



The happy and anxious lives of (feminist) legal scholarship: an interview with Prabha Kotiswaran

Oishik Sircar¹

Published online: 21 November 2019
© O.P. Jindal Global University (JGU) 2019

Abstract

This interview with Prabha Kotiswaran, Professor of Law and Social Justice at King’s College, London focuses, among others, on the many dimensions of post-colonial feminist legal education and scholarship; her own scholarly journey across three continents; insights into the gendered nature of academic labor; the lived dimensions of her feminism, the limitations and possibilities of emerging forms of feminisms in the wake of #MeToo; on her own scholarship on sex work; the misreading of governance feminism; the tradition of materialist feminism; her current project on law and social reproduction; and the imperative for strengthening solidarity between the women’s and labor movements in India.

Keywords Feminist Legal Theory · South Asian feminisms · Women’s Studies · Legal Education · Academic Labor · Sex Work · Trafficking · Governance Feminism · Materialist Feminism · Social Reproduction · Interview

1 Introduction

I met Prabha Kotiswaran in the afternoon of August 19, 2019 in New Delhi. The meeting took place at the N.D. Tiwari Bhawan where she was attending a national consultation on minimum wages and the Wage Code Bill. The room in which the consultation was happening was empty through the lunch break so we decided to use that time for the interview.

I had written to Prabha a few months earlier about the possibility of a conversation that will feature in this issue of the *Jindal Global Law Review (JGLR)* themed “Women and Law in South Asia”. She readily agreed but it took us a while to figure out the logistics. One possibility was to do it over email. I send her the questions, she

Oishik Sircar—Associate Professor

✉ Oishik Sircar
osircar@jgu.edu.in

¹ Jindal Global Law School, Sonipat, India

writes out the replies, we go back and forth a few times to finalize the text. Instead, Prabha suggested that it might be better to do this in person; not only because she had plans to be in India, but also that a face-to-face conversation would lend a certain element of candor to the exchange.

We had a one-hour slot before the sessions at the conference resumed. It wasn't one of the quietest of rooms. We were frequently interrupted by loud train whistles—the New Delhi railway station was close by. Occasionally a conference participant would step in to concernedly enquire why we are not having lunch. And there was a loud continuous whirring of the fan we were sitting under. I was still left with a few questions when the room started getting full again, so we moved to an adjoining one to continue.

The interview was audio recorded and while listening to it later, I found the ambient sounds to be productive than disruptive. They were in conversation with our own speech disfluencies. Together, they added a texture to our intonations, guttural interjections, chuckles, silences, that are lost when transcribed into written text form. The first draft of a transcription sometimes describes these sounds—the hmms, uhs, hahas—but eventually they are taken out to, as they say, clean up the text. During this time unclear words or sentences are also rephrased for clarity. I am conflicted about what to do with this sanitizing desire that we impose on the orality of speech as it transforms into a scriptural text. While I see the worth of redrafting—of treating the text as clay that can be molded and remolded—to suit the intentions of the composer; I also wonder whether this desire speaks to an authorial obsession to control meaning, to make it as unambiguous as possible. I'm flagging these thoughts—on the aside—as feminist and aesthetic dilemmas associated with the task of meaning-making that I struggle with and to acknowledge the extratextual dimensions of the process of knowledge production.

Post the transcription—meticulously done by my students Ishani Mookerjee and Shivam Kataria—based on how some of Prabha's responses were framed, I reworded my questions and reorganized their order to allow the reader some sense of a seamless flow. Prabha too, refined some of her responses. I annotated the interview with a set of footnote references that readers might find useful to follow up. I later added a question not asked during the interview to which Prabha has provided a written response that offers a very useful list of references on materialist feminism. The interview began as an in-person conversation and was finalized over several email exchanges. What you have then, is a collaboratively produced text that is a confluence of candor and curation.

2 Interview

Oishik Sircar (OS): *This issue of the JGLR is themed “Women and Law in South Asia”. I want to begin by asking you to give us some sense of what the expression Women and Law signifies for you. Does the relationship between the categories of women and law do any conceptual work in your thinking, teaching and research? Is it an expression that overlaps or is different from Feminist Legal Theory? I ask these*

because the expression Women and Law features quite prominently in Indian legal education. In fact, I remember when I went to the ILS Law College in Pune, we had an awkwardly worded course called Women and Law and Law Relating to the Child.

Prabha Kotiswaran (PK): Yes, I suppose some of the drift from Women Studies in India has been embedded in law schools and certainly I think even in the National Law Schools there are centers called Centers for Women and Law.¹ But even that is from a decade or so ago, possibly longer, and I think everywhere else, one sees a refashioning of that term into something like Gender and the Law. For me personally, the expression Women and Law has not been particularly productive. Partly because my teaching and research is not focused on feminist studies alone. My interests have shifted somewhat over the past few years. So I teach LLM courses on Transnational Criminal Law and Sociology of Law, and some of my research areas focus as much on men as on women. So the research that I am doing on trafficking, while it started from questions of how sex workers were continuously being targeted by anti-trafficking campaigns very soon metamorphosed into thinking about forced labor more broadly, and to look at the Indian law from the perspective of both men's and women's interests.

