
October 16, 2020

PUCL MAHARASHTRA STATEMENT ON THE HATHRAS INCIDENT

PUCL Maharashtra condemns the caste-based brutal rape and murder of the young Dalit woman from Hathras, UP, by upper caste men and the deliberate mishandling of the case, including delayed FIR, medical examination and burning of the body and destruction of evidence by state authorities.

PUCL Maharashtra condemns the even more reprehensible act of the UP government to create a false counter narrative in an attempt to threaten and criminalize the victim's family and its supporters.

PUCL Maharashtra believes that beyond bringing in public attention and calling for end to the Caste biases in the political, executive, penal and judicial system, it is imperative that we need to counter the everyday Caste and gender violence which have become a norm in Indian Society. The atrocious crimes committed by men from upper caste, supported by the State machinery on the victim at Hathras in UP though exceptionally heinous, is also reflective of everyday reality of caste and gender discrimination, as also violence faced by marginalized Castes and communities. It is a reflection of sanctioned caste discrimination perpetuated in everyday life of deeply misogynist, casteist and Brahminical Indian society.

The unit-level data of the National Family Health Survey (NFHS) conducted in 2015-16 indicates that an estimated 99.1% of sexual violence cases are not even reported. NCRB data on Caste and Gender violence shows increase in crime committed against SC/STs in year of 2019.

A total of 45,935 cases were registered for crime against Scheduled Castes (SCs), an increase of 7.3% over 2018 (42,793 cases). Crime rate (per lakh of population) registered showed an increase from 21.2 in 2018 to 22.8 in 2019, within which 7.6% (3,486 cases) cases were of Sexual Assault/Rape.

A total of 8,257 cases were registered for crime against Scheduled Tribes (STs), showing an increase of 26.5% over 2018 (6,528 cases). Crime rate registered increased from 6.3 in 2018 to 7.9 in 2019, which includes 13.4% (1,110 cases) of Sexual assault/rape and 10.7% (880 cases) of assault on women with intent to outrage her modesty.

The deliberate mishandling of the crime in Hathras

At every step the State machinery has deliberately disobeyed the directions under law and willfully neglected to perform their duty in this heinous case of caste-based sexual violence. They have attempted to protect the guilty and deny not only justice, but even proper medical treatment to the Dalit woman.

- Delay in lodging of FIR of rape: The young Dalit woman was sexually assaulted and grievously attacked on 14th September 2020. There are two videos in the public domain where the victim clearly speaks of sexual assault. Though the police were informed, and the victim was admitted in hospital on 14th September, the police took her statement only on 21st-22nd of September after which the FIR of rape was lodged. The FIR needs to be registered immediately however it was only after a week of the assault that her statement was recorded.
- Delay in collecting medical evidence – Despite the woman being in the hospital from 14th September, 2020 and repeated assertions of rape, the medical the medico-legal examination report was given by Jawaharlal Nehru Medical College Hospital only on 22nd September and samples were collected for the FSL report from JNMCH only on 25th September.
- Denial of rape by Police: Despite the MLC report stating that the victim's vagina had been penetrated by a penis and her dying declaration to the Magistrate stating that she was raped, relying on the FSL report which was based on evidence collected 11 days after the incident and post mortem report, which was 14 days after the incident, the ADG (Law and Order) Prashant Kumar refuted the allegations of rape on the ground that there was no sperm or ova found. The law is clear that mere penetration to any extent of the penis (or object) is sufficient and there is no necessity for ejaculation of sperm to constitute the offence of rape. Neither of the two report (FSL and post-mortem report) are relevant to a case of rape as per judgements of the Supreme court and the provisions brought in by the Criminal Law Amendment, 2013.
- Burning of the victim's body: The hospital and the police intentionally failed to hand over the body of the victim to her family for cremation. On the contrary the UP police and the District Magistrate Praveen Kumar Laxar, proceeded to burn the body of the victim at 3 AM on 30th September, in absence of any relatives, not only denying her right to dignity in life but also in her death. The act of burning the body of the victim by the police, is a deliberate and willful act of destruction of evidence.
- Barricading the village: The entire village was barricaded preventing not only the press and activists from meeting the victim's family but denying them access to any support from community or outside world. Denying information of atrocities being committed in Hathras to the people by preventing the entry of media, civil society and opposition parties.
- Creating false narrative to threaten the family: Falsely suggesting that this incident could also be a case of honor killing and attempting to shift the blame of the death of the victim on the family. Casting aspersions on the victim's character and making public statements that the members of the family would be subject to polygraph and narco-analysis test, are all attempts to intimidate and threaten the family of the victim and create a false narrative.

- Creating false narratives to intimidate the press and people: Under the bogey of International conspiracy against UP government, by lodging 21 FIRs in UP and 6 in Hathras under Sections 120B (criminal conspiracy), 124A (sedition), 153 A (promoting enmity between different groups), 153 B (imputations, assertions prejudicial to national integration), 420 (cheating) and 109 (punishment for abetment) of the IPC and by arresting four journalists under UAPA Act, the government is attempting to intimidate the press and the people from speaking up for the victim and her family and community.

Further, it is essential to recognize the consistent pattern in the present dispensation's attempts to turn the narrative of oppression and crimes against marginalized groups and not only shift the blame on the victims, but actually turn them into culprits. There is a clear intention not only to protect the perpetrators, but to further empower them. The Hathras case is part of a continuum of conscious and concerted efforts over the past few years to portray victims as perpetrators, as in case of the Bhima Koregoan violence and the CAA/NRC protests. Victims have been systematically arrested, imprisoned under draconian legal provisions and branded guilty of the very offences that have been perpetrated upon them.

