

# **SPOTLIGHT**

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# THE SPARK OF ‘NIRBHAYA’: INDIAN FEMINIST INTERVENTIONS, COMMON CHALLENGES AND PROSPECTS

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Writing during the peak of first-wave feminism in the West, Katherine Mayo, an American writer, painted a pitiful picture of the ‘Indian woman’ caught in the whirlpool of indigenous patriarchy and violence. Her book *Mother India*, published in 1927, soon became a template for many Western women writers as they — often unwittingly — participated in the imperial project through a regular diet of articles on the ‘Oriental woman’ in need of salvation.<sup>(1)</sup> Indeed such writings, portraying a universal image of women’s subjugation in the East, not only served as a strong indictment of the Indian subcontinent and the nationalist movements therein, but also undermined the agency of the Indian women who were struggling to create a space for themselves in social reformist movements.

It is no surprise, then, that the recovery from colonial epistemologies has been a major preoccupation of feminist thought in South Asia — namely in India, Bangladesh and Pakistan. To this date, post-colonial feminism continues to be mired in the effort of reconciling the unity of feminist struggle against imbalanced

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power structures, with the idea of *difference*, both cultural and religious. But even as the universalizing tendency of 'liberal feminism' has come under criticism — not only on a global scale with regard to East-West encounters but also domestically across class divides — the rise of nationalism and the associated menace of communalism and religious fundamentalism have posed new challenges for feminist movements in South Asia. While scholars such as Kumari Jayawardena have shown how feminism in Asia and the Middle East emerged organically as part of anti-imperial struggles,<sup>(2)</sup> there is also no denying the fact that, in effect, both colonialist as well as nationalist ventures were largely male-driven enterprises, centred on the notion of women as the 'bastions of culture.' Consequently, the female body often served as a contested terrain for the enactment of both cultural imperialism as well as anti-colonialism. In a similar vein today, one can observe how the gendered space in South Asia frequently finds itself hostage to secular-national as well as religious politics.

This phenomenon has been particularly evident in multi-ethnic India, where the agenda of gender equality has been hijacked, alternately, by the Bharatiya Janata Party (BJP) as well as the secular Congress in a bid to score greater electoral success across Hindu and Muslim constituencies. As a country with the longest history of gender-based activism, and where state secularism intersects with multiculturalism (through the endorsement of personal laws), India serves as a predominant case study in the paper, with occasional comparative glances on neighbouring Pakistan and Bangladesh. Adding to the complexity of secular/religious politics in India is the caste-based structure of its society. As a result, India serves as a useful case study of the way in which class and caste-based inequalities can both intersect with and challenge the struggle of feminism against imbalanced power structures.

On the latest front in India, the bestial gang rape and murder of a 23-year-old girl in New Delhi on 16 December 2012 has reopened a vigorous debate on

gender-based violence and the broader issue of women's status in society. The incident, occurring in a relatively affluent district of India's capital, got extensive coverage in national as well as international media, and was henceforth referred to as Nirbhaya (the "Fearless One"), a reference to the young girl who eventually died in a hospital in Singapore. Nirbhaya soon became a symbol around which the rights of women could be rallied. Subsequently, large-scale public protests broke out in India's urban centres, blaming the Indian government and the local authorities for inadequate security for women. At the international arena, this incident was taken up by One Billion Rising, a global campaign to end violence against women, where the number 'billion' refers to the UN figure that approximately one billion, or one in every three women will be raped or beaten in their lifetime. On 14 February 2013, a one-day rally was organized in 190 different countries to commemorate survivors of domestic and sexual violence, and tributes were also paid, among others, to the Delhi victim.<sup>(3)</sup> Although the western media coverage was not completely devoid of certain essentialist portrayals that depicted an inherently 'misogynistic' Indian culture,<sup>(4)</sup> the global spotlight on Nirbhaya, nevertheless, created an environment of greater scrutiny and cross-border dialogue as a local struggle raged for greater women's security. In India, this home-grown activism kick-started legislative activity that focused not only on Criminal Law Amendments but also addressed, for the first time, the thornier issue of gender violence condoned by the state under the khappanchayat system (village/caste councils) and the Armed Forces Special Powers Act (AFSPA).

This paper examines contemporary feminist interventions in India with an eye towards common regional challenges and prospects. After providing the history of women's movements in the subcontinent, the first section examines the ways politicized religion, communalism and militarism have affected feminist interventions in the legal and social realms. The second section narrows down on

the recent upsurge of feminist activity against gender-based violence in the aftermath of *Nirbhaya*. It examines how the agenda of countering sexual violence towards women has given a fresh impetus to the feminist movement in India, with the potential of transcending religious and caste barriers. In conclusion, the paper explores some potential prospects by examining the implications of the feminist activity in India post-*Nirbhaya* on the neighbouring region.

### **Women's movement in the Subcontinent: A historical glance**

Despite the diverging trajectories of India, Pakistan, and ultimately Bangladesh, after partition in 1947, women's movements across borders have shared many commonalities and have experienced new catalysts for activity during similar time periods. One obvious period of convergence was the time of pre-partition nationalism during which a notion of 'gendered citizenship' gradually emerged. Prior to this, social reform movements in the Indian subcontinent served as a platform for opposing patriarchal social practices, such as *sati*, child marriage and ascetic widowhood, but they lacked a gendered perspective. During this time, education was articulated as a social right for men and women in order to ameliorate their status. The movement was confined to the elite class, and education for a woman was propagated only to fulfil her ultimate role in the household.

