A bittersweet moment: Indian governance feminism and the 2013 rape law reforms

Article *in* Economic and Political Weekly · June 2017

CITATION
1

READS
580

1 author:

Prabha Kotiswaran
King's College London
39 PUBLICATIONS **446** CITATIONS

SEE PROFILE

A Bittersweet Moment

Indian Governance Feminism and the 2013 Rape Law Reforms

PRABHA KOTISWARAN

Based on a mapping of Indian feminist interventions on the law of rape over the past three decades, culminating in the wide-ranging law reforms following the rape and murder of Jyoti Singh Pandey in December 2012, it is argued that Indian feminism displays key characteristics of governance feminism. In particular, Indian governance feminism is deeply committed to a highly gendered understanding of sexual violence. Further, Indian feminism has increasingly resorted to the use of the criminal law to address sexual violence even as its historical suspicion of postcolonial state power has reduced considerably and is now mostly evident in its opposition to the death penalty for rapists. A robust culture of state feminism has ensured that feminist ideas find a foothold in state institutions and indeed state laws. It is hoped that by demystifying feminists' roles in law reform processes, we can begin to assess the intended and unintended consequences of such influence and resultant legislative successes.

Prabha Kotiswaran (*prabha.kotiswaran@kcl.ac.uk*) is Reader in Law and Social Justice, Dickson Poon School of Law, King's College London.

Four years since the passage of the Criminal Law (Amendment) Act (CLA), 2013 in the wake of Jyoti Singh Pandey's rape and murder in December 2012, the act has been at the epicentre of several debates amongst Indian feminists. Disagreements span the politico-legal spectrum and address issues ranging from the scope of the substantive offence of rape, to the minutiae of the evidence presented before the court to the quantum of sentencing to whether the CLA exemplifies the arrival of United States (US)-style carceral feminism on Indian shores. Since April 2013, several such controversies have emerged as the provisions of the CLA are tested in a range of cases involving digital penetration (Tarun Tejpal) and oral sex (Mahmood Farooqui) which would not have attracted prosecution pre-CLA as rape. As feminists confront the emerging realities of the CLA's enforcement, I argue in this article that the passage of the CLA reflects the growing influence of Indian feminists in the corridors of power, a phenomenon that myself and others have tracked as governance feminism (Halley et al 2006; Halley 2008).

In particular, I argue that Indian feminism has entered a governance mode in the light of three parameters, namely, an increased reliance on criminal law, a deep commitment to a highly gendered reading of sexual violence and a diluted oppositional stance vis-à-vis state power. In this article, I describe the emergence of Indian governance feminism, but retain a dispassionate normative stance towards it. Governance feminism for me is not a pejorative term; it carries no accusations that feminists are single-handedly responsible for the passage of a "draconian" CLA or that carceral feminism operates as judicial bias (Baxi 2016), inhabiting the minds of judges and resulting in unjust convictions of rape accused. Rather I use it as a conceptual tool to map a fundamental shift in the influence that feminists have vis-à-vis the state; where they were earlier an outsider social movement protesting against state policies, today they are a crucial part of the lawmaking process. The state in turn is receptive to many feminist ideas. My hope is for feminists to acknowledge that we have this influence and take responsibility for the resultant costs and benefits for both women and men. I attempt one such assessment of the likely distributive effects of the CLA elsewhere (Kotiswaran 2018a).

To clarify, Indian governance feminism is not a local version of highly influential strands of Western carceral feminism. Despite broad structural similarities between Anglo–American and Indian feminist movements, Indian governance feminism differs from Anglo–American governance feminism in that,

even when heavily reliant on the criminal law, Indian governance feminism is more sceptical of it, given the extraordinary violence and corruption of the postcolonial state. Also significant is the presence of a strong political left and an equally vocal materialist, even Marxist feminism that calls into question radical feminist tendencies within Indian governance feminism. These points of convergence and divergence between radical feminism and materialist feminism have political effects as I demonstrate elsewhere on the issue of sex work (Kotiswaran 2018b).

Finally, while this article deals with the instantiation of feminists and feminist ideas into state power, the governance feminism project (Halley et al 2018a, 2018b) recognises that state power extends well beyond the juridical into the discursive or governmental realm. The CLA process, for instance, overhauled rape law but also introduced trafficking offences affecting sex workers—subjects since the 1990s of the state's governmental power through myriad HIV prevention projects. The 2013 reform process brought feminist and sex workers' groups into conversation. A fuller account of governance feminism becomes possible by considering how feminists infiltrate state power but also how they form alliances with population groups like sex workers, whose interests they have not prioritised in their law reform agenda; crucial here is sex workers' fundamentally different disposition to criminal law reform (Kotiswaran 2011). I map this dimension in a comparison of rape and anti-trafficking laws elsewhere (Kotiswaran 2018b). I focus on rape here.

Long Feminist Struggle for Rape Law Reform

Since Thomas Macaulay's Indian Penal Code (IPC) was introduced in 1862, its rape provisions have been substantially amended only twice, once in 1983 and then in 2013. In the intervening 30 years between 1983 and 2013 (major points of intervention are listed in Table 1), feminists, many from the autonomous phase of the Indian women's movement (IWM) were highly engaged in rape law reform—their long road to the CLA punctuated by several rounds of negotiations and repeated failure. With Singh's brutal gang-rape and murder, rape, mostly a feminist issue, up until then was suddenly catapulted into the mainstream generating the public momentum required to realise law reform. The state's apathy abated but its response was influenced by a heightened public demand for retributive justice. Feminists felt cornered and had to choose between their commitment to gender equality and their resistance to state power (Dutta and Sircar 2013). While this perception of feminists feeling embattled has resonance, it does not present the full picture.

Table 1: A Summary of Proposals for Rape Law Reform

Mathura judgment from Supreme Court	1979
Report of the 84th Law Commission of India	1980
Amendment to the Indian Penal Code, 1860	1983
NCW Draft Amendments to Sexual Assault Law	1993
Sakshi petition to the Supreme Court	1999
Report of the 172nd Law Commission of India	2000
AIDWA Bill	2002
The Criminal Law (Amendment) Bill, ("Sexual Assault Bill")	2010
The Criminal Law Amendment Bill, by feminists ("Sexual Violence Bill")	2010
The Criminal Law Amendment Bill	2012
Report of the Committee on Amendments to Criminal Law (Verma Committee Report)	2013
The Criminal Law (Amendment) Ordinance	2013
The Criminal Law (Amendment) Act	2013

Between 1979 and 2013, the relationship between feminists and the state (and criminal law reform) underwent a substantial transformation. Not only were feminists slowly yet surely clarifying their own legal understanding of rape; their ideas were also beginning to find a foothold within the state through institutions of "state feminism,"[1] namely, the Ministry of Women and Child Development, the Law Commission of India (LCI) and the National Commission for Women (NCW). Following the December 2012 gang rape, the Verma Committee, the most open point of reception for feminists, effectively channelled many of their ideas into the CLA. Although feminists ultimately lost out on crucial issues including marital rape, rape by the armed forces and the age of consent, their successes are not insubstantial and could be traced back to their powerfully articulated theory of sexual violence. I track these successes through three parameters of governance feminism: Indian feminist groups' resort to the criminal law for addressing gender inequalities; their conceptualisation of gender inequality, particularly, violence against women; and their mode of engaging with the state all of which have resulted in a distinctively Indian governance feminism on rape.

