

London School of Economics and Political Science

**Resisting the Binary: Reconciling Victimhood and Agency in Discourses of Sexual
Violence**

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Abstract

Dominant discourses of sexual violence institute a binary imaginary of victimhood and agency, producing subjects as either victims or agents but never simultaneously both. This thesis tracks the production and effects of the victim/agent binary, and explores conceptual strategies and archival resources through which to challenge the binary, and interrupt the coercive and exclusionary politics it enables. I argue that the figure of the agentless victim occasions a protectionist response to sexual violence, justifying the expansion of the carceral, patriarchal state, and animating violent and exclusionary nationalisms. Simultaneously, the victim/agent binary becomes grounds for the denial of victimhood to subaltern subjects who are read as agentive, where agency is reinterpreted as culpability. In the context of post-colonial India, I identify case law, legislative reform and dominant feminist responses to sexual violence as key sites at which this binary is installed. These discursive fields are overdetermined by liberal investments in autonomous, unfettered modes of agency, foreclosing the possibility of representing or attending to subaltern subjects whose realities are marked by simultaneous conditions of victimhood and agency.

Through a feminist historical ontology of victimhood and agency, I challenge the 'givenness' of the victim/agent binary in the dominant archive by assembling what I call a subaltern archive, comprised of letters, petitions, pamphlets, interviews, rural newsletters, slogans, chants and other ephemera. A feminist historical ontology insists on the epistemic significance of subaltern archives as sites of concept-building, and brings into view the possibility of non-binary conceptual productions of victimhood and agency. Extending post-colonial, *dalit*, and Black feminist interventions, I offer a conceptualisation of agency that departs from liberal, autonomous orthodoxies, insisting on a more expansive account that is able to capture the often concealed and ephemeral ways in which agency manifests in conditions of violence and oppression. Simultaneously, I propose a structural, intersectional account of victimhood as an experience of gendered harm rather than an essential, defining gendered attribute, challenging the biological and psychological accounts of victimhood in dominant discourses. Based on these conceptual realignments of victimhood and agency emerging from the subaltern archive, I argue that within discourses of sexual violence, agency must be understood and represented as not simply compatible with, but often deriving precisely from and in response to experiences of victimhood.

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Chapter 1: Resisting the Binary: An Introduction

Introducing the Binary: Victimhood and Agency in Discourses of Sexual Violence

Sexual violence occupies a paradoxically unifying yet contentious place in feminist theory and politics. The universality of gendered experiences of sexual violence has long been a critical rallying point for transnational feminist solidarities and global feminist interventions (Menon 2004: 106). Despite an enduring consensus around the significance of sexual violence as a feminist concern, there has been little agreement on how to diagnose and address its causes and manifestations. Queer, post-colonial and Black¹ feminist scholars and activists have long cautioned against the dangerous exclusions and complicities entailed in even the best-intentioned efforts to counter sexual violence. Dominant efforts to address sexual violence across the world continue to display carceral preoccupations (Abrams 1995; Halley 2006; Kapur 2013; Kotiswaran 2016, 2017) neoliberal, neo-colonial and neo-conservative complicities (Davis 2000; Mohanty 1984; Kapur 2013; Phipps 2014, 2020; Stringer 2013, 2014), the effacement of intersectional oppressions (Crenshaw 1990; Davis 2000; Harris 1990; Hill Collins 1998; hooks 1984; Phipps 2014), and the ossification of classed, racialised, caste and colonial hierarchies of credibility (Davis 2000; Hill Collins 1998; Irudayam *et al.* 2012; Phipps 2014). The uneven distribution of, and dissimilar proximity to, sexual violence across hierarchies of class, race, caste, and gender and sexual normativity gives the lie to claims of universal sisterhood premised on a uniform vulnerability to sexual violence (Davis 2000; hooks 1984; Irudayam *et al.* 2012). A shared feminist commitment to addressing sexual violence does not, then, necessarily yield a unified and effective strategy of redress; nor does it imply exclusively, or even overwhelmingly, emancipatory outcomes for all women.² How sexual violence is conceptualised and deployed as a political category thus remains fiercely contested within feminist scholarship and practice, not least because of

¹ Following Kimberle Crenshaw, I use the upper case 'B', as "Blacks, like Asians, Latinos and other 'minorities', constitute a specific cultural group and, as such, require denotation as a proper noun" (Crenshaw 1990: supra note 81 at 1332 n.2). Similarly, I use a capital letters to denote *Dalit*, *Bahujan* and *Adivasi* communities.

² Here and throughout my thesis (unless specified otherwise), I use women and woman to denote a social, historical and political category, representing the contested subject of feminist politics (expressly refusing biological essentialism or ascriptions of ontological singularity).

how sexual violence, despite its ubiquity, is differently inhabited and distinctly experienced by differently located subjects.

In a further complication, efforts to counter sexual violence are by no means an exclusively feminist preserve. Increasingly, a number of distinctly non and even anti-feminist parties have clamoured to loudly register their condemnation of sexual violence, and signal their superior allegiance to the cause. Bridging all manner of political and ideological divides, a series of unlikely and even oppositional forces converge on a commitment to protect (at least *some*) women from (at least *some forms of*) sexual violence: ranging from global and local NGOs, international peacekeeping and human rights organisations, to masculinist nation-states, racial and caste supremacist organisations, militant religious and ethno-nationalist collectives. The proliferation of actors proclaiming a stake in ending sexual violence has resulted in a range of conflicting investments and strategies, with ever more regulatory and coercive effects for the very women they purport to protect, as well as for other marginal subjects (Kapur 2002, 2013). The intensification of militarised border regimes (Ticktin 2008) increased surveillance and control of gendered bodies (Kapur 2002, 2013), consolidation of violent and exclusionary ethno-nationalisms (Ticktin 2008; Yuval-Davis 1993), expansion of the carceral state and its punitive infrastructure (Kapur 2013; Kotiswaran 2016, 2017), and the emboldening of racist, casteist and classist rationalities (Phipps 2014, 2020) are but a few of the pernicious dividends of an increasingly fraught ‘war against sexual violence’.³ The rhetoric of protecting women from sexual violence is frequently and effectively invoked in order to rehabilitate old colonial projects and justify new ones (Alcoff 2018; Farris 2017; Mohanty *et al.* 2008), persecute sexual dissidents, police gender, sexual and caste transgressions (Kapur 2013), and re-inscribe neoliberal and neo-conservative rationalities across the globe (Phipps 2020; Stringer 2014).

Against the backdrop of these escalating harms enacted in the name of protecting women, it is more urgent than ever to critically examine “the violence we can do in the name of fighting violence” (Phipps 2020: 3). Phipps’ most recent work is the culmination of, and a tribute to, a long tradition of training a critical, reflexive lens to feminist ambitions and

³ For a critique of military metaphors and the ideological work they perform see Enloe 2020.

projects, and their intersectional failures, damaging complicities, and dangerous adjacencies (2020). Drawing on histories of critique within queer, post-colonial and anti-racist feminist theory and praxis, Phipps urges a reckoning with the many wounds inflicted, and human costs incurred in, the name of protecting some (often normative, white, cis, privileged) women from sexual violence. This thesis sits within this tradition of transnational efforts to foster a careful, situated interrogation of the differentially experienced effects of global measures to address sexual violence. My research draws on and echoes feminist censure of anti-rape projects that precipitate violences and exclusions, and that discard and displace multiply marginal subjects while consolidating the power and position of more privileged subjects. My work is indebted to and in conversation with these legacies of critique — these dissident, killjoy (Ahmed 2010) feminisms that eschew tempting triumphalism in favour of a sober, located and intersectional reflection that places multiply marginal, traditionally peripheral or subaltern subjects at the very centre of their analysis (Guha 1996; hooks 1984; Kapur 2002; Madhok 2014, 2021).

This thesis is thus invested in revealing the pernicious effects of dominant modes of addressing sexual violence, tracking the mechanisms of their production, and disrupting their operation. I argue that many of the exclusionary, violent and coercive consequences of efforts to protect women from sexual violence are rooted in mischaracterisations or mis-descriptions (Madhok 2014) of the subject of sexual violence. Much of what is enacted in the name of rescuing women from the scourge of sexual violence is enabled by a particular (mis)understanding of, and resultant (mis)orientation towards this subject. The careful circumscription and characterisation of those deemed simultaneously at risk of, and worthy of protection from, sexual violence legitimates particular modalities of response to sexual violence and invalidates others. In other words, I argue that the imagination of the subject of sexual violence determines the sort of politics enabled or foreclosed in the name of protecting women from sexual harm.

Specifically, this thesis submits that the imagination and representation of the subject of sexual violence is subtended by a politically dangerous and conceptually untenable victim/agent binary. Mediated by rationalities of caste, race, class and religion, women are imagined as either vulnerable victims in need of protection, or as capable (even

culpable) agents, but never simultaneously both. I argue that the failure to reconcile victimhood and agency within discourses of sexual violence is precisely the condition of possibility for a range of violent, exclusionary and regulatory outcomes. Put differently, I suggest that the neo-colonial, neoliberal and neoconservative complicities, intersectional failures and exclusions, carceral and punitive responses, and the re-inscription of class, racial and caste hierarchies that plague response to sexual violence are sustained by the inability to recognise subjects of sexual violence as simultaneously inhabiting and embodying the conditions of both victimhood and agency. In making this argument, my thesis draws on, and mediates between, two crucial but deeply polarised, traditions of feminist critique detailed below: (i) critical feminist engagements with overinvestment in victimhood, and (ii) consequent concern with an overstatement of agency.

An expansive and heterogenous body of feminist work has aimed its critique at the hegemonic production of women as victims, encoding femininity as vulnerability, and calcifying women as centres of damage, pain, trauma and brokenness alone.⁴ In the decades following the “sex wars”⁵ of the 1970s and 80s, feminists writing from a variety of contexts and disciplinary persuasions expressed concerns around the material implications of dominant representation of women as “pervasively constructed by male aggression” (Abrams 1995: 304). Critiquing the overemphasis on victimisation that emerged through the ascendancy of ‘dominance’ or ‘radical’ feminism during the sex wars (see for instance Dworkin 1989; MacKinnon 1987), oppositional feminist scholarship critiqued dominance literature for portraying women exclusively as victims, obscuring the myriad ways in which “women made choices, resisted coercion and exercised agency in their own lives” (Abrams 1995: 325-326). The victim subject, then, only emerges as a legible, intelligible category through an overwhelming association with passivity, weakness, vulnerability and violability (Marcus 1992; Brown 1995). Significantly, this victim subject is also feminised: victimhood in the context of sexual violence is exclusively, as well as almost inevitably, associated with the experience of being a woman: itself a carefully guarded, violently policed and exclusionary category (Kapur

⁴ For a more detailed disaggregation of and engagement with this diverse body of critiques, often loosely clubbed together under the signifier of ‘victim-critical’ or ‘anti-victim’ feminisms, see Chapter 2.

⁵ The feminist sex wars (also variously known as the lesbian wars or the porn wars) were a set of deeply polarised and polarising debates amongst predominantly US feminist theorists and activists relating to a plethora of issues broadly relating to questions of sex and sexuality (for more on the sex wars and related debates on sexual violence, see Abrams 1995).

2002). The victim of sexual violence thus emerges as a feminised, agentless, truncated subject in perpetual need of rescue. Against the din of declarations of protection, women's own voices and desires are silenced; women's bodies rendered terrains on which powerful players contest their own interests.

Post-structuralist (Brown 2005; Marcus 1992), post-colonial (Chow 2002; Kapur 2002; Mohanty 1986; Spivak 1988), decolonial (Smith 1999, Tuck 2009) and anti-racist (Harris 1990; hooks 1984;) feminists⁶ argued that dominant representations of women as entrapped within conditions of agentless victimhood were both conceptually and empirically unfounded (i.e. did not accurately reflect women's realities), as well as politically dangerous. Damage-centred (Tuck 2009) representations of women within discourses of sexual violence are charged with echoing and affirming patriarchal scripts of female injury and passivity, authorising the expansion of the carceral state while concealing its proclivity to wound, buttressing gender and cultural essentialisms, inviting imperialist, neo-colonialist intervention, precipitating reactionary protectionism (Kapur 2002), precluding intersectional analyses (Crenshaw 1990; Harris 1990; hooks 1984), and ultimately augmenting "the muscular power of the state to regulate and discipline the sexual behaviour of its citizens in the direction of fewer rights and more surveillance" (Kapur 2013: 320). These critiques of 'woman-as-victim' formulations specifically attribute the violent politics enabled in the name of protecting women to the erasure of women's agency, and urge feminists to engage in representational practices that are attentive to the daily actions women take to sustain themselves, even amidst conditions of extreme violence and coercion (hooks 1984; also see Madhok *et al.* 2013).

These concerns around the hegemonic representation of women as wounded subjects in turn prompted a separate set of feminist disquiets. Stringer (2013, 2014), Phipps (2014) Mardorossian (2002, 2014) and Wilson (2011, 2013) have cautioned against the uncritical ascendancy of a 'women-as-agent' formulation in response to feminist reservations around the representation of women as pervasively constructed by victimhood. These scholars take issue with the neoliberal and neoconservative

⁶ These are inevitably crude and reductive classifications, with substantial divergence within, and overlap across, categories. I unravel each of these domains and the scholarship within them in more detail in Chapter 2.

complicities (and resulting individuating, psychologising, pathologising, victim-blaming and exclusionary effects)⁷ of an untempered insistence on recognising women as agents. They argue that supplanting representations of victimhood with an emphasis on agency precludes the recognition of violence faced by subjects read as agentival, entrenches neoliberal discourses of resilience and personal responsibility, buttresses conservative discourses of victim-blame, and forecloses the possibility of structural, systemic accounts of gendered violence and oppression.

Stringer (2014) and Phipps (2014) highlight the porous borders between feminist and neoliberal investments in emphasising individual agency, with “feminist objections to the notion of the victim ... serving to support neoliberal values, unwittingly or otherwise” (Stringer 2014: 6). Phipps (2014) traces the “rudimentary transformation” of an investment in representing female agency “into the concept of choice” (ibid: 34), justifying a politics of personal responsibility, positioning victims as culpable for, or at the very least complicit in, their own conditions of oppression and victimhood. Stringer (2014) echoes this concern with a shift from analyses of structural oppression to a focus on personal responsibility, arguing that this move obscures the role of social structures while exaggerating the power of individual choice, often with victim-blaming consequences. Mardorossian (2014, 2002) similarly critiques the individuating and psychologising effects of what she characterises as post-modern suspicion of the victim subject, and demonstrates that a shift from women-as-victims to women-as-agents inadvertently resurrects the liberal autonomous subject (traditionally the target of post-modern feminist critique) “through the back door” (2014: 42).

Within the post-colonial context, Wilson (2013) argues that the turn to agency in neoliberal discourses and practices of development has resulted in representations of the ‘third world woman’ as shorn of her location within structural inequalities, untethered from the politics of collective struggle, and engaged exclusively in individualised strategies of self-improvement and resilience. Circulations of women-as-agent thus serve to reinterpret volition as culpability, refuse a recognition of entrenched structures of gendered violence, and result in the withholding of redress and recognised victimhood

⁷ Chapter 2 conducts a more detailed analysis of these critiques and their divergences and convergences.

through victim-blaming rationalities. Thus, the resolution of the issues raised by critiques of women-as-victim formulations cannot, and should not, lie in an erasure or denial of the material, structural realities of sexual violence by recourse to inflated accounts of women as unencumbered, self-responsible and self-directing agents.

How, then, can feminists invested in guarding against the dangerous effects of responses to sexual violence simultaneously attend to both these seemingly conflictual bodies of critique summarised above? Through this thesis, I hope to forge a constructive engagement between the often polarised debates described above, drawing on shared premises and political commitments that are often obscured in dominant modes of engaging across the woman-as-victim and woman-as-agent divide. A key domain of dispute between these bodies of criticism is a quarrel over what is indeed the dominant representational reality of women: are we, in fact, coded as overwhelmingly passive, wounded, weak and vulnerable, or are we instead positioned as excessively self-authoring, self-responsible and largely unencumbered agents? Through an analysis of the post-colonial (and colonising) context of India,⁸ I suggest that *both* these representational exaggerations are operative within dominant discourses of sexual violence: they simply attach themselves to different subjects within different discursive registers or fields. In other words, I argue that women-as-victim and women-as-agent rationalities and representational practices both circulate, while differentially fixing themselves to differently located subjects, mediated by the intersectional rationalities of class, caste, race, and gendered and sexual normativities. As I demonstrate through Chapters 4, 5 and 6, across different discursive registers (juridical, legislative, feminist), the categories and boundaries of victimhood and agency are carefully circumscribed in ways that accommodate some subjects while refusing others, all the while constructing victimhood and agency as fundamentally incompatible and irreconcilable experiences or conditions of being. Thus, subjects of sexual violence are trapped between these binary representative registers, neither of which account for their complex reality.

The solution to the damaging politics enabled by the representational frames of women-as-victims and women-as-agents cannot be to simplistically swap abjection for heroism, or *vice versa*. Surrendering representations of either victimhood or agency at the altar of

⁸ The context of my research is discussed in more detail later in this chapter.

the other necessarily and inevitably precipitates a range of dangerous exclusions and complicities (outlined above), and concedes the terms of an inherent incompatibility between victimhood and agency. My intervention, then, is not so much to adjudicate between the conceptual and political efficacy of the women-as-victim or women-as-agent representation models, but instead to draw on insights from both crucial bodies of critique to militate against a *binary imagination of women* as always either victims or agents, but never, simultaneously both. The feminist project that I hope to contribute to is, as Abrams (1995: 333) puts it, to “describe a subject whose agency emerges against the backdrop of, and co-exists in tension with, systematic gender-based oppression.” Through this thesis I hope to help devise representational categories and frames that enable us to respond to sexual violence in ways that imagine women as “subjected but not—*solely*—the victims of their lives” (Rose 2015: 149).

Specifying the Inquiry: Research Aims and Questions

Before I describe the precise parameters framing my research, I briefly discuss the points of departure from which my thesis proceeds — specifically, I summarise the political commitments and onto-epistemic premises on which this thesis rests. Writing within a feminist tradition which insists on approaching research as a necessarily political undertaking, in what follows I offer a summary of (i) the stakes and interests animating this inquiry, as well as (ii) the theories and practices of being and knowing in the world (i.e. the onto-epistemological contents) that ground my research (discussed in more details in Chapter 2).

First, it is crucial that I register my investment in, and solidarity with, transnational feminist struggles working to address sexual violence.⁹ It is likely already clear that this thesis does not explicitly ask or answer the question ‘how can the causes and manifestations of sexual violence be addressed?’; rather, it concerns itself with violences, exclusions, and coercive and regulatory effects precipitated by the politics of attending to

⁹ Importantly, this commitment is qualified by a recognition of the conflicting multitudes contained under both ‘feminist’ as well as ‘struggles against sexual violence’, and in their intersection. I see feminism itself as a terrain of struggle rather than an innocent or benign (much less necessarily emancipatory) project, and one that often serves to cement rather than destabilise hierarchies of class, race, caste and gendered and sexual normativities (Raghavan 2018; see also Roy 2017) Thus my commitment to feminist struggles against sexual violence is by no means an uncritical embrace of all that travels under its title, but instead a gesture of claiming a stake in defining what travels under the label ‘feminist’ (Raghavan 2018).

sexual violence. Given this focus, I am anxious to clarify that this direction of inquiry is by no means a sweeping indictment of any and all efforts to mitigate sexual violence, far less a call to abandon measures to this end. To the contrary, my research is grounded in, and hopes to both recognise and in some small way contribute to, the legacies of especially *Dalit, Bahujan, Adivasi*,¹⁰ queer and Black feminist struggles and successes against sexual violence. In this regard, my research shares a central investment with these struggles: telling stories that reveal the systemic, structural nature of sexual violence, and of demanding recognition of and redress for the same. Even as I critically interrogate the representational practices through which the victim subject is presented, I hope that my insistence that she *must* indeed be represented serves to celebrate and fortify the crucial feminist triumph of claiming a voice, audience and enunciative position through which to give a structural account of sexual violence. My first political commitment then demands that my research is accountable to those affected by, and mobilising against, sexual violence, all the while differentiating and discerning between the varied and even oppositional groups and interests involved in these efforts.

This brings me to my second, and closely related, political and intellectual commitment: to a practice of critical, reflexive solidarity with struggles against sexual violence. Following dissident voices from within global struggles against sexual violence (Crenshaw 1990; Davis 2000; Kowtal 2019) I am invested in recognising, and even addressing, the heterogenous and conflictual nature of these struggles, as well as their dangerous proximities and entanglements. A significant challenge confronting the conceptualisation of my study was thus striking this balance of reflexive solidarity (Hemmings 2012), i.e. maintaining a continued but *critical* commitment to struggles, while remaining vigilant to the fragile nature of feminist victories, and guarding against the risk of suppling fodder to forces only too eager to roll back these volatile gains. How does a scholar located alongside (but not always necessarily within)¹¹ struggles against sexual violence develop such a practice of responsible, reflexive and critical solidarity? How do I simultaneously celebrate and fortify, as well as interrogate, feminist victories

¹⁰ Throughout this thesis, I use the political (and historical) categories of *Dalit, Bahujan* and *Adivasi* rather than the governmental categories of Scheduled Castes, Other Backward Classes, Scheduled Tribes and Denotified Tribes, while recognising the contested boundaries of each of these political signifiers, and the heterogeneity contained within them.

¹¹ For more on my location and my experiences working on sexual violence advocacy and activism during my time with Delhi-based NGO Nirantar, see chapter 3

against sexual violence? How do I value and engage responsibly with these struggles, as well as critics within and outside of them who have systematically traced the many violences enacted in the name of protecting women- the very violences and exclusions that my thesis most centrally concerns itself with? How do I engage thoughtfully with the full range of critical feminist inheritances (scholarly, activist and otherwise) I have had the privilege of encountering?

To answer these question, I turn once more to legacies of feminist, postcolonial and queer interventions that insist on supporting projects committed to representing women's experiences, while persistently critiquing the terms on which this experience becomes visible (Butler 1990; Dhawan 2012; Kapur 2002; Scott 1992; Spivak 1988 1990). These interventions enjoin a careful and critical engagement with the representational categories and practices deployed in the furtherance of feminist goals. Butler (1990: 4), for instance, warns that representation, while central to a range of feminist projects, is only worthwhile and meaningful if the subjects and processes of representation are persistently problematised. Feminist investments in securing recognition for, and affirmation of, gendered experiences of violence, coercion and oppression must guard against the risk of resisting such an interrogation— Joan Scott cautions that often:

the project of making experience visible precludes critical examination of the workings of the ideological system itself, its categories of representation (homosexual/heterosexual, man/woman, black/white as fixed, immutable identities), its premises about what these categories mean and how they operate, its notions of subjects, origin and cause (1992: 25).

In recognising the constitutive powers of our own representational claims and categories (discussed later in this section), feminists must constantly interrogate discursive productions and representational categories that have hitherto unproblematically “functioned as norms and as tools of critique” (Dhawan 2012: 55). A critical, reflexive practice of solidarity then remains committed to representing victimhood, while interrogating how the category of victim — the subject of feminist considerations of sexual violence— is produced and restrained through the very structures of discourse through which transformation, justice and redress are sought (Dhawan 2012: 55). Thus,

while commemorating and consolidating feminists' success in securing an enunciative position from which to articulate women's experiences of sexual violence, I also ask: on what precise terms have women been allowed access to this position? Which women are granted such access, and which women are denied testimonial legitimacy and credibility? What sorts of (and accounts of) violations are admitted, and what and who is erased in the process? What forms of politics are enabled and foreclosed through the selective recognition of some subjects as injured? In other words, I consistently question the terms on which the subject of sexual violence is recognised and (re)produced. Such an understanding of a critical, reflexive practice of solidarity in turn precipitates a further question: how do I develop a normative basis to this practice of critique, without resorting to crude calculations of whether harms outweigh benefits, especially when these harms and benefits are often borne/accrued by differently located subjects? How do I ensure that my research is consistently alert to the differential experiences of differently located subjects of sexual violence?

My third and final political commitment is to centre the subaltern subject within my analysis of the effects of efforts to address to sexual violence. Drawing once more on Black feminist (Combahee River Collective 1986; Crenshaw 1990), post-colonial (Kapur 2000, 2001, 2002; Nilsen and Roy 2015; Spivak 1988), and *Dalit* (Kowtal 2019) scholarship, I refuse the essentialisation of the subject of sexual violence, and expressly orient my analysis around subjects who are variously referred to (within different intellectual and political traditions) as subaltern, multiply marginal, peripheral, non-hegemonic, or non-dominant. This thesis follows scholars of Subaltern Studies — and more specifically, Gayatri Spivak (1988) — to centre a subaltern subject characterised by her lack of access to the dominant means of representation (for a more detailed discussion on subalternity, see Chapter 3). Marked by her location outside of hegemonic social, political and economic power, the subaltern speaks in a language that does not register with the hegemonic ear; she is not granted a hearing within institutional locations of power (Dhawan 2012; Spivak 1988). Spivak's determinedly epistemological understanding of the subaltern subject demands that we take seriously the question of how scholars and activists can enter into an ethical representational relationship with a subject who is only available for representation by proxy, i.e. through the mediating practice of the post-colonial scholar (*ibid*; discussed in some detail in Chapter 3). This thesis is centrally

guided by this question, and by a commitment to forging an ethical and accountable representational relationship with subaltern subjects of sexual violence.

Finally, before turning to a systematic consideration of my research aims and questions, I address a central onto-epistemic premise in which my inquiry is rooted (see Chapter 2 for a more detailed discussion). Given that my research is interested in the representational categories and practices entailed in dominant responses to sexual violence, I am primarily concerned with the discursive register. Here, I understand and use ‘discourse’ in the Foucauldian (1977, 1978, 1980) sense, as a set of practices engaged in the making of meaning, including and beyond laws, ideas, ideals, norms and common practices (see Chapter 2). Following Foucault and those writing in his tradition, I too am interested in restoring materiality to the study of discourse, tracking the ways in which discourse does not simply describe but fundamentally constructs reality and the subjects who inhabit it (Foucault 1977; Hacking 2002). Such an understanding is not, as Hall (1997) clarifies, to deny or refuse an engagement with the material world, but to recognise that our encounters with it are necessarily filtered through and mediated by discourse — it is through discourse that we imbue the world with meaning and communicate this meaning intelligibly to others (ibid: 25). My research thus embraces (and indeed affirms) the premise that discourses have material effects: they determine the boundaries of what can and cannot be said and even imagined, produce worlds, ‘make up people’ (Hacking 2002), and constrain and enable various forms of being, doing and knowing in the world.

Proceeding from the political commitments and onto-epistemic bases enumerated above, this thesis can be broadly understood as a **critical engagement with dominant discourses of sexual violence, invested in revealing their violent, exclusionary and other pernicious effects for subaltern subjects, tracing the discursive mechanisms through which these effects are enabled, and finally, disrupting their operation.** More specifically, returning to the intervention introduced in the previous section of this chapter, this thesis seeks to (a) demonstrate that the incommensurability between dominant imaginations of victimhood and agency in discourses of sexual violence plays a crucial role in enabling and sustaining a range of the dangerous complicities and injurious effects, and to (b) explore the possibilities for intervening in the discursive

(re)production of the victim/agent binary in order to disrupt these adverse outcomes. To this end, my thesis pursues three distinct but related aims, each prompting a series of their own research questions, with distinct issues at stake as discussed below:

- (i) To track how victimhood and agency come to be stabilised in a binary relationship within discourses of sexual violence, producing the subject of sexual violence as either victim or agent but never both;
- (ii) To reveal the violent, exclusionary and coercive politics enabled by the victim/agent binary, with a focus on its implications for subaltern subjects of sexual violence (i.e. studying the material effects of the discursively produced victim/agent binary); and finally,
- (iii) To offer alternative conceptual imaginations of victimhood and agency in order to resist the victim/agent binary, enable representational practices that are able to capture the complex reality of subaltern subjects as simultaneously inhabiting conditions of victimhood and agency, and interrupt the pernicious politics enabled through the dominant binary representational regime.

(i) Tracing the naturalisation of the victim/agent binary in discourses of sexual violence:

What precise understandings of victimhood and agency are operative within dominant discourses of sexual violence? What are the discursive sites and practices through which these understandings of victimhood and agency come to be naturalised? How do dominant understandings of victimhood and agency in turn mediate the recognition of subjects as victims or agents? In what ways do hierarchies of class, caste, race and gendered and sexual normativities interact with understandings and attributions of victimhood and agency? How do victimhood and agency attach themselves to differently located subjects of sexual violence, within and across different (but interacting) discursive registers (e.g. judicial, legislative, feminist, media discourses of sexual violence)? Relatedly, what are the parameters and protocols circumscribing recognition as a victim or agent? On what terms are certain subjects granted recognition as victim or agents, and on what terms are differently located subjects denied the same? Put differently, how are the conceptual categories of victimhood and agency constituted and contested within and through dominant discourses of sexual violence?

In answering the above, I additionally seek to uncover: how do some subjects become fixed as sites of brokenness and trauma, and others as agentival, self-authoring and self-responsible? How is the relationship between victimhood, vulnerability, weakness and violability forged within discourses of sexual violence? Through what discursive rationalities does victimhood come to be tethered to passivity and dependence? Is victimhood understood as a transient event, or an innate, defining and enduring state of being? What is the precise imagination of agency operative within these discourses? How is agency understood through/against liberal (and neoliberal) conceptions of the heroic, autonomous, self-directing and self-responsible subject? When and how does a recognition of agency preclude an attribution of victimhood, and *vice versa*? What, in summary, are the discursive conditions of possibility enabling the emergence and stabilisation of the victim/agent binary?

What is at stake here is challenging the 'given-ness' of dominant understandings of victimhood and agency, and interrogating the assuredness of dominant attributions of these categories. My intention is to persistently trouble these conceptual categories, and guard against their uncritical ossification within/through discourses of sexual violence. This analysis proceeds from the (Foucauldian) premise that victimhood and agency have no pre-discursive ontological content: as conceptual categories, they are only given meaning within and through discourse (see Chapter 2). Victimhood and agency are then not innocent signifiers that naturally map on to ontologically coherent or consistent subjects and realities outside of discourse: instead, they constitute and are constituted (given meaning) by the very things they describe. Thus, to trace the discursive circuits through which victimhood and agency are infused with their contemporary meanings and potency, and to track the discursive practices and processes through which the victim/agent binary comes to be stabilised, serves to denaturalise the victim/agent binary, and to challenge its given-ness, and begins to point us towards the possibility of alternative, non-binary, conceptual arrangements of victimhood and agency.

Significantly, my analysis uncovers sites of instability where the binary falters or fails, implying that the victim-agent binary does not enjoy an entirely seamless hegemony. Within dominant discourses of sexual violence, there are occasions when the antagonism between victimhood and agency gives way to a more conciliatory relationship. These

represent crucial moments of possibility (often followed by the eclipsing of hope) for the destabilisation of the dominant victim/agent binary (see Chapters 3 and 4). Most importantly, they point to the inherent untenability of such a binary formulation, and signal the urgent need for a conceptual re-thinking of victimhood and agency away from their dichotomous orthodoxy.

(ii) Revealing the effects of the victim/agent binary for subaltern subjects

What exclusions and erasures are entailed through the protocols governing attributions of victimhood and agency? What hierarchies might these exclusions engender or hold in place? In securing recognitions as victims or agents, what elements of subaltern subjects' complex realities are admitted and what is erased/left out/suppressed? To what consequence? What are the implications of non-recognition of victimhood or agency? What are the dividends of binding victimhood to helplessness and vulnerability, and evacuating agency from the victim subject? How, in turn does the attribution of agency enable or preclude acknowledgements of victimhood? What sorts of politics does the figure of the agentless victim of sexual violence enable, and what possibilities does it foreclose? What orientations towards and away from the subject of sexual violence does the victim/agent binary institute? How does the state (and other significant actors) enter into a relationship with, and respond to the agentless victim? What sort of actions do subjects who are read as agentival in turn invite? What demands are made of subjects read as agentival? How does the binary serve to produce subjects for rescue or for discipline/regulation and control? What forms of doing and being are authorised or prohibited through dominant understandings and ascriptions of victimhood and agency? In other words, what are the material implications of the victim/agent binary for subaltern subjects; how are the figures of the victim and the agent "put to work, and made to work, in particular times and places" (Ahmed 2000: 15)?

This line of inquiry is premised on an understanding of discourse as having subjectivating effects (Butler 1990; Foucault 1978 1980; Hacking 2002), producing the very things they describe, and doing the work of 'making up people' (Hacking 2002, see Chapter 3). Modes of description and presentation, such as victimhood and agency, fundamentally determine, delimit, enable and foreclose possibilities for action in relation to what they

describe (Hacking 2002: 108). Victimhood and agency serve to circumscribe legitimate ways of being and doing in the world; they fundamentally shape the subjects they describe, while equally circumscribing the possible modes of engagement with these subjects. Victimhood does not simply describe an experience of injury: it delineates forms of injury and categories of the injured that/who are worthy of recognition, it confers a political status which in turn invites particular (often protectionist) responses and gestures from a range of actors. Similarly, agency attaches itself to certain bodies with specific consequences: it sanctions the abdication of care and responsibility towards subjects read as self-directing, and places inflated demands on these subjects while effacing the structural conditions of oppression they inhabit. Through this trajectory of inquiry, I argue that many of the pernicious effects of dominant discourses of sexual violence are enabled precisely by a binary imagination of victimhood and agency—including, but not limited to, neoliberal and neoconservative complicities; carceral impulses; the effacement of intersectional inequalities; the emboldening of racist neo-colonial, imperial and ethno-nationalist rationalities and border regimes; the expansion of 'sexual security regimes' (Kapur 2013) and their machinery of surveillance, regulation and control. At stake here, then, is diagnosing the precise representational practices through which dominant discourses of sexual violence become amenable to, and even invested in, exclusionary, violent and regulatory agendas and projects.

(iii) Challenging the binary and its effects: imagining new conceptual arrangements of victimhood and agency

How can those of us who are invested in 'telling stories' (Hemmings 2011) of sexual violence—while refusing the violences and complicities they currently entail—challenge the dominant binary representational regime; i.e. how can we tell stories of sexual violence *differently* (Hemmings 2011)? How can we retain an investment in representing structural, gender-based oppression while insisting on recognitions of female agency, refusing the trade-offs and erasures often demanded in attaining either? Turning once more to Rose (2015), how do we respond to sexual violence in ways that imagine women as "subjected but not—*solely*—the victims of their lives" (ibid: 149)? How can we go beyond revealing the political dangers and conceptual poverty of the victim/agent binary, to fundamentally reimagine the very conceptual categories engaged in it? What are the

sites and practices through which we can reclaim these indispensable concepts? How can we begin to rethink “the categories of thought and action within which we habitually conduct our lives” (Halperin 1990: 25)? Where do we look for forms of knowing and narrating sexual violence that are excluded, erased and concealed in the process of stabilising the dominant, binary epistemic order? How do we seek, locate, and take seriously these buried and banished knowledges that are, by definition, inaccessible within and through the dominant representational regime? How, in essence, do we assemble both the archival sources as well as the conceptual strategies to think victimhood and agency otherwise?

In answering these questions, I look both at, and beyond, ruptures in the victim/agent binary within the dominant representational regime; I assemble what I call a subaltern archive, shielded (but never entirely insulated) from the logics that sustain the dominant binary representational order. Seeking ways of knowing and narrating sexual violence that have been banished from the dominant archive, I follow Subaltern Studies to privilege unqualified and disqualified forms of knowledge from a range of sources traditionally overlooked in the production of concepts and theory. My subaltern archive dwells beyond libraries, courtrooms, legislatures and dominant feminist archives, leading a rather more fugitive existence in slogans, chants, pamphlets, posters, letters, diaries, conversations and various other ephemera (for more on the subaltern archive see Chapter 3).

The subaltern archive constitutes a crucial site from which to challenge the victim/agent binary, and with it, the incessant incorporation of subaltern lives, trauma and death in the service of violent and exclusionary agendas. Through an engagement with the subaltern archive, I identify and amplify representations of sexual violence that do not accommodate, and even expressly frustrate, the coercive and exclusionary effects of dominant discourses of sexual violence. At stake here, then, is the possibility of interrupting the victim/agent binary and the pernicious politics the it enables, while insisting on telling stories of subaltern subjugation and struggle in conceptual vocabularies that accommodate and celebrate the subaltern subject in all her complexity. Through my analysis of the subaltern archive, I argue that if agency and victimhood are re-imagined from this site, agency emerges as not simply compatible with, but often deriving precisely from and in response to experiences of victimhood.

The discussion of research aims, questions and stakes above prompts the immediate question of methodology: how precisely do I approach the study of the naturalisation of victimhood and agency, and the imagination of alternative conceptual arrangements? What methodological tools might lend themselves to such an inquiry? As I discuss in some detail in Chapter 3, this thesis takes up ‘feminist historical ontology’ as a key methodological tool (Madhok 2020, 2021). Historical ontologies concern themselves with, and facilitate the study of, the history of concepts, the work they enable and foreclose, and the possibility of alternative conceptual categories and arrangements (Hacking 2002). A feminist historical ontology supplements Hacking’s (1988, 2002) work with a critical feminist politics of location, enabling an expressly gendered, intersectional and located analysis of how contemporary conceptions are produced, and how the conditions for their formation and dominance constrain our present ways of knowing and imagining the world (2020, 2021).

A feminist historical ontology studies how (necessarily gendered) concepts come into being, acquire particular meanings and significance at particular moments, how they make up people, and open up or close down possibilities for human action. In other words, it facilitates site specific, historically located accounts of concepts in order to demonstrate how particular gendered subject formations (and orientations towards these subjects) come into being at particular times (ibid). Crucially, a feminist historical ontology also makes possible conceptual work within what are understood as non-standard conditions: it facilitates an encounter with banished and buried knowledges, and demands that we take these seriously as sites for concept-building. In doing so, feminist historical ontology produces the conditions of ‘thinkability’ for alternative conceptual arrangements to emerge, challenging dominant understandings of the concepts through which we approach our realities. Thus, feminist historical ontology presents itself as an apposite methodological instrument through which each of the three strands of my inquiry might be facilitated (traced in some detail in Chapter 3). Feminist historical ontology’s emphasis on a necessarily located, situated, and deeply contextually embedded mode of analysis brings me to my next section: a specification of the precise context within which my analysis unfolds.

Locating the research: India as a Post-Colonial and Colonising Context

As discussed above, a feminist historical ontology stipulates a necessarily located, situated analysis: it refuses an uncritical, “technical application of theory” across contexts in favour of an “insistence on location as a critical reflexive ethics” (Madhok 2020, 2021), outlined in some detail in Chapter 3). While this research effort seeks to intervene more broadly in representational practices around sexual violence, my journey to this intervention via a feminist historical ontology is steeped in a deeply embedded analysis of a very particular, and complex, context: post-colonial India.¹² Through this section, I explain the rationale behind situating my research effort at this (by no means monolithic or homogenous) site, provide a brief and introductory background to the context, and outline what is enabled, analytically and methodologically, by my focus on this location. Why study the effects of discourses of sexual violence within and through the context of India? Why look here for the possibility of alternative conceptual arrangements of victimhood and agency? What unique analytical and methodological possibilities might such a focus accommodate?

My first, and arguably most significant, justification for locating this study in India lies in its status as a simultaneously post-colonial and colonising nation, and the centrality of discourses of sexual violence in securing its position as both. The production of India ‘under western eyes’ (Mohanty 1984) as a nation uniquely and pathologically acculturated to sexual violence has been central to its designation as a civilisationally backward, socio-culturally afflicted, post-colonial ‘other’, inviting patronising and neo-imperial responses from a range of actors who concern themselves with the suspect project Spivak (1988) labelled ‘white men saving brown women from brown men’ (Dutta and Sircar 2013; Kapur 2002; Narayan 1998; Thapar-Björkert and Tlostanova 2018). Global representations of India as home to the ‘rape capital of the world’ abound (Roychowdhury 2013), and play a crucial role in simultaneously buttressing the West’s image as progressive paragon and saviour while erasing women’s victimisation within these contexts, as well as cementing India’s image as endemically and *culturally* violent,

¹² For a more detailed discussion on the subaltern subjects —Mathura, Bhanwari Devi and Jyoti Singh— whose stories my research is centrally concerned with, and the consequent precise timeframe, discursive sites and narrative artefacts that I consider see Chapter 3.

while eliding accounts of Indian women's agency and resistance. Representations of India as uniquely, inherently violent and barbaric are thus often coupled with characterisations of Indian women as ineluctably weak, vulnerable and violable (Mohanty 1984; Narayan 1988), with significant material consequence. As I show through my analysis in Chapter 6, these representations reinforce racist, colonialist accounts of the unquestionable superiority of western liberal doctrines, while fuelling (often martial) projects invested in 'civilising' the 'barbaric other'. India's status as a post-colonial nation is thus fundamentally re-inscribed within and through dominant discourses of sexual violence, lending the context ideally to a project invested in interrogating the effects of modes of representing sexual violence and its subjects.

Simultaneous to its reality as a post-colonial nation, India is also a *colonising* force in its own right, engaged in multiple projects of material and epistemic occupation and displacement, from Kashmir to Manipur (see Bora 2010; Osuri 2017). Kaul's (2011) analysis, for instance, points to continuities in state formation from empire to the post-colonial condition, revealing the colonial legislation and attitudes that sustain India's occupation of Kashmir (see also Osuri 2017). The deeply undemocratic imperatives and imperial ambitions of the contemporary post-colonial state are often buttressed by continuities between anti-colonial, post-colonial and neo-colonial exclusionary nationalisms (as I show in Chapter 6), which in turn, I argue, are subtended by the material and discursive deployment of sexual violence. The state and its military apparatus enlist the figure of the imperilled normative Indian woman — vulnerable to the rapacious violence of the (especially Muslim other) — in the rationalisation of violent nationalisms as well as the justification of ritualised sexual violation in its 'borderlands' (see Chapter 6). The discourse of sexual violence within colonising India thus serves as a bordering practice (Ticktin 2008; Holzberg and Raghavan 2020), marking gendered populations for protection from sexual violence (and consequently, for surveillance, regulation and control), while rendering other gendered subjects available for unsanctioned violation, expressly in the name of securing the nation. Within the Indian context, representations of sexual violence are thus the battleground on which neo-imperial, post-colonial, neo-nativist and neo-colonial investments and ideologies compete to produce an account of the nation itself.

Second, post-colonial India has a rich, deeply fractured and contentious history of mobilisations against sexual violence, producing a profusion of diverse accounts and politicisations of sexual violence (Agnes 1992; Kannabiran and Menon 2007; Menon 2004; Kowtal 2019) — a wealth of discursive artefacts is thus available for a project that takes discourses of sexual violence as its central object of analysis. This history includes crucial forms of insurgent, dissident (often subaltern) resistance that emphasise caste hierarchies, conditions of occupation and judicial abandonment as a basis to refuse dominant modes through which to understand and address sexual violence (much of which inform the subaltern archive). They eschew easy recourse to the law, push at and challenge the frames through which injury is made legible, interrogate the routes through which justice is imagined and sought, and critique the institutions to which we appeal for recognition and protection (see for instance Cheruvillil 2014; Gyanshori 2008; Kandasamy 2013; Rowena 2013; Stephen 2012). Notably, this long and continuing history of resistance and contention is seldom accommodated within representations of India under western eyes (Mohanty 1984), steeped as they are in epistemologies of ignorance (Mills 2007) and forms of colonial unknowing (Vimalassery *et al.* 2016; Stoler 2011). Overcoming these wilful erasures entails persistent counter-productions of knowledge, insistent in their narration of subaltern Indian women as not simply subjugated by, but actively resisting both their structural and systemic oppression, as well as the actors and forces who claim to empower them. This thesis hopes to produce one such account, and to draw on precisely these histories of contention to make the case for a conceptual reimagining of victimhood and agency on the basis of subaltern Indian women's complex relationship with violence, oppression, coercion and agency, resistance and contestation.

Third, and finally, locating this inquiry in India is also motivated by my own investments in, proximity to, and familiarity with the context. Having grown up in India, it was where I had my own first encounters with forms of sexual violation, and where I forged the multiple communities with whom I worked to collectively make sense of these experiences. Much as my class and caste privilege substantially shielded me from exposure to a range of harms, India was the scene of my initiation into experiences of gendered victimhood, as well as the site of emergence and continued contestation of/through a collective political agency. India was also where I engaged explicitly with

work that sought to address sexual violence, most significantly during my time with Delhi-based feminist NGO, Nirantar. Through my work with Nirantar, and through the many incredible encounters it made possible, I began to apprehend the urgency and complexity entailed in the project of addressing sexual violence in India. I was confronted with the rather unsavoury reality that the vocabularies and frames through which I had first learnt to think about sexual violence were not simply inadequate for, but often fundamentally incompatible with securing recognition and redress for subaltern subjects of sexual violence. The institutions through which I imagined my own safety and protection — the (caste) family, workplace, the nation-state and its punitive apparatus — were all bound up with the reproduction of gendered violence on other(ed) bodies.

The questions posed through this thesis are thus not detached, clinical curiosities, but closely felt and lived conflicts and contestations. Far from embodying a dispassionate, ostensibly neutral view “from nowhere” (Haraway 1988: 581), I am intimately entangled with my research in ways that inflect every stage of the project (see Chapter 3). Given this entanglement, working on and from the context of India enables me to expressly address my own investments, fears and desires, and their implications for research into discourses of sexual violence. My proximity to and familiarity with the context also grants me crucial forms of access (to individuals, institutions, archives and more, discussed in Chapter 3)—most notably to subaltern archives which often appear in the vernacular. Researching discourses of sexual violence in India thus allows me access to crucial subaltern archives, while forcing me to trace, confront and account for my own complex affective and political investments and involvements in my scenes of analysis.

Summarising the Contribution: Post-colonial Feminist Interventions and Inheritances

In this section, I summarise the empirical, methodological and conceptual contributions and interventions I hope to make through this thesis, and locate them within the legacies of scholarship and activism that enable them. In doing so, I am careful to refuse the coloniality of claims to originality, often anchored in imaginations of exploring uncharted academic territory, and propelled by impulses of capture, conquest and domination. I am also keen to resist demands for and pretences at perfected scholarly

and critical mastery, following Singh's (2017) cautions against the colonial logics underpinning such ambitions. Instead, I view this thesis as sitting in conversation with, and in some ways facilitating a conversation between, hefty feminist inheritances which have thus far evaded this particular mode of encounter with one another, as well as with the subaltern archive I assemble.

This thesis is animated by the simultaneous desire to produce a located analysis of the effects of dominant discourses of sexual violence in post-colonial and colonising India, while also engaging in conceptual work that could more broadly inform transnational feminist imaginaries and strategies. Mediating between the particular and the universal, I hope to be able to make three levels of contributions that span this divide, and navigate the tricky terrain between specific, situated interventions and more broad knowledge claims. My empirical, methodological and conceptual contributions, while intimately entwined and informed by one another, thus move progressively from the particular to the universal in terms their sites and objects of analysis, orientations, and interventions. All three levels of intervention, however, remain centrally invested in contributing to transnational feminist efforts to resist the violences and erasures entailed in efforts to address sexual violence.

Empirical Contributions:

Within the post-colonial Indian context, sexual violence and the struggle against it has been the subject of a vast and growing body of scholarly and activist literature for over five decades (Agnes 1992; Baxi 2000, 2014a, 2014b; Kannabiran and Menon 2007; Menon 2004, 2012). The feminist 'story' (Hemmings 2005, 2011) of women's resistance against sexual violence has had many crucial tellings, charting its numerous trials, tribulations and triumphs across time. These multiple and varied narrations, while often coalescing around dominant stories of periodic progress and loss, do the crucial work of documenting the complex and contentious history of the struggle against sexual violence. My empirical contribution sits within this tradition, but departs slightly in two key regards: (i) through an express attentiveness to representational practices, and an investment in interrupting the amenability of narratives of sexual violence to violent,

exclusionary and coercive agendas and projects; and (ii) by the centring of the subaltern subject and her complex relationship with victimhood and agency.

My first contribution rests on a situated tracking of the precise representational dynamics through which responses to sexual violence come to accommodate and enable intersectional failures, violent and exclusionary ethno-nationalisms, neoliberal and neoconservative rationalities, the expansion of the carceral state, the surveillance and control of gendered subjects. Within the specific context of post-colonial India, I am able to reveal the effects of dominant, binary modes of imagining and representing sexual violence, and identify the precise sites and practices through which this binary representational regime is sustained. My second contribution emerges through the assembling of a subaltern archive from which to think sexual violence differently. In assembling a subaltern archive, I seek to compile and draw attention to a crucial set of resources from which to counter the pernicious ways in which subaltern subjects are raised, erased and displaced within dominant, binary representational regimes. Hemmings introduces the feminist narrative method of 'recitation', which aims at "not the telling of a new story, but a re-narration of the same story from a different perspective" (2011: 181). Through an engagement with the subaltern archive, this thesis provides a glimpse into what it would look like to re-narrate a history of sexual violence and the struggle against it that centres the subaltern subject, in all her complexity, in its telling. As I show in Chapters 5 and 6, attending to this different telling opens up possibilities for imagining representational practices of sexual violence that do not so readily accommodate the violent and exclusionary effects that dominant discourses of sexual violence so often provoke in post-colonial India.

Methodological Contributions:

This thesis participates in crucial and fraught methodological debates on how to enter into an ethical representational relationship with subaltern subjects of sexual violence. Despite the many dangers and violences entailed in the project, I follow Alcoff (1991) and Spivak (1988) to argue against the representational abandonment of the subaltern subject, while also refusing the abdication of political and ethical commitments and accountability to her. Far from claiming to have resolved these inevitably thorny

contentions, I work to bring together methodological frameworks through which to approach the representation of subaltern victimhood and agency in discourses of sexual violence. By engaging with and extending a rich history of post-colonial feminist and *Dalit* interventions, (Chow 2003; Loomba 1993; Li 2009; Guha 1996; Madhok 2014; 2020; Shobhana 2016; Spivak 1988; Sunder Rajan 1993) I work to compile a crucial set of questions and provocations which serve to guide the forging of an ethical, accountable and persistently reflexive representational relationship with subaltern subjects (see Chapter 3).

Additionally, my research demonstrates the methodological and analytical possibilities enabled by undertaking feminist historical ontologies (Madhok 2020, 2021). Through this thesis, I have had the privilege of introducing feminist historical ontologies to the study of discourses of sexual violence and its effects. In doing so, I illustrate the many enablements presented by a methodological apparatus that interrogates concepts, their histories, and the work they do, all the while emphasising their gendered nature and consequences, and insisting on a critical reflexive politics of location. Most importantly, feminist historical ontologies make possible conceptual work within traditionally non-standard conditions, inaugurating possibilities for alternative conceptual arrangements through which to challenge dominant conceptual formations. Feminist historical ontologies are thus crucial to enabling encounters with, as well as establishing the epistemic significance of, subaltern archives, as I demonstrate in Chapter 3. Through my thesis I hope to evince the utility of feminist historical ontologies to scholars participating in critical engagements with discourses of sexual violence specifically, as well as more broadly to any effort invested in interrogating the frames and categories through which we encounter the world.

Conceptual Contributions:

Madhok (2021) argues that the production of concepts from ‘most of the world’, from contexts outside of those from which concepts are standardly imagined is a matter of urgency. To Madhok (2021), “we simply don’t have the concepts we need in order to produce theorised accounts of phenomena and our different and historically specific encounters with the world” (ibid). In producing concepts from non-standard locations,

however, Madhok cautions that we must avoid both the trap of violent commensurability (Tuck and Yang 2012) as well as radical unintelligibility (Madhok 2021). Feminist historical ontologies provide precisely such a possibility of producing located, contextually embedded, epistemically situated conceptual work that holds the possibility to “disrupt the cycle of despair and exhaustion” (ibid) brought on by limiting our imagination to dominant conceptual categories. Through a feminist historical ontology of victimhood and agency, I draw on the subaltern archive to challenge the inevitability of the dominant victim/agent binary (and its violent consequences), and produce alternative conceptual possibilities that characterise victimhood and agency as fundamentally coeval and co-constitutive categories of experience.

Finally, by intervening in the victim/agent binary, I follow within a feminist tradition of “reliable suspicion” (Furgeson 2017: 271) of binaries, dichotomies and dualistic modes of knowing and being in the world. Feminist, queer, decolonial, and post-colonial scholars have systematically denounced the empirical failures, conceptual and analytical poverty, and political dangers of binary frames of understanding and approaching reality (Cixous 1986; Kapur 2018; Lorde 1984; Lugones 2007; Mohanty 1984). In locating my work expressly amongst these interventions, I hope to both (i) hold myself accountable to refusing all forms of often tempting but inevitably limiting and damaging binaries throughout my analytical and representational practices (man/woman; nature/culture; body/mind and even good/bad feminist); while also (ii) contributing to the crucial and ongoing project of resisting and transcending the binaries we are constantly disciplined into.

Charting the Course: Structure of the Thesis

Following this introductory chapter, in Chapter 2, *Victimhood and Agency in Sexual Violence: A Conceptual Framework*, I plot a conceptual path through rich and diverse bodies of feminist, post-colonial, Black, and queer scholarship on sexual violence, victimhood and agency. I consider the key debates animating feminist engagement with sexual violence, mapping the contours of contentions informing how sexual violence is imagined and articulated. Drawing out of this discussion, I outline the ontological and epistemic premises that undergird my research, built on the theoretical insights of Foucauldian ‘regimes’. I then detail the central tension my thesis seeks to intervene in:

the conflict between critiques of women-as-victims and women-as-agents representational regimes. Framing the victim/agent binary as the central challenge confronting dominant efforts to mobilise against sexual violence, I finally assemble the conceptual foundations from which to understand and approach victimhood and agency, and to commence my broader project of engaging critically with their (binary) productions and circulations in dominant discourses of sexual violence.

Chapter 3, *De-subjugating Knowledges: Methodological and Ethical Considerations*, takes up the question of how to approach the project of challenging the victim/agent binary, detailing and justifying the methodological tools, analytical lenses, and discursive artefacts I privilege in my research. I locate my methodological orientation and contributions within a tradition of feminist and post-colonial scholarship that insists on, and develops the tools to facilitate, concept building from 'non-standard' contexts. I introduce feminist historical ontology as my central methodological scaffolding, and outline how feminist historical ontologies interrogate concepts, their histories, and the work they do, while also inaugurating possibilities for alternative conceptual arrangements. I then introduce the key archival sites I consider, before engaging with fraught methodological debates around how to enter into an ethical representational relationship with subaltern subjects of sexual violence. Finally, through the lens of a critical feminist politics of location, I attempt to "name the ground" (Rich 1988: 209) from which I speak, and consider its implications for my research.

The next three chapters contain the central analytical thrusts of my thesis. In Chapter 4, *Revisiting Mathura: The State as Aggressor/Saviour*, I argue that case law is a central site for the (re)production of the victim/agent binary and its exclusionary implications. Through the of yoking agency to notions of liberal autonomy (heroic, unfettered, and heedless of context), recognitions of victimhood are withheld from a range of subaltern subjects. The resistance requirement, attributions of habituation, and adjudications based on liberal notions of consent are key judicial practices through which the victim/agent binary is entrenched. I demonstrate that each of these is mediated by rationalities of caste, class, gender and conformity to sexual and gendered normativities, fundamentally inhibiting subaltern subjects' ability to secure recognitions of, and redress for, violation. Finally, I argue that while feminist discourses in the aftermath of the attack

on Mathura held the potential to challenge the victim/agent binary, their emancipatory potential was blunted through feminist investment in legislative reform: a site at which, through a re-deployment of the victim/agent binary, the state re-authorized itself as protector/saviour, while concealing its proclivity to wound.

In Chapter 5, *Bhanwari Devi: The Unmaking of a Subaltern Subject as 'Case'*, I track how the history of legislation on sexual harassment was lived and experienced by the subaltern subject at the heart of its making: Bhanwari Devi. I argue that across case law, feminist responses to sexual violence, and legislative reform (and at their intersection in the Vishaka guidelines), the victim/agent binary violently circumscribed Bhanwari Devi's representational and political possibilities. I show how subaltern subjects are only admitted into the dominant archive in partial, truncated modes: as culpable habitué, self-responsible agent of change, agentless icon of abjection, or passive victim inviting capitalist rescue missions. In the final section of this chapter, I engage with a subaltern archive from which I begin to assemble the discursive artefacts and conceptual material through which to displace the dominant (binary) representational regime. Within the subaltern archive, Bhanwari Devi appears as a complex subject whose agency emerges precisely from her experience of victimhood, posing a fundamental challenge to the victim/agent binary and the politics it enables.

In Chapter 6, *Jyoti Singh: Securing the Nation through the Politics of Protection* I argue that dominant legal responses to the rape and murder of Jyoti Singh (re)produce the figure of the agentless victim as the paradigmatic subject of sexual violence. I trace how the figure of the agentless victim travels beyond case law, informing (while also being challenged by) legislative and feminist discourses of sexual violence. I demonstrate that the figure of the imperilled (normative) female body is produced as an idiom for the nation itself, providing the ideological animus for the expansion of the masculinist, patriarchal and colonial state. In the context of an increasingly authoritarian, Hindu nationalist and colonising state in India, I show how the figure of the agentless victim lends itself to regulatory, coercive, exclusionary and often brutal ends. Finally, I turn to the subaltern archive to identify and amplify responses to sexual violence that challenge the figure of the agentless victim and the violent politics it sustains.

My concluding chapter *Resisting the Binary: Rethinking Victimhood and Agency Through the Subaltern Archive* ties together the key findings, contributions and implications of my research, exploring what my analysis might point to in terms of a different representational relationship with, and politics of responding to, the subaltern subject of sexual violence. Finally, I briefly consider the risks that these findings and suggestions might pose through dangerous (if inadvertent) complicities or adjacencies.

Chapter 2: Victimhood and Agency in Sexual Violence: A Conceptual Framework

In this chapter, I locate my thesis within a rich inheritance of Black, post-colonial, queer and feminist scholarship and activism, bringing together disparate bodies of work that my research speaks alongside, within, and on occasion, against. This chapter is an exercise in acknowledging feminist debts (Madhok 2020); recognising the labour and struggles that have facilitated the very 'thinkability', or conditions of intellectual possibility for engaging in the forms of epistemic work I propose to undertake. My objective is not so much to provide an exhaustive overview of the decades of vast, contested, and constantly evolving literature on sexual violence, victimhood and agency (as if such a task was ever possible). Rather, mine is an expressly motivated engagement with these intellectual inheritances, seeking to (i) situate and frame the central problematic this thesis attempts to resolve i.e. the victim/agent binary and (ii) assemble the onto-epistemic grounds and conceptual apparatus from and with which my research proceeds.

This chapter begins with a consideration of the key conceptual debates animating feminist engagements with sexual violence, charting the central contestations around how sexual violence is imagined and articulated. Building on this discussion, I outline the onto-epistemic determinations that inform this thesis' understanding of and approach to sexual violence. I then take up debates around the politicisation of sexual violence, drawing on Black, post-colonial, queer and feminist cautions against the many pernicious effects of dominant modes of politicising sexual violence. Through my engagement with these crucial, often conflictual interventions, I frame the victim/agent binary as a central challenge confronting dominant efforts to mobilise against sexual violence, elaborating precisely what is at stake through my research (a discussion I initiated in Chapter 1). I establish my investment in tracing the antecedents, charting the effects of and interrupting the (re)production of the victim/agent binary in discourses of sexual violence, before turning to literature on victimhood and agency. I suggest that both victimhood and agency constitute crucial, even indispensable, conceptual resources to feminist and allied projects, but I join Black, post-colonial and post-structuralist feminists in cautioning against the myriad dangers of particular understandings and deployments of victimhood and agency, and the politics enabled by these frames. Through an

engagement with these crucial legacies of critique, I assemble the foundations of a conceptual approach from which to commence my broader project of engaging critically with the (binary) production of victimhood and agency in dominant discourses of sexual violence.

Sexual Violence: Debates, Dilemmas and Dangers

How has sexual violence¹³ been imagined and articulated by those seeking to study, represent and address its harms? In what various and competing ways has sexual violence been mobilised as a conceptual and political category within feminist theory and activism? Further, what are the *implications* of these various understandings and deployments of sexual violence? What conceptual and political work do they do (or fail to do)? What modalities of redress do they enable and foreclose? How do different modes of signifying and addressing gendered suffering shape the conceptual categories (especially victimhood and agency) through which subjects are produced, and in which they are enclosed? In this section I take up these questions in an effort to illuminate the various meanings attached to 'sexual violence', and demystify the manner in which this category assumes analytical and political potency.

First, I critically engage with the dominant conceptual approaches to sexual violence, tracking the various conceptual vocabularies and imaginaries through which scholars and activists understand and narrate sexual violence and its harms. Here, I concern myself predominantly with how sexual violence is framed conceptually: in other words, I ask how have feminists sought to make sense of, and articulate, the issue of sexual violence. I outline a range of difficulties manifest within dominant conceptual frameworks, while highlighting their strengths and contributions. Second, I draw on the preceding analysis to outline the conceptual approach I develop in this thesis, and introduce the onto-epistemic foundations from which my research proceeds. Finally, I turn to a critical interrogation of dominant efforts (activist, academic, legal etc) to *address* sexual violence: i.e., I move from examining *conceptualisations* of sexual violence to

¹³ My analysis concerns itself with the full universe of sexual violations and harms, including those apprehended through the categories of sexual harassment, rape, molestation, sexual assault and a range of other vocabularies and idioms through which sexual harm is understood and represented in different contexts (Alcoff 2018).

studying its *politicisation*. Here, I mediate between two bodies of scholarship: (i) critiques of the over-representation of women's victimhood and (ii) disquiets around the over-attribution of female agency, drawing on these pools of literature to establish the victim/agent binary as the central animating concern of my thesis.

Three Conceptualisations of Sexual Violence

Feminist accounts of sexual violence and its harms can broadly be classified along three distinct approaches: conceptualisations of sexual violence as (i) violence, not sex (ii) violence precisely because sex is violence and (iii) a unique species of violence due to its sexual content. Many of the debates that map along these divergent positions originated and circulated within a very specific geographical and temporal context: in the United States during what are referred to as the 'sex wars'¹⁴ of the late 1970s, the 1980s, and extending into the 1990s (Abrams 1995). While these conceptual approaches to sexual violence thus derive from, and speak to, the particular struggles and demands made 'there' and 'then', they have profound consequences for approaches to sexual violence across the world, not least in post-colonial India. As my analysis in Chapters 4, 5 and 6 demonstrates, Western feminist theory has had significant bearing on legislative reform and jurisprudence within the post-colony, to the extent that Catherine MacKinnon's work (discussed below) finds frequent, explicit mention within judgements relating to sexual violence in Indian courts (see Chapter 6). Thus, in my engagement with these Western conceptual approaches to sexual violence, I join Menon (2004) in insisting on a critical engagement with them, not least in recognition of their travels beyond the immediate contexts within which they emerged (I dwell in more detail on these travels and their consequences in the next section of this chapter).

In what follows, I highlight the merits and contributions of each of the three approaches to sexual violence, while simultaneously attending to their limitations, tensions and contradictions, before outlining the conceptual basis for my own engagement with sexual violence. Throughout my discussion of conceptual approaches to sexual violence, I both

¹⁴ The feminist sex wars (also variously known as the lesbian wars or the porn wars) were a set of deeply polarised and polarising debates amongst predominantly US feminist theorists and activists relating to a plethora of issues broadly relating to questions of sex and sexuality (Boyle 2014).

proceed from and demonstrate the premise that sexual violence has no pre-discursive ontological coherence: it is only given meaning within and through discourse (Alcoff 2018; Menon 2004). This is not, as I clarify, to deny the ‘realness’ of sexual violence, the embodied nature of its experience, or the corporality of bodies subject to it. Rather, it is to recognise that the circulation of ‘sexual violence’ as a meaningful category does not correlate or map onto any ontologically coherent or consistent reality: sexual violence is produced as a discourse rather than discovered and named as an antecedent reality.

(i) Sexual Violence as *Violence, not Sex*

This position emerged as part of the ‘second wave’ of feminism in the United States (Cahill 2001: 16) and is evinced most notably in Susan Brownmiller’s work *Against our Will: Men, Women and Rape* (1975). Brownmiller essentially took the ‘sex’ out of sexual violence, challenging narratives of rape as primarily and predominantly an act of sex, or a violent fulfilment of primal, feral male sexual urges. Instead, Brownmiller displaced the sex-centred orthodoxy with an emphasis on power and domination, recasting rape and sexual violence as a political, rather than sexual act. To Brownmiller, rape is “a deliberate, hostile, violent act of degradation and possession on the part of a would-be conqueror, designed to intimidate and inspire fear” (ibid: 391), rather than the violative fulfilment of sexual urges.

This reframing of rape served a number of crucial conceptual and political functions. Most significantly, it enabled a recalibration of the focus of rape from the individual to the social, providing a compellingly systemic account of sexual violence. Following Brownmiller’s work, rape came to be viewed not simply as an incursion on an individual, but a broader political instrument of social control, “nothing less than a conscious process of intimidation through which *all men keep all women* in a state of fear” (ibid: 15).¹⁵ Thus, rape and sexual violence became issues not of individual transgressions and victimisations, but of systemic, structural political configurations. Brownmiller’s account is above all a structural one: she located rape in relation to political, economic and social

¹⁵ To Brownmiller, rape served two key political functions: first, to ensure the continued and necessary protection of women by men through oppressive institutions such as marriage; and second, as an instrument in conflict and contestation between and amongst men (ibid: 123-125).

structures, and in doing so, she displaced the possibility of women's complicity in their own violation. The shift away from an emphasis of the sexual nature of sexual violence sought to render questions of the victims' sexuality, sexual history, and sexual preference entirely irrelevant (ibid): a crucial intervention, given the continued tendency to employ these lines of inquiry in order to blame victims for their victimisation. Further, eliminating associations of the sexual from incidents of sexual violence brought into sharper relief the brutality and violence of the acts themselves (Cahill 2001: 20).

Despite these important contributions to feminist thought and politics around sexual violence, Brownmiller's submissions pose some theoretical and political difficulties. The first of these lies in a curious slight of theory through which Brownmiller simultaneously rejects and affirms biologically deterministic theorising of sexual violence. Brownmiller's theorisation of rape firmly refuses narratives of the uncontrollable sexual urges of the biological male as a cause for rape: to the contrary, she insists on a structural, political rather than biological account for the nature and cause of rape. Brownmiller's refusal of biological determinism, however, falters in her theorisation of the *origin* of rape as a gendered technology of domination. While responding to the question of how men's domination over women acquired this particular, sexual modality, Brownmiller resorts to an irredeemably physiological account, stating "man's structural capacity to rape and women's corresponding structural vulnerability are as basic to the physiology of both our sexes as the primal act of sex itself ... when men discovered that they could rape, they proceeded to do it" (Brownmiller 1975: 13-14).

