

THE LAW'S GENDER: ENTANGLEMENTS AND RECURSIONS — THREE STORIES FROM SRI LANKA

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Abstract

Our essay examines the recursions, rationalities, limits, and promise of the law drawing on three recent cases of women who encountered law enforcement authorities and the courts in Sri Lanka. It provides a strong account of how dominant gender norms are mobilized to determine who is afforded the sanctuary of the law and who is not. By foregrounding the troubled encounters of the women with the law the essay also demonstrates the ways in which the law, culture, and the state combine, pull apart, and recombine in a manner that draws attention to their own internal relations; and how procedures established to ensure legal objectivity and judicial impartiality often fold back on themselves, reflecting the pliancy of the law. The essay also foregrounds the conditions of possibility, including feminist legal methodologies, that enable women to (re)turn to the law despite its transgressions. In doing so it argues for seeing the law as multilayered and recursive, reflecting the thick and uneven conditions under which women access justice in Sri Lanka. In highlighting how these women challenge and bargain with the law, the essay also acknowledges their tenacity and endurance in what, ultimately, is an effort at demanding an improved and substantive justice.

1 Introduction

This essay discusses the encounters of several Sri Lankan women with the law and its multiple *loci* — whether that is the police station, the courtroom, or the special investigative units of state authorities.¹ In doing so it undertakes an analysis of gendered power relations that operate through and within the law in Sri Lanka and the specific sites at which the women experience its procedures and authority.

The first encounter concerns Ramani, a fifteen year old schoolgirl and her mother Sita.² Ramani was expelled from a well-known girls' school in a major city in the south of the country on the grounds of “bad behavior,” having been seen in public with a young man.³ Ramani and her mother sought redress from the school authorities, the police, the national Department of Education, the National Child Protection Authority, the Human Rights Commission, the Southern Provincial Department of Education, and finally the Supreme Court on the basis of her right to education.⁴ While their pleas to these state authorities (some of which were sympathetic to their cause) failed to procure Ramani a place at her original school, her legal counsel withdrew her fundamental rights case pending in the Supreme Court over the technicality of a time limit. Ramani's education ceased and it took a further two years for her to obtain a place at another school — after repeated pleas by her mother to various school authorities.

The second encounter is that of Yoga, who was thirty years old when she first sought the protection of the court from a violent and hostile spouse in 2011. She filed several cases including an application for maintenance, a criminal case complaining of assault, a case for non-payment of maintenance, and finally a case alleging domestic violence. Despite the allegations of recurrent violence at the hands of her husband including sexual violence, the Magistrate's Court prescribed mandatory counseling. The cases, including one filed by her husband for divorce, were stuck in the Magistrate's, District, and High Courts for five years with only two of the cases (for maintenance and domestic violence) concluded, the latest in January 2017 with both parties arriving at a settlement.⁵

The third encounter is that of Nizreen, a seventeen-year old girl who repeatedly suffered parental verbal and physical abuse. Following a beating by her parents for attending a basketball match without permission, she complained to the police but instead of being granted the state's protection, she was detained at the police station for three days, presumably as punishment at the request of her parents.⁶ The police finally filed charges against the parents, but in court Nizreen, who had no legal counsel of her own, came under pressure by other family members to relent and agreed to return home. On another occasion when Nizreen went jogging with a friend and had sent a SMS to her mother informing her of her whereabouts she was ordered by her father not to return home. When Nizreen and her friend went back to the parents' apartment both girls were verbally abused by the father. Nizreen thereafter sought refuge at the home of her friend. Her friend's mother, Jayanthi, apprised the National Child Protection Authority (NCPA), vested with the power to monitor the progress of investigations and proceedings relating to child abuse, of the situation.⁷

As advised by the NCPA, Nizreen thereafter filed a complaint against her parents at its office, whereupon her father filed a counter-complaint against his daughter at a police station in Colombo, also stating that she had left home. After repeated summons by the police, and despite the NCPA's advice that she need not appear before it, Jayanthi presented herself to her nearby community police station with her daughter and Nizreen. Jayanthi noted that when she arrived it was clear that the Officer In Charge (OIC) had already informed Nizreen's parents that their daughter as well as her friend and her mother would be at the station. Jayanthi told us that she felt "ambushed" by the police. On arriving at the police station Nizreen's parents had heaped verbal abuse on

the three women. At no point were the parents restrained by the police. Following the intervention of the NCPA, Jayanthi returned with Nizreen to her own house. But given the intimidation by Nizreen's father and fearing an attack on her own house, Jayanthi sought refuge with a relative for three days, taking her family and Nizreen with her. Finally, the case was mediated by the NCPA. Even though all parties came to an agreement whereby Nizreen would live in her grandparent's house and be given an allowance by her parents who would also pay her school fees, the parents did not abide by the agreement. As reported by Jayanthi, Nizreen had to leave school before she could complete her final examinations and currently lives in rented accommodation while working a job for Rs. 20,000 (US\$ 135) per month.

By presenting these women's entanglements with the law, this essay analyzes its conditions of possibility, limitations, illegibilities, and 'rationalities.' In doing so, it examines the *promise* of the law as a means of justice and protection and its relationship to other law enforcement agencies. It highlights the law's dependence on culture for normative views on gender and in turn, its reinforcement of these beliefs pointing to how law and culture continuously recycle, reinforce, and reinvent each other.⁸ It foregrounds the overlay of several standards in the law: one which adopts a 'reasonable person standard,' (employed in claims for damages for instance) another which creates exceptions for women and children as specific categories, and yet another on which the law in practice oscillates between the two and seeks a qualification from women of their vulnerability and innocence in order that they may access its dispensation of justice. Seeing the law as multilayered and as folding back on itself in this way points to the thick and uneven conditions under which women access justice in Sri Lanka. These conditions are nonetheless disputed and this essay highlights how the women, together with their legal counsel, challenged the courts and bargained with the law in ways that also mark their tenacity and endurance.

