

GAZING FROM A DISTANCE: SPATIAL READING OF A LAW COMMISSION REPORT

—NIDHIN DONALD*

This paper will attempt a spatial reading of the 242nd Law Commission Report (hereinafter referred to as 'the Report'). I can best describe this attempt as an illustration. The Report deals with 'honour' crimes in the context of inter-caste, inter-community marriages. Transgressive unions, matrimonial or non-matrimonial, tell us stories of spatial vulnerability, resistance and creation of "homeplace". These stories play out in geographies designed by our social structures. The word 'transgressive' by itself implies a hostile geography. This paper would argue that while the Report tries to protect individuals from the threat of violence or bring them justice after violence, it does not provide any substantive insight on preventing such violence. The paper would further argue that without an informed sense of place, substantive insights on producing preventive physical infrastructure would be impossible. Thus, the paper will fetch answers or leads to the following questions - firstly, how does one capture the common sense of place in the Report? How does the report comprehend the physicality of caste and patriarchy?

I. UNDERSTANDING PLACE

"... An estimate of the weapons available was being taken from every home. Every family had knives and sharp instruments for slaughtering fowl and cutting vegetables. The wrestlers and masters had their swords... Women were taught to use the rope hoopla and sticks. Children were given the job of collecting stones and bricks... Day and night tea was brewed on the hearth¹."

* M.Phil. scholar, Centre for the Study of Discrimination and Exclusion, School of Social Sciences, Jawaharlal Nehru University, New Delhi. The author would like to extend his sincere thanks to the reviewers of this paper, for their comments and insights; his patient editors; and last but not the least, Asha Singh and Arvind Singh for their scholastic and moral support.

¹ SHARMILA REGE, WRITING CASTE/ WRITING GENDER: NARRATING DALIT WOMEN'S TESTIMONIES 237-238 (2006).

In *Antasphot*, Kumud Pawde² vividly describes her childhood during caste-conflicts in Nagpur. The Mahar³ Colony, in which she lived, was surrounded by Savarna⁴ quarters on all four sides. As the news spread that Mahars were being attacked, people in the colony feared attacks too. As the Maharwada⁵ prepared itself to resist these attacks, it took on the character of what Kumudatai calls a ‘wrestling ground’. The above lines describe the preparations in Maharwada to resist Savarna violence. It describes a lived crisis.⁶ Furthermore, it describes how people collectively resisted the crisis in the face of grave spatial vulnerability.

How do we understand lived crises? Everyday experiences are descriptions of lived crises. They play out in the backdrop of systemic crises. In the above description, the systemic crisis was explicitly caste violence. On the other hand, finding weapons, training children and women, brewing tea to stay awake and alert are descriptions of everyday experiences of lived crisis.

Kumudatai unravels her crisis in a ‘lived space’.⁷ It is a lived space because she is intimately part of its history and practice. She grew up in the colony. She moves across her home, hearth, and courtyard to describe the preparations in her colony. She documents the pulse of a place in a moment of crisis. Thus, she ‘unmaps and denaturalizes’ it.⁸

Why is Kumud Pawde’s account important to this paper? Its importance is primarily fourfold:

² Kumud Pawde is a Phule-Ambedkarite writer, feminist and activist from the Indian state of Maharashtra. She belonged to the Mahar community which is one of the Dalit communities of India. She has written her autobiography in Marathi, entitled *Antasphot* (1981).

³ Mahar is a Dalit (ex-untouchable) community primarily concentrated in Maharashtra, India. They have spearheaded the anti-caste movement in Maharashtra.

⁴ Savarna refers to the so called ‘twice-born’ castes (Brahman, Kshatriya and Vaishya) that fall within the four-fold Varna system. However, the use of the word ‘Savarna’ also has a political undercurrent which aims at distinguishing the ‘oppressors’ from the oppressed ‘Avarnas’ (The castes/communities outside the hierarchy or who are at the lowest rung of the hierarchy).

⁵ A settlement where Mahars reside.

⁶ PAUL GILROY, *THE BLACK ATLANTIC: MODERNITY AND DOUBLE CONSCIOUSNESS* (1993).

(Paul Gilroy points out that Marxism allocates priority to “systemic crisis” more than “lived crisis”. The memory of slavery prioritizes lived crisis. Through creative expressions, which he describes as ‘gifts offered by the masters’ like autobiographical writing and music, slaves fashion their identity and liberation).

⁷ HENRI LEFEBVRE, *THE PRODUCTION OF SPACE* (1991) (hereinafter Lefebvre).

(Henri Lefebvre proposes a triad spatial model – the perceived, conceived and lived space. Scholars argue that Lefebvre conceptualized “lived space” as a careful balance between the two poles of conceived space (purely idealism) and perceived space (pure materialism).)

⁸ Sherene Razack, *Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George*, CAN. JL & SOC. 15, 91, (2000).

(a) *Kumud Pawde understands the significance of her place.* Geographies are sometimes ignored as ‘mere containers of matter’⁹ or they are codified rigidly in binaries of public/private, nation/family and/or political/apolitical. This is done without realizing that our everyday social relations, contestations, and conflicts are mediated and structured in places which blur these binaries.¹⁰ Social actions are spatially enabled and spaces are socially enabled. This interface between the social and the spatial has implications on our identities, privileges, and vulnerabilities.

(b) *She gives a first-hand account of the place.* In other words, she describes the place as her body experiences it. Place¹¹ cannot be imagined without/outside the body. Kumudatai, as a child, is experiencing the measures in her colony through her body. The situated body is moving across spatial scales and describing the preparations (from memory). Thrift points out that we should imagine the body as a part of something much more complex than “flesh surrounded by an envelope of skin”.¹² It should be viewed as a link to a larger spatial continuum (Body, hearth, home, backyard, courtyard, colony, city etc.). He describes this as ‘a–where-ness’. A–where-ness entails things, people and places, which constantly react to encounters and evolve out of them. Thus, being socialized in the above experience, Pawde might have evolved her own sense of ‘a–where-ness’. All of us display this ‘a–where-ness’ of place through our bodies located in specific social locations.

