



## From “living corpse” to India's daughter: Exploring the social, political and legal landscape of the 2012 Delhi gang rape



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### SYNOPSIS

On December 16th 2012, Jyoti Singh, a 23 year old physiotherapy student, was brutally gang raped by six men on a bus in South Delhi, India. The severity of the attack and the inadequate response of the Indian government to the crime provoked nationwide protests and demands for legal reform. While other rapes have prompted public outcry, this particular crime inspired elevated interest, not only in India but around the world. This article addresses the relationship between the evolving social, political, and legal discourses surrounding rape in India that permeated the attack and its aftermath. By situating Jyoti Singh's case within a longer genealogy of responses to sexual violence in India this article reveals several unanticipated outcomes such as the distinct patterns of public outcry and protest, notable shifts in prior socio-legal narratives of rape and the pioneering content of the Justice Verma Committee report.

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“When a woman is ravished what is inflicted is not merely physical injury, but the deep sense of some deathless shame.”  
[Rafique v. State of Uttar Pradesh, 1981]

### Introduction

On December 16th 2012, six men brutally gang raped Jyoti Singh,<sup>1</sup> a 23 year old physiotherapy student, on a bus traveling through South Delhi, India. She died of the injuries she sustained thirteen days later. The severity of the attack and the inadequate response of the Indian government to the crime led to massive public protests that began in the capital and within days had spread to other parts of the country (Yardley, 2012). While other rapes have prompted public outcry, this particular attack inspired elevated interest, not only in India but around the world. The public response in India also marked a critical shift away from the socio-legal understanding of rape as a “deathless shame.”

In an effort to probe the public attention the case attracted, this article addresses the relationship between the evolving social, political, and legal discourses surrounding rape in India

that permeated the event and its aftermath. Jacqui Alexander's concept of ideological traffic will illuminate the complex discursive terrain made visible in the form of public protests, political responses, and demands for legal reform that followed the December 16th attack. Alexander's study of the regulatory practices of the state and heterosexualization pushes up against “the limits of linearity” in a chronological and hermetically sealed narrative of the colonial, neocolonial, and imperial periods, arguing instead that we consider “the ideological traffic that occurs within and among them” (2005:13). She suggests that “bringing neocolonialism into ideological proximity with neo-imperialism has made visible the different ways in which ideologies and practices traffic within the two spheres” (Alexander, 2005:246). I utilize the concept of “ideological traffic” here to bring together in ideological proximity the otherwise disparate discourses of law, politics and societal norms as they produce certain ruptures in the socio-legal landscape in which sexual violence cases are adjudicated. Factors such as societal perceptions of shame and honor, hegemonic framings of sexual violence in the media, and the role of legal and political structures interact with one another in delineating the offense of rape.

The ideological traffic surrounding the 2012 Delhi gang rape case reflects evolving gender relations in contemporary India and the patriarchal anxieties they provoke; class inequities in an era of global capital; and ongoing questions about women's safety and security in the public sphere. The hyper visible outcry by the public in the days after the attack identified patriarchal ideologies and victim blaming rhetoric, marking an important rupture in the national consciousness. The crisis that emerged out of what became transformed in public protests into the rape of "India's daughter" forced the state to critically reexamine its response to rape. What the world witnessed in the aftermath of the crime were previously dormant segments of the population evidencing a collective rage that spoke powerfully back to Indian law's often limited construction of legally *legible* rape victims.

Print and electronic media have discussed this case extensively and recent scholarship has explored specific dimensions of its after-effects through postcolonial and feminist critique (Dutta & Sircar, 2013; Roychowdhury, 2013), media studies (Rao, 2014) and the lens of youth culture (Atluri, 2013). This study breaks new ground by exploring some of its less visible aspects – the new patterns of public protest in support of Jyoti Singh, who transformed from a "living corpse" to "India's daughter" in the public consciousness, the problematic framing of rape in politician's statements following the incident, and the evolving representational agency and visibility of contemporary rape victims under the law. Heeding Jyoti Puri's warning that "sexual discourses are tools of power dispersal... [and therefore they] produce truths about subjects, structures, and histories" at a range of social, institutional and cultural levels (Puri, 2006:146), I seek to disentangle below some of the discourses of sexual violence that predated and followed the attack. Doing so indicates that while change occurred at a number of different societal registers, these shifts produced both subversive and regressive outcomes.

## Methodology

Sections I and II draw on an in-depth analysis of print and digital media coverage of the Delhi gang rape case in the period between December 2012 and December 2014. I examine both national and international publications to highlight discursive frames operating in the regional response and the narration and circulation of information about the case beyond India's borders. Section I exposes recurrent refrains in the public's critique of the government's inaction in the case and a particular identification with Jyoti Singh as a victim. Section II illuminates a contrasting set of responses by political leaders in the aftermath of her death and during the parliamentary debate on the proposed anti-rape bill, which reveal static assumptions about "acceptable" female behavior and narrow constructions of "legitimate" victimhood. These responses provide insights into the patriarchal norms and values that shape the state's perceptions of rape, which the media and protestors challenged.

Sections III, IV, and V focus on socio-legal responses and socio-political framings of rape in India. The strategic juxtaposition of these discourses reveals both contradictions and complicities in the shifting topography of sexual

violence in India. I begin, in Section III, with a brief examination of the juridical history and legal framework of rape in India, which remains deeply embedded in particular societal understandings of gender, shame, and patriarchal violation. In Section IV, I analyze a series of Indian Supreme Court cases involving rape that reveal a preoccupation with female chastity, the heightened evidentiary demands placed on rape victims, and the social stigma surrounding rape, each of which have served to exacerbate the challenge of securing convictions in rape cases. Section IV is an analysis of the Justice Verma Committee report, which was commissioned by the Indian government shortly after the attack on Jyoti Singh to review and offer recommendations for amendments to existing laws on sexual violence. This report rendered stunningly visible the intricate challenge of utilizing the criminal justice system to address rape. As the following section lays out, the changes the government enacted in the 2013 Criminal Law Act proved far more modest than those the Verma Committee had recommended.

