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The Women's Movement and Legislative Reform on Violence Against Women

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Introduction

Issues of violence against women and the law have been of continuing concern over decades for the contemporary women's movement in India. Soon after independence, it became clear that the constitutionally guaranteed equality and affirmative action were not shaping the law, policy or development programmes; and that systemic forms of violence against women would remain mere 'social evils' that attracted no legal consequences. In fact, the law's blindness towards gender-specific violence, in public and private domains, was striking in the face of increasing reports of dowry deaths and custodial rapes in the 1970s, around which the initial campaigns for law reform began. These campaigns set off the first phase of legislative reform, that began with a focus on specific forms of violence to grow into broader movements – from rape to sexual violence and from dowry to domestic violence. Both campaigns gained momentum from public outrage against cases that became symbolic of blatant impunity, institutional bias and apathy in their time. The movements for law reform focussed for the most part on criminal law remedies, dedicated courts and special mechanisms in

the quest for creating women-friendly institutional spaces, moving on eventually from 2005 onwards, to include in their demands, victim-centric reliefs as part of the legal redress. Over time, reasons for engagement with law reform changed – the idealism and belief in gender justice through the law became tempered with realism that the structures of caste, sexuality, class amongst others intersect and result in differential legal access as well as differential outcomes for women. Despite this, engagement with the law has been necessary for altering and challenging social norms, and creating possibilities to pursue accountability at individual and collective levels.

From Rape to a Gradation of Sexual Offences

Sexual violence in the legal discourse, as in society, is replete with gender stereotyping that blames the victim for provoking violence, sustaining as a result, *de facto* impunity for perpetrators. This is only one aspect of the many ways in which patriarchal attitudes and practices adversely influence the law on sexual violence. Until recently, the law did not recognize any serious sexual offence other than a narrowly defined provision on rape – collapsing the spectrum of sexual violence as it exists in society under a trivial, problematically worded, generic offence of ‘outraging the modesty of woman.’² Legal prosecutions therefore have been more about interrogating the victim’s chastity rather than about the violation of her bodily integrity and sexual autonomy. In this way, the legal process has been demeaning for rape survivors, reproducing and exacerbating the cultural shame, victim-blaming and stigma, while letting off perpetrators in most cases, or according sentences less than the minimum prescribed in cases of conviction.³ The law reform movement on sexual violence converged around cases that foregrounded key limitations of the law, around which more complex critiques and suggestions were pegged. The pivotal concerns that triggered these debates at different points in time were consent, custodial rape, narrow definition of rape and the gender neutral vs. gender specific framing of rape, although each of these debates combined more complex concerns of procedural

justice, forensic procedures and impunity. The debates surrounding law reform in 2013 involved a wider participation of civil society than ever before, were considerably dominated by calls for deterrent punishment, through castration and death penalty. The focus on resisting the calls for retributive justice, did not allow attention towards discussing the value of proportionality and judicial discretion in sentencing for rape, and indeed to justice, both of which were compromised in the 2013 amendment.⁴

In the post-emergency period of the late 1970s, when the nation's memory of state authoritarianism and impunity was still fresh, three cases of custodial rape became flashpoints, highlighting police impunity. The case of Rameeza Bee in 1978, in Hyderabad, involved rape by several policemen inside the police station, accompanied by beating her protesting husband to death. The public protests in the city, resulted in police firing and death of some protestors, leading to the appointment of the Justice Muktadar Commission. The Commission found the policemen guilty of rape and murder, and recommended that they be prosecuted. However, the police were subsequently acquitted by the session's court in the neighbouring state of Karnataka, to where the case was transferred, on the ground that evidence recorded before a Commission of Inquiry was inadmissible.⁵

In 1979, the nation was shocked with the Supreme Court's views on custodial rape in the Mathura case. A minor tribal girl was raped by two constables while in police custody, but the policemen were acquitted by the sessions court on the grounds that the girl, who had a lover, was 'of loose morals' and must have consented to the sexual intercourse. The High Court on appeal, distinguished submission from consent, noting that the young girl had little option in the custody of two policemen in the police station, thus reversing the acquittal. In contrast, the Supreme Court rejected Mathura's contention that she had not consented, and had in fact resisted the rape, on the ground that medical evidence did not record any injury on her body. The Supreme Court reversed the High Court's conviction, concluding that Mathura was a 'shocking liar' and the alleged rape was in reality a consensual sexual intercourse and a 'peaceful affair'.⁶ Outraged by the reasoning of the Supreme Court,

four law professors from Delhi University wrote an open letter to the Chief Justice of India in protest – pointing out that it was unfair to expect a tribal girl in custody of two policemen, in circumstances relating to a criminal complaint, to raise an alarm or attempt to resist rape without endangering herself. It was pointed out that passive submission was not the same as consent.⁷ Even as the definition of consent was at the heart of the concern expressed in the open letter, the letter also questioned the legitimacy of placing the burden of proving rape on victims in custodial settings, and drew attention to the differential access to legal redress and justice for the poor and the underprivileged. The letter contrasted the Supreme Court's stand in 'civil liberties cases involving affluent women' like Nandini Satpathy, that condemned the practice of calling women to police stations to participate in police investigation in their cases,⁸ while saying nothing about the vulnerability of poor tribal girls. The review petition moved by the women's organizations against the said judgment was rejected at the time, as the Supreme Court was yet to fully relax the requirement of *locus standi* (according to which only the person harmed/affected could approach the court for relief, and not anyone on his/her behalf), that paved the way for Public Interest Litigation.⁹

Even as debates arising from Mathura's case continued, another case stunned the nation, and the Parliament. On June 16, 1980, Maya Tyagi's husband retaliated against a policeman who molested her when their car broke down in Bhagpat in the state of U.P. In response, the policeman returned with their colleagues, shot her husband dead, forcibly disrobed Maya, inserted a stick inside her body and paraded her naked on the streets. As a cover up, she and her husband were charged with being dacoits.¹⁰ The findings of the P.N. Roy Commission appointed by the U.P. government reflected the extent to which patriarchal values shape interpretation of law. Despite holding that the cases against the Tyagi couple were trumped up to cover police atrocities, the Commission rejected the contention that insertion of a stick amounted to rape, suggesting instead, that such police violence was provoked by Maya Tyagi's protest, resistance and her husband's retaliation.¹¹ As noted by a

PUCL report: 'the truth is that it was not only rape, but the real form of rape where the desire to exhibit force was more marked than the sexual act.'¹²

Rape law reform became the rallying point for the progressive voices, civil liberties groups and the women's movement. There were public protests in several cities across the country and animated discussions in the Parliament. The main concerns related to the manner in which consent and its absence were linked to notions of chastity, the victim's 'character', her social location, and marks of injury/physical resistance. In the words of the open letter to the Supreme Court: 'Is the taboo against pre-marital sex so strong as to provide a licence to Indian police to rape young girls?' Further, in view of the difficulty of proving an absence of consent in custodial situations, where submission was inevitable to persons in authority, who exercised power and control over the victim in the precincts of an institution, the demand grew for shifting the onus of proof from the victim to the perpetrator; the demand was however divided on whether the onus of dis-proving rape (by proving that the woman consented to sexual intercourse) be shifted on the accused in all situations, or only in custodial situations. Some within the women's movement maintained that fair trial principle of treating the accused as innocent until proven guilty, be disturbed only in exceptional cases of custodial rape, where power of the accused combined with control and custody over the victim, placed upon the accused an additional onus to protect the victim, and answer for any breach of that protection.