In locating the origins of rape in the "factual accidents of biology" (Cahill 2001: 21), Brownmiller predicates her submission on (and subsequently reifies) biologically determined and determining essentialist imaginations of 'man' and 'woman'. Brownmiller's work assumes that the "very facts of the male and female bodies make rape a possibility" (Cahill 2001: 21) in a manner that "appeals to biology as a politically innocent field of knowledge" (ibid: 22). To Brownmiller, a subject's biology determines entirely their *availability for* rape, or *capacity to* rape. As Cahill (2001) demonstrates, within Brownmiller's characterisation, all men are potential rapists and all women are potential rape victims based on a *biological reality*. Brownmiller thus places rape back in the realm of the physical, rather than the social body, while framing the body as a

biological given rather than a political entity — a position that sits uncomfortably with feminist and queer vitiations of biologically-given sex (Butler 1990; Hird 2000; Wittig 1992).

Brownmiller's biological account of the origins of rape has two related, and troubling, implications. First, it enables a violent and exclusionary policing of the boundaries of womanhood. Within Brownmiller's imaginary, to be a woman (and consequently to be vulnerable to rape) is to occupy a particular body, defined by its position relative to the "primal act of sex" (Brownmiller 1975: 14). Such a physiological account irremediably excludes trans, male and other subjects — not readily apprehended as 'women' through Brownmiller's biological account — from inclusion within a structural account of sexual violence, and ultimately, from recognition as victims of rape. Brownmiller's origin story also has troubling implications for women who are not straightforwardly imagined as physiologically weak or vulnerable: if vulnerability to rape is coded as physiological vulnerability, a range of women who are understood as physiologically invulnerable (an attribution which is inevitably classed, racialised and caste-inflected), are similarly refused recognition as victims. Brownmiller's essentialising account of women also fails to recognise intersecting structures of power and their implications for the differential exposure of differently located subjects to sexual violence.

Second, Brownmiller's framing of sexual victimhood as inhering within the female bodily condition produces sexual victimhood as an essential, enduring, and even defining character of womanhood rather than a violative, temporally circumscribed experience.¹⁶ Within Brownmiller's formulation, women's experience of sexual violence "becomes ontology...and becomes encoded in the subject of woman" (Brown 1995: 131). Based on Brownmiller's physiological account of the origins of rape, sexual victimhood is no longer a socially, politically and structurally induced condition, but an essential, even ontological attribute encoded into, embedded within and enfolded by the female body (see Chapter 6 for a more detailed discussion). Brownmiller's theory of rape thus produces women as

¹⁶ This critique is not to suggest that all, or even most, experiences of sexual harm are neatly 'temporally circumscribed' — sexual violation is often enacted and experienced in enduring, continuous and pervasive ways (as I discuss in Chapter 5). The distinction I seek to make here is a framing of sexual violence as a happening rather than as a being — as event or experience rather than ontology (see Chapter 6 for a more detailed discussion).

“only acted on and never acting” (Cahill 2001: 25), over-determining women as “victims and victims only” (ibid: 26). Inadvertently, in her desire to eliminate the possibility of women’s culpability in the act of rape, Brownmiller undermines and erases the capacity for women to act altogether; in other words, as Cahill (2001) points out, Brownmiller’s work threatens the very possibility of any female agency (ibid: 25).

Finally, Brownmiller’s disaggregation of the notions of the sexual and the political (in her assertion that sexual violence is about politics, not sex), sets up a false exclusivity between these necessarily intertwined categories. This exclusivity, whether read ontologically or conceptually, is untenable. Sex and the sexual are often precisely *about* power and the political, and vice versa. Thus, the sexuality of sexual violence cannot be *replaced* by notions of the political, for it is precisely this *sexual* medium of violence that tells us something about the fields of power it occurs in, and the forms of politics it produces. As Cahill insists, “it *matters* that sexuality is the medium of the power and violence that are imposed on the victim” (Cahill 2001: 27). In response to this obscuring of the sexual in sexual violence, Catherine MacKinnon observes, “so long as we say that [rape, sexual harassment, and pornography] are abuses of violence, not sex, we fail to criticise what has been made of sex, what has been done to us through sex” (1987: 86-87). This point of departure, and the emphasis on a sharp critique of the work of ‘sex’ itself, presents the foundational premise for the second conceptualisation of sexual violence.

(ii) Sexual Violence as Violence because Sex is Violence

The second theorisation of sexual violence is the position attributed to ‘radical feminists’ or ‘dominance feminists’,¹⁷ most prominently represented by Catherine MacKinnon and Andrea Dworkin. Radical feminists place the phenomenon of sexual violence “squarely within the confines of” enforced heterosexuality (Cahill 2001: 36). To MacKinnon, the challenge in characterising sexual violence does not lie in distinguishing between violent and “normal” heterosexual intercourse, but in interrogating whether the two can, in fact, be meaningfully understood as distinct (MacKinnon 1989: 175). The implication here is

¹⁷ See Abrams (1995) for a more detailed discussion on radical or dominance feminism.

that within a context of forced heterosexuality, hetero-intercourse is almost always, inevitably accompanied by a degree of force or coercion. Thus, the violence of rape lies in the relentlessly coercive nature of socially constructed heterosexuality, which forces women to enter into a relationship of domination and control by men (Dworkin 1989: 151; MacKinnon 1989: 172).

Dworkin and MacKinnon's reconceptualisation of sexual violence, much like Brownmiller's, also offered considerable intellectual and political strength, albeit from a fundamentally different position. First, within their theory, sexual violence shifted firmly from the symptom of individual pathologies and deviations, to the product of deeply problematic *norms*: rape was no longer coded as the exception, forcing a recognition of its structural nature. Radical feminists provided the philosophical basis to cement the long-term feminist suspicion that, within contexts of entrenched patriarchy, sexual violence was not anomalous but paradigmatic. As Dworkin stated, "rape is not committed by psychopaths or deviants from our social norms—rape is committed by *exemplars* of our social norms Rape is no excess, no aberration, no accident, no mistake—it embodies sexuality as the culture defines it" (1976: 45–46). MacKinnon's and Dworkin's contributions also highlighted the pernicious techniques through which various heterosexual institutions, including that of marriage, colluded to produce systems of dominance and control over women, presenting convincing accounts of the entrenched and ubiquitous nature of patriarchal power.

Despite the allure of the clear and compelling position advanced by radical feminists, such a conceptualisation of sexual violence presents its own philosophical and political challenges. First, these theories essentialise 'women' into a natural, unproblematically coherent category (in a manner similar to Brownmiller's theorisation). Although both MacKinnon and Dworkin subscribe to the socially constructed nature of gender, Menon argues that the "reduction of women to their sex becomes inevitable" (2004: 116) within their framework. As Cornell points out, the rigidity of socially constructed gendered relations as posited by radical feminists renders gender as determined and irrevocable as if it were biological (1995: 20), precipitating precisely the challenges confronting Brownmiller's biological account of sexual violence and sexual victimhood (discussed earlier).

Similarly, within the radical feminist framework, it becomes theoretically impossible to construct the essentialised category of women as anything but the victims of power (Cahill 2001: 45). Through their theorisations, MacKinnon and Dworkin confer upon male or patriarchal power a potency that is “virtually infinite” (ibid: 44), serving to “pit female sexuality and female agency strictly against one another” (ibid: 43). Radical feminists thus over-extend the influence, coherence and persistence of the patriarchal construction of heterosexuality to a point of infallibility, such that it results in the impossibility of female agency (ibid: 37). As Cornell noted, through the radical feminist theorisation of sexual violence “nothing of women’s personhood is left over with which we could organise so as to begin the feminist process of becoming ‘for ourselves’” (1995: 144). In a theory where women are so entirely and “diligently constructed” (Cahill 2001: 44), what are the possibilities for the disruption of patriarchal dominance and control? Within MacKinnon’s and Dworkin’s theory of gender and gendered relations, the possibility of contesting gender categories, and challenging assigned gender realities is entirely unaccounted for. In a laudable endeavor to describe the material, systemic ways in which women’s experiences and possibilities are confined and constricted within patriarchy, radical feminists risked portraying women as “solely derivative of masculine power” (Cahill 2001: 44), rendering female agency a “literal impossibility” (ibid: 44).

Thus, through an entirely totalising theory of power, radical feminists produced an account of the female subject that is philosophically incompatible with the possibility of female agency, and politically reduces feminists to a position of paralysis through a “daunting seamlessness to male dominance” (Menon 2004: 115). MacKinnon and Dworkin, through their insistence that “violence is sexuality and sexuality is male” (Menon 2004: 115), leave little space for women to critically interrogate and resist the conditions of their domination, and refigure possibilities for pleasure and fulfilment through agentival practice (Cahill 2001: 44,45).

(iii) Sexual Violence as a unique, *sexual* form of violence

The final conceptualisation of sexual violence, which broadly informs contemporary global legislation on rape and sexual violation,¹⁸ recognises the unique nature of sexual violence, and locates this distinctness precisely in the *sexual* character of the violence. The sexual content of violence is discerned based on (i) the sexual purpose or intent of the act and/or (ii) the sexualised, embodied experience of the victim. What is implicit here is the assumption that there is unproblematic access to, and some degree of universal consensus around, the meaning of the ‘sexual’ as well as ‘experience’. A Foucauldian understanding of power, however, such as that adopted in Mardorossian (2002, 2014; see also Alcoff 2018), effectively challenges the assumption that the categories of ‘the sexual’ or ‘bodily experience’ present transparent, authentic, and readily accessible epistemic terrains.

This recognition of the mediated nature of experiences of the sexual results in the impossibility of separating the ‘reality’ of sexual violence from the institutions and ideologies through which the experience is given meaning (Alcoff 2018; Mardorossian 2002, 2014). Experiences of harm or trauma related to sexual violence are made sense of, and articulated, within the specific social and political context in which they unfold. Based on this position, Mardorossian presents a compelling case against the uncritical elevation of women’s experiences as the foundational basis of much theorisation around rape following the second wave of US feminism (2002, 2014). Mardorossian observed that “victims’ accounts of their own experiences do not exist in a vacuum of authenticity ... victims, like us, get their cues from the intersecting and conflicting discourses through which the world is understood and shaped” (2002: 747). Thus, victims cannot be understood as exercising some form of pure, uncontaminated agency in their encounters with, and accounts of, sexual violence.

Mardorossian thus suggests that we look to victims’ accounts of sexual violence not in pursuit of objective truths, but for an understanding of how the sexual is coded within various structures of power. If, as Cahill memorably asserted, “few women would agree

¹⁸ Most legislation is arguably based on this philosophical position, with the notable exceptions of Canada and Michigan State, both of which closely mirror the first (sexual violence as violence, not sex) position.

that being raped is essentially equivalent to being hit in the face” (2001: 3), what does this tell us about the way in which the sexual is scripted within various regimes of power and truth?¹⁹ While Mardorossian’s work does not explicitly engage with the implications of this feminist investment in the exceptionalisation of the ‘sexual’ in sexual violence, her critique encourages us to interrogate them. Such an investigation forces us to confront the way in which feminist investments in distinguishing sexual harm reveals dangerous entanglements with neoconservative, patriarchal ideologies of the sexual as somehow ‘more’. These positions are coded through various neo-conservative preoccupations with women’s chastity, modesty, shame and honour, as well as the location of these virtues and vices firmly within women’s encounter with the sexual (Alcoff 2018). It is precisely this differentiation of the sexual within patriarchal rationalities that provides the justificatory premise for the deployment of a distinct and deeper set of protective and disciplinary apparatus to regulate the sexual. Thus, feminist exceptionalisations of the sexual to mobilise recognitions of the particular harm of sexual violence fail to adequately destabilise (and might even serve to buttress) the patriarchal logics within which such harms are produced in the first place. As Joan Scott cautions, “the project of making experience visible precludes critical examination of the workings of the ideological system itself” (1992: 25).

This critique is complicated by the urgent and persistent need to recognise the reality of sexual violence as indeed representing ‘more’ than just violence, precisely given the patriarchal contexts within which it is experienced. Mardorossian is careful not to call for an erasure of the ‘realness’ of encounters of sexual violence and their experienced harms. Through Bordo (1992), Mardorossian (2002) stresses the importance of being reminded of “the materiality of the body” — Bordo cautions that cultural discourses “impinge on us as fleshy bodies, often in ways that cannot be determined from a study of representation alone” (1992: 185). The solution, then, cannot lie in theoretical refigurations of sexual violence away from associations of elevated harm, as our realities and experiences cannot be “transcended or transgressed” simply because we destabilise categories in theory

¹⁹ In following such a line of inquiry, however, Mardorossian is insistent that feminist theorists do not resort to “making women’s psyche the site of the analysis of rape or of rape prevention”, as such a move would constitute a necessarily depoliticising gesture (2002: 765). Here, Mardorossian departs from Marcus’ theory of rape as an overwhelmingly ‘scripted’ encounter (see Mardorossian 2002, 2014), and specifically departs from Marcus’ suggestion that a re-scripting of rape can straightforwardly alter women’s experiences of violation.

(ibid: 185). Put differently, feminists insisting that we talk differently about sexual violence will not straightforwardly shift how sexual violence and its harms are experienced.

The discussion above generates a range of challenges that seem to evade satisfactory resolution via the dominant feminist conceptual approaches to framing sexual violence and its harms. These unsettled tensions include: how can feminists recognise and represent the unique harms of sexual violence without re-inscribing the patriarchal, neoconservative logics that underpin dominant attributions and experiences of harm? Or conversely, how can we challenge neoconservative rationalities without undermining narrated experiences of harm as simply ‘in the head’, constructed, perceived and not produced? How, in short, can we challenge the unproblematised category of experience, while remaining attentive to the deeply located, situated manner in which the ‘sexual’ of sexual violence acts on, and through, us? Further, how can we simultaneously affirm the structural (rather than individual), gendered nature of sexual violence, while refusing the essentialisation and physiologisation of the category of ‘women’, and while recognising the victimhood of subjects not incorporated within the category ‘woman’? And finally, how can we acknowledge the located, situated, intersectional and structural manner in which power renders bodies differently available for sexual violence without essentialising women as victims, and foreclosing the possibility of female agency? In order to address the range of provocations generated by my engagement with the three dominant conceptual approaches to sexual violence, I extend and supplement some of the contributions discussed above to arrive at a fourth conceptual approach to sexual violence.

A Fourth Way: Sexual Violence as a Foucauldian ‘Regime’

The theoretical foundations for a fourth conceptual approach to sexual violence lie most notably in the work of Ann Cahill (2000) and Linda Alcoff (2014, 2018).²⁰ This approach is based on Foucauldian genealogies of power — more specifically, on Foucault’s theorisation of regimes of power/knowledge. Incorporating Foucault’s work within a

²⁰ While also present more implicitly in Mardarossian (2002, 2014).

feminist conceptual approach to sexual violence is no doubt a deeply controversial choice; as many feminists have rightly pointed out, Foucault's own express engagement with the question of rape was inaccurate at best, and fundamentally antithetical to the feminist project of securing recognitions for the harm of sexual violence at worst (Alcoff 2018; Cahill 2000; Mc Nay 1992; Plaza 1981). Despite Foucault's unquestionably wrong-headed treatment of the issue of rape, Alcoff (2018) argues that his broader approach to power proves helpful to feminist engagements with sexual violence in a "surprising sense" (2018: 20), rendering him perhaps an "unwitting ally" (ibid: 20) in the project of developing frames through which to understand, articulate and address the harms of sexual violence.

Alcoff (2018) suggests that Foucault's conceptualisation of regimes of power/knowledge brings into sharp relief the "contingent and variable character of our problematizations" (ibid: 21), or the manner in which issues of concern are both formulated and articulated. To Foucault, regimes represent forms of rationality written into practices or systems of practices (Foucault 1991). Foucauldian 'regimes of truth' are the historically specific mechanisms through which discourses that function as truths are produced and circulated in located times and places (Foucault and Rabinow 1984). Regimes of truth thus constitute the 'general politics' that surround the truth, including the discursive mechanisms through which one is able to distinguish that which is taken to be the truth. To the Foucauldian scholar, the truth is thus embedded within a system of power which sustains and produces it, and this system can be understood as a regime.

Framing sexual violence as a particular Foucauldian regime shifts the very objects and focus of analysis. A critical analysis of sexual violence as a regime involves three levels of interrogation: the dominant images, messages and discourses that produce 'truths' about sexual violence; the power relations that make these circulations possible; and finally, the instances of violence and regulation enabled by both. Studying sexual violence in specific historical contexts thus entails more than an examination of who is violated and how — it also involves an investigation into the very structures of power and flows of discourse that determine what precisely constitutes a violation, and who comes to be vulnerable or exposed to such violations. Alcoff (2014) stresses the importance of subjecting *all* productions of 'truth' around sexual violence to such a 'hermeneutics of suspicion' (ibid).

To Alcoff (2014), victims' own affirmative accounts of their violation (i.e. narrations of experience) must be read against Foucault's insistence that experience has a history. Put differently, the way in which victims respond to, understand and relay events must be understood as mediated by the regimes of truth that saturate the time and place within which experiences and their tellings unfold (ibid: 450).

Borrowing from Foucault's work on governmentality and disciplinary regimes, I argue that regimes are reinforced, reproduced and normalised through systems of everyday practices, also known as *discourses* (introduced in Chapter 1).²¹ Discourses, both uttered and enacted, initiate, repeat and naturalise various truths, stabilising regimes not through force, but through the 'conduct of conducts' (Foucault 1991). Within regimes of sexual violence, subjects thus internalise the 'truths' of sexual violence, including the disproportionate harm attached to *sexual* forms of violence. Thus, through a Foucauldian lens, we can locate the unique, elevated harm of *sexual* violence within the ideologies and rationalities of dominant (patriarchal, neoconservative) discourses that produce the 'truths' of sexual violence. Recognising that discourse fundamentally shapes subjects' experiences allows us to simultaneously take seriously, represent, and attend to victims' accounts of harm, while critiquing the (patriarchal) rationalities and discourses within which such harm is given elevated meaning.

Regime thinking can additionally account for the manner in which certain bodies are made differently available for violence. Regimes of sexual violence intersect and interact with other forms of structurally coded rationality, including those of race, class, caste etc. Thinking with/through the frame of regimes thus forces us to recognise the historically and contextually specific manner in which regimes interact to produce fields of power which differentially normalise violence against differently marked subjects, permitting an *intersectional* account of how bodies come to be made available for sexual violence. Further, Foucauldian regime thinking entails a deep suspicion of medicalised, physiologised accounts of social phenomenon like sexual violence, insisting instead on tracking structural issues through their discursive (re)production. Regime thinking thus

²¹ Discourse, here, can be understood as the rules, systems, and procedures which constitute the conceptual landscape within which knowledge production occurs. Discourse thus includes the universe of institutions, processes, practices, systems, etc. engaged in how knowledge is generated, as well as put to work, valorised, and circulated (Foucault 1978, 1980).

avoids the pitfalls of Brownmiller (1975), MacKinnon (1989) and Dworkin's (1989) gender essentialism. This in turn (i) enables the recognition of victimhood for subjects not read as women, and (ii) refuses the suturing of womanhood to victimhood.

Reframing sexual violence as a regime, or form of rationality, thus enables us to address some of the challenges and inadequacies of the dominant conceptualisations of sexual violence discussed earlier. But a crucial question persists: what, then, of the subject of sexual violence? How does regime thinking frame the subject of sexual violence and their relationship with victimhood and agency?²² Foucault held a unique position on the originary site and mechanism of the subject: that the individual subject is inaugurated and constituted by, rather than in response to, power (Foucault 1977). To Foucault, discourse, a key medium of power/knowledge, gives rise to subjects (Foucault 1980: 138), or, as Hacking (1986) suggests, discourse is engaged in the "constitution of subjects" (ibid: 164). Thus, within Foucauldian genealogies of power, discourse does more than simply represent the world: it constitutes the very thing it describes (Hacking 2006) and comprises the very subjects it seeks to govern (Weedon 1997).

An important clarification here is that although the Foucauldian subject is produced within and through discourse, it is not *entirely determined by it* (Bevir 1999; Butler 1997; Caldwell 2007; Dhawan 2012; Elden 2017a, 2017b; Foucault 1977; Foucault 1978; Madhok 2014; Sawicki 1991). This clarification briefly pre-empts a deeper discussion on the distinction between constitution and determination, and the resultant space for agency, in the final section of this chapter. For now, it is sufficient, and significant, to note that such a theory of subject formation avoids the over-determined inevitability of MacKinnon's (1989) and Dworkin's (1989), as well as Brownmiller's (1975) victims.

The discussion above serves as an introduction to the onto-epistemic foundations that undergird my research, proceeding (while also departing) from a critical engagement with dominant feminist conceptualisations of sexual violence. These ontological and

²² Once more, Foucault might appear an unlikely theoretical ally for a project invested in representing agency, given the preponderance of charges around Foucault's inability to account for agency within his framework of power. However, as I discuss in more detail later in this chapter, I follow Bevir (1999), Sawicki (1991) and Dhawan (2013) to argue that while Foucauldian frameworks of power vitiate the possibility of unfettered, liberal notions of *autonomy*, they accommodate (and even insist on) the possibility of agency.

epistemic premises are clarified, reiterated and developed in the second section of this chapter, and are revisited and extended in Chapter 3, under a more detailed discussion on victimhood and agency. Before I undertake a more detailed consideration of these two conceptual categories, I turn from my discussion on *conceptualisations* of sexual violence, to issues surrounding its *politicisation*. This is certainly not to suggest that conceptualisations are not always already political, nor that politicisations are not centrally informed by conceptual frames and grammars. To the contrary, the tensions between victimhood and agency inherent to dominant conceptualisations of sexual violence spill into, and are even amplified through, the politics of addressing sexual violence. In distinguishing between conceptualisations and politicisations of sexual violence, I am simply disaggregating the (no doubt intimately imbricated, but distinct) debates around (i) how the harms of sexual violence are understood and articulated, and (ii) how sexual violence circulates *politically* in efforts to address its harms. I now turn to expressly consider the debates, dilemmas and dangers surrounding how sexual violence is mobilised politically.

The Politicisation of Sexual Violence: The Violences done in the Name of Sexual Violence

How is sexual violence deployed as an explicitly political category of contestation and mobilisation at both local and transnational levels? What political imaginaries and responses are invoked or refused in the name of addressing sexual violence? What are the effects of these politicisations of sexual violence on broader socio-structural hierarchies and intersectional oppressions? What do these political entanglements tell us about “the violence we can do in the name of fighting violence” (Phipps 2020: 3)? In answering these questions, I go beyond building a catalogue of complicities and harms to interrogate the conditions of possibility that enable the violences enacted in the name of addressing sexual violence. What renders efforts to counter sexual violence so amenable to coercive and exclusionary agendas? How is it that avowedly feminist efforts to address the harm of sexual violence are not simply proximate with, but often expressly recruited for racist, nationalist, neo-imperialist and carceral projects and ambitions?

In addressing these provocations, I build on and extend a long tradition of Black, post-colonial, queer and post-structuralist feminist cautions against the pernicious consequences of efforts to counter sexual violence. These critiques comprise disparate, and even expressly divergent, bodies of work, each identifying distinct domains of concern, and proposing heterogenous remedial strategies. Despite the vast and variegated nature of these contributions, however, they align broadly into two distinct camps: (i) feminist critiques of what Kapur (2002) calls “victimization rhetoric”; and (ii) feminist concerns with an overinvestment in agency. The expansive literatures on the violences done in the name of sexual violence thus congeal around two oppositional positions, the first aiming its critique at the passive, helpless victim subject and the politics enabled in her name, while the second targets its censure at the over-attribution of agency to subjects of sexual violence, and its attendant harms. In what follows, I mediate between these (seemingly conflictual) bodies of critique in order to arrive at the central problematic that my thesis concerns itself with: the victim/agent binary.

In the immediate aftermath of the sex wars and in response to the ascendancy of dominance feminism, feminist activists and scholars from a range of contexts expressed concerns around the material effects of increasingly prevalent representations of women as “pervasively constructed by male aggression” (Abrams 1995: 4). In describing the work done by discourses of sexual violence in the production of gendered subjects, Mohanty (1984) cautioned:

Although it is true that the potential of male violence against women circumscribes and elucidates their social position to a certain extent, defining women as archetypal victims freezes them into “objects who defend themselves”, men into “subjects who perpetrate violence” and (every) society into a simple opposition between the powerless (read: women) and the powerful (read men) groups of people (ibid: 339).

In *States of Injury*, Brown (1995) produced a similarly compelling critique of the production of victims through feminist politics more broadly, and the politics of sexual violence in particular. She described how representations and appeals for recognition of victims, particularly in the legal register, furthers an identity politics that re-inscribes “femaleness as sexual violability”, and “injury as identity” (ibid: 131). Drawing on

Foucault, Brown reminds us that the law produces the subjects it claims to protect or emancipate, with worrying consequences for the “figure of woman wholly defined by sexual violation, wholly identified with sexual victimization” (ibid: 131). Such representations presented women as “fused with passivity” (Mardorossian 2002: 768), and as largely “incapacitated and naïve” (ibid: 768) subjects, synonymising womanhood with victimhood, and victimhood in turn with passivity and injury. Thus, even the best-intentioned projects of representation and recognition of sexual violence, even (and perhaps especially) feminist ones, produce a fixed, feminised and agentless victim subject — a “dependant subject” (Brown 1995: 27) — mere terrain to be acted on, whether in violation or protection. The woman-as-victim, as produced through discourses of sexual violence, is thus evacuated of the possibility of agency; in Mardorossian’s (2002) words “focussing exclusively on portraying women as victims”, came at the inevitable price of “erasing their visible agency” (ibid: 766).

The fixing of women’s identities to victimhood and its attended affiliations with passivity, injury and lack of agency has a range of dire implications for the politics enabled in the presumed interest of protecting women. The figure of the agentless victim imbues the “will to empower” against sexual violence with paternalistic, protectionist, patriarchal tendencies that produce coercive and regulatory effects for the very subjects it purports to protect (Baxi 2000, 2014; Kapur 2002, 2013; Kapur and Khanna 1996; Roy 2017). The production of women as “dependant subjects” (Brown 1995) legitimises the state and the law as “purveyors of freedom and protectors of the injured” (ibid: 27), authorising the expansion of the masculinist state and its martial and carceral apparatus (Kapur 2002, 2013; Ticktin 2008). This in turn effectively augments “the muscular power of the state to regulate and discipline the sexual behaviour of its citizens in the direction of fewer rights and more surveillance” (Kapur 2013: 320), while occluding the state’s own alarming record of perpetuating sexual violence.

For Cruikshank, this ‘will to empower’ underwrites any effort intended in the assistance of a group of people. Roy (2017) describes how this will to empower is refracted through explicitly coercive, carceral strategies to produce a breed of ‘punitive paternalism’ (ibid: 878), a particular governmental strategy through which the state, amongst other actors, plays the role of a concerned, carceral patriarch: protective and even coercive, but only

in its noble will to empower. It is through the omission of the feminised victim's agency, and the resulting strategy of punitive paternalism that various encroachments on these very subjects are justified: the imposition of curfews in women's hostels; the celebration of the patriarchal family unit and its regulatory controls over gendered bodies; the expansion of the masculinist, patriarchal state and its military and carceral machinery; all in the name of the agentless victim and her ineluctable violability.

Black feminists have long and vociferously opposed carceral responses to sexual violence, insisting on an expressly abolitionist mode of redress via investments in transformative (as opposed to retributive) modes of justice (Davis 2011; Wilson 2007; Kaba 2020). From the Western liberal context to which Black abolitionist feminists were responding, to the post-colonial world (Kannabiran and Menon 2007; Kapur and Cossman 1996; Kapur 2013; Kotiswaran 2016, 2017; Menon 2004), feminists have tracked the disproportionately punitive emphasis of mobilisations around, and responses to, sexual violence. From calls for harsher sentencing, to more extreme demands for chemical castration and even capital punishment, much activism around sexual violence has appealed to the notion of *individual penalty* in politicising sexual violence. Locked into the logic of retribution, sexual violence politics is reduced simply to punishment (Brown 1995: 27). The representational implication here is troubling: locating the problem of sexual violence so determinedly in the individual precludes systemic, structural analyses of sexual violence. The impossibility of prosecuting a social condition, as opposed to an individual, thus displaces the site of analysis (and responsibility) from the structural to the personal in a manner that is inimical to an intersectional feminist critique of the broader structures of power that make sexual violence possible in the first place. Revisiting this chapter in June 2020, as the Black Lives Matter movement and its expressly abolitionist agenda asserts its demands anew following the police murders of George Floyd, Breonna Taylor, Tony McDade and so many others, the project of interrupting carceral responses to sexual violence, and challenging the representational model of the agentless victim that sustains it, feels ever more urgent.

Women-as-victim representational frames additionally serve to re-inscribe gender essentialism (Kapur 2002), which in turn (i) reproduces violent and exclusionary norms through and around womanhood; (ii) occludes and even buttresses intersectional

hierarchies; and (iii) erases the diverse ways in which (especially subaltern) women exceed their ascribed status as victims. Kapur (2002) describes gender essentialism as the fixing of certain attributes to women — all women — in an ahistorical and context-blind manner which effaces the many differences amongst women. To Kapur (2002), dominant discourses of sexual violence serve to tether the category of ‘woman’ to ‘victim’ in a manner that reproduces a monolithic, homogenous subject of womanhood, and consequently victimhood. This in turn enables the exclusionary policing of who might be accommodated within womanhood and victimhood on the basis of subjects’ adherence to scripts of passivity, incapacity, and the absence of agency. Subjects read as agentive or non-passive — particularly subjects read as transgressing gender, sexual, caste and class norms — are thus denied recognition as victims, and even disavowed from the (narrowly constructed and violently policed) category of women understood as worthy of protection from sexual violence.

A second fall-out of gender essentialism is the effacement of intersectional hierarchies within and across gendered categories. Crenshaw (1990), Hill Collins (1991) and Harris (1990) point to how the universal affirmation of women-as-victim produces false universalities and erases intersecting and interacting structures of oppression. Hegemonic feminist characterisations of sexual violence present it predominantly, and almost exclusively, as an issue of gendered power relations, suggesting that all women were equally vulnerable to sexual violence. This not only obscures the material ways in which intersecting axes of oppression interact with gender in producing bodies as available for violence, but also further masks the significant complicities of white, upper class, upper caste women in upholding (and remaining invested in) the very structures that disproportionately expose subaltern women to sexual violence (Harris 1990; Phipps 2020). Harris decries this form of gender essentialism as the false “notion that a unitary ‘essential’ women’s experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience” (1990: 585).

While the woman-as-victim model explicitly fails to attend to intersectional structures of power, it is implicitly, and significantly, inflected by hierarchies of race, class, caste and gender and sexual normativity. Chow (2002) points to how Western feminism often monopolises victim identity on behalf of white bourgeois women, disregarding the

victimisation of other women. Phipps (2020) frames this as political whiteness, a defining characteristic of the mainstream Western feminist movement, which rests on an insidious form of self-regarding victimhood — “the white self as wounded self” (ibid: 67) — which upholds white women’s victimhood at the express cost of recognising the violences enacted on Black women and other marginal communities. Taken together, Harris (1990), hooks (1984) and Phipps’ (2020) work suggest that the women-as-victim model not only fails to address intersectional hierarchies, but is even implicated in their ossification. Further, hooks (1984) argues that not only does the women-as-victim formulation conceal power structures and (especially white) women’s situatedness within them, but the women-as-victims narrative simply does not square with (especially Black) women’s realities of resilience, resistance and what hooks (ibid) calls “survivorship” in the face of poverty, disenfranchisement and marginalisation. The women-as-victim story does not, then, effectively reflect or represent the complex, intersectionally experienced lives of Black and other subaltern women.

Finally, post-colonial feminists note that when the women-as-victim frame *is* in fact disaggregated to account for differences within and amongst women, it is inevitably done in a manner that perpetuates “cultural essentialisms” (Kapur 2002; also see Narayan 1998), re-inscribing civilizational hierarchies and justifying neo-colonial interventionism. Imperialist tropes often position sexual violence as a particular and acute malady of predatory, uncivilised third world men violating the weak, vulnerable and violable ‘third world woman’ (Dhawan 2013; Kapur 2013; Mohanty 1984; Spivak 1988). These framings rest on and reproduce the image of the undifferentiated and monolithic third world woman as leading “an essentially truncated life based on her feminine gender (read: sexually constrained) and being ‘third world’ (read: ignorant, poor, uneducated, tradition-bound, domestic, family-orientated, victimized, etc)” (ibid: 337). The outcome of such caricaturing is the homogenised production of the gendered category of ‘third world women’ fixed as powerless, exploited, harassed, agentless and thus, in need of rescue.²³ As immortalised in Spivak’s words, the politicisation of sexual

²³ It is worth noting Dhawan’s (2012) critique of the tendency of secular post-colonial critique to then erase or deny the gendered vulnerabilities of the denizens of post-colonial contexts, informed by over-emphasis on challenging global meta-narratives. The point of my critique is not to participate in such an erasure, but simply to highlight the reality and credibility of the post-colonial critique, which Dhawan agrees is an important, if partial, project.

violence continues to be haunted by the colonial preoccupation with “*white men saving brown women from brown men*” (Spivak 1988: 93), and its various violent and oppressive neo-colonial and racist implications.

Through these framings, sexual violence is instrumentalised as a script to legitimise ‘civilising missions’ of Western nation states, justifying both military incursions as well as draconian border policies (Ticktin 2008; Holzberg and Raghavan 2020). Kapur (2013) frames this as the production of ‘sexual security regimes’, which, through the evolved apparatus of international law, demonstrate dangerous complicities with colonial forms of knowledge-production (ibid: 2). These neo-colonial myths around the nature of sexual violence and its subjects reiterate racist, imperialist accounts of the unquestionable superiority of western liberal doctrines, as well as the urgency of projects engaged in ‘civilising’ the ‘other’. Through her work on ‘femonationalism’, Farris (2017) reveals the neo-colonial tendencies, especially amongst Western liberal feminists, to invoke feminist causes, including that of sexual violence, to advance hatred against migrants, Muslims, and various other figurations of the (mostly racialised) ‘other’. Thus, the vulnerability of the agentless brown woman-as-victim in the face of inevitable sexual violation provides (one of) the ideological basis for continued neo-colonial interventionalism, racism, and Islamophobia.

The aforementioned critiques of “damage centred” (Tuck 2009) representations of women as wounded, passive, and agentless victims in turn prompted a distinct set of feminist concerns. Stringer (2013), Phipps (2014), Mardorossian (2002, 2014) and Wilson (2011) *inter alia* warn that in militating against the “abstract image of woman as victim”, feminists have risked over-investing in a dangerous and untenable women-as-agent model (Stringer 2013: 152). Stringer attributed the ascendancy of women-as-agent representational frames to the dominance of what she calls “anti-victim talk” within contemporary feminism (2013, 2014). Stringer argues that while the critiques of women-as-victim representational modes are no doubt diverse, they broadly converge on the notion that “to represent women as vulnerable victims is disabling, misleading, regressive, and harmful”, whereas “to recognise women as agents is enabling, progressive, and liberating” (2013: 152). To Stringer (2013, 2014), this growing consensus marked the cementing of what she calls the ‘victim-bad/agent-good’

formulation, which in turn serves to entirely vitiate the possibility of an enabling feminist engagement with the politics of victimhood, while uncritically championing female agency, with deeply troubling consequences.

At an empirical level, Stringer challenged the very premise that “femininity as embodied vulnerability” (2013: 153) — the representational frame critiques of women-as-victim were ostensibly responding to — was indeed as dominant as its detractors claimed it was. While Brown (1995) and other critics of women-as-victim formulations averred that the law fixed women as injured, passive and wounded subjects, Stringer argues that to the contrary, the law remained preoccupied with understandings of women as “powerful and agentic” (2013: 153) to the extent that they can, and even should, bear responsibility for preventing sexual violence against themselves. Citing the continued predominance of judicial demands that (i) women respond in specific, prescribed formats to sexual attacks (e.g. that they fight back to resist rape), and (ii) women take responsibility for inviting or inciting sexual contact via their conduct (what Stringer calls victim precipitation), Stringer submits that the real issue confronting feminists is not so much an over-attribution of victimhood and passivity, but the over-ascription of agency (2013, 2014).

Stringer (2014) and Phipps (2014) also caution against the neoliberal complicities of an emphasis on agency simultaneous with a disavowal of the category of victim. Mindful of David Harvey’s warning that “any political movement that holds individual freedoms as sacrosanct is vulnerable to incorporation into the neoliberal fold” (2005: 41-42), Stringer argues that feminist critiques of victim feminism “unwittingly echo and support the values and cultural syntax of neoliberalism” (2013: 154). Stringer suggests that the “border between feminism and neoliberalism has proved permeable in the matter of the victim, with feminist objections of the notion of victim...serving to support neoliberal values” (2014: 6). Despite post-modern and post-structuralist feminists maintaining a studied critique of and distance from neoliberal ideology, to Stringer their critique of the victim subject — including through the work of Marcus (1992) and Brown (1995) — serves to reiterate neoliberal investments in personal responsibility and individual transformation (Stringer 2013, 2014). Critiques of the victim subject, together with an emphasis on female agency, work expressly in the service of propping up a politics of personal responsibility, positioning victims as culpable for, or at the very least complicit

in, their own conditions of oppression and victimhood (Phipps 2014; Stringer 2013, 2014).

Further, Cole (2011: 117) cautions that in disavowing the representational frame and potential of women-as-victims, feminists risk forfeiting a crucial conceptual vocabulary through which to talk about structural inequality, systemic domination and collective subjugation. Women-as-victims provided a crucial enunciative position from which to articulate and challenge gendered violence, a central feminist undertaking that is ill-served by the individualising frame of women-as-agents, and the prevention-oriented discourses they inevitably precipitate (Mardorossian 2002, 2014; Stringer 2014). Mardorossian (2002, 2014) argues that post-modern suspicion of women-as-victims ironically serves precisely to resurrect the liberal, autonomous subject that has traditionally served as the target of post-modern feminist critique. To Mardorossian (ibid), such critiques debunk the very concept of victimhood without accounting adequately for their own complicity in the rhetorical strategies of neoliberal (individuating and psychologising) and neoconservative (victim-blaming) projects, further eroding the possibilities for structural, systemic feminist critiques of sexual violence.

Finally, Wilson (2011) warns of the dangers of over-investing in agency in order to abate colonialist tropes of the abject third world woman-as-victim. Wilson (2011) and Dahl (2009) caution that, while the shift to emphasising agency in the representation of the third world woman appears to remedy the foreclosure of agency, this shift precipitates its own challenges which warrant scrutiny. Wilson observes that “critiques of the essentialisation of people in the South—and of women in particular—as passively suffering victims have been widely interpreted as an imperative to represent these women as universally enterprising, productive and happy” (ibid: 328). The ‘Agents Not Victims’ frame then works in the service of neoliberal ideologies to justify programmes of structural adjustment in the ‘developing’ world, privileging autonomous entrepreneurial agency while positioning victimhood as self-made (Dahl 2009: 404–405).

The increasingly individualist and market-oriented prescriptions of development literature and practice — both the dividends of an insistence on agency — now demand that women exercise their agentival capacities to successfully ‘manage’ the debilitating conditions of their poverty and exploitation (Wilson 2011). Representations of women’s agency are increasingly ubiquitous within approaches to gender and development, to the extent that women in the Global South are presented as “hyper-industrious entrepreneurial agents” (2011: 315), and the intensification of women’s labour is increasingly touted as the ‘solution’ to both poverty and gender inequality. Thus, emphasising third world women’s agency can serve to perform certain forms of ideological work for neoliberal agendas, framing women as individually responsible for failing to alleviate and address their (structurally induced) conditions of oppression. Wilson argues that these representations operate in the same ways as images of “content and productive” women workers in colonial enterprises that were often deployed by British advertising in the late nineteenth and twentieth centuries, aiming to reassure audiences of the legitimacy and justice of existing relationships and structures (2011: 329).²⁴

How, then, can feminist scholars and activists attend to the seemingly conflictual critiques of both women-as-victim as well as women-as-agent formulations? A good place to start, I suggest, is an examination of what these two distinct threads of critique might have in common: their shared investments, and premises. Both bodies of work are united by (i) a commitment to the politics of preventing and eventually ending sexual violence

²⁴ A final set of critiques of women-as-victim formulations demand mention, if only for their high visibility and circulation: the work of essayists Paglia (1992), Roiphe (1993), Sommers (1994) and Wolf (1993) present prominent, if deeply contestable, interventions. Paglia, Roiphe and Sommers, in particular, respond to the dominant representation of women as victimised and agentless by denying the pervasiveness of sexual violence as a gendered experience. Instead, they blame perceptions of sexual violence as an endemic issue on alarmist representations of a hysterical feminism, taking pains to debunk rape statistics, and attributing victimisation not to experiences of violence, but to feminist propaganda that brainwashes women into thinking of themselves as victims. Accusing feminists of “Victorian” sexual morality (Rophie 1993: 66), these authors ‘restore’ female agency through the highly questionable, and ultimately unconscionable and inaccurate, recasting of sexual violence as myth rather than structural reality. Through what Mardorossian labels “the worst kind of theory, unresearched, undocumented, polemical, and nonacademic” (2002: 749-750) these self-identified feminists unfortunately presented a widely read, and popularly circulated alternative to mainstream feminist accounts of sexual violence (ibid). Wolf’s (1993) critique, while distinct, is equally problematic: she appeals to women to revere the “dark immutable allure of male sexual power” and emerge as “satisfied heterosexuals” (1993: 186) rather than violated victims. Wolf, through her intensely personal prose, claims “male sexual attention is the sun in which I bloom. The male body is ground and shelter to me, my lifelong destination”, (ibid: 186), before stretching the script to underestimate, misinterpret and misrepresent the extent of women’s oppression (see Abrams 1995: 332).

while systematically attending to any complicities or harms precipitated in the process; and (ii) a shared understanding that feminists must carefully examine representations of the subject of sexual violence, for it is precisely the imagination and characterisation of this subject that determines the politics enabled or foreclosed in her name. Critiques of both women-as-victim and women-as-agent are fundamentally oriented around a critical engagement with the presumptive subject of sexual violence, and the interventions (or lack thereof) she is seen to warrant or invite. Embracing this orientation, my research is thus similarly focussed on the careful circumscription and characterisation of those deemed simultaneously at risk of, and worthy of protection from, sexual violence. My interest lies in working through the dilemmas inherent in the 'representation of violence, and the violence of representation' (Dhawan 2010), critically interrogating the possibility of representing sexual violence and its subject without precipitating new sets of representational and material violences.

Thinking alongside both bodies of critique discussed above, I suggest that neither constitutes a disavowal of (or even aversion to) either victimhood or agency *per se*; rather, both point to the perils precipitated by contemporary, dominant understandings of victimhood and agency, and their attachments to the (feminised) subject of sexual violence. Critiques of the women-as-victims model only take issue with the category of victim insofar as it implies passivity and a lack of agency: it is not just any victim, but specifically the figure of *agentless victim* that is mobilised to justify the essentialist, exclusionary, carceral, neo-colonial violences discussed above. Similarly, critiques of the women-as-agents formulation are not fundamentally opposed to representations of female agency as such: it is an over-investment in particularly autonomous, liberal modes of agency that come at the *cost* of acknowledging victimhood that these theorists oppose. Mediating between these bodies of critique, I submit that the challenge confronting feminists is that of confronting the empirically unsound and conceptually untenable *binary* between victimhood and agency in dominant representations of sexual violence: i.e., representations and associations of victimhood or agency that expressly preclude a recognition of the other. The issue, then, does not lie exclusively or entirely in either the representational frame of women-as-victims or women-as-agents; instead, at the root of (mis)descriptions of and (mis)orientations towards the victim subject lies a

(mis)conception that victimhood and agency are binary, dichotomous, mutually exclusive and fundamentally incompatible categories of experience.

Through my analytical chapters, I argue that *both* the women-as-victim and women-as-agent formulation circulate within dominant discourses of sexual violence in post-colonial India: they simply attach themselves to different subjects, in different registers of discourse. Thus, *both* sets of dangerous consequences (attributed to each of these representational tropes respectively), remain in evidence, and in urgent need of redress. The remedial strategy for both, I suggest, lies in disrupting the dominant victim/agent binary which sustains the dangerous politics they each enable. The challenge I take up through this thesis is then to systematically disclose the effects of the victim/agent binary, track the sites of its reproduction and normalisation, and explore strategies through which to challenge, and ultimately interrupt its reproduction (and consequently, its effects). In doing so, I hope to respond to Abrams' (1995) call to imagine, and indeed represent, "a subject (victim) whose agency emerges against the backdrop of, and co-exists in tension with, systemic gender-based oppression" (ibid: 333). Such an undertaking demands a reworking of victimhood and agency away from their current binary bind, reclaiming these crucial feminist conceptual resources in the service of structurally grounded, contextually situated, intersectional accounts of victimhood, while refusing to define women exclusively through their relationship with domination. The abdication of this entrenched victim/agent binary thus entails a careful engagement with the conceptual terrains of victimhood and agency. The next section of this chapter begins to plot this terrain and prepares the groundwork from which to explore possibilities for a conceptual reorientation of these categories away from the dominant binary.

Victimhood and Agency as Feminist 'Gift-horses'

Victimhood and agency have both long served as crucial conceptual resources for feminist and allied (anti-racist, anti-colonial and anti-capitalist) struggles. Each lends itself centrally, even indispensably, to the work of making subaltern reality legible, securing recognition of subaltern suffering, and providing complex accounts of subaltern personhood, subjectivity, and resistance (respectively). Equally (as discussed) certain modes of victimhood and agency have been enlisted in the service of a range of violent,

coercive, and regulatory agendas. Working with the categories of victimhood and agency in the context of sexual violence thus necessarily entails contending with the reality that certain stories told about agency obscure realities of violence, coercion, subjugation and subordination, while some stories told about victimhood occlude realities of subversion, resistance and a capacity to live otherwise, in excess of damage and trauma. Why, then, should feminists retain an investment in working with categories that pose such extensive complications? Why not simply discard victimhood and agency in favour of other terms or frames that do not come with tainted histories of difficult entanglements? Might not the most effective way of interrupting the victim/agent binary be via a disavowal or transcendence of these contested terms?

Through this section, I chart feminist engagements with victimhood and agency in order to simultaneously (i) justify a continued investment in these conceptual categories, while also (ii) attending to cautions around their uncritical embrace as conceptual routes to transformation or emancipation. Following Hortense Spillers' (2013) submission that "critical culture is always looking the gift-horse in the mouth", I treat victimhood and agency as two central feminist 'gift-horses' that must be embraced, defended, and repurposed to transformative ends, all the while remaining alert to the difficulties and dangers they consistently pose. Building on, and extending beyond, the crucial critiques of women-as-victims and women-as-agents discussed in the previous section, this section draws on feminist, anti-racist and post-colonial scholarship on victimhood and agency. Through an engagement with these crucial inheritances, I assemble a conceptual foundation from which to commence my broader project of tracking and interrupting the production, normalisation and effects of the victim/agent binary in discourses of sexual violence.²⁵

²⁵ Importantly, in critically engaging with the categories of 'victimhood' and 'agency', I am by no means attempting to arrive at frames through which to adjudicate on who, in fact, is a victim, or who possesses agency and to what extent (as if unmediated access to these judgements was even possible or desirable). Instead, I follow the scholars I engage with to enquire after the sort of work these categories enable and foreclose, who they attach themselves to, and with what consequence.

Unpacking Victimhood

At its most basic, a victim is simply understood as one who has suffered a wrong; a meaning in circulation since the term victim was first incorporated into the legal vocabulary in the mid-eighteenth century (Stringer 2013: 155). Stringer suggests that this common-sense, colloquial understanding of victim masks the reality that often, whether a subject is recognised as a victim or not has little to do with “what has happened or is happening to them, or the apparent severity of their experience” (ibid: 149). Instead, ascriptions or recognitions of victimhood depend on a range of other factors, including:

... their positioning within gender relations, ethnic hierarchy, class stratification, and other engines of social difference, and their positioning in relation to dominant discourses that distinguish between worthy and unworthy victimhood, between sufferings that demand humane recognition and response, and claims of suffering that are able to be cast as suspect or otherwise unworthy of recognition (ibid: 150).

To Stringer, the study of victimhood or victim politics involves “discerning the (labile, contested) parameters of victim recognition, exploring their logics, tensions and inclusions in the definition of victimhood” (ibid: 150). Such a study is expressly *not* aimed towards unearthing some deep, hidden truths about what an authentic victim really is or should be; instead, it is oriented around uncovering the shifting social ways in which victimhood is “known and weighed” (ibid: 150), and how some forms of suffering and some suffering bodies gain recognition while others are effaced, or “recognized in ways that are effacing” (ibid: 150). In order to understand precisely what such a mode of inquiry might entail, it is instructive, once more, to turn to Foucault. Revisiting to his previous work in *History of Madness* (1961), Foucault (1972) specifies the approach he deliberately decided *not* to take in locating madness as an object of history and discourse:

[W]e are not trying to find out who was mad at a particular period, or in what his madness consisted, or whether his disturbances were identical with those known to us today. [...] We are not trying to reconstitute what madness itself might be, in the form in which it first presented itself [...] and in the form in which it was later

organized (translated, deformed, travestied, perhaps even repressed) by discourses, and the oblique, often twisted play of their operations (1972: 47).

Refusing any analytical approach that would assume madness was constituted prior to discourse, Foucault argues that a history of objects such as madness must be conducted by training a critical eye to “the body of rules that enable them to form as objects of a discourse and thus constitute the conditions of their historical appearance” (1972: 48). Similarly, thinking of victimhood as an object of history and discourse liberates us from constraining preoccupations with ascertaining the ‘hidden truth’ behind ‘real’ victimhood, and unveiling the ideal parameters through which to circumscribe and apprehend the ‘authentic’ victim subject. Rather, it would prompt us to ask how different meanings attach to victimhood in different contexts and in different times, and how in turn victimhood attaches itself to different bodies in different spaces. It would mean refusing to view victimhood as a coherent pre-discursive object, and insisting instead on a critical, historical and located account of how victimhood comes to be understood, who gets to define and attribute it, and to whom.

Feminist engagements with the concept of victimhood have historically critiqued and contested these very boundaries of who is read as a victim, by whom, and under what circumstances; pushing consistently at the margins of victim recognition (Stringer 2014). Across the world, feminist activists and scholars have spent decades engaged in the arduous work of transforming the parameters of victim recognition, demanding the legibility of bodies, experiences and events as signifying victimhood when they were not traditionally interpreted as such. Stringer (2013, 2014) suggests that these efforts and their triumphs can most usefully be understood through a consideration of Lyotard’s theory of the victim, and the notion of bearing witness to the ‘differend’.

In his book *The Differend*, Lyotard (1988) re-characterises the term ‘victim’ to denote not simply one who has been harmed, but more specifically, one who has suffered a wrong that is not presently recognised in law. This unrecognised harm exists as what Lyotard (1988) calls a differend, or a form of suffering that cannot be phrased in a shared idiom. Lyotard’s theory of the differend distinguishes between plaintiff and victim, both of which fall under the more colloquial understanding of the victim as one who has suffered a

harm. Lyotard's (1988) plaintiff has the means to establish that they have been done a wrong, and is therefore in principle legible as a victim, is recognised for their suffering of a harm. Lyotard's specific characterisation of the 'victim', on the other hand is distinct from the plaintiff: for Lyotard's victim, "no presentation is possible of the wrong he or she says he or she suffered" (1988: 9). The victim in Lyotard's specific sense is one from whom legibility as a victim, in the colloquial sense of that word, is withheld. For Lyotard, one is a victim not in the moment of suffering a wrong but in the moment of being refused the means to prove that a wrong occurred—a moment in which one is not seen (by others, in language, by the law) as a "victim" in the established sense of that term: "I would like to call a differend the case where the plaintiff is divested of the means to argue and becomes for that reason a victim" (ibid: 12).

Under Lyotard's (1988) framing, the perfect, victimless crime is attained not so much by killing the victim or witness, but rather "in obtaining the silence of the witness, the deafness of the judges, and the inconsistency (insanity) of the testimony" (ibid: 9). By neutralising the addressor, the addressee and the credibility of testimony, the harm is effectively disappeared, and along with it, the 'victim' (who is only recognised as such by their status of having suffered the disappeared harm). What is left behind is the differend, the "unstable state and instant of language wherein something must be able to be put into phrases and cannot yet be". (ibid: 22). The project of rendering the victim visible, legible, recognised for the harm committed is then the project of bearing witness to differends, and "finding idioms for them" (ibid: 22).

Feminist struggles with(in) the contested terrain of victimhood in the context of sexual violence have engaged precisely in the work of bearing witness to differends and finding idioms for their enunciation, of securing recognition for Lyotard's unrecognised victims. Feminist activists work to name and claim categories such as marital rape, date rape, acquaintance rape, child sex abuse, sexual harassment, and so many more, fabricating idioms and frames of sensibility through which to convey the harm of sexual encounters previously understood as benign. Within and outside the confines of the law and its institutions, 'victimhood' has been an indispensable conceptual category for feminist efforts to bear witness to differends; to Stringer (2014), victimhood is, in fact, *the* central

idiom through which feminists have sought to, and succeeded in, “giving suffering visibility” (ibid: 157).

Working within and against (but certainly never surrendering) the parameters of victim recognition, feminist anti-rape activists have been, and continue to be, centrally preoccupied with questions of who is recognised as a victim, under what conditions, for what harms, recognised by whom, and to what ends. Through an attentiveness to these questions, feminists have cautioned against an uncritical embrace of the victim as a necessarily or even mostly emancipatory category of recognition. As Butler (1990: 4) advises, recognition is worthwhile and meaningful for feminism only if the subjects and processes of representation are persistently problematised, and there is much to be problematised about circulations of the ‘victim’. Gilson (2016) and Mardorossian (2002, 2014) enjoin feminist scholars and activists to pay careful attention to a range of elements of victim attribution. They prompt us to ask, for instance, when a subject is recognised as a victim, what precisely is being affirmed or revealed about this subject? In what ways has the content and association of victimhood shifted in specific contexts and locations, and with what effects?

Gilson (2016) and Mardorossian (2002, 2014) track how even within feminist projects of claim making around victimhood, what is meant by the victim, how the victim subject is constituted and represented, remains unsettled — with often unsettling effects. Within feminist literature and theory, victimhood is variously understood and represented in a range of contradictory and conflicting ways: as both a transient/temporally delimited experience as well as a persistent state of being; a specific event as well as an ontological, constitutive and enduring condition; a socially precipitated as well as a psychologically induced condition; a singular occurrence as well as a stable and continuous part of a subject’s identity. Each of these conflicting and irreconcilable characterisations of victimhood have distinct implications for (i) who is recognised as a victim (ii) under what conditions, and (iii) what is understood to be disclosed or revealed about the victim subject through a recognition of victimhood. All these in turn have profound consequences for the politics defended or denied in the name of the victim.²⁶

²⁶ The lack of convergence on what precisely constitutes victimhood, and what it means to experience it, also leads to a range of contradictory and often impossible demands made of subjects seeking recognition.

A range of feminist theorists have pointed to a dangerous trend within contemporary feminist engagements with victimhood through what can broadly be understood as an ‘inward’ turn (Gilmore 2003; Gilson 2016; Haraway 1997; Mardarossian 2002, 2014; Stringer 2013, 2014; Throsby 2004). In worrying tandem with neoliberal ascendancy, the understanding of victimhood has shifted from an externally produced, socially induced experience to a “psychologised inner state” (Mardarossian 2002). Increasingly the word victim is used less to designate a position within a power structure, but instead denotes an individual psychology marked by incomplete personhood (Haraway 1997; Throsby 2004; Stringer 2014). Victimhood comes to signify a deep truth about subjects’ interiority, and the victim becomes an identity category that fundamentally constitutes subjects in a stable and continuous way (Gilson 2016). Along with this turn inwards has come a heightened association of victimhood with particular (gendered) traits and characteristics, including passivity, helplessness and weakness. It is precisely such an understanding of victimhood, and exactly these associations that produce victimhood as incompatible with (or at the very least in conflict with) agency.²⁷ Crucially, then, my efforts to conceptually reconfigure victimhood away from its binary relationship with agency *must* track and disrupt conceptual formations of victimhood that mirror such a dangerous turn to the interior.

Finally, Phipps (2020) points to tendencies within mainstream white feminism to monopolise victimhood, to territorialise and occupy the category of victim in order to secure the privileges of bourgeois white women at the express cost of recognising and redressing the harms done to far more marginalised racialised communities. Bhabra

Being a “true” victim (Phillips 2000: 65–68), or a “culturally approved victim” (Lamb 1999: 117) entails demonstrating significant suffering, distress, and humiliation and appearing discernibly distraught while simultaneously being deferential, proper, and poised; “one must be vulnerable in culturally appropriate ways” (Glison 2016: 80). An authentic experience of victimisation is thought to create enduring damage to the victim’s psyche or body, but those victimised are also expected to be coherent, consistent, and rational both during and after the event (Hengehold 2000). The norms for a “true” victim thus often constitute a classic double bind (Frye 1983).

²⁷ Stringer views the turn from the language of ‘victim’ to that of survivor as, at its worst, mirroring neoliberal rationalities of personal responsibility and resilience, and at its most benign, failing to fruitfully challenge this turn to the interior and its attendant complications for the category of victim. My own sympathies lie closer to Mardorissian’s (2002, 2014) position that victim and survivor both contain emancipatory potential, and they need not be thought of in a necessarily conflictual or competing relationship. Simultaneously, I join Stringer in retaining an investment in the ‘victim’ subject (as I conclude in this section).

(2017) similarly highlights how in the era of Trump and Brexit (and equally, I suggest, Modi in India), electoral politics has witnessed a claiming of victimhood by dominant groups (white in the case of the West, and Hindu and *savarna* in the case of India), through rhetorics of being rendered 'strangers in their own lands'. Any effort to reclaim victimhood towards an emancipatory politics must guard against the dangers of such usurpations by insisting on a necessarily *structural* account of victimhood, persistently placing the victim subject (and especially collective claims to victimhood) within their location in intersecting hierarchies of oppression.

As I have tried to show through this section, the solution to the complicated politics of victimhood can by no means be to surrender any feminist investment in reclaiming the victim subject towards emancipatory ends — victimhood has been far too instrumental a tool to feminist and anti-racist struggles seeking to bear witness to, and produce structural accounts of, suffering. There is perhaps no greater evidence of the centrality of victimhood to feminist, anti-racist, anti-colonial, queer and other progressive projects than the systematic backlash the perceived 'cult of victimhood' (Cole 2007) consistently receives from reactionary forces throughout the world. Equally, feminists must guard against the violences, exclusions, and complicities entailed through particular modes of politicising victimhood, and remain alert to the ways in which it can function as an enclosure rather than an opening (for instance through the 'inward' turn). Put differently, the victim — i.e. both the conceptual category and those accommodated within it — *must* be defended, but also critically reimagined in order to carefully attend to those cast outside the sanctuary of its boundaries, and the politics enabled in its name.

Agency: The What and Why

Madhok (2013) identifies various descriptions of agency in academic and colloquial circulation, including "free will, free action, resistance, practice, praxis, performativity, motivation, desire, behavior, choice, preference, individuality, dignity, independence, critical self-reflection, liberty, self-rule or sovereignty, and moral authenticity" (ibid: 5). In light of these vast and varied interpretations and deployments, Evans (2013) highlights the continued lack of convergence over any particular, shared understanding of agency. There is, however, increasing consensus on a deep feminist discomfort with a

particular conceptualisation of agency: the Kantian figure of the autonomous, heroic (white, male) subject as somehow outside of relations of power (De Stefano 1994; Evans 2013; Madhok 2014). Various feminist accounts of gendered subordination and oppression, and their effects on the feminist subject, sit in conflict with assertions around the unfettered autonomy of the free agent. This tension is further complicated by simultaneous feminist investments in highlighting women's authorship and control over their own lives (Madhok *et al.* 2013: 1). As Di Stefano explains "(t)he discourse of autonomy has been used with some success to create 'space' for women as autonomous agents with the capacity for and the right to self-determination. ... On the other hand, feminist autonomy sits uneasily with criticisms of liberal conceptions of selfhood" (1994: 387).

Here, it is heuristically useful to distinguish between the categories of autonomy and agency (Bevir 1999), which I will use throughout this thesis to denote distinct intellectual positions (despite their interchangeable use in some academic literature). Bevir (1999), characterises autonomy as the possibility of an unfettered subject outside of, or before all power, the a priori subject. Agency, on the other hand, represents the possibility for action that is in excess of what is influenced by context, but emerges from and within that social context (*ibid.*). In order to displace or deface the Enlightenment subject, Foucault (and those following in his tradition) deny autonomy, while preserving agency through the idea that the agent is inherently creative: its creativity is simply limited by the contexts of power within which it operates (Bevir 1999: 5). Agents, in Bevir's reading of Foucault (*ibid.*), exist in specific social contexts which contain, constrain and constitute them, but never entirely determine the experiences they can have, and the ways in which they can exercise their reason, the beliefs they can adopt, or the ways in which they fashion themselves (Bevir 1999: 5).

Foucault, Bevir, and other post-structuralists, prominently Butler (1990) and Sawicki (1991), recognise the discursively constrained nature of the subject. They thus present a robust critique of autonomy, while retaining the possibility of, and an investment in, agency. Within such an understanding of subject formation, the space for agency emerges in the subtle distinction that while the subject is always "caught up within and dependent upon webs of norms that enable its intelligibility, it is never fully reducible to them"

(Dhawan 2013: 198). Foucault clarified in his later works that while individuals are shaped by their embeddedness in power relations, by actively deploying or deflecting techniques and models of self-formation, subjects may creatively transform themselves, and in the process “supplant the normalization operating in pernicious modern technologies of the self” (Sawicki 1991: 105). Therefore, Foucauldian agency can be understood as exercised during the process of political subjectivation through technologies of the self: Foucauldian agency takes the form of particular negotiations with and within power.

My engagement with agency, as opposed to autonomy, mirrors the post-structuralist philosophical position detailed above, and is invested in an understanding of agency emerging from, within, and (only) sometimes against structures of power. With this conceptual understanding of agency, I now consider the centrality of agency to various political projects that have come to inform my own interest in its representation. Feminism itself, as a broad political undertaking, relies heavily on insisting on a recognition of female agency in order to: (i) counter representations of women as less capable of rationality and reflection, and requiring guidance and protection (Madhok *et al.* 2013: 1); (ii) respond to governmental rationalities of paternalism (Butler *et al.* 2016: 1); and (iii) account for the possibility of transformation and the challenging of gender relations, for, as Gordan (2020) argues “without agency, ethics, liberation, maturation, politics, and responsibility could not be possible” (2020). Further, in order to confront structures of domination within the feminist movement itself, anti-racist and post-colonial feminists have relied heavily on assertions of subaltern agency in order to displace Western, white feminist fetishisations of the other as wholly victimised, and challenge the production of white agency in opposition to black incapacity (Gordon 2020, see also Abu-Lughod 2002; Al-Ali 2005; Anzaldúa 1987; Grewal and Kaplan 1994; Mohanty 1984; Narayan 1998). Finally, much of post-colonial scholarship’s critical charge, and ability to resist civilizational hierarchies and colonial rationalities has rested on its insistence “upholding the agency of subaltern groups” in the face of imperial domination (Majumdar 2017 on Guha 1987; Spivak 1988 and Bhabha 1988).

The centering of agency within these diverse projects is not, however, without debate and controversy, and is encumbered by several issues that equally trouble my own

investment in representing agency within the context of sexual violence. In what follows, I take up three central challenges confronting efforts to center agency for political transformation, particularly within oppressive and coercive contexts: (i) the action bias inherent to reading agency (Madhok 2014); (ii) the problem of recognising non-resistive subjects and their agency (Mahmood 2005) while retaining a normative investment in agency and (iii) the complicities involved in the deeply suspect, and ultimately impossible, project of ‘recovering’ agency (Spivak 1990). I engage with each of these critiques with a particular attention to the challenges they imply for the project of representing agency in discourses of sexual violence.

Cautionary Notes: How Not to ‘Do’ Agency

Post-colonial and Black feminist theorists have engaged in decades of thoughtful, creative, critical and constructive work with agency, gifting contemporary feminist scholars and activists with crucial insights into some of the dangers and pitfalls entailed in engagements with agency, and how to confront them. In this final section of the chapter, I outline some of these crucial interventions, which in turn centrally guide my own larger project of assembling the tools through which to represent subaltern victimhood and agency.

The Action Bias

Madhok’s (2013) *Rethinking Agency*, urges us to transcend what she calls the ‘action-bias’ inherent to contemporary theorisations of agency. Madhok demonstrates how representations of non-agentic subjects and subjectivities are “underpinned by a conceptual understanding of the agency of persons that stems from ... free action” (ibid: 8). Labeling this tendency to limit discussions of agency to the capacity to *act* freely as the action-bias, Madhok points to the shortcomings of such a restricted approach within contexts of coercion, where acting freely is not always — or even seldom — possible (ibid: 6). Madhok argues that even accounts of agency and autonomy that explicitly engage with the themes of coercion and relationality, including procedural and substantive relational autonomy (Benson 1991; Friedman 2003; Meyers 1989; Stoljar 2000) are unable to negate this over-attachment to action. Madhok recommends

transcending this action-bias through a greater attention to speech practices, representative of reflexive deliberations, which she sees as central to an analysis of agency (2013: 62,63).

Madhok's work draws our attention to the substantial material challenges confronting the task of rendering agency visible, legible, or intelligible within contexts of extreme coercion and oppression. Political projects invested in representations of agency, must, therefore, remain attentive to the reality that agency might not be clearly manifest within these contexts. In addition to Madhok's remedial consideration of reflexive deliberations, other strategies to overcoming the action bias lie in the works of Black feminists including Hill Collins (1991), and Harris (1990). These theorists detail accounts of internal self-respect (Hill Collins 1991) and creating and recreating the self (Harris 1990) as key agentival practices in response to the racialised, gendered and sexualised violences Black women are confronted with. Through various collective and cognitive processes, rather than explicit action, Black women shift the meanings associated with their lives in ways that are significant, though often entirely indiscernible. Even as contexts of coercion and oppression force Black women to "remain 'motionless on the outside'... [they] can always develop the 'inside' of a changed consciousness as a sphere of freedom" (Hill Collins 1991: 111). The theorist must thus remain alert to the action-bias in conceptualisations of agency, and consciously incorporate processes of reflexive deliberation, and self-fashioning and formation, as elements of agentival exercise.