Discursive terrain is messy and the post-December 12th landscape I trace below is no exception. Wendy Hesford suggests that certain globally visible forms of violation and abuse can engender a "human rights spectacle." She argues that "spectacular rhetoric activates certain cultural and national narratives and social and political relations, consolidates identities through the politics of recognition, and configures material relations of power and difference," which in turn shapes responses to particular human rights subjects (Hesford, 2011:9). Though the crime against Jyoti Singh did not technically activate human rights law, her case and the hyper visibility of its aftermath certainly operates within a parallel realm of spectacularity. When a case elevates to the level of spectacular violence, the local context within which these crimes emerge can often become obscured. In the section that follows I examine the public protests and media framings that followed the attack with the objective of making more overt the relationship of these responses to particular shifts in gendered visibilities and new narratives of protest.

## I) Societal responses to the 2012 Delhi gang rape

The crime and the responses to it produced a meta-narrative in what became a panopticon-like surveillance of the nation. What made this case transnationally legible was that it enabled prior gendered and Orientalist scripts to resurface (Roychowdhury, 2013). Global media outlets' coverage of the case emphasized India's distinct misogyny and cultural backwardness (O'Toole, 2013; Purves, 2013) thereby reifying the presumption that there are particular "cultural" forms of violence to which Indian women are uniquely subject (Kapur, 2002; Mohanty, 2003; Narayan, 1997). Elora Chowdhury (2014) posits as one feminist alternative to such framings adopting a transnational analytic of care when examining spectacular events such as the Delhi gang rape. This analytic is cognizant of the propensity to empathize with certain victim typologies and to consume particular hegemonic framings of "crisis" in lieu of precise inquiry into the structural processes (both regional and global) that underlie such incidents. Drawing on Chowdhury's transnational analytic of care how might we unravel, in a

more nuanced way, the varied public responses to the Delhi gang rape?

Jyoti Singh is a complex subject and one with whom massive segments of the Indian population felt and expressed profound sympathy (Kabeer, 2014). When four of Jyoti's attackers were sentenced to death, Judge Yogesh Khanna said the crime had "shocked the collective conscience" of the nation (Shah Singh, Mullen, & Udas, 2013). Activists suggested that her rape and murder "awoke" a dormant element of the public and that the ensuing public outrage had taken on "a life of its own." Why had Jyoti and not countless other victims of sexual violence become "India's daughter?" Class and caste are critical elements for understanding the specific resonance of this case. As Arundhati Roy said (2012), the case plays into a narrative of the "criminal poor... assaulting a middle-class girl" and as Amanda Hodge notes, "crimes against middle class women mobilize the middle class in a way that violence against lower caste women cannot" (2013). In fact, Jyoti'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. Her father was a luggage loader at the airport who had sold a portion of their ancestral land to help fund Jyoti's education as a physiotherapist. Jyoti had worked at a call center to cover her living expenses while she pursued her education. Nonetheless, 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).

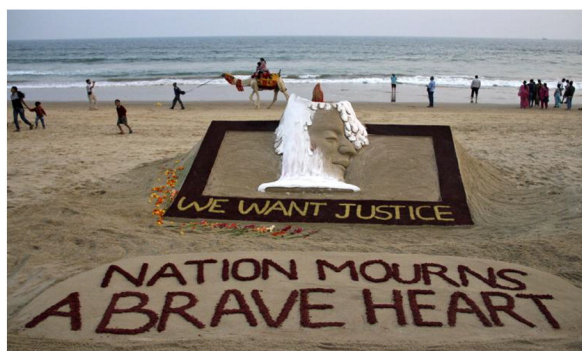
The urban upscale setting of the attack may have obscured this complexity. The fact that it happened on a private bus in a city where many people board similar transportation may have also boosted identification with Jyoti, who had boarded with a male friend after they had seen a film. In the aftermath of the crime one finds abundant editorial reflections on whose rapes matter to the Indian public at large (Kandasamy, 2013; Narayan, 2012; Sircar, 2012). The rape of Dalit women by upper-caste men, rape by the armed forces in conflict zones, and rape committed by family members and other perpetrators known to the victim remain disturbingly routine, and the silence around these categories of rape lies at the underside of the public discourse about Jyoti Singh's rape. As Palash Ghosh (2013a) writes "[f]or females at the very bottom of India's rigidly stratified society... rape has long been used as a method of oppression and terror by higher-caste men."

While acknowledging that the lack of equivalent outrage against other deplorable categories of rape is a critical problem, particularly in light of the gaps in the 2013 Anti-Rape law discussed below, more was at stake in the response to this case than simply middle-class soul searching and self-interest. A range of different publics, not just middle class people, expressed their outrage and in doing so drew on particular visual and narrative rhetorics. Under Indian law, Jyoti's name could not be released by the press, so several symbolic ones emerged to represent her: Nirbhaya ("the fearless one"), Amanat ("treasure"), Damini ("lightning"), and Jagruti ("awareness"). Many of these were memorialized in signs in public protests and shrines erected in her memory. She was "literally turned into India's national property" and protestors urged rapid legislative reform as tribute and insurance that no such event would happen again in India (Dutta & Sircar, 2013). The discourse of protectionism and construction

of women as property echo both the colonialist residue of "white men saving brown women" (particularly as the case was framed in the global media as evidence of India's cultural "backwardness" in relation to sexual violence) and nationalist frames which have equated violation of women with violation of the nation. As one protest poster photographed after the attack proclaimed, "India is raped."



Students protest the rising violence against women. Date: December 22, 2012 Location: New Delhi, India Credit: Nilanjana Roy/Wikipedia Commons



Sand sculpture by Sudarshan Patnaik in memory of the Delhi gang rape victim. Date: December 29, 2012 Location: Calcutta, India Credit: © RUPAK DE CHOWDHURI/Reuters/Corbis

Still other images and their accompanying textual narratives reflect different axes of engagement with the victim which stood in sharp contrast to the landscape of dishonor, shame, silence and disgrace that has previously plagued victims of rape. Protesters demanded the right to a safe city and meaningful legal protections for women, a reversal of a long history of police and judicial inaction in rape cases. They disrupted political officials' victim blaming and emphasis on why women "get raped," calling on them to ask instead "why men rape." Posters that read "My body, my right," "My dress is not a yes," and "Don't tell your daughter not to go out. Tell your son to behave properly," capture some of the public's effort to speak back to the remarks of callous state officials. As activist lawyer Vrinda Grover noted, it was "not the city that had changed" but the women living in it who were publically demanding justice and speaking out against gendered violence (Ashok, 2013).



