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Taking a Break from the State: Indian Feminists in the Legal Reform Process

By Shruti Iyer¹

Abstract

This paper examines the critique of what has been termed as “governance feminism” and analyses its conceptual utility with reference to the legal reform process undertaken in India in the aftermath of the Delhi anti-rape demonstrations of late 2012-early 2013. Governance feminism refers to the process by which feminists influence institutional decisions and policy, and critiques of governance feminism focus on its tendency to maintain an equivalence between womanhood and victimhood, and its blindness to unintended consequences of feminist legal reform. This paper will reflect on the critiques that have been made of governance feminist interaction with the state, and examine their exportability to the Indian context, with reference to Indian feminist engagement with the Justice Verma Committee (JVC) that was set up to make recommendations to the criminal law. I will go on to argue that the critiques that have been made of governance feminist intervention in the West have limited exportability to the Indian context. The insights of the governance feminist critique remain invaluable, and the methodological emphasis that it places on unintended consequences are of relevance to Indian feminists who (like any feminist movement) do not operate as a monolithic movement, but are constantly negotiating unstable political categories and identities. However, this paper will pay attention to the fact that where the Indian feminist movement was self-critical in its recommendations for legal reform, they were largely unsuccessful in having them reflected in the Ordinance and Act later passed. In the light of this, it will argue that while the governance feminist critique tends to espouse taking a break from feminism to account for other justice projects, the Indian feminist’s experience suggests that feminists may be better off taking a break from the state.

Key words: governance feminism, Indian feminist movement, law reform

“We thought this was an occasion where it was our duty to ensure that the full dignity of every woman was restored.” – Justice Verma (NDTV 2013).

An outpouring of protest on the streets of Delhi in December 2012, precipitated by the brutal gang-rape and subsequent death of Jyoti Singh Pandey, forced the Indian federal government to institute the Committee on Amendments to the Criminal Law (headed by the retired Justice Verma) to make recommendations on reforms to the criminal law on sexual assault and violence. Despite a history of ambivalence and tensions within the Indian feminist movement on the efficacy of law reform and its usefulness as a strategy, the demand for new laws in 2012-3

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were posited by many, particularly in the media, as the primary solution to reduce an apparent “epidemic” of sexual violence (Sharma and Bazilli, 2014, p. 4). The law was hailed as the best mechanism to respond to this crisis: to restore “dignity” to the fallen woman, and the women of the country in general, which would thereby restore honour to the nation-state in the eyes of the world.

Within academia and women’s movements, however, over the last decade there has been a proliferation in critiques of feminist engagements with state institutions and projects of governance that ask, in other words, “when did the Left get in bed with the state?” (Davis, 2011, p. 151). These scholars and activists call for better understandings of how it is that “feminist justice politics have moved off the street and into the state” (Halley, 2006, p. 20) in what they term as “governance feminism.” This paper will look at the phenomenon of governance feminism and the feminist will to power through state coercion, through the case study of the legislative reforms undertaken in India in the aftermath of the protests against sexual violence in 2012-13. In doing so, this paper will account for how governance feminism can explain the impulses behind some of the law reforms, but also how the Indian feminist movement falls outside its scope where its interventions defy the categorisation of governance feminism, particularly where it retains suspicion of state power.

This paper will do this by providing a coherent account of “governance feminism” by drawing on the relevant literature in the area, and go on to outline the law reform process undertaken in India in the aftermath of the protests against sexual violence in 2012-13. It will proceed to contextualise the Indian feminist movement in its distinct history as a postcolonial movement, and the protests of 2012-13 in a wider feminist campaign against sexual violence. Through this process, this paper will chart the ways in which the critiques of governance feminism apply and fail to apply to the Indian feminist movement. It will become clear that where feminists had taken account of the potential costs of their actions on other groups, the recommendations they made were not incorporated into the legislation later passed. This paper will then make the argument that while critiques of governance feminism have concluded that it is necessary to take a “break” from feminism to properly account for its costs, the Indian experience might demonstrate that it is not feminism we need a break from but rather the state. The Indian feminist movement may show us how to sustain a politics that does not shut its eyes to the “blood on its hands” (Halley, 2003, p. 608): and for us to account for the harm that feminist goals are capable of causing, it is law reform we may have to (temporarily) abandon instead.

