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ARTICLE

Feminist lawyering, violence against women, and the politics of law reform in India: An interview with Flavia Agnes

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Abstract
The history of the women's movement's relationship to law in India cannot be written without acknowledging the pioneering work of activist, advocate, and scholar Flavia Agnes. Her own life's journey, engagement with the movement, involvement in women's rights litigation, feminist jurisprudential scholarship, and outreach work through Majlis (the organisation she co-founded) offer key insights into the kind of movement-based legal pedagogy, awareness, and training that the women's movement has fostered in India. Flavia's activism and scholarship over the last three decades have opened up sophisticated critiques of rape law and family law reform in India that have become foundational to the field of what can be called Indian feminist jurisprudence. This interview offers insights into the autobiographical, the feminist, and the scholarly convergences in Flavia's thinking and writing. She speaks with candour and conviction and introduces ways of thinking about feminist lawyering, violence against women, and the politics of law reform in India that are historically and theoretically grounded in an ethics of self-reflexivity and quotidian wisdom that the insulated nature of clinical legal education in India has much to learn from.

Keywords Feminist jurisprudence · Law reform · Clinical legal education · Violence against women · Access to justice

1 Introduction

Law schools tend to understand clinical legal education (CLE) as a practice-oriented pedagogical component of legal education where students apply their doctrinal knowledge of legal rules by interacting with real-life clients who are in need of legal

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counsel, because of their social marginalisation and structural impediments to access justice.[1] The idea of the 'clinical' in CLE is a reference to a pedagogical method, an institutional place, and an orientation. The method is interested in bringing theory and practice together at a place called the 'clinic' that is oriented towards thinking of law as a tool for social transformation.[2] CLE is used in legal education as a way to bridge the gaps between 'interpretation' and 'change'[3] and between 'law in books and law in action'.[4] Understood in this way, the intellectual origins of modern CLE in the common law world can be traced back, most prominently, to American Legal Realism and critical legal studies.[5]

CLE travelled to Indian law schools through the Ford Foundation's initiatives that began as early as the 1950s, aimed at modernising legal education in a newly independent country and making legal education responsive to the needs of a fledgeling democracy.[6] This import didn't necessarily carry the intellectual commitment to the jurisprudential traditions of CLE in the United States of America, but one that was driven more by philanthrocapitalist[7] motivations which over time have neoliberalised legal education in India through the emergence of an elite breed of both public and private law schools.[8] While on the one hand, this is a story of progressive reform that one can argue has indeed made legal education more justice-oriented, on the other hand, legal education in elite law schools has also become inaccessible to marginalised students and remains insulated from political engagement with people's struggles and movements.

Law school clinics of the Ford Foundation model have mostly operated with welfarist objectives that support or supplement the work of the state legal aid services, with very little commitment to consistency, structural change, and philosophical engagement.[9] As I see it, there are four broad troubling concerns regarding the way

[1] N Vasanthi, 'Strengthening Clinical Legal Education in India' (2012) 42(4) *Social Change* 443.

[2] Ibid.

[3] Karl Marx, 'Theses on Feuerbach' in Karl Marx (with Friedrich Engels), *The German Ideology* (Prometheus Books 1998) 571. The Eleventh Thesis on Feuerbach reads, 'Philosophers have hitherto only *interpreted* the world in various ways; the point is to *change* it.' (Emphasis in original).

[4] Roscoe Pound, 'Law in Books and Law in Action' (1910) 44(1) *American Law Review* 12.

[5] Stephen Wizner, 'The Law School Clinic: Legal Education in the Interests of Justice' (2002) 70(5) *Fordham Law Review* 1929.

[6] See Jayanth K Krishnan, 'Professor Kingsfield Goes to Delhi: American Academics, the Ford Foundation, and the Development of Legal Education in India' (2004) 46(4) *American Journal of Legal History* 447; Aubrey McCutcheon, 'University Legal Aid Clinics: A Growing International Presence with Manifold Benefits' in Mary McClymont and Stephen Golub (eds), *Many Roads to Justice: The Law-Related Work of Ford Foundation Grantees Around the World* (The Ford Foundation 2000).

[7] Philanthrocapitalism refers to charitable ventures started or funded by companies or business tycoons to 'legitimise' capitalism; see Carl Rhodes and Peter Bloom, 'The Trouble with Charitable Billionaires' (*The Guardian*, 24 May 2018). https://www.theguardian.com/news/2018/may/24/the-trouble-with-charitable-billionaires-philanthrocapitalism. Accessed 30 December 2020.

[8] See SP Sathe, 'Is a National Law School Necessary?' (1974) 9(39) *Economic and Political Weekly* 1643; Upendra Baxi, 'Enculturing Law? Some Unphilosophic Remarks' in Mathew John and Sitharamam Kakarala (eds), *Enculturing Law: New Agendas for Legal Pedagogy* (Tulika Books 2007).

[9] Frank S Bloch and Iqbal S Ishar, 'Legal Aid, Public Service and Clinical Legal Education: Future Directions from India and the United States' (1990) 12(1) *Michigan Journal of International Law* 92.

in which CLE programmes operate in Indian law schools. The first is with regard to relationship-building and consistency. Students come and go, but human rights work or collaboration with people's movements requires long-term engagement. This is a weak link in the kind of support that law schools can provide to the marginalised. They can allow access to a very passionate group of young lawyers in training, but it will always be on a rotational basis—by the time one group would have established a relationship with a community or movement, it will be time for them to move on. The second concern is with regard to the question of politics; legal aid work at universities tends to take place in an apolitical space. They speak of safeguarding rights by providing representation and consultation, but it is mostly modelled as charity or welfare work that does not confront the politics of marginalisation head-on, which includes the ways in which law schools themselves are complicit in reproducing hierarchy at institutional, pedagogical, and curricular levels.[10] Third, although CLE programs engage in outreach work by conducting legal awareness workshops with communities or movements, they seldom result in subverting the knowledge asymmetry that is at the foundation of experiences of inaccessibility to justice. CLE outreach work by law school clinics can structurally end up reinforcing ideas of expertise and might not adequately be able to produce sustainable peer educator networks within communities.[11] Fourth, CLE in India, both in its actual workings and scholarship, tends to operate with an unstated anti-intellectual commitment that romanticises practice as more valuable than theory rather than thinking about them as a co-constitutive praxis.

Working outside the institutionalised space of the law school clinic to advance a more politically committed and radically transformative form of CLE—though not under that nomenclature—has been the women's movement in India. Drawing on a range of political traditions—socialist, liberal, feminist, Marxist, Maoist, Ambedkarite, civil liberties, theological, *inter alia*—the women's movement's engagement with law and access to justice is a rich historical account of experiential learning that did not require foundations in elite legal training, state-supported legal aid, or philanthrocapitalism[12]—though it has not remained entirely immune from the depoliticising influences of 'NGOisation' and 'saffronisation'.[13] Through this engagement, the women's movement has created unique spaces of legal knowledge production of its own at the intersections of academic and activist work, of life and law,

[10] See generally, Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy: A Polemic Against the System* (New York University Press 2004). Some notable exceptions might be National Law University Delhi's Project 39A, and the collaborative project between a select set of National Law Schools called Parichay. An earlier instance would be Delhi University Campus Law Centre's poverty law clinics that worked at the Beggars' Courts in Delhi. See BB Pande, 'Rights of Beggars and Vagrants' (1986) 13(3/4) *India International Centre Quarterly* 115. It is necessary to acknowledge here the impressive legal aid work that law school graduates have carried out through organisations like the Alternative Law Forum, Bangalore, and the Jagdalpur Legal Aid Group.

[11] See generally, Dean Spade, 'For Those Considering Law School' (2010) 6 *Unbound* 111.

[12] Radha Kumar, *The History of Doing: An Illustrated Account of Movements for Women's Rights and Feminism in India, 1800–1990* (Kali for Women 1993).