The Law Commission of India's 84th Report in 1980, reiterated a number of recommendations that were part of the above debates, including that consent must be explicitly defined as being free and voluntary. Further it recommended that once sexual intercourse was proved and the woman stated it was without her consent, then it should be presumed that there was no consent. The Law Commission suggested that this be introduced as a presumption in law that the accused could rebut by evidence to the contrary. This was recommended as a general rule and not an exceptional one operative in cases of custodial rape alone, although the subsequent

amendment limited this presumption to situations of custodial rape. In 1983 the government brought several amendments to the law on rape for the first time since its enactment in 1860. A new set of offences involving rape in the custody of police, hospitals, remand homes and rape against minors and pregnant women was created. A minimum mandatory punishment of seven years imprisonment for non-custodial rape and ten years for custodial rape, was laid down, to be reduced with judicial discretion in exceptional cases. Additionally, the shift in the onus of proof, as suggested by the Law Commission, was introduced with respect to custodial rape. The issue of consent and the woman's word, though central to the preceding debate and the Law Commission report, remained untouched.

After a long gap, attention turned to the definition of rape and the desirability of gender neutrality, particularly in the context of the difficulties posed by the definition of rape for prosecuting child sexual offences. The Supreme Court directed the Law Commission in *Sakshi vs Union of India*,¹³ to reconsider the rape law in light of increasingly reported cases of child sexual abuse, following which the Law Commission submitted its 172nd report.¹⁴ The report suggested that the offence of 'rape' be redefined as 'sexual assault' to cover within its scope a number of sexually violent penetrative acts apart from penile-vaginal penetration; that the offence of rape be made gender neutral, so that cases of sexual assault on young boys could also be brought within the scope of the law; and accordingly, Section 377 be deleted.¹⁵

The Law Commission reports generated substantial debate within women's groups, as well as child rights, sexuality rights and lesbian, gay, bisexual, transgender and inter-sex (LGBT+) groups, that had emerged by that time. While there was consensus on the need for an inclusive definition of rape, the debate on gender neutrality has been an evolving one, with positions getting nuanced with the changing context and the growing visibility of the queer movement. In the backdrop of the Law Commission report, the consensus veered against a blanket gender neutral rape provision. There was agreement that a gender neutral victim and perpetrator ought to be limited to custodial situations and for child victims only, since at that time, it was envisaged that child sexual offences would be addressed

through the general criminal laws. Subsequently however, with the move towards enacting a separate and distinct law on child sexual offences, the discussions on gender neutrality in respect of rape law reform revived.

Queer feminist groups evaluated both positions of gender neutrality and gender specificity of victims and perpetrators, to agree that although theoretically, a gender neutral definition of rape might appear to make legal redress available to men and transgender victims, which was desirable, it was realistically impossible to do so in the context of stigma and criminalization of homosexuality; a gender neutral rape law would only fuel a backlash of counter charges against women exercising rights.¹⁶ It was also agreed that since rape was a gendered crime used primarily against women, any attempt to address it in gender neutral terms would obscure the brutal ways in which patriarchal control over women's sexuality is manifested. Conversations on gender neutrality revisited yet again later in the context of the Criminal Law Amendment Bill of 2010, after the Delhi High Court's judgment decriminalising homosexuality.¹⁷ Although there was agreement that the perpetrator be gender specific, while victim be gender neutral, differences persisted broadly, between gay groups and women's groups, including queer feminist collectives, in the formulations for giving effect to gender neutrality of the victim in law reform proposals.

More amendments were carried out in the intervening years. In 2003, the Indian Evidence Act was amended to remove the clauses pertaining to the 'immoral character' and the past sexual history of the victim.¹⁸ Amendments were introduced to the Criminal Procedure Code in 2005 pertaining to the medical examination of accused, medical examination of victim and the requirement of an inquiry by the magistrate in cases of custodial rape.¹⁹ In 2008, additional amendments to the Criminal Procedure Code introduced procedures for recording the victim's statement; investigation in the case of child rape; completion of inquiry/trial in cases under 376 IPC and notably, a victim compensation scheme.²⁰

The push for law reform arose once again in 2010, in the backdrop of the Ruchika Girhotra case,²¹ leading the government to propose the Sexual Offences Special Courts Bill, 2010. The Bill

proposed to set up special courts for trying sexual offences and dispose of them within six months, and introduce provisions regarding sexual offences against 'young persons'. Women's groups rejected piecemeal proposals, demanding, instead, comprehensive law reforms, in response to which the Bill was shelved. The Criminal Law Amendment Bill (2010) followed, proposing substantive and procedural changes in the criminal laws with respect to rape, in response to which autonomous women's groups submitted a memorandum for comprehensive reforms relating to rape and other acts of sexual violence, including during communal and sectarian conflict. This proposal included a section on sexual offences relating to minors and persons other than women.

Discussions on law reform stalled again for two years until the appearance of the Criminal Law Amendment Bill 2012,²² which replaced the term rape with sexual assault that encompassed all forms of penetrative sexual contact, framed for the first time, in wholly gender neutral terms; it also included offences against public servants for disobeying the law in relation to recording of complaint or carrying out investigation; and included the offence of acid attack. The concerns flagged by autonomous women's groups in relation to this bill included objections in respect of making both the victim and the perpetrator gender neutral, emphasizing that the existing evidence of sexual violence reflected a gender specific and not a gender-neutral reality. The absence of an affirmative definition of 'consent' was another gap that needed attention, to counter moralistic inferences of consent/non-consent based on the victim's clothes, conduct, hymen tears etc to her detriment. The Bill retained the provision of 'outraging the modesty' of women which was based on patriarchal notions of honour and chastity, and ironically retained Section 377 despite the fact that the Delhi High Court had in a historic judgment delivered on 2nd July 2009, read down the provision to de-criminalise consensual homosexual activities between adults and a specific law on sexual offences against children had been enacted, making S. 377 redundant.²³

Soon after the 2012 Bill was placed before the Parliament, the December 16, 2012 homicidal gang rape unleashed public

outrage, and in response to which a high level committee headed by retired Supreme Court judge, Justice J.S. Verma, was constituted to recommend steps to address sexual violence.²⁴ Following extensive consultations with women's groups, legal academics, civil society organizations and victims, the Committee submitted its recommendations in January 2013. The most significant recommendation was a rejection of moral protectionism in law in favour of Constitutional protection of sexual autonomy and bodily integrity of victims of sexual violence. For the first time, a spectrum of graded sexual offences was introduced, which included stalking, voyeurism, acid attacks and forced disrobing, amongst others; and notably, an expanded definition of rape, and a holistic legal redress that included medical treatment and compensation to the victim-survivor. Further, accountability of state mechanisms and procedural changes geared towards making the justice system sensitive to the needs of victim-survivors of sexual violence were introduced.