Indian schoolchildren hold protest after Delhi gang rape. Date: December 22, 2012 Location: New Delhi, India Credit: AP Photo/Altan Qadri, File



Woman chants slogans as police fire water cannons in response to a large protest against the Indian government's reaction to the Delhi gang rape. Date: December 23, 2012 Location: New Delhi, India Credit: Photo by Daniel Berehulak/Getty Images

The belief that neoliberal urbanization in India produces certain marginalized masculinities as women enter and occupy public spaces comprises another element in the transnational analytic of care that informs my reading of the societal responses to this case. Vandana Shiva's reading of the case concurs that "violent, undemocratically imposed, unfair economy policies" have led to "the intensification and brutality of crimes against women" (Shiva, 2013). Other post-rape analyses examined connections between rapid economic change and reconfigurations of masculinity. Legal scholar Ratna Kapur wrote that young, professional females are "generating a sense of displacement in men" (Kapur, 2012). A reporter noted that "India's buoyant economy has thrust tens of millions of women into the workforce and universities, making them visible targets for resentful men who have been left behind trapped in poverty and ignorance" (Ghosh, 2013a). Within this shifting economic environment and a patriarchal social structure, another argued, "violence is one of the few things that can command respect" (Desai, 2014).

While there are undoubtedly connections between globalization and violence, particularly in terms of reconfigured gender

relations in family and public life, this is an incomplete narrative about evolving notions of Indian masculinity in the aftermath of the Delhi gang rape. Several news stories following the rape highlighted the tremendous poverty and hopelessness in which the defendants resided, framing the attack as an almost inevitable outgrowth of a restless and animalistic masculinity. Reporters described the perpetrators as "monsters" and "beasts" and the slum where they resided as a "fertile breeding ground for criminals" (Burke, 2012). The effort to pathologize Jyoti's attackers served to divert attention away from other expressions of masculinity relevant to this story. Men participated, very visibly, in the protests, offering a vital counter-narrative to the construction of a static Indian masculinity that actively resists disruption to traditional gender norms. The reporting on and striking images of male-led protests provide evidence of a willingness to embrace evolving gender relations, and of men standing as critical allies in the movement for gender justice.



Male demonstrators walk with placards during a protest calling for better safety measures for women. Date: December 23, 2012 Location: New Delhi, India Credit: TENGKU BAHAR/AFP/Getty Images



Anti-rape protesters lying on the ground during a gathering to mourn the death of the Delhi gang rape victim. Date: December 29, 2012 Location: New Delhi, India Credit: Photo by Virendra Singh Gosain/Hindustan Times via Getty Images



Indian journalists of print and electronic media hold a protest against the gang rape of female photojournalist while on assignment in the Shakti Mills compound in Mumbai, India. Date: August 24, 2013 Location: Jammu, India Credit: EPA/Jaipal Singh

One example was the “Skirt the Issue” anti-rape protest organized by men in Bangalore to challenge the message that women should change the way they dress in order to stay safe. The India for Integrity and Delhi Bikers groups also collaborated to offer “a public apology from Delhi men to Delhi women and to commit to change men’s attitudes toward females” (Sugden, 2013). Bollywood actor Farhan Akhtar initiated a movement called MARD (Men Against Rape and Discrimination). This organization focuses on public awareness campaigns that distributed plastic mustaches (symbolizing masculinity) at cricket matches and urged men to become “real MARDs,” mard being the Hindi word for man (Sarkar, 2013).



Men dressed in skirts take part in a demonstration against rape and sexual abuse of women. Date: January 12, 2013 Location: Bangalore, India Credit: Manjunath Kiran/AFP/Getty Images



Delhi men participate in a public apology to Delhi women. Date: March 16, 2013 Location: New Delhi, India Credit: Joanna Sugden



Farhan Akhtar's, Real Mard campaign poster Source: <https://www.facebook.com/TheRealMard>

Jyoti's father, Badri Singh, also offers an example of progressive masculinity in having chosen to support and prioritize his daughter's educational aspirations despite the family's precarious economic situation and the fact that he had two sons to educate. As one reporter wrote, “unlike many parents in India, where sons are usually favoured, the family had spared nothing for their daughter” (Burke, 2013). Badri Singh was also the person who released his daughter's name to the press, stating that he “hoped it would give courage to other women who have survived these attacks” (Farhoud & Andrabi, 2013).

It may be impossible to say for certain why the crime against Jyoti catalyzed this range of reformist responses. Perhaps the incident captured a cumulative feeling of outrage at the impunity enjoyed by perpetrators of similar acts and the state's prior inability to protect them. Maybe it was graphic nature of the violence committed against her with an iron rod during the attack which had caused severe and irreparable damage to her internal organs. Or perhaps the response to her victimization signals a desire to safeguard a new female subject and subjectivity that up to now had not been perceived worthy of the protection of the state. We could read Jyoti's life and her

family's investment in her future as an embodiment of the possibilities of reconfigured boundaries of gender and class — a utopian narrative perhaps, but one which the public was unwilling to see extinguished by her untimely death. Regardless of how and why the crime against Jyoti galvanized a national movement, these reactions reveal a shifting national consciousness around the problem of sexual violence and this hyper visible public critique emerged in a dialectical relationship with the more regressive and sexist statements issued by the state via its elected officials.