The three cases were identified through a legal counsel whom we approached for this purpose, given the anecdotal evidence we had of the ways in which she and her colleagues sought gender justice through their legal practice. This initial interview led us to the case files and notes which we studied on the condition of confidentiality. Subsequent interviews were conducted with the legal counsel as well as with Sita, Yoga and Jayanthi. Nizreen did not respond to our request for an interview. An interview was also conducted with *Janasansandaya*, the civil society organization that linked the legal

counsel to Sita. We also spoke to a woman Officer in Charge (OIC) of a Women and Children's Desk of a police station related to one of the cases. A limitation of the study is that we could not interview other significant actors in the three cases. The study therefore takes a purposive approach that privileges the personal narratives of the women, particularly where the legal record is silent. It does so to provide a situated body of evidence that nevertheless resonates with broader feminist legal commentaries on gender justice in Sri Lanka,⁹ including issues of legal pluralism, the tension between ideals of justice and judicial bias, and the effects on women of the co-reliance of the law, culture and the state on each other. The essay consciously locates itself within a praxis of knowledge production committed to the pedagogical, political, and ethical purpose of social and gender justice.¹⁰

2_ The Law in Practice

In her recent book *Duress: Imperial Durabilities in Our Times*, Ann Laura Stoler, a scholar of colonial history, reminds us that duress “is neither a thing nor an organizing principle so much as a relation to a [troubled] condition” and a referent for culpability, force, pressure, constraint, and stamina.¹¹ In assessing how we can best recognize and understand the modalities of duress, Stoler argues for a renewed use of the concept of recursion as a useful analytical lens. Drawing on Foucault, her call for a “recursive analytic” alerts us to when and where recursion and recursivity occur, and it points towards a conceptualization of imperial history and its power relations as those that neither begin or end schematically, nor continue seamlessly, nor repeat themselves mimetically. Rather, attentiveness to recursion shows us how power relations “fold back on themselves and, in the refolding, reveal new surfaces, and new planes.”¹² For Stoler, an analytical approach centered on recursion makes colonial history available for a reading alert to its unevenness, instability and contingency, to its temporal overlays and scaling. It would also highlight the specific sites and different registers on which technologies of power intertwine and recombine.¹³

The analytical purchase, or reward, of a recursive reading of how the law operates in Sri Lanka in relation to the women's cases has three broad objectives. The first is towards understanding how culture, the law, and the state work together, pull apart, occlude or produce ‘an excess’ that draws attention to their own internal relations. Im-

plicit here is an approach to the law, culture, and the state as triangulated and co-constitutive rather than as abstracted, separate spheres of influence. The second is to understand that even though the law is no longer understood as gender or culturally neutral,¹⁴ the requirement and public expectation of natural justice, judicial impartiality, and legal objectivity fold back on themselves with devastating effects for women. The third is to assess what room there is — without buying into the romance of legal objectivity — for maneuvers towards substantive equality for women in the eyes of the law. In each of these lines of inquiry, the essay highlights how women's subjectivity is codified and validated by/within Sri Lankan law enforcement. This includes the misogynist treatment of women that often occurs with the sanction of women in authority themselves. But the essay is also attentive to how women plaintiffs resist this handling. Key questions that underpin the analysis are: how do the law, culture, and the state fold into each other, and/or back upon themselves (much like the pleats of a sari) in the delivery, or not, of gender justice? What is the legal-cultural context (including of legal pluralisms) that supports the regulatory, scopic, and constitutive gaze of the law as it determines women's subjectivity? How do women petitioners experience the full impact of the law, and how do they negotiate the paradox that attends their belief in an ideal justice on the one hand, and its partial or non-fulfillment on the other? Finally, what do we learn from these cases about feminist legal practice in eliciting gender justice?

A recursive reading of the law in the Sri Lankan context also provides the best approach for understanding its seemingly disjointed and contradictory aspects including their specific historical and cultural contexts. Take for instance the legal pluralism that juxtaposes personal laws alongside Roman-Dutch law, English Common Law, legislation and the Sri Lanka Constitution. Even though the principles of Roman-Dutch law which recognize the concept of *patria potestas* have now been surpassed to privilege the principle of the best interest of the child both in judicial interpretation as well as in legislation,¹⁵ the *Muslim Marriages and Divorce Act*, for instance, allows for the “law of the sect” to govern marriage which effectively results in the non-stipulation of an age of marriage for both sexes.¹⁶ Again, Article 16 of the Sri Lanka Constitution which protects personal laws, notwithstanding any inconsistencies with its fundamental rights chapter, could permit the *Thesavalamai* to be invoked to disallow a woman married to a Malabar Tamil man, who is an inhabitant of the province of Jaffna, from transacting

her immovable property without his written consent.¹⁷ More recently, within legislation, the offense of statutory rape was introduced with a minimum mandatory sentence in 1995¹⁸ but by 2008 the Supreme Court had issued an opinion concluding that a minimum mandatory sentence which eliminated judicial discretion in sentencing amounted to a violation of the right to equality and the right to be free from torture.¹⁹ Relying on this opinion in several cases thereafter the judiciary issued suspended sentences to persons pleading guilty to statutory rape.²⁰ Yet it is also the case that, in relation to fundamental rights, sexual harassment experienced by a woman teacher was determined as a violation of the right to equality and non-discrimination for the first time in 2016, in a judgment that also invoked the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) for the first time.²¹ Evident in all of the above domains of the law in Sri Lanka is a recursivity that highlights “diverse plot-lines with different, sometimes incommensurable temporalities, often of religion, sometimes just of those moments when the resonances of temporality fold or wrap to show uncommon or even sundry temporal spacings.”²² What this heterogeneity, including its incommensurabilities and friction, result in is a situation in which neither gender equality nor a state of active discrimination against women in the courts is fully secured. Importantly, this instability tells us about an indeterminacy that keeps the potential *promise* of the law open in the popular imaginary. At times, women who have no other resources of strong economic and social capital or political influence turn to the law as a way of procuring the protection of the state. They do so not necessarily because they have faith in the legal system but because they believe that the law can be made to protect and compel.

