

Needed: A 'Tehelka' in Tehelka

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Amongst other things, the Tarun Tejpal imbroglio highlights the incompetence or unwillingness of organisations to deal with sexual harassment cases at workplace in the letter and spirit of the Vishaka guidelines. However, the committees set up according to these guidelines should not always be conceptualised as a redressal mechanism that is “alternative” to the law.

The ongoing Tarun Tejpal sexual assault imbroglio has been revelatory at multiple levels, but perhaps most of all of the truth of Noam Chomsky's observations (in another context) that “for the powerful, crimes are those that others commit.” It is far easier to demand in print columns and television studios that the definition of rape and sexual assault be expanded beyond peno-vaginal penetration when it is committed by one of “them” on a moving bus, but (as we have painfully learnt in the past five days) so much more difficult to let that amended definition to apply to one of “us”. Appalling as Tejpal's assault and slander has been, the tweets congratulating the “alleged” rapist for his exemplary “guts in repenting his actions” to the television interviews in which “his version” of the story has been read out from cell-phones have not been any less condemnable. As the woman complainant's family is now being subjected to intimidatory visits from yet other friends that Tejpal has made in his hour of need, the fog of despair is setting in thick and fast. Will things never change? Why do such stories never yield any other heroes than the woman who suffers the assault and then has the “guts to complain”, to “fight to live”, to “pursue her case with the police” and so on?

Mismanagement by Tehelka

Such stories soon become as much a quest for other villains as for justice. In this case, the Tehelka management, and particularly its managing editor Shoma Chaudhury, have quite rightly been picked as the prime candidate. Although Chaudhury has been at pains to point out that since Monday, she has been doing her utmost to do right by the complainant, there is universal agreement that the “tonality” of her words – to use the expression that she and Tejpal jointly resorted to in times when words should have actually failed them in self-disgust– have been far from consonant with either her actual actions or what was expected of her as a member of the Tehelka management.

Much has been quite rightly said of the manner in which the Tehelka management sought to frame the facts of the complaint in a way that would elicit the kind of grudging admiration of the twitterati that Javed Akhtar's tweet exemplifies, but not enough has been made of the fact that the young woman's letter of complaint was “leaked” in the way it was. A letter of complaint has to be, by the Sexual Harassment Act 2013, accorded full confidentiality and not only because it is a matter of the complainant's privacy. Equally importantly, confidentiality is needed to enable the complaints committee that is expected to inquire into the complaint to do its work. Quite clearly, the Tehelka management had no intention of ever conducting an inquiry in the first place, which is why Chaudhury was not overly exercised by the leak at the time. And although many have begun to congratulate the complainant on her in-depth “documentation”, the near-exteriority and clinicality of the word and the triumphalism of the way in which it is used, is at odds with what the letter actually

expresses –the feelings of disbelief, fear and terror that every complainant goes through before the tremors finally still, and she can find herself again, and only then be able to sit down to write that complaint.

Vishaka-compliant Committees

The complainant must have had enough faith in Chaudhury's "alleged" feminist credentials to have written to her, but as subsequent events have shown us that the only one in the country who is perhaps convinced of these is Tejpal himself, having "allegedly" felt the force of her "adamantine" adherence to feminist principles. However, the gravity of Tehelka's violations of the law are far more egregious than just Choudhary's failings and are not limited to just the failure to have the legally mandated standing complaints committee to conduct an immediate inquiry into the complaint. The belated announcement of a complaints committee headed by Urvashi Butalia is simply a further indication of bad faith. While Butalia's credentials are not in doubt to fulfil the role of a third party NGO, the law clearly mandates that the internal complaints committee be headed by a senior woman employee of the workplace. Further, the law also requires the complaints committee to include two other representatives from amongst other employees. The fact is that for none of these categories have any names been supplied. Add to this that all these persons are to be nominated by a badly discredited management; are these the conditions in which justice and redressal even a likely possibility?

