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VICTIMS OR AGENTS?

'Nothing can be more elementary and universal than the fact that choices of all kinds in every area are always made within particular limits.'

As must have become clear by now, disagreements among feminists are as many as are solidarities, hence the emergence of the term ‘feminisms’ in the plural. The common ground among feminists is marked by the recognition that gendered power relations oppress women and prevent them from attaining their full potential, but there are sharp differences of opinion regarding the manner in which these power relations operate in specific contexts and how they intersect with other power relations. Some of these disagreements have unfolded over the previous pages.

In this chapter we explore one of the key debates – when are women to be considered as **victims** needing protection, and when as active **agents** engaging with power and carving out their own spaces? The notion of ‘choice’ is not enough to answer this question, that if people ‘choose’ to do something, it reflects their agency. It is not enough because ‘freedom of choice’ is always exercised within strict boundaries that are non-negotiable – these boundaries are defined by economic class, by race and caste, and of course, by gender. The freedom to choose is never absolute – a domestic servant’s child cannot choose to be a doctor, a woman cannot choose her own future unconditionally. And yet, within those limited boundaries, people do make choices. How are we as feminists, to understand these choices?

As Amartya Sen (2006) puts it:

‘[N]othing can be more elementary and universal than the fact that choices of all kinds in every area are always made within particular limits. For example, when we decide what to buy at the market, we can hardly ignore the fact that there are limits on how much we can spend. The ‘budget constraint,’ as

economists call it, is omnipresent. The fact that every buyer has to make choices does not indicate that there is no budget constraint, but only that choices have to be made within the budget constraint the person faces. What is true in elementary economics is also true in complex political and social decisions.'

We will consider here five different issues in which the agency/victimhood dilemma has played out in complicated ways for feminists. Three of these can be thought of as forms of sexualized labour - *sex work*, *bar dancing* and *commercial surrogacy*. The other two are *pornography* and *abortion*. Debates around all of these have developed in directions that seriously trouble settled feminist critiques of violence, sexuality and above all, 'choice'.

But first, a discussion of a term commonly used by feminists, 'commodification', which runs through many such debates.

Commodification

The term 'commodification of the female body' refers to a form of critique that feminists have long made of certain kinds of representation of female bodies - as objects of male desire, as saleable in the market. From the scantily clad, sexualized bodies of women in advertisements for luxury items that assume a male consumer, to highly commercialized beauty contests, to women who 'sell their bodies' - that is, give sex in exchange for money – all of these have come under the framework of commodification. Derived from Marx, the term is often loosely used to suggest the pollution by market values, of objects and relationships that should properly be outside of commerce.

But in a world in which everyone makes a living, or tries to make a living, by selling a faculty (intellect, musical ability, training of various kinds, physical labour) or an object (from agricultural produce to mobile phones to cheap and shiny objects at traffic lights), this kind of critique has lost its edge. Is a professor commodifying her mind when she accepts payment for teaching? And if so, why is this acceptable to feminists and not say, a woman commodifying her body parts to advertisers, or to clients who have sex with her? One answer would be to say that the former has greater dignity and social respect than the latter, but as feminists surely we question the ways in which 'dignity' and 'social respect' are assigned to some forms of work and not others? To intellectual labour, but not to manual labour? Surely the feminist task is to upturn

these values, to transform the ways in which we look at the world, and not to reaffirm the world as it is?

Perhaps we should go back and take a closer look at what Marx said about commodification, and see whether that helps in any way to rethink these paradoxes. Marx used the term ‘commodity’ to refer to something that has exchange value, a thing that can be bought and sold in the market. A commodity appears to be a ‘mysterious’ thing, said Marx, because the human labour that has gone into its production is obscured, and the commodity appears to be a purely physical object with a value that is *intrinsic* to it. Human labour is performed in a network of social relations, but this fact is hidden, and commodities appear to relate to one another directly. Take for instance the comparative value of iron and gold, which appears to be the result of the intrinsic nature of those minerals, when in fact their value is determined by the socially established conventions of exchange that establish gold as ‘more precious’ than iron. And of course, these assigned values totally ignore the human labour involved in transforming iron and gold into commodities, from their initial form as naturally occurring minerals.ⁱ

It is this critique of the commodity form under capitalism that has been extended by feminism to the ways in which the female body is produced as a commodity. But as the discussion above suggests, the application of this critique to human bodies is to lose sight of human agency, will, volition, or whatever one may term the fact that human beings think and make choices while objects produced by them do not.

Now, Marx also says about the commodity:

‘It is plain that commodities cannot go to market and make exchanges on their own account. We must therefore have recourse to their guardians, who are also their owners...In order that these objects may enter into relations with each other as commodities, their guardians must place themselves in relation to one another.’ⁱⁱ

This mutual recognition by guardians of one another as owning their commodities is established in capitalist society through the contract.

This idea of the contract involves the myth of two equal individual parties mutually agreeing to certain terms and conditions of exchange – of labour or commodities, for money. Marx himself

has of course, a critique of this myth, for the person selling his/her labour power is not equal in any real sense to the person who employs him or her. The equality is purely formal and legal. But as long as, and to the extent that, work is enabled under capitalist conditions, the idea of the contract is what makes possible a struggle for equitable conditions. After all, why is it preferable to be wage labour than bonded labour? Because at least theoretically, the contract assumes consent, and mutually negotiated conditions of work. And at least theoretically, these are protected by law. What after all, is the Right to Work? A demand to be brought under the capitalist contract.

This is where we come to the problem with extending the critique of commodification to women's bodies. To think of advertising, pornography or sex work as commodification is to think of the women participating in this work as 'commodities', that is, as objects owned by others, men, who are the real parties to the contract. But, it is after all women themselves who are parties to the contract. Are they exploited? Yes, of course. But all work under capitalism is 'exploitation', that is, it involves the extraction of surplus value from labour. Under capitalism, the 'choice' that the labour market offers is between more and less arduous, more and less meagerly paid work.