When I do feminist work, Women and Law is not necessarily a framing device. For instance, when I teach Feminist Legal Theory, I'm more interested in the splits within feminism and the intra-gender redistributions of power. I think it's very hard anymore to assume that anything such as 'women' or 'women's interests' can, in fact, be considered as self-contained. Recently in my work on rape as well, I found that although I am very interested in feminist reform, I felt like part of that job was to also look at the implications of rape law for both men and women and increasingly transgender persons, because I think the transgender rights movement is one of the most vibrant social movements around and I think reorienting one's feminist research to move beyond or complicate the woman category has now become quite critical. In many areas where 'queering' was a cutting-edge move, 'transing' is now at the cutting-edge.²

OS: *Yet, the expression Women and Law endures—collectively and severally. Do you see any political possibility in this, or is the endurance—despite a fair amount of time and work that has gone into identifying limitations—depoliticizing?*

PK: I think it's possibly because of the kind of theoretical tools that one uses and what resonance it has in different contexts. But more importantly, the politics of it

¹ See generally, Mary E. John (ed), *Women's Studies in India: A Reader* (Penguin Books 2008).

² See generally, Benny LeMaster, 'Star gazing: Transing Gender Communication' (2019) 33(3) *Communication Teacher* 221; Jennifer Musto, 'Transing Critical Criminology: A Critical Unsettling and Transformative Anti-Carceral Feminist Reframing' (2019) 27(1) *Critical Criminology* 37; Robyn Henderson-Espinoza, 'Transing Religion: Moving Beyond the Logic of the (Hetero)Norm of Binaries' (2018) 34(1) *Journal of Feminist Studies in Religion* 88.

all: although theoretically you might embrace a research project where you disavow the woman category, or complicate what it means to be feminist, but you may not, in fact, feel like you can do so politically. One of my colleagues, Davina Cooper,³ has a project on the future of the legal category of gender and I think it's somewhat difficult to translate doing away with gender into political projects. That's because in many parts of the world the task of accounting for the relationship between Women and Law is incomplete and one needs to keep working at it. But I don't think it's necessarily either/or, I think one can continue to have a focus on women without limiting it only to women and try to understand gender more broadly.

OS: *I'll now come to the second key component in the theme of this issue: the term South Asia. How do you relate to this term, in terms of identity, geography, methodology, politics? Like the expression European Law, what, for you, might be conveyed by an expression like South Asian law? Do you think any claim to continental coherence, whether in terms of laws or feminisms is useful in the South Asian context? I particularly ask these in the context of your training in India and the US, your current academic location in a UK university as a non-European scholar, and the postcolonial orientation of your work.*

PK: Coming from my home-field of law, I think it's always tricky to claim oneself to be an expert in regional law because, as we all know, law is resolutely domestic. Purely from that perspective, I never present myself as a scholar of South Asian Law or of South Asia. That category has resonances within Area Studies but possibly a lot less outside of it and of course there are many centers on South Asia in both the US and the UK. So I think it could be meaningful in an institutional sense to have a home where one could discuss issues in a specific socio-historical context that reflect common postcolonial predicaments. There are certainly similarities in the way our academic institutions are set up. From some of the training work that I have done in Bangladesh, I've seen early career scholars in law schools there have very similar experiences as those in India. From that perspective, we share a whole range of experiences, but in other development and policy work that I've done—for example, a DFID (Department for International Development)-supported project with the International Labor Organization on Migration and Trafficking in South Asia—there are vast differences in socio-economic realities, in the way that one frames the problem and in the way that governments deal with it. And there are very different civil society formations that you see across South Asia, so I would say the differences can be quite stark and they can often outweigh similarities.

OS: *So you wouldn't necessarily think of a South Asian perspective and a postcolonial one as interchangeable expressions?*

³ See generally, Davina Cooper, 'A Very Binary Drama: The Conceptual Struggle for Gender's Future' (2019) 9(1) *feminists@law*; Davina Cooper, 'Beyond the Current Gender Wars' (2019) *IPPR Progressive Review* 25(4) 393. For a description of the project see: 'The Future of Legal Gender: A Critical Law Reform Project' <<https://futureoflegalgender.kcl.ac.uk/>> accessed 1 November 2019.

PK: I think there are some similarities for sure, but postcolonial can also mean a lot more. You can (and should) think of postcolonial law in the west. I don't think the idea of the postcolonial can be contained by what's happening in the South Asian context only. 'Postcolonial' in the Latin and South American context is of a different vintage and solidarities cannot be presumed.

OS: *The question came to mind not just because of the theme of this issue, but the kind of cautious self-characterization that is practiced by various activist-scholarly versions of feminism. I am specifically reminded of the book titled South Asian Feminisms edited by Ania Loomba and Ritty A. Lukose here.*⁴

PK: Yes, that is a really wonderful collection of essays, and there is much to be said for recognizing shared colonial histories and theorizing the postcolonial state formations in the region and the challenges of religious fundamentalism that have emerged. But if I remember correctly, the book's editors are also tentative about the usefulness of a regional framing and have an open-ended sensibility towards it, tracing conversations that South Asian feminists might have with postcolonial feminisms and with Western feminists on questions of common concern. Certainly for legal academics, the international and transnational spaces in which law is formed and congeals on a range of feminist issues are as important as the regional framing. There is also the issue of the disproportionate focus on India when we talk of South Asia. So one strategy that we have used in editing the *Indian Law Review*⁵ (for which I am the notes editor) is to make explicit the focus on India (rather than claim a regional focus) while welcoming South Asian scholars to contribute to the journal. We also encourage comparative work which helps us remain sensitive to the differences within the region.

