

COUNTERING BACKLASH

RECLAIMING
GENDER JUSTICE

WORKING PAPER 2

MOTHERS VS CHILDREN: CO-OPTING CHILD RIGHTS AS GENDER BACKLASH

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ABOUT

Countering Backlash aims to create much needed new knowledge around the complex phenomena of patriarchal backlash and identifying opportunities for women's rights organisations and other gender justice defenders, to address the erosion of gender objectives within development and counter gender backlash. The programme's main countries of focus are Bangladesh, Brazil, India, Kenya, Lebanon, and Uganda.

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ABBREVIATIONS

BBC	British Broadcasting Company
BSNL	Bharat Sanchar Nigam Limited
HC	High Court
IRS	Indian Readership Survey
IT Act	Information Technology Act 2000
JJ Act	Juvenile Justice (Care and Protection) Act 2015
KSCPCR	Kerala State Commission for Protection of Child Rights
NCPCR	National Commission for Protection of Child Rights
POCSO Act	Protection of Children from Sexual Offences Act 2012
SLP	Special Leave Petition
SC	Supreme Court
SCPCR	State Commission for Protection of Child Rights
TNM	The News Minute
ToI	Times of India
UNCRC	United Nations Commission for Rights of the Child

SUMMARY

This paper examines how progressive rights frameworks are instrumentalised as gender backlash tools to suppress feminist activism. I engage with the events following Rehana Fathima's political act 'Body and Politics' which faced strong backlash in the form of censure through law, and discourse capture. Using a conceptual framework I developed, I explore how various backlash concepts – co-option, censure, and discourse capture – discursively interact with each other, and identify factors that facilitate cohesion across backlash actors. I argue that in the Rehana Fathima case, the rights framework facilitated the agendas of powerful actors and not the constituents it was framed to serve. I conclude by making a case for political allyship across movements and among actors who are working on counter backlash strategies; and for deeper engagement of feminist development agendas with the sexuality of women.

1 INTRODUCTION

On 19 June 2020 Rehana Fathima, a gender rights activist, uploaded a video titled 'Body and Politics' on social media showing her 14-year-old son and her 8-year-old daughter painting a phoenix on her naked upper body as she rested. In her post description, she wrote, 'In a moral fascist society that look towards the female body as mere illusions. Exposing the views which the society seek to conceal is also a political act' (Fathima vs State of Kerala 24 July 2020: 6).¹ She framed her politics as a mother advocating that '...vaccines against these false preceptions [perceptions] and expectation about women's body and sexuality should be initiated from home itself' (Fathima vs State of Kerala 24 July 2020: 7). Her post met with public outrage and criminal prosecution citing concern for the safety and well-being of her children. As one newspaper reported, '...she made the kids lab rats to experiment her own pseudo-moralistic concepts on respecting female body and sexual sensitivity' (Times of India 2020). She is currently facing criminal prosecution for child sexual abuse online.

Rehana Fathima's² political act against the sexualisation of the female body triggered an adverse reaction – a backlash – from the state, media, and public. These backlash actors claimed in unison that her political act presented her minor children in an 'indecent' and 'obscene' manner amounting to child sexual abuse online. In the video the children are fully clothed; Fathima's body is painted covering her nudity; and her (stated) intent was to advocate for desexualising the female body (see Bhandari and Kovacs 2021: 52- 56; Chaudhary 2020). Despite the lack

of any apparent risk of the children being sexually abused by their mother, Fathima was censured using child rights law by state actors, and the focus of public discourse shifted from body politics to child rights. The use of child rights to suppress Fathima's political activism forms the crux of this research which aims to answer the question: how is the rights framework used to suppress women's activism in India?

Across the world progressive language and rights discourse is being used to build backlash against gender rights movements (Lewin 2021; Martinez *et al.* 2021). Susan Faludi (1991) first popularised the concept of 'gender backlash'³ as a 'cultural counter reaction to feminism'. Backlash is the resistance by those in power to change initiated by actors from marginalised groups (Flood *et al.* 2018; Mansbridge and Shames 2008). It has been characterised as 'friction' that is an integral part of social movements denoting the progress of a cause (Mansbridge and Shames 2008: 628). However, some forms of backlash adopt more subtle methods that do not present as 'friction', thereby



Backlash is the resistance by those in power to change initiated by actors from marginalised groups (Flood *et al.* 2018; Mansbridge and Shames 2008).

