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The Communal Violence Bill: Women's Bodies as Repositories of Communal Honour

By Zara Ismail¹

Abstract

This article examines the measures taken under the various iterations of India's Communal Violence Bill to tackle sexual violence in communally charged areas. It focuses on the 2002 violence in Gujarat to illustrate 'sexual impunity' in India, the workings of *izzat* (honour) within the discourse around communal violence, and to argue that citizens of India are not always equal before the law. Using decolonial, feminist and postcolonial theory, the author builds on a rich history of activism and scholarship to argue that not only are the measures proposed under the government's draft of the Communal Violence Bill inadequate, but also that they buy into problematic oversimplifications reliant on ideas of communal honour, thus neatly sidestepping institutional complicity in communal violence and foreclosing any potential for efficacy. When women are reduced to keepers of communal honour—their bodies the battlefields upon which party and communal politics play out—justice is put out of reach. The author argues that the policing of communal lines through the logic of *izzat* also results in a very peculiar construct of the concept of 'rapist' in times of communal violence, resulting in a distinction between 'men who rape' and 'men who are rapists'. Rape is very much a politico-legal issue in India. It has a history and a context. The sexual impunity that runs rampant in the country today is a result of both. The author argues that there is a need to deeply interrogate who matters in Indian politics—and, more importantly, who does not. Justice, in cases of sexual violence is heavily influenced by the rapist's position vis-à-vis the victim/survivor, and Gujarat has shown us that to be sidelined in Indian politics can often mean a denial of justice. This article seeks to trouble the divide between state and society, calling for a recognition and interrogation of state complicity and for the decentering of honour as the central paradigm of communal violence. It is only through the deconstruction of this façade that the underlying causes and contributors can be addressed, allowing us to move towards a more equitable and just system.

Keywords: India, coloniality, gender, human rights, sexual violence, communal honour

Introduction

In 2004, the United Progressive Alliance government of India proposed the first Communal Violence Bill (CVB) to prevent a repeat of the atrocities seen in Gujarat only two years prior (Uma, 2018). It has been 15 years, and the CVB has yet to be passed, which raises the glaring question of why this is the case. The CVB is a legal instrument aimed at protecting the human rights of minorities systematically targeted by communal politics, and in the case of the 2008 draft,² is a decolonizing tool that protects women's bodily autonomy through measures for justice,

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² This version of the Bill is titled *The Communal Crimes Bill 2008* and was drafted by "representatives of women's organizations and human rights activists" (Uma, 2018, p. 171).

rehabilitation and reparation (ibid.). Sexual violence in India must be understood “as an act that unfolds within and along a continuum of the ‘outrageous’ everyday” (Geetha, 2016, p. 16). It is the result of serious systemic and institutional corruptions that are complicit and, in certain cases, actively involved in using women’s bodies as a field upon which to play out aggressive party and communal politics, thus normalizing violence against women (Baxi, 2005). This political appropriation of women’s bodies has further removed them from their human and constitutional right to autonomy and personhood.

Through the course of this paper I argue that there is a need to decolonize gender and human rights, and to deconstruct the intersections of gender, community, ethnicity, religion and class – among others – that inform who counts as human in Indian politics, and by extension, under Indian governments. This paper builds on a rich body of work by Indian feminists and the women’s movement, along with interdisciplinary scholarship on issues of sexual and communal violence. My own modest contributions are twofold and draw heavily on this scholarship.

First, I approach this issue from the perspective of coloniality, both of gender and human rights, and argue towards the existence of a (patriarchal) coloniality of gender in India. Its presumed ahistoricity allows for state impunity, for sexual violence is presumed to be the result of a biological imperative, and thus inevitable.

Second, I draw on Siddharth Narrain’s identification of a false dichotomy between ‘act’ and ‘identity’ (in the context of India’s anti-sodomy laws). I apply it to incidents of rape, wherein distinctions are made between ‘men who rape’ and ‘men who are rapists’.