Governance feminism: a history

Governance feminism is perhaps most succinctly described as “the incremental, but now quite noticeable installation of feminists and feminist ideas in actual legal-institutional power” (Halley *et al*, 2006, p. 340), and the insertion of feminist knowledge, technique, and practice into institutional contexts. It is the phenomenon by which gender is activated within institutions, most ostensibly so in legal reform on sexual offences, but also in a variety of other contexts (such as gender mainstreaming).²

The 1990s were the decade in which governance feminism as we now know it fully emerged in a variety of institutions and governing contexts, with the growing incorporation of non-traditional political actors such as non-governmental organisations (NGOs) and experts in civil

² Gender mainstreaming is the process by which all decisions are scrutinised for differential impacts on different genders, as opposed to identifying women’s issues as a separate sphere.

society in decision-making processes (Halley and Thomas, 2013, p. 3). Feminism was able to wield power through advocacy and efforts to mobilise international law in its name; and it was tracked by the concurrent growth of public-private partnerships in government endeavours (ibid). Governance feminism is the process by which feminist knowledge is put to the service of the state, how it becomes *expertise* available for the conduct of government (Prugl, 2011, p. 72). While gender has long been a focus of governmental concern (in what Foucault terms “bio-politics”, where areas of concern include population, health, etc.), with the growth of neoliberalism,³ the mass re-entry of women into the workforce, and successes of women’s movements, there has been the emergence of a “new apparatus of gender”: no longer merely concerned with regulating women and their bodies, but centrally concerned with regulating *gender relations*, that is, the conduct of men and women towards each other (ibid). Governance feminism’s emergence can be clearly situated alongside this rise of neoliberal global governance, characterised by the “contract/crime paradigm” where legal structures that seek to preserve the freedom of the market exist alongside and reinforce the heightened surveillance and policing of citizens (Thomas and Halley, 2013, pp. 13; 15; 17-22).

Governance feminism extends itself to institutions outside the state, concerning itself with women in the workplace, childcare, maternity leave, etc.; whereas “carceral feminism” primarily denoted governance feminism concentrated on punitive legal responses to sexual violence (ibid, p. 3). Governance feminism is then all encompassing, compatible with a variety of feminisms, activated in multiple contexts, with varying (often conflicting) goals and outcomes. Thomas and Halley (ibid, p. 33) identify two variants of American feminism that have had significant uptake in law making: (i) *liberal feminism* that understands freedom and equality for women to inhere in rights and is therefore oriented towards formal legal measures; liberal feminism is also characterised by an emphasis on the individual, rather than the collective, centrally concerned with a freedom of *choice*; and (ii) *dominance feminism*, which by contrast, eschews the possibility of choice or agency exerted within the constraints of a male-dominated society. It holds that male domination and female subordination constitutes all social interaction, with the continual privileging of male cultural values and behaviours, and that the only possibility for female emancipation is a radical break from a “male-oriented reality” (Thomas and Halley, 2013, p. 14; see also MacKinnon, 1983).

Governance feminism has, in turn, taken different feminist approaches. In the liberal feminist push for rights, it has incorporated women’s rights into the vocabulary of human rights, focusing on reforms that would allow women to participate fully in the economy, thereby making their labour more available to capital and intensifying its exploitation. It has also incorporated dominance feminist strategies, particularly in espousing a “prosecutorial model of gender justice” (Thomas and Halley, 2013, p. 33) in combating violence against woman, especially in terms of increased policing and stringent laws to prevent prostitution, trafficking, and domestic violence.

In this sense, governance feminism clearly tracks the contract/crime paradigm. Liberal feminism reinforces the freedom of contract, while dominance feminism in governance produces “carceral feminism”: an approach that sees policing, prosecution, and imprisonment as the primary solution to violence against women (Law, 2014). It refers broadly to a strategy where incarceration is used as a tool to liberate (predominantly female) victims of violence, by making appeals to the state to deploy its coercive power to achieve feminist goals. While both liberal and dominance

³ Neoliberalism, for the purposes of this paper, is defined as a “substantive presumption against downwardly redistributive forms of regulatory policy and a procedural preference for privatized or semi-private modes of production” (Halley and Thomas, 2013, p. 12).

feminists call on carceral power, they do so in different ways rendering the distinction between them still meaningful: liberal feminists call upon the coercive state to punish *violations* of legal freedoms and rights, as an afterthought to their rights-based project of justice; dominance feminists focus on leveraging state power to alter behaviours that act disproportionately to harm women (Sandbeck, 2012, p. 2). The literature on carceral feminism is largely an indictment of feminists that use the law in this way for being blind to its consequences: the ironic effect of landing disproportionately marginalised, often racial minorities behind bars (ibid, p. 3) adversely affecting the families of lives of women in these communities, and the targeting, policing and criminalising of disenfranchised populations (Kapur, 2013, p. 19), leaving marginalised women more vulnerable to violence at the hands of the state - in prisons and inflicted by the police (Law, 2014).