[13] Srila Roy, 'The Indian Women's Movement: Within and Beyond NGOization' (2015) 10(1) *Journal of South Asian Development* 96; see generally, Tanika Sarkar and Urvashi Butalia (eds), *Women and the Hindu Right: A Collection of Essays* (Kali for Women 1995).

in the form of women's studies departments in universities,[14] support groups and civil society initiatives that are closely tied to community-based mobilisation and grassroots organising,[15] and several prototypes of women-centric and women-led non-state dispute settlement mechanisms in what are called *nari adalats* (women's courts) and women's *jamaats*.[16]

This history of the women's movement's relationship to law in India cannot be written without acknowledging the pioneering work of activist, advocate, and scholar Flavia Agnes. Her own life's journey, engagement with the movement, involvement in women's rights litigation, feminist jurisprudential scholarship, and outreach work through Majlis (the organisation she co-founded) offer key insights into the kind of movement-based legal pedagogy, awareness, and training that the women's movement has fostered in India. Flavia's activism and scholarship over the last three decades have opened up sophisticated critiques of rape law and family law reform in India that have become foundational to the field of what can be called Indian feminist jurisprudence. What is remarkable is that Flavia's oeuvre—that ought to be required reading for law students—has almost entirely been produced from outside the institutional space of the law school (though she has held visiting teaching positions at both elite and non-elite institutions and read for an MPhil at the National Law School of India University, Bangalore). Flavia's life and work are an embodiment of what has been called 'outsider jurisprudence'.[17] As Mari J Matsuda has written, 'Outsider scholars have recognised that their specific experiences and histories are relevant to jurisprudential inquiry… They reject the artificial bifurcation of thought and feeling. Their anger, their pain, their daily lives, and the histories of their people are relevant to the definition of justice.'[18]

I was introduced to Flavia's work during my student days in Pune through my engagements outside law school—with Muskaan, an anti-child sexual abuse campaign run by the women's documentation centre, Aalochana, and at the Women's Studies Centre at Pune University where I studied for a diploma. As a law student in the late 90s, I carried naïve righteous faith in the law's ability to change society for the better. Flavia's work was the first instance—later buttressed by that of Ratna Kapur and Brenda Cossman[19]—that not only introduced feminism to me but also revealed how even ostensibly progressive law reform can, in fact, be detrimental to women's rights. Flavia's writings carry a powerful lightness of touch that remains

[14] See generally, Mary E John (ed), *Women's Studies in India: A Reader* (Penguin Books India 2008).

[15] See generally, Poonam Kathuria and Abha Bhaiya, *Indian Feminisms: Individual and Collective Journeys* (Zubaan 2018).

[16] Sesha Kethineni, Murugan Srinivasan, and Suman Kakar, 'Combating Violence Against Women in India: *Nari Adalats* and Gender-Based Justice' (2016) 26(4) *Women and Criminal Justice* 281; Sylvia Vatuk, 'The "Women's Court" in India: An Alternative Dispute Resolution Body for Women in Distress' (2013) 45(1) *The Journal of Legal Pluralism and Unofficial Law* 76.

[17] Francisco Valdes, 'Outsider Jurisprudence, Critical Pedagogy and Social Justice Activism: Marking the Stirrings of Critical Legal Education' (2003) 10(1) *Asian Law Journal* 65.

[18] Mari J Matsuda, 'When the First Quail Calls: Multiple Consciousness as Jurisprudential Method' (1989) 11(1) *Women's Rights Law Reporter* 7, 8.

[19] See Ratna Kapoor and Brenda Cossman, *Subversive Sites: Feminist Engagements with Law in India* (SAGE 1996).

politically sharp without becoming ideologically overbearing. This is what enables her writings to seamlessly traverse the academic and the activist—her voice and vocabulary do not change, whether it is a contribution on marriage and women's rights for the Subaltern Studies Collective or if it is a pamphlet on feminist jurisprudence.[20] The understanding of both feminism and law in Flavia's thinking reveal their contingent foundations and thus enable an appreciation of their possibilities and perils. Her critique doesn't valorise or reject either.

For those not acquainted with Flavia Agnes' life and work, this interview will serve as an insight into the autobiographical, the feminist, and the scholarly convergences in her thinking and writing. Flavia speaks with candour and conviction and introduces ways of thinking about feminist lawyering, violence against women, and the politics of law reform in India that are historically and theoretically grounded in an ethics of self-reflexivity and quotidian wisdom that the insulated nature of CLE in India has much to learn from.

This interview was conducted through the months of November and December 2020 over several email exchanges. Both Flavia and I have annotated the interview with references to enable the reader to follow up on arguments, ideas, incidents, and events discussed.

2 Interview

Oishik Sircar (OS): *For several years, as a women's rights lawyer, you have worked from within the world of activism. Parallelly, you have taught at universities, been part of scholarly conversations, and your writings carry feminist theoretical insights that have influenced critical and feminist legal scholarship in India. Do you think your work aims to bridge the relationship between legal scholarship and activism? How did you come to occupy this interstitial space for yourself between theory and practice, as conventionally understood?*

Flavia Agnes (FA): Let me share some insights into my background. I don't belong to the world of academics. When I came into the women's movement in the 1980s, I was a homemaker with only very basic education. I had not worked since after getting married. I could connect with the issues that the women's movement was engaged in because of my own experience of raising three children in a violent marriage. After I entered the movement around the issue of rape and domestic violence, it became obvious to me that I should pursue my graduation and get a degree in law so that I can be better equipped to guide and support women facing these experiences. Fortunately, I was fluent in English, though my medium of instruction in school was Kannada, the language of the state.

I began writing in the 1980s. I mostly wrote informal articles which were published in newsletters of NGOs like the Women's Centre, in magazines like *Femina*

[20] Flavia Agnes, 'Women, Marriage, and the Subordination of Rights' in Partha Chatterjee and Pradeep Jeganathan (eds), *Community, Gender and Violence: Subaltern Studies XI* (Permanent Black 2000); Flavia Agnes, *Feminist Jurisprudence: Contemporary Concerns* (Majlis 2003).

and *Eve's Weekly*, and in journals like *Manushi* and *Lawyers Collective*. I wrote mainly around issues taken up by the women's movement, like rape and dowry death, violence against women in general, and also around personal law reform, more specifically Christian law reform.[21] They were written on a typewriter and I don't readily have filed copies so can't provide exact references. My autobiography was also written in this period. It is the writing process that made me realise that I occupy a vantage of approaching the subjects from my own lived experiences and through my exposure to the women's movement. It came to me naturally to bridge the gap between legal scholarship and activism. It was not a planned strategy, but the only way I could contribute to legal scholarship. Initially, I used to be quite embarrassed that my writing is not sufficiently 'academic'. Later, I realised that my writing has a unique edge of weaving together personal experience and academic scholarship without frills and fancies. It would resonate with a wide section of readers—homemakers, young students, activists. So, this way of writing became integral to my style, and I have continued with it.

OS: *In your powerful autobiography* My Story, Our Story… of Rebuilding Broken Lives,[22] *you write about the personal circumstances that were the motivation behind your decision to become a lawyer and continue to work in the area of women's rights, family law, and domestic violence. For a new generation of law students and feminist lawyers who might not be familiar with your autobiography, will you offer a brief recollection of that journey? Was it difficult to write the book and put it into the world? You had objections to the way in which Rustom Bharucha adapted it for the stage. I ask this question not only because it is an inspiring journey, but also to consider the ways in which feminist autobiographies can be understood as valuable sources of legal knowledge—something that Indian legal education has paid scant attention to (except when it is possibly the autobiography of a male legal luminary).*[23]

FA: My autobiography was first brought out as an informal publication by the Women's Centre, one of the first counselling and support centres which I, along with a few other feminist friends, had set up in 1981. At that time, I was still struggling to cope with all the challenges at a personal level. In 1984, we had organised a seminar inviting activists, NGOs, lawyers, and social workers from older, traditional institutions which run shelter homes for destitute women. The aim was to explore the support structures that are necessary to help women to make the transition from victim to survivor. The social workers from these institutions were very patronising. They referred to women facing violence in their marriages as 'these women', as though there are certain fixed attributes attached to being a victim of domestic violence. My autobiography was written to break this stereotypical approach.

[21] One of Flavia Agnes' first activist-academic pieces were published as a book chapter in Rehana Ghadially (ed) *Women in Indian Society: A Reader* (Sage 1988).

[22] Flavia Agnes, *My Story, Our Story… of Rebuilding Broken Lives* (Women's Centre 1984).

[23] For a critical take on the genre of feminist autobiographical or testimonial accounts of violence, see Tanya Serisier, *Speaking Out: Feminism, Rape and Narrative Politics* (Palgrave Macmillan 2018).