Reliance on Criminal Law

Compared to feminist movements elsewhere, a crucial point of departure for anti-rape struggles is the high levels of sexual violence inflicted by the state itself. Indeed, the Mathura case, which inaugurated the autonomous phase of the IWM in the 1970s, arose from the Supreme Court's acquittal of two policemen who raped a tribal teenager. The arc of feminist advocacy against rape thus extends from its opposition to the custodial sexual violence inflicted by the police in the 1970s and 1980s to the sexual violence perpetrated by the armed forces in conflict-ridden parts of the country today. Resorting to the state for criminal law reform has thus always been a fraught affair for fear of its misuse. The IWM has also been acutely aware of the merely symbolic promises of law reform given its chronic under-enforcement by a weak postcolonial state. However, as I will show, the zone of opposition to the criminal law has shrivelled within Indian feminism over the past three decades. Feminists' resolute opposition to the death penalty for rape post-2013 is a far cry from their deep suspicion of all aspects of the criminal law at the start of the IWM in the late 1970s.

Gendered Understanding of Violence

Indian feminists' increased reliance on the criminal law between 1983 and 2013 is linked to their reconceptualisation of rape during this period. Outlining the three major feminist approaches to rape—rape as violence (the Canadian model), rape as uniquely gendered violence, and "rape as violence where violence precisely *is* sex" (the radical feminist model),

Indian feminists adopted the second approach (Menon 2004: 110).[2] They had always privileged the special, sexual and gendered violence of rape. Although the second and third approaches appear distinct on paper, they are ideologically highly compatible with possibilities for slippage between them.

Consider the third approach: radical feminists understand all heterosexual sex as coercive because it is only "if force were defined to include inequalities of power, meaning social hierarchies, and consent were replaced with a welcomeness standard, [that] the law of rape would begin to approximate the reality of forced and unwanted sex" (MacKinnon 2005: 247). Legally speaking then, a defendant must be prosecuted on the basis of the complainant's testimony as to her reasonable perception of threat and the unwanted nature of the sex rather than whether it was consented to or not. Some philosophers of criminal law would further argue that penetrative sex by a man with a woman is prima facie a moral wrong where it was unjustified even if it was consented to (Herring and Dempsey 2010: 30–43). To be justified, such sex must confer value, respect and humanity on the woman. A crucial basis for this approach is the uniquely gendered violence of rape (in other words, the second approach).

Conversely, feminists pursuing the second approach attribute sexual violence to pervasive gender hierarchies. This appreciation for social coercion led feminists to name all rape as acts of power. Indeed "power rape" or rape under conditions of economic domination was a crucial contribution of the IWM although the 1983 amendment recognised the more limited category of custodial rape. These political formulations had legal implications in 2013 when the presumption of the lack of consent was extended well beyond custodial situations to everyday situations of dominance. Thus, we see how feminists' demands came close to those of radical feminists. Indeed, over the past three decades, feminists have (perhaps unconsciously) switched back and forth between the second and third approaches. This gendered understanding of rape, as I will show, became highly contested and has been challenged by lesbian, gay, bisexual and transgender (LGBT) advocates, children's rights advocates, and (in 2013) Marxist feminists.

Shifting Modes of Engagement with the State

In addition to feminists' increased reliance on the criminal law and their uniquely gendered perspective on violence against women, I also track feminism's changing relationship with the state. Feminists have elaborated on shifts in the 1990s whereby "a purposive interaction with institutional machinery and systems was thought to be critical in influencing positive outcomes for women" and the consequent "'mainstreaming' of women's issues marking a break from the protest activism of the late 1970s and 1980s and direct confrontations with the state" (Kannabiran and Menon 2007: 80). Such mainstreaming by the state to further economic development has also rendered feminism a professional option for many women producing in the process "nine-to-five feminists" in place of the militant feminists of the 1980s (Roy 2009: 343, citing Menon 2004). As I will show, feminist struggles to reform rape law starkly reflected this trend, with feminist lawyers playing a substantial and increasingly visible role. I now elaborate on each of the three parameters of governance feminism.

From Suspicion to a Faltering Faith in the Criminal Law

Pre-1983, the key IPC provision on rape was Section 375; Section 376 prescribed the punishment. Rape was defined as sexual intercourse by a man with a woman under five circumstances, including when it was against her will; without her consent; when consent was obtained under fear of death and hurt; when it involved impersonation of her husband, or when the victim was less than 16 years old (with or without her consent). Sexual intercourse by a man with his wife (her not being less than 15 years) was not rape. Related "sexual" offences were included in Sections 354 (use of criminal force with intent to outrage modesty), 509 (word, gesture or exhibition of an object with the intention of insulting the modesty of a woman) and 377 (carnal intercourse against the order of nature).

Indian feminists' struggles on rape started post-Mathura. The government in response convened the 84th LCI. Feminists inserted themselves in the reform process early on. In 1980, the LCI met with eight women's groups who proposed ambitious changes for gender-matching (for example, the rape survivor's mandatory examination by a female police officer (1980: 15), and for female social workers' involvement in rape investigations alongside the police (1980: 18), and in the trial (1980: 31)). The LCI rejected all these demands on the grounds of impracticability, but also out of fear of a "trial by the public" with the trial being instrumentalised to wage caste and class warfare.

In 1983, Parliament amended the rape law. Incorporating several of the LCI's recommendations, it expanded the grounds for finding a lack of consent to include survivors who were of unsound mind, intoxicated or drugged. Consent was not defined. Although, the LCI recommended inserting a rebuttable presumption of lack of consent in all instances where a woman claimed so (1980: 35), and Geeta Mukherjee (Member of Parliament) tabled an amendment to presume the lack of consent in all cases of "power rape" (Baxi 2014: 34, citing Lok Sabha debates 1983: 412), the 1983 amendment allowed this presumption only for custodial rape,[3] rape of a pregnant woman, and gang rape. Under the newly introduced Section 114A of the Indian Evidence Act (IEA), 1872 once sexual intercourse by a man in a position of authority was proved, and the rape survivor stated that she did not consent, her lack of consent was presumed.