3_ The State of Law

The police station was the first port of call for Ramani (who was detained by the police and therefore had no choice in the matter) as well as for Sita, Yoga, and Nizreen. While the police station is the primary administrative *locus* for the implementation of law and order in civilian spaces, as an agency of law *enforcement* it is also where, as Giorgio Agamben noted, “the contiguity if not the constitutive exchange between violence and the law that characterizes the figure of the sovereign is visible in all its nakedness.”²³ For Agamben there is “nothing reassuring about the appearance of sovereignty under

the guise of the police.” This is because it is through the police that the state first attempts to criminalize the dissenter and, moreover, decides so on a case-by-case basis. It thereby reinforces a “zone of indistinction between violence and the law perfectly symmetrical to sovereignty” — a subject upon which Agamben has consistently written.²⁴ Even when recent shifts to “community policing” have aimed at a more egalitarian police force, its coercive capacity often facilitates misconduct, intrusiveness and even brutality.²⁵

When women go to police stations to make their initial complaints they are therefore aware that these are sites of asymmetrical power relations imbued with performativities of domination and assistance.²⁶ They have to justify their needs at the police station and make a good impression to avoid being treated as suspect. Their documents have to be in order and the onus is on them to be persuasive. They have to aim to remove the physical and social distance between themselves and the decision makers, in this case, the OIC and the officer recording their complaint) without undermining their authority or disrupting the structural hierarchies of the police station. Their effort, therefore, is to forge a link between themselves and the bureaucrat on the basis of a common humanity. Yet their inability to fully know how they will be assessed constitutes their precarity.²⁷

Jayanthi, for instance, despite the advice of the NCPA that she did not have to show up at the police station did so because, as she stated, “I did not want to antagonize my own police station in case I have some trouble and need them in the future”.²⁸ A strategy of appeasement is evident here. It was precisely to alleviate such anxiety and to permit women and children empathetic access to the law that the Sri Lankan state stipulated since the late 1990s that the police maintain a Women and Children’s Desk at its stations. However, in both the cases of Ramani and Nizreen, who were minors at the time they first encountered the police, the women police constables at these Desks were either outright hostile or lacked power to intervene on their behalf. The petition filed by Ramani and her mother to the Supreme Court sets out in detail that Ramani was slapped on the back once, repeatedly slapped on the face, scolded and called a “whore” by the women police constable cited as the 7th Respondent in their fundamental rights petition. The petition details that when Ramani and Sita were taken to the Women and Children’s Office of the same police station thereafter, the 7th Respondent slapped Ramani yet again. This time, the Senior Woman Police Officer present had asked her

colleague to stop the beating in acknowledgement that official codes of conduct had been breached and that Ramani's rights as both a citizen and a minor entitled to the protection of the state had been infringed.

Even if not physically abused, women suffer emotional harm from humiliation by the police at its precincts. Sita noted that she was subjected to reprimand and insults by the Senior Woman Police Officer for her "failure" to guard her daughter's virtue.²⁹ Clearly Sita's defense of her daughter was judged as argumentative and adversarial, eliciting in turn a forceful patriarchal response, also from the women police officers. In fact, in the case filed by the police on behalf of the state against Ramani, possibly for vagrancy, the police declared Sita an "unfit mother" and petitioned the judge not to allow her custody of her daughter. But as the state could not provide evidence to this effect, the judge ruled that Ramani could continue to live with her mother.³⁰

This points to how the rationale that women police officers and Woman and Children's Desks would provide a more empathetic service to women and children unravels when cultural notions of honor and morality are at stake, trumping a supposed solidarity based on gender. In fact, the senior woman police officer, an alumna of the school from which Ramani was expelled, took it upon herself to report the girl to the principal on the basis that Ramani had brought "shame" to the school.³¹ The policewoman's alumna status should not have been a factor in how the case proceeded. But what is evident here is the cultural authority police officers invoke in legal proceedings particularly when women are seen to have 'overstepped the line' sexually. Such methods of shaming and censure are not only deeply crosscut by dominant gender norms but also by class and age. Sita's status as a daily wage laborer with little education who had to place her thumbprint on documents because she could not sign her name, and so lacked economic and social capital, rendered her vulnerable to police humiliation. Nizreen's father on the other hand, a wealthy and influential businessman, had the latitude to intimidate his daughter, her friend, and Jayanthi at the police station without police restraint. While Ramani's gender, age, and lack of privilege made her available for *excessive action*, including violence at the hands of the police, Nizreen's father remained untouched by the (so called) long arm of the law, and became the beneficiary of its deliberate *inaction* and masculinist logic. Similarly, while Yoga's complaints against an abusive husband were taken up only on the third occasion that she reported him to

the police, Nizreen's father's punitive search for his daughter elicited its prompt response in a reiteration of how the law is often bent to favor men.

