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# HUMAN RIGHTS COMMUNIQUE

*Your Quarterly Dose of Human Rights*

## CENTER FOR ADVANCED STUDIES IN HUMAN RIGHTS

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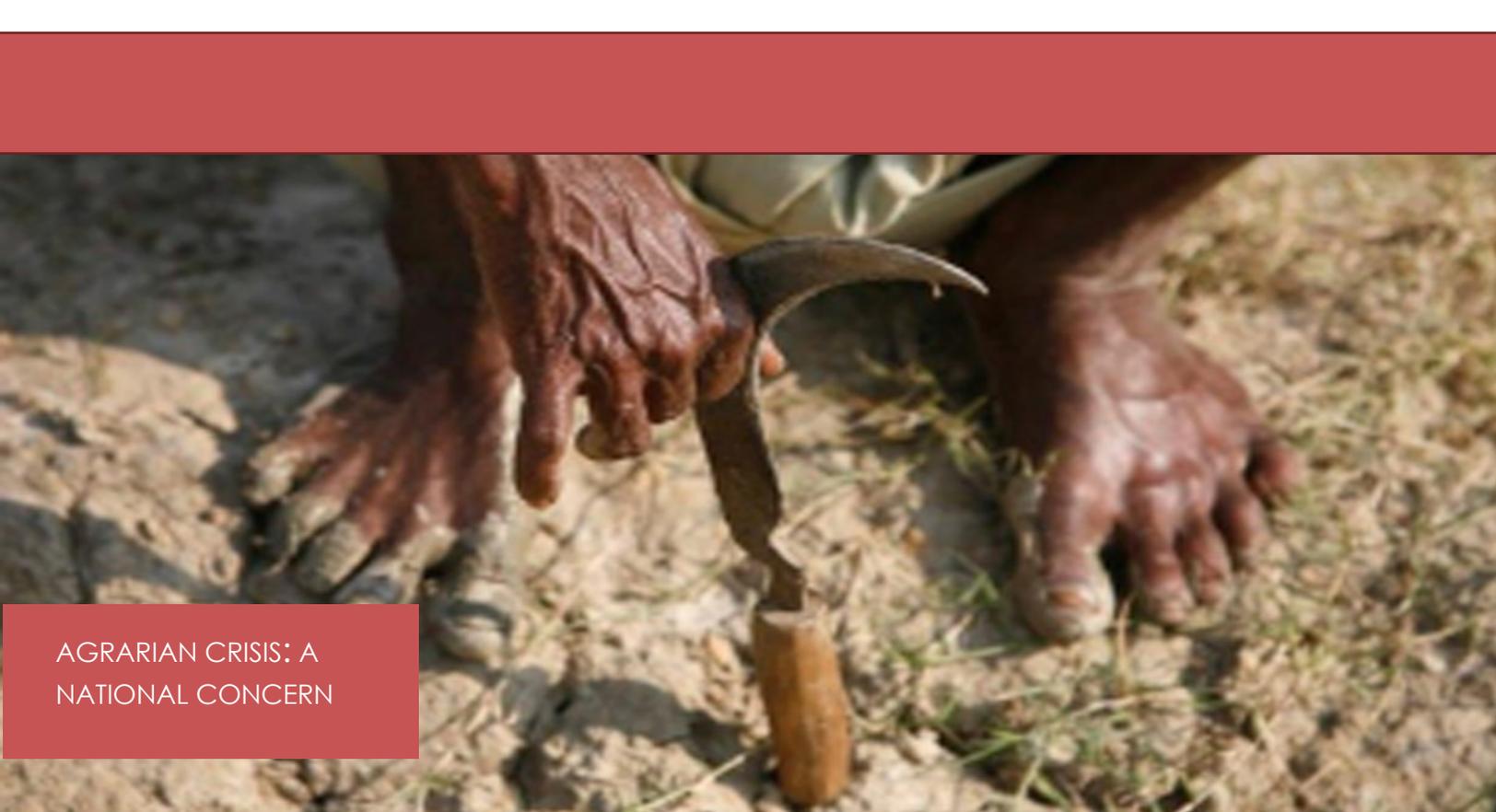
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## AGRARIAN CRISIS: A NATIONAL CONCERN

### INTRODUCTION

India has been witnessing increasing protests from farmers across the country over the past few years. Poignant images of farmers dumping vegetables on roads and clutching dead rats in their mouths have long indicated their plight amid the looming agrarian crisis. Poor policies, low agricultural prices and income, dependence on the weather, and low productivity due to inadequate technology and lack of mechanization are some of the factors which constitute this crisis that has driven farmers to commit suicides and to give up farming altogether. Statistics elucidate the chronic distress of the farmers and paint a gloomy picture of the future of the agrarian sector.

### STATIC GROWTH AND LOW MECHANIZATION

The Economic Survey of 2019-20 shows that the average annual growth rate in agriculture has been stagnant over the past six years, with the growth of Gross Value Added ('GVA') of agriculture and its allied sectors seeing a fluctuating trend. From -0.2% in 2014-15 and 6.3% in 2016-17, it has declined to 2.9% in 2018-19, and is estimated to be 2.8% in 2019-20. This latest estimate is slightly below the average annual growth rate of 2.9% between 2014-15 and 2018-19.