Minimum punishments of between seven years and life were introduced for rape along with increased penalties of between 10 years and life for custodial rape, gang rape, rape of a pregnant woman and rape of a child under the age of 12. Courts could impose lesser penalties if they adduced "special and adequate" reasons. There was no marital rape immunity when the parties were living separately under a separation decree or customarily, but the punishment was lower than for stranger rape. Similarly, marital rape of a wife between the ages of 12 and 16 years (16 being the age of consent) warranted only a two-year prison term. In a legal paternalist move

meanwhile, even consensual sexual intercourse between men in positions of authority and women in their custody was criminalised. Sections 155(4) (permitting the defendant to adduce evidence as to the immoral character of the survivor) and 146 of the IEA (dealing with witness cross-examination and often used to discredit the rape survivor), were left untouched.

Characteristic of the post-Emergency years, the political mood among feminists (and leftist scholars and activists) accompanying the amendment was one of deep suspicion towards state power. Lotika Sarkar, a feminist legal academic who with colleagues penned the Open Letter to the Supreme Court in the Mathura case, was once asked why they had not demanded a blanket presumption of lack of consent in all instances of rape rather than in custodial situations only. Memories of the Emergency of 1977 still fresh in her mind, she cautioned against handing over power to the government, which could be used to stifle all political dissent (Mazumdar 1999: 353). Feminists recollected that a blanket presumption of lack of consent might be used "by managements against trade union militants, by rural vested interests against revolutionary activists, by caste Hindu chauvinists against Dalits" (Patel 1980: 2138). In 1981, feminists' intense suspicion of state power meant that they were wary even of (now commonsensical feminist) procedural protections like in-camera rape trial proceedings recommended by the 84th LCI for the benefit of both parties. Feminists although resistant to the glamorisation of rape by the press, passed a resolution stating that "the Bill is in fact a blatant attempt to impose press censorship, which assumes significance in the context of increasing atrocities and repression of people's movements" (Haksar 1999: 75).

Post-1983, feminists vowed to take greater care with future demands lest they be used to curb civil liberties (Haksar 1999: 76); the law's ineffectiveness did not help either. In 1993, the newly established NCW worked with 11 feminist activists to propose Draft Amendments to Sexual Assault Law, this being the feminist statement on sexual violence post-1983 (Menon 2004: 111). The 1993 draft understood rape as "a unique form of violence because of its sexual character" (Menon 2004: 113).[4] The proposal recommended replacing rape with two subcategories of sexual assault—sexual assault involving penetration (penile and non-penile) and non-consensual touching, gesturing or exhibiting any part of the body for a sexual purpose. The draft proposed a second category of aggravated sexual assault based on several new grounds such as the survivor's age, disability, or pregnancy of the survivor, the defendant's powerful position in relation to the survivor, gang rape, where the assault resulted in grievous bodily harm or where rape occurred over a protracted period. The proposal also eliminated the marital rape immunity and, amidst considerable internal disagreement (Menon 2004: 126–28),[5] especially as to the increased criminalisation of adolescent sex proposed 18 as the age for consent.

In 1999, Sakshi, a feminist legal advocacy non-governmental organisation (NGO) filed a petition in the Supreme Court seeking clarification of the term "sexual intercourse" under the IPC to address growing child sexual abuse. On the Supreme Court's direction, the LCI submitted its 172nd report. The LCI recommended replacing rape with sexual assault that was gender-neutral as to the defendant and survivor. Penetration was expanded to include non-penile penetration. The commission failed to define consent or delete the marital rape immunity. It pegged the age of consent at 16 years and retained judicial discretion on minimum sentences. The LCI additionally proposed the offences of aggravated sexual assault and unlawful sexual touching and the repeal of Section 377. The LCI consulted with only three feminist civil society groups although there were many feminist voices in the debate.[6]

Although viewed as a paradigm shift from the reformatory strategy of the 84th LCI (Sen 2010: 86), feminists fiercely opposed the proposed gender-neutral offence of sexual assault out of fear of its misuse to file counter-complaints against women (Menon 2004: 137). A gender-neutral offence meant to address same-sex rape, furthermore was meaningless as long as Section 377 remained on the books with no legal protections for the LGBT community. Moreover, could not transgendered persons most at risk of rape, simply be treated as women under a gender-specific rape law (PLD 2010: 15)? With the proposed deletion of Section 377, feminists called for a gender-neutral offence and indeed a separate law against child sexual abuse.

Here again, feminists recollected that since only anti-terror laws reversed the evidentiary burden in favour of the prosecution, democratic concerns had to figure in their calculus (Murthy 2006). Similarly, although feminists unanimously opposed the marital rape immunity, some wondered privately if the husband's incarceration would not adversely affect a financially-dependent wife and disincentivise her reporting of marital rape. Where women often only wanted to chastise their husbands rather than remove them from their lives (Murthy 2006: 4), a civil law solution was, perhaps, more effective? Also, given the inherent violence of compulsory marriage, criminalising marital rape rather than treating it as a ground for divorce would leave the institution of marriage unquestioned.

Rise of Certitude in the Criminal Law

Despite feminist efforts in the 1990s to reform rape laws, little has changed. In 2002 an amendment to the IEA deleted Section 155(4), which allowed a rape accused to adduce evidence of the survivor's "generally immoral character" and provided that a survivor could not be cross-examined on her "general immoral character." In 2010, when the government proposed fast-track courts for rape, several women's organisations wrote an open letter to the Ministry of Law and Justice inviting a consultation on the 172nd LCI report. They made some predictable demands but, significantly departing from the 1990s when they understood rape as sexual assault, they now demanded new laws on sexual violence. In response, in March 2010, the Ministry of Home Affairs (MHA) proposed the Criminal Law (Amendment) Bill, 2010, a fairly minimalist document,[7] which feminists dismissed as a "greatly diluted version" of the LCI's proposals (Sen 2010: 87).[8] By May 2010, signatories to the open letter drafted their own the Criminal Law (Amendment) Bill, 2010.[9]

The bill, like the 1993 draft, was the IWM's aspirational statement on sexual violence. To a legislative draftswoman, however, its broad formulation of offences fell far short of the civil liberties principles that limit criminalisation and require precision, clarity and fair labelling. Certain offences were broad enough to be constitutionally suspect. Significantly, with the expansive understanding of rape as sexual violence, feminists' attachment to a gendered script of sexual subordination intensified even as their suspicion of state power and of the criminal law trailed off.