## II) Political responses to the 2012 Delhi gang rape

The political responses to the Delhi gang rape reveal ideological traffic that includes patriarchal anxieties about evolving notions of femininity and public displays of intimacy, as well as clear attempts to displace the violence onto Western culture or values or alternatively onto poor/migrant male bodies. Statements by lawmakers and other government officials in the wake of the attack indicate regressive sexist values and politicize rape. As Pratiksha Baxi writes, “the parliamentary discourse... [used] sexual violence as a resource for doing politics, and therefore re-entrenches rape culture” (2012). In calling the offenders “alien” and “exceptional,” in displaying a patriarchal mindset in discussing the problem of sexual violence, in employing very minimal change to the law in 2013, state representatives sought to tap into societal assumptions about gender, class, and regional difference and thereby appeal to their constituents.

For example, several political figures in the aftermath of the attack invoked the bogeyman of the restless migrant male. Mumbai politician Raj Thackeray singled out people from the state of Bihar, the home state of one of the defendants, as perpetrators of violence. He said “[a]ll are talking about the Delhi gang-rape, but nobody is asking where these men came from. No one is asking who did this. No one is talking about the fact that all these rapists are from Bihar” (“Raj Thackeray,” 2013). Similarly, within days of the attack Prime Minister Manmohan Singh said: “We have a large number of footloose young men who come to urban areas from rural areas in search of jobs, in search of livelihood strategies and if they do not get well absorbed in the process of development in rural areas, they can become a menace in society” (“PM warns,” 2012).

A variety of public figures engaged in victim-blaming. Cabinet Minister Kailash Vijayvargiya, for example, said that “if women breach their moral limits, they are asking for trouble” (Hullinger, 2013). Asaram Bapu, a religious leader, claimed Jyoti was “as guilty as her rapists” and that she could have halted the violence being committed against her if she had “taken God's name” or “called her attackers, her brothers” (Bennett-Smith, 2013). Botsa Satyanarayana, a political leader from Andhra Pradesh, said that Jyoti had placed herself at risk by being out at night. “Do we roam in the streets at midnight as we got Independence at midnight?” (“Foot in mouth,” 2013). A leader of India's Congress Party said, “No man will harass a woman unless led on by her” (Zee, 2013). Others charged that young women who wear skimpy clothing and “go around” with non-relative men “invite” such attacks and further that if women are out drinking and partying with men then “they cannot call it rape” (Goodman & González, 2013; Hullinger, 2013). Madhya Pradesh Home Minister

Babulal Gaur said, “women in South India are comparatively less prone to sexual assault because of their religious nature and their urge to wear full clothes” (Dutta, 2014). So abundant were these statements that several media outlets itemized and catalogued them as “foot in mouth” statements and lists of the “most troubling sexist remarks” after the Delhi gang rape (Bhadoria, 2012; “Foot in mouth,” 2013).

Another axis of ideological traffic revolved around an oppositional construction of the “West” by Indian politicians following the Delhi gang rape. They suggested the “Westernization” of Indian culture had *caused* the violence because the “Westernized” dress and behavior of women like Jyoti send men the wrong signals. Mohan Bhagwat, head of the pro-Hindu Rashtriya Swayamsevak Sangh, said utterly counterfactually, “rapes only occur in cities not in villages, where they have adopted Western lifestyles” (MacAskill, 2013). Vibha Rao, the chairperson of a state Women's Commission, claimed that women were “equally responsible” for the violence committed against them, stating that “[w]omen influenced by Western culture, send wrong signals through their dress and behavior and men often take the cue from those signals” (Bagchi, 2013). Shafiqur Rahman Barq, a member of Parliament said “Young men are provoked to commit rape because of the way women dress. Since they dress like Europeans, incidents of rape are taking place in the country” (“Women are to blame,” 2012). Similar statements emerged in the parliamentary debates on the anti-rape law the case inspired. Anand Geete of the Shiv Sena said, “A lot of people made fun of us when we opposed Valentine's Day, but now everyone agrees that it is the Westernization of our culture which is to blame for the rising number of rapes in the country” (Narodin, 2013). Implicit in these statements is nostalgia for a pre-colonial past where such forms of sexual violence were allegedly non-existent. The answer, for some, to the perceived taint of Westernization and rising number of crimes against women is for women to restrict themselves to household chores and do more to “satisfy” their husbands (Bhatt, 2013). As activist Kavita Krishnan explained, comments like these revealed an anxiety “about how to re-persuade women to be ‘real’ women — to go back to their traditional docile role even as they become more empowered” (Ghosh, 2013b).

A fourth axis of ideological traffic included biological determinist constructions of male provocation and corresponding warnings to women's groups not to “go overboard” to make what some alleged were “ordinary and innocent” male behaviors into punishable offenses. Responding to public sentiment in favor of the death penalty for the defendants, Mulyalam Singh Yadav said, “boys will be boys... they commit mistakes... why hang them?” (Mathur, 2014). Members of parliament made similar remarks with respect to proposed reforms to the law (Dutta, 2013), such as when Sharad Yadav said that “making stalking and voyeurism into punishable offenses is too harsh,” eliciting laughter from his fellow legislators when he asked them, “who amongst us have not followed girls?” (“Sexist' Sharad Yadav,” 2013).

Others' comments expressed patriarchal anxiety about evolving male/female interactions and shifting social practices like men and women dating before marriage, living together before marriage, and exhibiting physical affection toward one another in public. The fact that both Jyoti Singh and the female photojournalist who was gang raped in Mumbai in 2013 in

another high profile case,<sup>2</sup> were out in the presence of male companions was cited as evidence of this unease. As West Bengal Chief Minister Mamata Banerjee noted, parents once “reprimanded” young couples that held hands “but now everything is so open” (Baker, 2013). After the Mumbai rape, the police commissioner blamed the assault on a “newly promiscuous culture in India” stating that if people want a “safe city” couples should not be allowed to “kiss in public” or “indulge in [other] obscene things” (Mehta, 2013). Other endorsements of this kind of moral policing went so far as to suggest that premarital sex should be declared illegal and punishable by law (“Foot in mouth,” 2013). In a statement that combined both victim-blaming and a simultaneous critique of the new state of sexual relations in India one of the defense lawyers for the rapists said, “if my daughter was having premarital sex and moving around at night with her boyfriend, I would have burnt her alive” (“Delhi gang-rape,” 2013).