Furthermore, the share of agriculture and its allied sectors in the GVA of the nation fell from 18.2% in 2014-15 to 16.1% in 2018-19. However, the

government attributed the decline to better performance by the non-agricultural sectors in the survey, which also underscored the importance of agriculture mechanization for transforming Indian farming from subsistence to commercial farming. At present, the overall farm mechanization in India is around 40%, while it is 59.5% and 75% in China and Brazil respectively.<sup>1</sup>

### INCREASING SUICIDE RATES

As per the report by the National Crime Records Bureau ('NCRB'), entitled Accidental Deaths and Suicides in India, 5,957 farmers and 4,354 laborers ended their lives in the year 2019, making a combined total of 10,281 suicides from the agricultural sector and amounting to 7.4% of the total number of suicides in India. Such high numbers were reported even as Uttarakhand, Odisha, Delhi, Bihar, West Bengal, Manipur, Chandigarh, Daman and Diu, Lakshadweep, and Puducherry claimed to have had no suicides by cultivators and laborers during the entire year. The figures were similar, and just as grim, in 2018 which saw 10,357 suicides in the farming sector, with many states and union territories reporting zero suicides.

### ISSUE WITH HOLDINGS AND OPERATED AREA

<sup>1</sup> Chapter 7, *Agriculture and Food Management*, ECONOMIC SURVEY 2019-20.

The latest Agriculture Census, conducted by the Department of Agriculture, Co-Operation & Farmers Welfare every five years since 1970, reveals that the average size of operational holdings has been on a constant decline, making it difficult to achieve economies of scale and causing farmers to have little bargaining power on account of the low marketable surplus. The average farm holding of 2.28 hectares in 1970, which fell down to 1.15 hectares in 2010, has shrunk to just 1.08 hectares in 2015-16 as per the latest census.

Now, small and marginal land holdings, having less than two hectares of land, make up more than 86% of the total holdings in the country. However, these small and marginal farmers own 46.94% of the land under cultivation compared to the 43.99% of crop area belonging to the semi-medium and medium farmers, who hold 2-10 hectares of land and constitute a mere 13.2% of the farmers in India. Along with this inequitable distribution of holdings, the tenth agriculture census also highlighted that the total area under farming has gone down from 159.6 million hectares in 2010-11 to 157.82 million hectares in 2015-16.

#### **INCOME AND DEBT CRISIS**

The National Bank for Agriculture and Rural Development ('NABARD') released the first All India Rural Financial Inclusion Survey ('NAFIS') in 2018. Data from this survey revealed that Indian farmers are battling not only meager income and increasing debt, but also paltry savings and lack of insurance. A staggering 52.5% of all agricultural households in India were indebted as of 2016-17, having an average outstanding debt of Rs. 1.04 lakh.<sup>2</sup> The average monthly income of agricultural households was found to be Rs. 8,931; 35% of which was received from cultivation.

This means that the average income of a farm household increased by a mere Rs. 2,505 over four years between 2012-13 and 2016-17, when compared with the data from National Sample Survey Organization's ('NSSO') report of 2012 entitled Situation Assessment Survey of Agricultural Households in India, which set the average monthly income per agricultural household at Rs. 6,426.<sup>3</sup> NAFIS further reported that only 55% of

agricultural households had savings over a one year period with an average of Rs. 17,488 saved per annum, while only 26% of agricultural households had at least one member with some sort of insurance coverage. Just 17% and 5% of all farm households held life and health insurance coverage respectively.

#### **CONCERNS OVER IRRIGATION**

One of the major reasons for low productivity in the agricultural sector of India is the poor penetration of irrigation facilities. Farmers are left with no option but to rely on monsoons and face crop failure and low yield in case of drought or below-average rainfall. As per data provided by the Commission for Agricultural Costs and Prices ('CACP') under the Ministry of Agriculture and Farmers' Welfare, rainfall during the south west monsoon season in the four-year period from 2014-17 was below the long period average.<sup>4</sup> Low rainfall, coupled with the wide variation in geographical distribution of rainfall in India, makes the need for irrigation all the more imperative. However, as the statistics from the same 2018 report by CACP show, only 48.6% of gross cropped area in the country is irrigated, i.e., more than half of the total cropped area in India is unirrigated.

#### **INTRODUCTION TO FARM BILLS**

The recent introduction to this list of predicament of the farmers are the three Farm Bills namely- The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020, The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Bill, 2020, and, The Essential Commodities (Amendment) Bill, 2020, which were promulgated as ordinances in June, 2020 and were passed by the Parliament in September, 2020 through a voice-vote in the delayed monsoon session despite vehement protest and opposition. Despite that the Bills prima facie seem to be in the interest of the farmers, yet they are accompanied by some underlined apprehensions of the targeted community. A proper analysis of these Bills in the light of the apprehension voiced by the farmers becomes necessary to examine whether the apprehensions have any substance whatsoever or whether they are just inertia towards the proposed change.

The contemporary set-up requires the farmers to sell their produce to the state government authorized

<sup>2</sup> *All India Rural Financial Inclusion Survey, 2018*, NATIONAL BANK FOR AGRICULTURE AND RURAL DEVELOPMENT.

<sup>3</sup> *Key Indicators of Situation of Agricultural Households in India, 2014*, NATIONAL SAMPLE SURVEY ORGANIZATION.

<sup>4</sup> *Price Policy for Kharif Crops, 2018*, COMMISSION FOR AGRICULTURAL COSTS AND PRICES.

APMC mandis with a complete restriction on the interstate trade, which are then procured by the Central Government on the Minimum Support Prices ('MSP'). On this stage the state government also charges a cess or mandi fees for maintaining and securing the farm produce on behalf of the Central Government.

The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020 is intended to create an ecosystem "*where the farmers and traders enjoy the freedom of choice relating to sale and purchase of farmers' produce which facilitates remunerative prices through competitive alternative trading channels.*"<sup>5</sup> It aims to promote efficient, transparent and barrier-free interstate and intra-state trade and commerce of farmers' and to provide a facilitative framework for electronic trading. It seems a little perplexing on a cursory reading as to why there would be so much opposition towards a Bill which aims to reduce trade barriers and to increase the bounds of the trading field for the farmers.