OS: *I'm aware that your book, Dangerous Sex, Invisible Labor,⁶ emerged out of your doctoral work at Harvard Law School. You've written in the book that your involvement in sex work related research started much earlier, while you were a law student at NLSIU Bangalore, where you did your first law degree. Can you share how this interest developed and what made you sustain it to pursue doctoral research on the topic? Relatedly, while you were at NLSIU, what kind of influences made you engage with feminism as a law student?*

PK: The interest at NLSIU on sex work came up as a part of a competition called the Community-based Law Reform Competition⁷ which was radical back then and

⁴ Ania Loomba and Ritty A. Lukose (eds), *South Asian Feminisms* (Duke University Press 2012); see also, Srila Roy (ed), *New South Asian Feminisms: Paradoxes and Possibilities* (Zed Books 2013).

⁵ *India Law Review* <<https://www.tandfonline.com/loi/trilw20>> accessed 1 November 2019.

⁶ Prabha Kotiswaran, *Dangerous Sex, Invisible Labour: Sex Work and the Law in India* (Oxford University Press 2012). The book won the 2012 Hart-SLSA Book Prize for Early Career Academics.

⁷ See, N.R. Madhava Menon, *A Handbook on Clinical Legal Education* (Eastern Book Company 1998) 238.

feels like it's even more radical today. The idea was for teams from across South Asian law schools—groups of ten to fifteen law students—who would work on a particular legal topic for eighteen months of which 3 months had to be compulsorily spent amidst a community. So the first time that we participated in the competition, we worked on property rights and the second time we worked on labor and sex work. It was because of this that I became interested in the topic and my introduction to feminism also came about in the same context. We were doing a literature review of all the resources we needed and I read *Feminism Unmodified* by Catherine MacKinnon.⁸ It validated all of my feminist instincts, but also made me deeply uncomfortable.

When I went to Harvard, my plan was to actually pursue a project on colonial legal history and I had toyed with the idea of doing a PhD in history in fact. I think deep down within every socio-legal scholar is a desire to be an activist. When I started my PhD, that's when the sex workers' movement in India was also taking shape in a big way. It was very exciting because when we previously worked in the Community-based Law Reform Competition we had developed considerable empathy for sex workers as a community, but found it very difficult to access the community in Bangalore. Suddenly, in Calcutta I found that there were actually sex workers' groups, who were having conferences in big stadia and it just seemed like a very exciting moment. And that's what took me to attend one of these conferences in Calcutta in 2001: it was called the Sex Workers' Millennium Carnival.⁹ Even at that point, I was imagining that I would potentially write a book on the sex work debates, do something discreet to be part of the political conversation. But actually, it became something bigger and then ultimately, you know, became my dissertation research itself.

OS: *While you were at NLSIU, the project focused on sex workers in Bangalore and Delhi, and the book focuses on the Durbar Mahila Samanwaya Committee (DMSC) in Kolkata and sex workers in Tirupati. So, how did the locational focus shift?*

PK: Once I went to Calcutta, I realized that there was a sex worker's movement that was really fighting back the abolitionist discourse on sex work. In the early 1990s NLSIU was asked by the National Commission for Women to come up with legislative proposals on sex work and there had been a series of drafting exercises. But the proposal that came out of the Community-based Law Reform Competition was an extremely radical piece of legislation which really thought of sex work as work and was in spirit quite different from the institutional version. We had already had some encounters with the National Commission for Women and faced opposition from radical feminists. At that time, the go-to book was Jean D' Cunha's *The Legalization*

⁸ Catherine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Harvard University Press 1988).

⁹ See, Melissa Ditmore, 'In Calcutta, Sex Workers Organize,' in Patricia Ticineto Clough and Jean Halley (eds), *The Affective Turn: Theorizing the Social* (Duke University Press 2007) 170-188.

of Prostitution.¹⁰ There were colleagues at Vimochana in Bangalore who were strongly opposed to the idea of sex work as work, and we were just a group of students who had a very visceral response to that kind of abolitionist feminism.

So, I think seeing sex workers in Calcutta demanding workers' rights felt like a moment where one had to investigate that further. And it led very easily into thinking about materialist feminism because Leftist rule was the local milieu in which sex workers imagined their emancipation. They looked at protest rallies by trade unions outside their windows and thought, you know, we need to fight for workers' rights. Pamphlets put out by the DMSC quoted at length from Alexandra Kollontai and so that was the theoretical impetus to think about materialist feminism in a serious way. And I think studying Sonagachi was also important because it's a very typical red light area and the choice was to juxtapose that with something in southern India where there were no red light areas, only street-based sex work. Ultimately, it was also an issue of access that decided and determined which areas I wanted to do my field work in. So, it ended up being Calcutta and Tirupati to show both sides of the sector.

OS: *Can you give us a sense of what you mean by materialist feminism and some references that interested readers can follow up on?*

PK: I use the term “materialist feminism” to refer to various strands of left feminist thinking including Marxist and socialist feminism. Marxist feminists maintained that capitalism was fundamentally driven by the accumulation of profit through the extraction of surplus labor which it achieved through historically varied patriarchal structures.¹¹ Capitalism was then the material basis and ideological factors reproduced the sexual division of labor based on biology.¹² There is no clear definition of materialist feminism or the materialism which informs it. Lise Vogel, for example, notes that feminists used the term “both to invoke Marxism and to maintain our distance... to signal the key role, mediated and determinant only in the last instance, of human labor and material processes—most especially those carried out primarily by women and previously invisible to theory.”¹³ Materialist feminists eschewed the causal relation between capitalism's economic arrangements and its politics and cultural forms.¹⁴ They “accord[ed] a central place to sex classes and their material

¹⁰ Jean D’Cunha, *The Legalization of Prostitution: A Sociological Inquiry into the Laws Relating to Prostitution in India and the West* (Christian Institute for the Study of Religion and Society 1991).