Specifically, the bill proposed a new IPC chapter on "sexual violence" in place of the existing chapter on "offences against the body" and included situations where women were assaulted, stripped, disrobed, paraded naked, subjected to sexually humiliating words or actions, subjected to any sexual contact with or exposure of male organs, sexually touched, sexually harassed, and where their sexual and reproductive organs were mutilated. Highlighting the sex-based nature of these crimes, feminists segregated them as special, different, and possibly more harmful than other bodily offences. They effectively proposed a new bill on sexual violence;[10] I call it the Sexual Violence Bill.

Thus, between 1993 and 2010, feminists went from viewing rape as sexual assault to it belonging to a continuum of sexual violence. Feminist opposition to gender neutrality best exemplifies this shift. Given the exceptionally high rate of violence against women, or India's "rape culture," feminists considered gender neutrality to be a Western idea that was premature and unsuitable for domestic realities and would lead to false complaints against women.[11] This pragmatic argument, however, soon morphed into a radical feminist normative argument that women never rape (Agnes 2002: 846–47). In the face of gender neutrality, the IWM ultimately was a *women's* movement.

But rape law was by now a critical site for addressing violence against the LGBT community and children. Feminists re-grouped by involving LGBT and children's rights' groups to deliberate the Sexual Violence Bill. They had three options here. The first and the simplest option was to make the offence of rape gender-neutral as to the survivor but not the defendant. The second was to create separate offences within the same statute against the rape of women, children and LGBT persons. The third was to create entirely separate legislations for these groups. The Sexual Violence Bill adopted the second strategy to propose three distinct offences: (i) sexual violence by a man on a woman, (ii) sexual assault by a man on a person other than a woman, and (iii) sexual assault by a person on a child.

This formulation shows that feminists subscribed to a deeply gendered, radical feminist view of violence against women. In their calculus, only biological males could commit sexual violence against adults; biological females could not. Females could, however, abuse male and female children; children here occupied the social role of the woman. Feminists were unwilling to imagine women's sexual aggression towards adults, even when they occupied a dominant religious, caste or class background vis-à-vis less powerful biological males. The bill did not propose to prosecute such women for rape or other offences.

Once again, the violence suffered by females was considered graver than that of non-females. Female sexual harm was considered "sexual violence"; sexual harm committed against men, transgendered persons and children was merely "sexual assault." This hierarchy of harms necessitated a separate offence of sexual assault of a person *other than a woman*, which included men and transgendered persons. Thus, feminists remained strongly committed to the male–female dyad to theorise patriarchal sexual violence and cordoned off anti-female sexual violence from gender-based violence. Feminists struggled to address the experiences of transgendered persons; thus a transgendered person aspiring to a female identity could complain only of sexual assault against a person "other than a woman."

Feminists also successfully campaigned for and drafted a new laws[12] on sexual violence against children, namely, the Protection of Children from Sexual Offences Act, 2012. LGBT survivors of rape, however, continued to pose a serious challenge to the feminist demand for a gender-specific rape offence. Certain LGBT groups like the People for the Rights of Indian Sexual Minorities (PRISM), opposed gender-neutrality as lesbians and men could be prosecuted for rape (PLD 2010: 4). Others, including Aanchal and the Humsafar Trust (PLD 2010: 9), however, opted out of the feminist fold to strategise independently (PLD 2010: 13) for a gender-neutral rape law.

Reconceptualising Consent

The Sexual Violence Bill also boldly reconceptualised consent as the woman's unequivocal voluntary agreement, listing numerous situations where the lack of consent was presumed. These covered not only custodial situations involving the police, but also situations of collective violence, intimate violence, or where the perpetrator was in a position of social, political and economic *dominance*. "Economic/social dominance" was defined as

> situations of religious, ethnic, linguistic, caste and class dominance, including (but not limited to) both formal and informal employment situations such as landlord-agricultural labourer, contractor-labourer, employer-domestic worker. (See Note 9)

This intersectional analysis notwithstanding, the broad construction of coercion risked recasting even consensual sexual contact with a man from a dominant background as sexual violence, thereby undermining women's sexual agency. In practical terms, the paternalism of feminists and that of caste councils and families who use rape law to prevent inter-caste marriage seemed indistinguishable.

Even as the Indian feminist narrative of rape articulated exclusively in terms of the sexual subordination of women by men, became entrenched, rape was viewed less as forced sexual intercourse than as sexual intercourse without consent and under coercion. Feminist expectations of the criminal law grew even as political and legal struggles which previously

threatened to destabilise the feminist consensus on rape remained unresolved.

No official response to the Sexual Violence Bill was forthcoming until the government introduced the Criminal Law (Amendment) Bill, 2012 in Parliament on 4 December 2012. It re-designated rape as gender-neutral sexual assault and as in 2010, expanded sexual assault to include non-penile penetration, increased the age of consent to 18 years and retained the marital rape immunity.[13] Aggravated sexual assault covered a defendant who was a relative or in a position of trust and authority or social, political or economic dominance, or where the survivor was disabled, grievously hurt, or subject to persistent sexual assault. Feminists suggested these grounds in 1993 which were incorporated in the government's 2010 bill. The 2012 bill introduced only one new offence relating to acid attacks, increased punishments under Sections 354 and 509 and strengthened existing rape shield provisions but did *not* address sexual violence as feminists desired.[14]

Twelve days after the government introduced the Criminal Law (Amendment) Bill, 2012 Jyoti Singh was raped and murdered. The government immediately appointed the Verma Committee to look into law reform.

Verma Committee as a Site of State Feminism

The Verma Committee shifted the tone of the public debate, which was saturated until then with calls for the death penalty and chemical castration. Its report instead held the state responsible for failing to prevent women's abuse. It addressed head-on the rape inflicted by state personnel and family members, including husbands, by removing legal immunities these acts enjoyed. It labelled caste councils, which informally outlawed inter-caste romance and marriage, as illegal. It proposed a long list of new offences criminalising disrobing, voyeurism, trafficking, employing a trafficked person, seduction by a person in authority, sexual assault, stalking, gang rape and rape resulting in death or persistent vegetative state. Compare these changes to the Criminal Law (Amendment) Bill, 2012 introduced before the Jyoti Singh incident which proposed just one new offence on acid attacks. The newly proposed offences were broadly defined and had steep punishments when compared to previous penalties for similar offences. For example, sexual assault, meant to cover non-consensual, non-penetrative forms of sexual contact, was punishable by five years' imprisonment or fine or both. Thus, fondling a woman on the bus could attract up to five years' imprisonment.