However the concerns of the farmers stem from increased intrusion of the private players in a field which still requires hand holding by the government. It flows from a legitimate apprehension of the end of the MSP based procurement due to the dismantling of the monopoly of the APMC mandis making this state mechanism redundant. The increased private traders who might ensure lucrative prices in the initial few years will attract the majority of the farm produce but later might house an exploitative framework due lack of any ceiling prices for the procurement of the produce. This apprehension is further reaffirmed by the lack of statutory backing to the MSP regime and its status as an administrative policy. This implies that the government can declare MSPs for crops, but there is no legal implication if it fails to procure it.

While MSP is seen as a much needed State intervention to safeguard the interest of farmers so as to ensure a sustainable life for the most underserved section of the society by deciding a ceiling price for procurement so as to ensure recovery of at least the cost of production no such safeguard is provided under the proposed mechanism. So to secure the interest of the farmers the need of the hour is to afford legal validation to

<sup>5</sup> The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020.

the Minimum Support Price by making it the farmer's legal right. This has also been recommended by the Punjab and Haryana High Court in its recent rulings.<sup>6</sup>

The second Bill namely, the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Bill, 2020, facilitate contract farming and direct marketing. It provides for the sale and purchase of the farm produce to private houses on contract basis. Although this Bill ensures protection to the framers from exploitation but it does not prescribe a mechanism for price fixation. This raises another apprehension that the free hand given to the corporate houses can expectedly result in farmer exploitation.

The Essential Commodities (Amendment) Bill, 2020, deregulates the production, storage, movement and sale of several major foodstuffs, including cereals, pulses, edible oils and onion, except in the case of extraordinary circumstances. Critics maintain that this Bill would effectively legalize hoarding as licenses would no longer be required to trade in these commodities. "*The government hopes that the new laws will provide farmers with more choice, with competition leading to better prices, as well as ushering in a surge of private investment in agricultural marketing, processing and infrastructure.*"<sup>7</sup> However such an attempt to pull a LPG ('Liberalization, Privatization and Globalization') in the agricultural sector and leave it to the mercy of the market forces is not the most desired or appropriate measure when being mindful of the other factors that inherently affect this sector. Many states have shown their distaste towards these Bills.<sup>8</sup>

<sup>6</sup> The Punjab State Cooperative Agricultural Development Bank Ltd. v. The Registrar, Cooperative Societies, Chandigarh, 2019 (3) R.C.R. (Civil) 935.

<sup>7</sup> Priscilla Jebaraj, *Who Gains and who Loses from the Farm Bills*, THE HINDU, available at <https://www.thehindu.com/news/national/the-hindu-explains-who-gains-and-who-loses-from-the-farmbills/article32705820.ece>.

<sup>8</sup> Vikas Vasudeva, *Punjab passes its own Three Agriculture Bills*, THE HINDU, available at <https://www.thehindu.com/news/national/other-states/punjab-govt-presents-3-bills-to-negate-centres-three-agriculture-laws/article32898619.ece>.

## CONCLUSION

The abovementioned considerations briefly try to paint the picture of agrarian distress prevalent in the country. The sad reality of this sector and the ever-increasing need for government's support and protection are brought to the surface by way of this piece. These manifold problems that surround this sector can only be resolved through the effective and proper participation of the farmers and their representative or cooperatives originations. It is essential that the farmer's side of the story is heard and their concerns are voiced before any policy is formulated which decides their fates.

Additionally, legal recognition of the MSP schemes is one such measures that can assure that they are not open to exploitation and will not be left at the mercy of the corporate houses or market forces but their interest will be guarded by the state. It is necessary that rather than dismantling the existing framework with the assistance of new policies it is better for the government to try to strengthen the existing system and to ensure the remunerative prices to all the farmers for their produce. 'Jai Jawan Jai Kisan', a slogan which united the country in the time of war and strengthened the feeling of self-esteem should still resonate in the minds of the people in the present space and time. It is high time that this slogan reaches its rightful conclusion through the upliftment of the feeders of the country

Contributions are invited for the next issue of CASIHR Newsletter. The last day is 25<sup>th</sup> January , 2021 which can be mailed on [casihhr@rgnul.ac.in](mailto:casihhr@rgnul.ac.in)

## INTERNATIONAL NEWS

### UNHRC elections 2020

Fifteen countries were elected to the 47-nation council on 13<sup>th</sup> October. Saudi Arabia failed in its attempt to become a member of the United Nations Human Rights Council (UNHRC) for the next three-year term starting on January 1, while China, Russia and Cuba were elected in a vote that caused an outcry among human rights defenders. Experts say with a number of countries with questionable rights records being elected, the current system of entry to UNHRC is in serious need of reform.

### Thailand's protest

Thousands of protesters took to the streets of Bangkok in an unprecedented movement, demanding widespread reforms against the constitutional monarchy. The protesters claim that the constitutional monarchy is not functioning as per the democratic framework. At least 20 people have been arrested including three protest leaders.

### Hong Kong activist detained

Tony Chung, a 19-year-old Hong Kong activist who was detained by the authorities on suspected national security offences under a new national security law, authorities while attempting to seek asylum at the US consulate. The controversial law was imposed by China on Hong Kong in June, making it easier to punish protesters and reducing the city's autonomy. It is wide-ranging and gives Beijing extensive powers which it never had before to shape life in the territory. Critics say the law erodes the city's judicial independence and rights like freedom of speech, and that it has created a sense of fear and uncertainty in Hong Kong.