(c) *She articulates her place as marked and marred by caste hierarchy.* Dr. Babasaheb Ambedkar used the poignant metaphor of ‘a multi-storied building’ with no entrance or exit to illustrate Spatial Brahmanism.¹³ Every caste lives and dies in its own floor without any real communication with others. He analyses caste as a system, which divides labourers. This division of labourers is also a ‘division of geographies’. For example, G. Kalyanarao in his autobiography ‘The Untouchable Spring’ uses the phrase ‘lines of division’ to describe the spatial and social distances between Savarna Village (Uru) and Dalit Village (Palli). He writes that an Uru thrives on a Palli. The Palli supplies labour for

⁹ Chris Butler, *Critical Legal Studies and the Politics of Space*, 18(3) SOCIAL & LEGAL STUDIES, 313-332 (2009); Nigel Thrift, *Space: The Fundamental Stuff of Geography*, 2 KEY CONCEPTS IN GEOGRAPHY, 85-96, (2003) (hereinafter referred to as ‘Thrift’).

¹⁰ *Supra* note 6.

¹¹ Thomas F. Gieryn, *A Space for Place in Sociology*, ANNUAL REVIEW OF SOCIOLOGY, 463-496 (2000).

(According to Gieryn place has three important characteristics – Unique Geographic Location (the difference between here and there), Invested with Meaning and value (a place is not a place without people naming it) and Material Form (place has physicality).)

¹² Thrift, *supra* note 9.

¹³ B.R. AMBEDKAR, & V. MOON, DR. BABASAHEB AMBEDKAR, WRITINGS AND SPEECHES (VOL. 13), (1994); BRIJ RANJAN MANI, DEBRAHMANIZING HISTORY 359 (2008).

(Mani draws from Dr. Babasaheb Ambedkar to explain the sub-conscious of Brahmanism. Graded inequality of different classes characterizes Brahmanism. This graded inequality finds its material base in unequal division of labour and place. Spatial Brahmanism can be explained in terms of spatial graded inequality.)

denigrated jobs. It cleans and mops, produces and harvests for the Uru. At once, Kalyanarao exposes us to the exploitative nature of Spatial Brahmanism. It ordered our physical infrastructure. These infrastructures of caste facilitate the practice of distance and intimacy.

(d) *She presents an account of spatial resistance.* The Maharwada emerges as a sanctuary which needs to be defended from the violence of a caste-ridden society. Bell Hooks in her 1990 essay ‘Homeplace (as a site of resistance)’ writes¹⁴ –

“Despite the brutal reality of racial apartheid, of domination, one’s homeplace was the one site where one could freely confront the issue of humanization, where one could resist. Black women resisted by making homes where all black people could strive to be subjects and not object, where we could be affirmed in minds and hearts despite poverty, hardships and deprivation, where we could restore to ourselves the dignity denied to us on the outside in the public world.”

Writing in the context of white supremacist America, Bell Hooks underlines the radical political dimensions of black dwelling. She points out that historically the creation of the black dwelling, was a task almost single-handedly accomplished by black women due to the gendered nature of such a task. However, she argues this home was nurtured as a place where blacks could affirm themselves safely and thus, ‘heal many wounds inflicted by racial domination’. Thus home, despite patriarchal structures within, is made a community of resistance and a site of humanization. It is invested with a meaning and value which derails racial dominance. Thus, she calls the black-dwelling a homeplace. The use of the word ‘place’ underlines the uniqueness of the space, its invested meanings, values and physicality.¹⁵

Drawing from Bell Hooks, one can argue that Maharwada in Kumud Pawde’s account emerges as a homeplace with radical political dimensions against Brahmanical dominance in a caste society. The Wada, by staging a fight, transforms itself into a community of resistance. In this process, the dwelling is invested with a lot of meaning and value.

A. Why Is Kumud Pawde’s Account Relevant To Transgressive Unions?

I argue that Kumud Pawde’s account is extremely relevant to transgressive unions. They delineate the spatial features of such unions.

¹⁴ BELL HOOKS, HOMEPLACE: A SITE OF RESISTANCE (1990).

¹⁵ *Supra* note 10.

In our society, inter-caste, inter-community, non-heterosexual unions confront the grudge and violence of caste, honour and patriarchy. At such moments of lived crisis, they realize the need to strategize their actions. Fleeing from one's place of origin is a strategic act which recognizes the imminent violence of staying back. In other words, it recognizes the impossibility of the geography. Thus, escaping violence, by leaving the place becomes a politics of possibility. It also becomes an act of building a home place – a home place that affirms one's decisions and resists a hostile outside. Such new home places mark departures from normative structures of family, marriage and co-habitation. However, this is not to say that oppressive structures cease to exist in these dwellings. What one needs to recognize is that transgressive unions, matrimonial or non-matrimonial, tell us stories of spatial vulnerability, spatial resistance, and creation of "homeplace". One also needs to recognize that they face violence and persecutions while trying to transgress these impossible geographies.

B. Law as an Ally

Any discussion on inter-caste, inter-community unions should embed them in their spatial contexts. The role of law in building preventive infrastructure and strong punitive action against violence should make sense of this 'place'.

Drawing from Kimberle Crenshaw,¹⁶ I argue that we need intersectional analysis and intervention in the practice of law. Intersectionality, a term coined by her, offers a prism to view a range of social problems to better ensure inclusiveness of remedies. Intersectionality not only provides a tool to render certain exclusions more visible, it also points in the direction of a reframed approach to social justice politics.