Erasing the Non-Resistive Agent

Mahmood (2005) presents a compelling critique of the Western liberal suturing of agency with political resistance, affirming instead articulations of agency that manifest in compliance with, or conforming to, dominant oppressive norms. Mahmood's intervention was not intended to politically celebrate or valorise these forms of agentival exercise, but insisted instead that they also be *recognised* as indicative of agency. For such recognition to be possible, Mahmood establishes that we must "detach the notion of agency from the goals of progressive politics" (2005: 14). To Mahmood, such a project is crucial to asserting the agency of non-resistive subjects, in order to break the liberal, imperialist attributions of passivity to subjects read as conforming, rather than resisting. The

restoration of agency to the acquiescing, and particularly subaltern, subject is a particularly urgent project given that denials of agency continue to justify paternalistic, imperialist, racist, neocolonial domination and coercion.

In addition to its political significance, Mahmood's (2005) intervention is also philosophically robust, and compatible with Foucauldian notions of power, subject formation, and agency. Foucauldian agency, much like Mahmood's, is value neutral: it can be exercised equally in confirmation of, or in opposition to, the normative structures and confines within which the subject is produced. Despite its political and intellectual cogence, Mahmood's work proved controversial in that it presented a significant set of political and ethical difficulties for feminist investments in agency. If agency is not necessarily, inevitably, resistive, can agency continue to be cast as an unquestioned normative good within feminist projects for transformation (Roberts 2017)? In essence, can the feminist transformative project retain a normative investment in agency, or must agency lose its ethical content?

What Mahmood (2005) asks for, essentially, is that we decouple our conceptual and political approach to agency: "Our analytical explorations should not be reduced to the requirements of political judgement" (2005: 196). Thus, to Mahmood, feminists can hold a value-neutral conceptual approach to agency, while simultaneously relying on a normative basis to make political judgments. Sharing Madhok's (2013) scepticism for the possibility of such a clinical decoupling, I argue that the project of conceptualising agency is itself always already political (Madhok *et al.* 2013: 11). I thus join Madhok (2013) in insisting on a transparent continuity between conceptual and political formulations and investments in agency, while suggesting that Mahmood's intervention does, in fact, accommodate the possibility of a normative investment in agency.

Retaining Mahmood's (2005) central submission that agency must be decoupled from resistance and recognised irrespective of content, I submit that it remains possible to maintain an ethical, normative investment in *representing* specifically *subaltern* agency, particularly *in contexts of oppression*. I suggest that such an attachment to representing subaltern agency can be defended on two grounds. First, while agency does not *imply* resistance, the attribution of agency remains a crucial *precondition for* resistance (Gordon

2020). Returning once again to Foucauldian theories of power, while agency does not necessarily imply counter-conduct or the fashioning of alterity, it is within the space for agency that the *potential* for such disruption occurs (Sawicki 1991). Thus, while all agency does not produce political transformation, agency remains a crucial prerequisite to the possibility of resistive transformation (Abrams 1995; Butler *et al.* 2016; Harris 1990; Mardorossian 2002; Rose 2014). Second, as discussed earlier in this section, various feminist, anti-racist and post-colonial scholarships establish that the failure to represent, and consequently demand a recognition of, agency inevitably produces sites for paternalistic impositions of power and domination (Butler *et al.* 2016). Given that the omission or erasure of agency of subaltern polities forms the justificatory basis for coercive apparatuses of control and discipline, assertions and representations of their agency are crucial to counter such paternalistic domination.

It is therefore possible to consistently hold a value neutral conceptualisation of the content of agency, while retaining a normative political investment in representing the agency of subaltern subjects within contexts of oppression. The discussion above serves to justify my investment in representing the (often effaced) agency of subaltern subjects within contexts of violence, while enabling my work to embrace a content-neutral understanding of agency as suggested by Mahmood (2005). I am therefore able to incorporate Mahmood's important intervention, and prevent complicities in the erasure of non-resistive agents, while retaining a normative investment in representing subaltern agency.

Dangerous Complicities in the Suspect Project of 'Recovering' Agency

Given my normative and ethical investment in representing subaltern agency, my work is forced to confront a final set of challenges in the form of Spivak's (1988, 1990) deep suspicion for any project claiming to recover the agency of subaltern or marginal subjects. Spivak's critique of such an endeavour is based on a few grounds. First, Spivak is wary of the way in which such projects of recovery obscure heterogenous fields of power producing varied subject-positions, instead representing an undifferentiated subaltern subject as an effect of a monolithic oppressive colonial power (Dhawan 2012). Further, through her critique of Foucault's construction of the "expressive subject", Spivak

questions the manner in which such a move renders subjectivity, agency and identity as coherent, transparent, and accessible in an unmediated manner (Spivak 1988). Eschewing the possibility of an uncontaminated, authentic subaltern or marginal subject Spivak (1988) and Chow (2003) warn us against the futility and impossibility of attempts to “retrieve the lost, true speech of the silenced other” (Dhawan 2012: 56). There is thus the ever-present risk of essentialising, universalising and fetishising subaltern consciousness in the process of representing agency.

Additionally, applying Spivak (1988), Medovoi *et al.* (1990) explore how masses can be subalternised in the very moment they are given voice or representation. Through electoral processes in the Global South, Medovoi *et al.* demonstrate how “the people” are represented as always knowing their interests and being able to articulate them— agents in the truest, most transparent sense. They are additionally framed as idealised, homogenous electoral subjects, whose political choice is simply an extension of their “authentic” everyday choice or agency (*ibid.*). Thus, through the discourse of self-determination, the postcolonial nation legitimises itself while the “subaltern is silenced at the very moment when the claim that it is being heard is triumphantly announced” (Dhawan 2012: 57). Analogously, any effort to represent subaltern agency is equally vulnerable to silencing or speaking over the very subjects I seek to represent. The postcolonial scholar, in representing subaltern agency, thus becomes engaged in a parasitic, and ethically questionable, relationship with the subaltern subject: our speech is enabled and authorised precisely by the subaltern’s inability to be heard (I discuss this in more detail in Chapter 3). Finally, postcolonial feminists’ efforts to restore agency to subaltern subjects is constantly vulnerable not only to the dangers of essentialism and complicity in subalternisation, but further to themselves becoming “token victims”, and instruments of dominant structures (Dhawan 2012: 57). As Dhawan explains, “the postcolonial feminist is caught in a double bind as she inhabits the very structures she seeks to critique” (*ibid.*: 57).

Despite these serious issues plaguing efforts to represent, recover or restore subaltern agency, Spivak (1988, 2012) is at pains to clarify that the solution is not a post-representationalist politics, but a consistent, persistent interrogation of the scholar’s complicity in the reproduction of subalternity. To Spivak (1988), notwithstanding the

various dangers of reification, subaltern voices can only be heard through the mediating role of the intellectual. Thus, even as we attempt to listen to the ‘small voice of history’ (Guha 1996), we must remain ever-alert to our own participation in subordination, and reformat our ethico-political responsibilities to subaltern subjects accordingly. The role of the scholar, then, becomes to carefully, thoughtfully and reflexively construct the “infrastructure” (in the colloquial rather than Marxist sense) for subaltern agency to emerge (Spivak 2012: 438). Such a project involves being awake to, and making transparent, the intersecting axes of power that converge to erase, silence, or discipline agency. Developing the infrastructure for the emergence of agency entails the careful identification and consideration of terrains where agency is exercised, or contested, but also often silenced or invisibilised through hegemonic discourses of sexual violence. The work of the feminist theorist, then, is to disrupt processes of ‘hegemonic listening’ (Dhawan 2012) in order to trace, and render audible, these manifestations of agency.

Conclusion

In this chapter, I charted a conceptual path through diverse bodies of literature on sexual violence, victimhood and agency. Building from and extending beyond dominant conceptual approaches to sexual violence, I introduced the frame of sexual violence as a Foucauldian regime, outlining the particular ontological and epistemic bases which inform such a framework. I then considered two deeply polarised bodies of literature on the dangers of dominant politicisations of sexual violence, mediating between women-as-victims and women-as-agents critiques to frame the victim/agent binary as a key challenge confronting efforts to address sexual violence, and framing the binary as the central problematic I hope to address through this thesis. In the following section, I charted feminist engagements with victimhood and agency in order to (i) justify a continued investment in these conceptual categories, while also (ii) attending to the dangers precipitated by particular conceptualisation of and approaches to politicising victimhood and agency (extending beyond the cautions issued against women-as-victims and women-as-agents formulations). Specifically, I established the centrality of victimhood as a crucial feminist resource in order to produce structural accounts of gendered suffering, while highlighting the dangers of framing of victimhood as an identity category, or as revealing certain truths about a subject’s stable, inner state. I then

proposed an approach to agency which distinguished it from liberal modes of autonomy, before outlining cautionary notes on some of the dangers entailed in feminist engagements with agency, including the risk of an action bias (Madhok 2014), the erasure of non-resistive subjects, (Mahmood 2005) and the many complicities entailed in efforts to 'recover' the agency of subaltern subjects (Spivak 1988).

Engaging with a range of rich feminist inheritances, through Chapter 2 I thus assembled a conceptual foundation from which to commence my broader project of tracking and interrupting the production, normalisation and effects of the victim/agent binary in discourses of sexual violence. In Chapter 3, I take up the question of how precisely the various intellectual stipulations put in place by the conceptual orientations outlined here can be operationalised. How can the approaches to sexual violence, victimhood and agency discussed in this chapter be translated into research practice? How can they be integrated into the design and implementation of my research effort? How, in other words, does my conceptual framework inform the methodological decisions and ethical considerations that animate this thesis?

Chapter 3: 'De-subjugating' Knowledges: Methodological and Ethical Considerations

While the previous two chapters discussed the 'why' and the 'what' animating my thesis, in this chapter I turn to a consideration of 'how' to challenge the entrenched victim/agent binary in discourses of sexual violence. What follows here is an effort to articulate and account for the methodological choices that undergird my research, as well as to attend to the ethical concerns such an undertaking might provoke, with a continued alertness to the conditions within which this research is taking place. In this chapter, I outline and locate my own methodological contributions and interventions within traditions of dissident feminist thinking, writing and living, recognising the decades of activist and scholarly struggle that have created the conditions of possibility, and indeed facilitated the very thinkability, of my own research. Drawing on decolonial and post-colonial theory, I mark India, and especially banished, subaltern archives within the post-colony, as fertile sites for concept-building and worldmaking, rather than passive receptacles for the technical application of Western theory.

In this chapter, I raise and attempt to resolve a series of questions: how does one go about the project of tracking the sites of production, effects and ultimately challenging the victim/agent binary? What are the methodological tools and analytical lenses, as well as the discursive artefacts that I draw on? Put another way, in order to address my research questions, where do I look, and what am I looking for? Who, or what, might I fail to see? Beyond the questions relating to instruments and techniques which might enable my inquiry, I also consider broader concerns relating to the politics of knowledge production, as well as the politics enabled, or foreclosed, by the types of knowledge I hope to produce. What does it mean for *me* to be undertaking such an inquiry, from my particular location within global and local circuits of power and the political economy of knowledge production? What forms of knowledge and which knowers does my work re-authorise, and what and who does it delegitimise? In what ways does my work re-inscribe or challenge institutional and epistemic hierarchies? Whose stories, lives, struggles and labour have made my own work possible, and in what ways can I ensure an ethics of responsibility and accountability towards them? For whom do I write, and to what end (Nagar 2002)?

A History Where There Appears to be None

In Chapter 2, I detailed the epistemic frames underpinning my research, describing a set of onto-epistemic assumptions that treat ‘victimhood’ and ‘agency’ as historical artefacts, produced and attributed within specific contexts rather than innocent descriptions of intrinsic, naturally occurring states or characteristics of subjects. Proceeding from such an understanding, this thesis seeks to interrogate the circuits through which dominant understandings of victimhood and agency come to be imbued with the conceptual and political charge they currently contain. What are the conditions of possibility enabling the binary victim/agent formulation that dominates contemporary discourses of sexual violence? How can we study the naturalisation of these conceptual categories and their relationship to one another, while making the case for alternative conceptualisations and a different relational arrangement between them? How, in other words, do we study the history of concepts, and their production at particular locations and specific historical moments?

In this section, I introduce methodological and analytic tools that facilitate an interrogation of the processes and procedures through which concepts are produced and stabilised. I trace methods which “enable us to glimpse contingency where before we had seen only necessity” allowing us to challenge “the categories of thought and action within which we habitually conduct our lives” (Halperin 1990: 69). I assemble the apparatus to enable what Foucault calls a ‘history of the present’, an account of how our present conceptions were made, how these conditions of formation constrain our present ways of thinking, and how an exposition of these might point to the possibility of alternative conceptual arrangements. Finally, I supplement these methodological tools with a feminist critical politics of location, settling on what Madhok (2020, 2021) calls a ‘feminist historical ontology’ as my central methodological instrument. I suggest that a feminist historical ontology is an enabling methodological apparatus through which to study concepts, the work they enable and foreclose, and to explore the possibility of alternative conceptual categories and arrangements.

Subjugated Knowledges

Foucault's investment in subjugated knowledges presents a compelling starting point for an exploration of both (i) how the victim/agent binary has been naturalised within dominant discourses of sexual violence, and (ii) how to challenge this binary formulation. Foucault categorises as "subjugated knowledges" the various forms of knowing that are excluded, erased and buried in order for the dominant epistemic order to arise and stabilise (2003 [1997]: 7). Within his notion of subjugated knowledges, Foucault is, in fact, referring to two distinct categories of knowledge. On the one hand, he refers to "historical contents that have been buried or masked in functional coherences or formal systemizations" (ibid: 7): i.e. knowledge that is displaced in the practice of sustaining authorised knowledge, and concealing the fact of its fabrication. This set of subjugated knowledges contains an account of the moments and modes through which authorised knowledge comes to be consolidated in the first place. These accounts must necessarily be buried in order to sustain the illusion of the inevitability, infallibility and 'givenness' of dominant epistemic regimes. These are knowledges that, if attended to, reveal a history of "moments of consolidation [that] come with the naturalisation of a new logic" (Barlow 2004: 9) betraying the exclusions, erasures and burials out of which that new logic emerged.

Foucault also uses subjugated knowledges to refer to the series of knowledges that "have been disqualified as nonconceptual knowledges, as insufficiently elaborated knowledges: naive knowledges, hierarchically inferior knowledges, knowledges that are below the required level of erudition or scientificity" (2003 [1997]: 7). These 'banished' knowledges (borrowing from Eliot 2018), unlike the previous category of buried knowledges, are external to the official institutions of knowledge production; they have been exiled from the legitimate domains of formal knowledge. These knowledges were disqualified by the "hierarchy of erudition and sciences" (Foucault 2003 [1997]: 8), banished entirely from the official register of authorised knowledges.

These two categories of knowledge, the buried and the banished, were consciously coupled by Foucault in his formulation of subjugated knowledges as he believed they are united by what was at stake in their resurrection (2003 [1997]: 8). To Foucault, both buried and banished knowledges contain "a historical knowledge of struggles... the

memory of combats, the very memory that had until then been confined to the margins” (2003 [1997]: 8). Both of these categories of subjugated knowledges and the knowledge of struggles they contain are central to my thesis. Through a reading of dominant, authorised or official discourses, I hope to reveal the buried sites and practices through which victimhood and agency came to be placed within a binary relationship; the discursive mechanisms through which the binary comes to be re-inscribed and naturalised. I am also interested in uncovering a set of banished or disqualified knowledges: sites through which alternative conceptual arrangements of victimhood and agency could emerge, but which were exiled as naïve or inferior sites of knowledge, inadequate for theory or concept-building. Thus, this project necessitates a critical reading of the dominant archive in order to de-naturalise the victim/agent binary, as well as the assembling of an additional archive of banished knowledges from which to reimagine the relationship between victimhood and agency.

But how precisely does one go about uncovering and assembling these subjugated knowledges, these buried and banished artefacts, written out of history? How does one recover knowledges that have been disappeared and are by definition inaccessible? What are the possibilities and limitations that haunt such an undertaking? A range of scholars have cautioned against the impossibility and dangers of any efforts at a recuperative history: of attempts to simplistically expand and mine the archive for ‘the full picture’. Burton (2001, 2006), Grosz (2002), Hemmings (2011, 2018), Sedgwick (1990), Scott (1991, 1996, 2001) Spivak (1988, 1993, 1999), Stoler (2002, 2013, 2016) and Terry (1994, 1999), speaking within and across a range of disciplinary fields, have variously warned that recuperative history relies on a desire to produce a complete account of the past which can never be attained, and necessarily runs the risk of reifying and fetishising the archive itself, without destabilising or interrogating its authority, or the operation of power within and through it. Any attempt to “plug the gaps” (Hemmings 2011: 16) or “get the story straight” (Hemmings 2005: 118) inevitably etches its own erasures into the archive, all the while concealing the political and epistemological investments informing how the archive is assembled.

Refusing a straightforward model of recovery or recuperation in relation to subjugated knowledges, feminist, queer and post-colonial theorists have re-conceived the archive as a site of struggle, and the scholar’s task as uncovering and revealing the machinations of

power within the archive. This move reflects a shift from “a desire to understand the past” towards a desire to “[defamiliarise] the very assumed order of things” (Eichhorn 2013: 7) in the present. In this sense, the archive emerges as a site from which to diagnose “the power of the terms by which we live” (Brown 2001 in Eichhorn 2013: 7), through which scholars can demonstrate the contingency of the politics of the present and the power relations that constitute it, revealing new perspectives to imagine the future otherwise. In Hemming’s (2011) words, the scholar’s attachment to the archive is then no longer animated by the quest for new, or more, or different stories, but for an insight into “how we might tell stories differently” (ibid: 16) in order to make the present amenable to transformative imaginaries (Eliot 2018). Through the next section, I suggest that a feminist historical ontology (Madhok 2020, 2021) represents a particularly enabling tool through which to access and deploy subjugated knowledges, and to engage in such a different, transformative, telling of stories.

Towards a Feminist Historical Ontology

In his essay *What is Enlightenment?* (1984), Foucault uses the term ‘historical ontology’ for the first and only time across his entire oeuvre. Despite this rather cursory engagement, Foucault’s framing of historical ontology is of significant consequence: the essay names historical ontology as the overarching methodological frame informing his own work (ibid). To Foucault, historical ontology entails simultaneous investments in interrogating knowledge, power and ethics, asking: “How are we constituted as subjects of our own knowledge? How are we constituted as subjects who exercise or submit to power relations? How are we constituted as moral subjects of our own actions” (ibid)? Hacking (2002), a key interlocutor of Foucault’s work, engaged in a more substantive development of historical ontology as a methodological device in his essay ‘Historical Ontology’ (2002).²⁸ Hacking’s intellectual investments lay in developing instruments to enable effective histories of the present, histories that illuminated “how our present conceptions were made, how the conditions for their formation constrain our present ways of thinking” (2002: 25). To Hacking, historical ontology is a crucial tool through which to produce such historical accounts: “The comings, in comings into being, are

²⁸ As Koopman (2010) points out, what is interesting about Hacking’s interlocution of Foucault’s work is that he applies Foucault’s analytical and methodological insights to objects and fields of study that fall outside of Foucault’s domains of enquiry.

historical. The beings that become— things, classifications, ideas, types of people, people, institutions- can they not be lumped under the generic heading of ontology” (2002: 4, 5)?

But what, precisely, does a historical ontology entail and enable? To what objects of study is it suited, and what modes of enquiry does it engender? As Madhok (2020, 2021) points out, a key element of Hacking’s work with and through historical ontology involves an interest in words and concepts: how concepts come into being, acquire particular meanings and significance and particular moments, and how concepts ‘make up people’ (Hacking 2002). A historical ontology then provides an account of the ‘coming into being’ of not just material objects, but of classes, kinds of people, classifications, concepts, ideas. Beyond the question of coming into being, Hacking’s historical ontology also traces how “new ways to classify, open up, or close down, possibilities for human actions” (2002: 99); said differently, a historical ontology concerns itself not only with the emergence of concepts, but with the work they do in particular locations at specific points in time. Importantly, a historical ontology enables a rendering of historical processes that expressly rejects grand historical narratives and teleological progress mythologies: instead, it draws our attention to patterns of assumptions, repetitions and disruptions that undergird the production and circulation of concepts, classifications and categories across time.

By now, it has likely already begun to appear clear that historical ontology is methodologically germane to my project; I am, after all, interested in revealing how the concepts/classifications of victim and agent emerge, attach themselves to certain subjects, and enable and foreclose particular types of politics. Historical ontology thus centrally informs my project, but with one crucial supplementation: it is Madhok’s specifically *feminist* historical ontology (2020, 2021) that forms the methodological basis of my work. What, then, is a feminist historical ontology? What methodological enablements are instituted by Madhok’s (2020, 2021) extension of Hacking’s historical ontology through a commitment to an expressly ‘feminist’ praxis?

As Gunaratnam and Hamilton (2017) point out, the prefixing of ‘feminist’ to methods and methodology has proliferated considerably since the early 1980s, often with uneven ambitions, varied means, and irregular effects. Some commentators argue that feminist

research and knowledge-making demanded a distinct approach to empirical inquiry: “one that recognised and overturned systemic gender disparities, validated women's ‘experience’, rejected hierarchies between the researcher and research participant, and had emancipation and social change as its purpose” (2017: 115). Others suggest that what marks a knowledge project or approach as feminist could lie in the object of analysis (gendered relations of power), the subject of research (a feminist scholar), the epistemological assumptions and methodological choices underpinning the project, and/or the political aims that animate it (Holzberg 2017). Returning once more to Gunaratnam and Hamilton (2017), despite the absence of any immediate consensus, “a commitment to make feminism mean something in the doing of research, cultural analysis, teaching, artistic practice and in activism, has continued to complicate and supplement the idea of a distinct feminist methodological imperative” (ibid: 115).

Against this backdrop of ongoing debate, Madhok’s (2020, 2021) intervention provides a clear and compelling account of what operationalising an expressly *feminist* methodology might look like, and enable. Madhok’s (2020, 2021) formulation of historical ontology is distinctly feminist in three regards: (i) an attentiveness to the gendered nature and effects of concepts, (ii) an insistence on the imbrication of epistemology and ontology, and (iii) a commitment to a critical feminist politics of location. Through the rest of this section, I will take up each of these in turn, detailing their methodological implications, before concluding with a discussion of the suitability of feminist historical ontologies for facilitating encounters with subjugated knowledges.

(i) The gendered nature and effects of concepts

Madhok’s (2020) work begins with an insistence that concepts are necessarily gendered, “that they are taken up and attach themselves to gendered bodies, and that ‘making up people’ is a gendered exercise as ‘people’ are intersectional subjects.” Pointing to Hacking’s (2002) lack of interest in, or inclination to account for, the gendered nature and operations of concepts and their role in constituting subjects, Madhok (2020, 2021) highlights that a *feminist* historical ontology distinguishes itself through its avowed emphasis on the coming into being of gendered concepts, and the gendered nature of power relations, imaginaries and subjectivities that gendered

concepts put into place. Gendering historical ontology is, then, to “infuse it with an awareness of the inhering power relations in the meanings that concepts take up in specific historical locations, and in the work they do” (ibid). Gender, Madhok (2021) reminds us, is an intrinsically political concept, and attending to gender while producing historical ontologies is a distinctly political choice; a feminist historical ontology is then an expressly political project, enabling particular types of knowledge struggles which are necessarily invested in intersectional questions of gender.

This attentiveness to gender enabled by Madhok’s supplementation is crucial to my project; after all, within discourses of sexual violence victimhood and agency are both decidedly gendered concepts, that differentially attach themselves to various intersectionally gendered, classed, racialised and caste-located subjects. Understandings and attributions of victimhood and agency are produced, contested and stabilised within gendered regimes of power, and are consequently involved in ‘making up’ gendered subjects, and inaugurating gendered subjectivities or ways of being within these regimes. Thus, producing a historical account of the naturalisation of dominant understandings of victimhood and agency, as well as tracing their effects would be fatally flawed without an express attentiveness to the gendered dynamics of their constitution and consequences.

- (ii) Black and post-colonial feminist epistemology and the refusal to disentangle ontology from epistemology

Madhok’s (2020, 2021) feminist historical ontology expressly affirms “the imbrication of epistemology and ontology”, as it works to “make explicit the ways in which concepts come into being in different locations and within particular knowledge systems”. Following Wynter (2003), Madhok maintains that epistemologies have particular ontological effects and are therefore inevitably entangled. Drawing on black and post-colonial feminist scholarship (including Bhavnani 1993; Chow 2006; Crenshaw 1989; Hill Collins 2000; hooks 2000; Lorde 2001; Lugones 2010; Mohanty 1984; Rich 1986; and Spivak 1988) Madhok demonstrates that not only is it difficult to disentangle epistemology and ontology, but that there exists a mutually reinforcing relationship between them (Madhok 2021). Taken together, these disparate interventions reveal

how “specific political entanglements of the ontological and the epistemological produce conditions of epistemic erasure and marginality” (ibid). They prompt us to ask questions around who gets to be a ‘subject’ and a ‘knower’, while also interrogating the circumscription of proper and legitimate ‘objects’ of inquiry.²⁹

Madhok (2021) reminds us that epistemology is political (Alcoff 1993), and that knowledge is inevitably mediated by the intersections of race, class, gender and other forms of marginality (Crenshaw 1989), uncovering epistemology’s “irrepressible connection with social power” (Fricker 2007: 2) and revealing the processes through which subordinate groups are denied subjectivity and status as knowers.³⁰ Madhok’s understanding of feminist historical ontology, then, does not emphasise ontology at the cost of epistemology, or privilege an ontological project over an epistemological inquiry. Rather, she insists on the “impossibility of epistemology and ontology being discrete and radically disconnected” (Madhok 2021). To Madhok (2020), to subscribe to an intertwined understanding of ontology and epistemology is also necessarily to “argue for producing site specific, historically located accounts of gender relations in order to show how particular gendered subject formations come into being at particular times”, bringing me to Madhok’s (2020, 2021) final feminist supplementation: an insistence on a critical feminist politics of location.

(iii) A Critical Feminist Politics of Location

Madhok (2020, 2021) frames a critical feminist politics of location as the central ‘conceptual filter’ through which a feminist historical ontology is conducted:

²⁹ In Madhok’s words, “These critiques lay bare the forms of epistemological enquiries, their resultant knowledges and the forms of sociality central to white ontic feminist epistemic thinking and also its power to define who gets to be a ‘subject’ and a ‘knower’, and which knowledges and phenomena are legitimate ‘objects’ of study and consequently to receive recognition and authority. These are significant critiques because epistemological enquiries and processes, uphold a particular view of the world, endorse certain forms of gender relations and assume a specific set of hierarchical social and political relations as standard” (2021).

³⁰ Spivak (1988), for instance, has written about the ‘epistemic violence’ that accompanies the silencing of marginalised groups, while Hill Collins (2000) highlights the denial of subjectivity and cognitive competence of Black subjects. bell hooks (2000) asserts the need to develop feminist theory that emerges from “individuals who have knowledge of both margin and centre” (ibid: xvii) and for understanding marginality as a “position and place of resistance” that is “crucial for oppressed, exploited, colonised people” (1990: 150-151).

The critical politics of location is key to epistemic strategies aimed at avoiding a technical application of theory, a theory that is assumed to be independently ordered to the 'world', and thereby, reproducing and upholding the very power relations that inform theory production. As opposed to a technical application of independently (of the world) derived theory, a feminist historical ontology of concepts insists on a dynamic relationship to empirical facts in theory making but also in the study of concepts. As a result, the historically specific location and meanings of concepts becomes the starting point of theoretical and conceptual work and consequently, theorists and scholars have to describe how the concepts they are studying come into being and where; and furthermore, describe their use and articulation, i.e. how have these been deployed as building blocks for producing theorised accounts of the various encounters with the world (Madhok: 2020).

A critical feminist politics of location is borne of a series of interventions by feminist scholars who emphasised historical and political specificity, and have instituted a practice of 'naming the ground' from where they speak. It derives from epistemologies that expressly situate knowledge within multiple, interacting and intersectional circuits of power. Specifically, feminist historical ontology borrows from a feminist politics of location the question "from where are you looking and what/whom are you seeing", and the demand "to see and view all knowledges as marked knowledges, marked by those who inhabit particular locations and sites of knowledge production" (Madhok 2020).

As Madhok (2020) readily acknowledges, an attentiveness to the location of knowledge production is by no means an exclusively feminist impulse: location has been variously invoked by a range of post-colonial and decolonial scholars (Bhabha 1994; Chakrabarty 2009; Mignolo 2011 *inter alia*), and even appears in Hacking's own work (2002). What Madhok sees as unique to feminist scholarship on location, however, is what she calls its "insistence on location as a critical reflexive ethics" (2020).³¹ This critical reflexive

³¹ Madhok traces feminist scholars' multiple engagements with the question location as "a place in space and in time but also in history and epistemology" (2020). Feminists have invoked location to highlight the unequal distribution of intellectual and institutional capital, and the entanglements of theory building with the heteropatriarchal, racist, capitalist geopolitics and power relations that fundamentally inform knowledge production (Cusiqañqui 2012; Rich 1986; Mohanty 1995; Wynter 2003). Through her essay *Notes on the Politics of Location*, Adrienne Rich "catapulted struggles over accountability, responsibility and ethical politics to the centre stage of feminist knowledge production" (Madhok 2020). In opposition

ethics has two components: the first is a conscious and critical accounting of the global relations of power relations that underpin knowledge production and dissemination. The second entails forging a dynamic ethical relationship “between the self and the collective ... a relation to the self that is constantly made and remade depending on the location of self in specific contexts of struggle” (Mohanty 1995), while constantly redrawing the ethical relationship of the self to the site(s) of knowledge production.

Madhok’s feminist historical ontology then entails a series of methodological gestures: it necessitates “asking different questions, naming the epistemic ground one speaks/writes from, refusing a technical application of theory while insisting on ‘speaking back to it’ and of working to/ for justice” (2020). Most importantly, these gestures enable and authorise conceptual work in different geographical and intellectual spaces, in ‘non-standard’ background contexts and conditions; contexts outside those from which concepts are standardly produced (Madhok 2020, 2021). A feminist historical ontology, through its incorporation of a feminist politics of location, thus makes it ‘thinkable’ to derive conceptual accounts from sites and artefacts that were hitherto disqualified as naïve, inferior, insufficiently scientific or elaborated: banished knowledges, excluded from the official archive, exiled from authorised institutions of knowledge production. Thus, feminist historical ontology is a crucial tool for producing theory and concepts from the Global South more broadly, and for enabling an epistemic encounter with banished knowledges more specifically.

Returning once more to the key aims of my thesis, a feminist historical ontology presents itself as an apposite methodological instrument through which each of the three strands of my inquiry might be facilitated. My first research aim, uncovering the representational practices and discursive sites through which the victim/agent binary is produced and naturalised, goes to the very heart of what a feminist historical ontology intends: providing a located history to concepts that appear to have no history, challenging the ‘givenness’ of the dominant binary formulation of victimhood/agency.

to forms of ahistorical, “lofty and privileged” abstract theorising which centred white women and engendered a “confusion between [our] claims to the white Western eye and the woman-seeing eye” (1981: 219), Rich demands that we recognise the location and “name the ground we are coming from and the conditions we have taken for granted...” (219), while accounting for how they inform our theorising.

In terms of tracing and evidencing the pernicious effects of binary representations of victimhood and agency (my second research aim), a feminist historical ontology not only enables a located study of how concepts emerge, but also illuminates how they ‘make up people’, the work they do through their circulation, and the forms of politics they enable or foreclose. Here, it is useful to dwell briefly on what distinguishes historical ontology as a methodological apparatus from Foucauldian genealogy (putting aside temporarily the crucial supplementations entailed by Madhok’s expressly *feminist* historical ontology). Given that genealogy was Foucault’s central methodological offering for the project of rendering the familiar strange through the production of a “history of the present” (Foucault 1977:31), genealogy might appear a rather intuitive methodological choice for my research in light of my interest in a de-naturalising account of the victim/agent binary. While there is no contesting the utility of a genealogical practice to such an undertaking, I suggest that not only does a historical ontology enable an interrogation of the conditions of possibility and the ‘coming into being’ of concepts in much the same way a genealogy would do, but it extends beyond a genealogical exercise in two key regards.

First, historical ontologies attend explicitly to the production and constitution of subjects — the ‘making up’ of people — in a way that genealogies do not necessarily demand (Hacking 2002). Genealogies are centrally concerned with questions of what Allen (1996) calls the microphysics of power in the production of knowledge; a genealogical undertaking thus does not necessarily entail an express attentiveness to the subject produced within and through power (though it certainly does not preclude such an enquiry). Put differently, while historical ontologies concern themselves with both the ‘comings into’ and the ‘beings’ in “comings into being” (Hacking 2001: 5), genealogies are more explicitly oriented towards the former. As previously discussed, while Foucault (1984) characterised historical ontologies as concerning themselves with questions of knowledge, power *and* ethics, asking “How are we constituted as subjects of our own knowledge? How are we constituted as subjects who exercise or submit to power relations? How are we constituted as moral subjects of our own actions” (ibid: 49); while genealogies are preoccupied most extensively by the first question.

Second (and following from the distinction discussed above) historical ontologies not only pose questions about how conceptual categories make up subjects, but additionally ask how these subjects effectively ‘speak back’ to the regimes of power in which they are caught up and produced (Hacking 1986, 2002). In other words, historical ontologies are interested in the ways in which subjects *exceed* the categories they are disciplined into (Hacking 2002). Thus, a historical ontology of victimhood and agency would allow me to trace not only how subaltern subjects are caught up in, and erased by, these conceptual and classificatory categories, but also how subaltern realities fundamentally exceed dominant versions of victimhood and agency. Subaltern subjects thus leave traces and tracks outside of the dominant categories through which they are produced, and a historical ontology (unlike a genealogy) requires that we follow these tracks, inaugurating the possibility of thinking the categories of victimhood and agency otherwise. Thus, while a historical ontology encompasses some of the key methodological orientations of genealogical practice — Foucault (1984) himself characterised historical ontologies as a meta-methodological impulse, encompassing genealogical as well as archaeological enquiries — it puts in place specific stipulations around attending to subjects that extend beyond the methodological enablements of genealogy.

Turning once more to a consideration of how a specifically *feminist* historical ontology enables my research, by insisting on the epistemic significance of banished, unauthorised sites, a feminist historical ontology prompts me to look beyond the dominant archive to assemble alternative discursive artefacts through which to engage in different, transformative tellings of sexual violence. In enabling an encounter with subjugated knowledges, a feminist historical ontology thus expressly facilitates the third and final aim of my thesis, pointing me to the archival material through which to produce alternative conceptual accounts of victimhood and agency that resist the victim/agent binary, and insist on the simultaneity of experiences of victimhood and agency. But before I can venture to engage in feminist historical ontologies of victimhood and agency, I must attend to three central questions that the methodology provokes: where is the theorist looking, who/what is the theorists looking/reading for, and what/whom is the theorist seeing?

Subaltern Subjects: Introducing Mathura, Bhanwari Devi and Jyoti Singh

In Chapter 1, I introduced my intention to centre the subaltern subject in my analysis of the effects of the victim/agent binary. What remains to be clarified are the parameters through which I identify, recognise and designate a subject as subaltern. Who exactly is the subaltern subject, or what precisely constitutes subalternity? Gopal (2004) writes that within the field (and political project) of Subaltern Studies, at its early stages the term subaltern was used interchangeably with the category of 'peasant', marking Subaltern Studies' express debt to Antonio Gramsci. While the Italian term 'subalterno' as employed by Gramsci roughly translates to 'subordinate' or 'dependant', within South Asian Subaltern studies the term was extended to denote "the general attribute of subordination in South Asian society whether this is expressed in terms of class, caste, age, gender and office or in any other way" (Guha 1988: vii). The Subaltern Studies project was a historiographical, epistemological undertaking expressly oriented around attending to this subaltern subject, producing historical accounts that eschewed grand narratives and huge figures in favour of "bending closer to the ground" to trace and recount the "small voice of history" (Guha 1996). In the early days of Subaltern Studies, then, the category of the 'subaltern' was engaged to shed light on the practices of dominance and resistance outside the framework of class struggle, but without ignoring class itself: "'subaltern' would be of help in avoiding the pitfalls of economic reductionism, while at the same time retaining a necessary emphasis on domination and exploitation" (Sarkar 2002: 401).

Through her field-defining text *Can the Subaltern Speak*, Gayatri Spivak (1988) introduced an expressly epistemological understanding of the subaltern subject, distinguished by her exclusion from, and lack of access to, the dominant means of representation. Subalternity, to Spivak (1988, 1999), was the condition of 'radical unrepresentability', characteristic of a subject cast outside of hegemonic social, political and economic power, speaking a language unrecognisable to the hegemonic ear, and refused a hearing in institutional locations of power (Dhawan 2012; Spivak 1988). Importantly, as Sunder Rajan (2010) points out, Spivak evades, and perhaps even willfully refuses, a precise and enduring ascription of any inalienable, defining attributes to subaltern subjects. Spivak's choice of protagonist for a central story in *Can the*

Subaltern Speak, Bhuwaneswari Bhaduri, has precipitated much contention and controversy around the Spivakian understanding of subalternity, often inviting challenges around whether Bhuwaneswari Bhaduri is, in fact, subaltern at all (Sunder Rajan 2010). Responding to these controversies and what she calls the “aporia of exemplarity” (1999: 430), Spivak submits that the choice of Bhuwaneswari Bhaduri, who “was not a true subaltern” (ibid: 308) signals Spivak’s refusal of a “romantic attachment to pure subalternity as such” (in Landry and MacLean 1996). To Spivak (1999), then, claims to subalternity can “be staked out across strict lines of definition by virtue of their muting by heterogeneous circumstances” (1999: 308)

Following Spivak’s (1999) repudiation of attempts to rigidly demarcate and police the boundaries of true or authentic subalternity, my understanding of subalternity aligns broadly with Spivak’s representational, but simultaneously structural (Sunder Rajan 2010), reading of subalternity as marked by the condition of being “insufficiently represented or representable in that narration” (Spivak 1999: 244/21) due to a range of contextual structural strictures and impediments. Proceeding from such an understanding of subalternity, I now offer a brief and inevitably inadequate introduction to Mathura, Bhanwari Devi and Jyoti Singh: the women whose stories and struggles I draw on throughout this thesis. Mathura, a young (between the age of 14 and 16) *Adivasi* woman, was raped by two policemen on the premises of the Desaigunj Police Station, Chandrapur District in Maharashtra, Western India on 26th March 1972. A little more than twenty years after the attack on Mathura, on 22nd September 1992, in the village of Bhateri, Bhanwari Devi, a *sathin* (grassroots worker) under the state’s Women’s Development Programme was gang-raped by five men as retaliation for efforts to stop a child marriage in the dominant *Gujjar* community.³² Bhanwari Devi and her husband Mohan, both belonging to the *Bahujan* Kumhar community,³³ were attacked in the fields of Bhateri by four Gujjars and one Brahmin. Two decades after the attack on Bhanwari Devi, on the evening of 16 December 2012, Jyoti Singh Pandey was raped and assaulted

³² Also often written as ‘Gurjars’, they are a *jaati* or caste community traditionally composed of cattle breeders. In the village of Bhateri, Gujjars were a powerful caste community, both in terms of ownership of land and material resources, as well as political patronage.

³³ Kumhar(s) are traditionally a community of potters, and is a caste officially recognised as a Scheduled Caste by the Government of India.

by five men and a minor aboard a private bus in South Delhi. Thirteen days later, she died due to injuries sustained during the attack.

The decision to structure my analysis around the attacks on, and struggles of, Mathura, Bhanwari Devi, and Jyoti Singh derives from three key bases. First, I suggest that tracking discourses across these critical incidents spanning four decades presents the possibility to uncover both the resilience, as well as mutability, of constructions of victimhood and agency, presenting crucial clues to understand how precisely these configurations persist or shift across time, a central element of undertaking a feminist *historical* ontology of victimhood and agency. Second, the distinct class, caste and geographical locations of each of these differentially subaltern women present an opportunity to develop a textured analysis of how victimhood and agency attach themselves differently to differently marked bodies. Finally, the attacks on, and responses to, the rapes of Mathura, Bhanwari Devi, and Jyoti Singh prompted both local and national mobilisations, along with the only three instances of substantive amendment to criminal law pertaining to rape in post-colonial India.

Over the next three chapters, I revisit Mathura, Bhanwari Devi, and Jyoti Singh's stories, following these subaltern subjects as they are raised, erased and displaced across and between archival sites and artefacts. Drawing on Spivak's representational understanding of subalternity, I track how their stories circulate across various registers, ventriloquised by various actors keen to re-tell and even retail subaltern suffering even as they deny the subaltern women at the heart of these struggles a hearing. While my attempt through this thesis is to avoid miming the violences of the archive even as I critique them, my invocations of these subaltern subjects in the service of my own epistemic project is far from innocent, and often replicates the representational violences of the archive, or inflicts new ones. Spivak (1988) has warned of "first-world intellectuals masquerading as the absent nonrepresenter who lets the oppressed speak for themselves" (ibid: 292). However, Spivak (1988, 1996) simultaneously insists that the dangers of mis-representation, or the reproduction of hierarchies of power, cannot and should not be turned into an alibi for non-representation; Spivak's (1988) assertion that the subaltern cannot speak never meant to shirk the responsibility of representation, but instead intended to stress that the stakes and risks entailed in representational practice

are both high. My aim throughout the thesis is to engage in honest reckonings of my complicities and representational inadequacies, while aiming consistently towards an ethical and accountable representational engagement with Mathura, Bhanwari Devi, Jyoti Singh and their stories.

My hope is to handle with care the feminist debt (Madhok 2020) I incur in acknowledgement of how Mathura, Bhanwari Devi, and Jyoti Singh have paved the conditions of possibility and 'thinkability' for not just my own project, but any meaningful engagement with the issue of sexual violence in India. In doing so, I do not by any measure imagine that I can do justice to their lives and struggles, much less meaningfully deliver any semblance of justice to them or to others. Instead, I hope to explore, reveal and begin to challenge the conditions of their violation and the denial of justice to them through a critical engagement with the archives in which their stories, or versions thereof, circulate. By following traces of these subaltern subjects in the archive, I track which elements of their complex relationship with victimhood and agency are admitted, and which elements expunged, from the tellings of their stories, and to what effect.

The Archive as a Field of Power: Beyond 'Search and Rescue'

To Latimer (2014), an archive is "more than a repository of objects or texts, the archive is the very process of selecting, ordering, and preserving the past- in short, of making history" (ibid: 34). In other words, archives produce the very history they appear merely to reflect or represent. Following Foucault and Derrida's legacy of rethinking the archive as a site where power is exercised and knowledges are legitimised, rather than as an innocent repository for fragments that 'preserve' or 'safeguard' the past (Foucault 1972 [1969]: 129; Derrida 1995), the 'archival turn' within the humanities and social sciences (see Eichhorn 2013) has reflected a shift in the interests animating scholars' engagements with the archive. As Eichhorn notes, this archival turn since the mid-1990s is animated not so much by a pursuit of a true or authentic history, but by an investment in "engag[ing] with some of the legacies, epistemes, and traumas pressing down on the present" (2013: 5). A feminist historical ontology sits firmly within such a tradition, and exhibits a similar disposition to the archive and the possibilities it holds for producing histories of the present: historical ontologies facilitate critical encounters with archives

that provide glimpses into the dynamics of power that produce and order archives in the first place.

The production of, and engagement with, archives is then by no means an innocent or neutral pursuit: archiving is an intensely political process, a field of struggle and contestation, upholding but simultaneously concealing structures of power and hegemony. Extending Zachariah (2016), I view the archive not as a static place frozen in time and space, but a particular type of epistemic and “rhetorical move” (2016: 12); a dynamic site imbued with an agency of its own, an agency derived from the particular investments of those assembling and entering it. Following feminist, queer and post-colonial theorists’ eschewal of recuperative engagements with an archive, refusing the impulse to recover lost or hidden histories, my assembling of and encounter with archives is not aimed at producing a corrective representational account of sexual violence or subaltern subjects’ experience of and struggle against it. Instead, conceiving of the archive as a site where regimes of knowledge are produced, I conduct a historical ontology of how ‘victimhood’ and ‘agency’ come to be constituted, contested, and consecrated within, and through, the archive. I track how these conceptual categories emerge and are stabilised within the archive, the subjects they attach themselves to or accommodate, and the work they are engaged in in ‘making up people’. Through a feminist historical ontology of victimhood and agency in the dominant archive, I do not hope to reveal any inner truth around these conceptual categories, but instead hope to unmask the “details and accidents” (Foucault 1977 [1971]: 144) by which they came to settle into their dominant binary formulation. And finally, through a tracking of victimhood and agency within an archive of banished knowledges — what I call the subaltern archive³⁴- I hope to uncover the conditions of possibility for an alternative conceptual understanding and arrangement of victimhood and agency.

Before I proceed to detail how I assemble and engage a dominant and subaltern archive, it is imperative that I issue a few clarifications. First, and prior to any venture to circumscribe these two archival spheres, I must puncture any illusion of their total separability: the dominant and subaltern archive are by no means hermetically sealed from, and impervious to, one another. In fact, as my analysis in Chapter 5 reveals, it is

³⁴ For a discussion on my characterisation of this archive as ‘subaltern’, see page 17

often the very same actors who author, curate and are the custodians of discursive artefacts within both the dominant and subaltern archive. Second, by classifying them as the dominant and subaltern archive respectively, I am by no means signalling either the seamless hegemony of dominant relations of power in the former, or the radical and inevitable alterity of the latter. I cannot, and do not in any way claim to know of the disruptive or affirmative potential of either archive in advance of my engagement with them. In fact, entering both archives through the methodological lens of a feminist historical ontology enables me to uncover possibilities for an alternative conceptual basis to victimhood and agency within the dominant archive (as I do most extensively in Chapter 4), while recognising sites of the affirmation of the victim/agent binary within the subaltern archive. As the discussion in the section below clarifies, my classification of my two key archival sites as 'dominant' and 'subaltern' draws on insights from the Subaltern Studies project, and derives from the attributed legitimacy and authority of each archive as a site of credible knowledge production, concept-building and theory making.

The Dominant Archive: Accounting for Erasures

Following scholars writing within the Subaltern Studies tradition (Byrd 2018; Chatterjee 2012; Gallien 2017), and maintaining an understanding of the archive as a field of power, I frame the dominant archive as comprised of a range of discursive fragments which bear forms of institutional legitimacy; artefacts which are authorised as representing the truth of an incident, the official record, the recognised version of events. The dominant archive is thus constituted by discursive objects that are lent credibility and authority by their proximity to (or even physical location within) institutions of power or authority. The law incontestably falls into this category, and forms a key site for my exercise in producing feminist historical ontologies of victimhood and agency. Within the broader domain of the law, my thesis attends to two key strands of discourse: (i) judicial discourses, comprised of case law pertaining to the criminal prosecutions involved in Mathura, Bhanwai Devi, and Jyoti Singh's battles for legal recognition as victims; and (ii) legislative reform, of amendments to criminal law precipitated by the attacks and the mobilisations they precipitated.

While recognising the dangers of epistemically privileging and consequently re-authorising the state more broadly (and criminal law in particular) within my analysis of discourses of sexual violence, I follow a range of post-colonial scholars (Baxi 2014; Kotiswaran 2013; Kapur 2013; Menon 2004; Satish 2017) in retaining an interest in *critical engagements* with the law. Drawing on the work of various post-structuralist feminist legal theorists (Brown and Halley 2002; Brown 1995; Phelan 1990; Smart 1992), this thesis employs an understanding of the law as a particular, potent form of disciplinary discourse fundamentally engaged in the constitution and regulation of subjects and subjectivities. Within this body of scholarship, the law is affirmed as fundamentally involved in the production, gendering and regulation of subjects (Brown 1995; Brown and Halley 2002; Das 1996; Kapur 2013; Menon 2004; Phelan 1990; Smart 1992). Thus, while remaining alert to, and sympathetic of, Indian feminists' deeply conflicted relationship with the law (Haksar 1986; Dhagamwar 1992), I am equally aware that within the post-colony "neither state institutions nor judicial remedies can be entirely dispensed with" (Kannabiran and Menon 2007: 196). Indeed, there remains significant feminist investment in securing juridical legibility for the abject, gendered subject to whom legal recognition and protection is denied (Agnes 1992; Kannabiran and Menon 2007). This continued feminist concern over the judicial abandonment of marginal subjects along with the scale and power of the state and its gendering and subjectivating effects render it a crucial site from which to track conceptual productions of victimhood and agency within discourses of sexual violence. Thus, the law forms a key component in my assembling of a 'dominant' archive from which to interrogate productions of victimhood and agency in discourses of sexual violence.

Beyond case law and legislative reform, the third and final discursive site from which I assemble my dominant archive is dominant feminist responses to, and mobilisations around, sexual violence. The classification of feminist discourses as 'dominant' is far more controversial and less straightforward than the designation of law within this domain. Drawing on Kotiswaran (2016, 2017), I suggest that in the immediate aftermath of the attack on Mathura, and progressively through the decades that followed, the feminist movement in India has been both increasingly institutionalised (Menon 2012), as well as increasingly admitted into (and even incorporated within) the "corridors of power" (Halley *et al.* 2018: 105). Mirroring broader global patterns of governance or state

feminism, dominant feminist activists, scholars, organisations and movements have not only been granted greater access to formal institutions of power (including and beyond the state), but have accrued and consolidated their own forms of institutionalised power. Here it is crucial to clarify that what I mean by ‘dominant feminist discourses’ does not include the struggles of and claims made by, for instance, subaltern *Dalit*, *Adivasi*, and Muslim women who are systematically side-lined, and even maligned by the state and other institutions of formal power. What I am referring to, then, by ‘dominant’ feminist discourses are those that in some way register to the ‘hegemonic ear’ (Dhawan 2012); those which, though not necessarily uncontested or secure, are at the very least acknowledged, circulated and engaged with by institutions and structures of power.

The three domains of discourse that constitute my dominant archive — case law, judicial reform and feminist discourses — are by no means perfectly separable or insulated from one another (nor from the subaltern archive, as I discuss in the next section). To the contrary, several of the discursive artefacts I study sit precisely at the junction of these three spheres (e.g. the Vishaka Guidelines, as well as the Justice Verma Committee Report as discussed in Chapters 5 and 6 respectively). It is the productive tension between the three registers of the legislative, the judicial and the feminist that presents the terrain for my analysis of dominant discourses of sexual violence. The precise objects for analysis, pertaining to each of my analytical chapters are summarised below:

	Chapter 4	Chapter 5	Chapter 6
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Case Law	Sessions Court ruling in the case of Tukaram and Anr. vs State of Maharashtra. Bombay High Court judgement. Supreme Court judgement. Related judgements.	Sessions Court ruling in Ram Karan Gujjar and Ors. vs State of Rajasthan. Related judgements.	Delhi High Court ruling in Mukesh & Anr vs State For Nct Of Delhi & Ors. Supreme Court Sentencing Ruling. Related judgements.
Legislative Reform	Criminal Law (Amendment) Act 1983. Lok Sabha and Rajya Sabha (Lower and Upper houses of Parliament respectively) debates pertaining to related Bills.	Vishakha Guidelines on Sexual Harassment at the Workplace.* The Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act 2013 (aka POSH Act). Lok Sabha and Rajya Sabha (Lower and Upper houses of Parliament respectively) debates pertaining to related Bills. <i>*promulgated by the Supreme Court in the absence/place of relevant legislation</i>	The Justice Verma Committee Report. (committee constituted to advise the central government on reform in the aftermath of the attack on Jyoti Singh). Criminal Law (Amendment) Act 2013. Lok Sabha and Rajya Sabha (Lower and Upper houses of Parliament respectively) debates pertaining to related Bills.
Feminist responses	Open letter to Supreme Court from feminist academics Published feminist analyses in national, regional and international journals.	Public Interest Litigation (PIL) filed by various feminist groups under Vishakha and others vs State of Rajasthan. Vishaka (NGO) archives including letters, petitions and analyses by feminist scholars and activists. Published feminist analyses in national, regional and international journals. Interviews with 3 feminist activists involved directly in supporting Bhanwari Devi and in the mobilisations following her attack. Feminist publications and debates on MeToo.	Submissions to the Justice Verma Committee by various feminist academics, activists, and groups. Published feminist analyses in national, regional and international journals. Slogans, posters, and statements issued and circulated at the mobilisations/protests. Interviews with 9 feminist activists and academics.

Through a feminist historical ontology of victimhood and agency in the dominant archive, I identify the discursive sites and representational strategies through which the victim/agent binary is produced and stabilised, as well as reveal moments of possibility (often followed by the eclipsing of hope) through which alternative conceptual arrangements of victimhood and agency might be imagined. In analysing the dominant archive, I am interested in tracking what happens in the appropriation of subaltern suffering as/into ‘case’ (Guha 1987). When the narration of subaltern reality is left to the “stentorian voice of the state” and those speaking to/within it (ibid: 141), Guha argues that the “complex tissue of human predicament” is reduced to mere ‘case’ (ibid). In producing a feminist historical ontology of victimhood and agency in the dominant archive, I essentially ask: when the lives of subaltern subjects of sexual violence are anthologised for the law, which elements of their victimhood and agency are admitted into and recognised by the archive, and which elements are left out? What are the

violences and erasures entailed in representing the victimhood and agency of subaltern subjects in the format of a 'case'?

Significantly, in my engagement with the dominant archive I also track locations where the binary stumbles, falters and fails, revealing cracks and fissures through which the impermanence and instability of the victim/agent binary is laid bare. In Chapter 4, for instance, I identify various sites and moments of possibility (victim testimony and the category of passive submission, for instance) for alternative, non-binary imaginations of victimhood and agency sheltered within the dominant archive. These alternative arrangements of victimhood and agency — these buried knowledges — set against though often alongside their binary orthodoxy, constitute what Deleuze and Guattari (1986: 17) call 'minor' knowledges and conceptions: unique or atypical formulations that through their very existence, highlight the fragility and fallibility of dominant imaginaries. The dominant archive is thus by no means seamlessly or irredeemably governed by hegemonic relations of power (much as the subaltern archive is equally not impervious to them).

In any engagement with dominant archives, Hartman (2008) warns of the impossibility, but the simultaneous imperative, to resist miming the violences of dominant archives even as we engage them to contrary ends. For Hartman, any effort to redress the reproduction of erasures through an encounter with the dominant archive must be accompanied by "describing as fully as possible the conditions that determine" (2008: 1) the silences and erasures etched into the archive in the first place. What Hartman is asking for is an uncovering of buried knowledges, of the protocols and procedures which determine and prop up dominant representation regimes, and which occlude any evidence that challenges its 'givenness'. While a feminist historical ontology of victimhood and agency enables precisely such an accounting (as discussed above), I join Hartman (1997, 2008, 2019) in pursuing a more expansive form of redressal; of extending beyond such elaboration of buried knowledges to more substantively imagine and engage in a *different* telling of subaltern stories. To, in other words, attempt to assemble an archive within and through which the subaltern subject can be represented in all her complexity, un-truncated by the dominant representational regime's investment in the victim/agent binary. Once more, a feminist historical ontology, with its emphasis on a critical politics of location provides a potential pathway to such a different

telling. Recall that a feminist historical ontology, through its emphasis on a critical politics of location, produces the conditions of 'thinkability' to derive conceptual accounts from non-standard conditions: from knowledges dismissed as naive, insufficiently elaborated or unscientific. Feminist historical ontology, therefore, enables, and even demands, a productive encounter with banished knowledges.

The Subaltern Archive: 'De-subjugating' Banished Knowledges

Through my analysis of the dominant archive, I track how the subaltern subject is only invited into, or accommodated, within this field of power in partial, truncated modes; only victim or agent but never simultaneously both. An engagement with banished knowledges, on the other hand, fuels the possibility of alternative conceptual arrangements between victimhood and agency, and of instituting a representational account of subaltern subjects that are able to account for both their victimhood and agency. While fractures in the hegemonic episteme within dominant archives provide glimpses into buried knowledges, banished knowledges are, by definition, exiled from the dominant register for the most part. Where, then, does one seek and encounter banished knowledges?

In my quest for these subjugated knowledges, shielded (but never entirely insulated) from the stentorian voice of the state and the narration of subaltern reality as 'case', I turn once more to Subaltern Studies, a field within which the quest for banished knowledges is now a well-trodden and carefully considered route (Arondekar 2005). Within Subaltern Studies, the expansion of the archive to include previously discounted knowledges was central to the project of unsettling colonial certainties and hierarchies (ibid). Shetty and Belamy (2000), while commenting on what they call post-colonial theory's 'archive fever' (borrowing from Derrida 1996) see the central project of Subaltern Studies as animated by a desire not only to recover lost speech, voice or agency, but also to encounter lost or buried texts. Chatterjee (2012), in his detailed cataloguing of the sources often turned to by theorists of subaltern studies, frames these sets of artefacts as comprising archives of the "non-canonical, unsophisticated, down market" (2012: 48). Chatterjee's (2012) inventory of banished artefacts central to the subaltern studies project included calendars, prints, book illustrations, advertisements, studio photos, songs, ballads, local newspapers and so much more; all variety of scraps and

snippets that were able to capture and preserve the ‘small voice of history’ (Guha 2009), whispered by subaltern subjects, in a manner entirely inaccessible through the hegemonic archive. The subaltern archive can then be understood as holding the hushed records of what Scott (2014) calls “quiet, unassuming” ways of being and doing, because such a manner of existence “usually flies below the archival radar, waves no banners, has no officeholders, writes no manifestos, and has no permanent organisations, escapes notice” (ibid: 12).

It is precisely this field of artefacts that a feminist historical ontology prompts and enables scholars to take seriously as sources of concept-building and worldmaking; these discursive fragments banished from the official record for being too naive, insufficiently elaborated, unscientific. Feminist historical ontology thus paves the conditions of the ‘thinkability’ of producing conceptual accounts from these banished knowledges, while subaltern studies provides maps guiding me to where they might dwell. These unqualified and disqualified knowledges form what I call the ‘subaltern archive’; named as such both in acknowledgement of Subaltern Studies in drawing my attention to the location and epistemic value of these archives, as well as in recognition of the archives’ own subalternity and precarious status as banished, fragmented and fugitive — unable to register to the ‘hegemonic ear’ (Dhawan 2012).

My own subaltern archive take a range of forms: it includes slogans raised and chants shouted at rallies and protests; tattered pamphlets circulated within and beyond the metropole; hurried notes captured during, between and after visits to the hospital, the police, and the court in pursuit of justice; vernacular newsletters written by, and for, neo-literate women in rural Rajasthan; interviews with victims and their allies,³⁵ and a variety

³⁵ I made the vexed, but I hope ultimately ethical decision not to interview Mathura and Bhanwari Devi for a few reasons. First, through the exhaustive and rigorous documentary practices of *sathins* and other feminist activists supporting Bhanwari Devi, along with a series of careful interviews conducted by Madhok (2014), there exists a vast repository of documents — all expressly invested in securing representational and substantive justice for Bhanwari Devi — through which her rich and complex account of the attack and its aftermath emerges. Given my access to these documents, it did not seem justifiable to demand a further recounting (and inevitable reliving) of trauma and abjection in the form of an interview. While there are no similar sites through which Mathura’s voice can emerge, my decision not to interview her followed an article (Basu 2013) documenting a journalist’s attempts to find and interview Mathura. In the article, Mathura and her family expressed firm desires to put the past behind her: any effort to contact Mathura for my research following this account seemed entirely indefensible.

of other ephemera, often in tatty but treasured folders in dusty basements of NGOs.³⁶ Taken together, these represent an “ensemble of cultural imaginings, affective experiences, animated objects, marginal voices, narrative densities, and eccentric traces of power’s presence” (Gordon 1997: 25). These unlikely sites proved invaluable resources from which to make “untimely incisions [...] into received narratives” (Stoler 2011: 144); crucial epistemic resources from which to challenge the representational frames entrenched within the dominant archive. They produce what Hall (2001) calls “an interruption in a settled field, which is to enter critically into existing configurations to re-open the closed structures into which they have ossified” (ibid: 92). Importantly, the discursive artefacts constituting the subaltern archive are not exclusively produced and safeguarded exclusively for or by subaltern subjects: they are, however, united by a commitment to securing representational and substantive justice for the subaltern subject of sexual violence, and to this end, create the representational conditions through which the complex reality of subaltern existence might emerge and be committed to documentary memory.

Through a feminist historical ontology of victimhood and agency in the subaltern archive, I am able to ‘de-subjugate’ historical knowledges, or in Foucault’s (1997) words “set them free ... enable them to oppose and struggle against the coercion of a unitary, formal and scientific theoretical discourse” (ibid: 11). The subaltern archive thus holds knowledges that destabilise the ‘given-ness’ of this binary formulation, that “[shadow] and [subvert] the very authority that establishes [its] disciplinary order” (Gordon 1997: 26). The banished knowledges held within the subaltern archive then represent what Foucault (1971 [1961]) called ‘heterotopias’: sites that “shatter or tangle common names” and “stop words in their tracks” (ibid: xix). In assembling and analysing this subaltern archive,

³⁶ Crucially, in assembling this subaltern archive I attend to Arondekar’s (2015) caution on the risks of producing ‘indigenous’ or ‘post-colonial’ archives in India while recognising that these might continue to erase *Dalit* epistemes. Arondekar (2015) remains, and reminds us to be, “wary of the summoning of postcoloniality and/or indigeneity as the desired alterity, without a clear understanding of how the terms emerge and create archival forms that demand radical exclusions rather than inclusions” (ibid: 227). Thus, in assembling my subaltern archive within the context of a caste society, I am conscious to expressly incorporate and privilege the accounts of *Dalit* women, recognising that “archives are, after all, always in situ” (ibid: 227), much like the concepts they hold, reveal and provide sites for us to study. In assembling these archives, I was invaluablely aided by the time, intellectual support and experiences of feminist activists and scholars Mamta Jaitley, Renika Pamecha and Dr Pritam Pal in Jaipur.

I want to linger with de-authorized forms of knowing, allowing them the time and attention through which they might reveal the potential to counter the structural silences that produce the normativity of subaltern erasure, abjection, and even death (Sharpe 2016). The subaltern archive then presents a crucial site from which to challenge the victim/agent binary, and with it, the incessant incorporation of subaltern lives and deaths in the 'negative', the relentless representation of subaltern subjects as sites of brokenness, trauma, pain and damage alone, all the while sustaining regimes of subaltern abandonment, dispossession, and death.

But how, precisely, does one go about reading victimhood and detecting agency within the subaltern archive? As discussed in Chapter 2, agency does not readily reveal itself, even within banished or subaltern archives in contexts of violence and coercion; especially not alongside representations of victimhood. Further, even when agency does appear, it seldom announces itself as such. Victimhood, on the other hand, often declares itself (even when these declarations remain unheeded), but often in conflicting and contradictory ways, sometimes as event, sometimes as being (see Chapter 2). Any effort to produce a feminist historical ontology of victimhood and agency must then settle upon an understanding of how victimhood and (especially the more elusive) agency can be apprehended in the archive; i.e. I must develop a reading practice for victimhood and agency in contexts of violence and oppression.

Reading Victimhood and Agency in the Archive

While producing a feminist historical ontology of victimhood and agency, how does one engage with the complex task of reading and representing agency within/against contexts of brutalisation and murder? What does it mean to apprehend and represent the agency of a subject who only becomes available for representation through experiences of trauma, pain and life-ending injury? Where and how do we locate the agency of such a subject? How do we resist entering into fetishistic and parasitic dependencies on the agency of dead subaltern subjects (Li 2009), and refuse misguided efforts to recuperate their lost, true speech (Loomba 1993; Spivak 1990)? How do we develop a conceptual vocabulary and enunciative position from which to ethically represent dead subaltern subjects and the structural circumstances that produced their death, whilst challenging

the victim/agent binary? Simultaneously, how do we balance the representation of subaltern agency with an attentiveness to the structural conditions of victimhood that (re)produce and sustain subalternity, and circumscribe the possibilities of subaltern agency?

As discussed in Chapter 1 and 2, the solution can never simply be to “put a canny subaltern in place of ‘the victim’” (Nair 1994: 83); swapping abjection simplistically for heroism (or vice versa). Instead, my effort through this thesis is to develop a composite, dynamic conception of subaltern victimhood and agency through a telling of subaltern subjects’ stories that is inhospitable to reductive, dichotomous renderings of victimhood versus agency. Subaltern Studies provides some theoretical instruments through which we can begin to address this methodological challenge. Scholars of subaltern studies have long been involved in the difficult project of retrieving the voice, and uncovering the agency, of subaltern subjects within conditions of constraint and oppression (Guha 1987): some theorists characterise representing subaltern agency as a uniting animus and central theoretical impulse of subaltern studies (Bracke 2016; Gopal 2004; Majumdar 2017). Subalternists did not, however, imagine this as a perfectible or straightforward undertaking: Spivak (1988, 1990, 1999), for instance, expressed consistent suspicion for any project claiming to ‘recover’ the agency of subaltern or marginal subjects, and insisted on the futility and impossibility of attempts to simplistically “retrieve the lost, true speech of the silenced other” (Dhawan 2012: 56) (see Chapter 2).

Further, Madhok (2014) highlights the particular and substantial material challenges to making agency visible, legible, or intelligible within contexts of extreme coercion and oppression. Political projects, such as my own, invested in representations of agency must then be attentive to the often concealed and ephemeral ways in which agency manifests in these contexts, and aware of the losses entailed in maintaining an ‘action-bias’ in identifying agency (Madhok 2014). Following post-colonial and black feminist theorists, my analysis seeks to foreground modes of agency that include reflexive deliberations (Madhok 2014) and accounts of internal self-respect and recreations of the self (Harris 1990; Hill Collins 1991). Thus, I hope to attend to manifestations of agency within which the subject might “remain ‘motionless on the outside’...[but] develop the

‘inside’ of a changed consciousness” (Hill Collins 1991: 111). Hill Collins (1991) described how even — and often especially — in contexts of violence and oppression, subaltern women work through various collective and cognitive processes, rather than explicit or material action, to shift the meanings associated with their lives in significant but often neglected articulations of agency.