The law as enforced at these police stations is thereby provisional and contingent, depends on a prior, more substantial set of 'rules' on morality, gender, age, and class that wields authority over it.³² It bends to, and works with the logic of a masculinist state that, by setting itself up as a protector of the vulnerable, places women and children (as a paradigmatic category) in a subordinate and obedient position.³³ Obedience and supplication become, then, the bargain women have to make in seeking the protection of the law. Yet as we have seen in these cases, the police officers as agents of the law, hardly kept to their side of the bargain. They failed to protect the interests of both Ramani and Nizreen, who were minors, even though the law is clear that "in all matters concerning children [...] the best interest of the child shall be paramount."³⁴ The police also failed to protect the interests of Yoga who, as a woman, should have secured 'the protection' of the state, but had to repeatedly plead her case before action was taken. According to her legal counsel, the delays in processing such complaints have now become routine and institutionalized at police stations as a way of forcing married couples to mediate rather than litigate their disputes.³⁵ This was corroborated by the senior police woman officer we spoke to who noted that they "advise and guide" people who come to them and that "often [the police] try to speak to the offenders and even plead with them not to harm their families." An approach to encourage settlement rather than law enforcement is evident here even when the complaint involves gender-based violence.³⁶

Yoga was, moreover, additionally vulnerable as an "unaccompanied" woman and, according to her, subjected to the sexualized advances of the police, her husband's lawyer and the judge's personal bodyguard. She noted that a police officer used her telephone number (part of her record/complaint) to call her informing her that "he was in the area." She also had to fend off telephone calls from other police officers and her husband's lawyer who had telephoned her to say that his wife was away (in what could also have been a honey trap to entice Yoga and thereby prove her "loose morals"). Yoga also told us that, when she entered the Magistrate's Court, she invariably held her handbag over her breasts to protect herself from groping and lewd stares.³⁷ As sites of state-legal authority, neither the police station nor the court offered Yoga sanctuary. Rather they were places of danger and harassment.³⁸

4_Partial Justice

How the women experienced the law (as mediated by its agents such as the police, the NCPA, and the courts) suggests that, if at all, they accessed its principle of objectivity (intrinsic to the notion of a fair and evenhanded justice) only partially. This limited fulfillment of the law militates against received ideas on legal objectivity and judicial impartiality. What does the law become when it only partially delivers on this promise of justice? Can there be a “black letter” of the law without its constituent cultural DNA? If not, what is the impact on women when law enforcement agents continuously play on the *continuum* of law as culture and culture as law?³⁹ In such a situation, why do women even persist with the law? This section seeks to answer these questions through a further analysis of the cases.

In Ramani’s case the police and the school authorities, as agents of the state, were required by law to act “objectively” to further the stated purposes of the authority and discretionary power vested in them. Similarly, they were required to comply with due process (also described as rules of natural justice) in inquiring into any matter. These rules are that no one shall be judge of his/her own cause (impartiality) and that both parties to a case must be heard. In Sri Lanka, the duty to give reasons for decisions has been added as a third rule.⁴⁰ These rules of natural justice are Common Law principles that have been developed over time by the judiciary. What rules of natural justice are appropriate in each context depends on several factors, including the “significance” of the case. Gomez, commenting on the open-ended and vague framework of natural justice, observes that it takes color from its context.⁴¹ In Ramani’s case, it took color from the socio-cultural context to such a degree that the discretionary power vested in officials such as the school principal and woman police officer became amplified into outright prejudice and arbitrariness in the service of morality and a patriarchal state.

Regardless of the harms and hurdles faced, Ramani and her mother Sita relentlessly sought the fulfillment of justice. Their legal counsel noted that Sita “felt very wronged” by the school principal who had arbitrarily and opaquely expelled her daughter from school. Sita noted that she was determined to clear Ramani’s name. She declared “we brought her up to this level with such hardship, we have to clear her name because the police and the principal are lying about her.”⁴² The extent to which Sita persevered,

borrowing money to travel several times to the capital city of Colombo to plead her case at the national Department of Education and the Human Rights Commission so that her daughter could continue her education, indicates not only her resolve at regaining respectability but also her pride, as her legal counsel also noted, in the fact that her daughter was at a “big,” i.e. prominent school in their home district. In Sri Lanka, education has long been viewed as a path to upward social mobility. It is valued as a public good and education is free from primary to tertiary level in all state schools and universities. This is supported by the law, which mandates compulsory schooling up to the age of sixteen.⁴³ For Sita and her husband (a manual worker in a government department), education would have provided the only means by which Ramani could eventually access good employment and class/social mobility. Following her expulsion from school, these hopes were dashed. Sita reported that Ramani engaged in self-harm by cutting herself, and her father suffered a mental health breakdown following these events. Despite the loss of two years, the fact that Ramani is back in another school and currently studying for her G.C.E. Ordinary Level examination is, therefore, a hard-won positive development for the family.

It is ironic that at the very point at which Ramani and her mother required the court to use its “just and equitable jurisdiction” as mandated in the Sri Lanka Constitution on their behalf, and when, as their legal counsel noted, “they had nowhere else to go but the law because they have no other influence,” the Supreme Court’s commonplace reliance on a technicality pressured their legal counsel to withdraw the case. The technicality was of a time limit that applies to fundamental rights petitions which requires, under Article 126 (2), that petitions be filed within one month of alleged infringement. The reason Ramani and Sita did not file their petition within the stipulated time was because they sought redress from other official authorities such as the national Department of Education where they were told Ramani could resume her seat in the class without any prejudice or further documentation. Ramani did so, only to be chased out by the principal — indicative of how and when culture trumps the law and morality overrides the right to education. Ramani’s plea to the Supreme Court therefore came as a matter of last resort after other avenues had failed.