In Crenshaw's famous speech¹⁷, "What Kind of Ally Are You? Or, What is Your Disaster Relief Kit?" she puts up a very important question (as the title of the speech suggests) –

"[...] When we talk about Black-on-Black violence in the African American community, we seldom talk about the most common type of violence -- the violence that occurs in the home. It is as if the Black bodies that we care most about are gendered in a particular way. We talk about ending the violence that endangers our fathers, brothers and sons, but we are often far too silent about the violence that

¹⁶ Kimberle W. Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, U. CHI. LEGAL F. 139 (1989); Kimberle W. Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1241-1299 (1991).

¹⁷ Crenshaw Kimberle, Executive Director, African-American Policy Forum, Address at the V-Day 10th Anniversary Celebration (2008).

endangers and sometimes takes the lives of our daughters, sisters, and mothers. Antiracism's solidarity, it seems, is often drawn with a gender line.

So then, I ask, what kind of ally are you?"

The immediate context of her speech was the conspicuous discrimination faced by blacks, disabled, old, and women in the aftermath of Hurricane Katrina. She extends the context to criticize the single-axis analysis of various social movements and poses the question 'What kind of an ally are you?' She expounds that an ally should be 'firmly planted in intersections'. I would add that an ally should also be at an approachable social and geographical distance. Finding a political meaning to 'place' would mean multi-scale analysis of social realities and multi-scale interventions to change these social realities.

Women's movements, anti-caste movements, and other progressive struggles have consistently upheld law as an ally. They have tried to push the legal apparatus through notable struggles. The past three hundred years have witnessed considerable changes in the social fabric of the country. Legal systems have played a very important role in such changes. However, compared to others, law has always remained a weak cultural agent.

Going back to Pawde's account, one could clearly say that the community was fending for itself in the face of a lived crisis. There were no allies. There was no legal infrastructure, which came to their rescue. In such a situation, an ally envisioned by Kimberle Crenshaw¹⁸, using the following words, would be a great source of respite –

"A different kind of ally, one that will go to the mat, one that will give you a ride not only to your destination but all the way to her destination, one that will seek power not to exercise it for your own ends, but for the ends of women and disempowered people all over the world."

In the light of the above discussion, I attempt a spatial reading of the Report. I try to answer the following questions, at least partially, in my paper - (a) How does one capture the common sense of place in the Report? (b) How does it understand the physicality of caste and patriarchy? (d) Finally, what kind of an ally is law?

The following sections will chronologically discuss (a) the rationale behind selecting the Report (b) a note on the salient features of the proposed 'Interference in Matrimonial Alliance Bill' in the Report (c) the perceptions of the Law Commission Report on finer spatial scales such as the household (d)

¹⁸ *Id.*

the extent and expanse of Khap Panchayats (e) the socio-economic and spatial consequences of inter-caste and inter-religious unions (e) the pedagogy of the Report with relation to our geography.

II. READING 242ND LAW COMMISSION REPORT

A. Why this Report?

Before we start, a brief introduction on the context and history of Law Commission of India (hereinafter referred to as ‘the LCI’) would be extremely useful. Lotika Sarkar¹⁹ gives us a detailed account on the LCI, its history, and practice. She points out that the First LCI, in pre-independence India, was appointed in 1834. Under the British rule, the LCI aimed at unifying certain branches of law in order to help the rulers to administer easily. Considerable codification of laws was achieved through the operations of four Law Commissions in pre-independence India.

The Law Commission of the colonial and post-colonial era understandably did not have the same objectives. Post-independence, the first Law Commission was formed in 1955. Around the same time, the government appointed several specialized agencies. They included Central and Social Welfare Board, the Khadi and Village Industries Commission, the University Grants Commission etc. LCI Reports have tried to bring about social justice and have the law in tune with the constitutional mandate of equality and justice, social, political and economic. It has proposed reforms as per changing social conditions. Commissions have been appointed to recommend revision and modernization of law, criminal, civil revenue, substantive, procedural or otherwise.

The rationale behind the Report is simple. It deals with “honour” crimes in the context of transgressive (matrimonial) unions. Drawing from the conceptual framework and questions discussed above, transgressive unions enable analysis of spatial vulnerability, and creation of home-place in multiple scales. They tell us stories of resistance and violence and their interface with larger social structures.

B. A Note on the Socio-Legal Context of the Report

In September 2009, on a Calling Attention Motion,²⁰ the Parliament of India asked the LCI to examine ‘various aspects of honour killings’. The

¹⁹ Lolita Sarkar, *Law Commission of India: Report*, CENTRE FOR WOMEN’S DEVELOPMENT STUDIES, (1988).

²⁰ As per chapter XVI of ‘The Rules of Procedure and Conduct of Business in Lok Sabha’ a member may, with the previous permission of the Speaker, ‘call the attention’ of a Minister to any matter of urgent public importance and the Minister may make a brief statement or

upsurge of what are called honour crimes and the notorious assertions of Caste Panchayats against inter-community, inter-caste and *sagotra*²¹ unions provided the immediate context for such an enquiry.

Prior to the Parliamentary intervention in 2009, several High Court verdicts and directions addressed honour crimes. Kachhwaha enlists such instances of ‘judicial activism’ in her essay.²² She prominently takes note of the Rajasthan High Court judgment in *Laxmi Kachhawaha v. State*²³, in relation to illegal regimes of Caste Panchayats on the weaker-sections of the concerned communities, especially on women. She points out that the court observed that these Panchayats had no jurisdiction whatsoever to pass social boycott orders, impose fines on anyone or to violate the basic rights of an individual. It ordered the State authorities to take steps for preventing the abuse of social influence by restraining such Panchayats. It directed the administration to collect the record of the members participating in the illegal Khap panchayats and to proceed against them under the National Safety Laws. The names of such persons should be enlisted in the Black list and made available to the district administration to ensure that they remain devoid of governmental amenities and other benefits.