If women choose then, to take up professions like modeling, or sex work, or any other profession in which they commodify some body parts rather than others, should not feminists stand by them in demanding better conditions of work, more pay and dignity in their professions, rather than going along with misogynist values that demean certain kinds of work altogether?

We will see how complicated these internal feminist debates are as we move on to the specific issues.

Sex work

Feminism has for long seen prostitution as violence against women, and many feminists still do. However, a new understanding of the practice has emerged with the gradual politicization of people who engage in prostitution, and their voice becoming increasingly public. One of the key transformations that has come about because of this, is the emergence of the term sex work to replace 'prostitution'.

The understanding behind this is that we need to demystify ‘sex’ – it is only the mystification of sex by both patriarchal discourses and feminists that makes sex work appear to be ‘a fate worse than death’. Consider the preliminary findings of the first pan-India survey of sex-workers that we referred to earlier. 3000 women from 14 states and 1 Union Territory were surveyed, all of them from outside collectivized or organized--therefore politically active--spaces, precisely ‘in order to bring forth the voices of a hitherto silent section of sex workers.’ The significant finding is this: About 71 percent of them said they had entered the profession willingly.

This study establishes what feminist research on sex work has been tending increasingly to show, that the model of *choice* versus *force* is utterly inadequate in understanding the motivations of women in sex work (Shah 2003). In fact, most sex-workers have ‘multiple work identities’. The study found that ‘a significant number of females move quite fluidly between other occupations and sex work. For example, a street vendor may search for customers while selling vegetables and a dancer at marriages may also take clients. It is not easy to demarcate women’s work into neatly segregated compartments. Sex work and other work come together in ways that challenge the differentiation of sex work as an unusual and isolated activity.’

Poverty and limited education are conditions that push women into labour markets at early ages, and sex work was found to be one among several options available to women in the labour market. This means that other occupations are often pursued before sex work emerges or is considered as an option. Sex work offers a significant supplementary income to other forms of labour. Many of those surveyed also worked in diverse occupations in the unskilled manufacturing or services sector for extremely poor wages.

Why did women either leave these other occupations or supplement their income from those occupations with sex work? The responses were:

low pay

insufficient salary

no profit in business

no regular work

no seasonal work

not getting money even after work

could not run home with that income--*is kaam se pet nahi bharta*

Quite simply, sex work is an economically attractive option. In short:

'Sex work is not the only site of poor working conditions, nor is it particularly prominent in terms of the employment of minors as compared to other sectors. For those coming to sex work from the other labour markets, they have often experienced equally harsh (or worse) conditions of highly labour intensive work for very low (and most often lower) incomes. It is from these background cases, that the significance of sex work as a site of higher incomes or livelihoods emerges' (Sahni and Shankar 2011).

What this study does is force us to recognize that 'choice' is severely limited in the labour market as a whole. If people find it possible to move to work that is less exhausting and better paying, they will do so. There is no more or less agency exercised in 'choosing' to work as a domestic servant in multiple households for a pittance and with minimum dignity, or be exploited by contractors in arduous construction work, than there is in 'choosing' to do sex work – whether as the sole occupation or alongside other work.

We must recognize, when it comes to the capitalist labour market in particular, that 'choice' quite simply does not exist for the vast masses of people. We do recognize this when it comes to other kinds of work, demeaning work like domestic labour, or exhausting and exploited conditions of work in factories; that is, we see that people do this work only because they have no other choice, but our reaction would not be to demand abolition of that form of work. Rather, we would want that the conditions of all kinds of work should be dignified, that there should be minimum wage regulations, reasonable leisure time, and so on.

Under prevailing conditions, workers may even be prepared for more arduous hours if it means a slightly higher wage; that is, they may 'choose' this option. For instance, the Karnataka government decided in early 2011 to amend the Factories Act 1948 to increase the daily working hours of employees from nine to 10 hours in an attempt to increase productivity. It claimed the move was meant to help women workers in the garment industry, and that, in fact, the workers had themselves demanded the increase in working hours. Of course, what the workers wanted was an increase in wages, a demand they knew would not have been granted unconditionally.

What this ‘demand’ from the workers showed was that they are grossly underpaid, and so desperate to earn a little more money that they are prepared to work extra (Hunasavadi 2011).

You can see the operation of choice here – limited but still, exercised within possible limits. The ‘choice’ to do sex work is no more or less constrained than any choice of work is under capitalism. As for forced sex work, which is precisely like bonded labour, as feminists we should back of course policies and institutions that support women who want to leave the profession. Then there is the fact that sex workers often face rape and physical abuse from their clients. Decriminalization of sex work would enable such women to take these matters to the law just like any other raped woman (or person of any gender, for that matter).

For most women, isn’t marriage far more of a compulsory institution (and compulsory form of work) than any other? It is for many women as arduous, undignified, and inescapable as sex work is assumed to be – and unpaid on top of it all! But we try to empower women within marriages, not demand the abolition of marriage itself.¹

The growing sex-workers’ movement in India thus provokes us into questioning the assumption that it is better to be one man’s wife, effectively subject to feudal power relations, than a sex-worker, subject to a capitalist contract. An alternative way in which organized sex workers conceptualize their work is to move away from the idea of being a ‘worker’, a wage slave under capitalism, to a person running her own business. In many parts of India, prostitution is referred to as *dhandha* or business, and women who engage in prostitution are referred to as *dhandawali* or women in business. The Maharashtra based organizations SANGRAM and VAMP prefer this as a self-description as opposed to Durbar Mahila Samanwaya Committee (DMSC) in West Bengal which uses *jaun karmi* or sex worker. Thus the former use the term ‘people in prostitution and sex work’ (PPS) to acknowledge the diverse groups covered under this term, which include devadasis, housewives who sell sex, women who work in brothels, streetwalkers, and male sex workers. ‘Furthermore, the term PPS validates multiple identities by acknowledging people in prostitution and sex work as people first: when she is with a client she is a *dhandawali*; when she

¹ Although it is worth considering the kinds of imaginative horizons that might open up if marriage were indeed to be abolished. Would it result in children being brought up entirely differently if that compulsory future was not on the horizon, and those compulsory roles did not have to be performed?

is with her children, she is a mother; when she is educating her community, she is a peer educator' (Pillai et al 2008).