¹The quotes are excerpts taken from the English translation of the original post description in Malayalam (one of the official languages of the Indian state of Kerala) which was submitted to the Kerala High Court in Fatima vs State of Kerala.

²Through the paper I refer to Rehana Fathima as 'Fathima' as in the judgments by the Supreme Court of India and High Court of Kerala.

³The concept has been referred to by different scholars with minor variations. For this research I will be referring to it as gender backlash or backlash interchangeably.

normalising the backlash. In this context, the use of human rights law as a backlash tool against progressive feminist politics sets a dangerous precedent. This research explores the operationalisation of co-option as a backlash strategy, and responds to three different calls for theorisation on backlash: 1) research exploring women's participation in informal politics and the influences that limit and facilitate the oppositions they face (Sen *et al.* 2017); 2) theorisation based on the lived experiences of those who face backlash (Piscopo and Walsh 2020: 269); and 3) research to understand how backlash works and how it is operationalised (Piscopo and Walsh 2020). To this end, I have identified three sub-questions:

- How is the rights framework co-opted as a gender backlash strategy?
- How is the rights framework co-opted to censure women as a form of gender backlash?
- How does this form of co-option of the rights framework facilitate capturing the discourse on women's activism?

To explore these questions, I first draw out the context in which Fathima performed 'Body and Politics'. I then locate her activism at the intersection of three main bodies of literature: a) the limitations of the transnational application of human rights, specifically child rights laws in India; b) mother activism as an organising strategy for political activists and feminist advocacy on body politics through naked protests; and c) gender backlash theory and co-option as a backlash strategy. Here, I identify the opportunity within academic scholarship to study the operationalisation of co-option as a backlash strategy. To this end, I present a framework to analyse the backlash Fathima faced by identifying 'censure' and 'discourse capture' as secondary concepts that form modes of co-option and pre-existing patriarchal themes that facilitate it. I then use the framework to analyse the backlash against Fathima's political act, drawing out evidence to showcase the cooption of the child rights framework to suppress Fathima's activism. Finally, I summarise the main discussions of the research, identify areas of scholarship on gender backlash theory that the study contributes to, and delineate some implications of this research for development actors and gender scholars.

2 CONTEXTUALISING FATHIMA'S POLITICAL ACTIVISM

Fathima is a well-recognised feminist activist from the state of Kerala, India. She performs political acts as a commentary on the gendered nature of social, cultural, and political norms. To engage with the backlash against Fathima's 'Body and Politics', it is important to understand governance structures in India specifically concerning child rights, the social and political context of Kerala and its history with body politics, and the history of Fathima's political activism.

Fathima's 'Body and Politics' generated responses from actors at multiple levels of governance in India. Two central concepts of governance in India which help us to understand the different roles of state actors who responded to Fathima's political act are firstly, the doctrine of 'separation of powers', i.e., separation of the three pillars of governance, the executive, the legislature, and the judiciary. The three pillars function as checks and balances for each other; the freedom of the press and the right of citizens to express dissent further hold these pillars of governance accountable. The second concept is the quasi-federal system whereby responsibilities are divided across levels of governance – national, state, and council of villages – with unavoidable overlaps; while the separation is not rigid it is effectively discernible (Rao 2005: 114). In response to Fathima's political act I discuss responses from across the pillars of governance at the national and state levels.

Laws protecting human rights in India (based on the constitution and international commitments) are legislated on by central government and implemented throughout the country (with a few constitutional exceptions as identified in the law). India became a signatory to the United Nations Convention on the Rights of the Child (UNCRC) in 1992 and has created a strong child rights legal framework with institutions to ensure implementation of these rights. To monitor the implementation of these laws, policies, and institutions, the Commission for Protection of Child Rights⁴ was formed at the national and state levels. The Protection of Children from Sexual Offences Act 2012 (POCSO) is an example of a comprehensive law for the detection,

investigation, prosecution, and punishment of various forms of child sexual abuse; multiple aspects of this crime are punishable under other laws as well. A review of this and similar laws reveals that child participation finds limited space within these legislations and institutions, with 'the best interest of the child', a key tenet of the UNCRC, operationalised through *parens patriae* power of the state acting as guardian and decision maker.