Juxtaposed against the figure of a dangerously free, Western influenced and hyper-sexualized female subject are the so-called “good women” allegedly safeguarded against the risk of similar violations. In a widely discussed statement, defense lawyer Manohar Lal Sharma said, “until today I have not seen a single incident or example of rape with a respected lady,” implying that traditionally sanctioned behavior inoculated women against sexual violence (Caulfield, 2013). The entrenched nature of these patriarchal beliefs was also apparent in calls to ban young women from wearing skirts (to avoid men’s lustful gazes), bans on women using mobile phones (which allegedly made them more susceptible to rape), and calls requiring girls to wear overcoats (to shield themselves from sexual violence) (Bosco, 2013; Hullinger, 2013; MacMillian, 2012). Public figures cited increased consumption of fast food and Bollywood films, and the rise of women in the public workforce as explanations for the increase in sexual violence. Several of these statements were powerfully captured in All India Bakchod’s (backtalk) viral anti-rape video “It’s your fault” (“All India,” 2013).

Noticeably absent in the statements detailed above is any willingness to engage with male culpability in perpetrating this violence. As Vishal Arora explains, they reflect instead the implicit belief that “many Indian men do not still know how to respond to woman who is out of her home alone, but to sexually abuse her” (2013). The outcry against the Delhi gang rape and subsequent rapes, and the powerful indictment of the state’s inadequate response to sexual violence that followed, shamed the nation in a transnationally visible way. Political figures scrambled to offer alternative explanations for the violence: she invited the attack, she wore the wrong clothes, she went out at night, and she was too Westernized. Rather than framing the issue of rape in terms of the complexities of evolving gender norms, violent masculinities, and neoliberal displacement, women were instead positioned as provocateurs, who by transgressing the boundaries of idealized femininity and the domestic sphere, had provoked these attacks. Men were constructed as helpless against a biological imperative to “take” women who had made themselves available. These logics sought to disrupt the public’s identification with the victims as aspiring, young, professional women demanding the right to move freely and safely in public spaces.

Still others engaged in strategic displacement of the violence onto the neo-imperial “West,” a stain on “urbanized” India, or onto lower class, lower caste, or migrant men.

### III) A shifting landscape of rape jurisprudence

This section situates the response to Jyoti Singh’s case within a longer trajectory of Supreme Court jurisprudence on rape, revealing how Indian courts and the public have traditionally viewed allegations of sexual violence and the particular socio-legal obstacles that have confronted women pursuing these cases. While the global media construed the case as an isolated event that “awoke” the Indian public in a hyper visible way, the case can be situated within a series of crisis-invoking cases in India’s legal history (Mankekar, 1997; Pathak & Rajan, 1989). Below I explore the ideological traffic circulating in the realms of law and society, drawing on analyses of select Supreme Court jurisprudence in earlier rape cases. Kalpana Kannabiran’s study of fifty years of judicial decisions in rape cases begins with the prophetic statement that, “[t]he paradox that informs the rape trial in India is that while legally rape is a crime, culturally, ‘rape’ does not exist” (2002:105). Instead, she explains, what emerges in the judicial narratives of rape is an exercise in “periphrasis” or speaking around the issue of rape that is structured by perceptions of naturalized male/youth lust, pornographic male fantasy, obsession with female chastity, and a focus on shame, both individual and familial. The spectacle of rape in the Indian courtroom has been described as voyeuristic and the relentless inquiry and investigation to which female victims are subject becomes patently evident in the judicial discourses examined below. They portray a societal context delineating rape as the most profound of violations and a woman’s chastity her most treasured value, marking a woman who has been raped in India as a *zinda laash* — “living corpse.”

“Because she was used to sex, she might have incited the cops (they were drunk on duty) to have intercourse with her.”

[Tukaram v. State of Maharashtra, 1979]

*Tukaram v. State of Maharashtra* (1979) was among the earliest flashpoint cases on rape in India, inspiring massive public protests, feminist organizing, and calls to amend criminal laws (Basu, 2013). Mathura was a young woman from a tribal community in Maharashtra who had gone to the police station to complain about poor treatment by her brother and claimed that she was taken by the police to a latrine and raped. The district court acquitted the defendants of the crime, reasoning that while the accuser, Mathura, had indeed had sexual intercourse at the police station, “rape had not been proven” (*Tukaram v. State of Maharashtra*, 1979). The court concluded that Mathura was “habituated to sexual intercourse,” but had lodged the false accusation against the police in order in to appear chaste and virtuous to her future in-laws.

The High Court reviewing the case reversed the lower court, stating that it was highly improbable that Mathura had initiated the sexual intercourse, or that, as a young female laborer who was in police custody at the time could have resisted the

advances of the police. But the Supreme Court reversed the case again, acquitting the policemen on the ground that “no marks of injury were found on the person of the girl after the incident and their absence goes a long way to indicate the alleged sexual intercourse was a peaceful affair, and the story of a stiff resistance having been put up by the girl is all false” (*Tukaram v. State of Maharashtra*, 1979).

The Mathura decision shocked the nation, inspiring widespread outrage and calls for tougher rape laws (Sircar, 2006). Four years later in 1983, parliament amended criminal law to require a defendant to refute a victim's claim of non-consent to avoid criminal penalties for rape. The Mathura decision also led to the creation of a distinct category of “custodial rape” in which the burden of proof shifts to the accused once intercourse has been established.

The courts' language reveals a fixation on Mathura's chastity. The decision lays bare a socio-legal context where evidence of prior sexual activity and a lack of defensive wounds could undermine a woman's claim of non-consent. Although the exacting evidentiary demands the courts had employed were derived in the colonial period from English law, scholars have argued that while evidence of the sexual history of the victim and physical evidence of resistance diminished in importance in England they “remained crucial in trials in India” (Kolsky, 2010: 111). A 1983 case spurred a shift.

“Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society.”