Spivak (1993) reminds us that, especially within conditions of subalternity, while there is “no unmediated access to ‘correct’ resistance” (ibid: 103), there remain models of ‘interventionalist practice’ that scholars must attend to. Much of Subaltern Studies’ historiographical sensibility aligns with this insight, recognising that scholars must break with clear-cut nostalgias for, or attachments to, pure, untainted instances of agency or resistance (Gopal 2004). Instead, within conditions of violence, constraint and coercion, the challenge is to attend to untidy, imperfect, and incomplete ‘interventionalist’ practice. Thus, any effort at a feminist historical ontology of agency under conditions of violence and coercion must be able to detect, register, and account for these concealed and ephemeral manifestations of agency.

My reading of agency thus sits within a broader tradition of anthropological efforts insistent on representations of subaltern subjects as “made up of divided and fractured subject positions” and possessing a “complex agency”, often derived *from* the “poisonous knowledge of violence and suffering” (Das 1997: 222; see also Fassin 2008; McKinny 2007a, 2007b; Madhok *et al.* 2013; Madhok 2014). My analytical contribution leans on, and seeks to extend, these critical interventions by exposing the harms of, and building the conceptual infrastructure to challenge, binary conceptions of victimhood and agency in the context of sexual violence. A conceptual understanding of forms of agency as bound up with, and emerging within the backdrop of experiences of victimhood, violence, oppression and coercion, as I attempt through my analysis, provides a crucial resource through which to demonstrate the conceptual poverty, and instability, of binary formulations of victimhood and agency. There remains, however, a final set of challenges haunting the project of producing a historical ontology of agency in order to imagine alternative conceptual arrangements of victimhood and agency: the thorny and unsettling question of how to engage in the project of representing the agency of a murdered subject. How can the post-colonial scholar enter into an ethical

representational relationship with a dead subaltern subject, particularly when that relationship is mediated by an interest in particular representations of agency?

The Trap of Necro-idealism

Spivak (1988) has cautioned that in efforts to represent subaltern agency, post-colonial scholars often become engaged in a parasitic and ultimately unethical relationship with the subaltern subject: our speech is enabled and authorised precisely by the subaltern's inability to be heard. Often, through appropriative practices entailed in the representation of subaltern agency, the "subaltern is silenced at the very moment when the claim that it is being heard is triumphantly announced" (Dhawan 2012: 57, drawing on Medovoi *et al.* 1990). Li (2009) extends Spivak's critique (and turns it on Spivak's own work) to argue that post-colonial theorists' extractive, parasitic and fetishistic dependence on subaltern subjects is perfected, and only truly quenched, through their encounter with the figure of the dead subaltern subject. Sunder Rajan (2010) suggests that while it might appear that death represents the occasion through which subalternity might come undone, to the contrary, gendered subalternity is intimately imbricated with subaltern death, while conversely, subaltern death is fatally tied to a subject's gendered subaltern condition. To Sunder Rajan (2010), understanding and representing subaltern death must extend beyond questioning conditions of causality (what caused subaltern death) or visibility (what conditions allow the death of a subaltern subject entry into the archive); crucially, ethical engagements with subaltern death *must* interrogate the scholar/historian's dependency on the subaltern subject's death.

Much of post-colonial theory and Subaltern Studies has concerned itself with providing "interventionist accounts" (Spivak 1988) of the tragic/heroic/sacrificial death of subaltern subjects.³⁷ To Li, the foundational imagination of the subaltern subject as a position of unrepresentability, designating the limits of hegemonic thought and representation regimes, leads to the inevitable idealisation of the dead subaltern subject as the utopian ideal of alterity (Li 2009). Li argues that "in death, the subaltern is perfected as a concept so pure no living referent can contradict or complicate it" (2009:

³⁷ See, most paradigmatically, the telling of Chandra's death in Guha (1987) work, and Bhuvaneshwari Bhaduri's suicide in Spivak's (1988)

275). Thus, it is only through the death of the subaltern subject that the possibility of imagining “a critical alternative to existing hegemonies” can ever be secured (ibid: 275): in other words, “subaltern utopianism paradoxically seems to require the subaltern’s death; the subaltern has to die in order to serve as an irreducible idea” (ibid: 273). Post-colonial theorists’ quest for radical alterity and non-hegemonic possibilities thus develops a perverse reliance on the death of subaltern subjects. Through practices of necro-idealism, in efforts to represent the agency of dead subaltern subjects, subalternists and post-colonial theorists perform questionable acts of ventriloquism, cementing a wholly unethical, parasitic and extractive relationship between post-colonial theorists and dead subaltern subjects (ibid).

Dalit scholar Shobhana (2016) describes the perverse conversion of subaltern death into an “opportunity”, holding “immense potential” for privileged leaders and academics alike.³⁸ The death of subaltern subjects is enlisted by hegemonies to “remind us of history, reinvent gendered roles and values, summon anger and imagine communities” (ibid). Shobhana argues that those belonging to the dominant ruling class in India — *Brahmins* and *Savarnas* — hasten to the site of subaltern suffering and fatality in order to “read, interpret, package and annotate their bodies” (ibid). The abjected *Dalit* body is the only sort of *Dalit* body made available for representation, and such a representation is inevitably mediated through a ‘casteless’ (i.e. *Brahmin-Savarna*) narrator or writer (ibid). In their eagerness to interpret subaltern suffering, to read subaltern struggle off dead subaltern bodies, Shobhana argues that *savarna* scholars, activists and writers offer more solidarities in death than in life, hold *Dalit* death to be “more meritorious and valuable” than *Dalit* existence, and produce a dangerous, “pro-death order for historically subjugated groups” (ibid).

Heeding Li’s (2009) and Shobhana’s (2016) critiques would entail refusing crude efforts to posthumously read agency into subaltern subjects’ wounding, death or even biography. In other words, resisting necro-idealism means eschewing the practice of

³⁸ Shobhana was writing in response to the deluge of *savarna* interest in interpretations of Rohit Vemula’s suicide note. Rohit Vemula was a *Dalit* scholar and activist who died of suicide on 17 January 2016, while he was a PhD student at the University of Hyderabad. Rohit Vemula was a committed Ambedkerite, anti-caste activist, and had recently faced suspension from the university in retaliation for his activism.

seeking agency and resistance in a subaltern subject's rape and murder,³⁹ and equally disavowing simplistic quests for agency in her history. Insisting on a rigorously ethical representational relationship with brutalised subaltern subjects leaves the project of representing subaltern agency, and challenging the victim/agent binary, at a methodological impasse: how do we resist and challenge dominant binary representational regimes and their dangerous implications while refusing parasitic, fetishistic dependencies on dead subaltern subjects? How can we challenge the exclusion of agency from recognitions of victimhood within contexts of brutalisation and murder without engaging in necro-idealism?

Spivak (1988, 2012), while conscious of the serious issues plaguing efforts to represent, recover or restore subaltern agency, is also at pains to clarify that the solution can never be a post-representational politics, or a ceding of the terms of representation to hegemonic/dominant registers. The inescapable and imperfectible project of representing subaltern agency, often emerging from/in tension with her victimhood, can never be altogether abandoned. To Cherniavsky, although "a silence cannot be 'filled' without repeating the original act of erasure (by representing her who cannot represent herself)", we *must* attempt to redress the silence (2011: 153).⁴⁰ The role of the scholar, then, becomes to carefully, thoughtfully and reflexively construct the "infrastructure" for agency to "emerge" (Spivak 2012: 438; see Chapter 2), while recognising our own complicity in silencing and erasure. In order to overcome the methodological impasse posed by the un-representability of dead subaltern subjects and their agency, I embrace Spivak's (2012) injunction to construct the conceptual "infrastructure" for agency to "emerge" (ibid: 438), and inform a different historical ontology and conceptual production of agency, by drawing on the work of post-colonial scholars interrogating representations of the victimhood and agency of widows in cases of *sati*.

³⁹ Recall Stringer's (2014) cautions against insisting on reading agency into moments of attack, and the risk of re-inscribing the resistance requirement (discussed in detail in Chapter 4, and briefly in the first section of this chapter).

⁴⁰ Put differently, while acknowledging that the subaltern's silence is occasion for our speech (Spivak 1999), we cannot abandon representational practice as marginalised voices can only be heard through the mediating role of the scholar (Spivak 1988, 1999).

The Collective Subaltern and the Radical Subjectivity of Pain

While confronting the fraught project of conceptualising and representing the agency of widows in the context of *sati* in colonial and post-colonial India, Loomba (1993) and Sunder Rajan (1993) challenge the pre-occupation with reconstructing and demystifying the motivations, subjectivity and agency of individual *satis*. Sunder Rajan (1993) demonstrates the inevitable limitations of such an effort, arguing that assuming that the “answer to such a complex mystery is to be sought in knowing the *sati* herself, leads all too often to a closure of analysis, her death creating a condition of definitional unknowability” (ibid: 14). Further, Loomba warns that “locating agency within the temporal and experiential boundaries of the act of widow immolation is fraught with the dangers of succumbing to its grotesque power and its ideal authenticity at the expense of understanding how and why it is produced in the first place” (1993: 220). Instead, Loomba (1993) suggests, it is more productive to think of the ‘collective subjectivity of agents’, comprised not simply of all *satis*, “but rather of large sections of Indian women who suffer from the consequences of the ideology of *sati*” (1993: 221). To Loomba, “in the text of *sati*”, the ‘subaltern’ cannot be thought of simply as the immolated widow. Rather, the figure of the subaltern must be more substantially imagined and located as representing the “larger body of women, whose experiences, articulations and silences” are produced and framed by the ideologies of *sati* (ibid: 221). Through the framework of a collective subjectivity of agents, Loomba argues that the ‘truth’ about the *sati*, her subjectivity, and agency does not lie exclusively in the individual *sati*, but can be read through an engagement with the subaltern collective that is implicated within — and constituted by — broader discourses of *sati*.

The notion of a collective subjectivity of agents (and the shift from the individual to the collective that it entails) presents a fertile site from which to explore possibilities of representing subaltern agency within contexts of structural, life-ending violence and brutality, but also raises a host of questions. How does one imagine and construct the boundaries of this subaltern collectivity while avoiding essentialisms, and refusing the trap of ontological accounts of helplessness and vulnerability as located within the corporeal? How, in other words, can such an exercise guard against the representation of victimhood as an essential, inherent trait of women, as a marker of their inner truth and

thus risking the 'inward turn' in accounts of victimhood cautioned against in Chapter 2? Further, how do we ensure that a consideration of the collective, rather than the individual, does not "bypass, devalue or erase the suffering, the pain or the determinations of the individual subject" (Loomba 1993: 222)? What modes and articulations of agency does this collective engage in, and how can this agency be discerned? In other words, who precisely are these agents, where does their agency lie, and how can it be represented? How, equally, can scholars account for, and represent, the conditions of victimhood against which their collective agency emerges? In order to address some of these questions, I turn to Sunder Rajan's (1993) use of Elaine Scarry's (1987) work on the 'radical subjectivity of pain', and the construction of the collective female subject of/in pain.

In Sunder Rajan's reading, Scarry (1987) "creates out of pain the very condition of the human subject" (1993: 21). Scarry insists upon "the existential, the brute reality of pain, the sheer aversiveness of it, its gratuitousness" (in Sunder Rajan 1993: 21) while producing pain as a site of 'radical subjectivity'; a basis for the subjectivity and site for the constitution of the identity of the self/subject (ibid: 21). While pain as a visceral, embodied experience is both deeply isolating and often individualised, Sunder Rajan reads the pain produced within conditions of structural violence and oppression as a collective or shared condition: there is thus a shared knowledge of pain that unites and constitutes all those who are exposed to it (ibid: 21). Sunder Rajan (1993) was expressly alert to the fact that to crudely extrapolate from the experience of pain to the constitution of subaltern subjectivity would risk "legitimizing the specious tautology connecting body/pain/woman/victim", and was thus express in her refusal of an ontological or essential account of pain or victimhood. Subsequently, Sunder Rajan does not subscribe to pain as a "perennial or definitional attribute of the subject" (1993: 21); the body in pain or subject of pain is not imagined as displaying an innate, physiologically determined predisposition to, or predilection for, pain. Within this frame, pain as a subjectivating force is *not* an ontological condition which inheres in the weak, delicate 'female' body,⁴¹ but an expressly social and political condition. Pain to Sunder Rajan is a "stage rather than

⁴¹ Such a formulation is contrary to and challenges the production of helplessness, vulnerability and ultimately victimhood as ontological conditions as located in the delicate and fragile physique of women (see Chapter 6).

a state” (ibid: 22). Thus, the ‘collective’ subaltern body is not circumscribed on the basis of biological essentialism, but through a located analysis of those subjects who exist within a socially and politically induced condition of differentiated proximity to pain.⁴² Understanding victimhood through Scarry’s (1987) frame of pain then implied reading victimhood as a necessarily structural, historical artefact rather than an ontological, psychological or essential trait.

Such an imagination of a collective subaltern, constituted by a shared knowledge and experience of pain, produces an account of victimhood (as a relationship with pain) which is not simply compatible with, but constitutes the very grounds for a radical subjectivity and agency. To Sunder Rajan, the body in pain is emphatically one which acts/reacts rather than one who invites assistance: “pain is the very condition of movement to no-pain” (1993: 33). The collective subaltern subject of pain is then resolutely active, agentival, non-passive; in possession of a radical subjectivity animated by a desire to move towards and achieve no-pain. The shared knowledge of pain is then both the basis for the forging of a collective subalternity, as well as the substrate from which this collective subaltern polity derives its capacity of a radical subjectivity and agency.

The turn from the individual to the collective as the site of subaltern subjectivity, agency, pain, and injury chimes with queer and feminist theorisations around vulnerability as a site of transcendent collectivity/solidarity, as well as a resource for radical politics (Butler *et al.* 2016; Butler 1997; Wilson 2013). Much of this work draws on the premise that vulnerability is not a state to be overcome, but a social and political condition from which we mobilise (Butler *et al.* 2016: 13); to Butler, “agency is derived from injury and injury countered through that very derivation” (Butler 1997: 43). In making a case for a decidedly collective, and co-constitutive understanding of both agency and vulnerability, Wilson (2013) argues that when agency is conflated with individual choice rather than collective action against oppressive conditions, we fail to appreciate that collective agency is performed exactly in and through intense experiences of constraint (2013: 96). Butler, Gambetti and Sabsay have similarly turned their attention to resistance and

⁴² To be clear, I understand such an account to be necessarily intersectional, and to see all subjects as differentially exposed/proximate to pain based on their caste, gender, class and other socio-political locations.

vulnerability in relationship to “collective agency” (2016: 6), insisting that many forms of collective agency “develop under duress” (2016: 7).

How can Loomba’s and Sunder Rajan’s interventions into the literature on widow immolation, taken together with queer and feminist theorisations of vulnerability, be applied to the context of sexual violence, and to the project of challenging the dominant representational regime instituted in the telling of subaltern subjects’ rape and murder? I suggest that reading the archive for articulations (or a historical ontology) of collective subaltern agency, understood as drawing from the ‘radical subjectivity of pain’ (Scarry 1987 as interpreted in Sunder Rajan 1993), and emerging from a subaltern collective constituted by their shared proximity to and knowledge of violence could provide the conceptual basis to challenge the victim/agent binary by demonstrating the coeval and co-constitutive nature of conditions of victimhood and articulations of agency. Put differently, through a feminist historical ontology of collective subaltern agency, read as deriving from the radical subjectivity of pain, I am able to assemble the conceptual apparatus to challenge the victim/agent binary, and allow subaltern subjects to emerge in the subaltern archive as not simply an embodiment of both victimhood and agency, but a subjects whose agentival manifestations often derive *precisely from* their experience of victimhood.

A Critical Feminist Politics of Location

My account replicates the very order of violence that it writes against by placing yet another demand upon the girl, by requiring that her life be made useful or instructive, by finding in it a lesson for our future or a hope for history (Hartman 2008: 14).

While I have spoken at length of the various erasures and violences entailed in the representation of subaltern subjects of sexual violence, I have thus far deferred a reckoning of the violences and hierarchies of power I re-inscribe, or inflict anew, through my own particular representational investments. My project places “yet another demand” (Hartman 2008: 14) on the subaltern subject, hoping that her scene of suffering can “halt other crimes” (ibid: 14), can challenge the dominant representation regime and

perhaps even institute another. What precisely am I hoping, or claiming, can be gained by re-visiting or re-staging scenes of subaltern suffering, and in what ways am I inviting my readers to participate in these scenes? As Hartman insists we ask ourselves, “are we witnesses who confirm the truth of what happened in the face of world-destroying capacities or pain ... and the repression of dominant accounts”, or rather “are we voyeurs fascinated with and repelled by exhibitions of terror and sufferance?” (1997: 3). What, Hartman (1997) asks, do we hope that the “exposure of the violated body yields” (ibid: 4), why place subaltern abjection on display once again? The solution to these difficult questions is not, and cannot be, a retreat from a representational politics altogether, one must, as Hartman (2008) affirms, tell stories in dark times, one must explore the possibility of “attending to and recruiting the past for the sake of the living, establishing who we are in relation to who we have been ... interrogating the production of our knowledge about the past” (ibid: 14). But in doing so, in placing “yet another demand” on subaltern subjects, I must also expressly place myself with the frame of my interrogation and critique.

In Adrienne Rich’s words, a scholar must “name the ground” from which we speak (1986: 209). Rich’s intervention is a call for more than a straightforward confessional gesture, or formulaic declaration of biographical information: Rich demands a recognition that scholars cannot divest themselves of their locations and investments even if the “declare it to be so, or simply by disclosing them” (ibid). Recall that a feminist historical ontology necessitates a critical reflexive politics of location. It insists that theorists do not simply announce, but systematically account for the effects of their location within the global circuits of the intellectual division of labour (Spivak 1987), while forging an ethical dynamic relationship “between the self and the collective” (Mohanty 1995). It entails an interrogation of the scholar’s imbrication within the global political economy of knowledge production (Cusiqañqui 2012), eschews universalising gestures towards a ‘global sisterhood’, accounts for hierarchies of class, race, gender, sexuality, caste and more, and takes cognizance of their implications for the production and legitimisation of knowledges (Alexander and Mohanty 2010; Grewal and Kaplan 1994; Mohanty 1995). A feminist historical ontology then necessitates a careful and responsible engagement with the following questions: how can I acknowledge and amplify, but not appropriate and deracinate the knowledge, struggles and trauma of the subaltern subjects I write about?

When I extract and synthesise subaltern knowledge and struggle as knowable product, what hierarchies of power and circuits of knowledge production am I buttressing? Who do my epistemic interventions serve, make successful, grant access to, and who do they 'unshelter' (Minia and Shroff 2019), make vulnerable, lay bare as spectacle?

In answering these questions, I turn to Novetzke's (2011) analysis of how hierarchies of power fold in and reinforce themselves through critique, even when that critique is expressly aimed at dismantling them. Through his work on the 'Brahmin double', Novetzke argues that in pre-colonial India, critiques of the caste system circulated by Brahmins themselves served to deflect or diffuse criticism away from the privileged Brahmins, while cementing their role as 'knowledge specialists' (ibid). In a context where Brahmins positioned themselves as the caste group divinely consecrated as having a monopoly over knowledge production, at the very helm of the brutal caste system, Brahmin advocates of anti-Brahmin and anti-caste sentiment offered a 'double': an alternative, discursively constructed 'Brahmin' (distanced from the critical, critiquing Brahmin), thus deflecting or diffusing criticism. In contemporary academia, Da Costa (2018) identifies a similar tendency towards 'academically transmitted caste innocence', through which *savarna* scholars erase or disavow their caste complicities by donning what they view as a protective cloak granted by undertaking caste-critique.

What implications do these critiques have for my work as a *savarna*, class and caste privileged woman, undertaking research on subaltern Indian subjects while located at the epicentre of former (and in some ways, contemporary) Empire? What happens when I displace radical subaltern knowledges and critiques from their domestic locations, and instrumentalise them in the service of my own intellectual agenda? First, I risk gestures towards 'academically transmitted caste innocence', erasing my continued structural advantage through the violent caste system. Through my anti-caste critique, I risk producing my own version of the 'double': a discursively constructed phantom *savarna* who I can rapidly distance myself from, deflecting attention from my own complicities. Second, I become complicit in processes of what Crenshaw (in Conceicao 2019) calls 'ideological gentrification', processes through which subaltern critiques are *occupied* through their take-up by privileged subjects and circulation in spaces of institutional power. The insurgent knowledges I track within the subaltern archive are then deployed in the service of not only shoring up my own progressive intellectual credentials, but also

serve to re-inscribe the Western academy, where I write and work, as the citadel for radical (and even de-colonial) knowledges from across the world. Through the incorporation of scholars such as myself (and scholarship built on the lives and struggles of subaltern subject), despite being confronted by sustained critiques of racism, neo-colonialism and neoliberalism, the Western academy re-authorises itself as cynosure of global knowledge production. My entanglement with the Western academy is but a symptom of the selective embrace of the non-threatening, advantaged, interpellated native in a manner that secures rather than challenges my own, as well as the academy's carefully accumulated privileges and futurity.

Despite the litany of complicities and violences listed above, the solution cannot be a refusal to engage with, authorise and amplify subaltern knowledges outside of their exiled locations, or to surrender the pursuit of ethical and responsible relationships with subaltern subjects, struggles and knowledges. As Alcoff (1991) reminds us, retreat is not an option; we must relentlessly explore the possibility of such ethical, responsible and care-ful representational relationships. For my part, an attempt at such an exploration has been my participation in efforts to 'decolonise' the Western academy. Taking our cue from Tuck and Yang's (2012) insistence that decolonisation is not a metaphor, I work within a collective that seeks to bring materiality to the centre of conversations on challenging global and material hierarchies from our position in the white Western academy. We raise and grapple with questions of gendered and racialised labour on campuses, universities' complicity in the enforcement of violent border regimes, the inaccessibility of epistemic spaces to certain gendered, racialised and caste-located subjects *inter alia*. My hope is that in insisting on a reckoning within the white Western academy, usually so preoccupied with diagnosing and resolving problems 'over there', we can begin the work of chipping away at its hegemony, doing our bit towards the dismantling, and ultimately, the abolition of the Western university and the regime of epistemic and material violence sustained by its continued dominance (Boggs *et al.* 2019).

My involvement in these efforts (and my writing of this section) is by no means an exoneration of the aforementioned charges of complicity. Rather, it is a small, incomplete and necessarily inadequate part of what must be an ongoing commitment to acknowledge and redress these many entanglements, investments and collusions. In no way can or

should my debts ever be considered settled, complicities redressed, violences atoned, privileges redistributed and ethical obligations concluded. Rather than producing a litany of exculpatory claims and gestures, I hope that through this thesis, I raise a series of questions, demands, and commitments through which to begin to hold myself, and those similarly located to me, to account in our critical engagements with discourses of sexual violence, and the subaltern subjects disproportionately affected by them.

Conclusion

Through this chapter, I have specified the subjects and objects of my inquiry, outlined and justified the methodological choices I make and considered some of the ethical questions raised by my methodological choices more specifically, and my research and its investments more broadly. I outline the methodological and analytical possibilities presented by feminist historical ontology, and suggest that it lends itself ideally to my aims of tracking the production, effects and possibilities for disruption of the victim/agent binary. In doing so, I trace how feminist historical ontology interrogates concepts, their histories, and the work they do, all the while emphasising their gendered nature and consequences, and insisting on a critical reflexive politics of location. Most importantly, feminist historical ontologies make possible conceptual work within traditionally non-standard conditions, inaugurating possibilities for alternative conceptual arrangements through which to challenge dominant conceptual formations. Feminist historical ontologies are thus crucial to enabling encounters with, as well as establishing the epistemic significance of, subaltern archives.

Following an introduction to feminist historical ontologies, I turned to respond to two of the key questions that this methodological frame confronts the scholar with: where is the theorist looking, and who, or what, is the theorist seeing? In responding to these provocations, I introduce the key archival sites (both dominant and subaltern) that I turn to, as well as present an account of 'who' I am looking for: i.e. the subaltern subject of sexual violence. Finally, I engage with fraught methodological debates around how to enter into an ethical representational relationship with subaltern subjects of sexual violence. Despite the many dangers and violences entailed in the project, I follow Alcoff (1991) and Spivak (1988) to argue against the representational abandonment of the subaltern subject, while also refusing the abdication of political and ethical commitments and accountability to her.

Far from claiming to have resolved these inevitably thorny contentions, I work to bring together methodological frameworks through which to approach the representation of subaltern victimhood and agency in discourses of sexual violence. By engaging with and extending a rich history of post-colonial feminist and *Dalit* interventions, (Chow 2003; Loomba 1993; Li 2009; Guha 1988; Madhok 2014, 2020; Shobhana 2016; Spivak 1988; Sunder Rajan 1993) I work to compile a crucial set of questions and considerations which serve to guide the forging of an ethical, accountable and persistently reflexive representational relationship with subaltern subjects (for more see Chapter 3).

In the three chapters that follow, I take the conceptual and methodological tools I have assembled through Chapter 2 and Chapter 3 to specific analytical sites. Notably, the structure and contents of these chapters are informed to a significant extent by the availability of archival material relating to each analytical site; my three analytical chapter thus evade perfect structural symmetry. Chapter 4 studies the discursive circulation of the attack on Mathura in 1972, and engages with an extensive dominant archive, revealing cracks within the dominant representational regime through which buried knowledges of alternative conceptual arrangements of victimhood and agency begin to emerge. This chapter does not (unlike Chapters 5 and 6), however, include an engagement with a subaltern archive, largely due to the precarious, often ephemeral nature of subaltern archival artefacts, and the time that has passed since the attack on Mathura. All three chapters are united, however, by a shared investment in tracking the sites of production, effects and challenging the victim/agent binary, while insisting on telling stories of subaltern subjugation and struggle in conceptual vocabularies that accommodate and celebrate the subaltern subject in all her complexity.

Chapter 4: Revisiting Mathura: The State as Aggressor/Saviour

On 26 March 1972, Mathura,⁴³ a young *Adivasi* woman, was raped by two policemen on the premises of the Desaijunj Police Station, Chandrapur District in Maharashtra, Western India. On 15 September 1978 the Supreme Court of India acquitted the two accused policemen by a judgement in the matter of Tukaram and Anr. vs State of Maharashtra⁴⁴ (hereafter the Tukaram case/matter/judgement). Days after the pronouncement, four legal academics — Upendra Baxi, Vasudha Dhagamwar, Raghunath Kelkar and Lotika Sarcar— wrote an open letter to the Chief Justice of India recording their strong concerns with the judgement.⁴⁵ The letter’s call for a critical examination of the judicial encounter with rape was soon echoed in mass mobilisations across cities, and eventually prompted the establishment of a series of feminist organisations (Kannabiran and Menon 2007).⁴⁶ Several of these feminist collectives became centrally engaged with the issue of legal reform to address sexual violence (ibid). The response to the Supreme Court Judgement in the Tukaram matter is often characterised as “inaugurating the autonomous phase of the Autonomous Indian Women’s Movement” (Kotiswaran 2016: 9).

As a direct response to the feminist agitations and advocacy following the case, the Criminal Law (Amendment) Act of 1983 was passed, marking the first revision of the law on sexual violence in India since the colonial introduction of the Indian Penal Code in 1860 (Khullar 2005). Thus, the denial of justice in the Tukaram case and the mobilisations that followed presents a paradigmatic event through which feminist relationships with the law were fundamentally forged in the post-colonial moment (Kannabiran and Menon 2007). Recognising the significance of the case, this chapter revisits discourses of sexual violence produced and circulated following the attack on

⁴³ Within all legal, academic and media texts on the case, the victim is simply referred to as ‘Mathura’. All other names within the judgement also appear only as first names. This is to clarify that the presentation of this name as such is not a choice on my part, but based on the limits of publicly available information. The legal as well as academic tendency to reductively refer to poor, marginal women by their first name alone is itself worth noting and critiquing in this instance and others.

⁴⁴ *Tukaram and Anr v. State of Maharashtra* (1979) 2 SCC 143.

⁴⁵ They raised issues with the judicial interpretation of consent, and the exclusionary nature of the justice system through the letter (discussed and analysed in greater detail later in this chapter).

⁴⁶ These organisations were largely urban NGOs, including Saheli and Stree Sangarsh in New Delhi; Forum Against Rape and Women’s Centre in Bombay; Chingari Nari Sanghatan in Ahmedabad; Vimochana and SJS in Bangalore.

Mathura, with a focus on their implications for the subaltern subject at its heart: Mathura and those placed in structural proximity to her.

Specifically, I am interested in tracking how the Tukaram case and its legacy are productive of, or intervene in the binary construction of victimhood and agency in discourses of sexual violence. In undertaking a feminist historical ontology of victimhood and agency, I trace how the classifications of 'victim' and 'agent' emerge, stabilise, and attach themselves to particular subjects, and enable or foreclose particular types of politics at specific locations and times. To this end, I ask: what elements of Mathura's victimhood and agency are recognised and represented in the discourses of sexual violence following her attack? When, where and on terms is Mathura legible as a victim or agent? How are victimhood and agency imagined and framed through these attributions (or the absence thereof)? How did the Tukaram case and the responses to it challenge or reproduce dominant (binary) conceptions of subaltern victimhood and agency, and to what effect? What might these discourses reveal about the possibility of interrupting the victim/agent binary? Revisiting the Tukaram case nearly four decades after the attack on Mathura allows me to commence my broader exercise of uncovering the 'conditions of possibility' that gave way to contemporary binary arrangements of victimhood and agency. A feminist historical ontology of victimhood or agency is, after all, simply a particular mode of pursuing and presenting a history of the present, with an attentiveness to the gendered nature and effects of these concepts, as well as a commitment to a critical feminist politics of location (see Chapter 3).

The chapter is arranged in three sections and produces a chronologically arranged, but non-linear account of the case and its effects. Through this chapter, I commence my exercise in rejecting grand historical narratives and teleological progress mythologies, and instead employ a feminist historical ontology to track patterns of assumptions, repetitions and disruptions within the long contemporary moment I hope to attend to. I begin with an account of the rape of Mathura, the circumstances under which it occurred, the legal framework within which it was tried, and the arguments extended in the various related judgements. In the next section, I analyse case law relating to the attack to argue that the judicial interpretation of agency-as-autonomy evinced in the Mathura case is fundamentally productive of the victim/agent binary. Of my three analytical chapters,

this chapter deals most extensively with the productions of victimhood and agency within the realm of case law, reflecting the centrality of the Tukaram judgement as an inaugural engagement of the Autonomous Women's Movement with the issue of sexual violence. Across contestations around bodily autonomy, testimony and consent, I illustrate the pernicious effects of liberal autonomous assumptions undergirding agency, and uncover the potential for non-autonomous models of agency to disrupt the victim/agent binary. In the final section of this chapter, I continue to track the production/disruption of the binary as discourses of sexual violence travel from the terrain of case law to feminist mobilisations, and then finally re-engage the state at the site of legislative reform. I argue that the emancipatory potential of feminist interventions is blunted and even undermined on their encounter with the state in the form of legislative reform, where hegemonic scripts of paternalism, rape as death, and habituation return to entrench the victim/agent binary.

Conspicuous in its absence in this chapter is an engagement with a subaltern archive, or any trace of Mathura's own account of the attack. My inability to assemble discursive artefacts through which banished knowledges — written out of the 'official' record of the attack and its aftermath — might emerge is a factor of, and testament to, the precarious and ephemeral nature of the subaltern archive. Close to fifty years have passed since the attack, and in the interim, records of how the attack and its aftermath were experienced by Mathura and those located proximately to her have been effectively vanished; buried and displaced by dominant accounts. The structural and epistemic conditions that exile or degrade certain knowledges can thus obliterate them over time. The absence of a subaltern archive in this chapter is also evidence that subalternity is itself not uniformly experienced or documented: as my analysis demonstrates, Bhanwari Devi's involvement with the Women's Development Programme and resultant proximity to metropolitan activists, and Jyoti Singh's urban, 'upwardly mobile' and 'casteless' public construction (Shandilya 2015) place them differently to Mathura, a young *Adivasi* woman with no such access enabling entry into alternative archives. In the absence of a subaltern archive, this chapter centrally concerns itself with the subaltern subject's encounters with power in the dominant archive, while also attending to fissures in the dominant episteme, giving way to moments of possibility for the displacement of the victim/agent binary.

Tukaram and Anr. vs State of Maharashtra

The Rape of Mathura: An Account of the Case and the Charges

At the time of her attack, Mathura was a young (aged 14-16)⁴⁷ labourer, belonging to an *Adivasi* community in Chandrapur district of Maharashtra (Sakhrani 2016). Her parents died when she was a child, and she lived with her brother Gama, also a labourer (ibid). Mathura was under the employ of a woman called Nunshi, and was in a consensual sexual relationship with Nunshi's nephew Ashok. The details of the attack on Mathura, as recorded in various media and academic texts on the case (including Baxi *et al.* 1979; Baxi 2013; Kannabiran and Menon 2007; Sakhrani 2016 *inter alia*), and in the account presented in the Tukaram judgement, are below.

On 26 March 1972, Mathura's brother Gama, lodged a report at the Desaignuj Police Station alleging that Mathura had been kidnapped by Nunshi, Nunshi's husband Laxman, and Ashok. The report was recorded by Head Constable Baburao, at whose insistence all three of the accused, along with Mathura, were brought to the station at approximately 9 pm. Mathura and Ashok's statements were recorded, and Baburao directed Gama to bring a copy of official documentation proving Mathura's age. At about 10:30 pm, Head Constable Baburao then left the police station, and Mathura, Nushi, Gama and Ashok also began to exit. Head Police Constable Tukaram, and Police Constable Ganpat, however, directed that Mathura stay behind, while instructing the rest to leave the station. Mathura was then detained alone, and raped twice by Ganpat, and sexually assaulted by Tukaram. Nunshi, Gama and Ashok, who were waiting outside, grew concerned when Mathura did not emerge for some time.⁴⁸ They began to shout out for her, and soon attracted a crowd. When Mathura emerged from the station, she immediately reported to the gathered crowd that she had been raped. Head Constable Baburao then returned to the station and lodged an official complaint in the form of a First Incident Report (FIR), commencing an investigation into the event. Almost 20 hours after the attack, on 17 March 1972 Mathura

⁴⁷ Mathura's age at the time of the attack was a matter of contention when the case came to trial. During the medical examination twenty hours after the attack, her age was determined to be between 14 and 16 years. The Sessions Court found that there was no evidence to prove that Mathura was under 16, and the case was not tried as one relating to the statutory rape of a minor.

⁴⁸ There is no readily available account of precisely how long Mathura was in the police station alone with Ganpat and Tukaram.

and the two accused were medically examined for evidence.

Charges were brought against Ganpat and Tukaram under Section 375 and Section 354 of the Indian Penal Code (IPC) respectively. The IPC is the central criminal code formulated by the British colonial administration in 1860, and adopted as such on independence (Minattur 2015).⁴⁹ At the time of prosecution, the sections under consideration remained entirely unaltered since their colonial codification in 1860. As per the Indian Penal Code, the charges were brought under the provisions set out below:

Section 375:

A man is said to commit rape who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:

First: Against her will.

Secondly: Without her consent.

Thirdly: With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly: With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly: With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly: With or without her consent, when she is under sixteen years of age.

Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception: Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape (Sec 375 Indian Penal Code 1860).⁵⁰

⁴⁹ The Indian Penal Code thus has a basis in Enlightenment assumptions around the liberal, autonomous subject that I critique later in my analysis.

⁵⁰ Notably, the IPC only recognises women as victims of rape under Section 375. Following the introduction of the Transgender Persons (Protection of Rights) Act of 2019, the 'sexual abuse' of trans subjects was criminalised, while bearing a minimum sentence of six months and a maximum sentence of two years, in

and;

Section 354:

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both (Sec 354 Indian Penal Code 1860).

Under these charges, the case against Tukaram and Ganpat was brought to trial. The case was first heard at the lowest level trial court for ‘serious criminal cases’ including rape: the District or Sessions Court (Satish 2017). The Sessions Judge at the Chandarpur District Court acquitted the accused of charges on 1 June 1974.⁵¹ The prosecution then initiated procedures to appeal the decision. Beyond the Sessions courts at the district level, the Indian judicial architecture presents two higher tiers of appellate courts: state level High Courts, and the apex national level Supreme Court (Satish 2017). The Nagpur Bench of the Bombay High Court heard the appeal in 1976, and set aside the Sessions Court acquittal, convicting the accused on 12 October 1976. The High Court judgement was then challenged by the defence through an appeal process that brought the case to the Supreme Court. A three-judge bench comprising Justice A.D. Koshal, Justice Jaswant Singh, and Justice P.S. Kailasam heard the case in 1978, and reversed the High Court conviction, once again acquitting Tukaram and Ganpat of all charges on 15 September 1978. It was this final judgement of the Supreme Court that elicited the concern of four leading academics, and prompted them to write the open letter (Baxi *et al.* 1979) that went on to precipitate nationwide protests, and change the law on rape in India. The next section of this chapter concerns itself with the judicial treatment of the attack on Mathura at all three levels of the judiciary at which it was heard: the Chandarpur Sessions Court, the Nagpur Bench of the Bombay High Court, and the Supreme Court of India.

contrast to the minimum sentence of seven years for rape of women following the Criminal Law Amendment of 2013.

⁵¹ Unlike most other countries following common law, India does not have a jury system (Satish 2017). Instead, at the District/Sessions Court level, an individual judge typically hears cases.

The Indian legal system is a hybrid of both statutory law (or legislation), and common law (or case law) (Minattur 2015; Satish 2017). Common law represents a body of law that is derived from prior judicial decisions, or precedents (Satish 2017). Within common law systems, the practice of law also constitutes the very *production* of law through the establishment of judicial precedent (ibid). In this context, the judicial treatment of Mathura's rape is significant not simply for its content, but also for its continued legal implications and influence. The Mathura judgement is thus hardly a singular, insular, exceptional relic of a since-reformed judicial past: instead, it represents an enduring form of judicial rationality and discourse on sexual violence. The Supreme Court Judgment on the Mathura rape case set significant judicial precedent, with lasting effects. The judgement has been invoked in the reasoning of at least 49 other rape cases heard at various state-level High Courts and at the Supreme Court.⁵² A vast majority (more than 80%) of the judgments rely on the Tukaram judgement in order to justify acquittals, some as recently as 2014 (see Sohan Singh vs State of Himachal Pradesh 2014). Thus, the Tukaram judgment has far-reaching material and discursive consequences, in significant excess of the remit of the case alone.

“A Shocking Liar”: A Summary of the Rulings

In the case of Tukaram and Anr. vs the State of Maharashtra, the Sessions court acquitted the accused. The Court found Mathura to be “a shocking liar”, (Tukaram and Anr. vs State of Maharashtra 1979: 2), “habituated to sexual intercourse” (ibid: 6) and whose testimony “is riddled with falsehoods and improbabilities” (ibid: 2). While the court did not contest that intercourse had occurred between the accused Ganpat and Mathura (indeed it was acknowledged that it likely had), not only did the court find this to be consensual, but characterised the animus behind the complaint and the case thus:

Finding Nunshi angry and knowing that Nunshi would suspect some thing fishy, she [Mathura] could not have very well admitted that of her own free will, she had surrendered her body to a Police Constable. The crowd included her lover Ashok, and

⁵² This number is based on cases made publicly available and searchable on national databases as they were considered to take significant positions on matters of the law. I am unable to consider the (likely many other) cases that invoked the judgement but do not appear on these databases, nor am I able to capture when and how the judgement has featured in the judicial reasoning of cases in the lower (Sessions and District) trial courts.

she had to sound virtuous before him. This is why—this is a possibility—she might have invented the story of having been confined at the Police Station and raped by accused (ibid: 5, 6).

The Nagpur Bench of the Bombay High Court reversed the Sessions Court’s decision to acquit on the grounds that Mathura’s consent in this case should be characterised as “passive submission”, framed within the following interpretation of what transpired:

Mere passive or helpless surrender of the body and its resignation to the other's lust induced by threats or fear cannot be equated with desire or will, nor can [it] furnish an answer by the mere fact that the sexual act was not in opposition to such desire or volition (ibid: 6).

Further, the High Court read the act of Mathura filing a complaint, and its implications, quite differently from the lower court:

Her subsequent conduct in making a statement immediately not only to her relatives but also to the members of the crowd leave no manner of doubt that she was subjected to forcible sexual intercourse (ibid: 7).

The High Court conviction was subsequently overturned by the Supreme Court acquittal. The observations and reasoning of the Supreme Court in this case are the most extensive, and most legally significant. Most notably, the High Court’s reading of the case as an incident of “passive submission” was rejected on the following grounds:

no marks of injury were found on the person of the girl after the incident and their absence goes a long way to indicate that the alleged intercourse was a peaceful affair (ibid: 7).

Further,

Her failure to appeal to her companions who were no others than her brother, her aunt and her lover, and her conduct in meekly following Ganpat appellant and allowing him to have his way with her to the extent of satisfying his lust in full, makes us feel that the consent in question was not a consent which could be brushed aside

as "passive submission"(ibid: 8).

Analysing the Judgments: Agency-as-autonomy versus Victimhood

While the Mathura judgments garnered considerable academic attention and critical analysis, my engagement departs from much of the work on the case as it is informed by a particular attentiveness to the production of victimhood and agency in and through these rulings. How do the judgments construct and attribute these categories (often implicitly rather than explicitly)? In what way is their relationship with one another cast through the law? What elements of Mathura's victimhood and agency are legible to and represented within the law? To what effect? Finally, what do the judgments reveal about alternative conceptual arrangements of victimhood and agency within and beyond the law? What, in other words, do the judgements disclose about the production, effects, and possibilities to disrupt the victim/agent binary in discourses of sexual violence?

Bodily Autonomy: A Double Bind

A significant and extensively studied site for the judicial construction and ascription of agency and victimhood comes in the form of what many feminists have termed the 'resistance requirement' (Anderson 1998; Clemens 1982; Schwartz 1983; Stringer 2014; Van Dijk 2009 *inter alia*). The resistance requirement is the judicial demand that women neatly adhere to a certain set of expectations of performed resistance in order for their claim of violation to be taken seriously (Bumiller 1987: 77; Stringer 2014: 72). Through the resistance requirement, "women who do not physically resist or are unable to corroborate their resistance are rendered as blameworthy non-victims" (Stringer 2014: 72). While the resistance requirement is not expressly codified in the letter of the law, feminists have identified it as a pervasive judicial interpretive rationality, both globally (ibid), as well as specifically in the post-colonial Indian context (Baxi 2013).⁵³ Although the sections relevant to rape in the Indian Penal Code or the Indian Evidence Act do not explicitly require proof of maximum (or any) resistance on the part of victims,⁵⁴ the

⁵³ The resistance requirement is thus institutionalised through judicial precedent, rather than inscribed within statutory law.

⁵⁴ In fact, the resistance requirement was expressly proscribed through the Criminal Law Amendment of 2013, though rape jurisprudence continues to disregard and even expressly subvert statute in this regard, as discussed later in this chapter.

resistance requirement is effectively encoded through medical jurisprudence books that emphasise the necessity of injuries in ascertaining rape (Mitra and Satish 2014).

In 1920, an Indian doctor and professor of medical jurisprudence, Jaising P. Modi, published *A Textbook of Medical Jurisprudence and Toxicology*, which became the authoritative reference on medical jurisprudence in India (ibid). It was soon the most cited textbook on forensic medicine by Indian courts (Mitra and Satish 2014). While the textbook has been updated in various iterations, each edition of Modi's book details injuries that should likely ensue from a struggle during a sexual attack including scratches, abrasions and bruises (Modi 1932: 409; Modi 1945: 331; Modi 2008: 925). For instance, in its 2008 version, the textbook states:

It is necessary to prove that the resistance offered by the woman was upto her utmost capability and that every means, such as shouting, crying, biting, or beating had been tried to prevent the successful commission of the act (Modi 2008: 898).

Thus, medical jurisprudence functions as a form of expert knowledge, presenting prescriptive details on how women should behave under the circumstance of a sexual attack (Mitra and Satish 2014). Courts then rely on these textbooks as scientific and objective referents of victims' ideal behaviour, translating (disciplinary) medical insights into jurisprudential fact. Not only does Modi's textbook serve to institutionalise the resistance requirement in Indian jurisprudence, but it further entrenches classed hierarchies in its codification of the same. Justifying the indispensability of visible injuries to ascertaining violation, Modi's textbook states that a woman belonging to the "labour class", who is "accustomed to hard and rough work, will be able to deal blows on her assailant, and will thus succeed in frustrating his attempts at violation. On the contrary, a woman belonging to a middle class or rich family might not be able to resist for long, and might soon faint and be rendered powerless from fright or exhaustion" (Modi 2008: 938-939). The resistance threshold for women of the working class is then explicitly higher, strengthening the basis for the absence of injury to be interpreted as the impossibility of victimhood on occasions when the victim is parsed as belonging to the 'labour class'.

The resistance requirement materialised at two key sites in the Tukaram judgements. The Sessions Court and the Supreme Court held the absence of injury as significant

evidence of Mathura's consent: recall that "their [marks of injury] absence goes a long way to indicate that the alleged intercourse was a peaceful affair" (Tukaram and Anr. vs State of Maharashtra 1979: 7; emphasis mine). Further, the Supreme Court cemented in their verdict that "Her failure to appeal to her companions...and her conduct in meekly following... and allowing him to have his way with her to the extent of satisfying his lust in full, makes us feel that the consent in question was not a consent which could be brushed aside as 'passive submission'" (ibid: 8; emphasis mine). Thus, there are (statutorily implicit, but legally express) requirements that Mathura failed to act in accordance with both during and after the attack (struggling, appealing to companions etc.), resulting in her being denied recognition as a victim. This resistance requirement dictates that victims *should* act a particular way based on the assumption that if they so desired, they *could* act accordingly: an assumption that is demonstrative of a judicial attribution of agency. This judicial ascription of agency to Mathura then formed the basis for the denial of her victimhood: the assumption that she *could*, but *chose not to* act in particular ways forms the justificatory premise for the denial of her victimhood.

The Tukaram judgments thus present a cautionary tale *against* the uncritical insistence on recognitions of female agency in contexts of sexual violence. Stringer (2014) argues that the resistance requirement is illustrative of how the circulation of women-as-agent can operate in a negative, disempowering way, particularly while seeking formal recognition and redress from the law. Stringer draws on Amir (1971), Bumiller (1987), Van Dijk (2009) and Wolfgang (1958) to contend that victim-blaming and resistance requirements are indeed the dividends of recognising female agency, inevitably at the cost of acknowledging systematic victimhood. While conceding the political and conceptual importance of woman-as-agent, Stringer (2014), asks if its emancipatory potential can ever be realised, given that especially within the legal terrain, agency is consistently reinterpreted as responsibility, and precipitates the denial of victimhood (ibid: 76). Stringer's concerns are by no means misplaced: the resistance requirement has and continues to be prolifically operative within rape jurisprudence in post-colonial India. On 22 June 2020, Justice Dixit granted bail to a rape accused on the basis that the victim fell asleep following the attack, thus responding in a manner "unbecoming of an Indian woman; that is not the way our women react when they are ravished" (Rakesh vs State of Karnataka 2020: 3). Justice Dixit's observations are only the most recent in a long

and continuing legacy of judgements that have undermined claims to victimhood on the basis that victims did not perfectly adhere to pre-determined, normative scripts governing the actions of authentic victims before, during, and after an attack (see, for instance Mahmood Farooqi vs NCT State of Delhi 2017; Raja vs State of Karnataka 2016; Vikas Garg and Ors. vs State of Haryana 2017). These judgements betray and understanding of victimhood that aligns with the 'inward turn' (Gilmore 2003; Gilson 2016; Stringer 2014), understanding victimhood as inevitably associated with certain behaviours, which in turn reveal certain stable truths about the victim subject and her psychological state.

With this in mind, I share Stringer's (2014) concerns around judicial circulations of women-as-agents at the cost of recognitions of victimhood, and am certainly alive to the patriarchal cunning of the law in converting female agency into culpability. Unlike Stringer (2014), however, I am less willing to simply discard an investment in recognising and representing subaltern agency in the face of its judicial reinterpretation as responsibility or culpability. Instead, I read Stringer's critique as providing ever greater impetus to break victimhood and agency out of a zero-sum, mutually exclusive relationship, refusing to capitulate to the untenable binaries enforced by the law. Stringer briefly advocates such an approach, while seemingly unwilling to pursue it herself: she articulates the urgent need to "find a way to phrase women's agency without reinscribing the patriarchal differends of rape law, which construct women as blame-worthy agents of their own victimisation, reducing 'agency' to the ability to be blamed for suffering of a wrong" (2014: 59).

Taking up Stringer's provocation entails confronting the question how can we approach women's agency in a manner that does not legitimise, but instead challenges the resistance requirement. I suggest that the answer might lie in challenging the assumptions that undergird the resistance requirement. Unpacking the subtext of the resistance requirement reveals the paradoxical and altogether untenable judicial requirement for women to demonstrate or act out non-consent in a particular and prescribed manner, at the very moment they are claiming constraint, coercion or the inability to act freely. The problem then is not a simple matter of misattributing agency, but the over-ascription of a conceptually unfounded, context-blind, unfettered, *autonomous* agency, heedless of the conditions of constraint within which agency finds

its expression. The resolution to this reframed problem is not an eschewal of agency, but a conceptual rethinking of agency for contexts of oppression (Madhok 2014).

Under conditions of coercion and oppression, Madhok (ibid) suggests, preferences do not and cannot always straightforwardly manifest as action. Within such contexts (i.e. the absence of pure negative freedom), Madhok (2014) makes the case for shifting away from privileging actions as the “principle site of recognition and analysis of agency”, writing against the tethering of agency to the possibility of free action. Instead, Madhok (ibid) recommends a rethinking of agency that privileges a consideration of “cognitive processes, motivations, desires and aspects of our ethical activity” (ibid: 38). Some of this “ethical dynamism”, Madhok (ibid) suggests, escapes action but can often be traced to speech acts. Thinking about “how persons articulate their reflexive considerations in their speech practices” (ibid: 37) provides a promising terrain from which to detect and represent agency within context of coercion and oppression, where agency does not manifest in free action.

Madhok (2014) suggests, therefore, that we dispense with the figure of the heroic autonomous agent, replacing it with an agency that, while constrained, is far from erased even within conditions of extreme oppression. Shifting the site of agency from actions to speech poses a direct challenge to the resistance requirement, and presents a compelling conceptual basis to break out of the binary of victimhood/agency, insisting that these conditions can and indeed *do* coexist, though evidence of both cannot be sought in actions, least of all free actions, under conditions of coercion. The case for re-conceptualising agency away from unfettered autonomy is, however, complicated by feminist investments in the conceptual and political category of ‘bodily autonomy’. The claim of bodily autonomy has been integral to various feminist and queer mobilisations and demands (Butler 2004; Eisenstein 1988; Schulhofer 1992; Siegel 1992). Ownership and control over the body — i.e. claims to bodily autonomy — have animated feminist and queer political projects around abortion and reproductive rights, intersex/trans rights to reassignment, LGBTQ rights to sexual autonomy, and the rights of various persecuted racial and religious minorities against violence (Butler 2004: 21). Within these projects, the claim to bodily autonomy is often predicated on a property model of ownership and rights over the body, especially in the context appeals for legal recognition and protection (Alcoff 2009; Pateman 2007; Phillips 2013). The hard-won feminist

triumph of judicial recognition of bodily autonomy proves a double-edged sword in the context of sexual violence, particularly when considered through the frame of property models of ownership.

Property models of thinking the body and bodily autonomy place a series of demands on the subjects who claim ownership over/possession of their bodies (Alcoff 2009; Pateman 2007; Phillips 2013). These subjects are rendered responsible for their bodies, and their bodies are additionally read as straightforward vehicles/carriers of subjects' wills and desires. Such a framing risks dangerous complicities with neoliberal rationalities of the self-responsible and self-directing subject, absolving the state of responsibility in the care and support of subjects' ostensibly self-owned bodies (Stringer 2014). Reading the body as an uncomplicated terrain for the manifestation of subjects' will or agency opens the doors to a range of other dangers, not least in the context of sexual violence. The resistance requirement is underpinned precisely by the notion of bodily autonomy: the judicial demand for resistance is made possible only through an acknowledgement of women's ownership and authorship over their bodies. The judicial recognition of women's bodily autonomy mobilises the image of a sovereign, unencumbered subject, able to mount effective resistance if sufficiently desired.

In 1977, a two-judge bench of the Supreme Court of India ruled to acquit three men accused of gang-raping a five-month pregnant woman, noting that she must have consented as not only did she not have injuries, but that the foetus did not immediately abort "due to shock", as it would have done in the event of non-consensual sex (Pratap Misra vs The State of Orissa 1977). The prevalent assumptions that self-lubrication, arousal or orgasms betray women's consent (Xue 2017) — even if when victims state to the contrary — are similarly predicated on the basis that our bodies are entirely ours to control, and that bodies consistently and coherently manifest expressions of will or agency. These demands represent perverse acknowledgements of bodily autonomy (or the ownership and authorship over the body), failing to recognise the many ways in which our bodies are never truly, fully our own (Butler 2004). Within the context of the legal response to sexual violence in India, Das (1996) and Baxi (2013) describe how the body is, in fact, routinely turned against the subject, speaking in opposition to their

testimony, when the body is read or parsed for evidence contrary to victim testimony.⁵⁵ Through various technologies of medical jurisprudence, the body is made to speak in place of the victim, ostensibly providing indisputable truth in the place of dubious testimony. Medical jurisprudence routinely enabled the state to dismiss or circumvent oral testimony by locating truth in and on the body (Kolsky 2010). Thus, the body is often interpellated or instrumentalised in ways not only beyond our control, but demonstrably against our interests.

While appeals to the law often rely on the recognition of bodily autonomy, Frug (1992) argues that the body remains largely under-theorised within legal claims, and is often treated as an uncomplicated given (Frug 1992). Frug (1992) advocates a feminist relationship with the law where not just the subject, but its very embodied reality, the body, is understood as “indeterminate, incoherent and contingent” (ibid: 1051). Departing from liberal feminist legalism, Frug (1992) then eschews an imagination of the body in the law as ever incontestably determinate, or our own. Crossley (1996) makes a compelling case for understanding the body, as Foucault suggests as “moulded by a great many distinct regimes” of power and domination (1977: 153). Such a conceptualisation does not preclude the possibility of embodied agency through various forms of self-fashioning, but simply registers the very material ways in which bodies are continually constituted; acted upon even as they act (Crossley 1996). To Butler (2004),

The body implies mortality, vulnerability, and agency: the skin and the flesh expose us to the gaze of others but also to touch and to violence. The body can be the agency and instrument of all these as well, or the site where “doing” and “being done to” become equivocal. Although we struggle for rights over our own bodies, the very bodies for which we struggle are not quite ever only our own. The body has its invariably public dimensions; constituted as a social phenomenon in the public sphere; my body is and is not my own (ibid: 21).

If the body is both socially scripted and read, inscribed and interpellated, is there a legitimate conceptual or political basis to claims of bodily autonomy? Or do assertions of autonomy only obscure the material functioning and relations of power, and deny the

⁵⁵ Baxi (2004) speaks of the medicalisation of rape, where categories of consent, age, coercion etc. are interpreted through medicalised technologies of interpreting the body, rather than through victims' accounts of what the body has been subject to.

necessarily limited and constrained nature of agency, as opposed to autonomy? Could claims of bodily autonomy, or complete and unmediated access to and authorship over our own bodies risk legitimating dangerous resistance requirements? Extending Frug (1992) and Butler (2004), I suggest caution in making unqualified legal claims over ownership of the body in contexts of sexual violence.⁵⁶ In order to account for moments when the body speaks or acts against us, feminists and queer scholars/activists must remain vigilant to the material risks of absolute bodily autonomy as a basis for claim-making, and consistently emphasise the necessarily constrained nature of embodied agency, not least in contexts of violence. If we must be careful not to uncritically extol the body as a site for agency (or a straightforward carrier of will) within contexts of coercion and oppression, where else can we “build the infrastructure” (Dhawan 2012) for conceptualisations and representation of agency compatible with victimhood? Returning to Madhok (2014: 62, 63), under coercive conditions, a crucial ingredient for rethinking agency away from autonomy and its inherent action-bias can be found in the domain of speech practices, representative or reflexive deliberations. This brings me to my next analytical section on testimony.

Interrogating Testimony: Coupling Chastity and Veracity

As early as 1952, the Supreme Court of India had laid down that a conviction of rape may be based solely on a victim’s testimony (in *Rameshwar vs State of Rajasthan* 1952). However, the adjudication of guilt then became critically reliant on establishing the reliability of the victim’s testimony. Thus, the acceptance or rejection of the victim’s account of violence, presented through testimony, is often the pivot on which judicial ascriptions of victimhood rest. The question of the reliability of testimony is one that is complicated by an entrenched colonial and post-colonial suspicion of Indian women’s accounts, and pervasive myths of false accusations (Mitra and Satish 2014). As per the early architects of medical jurisprudence specifically for Indian subjects, Indians were inherently deceitful, and medical evidence was indispensable as the oral testimony of

⁵⁶ This by no means implies a complete surrender of authorship over the embodied self: the body remains a crucial site of agency and contestation, and must be recognised as such in and beyond feminist engagements with the law. Thus, the body can and *should* remain a central site from which to make claims for women’s rights to abortion; intersex/trans rights to reassignment; LGBTQ rights to sexual autonomy; and the rights of various persecuted racial and religious minorities against violence – all while the body remains apprehended as at least partially “given over” (Butler 2004: 21,24).

Indians could never be trusted, particularly in the context of women's accusations of rape (ibid: 52). Norman Chevers, author of the first book of medical jurisprudence for colonial India in 1856 commenting on the matter of rape, observed that "instances of this crime appear to be of great frequency in India, and there is also reason to believe that persons are, by no means rarely, charged falsely with its commission" (Chevers 1956: 460). Chevers' sentiment was echoed in various editions of the later Modi textbooks on medical jurisprudence: in the latest edition of Modi, the book continues to assert that "[a] charge of rape is very easy to make and very difficult to refute" (Modi 2011: 664). Thus, the task of ascertaining the reliability, veracity and authenticity of a victim are central preoccupations within rape trials; in fact, testimony became a key site for the construction or validation of legitimate victimhood, and the production of the victim subject.

In the case of Mathura, testimony played a central role in the constitution of Mathura as a subaltern subject imagined as fundamentally incompatible with victimhood. Recall that the Sessions Court described Mathura as "a shocking liar" (Tukaram and Anr. vs State of Maharashtra 1979: 2), whose testimony "is riddled with falsehoods and improbabilities" (ibid: 2), explicitly casting her testimony as necessarily suspect, stripping her of any epistemic authority through an act of what Fricker (2007) calls testimonial injustice. Notably, the characterisation of Mathura's testimony as suspect upheld a notion of her agency, of a wilful display of agentival and intentional action captured by the court thus:

Finding Nunshi angry and knowing that Nunshi would suspect some thing fishy, she (Mathura) could not have very well admitted that of her own free will, she had surrendered her body to a Police (page 5,6 of judgment) Constable. The crowd included her lover Ashok, and she had to sound virtuous before him. This is why-this is a possibility-she might have invented the story of having been confined at the Police Station and raped by accused (Tukaram and Anr. vs State of Maharashtra 1979: 5, 6).

The court's portrayal of Mathura invokes the image of a self-directed, self-authoring and self-interested subject, with transparent motivations and a largely unencumbered

capacity to act on them.⁵⁷ Significantly —as I demonstrate through this section— such a characterisation of Mathura, and the inherently suspect nature of her testimony, derives directly from the court’s pronouncement of Mathura as “habituated to sexual intercourse” (Baxi 2013; Satish 2016). Here, I suggest that the figure of the *habitué*— as always agent but never victim— emerges as a key judicial embodiment of the incompatibility of agency and victimhood within binary judicial rationality.

The characterisation of women as ‘habitué’ or ‘habituated to sexual intercourse’ has a long colonial and post-colonial legacy (Baxi 2013). Colonial medical jurisprudence became a key site of expert or technical knowledge as a form of governmentality and control, and was centrally engaged in the production of the *habitué* through a technique known as the two-finger test.⁵⁸ Informed by imperial patriarchies, framing native rape claims as suspect and native women as habitual liars (Baxi 2013: 64), the two-finger test became the objective standard for determining the past sexual history of the victim. Predicated on the notion that medical jurisprudence could “make a female body speak despite, or even to spite, her testimony” (ibid: 62), the two-finger test, based on the ease with which the victim’s vagina admitted two fingers, became the basis for expert pronouncement on the victim’s habituation to sexual intercourse. Establishment of habituation in turn cast immediate doubt on victims’ testimony of withholding consent: the *habitué* became incapable of, or at the very least unlikely to withhold consent, on the basis of her habituation to sex. Once the *habitué* is established as ever having signalled her availability for sex (through a recognised articulation of sexual agency), she is deemed fallen, unchaste, unworthy of protection, and largely incapable of refusing consent (ibid). The *habitué* is then cast as equally habituated to lying as she was to intercourse (ibid: 63; for more on the colonial history and post-colonial continuities of binding chastity to veracity see Kolsky 2010).

⁵⁷ These more liberal, autonomous judicial constructions of the subject represent colonial relics that sit in contrast to how Indian women and the women’s movement itself imagines the female subject and her agency, a discussion I conduct in more detail in Chapter 4.

⁵⁸ The two-finger test continued as jurisprudential norm in independent India, and was administered in the determination of Mathura as *habitué*. The dismissal of testimony of lack of consent based on medically-established habituation is evinced explicitly in several cases beyond Tukaram (Baxi 2013). Admission of the two finger test to rape victims was only recently eliminated from investigative procedures through the Criminal Law Amendment 2013.

What is important here is that the figure of the *habitué* represents both an embodiment and a recognition of agency; more specifically of sexual agency, and most often, an unruly or non-normative sexual agency (Kapur 2005; Kolsky 2010). Here, I use unruly to indicate an exercise of sexual agency outside of the patriarchal systems of allegiance of caste-endogamous marriage (Das 1996). The pronouncement of habituation was then underwritten by a deep-seated patriarchal anxiety to control and regulate women's sexual agency. Indeed, the dismissal of *habitué* testimony marked the very disciplining of this agency: the judicial denial of victimhood to the *habitué* was predicated precisely on a recognition of, and desire to punish, the exercise of agency. The *habitué* becomes one of Sara Ahmed's (2014) wilful subjects, who wills too much, in the wrong way, and must be punished.⁵⁹ The refusal of recognised victimhood authorises violence with impunity against wilful subjects, thus rendering them subjects available *for* sexual violence. The withholding of recognised victimhood from wilful subjects becomes a tool for their regulation, control and disciplining, and the *habitué* becomes an embodied site for the entrenchment of the victim/agent binary and its pernicious, coercive effects.

If the *dismissal* of testimony on the basis of habituation presents a site for the entrenchment of the victim/agent binary, could the judicial *acceptance* of testimony open up possibilities to disrupt the dichotomy? Beyond the figure of the *habitué*, what is the judicial role, function and possible promise of testimony? Returning once more to Madhok's (2014) suggestion of privileging speech acts as a site of agentival practice in contexts of violence and coercion, do alternative judicial treatments and practices of testimony present the potential to upend the duality between agency and victimhood? The High Court Judgment in the case of Mathura presents promising and under-explored possibilities for the potential of deploying testimony disruptively. Recall that the High Court convicted both accused in the case (as opposed to both the Sessions Court and Supreme Court). In its pronouncement, the High Court read and legitimised Mathura's victimhood precisely through a recognition of the testimonial practice of her "making a statement", as below:

Her subsequent conduct in making a statement immediately not only to her relatives but also to the members of the crowd leave no manner of doubt that she was

⁵⁹ Further, much like Ahmed's wilfulness, habituation is not applied or attributed evenly, and does not escape the rationalities and codes of caste, class and religion.

subjected to forcible sexual intercourse (Tukaram and Anr. vs State of Maharashtra 1979: 7).

The above statement is of significant, if oblique, consequence: through it, the High Court explicitly places testimony, in the form of “making a statement” (ibid: 7), as a simultaneous marker of agency and victimhood. Through her testimonial practice, Mathura’s victimhood is authorised and legitimised at the very moment her agency is upheld through the recognition of her agentival practice in ‘making a statement’. Thus, the site of testimony lends itself as a unique and pivotal interruption to the binary conceptualisation of victimhood and agency. The very function of victim testimony punctures the illusion of an incompatibility between these categories: for testimony is nothing but an express *account of victimhood* through the explicit *exercise of agency*. The specious polarity between victim *or* agent unravels with a testimony of oppression, affirming the subject at once as agent and victim. Such a disruption to the dichotomous-orthodoxy of victimhood and agency is only possible if testimony can be convincingly theorised as an articulation of agency: an exercise with a long and compelling legacy in both Black feminist (Anim-Addo 2004; Hill Collins 1998; McGuire 2017; Miller 2005) and post-colonial, subaltern theory (Bex and Craps 2016; Craps 2010; Dhawan 2012; Kimura 2008; Spivak 1988, 2012).

Black and post-colonial feminist scholarships’ investment in testimony as agency is balanced with a careful critique of overburdening testimony as a site of agency, and bloating its conceptual and political potential. Spivak (1998) and Chow (2003) caution against the treatment of testimony as authentic, unmediated ‘truths’ revealing the transparent and coherent agency of subaltern subjects, and warn us against the impossibility of attempts to “retrieve the lost, true speech of the silenced other” (Dhawan 2012: 56). Kimura (2008) emphasises that testimony must not be read as a transparent representation of ‘objective’ reality or historical truths, and that the conceptual and political potential of testimony-as-agency should not be understood to lie in the validity or authenticity of testimony itself. Within Black feminist cautions on testimony, Anim-Addo (2004) reminds us that testimony is always bound by the norms of intelligibility and the rules of audience within which it is received. Even when voice is “given” through testimony, it is inevitably limited, directed, and expected to take a certain form in a

certain space. Thus, Anim-Addo (2004) presents a damning indictment of the uncritical romanticising of testimony as a vehicle for pure, unmediated agency, reminding us that “the nature of ‘the gift of speech’ that the testimonies allowed and that implicated voice and body in circumstances [were often] more conducive to the preserving of women’s silence than the claiming of authority” (ibid: 35). Similarly, Grewal (2016) reminds us that testimony can often serve to uphold rather than challenge norms and hierarchies, including those that oppress the very subject of the testimony. Finally, we must be careful not to wholly collapse testimony with agency in a manner that prevents us from recognising agency where testimony is unavailable, unintelligible or rendered inaccessible.