As the secretary of the Women's Centre, I was meeting many battered women, and in the process of 'counselling' them, was drawing from my own experience. So, I thought of sharing my story with them. It was meant to be a story that can offer a real-life example of how they too can change the course of their life. The book has never been published formally through a publisher, but has travelled through the grapevine far and wide, and has become my most popular work. Several women's groups took on the task of translating it into regional languages and distributing copies to women in distress to help them chart a new course in their lives. Eventually, it became an important document in the women's movement. Every time we ran out of copies, it was reprinted by some group or other. I had never imagined this afterlife for the book.

Thinking about the book now from a somewhat objective distance, I believe it contains a very honest description of the feeling of being trapped in a violent marriage and the struggles to break free. It captures my struggles at various levels—raising three children within a violent marriage, the leaving and adjusting to the lowering of my economic status, the feeling of being let down by close friends, not knowing whether the choices one had made on behalf of the children were the right choices, worrying about how they would judge me later when they grow up, whether they would blame me for making these difficult choices on their behalf, whether they would be left with deep scars as they stood by me and provided me support through all these trials and tribulations, the struggle to arrive at a delicate balance between being a single parent and a working woman, the frightening feeling of being solely responsible for all the decisions, the humiliation of starting as a junior lawyer at the age of 40, taking on controversial positions within the women's movement, the feeling of despair, the emptiness. While recounting and recapturing a past, one has to relive those painful moments which were very difficult to overcome. It is not easy to lay bare your life to all and sundry, giving strangers a peep into your innermost thoughts and feelings and making public your weaknesses and failures. When new interns come to work at Majlis—the legal and cultural resource centre that I co-founded in 1991—they are sometimes given this book to read by my colleagues. I cringe when I enter the office and see a young 20-year-old reading it. While for them it is just a human-interest story, for me, it is a narration of the very painful phase of my life.

I vividly remember a public meeting in Lucknow where the Hindi translation of the book, titled *Parvaaz*, was being released.[24] Some feminists from Delhi and Uttar Pradesh were present at the event. The *shamiana* was full. The translator had chosen a terribly painful and humiliating passage to read out loud to the entire gathering. He was proudly showing off his skills of translating with all the emotions from the original, faithfully recaptured. He meant well. There was pin-drop silence as everyone was totally engrossed. Sitting on the podium, I was terribly hurting inside but did not know how to express my feelings. Sensing my discomfort, a feminist friend

[24] Flavia Agnes, *Parvaaz*: *Tooti-Bikhri Zindagi ko Sanvarne ki Meri Kahani, Hum Sabki Kahani* (Nasiruddin Haider Khan tr, Daanish 2008).

from Delhi raised objections. I was most grateful to her. But the translator was surprised. He could not understand why she was objecting.

For me, it was a great learning moment. I realised that having written about my experience and placed it in the public domain, it had gained a life of its own. It was no longer just my story. It was a collective experience for thousands of women. I had only authored it, but I do not own it, do not have any control over it, and that I should learn to distance myself from it and let it flow its own course. But despite this realisation, it is still very difficult to practice this distancing from my own life's story. It is for this same reason that I had objected to the adaptation of the book for the stage by the playwright Rustom Bharucha. At the time—might have been in the 90s, not very sure—the book was still very close to me. It is one thing to let people read it in the private and intimate space of their homes, and a totally different experience to see it being enacted publicly on stage. Well, later though, there have been television serials and documentary films based on the book and my life, but by then I had learnt to take a distance.

I have never considered the question whether feminist autobiographies can be understood as a legitimate source of legal knowledge. There are many such writings today, and they do form a veritable resource for a new type of literature, but I guess they should also form a good resource for teaching and, by extension, healing.[25] I think there is a strong case to be made for considering feminist autobiographical work as pedagogical texts for legal education. If literature students can study autobiographies as literary texts, why can't law students study them as legal texts?

OS: *You've been active in what can be referred to as the Indian women's movement for close to four decades. Attending to the connection between law, patriarchy, and women's lived conditions has been one of the key engagements of the movement. Demanding and working towards law reform was and continues to be the movement's foremost agenda. In your influential book* State, Gender and the Rhetoric of Law Reform,[26] *you offered a critique of how the consequences of reform have been derailed or backfired. Your argument was particularly compelling with regard to the 1983 rape law reforms that came after the protests against the Mathura judgment of the Supreme Court.*[27] *Can you give us a sense of what made you advance such an argument? Do you hold the same position with regard to the 2013 criminal law amendments related to sexual violence against women as well?*[28]

[25] See generally, Patricia J Williams, *The Alchemy of Race and Rights: Diary of a Law Professor* (Harvard University Press 1992); Uddipana Goswami, 'How to Heal Through Life Writing' (*Psyche*, 28 October 2020). https://psyche.co/guides/to-start-to-heal-from-trauma-in-your-life-write-about-it. Accessed 28 December 2020.

[26] Flavia Agnes, *State, Gender and the Rhetoric of Law Reform* (Research Centre for Women's Studies, SNDT Women's University 1995).

[27] See generally, Flavia Agnes, 'Women's Rights and Legislative Reforms: An Overview' (2008) 36(2) *International Journal of Legal Information* 265; Debolina Dutta, 'Another Story of the Open Letter: An Inheritance of Relationship-Making' (2018) 9(2) *Jindal Global Law Review* 181.

[28] See generally, Preeti Pratishruti Dash , 'Rape Adjudication in India in the Aftermath of Criminal Law Amendment Act, 2013: Findings from Trial Courts of Delhi' (2020) 4(2) *Indian Law Review* 244; Debolina Dutta and Oishik Sircar, 'India's Winter of Discontent: Some Feminist Dilemmas in the Wake of a Rape' (2013) 39(1) *Feminist Studies* 293.

FA: An earlier version of this book was published as an article in the *Economic and Political Weekly* in 1992.[29] I felt that since the 1983 amendments to the rape law, the demands of the women's movement, as well as state responses, fell into a familiar pattern that did not monitor and assess the impact of these legislative changes. I have explained this elaborately that every issue that was raised was tagged with the demand for stringent punishment and weakened the strict procedural rigours of criminal law. Enhanced punishments strengthen the state, but they don't necessarily empower women. Historically, stringent laws have never proved to be a deterrent. There was also a premise that a rape is a rape, and each case should warrant stringent punishment. This logic also permeated through other issues such as 'dowry death',[30] widow immolation etc. The government also became very familiar with this pattern and as I had written, 'If oppression could be tackled by passing laws, then this decade would be adjudged a golden period for Indian women, when protective laws were offered on a platter.'[31] My concern was that there was very little attention paid to the procedural aspects of a rape trial and it dealt only with superficial issues, and the answer was always located within the realm of stringent punishment, and this approach would not yield positive results—as continues to be the case.

I do have a similar criticism for the 2013 amendments, but my concerns are not identical. For one, the report by the Justice Verma Committee viewed the issue in a wider and holistic manner, but the major reforms that were brought in were aimed at broadening the definition of rape beyond the narrow framework of penetrative sex.[32] This change was already brought in through the Protection of Children from Sexual Offences (POCSO) Act, 2012, which came into effect on November 14, 2012, around a month prior to Jyoti Singh Pandey's gang rape and murder.[33] But the POCSO Act has many procedural safeguards which the rape law amendments of 2013 lack.[34] Hence, in the end, it was brought down only to widening the definition and prescribing even more stringent punishment.

[29] Flavia Agnes, 'Protecting Women Against Violence? Review of a Decade of Legislation, 1980–89' (1992) 27(17) *Economic and Political Weekly* WS-19.

[30] s 304B (1) of the Indian Penal Code, 1860 (IPC) defines 'dowry death' in the following manner – 'Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.'

[31] Agnes, 'Protecting Women Against Violence' (n 29).

[32] Justice JS Verma (Retd) and others, *Report of the Committee on Amendments to Criminal Law* (2013) 70–118. https://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf. Accessed 28 December 2020.

[33] Jyoti Singh Pandey, labelled Nirbhaya or 'fearless' by the Indian media, was the woman whose brutal gang-rape and murder in Delhi in December 2012 lead to widespread protests and numerous criminal law reforms in 2013; see TOI-Online, 'What is Nirbhaya Case? (*The Times of India*, 18 December 2019). https://timesofindia.indiatimes.com/india/what-is-nirbhaya-case/articleshow/72868430.cms. Accessed 30 December 2020.