Kavita Kachhwaha further notes that in *Arumugam Servai v. State of T.N.*,²⁴ the Supreme Court interpreted law on the matter of inter-caste matrimonial unions as follows:

*“once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such marriage the maximum they can do is that they can cut off social relations, but they cannot give threats or commit or instigate acts of violence and cannot harass the person.”*²⁵

The Court observed that *Khap* Panchayats often decree or encourage honour killings or other atrocities in an institutionalized way on such boys and girls, who wish to get married or have been married, or interfere with the personal lives of people. This is wholly illegal and has to be ruthlessly

ask for time to make a statement at a later hour (See <http://parliamentofindia.nic.in/lr/rules/rule16.html>).

²¹ D.D. Kosambi contextualizes ‘gotra’ in the Rigvedic pastoral communities. He identifies ‘go-shala’ (cowshed) as its root word. Basically, those groups which lived together and shared a common cow-shed, or in other words were intimately connected in every activity of life, identified themselves with the same ‘gotra’. They claim to be children of the same ancestor. *Sagotra* means ‘of the same gotra’. Marrying within the same gotra or ‘Sagotra marriages’ is considered blasphemous in certain caste communities.

²² Kavita Kachhwaha, *Khap Adjudication in India: Honouring the Culture with Crimes*, 6(1) INTERNATIONAL JOURNAL OF CRIMINAL JUSTICE SCIENCES 299 (2011).

²³ *Laxmi Kachhawaha v. State*, 1999 SCC OnLine Raj 47 : AIR 1999 Raj 254.

²⁴ *Arumugam Servai v. State of T.N.*, (2011) 6 SCC 405.

²⁵ *Supra* note 18.

stamped out. The Court sternly directed the administration and police authorities throughout the country to see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple is not harassed by anyone nor subjected to threats or acts of violence. If anyone does so, he is taken to task by instituting criminal proceedings and stern action is taken in accordance with law.

C. A Bird's Eye View of the Proposed Bill

The Report primarily reviews honour crimes and foregrounds the reasons for a separate law. In addition, it proposes the enactment of the 'Interference in Matrimonial Alliance Bill' (hereinafter referred to as 'the proposed Bill') with three penal provisions. The Report identifies Khap Panchayats/caste combines²⁶ as the major orchestrators of honour crimes. It observes²⁷ that the operations of Khap Panchayats lead to "flagrant violation of rule of law and invasion of personal liberty of the persons affected". It proposes a 'threshold ban' on caste combines, which gather with the intent to cause harm to individuals in inter-caste/inter-community/*sagotra* matrimonial alliance. The Report spends quite some time discussing individual autonomy and choice.

All the penal provisions recommended by the LCI have to do with the Caste Panchayats. The second section of the proposed bill deals with a threshold ban on caste congregations with vicious intentions.²⁸

Section 300 of Indian Penal Code deals with murder and actions employed with the intention to murder. The Commission observed that though Section 300 of the Indian Penal Code covers unlawful assemblies, it does not spell out Caste Panchayats explicitly. Thus, it proposes an expansion of the section.

Section 3 and 4 are allied sections which deal with 'endangerment of life and liberty' and 'criminal intimidation' caused by unlawful assemblies. The LCI has invoked the principle of presumption (basis) to ease the process of conviction in cases where there is no proof.²⁹ The presumption to some extent solves the problem arising from the difficulty in the identification of actual role

²⁶ The word 'Khap' has an Urdu origin. It literally means 'Branch'. In the 1881 Caste Census Report, there is a detailed discussion on castes and their 'clans'. The Hindi translation of the Census Report used the word 'Khap' for 'clans'. Khap Panchayats, denote 'clan-based' decision-making bodies, which primarily operate at the level of a village.

²⁷ Part 2.3, *Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework, Report No. 242*, THE LAW COMMISSION OF INDIA, (2012).

²⁸ Section 2(1) of the proposed "The Prohibition of Interference with the Freedom of Matrimonial Alliances Bill" deals with gatherings which are convened with intentions to condemn 'transgressive' marriages. The section proposes such gatherings 'unlawful' and prescribes punitive actions.

²⁹ Section 3 and 4 of the proposed Bill.

that may be played by one or more members of the assembly and in securing evidence to implicate the guilty.

The Report recommends changes in the provisions of Special Marriage Act, 1955, especially the removal of the time gap between the date of submitting notice of marriage and the registration. The Report also suggested the removal of domicile restrictions of the couples in the process of registering the marriage.

III. THE 'UNMARKED' FAMILY AND THE KHAP PANCHAYAT

The mandate of the Report clearly stated 'a review of various aspects of honour crimes'. However, it concentrates on Caste Assemblies. LCI understands Caste assemblies as a close-knit circle of elders who interfere with the life and liberty of young couples. The family and relatives of the couples are imaged as being forced and coerced by caste assemblies to violate the couples.

The parental home and individual family members are separated from the members of the caste assemblies. Such a separation is artificial as it turns a blind eye to the history of Khap Panchayats. Tracing the history of Khap Panchayats, Bhardwaj explains that Khap Panchayats emerged in the past three hundred years as collective responses to external oppressions and dishonour.³⁰ Every gotra establishes its own panchayat. It anchors its existence in families, communities and their places. It occupies a space which is not fully separable from individual families. To understand its artificiality, let us consider the following example: if the daughter of a Khap Panchayat member marries someone outside the community, how would we understand this further and his compliance or active participation in the decisions of the Khap Panchayat? In such a case, how do we read the following statements made by the LCI in section 2.9 and 3.1 respectively? –

“Given the social milieu and powerful background of caste combines which bring to bear intense pressure on parents and relatives to go to any extent to punish the ‘sinning’ couples so as to restore the community honour, it has become necessary to deal with this fundamental problem.”