The Verma Committee recommendations did get partially enacted into law through the Criminal Law Amendment Act 2013, but not without dilutions and reversals. On 3 February 2013, a few weeks before the parliamentary session, the central government introduced a hastily drafted Ordinance. The Ordinance introduced the blanket gender neutral definition of sexual harassment, assault and rape (from the 2012 Bill), and selectively incorporated the recommendations of the Committee. The Ordinance was rejected by women's groups for its failure to implement the Verma Committee recommendations and for circumventing the parliamentary process. After much public criticism it was replaced by the Criminal Law Amendment Act 2013, which was enacted on 21 March 2013. Some salient features of the amendment were as follows:

- It retained the term 'rape', defined in gender-specific terms with regard to both the victim and the perpetrator, and expanding the scope to include penetrative acts beyond penile-vaginal.
- Consent was clearly defined to mean an unequivocal agreement to consent to the sexual act in question. Further,

physical resistance by the victim was immaterial to the determination of consent.

- Acts such as forced disrobing, stalking, voyeurism and acid attacks were criminalized.
- Provisions were introduced for free and immediate treatment for the victims of sexual violence and acid attack, by all healthcare facilities, with penalties for refusal to provide such treatment.
- It strengthened penal accountability of public servants for disobeying the law to the detriment of the victim.
- The requirement of prior sanction of the government for prosecuting public servants was dispensed with in cases of sexual offences.
- Provisions were made for the first time with regard to physically and mentally challenged victim-survivors of sexual violence. These included interpreters and special educators, for assisting disabled victims of sexual violence, while registering complaints, recording their evidence and during the trial.

Despite these significant changes in law, other longstanding demands made by the women's movement and the queer movement, which were endorsed by the Justice Verma committee, were excluded in the 2013 amendment. These continuing concerns are as follows:

- The amendment failed to extend protection to male and transgender victims; it also failed to repeal Section 377. It also failed to mention systemic sexual violence against Dalit and adivasi women by non-Dalit/non-advasi as aggravated sexual offences.
- The marital rape exemption was retained, although rape during de facto separation has been recognized.
- The legal age for sexual consent (below which age, consent to sexual intercourse is not recognized in law as a minor is deemed to lack the capacity to consent) was 16 since 1983, it was raised to 18 in 2012. The 2013 amendment affirmed the increase in legal age of consent to 18 years, thus criminalizing

consensual sex between young adults in the age group of 16 to 18 years, a move that has only strengthened control and policing of relationships between young people by the parents, community and religious leaders.

The focus of the campaign for reform of rape law began with custodial rape, which highlighted the problematic interpretations of consent/non-consent that blamed victims while exonerating the accused. Despite this, law reforms over successive years until the 2013 amendment did not introduce a definition of 'consent'. The campaign grew to address an expanded definition of rape, taking on new challenges relating to gender neutrality, and more recently, witnessed reversals such as with the enhancement of the legal age of sexual consent. Definitional issues have been more central to law reform campaigns on rape, with concerns relating to caste, communalism and the accountability of security forces in conflict zones, being included much later, once these concerns developed within the intersecting movements in respect of the existing and proposed special laws relating to caste atrocities, communal violence and sexual violence by the armed forces.²⁵ The 2013 amendment significantly incorporated the concerns of the disability rights movement for the first time. This journey speaks of the inevitability of an evolving law reform agenda that has grown with, and will continue to grow, with the inter-sectionality of new movements and concerns, such as those relating to caste, communalism, sexuality, child rights and disability.

From Dowry to Domestic Violence and Beyond

The dowry campaign was the starting point of the journey to bring violence inside the private domain of the 'family' within the public discourses of law and rights. Initially framed as a 'social ill' instead of violence, dowry was one of the first women-specific issues debated in the Parliament in post-independence India. In 1953 Uma Nehru introduced a private member's Bill in the Parliament on the

prohibition of dowry, which was deferred in the hope that rights granted to women under the Hindu Code Bill which was being discussed in the Parliament, would render the dowry law unnecessary. When the Dowry Prohibition Act was passed in 1961, one of the major concerns of the lawmakers was whether all giving of gifts and money could be viewed as a problem, the potential harassment posed by such a law and whether at all a law was necessary to deal with a 'social problem.' There was also ambivalence regarding the effectiveness of such a law, given the wide cultural sanction given to the practice of giving and taking dowry.²⁶

The 1961 legislation made it an offence to give, take, agree to give or demand dowry, but the limited definition of dowry, wide social sanction and a lack of political will made for an unenforceable law.²⁷ The 1970s saw a spurt in news reports of 'unnatural deaths' of young wives, typically by burns caused by the bursting of cooking stoves leading to their clothes catching fire. Each case revealed some history of dowry demands, driving home the point that in addition to dowry demands, there were taunts, violence, murder and suicide in the matrimonial home. Women's groups such as Mahila Dakshata Samiti and Stree Sangharsh organized demonstrations against such deaths, targeting the marital families of the deceased women for the crime as well as the state for its inaction. It was due to their active mobilization on the issue, that the discourse began to shift from one of 'social ills' to 'criminal offences' such as extortion and murder.

The campaigns also highlighted the problems with the law and the legal system. Disinclined to interfere in what is, till date, viewed as a private matter, the police registered cases as accidents or suicides. The judiciary too grappled with having to treat a socially sanctioned practice, and violence arising from that as offences. The case of Tarvinder Kaur in 1979 is a case in point. Tarvinder, a young newly-wed, left death-bed statements alleging that her in-laws had set her alight because her parents failed to fulfil their ever-increasing dowry demands. This relevant piece of evidence was disregarded by police who registered her death as a suicide. In protest, Stree Sangharsh's mobilization around Tarvinder's death, public protests spread around Delhi and beyond, sparking public

debate on dowry-related crimes.²⁸ Dying declarations were seldom seen as convincing evidence, resulting in the acquittal of the husband and the in-laws. In response to the ineffectiveness of the law and the ever-rising incidents of 'bride burning' and pressure from the women's movement, the Dowry Prohibition Act was amended first in 1984 and then again in 1986. Dowry defined narrowly as given 'in consideration of marriage' was redefined to include, 'Any property or valuable security...given or agreed to be given....at or before or any time after the marriage... or in connection with the marriage.' Nonetheless, presents given without demand, that were customary in nature and not excessive in comparison to the financial status of the giver, remained exempt. Dowry advertisements were banned although these remained integral to almost all matrimonial columns in the newspapers and a new mechanism of the Dowry Prohibition Officers was created for investigation of cases, since police intervention was deemed ineffective. These posts, however, remained vacant for decades.