[34] Some of the child-friendly provisions under the POCSO Act include guidelines to the police (ss 19, 24), appointment of a support person (ss 38, 40), protection during medical examination and during the trial (ss 27, 36–37).

Though feminists are opposed to the death penalty, they were in favour of extending life imprisonment from 14 years to the remainder of the entire life of a youth offender who might be only 19-years-old. And here, the class position of the accused is of paramount importance. It is the accused persons from the lower classes, generally represented by legal aid lawyers, who will be convicted and awarded such stringent punishment. If you study the judgments from 2013 to 2020, it will become obvious that neither has the stringent punishment acted as a deterrent nor positively impacted the rape trials to protect the dignity of the victim, though some cosmetic changes have been made.

I have also been severely critical of feminist law reform demands that brought in amendments to the Indian Penal Code (IPC), 1860, to deal with 'dowry violence' and 'dowry death', and the Dowry Prohibition Act, 1961. The first problem was that dowry-related violence was placed on a pedestal as compared to all other forms of domestic violence. Also, the legal provision did not take into consideration the social norms of giving and taking dowry. Only when the woman dies does the issue of dowry get raised as a dowry death issue.[35] I also feel that parents who marry off their daughter and force her to stay on within the violent marriage until she dies are not made culpable and hence the social norm of dowry giving and taking and lavish weddings continues. It becomes an avenue for spending black money. So, there are larger societal concerns involved here and seldom have we looked at them as a campaign issue.

Also, consider what happens when a woman dies an 'unnatural' death—it is either murder or abetment to suicide. By naming it as 'dowry death', we are discounting all the deaths that occur due to the violence that a husband and in-laws inflict upon a woman and the myriad ways in which a woman is humiliated and driven to suicide. So, this naming has been extremely shortsighted. I always compare it to my own situation. If I had committed suicide (on many occasions I was very close to it) how would it be named since dowry was not an issue? In fact, all the conventional triggers were absent in my situation—dowry demand, mother-in-law problem, alcoholism or work-related frustrations. And I was sure that thousands of women are experiencing violence in situations similar to mine.

OS: *You have for long held a view—some would think controversially—that the criminalisation of marital rape would mostly be a symbolic victory that will do little to secure the economic and social rights of married women. You had made this argument compellingly—to the dismay of many in the audience—at the First Rituparno Ghosh Memorial Lecture that you delivered in Kolkata in 2014.*[36] *This view*

[35] Flavia Agnes, 'Dowry Murders and Suicides in Judicial Discourse – Interrogating Women's Agency' in, Nirmala Banerjee, Samita Sen, and Nandita Dhawan (eds), *Mapping the Field: Gender Relations in Contemporary India*, vol 2 (Stree 2013).

[36] Pratyay Gender Trust, 'First Annual Rituparno Ghosh Memorial Lecture by Flavia Agnes' (6 September 2014). https://www.youtube.com/watch?v=OO5KAabT2ew. Accessed 28 December 2020.

finds resonances with the kind of critiques advanced at carceral feminism[37] *by a younger generation of Indian feminist legal scholars like Prabha Kotiswaran.*[38] *But you have been making this argument for a long time now—even before anyone in India possibly knew about this expression called carceral feminism. Can you offer an elaboration of this argument?*

FA: Well, it is a great consolation that a younger generation of Indian feminist legal scholars, like Prabha Kotiswaran, have advanced arguments against increased and severe forms of criminalisation and incarceration. I have been opposing this demand for a very long time now. My reasons for opposing this demand are similar to my opposing special legal provisions for dowry-related violence. My concern is with placing on a pedestal one type of violence over other types of brutal violence when the survivor does not categorise the violence she is subjected to in this manner.

My opposition to criminalising marital rape is with regard to the manner in which rape is viewed in society. Rather than sexual lust, the reason for rape is to establish power and dominance and to humiliate the victim and make her unfit for marriage. It is for this reason that many times, a rape victim commits suicide after an incident of rape because of the stigma and public humiliation that the act of rape causes her. She is treated as a soiled object, unfit for marriage. Even judges, at times, make similar comments in judgments which can be considered as progressive, like providing a higher amount as compensation since it would be difficult to get her married as no one would be ready to marry her, and the parents would have to pay a higher amount as dowry.[39]

If this is the way society views rape as 'stigma' rendering the girl unfit for marriage, then logically rape by husband does not cause similar stigma. When we are talking about marital rape, we are not talking merely about 'sexual penetration' but the violence caused through a forcible sexual act. So, what we are opposing is violence rather than the sexual intercourse.

I believe that rape originated as a patriarchal formulation.[40] It is what strangers do to 'our' women. Hence sexual violation by a husband or father was not considered

[37] Carceral feminism is a strand of the feminist movement that seeks the punitive power of the state, through strict criminal laws, to remedy patriarchal violence; see Alex Press, '#MeToo Must Avoid Carceral Feminism' (*Vox*, 1 February 2018). https://www.vox.com/the-big-idea/2018/2/1/16952744/me-too-larry-nassar-judge-aquilina-feminism. Accessed 30 December 2020.

[38] Prabha Kotiswaran, 'The Carceral Politics of Sexual Violence' (2nd Annual Lecture in Criminal Law, Project 39A, National Law University Delhi, 22 November 2019). https://drive.google.com/file/d/1dxP1LtF66m-lyNSVwrOdU-2ds5E-tcmK/view. Accessed 28 December 2020; Oishik Sircar, 'The Happy and Anxious Lives of (Feminist) Legal Scholarship: An Interview with Prabha Kotiswaran' (2019) 10(2) *Jindal Global Law Review* 303.

[39] See generally, Poorvi Gupta, 'How India's Rape-Survivors End Up Marrying Their Rapists' (*article 14*, 25 August 2020). https://www.article-14.com/post/how-india-s-rape-survivors-end-up-marrying-their-rapists#:~:text=New%20Delhi%3A%20On%2016%20June,impregnated%20when%20she%20was%2016.&text=Vadakkumchery's%20plea%2C%20pending%20in%20the,Court%2C%20is%20not%20without%20precedent. Accessed 28 December 2020.

[40] See generally, Jonna Bourke, *Rape: A History from 1860 to the Present Day* (Virago 2007); Mithu Sanyal, *Rape: From Lucretia to #MeToo* (Verso 2019).

rape. Under Mosaic law, an eye for an eye and a life for a life extended also to a rape for a rape.[41] So a rape by a husband does not cause similar stigma as a rape by a person other than the husband. In fact, Mrinal Satish in his book—while analysing punishment for rape in reported judgments—has brought out the fact that the courts make a distinction between a survivor who is a married woman to the one who is single, insinuating that if a woman is married at the time of the rape, it becomes a less serious offence.[42]

We can interrogate this issue from another perspective—in India, a large number of girls are married off before they reach adolescence and for most girls, sexual intercourse on the first night turns out to be rape. But girls are socialised into accepting it as a norm and gradually learn to passively submit to sexual demands by the husband. Which women are we talking about when we are thinking about criminalising marital rape? In such a situation placing one type of violence on a pedestal ends up undermining all other types of violence married women are subjected to, and we would be endorsing a populist patriarchal framing that rape is worse than death, or that rape is the ultimate humiliation.

Instead of forcible sexual penetration, what if the husband breaks her skull, damages her cornea, fractures her spine or causes permanent brain damage—should these violations be considered as violence of a lesser degree than the forcible sexual penetration by the husband? As a survivor of domestic violence, I would consider not. At times, even economic violence could be worse than an act of forcible sexual penetration. For instance, if the husband refuses to give money for payment of school fees due to which the child misses her annual exams. It depends on what each woman perceives as a graver violation. I feel that only a woman who has not been subjected to a range of marital violence could make this demand and such a demand feeds into the patriarchal presumption that rape is the worst type of violence that a married woman is subjected to. I feel it is better to have punishment commensurate with the injuries and violation that is caused by her husband rather than have a blanket view that all sexual violence has a similar impact on all married women.

There is also another aspect to this. Several husbands humiliate their wives by not having sex with her, because they find her repulsive. There are husbands who threaten their wives that if she does not have sex, he will rape their daughter or he can bring home an attractive young woman and have sex with her in her presence. In marriage, all this can be considered as sexual violence. The power a husband has over his wife is ultimate and is far greater than what a rapist has upon the survivor. As the Protection of Women from Domestic Violence Act, 2005, prescribes—it is physical, emotional, sexual, and economic, and it forms a continuum of violence within marriage. So, before making a demand for criminalising marital rape, we need to understand the complexity of the problem.