It was not until the upsurge in nationalist movements that the notion of 'political rights' began to be afforded to women. Women's involvement in political campaigns led to the formation of women's political associations. These associations provided a fertile ground for training women in the arena of politics, and eventually paved the way for the emergence of organizations such as the Women's Indian Association in 1917 and the National Council for Indian Women in 1925. For their part, Muslim women from the elite classes also began to take a

greater role in politics notwithstanding pressures from the more conservative sections of the community. In 1918 both all-India Muslim League and Indian National Congress announced their support for women's franchise. Although such involvement had increased the visibility of women as political actors, feminist activity still suffered from an incomplete conceptualization of its aims and goals. Khawar Mumtaz and Farida Shaheed argue that "women fought for their rights less on an exclusively 'feminist' platform and more in the general political arena as an integral part of the nationalist movement."<sup>(5)</sup> In that sense, nationalist movements had added a 'feminine' dimension more than a 'feminist' one per se.

Finally, the eighties marked a 'watershed' decade for feminist activity in South Asia. It was during this time that women's movements began to actively conceptualize their rights by articulating the ways in which structural inequalities operated in society at the expense of caste, class *and* gender. In the backdrop of this newfound agenda in India was the publication of *Towards Equality Report* in 1974, which highlighted gender disparities in health, employment, education and political participation. Heavy industrialization and agricultural capitalization in the sixties and the seventies had failed to fulfil the promise of development, creating a host of contradictions and greater inequality in both urban and rural areas. Amidst rising unemployment, students channeled their frustrations through protests and the Indian government, in turn, responded with draconian laws. This context provided the backdrop for movements challenging the authority of the state, and for women's organizations to consciously engage with the law in order to demand their rights and seek redressal. Henceforth in the campaigns against rape, dowry and *sati*, the primary target of women's movements was the state. The state was held accountable for failing to protect the rights of women, and as Anurekha Chari points out, "in addressing the state, women's groups were making an important assertion of women's rights as citizens."<sup>(6)</sup>

Meanwhile, in neighbouring Pakistan and Bangladesh, women's

movements also mobilized against the state during the eighties, each responding to their respective political contexts. According to Amrita Basu, many feminist groups during the time were in contact with one another through regional networks and conferences.<sup>(7)</sup> Owing to Pakistan's chequered road to democracy, interspersed with military coups, women's movements were not able to utilize their potential until the era of Zulfikar Ali Bhutto (1971-77). Whereas military regimes in Pakistan by and large sidelined civil bureaucracies and women from policy-making positions, the Bhutto era included several measures to increase gender equality, such as the provision of affirmative action in the Constitution and the reservation of seats for women in the National Assembly and provincial assemblies. The government also appointed a women's rights committee to recommend measures to improve women's legal, political and economic situation, and subsequently approved the formation of a Women's Division as a separate ministry under the federal government. As a consequence of this pre-conditioning, women's organizations, led by the Women's Action Forum, became most active during the time of Zia ul Haq's Islamization in the eighties, responding to the state's repressive measures. As a result, the government substantially modified the Law of Evidence (1984) and delayed its enactment for two years. The Law of Qisas and Diyat, tabled in 1984, was also delayed until 1992, under the 12th amendment to the constitution, without the clauses discriminating against women.<sup>(8)</sup>

The eighties also represented an important decade for the Bangladeshi women's movement. International organizations encouraging development initiatives for women also led to greater cross-border linkages and dialogues. The domestic impetus in Bangladesh came from the political dissatisfaction with military dictator Hussain Muhammad Ershad's regime for its politicization of Islam and centralization of powers. As some of the most organized groups within civil society, women's organizations played a key role in the protests that

removed Ershad from office and also accounted for the large voter turnout for the 1996 election. In areas where NGOs had been active, the turnout of women voters was extremely high. The women's movement in Bangladesh not only took up issues of female exploitation, such as rape, dowry, fatwa deaths, and trafficking, but it simultaneously challenged the military's abrogation of democracy with the belief that women's rights could only be realized in a democratic environment.<sup>(9)</sup>

In tandem, the eighties signified a period during which women's movements across the South Asian subcontinent began to increasingly focus their attention on the state and on the efficacy of law as a means of redressal. Comparatively in the legal realm, the campaigns carried out in India were most successful, with many of them resulting in tangible legislations. For instance in 1984, the Dowry Prohibition (Amendment) Act was passed which sought to tighten the loopholes of the previous law passed in 1961 and to prevent the continuing incidents of 'dowry deaths.' Another significant piece of legislation introduced in the eighties was the Criminal Law (Second Amendment) Act (1983), which specified a new offence of cruelty by husband or relatives in the following words, "wilful conduct of such a nature as is likely to drive a woman to commit suicide or cause physical or mental injury to herself." Finally, the Marriage Amendment Bill passed in 1981 sought to ease divorce procedures and provide important safeguards for the rights of women to maintenance and alimony.<sup>(10)</sup>

Much of this success can be attributed to the history of uninterrupted democratic politics and the existence of a stronger civil society in India as compared to Pakistan and Bangladesh. But with every two steps forwards, there was also one step back for Indian women's movements. Notwithstanding the overt progress of the legislative activity characterizing this period, there still remained challenges in the form of procedural loopholes, lack of political will for the enforcement of law, and pressure from conservative elements. Flavia Agnes, a

notable Indian feminist and legal scholar, writes:

If oppression could be tackled by passing laws, then the decade of the 1980s would be adjudged a golden period for Indian women, when protective laws were offered on a platter. Almost every single campaign against violence on women resulted in new legislation. The successive enactments would seem to provide a positive picture of achievements but the crime statistics reveal a different story. The deterrent value of the enactment was apparently nil. Some of the enactments in effect remained only on paper.<sup>(11)</sup>

These challenges provided a fertile ground for Indian feminists to begin theorizing bottom-up approaches to gender equality alongside top-down legal implementations. Another overwhelming question to emerge from efforts of Indian feminists during the eighties was that of representation: after all, *who* could represent *whom* in the campaigns for women's rights? For instance, could the upper-class women articulate the concerns of the poor, the working class or the lower-caste *dalits*? Could the Hindu majority speak for Muslims and vice versa? Could organizations for women's empowerment set up by the government or the women's wing of political parties represent Indian feminism without being tainted by their respective political agendas? In the ensuing years, these questions were to be further problematized in India, particularly with the rise of communalism, militarism and politicized religion.