### Conflict between Armenia & Azerbaijan and flagrant violation of human rights

On 27 September, heavy fighting erupted between Azerbaijan and Armenia and Armenian-supported forces in Azerbaijan's break-away region of Nagorno-Karabakh. In recent days, both sides involved in the conflict have exchanged artillery and rocket fire. Cluster bombs which are inherently indiscriminate weapons that inflict suffering for civilian populations' years after their use, and are internationally banned by a treaty backed by more than 100 states are reported to be used in this conflict resulting in gross violation of humanitarian law and safety.

### Pope Francis supports same sex civil union

Pope Francis has called for the recognition of civil union laws that would provide legal protection to same sex couples. He emphasized that gay and lesbian people are "children of God and have a right to family and that "nobody should be thrown out, or be made miserable because of it."



## OF CASTE AND GENDER: THE HARROWING CASE OF RAPE IN HATHRAS

### INTRODUCTION

Over a month since the brutal incident of a 19-year-old Dalit woman's gang-rape by four upper-caste men in Hathras, Uttar Pradesh, the nation-wide outrage continues. In the wake of her death post the incident, protestors have flooded the streets, raising cries for women and Dalit rights. Unfortunately, the grief and fury are in response to not just the horrific crime, but also the subsequent conduct by various organs of the state, which has been described as 'a brazen violation of the rule of law.' The handling of the case - from the hasty cremation of the woman's body in the dead of the night by the Uttar Pradesh Police without her family's consent, followed by the State's claims of no wrongdoing by the accused by attempting to negate the possibility of rape, to the crackdown on protestors and attempts to prevent the victim's family from speaking to the media and their lawyer - has raised many eyebrows.

While the government initially made an attempt to take a step by suspending the Hathras Superintendent of Police, along with four other policemen, for 'negligence and lax supervision' in the process of filing a complaint and interviewing the victim, it has not escaped criticism for its subsequent actions. In fact, in a letter to the Chief Minister, a group of 92 former civil servants have declared that the nation is 'plumbing the depths of depravity and

callousness in governance.' Amidst the roaring protests and cries for justice, and the Uttar Pradesh High Court is calling the incident a prima facie infringement upon the human rights of the victim and her family, it is crucial to identify the lapses by the state agencies with regards to upholding the victim's rights, and examine the extent to which the same have been violated.

### A FATAL SEXUAL ASSAULT, FORCED CREMATION AND CASTE ATROCITY

From using a deceptive description of sexual assault to an unfounded and fallacious conspiracy theory, the Hathras rape case develops a distorted and self-serving narrative of the tragic incidents. The affidavit<sup>9</sup> filed by the state of Uttar Pradesh in the Supreme Court was full of legal fallacies and problematic statements. On October 12, 2020, the Lucknow Bench of the Allahabad High Court took a suo motu cognizance of the matter and reprimanded the negligent and delinquent actions of the state police and rebuked the state government for violating the fundamental rights of the deceased and the victim and her family.

<sup>9</sup> *Hathras: In Affidavit to SC, UP Govt Peddles Half Truths, says Conspiracy Afoot to Malign It*, THE WIRE, available at <https://thewire.in/law/hathras-adityanath-supreme-court-uttar-pradesh-govt>.

## Denial of Victim's Testimony

The police officials in Uttar Pradesh and the state government has repeatedly insisted that their investigation has revealed that there actually was no rape in the Hathras case in which a 19-year-old Dalit woman was allegedly gang-raped and killed by four upper-caste men. They disregarded the victim's testimony where she mentioned the use of force against her will repeatedly.<sup>10</sup> The victim mentioned in a video that four men attacked her because she didn't let them do 'zabardasti' with her. This video testimony was given at a clinic in Hathras where she was taken on September 14, 2020 after being found severely injured near the field. On September 22, 2020 in a statement in front of the magistrate, the victim specifically reported rape against her and named the four attackers.

As per the affidavit from the Uttar Pradesh government, this statement to the police is essentially her last statement. Therefore, it might not strictly be defined as a dying declaration; it would be critical evidence and would hold a high evidentiary value.<sup>11</sup> The Supreme Court in various judgements has held that the legislation pertaining to rape and procedural laws do not need medical corroborating evidence for prosecutions of rape. It has further iterated time and again that finding corroboration, adds insult as well as the emotional injury of the victim.<sup>12</sup> In other words, the claims of gang-rape by the victim are more than adequate for the police to examine the rape accusation, and the courts can also prosecute, whether they are convinced of the validity of the victim's testimony, on the grounds of only this evidence.

In the present situation, this has much more meaning because the gang-rape claim came as part of the dying testimony of the survivor, given before a

magistrate. The woman in her statement reportedly named the four accused persons. The courts prefer to assign a dying statement considerable weight, under the assumption that it is impossible that anyone who is about to die will not deceive. Indeed, the Delhi gang-rape-murder case relied on this theory to eventually convict all the accused persons.

## Structurally Distorted Understanding of Rape

The Medico-Legal Case examination performed by the doctors of the Jawaharlal Nehru Medical College Hospital in Aligarh, reported that the victim was subject to penetration by penis, complete penetration of vagina and there were marks of use of force. Since, this forensic examination and the related samples were taken 11 days after the incident; the report concluded that there was no presence of sperm.<sup>13</sup> The Uttar Pradesh government's affidavit has harped on the sexual assault forensic examination report, which, they claim, does not support the claim of rape.