[41] See generally, Stephen P Pistono, 'Susan Brownmiller and the History of Rape' (1987) 14(3) *Women's Studies* 265.

[42] Mrinal Satish, *Discretion, Discrimination and the Rule of Law: Reforming Rape Sentencing in India* (Cambridge University Press 2017) 74–75.

OS: *You have also been vociferous against the death penalty for rape and wrote some very incisive opinion pieces*[43] *in the wake of the Shakti Mills case*[44] *on this. There is a broader consensus against capital punishment in human rights discourse.*[45] *Is your opposition to it one that derives from such a civil liberty-based argument—that the state has no right to take away anyone's life—or does the opposition to the call for death penalty for rape require an emphasis on other aspects of the relationship between the state's punitive powers, patriarchy, and the regulation of women's sexuality? Or possibly a combination of both?*

FA: I think it is both. There are many in the women's movement who are also part of the civil liberties groups where they oppose the death penalty. You cannot have this dual approach, one as a human rights activist and the other as women's rights activist. I find this approach rather strange. We have to develop political clarity so that our stand does not change depending upon which forum we are representing. I am also wary of enhancing state power to protect women as though the state is a benevolent patriarch.[46] I feel this is a dangerous position to hold and it will boomerang on women and will be a potent weapon in the hands of the state to curb female sexuality as we saw in the Bar Dancers' case or the demand to decriminalise sex work and alternate sexual orientation.[47] Where women are concerned, the state draws a line between the so-called 'good' woman who needs protection and the 'bad' woman who needs to be penalised as she does not fit into the 'good' woman category. There is also a class issue as we have observed in the 'Nirbhaya' case where protests erupted in almost every major city where the demand was for

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[43] Audrey D'Mello, Flavia Agnes, and Persis Sidhva, 'The Making of a High Profile Rape Trial' (2014) 49(29) *Economic and Political Weekly* 37; Flavia Agnes, 'Opinion: Why I Oppose Death for Rapists' (*Mumbai Mirror*, 5 April 2014). https://mumbaimirror.indiatimes.com/mumbai/cover-story/opinion-why-i-oppose-death-for-rapists/articleshow/33250078.cms. Accessed 28 December 2020; Flavia Agnes, 'Not by a Stricter Law Alone' (*The Indian Express*, 27 October 2015). https://indianexpress.com/article/opinion/columns/not-by-a-stricter-law-alone/. Accessed 28 December 2020.

[44] In 2013, a photo-journalist, among several other women, was gang-raped in Mumbai in what came to be dubbed as the 'Shakti Mills case' by the media on the basis of the site of the incident; see Rashmi Rajput and Tejas Mehta, 'Mumbai Photojournalist Gang-Raped: One Arrested, Four Accused Identified, Say Police' (*NDTV*, 23 August 2013). https://www.ndtv.com/mumbai-news/mumbai-photojournalist-gang-raped-one-arrested-four-accused-identified-say-police-532517. Accessed 30 December 2020; India Today Online, 'I Too Was Gangraped by the Same Men at Shakti Mills, Says 19-yr-old Ragpicker' (*India Today*, 3 September 2013). https://www.indiatoday.in/india/north/story/ragpicker-alleges-she-was-gangraped-by-same-men-shakti-mills-photojournalist-209713-2013-09-03. Accessed 18 January 2021.

[45] See, for instance, Manasi Phadke, 'The Maharashtra Shakti Bill on Crimes Against Women, Children & Why It's Called Draconian' (*The Print*, 17 December 2020). https://theprint.in/theprint-essential/the-maharashtra-shakti-bill-on-crimes-against-women-children-why-its-called-draconian/567660/. Accessed 31 December 2020.

[46] Jahnavi Sen, 'Interview: Why Harsher Criminal Laws Won't Make Sexual Violence Go Away' (*The Wire*, 21 November 2019). https://thewire.in/law/prabha-kotiswaran-sexual-violence-human-trafficking. Accessed 28 December 2020.

[47] See generally, Flavia Agnes, 'Hypocritical Morality' *Manushi* (October 2005). http://www.indiatogether.org/manushi/issue149/bardance.htm. Accessed 28 December 2020; Prabha Kotiswaran, 'How Did We Get Here? Or a Short History of the 2018 Trafficking Bill' (*EPW Engage*, 21 July 2018). https://www.epw.in/engage/article/how-did-we-get-here-or-short-history. Accessed 28 December 2020; LiveLaw Research Team, 'Decriminalising S.377 Will Not End Homophobia & Transphobia: Interview with Oishik Sircar & Dipika Jain' (*LiveLaw.in*, 22 December 2016). https://www.livelaw.in/decriminalising-s-377-will-not-end-homophobia-transphobia-interview-with-oishik-sircar-dipika-jain/. Accessed 28 December 2020.

the death penalty. While there was outrage in the wake of the Hathras rape case, it was nowhere close to the 2012 protests in scale.[48] Rape of Dalit women and girls by upper caste men is treated as less of a crime, and in contrast, those who are awarded death penalty in most cases of rape belong to the lower caste and class.

OS: *You were closely involved with the Bar Dancers' case*[49] *as an advocate. In that context, what do you think were the challenges that you faced as a feminist lawyer in strategising against the law*[50] *that the Maharashtra government wanted to bring in to ban bar dancers?*

FA: The glaring contradiction in the Bar Dancers' case is that those who were demanding a ban as well as those opposing it were both women's groups. In fact, the women's movement was divided on this issue with conservative groups as well as the child rights groups using protectionist arguments. Those who were supporting the dancers' right to dance in bars and earn a living were highlighting the need to view bar dancers as working women who were heads of their households.[51] These young women belonged to traditional dancing communities, and dancing was the only skill they possessed. As traditional feudal structures in small cities broke down, they were reduced to penury and moved to cities in search of livelihood options. They would have got into sex work as they possessed no other skills and the introduction of 'item numbers' in Bollywood cinema provided them with an ideal opportunity where they could earn decent amounts through dancing in bars on these film songs. While the conservative groups, as well as the state, viewed them as 'trafficked women' who were devoid of any choice and who were in need of rescue, for the newer women's organisations, they were merely 'working women' making the best of the situation they were thrown into, to earn their livelihood.[52] Within the conservative atmosphere of the formal courts, those who were supporting the women's right to dance stayed away from using the sexual, erotic, and sex appeal arguments because one felt the courts might not view the cause of the girls sympathetically. So, we even got a male senior counsel with a very pleasing court presence to argue the case, and I played the role of assisting him. We didn't want to take any risks as a large number of girls depended upon us to win the case for them as it was

[48] Jyotsna Siddharth, 'We Must Call It What It Is: Caste-Based Violence' (*Akademi Mag*, 1 October 2020). https://www.akademimag.com/caste-based-violence-hathras. Accessed 28 December 2020; Sowjanya Tamalapakula, 'Dear Upper Caste Indians, Hathras is Not Another Nirbhaya. It is a Khairlanji' (*The Print*; 24 October 2020). https://theprint.in/opinion/upper-caste-indians-hathras-rape-murder-nirbhaya-case-khairlanji-massacre/529981/. Accessed 30 December 2020; Skye Arundhati Thomas, 'Caste Atrocities' (*LRB Blog*, 21 December 2020). https://www.lrb.co.uk/blog/2020/december/caste-atrocities. Accessed 31 December 2020.

[49] *Indian Hotel and Restaurant Association (AHAR) and Ors. vs. The State of Maharashtra and Ors.* (2019) 3 SCC 429; Flavia Agnes, 'SC Ruling Half the Battle Won for Bar Dancers' (*The Tribune*, 22 January 2019). https://www.tribuneindia.com/news/archive/comment/sc-ruling-half-the-battle-won-for-bar-dancers-717332. Accessed 30 December. 2020

[50] The Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of Dignity of Women (Working Therein) Act, 2016.

[51] See generally, Prabha Kotiswaran, 'Labours in Vice or Virtue? Neo-liberalism, Sexual Commerce, and the Case of Indian Bar Dancing' (2010) 37(1) *Journal of Law and Society* 105.