As an important structure for governance accountability in India, the Indian media is one of the world's most dynamic industries with a strong influence on public and political opinion (Bidwai 2011).⁵ Fathima's political activism is based in Kerala where news and newspapers are disproportionately popular; almost 59.73 per cent of homes in Kerala continue to have newspapers delivered (Indian Readership Survey (IRS) 2017 in TNM 2018). This almost obsession with news combined with high levels of internet saturation has led to online news portals and discussion spaces becoming popular in Kerala. While online spaces have provided opportunities for feminist activism and discourse, the quality of discussion and the abuse of feminists on these anonymous platforms with minimal regulations has been a matter of concern (Subramanian 2015; Varghese 2018).

Kerala is considered one of the more progressive states with an enviable record of 'development'. The popular 'Kerala model of development' in development practice and scholarship is based on the state's achievements (Lietaen 2002). This façade of progress hides a deep-rooted patriarchal authority that exists in the state (Pillai 2017: 52). Tensions concerning the control of women's bodies by the state have existed since before independence in Kerala. In the early 1900s, an *Ezhava*⁶ woman named Nangeli famously resisted '*Mulakkaram*' (breast tax) levied by the erstwhile State of Travancore from lower caste women who chose to cover their breasts, by cutting off her own breasts when forced to pay the tax (BBC News 2016). More recently women have won the right to enter the Sabarimala shrine⁷ in a landmark Supreme Court (SC) judgment. Hundreds of protestors – men and women – barricaded the shrine refusing

⁴ The National Commission for Protection of Child Rights (NCPCR) and the State Commission for Protection of Child Rights (SCPCR) were constituted under the Commissions for Protection of Child Rights Act 2005. The Kerala SCPCR is known as KSCPCR.

⁵ Newspapers alone account for almost 17,000 titles supported by a growing middle class. India also has a steadily growing number of internet users with almost 560 million people using the internet as of March 2019, with Facebook being the most popular social media site (BBC News 2019).

⁶ A lower caste community of traditional toddy tappers; they are the highest of the polluting castes and have grown to have significant political power in Kerala (Hardgrave Jr 1965: 669). '*Mulakkaram*' is a strong representation of the state controlling not just a female body but a lower caste female body.

⁷ The Sabarimala Shrine atop a hill in the Perinad tiger reserve attracts millions of believers to Kerala every year. Ayyappa Swami, the idol, is considered to be celibate, hence women of menstruating age are not allowed to enter lest they tempt the celibate god.

entry to women devotees. The state government, formed by the Communist Party of India, faced strong criticism from the public for complying with the SC order and facilitating the entry of female devotees. Fathima was one of the women protestors and faced public censure and ridicule for attempting to climb the shrine and destroy its 'purity'. She was suspended from her job at Bharat Sanchar Nigam Limited (BSNL) and an inquiry commissioned against Fathima on 'the charge of fomenting enmity between communities' (The Hindu 2020).⁸ Kerala's long history of controlling women's bodies based on Brahmanical patriarchal norms — structured around both caste and gender hierarchy — has constructed gender norms where progress on gender rights is considered to be only of the mind through women's education; female bodies, specifically the sexuality of women, have been intentionally side-stepped within this 'progress' (Devika 2009).

2.1 THE POLITICAL ACT

Fathima posted 'Body and Politics' on YouTube and her Facebook account with the hashtags, #BodyPolitics and #BodyArt on 19 June 2020. Along with the video she posted a 7-paragraph long description in Malayalam explaining the intent of her political act. The video generated intense public outrage and the incident was widely covered on state and national media and discussed on social media and public discussion platforms. Multiple state actors from both the central and state governments holding responsibilities across the pillars of administration responded to the video under their legal mandate to protect child rights (see Annexe 1 for action taken by state actors and Figure 6.1 for the timeline of events). YouTube

age restricted the video. Engaging with the public gender backlash against Fathima's 'Body and Politics' has allowed me to explore the pathways through which co-option as a backlash strategy operates.