The Verma Committee proposed criminalising the full range of acts that feminists designated as sexual violence. The report exemplifies feminists' attachment to the script of gender subordination and the unique nature of gendered harm needing the heavy-handed response of the criminal law. The committee benefited from its interactions with the 92 feminist NGOs and individuals who, not content with writing to the committee, met committee members in January 2013. They even took credit for dissuading the committee from recommending the death penalty for aggravated rape. Feminists as repeat players could obtain access to state bodies. Not surprisingly, they enthusiastically welcomed the committee's report as signalling a "paradigm shift" in thinking on violence against women.

However, Indian feminists were not alone in influencing the committee. It thanked at least one American radical feminist—Diane Rosenfeld—for her contributions. Relatively new single-issue NGOs like the Bachpan Bachao Andolan (BBA) focusing on missing children and child trafficking, also engaged extensively with the committee and committee members were themselves acquainted with feminist lawyers. Justice Verma had delivered the Vishaka judgment; Justice Leila Seth was a member of the 172nd LCI and Gopal Subramanium, as Solicitor-General demonstrated familiarity with feminist legal arguments, particularly those of Catharine MacKinnon when representing the government on cases relating to bar dancing and child trafficking in circuses.

The influence of Indian radical feminists and anti-trafficking groups (like the BBA) is exemplified by the fact that the second longest chapter in the committee's report deals with trafficking. The report claims that missing children are trafficked into sex work, later justified as voluntary prostitution. Their trafficking sets the climate for "a rape culture" (Verma et al 2013: 200). Radical feminists routinely make these arguments—prostitution for them is paradigmatic of sexual violence against women, rape being only one manifestation. They also often conflate sex work with trafficking for sex work.[15] In order to eliminate trafficking then, sex work has to be eradicated. This constellation of radical feminist ideas currently travels the world as anti-trafficking discourse. Thus, although trafficking had historically assumed low priority for the IWM, anti-trafficking NGOs like the BBA (not a feminist organisation) presented these arguments to the Verma Committee. Little surprise then that the committee proposed a new trafficking offence that did not distinguish trafficking from voluntary sex work.[16]

Consider other vignettes of feminist reasoning in the Verma Committee report. It offers familiar radical feminist tropes of victimhood, harm, the special harm of rape to one's dignity and the collapsing of different harms into each other requiring a zero-tolerance approach to milder harassment to prevent the serious harm of sexual assault (Verma et al 2013: 18). Thus, publicly molesting women and girls could eventually cause psychological problems and even lead to suicide (Verma et al 2013: 143). From the conflation of sexual harms to policing *any* sexual activity was a short step away. Thus, we learn that "aggravated sexual assault must include all stages of affront to human dignity which is the quintessence of human rights, beginning with *any act with a sexual overtone*" (Verma et al 2013: 18, emphasis mine). The surest way to eliminate sexual subordination then is to avoid sexual activity altogether. Also, although the committee understood rape as an exercise of patriarchal power, women and girls are innocent, fragile victims in this script. The Verma Committee as a productive site of state feminism ultimately channelled feminist ideas of many stripes (mostly Indian materialist feminism but also slivers of Anglo–American

radical feminism and some gender-speak from non-feminists) into a hyper structuralist feminist argument for law reform and increased criminalisation.

The Criminal Law (Amendment) Act, 2013

In February 2013, the President promulgated the Criminal Law (Amendment) Ordinance, 2013,[17] subsequently replaced by the CLA. The CLA offered mixed results for feminists who lost out on key issues. The age of consent was increased from 16 to 18 years. Marital rape immunity was not only retained but was now expanded to "sexual acts" not just sexual intercourse. Despite assurances that the age below which marital rape would be criminalised would be increased, there was no change. Only marital rape of a wife below 15 years was punishable.

However, feminists also had reason to celebrate. Section 375 retains the gender specificity of rape—only a man can commit rape and only against a woman. Rape now covers penile and non-penile penetration. The CLA defines consent as "an unequivocal voluntary agreement where the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act." A substantial portion of this definition appeared in the Sexual Violence Bill and the Verma Committee report before being modified for the CLA. Explanation 2 to Section 375 (formulated in the Sexual Violence Bill) clarifies that the lack of physical resistance shall not be construed as consent.

To cut back on judicial leniency in rape sentencing, Section 376(1) prescribes a minimum sentence of seven years with no room for judicial discretion, and a maximum of life imprisonment, for rape. The grounds for aggravated rape under Section 376(2) have been doubled, from seven to 14. Many of these additional grounds were first proposed by feminists in 1993 and are listed in the Sexual Violence Bill. They are based on the defendant's status (being a member of the armed forces, a relative, guardian, teacher or a person in a position of trust or authority, in a position of control or dominance), the survivor's status (pregnant woman, or less than 16 years of age, incapable of giving consent, suffering from mental or physical disability), the context of rape (communal or sectarian violence) or the harm to the survivor (grievous bodily harm, repeated rape). Section 114A of the IEA expanded the rebuttable presumption of lack of consent beyond custodial rape to cover all cases of aggravated rape. Gang rape, earlier a ground for aggravated rape, is now a separate offence punishable by a minimum sentence of 20 years. The CLA imposes a minimum sentence of 20 years and up to life imprisonment or the death penalty for rape resulting in death or persistent vegetative state. The punishment for repeatedly committing aggravated rape is life imprisonment or the death penalty. The Verma Committee had proposed stringent punishments for all these offences but not the death penalty.

The CLA also expands a pre-existing offence criminalising consensual intercourse in a custodial situation by a public servant to now include any person in a position of authority or in a fiduciary relationship. The term "person in a position of authority" is not defined and could result in a legal paternalist denunciation of women's sexual choices. Another provision penalises the police's failure to register a first information report. The CLA also incorporated the Verma Committee's recommendations (in turn influenced by feminists' theory of sexual violence) by including separate offences against stalking, committing an acid attack, voyeurism, disrobing, trafficking and sexual harassment. Many of the new offences are non-bailable and repeat offenders are subject to increased penalties. The CLA also strengthens rape shield provisions.

Criminal Law's Expanse, Feminism's Discontents

As my discussion of various feminist proposals makes clear, the expansion of the anti-rape platform to one of sexual violence (as exemplified by the Sexual Violence Bill) envisioned a correspondingly enlarged role for criminal law. Whether or not the CLA has its desired effects, the universe of the criminal law has expanded. Feminists' main criticism of the CLA in fact remains its under-criminalisation, namely, of marital rape and rape by members of the armed forces. Thus, where in the late 1970s and the early 1980s, feminists were suspicious even of in-camera rape trials, today, feminists are unanimously opposed to the criminal law only where it prescribes the death penalty for rapists.[18]

The intra-feminist disagreement over the exclusivity of rape as a form of male–female violence was not resolved in 2013. Feminists were faced with the LGBT question once again. This time, feminists were content with gender neutrality as to the survivor but not the perpetrator.[19] However, their fierce opposition to gender-neutral rape in the 2013 Ordinance caused the government to revert back to a gender-specific definition in the CLA. Reeling from this missed opportunity, Aarti Mundkur and Arvind Narrain, advocates for the LGBT community felt betrayed and indirectly blamed feminists in a 2013 op-ed for refusing to acknowledge the "lived experiences of members of the transgender community" (Mundkur and Narrain 2013). In effect, Indian feminism successfully managed contestations to its rape narrative, thereby consolidating a theory of gender subordination that is remarkably close to Anglo–American radical feminism. Consequently, it was unable to seriously engage with sexual violence against males and transgendered persons (Baxi 2014: 46).