Alongside, amendments were introduced in the criminal laws to address violence, cruelty, unnatural deaths and suicides within marriage. The social and historical context of dowry, the distinct patterns of violence, its occurrence within the privacy of the home by persons in whose care and custody the bride lived, called for a distinct set of offences based on the presumption that unnatural deaths were related to dowry violence and cruelty. In 1983, Section 498A was inserted in the Indian Penal Code, making the infliction of physical or mental 'cruelty' upon a wife by her husband or in-laws, a criminal offence. Even as this provision on 'cruelty' included dowry harassment, its ambit was much broader than that. Thus cruelty to a wife was made a cognizable, non-bailable offence punishable with a maximum of three years imprisonment with fine. At the same time Section 113A to the Indian Evidence Act was also introduced, allowing the court to draw an inference of abetment to suicide if cruelty was proven in a case of unnatural death within seven years of marriage. In 1986, a new offence of 'dowry death' was created through the insertion of Section 304B of the IPC, along with Section 113B in the Indian Evidence Act that invoked presumption

of dowry death, if a woman died within seven years of marriage, under suspicious circumstances and if it was shown that the woman or her family was being harassed for dowry by the husband or his family prior to her death. Despite these amendments in law, a weak investigation machinery, poor evidence collection and prosecution, the institutional bias of the police and the patriarchal attitude of the judiciary combined to reproduce prevailing social values and gender stereotypes, posing obstacles to gender justice. The judiciary, in its reasoning, often normalised some violence as the 'wear and tear' of ordinary married life, and exempted the giving of considerable amount of gifts from the purview of the law, by stating that they were given out of free will, or that this was not unreasonable in view of the status of the bride's parents. In fact, judicial reasoning and responses to dowry-related violence against women often varied with class, caste, motherhood, educational status of the women.²⁹

While S. 498A criminalized cruelty within marriage, being a criminal law, it came to be used for grave and overt (physical) forms of domestic violence. This meant that legal redress was difficult for routine harassment, which comprised largely of economic and psychological violence, including acts such as taunts, verbal abuse, denial of food, taking away of *streedhan* (economic resources provided to a bride for her personal use at the time of her wedding) and other economic resources belonging to the woman, that were often independent of dowry. Further, it was extremely challenging for women to prove violence by the husband and his family members 'beyond reasonable doubt' as warranted by criminal law, particularly due to a lack of witnesses to corroborate (substantiate) the woman's testimony of violence that was inflicted on her in a private space. The institutional bias of the police, which considered domestic violence to be a private matter unworthy of legal intervention, and condoned the same, often pushed women back into violent homes after 'counselling'. Women too, were reluctant to take recourse to criminal proceedings, as they often sought legal intervention to stop the violence, negotiate better terms without threatening the marriage or sending the husband and his family members to jail. It became evident that a criminal remedy did not allow that – for

the prospect of arrest and imprisonment foreclosed the possibility of reconciliation and resumption of marital life. In fact, a large number of women who were successful in registering complaints of cruelty against their husbands under Section 498A, would fail to pursue the criminal proceedings later either due to pressure from family members, due to the fear of losing an earning member of the family, or indeed, the fear of breaking the marriage. Women also failed to participate and testify in court in the criminal proceedings in contexts where a settlement had been negotiated with the husband, and non-pursuance of a complaint under S. 498A was part of the settlement.

With experience, the limitations in relying solely upon criminal remedies became apparent. At best, criminal remedies could result in conviction of the accused. It could not offer specific reliefs to the victim-survivor, such as security against eviction from home, freedom from violence within the home, medical assistance, monetary help or a short stay home. Moreover, criminal complaints could be registered only after an offence had been committed. To the contrary, in a context of domestic violence, the woman required protection orders against her perpetrator when she apprehended violence or danger to her life. There was a need for law that offered something different, and equally, a need to define domestic violence in terms unconnected with dowry or grave cruelty. Legal protections to 'wives' alone were also not adequate, with evidence that daughters, single women in the family, as well as women in relationships akin to marriage experienced similar forms of violence.

Taking into account the above learning, the discourse gradually shifted from dowry violence to a broader category of domestic violence; and correspondingly, to civil law remedies that could respond effectively to the diverse reliefs that women needed. After more than a decade of campaigning, the Protection of Women Against Domestic Violence Act (PWDVA) was enacted in 2005. The statute considerably transformed the manner in which domestic violence and its remedies were understood. It defines domestic violence broadly to include physical, emotional, economic and sexual abuse against women; it offers remedies that focus on protecting women's rights and enabling their recovery, rather than punishment of the

perpetrator; it extends legal protection to women in the household and not just wives, covering within its scope, mothers, sisters, daughters and women in relationships akin to marriage; being a civil law, it created a cadre of Protection Officers and Service Providers, minimizing the dependency on the police for redress. The remedies include protection orders that prohibit further violence, protection of the right of a woman to reside in the shared household irrespective of formal ownership of the house, obtain temporary custody of children, maintenance and compensation. That the implementation of these legal provisions continues to be poor, is another story.³⁰

Despite successes in securing laws to address dowry and domestic violence, legal redress in reality is primarily available to wives. The stereotype of the chaste 'good woman' colours all laws that seek to protect women. Even though theoretically, the Protection of Women Against Domestic Violence Act (PWDVA) widens the scope of 'rights holders' to include women in relationships akin to marriage, and offers diverse kinds of reliefs and interventions, in practice, it is primarily used for wives to secure maintenance or economic support.³¹

A range of non-marital intimate relationships make for diverse family forms in India, many of which have historically had social approval and recognition at local levels. In fact, conjugality has historically been shaped by the relationship with land, modes of production, geography, sexuality, caste and custom, amongst others, making for a diverse landscape of family forms. Yet, the focus of the activism for legal protections to women within the domestic sphere has largely been in relation to married women and marriage. Growing initially from a concern for the vulnerability of brides in the context of dowry, it evolved more broadly to wives within the context of the matrimonial home. The marriage-centric legal framework, leaves women in de facto common law marriages, second wives, women in same sex relationships – broadly, women in non-normative conjugal relationships - bereft of legal protection.³² Despite the PWDVA's notional protection to women in relationships akin to marriage within it, there have been renewed efforts towards making 'proof of marriage' a pre-condition for legal protection, through support for

compulsory registration for marriage, being presented as it has been, as a panacea for multiple matrimonial wrongs. This push came from the National Women's Commission and several women's groups, and was endorsed subsequently by the Supreme Court directing states to establish a legislative framework to secure compulsory registration,³³ with very few voices protesting this.³⁴ Not only does such a move undermine the principle that legal protection to women in all family forms is necessary; it also privileges and promotes marriage as a safer/better institution, along with its notions of normal-deviant sexuality for women.