The critiques mounted against governance feminism are no more forgiving of its myopia. While noting that feminist legal projects have produced many positive changes in the lives of women “who enjoy more equality, more autonomy, and a greater share of the world’s wealth because of feminism in power” (Halley and Thomas, 2013, p. 3), they are concerned with the costs that this has come at. Women benefit differentially and some women are even harmed; and the adoption of feminism as expertise in the mainstream has precluded and silenced vociferous intra-feminist debate on the legal reform that is advocated for. Their critique is an attempt to “describe and assess [the] confusing mix of outcomes” that governance feminist action generates (ibid, p. 16).

Critiquing governance feminism

Governance feminism, in its insistence that the state intervene to punish perpetrators of violence, maintains an “ideational equivalence of women and victims, both individually and collectively in relation to patriarchy.” This, to Halley and Thomas (2013, p. 9), amounts to erasing any agency and choice that women exert, even if it is exercised within constraints and also pushes to the periphery ways in which some women enjoy socio-political advantage over other women and men and can even act to oppress them (the example they provide is of a female head of household exercising power over household help).

Moreover, to be blind to the governance feminist exercise of power often encourages the assumption that enacting laws intended to enhance women’s liberty or protecting them by severely punishing offenders will actually do so, without considering how these laws operate in the social contexts of the lives they affect (ibid). Their methodology also calls for greater scrutiny of the *unintended consequences of feminist action* (Kotiswaran, 2013), particularly where legal action may harm the women they intend to help, by analysing the impact of legislative intervention, and paying special attention to circumstances where feminist reforms undercut the rights of other groups.

We are encouraged to be wary of how feminism merging into mainstream politics and governance “consolidates a particularistic, identity-based project” at the expense of alternative feminisms that ignore the “siren call of victimisation and identity as prerequisites for legal intelligibility” (Halley and Thomas, 2013, p. 4). What this also does is delegitimise “hermeneutically rich feminisms in the postcolonial world” (ibid, p. 7). Positioning the victim-oriented governance feminism forged by Western feminists and Third World elites on offer as *only* feminism means dismissing alternative resistances, and losing narratives that would contribute immensely to a full account of the female experience under patriarchy and the state.

Halley contends elsewhere (2006, p. 342) that the governance feminist equivalence between women and victims causes them to espouse the “Injury Triad”: women are injured, they do not cause any social harm, and men who injure women are immune from harm, i.e., female injury + female innocence + male immunity (ibid, p. 320). Unequivocal upholding of “the Injury Triad”, and a failure to critically analyse it, blinds feminists to the consequences of courting legal reform. If men are seen to be utterly immune from harm under patriarchy, then feminists are unable to see the social costs of implementing harsh criminal laws that drastically increase the likelihood of a conviction, even if it unfairly undercuts the rights of defendants to a fair trial, unfairly exposes many men to rigorous and brutal state punishment, and tears apart families. Feminism, by insisting on tracking female subordination alone, blinds itself to other justice projects, other interests and forms of power (Halley, 2003, p. 608).

Governance feminism appears essentially concerned with making female sexuality legally legible and then regulating sexual conduct, by “repressing through legal sanctions and moral indictments ‘unequal sex’” (Davis, 2011, p. 119). Feminist activism in this area has targeted sexual violence, sexual harassment, sex between unequals (e.g., boss/secretary and teacher/student [Halley, 2004, p. 13]), prostitution, trafficking, and pornography. In these arenas, Halley fears that feminists have developed “frightening alliances with the state to police and discipline undesirable sex” (Davis, 2011, p. 117).

