

○ VOLUME 14 NUMBER 1, 2015

Sovereignty, Postcoloniality, and Gendering Human Rights: Rape and Occupation

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The December 2012 Delhi gang rape case of Jyoti Singh Pandey prompted widespread protests in India, and received global international media coverage. Since the event of the gang rape case, the complexity of feminist, queer, Hindu nationalist, and legal discourses in India also sheds light on state sovereignty and its investments in occupation, suffering and sexual violence in Kashmir and the North East. Attention to sovereignty in relation to bodies assembled by territory, religion, sexuality and gender makes visible an assertive Indian imperialism. This paper explores the ways in which a gendering human rights approach, which resulted in the 2013 anti-rape law is inadequate in thinking through sexual violence, suffering and torture where it concerns occupation. It may be more apt, this paper argues, to think through the practices of sovereignty in the Indian (post) colony.

Introduction

On December 16, 2012, the horrific rape of Jyoti Singh Pandeyⁱ and the subsequent wide-scale protests in Delhi received global coverage. Whether it was the brutality of the rape, delayed police action or state apathy, the public protests incited a sea change in Indian politics regarding violence against women and played no small part in the swift attempts at justice that followed. For one, the alleged offenders were arrested in record time, within a week (Times of India 2012). Secondly, the government-commissioned Verma committee was instituted on December 23, a week after the event, to provide recommendations for amendments to criminal law for sexual

assault—i.e., ‘quicker trial and enhanced punishment for criminals committing sexual assault of extreme nature against women’ (The Hindu 2013). By the 23rd of January, the Verma Committee submitted the Report of the Committee on Amendments to Criminal Law (2013), or the Verma Committee report as it is colloquially referred to, and a parliamentary ordinance was passed by the 3rd of February, 2013.

The anti-rape law passed on the 2nd of April, 2013 greatly expanded the terms by which violence against women could be defined and punished, but fell short of the Verma committee’s recommendations as well as feminist aspirations for the bill. Feminist legal assessments of the anti-rape law exposed its continuing patriarchal and heteronormative assumptions. For example, the law excludes marital rape as rape unless the couple is separated. Furthermore, rape is deemed as occurring only between men and women—thus excluding penetrative sexual violence against male or transgender victims. In terms of rape committed by the armed forces, the clause that prior governmental sanction is needed to bring any prosecution charges in the Armed Forces Special Powers Act (AFSPA) continues to keep in place mechanisms which effectively disallow prosecution for rape in Kashmir and the Northeast. While the recommendation of the Verma report to remove the clause of necessary prior governmental sanction to prosecute police were heeded, the recommendation to remove this clause in AFSPA for the security forces which effectively provides structural immunity for rape in conflict zones such as Kashmir and the Northeast regions was not heeded.

Commentary on the event of the rape highlighted the complexities of feminist and queer theorising and activism (e.g. intersections of sexuality, caste, and class or rural and urban distinctions and hierarchies were discussed in great detail in various forums and sites).ⁱⁱ While this complexity is worth noting, my interest in this event had to do with how it became an occasion by academics, lawyers, and activists to make visible state practices of sexual violence in Kashmir and the Northeast by India’s armed forces.ⁱⁱⁱ Based on this interest, I would like to explore the following questions in this paper: how does the legal impunity for military personnel accused of sexual violence, lodged within the AFSPA, become a way to unpack how we might understand the operations of sovereignty in the context of Indian context? Secondly, how might we understand the ways in which academic, activist and human rights discourses deploy the issue of rape to highlight general state violence? Are there distinctions to be made between political suffering and social suffering with regard to rape as a technique of state violence? And finally, how does this discursive deployment of rape in relation to sexual violence become a way to think through what it means to reconsider the status of the Indian state as ‘postcolonial’? So this paper examines the ways in which the notion of rape is used, through the complexity of feminist, activist, and rights discourses, to shed light on the operations of state sovereignty and simultaneously bring into question India’s status as a ‘postcolonial’ state.

AFSPA in the context of gendering human rights

In order to address these questions, I want to start by discussing the significance of the AFSPA in terms of why it came into focus during the event of the December 16 gang rape. The AFSPA is a re-incarnation of a colonial enactment through which the Indian government attempted to maintain its territorial integrity as a newly independent postcolonial state. Pushpita Das traces the lineage of the AFSPA enacted in 1958 to its origin in the 1942 ordinance 'promulgated by the British on August 15, 1942 to suppress the "Quit India" movement' (2012, p. 12). The special powers possessed by this ordinance included the use of force even if it meant causing death if a person did not stop when challenged by a sentry, caused damage to property, or resisted arrest. But a further significance of the ordinance lay in the immunity it provided to officers as their actions could not be accountable in court unless there was prior approval of the charge by the central government. The difference between colonial law and its 'postcolonial' incarnation, however, lay in a removal of another safeguard. As Das states, the 1958 Act promulgated against the threat of Naga calls for independence from India devolved decision-making regarding the special powers of the act from 'the rank of captain or equivalent' to 'a havildar/jamadar, thus allowing almost every soldier to use force with impunity' (2012, p. 15). So while Das suggests that these powers are 'not unfettered' since they can only be used in certain circumstances (assembly of five or more persons carrying weapons or someone violating the law), the provisions of the act 'to shoot, kill and arrest without warrant' any suspect or to 'enter and search without warrant or destroy any premises' believed to be sheltering suspects has given rise to a culture of state violence with impunity (2012, p. 15).