I use this distinction to circle back to my first argument, re-iterating the asymmetrical value the Indian establishment places on men and women, favouring the first at the expense of the second. I state, once again, that men are the normative subjects of law and human rights in India, which I use to reinforce my argument that the coloniality of gender in India is patriarchal in nature. The structure of this essay will be as follows: I will begin with a discussion of coloniality, followed by an introduction to the CVB. I will then give an account of ‘sexual impunity’, arguing that not all citizens of India hold equal value to the government. I use the communal violence in Gujarat as an example of this, and further explore the role of women’s bodies as repositories of communal honour.³

There are instances in which lists of relevant laws, and of communal violence, are put into footnotes. I do so deliberately, to emphasize the fact that these are not one-off issues, but rather structural problems that must be addressed. I conclude with an argument for the need to decolonize both gender and human rights in India as part of a social justice project that demands both structural change and an acknowledgement of not just institutional, but also individual, complicity. I echo countless other voices when I say that holding complicit institutions accountable for the sexual violence that occurs under their watch can only be achieved with the historicization of this violence, and of the underlying factors that facilitate it. I call for the decentering of honour as a central paradigm in communal violence and argue that this constitutes a move towards decolonization. The bottom line is that a woman’s body must be divested of all the social meaning that weighs it down and denies her justice in the event of sexual violence – a woman’s body must return to being just that, *her* body, something she has complete autonomy over.

³ When I say honour in the context of India I mean *izzat* as used in Chakravarti (2005).

Coloniality

Coloniality is a mindset that survived colonialism, in which European models of gender and sexuality were universalized, and then normalised. Dehumanization went hand in hand with this process, and survives in coloniality as a complex oppression that is expressed at intersections between “racialization, colonization, capitalist exploitation and heterosexism”, the resulting ‘subject’ somehow double and fractured, thus incomplete (Lugones, 2010, p. 747; Quijano, 2000). As the legibility of bodies is key to the allocation of human rights, the dehumanization inherent to coloniality manifests itself as an exclusion of the ‘incomplete’ or illegible subject from the realm of human rights, for they are seen to be less than human (de Lauretis, 1987). I understand coloniality to be the denial of all that deviates from modern, heteronormative embodiments, just as the colonial civilizing mission involved an eradication of other, so-called primitive, ways of life (Cornwall, 2014; Lugones, 2007; 2010; Oyewumi, 2002). Coloniality permeates knowledge production, as well as what Lugones terms the “construction of collective authority”, so not only has coloniality shaped institutions, but we must also acknowledge our own complicity in the same (2007, p. 206).

The (Patriarchal) Coloniality of Gender

Coloniality and its various configurations, such as the coloniality of gender, are not pre-colonial systems which were universalized and then preserved in their original form, but rather the hybrid products of this universalization. Coloniality, then, is the fencing off of potentiality, of *other* ways of being (Lugones, 2010). The coloniality of gender in India is a combination of the imposition of heteronormative binary gender and existing patriarchal configurations of ‘woman’, in which she is both the property of men and the keeper of a community’s honour (Chakravarti, 2005). The result is an institutional patriarchy, the hybrid product of “orthodox indigenous patriarchy” (Pande, 2012, p. 229) and a capitalist system of gender in which women have been positioned as subordinate counterparts of men, relegated to the private sphere of the public-private divide (Alexander, 1994; Rubin, 1975; Wynter, 2003). When I speak of patriarchal structures in this essay, it is this institutional patriarchy that I am referring to.

In essence, the hybrid product that emerged from India’s colonization and that was naturalized in its post-colonial life is a ‘(patriarchal) coloniality of gender’.⁴ This configuration is characterized not just by the seemingly ahistorical, and thus naturalized, formations of heteronormativity and binary gender divisions, informed by a worldview that is racialized, capitalist, and entrenched in a history dominated by Western colonial powers, but also by a nexus of caste and patriarchal power. As with any form of coloniality, the presumed ahistoricity of this structure is dangerous. To hold that sexual violence is ahistorical allows for the (convenient) argument that “it may be possible to limit sexual violence, but it cannot be overcome or abolished” (Bourke, Campbell, Mühlhäuser, Virgili & Zipfel, 2019, p. xi), for to render a phenomenon ahistorical is to naturalize it. By extension, historicizing seemingly ahistorical phenomena is the only thing that allows for their deconstruction (Lugones, 2007; Rubin, 1975). The (patriarchal) coloniality of gender has resulted in very disturbing potentialities in Indian society – and while the