The debate on regulation of sex-work falls broadly into three positions:

Criminalization, a view that considers prostitution to be a social evil. This can produce either an actively abolitionist position, or a more hypocritical one that tolerates it by remaining silent on whether the activity itself is legal or not, while criminalizing the 'outward manifestations of sex-work' such as soliciting, brothel-keeping and trafficking. The current Indian legislation, Immoral Trafficking Prevention Act of 1986 (called both IPTA and PITA for short) is an example of the latter approach.

Legalisation involves the legalizing and state regulation of sex-work through zoning and licensing laws. A Kolkata-based sex-workers' union, Durbar Mahila Samanwaya Committee has, in a publication, pointed out that the colonial experience in India has shown that legalization results in excessive state control and ghettoization of sex-work. This approach is also criticized for its potential to push large sections of the sex trade underground.

Decriminalization treats sex-work as falling within livelihood issues and a matter between consenting adults, and therefore demands the removal of sex-work and all voluntary relationships around it, from the scope of criminal law. Under this approach, forced sex-work as well as that involving minors could be subjected to the force of general laws on fraud, coercion and forced labour, while voluntarily undertaken sex-work would come under the scope of existing labour legislation. This is the position generally taken by organized sex workers all over the world, including in India (Kotiswaran 2011).

The complexities of this debate are obscured by pronouncements such as that of the Supreme Court recently (2009), which, while hearing a Public Interest Litigation on child-trafficking, asked the government to legalize prostitution if it was unable to curb it. 'You can then monitor the trade, rehabilitate and provide medical aid to those involved,' said the judges. As we saw though, legalization versus abolition are not the only two positions possible, and there are serious problems that sex-workers' movements have with legalization.

Bar dancers

A related issue that women's groups have taken up is that of 'bar dancers' in Mumbai. Bar dancers used to perform floor shows and cabarets in licensed bars, and the 1980s saw a proliferation of such bars. Bar dancers were not sex-workers, but when in 2005 the state of Maharashtra banned dancing in bars, the reasons adduced were similar to those usually made for the abolition of prostitution – 'depravation of public morality', and 'corruption of youth'. Women's groups from Mumbai and other cities, as well as the labour union of the dancers themselves, came together to protest the move as denying the right to livelihood to the affected women. The hypocrisy of the ban becomes clearer when we consider the fact that it applied only to low-end 'bars' and not to 'hotels' frequented by more wealthy clients, as the state proposed an exemption to clubs and to hotels which had three or more 'stars'. Similarly, a Delhi High Court judgement (2006) overturned a 1914 law prohibiting women from serving liquor in public places. The judges were ruling on a petition filed by the Hotel Association of India and two women hotel employees, who said the law was damaging their career prospects. The reason the judges gave for upholding their claim reinforces sexualized images of women in the public sphere, namely that '...the feminine touch indeed lends grace and elegance to the hospitality industry, which grace and elegance is not inherently suited to the male disposition'. In the bar dancers case though, the Bombay High Court in April 2006, ruled as unconstitutional the Maharashtra government ban on dance bars, conceding that it violated the fundamental right to livelihood. The case is now on appeal in the Supreme Court, but in the meanwhile the women have scattered back into the invisibility from which the publicity had dragged them.

The Mumbai-based feminist group Majlis that intervened in the case along with the bar dancers' union, found in the course of its investigations that the dancers were largely migrants from other parts of India, who had been brought to the city on the promise of jobs as domestic labour, but then were introduced to the bars. However, although the women may have been initially apprehensive about the work involved in bar dancing, most of them eventually found it to be the best option for them since they were earning far more than they would as domestic workers and they enjoyed a certain degree of economic freedom. Majlis found that 'There was no compulsion, other than their own economic compulsion, that made them become bar dancers.' The ban on the contrary, resulted in many of them being jailed, without the wherewithal to get out on bail, leaving their aged parents, children and sometimes infants in arms to fend for

themselves. The closure of the bars led to destitution for many even if they were not in jail (Majlis 2005).

The sheer callousness--of the moral framework that declares sex work and bar dancing to be intolerable but can with equanimity tolerate the poverty and desperation of people thrown out of this work--is mind-boggling.

'Trafficking' (forced) versus 'migration' (voluntary) – challenges to national borders

The notion of ‘trafficking in persons’ has become closely linked to the abolitionist position on sex work, and has acquired great clout and visibility internationally, with feminists from the first world leading anti-trafficking campaigns. The most widely used definition of trafficking within such campaigns was jointly arrived at in 1999 by the Global Alliance Against Traffic in Women (GAATW), the Foundation Against Trafficking in Women, and the International Human Rights Law Group (IHRLG) based in the U.S. In this definition, trafficking is linked to migration, with trafficking being understood as ‘forced migration.’

Many feminists are critical of anti-trafficking initiatives, particularly of the US Anti-Trafficking Act 2000. They show how these initiatives collapse the distinction between (voluntary) sex-work and (coerced) trafficking, treating all cross-border movements of women as coerced; thus excluding these women from legal recognition, and casting their families as criminals. There has been pressure on the U.S. government from international groups working on public health and human rights, to rethink current U.S. law that makes funds for HIV/AIDS prevention programmes conditional on opposing prostitution. Such a requirement, it is argued by feminist critics of anti-trafficking campaigns, vitiates health programmes among sex-workers as well as fails to protect the most vulnerable sections. There is also militant opposition from sex-workers themselves to anti-trafficking policies being promoted by Western and South Asian countries and some feminists and human rights groups (Kapur 2005). Anti-trafficking initiatives are thus another instance of ‘governance feminism’ that we discussed earlier, and face the same critique.