If testimony must not be fetishised as the site of objective truth, therapeutic healing, resistive politics, or unfettered authorisation, what *can* be gained by attending to testimony? In what way does testimony lend itself to the larger project of critically interrogating the production of victim/agent or victimhood/agency through discourses of sexual violence? Drawing on post-structuralist conceptualisations of agency discussed in Chapter 2, together with the Black feminist and post-colonial insights above, it is important to reiterate that testimony need not be unmediated, unconstrained or in any way outside of the relations of power in order to be an articulation of *agency*. Thus, testimony as agency remains an entirely justifiable conceptual position within a (non-liberal, autonomous) understanding of agency as necessarily and inevitably limited by the regimes of power within which the subject operates (returning to Bevir 1999: 5). As Mertus’ work on international sexual violence trials corroborates, although the “narrative of the witness is contorted to suit the audience” (2004: 112), “women still express agency in the context of adversarial process” (ibid: 110). Reading testimony as agency then retains the potential to productively disrupt the conceptually and politically crippling dichotomy between victim and agent in discourses of sexual violence: for testimony presents an account of victimhood (however constrained, confined, or coerced this account might be) *through* an exercise of agency. Thus, testimony could provide a key site for the interruption of binary accounts of victimhood/agency within (and beyond) judicial discourse.

The discussions above on the body and testimony present critical accounts of key sites at

which the relationship between victim and agent is forged. While both sites present important *elements* of juridically ascribed agency, neither forms the central philosophical basis for the judicial mediation between victimhood and agency in the context of rape. The most explicit and indispensable site for the mediation between victimhood and agency in case law on sexual violence is the overburdened and deeply contested category of consent. The pivot on which the attribution of agency and the possibility of victimhood rest, at the threshold between violence and acquiescence, consent is the third and final site of contestation in my analysis of case law related to the Tukaram case.

Complicating Consent: The Possibility of “Passive Submission”

The philosophical and juridical question of consent has posed fundamental challenges to feminist engagements with sexual violence. Central to feminism’s troubled relationship with the category of consent is its entrenched attachments to liberal models of selfhood and embodied autonomy (Alcoff 2009; Brown 1995; Butler 1997; Du Toit 2008; Grear 2008; O’Regan 2014 *inter alia*). The suturing of consent to liberal notions of autonomy, particularly within juridical understandings of consent, produces several political and conceptual problematics. These include obscuring the functions of power and ideology in producing and negotiating consent (Brown 1995; Butler 1997; O’Regan 2014); (re)producing norms of intelligibility from which marginal subjects are excluded (Du Toit 2008; O’Regan 2014) and re-legitimising state authority and corporeal governance (O’Regan 2014).

A central and persistent challenge haunting the category of consent is that, through its continued reliance on liberal autonomous notions of the legal subject, it presumes (rather than guarantees) the formal equality of subjects who are not substantively equal (Hunter and Cowan 2007). Put differently, consent-based models assume that subjects entering into consensual relations do so: (i) on an entirely equal footing (ii) in a manner unimpeded by structural and systemic inequalities, and (iii) irrespective of the particular context in which consent is negotiated. Each of these not only defy empirical reality, but do so in a manner that is inevitably to the detriment of marginal subjects, particularly within immediate contexts of intimidation or domination. Within a social context of structurally entrenched inequality, such a misplaced judicial presumption of formal equality fundamentally subverts the possibility of realising substantive equality via

appeals to the law.

At the time of the Tukaram judgement, while 'consent' functioned as a pivotal judicial category on the basis of which violation was determined, there was no explicit conceptualisation of this category within the Indian Penal Code (IPC). There was an implicit allusion to a 'common sense' notion of consent, and an assumption that it functioned in a manner that made its presence or absence transparently and unproblematically apprehendable within the juridical register. Given the IPCs colonial legacy, this common-sense notion of consent arguably remained rooted in previously discussed liberal assumptions of selfhood (Kapur 2007) and thus perpetuated the challenges inherent to this model. With this in mind, contestations around consent in the Mathura case presented important possibilities for a judicial displacement of liberal autonomous imaginations of consent, and their complicity in upholding the victim/agent duality. In the Bombay High Court judgement convicting the two accused, the court introduced the language of "passive submission", arguing that:

mere passive or helpless surrender of the body and its resignation to the other's lust induced by threats of fear cannot be equated with desire or will, nor can it furnish an answer by the mere fact that the sexual act was not in opposition to such desire or volition (Tukaram and Anr. vs State of Maharashtra 1979: 6).

Through the framing of passive submission, the High Court sparked the possibility of complicating the judicial category of consent in order to account for the conditions of power within which consent is materially transacted. With the language of passive submission, the High Court introduced a vocabulary to describe agentival possibilities within conditions of coercion or oppression. In fact, passive submission posed a direct challenge to liberal, autonomous models of embodied selfhood, highlighting their conspicuous inability to account for coercive configurations of power that fundamentally effect negotiations of consent. Further, the assumed transparent apprehendability of an unambiguous, binary (yes or no) articulation of agency through consent was taken to task. The possibilities of submission not amounting to consent, surrender not amounting to desire, or resignation not amounting to will, all pointed to a conceptualisation of agency that must necessarily accommodate a divergence of volition and action or

outcome: i.e. a necessarily constrained, restricted, and even compelled agency. The High Court judgement's conception of agency thus sat in close alignment with Madhok's (2014) prescriptions of transcending the action bias, and refusing autonomous modes of action-oriented selfhood.

While the High Court's complication of consent through passive submission presented crucial and underexplored political and ethical possibilities, its judicial currency was short-lived. The Supreme Court judgment on the matter overruled the High Court's reading of passive submission. Returning to the Sessions Court's framing of Mathura's account as a "tissue of lies", the Supreme Court pointed once again to the absence of injury to vitiate the possibility of coercion. Negating the High Court's reading of passive submission, the Supreme Court's Judgment stated:

As pointed out earlier, no marks of injury were found on the person of the girl after the incident and their absence goes a long way to indicate that the alleged intercourse was a peaceful affair, and that the story of a stiff resistance having been put up by the girl is all false (Tukaram and Anr. vs State of Maharashtra 1979: 7).

Further,

Her failure to appeal to her companions ... and her conduct in meekly following ... and allowing him to have his way with her to the extent of satisfying his lust in full, makes us feel that the consent in question was not a consent which could be brushed aside as "passive submission" (ibid: 7, 8).

Thus, the Supreme Court returned to simplistic notions of unfettered, self-directed liberal autonomy, reading consent in the absence of injury, and volition in the absence of resistance. The Supreme Court's interpretation of consent in the case upheld Mathura's absolute autonomy, and produced this very autonomy as the basis to deny her victimhood: returning to and re-inscribing divergent, binary constructions of victimhood/agency, through a crude conceptualisation of agency-as-autonomy. The dangers of presumed equality underpinning legal models of consent could not be starker than in the case of Tukaram: in the eyes of the law, Mathura was considered an equal

autonomous agent to Tukaram and Ganpat, equally able to know and exercise her will, despite her position as a young *Adivasi* woman confronted by two police officers inside of a police station.

The Tukaram judgement further illustrates that the category of consent and its judicial interpretation are haunted by the figure of the habitué, producing yet another repetition of the victim/agent binary. Recall this articulation of the court's judgement on Mathura's will:

Finding Nunshi angry and knowing that Nunshi would suspect some thing fishy, she (Mathura) could not have very well admitted that of her own free will, she had surrendered her body to a Police (page 5,6 of judgment) Constable. The crowd included her lover Ashok, and she had to sound virtuous before him. This is why-this is a possibility-she might have invented the story of having been confined at the Police Station and raped by accused (Tukaram and Anr. vs State of Maharashtra 1979: 5, 6).

Mathura, rendered by the court as habitué, is constructed as always already consenting—a wilful subject whose willingness to “surrender her body” (ibid: 5) can be presumed. The habitué, within the judicial register, becomes she who cannot withhold consent: the recognition of her (sexual) agency becomes the unyielding basis for the denial of her victimhood (Mehra 2018). Her habituation becomes the premise for her always already assumed volition. Within the Indian legal framework, Mehra (2018) argues that through the discourse of habituation, adjudicating on the matter of consent entails “an evaluation of her virginity-chastity against the Brahminical value system” (ibid: 41), resulting in a characterisation of the habitué as “unlikely to refuse sex” (ibid: 41). The category of consent is thus applied in a manner to reproduce (and exclude from victimhood) the subject who cannot not consent, the habitué, forever the agent, never the victim, and an enduring site for the entrenchment of the victim/agent binary.

Implications of the Analysis

The discussions above have significant implications for my inquiry into the sites of production and effects of, and the possibilities to interrupt the victim/agent binary. The Supreme Court judgement offers crucial insights into how, through the yoking of agency to notions of liberal autonomy (heroic, unencumbered, and context-blind), case law becomes a central site for the (re)production of the victim/agent binary. Within the realm of juridical discourses, (i) the resistance requirement, (ii) attributions of habituation, and (iii) adjudications on the basis of liberal notions of consent present specific practices through which the victim/agent binary is entrenched. Each of these is in turn mediated by rationalities of caste, class, gender and conformity to gender and sexual norms, differentially attributing victimhood and agency to differently located subjects. The effects of the victim/agent binary within the judicial register are profound: they fundamentally inhibit subaltern subjects' ability to access redress via recognition of their victimhood. The law's presumption of formal equality between the autonomous subjects that appear before it, and its indifference to the structures and contexts within which consent is navigated, fundamentally subverts the possibility of realising substantive equality via appeals to the law.

Further, the law not only produces and mediates the subject *of* sexual violence (i.e. the victim), but also the subject *for* sexual violence. Through the denial of access to legitimised victimhood *despite* the experience of violation, Mathura was rendered through juridical discourse as a subject against whom violence is unsanctioned, or, in its obverse, the subject against whom violence is legitimised. The unruly, non-normative, non-conforming subaltern subject is then already and always available for violence as her body is always other, her testimony always suspect, and her consent always moot. Baxi (2013) points to how rationalities of class, caste and religion participate in the production of the habitué, producing women at the intersection of these identities as disproportionately available for violence with impunity. Thus, the hierarchies of caste, class, religion and gender find license through legal discourse to convert rape into sex, and violence into acquiesce.

While the Tukaram case is less expressly illuminating of the production of the victim subject *per se*, (as both the Sessions and Supreme court judgments denied victimhood), it is useful to dwell briefly on the conditions under which Mathura was first brought into the contact with the carceral apparatus of the State. Mathura's inaugural encounter with the police was in order to *deny* her victimhood in the kidnapping complaint that her brother Gama had filed against her partner Ashok. This encounter was precipitated by Gama's patriarchal anxiety to discipline Mathura's sexual agency, manifest in her consensual relationship with Ashok. Gama's appeal to the state to produce Mathura as a victim was a bid to vitiate this agentival ability to continue her sexual relationship with Ashok: thus, within this encounter, Mathura's victimhood presented not just the judicial counterpoint, but even the *antidote* to a recognition and respect of her agency. It is precisely the possibility of such judicial recourse to discipline female agency that forms the site of punitive paternalism, a particular form of carceral politics; where female agency is sacrificed at the altar of masculinist protectionism and the strengthening of the family, community and state (Baxi 2013; Kapur and Khanna 1996; Roy 2017, see Chapter 6).

With all this in mind, what does the analysis of bodily autonomy, testimony and consent imply for feminist political engagements with sexual violence? What does it tell us about the constitution and effects of the victim/agent binary, and the possibilities its subversion? Overall, the analysis points to an urgent need to trouble conceptualisations of agency-as-autonomy across and beyond the sites of contestation presented by the body, testimony and consent. The analysis above illustrates the production of the binary through a normalisation of liberal, autonomous modes of agency, naturalised through the discourses of case law. The discussion also points to possibilities for the disruption of the binary at the sites of testimony and consent, through a conceptualisation of agency as marked by conditions of constraint in contexts of violence and coercion. Analyses of both bodily autonomy as well as consent in case law point to the utility of Madhok's (2014) reconceptualisation of agency away from autonomous modes of acting, refusing the action-bias in favour of attending to speech acts and reflexive deliberations as sites of agency, all the while insisting on a meticulous attentiveness to the conditions and constraints within which agency is negotiated and transacted.

What happens to the victim/agent binary when discourses of sexual violence escape case law's dominant liberal assumptions? How does the binary travel as discourses move through different registers? Through the rest of this chapter, I turn to the political moment following the Tukaram judgement, and continue to track processes of naturalisation and disruption around the victim/agent binary as discourses of sexual violence traverse the sites of feminist mobilisations and legislative reform.

Analysing the Reponses: Reflections and Refractions

Feminist Intervention(s): The Binary in Jeopardy?

In September 1979, four lawyers Upendra Baxi, Lotika Sarkar, Vasudha Dhagamwar and Raghunath Kelkar, registered their disquiet over the Supreme Court judgment in an open letter to the Chief Justice of India. The letter expressed concern for the “millions of Mathuras” constantly affected by the prevailing judicial treatment of rape, and asked for a critical review of “colonial and male-dominated notions of what may constitute the element of consent, and the burden of proof, for rape” (Baxi *et al.* 1979). The letter, soon extensively circulated in the print media, launched countrywide protests, “effectively inaugurating the autonomous phase of the Indian Women’s Movement” (Kotiswaran 2016). Various women’s and student’s organisations allied in resistance, demanding legislative reform in the form of amendments to the rape law (Agnes 1992; Baxi 2000; Dhagamwar 1992). Thus, out of Mathura’s pain and struggle emerged the very condition for a radical, collective feminist subjectivity (drawing on Sunder Rajan’s 1993 ‘collective subjectivity of pain’ discussed in Chapter 3).

Notably, however, as both Agnes (2002) and Dutta (2018) observe, neither the legal academics who authored the letter, nor the women’s movement leaders who mobilised in the letter’s wake, thought to seek Mathura’s consent, much less engage her more substantively, within a movement effectively founded on her pain. Thus, the very foundation of the autonomous Indian Women’s Movement marked an instance of the selective embrace of a subaltern subject’s victimhood, pain and abjection, coupled with the refusal to acknowledge, engage and represent her agency. Mathura became an ‘icon’ (Agnes 2002) of abjection alone, and feminist discourses in the wake of her attack served

to re-inscribe the victim/agent binary in exclusively accommodating and representing her victimhood to the express exclusion of her agency (see Chapter 5 for a more detailed discussion on appropriative attachments to subaltern trauma). Further, acknowledgements and representations of Mathura's victimhood elided, or at the very least ignored the material ways in which her position as an *Adivasi* fundamentally defined her victimhood (both in terms of her proximity to violence as well as her exclusion from redress). Thus, dominant circulations of Mathura through the letter and the mobilisations that followed failed to capture her complex reality as a multiply marginal subject who simultaneously inhabited and navigated experiences of victimhood and agency from a specific (rural, *Adivasi*) structural location. As a result, the politics enabled by these mobilisations, while no doubt disruptive and significant, failed to specifically and substantively address the liberatory possibilities of subaltern subjects located proximately to Mathura.

At the time of the attack on Mathura, and during the mobilisations following the Tukaram judgement, the autonomous Indian Women's Movement was in its nascence, and certainly did not enjoy extensive patronage from the state (Kotiswaran 2017). To the contrary, the movement remained largely cynical of and even adversarial in its engagements with the state, while only just commencing a gradual shift towards a more conciliatory, and even collaborative relationship with the state (ibid). At this time, then, feminist discourses sat at the very cusp of dominant and subaltern archives, demonstrating their non-separability, as well as the impossibility of anticipating the politics they enable in advance (see Chapter 3). As I demonstrate in the discussion that follows, feminist mobilisations displayed highly ambivalent and complex attachments to the victim/agent binary, precipitating discursive shifts that simultaneously placed the binary in considerable jeopardy, while also re-authorising it at different sites.

In a Memorandum issued by the Joint Action Committee for Rape and Sexual Harrassment (PLD Archives, undated) fifteen Delhi-based organisations⁶⁰ echoed the concerns of Baxi

⁶⁰ National federation of Indian Women, Mahila Dakshita Samini, Stree Sangharsh, Bhariatiya Mahila Jagriti Parishad, Manushi, Young Women's Christian Association, Action India, Indraprastha College Women's Committee, Delhi Schoolteachers Association, Education to Reality Network, Abner School Memorial Adult Literacy Project, Delhi University Students, Progressive Students Organisation, All India Students Federation

et al.'s letter, and articulated two key demands to be implemented via legislative reform. First, a judicial recognition that "the fact of submission does not mean consent". The Memorandum suggested that this could be achieved by shifting the burden of proof, or the onus for establishing consent, from the victim to the accused. As Agnes (1992) explains, this would mean that once sexual intercourse is established, if the women states that it was without her consent, then the court should presume that she did not consent. The burden of proving that she did, in fact, consent would then fall to the accused (*ibid*). Second, the Memorandum petitioned for a victim's past history to be considered irrelevant to cases of rape, and remain inadmissible as evidence during any stage of the trial. These two central demands for legislative redress — consent as distinct from submission, and eliminating past sexual history — formed the pith of mobilisations following the Tukaram judgment (Agnes 1992; Baxi 2000).

While there was near absolute feminist consensus around the exclusion of past sexual history, the question of consent and the burden of proof proved more contentious. Lotika Sarkar, one of the authors of the historic letter, along with others including Member of Parliament Geetha Mukherjee, suggested that the presumption of non-consent based on testimony only apply to cases of 'custodial' or 'power' rape: where clear, immediate, material, structural conditions of custody or asymmetry of power marked the relationship between the victim and the accused. This would include cases of police and other forms of state custody, state homes, medical facilities, rape by employees and landlords etc. Plagued by recent memories of the Emergency, human rights groups reminded feminists that a blanket presumption of non-consent in all cases would be vulnerable to malice, particularly in the hands of "managements against trade union militants, rural vested interests against revolutionary activists, caste Hindu chauvinists against dalits" (Agnes 2002). Thus, feminist debates at the time produced a nuanced and located account of consent as negotiated within, and constrained by, conditions of coercion and structural violence.

Feminist claims in the post-Tukaram mobilisations thus served to produce a non-autonomous account of female agency in contexts of violence, interrupting binary formulations of agency (as autonomy)-vs-victimhood. Recognising that within conditions of custody or other asymmetries of power, agency is no longer absolute, or unfettered,

has important implications across the terrains of bodily autonomy, testimony, and consent. When authorship over the body and its responses is recognised as fundamentally and necessarily constrained, the resistance requirement (i.e. the judicial demand to *act out* resistance in a particular manner), becomes untenable. Thus, contra Stringer (2014), assertions of agency no longer need to come at the *cost* of acknowledgement of victimhood, since agency is understood as restricted, confined and circumscribed by the conditions within which it is articulated. Evidence of injury or other manifestations of resistance can then no longer serve as evidentiary thresholds in cases of sexual violence. Second, the inadmissibility of past sexual history exorcises the damaged figure of the habitué as always agent and never victim. Without discourses of habituation, and the resulting entanglement of compromised chastity with suspect veracity, the feminist movement sought to restore epistemic authority to testimony as an agentival articulation of victimhood. Finally, an acknowledgement of consent as distinct from submission through an attentiveness to conditions of power liberates the category of consent from its liberal, autonomous assumptions of embodied selfhood, and avoids the resulting complicities in reproducing the agent/victim binary.

While feminist critique(s) post-Tukaram offered important disruptions to the victim/agent binary through a reconfiguration of female agency in contexts of coercion, they were not entirely or exclusively emancipatory. Notably, feminist discourses evinced two sites of complicity with the victim/agent binary, as Agnes' (1992) analysis highlights. First, Agnes pointed to how vocal factions of the campaign repeated traditional notions of rape being the "ultimate violation" of a victim, and, more damagingly, articulating this violation as reducing her to a state "worse than death" (ibid: WS19). Such a framing, as Baxi (2000) argues, legitimises the position that "death scripts the raped woman's life, positioning her as an eternal victim, thus implying the death of the raped woman as a subject" (ibid: 1197). The death of the victim as a subject is but the strongest possible articulation of the complete and utter denial of the victim's agency. In this formulation, the recognition of victimhood then becomes fundamentally incommensurate with the possibility of recognising agency.

Second, Agnes (1992) points to the acute paradox of expanding the carceral machinery of the state in the aftermath of a case of sexual violence perpetuated *by the* carceral

machinery of the state. There remains a significant legacy of sexual violence *by* agents of the state in colonial and post-colonial India. Contemporary to the Tukaram judgement, two other cases of police-inflicted sexual violence came into national focus: the custodial rapes of Rameeza Bee⁶¹ and Maya Tyagi.⁶² In such a context, Agnes (1992) argues, appeals to the state simply vest more power with the state enforcement machinery at the cost of, rather than in the service of, empowering women (ibid: WS19). Appeals to the state seemed particularly ironic in a movement sparked by the rape of an *Adivasi* woman, given the long and continuing history of police and military brutality against the *Dalit*, *Bahujan* and *Adivasi* communities. Alluding, once again, to the post-Emergency context, the irony of a legislative appeal was not lost on Lotika Sarkar, who cautioned “do you want to hand over such power to the government?” (cited in Kotiswaran 2016: 14). Baxi (2000) characterises recourse to the state as functioning to “increase disciplinary power over all women” (ibid: 1196). Inevitably, disciplinary or regulatory authority implies conditions of impeded agency. Thus, through the strategy of legislative reform aimed at buttressing state machinery, female agency was bartered for state recognition of victimhood.

Despite these contradictions and ironies, the feminist intervention nevertheless placed the judicially legitimated binary of agency-as-autonomy vs victimhood in a degree of jeopardy. Feminist imaginations of a constrained agency, departing from liberal autonomous modes of subjecthood threatened the stability of the binary formulation, and presented a possible inroad to its unravelling. The promise of the post-Tukaram moment was, however, short-lived: its disruptive charge substantially neutralised during the case’s ensuing encounter with the domesticating powers of the state.

⁶¹ In April 1978, Rameeza Bee, a Muslim working-class woman from Hyderabad, and her husband were arrested by the police for ‘loitering’ when they were returning from a late-night visit to the cinema. The police demanded a fine. The husband went home to bring the money. During his absence, Rameeza Bee was raped by three policemen. When the husband returned, he was beaten to death by the police. Rameeza Bee was then (falsely) prosecuted for enticing minor girls into prostitution. She was initially convicted of this charge, and released a year later.

⁶² On 18 July 1980, Maya Tyagi, a young middle-class woman, was driving to her parents’ house in Haryana. Her car broke down on the way, and while it was being repaired a policeman in civilian clothes tried to molest Maya. Maya’s husband attacked the policeman. The policeman returned with a large contingent. They opened fire and shot her husband dead. Maya Tyagi was dragged out from her car, beaten, stripped and paraded through the town. She was then taken to the police station, where she was raped. She was (falsely) charged with armed robbery.

The State's Distortions: Restoring the Binary

In response to agitations from the feminist movement, on 27 March 1980 the government directed the Law Commission of India⁶³ to conduct a study of the law relating to rape. Less than a month later, on 25 April 1980, following a series of consultations with feminist organisations and academics,⁶⁴ the Law Commission of India presented its Eighty Fourth Report on *Rape and Allied Offenses: Some Questions of Substantive Law, Procedure and Evidence* (LCI 1980). The report incorporated a number of recommendations from the feminist movement, including the presumption of non-consent in cases of custodial rape, as well as the exclusion of any details of victims' past sexual history as a means of discrediting victim testimony (LCI 1980).⁶⁵

Nearly four months after the submission of the report, the government introduced bill number 162 of 1980, ostensibly based on its recommendations, on 12 August 1980. The bill, however, was a severely compromised, even distorted, version on the Law Commission's recommendations. First, there was no trace of amendments to the admissibility of evidence related to past sexual history: this central feminist demand vanished between the report and the bill. Second, the bill included a clause that had never been petitioned for, and had no traceable impetus within the movement or the report: a recommendation to make publication of any details of an incident of rape that might disclose the identity of the victim *a non-bailable criminal offense*. Through the recommended introduction of Section 228A, the bill made publication of any such material punishable by up to three years in prison; a move that provoked strong objections from the women's movement (Baxi 2000). Women's groups pointed to the fact that it was precisely the wresting of the Mathura rape case from the sphere of private shame to public outrage that made possible a broader national conversation on addressing sexual violence, and prompted the bill in the first place (ibid). Banishing

⁶³ The Law Commission of India is an executive body, established by an order of the Government of India. It comprises independent legal experts, entrusted a mandate by the Government for a fixed tenure to function in an advisory capacity to the Ministry of Law and Justice.

⁶⁴ The Law Commission consulted the All India Women's Conference, Young Women's Association, Young Women's Welfare Association of India, National Federation of Indian Women, Nari Raksha Samiti, Stri Sangharsh, National Council of Women, National Federation of Indian Women Lawyers, *inter alia*.

⁶⁵ These key provisions were in addition to other recommended alterations to substantive, procedural and evidentiary law. It falls outside of the scope of this thesis to detail these recommendations.

narratives of violence from the public sphere in the name of protecting the reputation of victims reproduced patriarchal scripts of shame and honour, depoliticised and particularised the structural issue of sexual violence, and blunted the movement's ability to mobilise around it (ibid). Groups came together to release the following statement on the proposed Section:

We feel this is a direct attack on the ability of women's organizations to organize on the issue of violence against women. The danger extends further, because, on the pretext of protecting women, the Bill is in fact a blatant attempt to impose press censorship, which assumes significance in the context of increasing atrocities and repression of people's movements. We therefore resolve we will defy this provision of the Bill..., specially by unitedly protecting our alternative media (cited in Haksar 1999: 75).

In the face of unrelenting resistance from the women's movement, on 23 December 1980, the bill was referred to a Joint Parliamentary Committee (JPC)⁶⁶ for further consideration, and more extensive consultations with feminist organisations, activists and other concerned parties (Baxi 2000). Two years later, on 27 October 1982, the JPC submitted its recommendations to the Government. Based on the JPC's recommendations, an amended bill was re-introduced a year later, and debated in the Lok Sabha (lower house) on 18 and 21 November and 1 December; and in the Rajya Sabha (upper house) on 5 and 6 December 1983. Following debates and modifications to the Bill, the Criminal Law (Amendment) Act of 1983 was given the President's assent on 25 December 1983. This was the first time the law relating to rape had been amended since the introduction of the Indian Penal Code in 1860. While it is beyond the scope of this thesis to detail all of its provisions,⁶⁷ below are two notable features, relevant to the ensuing analysis of the legislation and its rationalities:

- (i) New sections 376B, C and D were introduced to punish custodial rape in the contexts of public servants; superintendents or managers of jails, remand

⁶⁶ A JPC is an ad-hoc committee instituted by the Government, with membership from both houses of Parliament the Lok Sabha and the Rajya Sabha, to research and advise on specific legislative matters.

⁶⁷ Detailed commentaries on the act and its implication can be found in Agnes 1992; Baxi 2000; Kotiswaran 2016)

homes or women or children's institutions; and management and staff of hospitals.

- (ii) The Act was entirely silent on the matter of excluding evidence of past sexual history or 'habituation'. Provisions like Section 155(4) of the Indian Evidence Act, permitting the defendant to adduce evidence as to the immoral character of the survivor and Section 146, dealing with witness cross-examination and often used to discredit victims, were left untouched.

The disruptive promise of feminist claims in the post-Tukaram moment and the possibility of upsetting the victim/agent binary were significantly neutered when the discourse re-entered the realm of the state. The refraction of the feminist impulse, and a re-centring of binary formulations of victimhood and agency occurred both through the substantive provisions of the Act and in the discourses circulated and legitimated during the Parliamentary Debates, as discussed below.

Patriarchal Protectionism

In many ways, the recognition of custodial rape as a context marked by relations of power, with the ability to mediate the category of consent, was a significant feminist triumph. Its particular articulation through Sections 376B, C and D of the IPC however, took feminist cautions to a patriarchal, protectionist extreme, criminalising *all custodial* sexual intercourse, *irrespective of the victim's testimony* of consent/non-consent (Kotiswaran 2016: 13). What this meant was a refusal to attribute or recognise *any agency* within custodial contexts, through the elimination of the very possibility of consent. The victim's account of their own violation/lack thereof was then rendered immaterial: this time, the custodial context, rather than her body, spoke in place of the subject; but with the very same effect of muting her agency. Implicitly, this marked a return to liberal notions of agency, as either present in its heroic, autonomous and unfettered form, or entirely vitiated; ignoring careful feminist efforts to provide an account of non-autonomous agency in conditions of coercion. Thus, per the amendment, within custodial contexts the subject is so exhaustively and inevitably saturated with victimhood, that agency becomes fundamentally inconceivable.

The total disregard for the victim's testimony and the dismissal of her agency were justified through the repetition of various tropes of shame and passivity. During the debates on the matter, Dinkarrao Govindrao Patil characterised victims of rape as of a "shy nature", and insisted that investigating machinery "be prompt, active and sincere in finding out evidence *without waiting for a complaint from the poor lady*" (Rajya Sabha (hereafter RS) debates 6 December 1983, emphasis mine). Inciting law and order responses *prior to*, or even in the *absence* of victim complaint/testimony poses a particularly sinister threat in the post-colonial Indian context (Baxi *et al.* 2006). Criminal law (including provisions on abduction/kidnapping, trafficking, and rape) has long been instrumentalised to discipline female sexual agency, with fathers or brothers often filing cases to mark their disapproval of consensual relationships (ibid: 1245). Carceral provisions are thus frequently deployed to police agentival transgressions of various codes of gender, caste, religion and class (ibid; discussed in some details in Chapter 6). Recall that Mathura's rape also occurred during an encounter with the police following her brother filing a case of kidnapping to punish her *consensual* relationship with Ashok. Thus, through Sections 376B, C and D, the amendment circumscribed contexts within which victimhood was ineluctable, and agency unthinkable; re-inscribing the damaging victim/agent binary through a continued attachment to purely liberal, autonomous and absolute modes of agency.

The Death of the Victim Subject

The parliamentary debates repeated and re-authorised various assumptions and rationalities as the bill was debated in the Lok Sabha and the Rajya Sabha (for more on the legitimating potency of these discourses, see Baxi 2000). Particularly prominent and dangerous amongst these rationalities was the presentation of victims of rape as "scripted by death" (Baxi 2000: 1196). Through a recirculation and even exaggeration of thorny feminist discourses of rape as the ultimate violation, the debates cemented representations of the victim subject as ineluctably entangled with *death*. For instance, Narul Islam said "ours is a country of Sita and Savithri and traditionally we regard our women as such, and to our women chastity is everything; if it is lost, everything is lost—not only lost, socially she becomes dead" (Lok Sabha (hereafter LS) debates, 1 December 1983: 393). Sezhiyan, in his concurrent note in the JPC Report has said: "Rape is not

merely a criminal assault, it is an assault on her life, on her soul, on her social respectability. For no fault of hers, a woman is suddenly deprived of her inherent right to lead a normal and happy life; she is doomed to suffer in silence and only death can free her from the stigma and the agony” (JPC Report 1982: XXXV).⁶⁸

As previously discussed in the context of feminist discourses, the implications of such scripts can be understood to be “the death of the raped woman as subject” (Baxi 2000: 1197): i.e. the decisive articulation of a subject *sans* agency. The production and legitimation of this subject buttresses a binary imagination of victimhood and agency, where the condition of victimhood, implying death of the subject, becomes necessarily incompatible with agency. The framing of rape as a fate likened to, or only liberated by, death produces a second and distinct peril, in the form of its corollary. If rape is the ultimate violation, resulting in a *death-adjacent* condition, the implication is that a victim under siege would rather die, or sustain life-threatening injuries than be raped. The consequence of this corollary on the resistance requirement is readily visible, and deeply damaging: it justifies the demand for corroboration in the form of severe bodily harm. Once again, through a failure to appreciate the constrained nature of agency in contexts of violence, and a repetition of the resistance requirement, victimhood and agency are arranged dichotomously.

Resuscitating the Habitué

While a central feminist investment following the Tukaram verdict was to challenge the production of the habitué, the Amendment of 1983 was silent on all measures suggested to this end. To the contrary, the Parliamentary debates relating to amendments to the law on sexual violence frequently and actively participated in the resurrection and recirculation of the figure of the habitué. Ram Jethmalani, for instance, cautioned “after all, we are not dealing all the time with virtuous women. We may also deal with some women who, unfortunately, do not conform to the normal standards of womanhood” (LS Debates 1983: 413). The habitué was thus also expressly cast outside not only the possibility of victimhood, but also “normal standards of womanhood” (ibid: 413). Further

⁶⁸ These discourses foreshadow the emergence of the “zinda laash” of living corpse in the aftermath of the attack on Jyoti Singh, discussed in some detail in Chapter 6.

vilifying the wilful habitu , Moolchand Daga proffered “Some girls are very clever and are the agents of the police. These days in the world of politics, police can falsely accuse anyone it wants to charge of rape. What is the way of saving oneself from them” (LS debates 21 November 1983: 431, translation mine).

Meanwhile, in another denigration of the excessive will of the over-agentival habitu , Ghanshyambhai Oza argued against custodial exceptions as “Women of easy virtue are also sometimes arrested for committing some crimes, suppose they induce some young officers and then they complain about it, they induce police officers, young police officers, innocent police officers to have love affair [sic] with them and soon after in order to blackmail those officers or constables they complain against them” (RS debates 5 December 1983: 324). The habitu  is thus re-inscribed as the unruly, wilful subject saturated with agency, and incommensurable with victimhood: the very inverse of the socially dead subject of victimhood. Thus, the debates betrayed a resolute attachment to the figure of the habitu , and through her construction, a necessarily binary formulation of agency-as-autonomy, and victimhood.

In Conclusion: Reading Tukaram in Farooqi

On 25 September 2017, Mahmood Farooqi, a well-known writer, performer and director, was acquitted of charges of having raped an American Fulbright Scholar at his home on 25 March 2015. The Delhi High Court judgment in the case of Farooqi vs State (Government of NCT of Delhi) 2017⁶⁹ displays dispiriting similarities to the Tukaram judgment, proffered nearly forty years prior. In a faithful repetition of the resistance requirement, the Farooqi judgment commented on the absence of injury, and indicated that the “conduct of the prosecutrix, post incident” (2017: 37) implied one of consent rather than violation, upholding an idealised version of absolute autonomy, incompatible with victimhood. While the language of ‘habituation’ was not explicitly invoked, the judgment spoke at length of past sexual behaviour, highlighting on multiple occasion the “history of intimacy” between the accused and the victim (ibid: 39). Such characterisations were then deployed to establish that the witness’ testimony was not of “sterling quality” (ibid: 43, 44), and set aside as suspect, re-inscribing the figure of the

⁶⁹ Mahmood Farooqi vs NCT State of Delhi 2017 CrLJ 3457

habitué, forever an agent (particularly a sexual agent) but never a victim. Finally, and most strikingly, on the matter of consent, the court ruled that as opposed to “conservative” women, in the case of “intellectually and academically proficient” women for whom “equality is a buzzword”, “a feeble ‘No’ may mean yes” (ibid: 59, 60). In an explicit and absolute denial of victimhood, expressly predicated on a recognition of female agency (“proficient women”), the court produced an astonishing repetition of the judicial rationality that placed agency-as-autonomy and victimhood in firm opposition four decades ago through the Tukaram judgment.

Notably, between the Tukaram and Farooqi judgements, statutory law changed on two significant counts: (i) following an amendment to the Indian Evidence act in 2003, any evidence pertaining to a victim’s past sexual history was inadmissible and (ii) through the Criminal Law Amendment of 2013 (discussed in Chapter 6), lack of physical evidence of resistance was immaterial to establishing an offence. Despite these legislative amendments, the judgement in the Farooqi case (and others including Mahmood Farooqi vs NCT State of Delhi 2017; Raja vs State of Karnataka 2016; Rakesh vs State of Karnataka 2020; Vikas Garg and Ors. vs State of Haryana 2017) expressly ignored and even intentionally subverted statute to rehearse the resistance requirement, attributions of habituation, and liberal autonomous notions of the consenting subject in a manner strikingly similar to the Tukaram judgements. This judicial subversion of legislative mandate signals not only the inadequacy of legislative reform, but the extent of entrenchment and ossification of the agency-as-autonomy model (and its attendant effects) within judicial rationality.

Through my analysis of the Tukaram judgements, I challenge both the inevitability as well as the utility of the agency-as-autonomy paradigm, revealing the sites of its (re)production within the law, as well as its pernicious effects. Within and beyond the law, I argue that presumptions of formal equality overinvest in liberal autonomy, and fail to attend to entrenched structural hierarchies, inevitably failing to deliver substantive equality. Drawing on Madhok (2014), I make the case for a rethinking of agency away from liberal assumptions of the autonomous, heroic subject, eschewing action as the key site from which to read and represent agency in favour of speech acts. I explore the potential of testimony and consent as key sites from which to challenge the dominance of

the agency-as-autonomy model enshrined within the law, insisting on a studied attentiveness to the conditions and constraints within agency is exercised and transacted. Finally, through an analysis of legislative reform and related parliamentary debates, I track the re-inscription of the victim/agent binary through a reiteration of scripts of paternalism, rape-as-death, and habituation.

It is precisely through a feminist historical ontology of victimhood and agency that Tukaram can be read into the Farooqi case, and the legacy and sites of reproduction of the agency-as-autonomy model laid bare, lending a history to what is usually felt as without history (Foucault 1977: 139). As discussed in Chapter 3, a historical ontology concerns itself not only with the emergence of concepts, but with the work they do in particular locations at specific points in time. By drawing our attention to patterns of assumptions, repetitions and disruptions that undergird the production and circulation of concepts, classifications and categories across time, a feminist historical ontology presents an account for why and how, despite feminist intervention and legislative reform, forty years later the Farooqi judgements so closely mirrored the rationalities of Tukaram. It permits us the construction of a non-linear history of discourses of sexual violence, and a rejection of teleological progress narratives and development mythologies. It makes possible a tracking of the conditions of possibility of current oppressions, while revealing possible sites for their resistance. In the chapters that follow, I persist in undertaking a feminist historical ontology of agency and victimhood, producing a de-naturalising history of the present while uncovering sites and strategies for the interruption of the victim/agent binary in dominant responses to sexual violence.

Chapter 5: Bhanwari Devi: The Unmaking of a Subaltern Subject as ‘Case’

The Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act (aka POSH Act), India’s first legislation to specifically address the issue of sexual violence in the workplace, came into force in December 2013. Citing sexual harassment as a violation of the fundamental rights of women to equality, and in contravention of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the Act marked a significant milestone in the narrative life of sexual violence in India (Baxi 2014; Kotiswaran 2017; Pullat 2017). In this chapter I track the antecedents of the 2013 Act, following the discursive journey that culminated in its enforcement. The Act derives its impetus from a particular incident of sexual violence: the rape of Bhanwari Devi in 1992 in Bhateri, Rajasthan. Bhanwari Devi was attacked in retaliation for work she was undertaking as an employee of the Women’s Development Programme (WDP). The WDP, set up by the Government of Rajasthan in 1984, was a state initiative aimed explicitly at “empowering rural women to play an active role in development” (Kannabiran and Singh 2008: 94).⁷⁰ The programme enlisted grassroots workers called *sathins*,⁷¹ predominantly from marginal caste (*Dalit-Bahujan*) and tribal (*Adivasi*) backgrounds, to work on an ambitious range of issues including: local government, land, water, the public distribution system, minimum wages, family planning, education, health, hygiene, literacy, and child marriage *inter alia* (ibid).

On 22nd September 1992, in the village of Bhateri, Bhanwari Devi, a *sathin* under the WDP was gang-raped by five men as retaliation for efforts to stop a child marriage in the powerful Gujjar community.⁷² Bhanwari Devi and her husband Mohan, both belonging to the *Bahujan* Kumhar community,⁷³ were attacked in the fields of Bhateri by four Gujjars and one Brahmin. Following a compromised investigation and a humiliating and protracted trial (Jagori Archives 1992a, 1992b, 1993a, 1993b, 1994, 1996), all five of the

⁷⁰ Original programme documents that I hoped to cite from could unfortunately no longer be accessed due to the COVID-19 pandemic.

⁷¹ Translated from Hindi as ‘female companion’.

⁷² Also often written as ‘Gurjars’, they are a *jaati* or caste community traditionally composed of cattle breeders. In the village of Bhateri, Gujjars were a powerful caste community, both in terms of ownership of land and material resources, as well as political patronage.

⁷³ Kumhar(s) are traditionally a community of potters, and is a caste officially recognised as a Scheduled Caste by the Government of India.

accused were acquitted of charges of rape by the Sessions Court in 1995. An appeal of the acquittal has been pending at the Rajasthan High Court since 1996. Bhanwari Devi's case became the grounds for a successful Public Interest Litigation (PIL), *Vishaka v State of Rajasthan*, that came to be a defining moment in the history of Indian post-colonial feminist and legal engagement with sexual violence (Baxi 2014; Kannabiran and Singh 2008; Murthy 2013; Sood 2008). The Supreme Court ruling on the PIL, culminating in the 'Vishaka Guidelines' for the prevention and redress of sexual harassment at the workplace, marked the introduction of the vocabulary of 'sexual harassment' to the juridical and legislative discourse of sexual violence in India. Conferred international recognition by the CEDAW Committee as a "landmark judgement", the Vishaka case has been heralded globally as a "success of judicial action in redressing violence against women" (Sood 2008: 58). Neither the Vishaka guidelines nor the Sexual Harassment Act that it precipitated, however, secured avenues for redress in Bhanwari Devi's specific case: as activist Kavita Srivastava points out, "Many women have gained from Bhanwari Devi's struggle, but sadly not her" (in Kurup 2006).

While the Vishaka judgment came to acquire historic status within the national struggle against sexual violence, this chapter interrogates how that history was lived and experienced by Bhanwari Devi, the subaltern subject at the heart of its making. I am interested in tracking what happens in the appropriation of an event as/into 'case' or legal discourse (Guha 1987). When the narration of subaltern reality is left to the "stentorian voice of the state" (ibid: 141), Guha argues that the "complex tissue of human predicament" is reduced to mere 'case' (ibid; Chapter 3). Through this chapter, I ask: when the lives of subaltern subjects of sexual violence are archived and anthologised for the law, what is lost, what can be regained, and how?

This chapter is divided into three parts. In the first section, I provide a background to the WDP, and detail the context and conditions within which Bhanwari Devi was attacked. In the second part, I analyse the effects of dominant discourses engaged in the telling of Bhanwari Devi's story as 'case' for, and in the image of, the law. I argue that these dominant discursive registers (case law, feminist discourse and legislative reform in the form of the Vishaka judgement) produce a set of erasures and omissions, and are unable to capture the complex, composite reality of Bhanwari Devi's subjecthood as both victim

and agent. Rather, through an attachment to the victim/agent binary, these registers cast Bhanwari Devi as a fragmented, partial subject, and precipitate various dangerous and exclusionary effects. Thus, in this second section, I ask: under what terms is Bhanwari Devi as a subaltern subject admitted within these dominant registers⁷⁴ (engaged in representations of Bhanwari Devi's story as 'case')? Where and how is she rendered visible, and under what conditions is she erased? What elements of her complex relationship with both victimhood and agency are registered, what elements are omitted at these sites? What are the representational implications of Bhanwari Devi's partial capture across these registers for the victim/agent binary?

The third and final section of the chapter seeks to assemble and draw on a subaltern archive for a different telling of Bhanwari Devi's story. Attempting to ensure that I do not simply mime the erasures and violences of dominant discourses (even as I critique them), through this section I seek to interrupt the dominant (binary) representational regime, and produce an account of Bhanwari Devi that is able to capture and reflect her complex reality as both victim and agent. In assembling and drawing on a subaltern archive,⁷⁵ I hope to produce an account of Bhanwari Devi that is less amenable to simplistic readings of victimhood *or* agency, in order to answer the question: what are alternative archival sites and conceptual bases through which we can imagine a different representational regime, and a disruption of the victim/agent binary? These subaltern renderings thus contain the possibility and promise of a composite representation of Bhanwari Devi as both victim and agent, and provide a glimpse into what it would look like to produce a history of sexual violence and the struggle against it that centres a subaltern subject, in all her complexity, in its telling.

⁷⁴ The archives I use for this section include (i) 450 pages of press releases, reports, bail hearing copies, letters to various functionaries, judicial appeals, PIL documentation, newspaper articles and pamphlets pertaining to Bhanwari's Devi's rape case as preserved by the NGO Jagori in Delhi (Jagori Archives); (ii) my own interviews with 4 Jaipur-based and 2 Delhi-based activists who had worked on the case; (iii) publicly available information on the Vishaka petition, judgement and the POSH Act (iv) Digital Archives (misc) capturing contemporary conversations around the List of Sexual Harassment Accused (LoSHA) and #MeToo India. For more on the archive see Chapter 3.

⁷⁵ In this section, I engage with the following archival material: (i) 5 years' of *Ujjala Chaddi* newsletters (1992-1997) — Hindi language monthly's produced by neo-literate women in Rajasthan under an initiative by NGO Vividha, accessed at the Vividha library, along with other internal Vividha institutional documents (ii) 450 pages of press releases, reports, bail hearing copies, letters to various functionaries, judicial appeals, PIL documentation, newspaper articles and pamphlets pertaining to Bhanwari's Devi's rape case as preserved by the NGO Jagori in Delhi (Jagori Archives); (iii) interviews conducted by Dr Sumi Madhok as part of her fieldwork for Madhok (2013); (iv) my own interviews with 4 Jaipur-based and 2 Delhi based activists who had worked on the case.

Background

In this section, I develop a composite narrative of the attack on Bhanwari Devi and her husband Mohan. Drawing on feminist and post-colonial engagements with the question of representation, I am careful not to make claims to an 'objective', pristine, or unmediated rendering of the assault or the context surrounding it (Dhawan 2012; Haraway 1988; Noys 2013; Spivak 1988 *inter alia*). E.H. Carr wrote:

Facts are ... [not] ... like fish on the fishmonger's slab. They are like fish swimming about in a vast and sometimes inaccessible ocean; and what a historian catches will depend, partly on chance, but mainly on what part of the ocean he chooses to fish in and what tackle he chooses to use— these two factors being, of course, determined by the kind of fish he wants to catch. By and large, the historian will get the kind of facts he wants. History means interpretation (Carr 1961: 23).

Adopting Carr's historiographical sensibility, what follows is an expressly *interested* account, invested in developing a detailed and located understanding of the coercive conditions under which subaltern subjects encounter, and struggle to address, sexual violence. Through this account, I draw attention to the multiple sites and extended temporality of Bhanwari Devi's experiences of victimhood. A majority of the narrative below has been pieced together from the archives of a feminist NGO in Delhi, Jagori, which worked closely with Rajasthan-based NGOs, including Vishakha, to support Bhanwari Devi's struggle for justice. Before I construct this narrative, however, I briefly frame the WDP and the role of *sathins* within it.

The Women's Development Programme and *Sathins* as autonomous 'agents of change'

The WDP was envisioned and implemented as an essentially collaborative enterprise, bringing together state functionaries and feminists (activists, academics and NGOs) to recruit and train grassroots workers (*sathins*). This partnership precipitated various tensions as well as convergences, typified in many ways by their contrasting imaginations of the *sathin* subject (Madhok and Rai 2012). While the state displayed an "avowedly

women-in-development” perspective, feminist academics and activists involved in training the *sathins* favoured a “feminist empowerment framework” (ibid: 652). Despite their distinct visions of and for the *sathin* subject, both the state and its feminist development partners shared (i) the assumption that “the *sathin* would somehow be able to extricate herself from the prevailing power hierarchies within the village” (ibid: 655) in order to achieve the development goals of the WDP; and (ii) a degree of inattentiveness to the risks of injury incumbent upon the *sathin* in the course of her work (ibid).

Overall, the imagination of the *sathin* and her role in the WDP were characteristic of the encounter between liberal developmentalist discourse and neoliberal rationalities; underpinned by imaginations of a heroic unfettered autonomous agent (Madhok and Rai 2012; Madhok 2014; Wilson 2007). This particular production of the *sathins* through the frame of ‘agency in development’ over-emphasised the heroic, self-determining and unencumbered subject *while systematically eliding* the material constraints and real threats of violence and victimhood confronting these subjects (Madhok and Rai 2013). Described principally as ‘agents of change’ within WDP and related documentation, *sathins* were framed through a “universalist, individualized, and voluntaristic understanding of agency that privileges the individual as the locus of responsibility but not of injury” (ibid: 646).

The WDP was thus an early example of the “mobilizing of agentic subjects for development” (ibid: 646), buttressed by the dangerous notion that the “perception and calculation of risk...is the responsibility of the individual agent; indeed, it is integral to agentic subject formation” (ibid: 661). Despite a growing awareness of the subordinated position of *sathins* as well as the risky, transgressive political work demanded of them to uphold development objectives, the state left the navigation of this precarity and insecurity to the *sathin* herself. This model was based on the notion that “if the agent suffers through her action, the responsibility must lie with her: her evaluation of her own position and resources, the obstacles to overcome, and the system of support that she can depend on must be flawed” (ibid: 661). Within the WDP, the *sathin* became Brown’s (2003) ‘prudent subject’, who “bears full responsibility for the consequences of his or her action, no matter how severe the constraints on this action” (Brown 2003; in Madhok and Rai 2012: 648).

The WDP was thus premised on the functioning of a *sathin* subject saturated with agency; an entirely self-authoring, self-directing and self-responsible agent, able to transcend her conditions of vulnerability or even victimhood in her 'becoming' as agent-of-change. The very imagination of the linchpin of the WDP, the *sathin*, was then firmly embedded in a binary conception of agency and victimhood. Notably, various feminists involved in the imagination and implementation of the WDP registered their concerns with such a model and the obvious risks and injury it exposed *sathins* to; these considerations did not, however, formally inform the institutional life of the WDP (interview with Mamta Jaitley, Renuka Pamecha, Dr Pritam Pal July 2018). The role of feminist activists and academics in supporting, while also subverting and resisting, the WDP infrastructure produced a series of tensions and entanglements that make it particularly challenging to extricate 'state' from 'feminist' discourse in this instance. Many of the feminists involved (including those I interviewed) often took oppositional stances towards state machinery, and were instrumental in supporting Bhanwari Devi in her efforts to hold the state to account following her rape. Thus, various feminists involved within the WDP in often formal capacities also played a crucial role in challenging the state's representational failures in Bhanwari Devi's legal encounter, as I discuss in the final section of this chapter.

The Rape of Bhanwari Devi⁷⁶

Bhanwari Devi was recruited as a *sathin* as part of the WDP in March 1986. Ever since, she worked on issues related to education, deserted women, rape, employment, fair wages, and child marriage. The issue of child marriage was discussed with *sathins* in Bhanwari Devi's village of Bhatari for the first time in May 1986. In 1992, the State Government of Rajasthan observed a symbolic 'Anti-Child Marriage fortnight' from 20th April to 4th May during the festival of *Akha Teej*.⁷⁷ Several prominent local officials, including the Chief Minister, Chief Secretary and the Collector of the state made public appeals against child marriage during this period. As part of these broader initiatives

⁷⁶ This section is (for the most part) based on a document retrieved from the Jagori archive titled 'Bhatari Gang-Rape Dateline' (hereafter Dateline 1992). Any other sources used are indicated.

⁷⁷ The festival is notoriously linked with the practice of child marriage in Rajasthan. While child marriage has long been banned in India (the first law in this regard being enacted by the British colonial state in 1929), the law is weak and "largely ignored in rural Rajasthan" (Madhok 2014).

Bhanwari Devi visited the house of Ram Karan Gujjar, amongst others, to dissuade him from getting his one-year old daughter married that *Akha Teej*. On 2nd May 1992, the intended day of the Gujjar marriage, the Bassi (name of district) police went to Ram Karan Gujjar's house to stop proceedings. They also visited several other houses in Bhatari and neighboring villages. Ram Karan Gujjar proceeded with the planned marriage of his one-year old daughter at 2 am the next morning. Police action across the villages created a "very tense atmosphere" (Dateline 1992), and Bhanwari Devi and other *sathins* were blamed for instigating police intervention and creating hostilities. Throughout May, various *sathins* including Bhanwari Devi reported an increasingly threatening atmosphere in Bhatari and surrounding villages, and made this known to the local *Tehsildar* (local administrator), Bassi Station Deputy Officer (SDO) and other officials during a meeting at the neighbouring Palala village.

On 10th May 1992, Badri Gujjar, Ram Karan Gujjar's brother, visited his relative Godavari in the village of Bhanpur Bhurd. There, he accused Bhanwari Devi of bringing shame on the family by sending the police to their house to stop the marriage and "vowed to avenge the humiliation" (Dateline 1992: 2); saying that when he is done with her "she will not be fit to walk or show her face to anyone" (Sworn Affidavit of Godaviri 1993). Later in May, Badri Gujjar went to Bhanwari Devi's house, where he attacked Bhanwari Devi and Mohan, and threatened to kill her. Bhanwari Devi decided not to file an FIR,⁷⁸ anticipating that it will only heighten hostilities. Mohan and Bhanwari Devi were then subject to systematic social and economic boycott by the entire village. The Gujjars used their influence to instruct villagers not to sell any milk to Bhanwari Devi's family, or buy their pots (a key source of their income). A tree in Bhanwari Devi's field was felled, and fodder stolen. Soon, the harassment was so dire that Mohan could no longer leave the family and go to Jaipur to work as a rikshaw-puller. Once again, these threats and coercions were brought to the attention of the local SDO, Collector and others at a village-level meeting. In June 1992, the issue of systematic harassment was brought up at a large village-level meeting in the presence of several high-ranking officials, including the local Member of Legislative Assembly (MLA). The MLA expressed explicit support for the Gujjars, attempted to deny that the child marriage ever took place, and admonished WDP officials

⁷⁸ First Incident Report is the procedure through which a police investigation on a matter is initiated.

for raising the issue of child marriage in the first place. Through the rest of June, the harassment and social and political boycott of Bhanwari Devi and her family continued. Five men attacked the local postmaster Nathuram, who had employed Bhanwari Devi at his *piau* [water kiosk], after which he fired her, and Bhanwari Devi lost her last remaining source of income. Bhanwari Devi was also excommunicated from her own *Kumhar* community in the neighbouring village of Kanoti, as police action had extended to stop child marriages there too. Following a final village level meeting in late June 1992 to address the tensions caused by police involvement during *Akha Teej*, hostilities seemed to dissipate temporarily.

At six in the evening on 22 September 1992, Bhanwari Devi and Mohan were working in the fields behind their house. Mohan left to relieve himself and was attacked by five men armed with sticks: Ram Karan Gujjar, his brother Badri Gujjar, Ram Sukh Gujjar, Gyarsa Gujjar, and Shrawan Sharma. Bhanwari Devi “heard his screams and ran towards him” (Dateline 1992: 5), where she was then accosted by two of the men who “threw her to the ground” (ibid: 5). While Ram Karan Gujjar and Shrawan Sharma held Mohan, Ram Sukh pinned Bhanwari Devi to the ground, and Gyarsa and Badri raped her. They “tore away her jewellery” (Dateline 1992: 5), and threatened to kill her if she told anyone.

Bhanwari Devi and Mohan walked to Bhatari to seek help, where they met Rameshwar Panda (Shrawan Sharma’s brother), and the postmaster Nathuram. Both “said they could not help, and asked them to go to Jaipur” (Dateline 1992: 5). As the last bus out of Bhatari had left before 5 pm that evening, Bhanwari Devi and Mohan spent the night in Bhatari. Bhanwari Devi did not bathe or change her clothes, based on the training she had received on responding to sexual violence in her capacity as a *sathin*. At six the next morning, they travelled to the village of Patan and sought the assistance of *sathin* Krishna. Bhanwari Devi and Mohan went onwards to the Bassi district headquarters, while Krishna travelled to Jaipur to inform WDP officials. When Krishna returned with a more senior WDP fieldworker, Rasila, all four went to the Bassi Police Station to file an FIR. At the station, they faced “complete disbelief and opposition” (Dateline 1992: 5) from DySP Joshi and the *Thanedar* (station in-charge) Cheetar Singh. DySP Joshi insinuated that Bhanwari had fabricated the story in revenge, suggesting to the WDP official “*ranjish ke maare jooth bhi likhwa dete hai*” (people often make false allegations due to ‘rage’, Mathur 1992: 2223).

Both the DySP and *Thanedar* cast repeated aspersions on Bhanwari Devi's report, and argued with her for an hour and a half before agreeing to file the FIR. At this point, more than 20 hours had elapsed since the rape. Bhanwari Devi and Mohan were then sent to the Bassi Primary Health Centre (PHC) for a medical exam. They waited there for two hours before the doctor arrived, who then refused to conduct the exam as no female doctors were present to assist.⁷⁹ He made no attempts to contact any female doctors, and did not inform Bhanwari Devi of the consequences of a delayed examination on the rape investigation. He also did not give either Mohan or Bhanwari Devi any (much-needed) basic medical attention, but instead, referred Bhanwari Devi to SMS hospital in Jaipur for age verification rather than a rape examination.

At 10 pm, Bhanwari Devi and Mohan were transported to Jaipur in a police van. Once they reached SMS hospital, they waited for 45 minutes before a doctor attended to them. At this point more than twenty-four hours had elapsed since the rape. The medical jurist examined Mohan for injuries but refused to examine Bhanwari Devi without a magistrate's orders.⁸⁰ Rasila went to the Magistrate's house to secure an order, but the Magistrate refused to issue the order outside of office hours, and asked her to return after 11 am the next morning. Mohan and Bhanwari Devi spent the night at the Jaipur Mahila Thana (Women's police station) and faced ridicule and harassment. Over 30 hours had elapsed since the attack. The next morning, the magistrate passed an order for a general medical examination, instead of a rape examination, though he had been appraised of the facts of the case. Meanwhile, the case was handed over the Assistant Superintendent of Police (ASP) Badam Beerava, who took Bhanwari Devi and Mohan back to the hospital for the medical exam. On the phone to the Director of the WDP, ASP Beerva claimed that "nothing has happened to Bhanwari Devi, she is lying; leave her with me for two days and I will get her to say with her own mouth that nothing happened to her" (Dateline 1992: 7).

As the word 'rape' has been struck from the magistrate's issued orders for the medical

⁷⁹ While rape victims have the right to request the presence of a female examining doctor or nurse during a medical rape examination, she can choose to be examined by a male medical jurist.

⁸⁰ There is no legal requirement for a magistrate's orders prior to an examination. In fact, in *State of Karnataka vs Manjanna*, the Supreme Court found that refusal to examine a rape victim even without police orders is not to be condoned. In this case, the police had accompanied Bhanwari for the examination; there were no legitimate grounds to demand a magistrate's order.

exam, the medical jurists at SMS hospital once again refused to conduct an examination, and demanded an order specifically pertaining to rape.⁸¹ 46 hours had elapsed since the rape, and Bhanwari Devi had received no medical attention, had been unable to bathe, and was wearing the same clothes as when she was attacked. At 5 pm, the magistrate passed an order specifically for a rape examination. At 8 pm on 24 September, the rape examination was conducted, but was incomplete. Only a vaginal swab was taken, and an intra-uterine sample was not collected, despite the doctor's full knowledge of the substantial delay in the examination (after so much time had elapsed, a vaginal swab would no longer be able to establish the presence of semen, while an intra-uterine sample would) (Statement Of Concerned Doctors, Jagori Archive 1993a). The medical exam corroborated and recorded injuries to Bhanwari Devi's hands and legs caused by a "blunt and simple instrument" (Dateline 1992: 6). Following the medical examination, the police accompanied Bhanwari Devi and Mohan back to Bassi. At 11 pm, upon arriving at the Bassi Police Station, Bhanwari Devi was asked to deposit her *lehenga* (skirt) in evidence, and was not given any other clothes to wear. Bhanwari Devi wrapped herself in Mohan's blood-stained shawl, and, at midnight, they walked the three kilometres to the nearest *sathin's* village.

The months following September 1992 saw a series of protests by women's groups in Jaipur and Delhi, targeted petitions to senior state and union ministers, and a demand that the investigation be handed over by the local police to national investigative authorities, as local investigators were clearly prejudiced. By 8th October, the investigation was handed over to the Rajasthan state Criminal Investigation Department. Following a press conference by the National Commission for Women stating that the CID's efforts were "half-hearted" and displayed "deliberate attempts to dilute and weaken the case" (NCW Press Conference 1992), the investigation was finally handed over to the national level Central Bureau for Investigation in January 1993. The CBI subjected Bhanwari Devi to hours of "humiliating" interrogation (Madhok 2013: 145), and neglected to arrest the accused for months even after authorities were in a legal position to (Letter to CBI, Jagori Archives 1993b). Despite the charge sheet being filed by the CBI on 27th September 1993, Gyarasa was only arrested on 4th November 1993, while the rest

⁸¹ Once again, magistrate's orders are not required in order to conduct a rape examination.

were absconding at the time. Bail was denied to all of the accused (including anticipatory bail for the four who had not been arrested) on 17 December 1993. However, on appeal, on 11 April 1994 the same judge who heard the initial bail plea, Justice NL Tibrewal, granted anticipatory bail to Ram Karan Gujjar, Shrawan Sharma and Ram Sukh Gujjar, contradicting his previous judgement (Letter to CJI Jagori Archives 1994; Rajasthan High Court Bail Order, Application No. 643,652).

Tracking Bhanwari Devi's Reduction to/as 'Case'

While the attack on Bhanwari Devi, the mobilisations that followed, and her struggle for justice provoked considerable academic attention and critical analysis, my interest departs from much of this work in that it is informed by an attentiveness to representations of Bhanwari Devi's victimhood and agency. Specifically, this chapter asks: how do the discourses of sexual violence and harassment emanating from this attack capture, or fail to represent these distinct elements of her subjecthood? What are the effects of these representational practices? What might these discourses reveal about the possibilities for a reformulation of the damaging binary conceptualisation of victimhood/agency within and beyond the particular framing of 'sexual harassment'?

Case Law: The In-credible *Bahujan* Woman as Agentival non-Victim

In this section I detail Bhanwari Devi's adversarial encounter with the law enforcement machinery (from the police and other investigating authorities to the courts), and analyse what this encounter reveals about how victimhood and agency are understood and attributed by the law. Bhanwari Devi's victimhood was systematically denied at every stage of her appeal to the law: evinced from the reluctance of the police officer to file an FIR; the dismissal by medical staff at both the Bassi and Jaipur healthcare facilities; the scepticism of investigating officers; and finally the judgement to acquit by Justice Singh on 15 November 1995.

The criminal trial of Gyarsa, Badri, Ram Karan, Shrawan and Ram Sukh in the Sessions and District Court of Rajasthan, Jaipur, began in October 1994. In the Indian legal system, prosecution in criminal cases is undertaken by the state, represented by a prosecutor

(Baxi 2013). The prosecution and related investigation is initiated, funded, and implemented by the state, although in this case, Naina Kapur, a Delhi-based lawyer was nominated by activists to attend (but not argue) the trial to fulfil the requirements of the presence of a female lawyer in rape trials (Sood 2008). Rape prosecutions in India are thus contested between the state and the accused (represented by privately appointed defence lawyers, unless the accused requests state support), with the victim positioned as a witness (Baxi 2013: 10). Although the victim is referred to as the 'prosecutrix' (literally translating to female prosecutor) in trial transcripts and judgements, she is "perceived as a malevolent prosecutor", and thus relegated to the position of witness (Baxi 2013: 10).

Over a hundred hearings were conducted at the Jaipur Sessions and District Court in the case of Ram Karan Gujjar and Ors. vs the State of Rajasthan, and the judge appointed on the case changed five times during the course of the trial. On 15th November 1995, the sixth judge presiding over the case, Justice Jagpal Singh, acquitted all five of the accused on charges of rape. The judge convicted them under Sections 323 (voluntarily causing hurt) and 147 (rioting) of the Indian Penal Code for a total sentence of 9 months (already served by Badri and Gyarsa), and a fine of Rs 500.

Dismissing the charges of rape under Section 376 and Section 376/34⁸² of the IPC, Justice Singh stated in his judgement:

But it is beyond comprehension that those who live in a rural culture, including Gyarsa, who Bhanwari Devi says is a respectable person and who some in the village listen to, would in this manner commit a rape. Particularly in collusion with someone in who is forty years of age and that too in broad daylight in the jungle in presence of other men. The court is of the opinion that Indian culture has not fallen to such low depths: that someone who is brought up in it; an innocent, rustic man; will turn into a man of evil conduct who disregards caste and age differences and becomes animal enough to assault a woman. How can persons of 40 and 60 years of age commit rape, while someone who is seventy years old watches by? ... prosecution ...

⁸² See Chapter 4 for the relevant sections of the Indian Penal Code.

has not proved beyond doubt that Gyarasa, 60 and Badri, 40 raped Bhanwari Devi while Ramsukh and Shrawan, Bahmin and therefore of a different caste from the other accused looked on (The State of Rajasthan v. Ramkaran and Others 1995: 17–8).

The National Commission for Women,⁸³ national level representatives for the Communist Party and the National Congress, along with hundreds of women’s organisations across the country, denounced the verdict pronounced by Justice Singh in 1995. Much as in the case of the initial trial, the appellate process also unfolds between the state and the accused, leaving the pursuit of further hearings to the whims and the (absent) political will of various iterations of the Rajasthan State Government and their appointed public prosecutors, together with Rajasthan High Court judges. Despite nation-wide outrage and protests, Bhanwari Devi’s appeal of the Rajasthan High Court judgement has had only one hearing, and is pending, unresolved, since 1996. Four of the five accused are now deceased (Frayer 2018).

Much of the judicial arbitration of victimhood in the case of Ram Karan Gujjar and Ors. vs the State of Rajasthan rested on Bhanwari Devi’s testimony and its perceived credibility. Given the severely compromised investigation and the delays in the medical examination, there was little to no physical evidence available to corroborate the prosecution’s case. The question of Bhanwari Devi’s believability, in fact, haunted every stage of her appeal for justice, from the filing for the FIR, to the investigation, and finally the judgement. In the rest of this section, I argue that (i) Bhanwari Devi’s veracity was dismissed not based on the *content* of her testimony, but on a ‘credibility deficit’ (Fricker 2007)— i.e. it was not so much what was said, but who said it that determined believability; and (ii) that it was precisely because of Bhanwari Devi’s gendered, caste-inflected and agentival construction that she was perceived as in-credible. Thus, the judgement’s eventual refusal to recognise Bhanwari Devi’s victimhood stemmed from the court’s attribution of a mendacious, gender and caste inflected capacity to Bhanwari Devi.

⁸³ A statutory body of the Government of India, established in 1992 and generally concerned with advising the government on all policy matters affecting women.