Evident here is a law that “treats injury as primarily a breach against itself so that the human being [in this case Ramani] who is violated, becomes only an instrument by which the law reinstates its own authority.”⁴⁴ This instrumentality becomes obvious in

how the court uses time to deem it an infringement of its rules yet disregards time altogether when it comes to the long procedural delays in the completion of cases such as those filed by Yoga.⁴⁵ In relation to fundamental rights petitions themselves, the Constitution mandates that they shall be determined within two months, but the Supreme Court considers this as directory rather than mandatory.⁴⁶ Furthermore, the technical language of the court (in referring to the thirty day rule) appears impartial but in effect frustrates the very purposes for which the fundamental rights jurisdiction was established through the Sri Lanka Constitution in the first place. After all, Ramani and other citizens like her turn to the “exclusive” jurisdiction of the Supreme Court precisely when all other attempts have failed.

Yet the legal counsel’s decision to withdraw the fundamental rights petition also occludes a history of legal flexibility on the matter of the time bar (the thirty-day limit for filing fundamental rights petitions). For while temporality does constitute a statute of limitation within the law, there have been cases where the judiciary has dispensed with this requirement, adopting a purposive interpretation of the Article.⁴⁷ While this history of judicial discretion went unexplored in Ramani’s case, the withdrawal of the case also ensured only a faint trace of it: as a Minute on the case in court records rather than a full judicial account, for instance, of the harms done to Ramani and Sita, which would have become part of the public record had the case proceeded. It is noteworthy that for Yoga, however, whose cases *were* recorded in court, it was a matter of concern that the public had access to them. She worried about her husband’s reaction to this public record. Yoga had no idea until we spoke to her that her case was in the public domain.⁴⁸ This poses an interesting question as to what constitutes privacy in a public space such as a courtroom or a legal archive. It also illustrates the tangible threats women litigants experience due to family/social pressures that often result in their silencing, self-censorship, and even withdrawal from the law.

Even though the law failed these women or at best only partially fulfilled its promise, Ramani, Sita, Yoga, and Nizreen turned to the law. Despite her three-day detention at the police station and the raw display of police/state power against her, Nizreen presented herself at the door of the law at every turn to plead her case, refusing to passively return to her parental home, which would have meant accepting their rules as to how she should behave. Sita told us that she did not get justice, but when asked what advice she would give someone from her village in a similar situation she declared “they will

have to go down the same path. You cannot let it go. Injustice requires you to fight it.” For women like Sita the only path to access justice was through the police and the court. Yoga noted that she felt like giving up several times but that this attitude changed when, through a school friend, she met and obtained the support of her legal counsel. She declared that in order to fight a case in court women should “not expect immediate solutions, should litigate only if they are mentally strong, have time to waste, and have the capacity to bear scolding and harassment.” Yet she added that despite its inadequacies there was no other option but the law. Evident here is that for these women a flawed and even hostile legal system was still something to work with as long as they could obtain legal aid and other forms of support as opposed, for instance, to relying on extrajudicial means (ritual/religious practice seeking divine justice and retribution) or vigilantism. In this instance, as “law abiding” citizens who wanted to remain within the law, they chose the authority of the state and the means by which it promises justice in relation to dispute resolution.

5_Feminist Legal Methodologies

What room is there in this context for feminist maneuvers towards ensuring substantive equality for women in the eyes of the law? The discussion so far on the behavior of women police officers and the school authorities has shown that women cannot be relied upon to protect, or even to be fair and evenhanded, to other women even if this is the law’s mandate. Yet the woman police officer we spoke to was quietly emphatic that they work within an ethic of care. She stated “those who come to us are very poor, they come with a lot of sadness. Often we end up buying things for them because they have so many needs. Recently we even bought medicine for a child who came to us — the mother couldn’t afford the medication. We don’t need to go to a temple to earn merit, we earn it through our work.” However, the mismatch noted so far between intent, accomplishment, and action indicates that empathetic law enforcement by the police relies on a social sorting where the type of ‘violation’ and judgment on the merits/demerits of the complainant/defendant come into play. At the same time the police’s ability to abide by ‘the letter of the law’ depends on power relations that are both internal and external to it. For this same officer also noted that when school and medical authorities are reported to them as adversaries they have to “manage these matters carefully.” This indicates that personnel in these two sectors (who can even be of assistance

to the police at an individual level by virtue of their professional, political and social influence) wield power over and above the law.

Moreover, even when the women police *are* sympathetic to a woman plaintiff or a minor — such as the officer recording Nizreen’s complaint — they often lack the power to persuade their male colleagues to act impartially and respectfully to women. The OIC we spoke to noted “as a woman police officer I face challenges [...] even though I am an OIC I don't have a designated phone line or vehicle. They regard us as less.” This points to how Women and Children’s Desks themselves are accorded low priority within police stations in an internal, structural hierarchy that is prejudicial to women, including women police officers. Indicative of their struggle to equality was the legal challenge women police officers mounted and won in 2007 against a discriminatory promotion scheme whereby the cut off mark for male police officers had been set at 48 whereas for the women it was 68.⁴⁹

Data from our cases show, however, that where women seem to have made a difference are in the areas of legal aid and methodologies of legal practice. Sita and Ramani were helped by *Janasansandaya*, established in 1993 as a people’s forum to fight injustice. Working on legal advocacy, awareness raising, legal aid, medical, and psycho-social assistance, documentation and rehabilitation of victims of severe harms such as torture, the organization is based in Panadura, in the south of the country.⁵⁰ Sita noted that the work of *Janasansandaya* was known in her village and that the organization “was there for her every step of the way.” They assisted her financially and introduced her to the Human Rights Commission in Colombo. The organization was their link to the law and the state and their promise of justice. The work of *Janasansandaya* is also significant in the context of both poor legal literacy in Sri Lanka and the necessity for an overall assessment of the prevalence of systemic violations of rights and entitlements. Explaining the legal options and administrative remedies available for a particular case is one way in which the organization helps clients to make informed choices where there is little education on the law. Secondly, it uses its strategic position as a grassroots organization to map a larger picture of prevalence of violations. A woman officer working for *Janasansandaya* noted that Ramani’s case was one amongst many in which girls were being kept away from school and denied access to education for violating an unwritten and implied moral code.