Feminist legal scholar and activist Flavia Agnes has suggested a conceptual move away from the notion of a *vulnerable subject* to that of the *risk-taking subject*. She argues that migrants and trafficked persons, including those in prostitution, exercise agency and demonstrate decision-making abilities, which seek to maximize their own survival as well as the survival of their families. For example, many women negotiate the terms of their own movement and utilize

technological networks to plan their migration and keep in contact with others in their country of origin. Women's perceptions of themselves and of their 'exploiters' provide a further challenge to the traditional and stereotypical images of victim and perpetrator. For example while the dominant image of women in the sex industry is that of subjugated, dominated, objectified and abused persons who are preyed upon by conniving men, studies of women in the sex tourism industry in various countries reveal that women view it as an arena of negotiations to improve their own economic situation.

In addition, Agnes points out, as do many other feminists, that the trafficking agenda has come to be increasingly influenced by a conservative sexual morality which casts 'good' women as modest, chaste and innocent. Challenges to this understanding are seen as posing a dual threat - to women themselves and to the security of society. This produces a 'protectionist agenda', within which no distinction is drawn between willed and coerced movement. All movement of women is seen as coerced, thus reinforcing assumptions of third world women as victims, infantile and incapable of decision-making (Agnes 2006).

Nandita Sharma has suggested that anti-trafficking campaigns need to be replaced with a political practice that questions the very legitimacy of sealed national borders that we have come to take for granted over the last century. National border regimes must be opened up as well as the labour markets organized through them. There must be an end to discrimination based on one's nationality. These are the demands of the growing group of *No Borders* activists across the world. A radical political practice is called for, that challenges the barbed-wire borders of nation-states (Sharma 2003).

Thus we see that opening up the question of 'prostitution' from a variety of feminist perspectives reveals serious fissures in a range of concepts assumed to be stable and unquestionable - from 'nation-states' to the idea of 'work' itself.

Commercial Surrogacy

Commercial surrogacy, discussed earlier in the context of the family, is another phenomenon that frontally raises the issue of commodification of the woman's body as well as the question of agency and choice.

The term gestational surrogacy (or surrogate pregnancy) generally refers to a woman carrying to term in her uterus, an embryo implanted through in vitro fertilization (IVF). Commercial gestational surrogacy normally involves the sperm and egg of the contracting party, and a financial transaction in which the contracting party pays the woman who will bear the foetus for them in her uterus.

A complex field of ethical concerns around commercial surrogacy has been outlined by feminists over the last decade or so. In vitro fertilization as a medical intervention has long been under the feminist scanner for the tremendous physical and emotional stress it places on women undergoing the process. With commercial surrogacy, a whole new arena of power relations is opened up between relatively powerless surrogates from poorer parts of the globe; wealthy heterosexual, but also homosexual, contracting couples; and veritable cottage industries of commercial surrogacy springing up in several parts of the world. Feminists have raised the question of national health priorities - is infertility really the most important health problem in poor countries? They have also placed the surrogacy debate within the framework of reproductive rights and justice, trying to bring to the fore the rights of the poor women who become surrogates (Qadeer and John 2008; Waldby 2010; Sarojini and Das, 2010).

There is considerable feminist discomfort over the conceptualizing of a woman's 'natural body' as the object of a contractual relationship. Repugnance towards such objectification is reflected in for instance, the testimony of American feminist academic and activist Janice Raymond before the House Judiciary Committee of Michigan in 1987, declaring that surrogacy contracts 'should be made unenforceable as a matter of public policy... they reinforce the subordination of women by making women into reproductive objects and reproductive commodities.'ⁱⁱⁱ The very language used in technological and contractual reproduction dehumanizes women, referring to them as 'maternal environments' and 'human incubators', and by the use of terms such as fishing/recruiting/harvesting of eggs; miscarriages being attributed to an 'incompetent cervix' and so on (Raymond 1993; Sarojini and Das 2010). The surrogates become mere reproductive machines, and are seen as nothing more than the sum of their reproductive parts.

Another kind of feminist response, however, emphasizes the agency of women entering into a surrogacy contract, and, in an argument that parallels feminist debates on sex-work, explores the positive implications of treating surrogacy as a form of labour. Amrita Pande suggests that we

should think of commercial surrogacy in a poor country such as India in terms of new forms of ‘informal, gendered and stigmatized work’, with commercial surrogacy being a form of ‘sexualized care work’ (2009). Studies of commercial surrogates in Israel and India have found that they have a complex understanding of what they are doing; and different ways of conceptually separating their role as mothers towards the children they bear for themselves, and their relationship to the children they bear for others for money. They are not simply brainwashed and helpless dupes, but women who make certain choices having thought the circumstances through (Pande 2009, Teman 2003).

Even as women’s organizations and feminists are beginning to come to terms with this phenomenon, a draft Assisted Reproductive Technologies (Regulation) ART Bill is already on the anvil. Feminist analyses of this bill reveal that the stakeholders are assumed to be two parties only - the contracting parents and the medical practitioners. The surrogate mother is addressed only in terms of the interests of the contracting parents – for instance, she cannot have sex for a year and a half from the beginning of the process until delivery; a married woman requires the permission of her husband; the terms of her compensation and the agent who will compensate her are not clear; there is no anticipation of or remedies considered in the event of her becoming HIV positive in the process. The Bill in effect turns most of the surrogate’s transactions into a private undertaking with the future parents, with no safeguards built in to protect her interests (Qadeer and John 2008).

One of the reasons for the absence of the voice of surrogates themselves in this debate has to do with the anonymity preferred by most surrogate mothers, because of prevailing social prejudices. But in any case, feminist politics tends to be representational; that is, there is a sense in which ‘feminists’ assume we know what is in the interests of ‘women’. So if democratic pressure is built up, women’s organizations and feminist scholars/activists can become involved in the drafting of the legislation. But unless some sort of community of surrogate mothers themselves comes into being, which evolves its own rules, even such a legislation may not protect their interests. A law devised by feminists representing the interests of ‘women who become surrogates’, whose interests we presume to understand because ‘we are all women’, can at best be potentially useful, but at worst, may make it difficult for women to make an income in this way.