Fricker (2007) locates questions of believability as transacted within what she calls the 'credibility economy': the ways in which credibility is unevenly distributed amongst different speakers. When we attribute too little (or too much) credibility to a speaker, the speaker suffers an injustice. To Fricker (2007), a testimonial injustice is when a speaker suffers a 'credibility deficit' due to an identity prejudice; often rooted in structural inequalities. Attributing credibility deficits to Indian women more generally, and class-oppressed Indian women specifically has a long and enduring history in colonial (and post-colonial) jurisprudence (Kolsky 2010). In Norman Chevers' work on medical jurisprudence in colonial India (see Chapter 4), he warned of the untrustworthiness of 'natives', whom he characterised as "ingenious, calm-tempered, indolently pertinacious sensualists" (Chevers 1856: 8). Chevers further cautioned against the "strange combination of sensuality, jealousy, wiled and ineradicable superstition, absolute untruthfulness, and ruthless disregard of the value of human life lie below the placid, civil, timid, forbearing exterior of the native of India" (ibid: 8). Chevers (1856) specifically spoke of a "deceit inherent in the character of the lower class of natives" (Chevers 1856: 257), marking the express attribution of a credibility deficient to subaltern women.

The post-colonial continuities of colonial rape jurisprudence are evident at numerous sites of testimonial injustice haunting Bhanwari Devi's struggle for justice. In a report titled "Many Flaws in Bhanwari's Rape Case" published by the Hindustan Times in New Delhi on 1 October 1992, the author provided a detailed characterisation of Bhanwari Devi based on conversations with the police and residents of Bhatari. In his effort to invalidate Bhanwari Devi's testimony, Sethi (1992), described Bhanwari Devi as a "bold, aggressive and arrogant woman," and pointed out that "in the family also, she is playing a dominant role [sic], and a few months ago she gave a dressing down to her father-in-law for creating hurdles in her activities as a *sathin*": implying that such agentival behaviours are hardly compatible with victimhood. The author also pointed to the fact that this was likely a "concocted story" given that Bhanwari Devi "told her rape story with all the details"— a manifestation of agency Sethi (1992) was unwilling to attribute to real or authentic victims.

The jurisprudential history of sexual violence in India is replete with troubling precedents that uphold the impossibility of a *genuine* victim being able to reliably narrate

their experience of sexual violence. In 1983, in the case of *Bharwada Bhogibhai Hirjibhai vs State of Gujarat*, Justice Thakkar attempted to make a case to lower the threshold of evidence or corroboration required in cases of rape. Despite this progressive intention, the rationale Justice Thakkar extended was steeped in, and reproduced, patriarchal scripts of shame and honour. The judgement stated:

(1) A girl or a woman in the tradition bound non-permissive Society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred; (2) She would be conscious of the danger of being ostracised by the Society or being looked down by the society including by her own family members, relatives, friends, and neighbours; (3) She would have to brave the whole world; (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered (*Bharwada Bhogibhai Hirjibhai vs State of Gujarat* 1983).

The judgement thus codified within case law the perverse rationality within the 'tradition bound' context of India, no 'innocent' woman would be able to testify to her victimhood, and thus, conversely, no women able to testify to her victimhood was to be believed (inverting Menon 2004: 131). As James Baldwin wrote while describing the misrepresentation of Billie Holiday in the film *The Lady Sings the Blues* "that victim who is able to articulate the situation of the victim has ceased to be a victim: he, or she, has become a threat" (Baldwin 1976). Such a construction of victimhood re-inscribes the victim/agent binary by refusing the attribution of victimhood to subjects who are able to exercise agency in order to testify to their violation. Additionally, through such a framing, victimhood comes to be encoded as and associated with a particular set of prescribed behaviours, responses and embodied attitudes, rather than simply denoting an experience of harm. Victimhood is then understood as producing and revealing certain universal inner truths about subjects, their psychological states, and behavioural tendencies, mirroring the dangerous 'turn to the interior' in contemporary characterisations of victimhood (Gilson 2016; see Chapter 2).

The judgement in the case of *Ram Karan Gujjar and Ors. vs the State of Rajasthan* also participated in entrenching the victim/agent binary through its invocation of the figure

of the *habitué*. Recall from Chapter 4 that the *habitué* became the judicial category to describe a figure understood as 'habituated to sexual intercourse', exercising an unruly sexual agency, and systematically denied victimhood. Within colonial and post-colonial jurisprudence on rape, the virtues of chastity and veracity are twinned, forming the justificatory basis for the denial of 'victim' status to a subject seen as unchaste, and hence, untrue in their testimony. In the judgement on Bhanwari Devi's rape, the judge made mention of the presence of a "fourth man's semen",⁸⁴ ostensibly untraceable to Mohan or the accused Badri and Gyarsa Gujjar (this evidence was refuted by the prosecution, but these challenges were ignored in the judgement). The presence of this untraced semen was grounds to cast aspersions on Bhanwari Devi's fidelity, sexual morality, and ultimately, the veracity of her testimony. Thus, the figure of the *habitué* discussed in the Tukaram judgement (Chapter 4) appeared once more, re-inscribing the victim/agent binary through the case law in Ram Karan Gujjar vs State of Rajashtan (1995).

Above all else, however, Bhanwari Devi's encounter with law enforcement was mediated by the entrenched rationalities of Brahminical caste oppression, and the ensuing denial of credibility, reliability, and ultimately victimhood to *Dalit-Bahujan* women. On 25 September 1992, the Deputy Superintendent of Police (DySP) arrived in Bhateri along with a police officer to conduct inquiries into the case. As part of the investigation, the DySP interrogated Rameshwar Panda and the postmaster Nathuram who Bhanwari Devi had approached for help immediately after she was raped. Although both admitted that Bhanwari had informed them that her husband had been attacked and an '*anyay*' (injustice) was done to her, both claimed not to know that she had been raped. It is worth noting that in local parlance, rape is often euphemised as '*anyay*' or '*bura kaam*' (bad deed). Eventually, the DySP readily accepted the version proffered by Rameshwar and Nathuram, and accepted their insistence that rape had not taken place as sacrosanct when they agreed to swear their account by '*ganga jal*' (holy water from the river Ganga). Bhanwari Devi also offered to swear her truth by '*ganga jal*', to which the accompanying investigating *Thanedar* Cheetar Singh responded "*Aise to gangajal joothi ho jayegi*" (you would only make the gangajal impure/contaminated) (Mathur 1992).

⁸⁴ This evidence was ostensibly retrieved from her skirt (*lehenga*) rather than through the medical examination.

In suggesting that Bhanwari Devi would only sully/contaminate the water on her contact with it as a *Bahujan* woman, she was attributed a casteist, 'polluting' capacity, and denied the ability to perform sworn truth. Discourses of purity and pollution are central to the logic and functioning of violent caste hierarchies in India, and serve to sustain ritual exclusion, deny violation, and justify oppression of *Dalit-Bahujan* subjects (Irudeyam *et al.* 2011; Kowtal 2019; Madhukar 2015; Soundararajan and Vartharajah 2015). Through an extension of this very logic of purity and pollution, and the polluting capacity inherent to Bhanwari Devi as a *Bahujan* woman, the judgement denied the very possibility of the rape, as below:

The court is of the opinion that Indian culture has not fallen to such low depths: that someone who is brought up in it; an innocent, rustic man; will turn into a man of evil conduct who disregards caste and age differences and becomes animal enough to assault a woman. How can persons of 40 and 60 years of age commit rape, while someone who is seventy years old watches by?prosecution ... has not proved beyond doubt that Gyarasa, 60 and Badri, 40 raped Bhanwari Devi while Ramsukh and Shrawan, Bahmin and therefore of a different caste from the other accused looked on (Ram Karan Gujjar and Ors. vs the State of Rajasthan)

The possibility of *savarna* men 'disregarding' caste difference to violate a *Dalit-Bahujan* woman registered in the judgement as so far beyond the realm of possibility, that caste difference itself became a key evidentiary basis for the acquittal. In affirming the impossibility of rape across caste lines, the judgement blatantly denied the centuries long systemic, structural violation of *Dalit-Bahujan* women by upper caste men (Irudeyam 2011; Madhukar 2015; Manorama and Kandasamy 2007), erasing the history of sexual violence *as caste violence*. The judgement re-inscribed the impossibility of state-recognised *Dalit-Bahujan* victimhood and exposed the entrenched castiesm of law enforcement and judicial rationality in India.

Towards the end of her poem titled 'Aantaraani atyaachaaram', poet Challapalli Swaroopa Rani writes (translated from Telugu by Naren Bedide aka Kuffir):

even after (murder) death

we don't get a fistful of honour;
moreover, we're subjected to
lance-like comments–
'who asked her to sleep around' or 'who asked her to die'–
that pierce our souls
and kill us again
Now tell me
in this land
are even murders and rapes
free of untouchability...?

[extract from Naren Bedide's translation of the Telugu poem 'Aantaraani Atyaacharam' by Challapalli Swaroopa Rani (from the collection 'Dalita Kavivam - 2').]

The poem presents a plaintive rendering of how subaltern subjects are framed as culpable in their own violation, responsible for their own suffering, always agents and never victims. Thus, while *Dalit-Bahujan* and *Adivasi* subjects frequently approach the law for justice, the gendered, castiest logic of the law reinterprets agency as responsibility, and denies them legitimate victimhood. The machinations of caste in a profoundly Brahminical society serve to simultaneously make *Dalit-Bahujan* subjects available for violence; render them unruly, over-agentival and unreliable narrators of their own suffering; and finally refuse them recognition as victims. Thus, once again, victimhood and agency were locked firmly into a binary, incompatible relationship through the procedural and substantive rationality of the state.

Dominant Feminist Response: Truncating the Subaltern Subject⁸⁵

The gang rape of a sathin of Rajasthan's high profile Women's Development Project meant to be a retribution for her active participation in exposing and preventing child marriages, has once again highlighted the vulnerability of poor, rural, low-caste women who are being groomed to be change agents in a complex, feudal society (Mathur 1992: 2221 emphasis my own).

Mathur's (1992) introduction to her piece "Bhateri Rape Case: Backlash and protest" exemplifies an important attribute of dominant feminist discourse on the attack on Bhanwari Devi: a simultaneous and explicit emphasis on both victimhood *and* agency (see 'active participation' and 'vulnerability' above). Refusing the state's prevailing attachment to the victim/agent binary, feminist articulations around the Bhateri rape case consistently sought to highlight both Bhanwari Devi's radical, transgressive and inherently agentive role as a *sathin*, as well as the brutality of the violences visited upon her (Pamecha 1992; Prabhu 1992; Rai 1992; Sondhi 1992, Srivastav 1993; Unni 1992; as well as press releases, letters and reports in the Jagori Archives).

Following the assault, feminist academics, activists, lawyers and NGOs writing about and supporting Bhanwari Devi were consistent in their affirmation of her agency, both bound up in and beyond her role as a *sathin*, *and* their representations of the violent and coercive conditions within which she came to be attacked. Thus, despite (some, albeit uncomfortable) feminist complicity in the WDP's initial framing of the heroic autonomous *sathin* as "the locus of responsibility but not of injury" (Madhok and Rai: 646), after the attack, feminist discourses were consistent in their simultaneous emphasis on agency and victimhood, posing an important challenge to the stranglehold of the binary.

This important intervention was, however, often found wanting in one crucial regard: much of the nationally circulated feminist discourse on the case *systematically elided the*

⁸⁵ I use the language of 'dominant' or feminisms rather than 'mainstream' to explicitly address the workings of power (Madhukar 2015) in sidelining and maligning *Dalit*, *Adivasi* and other subaltern feminist articulations.

issue of caste (Baxi 2013; Herbert 2015; Kannabiran 2018; Manorama and Kandasamy 2007; Rowena 2017). Framing the attack as purely an issue of *gendered* violence, dominant (upper class, urban and *savarna*) feminist discourses often explicitly *denied* the caste rationalities underpinning both the attack and the miscarriage of justice that followed. For example, a press release signed by over 22 feminist NGOs and women's collectives⁸⁶ on 18 January 1996 stated: Bhanwari Devi's case, which is a case of sexual violence against women, is being deliberately manipulated into a caste issue to seek votes (Press release by 'Organisations Concerned with the Rights of Women', Jagori Archives 1996 emphasis my own)

The press statement was intended as an indictment of BJP's tactics to "garner votes in the Gujjar dominated Bassi constituency" (ibid), by garlanding the five accused in the Bhatari attack, and publicly discrediting Bhanwari Devi. Despite the justified outrage at the BJP's casteist opportunism and explicit celebration of the attackers, the statement belied the feminist organisations' own occasional elision of the *intersectional* nature of Bhanwari Devi's vulnerability, and eventual attack (Rowena 2017). While regional level feminist activists and organisations (including interviewees Mamta Jaitley, Renuka Pamecha, and Dr Pritam Pal) consistently amplified Bhanwari Devi's caste critique, and remain crucial allies in her continued battle against caste and gender hierarchies in Rajasthan, the framing of the case at the national level often left out the question of caste, including in the Vishaka judgement. The most enduring legacy of feminist agitations around Bhanwari Devi's rape came in the form of the public interest litigation Vishaka and Ors. vs State of Rajasthan⁸⁷ and the resulting judgement. A group of five NGOs: Vishaka, Mahila Purnvas Samou, Rajasthan Voluntary Health Association, Kali for Women, and Jaori filed a Public Interest Litigation (PIL) in the Supreme Court of India seeking relief from "the violation of the fundamental rights of working women" (SC Writ Petition 666-670 1992: 1), based on the attack on Bhanwari Devi. Following acceptance of the petition, the Court solicited

⁸⁶ The notice was signed by the National Commission for Women, All India Democratic Women's Association (AIDWA), National Federation of Indian Women (NFIW), Joint Women's Program, All India Government Nurses Federation, Progressive Students Union Delhi University, Nirantar, Jagori, Sakshi, Alarippu, Purogami Mahila Sangathan, Shakti Shalini, All India Progressive Women's Association, Charkha, Women's Political Watch, Kali, Indian Social Studies Trust, Action India, Ankur, Centre for Social Research, and the Indian Social Institute.

⁸⁷ *Vishaka and ors vs State of Rajasthan* 1997, 6 SCC 241

guidelines from the petitioners, which were in turn instrumental in framing the final judgement. The draft guidelines submitted by the NGOs in consultation with Delhi-based lawyers, as well as the final judgement make no mention whatsoever of caste and class as axes of discrimination or vulnerability. The guidelines emerging from the PIL failed entirely to address multiply marginal, subaltern subjects, while safeguarding the interests of elite, upper class *savarna* women in professionalised workspaces (discussed in some detail in the next section).

Thus, while dominant strands of the feminist discourse on Bhanwari Devi were able to accommodate her complex reality as both victim and agent, her inclusion within the national-level feminist register was also marked by the erasure of her caste identity: Bhanwari Devi was only admitted to the (dominant, national) feminist archive as a truncated subject, marked and produced only by gender but not by caste. In fact, the erasure of caste had implications for Bhanwari Devi's representation as both agent *and* victim: both her agency *and* victimhood were shorn of their caste (and class) axes. Her victimisation was presented as solely the result of her gendered subordination, and simultaneously, elements of her radical anti-caste agency were obscured. In fact, hegemonic feminist discourse failed to incorporate and amplify Bhanwari Devi's own expressly materialist, caste-based analysis of her oppression. Madhok's (2014) interviews with Bhanwari Devi reveal an articulation of agency derived from, and developing within the backdrop of *precisely* Bhanwari Devi's caste identity and oppression:

The state does not take the side of poor people, it only sides with the rich and the powerful....The Gujjars are high caste and they have a lot of money. They have 500 bighas [tradition unit of land measure less than an acre] of land and they sell crops worth nearly 3-4 lakh every year (Bhanwari Devi quoted in Madhok 2014: 145).

Why did the state not give me justice ... after it was abundantly clear that I had been raped? ... It spoke up for the rich and the powerful and the upper castes (Bhanwari Devi quoted in Madhok 2014: 146).

Dalit-Bahujan feminist academics, activists and collectives have long critiqued such

truncated accommodations of multiply marginal subaltern subjects within hegemonic feminist discourses. The *Alisamma Women's Collective* of Hyderabad Central University, for instance, released a statement to challenge the “caste-blind perspectives of upper caste feminism” on Women’s Day in 2002, stating:

We want you to acknowledge the political importance of ‘difference,’ i.e. heterogeneity that exists among Indian female community. That you are made whereas we are mutilated. You are put on a pedestal, whereas we are thrown into fields to work day and night. You were made Satis, we were made harlots (cited in Rowena 2017).

Rowena (2017) argues that the sexual harassment discourse in the Indian context “does nothing but reproduce this difference”. To Rowena, this discourse “appropriates the caste-gender oppression and resistance of a lower class *Bahujan* woman towards procuring rights and protection for elite/upper caste women” (ibid 2017 discussed in some detail in the next section). Manorama points out that discourses of sexuality, sexual morality, violence, harassment and control and regulation are all *instrumentally engaged* in the making and unmaking of the very categories of caste and gender in India (Manorama and Kandasamy 2007). The material and discursive production of *savarna* women as pristine, chaste victims for protection is parasitic upon the ‘othered’ production of *Dalit-Bahujan* women as always already sexually available (ibid 2007).

Thus, while dominant feminist discourses admitted Bhanwari Devi as both victim and agent, her accommodation, especially at the national level, entailed the violent erasure of a key axis of both her agency and victimhood: that of caste. While challenging the victim/agent binary, feminist discourses preserved a zero-sum, single-axial account of Bhanwari Devi’s subjecthood as both victim and agent, reaffirming the irreconcilability of the victimhood and agency of multiply marginal, subaltern subjects. The next section examines the effects of the encounter between dominant feminist discourses and the state in the case of the Public Interest Litigation initiated by feminist NGOs Vishka, Mahila Purnvas Samou, Rajasthan Voluntary Health Association, Kali for Women, and Jagori.

Legislative Reform: Institutional Inscription of the Binary

Parallel to but entirely separate from the criminal proceedings, Bhanwari Devi was at the heart of another judicial process, though on this occasion, her role was far more symbolic than substantive. The Public Interest Litigation (PIL) initiated by Vishaka and four other NGOs sought relief in respect of the State of Rajasthan, the State Women and Child Welfare Department, the Department of Social Welfare, and the Union of India's "failure time and time again to recognise that working women, in particular those working as change agents for the benefit or on behalf of the state are by virtue of their gender, consistently vulnerable to various forms of sexual harassment and abuse" (SC Writ Petition 666-670 1992: 1). Notably, the PIL and the judgment that emerged from it present a vivid illustration of the ways in which the three discursive registers I consider— case law, feminist discourses, and legislative reform— frequently seep into and across on another. Although, as it was heard at the Supreme Court, the Vishaka judgement is an instance of case law, the guidelines it set down *functioned* as legislation, and were drafted in extensive collaboration with feminist activists, academics and organisations.

The grounds for relief listed in the writ were that "repeated acts of sexual violence experienced by working women ... by virtue of their gender consistently vulnerable (sic) to various forms of sexual harassment and abuse in violation of Articles 14 and 21⁸⁸ of the Constitution of India" (SC Writ Petition 666-670 1992: 1). The 'prayer' listed at the end of the petition urged the court to "issue a writ, order or direction... directing the Union of India to constitute a committee to frame guidelines for the prevention of sexual harassment and abuse of women" (ibid: 6). The petition used Bhanwari Devi's story as a concrete and central illustration of systemic rights violations (the details of the attack on Bhanwari Devi and her ensuing struggle for justice occupy four and half pages of the six page petition). Thus, while the writ was intended "to empower all similarly situated women" (Sood 2006: 59), Bhanwari Devi's case provided the impetus as well as material grounding to the plea.

⁸⁸ Article 14 is the right to equality, while Article 21 is the right to life and personal liberty.

After the Supreme Court accepted the writ petition for hearing, the Vishaka petitioners filed various supporting documents pertaining to international law, including a UN document confirming India's ratification of CEDAW (which occurred after the initial Vishaka petition was filed).⁸⁹ The Vishaka judgement and the judicial process culminating in it typified the particular mode of increasingly transnationally experiences and transmitted 'governance feminism' illustrative of efforts to address sexual violence from the 1980s onwards (Kotiswaran 2017). Dominant, urban and (largely) legally trained factions of the feminist movement were 'let in' to the state and its processes, and the judgement was regarded a "result of cooperation" between the litigants (feminist organisations), respondents (executive branches of the state), and the judiciary (Sood 2006: 530-534). Through a series of submissions, depositions and consultations, feminist organisations were able to crucially inform the substantive content as well as parameters of the judgement. Further, the decision relied heavily on CEDAW, affirming the pervasive (though not always transformative) impact of international left legalist framings on the post-colonial judiciary (Atrey 2017).

The court delivered the Vishaka judgement on 13 August 1997, authored by then-Chief Justice of India, Justice Verma.⁹⁰ The decision described Bhanwari Devi's gang rape as an illustration of "the hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate; and the urgency for safeguards by an alternative mechanism in the absence of legislative measures" (Vishakha and Ors. vs State of Rajasthan 1997: 1). Following this brief acknowledgement, the judgement moved on to frame guidelines to address sexual harassment in the workplace, with no further mention of, or direction to address, the particular case of Bhanwari Devi, citing that, "that incident is the subject matter of a separate criminal action and no further mention of it, by us, is necessary" (ibid: 1). Notably, the Vishkha judgement was proffered *after* the November 1995 acquittal of all accused on charges of rape.

The Vishakha case marked the inauguration of official state discourse on 'sexual

⁸⁹ Other submissions included relevant sections of a 1994 report by the UN Special Rapporteur on Violence Against Women; an International Labor Organization manual on combating sexual harassment in the workplace; a paper on Australian approaches to sexual harassment; the Philippines Anti-Sexual Harassment Act of 1995; lists of relevant comparative case law from other jurisdictions etc.

⁹⁰ Justice Verma appears again as chief architect of the Verma Committee Report in 2015, discussed in Chapter 6

harassment' in the Indian context.⁹¹ In an increasingly common instance of the judiciary extending its reach to perform an expressly legislative function, the Vishaka judgement served as the law governing the prevention and redressal of sexual harassment in India, until it was effectively replaced by the Sexual Harassment Act of 2013 (Kotiswaran 2017). The fact that this judicial act of legislation came in the form of a PIL is not incidental to my analysis in this section, and bears brief consideration. Bhatia (2017) argues that often, following the filing of a writ, the petitioner or central subject of the petition becomes "peripheral to the proceedings". Given that the mechanism of Public Interest Litigation was introduced in order to secure justice for (subaltern) persons who were unable to approach the Supreme Court of their own accord, the endemic tendency of PILs to eventually displace the petitioning subject and her interests "betrays PIL's very *raison d'être*" (ibid). This broader proclivity of PILs to dislodge the marginal subject from its intent, proceedings and outcome was manifestly evident in the case of Bhanwari Devi and the Vishaka judgement. Through the rest of this section, I track how, through an over-ascription of an autonomous, heroic agency and an under-emphasis on her victimhood, the legislative register failed to adequately represent Bhanwari Devi's complex subaltern subjecthood, and address her multiple marginalities.

In the judgement, the Court decreed that "it shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required" (Vishakha and Ors. vs State of Rajasthan 1997: 8). The legal definition of sexual harassment was stated as below:

... sexual harassment includes unwelcome sexually determined behaviour (whether directly or by implication) as: physical contact and advances; a demand or request for sexual favours; sexually coloured remarks; showing pornography; and any other unwelcome physical, verbal or non-verbal conduct of a sexual nature (ibid: 8-9).

⁹¹ A detailed evaluation of the efficacy of the judgment is beyond both the scope and intent of this thesis. In this chapter, my analysis will be limited to a discussion of those aspects of the judgement that had implications for the victim/agent binary.

The judgement provided a set of guidelines for the prevention and institutional redress of sexual harassment at the workplace, but stressed that “where such conduct amounts to a specific offence under the Indian Penal Code or under any other law the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority” (ibid: 12). The attack on Bhanwari Devi was unambiguously a *criminal* offence under section 376 of the penal code. As per the guidelines, Bhanwari Devi’s only recourse would then remain the criminal judicial process, which had so spectacularly failed her. Thus, it became immediately evident that the Vishakha judgement, despite its enormous debt to Bhanwari Devi, was entirely ineffectual in addressing her specific case.

Besides its failure to further Bhanwari Devi’s own struggle for justice, the judgement also came as a betrayal of the initial writ’s intention to “empower all similarly situated women” (Sood 2006: 59). The judgement was fundamentally flawed in its imagination of the subject of sexual violence it sought to protect. Drawing on the WDP’s ‘agent-of-change’ framing of the *sathin* subject, the writ reproduced this imagination of an autonomous, self-authoring and heroic subject of development. The exaggerated representation of Bhanwari Devi as an ‘agent-of-change’ in the petition, as well as the complete erasure of caste and class vulnerabilities from the petition and subsequent submissions, served as the grounds for a mis-described subject with the resources, training, capacity and support to access and navigate the institutional mechanisms the guidelines established. The judgement presumed inclusion within a formal, institutionalised workspace, access to a degree of social capital and support, and only addressed injury or violence that was not tantamount to a criminal offence (Baxi 2000, 2013, 2014; Krishnan and Arasu 2001; Sood 2006). On all these counts, the judgement failed to capture the material conditions of precarity, constraint, coercion and extreme violence within which Bhanwari Devi’s attack and her fight for redress were located.

These misalignments and omissions, combined with the unfettered, autonomous liberal subject central to the legal imaginary (discussed in Chapter 4), produced what Baxi (2013) described as an “abject disconnect between the survivor’s life and legal history”. As case law relating to the judgement systematically demonstrates, the beneficiaries of the guidelines are almost exclusively upper class, *savarna*, heterosexual, cis-gendered,

white-collar women, employed within the (limited) professionalised urban workspace (Baxi 2000, 2013, 2014; Krishnan and Arasu 2001; Sood 2006). Scholarship reveals a dismal failure in the judgement's ability to address working conditions in the unorganised, informal sector, where a vast majority of subaltern subjects seek their livelihoods (Baxi 2014; Kapur 2001; Krishnan and Arasu 2001). Thus, the transmission of an over-emphasised agency and under-described victimhood from the feminist writ petition to the Vishaka judgement served to expressly exclude the very subjects it set out to empower.

In addition to its procedural failure to account for these precarious classes of labour, the framing of the judgement also allows for a series of interpretive exclusions due to its incorporation of the notion of '*unwelcome*'. The judgement's determination of 'sexual harassment' is predicated on the '*unwelcome*' nature of a sexual interaction (see Vishaka and Ors. vs State of Rajasthan 1995: 8): a criterion that is fundamentally mediated and distorted by the oppressive rationalities of caste, class, and gender and sexual normativities. Dominant representations and interpellations of *Dalit-Bahujan*, working-class and non-normative gendered/sexual subjects as promiscuous or always already welcoming sexual contact, have a long history in colonial and post-colonial case law (Baxi 2014; Kapur 2001). The *habitué*, or the licentious, sexually unruly, over-agentive subject is fundamentally excluded from the imagination of victimhood: she is forever an (unruly, sexual) agent, never a victim. As Kapur (2001) highlights, the qualifying function of '*unwelcome*' in the definition of sexual harassment becomes the basis to re-inscribe damaging tropes and deny subaltern victimhood, and serve to institutionalise the "moral regulation of sexual behavior" (Kapur *et al.* 1998). Thus, through its incorporation of the notion of '*unwelcome*', the Vishaka guidelines uphold the victim-agent binary, denying recognised victimhood to subjects coded as invested with (unruly, sexual) agency: subjects like Bhanwari Devi.

While Chapter 4 discussed the dangers of the state reauthorising itself and its carceral functions in response to sexual violence, the Vishaka judgement sifted the locus of protection to the market. Through the Vishaka guidelines, the state outsourced the function of protecting women from sexual harassment to employers; in a routine display of fidelity to its increasingly neoliberalised ethos. The capitalist labour market, anointed

through the judgement as ‘purveyor of freedom and protector of the injured’ (Brown 1995) then produced various coercive and disciplinary effects for the very women it was appointed to protect. For instance, the (now discontinued) Sumangali Scheme, recruited poor, rural teenage girls to work under exploitative conditions in the garment industry by providing assurances to their families that the workers would be rigorously ‘protected’ (Krishnan 2018; Solidaridad Network 2012). This protection took the form of containment and surveillance, where girls lived in hostels within the factory premises, and were trapped in “prison-like conditions”, with restricted movement and social interaction (Krishnan 2018: 80). Soliciting parental and societal consent predominantly on the grounds of ensuring the safety and security of these ‘vulnerable’ girls, the Sunmangali Scheme instrumentalised discourses of threat and violability to produce “docile labouring subjects” (Krishnan 2018: 77).

The Sumangali Scheme was far from an exception, with similar practices underwriting several manufacturing facilities across Tamil Nadu and Karnataka (Theuws and Overeem 2014). These factories served as paradigmatic sites of ‘punitive paternalism’ (Roy 2017) where the ‘will to empower’ (Cruikshank 1999) is refracted to discipline and violate its intended subjects. Within these spaces, the discourse of victimhood served as the very basis for the relentless disciplining of agency, presenting an instance of the re-inscription of the victim/agent binary through dominant discourses on sexual harassment. Notably, most of the girls enlisted under such schemes and subject to these captive, extractive forms of labour confinement were rural girls from *Dalit-Bahujan* communities (Solidaridad Network 2012; Theuws and Overeem 2014). Thus, while the Vishkha petition sought to address women “similarly situated” (Sood 2006) to Bhanwari Devi, these categories of women were systematically excluded from the state’s ambit of redress (as discussed earlier), while disproportionately bearing the cost of the violent ‘punitive paternalism’ (Roy 2017) it unleashed via the labour market.

The case of the exploitative garment sector also presents some wider, transnational implications of the victim-agent binary in the form of what Krishnan (2018) calls the ‘capitalist rescue narrative’ (ibid: 79). This discourse takes the form of a growing domestic and international consensus that globalised capital alone holds the potential to liberate third-world women from the clutches of patriarchy and poverty. Krishnan (ibid)

notes that, in the year 2012, a series of suspiciously similar ‘news’ stories appeared in the international print media, celebrating how lingerie brand Victoria’s Secret was providing garment sector jobs to empower and emancipate poor Indian women (see Bhalla 2012; Ramadurai 2012; Whitelocks 2012). One story, published by Reuters, reads:

The padded “Very Sexy” push-up bra which 22-year-old Jaya sews is for American lingerie retailer Victoria’s Secret LTD.N - designed to give a “boost” to buyers in hundreds of high-fashion boutiques across the United States. But a world away in this traditional rice-growing region of southern India, these luxurious bras are - in a different way - enhancing the lives of poor rural women. “I knew nothing but the village before,” says Jaya, sitting behind her sewing machine on the busy factory floor of textile manufacturer, Intimate Fashions, in Tamil Nadu (Bhalla 2012).

Krishnan (2018) describes the seduction of such a narrative to western consumers, assured that their purchases are transformative and liberating for the ‘poor, rural’ women manufacturing them. These narratives serve to uphold neo-imperialist representations of poverty and patriarchy as cultural pathologies of the ‘third world’, while producing the undifferentiated and monolithic third world woman as leading “an essentially truncated life based on her feminine gender (read: sexually constrained) and being ‘third world’ (read: ignorant, poor, uneducated, tradition-bound, domestic, family-orientated, victimized, etc)” (Mohanty 1984: 337). The outcome of such caricaturing is the homogenised production of the ‘third world women’ as powerless, exploited, harassed, and most significantly, *agentless* (see Chapter 3). Thus, through systematic re-circulations of the ‘agentless third-world woman’, the capitalist rescue narrative served to enable and embolden neo-imperial capitalist exploitation in the name of empowering women: upholding the victim/agent binary in its course.

Finally, *Dalit* feminists have pointed out that the judicial/legal discourse of sexual violence in general, and sexual harassment in particular, has long been used as a technology of control and subordination of *Dalit-Bahujan* men (Manorama and Kandasamy 2007; Rowena 2017; Sanghatana 1991). The ‘Chunduru carnage’ of 1991, for

example, where thirteen *Dalit* men were murdered by Reddies⁹² aided by the local police, was instigated on the basis of unfounded claims that a *Dalit* man harassed an upper caste woman (Sanghatana 1991). Far too often, “trumped up” charges of harassment of *savarna* women by *Dalit* men serve as “a blank permission slip” for unfettered and brutal retaliation (ibid: 2082), while systemic caste aggression against *Dalit-Bahujan* women, as in the case of Bhanwari Devi, remains entirely unacknowledged and unaddressed (ibid: 2082). The very discourse of sexual violence and sexual regulation, to Manorama (2007), is inextricably rooted in, and mediated through, caste, producing *savarna* women as pristine victims, *Dalit-Bahujan* men as violent predators, *savarna* men as protectors of virtue, and *Dalit-Bahujan* women as always sexually available. The structures of caste, gender and sexual normativity interact within discourses of sexual harassment to produce the victim and agent as caste-inflected, gendered, and fundamentally *irreconcilable* categories. Thus, as this section has demonstrated, while the Vishaka writ and its subsequent judgement were written in the *name* of Bhanwari Devi and other “similarly situated women”, through a set of fundamental representational failures, the guidelines re-inscribed the victim-agent binary, and did more to entrench exclusions and marginalities than abate them.⁹³ The Vishaka guidelines thus present an instance of how through the dominant register and its investment in the victim/agent binary, subaltern subjects are selectively raised, displaced and erased in order to secure the privileges of more structurally advantaged subjects — a challenge that persists in the contemporary #MeToo movement in India.

India’s #MeToo Movement: Feminism’s Right sort of *Dalit-Bahujan* Woman

Bhanwari Devi’s rape and ensuing battle for justice is customarily invoked in most literature, scholarly or otherwise, that seeks to analyse the provenance and relevance of

⁹² The Reddies constitute a powerful land-owning caste community, with roots as feudal overlords and peasant proprietors.

⁹³ The Working Women (Prevention of Sexual Harassment at Workplaces) Bill was introduced in the Rajya Sabha in March 2006, building on the Vishaka Guidelines. Following several rounds of consultations and amendments, the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act (aka the POSH Act) came into force in December 2013. Despite efforts to expand the scope of the ‘workplace’ to substantively address informal and domestic spheres of labour, various procedural limitations of the Act render it “unlikely to benefit these workers” (Pullat 2017). While it is outside the scope and interest of this thesis to conduct a detailed evaluation of the Act and its impact, it is important to note that the critiques of the Vishaka judgement detailed above persist in the imagination and implementation of the Act.

#MeToo in contemporary India (see Frayer 2019; Kannabiran 2018; Murthy 2015; Roy 2018; V. Geetha 2017). In this section, I briefly track the antecedents of, and contestations surrounding #MeToo in India, and attempt to demonstrate how Bhanwari Devi continues to exceed representation within this emerging (and by no means static) register.

The List of Sexual Harassment Accused (hereafter LoSHA) was a compilation of names of South Asian academics accused of sexual harassment, published by then a *Dalit-Bahujan* lawyer and PhD candidate Raya Sarkar. Inspired by Tarana Burke's recently popularised #MeToo campaign in the US and Professor Christine Flair's (2017) post detailing her harassment within the academy, LoSHA was intended to "make others aware of who they should be wary of" (Sarkar in Shankar 2017). Sarkar compiled the list based on testimony from victims and close friends of victims, and received "screenshots of chats, Whatsapp messages, emails, call recordings that corroborate[d] the testimonies of the victims" (ibid). In less than a day, the list named over seventy academics, many of whom were prominent members of the Indian and international left intelligentsia.

Twelve hours after the list was posted on Facebook, fourteen prominent, predominantly *savarna* Hindu feminists released an online statement appealing for the list to be withdrawn (Kafila Statement by Feminists 2017; hereafter the Statement). The Statement registered "dismay" at the initiative, expressed concern over the "lack of answerability of the list", and suggested that the list's "manner of naming can delegitimize the long struggle against sexual harassment, and make our task as feminists more difficult" (ibid). This statement was soon followed by several distinct denunciations of LoSHA by individual signatories of the Statement and others. These critiques were met with an "equally vociferous" (Da Costa 2018) response: Sarkar and other allies pointed to the hypocrisy of the Statement and its professed faith in 'due process', particularly given that (i) several of the signatories were long-time critics of institutional mechanisms and their failures and (ii) *Dalit-Bahujan* and *Adivasi* activists had long pointed out that even when institutional redress existed for upper class, *savarna* women, subaltern women were seldom addressed. LoSHA and the response to it laid bare the depth and persistence of critical fault-lines in Indian feminism, particularly around the issue of caste (Bargi 2017; Da Costa 2018; Kannabiran 2018; Mondal 2018; Rao 2018; Rowena 2017).

A year after LoSHA, starting in September 2018, a series of social media posts by predominantly *savarna*, urban, professional women launched the “current iteration” (Roy 2018) of the #MeToo movement in India. This wave of accusations emerged predominantly within the media and entertainment industries (Kannabiran 2018; Roy 2018), and garnered far more widespread circulation and unequivocal support within the hegemonic feminist movement than LoSHA did (Da Costa 2018; Kotwal 2019; Mondal 2019). Several of the signatories of the Statement denouncing LoSHA expressed solidarity with this movement, citing a key difference: this iteration of #MeToo involved personal public disclosures which include the specifics of allegations, rather than LoSHA’s anonymous list covering a range of unspecified allegations (with varying severity), which presented its attendant risks and dangers.

There is, notably, no semblance of consensus either within the dominant feminist movement or *Dalit-Bahujan* feminisms around the merits and limitations of either LoSHA or the more recent #MeToo mobilisations. Some *Dalit* and other subaltern collectives extended support to the later #MeToo formulation, while drawing attention to its need for an intersectional practice (see Dalit Women Fight 2018; Decolonial Feminist Statement on #MeToo by Kashmiri women 2018 *inter alia*). Various *savarna* and *Dalit* feminists expressed qualified support for both LoSHA and the later movement, while other *Dalit* activists registered dire reservations against both. It is neither the interest nor the place of this thesis to adjudicate on the potentials and problems presented by both instances: rather, it is my contention that it is dangerous to attempt broad pronouncements on their efficacy without an analysis of the dynamics of power underpinning them. Through this section, I hope to contribute to this project of exposing power by producing an account of a particular element of these discourses: I examine the constructions and attributions of victimhood and agency within LoSHA and contemporary articulations of #MeToo.

Dalit-Bahujan scholars and activists have revealed a troubling dynamic across these movements: a willingness within *savarna* discourses of sexual harassment to embrace, and even exploit, *Dalit-Bahujan* women as victims, but never as agentic leaders of the movement (Mondal 2018; Ramdas 2018). Mondal (2018) writes:

Why are Savarna Indians so reluctant to be represented by a Dalit woman, even someone who is a stranger, someone whose work is not specifically for or about Dalits? Raya Sarkar's list wasn't only for Dalit women, yet Savarna India needed a new, unrelated #MeToo movement to feel comfortable talking about large-scale sexual harassment. What message does that send to us Dalit women?

While refusing the legitimacy of a *Dalit* leader, the #MeToo movement nominally centers *Dalit-Bahujan* women in a role *savarna* feminists have long reserved for them: that of the quintessential victim. In a series of anachronistic and deracinating gestures, certainly intended in tribute but to nonetheless questionable effect, Bhanwari Devi has been declared the “Mother of India’s MeToo” (Frayer 2019). These ‘tributes’, however, do little to address the struggles of Bhanwari Devi and those like her, as Ramdas (2017) points out in a Facebook post:

*Phoolan, Bhanwari, Mathura, the nameless joginis and devadasi girl children cannot be linked to this metoo movement even by the most ahistoric kind of reasoning. their battle against sexual violence represents the majority of women from working castes and tribes, that is *women in the unorganized sector,* women with no privileges to lose in professional setups, women who fought back and have to fight back with guns, with laws, with slippers, with spit, with whatever they could, with whatever they can. women whose battles' accounts are not quivering with the terror of the brahmin-savarna men and their power to mess up professional careers. there is no meeting place for dalit bahujan women's history and the ruling class women's history. they are marked by different realities (Ramdas 2017).*

To Ramdas, what is even more disquieting than this ahistorical, nominal invocation of *Dalit* victims is the violent appropriation of subaltern trauma in the furtherance of securing *savarna* interests, particularly when factions of the digital #MeToo movement used images of Kathua rape victim Asifa Bano to symbolise their struggle. Asifa was an eight-year-old girl from a Muslim nomadic community travelling through the military-occupied Kashmiri valley. In January 2018, Asifa was kidnapped and held hostage in a Hindu temple by at least eight men, including local government officials and policemen,

where she was “raped for days, tortured, and then finally murdered” (BBC 2018). Ramdas (2018), writes:

why does this metoo movement need murdered children to be its mascot? what kind of convoluted leads to this.. to make it inclusive by getting hold of that prized identity: dalit? living dalit women are too problematic? there are no dalit women in the organized sector? so a dead child works best? (Ramdas 2018)

Ramdas’ critique of violent *savarna* expropriation of subaltern suffering was echoed in Mondal’s (2019) work. Mondal (2019) described how *savarna* discourse on sexual harassment was only interested in the *right* sort of *Dalit* subject — the *Dalit* woman only ever as abject victim, never as vocal agent:

The one person Savarnas traditionally cannot stand is the Dalit who can speak. That person is therefore no longer a “real Dalit.” So all the Dalits who are well-educated, articulate, have enough social safety—the only ones of us who have the power and skills to raise their voice and criticise the Savarna hegemony—are effectively delegitimised from speaking for our community. Raya or Meena or Christina or Thenmozhi or Sujatha or I are not the “right” kind of Dalit for liberal Savarna tastes. The “right” kind of Dalit is the body that was pulled down from the tree or fished out of the sewer, because that one is no longer squeaking (Mondal 2019).

The *savarna* accommodation of only the ‘right’ kind of *Dalit* is an exemplary illustration of what post-colonial feminists have long critiqued as troubling attachments to illusionary native authenticities (Chow 2003; Fusco 1994). Chow (2003) describes the discomfort and sense of betrayal experienced when “ethnic specimens” (ibid: 125) are seen as “no longer staying in their frames” (ibid: 126). The shattering of this always-illusionary authenticity (Fusco 1994) often provokes intrusive and even violent inquiries in the quest of establishing authenticity, or exposing the subject’s fraudulence. Within the context of #MeToo, several signatories of the Statement against LoSHA publicly demanded proof that Raya Sarkar was, in fact, *Dalit*, and expressed deep scepticism as to her subaltern ‘authenticity’ (Mondal 2019).

Dominant discourses surrounding the #MeToo movement in India thus betray an appropriative attachment to the “right” kind of *Dalit-Bahujan*, defined entirely by their abject victimhood; and a simultaneous refusal to accommodate *Dalit-Bahujan* agency or leadership. Claiming her as a feminist subject via the #MeToo movement thus transmits the harms of a partial and overwritten representations of subaltern subjects, claimed for and by far more privileged subjects to whom she is “simultaneously proximate and distant” (Lewis 2017: 7).

The Subaltern Archive: Victimhood as a Background Condition for Agency

Thus far, this chapter has focussed on the truncated, partial admission of Bhanwari Devi as a subaltern subject within dominant registers, mediated through a binary imagination of victimhood and agency. In the scramble to respond to Bhanwari Devi’s rape, all three sites (case law, feminist discourses, and legislative reform) evinced a series of representational erasures, betraying a systematic attachment to the victim/agent binary. My analysis so far exposed the damaging work of the binary in displacing the subaltern subject at the heart of the crisis, denying recognition of her victimhood, and entrenching her marginality through the very discourses meant to empower her. Thus, the response to Bhanwari Devi’s rape reinforces the urgent need to dismantle the victim/agent binary, and to find ways to represent the subject of sexual violence as not victim or agent, but always, simultaneously, both. In this final section, I turn to subaltern archives in order to interrupt the dominant (binary) representational regime, and produce an account of Bhanwari Devi that is able to capture and reflect her complex reality as both victim and agent. Following the subaltern studies tradition of centring the subaltern subject, and more specifically, subaltern consciousness, in the telling of her history (Guha 1988: 76), this archival exercise is an effort to redress the representation losses entailed in Bhanwari Devi’s partial accommodation in the telling of her story as ‘case’, narrated mostly through, or at the very least for/in appeals to, the state.

The first archive I consider is located in the basement library of Jaipur-based NGO Vividha. Established by Mamta Jaitley (also a co-founder of Vishaka), Vividha publishes a monthly newsletter, *Ujjala Chaddi*, written by and for newly literate women in (mostly rural) Rajasthan. *Ujjala Chaddi* closely documented the Bhatari rape case and the

mobilisations surrounding it, and carried several pieces by *sathins* involved in supporting Bhanwari's struggle for justice. My analysis draws on archived issues of *Ujjala Chaddi* dating from November 1993 to December 2000. In addition to *Ujjala Chaddi*, I also draw on other resources from Vividha's archive, including transcripts from interviews with Bhanwari Devi, pamphlets, newspaper reports, NGO reports, feminist activists' accounts of protests and rallies, and activist Kavita Srivastava's detailed documentation of Bhanwari's encounter with the local *panchayat*. The second archival source is a series of interviews conducted by Sumi Madhok, and documented in her book (Madhok 2013). During her fieldwork (conducted over 1998-1999, and intermittently across 2003, 2004, 2006, and 2007), Madhok documented the life histories of 70 *sathins* from and working in Jaipur and Ajmer districts — nearly half of all *sathins* working across the districts — including Bhanwari Devi. Finally, I return to some of the documentation around mobilisations following the attack on Bhanwari Devi, preserved in the archives of Delhi-based NGO Jagori. What unites each of these differently located archival sites is a common and express commitment to capturing and amplifying subaltern accounts of their complex realities, presenting crucial sites for the emergence of banished knowledges, exiled from the 'official' account of subaltern suffering (see Chapter 3).⁹⁴

My engagement with these archives is animated by the pursuit of a different (from the dominant archive) representational orientation towards the subaltern subject, which in turn poses the possibility of a different politics of addressing sexual violence. In other words, I read the subaltern archive for representational practices that defy the dominant (truncated) figurations of Bhanwari Devi as culpable habitué, agentless icon of abjection, or unencumbered agent-of-change. Through these alternative representational regimes, I assemble the conceptual infrastructure through which to think victimhood and agency otherwise, and challenge the victim/agent binary and the politics it sustains. Applying the reading practice for victimhood and agency in the subaltern archive outlined in Chapter 3, I develop an account of subaltern agency as emerging precisely from

⁹⁴ Importantly this subaltern archive cannot be thought of as hermetically sealed from, and entirely uncontaminated by dominant discourses. To the contrary, through the imbrication of various arms of the state and feminist activists and academics, both within the WDP as well as through the Vishaka legal encounter, it is often a similar cast of actors engaged in the important work of producing and preserving both the subaltern archive, as well as participating in dominant discourses. Thus, through this chapter I hope to refuse an easy separability or neat opposition between the dominant and subaltern archive.

experiences of victimhood, posing a direct challenge to the dichotomous orthodoxy of victimhood and agency in the dominant archive.

An 'Ideological Break with the State'

Hill Collins (1991) suggests that, within contexts of constraint, scholars must attend to manifestations of agency within which the subject might “remain 'motionless on the outside'...[but] develop the 'inside' of a changed consciousness” (Hill Collins 1991: 111). Hill Collins' recommendation to detect agency through changes in consciousness despite outward stillness points to the significance of Bhanwari Devi's shifting, and increasingly critical, disposition towards the state, despite her continued association with it in the capacity of *sathin*. Madhok's (2014) interviews with Bhanwari Devi on her appraisal of the state attest to the emergence of a deliberative mode of critique:

Despite all my fights for women's rights, the state has not given me justice. The state talks about fighting for women's development through education and the women's development programme...the Sarkar [government] that tells us about women's rights and urges us to educate other women about their rights so that they too can claim their rights. But tell me, what are the kinds of rights that the state is talking about...how come they never listened to my claim for rights and justice? Why does it even bother running these legal institutions? (Bhanwari Devi quoted in Madhok 2014: 145).

The whole talk of asking for our rights is insincere. From who should we demand our rights? (ibid: 145).

Bhanwari Devi's critique of the state, and the gap between its discursive and material commitment to rights and justice, raised significant questions around the actual 'doing' of rights (Madhok 2014: 150). Bhanwari Devi's disenchantment with the state's institutional provisions to access or realise abstract right claims evinced a radical critical consciousness; a tangible illustration of deliberative agency. Importantly, Bhanwari Devi saw this critique as deriving precisely from her experience of state abandonment.

The sarkar should have come to my aid. Those who violated the law have been set free...I work for women's development, for the state, and I want justice from the state. The state should have given me justice. . . I had complete faith in the state, but it never spoke up for me. I have been working and raising all issues in the hope of protection from the state for doing its work. Why did the state not give me justice...after it was abundantly clear that I had been raped? ... It spoke up for the rich and the powerful and for the upper castes...If the state does not provide me justice I will die an ant's death...The Gujjars will just squash my family and me (Bhanwari Devi quoted in Madhok 2014: 145, 146)

Bhanwari Devi thus expressly identified her experience of state abandonment as foundational to her disenchantment with the state, its moral legitimacy, authority and efficacy. Further, by at once identifying with, *and* in opposition to, the state, as both employed *and* failed by the state, Bhanwari Devi articulated what Madhok (ibid: 150) identified as a growing moral conundrum amongst *sathins*: i.e. “how to reconcile their status and role as *sathins*, which inevitably invoked their association with the state...with their commitment to rights and justice which they had thus far derived as workers of the same state” (ibid: 150). These complex deliberative processes marked a growing ideological break from the state, provoking deeper questions around whether and how rights could be supported outside of the framework, moral authority, and justificatory basis of the state (Madhok 2014). The emergence of a collective, critical, agentival disposition vis-à-vis the state was thus rooted in Bhanwari's experience of victimisation, and exacerbated by state abandonment.

Bhanwari Devi's disillusionment with the state also stemmed from state complicity and collusion in preserving social hierarchies of class and caste, the very structures that produced the conditions of her victimhood. Recall, for instance:

The state does not take the side of poor people, it only sides with the rich and the powerful ... The Gujjars are high caste and they have a lot of money. They have 500 bighas [tradition unit of land measure less than an acre] of land and they sell crops worth nearly 3-4 lakh every year (Bhanwari Devi quoted in Madhok 2014: 144, 145).

Representations of Bhanwari Devi's complex relationship with and trenchant critique of the state have significant implications for a feminist politics of response to sexual violence: it offers the basis for a decidedly anti-carceral posture, driving responses to sexual violence away from relationships of reliance on and investment in the law, the state and its punitive infrastructure. By fundamentally interrogating the moral legitimacy of the state and unmasking its role in reproducing the very structures and ideologies that normalise sexual violence against subaltern subjects, Bhanwari Devi challenged the state's pretence as protector or purveyor of freedom, while also refusing to disengage entirely from (and implicitly absolving) the state and its institutions. Instead, Bhanwari Devi forged a different relationship with the state, demanding accountability for its complicities, while resisting the ties of dependency and regulation that rape law often disciplines women into.

Notably, Bhanwari Devi's account of victimhood as well as state complicity is strikingly structural and intersectional, emphasising the intersecting axes of caste, gender and class in producing the conditions for both her violation as well as the denial of justice (a theme I return to later in my analysis). Through Madhok's (2014) interviews, then, Bhanwari Devi is represented as a complexly constituted, multiply marginal, and expressly *agentival* subaltern subject, incorporated simultaneously as victim *and* agent. These accounts thus serve to contest her partial, truncated and inevitably binarised representation across dominant registers, and commence the process of displacing and challenging the condemned subject of dominant narrativisation.

Re-scripting the Social and Institutional Encounter

Hill Collins (1991) describes how even —and often especially— in contexts of violence and oppression, subaltern women work through various collective and cognitive processes, rather than explicit or material action, to shift the meanings associated with their lives in significant but often neglected articulations of agency. While the demonstrations in Jaipur one month after Bhanwari's rape received media and academic attention, quieter but equally significant processes of collective *sathin* agency have remained understudied. Through posters, pamphlets and articles in *Ujjala Chaddi*, *sathins*

pushed back against dominant social and institution scripts, reinterpreting various encounters in acts of collective, disruptive meaning-making. Here, I expand on some of the more collective agentival articulations that emerged against the backdrop of Bhanwari Devi's victimhood.

One of the most striking exercises in collective meaning-making that emerged from *Ujjala Chaddi* reporting on Bhanwari's rape was a radical rejection of dominant scripts of shame that attached themselves to experiences of sexual violence. Rape in India was, and in many ways continues to be, saturated with patriarchal ascriptions of shame and dishonour to the victim, their family and community (Agnes 1992; Baxi 2013, 2014; Das 1996). These discourses even found institutional acknowledgement: various Supreme Court judgements speak of rape as the ultimate humiliation; enshrouding women with shame, risking the loss of her respect and status (see, for instance Bharwada Bhogibhai Hirjibhai vs State of Gujarat, Babulal vs State of Madhya Pradesh). In express defiance of these scripts, *Ujjala Chaddi* headlines and reports, and *sathin* protest pamphlets and posters read: "Whose honour was lost? Gyarasa's was; Badri's was!"; "Whose honour was lost? The state's was; the police's was!"; "Whose nose was cut?⁹⁵ The Rajasthan government's was" (Ujjala Chaddi November 1993, January 1994; October 1994; December 1995; Jagori Archives 1993).

In the protests that followed Bhanwari Devi's rape, *sathins* raised slogans that posed a direct challenge to gendered scripts of women as exclusively weak, vulnerable and violable; as always, already, and *exclusively* victims. *Sathins* and their allies chanted "*hum bharat ki naari hain; phool nahi chingari hain*" (we are India's women; not delicate flowers but powerful sparks) (Letter to *sathins*, Vividha Archives October 1992); and "*koi na kahen humein phir kabhi abla; saath milkar hum sabhi hain sabla*" (let no one ever again call us weak; united we are strong) (ibid). Crucially, these articulations challenged ontological accounts of victimhood as inhering in the weak, delicate female body, instead producing a strictly structural account of victimhood as induced by social and political structures. Mirroring Sunder Rajan's (1993) framing of victimhood as a "stage rather than a state", *sathins'* re-scripting of victimhood refused its association with passivity and

⁹⁵ A common metaphor for the loss of grace; respect; regard.

prescribed responses of shame and humiliation, eschewing the dangerous ‘inward turn’ in dominant accounts of victimhood (Gilson 2016, see Chapter 2). This refusal and the radical inversion of dominant scripts of shame and female violability displayed a resistive agency borne precisely of the violent, patriarchal and oppressive conditions Bhanwari Devi and other *sathins* were forced to inhabit: i.e. an agency coexisting with, and emerging exactly in response to, and acknowledgement of, conditions of victimhood.

Sathins also reinterpreted various elements of Bhanwari Devi’s institutional encounter with the law enforcement machinery, reformulating their implications into affirming and uplifting scripts. Despite the state’s failure to deliver justice and the various levels of institutional violence and distrust Bhanwari Devi experienced, *Ujjala Chaddi* carried a series of articles titled “We have won!”, “Bhanwari’s Truth Acknowledged!”, “Truth Prevails Again!” (Ujjala Chaddi September 1994, October 1994, November 1994). Referring to instances when the CBI eventually pressed charges, and when bail was denied to the accused at the sessions court level, these articles rescript the institutional meaning of these (incremental and ultimately incomplete) proceedings, framing them as affirmations of Bhanwari Devi’s truth, and acknowledgements of her suffering. These celebrations betrayed an implicit recognition but simultaneously subversion of state authority. The *sathins*’ strategic affirmations and negations of state authority, morality and significance in their life displayed complex processes of collective fashioning via their encounter with the violent state: once again displaying forms of deliberative and discursive agency framed within and against conditions of constraint.

Finally, Bhanwari Devi’s experience of victimhood formed the basis of a collective repudiation of pervasive silences around issues of violence against women. Bhanwari Devi’s rape, and choice to testify publicly, occurred within a context of socially enforced silence on women’s sexual victimisation. As Bhanwari Devi shared:

They think that I should have kept quiet about the fact that I was raped. Talking about it has resulted in bringing about shame and loss of honour upon the family, and consequently upon the village... the villagers think that only those women are respectful and honourable who do not bring their issues/problems and shame into the open, and who hide it within themselves. It is the same reason for which the

government did not let me go abroad for conferences that I was invited to as they did not want the 'tale of Rajasthan' to be told to others. They wanted this to remain within. The state and society are similar. There is no difference (Bhanwari Devi quoted in Madhok 2014: 157).

Bhanwari Devi's analysis was echoed by *sathin* Mohini Devi, who affirmed:

Women in the villages keep all their thoughts and deeds to themselves. Bhanwari spoke up openly about what had happened to her and therefore all the vilagers started thinking she is vile and a bad woman as she let everyone know of her shame. The villagers want women not to speak up ... (Mohini Devi quoted in Madhok 2014: 167).

In the protests supporting Bhanwari Devi's choice to seek justice and testify to her victimhood, *sathins* vociferously endorsed her decision to speak out, and called for a collective refusal of the social demand for silence on matters of sexual violation. A letter to *sathins* and their allies rallying support for Bhanwari Devi (Vividha Archives October 1992) urged "it is only when you speak, when you open your mouth, that the world can change". Emphasising that "silence is a key foundation of women's unfreedom and weakness", the letter called on its readers to "break the silence" (ibid) with urgency.

This call to testify in defiance of hegemonic social demands for silence must be read within the tradition of emancipatory feminist utterances, rather than in line with Foucault's critique of confessional discourse (1980: 58, 63). To Foucault, in believing that truth-telling about our experiences holds the key to our liberation, "we forget that this truth has been established as the secret to our souls not by us but by those who would discipline us through that truth" (Brown 1995: 42). In the case of women's testimonies of sexual violence, Brown argues via Foucault this 'truth' then filters into nationalist, patriarchal projects eager to construct femininity as violability, and designed to exploit this 'truth' in order to discipline us (ibid: 42). Das (2011), however, provides us with a resolution to this bind; a bind which, it is worth pointing out, remains resigned to a binary imagination of victimhood and agency. Das points out that while such discourses are amenable to nationalist ambitions keen to freeze women as victims (see Chapter 6),

women's production of these narratives occur through process that "simultaneously demonstrate harm, bare witness, and forge themselves [women] *otherwise*" (Das 2011, emphasis hers). Das (2011) insists that reading testimonial practice precisely *as agentival* allows women to show the harm done to them while not simply asserting, but *demonstrating* their multiple sites of subjecthood including, but certainly not limited to victimhood. The normative attachment to testimonial practice then no longer lies exclusively in the truth-value, or epistemic purity of the 'truth' of violence being confessed, but in the recognition of women as authoritative narrators of, and agents within, their own lives and experiences.

A series of pamphlets handed out to raise awareness about the Sessions Court judgement and the state's failure in securing justice for Bhanwari Devi declared, in solidarity with Bhanwari Devi: "If speaking the truth is rebellion, then consider us rebels" (Vividha Archives 1995; Jaagori Archives 1995). Another *Ujjala Chaddi* title stated "This, too, is a form of bravery" (October 1994). Reporting on Bhanwari Devi being conferred the Neerja Bhanot Bravery Award, the article emphasised the importance of recognising the act of speaking up about or reporting sexual violence as a form of courage, of heroic bravery, given the deep trauma caused by sexual violence, and the high social costs of discussing it. By framing and affirming Bhanwari Devi at once as rebel, victim, and hero, the article and pamphlet revealed Bhanwari Devi's multiple and simultaneous sites of identification, ascription and subjecthood. Taken together, these examples demonstrate how shared knowledge of pain forms both the basis for the forging of a collective subalternity, as well as the substrate from which this collective subaltern polity derives its capacity for a radical subjectivity and agency.

Agency Via Victimhood: Bhanwari Devi's "Interventionalist" Social Restitution

Spivak (1993) reminds us that within conditions of subalternity, while there is "no unmediated access to 'correct' resistance" (ibid: 103), there remain models of 'interventionalist practice' that scholars must attend to. Within persistent conditions of violence, constraint and coercion, the challenge of reading and representing agency then lies in tending to untidy, imperfect and incomplete 'interventionalist' practice. In the case of Bhanwari Devi, the subaltern archive reveals instances of partial, but far from

insignificant interventionalist practice in her efforts to forge a community following her rape and the backlash entailed by her struggle for justice.

Even before the attack on 22nd September 1992, Bhanwari Devi had been formally excommunicated by a *jaati* (caste) *panchayat* meeting of her own *Kumhar* community, convened by her father-in-law (Dateline 1992). The disownment was in retaliation for the work Bhanwari Devi was engaged in as part of the WDP to stop child marriage. Following the assault on 22nd September 1992, Bhanwari Devi's social exclusion extended across most caste communities within Bassi district (Dateline 1992). By early 1995, following the arrests of the accused (but preceding the verdict), Bhanwari Devi was routinely publicly humiliated by the local MLA, Block Development Officer, Panchayat Samiti Pradhan and other local officials at panchayat meetings, election rallies, WDP block level meetings, etc. On 25 February 1995, at a meeting convened by the WDP to enlist the support of local officials for one of its initiatives, the newly elected Panchayati Raj Institutions (local governance) threatened to boycott the WDP and all its *sathins* if Bhanwari Devi did not withdraw the case (Srivastava, Jagori Archives 1995). Various officials publicly denounced her as a liar, mocked her, and cast aspersions on her sexual morality (*ibid*). The social cost of Bhanwari Devi's pursuit of justice was, and continues to be, exorbitant: she still lives in Bhatari, where the *Gujjars* remain a powerful community, and her family continue to face all forms of social and economic sanction, ranging from exclusion from weddings and community celebrations, to loss of commercial patronage.

Given the multiple sites and extended temporality of Bhanwari Devi's victimhood, it might appear that Sunder Rajan's (1993) suggestion of pain and victimhood as a "stage rather than state" (*ibid*: 22) does not lend itself to the case of multiply marginal subaltern subjects, for whom victimhood is seldom a singular event. It might even be tempting to embrace ontological accounts of victimhood, conceptualising it as an enduring condition or even identity that attaches itself to, and fundamentally constitutes, subaltern subjects in a stable, almost unfaltering manner. Bhanwari Devi's own reality, however, provides a crucial counter to such all-encompassing, ontological accounts of victimhood, as demonstrated below.

Bhanwari Devi's social status is by no means marked exclusively with the scars of exclusion and abjection. Three vignettes from the archives tell a different story, of a community forged otherwise, of bonds built and upheld precisely through shared experiences of violence and proscription. These stories demonstrate the possibility of alternative solidarities, built from an authority and agency conferred upon Bhanwari Devi in recognition of her experience of victimhood and struggle for justice. Activist Kavita Srivastava (1995) documented how, in the years following the attack, Bhanwari Devi's relationship with three marginal communities in her village improved: the *Kohli*, *Ballai* (both Scheduled Castes) and *Meena* communities (a Scheduled Tribe). On their request, Bhanwari Devi was present at several of their community level meetings, at which they expressed admiration and regard for her tenacity in pursuing justice (Srivastava, *Backlash...*Jagori Archives 1995). Bhanwari Devi was often asked to intervene in order to settle disputes of marriage, was approached by women who were also victims of sexual violence, and was seen as a figure of authority and wisdom within these communities and their caste Panchayats.

Bhanwari Devi's status as authority and arbiter found broader recognition in February 2000. On 31 January 2000, Bassi was preparing for a *Panchayat* (local government) election when a researcher associated with the NGO Vividha visited the district to report on women's participation in the elections (Vividha Archive 2000). On her way to Bhatari, the researcher was accosted by a man called Nathi Meena, who attempted to molest her. The researcher escaped his attack, and made her way to Bhatari where she met, and was looked after by Bhanwari Devi. Bhanwari Devi along with other *sathins* hosted her for the night, and Bhanwari Devi escorted the researcher back to Vividha headquarters in Jaipur the next day. At Vividha, various members of the NGO along with the researcher and Bhanwari Devi decided that justice in this incident must be delivered at the village level, where the attack occurred, and that they did not want to involve the police or lodge a formal complaint (Vividha internal document, Vividha Archives 2000). On 8 February 2000, a committee of local members from the villages of Bhatari, Kanoti and Prepura was assembled to hear the case. Bhanwari Devi, along with another woman from a scheduled caste community, were invited to be part of the committee and decide on the matter (ibid). Members from women's organisations across Rajasthan gathered for the hearing, and senior members of the Bhatari community not only conferred legitimacy to the

committee and the public hearing, but affirmed the importance of women's organisations and programmes addressing sexual violence. On 10 Feb, in line with the decision of the committee, the accused admitted to attempted molestation, agreed to beg the victim's forgiveness at her feet, and to donate 52 Kgs of *ghee* to the local temple (ibid; Hindu 2000).

Bhanwari Devi presided over an altogether different gathering seven years later, in October 2007. Kiran and Vinod, both from different parts of rural Rajasthan, had met and fallen in love while studying in Jaipur (Vij 2007). Vinod's father was a farmer from the *Mali* community, while Kiran was a *Jat*, whose family owned four village schools. When Kiran's parents found out about her intention to marry Vinod, they forced her return to her home. When she escaped, they "took her away, drugged her and beat her up" (ibid). It was a few days before she could call Vinod, who approached activist Kavita Srivastava, then national secretary of the People's Union for Civil Liberties. Kavita in turn went to the police to secure Kiran's freedom from her parents' captivity. On 28 September 2007, Kiran and Vinod recited marriage vows that invoked Gandhi and Marx at a small ceremony where the invited chief guest was Bhanwari Devi.

These glimpses into Bhanwari Devi's life hardly present an exhaustive account of or insight into her complex social navigations. They are also certainly not intended to uncritically extoll the virtues of village-level, *Panchayat* administered 'rustic justice' (as the Hindu headline captioned the case), or new hierarchies of social authority. Instead, they evince the possibility of alternative solidarities, of the forging of different communities in the backdrop of conditions of extreme violence and oppression. They demonstrate how, in recognition of her victimhood and ensuing struggle, Bhanwari Devi is conferred authority and agency, and able to forge a community not simply despite, but in various ways precisely through, shared experiences of victimhood.

Bhanwari Devi's interventionalist gestures of alternative community-building acquires an altogether more poignant tone when read against the backdrop of ongoing caste violence in India. As I first drafted this chapter, national news channels reported on nineteen-year-old Rukmini Ransingh and her husband Mangesh Ransingh, set ablaze in Maharashtra on 1 May 2019 by her family for their inter-caste union. On 5 May 2019,

Rukmini Ransingh died in hospital of burns sustained in the attack (Indian Express Webdesk 2019). In a context where homes, natal communities, and caste-belonging pose a constant, murderous threat, it is crucial to recognise and celebrate the radical exercise of agency entailed in forging alternative socialities, building different communal harbours, and determinedly claiming dignity and community in victimhood.

