Rape, Justice, and Hierarchy in India

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J Am Acad Psychiatry Law 28:357–9, 2000

The spectacle of a man being hit over the head with a shoe by a woman as a form of punishment causes disbelief and wonderment. For failure to protect? For condemning a woman who has been raped? What kind of strange ritual is that? What form of justice? Through Western eyes, crime and punishment seem disconnected in this instance. In the West, crimes such as these are prosecuted within a legal system, where rules of evidence apply; upon conviction, justice is carried out by some form of deprivation of life, liberty, or the pursuit of happiness. Retribution is a cornerstone of this notion of punishment.

Mary Ann Weaver constructs a scintillating story of a poor village woman in India, an aspect of women's awakening, what she calls an "epic social experiment," in a reportage in the January 10, 2000, *New Yorker* article titled "Gandhi's Women." She explores the sojourn of a woman from the so-called backward castes (actually a tribal woman, a member of the scheduled castes and scheduled tribes, so called because of special status given to them in the Indian constitution, and thus enumerated on a "schedule") who rises to political power and is elected to a village council by new laws of local self-governance. Elected through a "quota system" called reservations for the scheduled castes and tribes, and women, the young woman of about 40 loses in the game of male politics, which is dominated by the upper castes, but continues to fight for herself and for other causes including those of women. Weaver accompanies the female leader and chances upon a major rural upheaval provoked by the rape of a newly married woman at the hands of her father-in-law and exacerbated by her own father's powerful reaction of shame. Mary Ann Weaver stitches together history and a society in transition, with a focus on women and the women's movement. Within this article, there are several issues that deserve comment and further explication: the status of women, violence against women in India, that country's legal system, and the cultural value system that undergirds the events in this report.

Violence against women is endemic and commonplace in many cultures and spans across history. Millions of women, regardless of their age, class, race, socioeconomic background, or culture, experience some form of sexual violence, quite aside from epidemic violence against them in times of war. Many survivors of violence feel alone, ashamed, and often blame themselves despite having been violated. Indeed, most cultures espouse mythology and mores that support blaming the victim instead of holding the perpetrator accountable. In India, which is no exception, current statistics estimate that a woman is sexually assaulted every 54 minutes. This is a gross underestimate, since rape is rarely reported. Within this cultural context, female victims of sexual violence are seen as dirty and tainted. If assaulted, they feel that they have no choice but to remain silent or kill themselves to maintain the family's social status. If they are single, matrimonial prospects dim. If married, both the in-laws as well as their own families reject them.

In the Indian psychological context, boundaries around the self extend far beyond the skin and include the family, community, and caste. Therefore, following a rape incident, family members justify the

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conclusion that their honor has been violated, that they have been assaulted and shamed. The grandmother's choice (in this story) of the route to justice also reflect the permeable boundaries of the self within the Indian culture. She immediately went to the indigenous court system, the caste *panchayat. Panchayats,* the system described by Weaver, were the norm in India before British institutions replaced them.

The foundation of modern law in India is the Anglo-Saxon tradition, introduced and implemented by the British during their rule, the Raj, in the 19th and the first half of the 20th century. The structure and the codes are borrowed; district, appellate, and state Supreme Courts and the federal Supreme Court. There are separate routes for civil and criminal prosecution, and proceedings are governed by an adversarial system with rules of evidence in play. A trial by jury was the norm, but the jury system was abandoned in the 1970s because impartial, objective judgment by peers simply could not be achieved. In addition, the courts are seen as tedious and viciously slow. One common analogy states that tort claims are settled in the times of one's grandchildren. And hence, in the story at hand, it is understandable that the actors resort to the more traditional avenue.

Today, two kinds of *panchayats* exist: one, political, created by recent legislation; the other, caste-based, is the more traditional. The political structure for local self-governance deals with economic development and social justice. It is an elected body at the village and district level that has powers for some adjudication. However, police functions are outside of its province. The original version was a council of elders for each of the various castes that saw to the enforcement of customs, rituals, and norms of a particular caste. This indigenous local justice invoked a greater sense of ownership, and the justice meted out was more powerful, authentic, and meaningful. Modern legal institutions are experienced as formal, distant, bureaucratic, overburdened, and subject to manipulation, both legal and extra-legal, and thus distrusted. The traditional court system operates as a function of the caste, a system of social teamwork that organizes social, private, and psychic life.

The Indian Hindi word for caste is *Jati*, akin to *genera* in Latin, a system derived from the original stratification of people into four classes, the *varna* arrangement. The four classes were the priests, the warriors, businessmen, agrarians, and the menial workers, a division initially occupational and which at some point in history became hereditary. The classes subdivided and multiplied into the present caste system. The principle dividing them, in the main, were rules of food (who may eat with whom, whose food, cooked by whom), and marriage (who may marry whom, in the village, outside the village, etc.). All significant life events, for example birth, death, and marriage, occur within the context of the caste. Caste is central to social orientation, and one who violates boundaries established by the caste is thrown out of its fold, loses all social anchors, and is shunned from relationships. The family as a whole is also stigmatized. To be ostracized from one's caste, then, is a form of deprivation, to be cast adrift into isolation. Before the days of penitentiaries, a common way of punishment in India was to be banished from one's caste and the village, to be declared, if you will, *persona non grata.* In Weaver's account, this was the major punishment meted out to the father-in-law convicted of rape, the father who insisted that his daughter, the victim, commit suicide, and the husband who failed to stand up for his wife. Having been banished from the caste and the village, no one may share food with them nor have any social alliance with them.

The intrapsychic importance of the caste system needs to be considered for a more thorough appreciation of the curious punishment imposed on the father and the husband. The maintenance and regulation of one's self-esteem, private and public, is vigilantly guarded and that of the other equally respected. Respect for that esteem from other members of the family and community is critical to one's self-esteem. Hierarchies of age, gender, and caste govern the rules of honor. Violations of these rules bring about grave social and narcissistic injuries. Perpetrators of such insults have to ask for forgiveness with total abjection to assuage the hurt.

Traditional punishments, comprising forms of humiliation and reversals of status, included such things as being made to ride a donkey facing backward or being garlanded with shoes. Not long ago, when the golden temple, holiest of the Sikh shrines in India, was desecrated by Indian soldiers on the orders of the central government, the chief minister of the state was punished by the council of the temple elders

for allowing the event to transpire. His punishment was to sit at the gate of the temple and clean the shoes of those who came to the temple. Needless to say, shoes are not worn when entering holy places in India, because they are worn on the feet and are made of leather and therefore are very polluted and impure. This reversal of status and self-humiliation remedied the prior insult. The caste system also visualizes a hierarchy, an order of high and low, governed by a principle of substance-code, with qualities—such as goodness, passion, and sloth—in different proportions inherent in members of a caste. An individual is presumed to be particulate and permeable, and human transactions involve exchange of bodily substances, which change the nature of transacting bodies.

From our point of view, what is of most significant and difficult to explain in the report is the heroic role of the grand-mother-in-law, mother of the man who raped the young woman, who behaved like few others might in taking up the cause of the victim against her own son and grandson. That woman is truly Gandhi's daughter.