In contextualising this paper, it is important to state my identity as a person born into a Kerala Syrian Christian family, and a child rights activist and development practitioner in India. While I do belong to a minority religious group, I do not face the same intolerance that Muslims in India are subjected to, which gives me the space to discuss Fathima's activism. As a child rights activist with a decade of work experience in India, I am familiar with child rights law and the institutions that implement these laws. My minority identity, my gendered experiences growing up in Kerala, and my experience working with child rights law have strongly influenced how I developed the conceptual framework for the analysis in this paper.



Kerala's long history of controlling women's bodies based on Brahmanical patriarchal norms ... has constructed gender norms where progress on gender rights is considered to be only of the mind through women's education; female bodies ... have been intentionally sidestepped within this 'progress'.

⁸ The inquiry found her guilty and an order was issued asking her to go on compulsory retirement with immediate effect.

3 LOCATING FATHIMA'S POLITICAL ACT AND THE RESPONSE TO IT IN ACADEMIC LITERATURE

To discuss Fathima's political act and the response to it by powerful actors, I locate my analysis at the intersection of multiple bodies of academic scholarship, namely – human rights framework, gender rights activism in relation to body politics and mother activism, and gender backlash theory.

Ostensibly there appears to be global intent to work towards achieving a common goal of human rights – justified by the Global North as inherent to human beings rooted in our shared history (Moyn 2017). However, scholarship on human rights and its application have identified significant challenges in this transnational application of rights, such as reconciling cultural and local realities (Merry 2006); the potential to operate as a tool for neo-imperial governance (Kapur 2006); limitations in translating into freedom for marginalised communities (Kapur 2019); and more recently its potential to be used as legal and language tools to reframe '... anti-rights efforts as rights affirming initiatives' (Martinez *et al.* 2021: 17). An analysis of the implementation of a subset of transnational human rights – child rights governance – reveals that child rights are claimed by various political actors including children and young people themselves, to serve their agendas (Holzscheiter *et al.* 2019: 283-84). A specific challenge concerning child rights is negotiating protection versus agency for children. The Indian government and scholarship on child rights from India tend to lean towards adultist (power of adults over children and young people) approaches revealing a shared understanding of age-based hierarchy and capacity (Johnson *et al.* 2020; Biswas and Wall 2021). In this context, it is relevant to note that Martinez *et al.* (2021: 16) discuss how child rights are 'weaponised' by religious right-wing groups who use '...child protection rhetoric to cause moral panic and mobilize it against laws, policies, and other initiatives that protect and advance women's, LGBTQIA+ persons, and even children's rights'.

In *Body and Politics*, Fathima chose to frame herself as a mother advocating for desexualising women's bodies and for sexual freedom. One of the ways women have organised for their political rights is based on their identity as mothers to claim rights for themselves and their children. The moral authority that motherhood lends 'mother activism', as Logsdon-Conradson

(2011) identifies, makes it a relatively safer and strategic choice, especially under authoritarian regimes. Mother activists have been criticised for planting their gender activism within the patriarchal framing of mothers as pure and exalted; Wright (in Bosco 2007) warns that the strategy gives the state the power to limit the mothers' activism to immediate concerns instead of allowing for long-term political gains. A central element of Fathima's 'mother activism' is the visual image of her naked upper body. Body politics has been a key constituent of feminist political thought and activism; contemporary feminist theorists engage deeply with '...ways in which the body and its fragmentations are inscribed with various meanings and significances, and how this process is mediated and thus limited by gender power relations and patriarchal schemas' (Matich *et al.* 2019: 342). Women's bodies have been the site of exercising power leading to '...violence, discipline, exclusion and normalization', hence naked protests have featured strongly in feminist political action (Davis 2016: 233; Ray 2018). Breasts as a signifier of both sexuality and motherhood mark naked protests as a strong tool to disrupt patriarchal structures (Matich *et al.* 2019: 337). Mother activists have used their bodies to shame authoritarian regimes. Through an act denoting minor departure from this practice, I argue that Fathima uses her naked upper body as an act of political mothering and to desexualise the female body. In a strongly protectionist environment, she advocates for non-punitive solutions to sexual violence – creating spaces for children to discuss and understand sex and sexuality.



Gender backlash manifests as a continuum where the distance between the everyday lived experience of structural gender discrimination and gender backlash is determined by the relative privilege of your non-normative identity (Townsend-Bell 2020).