[52] Flavia Agnes, 'The Bar Dancer and the Trafficked Migrant: Globalisation and Subaltern Existence' in Gayle Letherby and others (eds), *Sex as Crime?* (Willan 2008).

a matter of their livelihood. In hindsight, I feel that we failed to foreground the right of the girls to earn a livelihood by providing sexual and erotic services, which is a great loss to feminism. In fact, the girls would constantly ask us, do you realise what it is to dance for six to eight hours every night, oozing sexual charm so that the men will part with their hard-earned money only to watch us dancing? The girls knew very well what their talents were and they felt we, with our conservative middle-class values, could not grasp it.[53]

OS: *Despite your critique of law reform for securing women's rights, what made you set up the legal research and resource centre Majlis in Bombay in 1991? If enabling access to justice for women—particularly for criminal and family law litigation—was the primary objective for Majlis, how was the idea of access understood by you then especially in the context of state-supported legal aid? Was justice mostly understood as a matter of constitutional entitlement alone, or was it also imbued with a feminist imagination? If so, what was that?*

FA: The legal wing of Majlis was started to provide access to justice to women in general and to those from the marginalised sections in particular. The aim was to constantly push the boundaries of law through innovative legal strategies and to demystify laws and to create awareness about rights. A good example of the coordination between the legal and cultural wings of Majlis are the legal spots, *Kya Aapko Pata Hai*? (Do you know?), aimed at creating awareness about rights.[54] In the research we had conducted, it was brought to our notice that the legal aid provided by the state was of poor quality and the women litigants had lost faith in it. So, the Majlis legal wing was created to fill this void with a special focus of women's rights.

I believe that the women's movement has always made demands for law reform but has seldom systematically followed up cases to analyse how the law reform has actually played out on the ground. While it has become the 'in' thing to ask for law reform, to actually follow up cases in trial courts is considered a boring job. Unless we are engaged with the reformed law with a feminist imagination and see its potential for protecting women, our campaign for law reforms becomes hollow. If we do not bring to the notice of the higher authorities the irregularities and violations, they go on unchecked. So, we view the litigation work as a laboratory where we can watch very closely what goes wrong, and our effort is to set the system right. For instance, our article on the Shakti Mills rape trial, elaborately describing the process, could be written only because we had closely followed up this case. What we were able to bring out was the class bias that is so glaring—one victim was middle class and the other was lower middle class. The five accused were poor, lumpen elements from the nearby slums.[55] It was a case which the state considered as the top priority and paid great attention to minute details. Yet one cannot secure a conviction on a pre-written script where due process is not followed.

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[53] Flavia Agnes, 'State Control and Sexual Morality: The Case of the Bar Dancers of Mumbai' in John and Kakarala, *Enculturing Law* (n 8).

[54] http://majlislaw.com/en/top/resource-centre/films/kya-apko-pata-hai. Accessed 28 December 2020.

[55] D'Mello, Agnes, and Sidhva, 'The Making of a High Profile Rape Trial' (n 43).

OS: *The early 1990s was a particularly turbulent time for India in general, and especially for Bombay in the wake of the demolition of the Babri Masjid in 1992. This was preceded by the liberalisation of the Indian economy and an emerging upper-caste voice against the Mandal Commission report's implementation of reservation policies.*[56] *These three landmark moments collectively dealt a heavy blow on the lives of India's marginalised and especially on poor Muslim and Dalit women. Through this period, your work started addressing questions of secularism in India through a specific focus on the Uniform Civil Code (UCC) debates—which became the topic of your MPhil thesis (later published as* Law and Gender Inequality*).* [57] *What prompted this attention? What was the thinking on the UCC in secular and feminist circles at that time and what was your specific position?*

FA: I was not personally involved in the mobilisations around Mandal and the issues arising out of the liberalisation of the Indian economy. But the riots which broke out in Bombay after the demolition of the Babri Masjid[58] affected us a great deal and brought about a change in my political perspective. Before this, Majlis had two wings—the women's rights litigation and the interdisciplinary cultural forum. After the riots, secularism also became an important agenda for both the wings. Earlier, gender was the lens through which I would analyse current events, but now gender and religious identity became inseparable concerns.[59] The situation was far more complex than what the popular slogan of the women's movement—*hum sab ek hai* (we are all united)—indicated. We needed to develop newer parameters to take into account the emerging political situation.

During the *Shahbano* case,[60] we were fighting against the Muslim fundamental religious leadership.[61] For instance, the demand for a UCC was endorsed both by the women's movement and the Hindu right-wing political parties. But after the Bombay riots, there was a paradigm shift. Here secular and human rights organisations were working along with community-based conservative Muslim organisations in relief programmes and in the citizens' tribunals set up to investigate into the riots. We had to build trust and confidence in each other to help the riot-affected Muslims. In this, the Hindu right-wing outfits and parties were our adversaries.

It is not that gender and patriarchy had vanished and the only issue of concern was identity politics. These issues were of concern to Muslim women, but they were interlaced with concerns which affected the entire Muslim community including

[56] Deepak Nayyar, '1991: Economic Liberalization and Political Process' (*Live Mint*, 14 October 2016). https://www.livemint.com/Opinion/l46jd4x7sEnYgxizMcnq3M/1991-economic-liberalization-and-political-process.html. Accessed 30 December 2020. K Balagopal, 'This Anti-Mandal Mania' (1990) 25(40) *Economic and Political Weekly* 2231.

[57] Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press 2001).

[58] See Meena Menon, *Riots and After in Mumbai: Chronicles of Truth and Reconciliation* (SAGE 2011).

[59] Flavia Agnes, 'Women's Movement within a Secular Framework: Redefining the Agenda' (1994) 29(19) *Economic and Political Weekly* 1123.

[60] *Mohd. Ahmed Khan vs. Shah Bano Begum and Ors.* (1985) 2 SCC 556.

[61] Flavia Agnes, 'From Shah Bano to Kausar Bano: Contextualizing the "Muslim Woman" within a Communalized Polity' in Ania Loomba and Ritty A Lukose (eds), *South Asian Feminisms* (Duke University Press 2012).

women—the insecurity produced by the riots, the ghettoisation, the anti-Muslim propaganda which generated hatred towards Muslims as a community, injustice meted out to them only because they were Muslims, lack of development and opportunities leading to greater poverty. These too became important concerns for Muslim women.

Rather strangely, in 1991, at the inaugural session of the Women's Studies Conference held at Jadavpur University in Calcutta, as a plenary speaker, I had raised some of the concerns which affect women from minority communities.[62] I was speaking as a minority woman—something that I hadn't done before—and I said that the cultural ethos of the women's movement was primarily Hindu in which minority women feel out of place. This created a furore, and throughout the conference in every workshop, the discussions revolved around what I said or what I had actually meant. Heated discussions took place between those who agreed with me and those who opposed this view. For the first time, I had opposed the demand for the UCC from a public platform and suggested that if at all, we should have an optional UCC—a code which is not based on any religious scriptures but a secular civil code which a couple can opt for at the time of their marriage. We already have an optional UCC in the form of the Special Marriage Act, 1954. But the optional UCC would be more comprehensive which would govern all aspects of family law, including issues such as custody and guardianship, maintenance, right of residence, protection against violence, and inheritance. The difference is that registering under the provisions of this Act is not mandatory; it is left to the choice of the couple.[63] This position was highly criticised, but later, and more particularly after the 2002 Gujarat pogrom, gradually many secular and human rights groups started to accepted it.

OS: *In the wake of* Shayara Bano,[64] *the criminalisation of unilateral and instantaneous triple talaq, and more recently the Citizenship Amendment Act, 2019, and the judgments*[65] *on Ram Janmabhoomi and the demolition of the Babri Masjid,*[66]

[62] Feminist scholars like Uma Chakravarti and Maitrayee Mukhopadhyay have referred to this in their books. See Uma Chakravarti, *Rewriting History: The Life and Times of Pandita Ramabai* (Kali for Women 1998) and Maitrayee Mukhopadhyay, *Legally Dispossessed: Gender, Identity and the Process of Law* (Stree 1998).

[63] Flavia Agnes, 'Common Codes, Uncommon Challenges' (*Himal Southasian*, 5 December 2015). https://www.himalmag.com/common-code-uncommon-challenges/. Accessed 28 December 2020.