For instance, one feminist intervention in the debate demands an end to anonymity of surrogate mothers because that can leave them in a very vulnerable position. While one understands the feminist impulse behind this demand, how many women are empowered enough to risk their identity being known, given the sexualized understanding of the work? Why should they not have the right to remain anonymous? An insistence on removing anonymity could reduce opportunities for women to take up such work.

When women doing commercial surrogacy organize themselves, and start to voice their experiences, then we will begin to understand dimensions of this work that we are not in a position to, at this time.

Pornography

Indian feminism of the 1970s and 80s targeted sexist films, posters and advertisements, including actions like picketing of films and the physical pulling down of offensive hoardings and posters. The understanding of ‘sexism’ and ‘offensiveness’ here was restricted to the exploitative representation of women’s bodies, or direct glorification of rape. A broader definition of sexism would have brought into the net almost every film ever made by the mainstream Indian film industry, which have portrayed women either as submissive or as punished in the end for their assertiveness; the heroine as the target of aggressive romancing by the hero which barely stops short of sexual harassment, and which she simperingly accepts and so on. It was hoped that by targeting the most obvious ways in which women’s bodies were depicted by the film industry, this broader climate of misogyny and sexism would also be made visible. Lobbying by women’s organizations resulted in a new law – The Indecent Representation of Women (Prohibition) Act, 1986, passed with what seemed in retrospect to be great speed and very little debate.

Even at the time, the law was greeted with ambivalence by feminists. In their book on the Indian women’s movement, Nandita Gandhi and Nandita Shah, while critical of the powers given to the state, simultaneously felt the law was too full of loopholes - it did not cover advertisements, posters and photographs, did not define ‘indecent representation’ sufficiently clearly, leaving room for judicial interpretation, and did not specifically mention women and the gendered nature of power relations. In other words, the criticism they had was that the law both gave the state too much power and covered too few areas (Gandhi and Shah 1992).

A new entrant into the campaign against ‘obscenity’ in the 1990s was the Hindu right-wing. Feminist interventions too, continued in this decade, if at a lower ebb, but a different feminist voice was also emerging, challenging both right-wing and feminist demands for censorship. Three main themes emerged in this debate.

First, on the question of sexuality and desire, the troubling continuity in the pro-censorship positions of the Hindu right-wing and of secular feminists. The former attacks ‘obscenity’ and promiscuous ‘western’ culture as a threat to traditional ‘Indian’ values while the feminist argument is as critical of traditional Indian values as it is of sexist representations of women. Nevertheless, pro-censorship feminists unwittingly participate in the Hindu right-wing policing of sexuality and perpetuate the idea that women are not sexual agents themselves, but always the victims of pornography. Many anti-censorship feminists argue that we should be trying to create and protect spaces of greater sexual expression for women. Rather than closing off public spaces to sexuality, we should work towards a proliferation of sexual imagery directed towards women’s desires.

Second, the issue of the state. The journal *Manushi* had noted at the time of the passing of the Indecent Representation of Women Act, the arbitrary powers it gave to the state, and the potential curbs on freedom of expression that it could inaugurate.^{iv} Media scholar Shohini Ghosh argues that terms like ‘reasonable regulations’ used by feminists inevitably empower a state that feminists do not otherwise trust to remain within democratic limits. In addition, the explosion of media in the 1990s also led some feminists to lament the retreat of the state which left the field of media open to corporate owners. But Ghosh terms this lament ‘absurd’, for

‘the history of state-owned media is one of gaps and absences. All India Radio, Films Division and Doordarshan have consistently erased dissent and marginalised any speech or representation that has run counter to immediate state interests.’

Censorship will, she states unequivocally, ‘inevitably silence speech on the margins constituted by social, political and sexual minorities.’ A revealing illustration of her argument is the controversy over a Hindi film song, ‘*Choli ke peechhe kya hai*’ (what’s that behind the blouse). The song was assailed by Hindu right-wing organizations for being obscene, and for creating conditions for increasing sexual harassment of women. Ghosh points out that there were two

versions of the song in the film. One, performed by two women to each other on screen and sung by two female singers, and another, with identical lyrics and music, sung and performed by men. This second version culminates in the heroine being intimidated and physically assaulted by the male protagonist. But both the legal petition against the song as well as the protesters chose to ignore this latter version:

‘The anxiety regarding ‘increasing sexual harassment’ notwithstanding, the protesters demanded censorship not of the version that actually depicted violence against women but one that represented sexual agency on their part’ (Ghosh 1999).

The point here is that censorship empowers the state and targets, not dominant and powerful trends, but marginal and counter-dominant ones.

A third issue has to do with the question of reception, or how pornographic images are received by the audience. All images and representations are *received* differently in different contexts. The ‘*Choli ke peechhe*’ song performed by two women, for instance, may have appeared sexy to other women, not just to men. The gaze of the *viewer* constitutes and reconstitutes the meaning of images.

There has thus been a shift in feminist thinking from Laura Mulvey’s conception of the ‘male gaze’ (1975). Mulvey held that in cinema, women are the passive objects of a gaze assumed to be that of the male heterosexual spectator; the camera’s gaze on women is necessarily male; and women too take on the male gaze in looking upon themselves. The idea of the male gaze has been widely used in different contexts in feminist theorizing; for instance, with reference to advertising it has been argued that women are not just the objects of the male gaze, they are themselves the objects being sold to a male spectatorship. However, since the 1990s feminists have begun to see the female viewer as imbued with agency, engaging dialectically with the images she sees, and producing new meanings unintended by the author of the image. The gaze is not exclusively male, in other words - there are different kinds of gaze.