⁴ While I do not have the space to discuss this here in great detail, it is important to note that this patriarchy is a caste or Brahmanical patriarchy, for the power dynamics of caste and patriarchy are deeply intertwined. For example, caste exclusivity (exercised by the upper castes) is often sustained through the tight control of marriage, with a preference for endogamous matches. As we see in Rubin’s piece ‘The Traffic in Women’, the subordination of women gives men rights to women’s bodies that the women themselves do not possess (1975). It is the rights men are seen to have over the bodies of the women in their families that allow them to barter women – through marriage – so as to preserve the ‘purity’ of their caste. For more, please see Chakravarti (1993).

following are not grand statements of fact, they are very real and disturbing possibilities, as we will later see in Gujarat.

It is the heteronormative male citizen who is recognized as a political actor and full rights-bearing citizen, and men often serve as intermediaries through which women access political life. This asymmetry is reflected in the gendering of Indian laws,⁵ but more directly pertinent to this paper, is also reflected in the differential treatment of rape and marital rape – India has not criminalized marital rape, and so a woman's right to bodily autonomy plays second fiddle to her husband's 'right' to *her*, something I discuss in greater detail later in this essay. A woman, then, can too easily be rendered *homo sacer* if she lacks the protection of a man (Agamben 1998). In fact, in times of communal violence, violence against women is subsumed into a discourse of honour, indicative of the minimal value placed on women in political life (Baxi, 2005; Kumar, 2018). This potentiality, and the ease with which women can become *homo sacer* when separated from a male protector, indicates an underlying structural facilitator, one that must be dismantled.

Nevertheless, I acknowledge that this is changing, with women entering the work force and becoming financially independent, as well as becoming more aware of their rights, but the change is slow, and has not dismantled the underlying problem, that of impunity. Coloniality is invisible because its products are seen as natural, thus the limits they place on our imagination of what life *could* be go unnoticed. It is these barriers that Spivak thinks of when she speaks about the limits of political imagination, the need for unlearning, and an expansion of what it means to be a subject of ethics (Danius, Jonsson & Spivak, 1993). Similarly, the feminist push to imagine the unimaginable calls for a creative solidarity politic that celebrates a plurality of being over easily categorizable hybrids (Anzaldúa, 1999; Lugones, 2010).

The Coloniality of Human Rights

One of the many paradoxes of human rights is that they are meant to be universal, yet their normative subject is inevitably a white, heteronormative man, for this was the intellectual and academic climate in which the UDHR was drafted (Lugones, 2007; Wynter, 2003). Communal sexual violence reveals who fits into dominant configurations of the human and the citizen, and who does not. One must first be a citizen to be recognized as human – citizenship is key to the provision of rights for it is only through a government's acknowledgement of the individual as a legal subject that one is allowed access to human rights. To exercise human rights is to have access to them in the first place, and as Arendt has shown, there will always be a group – in this case the stateless – who do not have this ability. The inalienability of human rights, as Arendt points out, requires national emancipation to be realised. Consequentially, the subject of these rights are populations – as citizen bodies of nation-states – not the individual. And so, we have the central paradox of human rights, for despite their claim to a language of inclusivity, human rights are inherently exclusive, for the very definition of 'human' removes some from the scope of their application (2000).