The critique of governance feminism presented here (largely drawn from the works of Janet Halley) is powerful. We are asked if its “rigorous mapping of sexual injury” harms victims of sexism (Davis, 2011, p. 118). This critique charges feminists who push the state to enact legal reforms with failing their own constituency by not taking into account women that are harmed by the law; it accuses it of inflicting harm on other groups of people by its insistence that women are always subordinated and victimised, and claims that in doing so, feminist narratives deny that women exercise agency at all; it asks whether the feminism that is put to the service of governance reflects the myriad feminisms and resistances that exist; and it questions the unthinking assumption that the legal action that they ask for will translate into tangible benefits for the women they want to help. In short, the critique of governance feminism calls for us to take a long, hard look at feminists engaging in law reform initiatives.

Historicising the Indian feminist movement

On 16 December 2012 Jyoti Singh Pandey, a 23-year-old female physiotherapy student was taking a bus home in Delhi with a male friend and was brutally gang-raped, disembowelled, her naked body thrown from a moving vehicle and left for dead (Sharma and Bazilli, 2014, p. 4). India was aghast, and it made headlines across the world while Delhi saw unprecedented public protests, often met with violent police resistance eventually leading to the imposition of curfew orders (NYT, 2012). The Ministry of Home Affairs appointed a judicial committee headed by Chief Justice Verma to review the criminal law on sexual violence and recommend amendments, while the world hailed the incident as a “wake-up call”, and even a year later, as the case that “changed India” (CNN, 2013).

The protests took on a range of hues: women’s movements attempted to use the moment to open a larger dialogue on sexual violence in India, including issues as diverse as marital rape, the rape of women by Indian army officers in Kashmir and the North-East, demands to end victim-blaming, among others under the feminist slogan demanding *Bekaouf Azaadi*, or Freedom Without Fear (Carty and Mohanty, 2015, p. 104). But these concerns were largely drowned by demands for

the imposition of the death penalty, and chemical castration of the rapists (Dutta and Sircar, 2013, p. 295) by right-wing politicians and a sensationalist media.

It is useful to situate the protests of 2012-3 and the reforms that they led to in the history of Indian feminism. Before doing so, it is important to note that the terms “feminism” and “women’s movement” are themselves highly contested (Butalia, 2002, p. 207). To define an Indian movement as feminist, this paper draws from Kannabiran (2010, p. 129) in that “challenging the patriarchal basis of institutions and social spaces, presenting a cogent argument for why freedom is indispensable to women, and identifying and interrogating the foundations of unfreedom are the signposts of feminist movements.” While there may be no unified feminist movement, if disparate campaigns meet these criteria they qualify as feminist for the purposes of the following discussion.

In the postcolonial context, representatives of various groups and interests have had to articulate their demands in the context of legislative protection following the formulation of a Constitution and laws for the new nation-state. The history of Indian feminism, but also all social reform movements in India, is irrevocably shaped by post-colonialism as it was in the crucible of the debates surrounding the drafting of new laws that the connections between people’s aspirations and the law as a vehicle of social justice was drawn (Kannabiran, 2010, p. 121). Perhaps, on account of being a post-colony, much of the Indian Left has always been in bed with the state.

The demonstrations in 2012-3 were only the latest wave of protests against sexual violence that were followed by legal reform. Feminist organising in India can be traced back to the late 1970s, during the period of Emergency rule in 1975 (ibid).⁴ Early Indian feminist campaigns on sexual violence were primarily related to the issue of custodial rape (rape perpetrated by a state-agent when the victim is held “in custody”, generally in a state-owned institution), and were precipitated by the two prominent cases of Rameeza Bee and Mathura in 1978 and 1980 respectively. In both cases, the accused police officers were acquitted on characterising their victims as “promiscuous” and pointing to their sexual history (Kannabiran and Menon, 2007).

The protests that erupted in response to these cases stressed rape as a violation of a woman’s autonomy, and challenged the provisions of the Indian Penal Code (IPC), an unmodified colonial law that allowed for consent to be inferred from an absence of injuries on the victim (Sharma and Bazilli, 2014, p. 5; see also Kapur and Cossman, 1996). Legal reforms to the law on rape were introduced in the Lok Sabha (the lower house of Parliament) in 1980, reformulating consent as “free and voluntary”; shifting the burden of proof onto the defendant in cases of custodial rape; and imposing a longer sentence in cases of custodial sexual violence. The Bill was referred to a Joint Committee, which offered recommendations on it after two years of deliberation and consultation with feminist groups and other civil society stakeholders. While the law that was eventually passed diluted many of the recommendations of the Committee (Gangoli, 2007, p. 85-90), it marked important legal changes that bore the hallmarks of feminist intervention. In many ways, we already see the fingerprints of governance feminism in early Indian feminist campaigns – the deployment of feminist knowledge as expertise, the focus on unequal sex where there is a power differential between the perpetrator and the victim, the emphasis on higher sentences for such crimes, the hope that legal intervention would cause the effects it intended.