With women's increasing assertion of agency with respect to sexuality and marriage, there was growing evidence of parental as well as community policing, control and retribution against young women and couples. Law became a ready instrumentality of parental control and vengeance with false complaints of kidnapping lodged against the intimate partners of daughters. This has resulted in the use of law to forcibly wrest 'custody' of daughters who exercise agency with respect to sexuality and marriage, through the use of *habeas corpus* and the manipulation of law enforcement agencies to destroy/obscure evidence related to the same.³⁵ While most such cases that gained attention have been in the context of elopement and choice, marriages of heterosexual couples, controls and retribution, have also been used against same sex-desiring daughters. Violence by the natal family in contexts of gender non-conformity, forced marriage, forced psychiatric treatment, as well as false kidnapping charges and *habeas corpus* petitions have also been used against women in same sex relationships; and documentation shows the extent to which coercion, stigma and repression have resulted in suicides.³⁶

The feminist queer movement and disability movement have helped bring to light the violence against women in the natal family. The campaign against dowry in the 1970s, argued for excluding the natal family from the purview of criminalisation in order to encourage reporting of dowry-related offences. The work of women's groups, crisis intervention groups and Nari Adalts³⁷ (women's courts) has focussed primarily on the matrimonial home and legally valid wives, as has the PWDVA, despite extending protection to daughters and

women in relationships akin to marriage. The struggle for legal protection and non-discrimination in the family, is one where implementation remains a serious concern, as does the inclusivity of a broader range of women as rights holders.

In retrospect, the law reform campaigns also tell a story of exclusions and the continuous efforts towards inclusion and expansion – in terms of rights holders and types of remedies. If anything, this calls for continuing efforts to re-visit legal frameworks to examine how these re-constitute privilege and disadvantage. The rights framework in the family has for instance, been based on rights claims against husbands as male providers, particularly in the contexts of maintenance, matrimonial property and the right to residence. Even as these are necessary steps forward for those with property and financial resources, they make rights contingent on economic status. An inclusive rights framework compels us to explore social security frameworks that entitle single women and women without economic resources, to live with dignity and security. Such a framework also opens possibilities for breaking out of essentially patriarchal frameworks premised on lineage and male providers, while also de-centring marriage as a privileged family model.³⁸

Women's Access to Law, the Legal System and Justice

The major focus of the women's movement in the seventies and eighties was to secure legal recognition for specific forms of gender-based violence. Creating new offences opened possibilities for individual legal redress. However it became clear soon that ensuring implementation of the law was an impossibly uphill struggle that required investment of substantial energy and resources. In the period following legislative reforms, it became apparent that the statutory framework on its own did not ensure legal redress. Access to the legal system was impossible for a vast majority of women, due to economic, social and cultural barriers. The language of the law and its individual rights-based adversarial framework were alienating; the

requirement of financial and social capacity to navigate the system was a barrier. Women's groups across the country responded to this in different ways – some engaging with formal institutional reform, and others focussing on community-based alternative mechanisms at the local level; still others questioned law's capacity to transform or even alter the status quo. This section looks at the institutional responses and alternative mechanisms that incorporated law with gender justice at the community level, to primarily address concerns within the matrimonial home.

INSTITUTIONAL REFORMS

Two primary institutional reforms were recommended to overcome the insensitivity of legal structures – the first, through demands for separate spaces for women seeking matrimonial remedies and the second, by increasing women personnel in these institutions. This was based on the assumption that institutions staffed by women would be empathetic and sensitive to women's concerns. Two examples of special institutional arrangements are women's police stations and family courts.

(a) *Women's Police Stations*: As part of its engagement with law reform, the women's movement demanded the formation of separate, women-only police cells for women pursuing reliefs for dowry-related harassment/violence and domestic violence. It was argued that victims would feel more comfortable talking about intimate matters to women police personnel, who by virtue of being women, would also be gender sensitive.

An anti-dowry cell was set up in Delhi in 1983 to enforce the Dowry Prohibition Act. In 1986, the Anti Dowry Cell was renamed the Crimes against Women (CAW) Cell, and separate CAW cells were established in each of the nine districts of Delhi. Over the years, the use of CAW cells has also expanded to other Indian states. Although these cells and the additional resources made available for women were welcomed, it gradually became clear that the fundamental purpose of the CAW was family counselling, rather than investigation. Counselling is the 'first response' of CAW cells in 'domestic matters,' and its use was endorsed as recently as 2006

in the Delhi High Court.³⁹ Counselling is seen by many as the 'most suitable way of dealing with domestic discord' in the Indian context, ensuring the protection of marriage, avoiding a lengthy litigation in court and ensuring the participation of the husband and his family in a manner that ordinary counselling services would be unable to do.

This police-initiated family counselling has been critiqued, on the ground that the *dual* aim of protecting the victim-survivor and protecting the institution of marriage leads to advice that reinforces patriarchal conceptions of marriage, which are not in her best interests. The cell personnel receive no specific training for working with dowry harassment or domestic violence victim-survivors, and often seek to solve disputes by encouraging the woman to return home, failing to appreciate the dangers facing her. Counselling is also rarely accompanied by post-settlement follow-up to ascertain whether the violence has actually stopped. As a result, there is a risk that the cells function as little more than 'marriage counselling bureaus', that privilege marriage over a woman's security and dignity, and result in a failure to register cases of domestic violence because they are 'private matters', as was reported by Human Rights Watch.⁴⁰

(b) *Family Courts*: The *Towards Equality* report (1974), by the Committee on the Status of Women in India, had recommended that issues pertaining to the family must be dealt with by separate courts designated for that purpose. A similar suggestion was also made by the Law Commission in its 59th Report, which resulted in an amendment to the Code of Civil Procedure in 1976, to provide for family courts. These state-initiated developments were boosted further by the women's movement in the following decade. What began as a campaign for the laws on dowry and matrimonial cruelty, also drew attention to the manner in which women were treated in the adversarial trial process. This led to the demand for a separate institution, free from legal technicalities and rigid rules of procedure, evidence or limitation, for handling family matters. As a consequence, the Family Courts Act was enacted in 1984, with the goal of facilitating women's access to speedy and effective justice.