In the case of India, being a federal state, not only must one be recognized as a citizen of the nation, but often also as a citizen of the state in which one seeks justice. (Co-operative) federalism was seen as a way to achieve unity while simultaneously preserving diversity, necessary when considering the sheer size of the country (Baxi, 2005; Mawdsley, 2002). In truth, however,

⁵ Gendered laws in India include Section 375 and 497 of the Indian Penal Code, relating to rape and adultery respectively. Similarly, binary gender roles can also be seen in the *Protection of Women from Domestic Violence Act, 2005*, and more recently in Chapter 2, Section 7 ((1) i-iv) of *The Criminal Law (Amendment) Bill, 2013*, referring to sexual harassment.

the system is that of an asymmetric federalism, and there is a long history of rendering states outsiders in their own country – the seven sister states of Northeast India being one example⁶ – as well as Muslims, among others, being marginalised despite the secular nature of the Indian constitution (Geetha, 2018; Chandoke as cited in Narrain, 2011). To be rightless is to be without a place in which one's "opinion is significant and [...] actions effective" (Arendt, 2000, p. 37), and a minority's opinion is undeniably less significant than that of a state majority, particularly when politics are communalised as they have been in India.

The coloniality of human rights is further complicated by the allocation of second-class citizenship to all but the majority, a practice that has been made explicit in certain states with the rise of the Bharatiya Janata Party (BJP) and Hindutva politics.⁷ This must contend with the coloniality of gender which, when paired with patriarchal structures, means that communal sexual violence is a structural and political issue born from the 'outrageous' everyday. What emerges is that the state is both complicit and highly invested in sustaining coloniality, for it benefits the communal politics employed contemporarily (Bhowmick, 2017; Taseer, 2019).

The Communal Violence Bill

India has seen multiple drafts of the CVB since 2004, and a strong feminist lobby continues to push for it to this day (Uma, 2018). It is interesting to note that the government drafts of the Bill did not actually introduce any new measures, but rather collated existing laws under a single, targeted piece of legislation (Desai, 2011; Manghnani, 2006).⁸ The need, then, is not for new legislation, but rather the enforcement of existing laws, and if this is not possible then it stands to reason that the CVB is of no more use than its predecessors.⁹ The Bill was finally tabled in 2014, due to a national election and subsequent change in government. Due to the confines of this essay I will be focussing primarily on the provisions made for the prevention of sexual violence in the Bill.

I would like to note, however, that while the CVB was still being discussed, the BJP's primary complaint – echoed by other parties – was against the Bill's provisions to allow the Central Government to declare areas to be 'disturbed', thus allowing for a state of emergency (Desai, 2011). The BJP argued that this would interfere with India's federal structure, undermining state sovereignty in favour of what they called 'pseudo-secularism' and anti-majoritarian tendencies (Baxi, 2005; PTI, 2013). This communal argument swept aside the original justification for the declaration of 'disturbed' areas, namely the speedy suppression and investigation of communal violence (Vanka, 2008). Nevertheless, I must also acknowledge that the state has similar power in

⁶ These states are Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura.

⁷ India does not follow a two-party system, but it does have two particularly strong parties that run for the general elections. The Congress Party plays dynastic politics, and lost the last two elections to the BJP, of which the current Prime Minister, Narendra Modi, is a member. Narendra Modi was the Chief Minister of Gujarat during the communal violence of 2002, and was backed by a right-wing Hindu organisation called the Rashtriya Swayamsevak Sangh, which believes India should be a Hindu nation. It was Congress that proposed the CVB while it was in power as part of the United Progressive Alliance government. The Congress Party then side-lined the CVB in 2014, for fear of it affecting them detrimentally in the national elections, which they subsequently lost.

⁸ The two drafts are *The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005* and the *Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011*.

⁹ Much of existing legislation in India is underused, particularly those related to the prevention and containment of violence. Mangubhai speaks of the minimal usage of the *SC/ST (Prevention of Atrocities) Act* (2016: 272); Agnes speaks of the negotiations and losses entailed in appealing the court under the *Protection of Women from Domestic Violence Act* (2018: 24).

the case of the *Armed Forces (Special Powers) Act* (AFSPA), and has abused this power (Kikon, 2016; Madhok, 2018). The issue that the BJP raised is a vitally important one, but operationalising it for political gain, as has been done here, forecloses any possibility for its meaningful consideration. What remains is a blatant example of a state's autonomy being favoured over the interests of its minorities.