## **Confronting post-colonial challenges to feminist interventions in India**

### **Communalism & politicized religion**

The relationship between gender and politicized religion in South Asia is nuanced and complex. While religious activism has undermined women's autonomy in some contexts, it has provided a space for women's activism in

others. Amrita Basu writes on this paradoxical relationship:

Contrary to the hopes of most feminists, women have not always opposed religious nationalist appeals; [and] contrary to the hopes of religious nationalists, religious identities have not always negated women's gender, class and regional identities.<sup>(12)</sup>

Setting aside the dominant perception that religion and gender equality are always inversely related, many scholars have highlighted the privileged place of religion and piety in social life, as well as the ways in which women have appropriated the concept of equality within religion to achieve social change. But since religion is not just a matter of faith but also a mark of self-identity for many people, the question of religious patriarchy cannot be divorced from considerations of identity politics inherent in communalism or nationalism. In the Indian context, religious fundamentalism and communal tensions not only reinforce each other, but also effectively bank on the other for survival. Meghana V Nayak explains the interdependency of communalism and religious fundamentalism: "Hindu nationalism needs Muslims and other extremes and chauvinism (such as Sikh and Tamil) to exist in order to justify the need for a Hindu nation for Indian Hindu citizens afraid of terrorism."<sup>(13)</sup>

The same applies vice versa, where minority cultures endorse authoritarian religious tendencies in order to get protection from the encroachment of the majoritarian culture. For Hindu nationalists advocating a culturally Hindu nation, it is a clever tactic to sensationalize the selective 'vices' of minority cultures so that they may be located outside the domain of 'Indian values.' For their part, minority religious communities respond by conflating religion and culture, and identifying the private sphere as the essence of their cultural identity. In what then becomes a defensive reaction to perceived majoritarian assimilation, it is the rights of women that are often compromised upon; family law becomes linked with the community's overall status and begins to serve as a means of 'shoring up

one' cultural capital.'<sup>(14)</sup> Consequently, any alterations to family law or the status quo through an alternative reading of religious scripture is taken as an assault on the integrity of one's cultural or religious identity.<sup>(15)</sup>

An apt manifestation of the above is the controversy that erupted over the reform of Muslim personal law in India, after a divorced elderly lady, Shah Bano Begum, was denied alimony from the Supreme Court in 1985. The incident also indicated how the agenda of women's rights is held hostage by both religious as well as secular politics. Following the divorce of 73-year-old Shah Bano Begum in 1985 and her subsequent pledge for maintenance, the Supreme Court ruled in her favour, stating that criminal laws override personal laws and are applicable to Muslim and non-Muslim women alike. The judgment caused an outcry among the leaders of the All India Muslim Personal Law Board (AIMPLB), who perceived in this gesture an attempt to invade upon the private sphere of their community. In response, the Congress government of the time, led by Rajiv Gandhi, enacted a legislation, the Muslim Women (Protection of Rights on Divorce) Bill, 1986, to explicitly exclude Muslim women from the purview of the Criminal Procedure Code, to which all citizens otherwise have recourse. In so doing, the Muslim Women Bill not only strengthened the authority of the Muslim clerical class in the interpretation of personal law, but also removed the Muslim personal law from the purview of internal reform.

The issue was further exacerbated by the communal politics of the Hindu Right, namely the BJP, who took upon themselves a 'civilizing mission' to sensationalize the 'backward' Muslim laws and to subsequently reform them. In their mission to endorse the notion of a culturally superior Hindu nation, a pseudo-feminist agenda of defending the 'pitiable Muslim woman' featured prominently. While the Congress party converted women's rights into an issue of minority rights, making pragmatic compromises with communalism in order to maintain its vote bank with the Muslim community, the Hindu Right seized the

opportunity to not only criticize ‘Muslim backwardness’ but also the failings of the Congress and their ‘pseudo-secularism.’<sup>(16)</sup>

The subsequent Muslim Women Bill that was passed, however, did not just evoke a response from the Hindu Right or from liberal feminists. In the protests that ensued in Kerala, West Bengal, Bombay and Delhi, Indian Muslim women from urban, middle-class background also participated fervently, questioning the interpretations of their male-ulema. Nevertheless, BJP’s bandwagoning of the Uniform Civil Code in order to save the ‘oppressed’ Muslim woman only delegitimized, in the eyes of the Muslim community, state-sanctioned gestures towards gender-equality. It simultaneously provoked the notion of ‘liberal feminism’ as being a form of cultural imperialism. But if there was any silver lining that emerged from this controversy, it was that women’s organizations committed to the principles of genuine equality, as opposed to mere politicking, began to pay greater attention to bottom-up approaches to gender-based reform. They also began to emphasize internal democracy within minority communities, where Muslim women could represent themselves — instead of *being* represented by the male clergy of their communities.