In the university and women's movements for the institution of Vishaka-compliant committees in all workplaces there has been a clear-headed understanding that the success of these committees will depend on the extent to which they are insulated from the pressure that individuals at the higher levels of the workplace are bound to wield to rescue "people like them". Many universities in particular have chosen modes of direct and indirect election to choose representatives of all levels of employees and students; the wisdom of which the Tehelka case only underlines yet again. After all, the isolation of the workplace as a specific zone of discriminatory gender-based harassment and violence in Vishaka (and now the Act) is predicated on a recognition that workplace hierarchies may reproduce patriarchal power and violence in a specific fashion that merits distinct treatment. It is therefore only logical that for these committees to be effective, all the (multiple) hierarchies in workplaces must be challenged by the composition of such complaints committees. Wide-ranging participation of employees through processes of popular constitution also has another desirable effect of raising awareness on the issues of sexual harassment and workplace discrimination.

Woman's Right to Choose the "Civil" or "Criminal" Route

In the last two days, there has been fierce debate with regards to the complainant's agency in being able to choose whether to go the "civil" or "criminal" route. Among feminists, there is now a consensus that the employer is bound to report the case, and the police has to file a First Information Report (FIR). This understanding has taken a couple of days to emerge, due mostly to concerns about the right of a woman to choose the redressal mechanism she wishes to approach. But the debate that has ensued has led to a general perception that the two options are mutually exclusive, in opposition to each other, with the criminal route trumping the other. This is however far from the truth, as the two processes can, and may still need to, go hand in hand.

There is no doubt that the allegations against Tejpal are ones that squarely fall within the definition of rape, and it is good that an FIR has been filed, and it is even better that the complainant has indicated that she will pursue the criminal complaint. If Tehelka had had a complaints committee in place, this would have been the course of action that should have resulted but with the kind of legal

advice, counselling, and institutional support that every complainant needs in order to pursue a criminal complaint. Instead, the complainant was, and continues to be, left alone and be effectively silenced, because the public is the only arena in which she can frame her questions and voice her doubts. A complaints committee-initiated FIR would have unambiguously communicated to Tejpal and other employees in Tehelka, as well as the general public, that Tehelka is an organisation in which rape and sexual assault are always considered crimes against women even when they are committed by its own editor. The unfortunate truth is that Tehelka has not so distinguished itself as an employer; and it is therefore Tehelka who must receive our full throated condemnation rather than the feminist lawyers and activists who have argued that the complainant must be allowed to have a say.

The decision of the complainant to make her statement before a magistrate is a reminder to all of us that when we ask for amendments in the law, it is with belief in the law; and that belief must not desert us when we find ourselves in the regrettable position of having to access them. Despite our myriad concerns about the manner of the implementation of the law, the complainant's salutary resolve is an important reminder that the complaints committee route should not always be conceptualised as a redressal mechanism that is "alternative" to the law. On occasion, it must be one that facilitates, mediates, and supports a woman employee's engagement with the criminal justice system. In other words, the battle with, and at, Tehelka is now to ensure that the complainant is given the resources and support services she needs to pursue the criminal complaint; an assistance that only a genuine, non-nominated complaints committee representative of all employees can be trusted to do.

A genuine complaints committee at Tehelka is still needed to investigate the woman's charges for two additional reasons. While the acts reported in the original complaint may amount to rape, no one should assume that these are the only misdeeds for which Tejpal needs to be brought to book. Tejpal could well have committed other, less egregious but equally unwelcome, discriminatory and trauma-inducing acts directed at either this complainant or other women employees of Tehelka. These are not necessarily the subject of the criminal investigation at hand, but should be the objective for the internal complaints committee inquiry. Furthermore – although in stating this one may be operating at the highest level of wishful fancy – a complaints committee inquiry is needed to take action against Tejpal at the level of the institution itself. Hopefully, Tejpal's self-serving recusal of himself as editor is not the only "action" that the Tehelka management should (be allowed to) be satisfied with; at the very least, he should be suspended forthwith.

The word "tehelkaa" in Hindi denotes a uproar, a scandal, an expression of outrage. The last week at the magazine have shown how easily these epithets can be applied to a regrettable situation, but the promise of the word cannot be exhausted by Tejpal's violence and Chaudhury's sins of commission. What is needed is now a true tehelkaa inside Tehelka, where the employees, instead of resigning in disgust, enforce democracy and the rule of both civil and criminal law in that organisation.