[*Hirjibhai v. State of Gujarat*, 1983]

In *Hirjibhai v. State of Gujarat*, the Supreme Court found that “corroboration is not the sine-qua-non for a conviction in a rape case,” and “refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury,” recognizing for the first time the challenge of obtaining corroboration of a rape allegation and claiming that “in the Indian setting” such corroboration is unnecessary (*Hirjibhai v. State of Gujarat*, 1983). The Court's decision furnished explanations for why Western women might make false allegations of rape and listed twelve reasons why an Indian woman of urban or rural background would not dare lodge a false complaint. These include fear of impugning her chastity, losing the respect of her husband, being unable to find a husband if unmarried, being taunted by society, having her honor and name tainted, and fear of being considered promiscuous. The Court reasoned that Indian society provided a “built in assurance that the charge is genuine rather than fabricated” (*Hirjibhai v. State of Gujarat*, 1983). While the logic employed here differs from claims that Western behavior by women invites rape such as the rape of Jyoti Singh, the emphasis on lying and deceitful Western women and honorable, chaste Indian ones echoed the political responses in 2012.

Furthermore while the *Hirjibhai* Court makes a compelling argument that the excessive demand for corroboration in cases involving sexual violence against Indian women may be unnecessary, it relies heavily on the premium placed on honor and virtue (or the overwhelming

social cost of rape) in order to do so. A 1996 case would also emphasize the deleterious societal impact of rape in a women's life.

“Rape is not merely a physical assault — it is often destructive of the whole personality of the victim. A murderer destroys the physical body of the victim, a rapist degrades the very soul of the helpless female.”

[*State of Punjab v. Gurmit Singh*, 1996]

*State of Punjab v. Gurmit Singh* marked another important milestone in the evolving Supreme Court discourse on rape. While, like the court in the *Hirjibhai* case, the Supreme Court in this case underscored the elevated value of female chastity in Indian society, it also offered some powerful statements about the need to take a more rational approach to rape. The *Gurmit Singh* case involved a young girl, under the age of 16, who claimed she was kidnapped on her way home from school, taken to a nearby village and gang raped multiple times by several men. The lower court rejected the victim's allegations because she was confused about the kind of car her kidnapper had been driving, because she had failed to loudly resist her abduction, and because she didn't immediately report the attack. The Supreme Court recognized that the delay reflected the family's pursuit of relief through the village panchayat (tribal court) first, and that public prosecution threatened the victim's reputation and future marriage prospects (*State of Punjab v. Gurmit Singh*, 1996). Ultimately the Court ruled that the testimony of victims of sexual assault should be given elevated weight regardless of external corroboration. They went on to suggest that the lower court had erred in weighing the prosecution's argument that the victim was a girl of “loose morals,” urging lower courts to approach rape cases with increased sensitivity.

Like the *Hirjibhai* Court, the Supreme Court in *Gurmit Singh* emphasizes the dishonor and stain of rape while also providing a more substantive reading of the context in which rape occurs and the likely reluctance of not only victims, but their families to report it. The decision also renders visible the lived impact of a rape accusation and subsequent trial on a young woman's life. The idea that a woman would not dare engage in the act of falsely accusing someone of rape because of the potential stain on her character is reflected in the Court's assertion that “no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her” (*State of Punjab v. Gurmit Singh*, 1996). As Kirti Singh has argued, “these judicial pronouncements on chastity and honour further entrench in the minds of people and the women the ‘disgrace’ of rape” (Singh, 2004). The judicial focus on consent, corroboration, and prior sexual conduct reflected a framework of intense and distinctly patriarchal scrutiny of accusations of rape.

Other aspects of Indian law reflect a patriarchal view of sex. For example, the crime of rape is defined by penile penetration of the vagina, which as feminist scholar Nivedita Menon has written, reflects the construction of rape as “a harm against the honour of the woman's family, and the purity of her womb. Only the penis can damage that purity in such a way that patrilineal succession is cast in doubt — all other damage is bearable.” (Menon, 2013). In a custom once permitted under Indian law, and still practiced despite a



2003 ban, the medical establishment in India has used a test known as the “two-finger test” to evaluate a rape victim's chastity and thus the credibility of her claims of rape. The test involves a doctor inserting two fingers into the vagina to determine by some measure of vaginal elasticity, whether the complainant is “habituated to sex.” Studies by human rights organizations suggest that the test continues to be widely used (Park, 2013).

However, both Jyoti Singh and the 2013 Mumbai gang rape victim challenged patriarchal constructions of rape by rejecting the *zinda laash* label. While Sushma Swaraj, the leader of the opposition party in Parliament, demanded capital punishment for the Delhi attackers, reasoning that even if Jyoti had survived she would be a *zinda laash* (Chaudhry, 2013), the statements of Jyoti and her family rejected the idea of rape as a living death (“Indo Asian News Service,” 2012; Kumar, 2013). From her deathbed Jyoti remained actively engaged in cooperating with law enforcement, offering several statements to magistrates reviewing the case and asking that her attackers be ‘burnt alive’ (Brown, 2013; “Delhi gangrape victim,” 2012). Similarly the Mumbai victim said she wished to return to work and that she refused to be silenced or immobilized by her rape. In a statement from her hospital bed she said, “Rape is not the end of life” (“Rape is not,” 2013).

So what stands out prominently in these highly visible rape cases is women's denunciation of a brand of victimhood that confines them to the status of “living death,” in order to become active agents, breaking traditional silences around sexual violence and demanding that their attackers be punished. This shift also included the very noticeable support of the women's family members in their pursuit of justice. This broader societal transformation was further echoed in the countless other women who came forward to speak of their own violations after these highly publicized attacks. The increase in reporting of rapes has continued since December 2012 (Rukmini, 2014) and global and national media coverage of rape cases also remains high (Bhalla, 2014; Hundal, 2013).

#### IV) The Verma Committee report: a pathbreaking intervention

All six of the defendants in the Delhi gang rape case were arrested within five days of the attack, and by December 22nd the Indian Government had put together a judicial committee to review possible amendments to criminal law and suggest measures for faster trials and harsher penalties for offenses involving sexual violence. Justice J.S. Verma, a former Chief Justice of the Supreme Court and a jurist known for his involvement in landmark decisions involving women, chaired, and High Court Justice Leila Seth and former Solicitor General of India, Gopal Subramaniam served on the Committee. The Committee received nearly eighty thousand responses from stakeholders, social activists, legal professionals, NGOs and women's groups from India and abroad on how to improve its rape laws (“80,000 Suggestions,” 2013). They had access to perspectives often silenced in the context of law and policy-making, including trafficked women, sex workers, queer women, and women experiencing violence in militarized areas of India. A month later the Committee submitted a 631 page report to the Indian government to consider as it debated changes to existing criminal law and procedural code sections.