As per the bare provisions and the definition of rape provided in Section 375 of the Indian Penal Code, 1860 in order to establish the crime of rape, 'penetration of the vagina by the penis' in the traditional sense of sexual activity is not at all mandatory. The penetration into a woman's vagina, urethra or anus, to some degree, of some substance or part of her body, such as her finger, hand or mouth, also entails rape. The critical aspect is 'to any extent.' This implies that the even a minute contact with the private part or concerned parts would also result in rape. Therefore, the presence of semen or sperm in the vaginal smear is not essential to establish the crime. The Supreme Court has also ruled that though the penetration itself proves the offence of rape under Section 375 and 376, the contrary was not accurate.<sup>14</sup>

<sup>10</sup> *Hathras Case: A Woman repeatedly Reported Rape. Why are Police denying it*, BBC INDIA, available at <https://www.bbc.com/news/world-asia-india-54444939>.

<sup>11</sup> *Munnu Raja v. State of Madhya Pradesh*, 976 S.C.R. (2) 764

<sup>12</sup> *State of U.P. v. Chhotey Lal*, (2011) 2 S.C.C. 550; *Vijay @ Chinee v. State of Madhya Pradesh*, (2010) 8 S.C.C. 191; *Bharnada Bhoginbai Hirjibhai v. State of Gujarat* (1983) 3 S.C.C. 217; *State of Punjab v. Gurmit Singh*, 1996 S.C.C. (2) 384.

<sup>13</sup> *Ismat Ara, Aligarh Hospital MLC Report on Hathras Victim Shatters UP Police's 'No Rape' Claim*, THE WIRE, available at <https://thewire.in/women/aligarh-jnmch-hathras-victim-mlc-report-up-police-rape>.

<sup>14</sup> *Radhakrishna Nagesh v. State of A.P.*, (2013) 11 S.C.C. 688.

## Revelation of Her Identity

The chief of the Information Technology Cell of the Bhartiya Janta Party posted a video of the victim, while wrongly saying that she did not talk about abuse, even though he openly disclosed her name while doing so.<sup>15</sup> He also questioned her character and degraded the veracity of rape accusations. Under the Indian law, as per Section 228A of Indian Penal Code, 1860, the revelation of identity of a rape victim is a punishable offence and violates her right to dignity guaranteed under Article 21 of the Indian Constitution.

## Forced Cremation

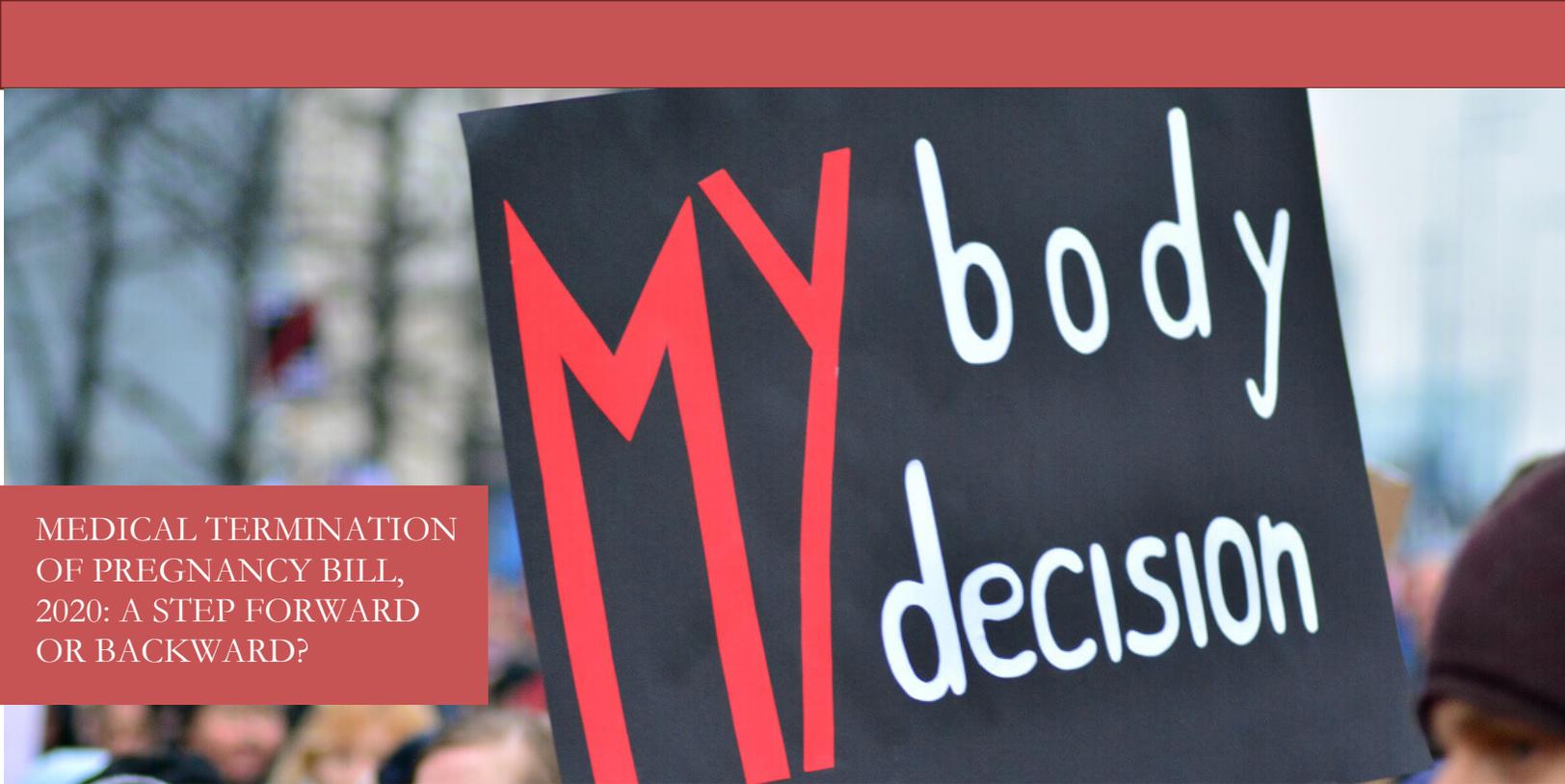
At about 2 a.m., the policemen cremated the victim's body without enabling the family to hold the last rituals or even give them a last glance of their daughter. Within their home, they were kept under lock and key and not permitted to join the funeral of their own family member. Hurried and forceful cremation is a breach of the right of the victim to dignity under Article 21 of the Indian Constitution.