The Indian feminist movement since then, though as disparate and diverse, has remained no stranger to legal reform, contributing to a raft of new criminal and civil laws and amendments. This included the inclusion of domestic violence in the criminal code (1983); a ban on pre-natal

⁴ This refers to the 21-month period between 1975 and 77 when the Prime Minister, Indira Gandhi, ruled under emergency constitutional provisions.

sex determination so as to prevent sex-selective abortion (1993); laws on sexual harassment in the workplace (2003), among others (ibid, p. 9).

The discourse of women's rights in India also interlocked with global human rights discourse, where violence against women was framed as a human rights issue in international law conventions. Feminist groups began to use international conventions in the early 1990s as a rallying point to mobilise for change, and as leverage over the state (Kannabiran, 2010, p. 130) to extract measures, commitments and policies in service of their goals. This is congruent with the account of governance feminism provided above, where the U.S. became the lead exporter of a "legal toolkit" that was transplanted into many Third World nations (see Halley and Thomas, 2013, p. 13; Sharma and Bazilli, 2014, p. 13). This globalisation of the violence against women agenda also led to the growing leakage of non-governmental organisation (NGO) actors into women's groups in India, a further hallmark of governance feminism.

Problematising governance feminism in the post-colony

The events of December 2012 and the legal reforms undertaken in its aftermath occurred in the context of this globalisation of feminist discourse, and it also followed a startlingly similar trajectory to the reforms undertaken in 1980, though the Justice Verma Committee (hereafter, JVC) submitted its 657-page report within 29 days. While it is beyond the scope of this paper to undertake an exhaustive analysis of all the proposed reforms within the report, a few are analysed so as to draw out the applicability and the limitations of a governance feminist critique.

The conversion of feminist knowledge to expertise in state institutions to provide for criminal law amendments on sexual violence, thereby promoting and enhancing punitive measures, is evidence of governance feminism elements at play. It is instructive to refer to the acknowledgements of the JVC report, which thank the contributions of "women's social action groups" and state that they had multiple oral consultations with "representatives of several stakeholders, particularly women's social action groups and experts in the field" (JVC, 2013, p. ii), and around 82 activists and organisations provided evidence to the committee (Grover *et al.*, 2013). Interestingly, the report also extends its thanks to several academics, prominently from Harvard, where a Policy Taskforce called "Beyond Gender Equality" was set up in order to advise the Indian government on how to best implement the report (Harvard College Women's Centre, 2013). Governance feminists from across the globe were involved in the Indian legal reform process. The feminist will to power has – apparently – transcended the borders of the nation-state.

To move onto the critique of governance feminism that was outlined in section II, tensions emerge when attempting to characterise the Indian feminist movement which engaged with the JVC as attempting to maintain an equivalence between women and victims. As early as the 1990s, when governance feminism was arising in a variety of contexts, Butalia (2002) was pointing to the fact that Indian feminists could not hold on to the belief that women were largely the *victims* of violence rather than its perpetrators; and a series of violent anti-Muslim incidents in the 1990s demonstrated that Hindu women played an important role in perpetrating violence and abetting the sexual assault of Muslim women (pp. 225-228). The Indian feminist movement increasingly abandoned a position of victimhood and injury, recognising multiple situations where women exerted power over other marginalised groups. This was visible in debates surrounding gender-neutral provisions in the recommendations of the JVC report – particularly as gender-neutrality often pits feminist goals against queer ones. Feminist activism challenged the narrow understanding of rape as that which required penile penetration of the vagina, pointing out that it

was the only form of assault where harm done with a body part attracted more grievous punishment than harm inflicted with a weapon and drawing attention to the fact that this was rooted in misogynistic and heteronormative understandings of women as *particularly* violated by penile penetration as this, by extension, violates the honour of her family, as well as her womb.