¹¹ Rosemary Hennessy, *Profit and Pleasure: Sexual Identities in Late Capitalism* (Routledge 2000) 28.

¹² Danielle Juteau and Nicole Laurin, ‘From Nuns to Surrogate Mothers: Evolution of the Forms of the Appropriation of Women’ Mary Jo Lakeland (tr) (1989) 9(1) *Feminist Issues* 13–40, 20.

¹³ Lise Vogel, *Woman Questions: Essays for a Materialist Feminism* (Routledge 1995) xii.

¹⁴ Rosemary Hennessy, *Profit and Pleasure: Sexual Identities in Late Capitalism* (Routledge 2000) 28.

basis, that is, the appropriation of women’s work by men.”¹⁵ Socialist feminism, on the other hand, arguably attributed women’s position to the system of capitalist patriarchy.¹⁶ Social reproduction has been a central issue that has animated materialist feminism.¹⁷

OS: *I want to discuss something that is conventionally considered to be on the margins of scholarly works but to my mind, no less significant in comparison to the main text, as it were. I’m talking about the acknowledgement. You close the acknowledgement section of your book with the following words: “Finally, thanks to the several women who in taking care of my children so well performed the invisible labor that makes the work of women like me possible.”¹⁸ A key focus of your research has been the relationship between sex, gender and labor as mediated through law. With this acknowledgement, you place yourself into the field of your own research. As I read it, you assert that feminist academic work carries its own possibilities of extracting surplus from the care-labor of others, or in this context, other women. I was wondering if you could say something about how your personal and political lives interact in the ways in which you live your feminisms?*

PK: The book was an attempt to rethink the materialist feminist politics of sex work and in the course of reading a lot of materialist feminist books (many of which are referenced in my response above), I realized that materialist feminists in the 1970s and 80s would often acknowledge their reliance on other women’s labor, thus, performing the politics of the personal. I wanted to mark my work as materialist feminist in that way. I had young children when I was working on the book and the burdens of social reproduction were always at the top of my mind. I was self-reflexive about the politics of housework and child care and my market-mediated interactions with a range of women, including cleaners, nannies, housekeepers, au pairs, babysitters. Often, it was hard to tell apart my life at home from what felt like immensely interesting fieldwork on markets in reproductive labor in London.

¹⁵ Danielle Juteau and Nicole Laurin, ‘From Nuns to Surrogate Mothers: Evolution of the Forms of the Appropriation of Women’ Mary Jo Lakeland (tr) (1989) 9(1) *Feminist Issues* 13–40, 20. See also, Annette Kuhn and AnnMarie Wolpe, ‘Feminism and Materialism’ in Annette Kuhn and AnnMarie Wolpe (eds) *Feminism and Materialism, Women and Modes of Production* (Routledge and Kegan Paul 1978) 8–9 for a subtle articulation of the term materialist feminism which is presented as moving towards the construction of a Marxist feminism to the extent that it is an attempt to transform Marxism.

¹⁶ Nancy Holstrom, ‘Introduction’ in Nancy Holstrom, *The Socialist Feminist Project: A Contemporary Reader in Theory and Politics* (Monthly Review Press 2002) 5.

¹⁷ Materialist feminism has also inspired studies of the political economy, see for instance Jennifer Cohen, ‘What’s “Radical” about [Feminist] Radical Political Economy?’ (2018) 50(4) *Review of Radical Political Economics* 716–726. For a materialist feminist analysis of sex work, see Chapters 2 and 3 from Prabha Kotiswaran, *Dangerous Sex, Invisible Labour: Sex Work and the Law in India* (Oxford University Press 2012).

¹⁸ *ibid* Kotiswaran xi.

My current research undertakes an expansive study of social reproduction to look at surrogacy, erotic dancing, sex work, paid domestic work and unpaid domestic work. Although social reproduction has been theorized in very sophisticated ways around the world,¹⁹ translating it into the personal or from the personal to political has been a real challenge for Indian feminism in particular. One of the major research gaps, I think, when you look at social reproduction in India is that there is very little work on unpaid domestic work or work of housewives. This is related to the politics of the Indian women's movement and our inability to work through the guilt or the silences around social reproduction. For this reason, we have not been able to engage with unpaid domestic work in a more robust way. And it's becoming more urgent now with the crises in social reproduction.

While social reproduction animates my work, research and thinking about feminism, one cannot forget the marginalized, unpaid, invisible and unrecognized work in academia: peer reviewing articles and book proposals, editing, writing recommendation letters for tenure, mentoring, providing pastoral care, organizing talks and conferences, doing committee work, building community and so on. Women often shoulder the bulk of this work as they are keen to be good citizens only to then discover the gender pay gap. I think there is a real imbalance there. The way the academia is structured makes it very problematic for all academics who are parents, not just women, to feel comfortable about their work choices. Academics continue to have conferences on weekends, a lot of events and talks tend to be in the evenings, one is always told that to be successful you have to travel a lot, hop between institutions to get promoted. That's the academic culture we live in and that's something around which we need to have much more of a conversation.