Although conceptualised to expressly facilitate gender justice, this did not get reflected in the legislation that gave effect to those

demands. 'Preservation of family' was the primary concern of the Act, on the assumption that the rights of women and children were synonymous with the preservation of the family. The judicial discourse in the area of matrimonial law also reveals the extent to which the ideology of 'family' is used to undermine women's equal rights in the family. Apart from the problematic ideological design of the family courts, their functioning has been compromised by technical questions of territorial jurisdiction, subject matter jurisdiction, personal appearance of parties and so on.⁴¹ The wide discretionary power granted to family court judges by the Act has not been adequately and creatively used. At the same time, the role played by the government in setting up family courts and providing adequate infrastructural support, also leaves much to be desired. In order for family courts to protect women's rights, there must be a concerted effort to provide continuing training and re-orientation of judges in constitutional and international standards on gender justice.

MAHILA NYAYA PANCHAYATS/SHALISH/NARI ADALATS/ WOMEN'S JAMAAT - ALTERNATIVE FORA FOR DISPUTE RESOLUTION

Women's groups have also been instrumental in setting up community-based, women-led platforms/structures of justice redressal, outside the mainstream justice system, such as women's panchayats or Nari Adalats or shalish. Established largely as a response to economic and cultural alienation of the formal justice system and in rejection of the patriarchal justice doled out by the caste panchayats, these mechanisms seek to provide effective alternatives that use a combination of mediation counselling, informal and formal strategies to provide access to remedies and justice to women. By focussing on remedial justice rather than punitive action, such mechanisms have been effective in positively impacting the power equations between the parties. Although these are informal women led adjudication/mediation mechanisms at the community level, they are fairly heterogenous in their approaches and ideologies,

varying with the extent of feminist consciousness and linkages with women's movements and feminist groups. So for instance, there are examples of positions as diverse as that of rapists being forced to marry the rape victim, supposedly to save her 'honour', in contrast with a case where a women's panchayat in Arkonam, Tamil Nadu ruled that instead of beating or lashing a rapist, he should be made to give his share of land to the victim and her child.⁴² The latter approach is undoubtedly derived from an ideological position based on responsibility and entitlement rather than honour, while also ensuring a concrete benefit to the victim.⁴³

The all women's *jamaat* movement of Tamil Nadu, with their over 25,000 strong membership across 15 out of 31 districts of Tamil Nadu, are a symbol of women's empowerment and quest for equality. The very existence of women's jamaats challenges the monopoly of the conservative male elite over community mediation and leadership. Beyond that, it has succeeded in re-defining adjudication processes as being accessible, inclusive, transparent, fair which are not exclusive of, but linked to formal systems of justice. Unlike the traditional male jamaats, they abjure parallel justice, and where necessary, refer the cases to the legal system, acting as a bridge between the informal and the formal.⁴⁴

The informal setting of the women's panchayats, the practical conciliatory approach of the proceedings, a built-in process of enforcement of the decisions and the shared gender identity of the 'client' and the 'judges' are in themselves viewed as facilitating gender justice. As with all non-formal mechanisms, the informality of its processes and the fluidity of its normative framework poses challenges. Formal legal rights are often more progressive than what is offered to the women by way of a mediated resolution. A study of Gujarat initiatives notes that the alternative courts are managed and presided by lay women, untrained in law, and this often results in their being unable to comprehend the complexities of legal or revenue documents presented by the clients in support of their claims.⁴⁵ Being a community-based initiative, the fear of sanctions also may not be as strong as compared to judgments and orders passed by the formal courts. The Gujarat study further notes that

'Their relatively low understanding of the laws, legal provisions and procedures, coupled with unconscious slips into patriarchal ways of judging and seeing – both of which were evident during the study – can make them vulnerable to the same faults as both the Gynati Panchayat and the formal justice system.'⁴⁶

Another study of the shalish in rural West Bengal shows that women's groups intervene in and influence the community shalish led by influential men, that commands considerable social sanction. Women's groups use this mechanism strategically to further gender justice, although the composition of the shalish is subject to the influence of local power politics and political affiliations. Nonetheless, women's groups have used these mechanisms to resolve women's cases effectively, valuing the mechanism for its flexible remedies and injunctions, its power of social sanction and the practicality of enforcement.⁴⁷

Conclusion

The campaigns for legislative reform from the 1980s to 2013 reflect an evolving reform agenda, shaped by emerging perspectives and movements. They highlight the need to constantly reflect upon and re-examine legal frameworks for their limitations, partiality and to be in conversation with emerging emancipatory movements that throw light on bias and exclusions within the law reform agenda. A continuing reform agenda requires a greater investment than there has been so far, on policy-oriented socio-legal studies to create evidence of law's interface with structures of caste, gender, class and sexuality, as well as evidence of its differential impact on marginalized constituencies amongst women. There is equally a need to evaluate the assumptions underlying over-reliance on criminal law and stringent penal frameworks for addressing violence against women. To what extent do punitive responses assist the victim-survivor's need for healing and recovery; and indeed, to what extent does legal justice recognize and address the needs of the victim-survivor are necessary questions to ask. The trend towards demanding support

services to women in the PWDVA, 2005 and more recently, in the inclusion of duty to provide medical treatment under the CLAA, 2013 marks a normative shift in the demands by the women's movement and its expectations of legal justice, even if the mechanisms for operationalising these remedies are severely inadequate, and non-existent in many parts of the country. The discomfort and reluctance of women's groups to proactively push for or endorse compensation as part of legal redress, calls for introspection, although the law has now been amended to provide compensation to victims of sexual and acid violence. The reliance on penal remedies arises from an excessive focus on wrongs and victimisation which in the context of sexuality has resulted in 'systematis[ing] sexuality within a marital, heterosexist paradigm' that has created a 'narrow...and rigid view of sexuality' steeped in 'negative' aspects of a woman's sexuality in rape and violent contexts.⁴⁸ In the absence of policy debates on sexual rights, sexuality in law has become limited to sexual wrongs and victimisation, played out through the stereotypes that are used in legal discourse to determine 'consent' and 'non-consent'. These are likely to persist, even if re-configured somewhat, despite the introduction of a statutory definition of consent in the 2013 amendment.