This culture of impunity regarding the correlation between the AFSPA and sexual violence was highlighted in the wake of the Jyoti Singh rape case as well as the Verma Committee report. The report observed that 'impunity for systematic or isolated sexual violence in the process of Internal Security duties is being legitimized by the Armed Forces Special Powers Act, which is in force in large parts of our country' (2013, p. 106). Following this observation, the report argued for bringing sexual violence against women under the purview of ordinary criminal law. But going beyond this clause, the Verma Committee report recommended 'the imminent need to review the continuance of AFSPA and AFSPA-like legal protocols in internal conflict areas as soon as possible' (2013, p. 150).

The Indian government's avoidance of this specific recommendation brings into focus the question of state sovereignty, its relationship to borders, and the role that gendered human rights, sexual violence and violence in general plays in the context of the Indian state's relationship to the regions of Kashmir and the Northeast. For example, excusing governmental inaction in relation to the Verma Committee's recommendation of reviewing the AFSPA, then Union

Finance Minister P Chidambaram emphasised the need for making AFSPA 'more humanitarian', but suggested that 'the Union government could not move forward as there was "no consensus" between it and the Army on the issue' (Joshi 2013). Walter Fernandes (Senior Fellow at the Northeastern Research Centre), in his forceful criticism of this stance, highlights this strange governmental response which appears to pass the blame for AFSPA to the Indian armed forces through the question 'Who rules India: the elected representatives or the army?' (2013). Fernandes' reference point is the earlier recommendation by the Jeevan Reddy commission to repeal AFSPA. This commission was appointed to inquire into the rape and murder of Manorama Devi, a Manipuri woman who was found raped and murdered by the Assam Rifles, a paramilitary unit deployed for border security, in 2004. Yet, the Indian government then did not publish the report; the report as Fernandes (2013) states was uploaded by one of India's national newspapers, *The Hindu*, "illegally".

Fernandes' discussion of the recommendations of the Jeevan Commission and the Verma Committee report highlights the ways in which the question of sexual violence, gender justice, state sovereignty and its territorial integrity in relation to borders as evidenced by continuance and expansion of AFSPA report need to be theorised as a kind of assemblage which re-surfaced in the responses to the Jyoti Singh case. Following Jasbir Puar's work, *Terrorist Assemblages: Homonationalism in Queer Times* (2007), in this paper I assemble discourses of rape and gender justice, the differing events and contexts of rape, the legal immunity of AFSPA, and academic discussions of gendering human rights in order to shed light on state practices of sovereignty at its borders. I explore what this assemblage might mean and do for the status of the 'post' in the context of Indian (post) coloniality. In order to explore the relationship between rape, gender justice, and AFSPA, I turn to a feminist discussion which addresses the Northeastern context referenced by Fernandes.

Gendering human rights: AFSPA at the North Eastern border

There is a dense history of scholarship on rape against women in the context of conflict zones. Drawing on earlier feminist theorisation of rape, Ruth Seifert's study of the rape of Bosnian women by Serbian men argues that there is a need to theorise rape as sexual torture which originates in 'the political construction of the female body in a certain national context' (1996, p. 41). So, not only must we read raped Bosnian bodies as a display of Serbian power, Seifert states, but that 'the incontestable reality of tortured female bodies is translated into male power' (1996, p. 41). In bringing together an analytic of gender arrangements as well as national identity, Seifert (1996) seeks to provide a way of interpreting collective anti-female violence.

Seifert's (1996) argument can be contextualised in the need to gender human rights discourse, where gendered violence was not recognized as a human rights violation, something that was central to the 1993 Vienna World Conference on Human Rights and the UN Women's Conference in Beijing.^{iv} That same year, India ratified the Convention on Elimination of all forms of Discrimination Against Women. In fact, the Verma Committee report cites the fact that India made a commitment to 'operationalize a national policy on women' at the Beijing Women's Conference (2013, p. 106). This state ratification of a United Nations gender justice convention has encouraged human rights activists and organisations in India, dealing with the problem of the intertwined nature of state and gendered violence, to draw on gender justice conventions to highlight state violence. So, for example, the Survivors Citizens for Justice and Peace Report (2010) highlights the role of the state in sexual assault and gendered violence in the case of the pogroms against Muslims in Gujarat in 2002.^v Following Sylvia Walby, this move could be described as a result of the globalization of the gendering of human rights discourse (2002, p. 551). Yet, this gendering of human rights process does remain problematic. The doubleness of state ratification of a gendered human rights convention and the ways in which human rights reports used this discourse to report on state violence in areas where the state is concerned with the notion of sovereignty, I argue, presents a specific set of problems. One problem has to do with how women get positioned as passive objects. Secondly, the question arises as to whether gendering human rights is an adequate strategy when speaking about state violence.