Subsequently in 2005, an All Indian Muslim Women’s Personal Law Board (AIMWPLB) was formed to discuss and adopt strategies for the implementation of the Muslim Personal Law in India. The purpose of this board was to include the voices of Muslim women in the interpretation of personal law so that their legal rights in marriage, divorce and inheritance could be protected. In March 2008, the AIMWPLB released a 12-page *Sharai’ Nikahnama* which sought to offer India’s Muslim women a religiously-sanctioned alternative to conventional Islamic marriage contract, and challenged the authority of religious male clerics by including (mutually negotiable) clauses for women’s protection.<sup>(17)</sup> Working within the domain of choice granted to women in Islam, the concept behind the model *nikahnama* was that it could be framed by the bride

in question according to her needs and conditions. In so doing, it allowed for choice and consensus between both parties before the marriage commitment. The initiative was praised by the All India Democratic Women's Association for educating Muslim women of the rights that were denied them due to ignorance.<sup>(18)</sup> AIMWPLB President Shaista Ambar also explained the deterrent value of such an initiative: "Women have to deal with broken homes and unhappy lives because of unfair laws. We hope that this will not happen any more."<sup>(19)</sup>

### **State-sanctioned gender violence**

While tackling the oppression of women by religious or nationalist ideologues has been one struggle for feminist organizations, an equally challenging concern to emerge in contemporary times is the active participation and co-opting of women in ideologies that promote violence. Militarism in the subcontinent has manifested itself both in the form of ethnic or communal conflicts as well as in the precedence of military concerns (such as that of centralization, obedience and hierarchy) over social ones. The adverse impact of militarism on feminist campaigns against imbalanced power structures is acknowledged worldwide. Madhu Malhotra, from Amnesty International, writes:

Wars, internal conflicts and violent repression of political and social justice movements can have a particular and often disproportionate impact on women and the types of abuses they experience, despite the continued efforts of women's rights defenders to prevent such abuse. It is a sad reality that sexual and gender-based violence in the context of militarism happens in all regions of the world.<sup>(20)</sup>

But what happens when women themselves become active instigators of violence against their own gender, albeit from a different community? Take the issue of gender-based violence in India, for instance, a central concern for Indian women's movements since their inception. Amidst the prevalence of communal

politics and militarism, however, even a seemingly universal agenda of combating gender-based violence becomes politicized. The rhetoric is either hijacked to prove the superiority of one religious/ethnic community over another, or the violence itself is overlooked in the name of national security or collateral damage.

When in late 1992, the urban centres of Bombay and Delhi became engulfed in communal riots after the destruction of Babri Masjid in Ayodhya (Uttar Pradesh), Hindu women readily supported violence against Muslims rather than protesting gender-violence within their own community and beyond. Some of the most powerful images that stand out from the UP communal riots of the nineties are that of Hindu nationalist women leading processions through Muslim neighbourhoods, shouting inflammatory slogans with tridents in their hands. This is because Hindu right-wing groups have repeatedly evoked gendered imagery (of Hindu women as victims of Muslim lust) to foment (communal) violence.<sup>(21)</sup> In the same vein, Hindu women are portrayed to be empowered vis-à-vis their ‘oppressed’ Muslim counterparts. Bachetta and Power write:

The problem with Hindu nationalist security is not that it belies the so-called natural pacifism of women, but rather it inscribes right wing ideology as the only authoritative source of security. Right wing women around the world participate in and draw upon this ideology to feel safe and to benefit from the suppression of minorities.<sup>(22)</sup>

Such instances have not only challenged feminist interventions in the practical domain, but have also problematized the idea of ‘female agency’ on a theoretical level. It is this dilemma that has thrown off contemporary feminists in the region, compelling them to disengage from notions that associate empowerment or agency with militarism on the one hand, and ‘meek timidity’ with pacifism on the other hand. Meanwhile, on the state level, responses to gender-based violations during caste or communal violence have also been disappointing. A glaring example is the response of the National Commission for

Women (NCW) after the Gujarat massacre of 2002 during which there were many instances of blatant sexual violence against women. The NCW, despite its autonomous status in India, is criticized for being influenced by its governmental appointees.<sup>(23)</sup> With regard to the Gujarat massacre, the Commission, much to the criticism of feminist organizations, altogether evaded the issue of state or administrative complicity in the violence, ignoring the reports of civil rights groups and other bodies like the National Human Rights Commission. Among other criticisms levelled against the NCW was that they had referred to sexual violence in the conflict only as an aberration, as opposed to a systematic campaign. Moreover, they had merely focused on compensation and relief without delving into the ‘minority angle’ of the violence.<sup>(24)</sup>

Similarly, in the conflict-prone areas of Jammu and Kashmir and the North-East India, where the army is known for its heavy-handedness, women are often caught in the crossfire between insurgency and counter-insurgency, and suffer from sexual violence at the hands of both parties. Both regions have experienced large-scale violations where women have been targeted, but governmental bodies have remained silent owing to political sensitivities surrounding the nature of the conflict. Such zones are particularly prone to state complicity or sanction of violence against women. This is carried out either through direct complicity under Armed Forces Special Powers Act (AFSPA); or conversely, through the crime of omission by empowering communities or *khap panchayats* (village councils) to use violence with immunity.

As far as the disputed State of Jammu and Kashmir is concerned, many violations against women are altogether censored from the press. A glaring example is the infamous Shopian incident in which two young Kashmiri girls were found dead near the Central Reserve Police Force (CRPF) camp in May 2009. An initial, dubious press release rejected the possibility of sexual assault, only to be cancelled without comment. No FIR was lodged either. The tragedy

was then labelled as a ‘case of drowning,’ but an inquiry soon revealed that the stream nearby was too shallow. Despite repeated attempts to cover up the incident, a number of contradictory statements indicated the existence of behind-the-curtain dealings between the police and the local authorities. The incident, sparking widespread anger across the State, soon came to be known as a “monumental fraud on the people of Kashmir” after which an FIR was finally lodged for rape and murder.<sup>(25)</sup> Much in the same way, political authorities also have history of remaining silent in the face of violations in Chattisgarh. In 2004, a Manipuri woman, Thanjam Manorama Devi was picked up by the Indian paramilitary unit, 17<sup>th</sup> Assam Rifles, on the pretext of being involved with the People’s Liberation Army of Manipur, sexually assaulted and later found dead in a field. The failure to hold the culprit accountable by the state led to widespread protests in Delhi and Manipur. Such was also the case of Soni Sori, a tribal teacher in Chattisgarh, who was framed on charges of acting as an intermediary for the Maoists in 2011 and was brutally assaulted in police custody. For its part, the Chattisgarh government denied charges of sexual assault under police custody, insisting that the allegation was designed to malign the local police by “vested interests.” Her case was taken up by local as well as international organizations, such as Amnesty International and Human Rights Watch, but to little avail.<sup>(26)</sup>