[64] *Shayara Bano and Ors. vs. Union of India (UOI) and Ors.* (2017) 9 SCC 1.

[65] *M. Siddiq (D) thr. L.Rs. vs. Mahant Suresh Das and Ors.* 2019 (15) SCALE 1.

[66] See generally, Jyoti Malhotra, 'Triple Talaq: From Shah Bano to Shayara Bano' (*The Indian Express*, 22 August 2017). https://indianexpress.com/article/opinion/triple-talaq-verdict-supreme-court-illegal-muslim-divorce-nikah-halala-from-shah-bano-to-shayara-bano-4808525/. Accessed 28 December 2020; Faizan Mustafa, 'Why Criminalising Triple Talaq is Unnecessary Overkill' (*The Wire*, 15 December 2017). https://thewire.in/gender/why-criminalising-triple-talaq-is-unnecessary-overkill. Accessed 28 December 2020; India Today Web Desk, 'Ayodhya Ram Mandir Case Judgment: Supreme Court Rules in Favour of Ram Lalla | 10 Highlights' (*India Today*, 9 November 2019). https://www.indiatoday.in/india/story/ayodhya-ram-mandir-case-supreme-court-judgment-top-10-highlights-1617304-2019-

what is your assessment of the relationship between Hindutva and women's rights in India today?

FA: In 2002, during the Gujarat pogrom, gruesome sexual violence inflicted upon young Muslim women came to light. There were many instances of young women being raped and then burnt. There was also an incident where a pregnant woman's stomach was slit open, her foetus taken out and held up for public viewing and then burnt.[67] These instances made it necessary for women's groups to question the underlying communal motive for the Hindu right-wing demand for a UCC. So, more people started reframing the demand for the UCC into reform within personal laws to bring in gender justice.

Things became even worse after the 2014 election when the Congress-led United Progressive Alliance (UPA) lost and the National Democratic Alliance (NDA), led by Bharatiya Janata Party (BJP), came to power. The beef ban, which resulted in the lynching of Muslims on a mere suspicion of possessing beef, came to light.[68] There were also atrocities committed on Christian Adivasis in Kandhamal in Orissa,[69] and the *ghar wapsi* (return home) campaign to reconvert Adivasis into the Hindu fold.[70] There were campaigns against inter-religious marriages—which were given the title 'love jihad'—and efforts to prevent such marriages.[71] So, the women's movement started distancing itself from the Hindu right-wing political groups.

This confusion entered the Supreme Court as well during the *Shayara Bano* case, where Muslim women's groups like Bebaak and Bharatiya Muslim Mahila Andolan (BMMA) and the attorney general were arguing on the same side, and Muslim religious organisations were on the opposing side.[72] The position that Majlis advocated was again a more nuanced one—that the traditional norm of a *Nikahnama* (marriage contract) could be used to prevent husbands from pronouncing arbitrary triple talaq and also to curb polygamy. Then came the government's move to bring in a law to criminalise triple talaq. This was opposed by most groups though BMMA welcomed it. For these groups, which had supported Shayara Bano and the other

Footnote 66 (continued)
11-09. Accessed 28 December 2020; The Hindu Net Desk, 'All Acquitted in Babri Masjid Demolition Case | Advani, MM Joshi Hail Verdict, Congress Wants Govt to Appeal Against It' (*The Hindu*, 30 September 2020). https://www.thehindu.com/news/national/ayodhya-babri-masjid-demolition-case-verdict/article32728552.ece. Accessed 28 December 2020.

[67] See generally, Megha Kumar, *Communalism and Sexual Violence: Ahmedabad Since 1969* (Tulika Books 2017).

[68] Supriya Nair, 'The Meanings of India's 'Beef Lynchings'' (*The Atlantic*, 24 July 2017). https://www.theatlantic.com/international/archive/2017/07/india-modi-beef-lynching-muslim-partition/533739/. Accessed 28 December 2020.

[69] Priya Ramani, ''They Don't Feel Sorry': Revisiting Kandhamal 10 Years after the Violence Against Christians' (*Scroll.in*, 26 August 2018). https://scroll.in/article/891587/they-dont-feel-sorry-revisiting-kandhamal-10-years-after-the-violence-against-christians. Accessed 28 December 2020.

[70] Aathira Konikkara, 'Adivasi Christians Face Widespread Persecution in Chhattisgarh, Pressurised into Ghar Vapsi' (*The Caravan*, 29 June 2020). https://caravanmagazine.in/religion/adivasi-christians-face-widespread-persecution-in-chhattisgarh-pressurised-into-ghar-vapsi. Accessed 28 December 2020.

[71] Hannah Ellis-Petersen, 'Muslims Targeted Under Indian State's 'Love Jihad' Law' (*The Guardian*, 14 December 2020). https://www.theguardian.com/world/2020/dec/14/muslims-targeted-under-indian-states-love-jihad-law. Accessed 30 December 2020.

[72] *M. Siddiq (D) thr. L.Rs. vs. Mahant Suresh Das and Ors.* (n 65).

petitioners during the triple talaq litigation, the news that most of the petitioners had joined the BJP came as an embarrassment. The latest news is that Shayara Bano has been appointed as a member of the Uttarakhand State Women's Commission.[73] I watch these developments from a distance and get amazed by the manner in which positions within the women's groups change from incident to incident.

OS: *In 2011, you published a book in two volumes on family laws in India.*[74] *The volumes were written as a text that can be read by law students and can also be used to teach family law in law school. Why did you want to make use of years of litigation experience in family law to write a book primarily to be used in the university space? Was there a lack in family law teaching that you wished to address through these two volumes?*

FA: I was invited to teach family law at the National Law College in Bandra, Mumbai, and when I asked the principal to give me books to teach from, I realised they were not just archaic and but also gender-biased. When I asked for more recent publications, his answer was, there were none. Then he suggested, 'Why don't you write one.' That set me thinking, and I started working on it. I perceived it as just one book, but when the manuscript was sent to the publishers, they suggested that it should be brought out in two volumes.

The book is different from other family law books as I have drawn from my own experience of litigating as a feminist lawyer, the legal strategies that are evolved in a lawyer's chamber, and negotiations carried out in court corridors. Also, special attention is paid to research cases which were decided in favour of women. For instance, the last chapter of Volume II titled 'The Interface between Life and Law' is completely based on my experience of litigation.[75] I notice that one cannot find these in most law textbooks. I see these two volumes on family law in India as my contribution to building a feminist jurisprudence of the field. The book is written in a simple and lucid language so that it is easily accessible to law teachers and students alike.

OS: *Generations of women law students—mostly from elite law schools — have interned with Majlis. Many of them have gone on to become women's rights lawyers and feminist academics. Alongside, Majlis has consistently worked with young women lawyers through the very important fellowship programme for women lawyers from district towns of Maharashtra that I've had the wonderful opportunity to be involved in as a trainer. Given the interactions that you have with young women lawyers from these two very different demographics, what role do you think law schools or colleges play in advancing access to justice, especially in the context of violence against women? Although the elite law schools are ostensibly considered*

[73] Press Trust of India, 'Anti-Triple Talaq Crusader Shayara Bano Gets Minister Rank in Uttarakhand' (*The Hindu*, 21 October 2020). https://www.thehindu.com/news/national/other-states/anti-triple-talaq-crusader-shayara-bano-gets-minister-rank-in-uttarakhand/article32906809.ece. Accessed 28 December 2020.

[74] Flavia Agnes, *Family Law Volume I: Family Laws and Constitutional Claims* (Oxford University Press 2011).

[75] Flavia Agnes, *Family Law Volume II: Marriage, Divorce, and Matrimonial Litigation* (Oxford University Press 2011) 328–349.

to be progressive spaces—well-trained and smart feminist law graduates from these places aspire to either work in the Supreme Court or go abroad to study. Is it the women lawyers who work at the lower courts who do the unglamorous legwork, away from media attention, who are required for slow but steady social transformation? I ask this question as a faculty at an elite law university who constantly worries about the consequences of all the critical and feminist teaching that I do—and needless to say, about my own complicities with the neoliberal university.

FA: I completely agree with you on this. The law interns we get every year from the prestigious law colleges are very bright, theoretically very sound, belong to the upper classes and castes, and their ambition is to study in a foreign institution or practice in the Supreme Court. There are quite a few examples of this. I am not saying that they do not contribute to feminist legal scholarship or to the general human rights discourse. But very few engage in trial court litigation in district towns.