It is precisely this problem that Papor Bora (2010) addresses in her reading of the Manorama Devi case in relation to the activism that followed her sexual torture and killing. Referencing the 2005 Northeast network report *Women in Armed Conflict Situations*, which framed the issue as women being caught between two patriarchal moves—'on the one hand, the state targets women and uses violence against them as a means of suppression and on the other the community is apathetic to the special problems of women' (2005, p. 2)—Bora (2010) cautions against this manner of framing gendered violence. The report Bora (2010) argues, frames women as passive objects caught between the state and the community, and secondly, addresses the category of gender in a unidimensional manner in the context of state violence and law in the Northeast. Bora suggests that while the focus on gendered effects of state violence collapses the public/private distinction in line with normative feminist theory, it does not address the nature/polity, civilised/savage distinction of colonial categories which operates in the way that women in the Northeast are treated not only by India's armed forces and the state, but also in the normative national imaginary (2010, p. 350).^{vi}

The pitfalls of the 'violence against women framework' have also been discussed by feminist legal theorist Ratna Kapur through a different angle. In the context of the rise of the Hindutva right, Kapur argues that this framework can be easily co-opted so that the

communalisation of sexual torture can pin the blame entirely on Muslim communities, or worse, discursively situate rape as a matter of women's, and thereby the family's (dis)honour (2005, p. 48). The postcolonial legal context, therefore, Kapur argues is fraught with pitfalls when feminist struggles are framed within a hegemonic feminist rights-based discourse which does not take account of national/local contestations of power (2005, p. 48). However, in the context of the Northeast, Bora complicates Kapur's argument by paying attention to the manner in which Northeast struggles for sovereignty against the Indian state are waged through the colonial and postcolonial knowledge production regarding the Northeastern tribal who is 'discursively constituted as neither modern nor national' (2010, p. 350).

The significance of Bora's argument lies in its exploration of the manner in which law constitutes the ideal Indian citizen within the axis of race and gender. We need to discuss this axis in relation to sexuality and religious identity as well in the context of Kapur's (2005) discussion of communalization and the problem of criminalizing sexuality. Bora argues that the call for the repeal of the AFSPA assumes equal protection for all citizens under laws widely applied across India; she states that such a discourse 'does not ask what makes possible a law such as the AFSPA' (2010, p. 345). In other words, the Act has been instituted in order to respond to bodies not intelligible as ideal citizens. And any feminist politics focussing on state violence and sexual assault yet giving inadequate attention to the manner in which law constitutes an ideal Indian citizen may be ineffective. In order to argue for a postcolonial feminist analytic which would address this nationalist problem of constituting an ideal Indian citizen as well as casting women as objects of violence in human rights discourses, Bora turns to the protest that followed the rape and killing of Manorama Devi. By reading the event of one protest by the Meira Paibi (female torch bearers) against the sexual torture and killing of Thangjam Manorama as speaking to the state in political terms, Bora (2010) illustrates how a gendered and racialised violence in the Northeast is made visible.

I draw on the account of Laishram Gyanshori (2008), one of the Meira Paibi protestors, as narrated to the magazine *Tehelka* to describe the event.

On July 11, 2004, Manorama Devi or Thangjam Manorama was arrested by the Assam Rifles as a suspected militant. Her brutally raped and tortured body was dumped near her home the next day. She had been shot in her vagina to destroy evidence of rape.^{vii} By July 12, 30 local organisations came together in a conglomeration called the Apunba Lup to launch a movement against the AFSPA. Gyanshori and some of her associates felt that the strategies described by the Apunba Lup weren't enough. On July 14, this group of women (30-40) gathered at the Kangla Fort in Imphal, the capital of Manipur. Gyanshori (2008) describes her experience of this protest:

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.

For Bora, the slogan 'Indian Army Rape Us' is a command (2010, p. 356). She argues that this command resignifies the category 'woman' as subject rather than object. Women would be objects of violence if the protest read 'Indian army rapes women' as found in human rights reports or in a legal case (2010, p. 356). Since the AFSPA is at the heart of the protest, Bora posits, the 'us' is not only 'women but also the Northeast' (2010, p. 356). Bora's discussion carefully traces prior articulations of the event, and she argues that these discourses use rape to 'seek accountability from the state' through a human rights discourse while political parties emphasise "women's vulnerability" (2010, p. 356). In both these cases, what becomes apparent, according to Bora, is the protectionist discourse which frames women's bodies as rape-able. Focussing on a reading whereby the 'us' in the 'Indian Army Rape Us' signifies the region of the Northeast rather than women, Bora initiates a reading, which highlights the protest against the Indian state. In this sense, Bora highlights something else, something which human rights reports have documented—sexual abuse against male and female bodies. Here, she argues, 'the state is both patriarchal and heteronormative, where the punishment for betrayal is sexual violence irrespective of gender' (2010, p. 357).^{viii} Bora's suggestion is that by refusing the paternalist protection of the state through this protest—one which in practice gives 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, p. 357). This is a command, for Bora, for 'political equality', which establishes 'the equality of speaking subjects' as 'a prerequisite to questions of peace, democracy and citizenship' in the region (2010, p. 357).