One of the central considerations of the feminist lobby working to draft the Bill in 2008 was whether or not to make provisions regarding sexual violence gender neutral. This ties into a central paradox of women's rights as human rights, for to classify certain rights as 'women's rights' is to essentialise the category woman and automatically exclude certain groups, but to speak of sexual violence under the umbrella of human rights is to risk its marginalisation (Bunch, 1990; Uma, 2018). Rape laws in India continue to be gendered, with male perpetrators and female victims/survivors,¹⁰ and the decision to stick with this gendered model of sexual violence hinged on the recognition of the fact that women's bodies are uniquely targeted for sexual violence in communally charged situations.

'Communally disturbed' areas under the Bill merit measures above and beyond what is normally permitted, for the purpose of suppressing violence. The Bill makes provisions for witness protection as well as relief and rehabilitation for those affected (Manghnani, 2006), but what it doesn't do is take state complicity into account. A major critique of the CVB is the government's understanding of communal violence as restricted to the communities involved (Gonsalves, 2007). The role of the government and other institutions is swept under the proverbial rug, rendering them immune to justice. The 2008 draft introduced measures to curb the impunity of the state, ensuring that government actors were subject to severe penalisation proportionate to levels of responsibility, but subsequent drafts failed to do the same (National Advisory Council, 2011; Uma, 2018).

The state is understood to be unreliable with regard to the protection of its citizens (Uma, 2018), so upholding the human rights of those affected by communal violence is dependent on the actions of a fickle and colonial institution.¹¹ This is not to say that these laws are not essential, for these are all legal advancements that we "cannot not want" (Brown, 2000, p. 231), but rather that the justice dispensed under progressive laws isn't necessarily progressive as a result, for the police and the courts are still bound in a net of communal and caste ties, as well as being socialised into the same social prejudices as the rest of us (Chakravarti, 2005; Mangubhai, 2018).

Sexual Impunity

India gained its independence from the British in 1947, and India and Pakistan were born amongst brutal communal violence (Nandy, 2013). The women's movement in India – and indeed Pakistan and Bangladesh – began the task of cataloguing the violence experienced by women through the struggle for independence to the present day.¹² Their goal was to ensure that the "private secret of rape [was turned] into a public acknowledgement of the harm done to people" (Chakravarti, 2016, p. 29). This task, more often than not, came up against the ramifications that

¹⁰ I use the phrase 'victim/survivor' in line with Mangubhai (2016).

¹¹ Or, in rare cases, acts of vigilante justice. Take Manipur, for example, where a frustration with current judicial responses to rape cases has led to insurgent groups killing men accused of rape (for more, see Sitlhou, 2019).

¹² In the 71 years since Indian independence, the communal sexual violence committed under the purvey of AFSPA, the Emergency (1975-1977) declared by the then Prime Minister Indira Gandhi, the anti-Sikh riots of 1984, the 1992 destruction of the Babri Masjid and the 2002 communal violence in Gujarat, among many other atrocities, have all been faithfully catalogued and recorded by the women's movement, feminists and human rights activists (Kannabiran, 2005; Uma, 2018).

filing a first information report would have for a victim/survivor of sexual assault – particularly when the chances of a conviction are so slim.

The communal violence in Gujarat was a tipping point for India, and led to a widespread and mainstream acknowledgement of a deeply ingrained problem, the *impunity* of sexual violence (Chakravarti, 2016), and one need only look to anti-Muslim and patriarchal rhetoric used in recent Indian elections to see that things have not improved since then (Bhowmick, 2017; Taseer, 2019). The gang rape resulting in the infamous Nirbhaya case (of 2012) is a more recent example of sexual impunity, and has raised important questions:

- Why is the rape of a Dalit women not subject to the same moral outrage and protest as the Nirbhaya case?
- What of atrocities committed against Muslim women in Gujarat? And the violence enacted in the Northeast of India under AFSPA?
- Why was it that the Nirbhaya case was more horrific than any of the countless others that occur, quite literally, on a day to day basis?¹³