However, expanding rape to include “all non-consensual penetration of a sexual nature” (JVC Report, 111) also opens up the possibility of rendering rape an entirely gender-neutral offence. Feminist activists, alongside queer activists, have broadly been in favour of a gender-neutral victim provision, allowing for male and transgender rape victims to be able to seek redress. There has, however, been sustained debate on whether the perpetrator of the crime of rape should be gender-neutral: some argued to allow women to be charged with rape would only further make them the target of the law rather than allowing for their protection, while others argued that there were certainly situations where it should be allowed (Menon, 2013). Eventually, the JVC report recommended gender-neutrality in cases where there was a clear power imbalance between the perpetrator and the victim (such as one of custody or authority). While this would appear to be a classic governance feminist move – the targeting of “unequal” sex – it also runs contrary to the victimhood narrative that characterises much governance feminism in the West. Whilst this narrative surfaced, it is unsustainable to say that the Indian feminist movement did not recognise a multiplicity of power dynamics that allows women to assert agency and exert sexual violence in some circumstances. Allowing for perpetrators to be gender-neutral in clearly delineated circumstances enabled feminist action to retain a degree of protection for women without undercutting the rights of children and queer victims.

The unanimous feminist opposition to the use of the death penalty also indicates the limited exportability of the governance feminist analysis Halley provides us with. Halley’s concern is that feminists blind themselves to other justice projects, and yet the Indian feminist movement’s history shows us otherwise. Throughout the history and pre-history of constitutional rights for women, debates between groups acknowledged “women inhabited an intersectional space, as part of communities, castes, tribes, and regions, and acted from that complex location” (Kannabiran, 2010, p. 121). The recognition that feminist concerns did not automatically supersede other identities that women inhabited has been a key feature of Indian feminism, which has also been traditionally suspicious of state power (Kotiswaran, 2013) as its campaigning began during authoritarian Emergency rule.

The opposition to the use of the death penalty from Indian feminists displays a continuing, though gradually diluted, anti-statist impulse. Many were furious that one of the accused rapists in the Pandey case would be tried as a juvenile as he was a few months shy of 18 when the crime was committed, and called for the lowering of the age at which an offender can be tried as an adult to 16, which was also unanimously opposed by Indian feminists and activists. Such calls were seen for what they were: an attempt by the Indian state to claim more power for itself in the name of justice.

Interviewer: the only thing the Director-General of Police and the Chief Secretary had in consensus was that we must lower the juvenile age [...]

Justice Verma: No, that is because they only want a little more power. It would give a little more power to them, that’s all. (NDTV 2013)

The widespread feminist opposition to the death penalty and lowering the age at which juveniles can be prosecuted as adults displays a concern to not allow feminist agendas to undercut

the rights of defendants and children, especially in a climate of harsher punishment (see Batra, 2008). We do therefore see traces of a feminist movement that is alert to the unintended consequences Halley warns us of.

The critique of governance feminism goes on to accuse it of a blind assumption that laws will produce their intended consequences, or at the very least, cause positive changes. There is reason to doubt this claim in the Indian context. As outlined above, the Indian feminist engagement with the law and the discourse of rights has been long and often produced varying, unsatisfying outcomes. As Gangoli notes, “it is safe to postulate that most feminists have little or no faith in legal solutions to violence” (2007, p. 9), and this includes not only academic scholars, but also feminist lawyers who “work with the law to provide relief to women, while accepting its limitations” (ibid). Feminist critiques of Indian law are attentive to how it reproduces and legitimises subordination, have noted how past legislative reforms have not yielded many gains for women, and have suggested that the law can “radically refract the ethical and emancipatory impulse of feminism itself” (Menon, 1995, p. 369). Though feminists continue to use the law as an important arena of intervention in the absence of alternatives and in the hope that it can be emancipatory, they have considered its disciplinary effects and recalcitrant nature critically (for a prolonged consideration of various Indian feminists that have discussed this, see Menon, 2004, p. 3-9).

Taking a break from the state

It is therefore not as evident as Halley claims that governance feminists, including those that presented evidence to the JVC, are uncritical of their own enterprise. Indeed, Halley’s analysis of governance feminism leads her to the dismal conclusion of exhorting her reader to *Take a Break from Feminism* (and this is the subtitle of her book, *How and Why to Take a Break from Feminism*). She outlines the conceptual benefits of left divergence from feminism in the face of its growing regulatory will to power and insistence of women as victims – “we don’t always need feminism in order to have meaningful left projects about sexuality” (Halley, 2004, p. 9) – and *Take a Break from Feminism* would allow feminists to better evaluate the consequences and costs of their actions, and enable them to account for interests that are exterior to feminist concerns and balance them appropriately.