Bora's argument for a postcolonial feminist analytic is an attempt to provide an alternative to the language of law, and to understand the entanglement of the intersectionality of race and gender in relation to the protest against law and its violence. In highlighting the impossibility that AFSPA can be humanitarian in practice or that ordinary law can be applied equally, Bora highlights an Indian nationalism that depends on, but also further exploits colonial and Eurocentric ways of knowing the Northeasterner—as racially other, and which cannot be an adequate response to colonialism as would befit a postcolonial state.

But the question is, what response could befit a postcolonial state when it is concerned with maintaining the territorial integrity of national borders in the face of a struggle for sovereignty? Slightly refocusing Bora's argument not only in relation to law, but to the broader issue of sovereignty, I suggest that Bora's reading of the protests against an AFSPA-related sexual violence and murder is in fact productive of the broader issue—that of the complex entanglements of sovereignty, race, religion and gender. I would argue that these entanglements need to be read as an assemblage; hence this is not merely an issue of highlighting intersectionality. For Jasbir Puar, the conceptual relationship between assemblages and intersectionality may shed light, among other things, on the relationship between 'discipline and control' (2011). Bodily technologies of sovereignty, I would argue, are part of this relationship. So, this is not a question of an alternative to law per se, but a way to highlight the practices of state sovereignty, its bodily technologies, and to explore how human rights practitioners respond to these technologies through recourse to a gender justice discourse.

In the first instance, it is hard to imagine the naked women as attempting to command a space for the *equality* of speaking subjects. If anything, as the interview with Gyanshori highlights, the command to rape 'us' is a weapon which does not establish equality but exposes, makes visible and embodies, quite literally, abject gendered bodies which the AFSPA attempts to produce. With the body of Thangjam Manorama imaged in her mind—a suspect raped body who militates the command for justice—Gyanshori (2008) describes the fire which lit their hearts. The women embody the Meira Paibi, women becoming flaming torches as they rush enraged and in agony screaming slogans against the Indian army. In this becoming, the abject bodies of those who might be raped at will by the immunity that the AFSPA grants become subjects. Yes. But, the act does not illustrate a demand for political equality, I suggest. Yet, neither are they only 'bare life parading as bare life', as Ananya Vajpeyi has read it, even as they highlight this status (2009, p. 41). They illustrate through the powerful protest of stripping their gendered bodies the absolute power that sovereign violence commands over their bodies. I am reminded here of Jasbir Puar's (2005) analysis of US torture in Iraq which comments on how much power we command over bodies. And in turn they demonstrate the power of the stripped body, bare life, for making this sovereign violence, this will-to-rape, this will-to-torture women and men, visible through the highly technologised mediated circuits of our vision. In this sense, Bora's reading of the slogan 'Indian Army Rape Us' is productive. Yes, this is a challenge (in Gyanshori's words) to sovereignty, a challenge that operates as a will-against-power, and by extension a will-against-the-sovereignty of the Indian nation-state.^{ix} In this challenge, 'Indian Army Rape Us', what is made visible is rape as an embodied technology of Indian sovereignty in its 'borderlands'.^x Why is it necessary to name rape as an embodied technology of sovereignty? What would this naming highlight in relation to a gendering of a human rights discourse or even a postcolonial feminist analytic?

Somatechnics and the practice of sovereignty

In the context of transsexual surgery and self-demand amputation practices, Susan Stryker and Nikki Sullivan discuss the need for a term that describes the material intelligibility of the body through regulatory norms, which Judith Butler theorised so eloquently. This term ‘somatechnics’ illustrates how ‘isomorphic relations between the collective body politic and an individual corporeality is therefore not merely representational but also material’ (2009, p. 52). In this sense, ‘somatechnologies function 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, Currah and Moore 2008, p. 14). This connection and circulation is an enmeshment, therefore, with political sovereignty. If Foucault attempted to overturn a Hobbesian vision of authoritarian sovereignty through an argument for an analytic of the microphysics of power (thus a vision of power that was initially anti-judicial), Stryker and Sullivan suggest that ideals and ideas of ‘bodily integrity continue to (in)form current social imaginaries—that notions of integrity, in short, still create somatechnic effects on individual bodies, social bodies, and the relations between them’ (2009, p. 51). Foucault’s (2004) later work, of course, suggests that the triangle of sovereignty-discipline-government had to be taken into account in order to describe this microphysics of power. Elsewhere, in the context of the occupational divide and rule policies of the US government in relation to religious identity in Iraq, I have described the manner in which Foucault’s biopolitical caesurae or the differentiation of populations enable the transformation of biopolitical power to necropolitical power in times of crises—such as invasion, occupation or so-called riots. I named this biopolitical caesurae, generated by colonial sovereignty, as constituting ‘an enumerative normative somatechnics’ to describe the embodied effects of colonial epistemologies and techniques of governance which produce identity categories.^{xi} In this paper, I want to explore how the quest for sovereignty operates as a somatechnological force, which drives the techniques of (post)colonial governance.