The engagement with the law, despite this rich history, has been accompanied by critical debates questioning the over-reliance on law and also, its relevance in the struggle for social transformation. As part of this critique is the questioning of the relevance of rights language to the emancipatory agenda since the articulation of rights in law delinks it from the political ideology or the structural critique they originate from. Rights claims, it is asserted, tend to get fixed in terms of identities – of woman, caste, disability and so on, rather than the normative frameworks that are radical and transformative, irrespective of identities. This has been critiqued particularly in relation to sexuality, where the rights activism has been fixed on categories: woman, sex worker and LGBT+, that add to the list of rights holders, without transforming the violation-centred, heteronormative framework of the law. Once codified into law, rights have limited potential to disturb the social values from which inequalities and hierarchies emanate.⁴⁹ Another criticism

has been that rights and claims in law flatten and universalise the category of woman, creating the foundation for stereotypes of good and bad women, selectivity, and the inevitable othering of the subaltern categories.⁵⁰ Law reform activism with its focus on state and the law, tends to get lawyer-led, and may get monopolised by a few professionals, without the participatory processes or consultations necessary for strategic framing of the reform agenda.⁵¹ Once enacted, these reconfigure and reproduce the status quo. And further, that rights and laws are problematic pathways to radical transformation as they rely upon the primary state as the agent of social transformation and emancipation, which is a contradiction. This is why law, regardless of the intention with which it is framed, reinforces the dominant interests the state embodies – rather than its subversion. While seeming to be women-friendly, the law co-opts the language of women's rights without transforming the very norms that underpin gender, social, sexual, caste and class hierarchies.⁵²

Even as many share the view of law's tendency to reconstitute the status quo, the women's movement's engagement with law reform has been premised broadly on the fundamental necessity of negotiating *de jure* equality for women and for engendering the law, to make it cognisant of, if not uniformly responsive to socially sanctioned injustice. If one views law, both in terms of being a necessary tool to contest power, and a site of power itself, the legal terrain is an unavoidable arena of struggle. The contradictory and heterogeneous nature of law in fact, holds possibilities of contestation through litigation. There has not been enough of discussions however, on the limitations of pursuing a reform agenda that gives greater controls to the state, and indeed, to the police, rather than to women. That while the women's movement has been pacified with new laws, the levels of violence against women and its legitimization continued to increase, and the public-private divide remains.⁵³ Further, that even as public outrages and media attention that seem to be forthcoming in recent times for select cases, little attention is paid to the structural nature of violence, particularly for the marginalized. The call for greater critical reflection however, is not to argue against a robust engagement with the law, but to emphasize greater need for tracking

the impact of law, to create evidence for informing future law reform; and indeed, for a stronger emphasis on parallel political and creative strategies that challenge normative frameworks that entrench the status quo, while simultaneously being transformative.

Notes

1. Research assistance for this paper was provided by Claire McEvilly and Saptarshi Mandal from PLD.
2. It was not until February 2013, that the definition of rape was expanded to include other forms of penetrative sexual assault. Until then, the only serious sexual offence was that of rape; with a trivial offence of 'outraging the modesty of a woman' as a secondary catch-all offence to cover everything other than narrowly defined rape.
3. Mrinal Satish (2013, January 4), 'Chastity, Virginitly, Marriageability and Rape Sentencing', available at <http://lawandotherthings.blogspot.in/2013/01/chastity-virginitly-marriageability-and.html> accessed on 5 October 2013
4. In the period post December 16, 2012 homicidal gang rape in Delhi that evoked widespread public outrage, the demand for retribution and deterrence coloured all debates, including to some extent the Criminal Law Amendment Act, 2013, that introduced a high minimum sentencing for rape, without judicial discretion to reduce sentence for adequate and special reasons. In fact, the sentencing structure brought in by this amendment was higher than that in the Protection of Children from Sexual Offences Act, 2012 for similar offences against children.
5. For more details on the case, see, Kalpana Kannabiran. 1996. 'Rape and the Construction of Communal Identity' in Kumari Jayawardena and Malathi de Alwis (eds.), *Embodied Violence: Communalising Women's Bodies in South Asia*. New Delhi: Kali for Women, pp. 32-41.
6. *Tukaram vs. State of Maharashtra* AIR 1979 SC 185.
7. Upendra Baxi, Lotika Sarkar, Raghunath Kelkar and Vasudha Dhagamwar. 1979. 'An Open Letter to the Chief Justice of India', *SCC Journal*, Vol 4, 17.
8. 1978. 2 SCC 424.
9. The pioneering case in this regard, was *Hussainara Khatoon vs Home Secy., State of Bihar* AIR 1979 SC 1979.
10. For more on this case, see Baghat Report Supports Oppression, *PUCL Bulletin*, May 1981 available at <http://www.pucl.org/from-archives/may81/baghat.htm>, accessed on 5 November 2013.
11. 'Baghat report Supports Oppression', *PUCL Bulletin*, May 1981.
12. *Ibid.*
13. Writ Petition (Criminal) no. 33 of 1997.

14. The Law Commission submitted two reports – the 156th Law Commission Report submitted in 1997 did not address the concerns adequately, so the Supreme Court directed the Commission to re-consider the precise issues posed, which it did in the 172nd Report that was submitted in 2000.
15. S. 377 of the Indian Penal Code titled 'unnatural offences' is based on a colonial notion of that any form of sexual relationship other than penile-vaginal intercourse is 'against the order of nature' and deserves to be severely punished, even if it is between two consenting adults. While this provision serves to criminalize homosexuality (and has been the subject of constitutional challenges in the Delhi High Court and subsequently the Supreme Court), the provision was used to prosecute child sexual abuse, particularly those perpetrated on boys, till the enactment of Protection of Child Sexual Offences (POCSO) Act 2012.
16. Naisargi N. Dave (2012), *Queer Activism in India: A Story in the Anthropology of Ethics* (London: Duke University Press, and New Delhi: Zubaan, pp. 167–204.
17. *Naz Foundation vs NCT of Delhi* 160 *Delhi Law Times* 277.
18. See sections 155(4) and 146 of the Indian Evidence Act.
19. See sections 53A, 164A and 176 respectively.
20. See sections 157, 173, 309. The victim compensation scheme under section 357A went unnoticed for the most part by the women's groups, and came to be debated much later in 2011, with the framing of a financial assistance scheme for rape victims by the government.
21. The molestation of a 14 year old girl by the Inspector General of Police (Haryana), S.P.S. Rathore, in 1990 took 19 years to secure a conviction. In the course of this period, the persistent harassment by the influential accused unleashed continuing violence against the victim, causing her to commit suicide and her family to re-locate. The victim's expulsion by her school, the loss of job by her father, and a false case against her brother led to the suicide.
22. The text of the Bill is available at <http://pldindia.org/wp-content/uploads/2013/04/Criminal-Law-Amendment-Bill-20121.pdf>, accessed on 4 October 2013.
23. The Protection of Children from Sexual Offences (POCSO) Act, 2012.
24. The terms of reference constituting the committee were limited to speedy justice and punishment with respect to aggravated rape, but the committee expanded its scope of inquiry to address all aspects necessary for addressing sexual violence.
25. Many of these concerns were part of special laws rather than the criminal law reform debates. The repeal of the Armed Forces Special Powers Act in relation to the conflict areas of the Northeastern states, and later Kashmir; the Prevention of Atrocities Act in relation to caste-based sexual violence; and the debates on recognition of mass sexual violence, witness and victim protection as well as culpability arising from command responsibility developed post