The Verma Committee's report marked a watershed moment in reframing the issue of gendered violence in India. The Jyoti Singh case had touched off a considerable resurgence in public support of and optimism toward the state's purported “investment” in legal reform. The Verma Committee report responded by providing a pioneering blueprint of the changes necessary to address the often hostile socio-legal climate women in India confront (Verma, Seth, & Subramaniam, 2013). Close analysis of this document's discussion of the structural challenges women face in India reveals several important discursive shifts. The multidimensional interventions it proposes also offers important conceptual openings for a more radical and transformative dialogue about improving the socio-legal environment surrounding rape.

One commentator called the report “a handbook which effectively catalogues the causes for misogyny in India” (Kale, 2013) The report rendered visible the role of state institutions in exacerbating particular forms of abuse and the limited ideological framework within which some forms gendered violence have been conceived. Longtime activist Brinda Karat described the report as “a strong indictment of the governments at the Centre and the States for their criminal callousness in ignoring earlier recommendations of measures to prevent sexual violence against women” (Karat, 2013). It examined multiple aspects of the state's response to violence including law enforcement workers, military officials, and medical personnel, underscoring the need to make each of these constituencies answerable for their insensitivity towards sexual violence. The Committee called for increased police accountability in investigations, specialized training of criminal justice personnel, and faster trials. In the context of the medico-legal establishment, they specifically recommended the discontinuation of the two-finger test.

In expanding the framework of what constitutes actionable violence, the Verma Committee drew heavily on the discourse of human rights and the equality provisions of the Indian Constitution. The report proposed a separate Bill of Rights for women that would note, “certain practices including cultural, social, political, religious and customary norms are patriarchal and impair the agency, dignity and equality of women” and protect every woman's right “to express and experience complete sexual autonomy” (Verma et al., 2013: 429). The report situates violence within societal and institutional structures and calls for a more substantive view of where and how violence manifests itself.

The report also offered profound insights into the linkages between violence against women and broader aspects of gender socialization. An entire chapter criticized the role of educational institutions in bifurcating the education of boys and girls in a manner that promotes gender inequity in society. The Committee noted that “routine practices” in schools such as the gendered tasks boys and girls are asked to do construct “the gender regime” (Verma et al., 2013: 388). In the same section the Committee offers a sustained discussion of the “cult of masculinity” and male aggression identifying a common misperception among young men that a so called “real woman” is “meant to resist sexual advances.” As a result, they explain, “the use of force becomes not only normal, but... also essential and ideal” (Verma et al., 2013: 391).

Several notable changes can be identified in the report. One was a reconfiguration of the *boundaries* of actionable violence

meriting redress under the law to include acid attacks, stalking, sexual harassment, and trafficking. The second was an expansion of the *bodies* deemed eligible for the state's protection, for example, the call to abandon the marital rape exemption. The Committee reasoned that the exemption derives from an antiquated, patriarchal context that views women as the property of their husbands. The expansion of eligibility for protection also included the ground-breaking recommendation that the government review provisions of the Armed Forces Special Powers Act (AFSPA), which grants immunity to military officers who commit sexual violence in conflict zones. The report specifically recommended that cases involving sexual violence against women by members of the armed forces be tried in civilian courts (Verma et al., 2013: 149). The report also expanded the idea of gender justice beyond women, calling for the protection of rights of all sexual and gender identities, naming “lesbian, gay, bisexual, transgender, and intersexual persons” specifically (Verma et al., 2013: 41).

The final category of shifts occurs at a more meta/ideological level. The report reframes the discourse of gender equality in order to address head-on some of the tensions around gender, community, and culture, and examines the operation of patriarchy in hindering the efficacy of the legal system's response to violence. As Priya Kale has argued, the report's “biggest achievement is that it recognizes sexual assault as a violent symptom of a problem that has much deeper roots: subversive patriarchy” (2013). For example, the report argued against the use of trivializing language such as “eve-teasing” and “insulting the modesty of a woman” to describe sexual offenses. It called for keeping the age of consent at 16. The report also rejected the societal stigma of rape as imposing shame, calling it “the duty of the State as well as civil society to deconstruct the paradigm of shame-honour in connection with a rape victim” (Verma et al., 2013: 83). In arguing for urgent change in a climate where “a woman seems to be risking her reputation and honour by reporting a crime of sexual assault,” the Committee endeavored to disentangle the rape of an individual woman from her community (Verma et al., 2013: 84). As one media account summarized, “the JVC [Justice Verma Committee] effectively states that the ‘community’ is not a stakeholder in a woman's sense of self-worth and the violation of her physical autonomy alone is a serious enough crime” (Kale, 2013). This marked a monumental shift in the socio-legal landscape charted above which viewed the crime of rape as deeply embedded in ideas about shame, honor, marriageability and community.

#### V) The 2013 Criminal Law Act: the state responds to the JVC

Many activists characterized the state's actions in response to the Justice Verma Committee report as significantly diluted. The *Criminal Law (Amendment) Act 2013*, popularly referred to as the “Anti-Rape Law,” incorporated only some of the Committee's recommendations. It added the new categories of violent attacks the report had recommended to the Indian Penal Code, stipulating specific penalties for each crime (*Criminal Law (Amendment) Act, 2013*). It expanded the definition of rape to include any non-consensual penetration of the mouth, anus, urethra or vagina with the penis or other object, and non-consensual oral sex. In addition to increasing the penalties for crimes involving sexual violence there were

also significant procedural shifts including making it a punishable offense for a police officer or other public servant to fail to register a complaint when a sexual offense is reported and a requirement to fast track sexual offense cases. The new law also created a statutory bar against the use of a victim's past sexual history in determining her consent and a prohibition against questions during cross-examination as to the victim's moral character or past sexual history (*Criminal Law (Amendment) Act, Ch. IV, 2013*). It also stated that the absence of physical struggle does not constitute consent, a significant shift from earlier practice.