What constitutes sexuality, pornography and desire, can thus change radically with contexts of time and place. Here is an intriguing story discussed by Udaya Kumar (1997). It is narrated by C Kesavan, the Ezhava leader of Kerala, in his autobiography. Ezhavas are a ‘Backward Caste’ that launched powerful struggles for equality through the 19th and 20th centuries. One of the issues in

these struggles was defiance of caste markers such as Ezhava women not being allowed to cover their breasts. C Kesavan's mother-in-law relates to him an incident of her youth. At a time when these movements raged across Kerala, she was given some blouses by her sister-in-law. Caught by her mother while secretly wearing the blouse and admiring herself, she was fiercely chastised both for being 'a slut' as well as for walking around 'in shirts like Muslim women'. Scared of her mother's blows, she hid the blouses away, to be worn at night, for her husband's enjoyment, who thought it 'looked good', and who would come very late at night to her, she said, like a divine lover, a Gandharva.

The delight at the blouse then, of both the wearer and the viewer, was produced in complex ways – 'sexiness' here was produced by the *covering* of breasts secretly at night, in a cultural context in which bare breasts were ordinary and everyday. And then there was the desire generated by the thrill of transgressing caste hierarchy in the dark of the night, in the very rituals of producing 'sex' through robing and disrobing.

(We might also remark upon the fact that for the mother, the sign of inappropriate sexuality was the clothing, not the nudity, of the female body - signifying as it did, rule-breaking of two kinds: sluttishness as well as the loss of carefully designated difference from the Other, the Muslim woman.)

Sexuality and desire are dramatically revealed in this instance to be, not something fixed and easily recognizable, but produced at the interstices of 'public' politics and 'private' conjugalitity.

How do other kinds of non-normative bodies trouble the stable boundaries of what is sexy and what is not? For instance, Anita Ghai posits an insightful distinction between the 'male gaze' and the 'stare' in the context of the disabled female body:

If the male gaze makes normal women feel like passive objects, the stare turns the disabled object into a grotesque sight. Disabled women contend not only with how men look at women but also how an entire society stares at disabled people.

So de-sexed is the disabled female body considered to be, says Ghai, that in North Indian Punjabi families, where girls are not allowed to sleep in the same room as their male cousins, disabled

girls are under no such prohibitions. The assumption that sexuality and disability are mutually exclusive ‘denies that people with deviant bodies experience sexual desires’ (Ghai 2002).

It is, in fact, impossible to fix the meaning of sexuality. Imagine a classroom in which, during a boring biology class, a drawing was made on the board, of human male and female reproductive systems. Far from being sexy or pornographic, the sketch would have been deadly dull, and been transcribed in a bored way into various notebooks. Once the class is over, and a new bunch of boisterous students enters the room, that very same sketch could become the object of adolescent sniggers and knowing sly glances. Without a single thing being changed on the board, a dull educational picture can become suddenly ‘pornographic.’

It would appear then, that different kinds of ideas, values and representations construct a mesh which trap some acts as ‘sex’. This mesh is historically and geographically fluid, and sieves the material passing through it in different ways at different times: ‘sex’ is not a clear and specific physical phenomenon always recognizable as such in all times and places.

Such an appreciation of the uncontrollable fluidity of sexuality and desire, and of the complexity of representational practices, is what lies behind the recent feminist arguments we have discussed, against censorship of ‘obscenity’ and ‘pornography’.

For many Indian feminists, American feminist Carole Vance’s notion of ‘pleasure and danger’ has been very productive. Vance opposes a particular American feminist understanding of pornography as ‘the theory behind the practice of rape’, in which women can only and always be the targets of an aggressive male sexuality. This view is associated with Catharine MacKinnon and Andrea Dworkin, who are also behind the most powerful anti-trafficking initiatives in the USA, and the inspiration for ‘governance feminism’ discussed earlier. Vance on the other hand, uses the notions of pleasure and danger to refer to ‘the mix of fear and excitement’ that women feel when they approach sexuality; to the fact that women, depending on their personal life journeys, may want to stress safety or adventure at different stages in their lives; it suggests that women’s responses to sexuality will be diverse, not singular, and that any feminist programme that seeks uniformity in women’s responses is ‘dishonest and oppressive’ (Vance 1984, 1992).

Rather than assuming that pornography only objectifies and commodifies women for the male gaze, what if we were to think of women too, as consumers of pornography, of pornography as arousing not only heterosexual desire but also homoerotic desire, and of pornography not as

something fixed and easily recognizable, but as diffuse and complex as the sensations it evokes? This way of thinking of pornography opens up liberating ways of thinking about not just female sexuality, but about desire in general.

To take on board these insights is to reconcile with the fact that the only defensible feminist position on pornography is to ensure the proliferation of feminist discourses about sexual pleasure and desire, while also recognizing that what is ‘feminist’ will itself always be the subject of internal contestation.

Abortion

One of the most troubling issues for feminists in recent years, embodying a dilemma that is almost irresolvable, has to do with the selective abortion of female foetuses. Although this practice is restricted to India and to some South Asian communities in other parts of the world, its very possibility creates a more fundamental crisis for feminism. This is because feminists generally support the unconditional rights of women to safe and legal abortions. We see this as necessary because pregnancy and child-rearing are for all practical purposes, the sole responsibility of women. We should, therefore, have the right to choose when and under what circumstances we will bring a child into the world, for we should be able to control what happens to our bodies and to our lives. The right to safe and legal abortion is an essential right of self-determination.

In the West, this right has always been challenged and circumscribed by the Christian right-wing, and feminists there, even today, have to struggle to retain it. Anti-abortion campaigns emphasize that the foetus is a person and that it has an independent right to life, and so their campaigns position themselves as ‘pro-life’, while feminists call themselves ‘pro-choice’.

The landmark judgement in the USA was Roe v Wade (1973), which defended the right to abortion as a right of privacy. However, this right is precarious, because many states did not repeal pre-1973 statutes that criminalized abortion, which could again be in force if Roe v Wade is reversed. Since there is a powerful anti-abortion lobby in the USA, this possibility cannot be ruled out. Many American feminists have been uncomfortable about seeing abortion in terms of the rights of individual women and locating it in the realm of privacy, for it suggests that pregnancy is an individual and private matter. They stress rather, that under conditions of pervasive sexism and patriarchy, decisions about pregnancy are sometimes out of the control of

women. Moreover, they would like to see decisions about pregnancy and abortion as set within networks of responsibility rather than within the realm of ‘individual’ rights. We will return to these questions later.

