaviour, but an act which is in keeping with the way society organises relationships between men and women. Which explains why Bajaj calls it breaking a conspiracy of silence.

It might be useful at this point to understand this debate by extending the framework of duality Elshtain poses between morality and power (J B Elshtain, 'Moral Woman and Immoral Man: A Consideration of the Public-Private Split and its Political Ramifications', *Politics and Society*, 4(1974), pp 453-61). This duality is one way of articulating the separation between the private and the public in civil society. The dominant consciousness in a liberal patriarchal system is typified by a contrast between and hierarchisation of the political sphere – the state, i.e., the sphere of power, force and violence, and the society, i.e., the private realm the sphere of voluntarism, freedom and *spontaneous regulation*. This opposition between morality and power counterpoises love and altruism, the natural attributes of womanhood against physical force and aggression, the natural attributes of manliness (the attributes of a national hero), which are seen exemplified in the military force of the state.

There is, however, a further complexity to this duality. In the opposition between and society or the sphere of morality and the political sphere or the sphere of power, morality is essentially passive, where women use or are expected to use "finely tuned, discreet social mechanisms for coping with importunate intrusions on the individual [read female] body" (Swapan Dasgupta, *The Indian Express*, August 10). The active enforcement of morality, the protection of national honour for instance is a male prerogative and belongs to the realm of the political. It is this active morality that gives the political realm its legitimacy – a legitimacy that is governed by the ends justify the means doctrine. It is also this morality which defines the political as the supreme, before which all other interests are subservient, all other issues irrelevant, and human life totally dispensable, especially the interests, issues and lives that make up the body of society, the private realm.

It is the implications of this duality that spell out for us yet another dimension of the feminist slogan "the personal is the political". It is precisely this bending of the 'social' interest, the subjugation of social morality to the interests of the nation, the political morality that is being articulated in the write-

ups on the Gill-Bajaj case. Take for instance the following statements: "the sentence of three months' rigorous imprisonment ...although well within his discretion and powers under the relevant section of the Indian Penal Code looks somewhat harsh considering that Gill had an outstanding record as a supercop. If today Punjab is rid of militancy which had taken a heavy toll of human lives in the state a great deal of the credit goes to Gill" (editorial, *The Hindu*, August 9).

"It somehow makes the law of the land look grotesquely odd and incongruous that a man who has done signal service to the country by ridding a state of the dread and oppression of terrorism should have to spend five months in jail for a minute's exuberance provoked by the charms of an attractive working woman" (editorial, *Deccan Chronicle*, August 8).

"KPS Gill's conviction by a Chandigarh court prompts a moral dilemma. India's most celebrated policeman, the man who contributed most in crushing terrorism in Punjab, and one of the country's most authentic living heroes, has been held guilty of using 'criminal force' and "intruding upon the privacy of a woman...There was no political dimension in Rupan Deol Bajaj's charge...It was a plain and simple charge of sexual harassment...Under the circumstances, should Gill's enormous national contribution be allowed to gloss over a personal misdemeanour? Conversely, should Gill's record in Punjab be allowed to be subsumed by a flood of righteous indignation...No Indian who is aware of his role in defeating secessionism in Punjab can be happy at Gill's misfortune...Unfortunately it is not his humiliation alone; the country too feels a little small today." (editorial, *The Indian Express*, August 7).

Then we have the arguments that foreground Gill's contribution to the nation, and reassert his place as a national hero. An extension of this argument is that any attack on Gill that goes to the extent of his imprisonment is a gross violation of the dignity and integrity of the nation and will in fact throw up the Indian nation in poor light in the international context.