On the other hand, one can find quite a few women lawyers litigating in district courts who are engaged with different fields of law, mainly under a male senior as there are very few women seniors in the profession at the district court level. If at all there are, they are mostly a husband-and-wife team. They understand the minute points of litigation very well and are familiar with the technical aspects of law with civil and criminal codes. Many of them aspire to join the judiciary. But generally, they lack feminist and human rights law perspectives. They have no exposure to the wider theoretical debates on the death penalty, the interlinkages between caste and gender, same-sex relationships, pros and cons of a gender-neutral rape law, complexities involved in the UCC debates, and so on. But if they are given an exposure to these evolving topics, they would be able to carry forward the discussion in local languages and help spread awareness regarding this, possibly in more effective ways.

It is with this aim that we started the District Lawyers Fellowship Programme for women lawyers so that they are given this exposure and mentorship for one year as fellows with Majlis. I remember you were a trainer for our fellowship cohort in Pune. Many of them were appointed as public prosecutors, magistrates or sessions judges, and they were able to carry forward the feminist, human rights, and legal theory discussions into their work. So, we found this program extremely rewarding in terms of changing attitudes at the grassroots level of the judiciary. Unfortunately, we could not sustain this program, but we were able to establish a broad network of women lawyers from every district who have become a part of our network. We keep holding periodic short-term workshops as refresher courses to give further exposure to them to contemporary concerns. On the other hand, though some of the interns from prestigious universities do keep in touch with us, it is more at an individual

level, and we cannot say that we have been able to create a network among our past interns from elite law schools.

OS: *In light of recent events like the spate of arrests of human rights lawyers and activists related to the Bhima Koregaon commemoration,*[76] *the anti-CAA protests,*[77] *how do you think law schools can genuinely commit themselves to advancing access to justice? I ask this also because the current climate—especially with the amendments to the Foreign Contributions Regulation Act, 2010*[78]*—will have a direct impact on human rights organisations whose work might pose a threat to the commonsense of hate and prejudice promoted by the current political dispensation. I remember that at a special lecture that I had co-organised for you at the Family Court in Melbourne in 2015, you had mentioned the very difficult constraints under which Majlis has to work.*[79] *Will these recent developments have a bearing on Majlis's work and where might a civil-society–law school partnership help advance access to justice in these times?*

FA: It was a great experience to interact with sitting judges of the Family Court in Melbourne. They were so informal and freely interacted with me and also permitted me to sit in the Court to witness the hearing in one case. Even during the hearing, they were informal within the aura of formality. It was around Christmas time, but strangely it was a warm Christmas! They had also organised a lovely Christmas lunch for us. This meeting at the Family Court was one of the high points of my trip to Australia.

Coming to your question—in 2015, Prime Minister Modi was just one year into his office, and one had no clue as to how things will unfold during the next few years. Even then, there were apprehensions among many NGOs that things might not be easy. But what the later years, and more particularly the second term of Mr Modi's Prime Minister-ship, have unfolded is a total clamping down of civil society organisations, draconian laws to throttle the freedom to dissent, curbs on receiving foreign grants, and so on. It has become dangerous even for students to agitate or get engaged in protests to safeguard civil rights. Things are just beginning to unfold, and one cannot even fathom the curtailments of rights which will take place post the present pandemic crises. The situation is very grim and the work of several NGOs, including Majlis, will be affected.

[76] Apoorva Mandhani, '2 Years, 3 Charge Sheets & 16 Arrests—Why Bhima Koregaon Accused are Still in Jail' (*The Print*, 31 October 2020). https://theprint.in/india/2-years-3-charge-sheets-16-arrests-why-bhima-koregaon-accused-are-still-in-jail/533945/. Accessed 30 December 2020.

[77] Taran Deol, 'CAA Protesters' Arrest 'Designed to Send Chilling Message': UN Asks India to Free Activists' (*The Print*, 26 June 2020). https://theprint.in/india/caa-protesters-arrest-designed-to-send-chilling-message-un-asks-india-to-free-activists/449401/. Accessed 30 December 2020.

[78] International Commission of Jurists, 'India: FCRA Amendment 2020 will undermine the work of Civil Society' (*ICJ.org*, 24 September 2020). https://www.icj.org/india-fcra-amendment-2020-will-undermine-the-work-of-civil-society/. Accessed 28 December 2020.

[79] Commonwealth of Australia, *Family Court of Australia Annual Report 15/16* (2016) 234, 242, 251. https://parlinfo.aph.gov.au/parlInfo/download/publications/tabledpapers/6c529852-b23c-4ff1-b365-e90d341f5f12/upload_pdf/FCoA_AR_2015-16_WEB.pdf;fileType=application%2Fpdf#search=%22publications/tabledpapers/6c529852-b23c-4ff1-b365-e90d341f5f12%22. Accessed 28 December 2020.

There is an urgent need to re-invent ourselves and to think out of the box if we are to survive. In this context, your suggestion of a civil-society–law school partnership may help in advancing access to justice to the marginalised communities whose basic human rights are violated. There may be many areas where issue-based research will be of great value to an NGO working at the grassroots level. But I can think only of a few. When a group identifies a concern affecting the marginalised, the first thing is to collect data and bring out a comprehensive report, write articles based on this in English as well as local languages, spread the message through social media so that a favourable environment is created for filing a Public Interest Litigation (PIL). Another area is documentation, creating campaign material, writing innovative slogans, designing posters, mobilising the community to protest against draconian laws, so on. Law school student groups or legal aid clinics can also help local NGOs in writing reports and funding proposals. More such areas can be identified once the partnership is fine-tuned and finalised. Someone needs to work out the minute details, the nuts and bolts of a project like this. I find the idea of research collaborations between them can be worked out more easily than the actual work of litigation. It is an idea worthy of deeper exploration.

OS: *We've seen young people braving the risk of infection to step into the streets to protest the rape and murder of a Dalit woman by upper-caste Thakur men in Hathras which was followed by a stealth cremation of the body by the police.*[80] *In a country whose law enforcement, government, and judiciary are steeped in not only caste prejudice but also violent caste supremacy that manifests most brutally through the invisibilising of the caste dimension of sexual violence—we had seen the same happen for Khairlanji as well where the caste dimension of the crime was overlooked by the court even when it handed the capital punishment*[81]*—how are we to think about law's relationship to justice more hopefully? In your personal and political lives, you have lived through many such phases of acute crisis—what, for you, does the ensuing struggle entail?*

FA: It is very difficult to think at this stage about law's relationship to justice more hopefully when it appears that we have lost all the gains secured over the last several decades. Many of us who have been active in this movement for gender justice for four decades are old now. There is a feeling of despair among many of us. One wonders whether those who played an important role in re-imagining the course of judicial transformation in the 70s and 80s and had evolved innovative strategies to safeguard the rights of the marginalised would be in a position to cope with the current challenges.

[80] Ziya Us Salam, 'Hasty Cremation of Hathras Gang-Rape Victim Raises Doubts about Administration's Role' (*Frontline*, 23 October 2020). https://frontline.thehindu.com/social-issues/hasty-cremation-of-hathras-gang-rape-victim-raises-doubts-about-administrations-role/article32751174.ece. Accessed 30 December 2020.

[81] Reader's Editor, 'Khairlanji: The Crime and Punishment' (*The Hindu*, 23 August 2020). https://www.thehindu.com/opinion/Readers-Editor/Khairlanji-the-crime-and-punishment/article16149798.ece. Accessed 30 December 2020; Anand Teltumbde, 'Khairlanji and its Aftermath: Exploding Some Myths' (2007) 42(12) *Economic and Political Weekly* 1019.

I am sure the struggle for justice will continue, but with newer and younger players. When we witnessed the anti-CAA protests where students and Muslim women were able to carry out the struggle to reaffirm constitutional values, it was a moment of hope. Similarly, the protests against the Hathras rape and the stealth burning of the victim's body provide yet another spark. But on the other hand, the failure of the Supreme Court in recent times to protect the life and liberty of the citizens is a cause of great concern. The fight for justice will take on newer forms with newer actors. It is for a younger generation of law students and scholars to track them, analyse them, and theorise them so that a new realm of justice claims is articulated to leave behind a legacy for future generations. That is all that I can hope for in these grim times.

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