It is immediately apparent that not all citizens of India have equal value to the government or, to put it another way, not everyone has the power to ensure they get justice, for we know that “rights differentially empower different social groups”, another central paradox of human rights (Brown, 2000, p. 232). While the blatant preference often given to the heteronormative male subject is a serious ethical issue, one I cannot address in as much detail as I'd like, I must make the following clear. India is patriarchal – it has a culture of impunity, a ‘rape culture’ if you will. Yet I am determined to avoid falling into problematic cultural arguments that would position Indian society as anachronistic as a result of the treatment of women within its political borders. The culture of impunity that exists in India is the result of a corrupt political formation, of a colonial history that utilised an existing system of social stratification (caste) as a policing tool, as well as exacerbating it to suit the British strategy of ‘divide and rule’ (Christopher, 1988; Radhakrishna, 2001). The problem is not a religious or cultural one, but rather a politico-legal issue that must be considered in its historical and political context (Abu-Lughod, 2013). Impunity is not an ‘Indian’ problem, but rather a result of India’s history. The problem of impunity must not be subsumed into a discourse of linear progressions toward modernity but must rather interrogate colonial understandings of morality and justice.¹⁴

Gujarat, 2002: Honour as a Central Paradigm

The communal violence in Gujarat began with the burning of a railway carriage that was part of the Sabarmati Express, carrying Hindu *karsevaks* (religious volunteers) returning from

¹³ It is pertinent to note that these questions have also been politicised, an example being Sheila Dikshit, who claimed that the Nirbhaya case was ‘blown out of proportion’ by the media. Dikshit was the Chief Minister of Delhi in 2012, and said this as part of her campaign to run for the 2019 elections, denying all responsibility for the way in which the Nirbhaya case was handled (India Today Web Desk, 2019; TNN, 2019). This is an example of a woman’s complicity with the systemic problem of violence against women, and proves that having women in power doesn’t necessarily safeguard the women they govern.

¹⁴ The issue of colonial constructions of morality and justice speaks deeply to the discursively constructed relationship between the Global North and the Global South, particularly in terms of human rights and violations of the same. The idea of India as the ‘rape capital of the world’ must be interrogated through the same perspectives I am presenting in this essay, for sexual violence is as much a problem in the Global North as it is in India (Htun and Weldon, 2018).

Ayodhya.¹⁵ This resulted in Hindus exacting their revenge on the perceived perpetrators of this violence, the Muslim community, resulting in widespread violence which included the sexual violation of Muslim women (Hameed, 2005).¹⁶ Impugning communal honour through the bodies of women is a common theme in communal violence, but it is important to note that this violence can take a variety of forms. As an indication of this variety, I draw on Bourke et al.'s description of sexual violence in wartime, the various forms including “forced undressing, sexual torture, coerced fellatio, sexual enslavement, forced prostitution, enforced pregnancy, or vaginal and anal rape with the penis, fingers, hands and objects” (2019, p. xi). I believe that this description is important, as it draws our attention to the power-play involved, the use of shame and humiliation, and the heterogeneity that characterizes sexual violence.

In Gujarat we saw the policing of communal boundaries, enacted through the genocide of Muslim populations, as well as violence directed towards Hindu women who married outside their communities (Chakravarti, 2005).¹⁷ Endogamous practices mean that communal lines in India are only semi-permeable so, despite the introduction of the *Special Marriages Act* in 1954 (which legalised inter-caste and inter-religious marriages), it is still possible to identify the limits of ‘community’ (John, 2011; Vanita, 2011). The Gujarat State Government’s complicity in the events that unfolded, and the subsequent failure to get justice – evidenced by the election of the erstwhile Chief Minister of Gujarat to the office of Prime Minister in 2014, and his re-election in 2019 – has brought impunity to the forefront of feminist debates and lobbying surrounding sexual violence and rape culture in India (Geetha, 2016).