Here in the interplay between norms and laws, the quest of sovereignty is concerned with militantly maintaining the political and territorial integrity of the body politic through key terms such as ‘public order’, a key clause in the AFSPA. The practices of maintaining public order involve the disintegration of those bodies always already suspect and anti-national through sexual torture, rape, maiming, disappearing and massacre. These bodies reappear in official documents and statements as those who *have to have been raped, tortured, and killed*, for the sake of an imagined bodily integrity of the nation. In effect, this is the manner in which the AFSPA works. To understand the somatechnology of sovereign power, therefore, is to understand its aptly named Acts as generative of (dis)integrating bodily practices; enmeshing, as Stryker, Currah, and Moore (2008) argue, the lives of bodies with the lives of states and nations.

These disintegrating bodily practices of sovereignty are the context through which we must understand the suffering of the victims as political—i.e., suffering under occupation or colonialism—rather than reducing the question of rape in this context only to social and personal suffering. While the categories of political, social and personal are not necessarily separable, I stress here the distinction of political suffering under occupation. In the context of Israeli settler-colonialism, Nadera Shalhoub-Kevorkian states that ‘Eurocentric narratives of suffering’ often rely on an ‘individualising’ technique which ‘ahistoricizes and apoliticizes suffering’ (2013, p. 279). These narratives negate the political issue of suffering under colonialism and occupation. A similar argument could be made for the Indian context. And the difference between the political techniques of occupation in Kashmir—including rape—and the socio-political issue of violence against women becomes visible. It is here that the logic of states signing up to gender justice conventions while engaging in embodied (dis)integrating practices in the concern for territorial integrity becomes intelligible. These techniques of sovereign power one could argue highlight a biopolitical, even a necropolitical, hierarchy: the state is engaged on the one hand in the attempt to improve on gender justice processes with regard to rape in relation to the figure of ‘the Indian woman’ and justifies or provides immunity for the sexual torture and murder of those women and men who are placed in the categories of suspected terrorists or anti-national bodies. The gender justice processes mentioned here are by no means ideal as feminist legal theorists like Ratna Kapur (2005) have pointed out and may be hijacked by the discourse of honour in practice. Yet, this hierarchy also points out the limits of a gendered human rights discourse, a limit which surfaces in human rights reports, precisely because it faces the limit of the sovereignty doctrine. This problem appeared in the online contestations regarding exhortations to the protestors of the Jyoti Singh rape case to remember the rapes of women in the Northeast and in Kashmir. For example, banners about the 1993 Kunan Poshpora rape case appeared during the street protests. Abhijit Dutta (2013) countered these exhortations to remember the Kunan and Poshpora rape case arguing that the focus on rape as gendered violence could exclude the other techniques of state violence and occupation.

Gendering Human Rights: AFSPA in the ‘borderlands’ of Kashmir

Before I proceed to discuss Dutta’s argument, I want to comment briefly on the entanglement of territory, body, history and geography in Kashmir. If Papor Bora argues that the Northeastern subject has a genealogy that is racialised through (post)colonial knowledge production, it is important to note that the suspect, anti-national Kashmiri subject is Muslim, a subject that can be traced through a different yet related genealogy as Mridu Rai (2004) has demonstrated in her historical study of Kashmir. Here sovereignty constitutes its religious other through the mechanisms of the political theology of Indian secularism, where religious difference has played a role in the

politics of occupation in Kashmir. Caught in a place where the strategic geopolitics of India, Pakistan and China function to render Kashmir as a borderland, as Shubh Mathur (2012) suggests, Kashmir's tale is one of contested sovereignty, a Muslim majority state rendered a problem in an envisioned Hindu-majority India, 'a territory of desire' as expressed through popular cinema (Kabir 2009). Here the right to kill since the institution of the AFSPA in the 1990s has resulted, according to the 'Alleged Perpetrators: Stories of Impunity in Jammu and Kashmir' report, produced by the International People's Tribunal in Jammu & Kashmir (IPTK) and the Association of Parents of Disappeared Persons (APDP) in the 'enforced and involuntary disappearance of an estimated 8000 persons (as on Nov 2012)', about '70,000 deaths, and disclosures of more than 6000 unknown, unmarked and mass graves' (2012, p. 7). The IPTK/APDP report also states that 'the last 22 years have also seen regular extra-judicial killings punctuated by massacres' (2012, p. 7).