My analysis in this final section falls within a broader anthropological tradition insistent on representations of subaltern subjects as “made up of divided and fractured subject positions” and possessing a “complex agency”, often derived *from* the “poisonous knowledge of violence and suffering” (Das 1997: 222; see Chapter 3). Bringing these efforts to the specific context of sexual violence in India, I attempt to assemble the archival and conceptual material through which to challenge the truncated representation of subaltern subjects in dominant discourses of sexual violence. In the subaltern archive, victimhood and agency are understood and represented in ways that pose a fundamental challenge to their (binary) conceptualisations in the dominant archive. Rigorously structural, intersectional accounts of victimhood as an experience of socio-politically induced harm refuse the figure of the self-responsible agent-of-change, and demand accountability from the state and its institutions for their culpability in the production of harm. Representations of collective subaltern agency in the form of testimonial practice, the forging of alternative solidarities, and the re-scripting of social and institutional encounters additionally challenge the appropriation of subaltern trauma through the portrayal of subaltern subjects as icons of abjection, or as passive, weak and vulnerable subjects for protection via capitalist rescue missions. Finally, the subaltern archive prompts a fundamental rethinking of the nature and role of the state in redressing sexual violence, reformatting the relationship between subaltern subjects and the state from one of dependency to an equation of accountability. An understanding of agency as bound up with, and emerging within the backdrop of experiences of structurally induced victimhood, as I attempt above, thus provides a crucial resource through which to demonstrate the conceptual poverty, and instability, of the victim/agent binary, and to challenge the coercive, exclusionary politics the binary sustains.

Conclusion

In this chapter I have argued that subaltern subjects are admitted within dominant discourses of sexual violence as either agentless icons of abjection, or as liberal autonomous ‘agents of change’, culpable in their own violation, and responsible for their own suffering. Through a refusal to simultaneously recognise and represent subaltern victimhood and agency, the subaltern subject is selectively evoked — spoken for, and often over — in a manner that serves to secure the privileges of more advantaged subject at the express cost of subaltern liberation. *Dalit*, *Bahujan* and *Adivasi* subjects are positioned as unreliable narrators of their own suffering, and are only ever (partially) accommodated within the dominant archive on terms that are not their own, often mediated by the *savarna* appropriative attachment to subaltern suffering. A feminist historical ontology of victimhood and agency in discourses of sexual harassment thus reveals a persistent attachment to the victim/agent binary across the (often intersecting) sites of case law, legislative reform, and feminist discourses of sexual violence.

Importantly, feminist historical ontologies go beyond tracking the antecedents and effects of dominant conceptual categories: they insist that scholars tend to how subjects exceed the categories they are disciplined into, and ‘speak back’ to the regimes of power in which they are caught up and produced (Chapter 3). A feminist historical ontology of victimhood and agency in discourses of sexual harassment thus not only reveals how Bhanwari Devi is representationally truncated and erased within the dominant archive, but also how Bhanwari Devi’s reality leaves traces and tracks of ‘excess’, and even refusal, beyond dominant discursive registers. It is precisely these traces of excess within the subaltern archive that contain the possibility of alternative conceptual arrangements of victimhood and agency. Drawing on newsletters, pamphlets, posters, protest slogans, interviews and other ephemera emerging from Bhanwari’s Devi’s struggle for justice, I assemble the archival material from which to take forward feminist historical ontology’s insistence on deriving conceptual accounts from sites and artefacts hitherto disqualified as inferior or naïve. These archives hold representations of personal and collective testimonial practice, tell stories of re-scripting dominant social and institutional narratives around sexual violence, reveal occasions of collective reflexive deliberation, moments of new solidarities and the forging of new political communities: all decidedly

agentival practices emerging precisely from subaltern women's encounters with sexual violence and their struggles against it. Agency, as I read it in the subaltern archive, materialises in response to, rather than in the place of, conditions and experiences of victimhood. With these emergent possibilities for a different conceptual imagination of victimhood and agency, I turn to my final analytical chapter.

Chapter 6: Jyoti Singh: Securing the Nation through the Politics of Protection

“The victim of such a crime is neither alive, nor dead; if she survives, she is forever condemned to the existence of a zinda laash [a living corpse]” - Sushma Swaraj, Leader of the Opposition, BJP in the Lok Sabha on 17 December 2012.

On the evening of 16 December 2012, Jyoti Singh Pandey was brutally raped and assaulted by six men aboard a private bus in South Delhi. Thirteen days later, she died due to injuries sustained during the attack. In the days following Jyoti Singh’s rape, large-scale mobilisations erupted across the country, most notably in Delhi, with protesters flooding into the capital city’s arterial roads and bringing large parts of the city to a standstill (Bakshi 2017; Dutta and Sircar 2013; Lodhia 2015). In response to the mass movement, the Delhi Police imposed a city-wide curfew, ostensibly “in fear of a law and order situation” (Kotiswaran 2017: 3), and deployed water cannons and tear gas to disperse the protestors (ibid). In the period immediately following the attack, “rape was catapulted into the mainstream of public life, whereas until 2012, it was almost exclusively a feminist concern” (Kotiswaran: 4).⁹⁶ The mobilisation following the death of Jyoti Singh led to far-reaching legislative reform in the form of the Criminal Law (Amendment) Act of 2013, putatively offered in acknowledgement of and response to decades of feminist efforts to amend legal provisions relating to the protection of women from sexual violence.

In this chapter, I argue that dominant legal responses to the rape and murder of Jyoti Singh (re)produced the figure of the ‘agentless victim’ as the paradigmatic subject of sexual violence (following Mohanty 1988; Kapur 2005; Spivak 1988). In contrast to the legal construction of Mathura and Bhanwari Devi (as either culpable habitué, or self-responsible agent of change), case law represented Jyoti Singh as an agentless victim comprising a vulnerable ‘protectorate’. Judicial discourses in the trials relating to Jyoti Singh’s attack constructed Indian women as trapped within a biologically determined condition of helplessness and vulnerability, producing victimhood as (i) an enduring, defining condition (ii) emerging as an inevitable result of women’s physical fragility. I

⁹⁶ For analyses on what might account for the unprecedented response to the rape and murder of Jyoti Singh see Kotiswaran (2017), Shandilya (2015), Kandasamy (2013).

trace how the figure of the agentless victim travels beyond case law, often informing (while also being challenged by) legislative and feminist discourses of sexual violence. Across dominant registers of response to the rape and murder of Jyoti Singh, I follow the sites at which the figure of the agentless victim is produced, contested and recuperated, and examine the implications of imagining the subject of sexual violence as devoid of agency. Through the selective designation of some subjects (mediated through the rationalities of gendered and sexual normativities, caste, and religion) the figure of the imperilled (normative) female body is produced as an idiom for the nation itself, providing the ideological animus for the expansion of the masculinist, patriarchal, colonial state in the name of protecting the vulnerable woman/nation and securing her sovereignty, security and purity. Within the immediate context of an increasingly authoritarian, Hindu nationalist and colonising state in India, I argue that the figure of the agentless victim is appropriated towards regulatory, coercive, exclusionary and often brutal ends. What is at stake through my analysis is an exposition and critique of the troubling conditions under which victimhood is granted and recognised, and the various violent and exclusionary rationalities re-inscribed through these protocols of recognition.

Finally, given the amenability of discourses to sexual violence to capture by exclusionary nationalisms, I turn to politicisations of sexual violence that do not so readily accommodate, and even expressly frustrate, disciplinary nationalisms and violent neo-colonialisms. Continuing my engagement with the subaltern archive from Chapter 5, in this chapter, I assemble an archive of discursive artefacts that are able to simultaneously uphold an ethical relationship with the brutalised subaltern subject, and challenge the victim/agent binary and its entanglement with violent nationalisms. Through this final section, I demonstrate that by challenging the representational regime that sustains the figure of the agentless victim, there remain possibilities to rescue subaltern life, suffering and death from their incessant incorporation in the service of violent and exclusionary hierarchies.

Case Law: Punitive Paternalism and the Agentless Victim

What are the conditions for, and consequences of, case law's selective recognition of (some) women's victimhood in India? How does the law view, and in turn constitute, the legitimised, recognised victim of sexual violence? What are the criteria for inclusion within the legally sanctioned category of victimhood, and what are the consequences of the law's selective recognition and representation of certain gendered subjects as victims? How, in other words, does the law understand and produce victimhood?

On 3 January 2013, five days after Jyoti Singh's death and against the backdrop of intense national and international scrutiny, the attackers were charged with thirteen offences under the Indian Penal Code.⁹⁷ One of the accused, Ram Singh, died in police custody from alleged suicide on 11 March 2013.⁹⁸ The remaining four accused — Pawan Gupta, Vinay Sharma, Mukesh Singh and Akshay Thakur stood trial at a Delhi District Court, were found guilty on all counts on 10 September 2013, and were sentenced to death by hanging on 13 September 2013. On 13 March 2014, the Delhi High Court upheld the guilty verdict and the death sentences. The Supreme Court of India rejected all appeals and upheld the death penalty in a judgement delivered on 5 May 2017, stating that the accused had committed "a barbaric crime", and had "shaken society's conscience" (*Mukesh & Anr. vs State For NCT Of Delhi & Ors.*: 2⁹⁹). On 20 March 2020, Pawan Gupta, Vinay Sharma, Mukesh Singh and Akshay Thakur were hanged at Tihar jail, New Delhi.

While the decision to enforce the death penalty was vociferously denounced by feminist activists, academics, and members and allies of the women's movement in India (Khan 2020), the substantive contents of the judgements relating to the case of *Mukesh & Anr. vs State For NCT Of Delhi & Ors.* proved less controversial. On the contrary, the Sessions Court, High Court and Supreme Court rulings on the case were broadly celebrated, particularly for their affirmative view of the credibility and evidentiary weight of victim testimony (Nigam 2017). Benches at all three levels of the judiciary condemned the

⁹⁷ The juvenile accused stood trial separately, and was given the maximum possible sentence of three years imprisonment in a reform facility.

⁹⁸ Ram Singh's death provoked much controversy, with widespread allegations that he was murdered in prison. While police reports list the death as suicide, Singh's attorney and family pressed for further investigation (Pandey and Sikdar 2013).

⁹⁹ *Mukesh & Anr vs State For Nct Of Delhi & Ors* 2017, 6 SCC 1.

treatment of women in India, and decried social and judicial pre-occupations with shame in responding to sexual violence. The Supreme Court judgement in particular went on to constitute crucial precedent, supplementing a growing body of case law that confers evidentiary significance to victim testimony in cases of sexual violence (ibid). Through these judgements, Jyoti Singh received unequivocal recognition as a victim within the eyes of the law at every level of judicial appeal; quite unlike Mathura and Bhanwari Devi. Jyoti Singh's affirmation as victim (while by no means inconsequential) should *not*, however, be straightforwardly interpreted as the culmination of years of successful feminist engagement with legal reform. The continued denial of justice to hundreds of victims of sexual violence (some as recently as 2020) serve as solemn reminders of the untenability of teleological progress narratives in accounting for the recognition of *some* women's victimhood within case law. In the rest of this section, I critically engage with the judgements relating to the rape and murder of Jyoti Singh in order to answer two central questions: First, on what terms was recognition of victimhood granted through these trials? Second, what modes of politics do these conditions of recognition precipitate? Put differently, through what protocols of recognition does the law construct the subject of sexual violence, and what forms of interventions/responses is this subject seen to invite from the law?

Producing the Protectorate: The Legal Inscription of the Agentless Victim

The judgements relating to the case of Mukesh & Anr. vs State For NCT Of Delhi & Ors. provide crucial insights into the law's characterisation of the victim subject. The death sentence ruling by the Delhi High Court bench comprising Justice Khetrpal and Justice Rani, for instance, stated:

Nirbhaya was on the verge of completing her Physiotherapy Course and provide (sic) healing touch to many patients in need of physiotherapy. Her fragile physique as a young girl rendered her totally helpless when the convicts took turn (sic) to rape her. She could only look towards her friend (PW-1) for help who was also pinned down

and assaulted by the convicts to prevent him from coming to her rescue (Delhi High Court, Death Sentence Reference No. 6/2013: 330,¹⁰⁰ emphasis mine).

In her concurring note in the judgement Justice Pratibha Rani noted:

While delicate physique of a woman has made her vulnerable (sic), her place and role in the growth of society has made her command utmost respect. These characteristics of a woman have been depicted by great Hindi Poet Jai Shankar Prasad in his epic 'Kamayani' as:

'Yeh aaj samajh to paayi hoon,

Main durbalta mein nari hoon,

Avyay ki sunder komalta,

Lekar main sabse haari hoon.'

(This, I understand today, I am a woman, in weakness; The delicate beauty of my limbs, Because of which I lose to all)."

Nari! tum kewal shraddha ho,

Vishwas-rajat-nag-pal-tal mein,

Piyush srot si baha karo,

Jeevan ki sundar samtal mein.

(Oh woman! You are honor personified, Under the silver mountain of faith, Flow you, like a river of ambrosia, On this beautiful earth) (Delhi High Court, Death Sentence Reference No. 6/2013: 331, translations provided in original, emphasis mine).

While upholding the death sentence awarded by the Delhi High Court, Justice Dipak Misra, Justice R. Banumathi, and Justice Ashok Bhushan of the Supreme Court proffered:

¹⁰⁰ Delhi High Court, Death Sentence Reference No. 6/2013, IV (2014) CCR 174 (Del.)

The death sentence may be warranted where the victims are innocent children and helpless women. Thus, in case the crime is committed in a most cruel and inhuman manner which is an extremely brutal, grotesque, diabolical, revolting and dastardly manner, where his act affects the entire moral fibre of the society e.g. crime committed for power or political ambition or indulging in organised criminal activities, death sentence should be awarded (Mukesh & Anr. vs State For Nct Of Delhi & Ors. 2014: 112).

Further,

A murder destroys the physical body of his victim, a rapist degrades the very soul of his helpless victim (Mukesh & Anr. vs State For Nct Of Delhi & Ors. 2014: 124, emphasis mine).

Finally,

Certainly, whenever such grave violations of human dignity come to fore, an unknown sense of insecurity and helplessness grabs the entire society, women in particular, and the only succour people look for, is the State to take command of the situation and remedy it effectively (Mukesh & Anr. vs State For Nct Of Delhi & Ors. 2014: 172, emphasis mine).

These extracts from both judgements are striking in their emphasis on *helplessness and vulnerability*¹⁰¹ as defining conditions of Jyoti Singh in particular, and women in India more generally. The High Court judgement attributes this helplessness to Jyoti's "fragile physique" (Delhi High Court, Death Sentence Reference No. 6/2013: 330), and locates the vulnerability of victims as such in their "delicate physique" and "weak limbs" (Delhi High Court, Death Sentence Reference No. 6/2013: 331). The Supreme Court judgement equally stresses the overwhelming helplessness of victims of sexual violence specifically,

¹⁰¹ There is a vast and developing literature on feminist theorisations of vulnerability, and its relationship with victimisation, agency and resistance (see, for instance, Butler 2004; Butler, Sabsay and Zeynep 2016; Gibbs 2018; Gilson 2014). The use of vulnerability in the judgements I discuss in this section aligns most closely with the notion of vulnerability as attached to specific groups or bodies through a "spectre of violence" (Murphy 2012: 65), and presents an instance of the dominant political circulation of vulnerability that the aforementioned works seek to challenge. I return to a discussion on vulnerability later in this section.

and of women in contexts of sexual violence more broadly.¹⁰² While it is crucial to recognise the conditions of vulnerability that mark the realities of gendered subjects, and though the judgements must be commended for affirming Jyoti Singh's victimisation, it is worth dwelling briefly upon the ideological frames and conditions within which these recognitions were granted. What do these conditions imply for the legal construction of the subject of sexual violence, her relationship with agency and victimhood, and consequently, the politics authorised in her name?

Brown (1995) reminds us that the law does not simply invoke, but fundamentally produces the subjects it claims to protect or emancipate, serving as an authoring discourse that constructs the various categories it deploys (woman, victim, *habituae*, criminal, *inter alia*; Brown 1995: 131). Brown's (1995) contention is that the law does not innocently engage with the *a priori* subject position of 'victim' in determining who is accommodated within it. Rather, through its adjudications, the law participates in constituting, circumscribing, imbuing with meaning and authorising the very category of subjects we come to know as victims (see Chapter 2). To Brown, the "inscription of gendered, racial, or sexual identity in legal discourse" has "the effect of reaffirming the historical injuries constitutive of identities", and thus "installing injury as identity in the ahistorical discourse of the law" (1995: xi). Legal redress for certain injured identities then paradoxically serves to discursively entrench the very "injury-identity connection" (ibid: 21) it seeks to remedy. Thus, the law converts "attribute into identity", and serves to codify "within the law the very powerlessness it aims to redress" (ibid: 21). Drawing on Brown (1995), I suggest that the High Court and Supreme Court judgements relating to the attack on Jyoti Singh serve to (i) frame victimhood as women's defining, enduring condition — an essential gendered attribute rather than a temporally circumscribed event, and (ii) suture victimhood to associations of helplessness and vulnerability, which in turn are understood as predicated on corporeal fragility (rather than social

¹⁰² Both judgements were not entirely unprecedented in this regard; previous judgements had similarly emphasised victims' helplessness and vulnerability (142 cases across various High Courts and the Supreme Court), while some had even expressly located these attributes in the body ('physique') of the victim (see for example the Bombay High Court Judgement in the case of Noorkhan Rahimatkhani Pathan vs State of Maharashtra 1992). The judgements relating to the attack on Jyoti Singh did, however, go on to form significant precedent in their own right, and are hence worth carefully attending to (the Supreme Court judgement has been cited in 142 cases since, while the High Court judgement appears in 3 others).

hierarchies). Taken together, as I argue below, these characterisations serve to produce the figure of an agentless victim, with deeply exclusionary and regulatory effects.

Brown asks feminists to carefully consider what happens when “experience becomes ontology... and becomes encoded in the subject of woman” (ibid: 131). In recognising victimhood only through the categories of helplessness and vulnerability, and in locating these in women’s bodies (“delicate and fragile physique” and “weak limbs”), the judgements discussed above produced victimhood as an enduring, constitutive condition that is the exclusive (and inevitable) preserve of particular gendered (i.e. feminised) bodies. Within the judgements, then, to be a woman is to be in a relation of proximity to violence as a result of biology, rather than as a consequence of socially and politically sustained, intersectional, structural configurations of power. As per the judgements, helplessness and vulnerability were no longer social, political and structural conditions, but ontological attributes encoded into, embedded within and enfolded by the female body.

Within conditions of biologically determined vulnerability and helplessness, the victim subject is rendered incapable of any practice of self that is not entirely pre-determined by their biological violability: i.e. the victim is marked by the absence of agency (see Chapter 2 for a discussion on the conceptual incompatibility of agency with biological accounts of victimhood). The impossibility of accounting for agency within such a frame of victimhood becomes all the more unmistakable through the judicial placement of “helpless women” in proximity with “innocent children” (Mukesh & Anr. vs State For Nct Of Delhi & Ors. 2014: 112): within the law, children are expressly framed as absent of agency (Rosen 2007). Judicial attributions of victimhood thus re-inscribe the victim/agent binary through the figure of the feminised, agentless victim, marked by conditions of fragility, weakness, and consequently, vulnerability and helplessness.

What are the consequences of framing femininity as embodied vulnerability, and of legally inscribing the victim subject as devoid of agency? What are the implications of the demand that a subject be legible as weak, delicate, fragile, and consequently helpless and vulnerable in order for them to be recognised as a victim? What does the figure of the agentless victim imply both for the politics of recognising and redressing sexual violence?

In other words, what are the implications of centring the agentless victim as the paradigmatic subject of sexual violence? Heeding Butler and Athanasiou's (2013) caution that "recognition is not in itself an unambiguous good, however desperate we are for its rewards" (ibid: 82), it is crucial to interrogate the implications of the *terms* of Jyoti Singh's recognition as a victim. In what follows, I begin to track some of the deeply exclusionary and regulatory consequences of the judicial production of the figure of the agentless victim, marked by the biologically destined conditions of helplessness and vulnerability.

The denial of justice to Mathura, Bhanwari Devi and thousands before and after then attests firmly to the reality that judicial attribution of victimhood to not easily extend to include *all* women. I suggest that the exclusion of subaltern women from legal recognition as victims is precisely the result of placing agency in opposition to victimhood through victimhood's overwhelming associations with weakness, helplessness and vulnerability. Within such a frame, subjects read as agentival — particularly subjects seen as transgressing gender, sexual, caste and class norms — are denied recognition as victims, and even disavowed from the (narrowly constructed and violently policed) category of women understood as worthy of protection from sexual violence. Given that attributions of helplessness and vulnerability are inevitably inflected by gender, class, caste and other normativities (and thus unevenly distributed and attributed), recognitions of victimhood are withheld from subjects read as inadequately embodying femininity, helplessness or weakness. Labouring bodies, for instance, are frequently rendered unintelligible as fragile or delicate, helpless or vulnerable, particularly through discourses of medical jurisprudence. Jaising Modi's authoritative reference book on medical jurisprudence insists that a woman belonging to the 'labour class', who is

accustomed to hard and rough work, will be able to deal blows on her assailant, and will thus succeed in frustrating his attempts at violation. On the contrary, a woman belonging to a middle class or rich family might not be able to resist for long, and might soon faint and be rendered powerless from fright or exhaustion (Modi 2008: 938-939).

Legal evidentiary practices require that, alongside the findings of post-rape medical examinations, details of the size or 'build' of victims are also recorded — evidence that is often referred to in judgements, with courts routinely dismissing cases on the grounds

that “well-built” women are unlikely to have been raped (Mehra 2018).¹⁰³ Thus, the judgements relating to the attack on Jyoti Singh re-inscribed exclusionary rationalities that refuse to recognise the violation of bodies that are not legible as expressly and simultaneously female and fragile (synonymised with cis-gendered, middle or upper class and privileged caste).

Beyond their exclusionary implications, the judgements’ framing of victimhood as premised on women’s demonstrable vulnerability and helplessness also serves to legitimate a protectionist politics of redressing sexual violence. Sabsay (2016) argues that dominant attributions and recognitions of vulnerability and victimhood often “participate in the expansion of the biopower exercised over those populations declared in need of protection” (ibid: 281). Humanitarian governmental practices that designate specific populations as “in need of protection” (Butler *et al.* 2016: 4) do so in a manner that serves to not only “negate the capacity of those declared vulnerable to act politically, but also expand biopolitical forms of regulation and control” (ibid: 4). Butler argues that claims to women’s disproportionate experience of sexual violence structures understandings of women’s vulnerability in “often prohibitive ways”, precipitating “paternalistic mobilisations of vulnerability” that entrench regulatory and coercive regimes of monitoring and control over women, and foreclose the possibility of women’s own participation in their liberation (Butler 2004: 33). Thus, conceiving of vulnerability as a fundamental, essential and biologically inscribed attribute of women prompts dangerous responses to such vulnerability, characterised above all by regimes of coercive, punitive protectionism and paternalism (Butler 2004; Gilson 2016).

I suggest that such “paternalistic mobilisations of vulnerability” (Butler 2004: 33) draw their ideological impetus from a conceptual failure to account for the agency of victim subjects: in other words, paternalistic responses to recognitions of victimhood result precisely from the failure to conceptually reconcile vulnerability, victimhood and agency. The notion and attribution of vulnerability in itself does not necessarily or inevitably imply paternalism: in fact, “vulnerability can support any version of politics” (Butler *et al.* 2016: 4). Indeed, while critiquing dominant (state, humanitarian, etc) deployments of

¹⁰³ See, for example Pratap Mishra vs State of Orissa AIR 1977 SC 1307

vulnerability, Butler *et al.* (2016), Gibbs (2018), Gilson (2016) and others retain an express investment in recognising and realising the political possibilities of alternative mobilisations of vulnerability, re-envisioned as the basis of radical relationality. It is specifically conceptions of vulnerability and victimhood that are inhospitable to considerations of agency that produce the victim as “object for protection rather than subject once violated” (Sahai 2014), precipitating paternalistic and protectionist, rather than enabling, responses. Through the production of the vulnerable, agentless victim as the subject of sexual violence, judicial discourses frame women as a class of subjects for protection: a *protectorate* — merely a terrain to be acted on (either in violation or protection), but never to act themselves. By locating vulnerability and helplessness within women’s “fragile” bodies while refusing to recognise female agency, the judgements discussed in this section served to (re)inscribe Indian women as a protectorate; a class of citizens fundamentally defined by their ineluctable condition of victimhood, a body of subjects for protection, incapable of agentival action.

Thus, within the judgements discussed in this section, the protocols instituted and enlisted in the important task of recognising Jyoti Singh’s victimhood produced dangerous, overdetermined figurations of women as agentless victims, and as constituting a passive protectorate. I suggest that thinking of the judgements as productive of a particular ‘figuration’ of Indian women could be instructive, drawing on social scientific analyses of figures and figurations as instruments through which power flows, subjects are produced, and discourses legitimated (Woodward 1999). To Tyler, figures are “highly condensed” forms of social classification that are “over determined and [...] publicly imagined (are figured) in excessive, distorted, and caricatured ways” (2008: 18). This overdetermination, Tyler argues, allows figures to become essential to the logics of governmentality (*ibid.*). Castañeda (2002) suggests that figures incorporate a double force, implying both “constitutive effect and generative circulation” (2002: 3): in other words, figures simultaneously ‘make up people’, as well as circumscribe political possibilities. In the next section, I attempt to track the generative circulation of the figure of the agentless victim: in other words, I follow Ahmed (2000) to ask how the figure is “put to work, and made to work, in particular times and places” (*ibid.*: 15).

Punitive Paternalism through *Parens Patriae*

What sort of politics does the figure of the agentless victim of sexual violence enable, and what political possibilities does it foreclose? How does the state enter into a relationship with, and respond to the protectorate? Historically, the spectre of the agentless victim in its various avatars formed the ideological substrate to justify colonial rule: the ‘child bride’, the ‘burnt widow’, the ‘captive of the *zenana*’¹⁰⁴ and the prostitute all served as signifiers for the wounded reality of Indian womanhood in its entirety (Liddle and Rai 1998). The ‘suffering body’ of the Indian woman in turn stood for the condition of India as a whole, establishing the nation as backward and in need of imperial rescue (Burton 1994; Liddle and Rai 1998). Within the post-colonial condition, the liberal state authorises itself through the image of its ‘injured’ subjects: the law produces wounded identities as a ‘dependant subjects’, which in turn legitimises the state and the law as the “purveyors of freedom and protectors of the injured” (Brown 1995: 27 see Chapter 2). The Supreme Court judgement explicitly subscribed to the rationality of turning to the state to address the vulnerability and helplessness of the agentless victim:

Certainly, whenever such grave violations of human dignity come to fore, an unknown sense of insecurity and helplessness grabs the entire society, women in particular, and the only succour people look for, is the State to take command of the situation and remedy it effectively (Mukesh & Anr. vs State For Nct Of Delhi & Ors. 2014: 172, emphasis mine).

Indeed, the immediate aftermath of the attack on Jyoti Singh did witness the state ‘taking command’ of the situation through the consolidation of what Kapur (2013) calls ‘sexual security regimes’: configurations of sovereign and disciplinary power articulated through expanding the remit of the state and its martial apparatus to surveil, restrict mobility, detain and incarcerate. Curfews for female students in public college dormitories all over the country were brought forward, and girls required to seek express permission from their parents or college administration and provide details of those accompanying them in order to leave campuses (Bhowmick 2013). The Delhi police issued an advisory of ‘dos’

¹⁰⁴ Zenana is an Urdu/Arabic word for a section of the house this is historically used as a secluded women’s quarters.

and 'dont's' for women in the city which recommended severe restrictions to female mobility, while *khap panchayats*¹⁰⁵ in Haryana prohibited women from wearing jeans and using mobile phones, and advised that girls be married off as soon as possible for their own protection (ibid). The Criminal Law Amendment Act 2013, passed in response to the attack (discussed in some detail in the next section), served above all to re-invest power in and expand the patriarchal institutions of the military, police, and the family "in the direction of fewer rights and more surveillance" for women (Kapur 2013: 320).

The spectre of Jyoti Singh as agentless victim and the representation of women as constituting a helpless protectorate thus gave licence to the state to intervene under the guise of the will to empower against sexual violence, with the state assuming the role of concerned, carceral patriarch: protective and even coercive, but only in its noble will to empower (see Chapter 2). Through the omission of the feminised victim's agency, and the resulting strategy of punitive paternalism (Roy 2017), a diffuse set of discursive formulations worked alongside formal legislation to regulate and discipline Indian women. The post-colonial state thus becomes a site for the re-subordination of subjugated bodies through its protective orientation towards the agentless victim. The Indian post-colonial state is a historically suspect ally in the project of securing women's rights (Menon 2004). The state more broadly, and the law in particular, have long been crucial sites and instruments for the 'rescue' of the vulnerable, agentless victim. A variety of judicial strategies of state intervention have been deployed in relation to the protectorate (including allegation of rape, abduction, or kidnapping) often resulting in state detention that exposes women to conditions of extreme coercion and violence. Arasu & Thangarajah (2012), Baxi (2013), Chakravarti (2005), Mody (2008), Rao (2003) and others have documented the long history of such exercises of state power to extinguish female agency in the name of protection.

The effects of case law's codification of the figure of the helpless, agentless victim finds its paradigmatic illustration in the judicial treatment of Hadiya. In 2016, 25-year-old Hadiya was a homeopathy student in the town of Salem in Tamil Nadu when her parents

¹⁰⁵ *Khap panchayats* are rural community organisations, organised predominantly along caste lines.

filed a *habeas corpus*¹⁰⁶ petition at the Kerala High Court claiming that she had been forcibly detained and converted to Islam.¹⁰⁷ Hadiya appeared in court on multiple occasions, testifying that she had converted of her own volition, was not being forcibly held, and had consensually married and was living with a man named Shafin Jahan. On 24 May 2017, the High Court overstepped the judicial remit pertaining to the *habeas corpus* petition, annulled the marriage, and decreed that Hadiya be returned to her parents' custody. Hadiya was refused access to a mobile phone, and constantly surveilled by the Superintendent of Police (Shafin Jahan vs Ashokan and Ors. 2018). The court stated that it was “anxious and concerned about the safety of the detainee¹⁰⁸ and her well being [sic]”, and that although Hadiya had attained majority in age, it was “necessary to bear in mind the fact that the detainee who is a female in her twenties is at a *vulnerable age*” (ibid, emphasis my own). In view of her “vulnerable state”, the court exercised its *parens patriae* jurisdiction, a provision which allowed the court to act on behalf of individuals deemed unable to act in their own best interests (ibid).¹⁰⁹

Through its deployment of *parens patriae*, the court perfected case law's practice of punitive paternalism, vitiating Hadiya's agency on the grounds of her vulnerability. Hadiya was evacuated of her own choices and desires, and transformed by the law into a receptacle for the projected desires and anxieties of the state. The agentless victim became a site for the violent articulation of patriarchal, Hindu nationalist preoccupations with sexual purity and caste/religious endogamy, re-inscribing femaleness as victimhood, and re-authorising the carceral state to intervene on her behalf, and act in her place.

¹⁰⁶ *Habeas corpus* is a recourse to the law, usually in the form of a writ, through which an individual can report and seek redress for unlawful detention. While *habeas corpus* is ordinarily invoked in cases involving political prisoners or illegal detention within state facilities, Baxi (2006), has demonstrated that the writ is increasingly invoked in order to fortify custodial power over women who enter into transgressive consensual relationships.

¹⁰⁷ For details of the case see (Varier 2017).

¹⁰⁸ Term used in Indian case law for individual held in custody; a 'detainee'

¹⁰⁹ The invocation of *Parens Patriae* has a chilling jurisprudential history in post-colonial India— following the Union Carbide Corporate (UCC) gas explosion in Bhopal in 1984, the state unilaterally decided to act as *parens patriae* on behalf of all victims. Non-state human rights groups and the victims themselves then lost all legal standing to claim compensation. The state thus assumed the persona of the victim, abdicated all responsibility in the case, and through this benign posturing, effectively exculpated both itself, and UCC (Butler 1987).

Through its (re) production of the figure of the agentless victim as the paradigmatic subject of sexual violence, case law relating to the rape and murder of Jyoti Singh thus served to bind helplessness and vulnerability to the victim subject, expressly endorsing the expansion of the state's coercive and regulatory power (over her) for her protection. Judicial discourses in this case then served to affirm a politics of punitive paternalism, mobilising the agentless victim in the service of measures oriented around the regulation, surveillance and disciplining of *some* female subjects, while intensifying the vulnerability and subjugation of others, never recognised as victims. Through the next section, I continue to track the figure of the feminised, agentless victim in its circulations beyond case law, tracing how the judicial designation of women as a protectorate haunts (but is also challenged by) legislative constructions of, and responses to, the subject of sexual violence.

Legislative Reform: Securing the Protectorate via the Muscular State

On 23 December 2012, a week after the attack on Jyoti Singh, the federal government appointed a three-member committee headed by former Chief Justice of the Supreme Court, Justice Jagdish Sharan Verma (author of the Vishaka Guidelines discussed in Chapter 2), Justice Leila Seth (a retired judge), and Gopal Subramaniam (former Solicitor General) to recommend changes to the law on sexual violence. The Justice Verma Committee (JVC) sat at the intersection of judicial, feminist and legislative registers (much like the Vishaka Guidelines): it was (i) composed of former legal practitioners, (ii) sought extensive inputs from the institutional women's movement and was overwhelmingly informed by a feminist politics, and (iii) was instituted expressly to advise on legislative reform. The Verma Committee solicited public inputs through an array of consultative processes, receiving close to 80,000 submissions from scholars, activists, legal professionals, NGOs and women's groups for review, and published a 644-page report based on the inputs on 23 January 2013 (henceforth JVC Report 2013). In addition to its public call for recommendations, the committee conducted individual meetings and interviews with activists, academics and victims (see Appendix 2 and Acknowledgements, JVC Report 2013). Kotiswaran (2017) characterises the JVC report as a paradigmatic illustration of governance feminism (or state feminism) in the post-colony, where feminists and their demands were 'let into' state processes of legislative

reform. The committee consulted extensively with women's rights groups outside of its standard call for public participation, and expressly credited certain feminist NGOs and academics for their contributions to the report. Thus, the JVC report was a crucial site for the production and circulation of discourses of sexual violence in response to the attack on Jyoti Singh, and sat at the convergence of judicial, feminist and legislative registers. In the next section, I analyse the the complex and contradictory intentions and effects of the JVC, specifically attending to the report's construction of the subject of sexual violence and her relationship with victimhood and agency.

The Justice Verma Committee Report

The Verma Committee Report was celebrated as a "pathbreaking intervention" (Lodhia 2014: 97), and a "watershed moment" in redefining the discourse on sexual violence in India (ibid). The report and its recommendations were indeed transformative in many regards, and marked a crucial departure from dominant patriarchal, regulatory discourses of sexual violence. While a detailed analysis of the report and its recommendations is beyond the scope of this thesis, I briefly discuss some of its most notable contributions, and assess their implications for the construction of victimhood and agency.¹¹⁰ The most striking feature of the report with regard to conceptualisations of victimhood and agency was a firm articulation of sexual violence as a violation of bodily integrity and sexual autonomy:¹¹¹ a paradigm shift from the previous legal framing of the offence that implicitly subscribed to a patriarchal property model of sexual violation.¹¹² In the six years following the publication of the report, a series of High Court and Supreme Court judgements have drawn on the frames of sexual autonomy and bodily integrity in 36 different cases.¹¹³ The report expressly affirmed the importance of women's ownership of and control over their bodies, and demanded that measures be

¹¹⁰ For a detailed review of the report see Kotiswaran 2017.

¹¹¹ The JVC adopted this articulation from the UN Handbook on sexual assault (JVC Report 2013: 106)

¹¹² At the point of the authoring of the report, only peno-vaginal penetration was legally recognised as rape under Section 376 of the IPC, betraying the law's primary investment in protecting (patriarchal) "property and marriage regimes within systems of exchange and kinship" (Basu 2011, also see Das 1996; Menon 2004, 2012). The JVC report extended the category of rape to cover non-peno vaginal penetration, and recommended the criminalisation of a range of additional, non-penetrative violations under the category of 'sexual assault', including stalking, voyeurism, acid attacks and disrobing, while recommending that the language of 'outraging the modesty' of women (in sections 335 and 509 of the IPC) be dispensed with.

¹¹³ See, for instance Nimeshbhai Bharatbhai Desia vs State of Gujarat 2018, Joseph Shine vs Union of India 2018, Z vs State of Bihar and Ors. 2017.

immediately undertaken to secure and preserve every women's right "to express and experience complete sexual autonomy" (JVC Report 2013: 429). Importantly, the report's regard for female agency was concurrent to its recognition of conditions of structural gender subordination and violence i.e. the JVC report contained a simultaneous acknowledgement of women's victimhood and agency. It stated, for instance:

It is an admitted fact that women in India have suffered in various aspects of life and physical health, mental well-being, bodily integrity and safety, social relations, political empowerment, education and knowledge, domestic work and non-market care, paid work and other projects, shelter and environment, mobility, leisure activities, time autonomy, respect, religion, and if we may add, self-esteem / self-autonomy (JVC Report 2013: 10).

Reading the fundamental right of women to safety, bodily integrity and the exercise of autonomy and freewill as granted under Article 21 of the Constitution (JVC Report 2013: 56), the committee demanded that the state undertake a "political and social commitment to respecting, protecting and promoting women's right to integrity, agency and autonomy" (JVC Report 2013: 111). The committee proposed a Bill of Rights for women, urging that the government:

recognize the historical distinctions, exclusions and restrictions on the basis of gender, while also taking note that certain practices including cultural, social, political, religious and customary norms are patriarchal and impair the agency, dignity and equality of women (ibid: 429).

The report thus categorically interrupted binary imaginations of victimhood and agency, affirming female agency and the importance of producing conditions conducive to its exercise, while recognising conditions of structural (socially, culturally and politically produced) violence and subordination. Eschewing the discourse of the agentless victim as a site for intervention (incapable of action), the committee expressed a deep commitment to placing women and their agency at the centre of measures to address their structural (rather than biologically inscribed) vulnerability. In displacing the figure of the agentless victim, the report also crucially demanded that the state revoke impunity from two key patriarchal institutions often mobilised on her behalf: marriage and the

military. Citing India's commitments to CEDAW, the JVC Report proposed that sexual violations within a marriage be recognised and criminalised as rape (ibid: 62), and that the impunity granted to armed personnel under the Armed Forces Special Powers Act (AFSPA)¹¹⁴ be revoked, with sexual violence by uniformed personnel also brought under the purview of criminal law (ibid: 150).¹¹⁵

Despite these significant advancements, one element of the JVC report remains a cause for consternation, and of significant and difficult consequence for the victim/agent binary: the conflation of the offence of trafficking with prostitution. Historically, the (dominant) institutional women's movement in India paid scant attention to the issues of sex work or trafficking (Kotiswaran 2017, 2019). The inputs submitted by feminist academics, NGOs and activists to a 2010 draft bill on sexual violence, for instance, made no mention of sex work or trafficking, and the Parliamentary Bill introduced by the government based on these recommendations on 4 December 2012 was similarly silent on both issues. The JVC Report, however, proposed criminalising trafficking and the employment of trafficked persons in a manner that did not constructively distinguish trafficking from consensual adult participation in sex work. Kotiswaran (2019) accounts for this by highlighting the unparalleled access the JVC granted to what she calls 'neo-abolitionist groups', whose dominance/radical feminist perspectives on trafficking and sex work came to be uncritically accommodated in the report due to (i) a vacuum left by other institutional feminists' silence on these issues and (ii) the exclusion of sex worker's advocacy groups from the many organisations consulted by the JVC (ibid).

Neo-abolitionist groups drew on largely US dominance feminist theoretical frames to collapse the distinction between consensual sex work and trafficking, locating them as adjacent in a continuum of sexual harms. A key neo-abolitionist organisation in India, the Bachpan Bachao Andolan (repeatedly cited in the JVC) had close ties with one of the

¹¹⁴ The Armed Forces Special Powers Act (AFSPA) of 1958 confers 'special powers' to armed forces personnel including the right to kill with legal impunity.

¹¹⁵ Aside from the significant contributions discussed above, the report also crucially extended the discourse on sexual violence to recognise violations of bodies of all genders and sexualities, resisted the demand for the death penalty in cases of sexual violence, proposed wide-ranging governance reform in order to make institutional processes of redress more accessible and navigable, challenged discourses of shame and honour that attach to victims, pronounced caste councils involved in the regulation of women's sexuality illegal, and demanded increased police and government accountability in addressing sexual violence.

author-members of the JVC, Solicitor General Gopal Subramaniam, who had previously represented the organisation and was extensively familiar with, and sympathetic to, dominance feminist jurisprudence via Catherine MacKinnon's work (ibid). Further, the JVC expressly credited Diane Rosenfield, another noted dominance feminist, for her contributions to their deliberations (JVC 2013: 426). Based on these significant influences, the issue of sex work and trafficking, hitherto entirely absent from feminist engagements with the law on sexual violence, came to constitute the second longest chapter in the JVC report.

In its section on trafficking, the report framed the issue as “a vicious circle of missing children/women-trafficking-abuse-prostitution” (JVC Report 2013: 152), and demanded an urgent intervention into this practice. Displaying close fidelity to radical feminist accounts, the report viewed sex work— which was characterised exclusively as the result of trafficking— as producing and perpetuating “a rape culture” (ibid: 200), and implicitly reasoned that in order to address trafficking, sex work must be eradicated (ibid: 180-200). Thus, a set of dominance feminist investments in criminalising sex work that often moved under the guise of anti-trafficking discourse made its way to post-colonial India through the JVC report. Through an over-reliance on neo-abolitionist perspectives and a failure to incorporate non-trafficked sex workers' accounts of their needs, the report eliminated the possibility of consensual adult sex work and “elided the difference between adults and children as well as between sex work and trafficking” (Kotiswaran 2018). Within such a frame, sex worker agency becomes an impossibility, as women are positioned exclusively as “innocent, fragile victims in this script” (Kotiswaran 2018). Through the “rescue and rehabilitate” (Sahai 2018) frame it institutionalises via the section on trafficking, the JVC report, once again, produces the feminised subject for protection as infantilised, agentless victim. Thus, despite its many triumphs, through its discussion on trafficking, the JVC's imagination of victimhood and agency slips back into a binary, dichotomous mode, resurrecting the spectre of the agentless victim, and justifying regulatory and coercive state infractions in the name of her protection.

‘The Impunity of Every Citadel is Intact’: Fortifying the Patriarchal State

In February 2013, shortly after the release of the JVC report, the President of India promulgated the Criminal Law (Amendment) Ordinance of 2013, ostensibly drawing on the insights of the report. In reality, the ordinance “did not reflect the spirit of the Verma Committee Report” (Kotiswaran 2017: 24), and was decried by feminists for its significant dilutions of the more transformative elements of the JVC’s recommendations. On 21 March 2013, the Ordinance was replaced by the Criminal Law Amendment Act of 2013 (CLA), following considerable debate in both the Lok Sabha and Rajya Sabha (Lower and Upper Houses of Parliament respectively), introducing into law a containment and subversion of the people’s will as articulated through the JVC report. Much has been written about the myriad ways in which the CLA departs from the JVC report (2013; Menon 2014); the implications the CLA might have for differentiated factions of women approaching the law through its provisions (Kotiswaran 2018); and whether or not its desired effects will likely be realised (Rizvi and Sethi 2014). While questions around the efficacy of the CLA remain to be answered with certainty, what is incontestable is that through it, the “universe of criminal law has expanded” (Kotiswaran 2017: 25), and with it, the muscular (Kapur 2013)¹¹⁶ power of the state, at the cost of recognising and strengthening the power, capacities and agency of those it sought to protect.

What does this expansion of the punitive state mean for imaginations of victimhood and agency in discourses of sexual violence? What presumed figure of the subject of sexual violence animates and justifies the fortification of the patriarchal state in the first place? How does the CLA construct and attribute the categories of victimhood and agency? Within the context of an authoritarian, Hindu fundamentalist, post-colonial and colonising ruling power, what implications does an enlarged state have for the politics of sexual violence? In addressing these questions through this section, I track how the figure of the agentless victim is invoked by and reproduced through legislative reform via the CLA.

¹¹⁶ In her work on sexual security regimes, Kapur (2013) implicitly characterises the punitive, carceral and securitising functions of the state as constituting its ‘muscular’ apparatus and power.

The CLA expressly disregarded (feminist) recommendations endorsed by the JVC in five crucial regards: the amendment (i) introduced the death penalty for certain cases of sexual violence (ii) retained the framing of ‘outraging the modesty’ of women as a codification of sexual offence (iii) refused the revocation of impunity for armed personnel accused of sexual violence in areas under martial law (iv) retained the exceptionalisation of marital rape as non-punishable and (v) failed to frame rape expressly as a violation of the bodily integrity and sexual autonomy of women (CLA 2013).

In the words of lawyer-activist Vrinda Grover, the CLA ensured that the “the impunity of every citadel is intact – family, marriage, public servants, army, police” (in Menon 2014). A reform that sought to address the issue of sexual violence served instead to re-invest power and control within traditional bastions of patriarchal power (Menon 2014). Through a blatant indifference to the systemic abuses perpetrated by and within these violent institutions, the CLA conferred upon them augmented punitive powers in order to protect women against sexual violence. In doing so, the amendment served to produce certain subjects as available *for* sexual violence by ensuring impunity for attacks on them: women within occupied territories under martial law; wives abused by their husbands; subjects outside of the recognised category of ‘female’; women who were deemed bereft of ‘modesty’ (and hence impossible to outrage in the first place) — the habituae and other unruly, non-normative and wilful subjects — were all excluded from protection under this provision. The condition of inclusion thus became a disciplining tool, making state protection conditional on normative conformity.

In addition to expressly rejecting the language (and by extension, the recognition) of sexual autonomy or agency within the framing of the law, various provisions under the CLA serve expressly to undermine, overwrite or disregard the agency of victims. For instance, Section 166A of the CLA penalises a police officer with imprisonment of between six months and two years and a fine for failing to record a complaint alleging a sexual offence. Although rape was always codified as a cognisable offence,¹¹⁷ the inclusion of Section 166A dramatically increased the penalty for police failure to record rape complaints. While the measure appears enabling, the provision is complicated by the fact

¹¹⁷ Under the Code of Criminal Procedure 1973, a cognisable offence is one for which a police officer can make an arrest without a warrant, and initiate an investigation without a court order.

that Section 166A does not specify whether its remit is limited to complaints filed by victims themselves. In the absence of such a specification, the section serves to compel police cognisance of a complaint filed even against the victim's wishes. Such a provision expressly erases the victim's agency in the process of recording a complaint and initiating investigations, and "transfers women's rights to their employers, family members, community and neighbours" (Kotiswaran 2018: 111); and thereafter and most worryingly, "to an all-powerful, all-encompassing state" (Rizvi and Sethi 2014). The victim herself is entirely displaced from proceedings meant to centrally involve her; a possibility that is particularly susceptible to abuse by third parties approaching the law in order to discipline women's sexual transgressions across caste and/or religions lines.¹¹⁸

The potential for disregarding female agency while securing recognition of victimhood is additionally encoded under clause (k) of Section 376(2) of the IPC, added under the CLA. Through this provision, the pre-existing statute criminalising consensual intercourse with a public servant in a custodial context (discussed in Chapter 4) was extended to include any person in a position of authority or in a fiduciary relationship (CLA 2013). Under the amended law, consensual relations with a man in a position of control or dominance are broadly criminalised, with no clarifying stipulations on the terms "control" or "dominance". Feminist recommendations to amend the clause had included a list of possible configurations of power, covering "situations of religious, ethnic, linguistic, caste and class dominance, including (but not limited to) both formal and informal employment situations such as landlord-agricultural labourer, contractor-labourer, employer-domestic worker" (Kotiswaran 2018: 111). However, feminists were insistent that consensual relations ought not be criminalised; a qualification that the CLA overlooked. Clause (k) is thus "left ripe for an interpretation that consensual sex between two adults from different religious, caste, or class communities is aggravated rape" (Kotiswaran 2018: 112).

¹¹⁸ The provision has already witnessed misuse at the hands of over-zealous "renegade feminists" (Kotiswaran 2018: 112), as in the 2014 case where a prominent feminist, Madhu Kishwar, videotaped a complainant and circulated the recordings in the media, on the basis of which the police filed an FIR against the accused under Section 166A. Following the widely distributed video, shared without the consent of the victim, the accused committed suicide—a tragic string of events that were initiated by a disregard for the victim's own wishes on how to seek recourse (for a detailed account and analysis of related events see Menon 2014; Kotiswaran 2018).

Feminist anxieties around the deployment of the CLA's provisions to regulate and discipline female agency (via claims of victimhood) were far from misplaced. Sen's (2014) analysis of rape cases heard at Delhi district courts following the CLA found that a third of the cases were filed by parents, brothers or other 'concerned' parties seeking intervention in cases of consensual adult relationships that transgress religious and/or caste norms (also see Mehra 2018). The CLA thus served to simultaneously expand state power and re-inscribe the figure of Indian women as a helpless protectorate. Returning once more to Ahmed's injunction to track how figures are "put to work, and made to work, in particular times and places" (ibid: 15), I conclude this section with a consideration of the how the figuration of women as a protectorate, as invoked and re-inscribed by the CLA, is put to work and made to work in the context of the authoritarian, Hindu-nationalist regime in power in India since 2014.

The *Hindutva*¹¹⁹ regime instituted under the *Bharatiya Janata Party* (BJP) following its electoral triumph in 2014 incorporates the figure of the agentless victim into BJP policy-propaganda through programmes like *Ghar Wapsi* (return home/homecoming) and the myths of 'love *jihad*' (Kinnvall 2015; Sarkar 2018). Each of these embolden the patriarchal institutions of the family and community to intervene in order to preserve the security and purity of the normative female subject — the respectable, caste-Hindu woman — while systematically displacing the agency of the gendered subject at their core. The discourse of *love jihad*, for instance, alludes to an ostensible Muslim conspiracy to convert innocent, vulnerable Hindu women to Islam by marriage, and to force them to bear Muslim progeny and demographically threaten the sanctity and stability of the Rashtriya Swayamsevak Sangh's (RSS)¹²⁰ ideal of the Hindu *rashtra* (Hindu nation) (Sarkar 2018).¹²¹ Fathers and brothers are encouraged to surveil and control daughters and sisters, restrict their mobility, monitor their sociality, and ensure their swift and secure custodial transfer through a caste-appropriate Hindu match (Tyagi and Sen 2018). More insidiously, they are also encouraged to police and punish transgressions of caste and religious endogamy (Tyagi and Sen 2018; Sarkar 2018). Female vulnerability is then

¹¹⁹ A political ideology seeking to establish the hegemony of Hindus and a Hindu way of life; the predominant form of Hindu Nationalism in India (see Sarkar 2018).

¹²⁰ The RSS is an Indian right-wing, Hindu nationalist, paramilitary volunteer organisation. It is the progenitor and leader of a large body of organisations called the Sangh Parivar.

¹²¹ For a more detailed discussion on the RSS, the BJP, the broader Sangh Parivar and the rise of *Hindutva* under the Hindu right, see Sarkar 2018.

invoked in the service of Hindu nationalist goals, with violent nationalist desires and anxieties projected onto the figure of the agentless victim. As Thompson *et al.* (2019) note,

The 'love jihad' campaign, while focusing its anger on Muslims, received its emotional bonding from the "victimized" Hindu woman. The Hindu woman has often been regarded as an exclusive preserve of the Hindu man, and safeguarding her virtue is identified as his exclusive prerogative. In the name of protecting "our" women, which the women themselves have never asked for, they justify all forms of violence (ibid: 90).

Under the discourse of *ghar wapsi*, 'errant' members of families and communities who have converted to other religions, but also "wayward women who may have married outside their caste and religion" (Varma 2018: 68) are welcomed back into the "folds of the Hindu home" (ibid), often following threats, coercion and violence (ibid). Under the *Hindutva* vision of *Vasudhaiva Kutumbakam* (literally translated from Sanskrit as the world is one family), the RSS and its affiliates assume the responsibility of identifying and rescuing Hindu women who have 'gone astray' from their proper place in the Hindu family: a project to which the CLA's provisions become particularly amenable, given their inability to account for and protect women's agency.¹²²

Thus, in ignoring some of the key, transformative recommendations of the JVC report, the CLA of 2013 served to (i) reinvest power within traditional bastions of masculinist, patriarchal control (the army, police, family and community), (ii) produce a range of gendered subjects as 'available' for violence by granting impunity for violations against them, and (iii) systematically disregard the desires and choices of the agentless victim. In

¹²² The justification of masculinist 'rescue' missions of the imperilled daughter must be understood against the backdrop of a long and continuing history of cynical deployments of the metaphor of the family in the construction of the Hindu nation. Post-partition, the Indian state arrogated unto itself the task of 'rescuing' women who had been abducted during the communal violence of Partition, and returning them to their proper homes, nations, and religions. In the project of 'recovering' abducted Hindu women, the state determined that "any woman who was seen to be living with, in the company of, or in a relationship with a man of the other religion... would be presumed to have been abducted, taken by force" (Butalia 2000: 115). Women were routinely forcibly 'returned' to natal homes and families, despite often having left of their own volition (ibid). In Das' words, women's own desires receded into the background the moment "national honour was tied to the regaining of control over the sexual and reproductive functions of women" (Das 2006: 26).

both its letter and practice, the CLA upholds the victim/agent binary and ossifies the image of the agentless victim, enables masculinist institutions to act on victims' behalf, and lends itself to various coercive Hindu nationalist projects. Ultimately, the CLA and the imagination of the protectorate it perpetuates are not simply amenable to, but a central apparatus in the rejuvenation of a masculinist, patriarchal and ethno-nationalist state.

'India Is Raped': The Nation and/as the Imperilled Female Body

What happens when the figure of the agentless victim, produced, contested and resurrected in case law and legislative reform, encounters broader discourses of sexual violence outside the terrain of the state? In this section, I attend to how the legal discourses discussed thus far collude with broader popular discourses of sexual violence, including feminist responses, to produce a series of adverse effects, not least for subaltern subjects located within India's 'borderlands' (Osuri 2015; see Anzaldúa 1987 for more on borderlands). I argue that by framing the imperilled women who comprise the protectorate as a metaphor for the nation, dominant responses to sexual violence serve as a violent bordering practice, producing contradictory subaltern subjects within post-colonial India's vast occupied territories: subjects made available either for violation with impunity, or for coercive protection.

The mass mobilisations following the rape and murder of Jyoti Singh were unprecedented both in their scale and composition: while India was by no means unaccustomed to large, urban, public demonstrations against sexual violence, these were traditionally the preserve of individuals and organisations affiliated (if loosely) with the broader, institutional women's movement (Dutta and Sircar 2013; Lodhia 2014; Roychowdhury 2013). The flood of particularly urban, middle class protesters — from housewives to students and beyond— which brought Delhi to a complete standstill, had no historical equivalent (Lodhia 2014). Within the cacophony of voices emerging from these mobilisations, it proves challenging to distil those that were avowedly 'feminist' in their identifications, demands, and politics (Dutta and Sircar 2013).¹²³ In this section, I

¹²³ A key site for expressly feminist discourses of sexual violence in response to the attack on Jyoti Singh were the submissions to (and the final report of) the Justice Verma Committee. Kotiswaran (2017), Lodhia (2014), Dutta and Sircar (2013) and others have highlighted how key unifying factors across the feminist response to the attack were a simultaneous (i) appeal to the state via legislative reform, and (ii) express

attempt to disentangle some of the key threads running through the discursive deluge following the attack on Jyoti Singh, identifying sites of convergence and divergence, and examining their implications for the victim/agent binary. Importantly, as the discussion below will demonstrate, the fecundity of the discursive moment following the attack on Jyoti Singh was such that it was impossible to predict in advance the outcomes of various narrative interactions, resulting in unexpected and often uncomfortable discursive alignments.

Sovereignty, Security and Purity: The Nation as the Normative Female Body

Under Section 228A of the Indian Penal Code, revealing the identity of rape victims is a crime punishable by imprisonment; a measure intended to protect victims of sexual violence from intimidation and social stigma. Specifics relating to the victim, including her identity and social location, were thus unknown to the protesters and press until, acting on Jyoti Singh's behest, her father gave permission for her identity to be disclosed on 5 January 2013. Prior to this, the image of the victim of the 'Delhi gang-rape' circulated in the media and protest circles as an open signifier onto whom the normative attributes of the paradigmatic 'Indian women' were superimposed: upper caste, middle/upper class, and inevitably Hindu (Lodhia 2012). Newspapers and TV reports referred to her by a series of sobriquets: *Nirbhaya* (fearless one), *Jagruti* (awareness), *Damini* (Lightening) — all notably and unquestionably Hindu signifiers. Her status as 'everywoman' (Shandilya 2015) was figured around the image of an urban, upper/middle class, *savarna* Hindu woman on the basis of the few facts available to the media: that she lived in Delhi, that she had watched an English movie at a multiplex (cinema), that she had been accompanied by a Hindu male, and that she was studying at a university (ibid).¹²⁴

denunciation of calls for the death penalty in cases of rape. Above all, the feminist response to the attack marked an entrenching of the 'letting in' of feminists within the state and state processes (Kotiswaran 2016, 2017, 2018)

¹²⁴ Jyoti Singh's class status was complicated: her parents had migrated from a poor village in Uttar Pradesh before her birth "in the hope of elevating their family's economic standing" (Lodhia 2015: 91). Her father loaded luggage at the airport, and had sold a portion of their ancestral land to help fund Jyoti Singh's education as a physiotherapist. Jyoti Singh had worked at a call center to cover her living expenses while she pursued her education. On the other hand, many of the protestors were middle class students and professionals, and, in one reporter's words, they may have "identified with Jyoti's aspirational middle-class identity and values" (Lum 2013). Jyoti Singh's caste status, which was obscured in most discussions and hence assumed as *savarna*, in fact corresponded to one of the communities under Other Backward Castes (she was from the *Kurmi* community)— in other words, Jyoti Singh was *Bahujan*. However, as Kowtal and Soundararajan (2014) argue, feminist organisations and activists involved in the mobilisations following

Despite Jyoti Singh's express wish to be publicly identified by her name (in defiance of dominant scripts of shame and dishonour), the titles Nirbhaya, Jagruti, Damini, etc. continued to circulate; overwriting her explicit desire to be named with the attachment to representing her as 'everywoman' (Shandilya 2015). The telling of Jyoti Singh's trauma and struggle served to displace the subject at the heart of the case — her own reality, history, and desires were erased to accommodate the projected desires and attachments of the 'everywoman' she came to stand for. In the din of voices straining to amplify her struggle, Jyoti Singh was left paradoxically silenced. As Lata Mani said of women's role in the debate on *sati*, Jyoti Singh was rendered "neither subject not object" but simply the "ground" on which competing discourses of sexual violence took root, and were contested (Mani 1987: 152).

Jyoti Singh's reduction to an agentless victim, a silenced, abstracted, symbolic category (as opposed to embodied agentive subject), found its most striking articulation in a series of posters and slogans proclaiming 'India is raped' (Lodhia 2014). The violation of Jyoti Singh was rhetorically equated to the violation of India as a nation itself; Jyoti Singh's (assumed) normative, female body was then expressly produced *as* the nation. The appropriation of Jyoti Singh's trauma through this metaphor saw her "literally turned into India's national property" (Dutta and Sircar 2013: 299). The nationalist frame of Jyoti Singh *as India* was circulated not just by Hindu nationalist organisations and the international media, but also at student-led protests in Delhi, and within nationwide campaigns against the brutalisation of women by various NGOs and civil society organisations. Through the simultaneous representations of Jyoti Singh-as-everywoman and Jyoti Singh-as-nation, the imperilled normative Hindu woman became the ideological basis for the re-inscription of the myth of the imperilled Hindu nation, and dovetailed alarmingly with BJP and RSS-backed rally-cries for the defence and reclamation of the sovereignty, sanctity and purity of India as *Hindu Rashtra*.

The circulation of Jyoti Singh as an abstracted signifier for the imperilled nation was literalised through articles and posters related to her attack that invoked the figure of

her attack worked to obscure her caste status in order to ensure that protesting factions were not split, and so that the movement was not fractured by a "divisive caste issue" (ibid).

Bharat Mata (the Nation as Mother, or Mother India) as the subject of sexual violence and for protection (Ramdeep 2014). These representations were often accompanied by imagery of *Bharat Mata*, adorned in the Indian flag and being forcibly disrobed (ibid). A key *motif* in the production of nation-as-woman, and a critical artefact in the forging of India as a post-colonial political entity, *Bharat Mata* is a gendered embodiment of national territory that centred the pure, respectable caste-Hindu woman in its production. At the turn of the twentieth century, artists began to incorporate the map of India into her visual representation, producing a cartographical representation of India as an expressly gendered ‘bodyscape’ (Ramaswamy 2001, 2002).¹²⁵ Placing the female body as representative of the nation-space positioned both the nation and the Indian woman as potent affective sites, eliciting and binding “declarations of male devotion to and desire for woman and nation” (2001: 97).¹²⁶ These figurations embedded powerful attachments to the somatic being of *Bharat Mata* within the desire for the spatial and political entity of ‘India’, and enabled Hindu nationalist parties to make specific and exclusionary claims regarding ownership of and sovereignty over the contested, emergent post-colonial nation. The figure of *Bharat Mata* did not simply reflect affective gendered attachments to the project of the *Hindu Rashtra*, but was instrumental in producing them.

Deployed liberally in the protests following the attack on Jyoti Singh, the iconography involving *Bharat Mata* served to render Jyoti Singh once more as an abstract signifier (rather than agentival subject), politicised in a series of ways that were entirely untethered from her own reality, desires and politics. The figure of *Bharat Mata* served to re-inscribe the agentless victim as helpless and vulnerable, and secure the boundaries

¹²⁵ For instance, consider the quote “Do you see this map? It is not a map but the portrait of Bharat Mata: its cities and mountains rivers and jungles form her physical body. All her children are her nerves, large and small ... Concentrate on Bharat as a living mother, worship her with nine-fold *bhakti*” (Aurobindo Ghosh as quoted in Menon 2015).

¹²⁶ It is instructive, here, to think of the production of the nation as the female body through the frame of ‘somatechnics,’ understood as “the capillary space of connection and circulation between the macro- and micro-political registers through which the lives of bodies become enmeshed in the lives of nations, states, and capital formations” (Stryker *et al.* 2008: 14). Somatechnics function by establishing “isomorphic relations between the collective body politic and an individual corporeality” that are not merely representational but also material (Stryker and Sullivan 2009: 52). Stryker and Sullivan suggest that the ideal of bodily integrity, for instance, centrally informs “current social imaginaries— notions of integrity, in short, still create somatechnic effects on individual bodies, social bodies, and the relations between them” (2009: 51). Thus, through discursive mechanisms, insistence on the security, integrity, and sovereignty of the (normative) female body can dissipate into demands to secure the integrity and sovereignty of the nation itself.

of both the nation and the victim subject as firmly Hindu and *savarna*. The circumscription of the normative victim as necessarily aligned with the Hindutva project was perfected through the 'Abused Goddesses campaign', a series of images of the three primary upper caste goddesses of Hindu mythology, Durga, Saraswati and Lakshmi portrayed as victims of abuse, with welts, bruises and gashes across their faces (Tilak 2013). The campaign served to cement the worthy victim as the deified, pure, pious upper caste Hindu woman, deploying evocative imagery with glaring parallels to the various depictions of the nation as/through *Bharat Mata*.

The political implications of suturing the normative (agentless) victim subject to the nation must be understood within the long colonial and post-colonial history of deployments of the imperilled woman as nation via *Bharat Mata*. Bankim Chandra Chattopadhyay's novel *Anandamath* (1882) personified the nascent nation as "the hapless, helpless mother whose sacred body was desecrated and violated, first by Muslim invaders, and then by British colonialists" (Ray 2018: 377), and produced the dominant and pervasive imaginary of the mother-nation. Discourses around *Bharat Mata* in colonial India were "infused with pain, hurt, and injury", and "are not just about avenging the mother, but also protecting her from the 'impure', whose continuous and perseverant presence refuses to allow the nation to be restored to her full glory, despite independence and partition" (ibid: 378). The figure of *Bharat Mata* and the desire for a *Hindu Rashtra* animated a brutal and brutalising nationalism, culminating in the birth of two partitioned political entities over which much blood has been spilt.¹²⁷ The founding moment of the Indian nation was fundamentally shaped by the experience of and response to sexual violence, where disputes and assertions of control were enacted on women's bodies, with women inevitably positioned as a helpless, vulnerable, agentless protectorate.¹²⁸

Das (1996) suggests that from its very inception, "the imaging of the project of nationalism in India came to include the appropriation of bodies of women as objects on which the desire for nationalism could be brutally inscribed and a memory for the future

¹²⁷ Within the space of two months in 1947, twelve million people were displaced, a million died, and more than seventy five thousand women were brutalised (Butalia 2000).

¹²⁸ Women, previously repositories of community honour as *Bharat Mata*, became sites for the inscription of national shame (Butalia 2000). So pervasive was the belief that safeguarding a women's honour was essential to upholding male, community and national honour that "a whole new order of violence came into play, by men against their own kinswomen; and by women against their daughters or sisters and their own selves" (ibid: 44).

made”.¹²⁹ Within this figuration, a threat to female sexual sovereignty and purity is read as a threat to the nation itself, and sexual panics become national security panics (Chatterjee 1989). The history of politicisations of sexual violence around the image of the imperilled, normative woman as the nation is thus one of necropolitical appropriations of violated, murdered, female bodies in the violent process of nation-making (Das 2007). The rending of Jyoti Singh as displaced, silenced object in the narration of her own trauma, extinguishing her agency while appropriating her victimhood towards nationalist ends, maps on to this long history of the incorporation of women’s violated bodies in the service of (Hindu) nationalist agendas in the post-colony. In the next section, I continue an interrogation of the appropriation of subaltern violation in the service of brutal imperialisms and nationalisms, analysing how discourses around the rape and murder of Jyoti Singh were incorporated in the ideological (re)production of India as a post-colonial and colonising nation.