## CONCLUSION

The Hathras rape case is not a disclosure or revelation of an isolated crime; it is a reminder of the centuries of injustice done to women and Dalits, and especially Dalit women. The population of the country is divided on many fronts, with certain groups demanding the narrative to be devoid of the element of caste, and others demanding the narrative to specially take into consideration the role caste had to play in this. With wide spread protests erupting in support of the family and demanding a fair investigation, and the counter- movements by upper caste protesters supporting the accused, the hopes of justice for the victim are appearing to be desecrated. The investigation has been further contaminated by political motives and police insensitivity, with local leaders and investigative officers claiming the rape never took place. However, in this incident, rising above vested interests, we notice that there is blatant disregard of human rights and abolition of caste-based and gender-based violence remain farfetched ideals.



<sup>15</sup> Angana Chakrabarti, *BJP IT Cell head Amit Malviya tweets video of Hathras Victim, experts say it violates IPC*, THE PRINT, available at <https://theprint.in/india/bjp-it-cell-head-amit-malviya-tweets-video-of-hathras-victim-experts-say-it-violates-ipc/515973/>.



## MEDICAL TERMINATION OF PREGNANCY BILL, 2020: A STEP FORWARD OR BACKWARD?

*“Reproductive freedom is not just the ability not to have a child through birth control. It’s the ability to have one if and when you want.” - Pamela Madsen*

### INTRODUCTION

Even in contemporary times, a pattern of paternalistic influence and control has been observed in majority of the laws and policies dealing with the sexual and reproductive rights of women.<sup>16</sup> Entailed within these is the right to abortion, which has been an integral part of various feminist civil movements across the world and has also been regarded as an essential human right by the United Nations Human Rights Committee.<sup>17</sup> Essentially, abortion is a political issue as it is governed by the laws enacted by the State.

In India, the principal law governing abortion and reproductive rights of women is the Medical Termination of Pregnancy Act, 1967 (‘the Act’). The Medical Termination of Pregnancy (Amendment) Bill, 2020 (‘the Bill’) was introduced in the Parliament to amend the original Act and was subsequently passed by the Lok Sabha in March, 2020. The objective of this article shall be to analyze the core features of the Bill and the pragmatic impact of the proposed amendments on the concerned stakeholders from a perspective of human rights and feminist jurisprudence.

### KEY FEATURES OF THE BILL

The new Bill has sought to amend Section 3 of the Act which lays down the conditions for the medical termination of pregnancy in different gestational periods. Vis-à-vis the original provision of the requirement of opinion of two registered medical practitioners for the termination of pregnancy for a gestation period of up to 12 weeks and beyond up to 20 weeks, the amendment has proposed the necessity for the opinion of only one medical practitioner. Moreover, the medical termination of pregnancy for a gestation period of beyond 20 weeks and up to 24 weeks, which was not entailed within the Act has now been incorporated contingent to the opinion of two registered medical practitioners for some categories of pregnant women. In emergency situations for any time during the pregnancy, the opinion of one registered medical practitioner is required to save a pregnant woman’s life.

<sup>16</sup> Rebecca J. Cook, *International Human Rights and Women’s Reproductive Health*, 24 (2) STUDIES IN FAMILY PLANNING, 1993, pp. 74-75.

<sup>17</sup> Sarah Joseph, *General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life*, INTERNATIONAL LEGAL MATERIALS, 2019, pp. 849-71

The Bill under amendment to Section 3(2) enshrines that in a situation of failure of a contraceptive method or device, the pregnancy may be terminated up to 20 weeks even by an unmarried woman, a right which initially was only available to a married woman. The Bill also proposes the constitution of a Medical Board by the governments of all the States and Union Territories by introduction of Section 2(aa). The composition of the same includes a gynaecologist, paediatrician, radiologist or sonologist and other members as notified by the government of the concerned states. In pursuance of upholding a woman's right to privacy, the Bill introduces Section 5A which provides for revelation of the details of the concerned woman's termination of pregnancy by the registered medical practitioner only to a person authorized by law, the contravention of which shall result in the imprisonment for up to one year, a fine or both.

### **CRITICAL APPRAISAL OF THE BILL**

Even though this Bill is a step in the right direction, but there are miles to go before we reach an equal platform to ensure reproductive autonomy for women in India. Still it does not ensure an absolute right to terminate one's pregnancy. The Bill is vague and unclear regarding the actual functioning of the Medical Board and the finances and funds required for supporting it. Not much thought has been given to the condition of marginalised women as a specific category of females is created. The requirement of this law is based on the premise that Section 312 of the Indian Penal Code, 1860 still considers abortion as a punishable offence. Thus, disregarding personal autonomy and right to liberty of women as enshrined in the Indian Constitution.