Notwithstanding these positive shifts, the new rape law fell far short of the Verma Committee's recommendations and Kavita Krishnan wrote that it “makes a mockery” of the report. A press release issued by a coalition of several women's organizations stated that the law dropped “all aspects of the JVC report that were hailed as ‘signs of a paradigm shift’” (Menon, 2013). Activist lawyer Vrinda Grover wrote, “the impunity of every citadel is intact – family, marriage, public servants, army, police” (Menon, 2013). So what were the specific shortcomings of the new law?

For one, the crime of marital rape was excluded making India one of about fifty countries that have not yet criminalized spousal rape. According to the United Nations Population fund, two-thirds of Indian women surveyed have been forced into sex by their spouses (Fontanella-Khan, 2014). Both male and female legislators debating the bill had argued that criminalizing marital rape had the potential to “destroy the institution of marriage” (Rajya Sabha, 2013). This exemption up to today continues to harm women. In May 2014, a Delhi court reaffirmed the idea that forcible marital rape is not a crime in a disturbing case involving the acquittal of a man who had drugged and raped his wife (Nelson, 2014).

Like violent husbands, the new law by its omissions protected army officials who rape women in the regions of India's North East, preserving their legal immunity via AFSPA (Denyer, 2013; Human Rights Watch, 2008). Just as lawmakers had framed outlawing marital rape as a “threat to the Indian family,” they warned that amending AFSPA would undermine “national security” (Manecksha, 2013). Activists also deplored the raising of the age of consent to 18. Though the Verma Committee had argued for keeping it at 16 some political parties said the change would “encourage premarital sex, which is against the culture of the country” (Krishnan, 2013). Many activists wished to avoid confusing youthful consensual sex with rape and the branding of teenage boys who had consensual sex as rapists (Nundy, 2013). Lastly, the new law declined to extend protections against sexual violence to men and transgender communities.

The new law ultimately elevated the interests of the imagined family, “national security,” and a narrow framework of acceptable intimacies through its refusal to embed the more progressive recommendations of the Verma Committee. Instead the 2013 Anti-Rape Law reflects a more punitive approach to rape framed rather narrowly around the specific facts of Jyoti Singh's case, for example creating a provision for the death penalty in cases of rape that cause a victim to enter into a persistent vegetative state (*Criminal Law (Amendment) Act, Sec. 376A, 2013*). In fact, the Verma Committee had specifically excluded the death penalty for rape in its recommendations. The Committee thereby aligned itself with feminists on the ground

who reasoned that doing so risked patriarchally reinscribing the crime of rape as one so destructive to a woman's honor as to be incommensurate with a punishment less than death.

## Conclusion

The aftermath of Jyoti Singh's lethal rape does not offer a neat and linear progression from crisis-invoking case, to public outcry, to comprehensive legal reform. In this article, I set out to uncover the layered and sometimes contradictory responses to this crime. Weaving together these often disparate discourses I reveal, for example, that while shame remains a phantasmic presence in the response, it had shifting meaning. As the case gained global notoriety and Delhi was labeled "India's rape capital," the world was invited to participate in a very public indictment of the failures of the Indian legal system. Media headlines declared that the nation itself had been shamed. The state's highly problematic response to the crime sought to blame the victim for the unimaginable violence she had endured and in doing so may also have caused its citizens to feel shame.

My analysis of the public and media responses to Jyoti Singh's rape and India's evolving rape jurisprudence reveals changes in perceptions of acceptable female behavior and a gradual restructuring of the parameters of "legitimate" victimhood. While the Justice Verma Committee report's negation of the stigma associated with rape has no force of law, it, as well as the media and public responses, represent a powerful shift. And yet statements of political and religious figures, and the significant shortcomings of the 2013 Anti-Rape Law, remind us "what kind of patriarchal reaction we're up against" (Bhalla, 2013). Two years later another transnationally visible rape case rocked the nation's capital, this time involving a driver of the taxi-service Uber. Newspaper headlines decried the nation's shame and the political responses that followed were all too familiar (Jha, 2014). Looming in the case was the specter of neoliberal capital in the form of a U.S. based car service operating in India, providing an opportunity, once again to deflect responsibility for the crime onto a Western entity. Like Jyoti Singh and the victim of the 2013 Mumbai gang rape, the Uber cab rape victim also spoke publicly about the violation she had experienced saying she refused "to be shamed by the incident," ignoring friends and community members who cautioned her against speaking out.

It seems inevitable that such bravery will engender real change in India, that the public displays of support toward Jyoti and the other victims she has come to represent will one day lead to the full implementation of the Verma Committee's blueprint for legal change, tackling gender roles and patriarchal structures at their core. The aftermath of the 2012 Delhi gang rape case reveals evidence of crucial shifts in the legal and public discourse surrounding the shame of rape and the foundation of a more humane and holistic approach to sexual violence in India. In the cautiously optimistic words of Jyoti's father, "I know one day people will forget her. But they will remember her death led to changes. Changes in the anti-rape laws, a change in consciousness" (Ghosh, 2013b).

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## Endnotes

<sup>1</sup> In print media following the attack the victim of the Delhi gang rape was referred to by the names "Jyoti Singh" and "Jyoti Singh Pandey." I have chosen to use the name "Jyoti Singh" which reflects her family name. The name of Jyoti's male friend, who boarded the bus with her that night and who witnessed the attack and who was also badly beaten by her assailants was Awindra Pandey.

<sup>2</sup> The Mumbai gang rape case or what was also referred to in the media as the "Shakti Mills gang rape" involved the gang rape of a 22 year old photo journalist on who was on assignment at the Shakti Mills compound in South Mumbai on August 22, 2013. The five defendants in that case were convicted in March 2014 and the following month three of the four adult convicts, who had been repeat offenders, were sentenced to death under a provision of the newly enacted Criminal Law (Amendment) Act. The fourth received a life sentence and the juvenile offender was sentenced to three years of reform school, the maximum sentence allowed under the Juvenile Justice Act.

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