OS: *Your thoughts will resonate strongly with faculty in universities that measure academic worth on the basis of public presence at conferences, in the media, and through a really conservative set of publication metrics. Teaching (and mentoring) in such a scenario is rendered almost the least valued task that's performed by academics, though it takes up the most amount of time and commitment. It produces an atmosphere of constant devaluation and demotivation. Academics, and especially women, who demonstrate success on the terms of the neoliberal academia—which inevitably is also built on the devalued care work of other women—are projected as role models, thus, normalizing the structural malaise of the system.*

While you were at Harvard working on your doctoral research, you'd already joined the governance feminism project with Janet Halley and some of your colleagues. Tell us a little bit about your motivations behind that project. It's a collaborative project that has been sustained for a very long time, beginning with the 2006

¹⁹ See Tithi Bhattacharya (ed) *Social Reproduction: Theory Remapping Class, Recentering Oppression* (Pluto Press 2017).

co-authored piece in the *Harvard Journal of Law and Gender*,²⁰ to the two recent volumes out from the University of Minnesota Press.²¹ In the first volume you have a chapter in which you make an argument about how the trajectory of rape law reform efforts in India can be read as an instance of governance feminism²²—one that has been over-reliant on the state and on criminal law, and one that tends to inherit key ideas from a MacKinnonite version of Radical Feminism.

PK: Yes, it has been a very rich intellectual project. When we started in late 2005, Janet was about to publish *Split Decisions*²³ and had already created a furor of sorts among feminist legal academics by insisting on taking a break from feminism. Which was a failed attempt! All of us are still deeply invested in the futures of feminism.

At that point, the four of us—Hila Shamir, Chantal Thomas, Janet and myself—were working on sex work/trafficking/rape in conflict. What the abolitionist feminists were doing was an immediate target for us to launch this sort of internal critique to see what are the different strands of feminism out there, and how do you embrace the successes and losses of the feminist movement. While the influence of US feminism in sex work and trafficking debates is well documented, we found that in countries like Israel, abolitionist feminism was visible because many feminist lawyers there were US trained. Some of them studied with Catharine MacKinnon and on returning home, had unparalleled access to parliamentary committees. They were able to change laws in a way that was breathtaking.

As a critical legal scholar I was interested in this project of internal critique. But as a student of postcolonial studies I realized one also has to temper the claims of American imperialism. After all, in the process of critiquing American imperialism, one can end up overstating its influence. In the 2006 piece, I argued that while it's true that US feminism is influential around the world, there are limits. In India, although the government had tried to amend the Immoral Traffic Prevention Act, 1986 in 2005 to criminalize customers of sex workers (to adopt what is called the Swedish model), Indian sex workers seized the opportunity that HIV funding offered to produce dissonance within the Indian state, thus offering a robust pushback

²⁰ Janet Halley, Prabha Kotiswaran, Hila Shamir and Chantal Thomas, 'From The International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism' (2006) 29 *Harvard Journal of Law and Gender* 335.

²¹ Janet Halley, Prabha Kotiswaran, Rachel Rebouché and Hila Shamir, *Governance Feminism: An Introduction* (University of Minnesota Press 2018); Janet Halley, Prabha Kotiswaran, Rachel Rebouché and Hila Shamir (eds), *Governance Feminism: Notes From the Field* (University Of Minnesota Press 2019).

²² Prabha Kotiswaran, 'Governance Feminism in the Postcolony: Reforming India's Rape Laws' in Janet Halley, Prabha Kotiswaran, Rachel Rebouché and Hila Shamir (eds), *Governance Feminism: An Introduction* (University of Minnesota Press 2018) 75-148.

²³ Janet Halley, *Split Decisions: How and Why to Take a Break from Feminism* (Princeton University Press 2006).

against the Swedish model.²⁴ The 2005 amendment did not pass. So, I was trying to ask: what does governance feminism mean in a context like India?

More recently, in the wake of the Jyoti Singh Pandey gang rape and murder, I had a chance to revisit it and initially felt very much that Indian feminists were different from American radical feminists, because we did not embrace carceral feminism in the way that they had.²⁵ But as I looked deeper into the history of rape law reforms and the various moments at which feminism had to engage with the state in India, I wasn't so sure. Of course, there were some key differences which led me to think that there are different varieties of governance feminism. Yet I believe that governance feminism is a productive way to think of law reform. After all, many social movements in India have influenced legal reform in India signaling a worldwide trend pointing to the significance of non-state actors in refashioning regulation. The idea for the Mahatma Gandhi National Rural Employment Guarantee Act (MGN-REGA), for instance was proposed by members of the National Advisory Council under the United Progressive Alliance (UPA) government. This growing influence of non-state actors cuts across the political spectrum whether on the left or right. The Indian state is porous to influences from the civil society that the idea of governance feminism can be transported to understanding law making in many different contexts. Aeyal Gross, has for instance written on gay governance.²⁶ So I think there is a way in which we could quite productively engage with governance feminism in the future.

In closing your question, you used the expression “inherit key ideas”. Actually it's not an inheritance. My argument was that we had enough of the raw material within Indian Marxist feminism and materialist feminism to arrive at the same kind of ideas that the radical feminists would have. So, we didn't really need to read MacKinnon to get to a radical feminist theory of rape.

OS: *What you are saying is that the logic and legacy of governance feminism in India has its own tradition that didn't require it to be exported from the US in the way it has happened, for example, in Israel? Do you think this argument settles concerns that Nivedita Menon has raised about governance feminism being an incommensurate framework for understanding feminist engagements with sexual violence*

²⁴ Global Network of Sex Work Projects, 'Impacts of Other Legislation and Policy – The Danger of Seeing the Swedish Model in a Vacuum' (2015) 4 *The Real Impact of the Swedish Model on Sex Workers* <<https://www.nswp.org/sites/nswp.org/files/4.%20Impacts%20of%20Other%20Legislation%20and%20Policy%20-%20The%20Danger%20of%20Seeing%20the%20Swedish%20Model%20in%20a%20Vacuum%2C%20Swedish%20Model%20Advocacy%20Toolkit%2C%20NSWP%20-%20December%202014.pdf>> accessed 1 November 2019.