While the legal counsels of Ramani, Sita, Yoga, and Nizreen do not have a feminist practice of their own (although this was a goal one of them aspired to), they are three young women who work in Colombo in the Chambers of a reputed male lawyer. They took on all three cases on a pro bono basis. When asked what she thought was different about the way they conducted their legal practice, the lawyer who appeared for Ramani, Sita, and Yoga told us “we like to tell the whole story and present that *whole story* in court even though judges get impatient.” This was corroborated by Yoga, who noted that the client counseling she received from her lawyer was patient, respectful, and empathetic. She stated “for lawyers our cases are not big ones although for us they are big” and she was grateful that her lawyer had given her the time and space to unburden herself. She also noted that her lawyer’s documentation was meticulous, pointing to a legal practice that was conscientious and organized. In the context of the sexualized advances of the male police, lawyers, and security guards that Yoga had to withstand she noted that she found security in consulting a woman lawyer. Evident here is a solidarity whereby an ethic of care was offered to the client in the context of the breakdown of faith in the police and law enforcement.

Questions remain, however, as to what really constitutes a feminist legal practice. If legal practice in Sri Lanka generally requires adherence to an ethical code that consists of counsel-client confidentiality, the cab rank rule, duty to court over duty to client, and avoiding conflict of interest, what is it that a feminist legal practice can add to this list? Discussing the Sri Lankan women’s movement’s demand for legislation prohibiting domestic violence, Morseth de Alwis posits what could be considered a feminist engagement with the law. This list demands dehegemonizing the law based on a critique of its content and enforcement, acknowledging its tendency to privilege itself as an institution to the detriment of alternative mechanisms of redress, asking when and how to engage with the law, and even strategically retreating from it when necessary.⁵¹ Morseth de Alwis further asks that we be aware of how and when “the feminist imperative to break the silence is often at odds with the social imperative to maintain silence” particularly when women come under family/social pressure to remain quiet on harms such as domestic and sexual violence. She calls therefore for the exposure of a “justice system [that] is not oriented towards women who are unable or unwilling to break the silence.”⁵²

The legal counsel we spoke to for this study was acutely aware of the law's limitations on gender justice, yet her chosen vocation was to work within the law and the courts. Her decision, for instance, to withdraw the fundamental rights application of Ramani and Sita from the Supreme Court can be seen, on the one hand, as caving into pressure from judicial technicalities related to the time bar. As already noted this had the effect of diminishing the public record on the violations experienced by Ramani and Sita and stopped short of testing legal flexibility on the interpretation of the technical rule. Yet the withdrawal could be also viewed as a strategic retreat, and even an internalized feminist refusal to work with the law so that other avenues maybe kept open. For once a case is dismissed, it adversely affects the litigant's chances of returning to the Supreme Court with the same case or seeking other administrative redress. For legal counsels working with the law, these decisions, the end-result of which cannot be fully known in advance, are complex. They often result in a compromise that abides by the law yet supplements it — albeit not completely undermining it — in other ways. In the cases we have highlighted so far, this supplementarity included providing the women ethical humane legal counseling, friendship, and a feminist solidarity in a critique of power towards gender justice.

6_Conclusion

Through a gendered analysis of women's experiences of the law in Sri Lanka, this essay has illuminated the operations of the law, and how law, culture, and the state intersect and work together, sometimes opaquely (in the manner the school authorities acted), at other time excessively (police violence, misogyny and bias). The essay thus highlights how, if culture is a way of life and a range of practices, those in authority practiced their culture by intervening through the law. In doing so it provides a strong account of how dominant gender norms are mobilized by law enforcement authorities and those adjudicating the law to determine who is afforded sanctuary within it and who is cast out. It also demonstrates how the law becomes contingent when law enforcement authorities adopt what is essentially a cultural stance in respecting those with social/professional status even if they are miscreants. The essay thereby has a number of important implications for the question of whether we should re-think conventional calls for a return to 'law and order' where systems have failed or when social breakdown has occurred. For these calls emerge from an understanding of the law that somehow

treats it as capable of being outside of culture and the social. Such calls also ignore the fact that the law *relies* on the transgression of its rules so that it can performatively reiterate its authority. Such self-reflection on the law is particularly timely for contemporary Sri Lanka, given the country's current context of postwar transitional justice that has elicited a heavy reliance on law reform and institutional redesign as the way forward.

While law and culture are co-constitutive, they are nevertheless not completely indistinguishable from each other for they also perform different operations of power.⁵³ The essay illustrates, for instance, how while culture's authority foreclosed all possibilities for Ramani from re-enrolling in her school, the law's authority left the door ajar, enabling her access to the Supreme Court (albeit partially because of the withdrawal of her case), just as much as Nizreen was able to access the NCPA. The essay thereby notes a paradox in how and why women turn to the law despite their frustration at the failure of "natural justice" at the sites of both law enforcement and the judiciary. It argues that when conditions such as free legal aid or legal support before authority figures are favorable, women turn to the law because in the public imaginary, the law continues to provide the 'legitimate' means by which to protect oneself against infringement. The essay has also raised questions about what a feminist legal methodology means in a context where a masculinist legal system has failed to procure all women who come before it their entitlements. Overall, by zooming in on the stories of Ramani, Sita, Yoga and Nizreen and their troubled encounters with the police, the state, culture and the law, the essay has demonstrated the ways in which these institutions combine, pull apart, and recombine according to contingent situations and reflected on where and how these assemblages occur.