But the Indian feminist movement illuminates Halley’s argument in interesting ways. It opens up the possibility for a diverse, dynamic feminist movement that retains the ability to be self-reflective and critical of the ways in which it employs the law, to weigh the concerns of other interests and strike an appropriate balance, and to fully understand the complex positions that women occupy that allow them to exercise agency to the detriment of other groups. Those on the Left committed to social justice, and who see the traits of governance feminism in feminist interaction with the state, do not necessarily have to *Take a Break from Feminism* altogether. Historicising the Indian feminist movement, understanding how its relationship with the law is irrevocably linked to its experience as a postcolonial movement, and contextualising the governance feminist will to power in these terms brings to light a way and method of radical politics that engages the state while being mindful of the costs that governance feminism brings with it. A strategy of campaigning that is continually self-reflective, that takes a good hard look at its own engagement with legal reform, is invested in concerns not explicitly feminist in nature, and yet does not take a “break” from feminism. For many of us, a break from feminism is not something we can afford.

Equally, critiques of governance feminism allow us to contextualise the Indian feminist movement in the globalising paradigm of law reforms on sexual violence, situating it transnationally, and they serve as a warning against the dangers of appealing to carceral measures to safeguard women's rights by making us take note of the ideology that makes this possible. By exposing the global power dynamics at play, we see the case of Jyoti Singh Pandey in a different light.

Crucially, governance feminism opens up another, more interesting way, of analysing this case. We note that, as in the 1980s, the most important Indian feminist recommendations and the most progressive sections of the JVC were deliberately ignored. Harsh legislation that allowed for the death penalty, lowered the age at which a juvenile could be tried as an adult, that did not allow for army officers to be tried for the sexual assault and rape of women living in North-Eastern India and Kashmir, and that failed to criminalise marital rape were subsequently passed. Perhaps a feminism that is self-critical, that balances competing interests and harbours a suspicion of state power while engaging with it, will not find uptake as governance feminism, which at the behest of neoliberalism's contract/crime paradigm seeks to *expand* state coercive power, not limit it. In that case it is not feminism we need to take a break from, but it is engagement with the state.

References

- Batra, B.J. (2008). Of Strong Medicine and Weak Stomachs: The Resort to Enhanced Punishment in Criminal Law in India. In Kannabiran K. and Singh R. (Eds.), *Challenging the Rule(s) of Law: Colonialism, Criminology, and Human Rights in India*. New Delhi: SAGE.
- Butalia, U. (2002). Confrontation and negotiateion: The Women's Movement's Response to Violence Against Women. In Kapadia K. (Ed.), *The Violence of Development: The Politics of Identity, Gender, and Social Inequalities in India*. New Delhi: Zubaan.
- CNN. (2013). Covering the rape case that changed India. Retrieved from <http://edition.cnn.com/2013/12/04/world/asia/india-rape-problem-udas>
- Carty, L.E. & Mohanty, C.T. (2015). Mapping Transnational Feminist Engagements: Neoliberalism and the Politics of Modernity. In R. Baksh & W. Harcourt (Eds.), *Oxford Handbook of Transnational Feminist Movements*. New York: Oxford University Press.
- Davis, A.D. (2011). Bad Girls of Art and Law: Abjection, Power, and Sexuality Exceptionalism in (Kara Walker's) Art and (Janet Halley's) Law. *Washington University in St. Louis School of Law, Legal Studies Research Paper Series*. Paper No. 10-06-09. Retrieved from <http://ssrn.com/abstract=1628726>
- Dutta, D. & Sircar, O. (2013), India's Winter of Discontent: Some Feminist Dilemmas in the Wake of a Rape. *Feminist Studies* 1, 239-306.
- Gangoli, G. (2007). *Indian Feminisms: Law, Patriarchies, and Violence in India*. Hampshire, England: Ashgate.
- Grover, V., John, M.E., Krishnan, K., et al. (2013). *Dear Sisters (and Brothers?) at Harvard*. Kafila. Retrieved from <http://kafila.org/2013/02/20/dear-sisters-and-brothers-at-harvard>
- Halley, I. (2004). Queer Theory By Men. *Duke Journal of Gender, Law, and Policy* 11(7), 7-53.
- Halley, J. (2003). In Cossman, B., Danielsen, D., Halley, J., & Higgins, T. Gender, Sexuality, and Power: Is Feminist Theory Enough? *Columbia Journal of Gender and Law*, 12(3), 601-637.
- Halley, J. (2006). *Split Decisions: How and Why to Take a Break from Feminism*. New Jersey: Princeton University Press.
- Halley, J., Kotiswaran, P., Shamir, H., & Thomas, C. (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 and Gender*, 29, 336-419.
- Halley, J. & Thomas, C. (2013). *Governance Feminism: A Two-Book Publication*. Minnesota: University of Minnesota Press. Retrieved from <http://www.lawschool.cornell.edu/cornell-IL-IR/upload/IL-IR-Colloquium.pdf>
- Harvard College Women's Centre. (2013). *A history of violence*. Retrieved from <https://hwc.wordpress.com/2013/02/15/a-history-of-violence>
- Justice Verma Committee Report. (2013). Retrieved from http://www.thehindu.com/multimedia/archive/01340/Justice_Verma_Comm_1340438a.pdf
- Kannabiran, K. (2010). Feminist Deliberative Politics in India. In A. Basu (Ed.), *Women's Movements in the Global Era: The Power of Local Feminisms*. Boulder, CO: Westview Press.
- Kannabiran, K. & Menon, R. (2007). *From Mathura to Manorama: Resisting Violence Against Women in India*. New Delhi: Women Unlimited.