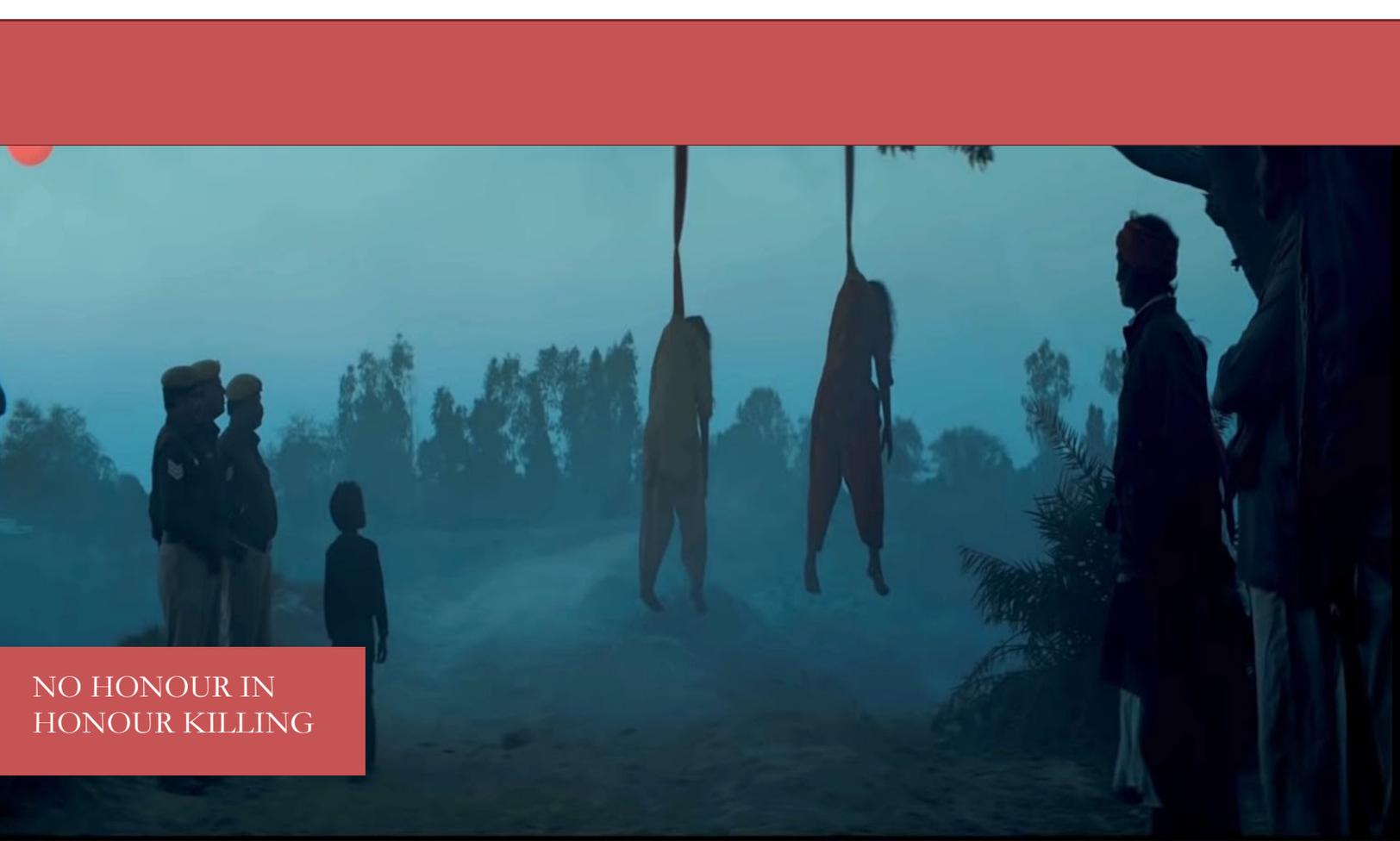
The Bill ensures to protect the privacy and confidentiality of women but fails to explicitly include minor under its purview, as a female below 18 years of age cannot consent to an abortion. This makes legal abortion inaccessible to minors who mostly are victims of statutory rape as provided under Section 375 of the Indian Penal Code, 1860 and Sections 19 and 21 of Protection of Children from Sexual Offences Act, 2012 which makes it mandatory to inform the police of such an offence. This would further encourage unsafe abortions instead. Although right to privacy has been guaranteed to women<sup>18</sup> which includes right to autonomy by the Supreme Court, still the decision of the medical practitioner plays an important role in determining the need for induced legal abortion.

As the Bill increases the upper limit for termination of pregnancy from 20 weeks to 24 weeks, this development is only applicable to a special category of females but will not be applicable to cases where the termination of pregnancy is necessitated by the existence of any foetal abnormalities. Although even with technological advancement, life threatening foetal abnormalities may be detected even after the required 20 weeks. This unnecessarily and non-justifiably puts the life of the mother at risk while providing a regressive outlook. Additionally, the Bill provides for a Medical Board to be constituted in each and every state and union territory to diagnosis and decide cases which require an induced abortion or not. This creates a not required checkpoint which would result in more delays and disapprovals, especially for women living in rural and remote areas.

### **CONCLUSION**

Consequently, the Bill may have not reached the ultimate point in reproductive jurisprudence; it has still widened the right to abortion for women in grave circumstances. This Bill in relation with the Surrogacy (Regulation) Bill, 2020 and the Assisted Reproductive Technology Regulation Bill, 2020 has begun an evolution in the law governing the reproductive rights of women in India. Though, absolute bodily autonomy of a female is still a distant dream, these three legislations has brought us a step forward but it still requires some work to reach the ultimate goal.