²⁵ Elizabeth Bernstein, 'Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns' (2010) 36 (1) *Signs: Journal of Women in Culture and Society* 45.

²⁶ Aeyal Gross, 'Homoglobalism: The Emergence of Global Gay Governance' in Dianne Otto (ed), *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge 2018) 148-170.

*related law reform in India because its intellectual and political genesis lies outside of India?*²⁷

PK: Menon’s argument is entirely misplaced. She relies on a strained understanding of governance feminism as “a universalist, top-down, state-centred feminism,”²⁸ which she picks up from a conference presentation that is not publicly available and chooses to ignore the elaboration of governance feminism both in our 2006 *Harvard Journal of Gender and Law* article and our 2018 book *Governance Feminism: An Introduction*.²⁹ We conceptualize governance feminism broadly to connote “every form in which feminists and feminist ideas exert a governing will within human affairs,”³⁰ and particularly look at efforts made by feminists to become incorporated into “state, state-like, and state-affiliated power.”³¹ In *Governance Feminism: Notes from the Field*,³² the accompanying volume that we have co-edited, we look at how governance feminism manifests in other institutional contexts including corporations, development agencies and international organizations.

What worries me is for Indian feminists to completely disavow their influence on the state. Feminists were literally in the corridors of the government in 2013, speaking to the legislative draft persons on what should be included in the amendments and you can trace back a lot of language in the Criminal Law Amendment Act, 2013 to feminist demands over the years. When critics of the idea of governance feminism claim to speak authoritatively for the entire Indian women’s movement, they are building an exclusionary culture of authenticity with no room for differences or internal critique. Critique is then dismissed as naïve and misplaced or as an act of betrayal or worse still as a conspiracy to discredit feminists. My research is based on a forensic reading of the various legal definitions and clauses that are publicly available in the feminist archives and I argue that feminists cannot continue to be defensive about their influence on the state.

And I don’t think calling someone a governance feminist is a bad thing. We have reiterated it several times in our books and presentations. The call is to move beyond saying whether this is right or wrong and to inaugurate a new vocabulary around thinking about sexual violence or for that matter, any issue that we choose to influence through law reform. An important part of the exercise is to be able to anticipate some of the unintended consequences of our feminist successes.

²⁷ Nivedita Menon, ‘Sexual Violence and the Law in India’ in Robin West and Cynthia Grant Bowman (eds), *Research Handbook on Feminist Jurisprudence* (Edward Elgar 2019) 184–212.

²⁸ *ibid* 206.

²⁹ Janet Halley, Prabha Kotiswaran, Rachel Rebouché and Hila Shamir (eds), *Governance Feminism: An Introduction* (University of Minnesota Press 2018).

³⁰ Janet Halley, ‘Introducing Governance Feminism’ in Janet Halley, Prabha Kotiswaran, Rachel Rebouché and Hila Shamir (eds), *Governance Feminism: An Introduction* (University of Minnesota Press 2018) ix.

³¹ *ibid* x [emphasis in original].

³² Janet Halley, Prabha Kotiswaran, Rachel Rebouché and Hila Shamir (eds), *Governance Feminism: Notes From the Field* (University Of Minnesota Press 2019).

About governance feminism being a western import to India: I see the project as a collaborative exercise where the western scholars involved learn from us as much as we do from them; you cannot nationalize the method of critique. The method mutates based on its context. For example, while working on the 2006 article, there was a point at which we realized that there were huge differences in the way we were thinking about the law itself and the criminal justice system in different jurisdictions. So in Israel, it is like in the US: there's a criminal law, the police enforce it, sometimes they under-enforce it, at times they over-enforce it, but by and large they enforce it in a way that it is meant to be enforced. Whereas, in India, because there is such a high level of informality, which Pratiksha Baxi has shown through her ethnography of rape trials,³³ there is much room for perverse outcomes. One can't assume that once you have a law on the books, it will get translated and equally you can't say that it won't be abused in ways that you had never fathomed. So there are some crucial institutional differences between countries and it would be problematic to argue that one is simply importing what's happening in the west. If anything, every iteration of mine on the project, has been a counter to what I perceive as North-American feminists' own inflated understanding of their influence around the world. Sometimes they are influential, as evident on the issue of trafficking,³⁴ at other times they are not. So you have to do the painful work of tracing ideas back and forth over a long period of time. I think there are no shortcuts here, so I am surprised how the argument about it being an imported framework can be sustained.

OS: *Would you consider conversations around the #MeToo mobilizations, especially as it unfolded in India, a new kind of mutation in the regulatory techniques of governance feminism where the state and the criminal law have been replaced by capitalism controlled social media, trolling and public humiliation? Is there anything advanced by the advocates of the 'name and shame' strategy that you find useful in this key moment in the history of Indian feminist struggles against sexual violence?*

PK: It's very worrisome, but this idea of using social norms to produce certain outcomes, that the law would otherwise be tasked to produce is not new. There's a general shift in the way governance is happening now, around the world wherever you see, there are indicators, there is naming and shaming of states for not meeting human rights obligations, the ranking of countries. Certainly in my work on trafficking, it's all over the place: indicators, measurements. And of course, it's very predictable, you know, it's all the developing countries that fare worst on these indicators.³⁵ But in some places, it has worked. For example, Brazil has a list of dirty companies that use forced labor and they are denied access to state credit, which was

³³ Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India* (Oxford University Press 2014).

³⁴ See generally, Prabha Kotiswaran (ed), *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery* (Cambridge University Press 2017).