An equally serious but less examined (and largely academic rather than policy-oriented) challenge has come from Marxists. Human rights groups (an important part of the progressive left) had always cautioned feminists as to the misuse of rape law offering instead a socialist theory of rape wherein rape by the police in rural areas was considered "a weapon of class domination" (Haksar 1999: 80). Law was *not* their preferred venue for political struggle; socialist feminists preferred "a programme of defensive resistance" rather than "working out legal definitions of rape and description of individual cases" (Haksar 1999: 80). After the rape and murder of Jyoti Singh, a Marxist feminist theory of rape proposed by Maya John (2013) was highly critical of feminists' failure to

account for the differential, sometimes, contrasting stakes[20] that women and men in varied class positions develop vis-à-vis each other thereby fundamentally problematising feminism's brief to accurately represent anything as coherent as "women's interests."

Collaboration Feminists and Feminist Lawyers

The third dimension of governance feminism is borne out in the IWM's increasingly collaborative engagement with the state. This holds true for rape as well and is facilitated by the emergence and consolidation of state feminism. Thus, feminists were key players in consultation with the LCI in 1980, the NCW in 1993, the LCI in 2000, with the MHA in 2010 and the Verma Committee in 2013. Ironically, post-CLA feminist claims that the state "betrayed" them in fact reflects feminists' proximity to state power and the relatively direct access that feminists have had to governmental bodies.

Also noteworthy is the IWM's prioritisation of law reform and the increasingly influential role played by lawyers at the forefront of feminist struggles. The law has played at once a central yet paradoxical role in the struggles of the IWM (John 2008: 263). Despite feminists' several successes in the 1980s when laws against rape, dowry deaths (John 2008: 264), sati (Menon 2004: 5), sex selection of fetuses and sexist media representations were passed (Menon 2015: 195), the "law has become simultaneously the most used and criticized sphere for thinking about justice for women" (John 2008: 266). As Sunder Rajan observes "it is, ironically, the conspicuous success of the women's movement in the field of legal reform that led to the doubts about its efficacy as strategy" (2003: 32). While the law remained central to the IWM during the 1990s and later, the democratic deficit of legalistic tactics (such as litigation) and consultative strategies deployed by feminist lawyers which overshadowed popular mobilisation was questioned (Menon 2004: 136–67; PLD 2010: 11). But of late, the law has continued to remain central to feminist struggles as evidenced by new laws on sexual harassment, domestic violence and child sexual exploitation. What has changed is that feminist lawyers have been instrumental in actually drafting these new laws not just litigating or lobbying for them. They have shifted the IWM's equation with the law—where it was earlier moderate, it is today evangelical. They now occupy a vanguard position within the IWM. Significantly, it is legal expertise that is being mobilised to counter internal critique amongst the feminist masses on the CLA (John 2014).

Conclusions

Over the past 35 years, feminist ideas have found more than a foothold in institutions of state power. No matter how tentative feminists remain about this influence, as Indian governance feminism comes into its own they can hardly deny that they have far more opportunities for being heard and taken seriously now than ever before. Feminist ideas circulate in the veins of the CLA and entire provisions could be traced back to feminist documents. Indeed feminists took credit for the CLA (Mehra 2013). Few feminists expressed concerns about increased criminalisation as a way to protect women's safety and security. An early assessment of the CLA suggests that it is likely to have unintended consequences alongside some scope for a reduction in female sexual abuse (Kotiswaran 2018a).

As Indian governance feminism confronts this bittersweet moment of success, my aim is not to castigate feminists or to undermine their crucial victories within and outside the law. Nor is it meant to underplay the strategic choices that all political actors have to make when defending individual survivors of sexual violence or when summoned by law-makers in the wake of an unexpected political opportunity. I also acknowledge the justice gap and other symptoms of the Indian legal system's legitimation crisis that result in both under-enforcement and perverse enforcement of laws against vulnerable groups leading feminists to prioritise, even fetishise changes in statutory law over reform in other arenas.

My aim here has been to simply demystify the role of feminists in law reform processes and suggest that they are not well-served by claiming to be powerless or lacking influence. A more promising path is to acknowledge feminist influence and take responsibility for the myriad outcomes that varied interpretations of the very offences they installed into the statute book will take, sometimes for the benefit of women and sometimes not. This argument does not stem from amnesia as to prior feminist critiques of the law's violence; on the contrary, I think that feminists are *not* critical *enough* of state power. While I am not invested in creating a "carceral feminist/anti- carceral binary" (Baxi 2016: 29), I do find worrisome, the dismissal of intra-feminist debates on the grounds that it fuels backlash against feminists. Feminists have, after all, always been less than popular with governments. So why this anxiety now? Can critical feminists not be traitors and collaborators? The downsides to clamping down on feminist debates are more than political. Defending the feminist mainstream paradoxically re-enacts commitments to liberal legalism.[21]

Above all, the landscape for feminist reform has fundamentally changed. Far from being the lone proponents of women's rights, feminists find themselves in a crowded field today, amidst state feminists, single-issue NGOs and fragile configurations of population groups like sex workers, all laying claim to the feminist mantle. Gender-speak has after all become a common political language resorted to by both progressive and conservative actors. Something more than "pure" gender-speak is necessary to hold on to the critical impulses of the IWM. Defending feminists' marginal yet valorous position

assiduously cultivates blind spots evident on the issues of sex work and trafficking, both of which were the subject of the 2013 CLA. Astonishingly, the carceral techniques introduced in the CLA now find replication in the recently proposed Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016.

As further test cases emerge under the CLA, Indian governance feminism may, at the very minimum, give pause to its evangelical pursuit of the law and stop celebrating the criminal law. We might pursue a materialist feminist theory of rape which resists the seductions of liberal, radical and Marxist feminism and inter-sectionality analysis. We might consider untethering ourselves from an exclusively gendered script of sexual violence, recognise the radical fluidity of gender identities, acknowledge that women in privileged positions can also perpetuate violence and take into account the interests of men, at least some of the time, heed men's call for new forms of political debate about sexual violence (PLD 2015: 5), and articulate new forms of feminism such as choice feminism (Madabhushi et al 2015: 43). We may even recollect the formative moments of our own vocabulary of sexual violence (Panjabi 1995). Or we might invest all our efforts in consciousness-raising, which has so far been the lasting legacy of Jyoti Singh's rape and murder.