“The close family members of the couple are also brought into the picture to enforce the diktats of such informal body of panchayats/councils. This is directly affecting the community and the family life in the villages, thereby posing a threat to social order and peace”

³⁰ Suraj Bhardwaj, *Khap Panchayaten aur Gotra-Ek Aitihāsik Vishleshan*, 25 (91) UDBHAWANA 12-19, (2011).

The division between family members and members of the caste combine would have been a practical decision on the part of the LCI to focus totally on Khap Panchayats. One of the suggestions on the consultation paper brought out by the Commission was to include family members (in the case of forced marriages) under the net of the proposed Bill. However, the LCI was of the opinion that including family members would affect the integrity of the Bill. Thus, the Bill, in effect, holds the family as unmarked by caste identities and honour.

The demonized village elders in the caste assemblies are often the kith and kin of the families and individuals in question. They could even be parents of individuals involved in inter-caste alliances. They may be living under the same roof. The parents might have conspired with the caste assembly in the decision-making process. However, such possibilities disturb ideas of a peaceful family. Thus, Khap Panchayats are imagined as stray elders in the public domain.

Very clearly, the parental home stands outside the purview of the Report. The household as a spatial scale is completely untouched by the Report. One has strong reasons to argue that such an omission is a disservice to the experiences of individuals, especially women who are confined, boycotted or killed within the households. The recent case of Bhawna Yadav³¹ is one such example. Bhawna, a Delhi University student, married Abhishek Seth against the desire of her parents. She was beaten up, strangled and killed in her urban household in New Delhi by her parents. The household, which is portrayed as a safe haven, transforms into a torture room in such cases. Several cases bear witness to the gendered nature of violence in the context of inter-caste, inter-community alliances.

In the 1970s and 1980s, women's movements in India denaturalized the neat binary of public and private spaces. The state apathy towards gendered violence in the household was questioned through legal and political actions. Through their actions women's groups highlighted several instances of dowry-deaths and domestic violence. They sought recourse to law as necessary and inevitable, as it was believed that legally criminalizing a practice would socially delegitimize it.³² As a result of their efforts, the 1980s witnessed a number of legislations which unmapped the private in varying degrees (Section 498A, Section 304B etc.). The judicial backlash to these changes emerged from attempts to preserve the household unit.³³ Thus, women's assertions against violence get misquoted as misuse and attempt to dismantle the sacred family

³¹ *Bhawna Yadav: Small dreams of Delhi 'Honour Killing' Victim*, BBC (21-11-2014), <http://www.bbc.com/news/world-asia-india-30141719>.

³² Sawmya Ray, *Legal Constructions of Domestic Violence*, 55(3) SOCIOLOGICAL BULLETIN, 427-448 (2006).

³³ Sharmila Lodhia, *Legal Frankensteins and Monstrous Women: Judicial Narratives of the "Family in Crisis"*, 9(2) MERIDIANS: FEMINISM, RACE, TRANSNATIONALISM, 102-129 (2009).

space – the household. Preserving the family finds a paramount place in judicial practice. Any idea, which disturbs the illusion of the peaceful household will face denial or outright refusal.

A misplaced understanding of public and private, which does not appreciate fluidity of spaces, clearly forms a characteristic of the Report's common-sense of place. Further, the Report embodies caste only in the Khaps gathered with malicious intentions thus, denying the presence of caste-based violence in other spatial scales such as the family household.

IV. THE SPATIAL CONTINUUM OF KHAP

On the one hand, the Report maintains its distance from the household while on the other hand, it enlists different kinds of violent acts, which display the spatial range of honour crimes³⁴ –

“There are reports that drastic action including wrongful confinement, persistent harassment, mental torture, infliction of severe bodily harm is resorted to either by close relations or some third parties against the so called erring couple either on the exhortations of some or all the Panchayatdars or with their connivance. Social boycotts and other illegal sanctions affecting the young couple, the families and even a section of local inhabitants are quite often resorted to. The cumulative effect of all such acts has also public order dimensions.”

Wrongful confinement, persistent harassment, mental torture, infliction of bodily harm, social boycotts and murder could happen in different spatial scales and social locations. Addressing and preventing such violence would mean asking the following questions (a) if young couples are punished, do they meet with equal punishments? Are there any differences? (b) Where are they punished - in the privacy of their homes, on the streets, on the fields, or in their schoolyard? (c) When are they punished? (d) Who punishes them?

These questions open up new areas of analysis and intervention. These questions expose the spatial and cultural spread of the Khap Panchayat. Starting from the hearth, home, and neighbourhood and scaling up to the village or town, the transgressing young couple has to encounter a spatial continuum called the Khap Panchayat.

The continuum is a direct result of the way our settlements are organized. Studies conducted by scholars in different parts of the country confirm an all-embracing role of caste and jati identities in settlement morphologies.³⁵

³⁴ Annexure II, Part 2, *Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework, Report No. 242*, THE LAW COMMISSION OF INDIA, (2012).

³⁵ AHMAD AIJAZUDDIN, *SOCIAL GEOGRAPHY* 191 (2011).

The report enlists Uttar Pradesh, Rajasthan, Punjab, Haryana and Bhagalpur in Bihar as hotbeds of honour crimes. Major towns in Uttar Pradesh such as Mathura, Meerut, Aligarh, Moradabad etc. are divided into a number of caste-based Mohallas. Ahmad observes that caste based segregation has increased post-independence.³⁶ Communal politics has sharpened this segregation even further.³⁷ The expansions in towns and cities hardly disturb community-based segregation patterns.

The residential patterns in rural areas are varied and complex. However, they follow the logic of caste in their physical layout.³⁸ The direction of the houses, the daily movement patterns of people from their homes to the fields, and the market place are determined by caste factors.³⁹ However, since independence, new spaces have emerged within the villages because of planned development. They include schools, dispensaries, banks etc. These spaces reproduce structures but provide small windows of interactions.