In earlier targeted and mass crimes against marginalized minority and dalit, tribal communities including the 1984 Sikh massacres, 1989 Bhagalpur violence, 1992-93 Bombay violence, 2002 Gujarat violence to Kandhmal in 2008 real perpetrators were never brought to justice and only a few foot soldiers were punished. The affected communities have still been denied justice over all these decades. However, the current political dispensation has pitched its goal higher to commensurate with its ideology and has embarked on a new offensive. The legal and judicial system has been "legally" turned on its head and the suffering victims in fact have been systematically arrested, imprisoned under most draconian legal provisions, and branded as guilty of violence which in fact has been perpetuated on them.

Chronology of well worked out State strategy

Bhima Koregoan violence

On 31st December 2017, Elgar parishad was organized in Pune by around 260 civil society groups, preceding the gathering at Bhima Koregaon on January 1 to commemorate the 200th year of the Bhima Koregoan battle. The parishad attended by thousands of people from all over Maharashtra and elsewhere concluded peacefully with pledge to stand by Constitution of India.

On 1st January 2018, many Dalits on their way back home from Bhima Koregaon were violently attacked and their vehicles and property destroyed. A complaint was lodged against Mr Ekbote and Mr Bhide, well known proponents of the Hindutva ideology. However, instead of arresting or even investigating them, the then BJP government arrested number of Dalit youths in the agitations that were held in the state on 2nd January 2018 to protest the violence. Since June 2018 onwards, 16 people across various states have been arrested under the draconian UAPA Act as a part of false narrative created around this case. The majority of these were not even present at the Parishad.

The people arrested are poets, writers, academics, lawyers, trade union activists, and human rights defenders. Many are senior citizens and some are octogenarians in a poor state of health. They have been denied bail even though there is no evidence against them (the material provided by the state does not meet the criteria of admissibility in court) and the state has even failed to begin the trial after two years. People who have been struggling to get justice for the survivors of caste and state violence are themselves being falsely projected as perpetrators of violence.

Delhi Violence

The Citizenship (Amendment) Act, 2019 (CAA) passed by Parliament on 11 December 2019, sparked massive protest all over India. The protests were led by the youth, predominantly women and Muslims in defense of Indian Constitution. Inspired by the women of Shaheen baug in Delhi, many cities and villages saw hundreds of women sit in peaceful dharana for months. No amount of police or even judicial pressure or violence and gun brandishing, deterred the women from their peaceful protest.

On 23rd February 2020, in the presence of Ved Prakash Surya, DCP of North East Delhi, BJP leader Kapil Mishra threatened to empty the sites where the protestors were sitting in *dharnas*. On February 24, 25 and 26, parts of North East Delhi witnessed large-scale violence and rioting. Much of the violence began with attacks on anti-CAA protest sites, leaving several dead of which majority were Muslims, hundreds injured, property destroyed, masjids vandalized, and thousands of lives affected.

While no action was taken on the inflammatory speeches made by BJP leaders, including Kapil Mishra and Minister of State for Finance Anurag Thakur, several activists, academicians and students who were part of the peaceful anti-CAA movement have been arrested under the UAPA Act. Many more are mentioned in the chargesheet, to serve as a continuing threat.

We need to understand the method unfolding to counter any wide spread protest spreading across India. The long standing economic distress starting from demonetization, imposition of GST, and unprecedented sudden lockdown, torture and displacement of lakhs of working population, loss of livelihood all these issues are sought to be diverted through, on the one hand, magnifying local issues such as Sushant Singh Rajput's unfortunate suicide, Kangana Ranaut's rants and Rhea Chakraborty's alleged drug consumption, and on the other hand crushing any genuine dissent through use of criminal laws against human rights dissenters and Foreign Exchange laws against human rights NGOs. The action taken against Amnesty International is but just the latest example of such persecution. In addition to all of this the hollowing of independent institutions such as CAG, Election Commission, RBI, Human Rights Commissions, Right to Information Commissioners and the Parliament itself is a dilution of democracy itself. The judiciary has also by and large succumbed to the pressures and is failing to perform its role as an overseer of constitutional democracy.

It is imperative for us to see the similar modus operandi in all these cases where victims are being branded as perpetrators. It is the same pattern emerging even in the Hathras case where cases are being filed against journalists and activists and false narratives against the family is being constructed. Genuine dissent is being crushed by use of criminal laws against victims, human rights dissenters and journalists.

This is dangerous trend which ought to be recognized and stopped especially in the days of post truth when there is little distinction between fact and fiction. When such a trend has seeped into the investigative, judicial and administrative institutions and the government has become the master of false narratives, justice for marginalized sections will become a distant dream unless we constantly question the state and hold them to account.

PUCL Maharashtra demands:

- a) The case of Hathras be transferred outside the state of Uttar Pradesh to Delhi.
- b) The Investigation of the case be handed over to a Court appointed and monitored Special Investigating Team consisting of police officers of impeccable reputation including women and Dalit police officers.
- c) The negligent state officials including the police, medical professionals, District Magistrate Praveen Laxar, who failed to perform their duty towards the victim and her family be prosecuted in accordance with law including under the SC/ST Prevention of Atrocities Act and the provisions brought in by the Criminal Law Amendment, 2013
- d) All state officials involved in illegally burning the body of the victim and destruction of evidence including the hospital officials who handed over the body to the police, the police and the district magistrate must be prosecuted in accordance with law;
- e) The victim's family be given protection by Central Reserve Police Force (CRPF) or police who are members of the Dalit community.
- f) The victim's family should be given the choice of appointing a Special Public Prosecutor to handle the case;
- g) The other FIRs and criminal charges surrounding this incident, against journalists and persons supporting the victim's family be dropped.

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