Women’s Bodies as Repositories of Communal Honour

In the case of the Gujarat riots, the coloniality of gender manifests itself through reducing women’s bodies to keepers of collective honour, and the resulting control of her sexuality, which is held ‘in trust’ by the male members of her family prior to her marriage, after which it becomes the property of her husband (Chakravarti, 2005; Mangubhai, 2016; Sen, 2005). Rape within a community, particularly marital rape, is framed within the age-old ‘men will be men’ adage, paired with the idea that ‘(certain) women ask for it’. Sexual violence perpetrated by men of one’s own community somehow becomes less violent than that by men from outside the community (Chakravarti, 2005; Geetha, 2016; Kikon, 2016). Here we see a divide between acts and identity, where only certain people who sexually assault women are rapists, where others have just committed the act of rape, something Siddharth Narrain terms a false dichotomy (2013).¹⁸ It is also a dangerous dichotomy, for it allows impunity in those who have raped, yet are never categorised as rapists. This creates a state of exception that essentialises either ‘side’ of a communal conflict (Kikon, 2016).

¹⁵ Ayodhya is the site of the infamous Ram Mandir (temple), and a serious point of contention in contemporary India.

¹⁶ I say ‘perceived’ because subsequent investigations into the Sabarmati incident have revealed evidence that contradicts the clear-cut narrative I have just provided. One thing to consider is that the carriage was found to have been burnt from the inside, not the outside, and the possibility that this was an accident has been ruled out. There was also an altercation between some of the *karsevaks* on the train and a few Muslim residents of Godhra at Godhra station. For a more detailed analysis, please see Bunsha (2002) and Mitta (2017).

¹⁷ It is important to note that while this simplification – that of communal violence between Hindus and Muslims – is needed to make sense of the situation, this framework doesn’t allow us to see the people who defied this simplification and helped and protected those who sat on the ‘other side’ of the conflict.

¹⁸ Narrain uses the idea of a ‘false dichotomy’ to interrogate the divide between men who have sex with men, and men who identify as homosexual, and does so in the context of Section 377 of the Indian Penal Code (which the Supreme Court insisted criminalized only the act, not the identity) (2013).

The logic, then, is no longer that sexual assault is wrong, but rather that only *certain* men have the right to perpetrate it upon *certain* women, and this 'right' is established through intersections of caste and religion.¹⁹ A lower caste woman's fight for dignity is often punished through further sexual violence, an effective policing mechanism that keeps lower castes marginalised and far from mechanisms of justice. Such 'punishments' are reminders of a woman's – and through her, her family and community's – place in society, reaffirming caste dominance (Mangubhai, 2016). Women are vessels for communal honour, but their own worth is also dependent on honour, for a dishonoured woman is dehumanised. Justice, then, is gendered – not all women have the right to bodily autonomy, and not all men are subject to legal sanction for their actions – and the symbolic dimensions of violence against women take precedence over individual experiences of that violation. We return to Arendt, and the centrality of citizenship to human rights, for if the state turns a blind eye, human rights discourse only takes a victim/survivor's search for justice so far, and the strategic mobilisation of shame makes it less likely that a victim/survivor would seek justice in the first place (ibid.).

Honour becomes an enforcement of power, and its maintenance (or attempts to reclaim it, as seen in Gujarat) a source of power, and women are often complicit in this upholding of honour (Baxi, 2005; Chakravarti, 2005; Rao, 2011; Sen, 2005; Welchman & Hossain, 2005). This then means that sexual violence in communal conflict, though highly gendered – with men as perpetrators and women as victims/survivors – is complicated by intersections of religion and caste. Women of the perpetrating community are often complicit, if not actively involved in the violence enacted, thus subsumed in a 'communal unconscious' (Baxi, 2005; Kannabiran, 2005; Nandy, 2013).

Sexual violence is a systemic problem – it cannot be divided neatly on gendered lines for not only are women complicit, but transgender and other gender-nonconforming individuals are rendered invisible in the current system. Sexual violence functions within a system of impunity, for communal politics permeate the government just as much as they do society, and sexual violence continues to function as a tool of (misguided) social justice. Not only is the social investment in the honour and dishonour of women and their communities violent, but it is exacerbated by caste and religious politics in India. Government drafts of the CVB are ineffective, not just because they don't adequately address the above, but also because there is nothing stopping the Bill from following in its predecessors' footsteps and being under-used.