NOTES

1 "State feminism" a term coined by Scandinavian feminists refers to the response of post-industrial democracies to demands of second-wave feminism by setting up women's policy agencies to improve women's status (Outshoorn and Kantola 2007: 1). Another precursor to governance feminism is femocracy, an Australian neologism referring to a feminist bureaucrat–a feminist formally appointed to a powerful position in government (Yeatman 1990: 64–65).

2 But see Sarkar 1994: 70–71; she criticises an understanding of rape as a sexual offence rather than as an act of violence.

3 Rape by a police officer, public servant, manager or staff member of a jail, remand home or other custodial institution, manager or staff of a hospital.

4 Menon concludes this from the proposal's emphasis on the "sexual purpose" of touch, gestures or sounds/words making these actionable under the law. Menon 2004: 113.

5 The benefits of prosecuting child sexual abuse outweighed the cost of criminalizing consensual adolescent sex. Citing inconsistencies between civil law and criminal law whereby marriage under the age of 18 was illegal, but rape against one's teenage wife above 15 was not, feminists argued for a higher age of consent.

6 Apart from Sakshi and the NCW, the LCI consulted with the All-India Democratic Women's Association (AIDWA) and Interventions for Support, Healing and Awareness; all three NGOs had participated in drafting the 1993 proposal.

7 It redefined rape as sexual assault, expanded the actus reus to include non-penile penetration, retained the gender specificity of rape for adults, proposed a gender-neutral offence of sexual assault and sexual abuse for minors and increased the punishment for rape. However, the Bill did not address sexual violence, raised the age of consent to 18 years and retained the marital rape immunity for adult wives. Minimum mandatory punishment was introduced for sexual assault and aggravated sexual assault. Aggravated sexual assault was expanded to cover defendants who were relatives or in positions of authority vis-à-vis the survivor or were in a position of "economic or social or political dominance." This expansion reflects suggestions that feminists made in 1993.

8 Kirti Singh, who drafted the 2002 AIDWA Bill criticised the Sexual Assault Bill; see Rajalakshmi 2010.

9 http://feministlawarchives.pldindia.org/wp-content/uploads/CLA-WOMENS-GROUPS-AND-OTHERS-NOTE-ON-SEXUAL-VIOLENCE.pdf.

10 There were disagreements on terminology (Kannabiran 2010).

11 The objection to gender neutrality is not limited to rape. When the Criminal Law (Amendment) Bill, 2012 proposed a gender neutral offence for acid attacks, the Women's Rights' unit of the Lawyers Collective objected because in India, men carried out acid attacks against women; prosecutors could simply use the IPC's provision on grievous bodily harm to deal with acid attacks against gay men and transgendered persons. By this logic, a new offence on acid attacks was unnecessary. The organisation's HIV unit meanwhile insisted on gender neutrality because gender neutral laws like the Immoral Traffic (Prevention) Act, 1956 did not undermine women's interests but gender specific laws did not benefit transgendered and transsexual persons.

12 Submission by Vrinda Grover to the Verma Committee 2013 (http://feministsindia.com/women-and-law/justice-verma-submissions/vrinda-grover/). Consider Section 30; it requires any culpable state of mind to be presumed, the prosecution only has to prove the actus reus. Such absolute liability offences are highly unusual even if meant to maximise prosecutions. Section 29 requires that for penetrative and non-penetrative sexual assault, whether aggravated or not, once the person is prosecuted for committing, abetting or attempting to commit it, he or she shall be presumed to have committed, abetted or attempted the act. In other words, defendants are presumed guilty until proven innocent. A similar provision is now part of the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016.

13 Except where the wife was younger than 16 years.

14 In July 2012, after the bill was circulated, 92 feminist organisations and 546 individuals protested its provisions through a petition to the chairperson of the ruling party.

15 The committee likely accepted claims made by the BBA which the committee specifically thanks.

16 Indian sex workers protested; see Kotiswaran (2018b).

17 The Ordinance replaced rape with gender-neutral sexual assault, covered non-penile penetration and sexual touching, raised the age of consent to 18 years and retained the marital rape immunity. Differences from previous drafts included its incorporation of several new offences and increased penalties from the Verma Committee report besides proposing the death penalty for aggravated sexual assault (resulting in death, a persistent vegetative state and for repeat offenders).

18 See Indira Jaising's submission to the Verma Committee; she uses the concept of institutional bias to advocate against gender discrimination but seamlessly transitions to demanding criminal law reform pp 13, 14, 21 (submission on file with author).

19 See Submissions to the Justice Verma Committee by the Lawyers Collective (p 6), http://pldindia.org/wp-content/uploads/2013/03/Submissions-by-Lawyers-Collective.pdf.

20 See my discussion in Kotiswaran (2018a).

21 See, for example, Baxi's (2016) claims that feminists have never denied defendants the right to a fair trial. Would stopping there be enough when men from disadvantaged backgrounds suffer many of the chronic access to justice issues that women face?

REFERENCES

Agnes, Flavia (2002): "Law, Ideology and Female Sexuality: Gender Neutrality in Rape Law," *Economic & Political Weekly*, Vol. 37, pp 44–847.

Baxi, Pratiksha (2014): *Public Secrets of Law: Rape Trials in India*, New Delhi: Oxford University Press.

— (2016): "'Carceral Feminism' as Judicial Bias the Discontents around State v Mahmood Farooqui," *Interdisciplinary Law,* 3, Hyderabad: Council for Social Development.

Dutta, Debolina and Oishik Sircar (2013): "India's Winter of Discontent: Some Feminist Dilemmas in the Wake of a Rape," *Feminist Studies,* Vol 39, No 1, pp 293–306.

Haksar, Nandita (1999): "Human Rights Lawyering: A Feminist Perspective," *Engendering Law Essays in Honor of Lotika Sarkar*, Amita Dhanda and Archana Parashar (eds), Lucknow: Eastern Book Company, pp 71–88.

Halley, Janet, Prabha Kotiswaran, Hila Shamir and Chantal Thomas (2006): "From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism," *Harvard Journal of Law & Gender,* Vol 29, No 2, pp 335–423.

Halley, Janet (2008): "Rape at Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law," *Michigan Journal of International Law,* Vol 30, No 1, pp 1– 123.

Halley Janet, Prabha Kotiswaran, Hila Shamir and Rachel Rebouché (2018a): *Governance Feminism: An Introduction*, Minnesota: University of Minnesota Press, forthcoming.