Couples are often punished when they try to cross these extended Khaps. Again, the struggle of getting away from this spatial continuum would be different for different individuals. Individuals who enter into inter-caste and inter-community unions (matrimonial or non-matrimonial) are positioned unequally in the hierarchy of gender and caste. D. Sujatha argues that many Dalit women in inter-caste relationships either are cheated by their upper-caste partners or have to face caste and gender-based discrimination within their matrimonial homes.⁴⁰ By not talking about non-matrimonial relationships, the Report is completely denying the experience of a large section of the society.

Similarly, communities who are implicated in such cases do not share similar social, political, economic, or spatial standing. The case of Illavarsan can be recollected as a telling example. Illavarsan, a Dalit youth from Dharmapuri, Tamil Nadu was in love with an upper-caste girl (Vanniyar - an OBC caste⁴¹). The love affair led to his murder and organized violence on Dalit settlements in Dharmapuri. The Dalit colonies of Natham, Anna Nagar and Kondampatti in Dharmapuri Panchayat in Tamil Nadu were looted and burnt by a mob of Vanniyars. A fact-finding team in its report mentions that a mob of 1000 Vanniyars entered the villages with heavy weapons and petrol bombs when there was none to challenge them. They chased away the innocent women and children and looted and burnt their houses.⁴² The intensity

³⁶ *Id.*

³⁷ KALPANA SHARMA, REDISCOVERING DHARAVI: STORIES FROM ASIA'S LARGEST SLUM (2000).

³⁸ *Supra* note 28 at 203.

³⁹ *Supra* note 28.

⁴⁰ D. Sujatha, *Redefining Domestic Violence*, 49 (47) ECON. POLITICAL WKLY., 19 (2014).

⁴¹ Other Backward Classes (OBC) forms a blanket category which includes many socially, economically, culturally excluded communities.

⁴² Ramdas Anu, *Who Killed Ilavarasan?*, ROUND TABLE INDIA. (July 10, 2013), http://roundtableindia.co.in/index.php?option=com_content&view=article&id=6723%3Awho-killed-ilavarasan&catid=119%3Afeature&Itemid=132.

of this punishment varies and differs. However, in such a situation, oppressor communities understand violence as an extreme form of normality.⁴³ Thus, the caste order, culturally and socially, sanctions violence. The physical infrastructure of caste and patriarchy (Khap Panchayats, Caste villages and households) spread out in our geography conspires in this violence.

Police stations, which become the popular face of law-enforcement, often conspire with Khap Panchayats. The case of Joseph Pawar and Ayushi Wani is extremely telling. On September 25, 2014, this inter-religious couple married as per Arya Samaj rituals and fled to Gujarat from Madhya Pradesh. The family tracked them down in Gujarat with the help of the police machinery. They were separated from each other in a police station on October 1, 2015, stating that their marriage was invalid.⁴⁴

Ripping individuals and their communities of their identities and spatial locations curtails possibilities of intervention. An intersectional approach would entail digging into the complexities of different identities and their impacts. Firstly, inter-caste, inter-community couples do not form one unified articulate community. They do not share common identities or spaces. They are not met with the same punishments. Instances of such matrimonial alliances are scattered in time and space. Thus, vertical and horizontal differences characterize such unions. Secondly, in most instances of inter-caste/inter-community alliances couples love, flee and hide. This has severe spatial and social consequences. However, the LCI upholds the choice of marriage as a choice exercised by grown up individuals undefined by place or history. In other words, the LCI does not imagine the individual as marked by specific spatial and historical contingencies. While it would go beyond the scope of the report to empirically investigate these specificities, it should not have deterred them from acknowledging the heterogeneity of inter-caste/inter-community alliances and consequentially the diversity in the problems they face.

Classical liberalism defines men as, free, equal, and rational and then uses these same qualities to define, citizenship and its prerogatives (Mirchandani, 2006)⁴⁵. The LCI draws its definition of individual autonomy from western classical liberal traditions. Individual autonomy constantly faces the reality of precarious caste geographies. Individuals and couples exercise their free will in such geographies.

The LCI understands caste as a residue of the past and by-gone. Such notions emerge from an assumed binary between tradition and modern. Satish

⁴³ Molly Warrington, *'I Must Get Out': The Geographies of Domestic Violence*, 26(3) TRANSACTIONS OF THE INSTITUTE OF BRITISH GEOGRAPHERS, 365-382 (2001).

⁴⁴ Milind Ghatwai, *Jobat: A Hate Story*, THE INDIAN EXPRESS, (Oct.12, 2014, 08:13 AM), <http://indianexpress.com/article/india/india-others/jobat-a-hate-story/>.

⁴⁵ Mirchandani, Rekha. "Hitting is not Manly" *Domestic Violence Court and the Re-Imagination of the Patriarchal State*, 20(6) GENDER & SOCIETY, 781-804 (2006).

Deshpande argues that tradition is examined using modern frameworks.⁴⁶ We do not have a place to stand ‘outside of’ modernity to understand tradition. Caste as a dynamic force has reshaped its images and technology. Barbaric village elders and family members in the service of caste and honour, manipulate SUVs, Smartphones, GPS and modern-day Law books. Thus, the story of individual autonomy should be culturally contextualized. This would mean recognizing the present moment of caste and patriarchy as ‘modern’ and dynamic.

V. BUILDING A HOMEPLACE, FINDING AN ALLY

The previous sections tried to capture the commonsense of place in the Report. It did so by exposing the blind spots in the Report, especially in relation to the household. It also tried to understand the spatial continuum of Khap Panchayats, describing the depth of the problem in hand. Individual and community experiences of honour crimes differ. Thus, special provisions should be made for Dalits and other marginalized sections in the proposed Bill. These provisions should include protection of Dalit communities along with the affected couple. The experiences of women amply prove the need to include the family and the household under the purview of the Bill. Similarly, non-matrimonial inter-caste unions should receive special mention in the Bill.