Legal immunity granted to security personnel also complicates prosecution when caste hierarchies merge with the rhetoric of public security. In the case of Mathura, a young dalit girl who was assaulted under police custody in 1983, the government was provoked enough to incorporate the term ‘custodial rape’ (i.e. by superintendents of remand homes, hospitals and prisons) in Criminal Law (Second Amendment Act, 1983), where the burden of proof lay with the accused. Despite this substantial inclusion, the government still managed to steer clear of the wider practice of ‘landlord rape’, which is a direct result of

entrenched caste and class hierarchies in rural settings. Women's organizations have criticized the tendency of armed forces or community leaders for raising the spectre of threat from the 'Other' in such occasions and for treating themselves as above the law. However, state patronage of such acts has created a culture of impunity and made the question of redress difficult.<sup>(27)</sup> The *khap panchayat* system, in which village councils comprise of the same caste, has dominated the rural Indian landscape for centuries. *khap panchayats* are known for their conservative hold over the community, particularly on matters relating to women, and often serve as de facto courts for the settlement of disputes ranging from land or cattle to murder. But notwithstanding their controversial judgments, they often receive patronage from political parties and act as vote banks during elections.<sup>(28)</sup>

Legislations on the issue of sexual violence in India, therefore, have largely been peripheral or selective, skirting past the actual 'elephant in the room.' Where the law does exist, prosecution is often made difficult owing to the social taboo surrounding the discussion of sexual violence. In 1997, for instance, the Supreme Court of India passed a landmark judgment known as the *Vishaka Guidelines*, which incorporated recommendations of the Committee on the Elimination of Discrimination Against Women (CEDAW). Prior to this, Indian civil and penal laws did not contain adequate provisions that addressed the issue of sexual violence and the judgment sought to remedy the gap. Although the core issue prompting the judgment was the violence faced by working women in rural India, the Supreme Court judgment, as it came to be applied, became beneficial only for women in organized urban centres where certain channels were provided for the registration of complaints and redressal. In the ensuing years in response to growing pressure from women's organizations, another draft legislation was framed to protect women against sexual harassment. But this legislation soon gathered dust and was replaced by "The Protection of Women Against Sexual Harassment at Workplace" in 2007 on the premise that the earlier bill was too

broad and difficult to implement. Barring certain organized and professional sectors, the significance of the bill was largely moot. The category of minors who could be employed, for instance, was excluded from the wording of the 2007 bill. But above all, the issue of ‘harassment’ by third-party actors, or outside the workplace and working hours remained largely unaddressed, leaving a significant population of women vulnerable to such practices.<sup>(29)</sup>

Amidst this backdrop, it is useful to examine feminist interventions in the aftermath of *Nirbhaya*, i.e. the infamous gang rape in New Delhi on 16 December 2012. For the first time in India’s history, the incident sparked a national conversation on the status of women in India. In the case of *Nirbhaya*, the brutality of the crime committed was non-political to begin with. But the ripple effects of *Nirbhaya*’s social agitation, nevertheless, managed to also confront the thornier issues of militarism as well as class and caste inequalities that have challenged feminist interventions. From the margins of a social debate, the issue of women’s security had now taken to the center stage of a political debate.

### **The spark of Nirbhaya**

What was novel about *Nirbhaya* was the nation-wide as well as international attention it received in the new age of social media, compelling politicians and civil society alike to deliberate over a previously underreported issue. As protests from the civil society gained momentum after the incident, a number of controversial and derogatory remarks made by high-ranking officials and politicians convinced the public that a deeper interrogation of social norms was required. Prime Minister Manmohan Singh’s *theekhai* (it’s okay) elicited deep criticism from the public for trivializing the issue. Andhra Pradesh Congress president Botsa Satyanarayana earned the wrath of the people after describing the Delhi gang rape as a “small incident” and saying that women shouldn’t go out during late hours. Meanwhile, Congress MP Abhijit Mukherjee also caused an

outrage with his derogatory reference to female protestors in Delhi. “They are dented and painted women chasing two minutes on fame, giving interviews on TV,” Abhijit told a news channel in Kolkata.<sup>(30)</sup> Another politician to earn intense criticism from the public was Banwari Lal Singhal, a BJP legislator from Alwar city constituency in Rajasthan, who asserted that women’s clothes led to sexual harassment. While on the one hand these remarks galvanized the protest movement by betraying an inherent chauvinist mindset, they also helped turn a social issue into an intrinsically political one.

The incident shifted public attention to the existing legal framework vis-à-vis sexual violence and set into motion a call for wide-ranging reform and implementation. Justice Verma was appointed chairperson of a three-member commission tasked with reforming the anti-rape law. A 630-page report submitted by the Justice Verma Committee contained suggestions about existing legal provisions and encapsulated the spirit of comprehensive and thorough reform.<sup>(31)</sup> The report provided a blueprint for radical transformation of gender relations to stop the unfair treatment of women from within the framework of constitutional guarantees on gender equality. Among the suggestions were faster and higher punishment for the crime of sexual assault, albeit death penalty was not listed as a recommendation. Apart from an emphasis on stronger laws, the report equally stressed the need to transform structures, processes and attitudes by making them more gender-sensitive. By extension, it applied the concept of mainstreaming gender in public amenities and services as well. The crime of sexual violence was, thus, located in a wider context of imbalanced power structures, and addressed in a multi-dimensional fashion, ranging from offences of stalking and voyeurism to the more aggravated cases of assault and trafficking.