³⁵ See generally, Sally Engle Merry, *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking* (University of Chicago Press 2016).

beneficial in trying to get companies to adhere to standards. So I think naming and shaming, to begin with, has become much more prevalent because of the limitations of the command and control form of regulation. That's one aspect of it.

There's a second aspect. In some ways, women have probably always had local knowledge of who is the guy that you should stay away from and it's hard not to imagine that in this day and context, that that would get amplified in some way through social media. So I think there are some benefits to this kind of #MeToo mobilization, which I think all of us appreciate in the worst case scenarios. The fact that these perpetrators can be exposed and that they've been is where I find Duncan Kennedy's idea of the tolerated residuum of abuse very useful.³⁶ It reduces the tolerated residuum of abuse because by shifting the boundaries of what is acceptable and what is unacceptable abuse, women are activating institutions which were earlier dormant because such abuse was socially thought to be acceptable. But then again, the benefits have to be weighed against the consequences. I'm thinking of the Khurshid Anwar suicide and the deep crisis that feminism had to confront.³⁷ At the same time, whatever our problems with #MeToo, I don't think the response should be to tell them to go back to institutions and follow due process when in fact, we are not investing enough in governance reform at any level. That's why I think the real hard work for the feminists starts now. How can some of the beneficial reforms from 2013 be operationalized through better implementation by activating levers within the enforcement machinery?

OS: *You have just embarked on a new European Research Council funded project titled *Laws of Social Reproduction*. What is this project about and how does it connect to and take ahead your previous work?*

PK: It's an extension of my previous work on sex work to understand how the law regulates different forms of reproductive labor. This requires an expansive understanding of social reproduction to include abject, market-based forms of reproductive labor. The project will explore five sectors of women's reproductive labor along the market-marriage spectrum, namely, sex work, bar dancing, commercial surrogacy, paid domestic work, and unpaid domestic work. Social practices present these forms of labor as quite discrete and distinct from each other when in fact, there are a lot of similarities between them. So if you try to understand the political economy of bar dancing or commercial surrogacy, there are some crucial differences. But there are also similarities between them. My idea was to examine the role of the law in not only refusing to recognize or inadequately recognizing women's labor as work

³⁶ Duncan Kennedy, 'Form and Substance in Private Law Adjudication' (1976) 89 Harvard Law Review 1685.

³⁷ See generally, Sehba Imam, 'Spar, But Don't Sensationalise' (*The Outlook*, 5 April 2018) <<https://www.outlookindia.com/magazine/story/spar-but-dont-sensationalise/299995>> accessed 1 November 2019; Ajitha Rao and others, 'Feminist Reflections on the Tragic Suicide of Khurshid Anwar' (*Kafila*, 17 February 2014) <<https://kafila.online/2014/02/17/feminist-reflections-on-the-tragic-suicide-of-khurshid-anwar/>> accessed 1 November 2019.

in these sectors but also its role in normalizing the socially perceived differences between these various sectors of women's labor.

The goal of the project is to expose how states use default legal categories that then shape our sensibilities and our thinking around certain sectors of women's work and how one would destabilize these categories. We can then ask if other modes of regulation might not be more beneficial for women. Is contract law a better way to achieve certain outcomes for bar dancers than say licensing law? Could labor law be better than contract law which is the default legal regime for commercial surrogacy? Shouldn't we focus more on tenancy laws to enhance the bargaining power of sex workers in red-light areas than restricting ourselves to decriminalization? In that sense, it's a continuation of the legal realist idea of trying to go behind, you know, what seems to be the most visible set of laws, to look at the background legal rules.

As when you think of it as a feminist project, you cannot help notice the sudden surge of interest in social reproduction theory. Because social reproduction, academically, has never drawn the crowds. Nor has materialist feminism which despite its rich insights into the political economy of work has been marginalized as a failed socialist plot. But at a recent conference at Queen Mary, Silvia Federici was there and the room was full of people, especially young people. So the crisis in social reproduction is real and is gaining visibility. Oddly enough there is a lot of support from UN organizations and private philanthropists like the Bill and Melinda Gates Foundation when they echo what materialist feminists said decades ago—that we need to reduce, recognize and redistribute reproductive labor, an idea which now has its own dedicated UN Sustainable Development Goal (SDG 5.4).³⁸ In re-theorizing social reproduction, feminists need to take into account the role of men too who are actively involved in social reproduction including in the restaurant, hospital, catering and teaching sectors. In that sense, the goal of the project is also to go beyond materialist feminism because some with a renewed interest in social reproduction theory want to redeem Marx on every page of their writing!

OS: *In this project or generally in your research, do you look at yourself as a lawyer or has that vantage point been diluted based on the inter-disciplinary nature of work that you do?*

PK: I am constantly stretching my disciplinary limits and it puts me in a position of self-doubt. Even with my first book, I felt strongly that I shouldn't claim to be an ethnographer because I am not trained as one, although anthropologist friends and mentors had no reservations in calling it ethnographic. But it is always comforting to have a home discipline especially because our critical socio-legal gaze needs to infiltrate legal doctrine and case law; textbooks in not only public law but also private law need urgent rewriting. So I fundamentally do think of myself as a lawyer even

³⁸ UN General Assembly, *Transforming Our World : The 2030 Agenda for Sustainable Development* (21 October 2015) A/RES/70/1, Target 5.4 <<https://open.undp.org/sdg/targets/5/4>> accessed 1 November 2019.

if lawyers don't think of me as enough of a lawyer! Legal scholarship has flowered in so many different ways—law and society scholarship, law and the humanities that there is no way we can go back to doing only law, to the way we used to do it. So, yes, it's a happy place to be. Happy and anxious.