While positing a duality between the political sphere and society, between morality (the good of the nation, national honour) and self interest (pressing charges of sexual harassment), and the supremacy of the former over the latter, what the authors in this debate are also doing is identifying morality with patriotism and placing it in opposition to self-interest that is identified with feminism (read anti-patriotism). And this is the core of the problem of separating the personal from the political, or separating realms of conduct. How does one separate Gill the police officer, saviour of Punjab, supercop,

national hero, crusher of terrorism, the image of virility and power from the man who uses that virility and power to grab the nearest available part of a woman's anatomy. It does not matter whether it is a breast or a bottom? And what does he expect when he does that? That she should melt into his arms, thrilled that a hero has actually laid his hand upon her. If a woman complains instead, it must be some old enmity. Or the IAS-IPS rivalry. If she tries to file a case, it is scotched. If she persists and the case is tried and against all odds the man is to be punished, then there is a great disturbance. It is against the established order of things. How can a national hero be described in terms that Dasgupta or Tavleen Singh use to describe commuters in the public transport system who exhibit the same behaviour without the power to back it, i.e., 'pathological bottom pincher', 'riff-raff', 'sexual pervert'.

This separation of spheres will lead inevitably to the trap of prioritising the larger interests over the smaller interests. And this will perforce spill beyond 'gender concerns' like sexual harassment. The spill-over for us is most evident in the phenomenon of state repression that we are so familiar with and the modalities of 'eliminating terrorism' where the lives of the people are made subservient to the good of the nation, not by the patriotic awakening of the masses but by the use of political (military) force. In this framework, the question of civil liberties and the struggle for civil liberties, like feminism, falls within the realm of self-interest, of anti-patriotism. The Gill-Rupan Bajaj verdict and the debates surrounding it exemplify this kind of duality. This has to do with the gendering of the state. Do we as Indian women then assume that the Indian state is one that will willingly subsume women's human rights to the larger interests of the nation? That tired and weary soldiers, heroes and policemen have a right to mis-behave occasionally and manhandle and abuse women with words and gestures with sexual overtones which must be shrugged off as a joke or suffered in silence.

In an attempt to side-step this juxtaposition of the larger interests versus individual interests in this case and foreground Bajaj's experience of violence, and the fact that sexual harassment did occur, Seema Mustapha argues assuming the validity of the separation of spheres, while asserting that Gill's positive contribution in one sphere cannot detract from his misdemeanours in another (Seema Mustapha, 'There is more to Gill than his public face', *The Asian Age*, August 10). While this is true and well-taken as an immediate response, the separation is in fact an ideological trap within which it is impossible to transcend the slippage from one to the other, a slippage that is inevitable and determined by the dominant interests.

Invariably, in discussing issues of gender, one focuses on the family without looking at how the state institutionalises gender. It engages in ideological activity on issues of gender ranging from birth control to the sexual division of labour. There is also the fact that person-to-person violence which is sought to be explained away as individual deviance is in fact an enforcement of the social order. That authority or legitimate power links with masculinity as the fulcrum of the power structure in gender relations. And it is the direct threat to this definition of masculinity that is the source of disturbance. The structural fact that there is a global dominance of men over women provides the basis for defining a form of hegemonic masculinity. A hegemonic masculinity as in the image of a national hero which is then constructed in relation to the subordinated masculinities (the terrorists and criminals controlled through violence and force with the ideological justification of maintaining law and order) and women. The connection between hegemonic masculinity and patriarchal violence is close. Femininity on the contrary is constructed around a compliance to the dominance of men or around a resistance to it. And since compliance is central to the pattern of femininity it is organised as an adaptation to power and authority emphasising nurturance and empathy (see

R W Connell, *Gender and Power: Society, the Person and Sexual Politics*, Polity Press, Cambridge, 1993). Mark, Bajaj should 'graciously' accept a simple apology and let the whole matter drop. (What has in a sense changed the outcome is the fact that Rupan Bajaj is firmly married, in authority, and has the support of her husband. The limitations of this victory are that it would have been inconceivable for a single woman not so firmly embedded within the institution of marriage that is so assiduously supported and protected by the state). The disturbance therefore is one that has to do with the questioning of these hegemonies and the tilting of the axes of power and authority.

To strike at this image of hegemonic masculinity can open the doors to questioning the definitions of heroism and courage, power and privilege and open the floodgates to chaos where the principles of kinder, kirke and kuche are swept out. What women have accomplished through the Rupan Bajaj verdict is, in an important sense the subversion of the patriarchal traditions of the Indian state and a rupture of the boundaries between the political sphere and society, between the home and the world, between the workplace and the street, between classes, forcing us to re-examine our realities and the categories through which we comprehend these realities.

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