Endnotes

- ¹ We acknowledge with thanks the comments of the reviewers and the audience at the Law and Society Trust, Colombo, where we presented and discussed this study in May 2017.
- ² All names used are pseudonyms reflecting the respective Sinhala, Tamil, and Muslim backgrounds of the women. All persons interviewed gave consent to be interviewed for this essay. Case Numbers have been withheld to offer further anonymity. Further details are on file with the authors.
- ³ Although Ramani was not issued a formal letter of expulsion, the order of the Principal to leave school acted as such. Later the Principal and another teacher of the school compelled Ramani to write and sign a letter admitting to "bad behavior" and causing "shame" to the school — the grounds on which Ramani's informal expulsion was explained.

- ⁴ The Constitution of Sri Lanka does not expressly recognize the right to education. However, the right to equal treatment before the law (Art 12(1)) has been interpreted in light of the Directive Principles of State Policy (Ch VI) which declares the provision of universal access to education as an objective of the state. Thereby the Supreme Court has recognized the right to education in determining several fundamental rights petitions. See for instance, *Kavirathne v Commissioner General of Examinations* SC (FR) 29/2012 SC Minutes 25 June 2012.
- ⁵ The first case was filed in the Magistrate's Court against her spouse for voluntarily causing hurt under S 314 of the *Penal Code*. The second case was also filed in the Magistrate's Court, claiming maintenance from the spouse who by now had left the marital home, under the *Maintenance Act* No 37 of 1999. A divorce action was thereafter filed by the spouse in the District Court. The spouse was convicted in the first case in January 2015. He appealed against the conviction, which at the time of writing is pending in the High Court and thereafter appealed against alimony *pendent lit* which went all the way up to the Supreme Court.
- ⁶ Interview with Jayanthi, the mother of Nizreen's friend, Colombo, 7th February 2017.
- ⁷ Section 14 (g) of the *National Child Protection Authority Act* No 50 of 1998.
- ⁸ Naomi Mezey, "Law's Culture and Lived Culture: a comment on Roger Cotterrell's 'The Struggle for Law: Some Dilemmas for Cultural Legality'", in *International Journal of Law in Context* 4 (4), (2009), 395–399, here: 396.
- ⁹ See for instance, Kumari Jayawardena and Kishali Pinto-Jayawardena, eds., *The Search for Justice: The Sri Lanka Papers* (Delhi: Zubaan, 2016).
- ¹⁰ Norman K. Denzin, "Emancipatory Discourses and the Ethics and Politics of Representation," in *The Sage Handbook of Qualitative Research*, eds. Norman K. Denzin and Yvonna S. Lincoln (Thousand Oaks: Sage, 2005), 951.
- ¹¹ Ann Laura Stoler, *Duress: Imperial Durabilities in Our Times* (Durham: Duke University Press, 2016), 7. Our parenthesis.
- ¹² Ann Laura Stoler, *Duress: Imperial Durabilities in Our Times* (Durham: Duke University Press, 2016), 26.
- ¹³ Ann Laura Stoler, *Duress: Imperial Durabilities in Our Times* (Durham: Duke University Press, 2016), 31-32.
- ¹⁴ For discussions on the "neutrality" of the law see Ratna Kapur, "Challenging the Liberal Subject: Law and Gender Justice in South Asia" in *Gender Justice, Citizen and Development*, eds. Maitrayee Mukhopadhyay and Navsharan Singh (New Delhi: Zubaan, 2007) 116; and for a discussion on the relationship of law to culture see Naomi Mezey, "Law as Culture" in *13 Yale Journal of Law and Humanities* 35-67 and Naomi Mezey "Mapping a Cultural Studies of Law" in *The Handbook of Law and Society*, eds. Austin Sarat and Patricia Ewick (Chichester: Wiley-Blackwell, 2015) 39–55.
- ¹⁵ For judicial interpretation that upholds the best interest of the child standard see *Premawathi v Kudalugoda* 71 NLR 398 and for an example of the application of the concept of *patria potestas* see *Hanifa v Razack* 60 NLR 287.
- ¹⁶ Section 16 of the *Muslim Marriage and Divorce Act* No 13 of 1951 as amended.
- ¹⁷ Section 6 of the *Matrimonial Rights and Inheritance (Jaffna) Ordinance* of 1911. The term 'Malabar inhabitants of the Province of Jaffna' is derived from the *Thesawalamai Code* of 1806. The *Matrimonial Rights and Inheritance (Jaffna) Ordinance* of 1911 applies to those are deemed to be Malabar inhabitants of the Province of Jaffna. The meaning of "Malabar Tamil inhabitant of the province of Jaffna" is subject to judicial interpretation. In general, it requires that the person can establish domicile through facts such as ownership of property in the Jaffna province. For a more

minute discussion, see H.W. Tambiah, *The Laws and Customs of the Tamils of Jaffna* (Colombo: Women's Education and Research Centre, 2004), 46.

18 Section 364(2)(e) of the *Penal Code*.

19 SC Ref 03/2008, SC Minutes 15 October 2008.

20 For a recent example see *Sampath v AG*. See for an analysis of such cases Lawyers for Human Rights and Development, *Justice – Suspended; A Study on Suspended Sentences for Sexual Offenders* (Colombo: Lawyers for Human Rights and Development, 2012).

21 *Manohari v Secy Min of Education* SC (FR) 76/2012, SC Minutes 28 September 2016. Sri Lanka ratified CEDAW in 1990.

22 Geeta Patel, *Risky Bodies and Techno-Intimacy: reflections on sexuality, media, science, finance* (Delhi: Women Unlimited, 2016), 196-7. Patel does not use the word 'recursion' in her analysis but her theorizing of the mobilization of desire vividly rehearses the operations that recursion (including a recursive reading) entails.

23 Georgio Agamben, "The Sovereign Police," in *The Politics of Everyday Fear*, ed. Brian Massumi (Minneapolis: University of Minnesota Press, 1993), 61.