The Kunan and Poshpora (twin hamlets) rapes occurred as a result of the AFSPA (Asia Watch 1993).^{xii} During the night of February 23, 1991, the 68th Brigade of the Rajputana rifles entered the village, corralled the men of the village in a *kothar* or storehouse, and began raping the women. Even girls as young as eight were raped. Dutta's (2013) searing account of mass rape in Kunan Poshpora on its 20th anniversary critiques feminist discourse that links the Jyoti Singh Pandey rape case to Kunan Poshpora through an analysis of patriarchy and sexual power politics which are at the heart of the event of rape. Rape under occupation is not a random event, Dutta argues: It 'is less about the power relations between man and woman in a patriarchal context; it has everything to do with the relations between State and Subject operating within the context of an armed occupation' (2013). 'We must be able to see that a rape in Kashmir', Dutta states, 'is no different from an enforced disappearance, an extra judicial killing, an illegal detention or a case of torture' (2013). Dutta argues that when the armed forces rape, 'they are doing their duty, they are teaching "them" a lesson, they are keeping Kashmir "integral" to India' (2013). In stating this argument about the disintegration of bodies in relation to the territorial integrity of the Indian state, Dutta (2013) makes an astute observation in pointing out that rape under occupation cannot be conflated with rape in general. Yet, rather than abandon the gendering of human rights discourse which is an ongoing process, I would ask the question as to whether there is room to rework this discourse in the context of the violent operations of state sovereignty? In a time when the (post)colonial state confronts contestations of its colonial occupations, human rights activists appear to use the gender justice discourse to highlight state violence. Yet, the strategies of highlighting state violence through a gender justice discourse remain limited if the gendered human rights discourse confines itself to addressing sexual violence against women.

Some examples of these strategies and their limitations can be read in earlier human rights reports in the context of Kashmir. The 1993

Asia Watch (a division of Human Rights Watch) report details and verifies 15 reported rape cases, and also discusses state failure to prosecute the rapes. In the overview the report states:

Since the government crackdown against militants in Kashmir began in earnest in January [...] 1990, reports of rape by security personnel have become more frequent. Rape most often occurs during crackdowns, cordon-and-search operations during which men are held for identification in parks or schoolyards while security forces search their homes. [...] Rape is used as a means of targeting women whom the security forces accuse of being militant sympathizers; in raping them, the security forces are attempting to punish and humiliate the entire community... (1993, p. 1)

The report specifies why it focuses on a gender specific discussion of rape: 'Social attitudes which cast the woman, and not her attacker, as the guilty party pervade the judiciary, making rape cases difficult to prosecute and leaving women unwilling to press charges' (1993, p. 1). While this may be true, evidence of state attempts to discredit the women may also contribute to the issue of why women may be unwilling to report rapes. The case study of six to nine women raped by the 22nd Grenadiers in the village of Chak Saidapora, south of the town of Shopian in 1992 substantiates this argument. The women's accounts reveal a general pattern. In one of these statements, a woman describes the soldiers as saying, 'We have orders from our officers to rape you' (1993, p. 10). Indian authorities discredited the rape allegations, but also said 'Two of the women who have been alleged to have been raped were wives of terrorists' (1993, p. 11). The report suggests that 'the authorities intend to use the accusation that the women associated with "terrorists" both to discredit the women's testimony—and implicitly at least—shirk responsibility for the abuse' (1993, p. 11). Here then are statements, which reveal that rapes are directly linked to orders by state authorities, and that the immunity against prosecution is the legal structure that enables these rapes. So, it is not necessarily social attitudes but a culture of immunity through AFSPA which makes it difficult for women to press rape charges. Yet, the report is only able to recommend that 'the government of India should support swift investigations of rape by security forces and paramilitary forces in Kashmir. [...] Only with such trials and appropriate punishments will these forces receive the clear, unequivocal message that rape is not condoned by their superiors' (1993, p. 17). Secondly, in the footnote to this statement, the report also states, 'Male detainees have been subject to various forms of sexual molestation' (1993, p. 1). So the question of state violence against men and women emerges in a report whose focus is violence against women. In other words, the value of this human rights report lies in its reportage of rape as a state-directed strategy of bodily disintegration, but its address toward the Indian government appears futile as it is, in fact, the state who has effectively (from the victim's accounts) engaged in ordering rape. And secondly, the conception of gender relegates the sexual torture to a footnote.

The IPTK/APDP report on violence in Kashmir takes a different route. Rather than focussing on interviews with victims and witnesses, the report draws on the state's own official documents to make a case for human rights violations. The report is not 'definitive' or 'exhaustive', but 'uses documents in possession by the state' to 'begin a process of accountability' regarding state violence (2012, p. 8). Cleverly, the IPTK/APDP report uses the individual criminal responsibility human rights discourse which individualises perpetrators to point out the scaffolding for state culpability. Individual criminal responsibility is illustrated by offering analyses of official state documents (statements before police, police final reports (closure reports or charge sheets) which name alleged perpetrators and their victims (except in cases of rape against women) in order to offer an indictment of the governments of Jammu & Kashmir and the Centre. The human rights discourse outlined here, therefore, is used against its current dominant framing—individual criminal responsibility—to offer an indictment of the practices of state sovereignty. And, in fact, the report clearly foregrounds this violence: 'The official designations of the alleged perpetrator and the geographical spread of the crimes against the people of Jammu and Kashmir indicate a decisive will of the Indian state, carried out by its functionaries as part of a design' (2012, p. 8). The IPTK/APDP report maps and chronicles those Foucauldian capillaries where the exercise of the sovereign right to torture, to rape, and to kill occurs and links these forms of sovereignty back to the structures of impunity, which enable state violence. More importantly, the IPTK/APDP report does not address the Indian state but an international community—possibly the International Criminal Court. And since it has a category that details specific cases of rape against women in state official documents, it exposes the culpability of the Indian state with regard to its international obligations as signatory to the Convention for Elimination of Discrimination Against Women. The significance of the IPTK/APDP report is that it addresses an international community and is a chronicle of the extent of state violence and occupation in Kashmir. In this sense, the document is an indictment not only of the perpetrators, but also of the state, its judiciary, and army. Because the strategy of IPTK/APDP report involves using official documents to hold agents of the state accountable, and in turn, hold the state itself accountable for torture and murder with impunity in the absence of domestic laws against torture, the issue of state sovereignty and its techniques of violence are addressed here in a strategic fashion. Yet, the non-focus on the question of the relationship between sexual torture and gender could prove limiting in the longer term especially through the growing dominance of an international gendered human rights discourse.