Moving ahead, a very important concern which couples in conflict with caste and community face is social and economic deprivation. The Report mentions socio-economic deprivation of such couples curtly, without spending enough time on spelling out its nature. Couples who flee to safer distances are thrown out of their caste and community networks. This implies grave difficulties in finding employment, accommodation, medical care, credit etc. It also implies temporary or near permanent isolation from spaces of social interaction. In addition, it means living a socially illegitimate life. The intensity of these difficulties varies according to the social location of the couple.

It is important to bring ‘homeplace’,⁴⁷ as expounded by Bell Hooks, to the centre stage of our debate. Moving beyond abstractions of radical change and subversive potentials of love, sensitive scholars and the state should foreground and intervene in everyday struggles of building places of love and resistance. In other words, the politics of survival should trouble our writings, recommendations, and actions. It is in the act of resisting the hostile outside that we discover the intimacies inside, thus creating a homeplace. Thus, the recommendations of the LCI should move beyond protection of endangered couples. It should aim at providing legitimacy to their lives by offering special schemes of housing, employment, credit and education.

⁴⁶ SATISH DESHPANDE, CONTEMPORARY INDIA: A SOCIOLOGICAL VIEW (2004).

⁴⁷ *Supra* note 14.

VI. THE PEDAGOGY OF THE REPORT AND OUR GEOGRAPHY

“Hindu religious preachers, religious centres and Sages-Saints have important responsibility with respect to the menace of ‘Love Jihad’, since they can advise a congregation of thousands of people. Hindu religious leaders should play a lead role in expressing to everyone the truth of ‘Love Jihad’ that is destroying Hindu families and race. The moment the discourses of Hindu religious leaders will proclaim the black deeds of Islam in the pages of history and present the dreadful reality, Hindu youth will not hesitate to settle scores for the screams of Hindu women of the past 1300 years.”⁴⁸

“The spiritual or religious leaders or respected elderly persons like retired officials and political personalities, members of legal profession, teachers, etc., can be requested to address the village gatherings and explain to them the real position and the need to shed superstition and abominable practices (such as ‘honour’ crimes).”⁴⁹

The Report and the proposed Bill assume great significance in the context of the recent scaling up of violence against inter-community and inter-caste couples under the banner of the Brahmanic outfits.⁵⁰ The recent campaign against ‘Love Jihad’⁵¹ is a telling example. The first quote in the beginning of this section appears in the official website of Hindu Janajagruti Samiti (hereinafter referred to as ‘HJS’) which is one such Brahmanic outfit that primarily operates from Maharashtra and Goa. HJS circulates newsletters in five languages - English, Gujarati, Marathi, Hindi, and Kannada. Similar websites are available in every language. The quote is one of the awareness measures prescribed by HJS to curtail instances of inter-religious and inter-caste marriages. The measure is an appeal to religious and spiritual leaders

⁴⁸ Sameer Darekar, Hindu Janajagruti Samiti, 2014.

⁴⁹ Part 8.1, *Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework, Report No. 242*, THE LAW COMMISSION OF INDIA, (2012).

⁵⁰ The use of the word ‘Brahmanic’ instead of ‘Hindutva’ is deliberate. The author understands Brahmanism as a historical process which systematically colonized fruits of Dalit-Bahujan labour, place and culture (Shobhana 2015). The mobilization of Brahmanic forces against religious minorities and Dalits in the past century is nothing but a significant moment in the long history of Brahmanism. The Sangh Parivar with its half a dozen organizations across the country is a Brahmanic organization which uphold caste and patriarchy.

⁵¹ Love Jihad is a term first coined by the Syro-Malabar Catholic Church in Kerala. Increasing instances of inter-faith marriages (especially, Christian-Muslim unions) had become a matter of ‘worry’ in the Church. This practice was termed “Love Jihad”. The Commission for social harmony of the Kerala Catholic Bishops Council reported that there had been 2,868 female victims of the “Love Jihad” in Kerala from 2006 to 2009, available at <http://www.fides.org/en/news/pdf/31969>); Nivedita Menon, *The Meerut Girl Desperate Hindutvavaadis and Their Jihad Against Love*, KAFILA (Oct. 14, 2014), <http://kafila.org/2014/10/14/the-meerut-girl-desperate-hindutvavaadis-and-their-jihad-against-love/> (hereinafter Menon). (The campaign was given a new life by Brahmanic outfits in the year 2014 in Northern States of India.)

who should tell their followers about the malice of Love Jihad. The second quote appears in section 8.1 of the Report. Interestingly, both the LCI and HJS appeal to same or similar constituencies to spread awareness in opposite directions.

Considering its spread, the former makes a stronger appeal. In fact, Lata Bhise Sonawane, an activist from Pune, gives us a detailed account on how the Hindu Janajagruti Samiti booklet on Love Jihad is easily available in traffic junctions, public gardens, public libraries, temples, women's gatherings, business centres and universities⁵². On the other hand, the Report has a limited mandate and a limited audience. Their proposals are primarily recommendatory in nature and the Law Ministry is under no obligation to consider them.⁵³ Thus, only a privileged few may read its recommendations.

HJS's decentralized approach emerges from its strong awareness of how caste and patriarchy operate as knowledges in geographies. For example, Deshpande gives us a detailed account of how Brahmanical groups mobilized for riots in the slums of Mumbai.⁵⁴ Their knowledge of the settlement, its morphology, communal composition and history played a very important role in post-Babri Masjid mobilization⁵⁵. They were well versed with the physicality of Caste and Patriarchy. These systems tell one about one's location and position (who is above you, who is below you, whom should you marry or dine with, who is your enemy, where should you reside, how should you fashion your body so on and so forth). It is a highly decentralized system where every individual is a potential agent. The physical mould of our geography, the construction of our spatial scales are influenced and shaped according to these systems.