In the United Kingdom, abortion has been legal since 1967, but continuously challenged, most recently in 1987 by a Private Member’s Bill, which resulted in substantial debate, but was defeated. In many other countries, abortion is illegal, or is permissible only to save the life of the woman, or only permissible up to the first trimester.

In India abortion has been legal since the Medical Termination of Pregnancy (MTP) Act of 1971, which came about not because of feminist concerns, or concern for women, but purely as a method of population control. Abortion is legal up to the second trimester, but it is at the *absolute* discretion of medical opinion. A study of the MTP Act points out that the pregnant woman cannot simply state that it is an unwanted pregnancy. She must provide explanations that fit into the conditions listed in the MTP Act, and it is medical opinion that has the power to decide whether the woman meets the requirements of the Act. That is, expert medical opinion must certify either that the pregnancy involves a risk to the life of the woman or would cause grave injury to her physical or mental health, or alternatively, that there is a substantial risk that a seriously handicapped child would be born. The Act does not define ‘health’, ‘substantial risk’, ‘seriously handicapped’ and so on. It is left to the medical practitioner to decide how these terms are to be interpreted, although two explanatory notes indicate that pregnancy in the case of rape (excluding marital rape) and contraceptive failure (in the case of married woman) may be treated as causing injury to mental health. In fact, even the words ‘abortion’, ‘miscarriage’ and ‘termination of pregnancy’ have not been defined, which leaves the medical opinion on these matters sacrosanct.

Thus, the currently liberal-seeming provisions of the MTP Act could become restrictive without a single word of the text being altered (Jesani and Iyer 1993).

But in general in India there has been no consistent and organized opinion against abortion. Far from having to struggle for the right to abortion, feminists have found themselves raising questions about the widespread sanction for abortion rather than contraceptives, especially condoms, as a method of controlling population. This means that the physical cost of population control is borne almost entirely by women. Further, feminists have been critical of governments

using incentives and disincentives to influence the decisions of government employees regarding family size, and the imposition of the small family norm even where factors like high infant mortality rates and insecurity of incomes make it rational to have large families. In the wake of the National Population Policy 2000, several states have announced population policies that have a strongly punitive and anti-democratic thrust. Clearly then, the legal sanction for abortion does not arise from feminist principles at all, but it exists, nevertheless. (Although I must add that of late there have been some very disturbing advertisements on television that promote the contraceptive pill and the morning-after pill, by contrasting these with abortion presented as the most shameful and terrifying alternative, one that any woman should avoid.)

It is another matter that despite the MTP Act the number of unsafe abortions continues to be high and around 20,000 women die every year due to abortion-related complications, most of which are due to their being performed illegally, that is, by unqualified personnel. Medical facilities and trained personnel are inadequate, especially in rural areas, and in addition, there is the widely held belief that abortion is illegal. Legalisation has not, in short, been buttressed by safe and humane abortion services.

But since the 1980s, these issues have taken a back seat in the face of rising instances of selective abortion of female foetuses. Indian feminists have successfully campaigned for legislation restricting sex testing during pregnancy. The Preconception and Pre Natal Diagnostic Techniques (Prohibition of Sex selection) Act (PCPNDT) came into effect in 1994, but the sex-ratio at birth has continued to fall, showing that sex-selective abortion continues unchecked.

The problem is that the tests routinely used to monitor a pregnancy, for instance, ultra-sound, also reveal the sex of the foetus. It has become a crime to give parents this information, but if a doctor does so, and the woman has an abortion in another clinic, the link between the two is impossible to trace. Government initiatives to address what has come to be called the ‘skewed sex ratio’ have thus increasingly taken forms that threaten to restrict access to abortion itself. Recently, in 2011, Indian feminists protested strongly at a statement made in the Maharashtra Legislative Assembly that ‘female foeticide’ should be treated as murder. There were a hundred signatories (including myself) to a letter to the Speaker of the Assembly that said in part:

First of all, abortion should not be referred to as ‘foeticide’, which has anti-abortion implications that we reject, for we believe that all women have the

right to decide when and whether to bear and give birth to children. Making sex selective abortions (wrongly referred to as ‘female foeticide’), a murder charge will only increase illegal abortions and also make access to safe abortion difficult for women, who already do not have many choices regarding their own reproductive rights. Safe and legal abortion is a woman’s right. Abortion is legal in India. The MTP Act, 1971 spells out the conditions under which it can be carried out.

Sex selective abortion however, amounts to discrimination against a particular sex, in most cases, the female sex. Sex selection in favour of the boy child is a symptom of devaluation of female lives.

It is important to remember that those who want to use abortion for elimination of the female foetus have to first determine the sex of the child. Rightly, it is this process of pre-natal selection which is a crime, and it is being regulated and monitored through the PCPNDT Act.

Unless we are able to deal with all those social and economic factors that are going into the culture of son-preference and daughter-aversion, the child sex ratio will go on plummeting. But the solution is not to curb the legal right to abortion. Rather the PCPNDT Act should be enforced, and clinics that offer prenatal sex testing weeded out...

Checking pre-natal sex selection requires the proper implementation of the PCPNDT act and monitoring of sex-selective procedures by the government, and cannot be achieved by introducing such draconian measures that curb women's right to safe and legal abortion.

This letter reflects the feminist position on sex-selective abortion in India today, and marks key shifts that have taken place over the last two decades or so. ‘Female foeticide’, for instance, was a term that many of us used earlier. But gradually, through internal debate, we came to the understanding that ‘foeticide’ is an emotive word, suggesting the ‘murder’ of the foetus who is already a separate person, and is widely used by the anti-abortion Christian right-wing in the USA. The alternative term ‘abortion of a pregnancy’ prioritizes the pregnant woman as the implicit subject. However in media reports as well as in government statements, ‘foeticide’

(often without even the qualifying term ‘female’) has come to replace ‘abortion’ in the context of sex-selective abortion in India.