Gendering human rights: the problematic of sovereignty

My concern in this paper has been to explore the problematic of the doubleness of state signatures to a gendered human rights approach and the simultaneous practice of state-directed sexual torture against men and women in the quest to maintain the territorial integrity of sovereignty. In this sense, at the level of law if not in the practices of

implementation, state sovereignty creates a hierarchy for gender justice—here the ideal Indian woman citizen can in principle (if not in practice) seek justice against the criminal rapist in the name of the violation of bodily integrity, while rape against anti-national, suspect bodies of women and men, as a (dis)integrating somatechnological event, remains effectively immune.

In the context of the postcolonial Indian state's arrival as a contender in global politics; in a time when global powers such as the US and the UK court Prime Minister Narendra Modi, culpable at least by human rights reports for the sexual torture and murder in the Gujarat programs, how will this gender justice hierarchy unfold?^{xiii} In a relevant and slightly tangential context, that of the use of the gendered human rights discourse to engage in war, Margaret Denike (2008) has argued that the problem with framing rape as a human rights issue in the context of war crimes is that it does not question the legitimacy of war. Such a critique leads us to the issue of the sovereignty doctrine and the intricate relation in our time between the gendering of human rights, war and the violent practices of sovereignty? The Indian state has joined its Western counterpart in the quest for immunity against war crimes. Garima Tiwari (2014) writes of the Indian state's hostility toward the Rome Statute for the establishment of the International Criminal Court (ICC). Furthermore, India is signatory to a 2002 bilateral treaty with the US for the provision of immunity for US personnel with regard to the ICC. What would be the meaning of anti-colonialism or decolonization in this context? Some scholars, perhaps following activists engaged in sovereignty struggles now use the term colonialism to describe India's assertion of its sovereignty in the Northeast and in Kashmir.^{xiv} If sovereignty itself is a border concept, as Wendy Brown argues, how would such a gender justice hierarchy 'render human rights a matter of corporate utility and state legitimacy rather than a matter of challenging the "protectionist rackets" and other forms of power of security states' (qtd. in Denike 2008, p. 113). Another way of challenging the sovereignty doctrine would be through the discursive shifts which can sometimes occur through activism and political contestation. Tracing a genealogy of human rights, Costas Douzinas argues that 'human rights are political constructs which both conceal important ways in which power is exercised and can also be used to challenge oppression and domination' (2000, p. 373). Or as Ratna Kapur has argued, we need to pay attention to the manner in which 'peripheral subjects don't just claims rights' but disrupt what is normative (2005, p. 131). So it is in this context of gendering human rights in the last decade of the 20th century that the link between the event of the gang rape case on December and the question of rape as a somatechnology of sovereignty are important to make. The link, of course, would be to illustrate the difference between rape as a social event and rape as a political act, causing political suffering, in the context of occupation and colonialism (Shalhoub-Kevorkian 2013).

Meanwhile, the struggle for justice in relation to the 1991 Kunan Poshpora rape case continues. In April 2013, 50 women (mostly lawyers), filed a PIL (public interest litigation) to reopen an

investigation of the case where around 53 women in those twin villages were raped en masse (Manecksha 2014). Judicial Magistrate Kupwara (June 6, 2013) and Sessions Judge Kupwara (August 8, 2014) had ordered further investigations into the mass rape. However, after the Army filed a plea against the Sessions court order, in January 2015, the High Court issued a stay on the investigations. Responding to this event, the Jammu and Kashmir Coalition for Civil Society has stated: 'today, Justice Tashi Rabstan, vacation judge in Jammu and Kashmir High Court, Srinagar, in a petition filed by the Indian Army, stayed the ongoing investigations in the Kunan Poshpora mass rape and torture case of February 1991 without hearing the survivors who were party to the orders in the lower courts for further investigations' (The Nation 2015). It remains to be seen whether or not the women and men of Kunan Poshpora will see any action against their immediate perpetrators as the saga continues.