- Kapur, R. (2013). Gender, Sovereignty, and the Rise of a Sexual Security Regime in International Law and Postcolonial India. *Melbourne Journal of International Law*, 14, 1-29.
- Kapur, R. & Cossman, B. (1996). *Subversive Sites: Feminist Engagement with Law in India*. New Delhi: SAGE.
- Kotiswaran, P. (2013). *Unintended Consequences of Feminist Action*. Kafila. Retrieved from <http://kafila.org/2013/02/18/unintended-consequences-of-feminist-action-prabhakotiswaran>
- Law, V. (2014). Against Carceral Feminism. *Jacobin Magazine*. Retrieved from <https://www.jacobinmag.com/2014/10/against-carceral-feminism/>
- Mackinnon, C. (1983). Feminism, Marxism, Method, and the State: Towards Feminist Jurisprudence. *Signs*, 8(4), 635-658.
- Menon, N. (1995). The Impossibility of “Justice”: Female Feticide and Feminist Discourse on Abortion. *Contributions to Indian Sociology*, 29, 1-2, 369-392.
- Menon, N. (2004). *Recovering Subversion: Feminist Politics Beyond The Law*. Chicago: University of Illinois Press.
- Menon, N. (2013). The impunity of every citadel is intact: the taming of the Verma Committee and some troubling doubts. *Kafila*. Retrieved from <http://kafila.org/2013/02/03/the-impunity-of-every-citadel-is-intact-the-taming-of-the-verma-committee-report-and-some-troubling-doubts>
- New York Times. (2012). Protests Over Rape Turn Violent in Delhi. Retrieved from http://india.blogs.nytimes.com/2012/12/23/protests-over-rape-turn-violent-in-delhi/?hp&_r=0
- NDTV. (2013). Your Call with Justice (Retd) JS Verma: Full transcript. *NDTV*, 30 January. Retrieved from <http://www.ndtv.com/india-news/your-call-with-justice-ret-d-js-verma-full-transcript-511868>.
- Prugl, E. (2011). Diversity Management and Gender Mainstreaming as Technologies of Government. *Politics and Gender*, 7(1), 71-89. doi: 10.1017/S1743923X10000565
- Sandbeck, S. (2012). Towards an Understanding of Carceral Feminism as Neoliberal Biopower. Paper presented at the 2012 Annual Conference of the Canadian Political Science Association, University of Alberta. Retrieved from <http://www.cpsa-acsp.ca/papers-2012/Sandbeck.pdf>
- Sharma, R. & Bazilli, S. (2014). A reflection on gang rape in India: What's law got to do with it? *International Journal for Crime, Justice, and Social Democracy*, 3(3), 4-21. doi: 10.5204/ijcjsd.v3i2.155