Conclusion: Decolonizing Gender and Human Rights

In this essay I have argued that the Indian configuration of the coloniality of gender is patriarchal in nature. Male control over women's bodies in peacetime and the symbolic dimensions of female purity are exacerbated during times of communal violence. These symbolic dimensions often overshadow the individual trauma experienced by women who have been sexually assaulted, and result in a differential treatment of rapists, depending on their social position vis-à-vis the survivor/victim. Impunity goes hand-in-hand with the systemic nature of sexual violence, thus necessitating a reworking of human rights so as to ensure the inclusion of those currently overlooked.

¹⁹ The recent moral panic in India surrounding 'love jihad', or the marriage between a Muslim man and a Hindu woman, is symbolic of this anxiety surrounding the honour (and purity) of a woman, and through her, her community (Rao, 2011). For narratives surrounding the policing of inter-religious and inter-caste marriages see Chakravarti (2005: 312-316), and for narratives of sexual violence in Gujarat, 2002, please see Hameed (2005).

A dominant critique of the language and doing of human rights is its reliance on universalisms, but these are tools that cannot, unfortunately, be done without. Perhaps new universalisms, born from dialogue between countries and peoples – speaking *with* rather than speaking for (Alcoff, 1995) – and built on concepts such as dignity, rather than equality, may allow us to create a new and more equitable era of human rights. The Courts of Women speak of ‘difference grounded in dignity’ as an alternative to ‘equality grounded in sameness’ (Kumar, 2017, p. 123). Of course, the language of dignity and honour in human rights has a fraught history in and of itself, with slippage between the two (Bayefsky, 2013; Mangubhai, 2016), as well as the mobilisation of this slippage in South Asia with regard to honour killings, shaming discourses surrounding rape and so on (Sen, 2015).

The normative subject of human rights paired with the (patriarchal) coloniality of gender in India has rendered women second-class citizens at best, and women are in constant danger of being rendered *homo sacer* when in times of, and post, communal conflict. Honour, particularly the honour of women, is central to maintaining communal boundaries, rendering communal politics all the more powerful. Communal politics have proven stronger than the language of dignity in the past (Dutta, 2011), so Kumar’s proposition would necessitate decolonisation as part of a larger social justice project, one that demands deep structural change and the continued interruption of complicity (Tuck and Yang, 2012).

There is a need to break down the false division between state and society, for highlighting the intersections between the two is a step towards holding government officials responsible for violence committed under their watch. Honour must be displaced as a central paradigm of communal violence, and women and other victim/survivors must be at the forefront of justice for sexual violence. This decentring of honour ironically requires legislation to pay closer attention to its symbolic dimensions, so as to prevent the dehumanisation of women through their dishonouring. This would dismantle a system that works in favour of politicians who communalise the nation, for it would make boundaries between communities more porous, and ensure women have bodily autonomy and the right to make decisions – who and whether to marry, for example. It would also undermine a culture of sexual impunity, resulting from the (patriarchal) coloniality of gender. What I propose is not the repatriation of indigenous land but is nevertheless a demand for an ‘elsewhere’ (Tuck and Yang, 2012), one in which women are unquestionably both human and citizen.

The issue of impunity is all the more important today, with the rise of religious politics, the re-election of the BJP and, particularly related to the 2002 violence in Gujarat, the 2019 Supreme Court verdict on the Ayodhya dispute. It is likely that *karsevaks* will once again flood into Ayodhya to help build a new Ram Mandir. Five acres of land have also been given to the Sunni Waqf Board to build a mosque on. Fresh communal violence is, unfortunately, far from unthinkable in this stage of India’s history, and we are no more prepared for it than we were in 2002. This is a need, today more than ever, to sacrifice the futurity of the upper-caste Hindu man in favour of the futurity of the Indian citizen, in possession of a ‘dignity grounded in difference’. The question is, how?

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