The sovereign decision manifest in the current anti-rape law to remove immunity for prosecutions for sexual violence against police but not the army, to render rape victims as gender specific (only women), leaves intact a heteronormative, patriarchal and colonial bodily integrity. It is here that the 2013 anti-rape law is an invitation to a critique of both law and sovereign power—where the sovereign can be exposed as janus-faced, protector and rapist. It is also necessary to be mindful that the human rights/legal activisms I have mentioned are operative in the context of an Indian imperialism that coincides, and at times may collude with an international imperialism which drives the war against terror. As both Mathur and Dutta argue, repealing the AFSPA is only one of several colonial laws in the arsenal of the Indian state. Mathur argues that while an independent India has a robust and democratic constitution, it inherited an entire set of anti-democratic colonial laws, designed specifically to act against those it deems suspect, anti-national bodies. Mathur states that this 'reliance on colonial legislation as a means of controlling recalcitrant populations has not waned over time' (2012, p. 36). Rather, 'democratic standards have receded rather than strengthened, as the nation-state has found a firmer footing, politically, economically and strategically' (Mathur 2012, p. 36). Mathur argues that this 'method of governance' is an 'essential element of Indian state power' (2012, p. 36). Her questions regarding sovereignty are relevant here: 'What are the limits to sovereignty? Can they be challenged by those who refuse its power? How may these limits be theorised? How is its legitimacy to be defined and contested?' (2012, p. 47).

One possible way of rupturing law is to expose the operations of sovereignty by revealing its embodied, somatechnological effects. Here, in making visible the fissure regarding rape in the Criminal Amendment or anti-rape law and the structural impunity of the AFSPA, a struggle against the janus-faced protector/rapist may continue. It is here that the value of assembling a study of the practices and techniques of sovereignty alongside discourses of gender justice and gendering human rights lies. There are, of course,

other forms of assembling. The chanting of the slogan *azaadi* (freedom) by Kashmiris and their allies demanding freedom from a rapist, torturing and killing state machine in the context of anti-rape protestors in Delhi also chanting *azaadi* signifies an assemblage of dissent. And it is here, in keeping vigilant about an international blind eye regarding India's occupation in Kashmir, that we may need to voice our anger against the (il)legitimacies of state occupation and violence.

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Notes

ⁱ Jyoti Singh Pandey was given a number of pseudonyms by the Indian media including Jagruti (awareness), Jyoti (flame), Amanat (treasure), Nirbhaya (one without fear), DelhiBraveheart, and Damini (lightening) in compliance with Indian law which conceals the identity of rape victims. Her name was released by the *Daily Mail*, but other media followed suit when the release appeared to be sanctioned by Jyoti Singh's father. See Eric Ortiz (2013).

ⁱⁱ For a sense of the complexity of the Verma committee report and the ordinance for feminist and queer activism, see Nivedita Menon (2013).

ⁱⁱⁱ See Manjula Sen (2013); Walter Fernandes (2013); Warisha Farasat (2012).

^{iv} For feminist legal theory regarding the gendering of human rights, see Rebecca Cook (1996) and Karen Knop (2004).

^v The Survivors Citizens for Justice and Peace Report (2010) was submitted to the Committee For the Elimination of Discrimination Against Women. Available at: http://www.cjponline.org/CJPSURVIVORSJUNE%202010_.pdf

^{vi} Bora turns to British anthropology to explain how the Northeastern tribal emerged as a savage figure, a racialised Mongolian, who was different to the Indigenous tribes of India or the *adivasis*. She argues that nationalist historiography built on Orientalist and indigenist distinctions to categorise people from the Northeast as incomplete citizens who were a threat to national security in the context of Naga sovereignty. Through the same categories, Northeastern sovereignty movements, Bora argues, made their claims for either a separate homeland or autonomy through the distinction of race. It is in this context that the Armed Forces Special Powers Act instituted as a temporary measure in some parts of Nagaland in 1958 was made permanent. Bora's discussion resonates with the call for intersectionality by black feminists in the US. However, I would argue that the specificity of India's postcolonial and nationalist history suggests that this call highlights a different set of political issues at stake (2010, p. 348).

^{vii} The pursuit for justice for the Thangjam Manorama case continues. Following the protests, the Manipuri State government ordered an inquiry under the Justice Upendra Commission. However, in 2004, the Assam Rifles petitioned the higher court for immunity under AFSPA. In December 2014, the Supreme Court directed the Indian government to pay a compensation of 10 lakh rupees to the family of Thangjam Manorama. A story of the case has been narrated by Ravi Nitesh (2015).

^{viii} See Jasbir Puar's (2005) discussion of torture at Abu Ghraib for a complex exploration of heteronormativity, homonationalism and their relationship to torture and anti-national sexualities.

^{ix} Sara Ahmed's (2014) rich history of 'will' may be instructive here in thinking about the ways in which will works as a will against power.

^x See Shubh Mathur (2012).

^{xi} See Osuri (2009).

^{xii} For an account of the rapes in Kunan and Poshpora, see the Asia Watch (a division of Human Rights) report, 'Rape in Kashmir: A Crime of War', Asia Watch and Physicians for Human Rights (vol. 5, no. 9, 1993). Available at: <http://www.hrw.org/sites/default/files/reports/INDIA935.PDF>.

^{xiii} See, for example, Rita Pal (2013). Pal, an independent medical journalist, points to the absence of any mention of rapes in Kashmir during the announcement of funding for victims of sexual violence by the UK Foreign Minister William Hague and the UN Commissioner for Refugees, Angelina Jolie.

^{xiv} See Kamala Visveswaran (2012); Shubh Mathur (2012).

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