Perhaps the most prominent feature of the report was the urgency with which it called for police reforms in order to reflect a “cooperative relationship between civil society and the police service.”<sup>(32)</sup> In so doing, it placed greater

accountability on the police as well as public servants for the environment of increasing insecurity for women in India. Another unprecedented feature of the report was the suggestion that the Armed Forces Special Powers Act (AFSPA) is reviewed in order to prevent the exploitation of women. It also included a clause for trying members of the armed forces accused of sexual assault without undergoing complicated procedures of permission, and for reining in of *khap panchayats*. Indeed in the aftermath of Nirbhaya, Justice Verma criticized the nexus between the police and the politicians: “I was shocked to see the Home Secretary patting on the back of the Police Commissioner. The least that could have been done was to seek an apology from the people for the city being unsafe.”<sup>(33)</sup> The report, thus, contributed in raising awareness of the power structures that enabled the social status quo, and placed the onus of responsibility on them. Kuldip Nayar, for instance, wrote an incisive article in *The Tribune*, echoing this criticism: “both [police and politicians] indulge in homilies but seldom criticize one another. Both are part of the establishment that wants more and more power with less and less accountability. Both are really responsible for the mis-governance or non-governance.”<sup>(34)</sup> Commenting on the AFSPA clause, he added:

I have always believed that the Armed Forces Special Powers Act (AFSPA) has outlived its utility, if it had any. To allow the forces to get away with killings even on suspicion — many incidents have come to light in Kashmir and the Northeast — is unpardonable. [...] The Army is deadily against any change in the AFSPA and has denied any rape case. [But] the rape case in Kunom Poshpara in Kashmir in 1991 requires full investigation, since the army’s personnel were found as much guilty as some in the civil administration.<sup>(35)</sup>

In response to mounting pressure from the media and the civil society at large, the Indian government passed an ordinance on sexual assault on 3 February

2013, less than three weeks ahead of the budget session. The ordinance was subsequently approved by the Lokh Sabha and the Rajya Sabha in March 2013, and provided amendments to Indian Penal Code, Indian Evidence Act and Code of Criminal Procedure (1973) on laws relating to sexual offence. Although the new Criminal Amendment Act (2013) was welcomed by women's rights activists for including the many sub-categories of sexual violence such as stalking, voyeurism, sexual harassment and acid attack (gender-neutral), it was criticized for not pushing forward with some of the most substantive features of the Verma report. Recommendations relating to marital rape, police reform, and prosecution of security personnel charged with sexual assault under ordinary criminal law, were all excluded from legislative purview. Instead the government focused on enhanced punishment, such as death penalty in the more aggravated cases and the creation of fast-track courts, as a means of deterrence.<sup>(36)</sup>

Needles to say, the ordinance came under fire by civil rights activists for being selective in the face of unprecedented protests against gender-based violence and women's insecurity. In the words of a columnist for *The Hindu*:

The cabinet seems to have taken up the least controversial recommendations, and packed them into an ordinance to avoid any extended debate on the wider issues and sidestep criticism that it was slow to act.<sup>(37)</sup>

But while it may seem that the government's approach in sidestepping the more substantive recommendations of the report represented a failure of feminist activity in India, such intransigence only reinforced the notion that change was unlikely, without sustained pressure from civil society and people's movements. It equally highlighted the importance of political will in ensuring any substantive — rather than cosmetic — gestures towards gender equality and women's security in the country. For academic and women's rights activist, Zoya Hasan from Jawaharlal Nehru University, this particular juncture represented a good

opportunity to raise questions about women's political participation as well as the attitude of political parties towards women in legislature and decision-making. Instead of merely relegating women to the task of political campaigning and mobilization of constituencies during elections, she called for an increased legislative representation of women alongside a system of internal democracy and transparency. The latter was deemed necessary so as to ensure that political patronage and power politics do not take precedence over the actual goals of gender-equality. In the aftermath of the Criminal Amendment Act (2013), Zoya Hasan highlighted the importance of persistent campaigning for the Women's Reservation Bill:

In a major step forward, the Rajya Sabha passed the Women's Reservation Bill on March 9, 2010, which is the furthest the Bill has ever got. But its fate in the Lok Sabha is unsure. If political parties are serious about the rights of women they should pass the Bill without further delay. A critical mass of 33% women in legislatures can demand and push gender-just policies and laws. It will catalyze change in state and society, challenge patriarchy and unleash a broader process of social change. What is more, it can change the character of Indian politics with a greater focus on common interests.<sup>(38)</sup>

Indeed the significance of feminist activity post-Nirbhaya lies precisely in its community mobilization around gender-based issues as well as in the inculcation of gender-sensitive approaches to policy-making. The political impetus sparked by *Nirbhaya*, in the age of social media, went much beyond raising awareness on the issue of sexual violence. The incident helped open a Pandora's box of social, legal and political obstacles that hinder adequate rights and protection to women in Indian society. According to India's prominent social scientist, Amartya Sen, the politicization of women's security that occurred in the aftermath of *Nirbhaya* has been a positive step in the right direction. Sen further

commented: “Public anger at gender inequality in India must be seen as an important — and long-overdue — social development, and it can certainly help in remedying the persistent inequalities from which Indian women suffer.”<sup>(39)</sup>

Among other endemic issues highlighted as a result of this incident was the prevalent social attitude that gave greater preference to boys and men, leading to sex-selection practices or female infanticide in India. For many civil rights activists, violence against women could not be eliminated unless discrimination within the basic family unit could be tackled. Zoya Hasan, for instance, elaborates on the way girls are automatically treated as less deserving of care and health:

Studies on discrimination towards girls in India have shown that the higher ratio of deaths can be attributed to the continuing discrimination towards girls in healthcare, food and nutrition, and emotional support. These figures also reflect the consequence of poverty that is forcing parents to choose who to treat for illness, where the girl features as the second choice.<sup>(40)</sup>

Back in 1990, economist Amartya Sen had characterized this same problem as “missing women,” a reference to the shortfall of female-male ratio in Asia. In the aftermath of *Nirbhaya*, Sen published another essay in the *New York Review of Books*, highlighting the various forms of female disadvantage in India:

There is strong evidence that the economic and social options open to women are significantly fewer than those available to men; and going beyond women’s well-being, we have reason to ask also about women’s limited role in society and their ability to act independently, and how their initiatives and actions influence the lives of men as well as women, and boys as well as girls.<sup>(41)</sup>

Equally important for Sen was the oft-neglected dimension of class and caste inequalities.<sup>(42)</sup> Sen wrote: “Dalit women have been violated and subjected to violence day in and day out without any group taking up their cause. The whole

issue of death and neglect is far greater than we assume. It has an immediate effect on human life because half the people in the world are women." Other articles in the Chandigarh-based *Tribune* recounted incidents in which the courts failed to prosecute the culprits and the entire family of the victim suffered as a result. "The high caste sense of entitlement of the males in rural areas, compounded by tacit support of the police, and a sense of shame attached to the victims of crime of rape multiplies such unfortunate incidents,' explained one such article.<sup>(43)</sup> Criticisms levelled against the coverage of Nirbhaya alleged that the attention received was primarily because the incident had occurred in an urban as opposed to a rural district. Indeed the spotlight on Nirbhaya allowed for questions to be raised about the inconsistencies of social protest as well as the everyday sufferings of Dalit women at the hands of high-caste men.

The significance of Nirbhaya must be viewed in the light of the political consciousness that was generated in the aftermath. The incident served to catalyze the discussion on sexual violence on a wider level, and soon became a symbol around which the rights of women could be rallied. In this sense, the significance stretches beyond the solitary incident itself in that it opened up the discussion of similar incidents that had preceded it, as well as those that followed.<sup>(44)</sup> Journalists and social activists made it a point to address the oft-neglected victims of sexual violence in rural areas, or those targeted in the 2013 communal riots of Muzzafarnagar, as the 'unknown Nirbhayas.'<sup>(45)</sup>

A number of projects were also set up under the name in order to provide greater security to women. Upon public demand, the government launched the Nirbhaya Fund of Rs 1,405 crore under which a project was designed to ensure the safety of women and girls in public transportation. The project involves the installation of emergency buttons in public transportation, the setting up of closed-circuit television (CCTVs) and the use of global positioning system (GPS) to ensure safety and security of women and girls in distress. It has been cleared

for implementation in 53 cities with more than a million in population.<sup>(46)</sup> On 15 February 2014, another project by the name of “Nirbhaya Keralam; Surikshita Keralam” was launched. The project includes the formation of women volunteer groups, the strengthening of existing mechanisms to counter human trafficking and abduction alongside awareness programmes against law violations. It also provides the rehabilitation of women and children, and strengthens police intervention in crimes against women by making public places as well as security personnel more gender-sensitive.<sup>(47)</sup>

## **Conclusion**

### **‘Think locally; act globally’**

Feminist thought in South Asia, notwithstanding the challenges posed by militarism, communalism and religious fundamentalism in the post-colonial era, has continued to evolve, and to some extent, has remained self-critical. Ratna Kapur and Mrinalini Sinha, for instance, call for a renewed engagement with local ‘pasts’ and contextual ‘differences,’ whilst steering away from the notion of an essentialist or nativist culture. Stepping past the East-West binaries, many scholars today also urge for greater dialogue with feminisms elsewhere in the region, particularly in the Global South or the East.<sup>(48)</sup> Instead of the previous mantra of “thinking globally, and acting locally,” they urge for the contrary: i.e. to “think locally and act globally” as Amrita Basu puts it. The existence of transnational networks has also, in some ways, dislodged earlier connotations of imperial hegemony, where the ‘local’ was once identified as the South and the ‘global’ as the North or the West. Instead, the agenda of connecting ‘local’ feminisms with the ‘global’ arena now refers to the development of cross-border linkages and the flow of resources, without compromising the specificity of voice and struggle in a given context.<sup>(49)</sup>

But moving past theory, to what extent is there an exchange of resources on gender-related issues and between women's networks across South Asia? Although the consciousness of common challenges and prospects exists among academics and developmentalists, we have yet to see a greater trickle-down effect at the grass-roots level so that successful models of gender mainstreaming are shared and applied transnationally. Owing to political tensions characterizing inter-state relations in South Asia, the avenues for cross-border experiential learning for women's organizations have been limited. According to a recent survey that the author conducted, a large number of activists and organizations working on gender-related issues in Pakistan are cognizant of the recent legislative strides and feminist activity in neighbouring India. But little has been done to translate that transnational awareness into meaningful action.<sup>(50)</sup> This is partly because women's organizations tend to take their cues from local specificities. But another important reason behind this is that there are limited channels for cross-border communication and relationship building. Meanwhile in India, there has been similar discussion on the need for knowledge and resource exchange across borders particularly in the aftermath of *Nirbhaya*. Speaking at length in his lecture at IIT University in Mumbai, Sen emphasized the need to learn and implement lessons from successful development models elsewhere in South Asia, and in the global south. Most prominently, he cited the example of Bangladesh, which stands ahead of India in the domain of human development, owing largely to its efforts at gender equality:

In Bangladesh's politics, gender equality became increasingly important. Not too long ago Bangladesh was behind India on all indices. Today Bangladesh is the only country with more girls in schools than boys. It has a higher life expectancy, lower mortality rates and women in the labour force.<sup>(51)</sup>

Indeed in the past decades, Bangladesh has launched a series of innovative development models designed to address gender inequities in education and health. A recent project launched by BRAC is the ‘tent-schooling’ system, whereby tent schools are established in neighbourhoods to assess the educational needs of children and remedy the gaps in learning in order to integrate them in regular schools.<sup>(52)</sup> The project has been designed with a gender-sensitive approach, since young girls in marginalized districts face greater hurdles in commuting to schools located away from their homes.