Sexual Violence as a Bordering Practice: The Post-Colonial and Colonising Nation

In the months following the rape and murder of Jyoti Singh, global accounts of India as endemically and culturally violent found significant purchase in the international media (Lodhia 2014; Krishnan 2015; Roychowdhury 2013).¹³⁰ US-based feminist magazine *Ms.*, for instance, published an article announcing “India hates women. That is the ugly, unvarnished truth”, clarifying that “this is no imposition of foreign rule. We can’t blame our old bugbear, the British Raj. This is pukka, indigenous, Made With Pride in India stuff” (Chaudhuri 2013). The international production of the Indian nation through discourses of sexual violence ‘under Western eyes’ has long been that of a country afflicted by an endemic *culture* of sexual violence (Narayan 1998; Mohanty 1989; see Chapter 2). These characterisations reinforce racist, colonialist accounts of the unquestionable superiority of western liberal doctrines, as well as the urgency of (often martial) projects invested in

¹²⁹ This incorporation of women’s bodies into the project of nationalism has its roots in a broader imagination of women as sexual property, and sexual violence as a property crime against husbands/families/communities— or male custodians of violated women (Basu 2011). This construction carries into the founding myths of nations imagined through the allegory of the family, with women (and their wombs) positioned as passive repositories of culture and identity (Yuval-Davis 1997). Within the Indian context, women have been framed “as the origin of nation-making, and of freedom of repression by external others (i.e. Muslim, Christian and Western Forces)” (Sarkar 2001).

¹³⁰ Roychowdhury (2013) found over 1,500 articles in the US media in the two months following the attack on Jyoti Singh, many of which represented India as endemically violent.

'civilising' the barbaric 'other'. South African filmmaker Leslee Udwin's documentary 'India's Daughter'¹³¹ similarly re-inscribed orientalist scripts of a country acculturated to violence, with conditions of urban poverty and deprivation serving as 'breeding grounds' for violent, predatory masculinities (Krishnan 2015).

This denunciation of India as uniquely, inherently violent and barbaric, and Indian women as ineluctably weak, vulnerable and violable, elicited mixed responses from feminists in India (Krishnan 2015; Menon 2014; Roychowdhury 2013). While many were keen to resist these orientalist tropes and their neo-colonial implications, they were equally invested in recognising the systemic, structural reality of large-scale violence against women. Feminist responses to neo-colonial discourses following the attack on Jyoti Singh were, however, less explicitly attentive to the contentious status of India as a simultaneously post-colonial and colonising nation-state, and the appropriation of women's violated bodies in securing India's ongoing status as both (Osuri 2015, 2017). The post-colonial critique of the orientalist production of India as afflicted by a culture of violence, thus often failed to include an express condemnation of (i) appropriations of the image of the sexually vulnerable, agentless victim in the furtherance of exclusionary nationalisms and (ii) regimes of sexualised violence in areas of neo-colonial militarised occupation by the Indian state, often expressly enacted in the name of protecting the imperilled normative Hindu woman.¹³² Thus, post-colonial feminist rejections of neo-colonial tropes of India as inherently predisposed to sexual violence, and calls to denounce representations such as Udwin's film (see for example Krishnan 2015), found unlikely and dangerous harmony with Hindu nationalist decisions to ban the film, and assert neo-nativist, idealised indigenities. In the words of Karthick RM, "some of the feminists... in their zeal to defend the image of India...are behaving like dutiful Indian daughters in ensuring that the name of their mother country is not besmirched" (RM 2015).

In the aftermath of the attack on Jyoti Singh, representations of sexual violence became a battleground on which various groups with divergent ideological underpinnings (neo-

¹³¹ The film proved highly controversial on a few counts, particularly after its airing was banned in India - for a more detailed discussion, see Krishnan 2015.

¹³² This is not to say that *all* Indian feminist's post-colonial critiques exhibited the same complicities and entanglements, as the final section of this chapter will demonstrate.

imperialist, post-colonial, neo-nativist *inter alia*) competed to produce an account of the nation itself. In this regard, a significant thread of public political discourse was the Sangh Parivar's incorporation of the rape of Jyoti Singh into their production of India as *Hindu Rashtra*, defined in opposition to the current reality of a tarnished nation, unable to protect its women (and by extension, itself), from the contaminating effects of the 'other'. In response to the attack, RSS Chief Mohan Bhagwat said:

Crimes against women happening in urban India are shameful. It is a dangerous trend. But such crimes won't happen in Bharat or the rural areas of the country. You go to villages and forests of the country and there will be no such incidents of gang-rape or sex crimes. Where 'Bharat' becomes 'India' with the influence of Western culture, these type of incidents happen. The actual Indian values and culture should be established at every stratum of society where women are treated as 'mother' (Doherty 2013).

Echoing Bhagwat, RSS Spokesperson Ram Madhav argued, "in Bhartiya tradition, we have great respect for women and if we go away from the Bhartiya tradition of respecting woman, one will end up in indulging in such criminal acts" (CNN-IBN 2013). Condemning the 'Westernisation' of India, Mamta Yadav, a senior official of the Akhil Bharatiya Vidyarthi Parishad (a student organisation affiliated to the RSS) urged, "We must save our culture, not just embrace another. These kind[s] of incidents never happened in India 200 or 300 years ago . . . Back then there was pride in the soil of our country" (Burke 2013). The security of women was framed as only possible through the realisation of the *Hindu Rashtra*, which in turn was proposed as a gender utopia for the (right sort of Hindu) women. In the aftermath of the rape and murder of Jyoti Singh, the threat of sexual violence was thus expressly enlisted in securing and defending violent and exclusionary politics of Hindutva.

As Butler (2007) reminds us, if the state binds in the name of nation, it also unbinds, expels, banishes, and often in ways that are antithetical to freedom and the exercise of agency. The figure of the imperilled, agentless victim as the embodied nation similarly binds together the (caste) Hindu family at the very moment it cements mythologies of threat, of the rapacious, violent 'other' that must be tamed or defeated. Anchored around

the gendered embodiment of nation as imperilled woman, discourses of sexual violence, including the CLA, function as a 'bordering practice' (Osuri 2015), violently re-inscribing the limits of those protected, and those violated; both in the name of *Bharat Mata*. Within and beyond India's 'borderlands' (Osuri 2015), occupied territories and 'zones of indistinction' (Agamben 1998), the state and its military apparatus expressly enlist the figure of the imperilled normative Indian women in the rationalisation of violent nationalisms and colonialisms, and in the justification of ritualised sexual violence (Malik 2018, 2019; Ray 2018; Zia 2019). During the Rajya Sabha debates preceding the ratification of the unconstitutional, exclusionary and anti-secular Citizenship Amendment Act¹³³ in December 2019, Union Home Minister Amit Shah implored members of the house to consider '*bahu beti ki izzat*' (the honour of the daughters-in-law and daughters) of expressly non-Muslim minority communities, imperilled by violent Muslim masculinities in neighbouring Muslim-majority nations (Rajya Sabha Debates 10 Dec 2019). The longstanding occupation of Kashmir, including the most recent intensification of militarisation following the revocation of Article 370,¹³⁴ has often been rhetorically justified on the basis of an infantilising, protectionist discourse over Kashmir more generally and Kashmiri women more specifically (Malik 2019, Zia 2019), framing "occupation as protection" (Zia 2019), and the army as simultaneously the custodians of Kashmiri women's safety, as well as the disciplinarians of dissident Kashmiri women (Zia 2019). Subaltern women in India's borderlands are thus produced as contradictory subjects: either as agentless victim for protection (via occupation), or as threats, to be disciplined and violated with impunity.

The figure of the normative Indian woman more generally, and *Bharat Mata* more specifically, have been invoked during the ritual violation of non-normative, dissident women, imagined as falling outside of, or posing a threat to, the construction of the *Hindu Rashtra*. Chants of *Bharat Mata Ki Jai* (Victory to the Motherland) have frequently accompanied mass 'search' operations which result in the gang rape and brutalisation of women in Kashmir, including during the mass attacks in Kunan and Poshpora in 1991 (Ray 2018). Shouts of *Bharat Mata Ki Jai*, along with iconography featuring her abounded

¹³³ See Bhatia 2019 for a detailed discussion on the unconstitutionality and exclusionary, anti-secular nature and implications of the Act, especially when read in concert with the National Registry of Citizens

¹³⁴ For more on the history of the Indian occupation of Kashmir, Article 370 and its recent revocation, see Kaul 2019; Osuri 2019

at a rally to defend the rapists in the horrific rape and murder of eight-year-old Asifa in Kathua, Jammu and Kashmir. The charge sheet in the case reported that men from the Hindu village were in an ongoing conflict with the nomadic Muslim *Bakarwal* community over land, and “decided to instil fear in them by making an example out of one of their daughters” (cited in Ray 2018: 375). In January 2018, Asifa was abducted, sedated, confined to a temple and repeatedly raped for over a week, before being murdered and abandoned (ibid). The Kathua Bar Association prevented the Jammu police from filing a charge sheet against the accused, and the rapidly assembled *Hindu Ekta Manch* (Hindu Unity Front) conducted a public rally (including the involvement of two BJP ministers), designating those who demanded the arrest of the perpetrators as ‘anti-national’. As Ray (2018) explains, the rally following the rape and murder of Asifa conveyed that:

not only is the rape and murder of members of the Muslim community hailed as a patriotic act, it is performative; it brands, expels, and rejects certain bodies, and in doing so, secures the borders of the nation, as well as polices citizenship; it brings some people together, unites them against the common enemy, legitimizes their acts of violence as a necessary sacrifice for the protection of the nation. It draws on tropes of a community, weakened by decades of ‘minority appeasement’ standing up for its right to exist in a nation that they can finally call their own (Ray 2018: 375).

Osuri (2015), Bora (2010) and others remind us that the militarised post-colonial and colonising state of India, rationalised, reproduced and fortified through the ideological trope of protecting the vulnerable (normative) Indian woman, often turns its instruments of ‘security’ against women at its borderlands.¹³⁵ The attacks on political and sexual dissidents and gendered bodies interpellated as standing in for the honour of the vilified ‘other’ are chillingly routine; Soni Sori, Kawasi Hidme, Thangjam Manorama, the women of Kunan and Poshpora and thousands of others are testament to the violent excesses of the Indian military in its ‘states of exception’ (Madhok 2018, Agamben 1998). Ray (2019) describes how, within the context of Chhattisgarh, the rape and violent disciplining of dissident women who resist exploitation are framed as “law and order” and/or “national

¹³⁵ Osuri (2015) argues that the ‘gendering human rights’ framework often pursued by feminists in response to sexual violence, and which resulted in the CLA of 2013, was inadequate in its ability to account of the violent ‘practices of sovereignty’ of the Indian post-colony in areas under occupation (ibid: 1).

security” measures (ibid: 277). On 18 November 2019, former Army General Major General SP Singh expressly advocated the rape of Muslim women in Kashmir as revenge for violence against Kashmiri Pandits (Husain 2019). In its failure to heed the JVC’s recommendation to abolish the special powers granted under AFSPA, the CLA served to extend the impunity granted to armed personnel and their violent practices in the name of ‘securing’ the nation. In analysing these contestations, attending to Bora (2010) reminds us that women are once more reduced to passive objects, battlegrounds and frontiers to be secured or breeched, protected or violated; either victim or agent but never both.

As this section demonstrates, legal discourses of the agentless victim operate alongside and collude with nationalist framings of the imperilled woman as the nation in order to authorise neo-colonial occupation (as protection), and justify the violation of dissident bodies in the name of securing *Bharat Mata*. Given the alarming amenability of responses to sexual violence to regulatory, coercive and exclusionary nationalist and colonialist projects (as long cautioned by Kapur 2013; Mohanty 1984; Davis 2000; Tictin 2008; and as illustrated through the analysis in this chapter), what are the possibilities of a politics of sexual violence that does not participate in the violent reproduction of the nation? What representational practices and modalities of feminist responses to sexual violence can successfully resist the reification of the agentless victim and the enlargement of the masculinist, exclusionary and colonising state in her defence? How can we challenge the production of the protectorate via the agentless victim, and its incorporation in the service of violent nationalisms and neo-colonialisms? In the final section of this chapter, I turn to representational practices and responses to sexual violence that do not so readily accommodate patriarchal, protectionist and nationalist ambitions in the context of India as a post-colonial and colonising state.

The Subaltern Archive: Refusals, Renunciations and Disidentifications

In this section, I assemble a subaltern archive from which to rethink victimhood, agency and their relationship with the subaltern subject of sexual violence against the backdrop of the rape and murder of Jyoti Singh. In doing so, I develop the conceptual infrastructure to (i) challenge the figure of the agentless victim and the modes of punitive paternalism

she is seen to invite, and (ii) disrupt the appropriation of subaltern victimhood towards violent nationalisms and colonialisms. I suggest that reading the subaltern archive for articulations of collective subaltern agency that emerges precisely *from* experiences of victimhood holds the potential to displace the figure of the agentless victim, and reveals possibilities to rescue subaltern life, suffering and death from their relentless recruitment in the service of violent and exclusionary hierarchies and nationalisms.

The sources from which I assemble the subaltern archive are fragmented and varied, but united by their commitment to developing an ethical political and representational relationship with the subaltern subject of sexual violence. These archives are subaltern in the sense that they are neither located nor authorised within traditional bastions of knowledge production or concept-building: rather they hold non-canonical and even anti-canonical ways of knowing (see Chapter 3 for more on the subaltern archive). I draw on interviews and reports documenting two *Dalit-led Yatras* (marches) organised to in response to instances of sexual violence against *Dalit* women in rural northern India; articles from *Savari*, a digital platform facilitating discussions between *Dalit-Bahujan* women; the archives of *Khabar Lahariya*, a rural newspaper published by and for rural women from *Dalit, Bahujan Adivasi* and Muslim communities in the state of Uttar Pradesh; and statements and protest material from feminist activist collective *Pinjra Tod* (break the cage).

The precarious, banished and indeed fugitive status of these archives and those engaged in their production and preservation is perhaps most painfully evident in the contemporary political moment: in May 2020 *Pinjra Tod* founding members Devangana Kalita and Natasha Narwal were arrested for their involvement in protests resisting the ethno-nationalist Citizenship Amendment Act 2019 (discussed in the previous section). In July 2020, anti-caste intellectual and activist Hany Babu, the husband of Jenny Rowena (a key contributor to *Savari*), was arrested in connection with the Bhima Koregaon case.¹³⁶ These arrests are only the latest in a series of measures to silence what Arundhati Roy calls the “nascent, emerging secular, anti-caste and anti-capitalist politics that these

¹³⁶ The Bhima Koregaon case involves the ongoing criminal persecution of anti-caste activists under allegations of instigating violence during the 2018 commemoration of the 200th year of Mahar victory at the Battle of Bhima Koregaon (see Thakur and Moharana 2018, Teltumbde 2018).

people represent”, providing a crucial “alternative narrative to Hindu fascism” (in Scroll 2020). In recognition of the enormous labour and risk entailed in the production of such subaltern archival artefacts, through this final section I hope to draw on and amplify precisely such an “alternative narrative to Hindu fascism” (Roy in Scroll 2020) in the context of discourses of sexual violence.

‘We are not the Walking Dead’: Refusing Death as Destiny

In November 2012, a month before the rape and murder of Jyoti Singh, the *All Indian Dalit Mahila Adhikar Manch* (AIDMAM)¹³⁷ received reports of twenty-two instances of gang rapes perpetrated against *Dalit* women in the northern Indian state of Haryana. In response to this “staggering level” of violence (Cheruvillil 2014) a group of *Dalit* women leaders from AIDMAM initiated the *Dalit Mahila Garima Yatra* (*Dalit Women’s Dignity March*), travelling across ten districts across the Haryana. The *Yatra* met with victims, spoke to families and community groups, confronted the police and district officials, documented violence, assisted in initiating police and legal action, organised awareness programmes, performed street theatre, and held protests in villages across the districts. Following the *Yatra*, and based on its experiences and findings, AIDMAM launched the *Dalit Mahila Swabhimani Yatra* (*Dalit Women’s Self-Respect March*) in 2014 — a longer journey across multiple states in India. Between February and March 2014, the *Dalit Mahila Swabhimani Yatra* travelled hundreds of kilometres across the states of Haryana, Uttar Pradesh, Bihar, Chattishgarh, Maharashtra, Madhya Pradesh, culminating its journey with a public meeting at Jantar Mantar in New Delhi on 12 March 2014.

Both the *Dalit Mahila Garima Yatra* as well as the *Dalit Mahila Swabhimani Yatra* present striking illustrations of the radical collective agency of pain (see Chapter 3), where the shared knowledge of violence against *Dalit* women (i.e. *Dalit* women’s victimhood) served as the substrate for a collective, agentival response. Not only did both *Yatras* entail forms of express collective mobilisation and resistance (including protests, formal and informal petitions to government officials, and collective testimonial and witnessing

¹³⁷ AIDMAM is an autonomous *Dalit* women’s movement, formerly initiated in 2006 by the National Campaign for Dalit Human Rights. They work to document, raise awareness about and support redress against instances of violence and human rights abuses visited upon *Dalit-Bahujan* women.

practices), but they also intervened in and re-scripted the very imagination of sexual violence and its implications for the lives of *Dalit* women. Stressing the significance of *Garima* (dignity) and *Swabhiman* (self-respect) to each of the respective *Yatras*, Thenmozhi Soundararajan, a member of AIDMAM emphasised that “the idea of self-respect goes to the core of what the act of rape is meant to do. It is meant to dehumanize, to destroy the unit of the *Dalit* family and humiliate the community for the gall of wanting to assert a *Dalit* civic presence in society” (as quoted in Cheruvillil 2014). The response to the violent disciplining of a *Dalit* civic presence was then a resolute insistence on visible, dissident, and female *Dalit* civic presence. The movement elevated *Dalit* women to positions of public leadership within a context where female *Dalit* visibility often came at a high price; as Asha Kowtal, founder member of AIDMAM said, “All of a sudden Dalit women were on the stage and communities were gathering at our meetings... this changed the equation and put Dalit women as state and national leaders” (as quoted in Cheruvillil 2014).

Das (2003) suggests that there “are paths on which self-creation may take place through occupying the same place of devastation yet again by embracing the signs of injury and turning them into ways of becoming subjects” (ibid: 230). Affirming Das’ (2003) and Sunder Rajan’s (1993) submissions that forms of becoming, being and doing often derive precisely from experiences of violation, both *Yatras* demonstrated instances of distinctly agentival, collective articulations of resistance drawing from experiences of victimhood. Commenting on processes of *Dalit* identify formation and subjectivation within the context of the *Yatras*, Soundararajan stressed that *Dalit* experiences of victimhood were almost inevitably followed by and bound up with the “assertion of survivorship and political identity” (Cheruvillil 2014). To Soundararajan, the political imagination of a *Dalit* woman is necessarily steeped in a simultaneous recognition of victimhood and agency: “The very idea of the Dalit woman ... is this idea that we’ve been broken, but that we are surviving and fighting to thrive” (as quoted in Cheruvillil 2014). Soundararajan’s imagination and articulation of *Dalit* subjectivity, emerging against the backdrop of systemic, structural caste and gender violence, is thus fundamentally inhospitable to binary imaginations of victimhood vs agency, and to the figuration of an agentless victim.

Importantly, the subaltern collective that constitutes the category *Dalit* is necessarily socially, economically and politically configured, rather than biologically determined. While insisting on recognising the materiality of violence and its inscription on *Dalit* women's bodies, Kowtal and Soundararajan equally underline that *Dalit* women's shared proximity to and knowledge of sexual violence derives from specific gendered and caste-determined histories, rather than from intrinsic, inalienable and corporeal dispositions. Kowtal and Soundararajan thus produce a rigorously political (rather than biological) account of victimhood, refusing scripts of female weakness, fragility and helplessness, and the figure of the agentless victim of sexual violence that emerges through them. Further, the collective *Dalit* subaltern as forged by the *Yatra* represents a subaltern class marked by a proximity to violence while simultaneously exhibiting a tendency to act, react and resist, rather than to invite assistance: a framing with a long history in *Dalit* women's mobilisations. Irudayam *et al.* (2006), in their study of *Dalit* women's mobilisations and responses to violence across India remarked:

It is ironic that instead of the Indian State being the custodian of constitutional rights, it is Dalit women themselves who often dare to uphold the rule of law in the face of the "rule of caste". This is evident from cases where Dalit women assert their rights to equality and fundamental freedoms of life, and also where they approach established legal justice mechanisms instead of taking the law into their own hands as the perpetrators have done. And yet, in only a few cases does the state rise up to meet Dalit women's expectations of justice. Therefore, what Dalit women look to is not a paternal way of providing them remedial justice, but support mechanisms that clearly establish and uphold their rights, and bring them into mainstream society with dignity (ibid 2006; emphasis mine).

Thus, *Dalit* women's mobilisations in response to sexual violence not only demonstrate the conceptual inadequacy of the victim/agent binary, but expressly refuse to participate in the production of the figure of the 'agentless victim' and women as a protectorate, resisting paternalistic intervention from the state. In their engagements with the state, *Dalit* women do not seek rescue, recuperation or protectionism: instead, they hold the state to account for its violences, excesses and negligence, while challenging the state's imagination of *Dalit* women as outside of victimhood. They emphatically refuse to accept

dominant terms of recognition of victimhood by disavowing the figure of the agentless victim, while demanding recognition of and accountability for the violations they face.

The archives of *Khabar Lahariya* offer similar, powerful renderings of *Dalit* refusal and resistance. On 8 December 2012, a week before the Delhi gang rape, *Khabar Lahariya*'s team in Chitrakoot, Uttar Pradesh, published a special issue on 'Violence Against Women' (KL Archives 2012). While producing an intersectional, structural analysis of sexual violence and its implications for *Dalit* women's lives, the publication also celebrated *Dalit* women's endurance and resistance in the face of life-ending violence and oppression. Rejecting their incorporation into the protectorate, the articles demanded accountability and answerability (rather than rescue and protection) of not just the state, but also dominant, metropolitan women's rights groups (KL Archives 2012). The *Khabar Lahariya* archives are also a crucial repository of *Dalit* women's practices of public testimony— a crucial site for the unravelling of the victim/agent binary (see Chapters 4, 5). The story of one woman in particular, Sheelu Nishad, a *Bahujan* woman from Banda, Bundelkhand district of Uttar Pradesh, offers compelling lessons.

"People think women are weak. Sheelu Nishad is proof that they are not" states a December 2015 *Khabar Lahariya* feature article. In 2011, Sheelu Nishad was raped by a former Member of the Legislative Assembly, Puroshottamnath Dwivedi, from the *Bahujan Samaj Party* (BSP). Despite systematic intimidation by powerful members of the party and their associates, and sustained efforts at dissuasion from some members of her own community, Sheelu Nishad was determined to seek legal redress and formal recognition as a victim. Four years later, in December 2015, when *Khabar Lahariya*'s feature on Sheelu Nishad was printed, Dwivedi was in jail, and Sheelu Nishad was an established women's activist, and had filed her nomination to contest in the local *Pradhan*¹³⁸ elections from her village of Shahbajpur. Sheelu Nishad's story offers a compelling illustration of a radical political subjectivity and agency emerging precisely from her encounter with violation; another embodied site for the undoing of the victim/agent binary through the collective radical subjectivity of pain.¹³⁹ However, as *Khabar Lahariya*'s feature on Sheelu

¹³⁸ A *Pradhan* is a member of a village-level constitutional body called the Gram Sabha, working as an intermediate layer of governance between village constituents and government officials.

¹³⁹ Importantly, Sheelu Nishad also stressed the collective nature of her resistance and response, crediting *Khabar Lahariya*, various political parties, and a range of other individuals and groups for their solidarity

Nishad details, dominant representations of her story did not always do equal or simultaneous justice to accounting for both her victimhood and agency. The feature characterised Sheelu Nishad as a “complicated figure...a vigilante and agent provocateur...a hero and wily politician” (KL Archives 2015). It suggested that amidst media representations that lead audiences to imagine her as a “revolver-wielding, cape-wearing, vengeful Snake Gang Commando” (ibid) on the basis of her association with the *Nagin Gang* (a vigilante group similar to the *Gulabi Gang*)¹⁴⁰, there was a risk that the “truth of a young and vulnerable woman” (ibid) was underexplored and overshadowed. Various media accounts of Sheelu Nishad represented her as either a dangerous, violent woman with avaricious political ambitions that ought to be tamed and contained, or a vulnerable pawn in the hands of powerful political players (Fontanella-Khan 2013) — reifying rather than challenging the victim/agent binary.

Khabar Lahariya's feature piece, their interviews with Sheelu Nishad, and her letters in their archives tell an altogether more nuanced story, highlighting her victimhood and the many intimidations and indignities that followed, as well as the radical collective agency that emerged in their wake. Sheelu Nishad, as represented within these archives, was fundamentally shaped by but also insistently so much more than her violation: following the attack, she continued to pursue tertiary education, contested local elections, collectivised and mobilised groups of women against sexual violence, and consistently pursued legal remedy in the face of a deeply adversarial justice system. In documenting her struggles and triumphs, the *Khabar Lahariya* archives represented a woman whose experience of victimhood moulded her political consciousness in crucial ways; a victim whose subjectivity and agency were significantly constituted, rather than simply devastated, through her encounter with sexual violence. Most significantly, Sheelu Nishad's story presents the possibility of a radically different relationship between the subaltern subject of sexual violence and the state, in stark contrast to that of protectorate and protector/“purveyor of freedom” (Brown 1995: 27). While Sheelu Nishad did not by any means renounce the state — to the contrary, by contesting elections and pursuing

and support— in her words, “You need numbers to feel empowered, to know you have the strength to go ahead” (KL Archives 2018).

¹⁴⁰ The Gulabi Gang is a group of over 270,000 women across three states in Northern India, mobilising against sexual and other gendered violences. Often characterised as a vigilante movement, members intervene to prevent and redress instances of violence, especially in *Dalit* and *Bahujan* communities. For more on the Gulabi Gang and its politics, see Richards 2016.

legal redress she sought both recognition and inclusion within it — she equally undermined and opted out of the state through her establishment of the *Nagin Gang*: a collective of over 20,000 women across rural Bundelkhand, who mobilise in response to incidents of sexual violence, administering their own forms of extra-legal justice (KL Archives 2018). Thus, Sheelu Nishad simultaneously addressed her demands for justice and accountability towards the state and its formal institutions, while resisting the modes of (and monopoly over) power represented by the state.

Taken together, the discursive artefacts assembled in this section represent a compelling challenge to dominant figurations of the agentless victim, the production of a feminised protectorate, and the expansion of the muscular state for protection. Articulations of victimhood and agency emerging from both the *Yatras* as well as *Khabar Lahariya's* archives (i) viewed victimhood necessarily as an event, rather than an essential, defining, enduring, or permanently incapacitating condition; (ii) understood victimhood as politically, socially and structurally induced rather than fatally inscribed onto women's bodies (refusing the biological essentialism attributed to women via case law); (iii) demonstrated that collective radical subjectivity and agency emerged from experiences of victimhood, exorcising the image of the agentless victim (iv) refused to invite assistance or seek paternalistic and protectionist modes of redress from the state, demanding accountability instead and thus (v) resisted their production as a protectorate through which the state could authorise the expansion of its muscular/carceral functions.

Returning to the quote with which I began this chapter, *Dalit and Bahujan* articulation of victimhood and agency give lie to Sushma Swaraj's characterisation of rape victims as a *zinda laash* (living corpse) "neither alive nor dead; forever condemned" (Lok Sabha Debates 2012). Collective subaltern articulations, as discussed in this section, resolutely refuse death as destiny, and equally disavow the trope of the living corpse, or agentless victim. Once more, drawing on and learning from the work, words and verse of *Dalit and Bahujan* women, I end this section with poet and author Meena Kandasamy's rendition of the insurgent spirit of violated women (in response to Sushma Swaraj):

*We refuse to be frozen into frigidity merely to fit into your depiction of rape survivors
as zinda laash, the living corpses. We are not the walking dead; every day comes alive*

because of us. We even own the nights. Patriarchal pride dies between our thighs
(Kandasamy 2013).

‘We will Not Mother India’: Disidentifying with *Bharat Mata*

What is less immediately evident from the section above is how to resist the particular mechanisms through which victims are taken up or abandoned in the (re)production of the post-colonial and colonising nation through discourses of sexual violence. In this final section, I turn to readings and representations of victimhood and agency that resist (re)production of exclusionary nationalisms and the nation-state. Uniting post-colonial feminist insistence on attending to questions of coloniality (Bora 2010; Madhok 2018; Osuri 2015) with *Dalit* and Kashmiri critiques of the foundational imagination of the nation (Qureshi 2020; Rowena 2013; Stephen 2011), I identify and amplify responses to sexual violence that frustrate violent and exclusionary rationalities sustaining the nation-state from within, as well as without, its contested boundaries.

On July 11, 2004, Manorama Devi or Thangjam Manorama, a young Meitei woman was found raped and murdered by the Assam Rifles, a paramilitary unit deployed for border security in the occupied state of Manipur (which was, and remains, under AFSPA). On 15 July 2011, a group of women assembled outside the Kangla Fort in Imphal, the capital of Manipur in a naked protest against the brutalisation and murder of Manorama Devi. Laishram Gyanshori (2015), one of the protesters described her experience as below:

I did not count the number of women then. I had no awareness of anything. I was in my own world, shouting slogans, screaming at the Indian Army to rape us, take our flesh. All that filled my mind was the image of Manorama’s corpse ... The imas met the men of the Assam Rifles unit with fire in their hearts ... It was the culmination of the rage and agony we had harboured for years. We challenged them to come out and rape us before everyone. We demanded they tell us what they were stationed here for: to protect our people or to rape our women (Gyanshori 2015).

Bora (2010) argues that through the command ‘Indian Army Rape Us’, the women re-signified the very category of Manipuri women as subjects rather than objects (ibid: 356),

with the 'us' signifying "not only women but also the Northeast" as a geopolitical entity (2010: 356). Bora (2010) reads the protests as demanding accountability while eschewing an emphasis on women's weakness or helplessness, firmly rejecting the protectionist discourse which legitimates the army's presence in Manipur in the first place (ibid). Bora's suggestion is that by refusing the paternalist protection of the state through this protest—a state which offers immunity for rapists—"the familiar trope of women as nation needing the protection of the state subversively reframes the debate on the Northeast in political terms by using gendered language" (2010: 357). Through their protest, the Manipuri women thus rejected not just their positioning as agentless victims for protection, but additionally interrogated the very legitimacy of the state, its military apparatus, and its infraction into the land, lives and bodies of Manipur's people.

While the disavowal of the nationalist paradigm and the nation-state find crucial and powerful articulations in India's 'borderlands', Rowena (2013) and Stephen (2011) argue that within what is imagined as 'mainland' India, dominant feminist frames are particularly unable or unwilling to identify and interrogate the operations of occupation and coloniality via nationalism. Rowena (2013) suggests that the power and hegemony of the nationalist paradigm seeped constantly into the protests following the attack on Jyoti Singh in ways that cemented "gender as a tool of nationalist mobilisation" (ibid). Drawing on subaltern historical accounts of nationalism, including Aloysius's *Nationalism without a Nation* (1998) and Mani's *Debrahmanising History* (2006), Rowena (2013) and Stephen (2011) push the critique of nationalism from a *Dalit* perspective beyond the question of exclusions. To both, the problem is not so much that nationalism or the nationalist paradigm is not accessible to, or made available to *Dalit* women, but that nationalism is, was and always will be a tool of *Brahmanical* domination and occupation. While nationalism also functioned as an anti-colonial strategy, to Rowena (2013) it is above all "a strategic organizing principle of the upper castes, which allowed them to successfully consolidate themselves against the onslaught of the anti-caste identities of various lower caste and *Dalit* groups in India" (ibid) As Rowena (2011) argues,

It was not that the brahminical class had better access to nationalism and modern categories, which resulted in the exclusion of all "others." Instead the argument that can be built from the available pool of dalit-bahujan thinking is this: the Brahminical

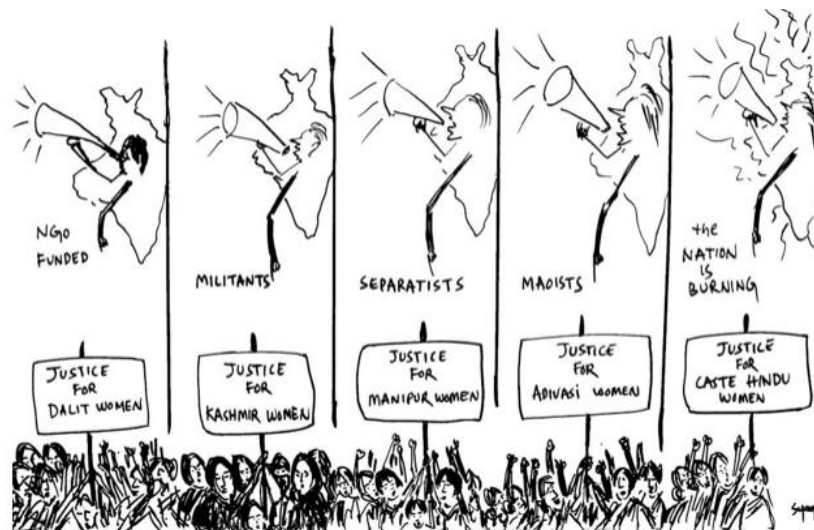
upper caste re-imagined themselves through national categories, put forward a nationalistic politics and countered the lower caste mobilizations that invoked particular caste categories and locations, with a more universal and all pervading nationalist identity. With this they took over the nation and its various dominant categories like secularism, merit, progress and modernity, and gained almost absolute control over its numerous institutions – from academics to administration to art and popular culture (Rowena 2013).

The solution to violent and exclusionary nationalisms can thus never be aspirations towards a more expansive nationalism, but must instead involve a consistent effort to critique national categories and their naturalisation from within and without. Rowena (2013) and Stephen's (2011) critiques are not exclusively, or even primarily, aimed at state and its excesses, or the violent formation and consolidation of the nation-state: instead their censure is directed at the national and nationalism, the very production of the 'imagined community' (Anderson 1983) of India. Against the backdrop of a *Brahmanical* supremacy that is parasitic on the nationalist frame, as well as the amenability of discourses of sexual violence to promoting nationalisms established through this chapter, what are the possibilities for feminist claim-making that do not seek recourse within national referents? How can a critique of sexual violence be framed as simultaneous to a disavowal of the nationalisms that often produce and refuse to recognise this very violence?

Muñoz argues that subjects, especially those within conditions of oppression or subordination, often resort to disidentification, a transformative political strategy that neither conforms, assimilates or resists the dominant ideology, but rather "works on and against" dominant ideological interpellation. To Muñoz, disidentification is: (a) a survival strategy that marginal subjects practice to be able to "negotiate a phobic majoritarian public sphere" (Muñoz 1999: 4); and (b) a practice that enables marginal subjects to rework damaged stereotypes as "seductive sites of self creation" (Muñoz 1999: 4) for the purpose of social and cultural critique. This can entail 'deterritorializing' and then 'reoccupying' cultural fields of normativity (Muñoz 1997: 101), racial/caste supremacy and misogyny from the perspective of minority subjects. These subversions are performed not from a position outside these fields, but from within them, thus creating

an alternate economy which resists the assimilationalist mode of the majoritarian public sphere to subversively re(use), re(think) and re(cycle) representations otherwise projected as natural and objective (ibid).

In their responses to sexual violence, *Dalit*, *Bahujan*, *Adivasi*, Kashmiri and other women who are routinely cast outside of the frame of the nation engage in creative practices of disidentification, reformulating dominant representations to subversive ends. Reoccupying and de-territorialising their ascribed outsider status, they claim their position of exteriority as a 'seductive site of self-creation' (Munoz 1997) and critique, a vantage point from which they can hold a mirror to the hypocrisies and contradictions entailed in the imagining of the Indian nation. The illustrations below, for instance, invoke the very 'damaged stereotypes' (ibid) (of militants, separatists etc) routinely recycled within the nationalist frame to discredit subaltern women and their claims for recognition and redress. In insisting on recognition from within their particular and minoritised positions (as *Dalit*, Kashmiri, *Adivasi*, Manipuri), rather than under the umbrella of Indian women, these subaltern women are able to "resist the assimilationalist mode of the majoritarian public sphere" (ibid) in their disidentificatory gestures.





(Illustrations by Unnamati Syama Sundar, published in Savari, 7 December 2012)

On Kashmiri Women’s Resistance Day, 23 February 2020, *Zanaan Wanaan* (translating to ‘women speak’), an independent Kashmiri Feminist collective, released a Kashmiri version of the Italian anti-fascist anthem *Bella Ciao*. In an interview describing the spirit behind the song, the collective shared “As opposed to the representation of Kashmiris in the Indian “mainstream” media as the crying, wailing and mourning people, which often sees Kashmir and Kashmiris with an oriental and a patronizing eye, this song speaks of the fights that we have and continue to put up against the occupier” (Kashmir Lit 2020). The song thus constituted an act of radical representational refusal, expressly challenging the modes through which Kashmiri women were accommodated within incorporated into narratives of/in the colonizer. The interview continued:

We are being projected as docile, innocent, naïve women who are “beautiful” but scarred by the tragedy inflicted upon them by militants and armed groups from across the Line of Control. This narrative is propagated to legitimize the presence of the Indian Army in the region to safeguard these Kashmir ki Kalis [flowers of Kashmir] from the vicious agents. We refuse the Indian media’s portrayal of us as crying mothers, sisters, and daughters as these pictures are clicked at our most

vulnerable states. We mourn and yet we rise to pelt stones or write songs (Kashmir Lit 2020).

The burden of challenging the appropriation of discourses of sexual violence in aid of violent and exclusionary nationalisms cannot and should not fall exclusively to those who are never accommodated within the imagination of the nation. It remains crucial to disavow the frame of the nation from a position of interiority; from within the ranks of those cast in the vision of *Bharat Mata*. On International Women's Day 2017, activist group *Pinjra Tod* launched a campaign directly challenging the nationalist appropriation of (some) women's bodies, titled 'We will not Mother India'. In refiguring the motif of the sacrificial, honourable woman, willing to die in the service of her nation and its regeneration, they expressly rejected the ideological basis of the (re)production of the nation via the normative female body. The movement's statement read:

Does the imagery of the nation entrap women into pinjras [cages] where we are reduced to biological reproducers of its members ('sons'); limited to 'mothers'/'wives'/'sisters' in need of protection; contained into cultural signifiers who are the markers and reproducers of cultural boundaries/differences; idolised into figures whose bravery is realised through self-sacrifice/erasure? In this gendered construction of the nation, the lives and experiences of Dalit, Adivasi and working class women are 'invisibilised', frowned upon and even criminalised. As we critique the nationalist project of Hindutva, we need to interrogate if there can really be a truly inclusive nationalism or if the nation functions on creating an excluded 'other' vis-a-vis whom difference is established? (Pinjra Tod 2017)

Fundamentally reframing what it means to be an Indian woman, and what such a category called upon its occupants to perform, the *Pinjra Tod* campaign presented a moment of disidentification that challenged the category of the Indian woman even as it spoke from within it, producing a moment of simultaneous mobilisation under the category, and transcendence of it. Rejecting weakness, vulnerability, peril, and fear as the 'inner truths', or the ontological condition of Indian womanhood, while simultaneously disavowing an identification with the (re)production of the nation, the campaign proclaimed:

Your borders and boundaries will not stop the international solidarity and collectivisation of women, our imaginations dance wild like stardust, like the magic spells of witches (Pinjra Tod 2017).

Pinjra Tod's disidentification with national categories within a post-colonial and colonising context finds no better articulation than their demand for “*Ma se Azadi, Ma ko bhi Azadi*” (freedom from the Mother (India), but also freedom for the Mother). Expressly recognising that *Dalit, Bahujan, Muslim, Kashmiri* and violated subjects were made invisible and even criminalised through the very discourses that produce normative Indian women as worthy of protection, the campaign sought liberation from the very figure of *Bharat Mata*, and the rationalities and boundaries that secured her.

What do practices of disidentification imply for a politics of sexual violence? How might gestures of refusal of and disidentification with the frame of the nation translate into alternative processes of claim-making, and alternative modes of redress for sexual violence? The discussions above point to a politics of representing and addressing the gendered harms of sexual violence that resolutely refuse dominant, nation-based idioms through which pain, suffering and victimhood come to be expressed and recognised. In a context where ‘inclusion’ within the ranks of those deemed worthy of protection is often effectively ‘occupation’, voices from the subaltern archive insist that the liberation of subaltern women does *not* lie in aspiring to or demanding their inclusion within existing (nation-based) protocols of recognition of victimhood, but instead in the disavowal of the ideological frames underpinning these protocols and the institutions they sustain. Refusing assimilation within, or acquiescence to the imagined community of the nation, the subaltern archive instead urges us to imagine a politics of addressing sexual violence that declines the protection of the nation-state in favour of solidarities and communities forged not within, but often expressly against the frame and boundaries of the nation, and the state instituted to secure it. Such an undertaking necessarily entails asking difficult questions about the institutions we traditionally approach for affirmations of pain and suffering — the (*Hindutva*, colonising) nation-state and its legal apparatus, the (patriarchal) family, (caste) communities — and holding a mirror to the violences inherent to the ideological and material basis and (re)production of these institutions.

Most of all, the subaltern archive demonstrates the futility (and even danger) of any gesture towards justice for the subaltern subject of sexual violence that does not insist on revealing and resisting the constitutive violences of caste hierarchies, exclusionary ethno-nationalisms, and the coloniality of the Indian nation-state, and its regulatory orientation towards the agentless victim of sexual violence.

Conclusion

Through this chapter, I analysed the circulation and contestation of, and politics enabled by, the figure of the agentless victim, produced through case law as the paradigmatic subject of sexual violence. Across the terrains of case law, legislative reform, and feminist appeals to the state, I argued that the figure of the agentless victim animates, and is resurrected through, dominant responses to sexual violence, producing women as a 'protectorate' to be secured through the expansion of the muscular power of the state. Within the context of a post-colonial and colonising nation-state, by framing the imperiled women who comprise the protectorate as a metaphor for the nation, dominant responses to sexual violence serve as a violent bordering practice, producing contradictory subaltern subjects within post-colonial India's 'borderlands': subjects made available either for violation with impunity, or for coercive protection. Through my analysis, I urge a critical confrontation with the institutions and protocols through which we seek recognition for suffering, and the modes of power we authorise through these appeals.

Finally, through an engagement with the subaltern archive, I explored the possibilities of a representational relationship with the subject of sexual violence which interrupts the dominant (re)production of the agentless victim, and disrupts the incorporation of subaltern suffering into the consolidation of violent and exclusionary hierarchies. Following the methodological demand of feminist historical ontologies to uncover and attend to sites where subjects 'speak back' to the regimes of power, I identify and amplify responses to sexual violence that not only refuse to assistance or protection in favour of accountability from the state, but also demand an express disidentification with and hostility to the very frame of the nation through which recognition, community and sanctuary are traditionally imagined and sought. In my concluding chapter, I build on

these crucial interventions to draw out what they might imply for a different (non-binary) conceptual imagination of victimhood and agency, and consequently, a different politics of addressing sexual violence.

Chapter 7: Resisting the Binary: Rethinking Victimhood and Agency through the Subaltern Archive

This thesis is a contribution to addressing an enduring challenge confronting feminist theory and praxis: how can feminists simultaneously represent and address the structural reality of sexual violence while resisting the conscription of the struggle against it towards violent and exclusionary ends? My research sits within a rich tradition of feminist critique that is centrally concerned with guarding against the recruitment of our emancipatory aspirations in the service of coercive and regulatory agendas. Here, critique functions neither as method nor as theoretical framework, but as an ongoing process of persistently denaturalising and historicising feminist desires and attachments, and the categories through which we imagine feminist futures (Dhawan and Castro Varela 2011). Locating my work within this legacy of critique puts in place certain stipulations: it demands a practice of consistently (and intersectionally) reading for the constitutive exclusions of the concepts and frameworks through which we make claims of, and in, the world. It entails relentlessly interrogating the protocols we institute, and the structures and epistemes we authorise (as well as discard or discredit) in efforts to secure recognition and redress for gendered suffering. Directing this spirit of critique inwards, I ask how my research, while avowedly invested in averting violences and exclusions enacted in the name of addressing sexual violence, might precipitate its own coercions and erasures. In seeking to challenge the dominant victim/agent binary and rethink victimhood and agency through the subaltern archive, what modes of politics might my research and findings inadvertently endorse? What forms of being or knowing are side-lined, or even maligned, through the critiques presented in this thesis, and with what potential consequences? In this concluding chapter, I summarise some of the key findings, contributions and implications of my thesis and practice of critique, before briefly considering the risks that these findings might, in turn, pose through dangerous amenabilities or adjacencies.

My research uncovers the dangerous effects of dominant modes of addressing sexual violence, tracks the mechanisms of their production, and explores the possibility of representing and responding to sexual violence in ways that disrupt these pernicious politics. In Chapter 1, I indicated a disinclination towards claims of originality given their

imbrication with proprietary and colonial impulses of conquest, ownership and domination. Rather than a novel foray into uncharted academic territory, this thesis sits in conversation with, and facilitates a conversation between, vital feminist inheritances which have thus far evaded this particular mode of encounter. My work draws on and mediates between two crucial but deeply polarised bodies of scholarship: (i) critical feminist engagements with overinvestments in victimhood (i.e. critiques of women-as-victims representational regimes) (ii) consequent concern with an overstatement of agency (i.e. cautions around circulations of women-as-agents; Chapters 1, 2). Both critical traditions are united in their attentiveness to the troubling material consequences of dominant representations of the subject of sexual violence, but diverge in their objects of critique and strategies for resolution. I tend with equal care to the often-conflicting warnings and insights these critical legacies extend, while resisting crude calculations of harms and benefits, especially as these harms and benefits are often borne by differently located subjects (Chapters 1, 2). This research is thus made possible by, and in dialogue with, activist and scholarly work that concerns itself with how victimhood and agency are conceptualised and assigned, and the politics rendered (im)possible or (un)thinkable by these representations and designations.

In engaging with the representational politics of sexual violence, I orient my analysis around the subaltern subjects, asking: how can we acknowledge and represent the simultaneous realities of victimhood and agency that mark the lives of subaltern subjects? How can we attend to the systemic violences that intimately structure subaltern lives without reducing the totality of subaltern existence to abjection, while also guarding against the many violences and exclusions enacted in the name of protection? Mediating between critiques of representations of women-as-victims and women-as-agents, I argued that the (mis)characterisation of the subject of sexual violence as either victim or agent (but never simultaneously both) is a central condition of possibility for a range of dangerous politics instituted under the guise of protecting women from sexual violence. The analytical thrust of my thesis was thus tracking and interrupting the production, normalisation and effects of the victim/agent binary in discourses of sexual violence.

My empirical contribution is offered as one amongst several feminist stories (Hemmings 2011) narrating women's experiences of and resistance against sexual violence in the

post-colonial and colonising context of India. What sets my account apart from other crucial tellings of this struggle is two distinctive emphases: (i) an attentiveness to representational practices, and an investment in interrupting the amenability of narratives of sexual violence to exclusionary and coercive projects; and (ii) the centring of the subaltern subject and her complex relationship with victimhood and agency. Engaging with a dominant archive spanning four decades of responses to sexual violence in India (1972 –2012), I uncovered and analysed (i) how subaltern subjects are raised, erased and displaced across various representational registers (juridical, legislative, feminist) through their selective recognition as victim, or agent, but never both, and (ii) the material effects of this binary representational regime.

My analytical chapters (4, 5 and 6) uncovered the precise discursive sites and practices through which victimhood and agency came to be stabilised into a binary relationship in dominant responses to sexual violence, denaturalising and challenging the inevitability of the prevailing dichotomous orthodoxy. I found that through the yoking of agency to notions of liberal autonomy (heroic, unencumbered and unmindful of context), case law serves as a central site for the (re)production of the victim/agent binary (Chapter 4). Judicial attachments to liberal modes of autonomy locate action as the key site for agency, assuming that desires translate straightforwardly into actions, heedless of the contexts of violence and coercion within which agency is negotiated and transacted. This (liberal) judicial imagination and attribution of agency is fundamentally incompatible with the recognition of structurally produced victimhood, reinterpreting agency as responsibility, and even culpability (Chapters 4, 5). Beyond the judicial register, dominant development discourses (often with feminist collusion, and inflected by neoliberal rationalities) equally betray an investment in liberal, heroic, voluntarist accounts of subject-hood (Chapter 5). Here, subjects of/for development are produced as the ultimate locus of autonomy and responsibility: entirely self-authoring and self-directing, responsible for their own suffering. Developmentalist and neoliberal rationalities in turn seep into and inform legislative constructions of the subject of sexual violence. The transmission of an over-emphasised agency and under-described victimhood from developmentalist discourses to legislative reform serves to expressly exclude the very subjects legislation ostensibly sets out to empower (Chapter 5).

Working in tandem with liberal and neoliberal notions of autonomous, voluntarist agency, dominant conceptualisations and attributions of victimhood are also centrally constitutive of the victim/agent binary. Within case law, I revealed that victimhood is constructed as (i) overwhelmingly and exclusively feminised, (ii) tethered to helplessness, vulnerability and passivity (Chapters 4, 5, 6), (iii) an enduring condition rooted in women's physical fragility (i.e. biologically rather than socio-politically produced, Chapter 6), and finally (iv) marked by, and manifest through, certain determinate and discernible behaviours and responses (Chapters 4, 5). Such an understanding of victimhood is necessarily mediated by hierarchies of class, caste, race and adherence to gendered and sexual normativities (Chapters 4, 5, 6), and inevitably subtended by the notion that any trace of volition voids the possibility of violation (Chapters 4, 5). Beyond case law, dominant feminist and legislative discourses also served to re-iterate scripts of agentless victimhood through framings of rape as death, appropriative attachments to subaltern subjects as icons of abjection, and recourse to patriarchal protectionism (Chapters 4, 5, 6).

With their representational possibilities violently circumscribed by the victim/agent binary, subaltern subjects of sexual violence were only ever partially accommodated within the dominant archive, granted recognition and representation solely through their incorporation into over-determined (binary) figurations. The habitué (Chapter 4), autonomous agents-of-change (Chapter 5), icons of abjection (Chapter 5), agentless victims comprising a protectorate (Chapter 6), and the image of the imperilled woman as the nation (Chapter 6) each serve as manifestations, as well as sites for the (re)inscription, of the victim/agent binary. Subaltern subjects are not simply assigned to but are rather enclosed within and disciplined into these figures: the victim/agent binary serves to fundamentally delimit the representational (and consequently political) possibilities available to these subjects. These figures then serve as embodied repositories of the representational and material violence of the binary: each over-determined figuration is seen to invite a particular mode of response, ranging from coercion and discipline or abandonment (Chapter 4, 5), to surveillance, regulation and control (Chapter 6). It is then precisely the (mis)representation of the subaltern subject of sexual violence as either victim or agent but never simultaneously both that authorises a range of violent and exclusionary responses to sexual violence. I showed that the

expansion of the carceral and muscular apparatus of the state and the obscuring of its proclivity to wound (Chapter 4), the licensing of capitalist rescue narratives that position the neoliberal market as a site of protection and even emancipation rather than exploitation (Chapter 5), the consolidation of violent and exclusionary ethno-nationalisms and colonialisms (Chapter 6), the increased surveillance and control of gendered bodies (Chapter 6), and the emboldening of casteist, classist and racist rationalities (Chapters 4 and 5) are the dividends of failing to recognise, represent and respond to subaltern subjects' complex subjecthood as both victims and agents. There is thus an urgent need to challenge the dominant (binary) representational regime, and to assemble the archival and conceptual material from which to reconcile victimhood and agency in discourses of sexual violence.

In response to this imperative (while also scaffolding the analysis that prompts it), my thesis extends three methodological interventions. First, I contribute to fraught debates on how to enter into an ethical representational relationship with subaltern subjects of sexual violence. Extending a rich history of post-colonial and feminist interventions, I compile a set of questions and provocations to guide the forging of an ethical, accountable, and persistently reflexive representational relationship with subaltern subjects (Chapter 3). In order to balance the recognition of subaltern agency with an attentiveness to the structural conditions of victimhood that produce and sustain subalternity, I advance a critical reading (and eventually representational) practice for victimhood and agency in the archive (Chapter 3). Second, this thesis serves as evidence of the methodological and analytical possibilities generated by feminist historical ontologies (Madhok 2020, 2021). By introducing feminist historical ontologies to the study of discourses of sexual violence, I demonstrate the enablements of a methodological apparatus that not only interrogates concepts, their histories, and the work they do, but equally points to the possibility of different conceptual arrangements by attending to how subjects exceed the categories they are assigned and disciplined into (Chapters 3, 5). Insisting on the epistemic significance of unauthorised sites of knowing, feminist historical ontologies enable encounters with banished knowledges that hold the possibility of challenging dominant conceptual categories and arrangements (Chapter 3). My thesis thus testifies to the utility of feminist historical ontology as a crucial tool to aid the production of theory and concepts from the Global South more broadly, and to enable

an epistemic encounter with subaltern archives specifically. Finally, drawing on the work of the Subaltern Studies Collective, I developed a methodological frame through which to identify discursive artefacts to assemble a subaltern archive from which a different (non-binary) imagination of victimhood and agency might emerge (Chapter 3).

In assembling and thinking with these subaltern archives, I arrive at a final set of contributions: the conceptual reformulation of victimhood and agency in contexts of sexual violence. While my engagement with the dominant archive provides a register of subaltern subjects' encounters with power, my thesis must do more than "recount the violence that deposited these traces in the archive" (Hartman 2008: 2) in order to resist "replicating the grammar of violence" (ibid: 4). To Madhok (2021), critique ought not only disclose the constitutive violences and erasures of concepts, but must also point to the formulation of alternative possibilities that could displace the object of critique with different conceptual apparatuses. By venturing beyond the dominant archive and thinking from and with the subaltern archive, my thesis extends an invitation to reconfigure the categories through which harm is articulated and recognition and redress demanded in the context of sexual violence.

Conceptualisations and representations of victimhood in the subaltern archive pose a fundamental challenge to dominant protocols of victim recognition and the politics they engender. Refusing scripts of passivity, helplessness and fragility, subaltern subjects contest ontological accounts of victimhood as an essential (feminised) characteristic, or an enduring, constitutive condition (Chapters 4, 6). Within the subaltern archive, victimhood is framed in ways that confront the 'inward turn' manifest in the dominant archive, which emphasises victimhood as a stable identity category, marked by a psychological state which inevitably manifests in certain pre-determined and discernible behaviours (often associated with passivity and weakness; Chapter 2, 4 and 5). Subaltern victimhood is proposed as a socio-politically induced experience of harm, rather than a structure of feeling, or an essential characteristic of gendered populations. Mirroring Sunder Rajan's (1993) framing of victimhood as a stage rather than a state, victimhood as it emerges in the subaltern archive is understood and represented as an event — a temporally circumscribed, though by no means singular or isolated experience of harm — rather than a defining, enduring or permanently incapacitating condition (Chapter 5,

6). Crucially, accounts of victimhood in the subaltern archive are insistently structural and intersectional, viewing victimhood as politically and socially induced rather than inscribed onto, or an inevitable result of, women's fragile bodies — expressly refusing the biological determinism of constructions of victimhood in case law (Chapter 5, 6). Sexual victimhood is understood as inextricably bound up with the structural realities of not only patriarchy, but also caste, class, coloniality and occupation (Chapter 5, 6). Victimhood is thus framed as the shared proximity to, and experience and knowledge of, gendered, classed, colonial and caste-determined histories and continuities, rather than a stable identity category rooted in intrinsic, inalienable corporeal dispositions (Chapter 6). Finally, victimhood as it appears in the subaltern archive is not simply compatible with, but often precisely the basis from which forms of radical collective agency emerge (Chapters 3, 5 and 6).

These dissonant, dissident forms of 'victim talk' (Stringer 2014) are mirrored by imaginations of agency that refuse dominant liberal, autonomous and voluntarist modes of discerning and assigning agency. Reading agency in the subaltern archive demands three central conceptual shifts from liberal (and neoliberal) frameworks of agency. First, it entails a displacement of action as a central or privileged site of agency (Madhok 2014), turning instead to reflexive deliberations, speech acts, re-scripting social and institutional encounters, representational refusals and dis-identifications as central sites of agentival action (Chapters 3, 5 and 6). Second, it demands relocating the locus of agency from the individual to the collective, developing an account of and attending to the collective subjectivity of agents (Loomba 1993; Chapter 3). Finally, it requires an understanding of agency as not in opposition to, nor simply coeval or simultaneously with, but often materialising precisely as a result of experiences of pain, injury and suffering (Sunder Rajan 1993; Chapters 3, 5 and 6). Such a conception of agency is necessarily inhospitable to individualist, voluntarist accounts of unfettered liberal autonomy, and emerges exactly from, and in tension with, background conditions of coercion, oppression and violence. Agency, as I read it in the subaltern archive, arises in response to, rather than in the place of, conditions of victimhood.

The subaltern archive harbours a vast repertoire of collective agentival gestures and practices deriving from the shared knowledge and experience of suffering. The archive

bears witness to personal and collective testimonial practice; tells stories of re-scripting dominant social and institutional narratives around sexual violence; reveals occasions of collective deliberation, moments of new solidarities and the forging of new political communities; and instances of the radical refusal and renunciation of, and disidentification with, dominant modes and institutions of redress (Chapters 5, 6). As represented in the subaltern archive, the subject in pain — the victim — is determinedly one who (re)acts rather than one who invites assistance. In other words, the subaltern archive bears out the proposition that “pain is the very condition of movement to no-pain” (Sunder Rajan 1993: 33). The collective subaltern subject of violence is then resolutely non-passive, in possession of a radical subjectivity, and propelled towards the achievement of no-pain. The shared knowledge of victimhood is thus both the basis for the forging of a collective subaltern community, as well as the substrate from which this collective subaltern polity derives its capacity of a radical subjectivity and agency (Chapters 3, 5 and 6).

Nestled in the subaltern archive are thus crucial glimpses into other conceptual possibilities for victimhood and agency — an understanding of agency as bound up with, and emerging against the backdrop of experiences of victimhood, violence, oppression and coercion. These conceptual realignments of victimhood and agency provide a vital resource through which to demonstrate the conceptual poverty and instability of the victim/agent binary. Rethinking victimhood and agency from the subaltern archive inaugurates the possibility of reading and representing subaltern subjects as occupying multiple simultaneous sites of identification, ascription and subjecthood (Chapters 5, 6), enabling accounts of subaltern reality that are hostile to the reductive, brutalising logics of the victim/agent binary and the politics it animates. Put differently, the subaltern archive holds the possibility of displacing dominant women-as-victims and women-as-agents representational frames and the dangerous politics they authorise.

My intention here is by no means to suggest that we can straightforwardly ‘represent’ our way out of sexual violence or the pernicious politics instituted in its wake. Rather, I argued that dominant representational practices render certain political possibilities more or less available, desirable or thinkable (Chapter 2). Challenging the dominant representational regime would then serve to exorcise or at the very least challenge the

figures of sexual violence it produces (the habitué, icons of abjection, the agentless victim, the imperilled woman-as-nation *inter alia*), and the modes of political response they occasion. Representations of subaltern victimhood and agency are only ever dangerous when one is mobilised to the exclusion of the other: i.e. assignments of victimhood are only harmful when, through the denial of agency, they are seen to invite carceral and colonial responses of protection, occupation, surveillance and control (Chapter 6). Similarly, designations of subaltern subjects as agents are only troubling when they imply a refusal to recognise systemic victimhood, resulting in responses of abandonment or coercion and regulation (Chapters 4, 5).

Thus, displacing the representational regime which produces and sustains the victim/agent binary bears the promise of moving beyond the deeply entrenched political impulses that emerge in response to it. As the subaltern archive evinces, a subject of sexual violence who is understood as simultaneously embodying victimhood and agency demands a radically distinct set of responses and relationships to those engendered by the binary representational regime. Such a politics bears a strikingly different orientation towards, and makes markedly divergent demands of, the state. The subaltern archive shelters the seeds of a decidedly anti-carceral politics of response to sexual violence, seeking accountability rather than protection, refusing a relationship of dependency, and interrogating the moral authority of the state and its instruments (the law, the military and the police; Chapters 5, 6). The subject of sexual violence in the subaltern archive does not invite abandonment by or withdrawal from the state either: instead subaltern subjects of sexual violence demand accountability and answerability, not least for the state's role in sustaining hierarchies of caste, class and gender that expose subjects to injury in the first place (Chapters 5, 6). From the subaltern archive thus emerges the possibility of a different association with the post-colonial and colonising state: one which demands accountability, and engages in strategic affirmations and negotiations, while refusing the modes of (and monopoly over) power represented by the state (Chapters 5, 6). The subaltern archive thus forces a reckoning with the law and the state not as sites of emancipation, but as terrains for the recuperation of ideologies, institutions and arrangements of power that produce violence and abjection.

Representations of the subaltern subject of sexual violence as a subject failed by the state rather than an object for protection thus hold the potential to disrupt logics of carcerality, coloniality, occupation, surveillance and control authorised by the figure of the agentless victim (Chapter 6). The unremittingly structural, intersectional account of victimhood presented by the subaltern archive also gives the lie to liberal and neoliberal mythologies of the unfettered, autonomous subject, responsible for their own suffering and culpable in their own injury (Chapters 5, 6). The subaltern archive further challenges the notion of the individual as the primary locus of agency and responsibility through illustrations of *collective* subjectivity emerging from experiences of violation. Crucially, these solidarities do not simply refuse or transcend dominant communities through which safety and security are traditionally imagined — the (patriarchal) family, (caste/ethno-religious) community, or (colonial) nation — but work to actively destabilise their legitimacy and the fantasy of their sanctuary (Chapters 5, 6). These subaltern collectives refuse dominant (caste/nation-based, normative) idioms through which pain, suffering and injury are recognised and redressed, forging alternative socialites, building different communal harbours, and determinedly claiming dignity and community in victimhood (Chapters 5, 6). Cognisant of their location in a context where inclusion within the ranks of those deemed worthy of protection is often effectively ‘occupation’, voices from the subaltern archive insist that the liberation of subaltern subjects does not lie in demanding incorporation within existing protocols of victim recognition, but instead in the disavowal of the ideological frames underpinning these protocols and the institutions they sustain (Chapter 6). In sum, the subaltern archive demonstrates the futility (and risk) of any gesture towards justice for the subaltern subject of sexual violence that does not insist on revealing and resisting the constitutive violences of caste and class hierarchies, exclusionary ethno-nationalisms, liberal and neoliberal ideological frames, and the coloniality of the nation-state.

While the subaltern archive presents a crucial site from which to imagine and enact disaffiliations with the carceral, neoliberal, and colonial ideologies that underpin dominant responses to sexual violence, embracing the spirit of feminist critique with which I opened this chapter requires a persistent interrogation of what erasures and violences might issue from epistemic investments in the subaltern archive. In resisting the victim/agent binary from the subaltern archive, what forms of politics might my

research inadvertently prescribe or proscribe? What pernicious inferences or uncomfortable allegiances could my research lend itself to? First, this thesis runs the risk of being read as reifying and fetishising the subaltern archive (and the subaltern subject/collective) as a site of radical alterity, instituting a new binary (dominant/subaltern) in the place of the one I set out to challenge. Spivak (1999) insists that any ethical encounter with subalternity must remain doggedly aware of, and attuned to the “irretrievably heterogenous” (1999: 270) nature of subaltern experiences and knowledges. The subaltern archive I assembled through this thesis was by no means exempt from this inevitable heterogeneity: in fact, sections of the subaltern archive often resounded with demands for the death penalty, chemical castration and other forms of carcerality even as other subaltern voices vociferously refused them. It is imperative then to clarify that my attachments to and investments in the subaltern archive do not derive from an imagination of all things subaltern as inevitably pointing towards an emancipatory or oppositional politics, or necessarily challenging dominant representational regimes. To the contrary, I stressed the inseparability of dominant and subaltern archives (Chapter 3), and the ways in which they necessarily filter into and across one another. A critical, ethical encounter with the subaltern archive can then only be facilitated via the development of a critical reading practice (Chapter 3) for the categories whose constitutive violences and exclusions feminists hope to challenge. Put differently, the subaltern archive can and must never be offered as an undifferentiated site of unfailing alterity, but rather as a crucial resource through which glimpses into alternative epistemic arrangements might emerge, often alongside reiterations of dominant epistemes (Chapter 3).

A related but distinct danger lies in assigning epistemic primacy and emancipatory significance to a politics built on and emerging from experiences of injury, woundedness and violation. In a global political context where powerful polities routinely mobilise a collective sense of dispossession, disenfranchisement and disadvantage as the nub of their reactionary political projects (Kinnvall 2018; Phipps 2016, 2020; Sarkar 2018), what amenabilities might my thesis risk in insisting on attending to the collective radical subjectivity of pain? When white supremacists, Hindu nationalists, and trans exclusionary feminists *inter alia* tether their epistemic and political legitimacy to (real or illusory; historical or contemporary) injury, conferring epistemic authority to the

shared knowledge and experience of pain could serve to lend credence to the claims and politics that sustain these powerful and often oppressive agendas. Phipps (2016) argues that experience (especially that of violence or disadvantage) is often commodified and mobilised as political currency, and this currency is assigned value in ways that inevitably align with and re-inscribe hegemonic relations of power. Scott (1991) similarly cautions that building a politics from or around experience risks obscuring the historical conditions that shape and produce experiences and how they are interpreted, narrated and circulated, with the effect of buttressing rather than contesting dominant ideological frames. Thus, given that the discursive and epistemic life of experiences are inevitably mediated by socio-political structures and the ideologies that emanate from and sustain them, privileging shared experiences of suffering as a site for emancipatory knowledges and politics could serve to displace an attentiveness to the structural conditions that produce harm in the first place. Crucially, then, investments in the collective radical subjectivity of pain *must* equally entail amplifications of subaltern demands for an intersectional attentiveness to the historical structures through which subjects are rendered available for violence (Chapters 5, 6).

The brief discussion above presents only the beginnings of what must be an ongoing, interminable process of persistently interrogating the epistemes, protocols and politics instituted and authorised by the critiques and conceptual frames presented in this thesis. While it is impossible to fully anticipate or guard against the myriad ways in which ideas and concepts travel, this uncertainty cannot absolve scholars of our responsibility or answerability. In recognition of this indeterminacy, I follow Nash's (2018) advice to let go of defensive attachments to the conceptual alternatives I offer here, recognising that at best, they serve as inadequate placeholders for complex realities and experiences that can (or should) never be fully contained within abstracted conceptual frames (Bliss 2019). Embracing Nash's (2018) corrective to defensiveness, I endeavour instead to remain in an ongoing relationship of care, intimacy, investment and accountability with the literatures, archives and most importantly subaltern subjects and knowledges I encountered through this thesis, consistently working with and through them towards a "sustained, uncoercive rearrangement of desires with no guarantees" (Spivak 2003: 615). I offer this thesis as a homage to these histories of critique and struggle, and as a

contribution to the crucial and far from concluded project of resisting the binaries that violently circumscribe our possibilities of being and knowing in the world.

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