24 *Ibid.* 62.

25 Phillip S. H. Shon, "'Let me See your Hands': The Grammar of Physical Controls in Police Directives" in *Images in Law*, eds. Anne Wagner and William Pencak (Aldershot: Ashgate, 2006), 205–207.

26 See Didier Fassin, *Humanitarian Reason: A Moral History of the Present*, (trsl.) Rachel Gomme, (Berkeley: University of California Press, 2012), 3. Fassin's discussion of the moral and affective economies surrounding those seeking welfare grants in France, their self-representation, and the performativities of humanitarian governance applies equally to a petitioner before the law.

27 Didier Fassin, *Humanitarian Reason: A Moral History of the Present*, (trsl.) Rachel Gomme, (Berkeley: University of California Press, 2012), 63–65.

28 Interview with Jayanthi, Colombo, 7th February 2017.

29 Telephone interview with Sita, 8th February 2017.

30 During the interview Sita was unable to provide specific details of the case or the charge against her daughter. This inability suggests low legal literacy that has the effect of alienating women like Sita from the law.

31 Interview with Ramani's legal counsel, Colombo, 23rd January 2017.

32 Stoler makes a similar case for how we should consider the concept of the colony. See Stoler, *Duress* (cf. note 11), 78.

33 See Iris Marion Young, "The Logic of Masculinist Protection: Reflections on the Current Security State" in *Signs: Journal of Women in Culture and Society* 29: 1 (2003), 1–25, here: 2.

34 Section 5(2) of the *International Covenant on Civil and Political Rights Act* No 56 of 2007.

35 Interview with Yoga's legal counsel, Colombo, 23rd January 2017.

36 Interview with Officer in Charge, Women and Children's Desk, 14th February 2017.

37 Interview with Yoga, Colombo, 8th February 2017.

38 Yoga was also compelled to deal with the police and the court in Sinhala even though Tamil is her first language. In Sri Lanka Sinhala is the official language of all the provinces except of the northern and eastern provinces where Tamil is the official language (Articles 18 and 19 of the Constitu-

tion). The language of the Court follows the same division (Article 24 of the Constitution). However, the Constitution recognizes a citizen's right to communicate with the state in a language of her choice. The enforcement of this right, however, is extremely poor.

³⁹ Mezey, "Law as Culture" (cf. note 14).

⁴⁰ See *Hapuarachchi v Commissioner of Elections* SC (FR) 67/2008 SC Minutes 19 March 2009.

⁴¹ Mario Gomez, *Emerging Trends in Public Law* (Colombo: VijithaYapa, 1998).

⁴² Telephone interview with Sita, 8th February 2017.

⁴³ As a result of these policies, in 2014 there was 99.7 per cent net enrolment in primary schools and by 2012, literacy rates of fifteen to twenty-five year olds was 97.8 per cent (Millennium Development Goals - Sri Lanka Country Report, Colombo: United Nations, 2014, p.65). Girls have had a good 95 percent enrollment in schools. Currently the overall enrolment of women students at universities is at 58 per cent with 86 percent enrolled for Law degrees. See "The Sri Lankan Women – Partner in Progress" (Colombo: Department of Census and Statistics, 2014, 31) and University admissions for 2014/2015, available at http://ugc.ac.lk/downloads/statistics/stat_2015/Chapter%202.pdf, accessed February 12, 2017.

⁴⁴ Panu Minkkinen, "The Expressionless: Law, Ethics and Images of Suffering" in *Law Critique* 19 (2008), 65–85, here: 67. Our parenthesis.

⁴⁵ See for instance, 'Critical Issues arising from the 8th Sri Lanka Government CEDAW Report of April 2015' submitted by Sri Lanka Women's Groups (10 June 2016) available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_24263_E.pdf, accessed on February, 12 2017; and P.A.S. Edirisinghe, I.D.G. Kitulwatte, A.A.S. Sihanada, B.A.A.R. Bulathsinhala, "Justice delayed – Justice denied; a study on time intervals of medico-legal examinations, reporting and giving evidence in cases of alleged child abuse victims," in *Medico-Legal Journal of Sri Lanka* 1.1 (2014), 20–26.

⁴⁶ Art 126(5) of the Constitution.

⁴⁷ See *Namasivayam v Gunawardena* [1989] 1 Sri LR 394; *Sriwardena v Brigadier Rodrigo* [1986] 1 Sri LR 384.

⁴⁸ Interview with Yoga, Colombo, 3rd February 2017.

⁴⁹ Officer in Charge, Women and Children's Desk, 14th February 2017. See also Namini Wijedasa, "Bleak Place for Women in Male Dominated Police Department" in *The Sunday Times*, May 1, 2016, accessed May 1, 2016, <<http://www.sundaytimes.lk/160501/news/bleak-place-for-women-in-male-dominated-police-dept-191555.html>>.

⁵⁰ Accessed February 11, 2017, <<http://www.janasansadaya.org>>.

⁵¹ Rizvina Morseth de Alwis, "Private Battles in Public Domains: Going Beyond Legal Terrains" in *Feminist Engagement with Violence: Contingent Moments from Sri Lanka*, eds. Nimanthi Perera-Rajasingham, Lisa Kois and Rizvina Morseth de Alwis (Colombo: International Center for Ethnic Studies, 2007), 138.

⁵² Rizvina Morseth de Alwis, "Private Battles in Public Domains: Going Beyond Legal Terrains" in *Feminist Engagement with Violence: Contingent Moments from Sri Lanka*, eds. Nimanthi Perera-Rajasingham, Lisa Kois and Rizvina Morseth de Alwis (Colombo: International Center for Ethnic Studies, 2007), 128.

⁵³ Mezey, "Law as Culture" (cf. note 14), 47.