While such development models geared towards poverty-alleviation, education and health can be effectively utilized as a resource-tool transnationally, there are also a number of other historical, cultural and political commonalities that can allow for South Asian feminism(s) to be considered for comparative analysis, notwithstanding the breadth of their diversity. For instance, Ania Loomba and Ritty Lukose argue that in South Asia: “Women, their bodies, their honor have been crucial to creating national borders, physical and conceptual. During [...] partitions, Hindu, Sikh and Muslim women were kidnapped as badges of honour. Often it was not women who moved – the boundaries of nation did, making women ‘alien’ in their own homes.”<sup>(53)</sup> Adding to this is the role served by religion in the region, not just in terms of its utility in politics but, more importantly, in the immense significance that it occupies in social life. As a consequence of the latter, religion in the public sphere has not merely constrained feminist movements in South Asia, as some scholars would argue, but has equally allowed for several positive forms of women’s agency to exist through the reinterpretation of religious doctrines.

One aspect of such a development can be glimpsed from the efforts of the All India Muslim Women’s Personal Law Board (AIMWPLB) to release a gender-sensitive *Sharai Nikahnama*. Although the model *nikahnama* has encountered some resistance from clerics and hardliners within AIMWPLB, it is

gradually seeking its place within the Indian Muslim community and has generated a much-needed debate on the topic. In 2008, Tahir Mahmood, an Islamic Law expert and a member of the Law Commission of India approved of the *nikahnama* as being commensurable with the spirit of *Shar'iah* and rejected the objections raised by the clerics. He said:

Even if somebody finds it at variance with the traditional law, parties to a Muslim marriage indubitably have full contractual freedom under Islamic law and can stipulate, at the time of marriage, conditions of their choice not violating any mandatory provision of Shariat. The new 'nikahnama' does not contravene any such provision and is fully valid under the legal rule of contracting parties' freedom of stipulation.<sup>(54)</sup>

Indeed in the aftermath of the Shah Bano debacle in 1982, many feminists called for greater representation of Muslim women in the affairs of their community, and for a bottom-up approach to reform in the community as opposed to a top-down implementation of the Uniform Civil Code. The formation of AIMWPLB represents a step towards that direction. It also stands out as a model for Pakistani and Bangladeshi civil society in that it allows women to have an active role in the interpretation of religion and in policy-making. Amidst the prevalent ire against 'liberal feminism' for failing to accommodate cultural or religious values in post-colonial South Asia, such a development also stands out as an affirmation of feminism that is commensurate with local values.

On the issue of sexual violence, the community mobilization in the aftermath of *Nirbhaya* stands out, yet again, as a learning point for neighbouring countries. From India to Pakistan and Bangladesh, a number of laws are available for the protection of women as well as constitutional guarantees towards this end. Dr. Fouzia Saeed in Pakistan, for instance, has been at the forefront of the Alliance Against Sexual Harassment (AASHA), an organization aimed at raising greater legal awareness on the issue and developing policy frameworks for the

government. She also spearheaded the legislation (Protection Against Sexual Harassment Act), which was eventually passed in 2010. Similarly, in the recent years, a number of legislations in Pakistan have focused on the protection of women against gender-based violence. In 2011, the National Assembly passed the Prevention of Anti-Women Practices (Criminal Law Amendment) Act that addressed social practices like *wanni*, *swara* or *budla-i-sulh*, wherein women are traded to settle personal, family or tribal disputes.<sup>(55)</sup> Another landmark bill was passed in the same year geared towards the prevention of acid crimes. But notwithstanding procedural loopholes, the problem in South Asia — across the board — lies not in the absence of legal provision, but in their lack of implementation. Notions of shame and honour associated with the female body often enable a culture of impunity because the perpetrators are not held accountable for their actions. For this reason, there is a need for full-scale community mobilization regarding not only gender-based crimes but also the existence of legal rights that are available. Only sustained pressure from civil society can ensure that the gap between policy and action is bridged.

Although Pakistan was the first country in South Asia to introduce a national law on the right to information (Freedom of Information Ordinance 2002), the law was largely ineffective due to low civic input as well as inadequate legal provisions. The enactment of the Indian Right to Information Act in 2005 in federal and provincial tiers of the government, however, provided tremendous momentum to the movement in Pakistan, with readily available examples of how ordinary citizens could use RTI for personal benefit and public good. Although the movement in Pakistan finally culminated in the enactment of RTI in Punjab and Khyber-Pakhtunkhawa, there still remains work to be done in terms of raising awareness among the common public and making the laws accessible to them.<sup>(56)</sup> As far as women's rights are concerned, access to information, and facilitating that access, could play a key role in the capacity-building of civil society and in

the implementation of relevant laws. Communities and women in particular, need to be aware of their legal rights as enshrined in the Constitution.

In that sense, Pakistan and Bangladesh can take a leaf out of India's civic mobilization on women's rights and security in the aftermath of *Nirbhaya*. In India, the call for change has not just been limited to agitation in the streets or the courts, but has also manifested in a number of public service announcements and advertisements in the media that seek to remove the social taboo surrounding the discussion of gender-based crimes. Gender as a political category has the potential of transcending class, caste, religious and national boundaries in a common struggle for parity and equality. And only through a greater exchange of knowledge and resources across borders, i.e. by "thinking locally and acting globally," can this goal become possible.

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