<sup>18</sup> Justice K.S. Puttaswamy (Retd.) v. Union of India, 2018 (9) S.C.J. 224.



## NO HONOUR IN HONOUR KILLING

*“The killing of women in the name of honour had never been an honourable practice and that such murders should not be categorised as honour killing.”*

### INTRODUCTION

The Supreme Court of Pakistan has endeavoured to break past the shackles of their conservative and orthodox dogmas when it penned down this modernist judgment that renders due regard to the values of human rights and to be specific, women rights in the instant case. Looking from afar, it becomes inevitable for us to appreciate the stance taken by the apex court of Pakistan to give precedence to the human rights of the woman who was brutally murdered by her husband over the long existing conservatism that was tagged along for years under the aegis of the ‘ghairat’ which translates to the term ‘honour’.

### FACTS OF THE CASE

The facts of the case tacitly supports the deep rooted male chauvinism and patriarchal superiority that plays the pivotal role in determining the socio-cultural conditions of the society of Pakistan. The petitioner was convicted for the murder of his wife under Section 302(b) of Pakistan Penal Code, 1860 and was awarded death sentence by the trial court. When the matter was sent to the High Court for the purpose of confirming the death sentence, the petitioner appealed against his conviction and the sentence. The High Court while upholding the conviction reduced the sentence to imprisonment for life.

The petitioner contended that the case comes within ambit of Section 302(c) as he was provoked by seeing her wife in the company of the other man and hence his wife was a woman of bad character. The State contended that even in the case a woman is of bad character, the petitioner does not have any right to kill her. The Supreme Court while interpreting Section 302(c) held that the proviso appended thereto bars any killing in the name or under the pretext of honour under this provision. The proviso was added in the year 2005 which was further amended in 2016. Since the present case falls within the ‘ghairat’ (honour), it cannot be bought under the ambit of Section 302(c) and hence, the appeal was dismissed.

## ANALYSIS

Pakistan is witnessing the highest number of cases of honour killing. The same was taken into account by the Legislature of Pakistan and hence, amended the Pakistan Penal Code, 1860 to exclude the benefit that the offender used to take by justifying the killing in the name of the honour. It is very ironic that that the honour that the offender tries to save through honour killing by various justification is not even authorised by the Holy Quran. The allegation of adultery under the Pakistan Penal Code, 1860 requires a strong proof and not a proof merely based on the suspicion or light evidence. However, in the case of honour killing the offender sits as the adjudicator and takes the sacred life which is usually on the basis of light evidence or mere suspicion which also attracts the other offence of Section 496C of the Pakistan Penal Code, 1860. This leaves no chance for the female to redeem her honour and hence, save her fundamental right to reputation and universal right to life.

Making a comparative analysis with the Indian Penal Code, 1860 it does not provide any such proviso to the exception of sudden and grave provocation for the offence of murder. Hence, the responsibility completely lies on the judiciary to uphold the rights of the women. However, the Supreme Court in Pakistan is already provided with the statutory guidelines. In such a case, the role of Indian judiciary requires more consideration. Now, looking this instant case from the post-modernist prism, the jurisprudence behind the judicial approach becomes clearer.

'Post-modernism' can be defined as the notion that encompasses acceptance of all thoughts and opinions that could be supported with some reason or logic. It means that the post-modernist approach obliterates the concepts that render conservative ideas and orthodox norms by advancing forth reason. In this judgment rendered by the Supreme Court of Pakistan, it has also adopted the post-modernist approach wherein it has been very eloquently asseverated that if the women is killed on the pretext of 'honour killing', then she has been denied to ever restore her dignity or reputation by making rational arguments in her defence before her family and the society at large. Treading on, the Supreme Court has assimilated the law of the land and the religious tenets to explain to the inhabitants of their country – why killing a person on such idea of honour is so erroneous, thereby adopting the methodology of post-modernism to advance

rationales to counter the existing conservative reasons in their society.

## CONCLUSION

The judgment marks an important step towards bringing a positive change that was sought to be brought via the amendment made in the year 2005 and 2016. It aims at reducing the crimes that are taking place against women. However, the judgment alone cannot do anything unless the society tread the path of social tolerance and becomes an important actors in preventing such crime.

## NATIONAL NEWS

### Amnesty International India shuts down its operation in India

Following a move by the Enforcement Directorate (ED) to freeze its bank accounts over alleged charges of money laundering, global NGO Amnesty International (AI) India has decided to shut its operations in the country. The organisation has called the move a "witch-hunt of human-right activists by the government, and a crackdown on dissent". Similar action was met by other NGOs as well. The United Nations' High Commissioner for Human Rights, Michelle Bachelet expressed "regret at the tightening of space for human rights NGOs in particular, including by the application of vaguely worded laws that constrain NGOs' activities and restrict foreign funding". Besides, she cited as worrying the use of the Foreign Contribution Regulation Act (FCRA), which a number of UN human rights bodies have also expressed concern is vaguely worded and overbroad in its objective."

### Hathras Rape Case

The Hathras Rape Case shook the nation when a 19-year-old woman died in the northern Indian state of Uttar Pradesh after reporting she'd been gang raped and brutally assaulted. The case made headlines only after police and administration officials cremated her body in the middle of the night on 29 September - a move the family say was made without their consent and which has raised suspicion. This was seen as gross violation of human rights and a result of the high handedness of the authorities.

### Farm Acts & the protest

The farmers largely in the states of Haryana and Punjab took to the streets to protest against the three agriculture ordinances which were introduced in May this year and passed by the Lok Sabha on September 15 amidst opposition.

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