— (2018b): *Governance Feminism: A Handbook*, Minnesota: University of Minnesota Press, forthcoming.

Herring, Jonathan and Michelle M Dempsey (2010): "Rethinking the Criminal Law's Response to Sexual Penetration: On Theory and Context," *Rethinking Rape Law: International and Comparative Perspectives*, Clare McGlynn and Vanessa E Munro (eds), Abingdon & New York: Routledge, pp 30–43.

The Indian Evidence Act, No. 1 of 1872, INDIA CODE, available at http://indiacode.nic.in.

The Indian Penal Code, No. 45 of 1860, INDIA CODE, available at http://indiacode.nic.in.

John, Mary E (ed) (2008): *Women's Studies in India A Reader*, Gurgaon: Penguin Books.

John, Maya (2013): "Class Societies and Sexual Violence: Towards a Marxist Understanding of Rape," *Radical Notes*, available at: http://radicalnotes.com/2013/05/08/class- societies-and-sexual-violence-towards-a-marxist-understanding-of-rape/.

John, Rebecca (2014): "Correcting Inconsistencies: A response to Anusha Rizvi and Manisha Sethi," available at: https://kafila.online/2014/03/12/correcting-inconsistencies-a-response-to-anusha-rizvi-and-manisha-sethi/.

Kannabiran, Kalpana and Ritu Menon (2007): *From Mathura to Manorama: Resisting Violence against Women in India*, New Delhi: Women Unlimited.

Kannabiran, Kalpana (2010): "Rethinking the Law On Sexual Assault," *Hindu*, 3 June, available at: http://www.thehindu.com/todays-paper/tp-opinion/rethinking-the-law-on-sexual-assault/article480312.ece.

Kapur, Ratna (2013): "Gender Justice, Interrupted," *Hindu*, 29 March.

Kotiswaran, Prabha (ed) (2011): *Sex Work: Issues in Contemporary Indian Feminism*, New Delhi: Women Unlimited, i-xxix.

— (2018a): "Governance Feminism in the Post-Colony: Reforming India's Rape Laws," *Governance Feminism: An Introduction*, Janet Halley, Prabha Kotiswaran, Rachel Rebouché and Hila Shamir, Minnesota: Minnesota University Press, forthcoming.

— (2018b): "'GF's Others: Sex Workers and the Criminal Law (Amendment) Act, 2013," *Governance Feminism: Notes from the Field*, Janet Halley, Prabha Kotiswaran, Rachel Rebouché and Hila Shamir (eds), Minnesota: Minnesota University Press, forthcoming.

LCI (1980): 84th Report on Rape and Allied Offences: Some Questions of Substantive Law, Law Commission of India, Procedure and Evidence, available at: http://lawcommissionofindia.nic.in/51-100/report84.pdf.

MacKinnon, Catharine (2005): *Women's Lives, Men's Laws*, Cambridge: Harvard University Press.

Madabhushi, Tejaswini, Maranatha Grace T Wahlang and Joshua Gitanjali (2015): "Locating 'Hyderabad for Feminism' in the Present Struggle against Violence," *Economic & Political Weekly*, Vol 50, No 44, pp 38–46.

Mazumdar, Vina (1999): "Political Ideology of the Women's Movement's Engagement with Law," *Engendering Law Essays in Honor of Lotika Sarkar*, Amita Dhanda and Archana Parashar (eds), Lucknow: Eastern Book Company, pp 339–74.

Mehra, Madhu (2013): "Taking Stock of the New Anti Rape Law," 5 May, available at: https://kafila.online/2013/05/05/taking-stock-of-the-new-anti-rape-law-madhu-mehra/.

Menon, Nivedita (2004): *Recovering Subversion: Feminist Politics Beyond the Law*, Urbana: University of Illinois Press.

— (2015): *Seeing Like a Feminist*, New Delhi: Zubaan.

Mundkur, Aarti and Arvind Narrain (2013): "Betraying the third way," *Hindu*, 19 April.

Murthy, Laxmi (2006): "Criminal Law Amendment, 2000 (CLA)," Partners for Law in Development, available at: http://pldindia.org/wp-content/uploads/2013/04/Comments-by-Laxmi-Murthy-to-Criminal-Law-Amendment-Bill-2000.pdf.

Outshoorn, Joyce and Johanna Kantola (eds) (2007): *Changing State Feminism*, New York: Palgrave Macmillan.

Panjabi, Kavita (1995): "The First Syllables of a New Language: Responses to Sexual Violence," *Indian Journal of Gender Studies*, Vol 2, No 1, pp 87–100.

PLD (2010): "Background to Discussions by Women's Groups on Sexual Assault Amendments (2001–2010)," Partners for Law in Development 29 March, available at: http://feministlawarchives.pldindia.org/wp-content/uploads/background-to-discussions-by-womens-groups-to-sexual-assault-amendments.pdf?

— (2015): *Critical Reflections from the Roundtable on Exploring the Continuum between Sexuality and Sexual Violence,* Partners for Law in Development, Report on Criminalization and Sexuality available at: http://pldindia.org/pld-updates/trainings-sexual-harassment-rajasthan/.

Patel, Vibhuti (1980): "'Law on Rape' Reviewing Rape: Proposed Changes in the Law by Lawyers Collective," *Economic & Political Weekly*, Vol 15, No 1, pp 2138.

Rajalakshmi, T K (2010): "'Bill Not Comprehensive': Interview with Kirti Singh, Advocate, Supreme Court," *Frontline,* Vol 27, No 13, available at: http://www.frontline.in/static/html/fl2713/stories/20100702271311400.htm.

Verma, J S, Leila Seth and Gopal Subramanium (2013): Report of the Committee on Amendments to Criminal Law, available at: https://www.scribd.com/doc/121798698/Justice-Verma-Committee-report.

Roy, Srila (2009): "Melancholic Politics and the Politics of Melancholia: The Indian Women's Movement," *Feminist Theory,* Vol 10, No 3, pp 341–57.

Sarkar, Lotika (1994): "Rape: A Human Rights versus a Patriarchal Interpretation," *Indian Journal of Gender Studies*, Vol 1, No 1, pp 69–92.

Sen, Rukmini (2010): "Law Commission Reports on Rape," *Economic & Political Weekly,* Vol 45, Nos 44–45, pp 81–87.

Sunder Rajan, Rajeswari (2003): *The Scandal of the State: Women, Law and Citizenship in Postcolonial India*, Durham: Duke University Press.

Yeatman, Anna (1990): *Bureaucrats, Technocrats, Femocrats: Essays on the Contemporary Australian State,* Sydney: Allen and Unwin.