OS: *Are there some key works that were influential for you and ones that you keep returning to?*

PK: It has been Duncan Kennedy's *Sexy Dressing Etc.*³⁹ I think it's just the perfect combination of social and legal theory. His ability to bring Foucault together with legal realism and sociology of law is very insightful. The other work that I have often returned to is Dipesh Chakrabarty's *Provincializing Europe*.⁴⁰ Working in the west, his reminder that western conceptual categories ought to be viewed not as a language but a dialect backed up by an army helps maintain my sanity.

OS: *Tell us about why you're here at this conference.*

PK: This is a national consultation on minimum wages and the proposed labor codes, hosted by the Working People's Charter, an organization of trade unions and organizations working with the unorganized sector. The Wage Code Bill was passed a few weeks back and my friend Chandan Kumar who is one of the organizers and I were texting each other because we were watching the parliamentary debates.⁴¹ And it was one of the biggest lessons for me, because I have been tracking the Trafficking Bill for some years now,⁴² and felt that it was such a niche issue: the feminists are not really interested, the labor movement is not really interested, so how do we get across a critical perspective on the Bill? But there were a lot of people interested in the issue, particularly groups that would be affected by it working with sex workers, bonded laborers, migrant workers, transgender persons.

But watching the Wage Code Bill debates was revealing. I had always assumed that the trade union movement had access to political parties, that the parties would just pick up their concerns over the Bill. Watching that debate was one of the most disillusioning moments for me, because you know the fact that there were only two Lok Sabha MPs, who were critiquing the Wage Code Bill and then in fact, when it came to the amendments, they were withdrawing their amendments, that was

³⁹ Duncan Kennedy, *Sexy Dressing Etc.* (Harvard University Press 1995).

⁴⁰ Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton University Press 2007).

⁴¹ PTI, 'Lok Sabha Passes Wage Code Bill' (*The Wire*, 30 July 2019) <<https://thewire.in/politics/lok-sabha-wage-code-bill-passed>> accessed 1 November 2019.

⁴² Prabha Kotiswaran, 'India's New Anti-Trafficking Bill is an Empty Gesture' (*The Wire*, 5 July 2016) <<https://thewire.in/rights/indias-new-anti-trafficking-bill-is-an-empty-gesture>> accessed 1 November 2019.

crushing. When you think about how articulate MPs were on the Triple Talaq Bill⁴³ and the Transgender Rights Bill in the 2019 monsoon session,⁴⁴ you see how the labor movement fares alongside other social justice causes. We need to revisit how ‘new’ social movements have captured the political imagination and how we might reinvigorate the labor movement.

I’m attending this conference because we are talking about the Wage Code Bill. And of course it’s fundamental to the kind of work that I do on women’s labor and on social reproduction. To illustrate: 132 million households have job cards under the MNREGA scheme, a majority of whom are women but minimum wages are not paid under the MNREGA scheme despite being mandated by the Supreme Court.⁴⁵ If we want to reduce and redistribute unpaid domestic work what better way than to offer women jobs under the MNREGA while maintaining crèches as required by the Act? Further still, as Jan Breman has suggested,⁴⁶ why not make waged care work an occupational choice under the MNREGA? Needless to say, the alliances between the women’s movement and labor movement have been historically fraught but feminists need to be present at these meetings to build solidarity on basic economic issues that are critical for millions of working women.

OS: *Thanks a lot, Prabha for taking out the time for this conversation. I have thoroughly enjoyed listening to, and reading your responses. It has also been very instructive to follow the considered way in which you have structured your arguments in response to my questions. Your answers, in fact, offered cues to rephrase and rethink the framing of some of my own questions. The interview as a form scholarship strangely carries marginal valence in law—even as the form has ubiquitous presence in public discourse in general. But I think it’s a form with immense possibility to reinvigorate the ways in which we think about academic knowledge production and conventions of collaboration.⁴⁷ I hope this conversation will speak to readers familiar with your work, and for those who are unfamiliar, I am sure, will develop an interest after reading this interview.*

Acknowledgements I thank the issue editors, particularly my colleague Albeena Shakil, for responding positively to the idea of carrying an interview. I couldn’t have completed this interview without

⁴³ The Wire Staff, ‘Complete Charade’: Activists, Civil Society Groups Condemn Triple Talaq Bill (*The Wire*, 31 July 2019) <<https://thewire.in/communalism/triple-talaq-bill-muslim-women>> accessed 1 November 2019.

⁴⁴ Dhruva Gandhi and Unnati Ghia, ‘Transgender Rights Bill: A Stunted Understanding of Gender and Equality’ (*The Wire*, 5 August 2019) <<https://thewire.in/lgbtqia/transgender-rights-bill-a-stunted-understanding-of-gender-and-equality>> accessed 1 November 2019.

⁴⁵ Nandini Nayak and Reetika Khera, ‘Women Workers and Perceptions of the National Rural Employment Guarantee Act’ (2009) 44(43) *Economic & Political Weekly* 49.

⁴⁶ See generally, Jan Breman, *Capitalism, Inequality and Labour in India* (Cambridge University Press 2019).

⁴⁷ See generally, Rebecca Roach, *Literature and the Rise of the Interview* (Oxford University Press 2018).

the excellent research assistance and prompt transcription of the audio recording by my students Ishani Mookerjee and Shivam Kataria. And of course, thanks to Prabha Kotiswaran for agreeing to this conversation.

Publisher's Note Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.