

# THE TRIUMPH OF VACHATHI OVER A HOSTILE STATE

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At Vachathi | Photo Credit: THE HINDU PHOTO ARCHIVES

The Madras High Court's judgment, on September 29, 2023, upholding the human rights of the people of Vachathi in Tamil Nadu is remarkable — as a constitutional court, it unmasked and recognised that coordinated and large-scale repression by uniformed forces cannot take place without orders from or complicity at the top levels of the government.

The court said, "In order to safeguard the actual smugglers and the big-shots, the revenue officers, police officials and also the forest officials, with the help of the then Government, played a big stage drama (sic), in which the innocent tribal women got affected." In the context of the large-scale violence we see today by law enforcement agents on the common man, the decision assumes importance. The repression of the anti-Sterlite protests, the student protests in Jawaharlal Nehru University and elsewhere, the bulldozer raj in Uttar Pradesh, Haryana, the repression against tribals and the violence in Manipur are but a few instances.

The villagers of Vachathi have created history and the court verdict is testament to their resolve. It is an assertion of their dignity. This is among the rarest cases in the annals of legal history where all 215 accused (the survivors of the 269 accused), government and law enforcement personnel stand convicted en masse of offences under The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Indian Penal Code. Rigorous imprisonment ranging from one to 10 years with fine has also been imposed.

A recollection of some of the events at Vachathi, a remote village of Adivasis in Dharmapuri district, Tamil Nadu is necessary. On June 20, 1992, about 300 uniformed officials unleashed violence on the village on the pretext of unearthing smuggled sandalwood. Eighteen women including a woman who was pregnant were raped. And, 90 women, 28 children and 15 men were illegally confined in the Forest Ranger's office. The custodians of law ordered the "Oor Gounder" (the village chief) to strip the women. The women were then asked to beat him with brooms. Several villagers were sent to Central Jail, Salem. The officials continued the plunder and violence, forcing the villagers to flee to the forests. After visits by members of the Tamil Nadu Tribals Association and the All India Democratic Women's Association in July 1992, A. Nallasivan, the then State Secretary, CPI(M) wrote to then Tamil Nadu Chief Minister J. Jayalalitha. K.A. Sengottaiyan, Minister for Forests, proclaimed that the complaint was fabricated. The government machinery down to the District Collector, the Revenue Divisional Officer, the Superintendent of Police and the Chief Conservator of Forests failed to take action

despite representations. Former IAS officer, Ms. Bhamathi, who was Director of the National Commission of Scheduled Castes and Scheduled Tribes (Tamil Nadu, Kerala, Puducherry and Lakshadweep) was the only official who sent a report of her findings to the National Commission of SC/ST. Yet, no first information report was registered.

A public interest litigation by A. Nallasivan was stoutly opposed by the State through its Advocate-General, the highest law officer. In 1995, the High Court relied on Ms. Bhamathi's report to rebuff the state, directed the supply of basic needs and asked the Central Bureau of Investigation to investigate.

It has been a long wait for justice. Why so? The obduracy of the state to deny even mandatory interim relief to victimised Scheduled Castes and Scheduled Tribes, the false cases that the police foisted on innocent villagers and the multitude of petitions by the accused to stall the trial with tacit support of the state were a few of manifold obstacles.

However, the main reason for the delay is clear in the court's observation: "It is not the situation that a private individual committed the offence and a single victim made complaint" and that "evidence of the victims clearly show that they were threatened by the uniform force not to reveal the sexual assault committed by the uniform force and if it was... they would take away the life of the individual or their family members".

Why was this state-organised collective crime dealt with as any other individual crime? Is this not a monumental flaw? When crimes are committed by agents of the state, should not "command responsibility" and culpability be fixed on the heads of departments and the Ministers too? The focus of evidence, onus and degree of proof and culpability would then shift. The trial was protracted and justice delayed because of the gross lacuna in the criminal justice system. Our criminal laws do not provide special procedures, evidentiary principles and criminal liability for such organised crimes by state actors. The prosecution had to prove the guilt of each of those accused as if an individual offence had been committed.

In line with Principle 24 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, law enforcement agencies must adopt measures to ensure that superior officers are held responsible if they know, or should have known, that officials under their command are resorting, or have resorted, to a violation of human rights, and they did not take measures to prevent, or report such use.

In numerous judgments, the Inter-American Court of Human Rights in South America has established that factors relevant to fix the responsibility of superiors are: knowledge of risk by state officials and the duty to know of the existence of a real and immediate risk to life and/or physical integrity, and the reasonable possibilities of preventing or avoiding that risk. Therefore, ignorance of actual occurrence cannot be claimed if superiors did not exercise adequate supervision and control. Article 28 of the Rome Statute followed by the International Court of Justice also follows the principle of command responsibility. In India, the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill has lapsed. The new criminal law Bills introduced by the central government as an exercise to decolonise old laws do not recognise organised violence by state agents as a separate class of crime and provide no speedy remedy. State violence is a colonial legacy and is anathema in a democratic republic.

STs have been oppressed historically and the law treats sexual and targeted violence against them as aggravated atrocities fit for rigorous punishment. Command liability in the case of Vachathi is writ large. The High Court has, therefore, ingeniously fastened the responsibility on the state to pay the enhanced compensation of 10 lakh and to ensure a job for each rape survivor. Stringent action has been directed against the then District Collector, Superintendent of

Police and the District Forest Officer. Is there no accountability and culpability to be fixed on the political executive? The case has thrown up the urgent need to amend the criminal law to fix command responsibility and consequent stringent penalty.

The atrocities happened two decades before 'Nirbhaya' (2012) that shook the nation's conscience. Criminal law amendments of 2013 and subsequent judicial decisions regarding non-disclosure of the identity of rape survivors, gender sensitive investigation and trial to prevent further victimisation and facility of medico-legal and psychological support were unavailable. For the 18 rape survivors, the full public disclosure of their identities, accompanied by harsh cross examinations on behalf of not one but several accused during the trial amounted to aggravated trauma. But they overcame a hostile state and an archaic and unfriendly criminal justice system. Many are now educated and are full participants in the economic and political activities in the area. These women are the true heroes of Vachathi.

R. Vaigai is a senior advocate practising at the Madras High Court and is a member of the legal team for the Vachathi survivors

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