- Gujarat carnage in 2002, and became part of the campaign for the Communal Violence Bill from 2005 onwards.
26. See Lotika Sarkar, Usha Ramanathan, Madhu Mehra. 1994. 'Gender Bias in Law: Dowry' (Karmika), available at <http://pldindia.org/wp-content/uploads/2013/04/Gender-Bias-in-Law.pdf>, accessed on 6 November 2013.
 27. The Committee on the Status of Women in India, set up by the government in 1975 found only one case filed under this law.
 28. Radha Kumar. 1993. *The History of Doing: An illustrated Account of Movements for Women's Rights and Feminism in India, 1800–1900*. New Delhi: Kali for Women, pp. 115–26.
 29. For a detailed discussion on this differentiation, see Madhu Mehra. 1998. 'Exploring the Boundaries of Law, Gender and Social Reform', *Feminist Legal Studies*, Vol. VI, No.1.
 30. Reports show that the appointment of Protection Officers across states is far from adequate, and that most appointments are in fact additional charge handed over to existing local level officers, who besides being overburdened, have not received adequate orientation to enable them to carry out their tasks. The Service Providers envisaged under law remain largely on paper.
 31. Lawyers Collective Women's Rights Initiative. 2013. *Staying Alive: 6th Monitoring and Evaluation Report 2013 on the Protection of Women From Domestic Violence Act, 2005*. New Delhi: Lawyers Collective, at p. ix.
 32. For discussions, research and documentation on why for legal protection of women in all family forms is necessary, including for women in non-normative intimacies, see Madhu Mehra (2010), *Rights in Intimate Relationships: Towards An Inclusive and Just Framework of Women's Rights and the Family*, New Delhi: Partners for Law in Development.
 33. *Seema vs Ashwini Kumar*, (2005) 4 SCC 443: (2006) 2 SCC 578: (2008) 1 SCC 180.
 34. Partners for Law in Development submitted a memorandum, endorsed by several community organizations and women's rights activists, to the government and the National Women's Commission arguing against compulsory registration of marriage, in light of the resultant rollback on women's rights. <http://pldindia.org/wp-content/uploads/2013/10/Petition-against-registration-of-marriages-and-definition-of-wife.pdf>.
 35. A writ of *habeas corpus* is a legal action that requires a person who has restrained another to produce the person in court, in order that the court may determine the legality of the 'custody' and restraint.
 36. Ponni Arasu and Priya Thangaraja, 'Queer Women and Habeas Corpus in India: The Love that Blinds the Law', *Indian Journal of Gender Studies* 19, 3 (2012) 413–435. See also, *Rights in Intimate Relationships: Towards An Inclusive and Just Framework of Women's Rights and the Family* (2010) *Supra* note 32.
 37. Feminist organizing of women at the community level, amongst urban poor and in rural contexts, has often led to the formation of collectives assuming

- leadership to address cases of violence, harassment and matrimonial wrongs faced by women in the community. Women's courts as they are informally called, intervene, counsel, mediate, initiate compromise and where appropriate, report the matter to the police.
38. For an exploration of a transformatory framework of rights in the family, see *ibid.*
 39. 'In a 2006 judgment, the Delhi High Court's Justice Aggarwal explained: '[T]he CAW Cells have been constituted with a social purpose so that the crimes relating to women are dealt with sensitivity [sic].... Firstly an attempt is made to bring about unity between the two spouses so as to make the marriage a success.... This cell is meant to safeguard the marriage and not to ruin it by registering case immediately on the asking of the complainant.' *Jasbir Kaur vs State (Govt. of NCT Delhi)* WP (Crl) No. 134/2006 & CM No. 545/2006, 27 July 2006. See Human Rights Watch (2009), *Broken System: Dysfunction, Abuse and Impunity in the Indian Police* New York: Human Rights Watch, p. 52.
 40. *Broken System*, *ibid.* p. 52.
 41. For a critique of family courts, see Flavia Agnes. 1991, 'A Toothless Tiger: A Critique of Family Courts', *Manushi*, No. 66, pp. 9–17.
 42. Nandita Gandhi & Nandita Shah. 1992. *The Issues At Stake: Theory and Practice in the Contemporary Indian Women's Movement*. New Delhi: Kali for Women p. 269.
 43. The Mahila Nyaya Panchayats and the Tamil Nadu Women's Jamaat, two examples of women's alternative dispute resolution, are discussed in greater detail by Poonam Kathuria and V. Geetha in their respective articles in this publication.
 44. For more discussion on their ideological framework and strategic positioning, see Madhu Mehra and Gayatri Sharma. 2010. *Negotiating Gender Justice, Contesting Discrimination: Mapping Strategies that Intersect Culture, Women and Human Rights* New Delhi: Partners for Law in Development pp. 124–32.
 45. Sushma Iyengar 2005. *A Study of Nari Adalats and Caste Panchayats in Gujarat*, Bangkok: United Nations Development Programme. p. 15.
 46. *Ibid.*
 47. International Centre for Research on Women. 2002. 'Women-Initiated Community Level Responses to Domestic Violence: Summary of Three Studies', Washington D.C.: International Centre for Research on Women.
 48. Geetanjali Gangoli. 2007. *Indian Feminisms: Law, Patriarchies and Violence in India* Hampshire: Ashgate Publishing Ltd, p. 57.
 49. Jaya Sharma. 2007. 'The Language of Rights, Development with a Body: Sexuality, Rights and Development', in Andrea Cornwall, Sonia Correa and Susie Jolly (eds.), *Zed Books* p.67–76.
 50. Nivedita Menon. 2004. *Recovering Subversion: Feminist Politics Beyond the Law* New Delhi: Permanent Black.

51. Nivedita Menon (ibid), in chapter 5 refers to the law reform proposed in relation to sexual assault in 2000 by the Law Commission of India based on consultations with select professionals, that was later critiqued by the autonomous women's groups for not being inclusive, participatory or reflective of serious concerns of the women's movement on the subject of gender neutrality.
52. Ratna Kapur. 2005. *Erotic Justice: Law and New Politics of Postcolonialism*, New Delhi: Permanent Black.
53. Flavia Agnes. 1992. 'Protecting Women Against Violence – a decade of legislation, 1980–89', *Economic and Political Weekly*, Vol XXVII, No. 17, April 25.

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