The monitoring of sex-determination tests is one thing, but it is quite another to monitor abortions themselves. Whatever the limitations of the former, the dangers of the latter are far greater. But one of the measures undertaken under Renuka Chowdhury as Minister for Women and Child Development, made it mandatory to register all pregnancies, and to monitor abortions. A pilot project has been implemented in ten blocks with a high malnutrition rate and a skewed sex ratio. Abortions will be permitted only for ‘valid and acceptable reasons’ (Chauhan 2007).

But what constitutes a valid reason for abortion and who decides? Most women in India have no control over the conditions in which they have sex, and often abortion becomes the only form of birth-control. Women also have abortions because of the stigma of illegitimacy, or because they cannot afford another child, or because they are at a stage in their careers or their lives where they cannot take on the responsibility for yet another human life. Will the government officials monitoring abortions have the right to determine which is a valid reason for abortion and which not?

This is where we come to some very difficult issues that must be addressed. First, it seems to me we cannot hold simultaneously that abortion involves the right of women to control their bodies, but that women must be restricted by law from choosing specifically to abort female foetuses. We seem to be counterposing the rights of (future) women to be born against the rights of (present) women to control over their bodies. It is true that many women in India go in for sex-selective abortion under pressure from their husbands’ families – it is not a ‘choice’ they willingly make. But is abortion ever a positive choice? Decisions to abort are almost always shaped by factors like those outlined above - illegitimacy, lack of social facilities for childcare that place a disproportionate burden on women, economic constraints and so on – and are no more reflective of a woman’s autonomy than her decision to abort a foetus because it is female. Nor are such decisions less determined by the constraints of a patriarchal society and a family structure based on the sexual division of labour. So why is abortion in all these other circumstances legitimate but not the abortion of female foetuses?

Second, what is our position on using pre-natal tests to detect ‘foetal abnormality’, a currently legal option? If we consider this valid, we are accepting a hierarchy of human beings based on

physical characteristics, the lower levels of which do not have the right to be born. But then, this reasoning can be extended to other categories, such as females. One feminist response to this dilemma is to argue that since women would have the sole responsibility of looking after such children, they should have option of whether to bear them or not. the identical argument can be made about female children - that because the social pressure to bear male children falls entirely on the woman, she should have the right to abort a female foetus.

The painful question is this: as feminists, can we insist that individual women should have to deal with the consequences of giving birth to every kind of foetus, and that abortion should be permitted only if you know nothing about the foetus you are aborting? Can we hold the lives of existing women to ransom in order that the rights of abstract categories - 'women', 'the disabled' - can be protected? Surely one can stand for the rights of existing women and people with disability while recognizing the rights of women to decide when, how and to whom to give birth?

I use the term dilemma for such instances precisely because an easy resolution of the ethical issues involved is impossible.^v To assume that either the pro-abortion or the anti-abortion position, devoid of context, is feminist or anti-feminist in itself, is clearly ill-founded. The pregnant body after all, is not two individuals with equal rights, it is a unique entity that cannot be addressed in the language of individualism – a life within a life, one life dependent on the other. Children are seen in the abstract as national resources, but concretely, under the present sexual division of labour, must be taken care of on a day-to-day, minute-to-minute basis by their mothers. Under such circumstances, I think the host body of the mother acquires the right to decide its fate. This is why the access to safe and legal abortion should not be defended as a right of privacy. Although it is a decision taken by individual women, that decision is shaped and driven by public and social arrangements and limitations – indeed, by a collective failure of social responsibility

There can be no quick fix for the selective abortion of female foetuses. The practice reflects the fundamental devaluing of women, which will have to be tackled in other ways, through consistent feminist politics. Such a politics would have to confront marriage itself and more importantly, question the necessary framing of motherhood within discourses of hetero-patriarchal legitimacy.^{vi}

An ideal feminist world would not be one in which abortions are free and common, but one in which women have greater control over pregnancy, and in which the circumstances that make pregnancies unwanted, have been transformed. Until then, in a hugely imperfect, unfair and sexist world, I believe feminists must defend women's access to legal and safe abortions whenever they decide to have them, whatever the reason for their decision.

This section has addressed debates among feminists that arise from complicated notions of 'agency' – women make choices, but they do not make them in circumstances of their own making. Often women choose options that go counter to normative feminist values. What we face here is the contradiction between two core beliefs of feminism. One, the belief in the autonomy of women and their ability to act as willing agents; two, the simultaneous belief in the hegemony of dominant power-laden values that constrain the 'freedom to choose'. That is, the values that 'we' consider to be desirable are not the dominant ones in society, and therefore, the freedom to choose most often simply reasserts existing dominant values, which from our point of view are deeply problematic. Thus, a woman may choose to abort a foetus because it is female, or to acquiesce to a marriage in which her natal family will be bankrupt by dowry requirements, or to participate in a beauty contest, or take up sex work as a livelihood option. What operates here may not be 'free will' in the feminist sense, but at the same time, we cannot simply characterize it as *lack* of free will. We need to face up to this troubling recognition in our politics.

What other option do feminists have but to treat these choices with respect, work towards changing the circumstances that shape them, continue to engage in dialogue, and, above all, always be open to the destabilization of our own norms?

ⁱ *Capital* Volume 1, Chapter 1, Section 4

ⁱⁱ *Capital* Volume 1, Chapter 2

ⁱⁱⁱ Cited by McElroy nd

^{iv} *Manushi* Editorial, No. 37, 1986

^v Feminist engagement with the moral dilemmas involved in aborting of foetuses judged to be ‘disabled’ is extremely complex. See Menon (2004) for an account.

^{vi} The inner subjectivities of mothers of daughters in a culture of son preference, has been creatively explored by feminist psychologist Rachana Johri (2001, 2010)