To elaborate further, one can quote Dr. Babasaheb Ambedkar from his powerful essay 'Caste in India: Their Mechanism, Genesis and Development'⁵⁶. He points out that endogamy is the essence of our caste society. Endogamy has severe spatial consequences -

"Caste in India means an artificial chopping off of the population into fixed and definite units, each one prevented from fusing into another through the custom of endogamy. Thus, the conclusion is inevitable that Endogamy is the only characteristic that is peculiar to caste, and

⁵² Personal Communication with Lata Bhise Sonawane in the year 2014.

⁵³ Rukmini Sen, *Law Commission Reports on Rape*, ECON. POLITICAL WKLY., 44, 45 (2010).

⁵⁴ *Supra* note 38; SATISH DESHPANDE, CONTEMPORARY INDIA: A SOCIOLOGICAL VIEW (2004).

⁵⁵ The demolition of Babri Masjid in Ayodhya in 1992 by Brahmanical outfits mobilized under the banner of Sangh Parivar marks a high point in organized assault on Muslims in India. The history of such mobilization should be dated back to Hindu nationalists such as V.D. Savarkar and Lokmanya Tilak who started the process of creating an elusive 'Hindu block' by manufacturing an elusive enemy called 'Muslim'.

⁵⁶ B.R. Ambedkar, "Castes in India: Their Mechanism, Genesis and Development; Babasaheb Ambedkar, Writings and Speeches, Vol. One", *Bombay, Education Department, Government of Maharashtra* (1979): 16.

if we succeed in showing how endogamy is maintained, we shall practically have proved the genesis and also the mechanism of Caste.”

This artificial chopping of populations as fixed definite units has a geography to it. When a Pathan Muslim woman falls in love with a Dalit Man, it takes place in a geography. They would be neighbors, classmates, or co-workers. In the words of Bourdieu, they might have shared a common physical space or locus/location.⁵⁷ However, very clearly, their positions are hierarchal and unequal to each other. By falling in love with each other, they are transgressing the logic of caste, inheritance and sexuality.⁵⁸ HJS understands the possibilities of subversions and encounters.⁵⁹ They act as non-state bodies of adjudication. Thus, they execute their operations in spatially disciplined but dispersed ways.

The similarity in the measure prescribed by HJS and the Report also needs special attention. I would argue that asking religious leaders to orient villagers against honour crimes captures the unawareness of the LCI. Honour crimes have a social and economic explanation in prevailing systems of caste and patriarchy. The political-economy of endogamy emerges from the need to preserve material and cultural resources within castes and communities. Religious leaders and Khap Panchayats are innately linked to the propagation and operation of this political economy. To entrust the same people with the job to exorcise villagers of honour crimes is a misnomer.

The centralized nature of our legal knowledge shows very little awareness of emplaced caste and patriarchy. Such an approach complements the decentralized outreach of HJS or Khap Panchayats in question. Baxi⁶⁰ cites the work of Prem Chowdhry and Uma Chakravarti to argue that the toleration of caste panchayats by the state indicates how different forms of law can co-exist and mutually reinforce each other. This harmony of sorts between institutions, which apparently speak opposite languages, is a contradiction, which needs deeper attention.

VII. CONCLUDING THOUGHTS

Law is often seen as a trustworthy ally, which would play a meaningful role in shaping transgressive home-places. The Report, with all its limitations, is a step forward. However, the Report stands at a dangerous distance from its subjects. A distance characterized by (a) its hesitation to touch finer spatial scales (b) its failure to unravel differences in locations and positions of

⁵⁷ P. Bourdieu, *Physical Space, Social Space and Habitus*, VILHELM AUBERT MEMORIAL LECTURE, REPORT, 10. (1996).

⁵⁸ Pratiksha Baxi, *Feminist Contributions to Sociology of Law: A Review*, 43 ECON. POLITICAL WKLY., 79-85 (2008).

⁵⁹ *Supra* note 6.

⁶⁰ *Supra* note 49.

individuals and groups (c) its pedagogy which displays an unawareness of our geography. It displays a commonsense of place, which does not counter the strategies of Spatial Brahmanism. Ours is a geography which historically blurs the distinctions between 'who' and 'where'. In other words, our identities and physical locations coincide. Inter-caste, inter-community unions transcend and denaturalize this coincidence, challenging not just systems of caste and patriarchy but also their geography. The Report should not only acknowledge this contribution but also come up with creative recommendations to help these couples find a place in our society.

State policies should address the threat of dispossession and lack of safety networks. The household should be recognized as a potential abettor in cases of honour crimes. This should reflect in LCI recommendations on protective measures. Protection orders and restraining orders should be issued in such situations. The geography of Khap Panchayats can be disturbed only by physically decentralizing legal infrastructure. New spaces of law enforcement should emerge within Mohallas, bastes and villages. These spaces should be sensitive to differences and distances. They should be approachable and accessible. Police stations have proved to be extremely unproductive and often counter-productive in disturbing caste geographies. They have worked as an annexure to this geography.

The language of LCI Reports does not reflect the complex realities of life. Its mandate does not encourage a language closer to life. However, the thought, which shapes such a language, should be influenced by everyday life. The inability to do so brings us to the question of distance. The Report gazes from a distance. A closer look would make its interventions sensitive to the intersections of history, place and life. Such an insight would make law an intimate ally. A meaningful pro-active decentralization of legal infrastructure which would trouble the spatial continuum of Khap is the need of the hour.⁶¹ Such decentralization would mean demystifying law, its language and image. It would mean destabilizing 'sacrosanct'⁶² places of Law. It would also mean making law an everyday weapon.

⁶¹ *Id.*

⁶² FLAVIA AGNES, *LAW AND GENDER INEQUALITY: THE POLITICS OF WOMEN'S RIGHTS IN INDIA* (1999); FLAVIA AGNES, *FAMILY LAW: MARRIAGE, DIVORCE, AND MATRIMONIAL LITIGATION* (2011).