The reactionary response by a series of actors to Fatima's protest which sought to censure and curb her activism, and to reframe her political mothering within a discourse of good versus bad mother can be identified as gender backlash, i.e., resistance to progress in gender equality (Chawla *et al.* 2017; Faludi 1991). According to Mansbridge and Shames (2008: 626), those in power enjoy the capacity to produce outcomes aligned to their interests; but when that power is challenged by those from disadvantaged groups, '...backlash is the use of coercive power to regain lost power as capacity'. Gender backlash manifests as a continuum where the distance between the everyday lived experience of structural gender discrimination and gender backlash is determined by the relative privilege of your non-normative identity (Townsend-Bell 2020). 'Backlash and resistance are diverse, contextual and historically specific' (Flood *et al.* 2018: 9). Fathima's identity as a Muslim in an India that is progressively aligning with right-wing caste Hindu nationalism makes her more vulnerable to gender backlash (Chigateri 2020). As Fathima herself identifies, the custodians of law interpret the letter of law on the basis of public morality rooted in Brahmanical patriarchal notions. This refers to pervasive practice both social and legal (based in Hinduism) of stratification that exists across socio-economic and political structures and aims to control female bodies and sexuality to maintain caste purity (Chakravarti 1993).

Flood *et al.* (2018: 13) identify the various types of backlash, namely: denial, disavowal, inaction, appeasement, appropriation, co-option, and repression. In this paper, I engage with 'co-option' – when the progressive language of rights, equality, and justice is used to maintain existing inequalities (Flood *et al.* 2018: 13). 'Co-optation',⁹ in contrast to violent suppression, may accomplish the goals of the more powerful without significant political or financial cost' (Holdo 2019: 444). It refers to the practice where those in positions of power or privilege subsume through negotiating for compromises, mainstreaming, or through other means, concerns of marginalised populations, leading to de-politicisation, appropriation, dilution, and reinterpretation of the cause (Trumpy 2008; Jong and Kimm 2017; Holdo 2019).

Fathima politicises the act of mothering, attempting to build an alternate discourse on the relationship of children with their mother's body. In this study, I show how the backlash against Fathima's political act adopts a subtle nature where powerful actors use their legitimate and self-assigned role as protectors of child rights to co-opt the child rights framework to curb Fathima's politics. I study Fathima's political act to contribute to the existing literature on feminist activism and gender backlash by mapping the pathways of co-option as a backlash strategy and engaging with concepts such as censure and discourse capture.

⁹ Flood *et al.* (2018) use the term 'co-option' to identify the gender backlash strategy. However, the term is used as 'co-optation' by scholars to describe powerful actors subsuming causes advocated for by social movements (Holdo 2019). I refer to the concept as 'co-option' in this paper, unless it is referred to as co-optation by an academic scholar I am quoting.

4 CONCEPTUAL FRAMEWORK

An important area of study within the growing scholarship on gender backlash is to understand the different ways in which gender backlash works (Piscopo and Walsh 2020: 266). Here, I define and operationalise concepts to form a framework through which the functioning of gender backlash against Fathima can be discussed. I argue that the reactionary backlash against Fathima can be identified as ‘co-option’, where the language of progressive frameworks is used to maintain the status quo (Flood *et al.* 2018: 13). To study how ‘co-option’ was operationalised, I identified secondary concepts: a) ‘censure’ by state actors to impose sanctions on Fathima which claim to protect the rights of her children (Mansbridge and Shames 2008: 625), and b) ‘discourse capture’ where Fathima’s political act to generate discourse on body politics was ‘dismantled’ through actions and narratives of powerful actors and reframed to one on protecting child rights (Lewin 2021: 255).

4.1 CO-OPTION

Backlash is an inevitable response ‘...to actual or perceived challenges to existing hierarchies of power’ (Flood *et al.* 2018: 8-9). This response can range from passive blocking to active violence (*ibid.*: 13). Co-option is one of the subtle forms of resistance to change; it is a form of gender backlash that uses ‘... the language of progressive frameworks and goals (equality, rights, justice and so on) to maintain unequal structures and practices’ (Flood *et al.* 2018: 13). Academics have discussed how co-option as a backlash strategy is used by powerful actors to subsume the cause of marginalised groups and direct it to serve their agenda and resist any meaningful shift in power (Trumpy 2008; Jong and Kimm 2017; Holdo 2019). In this paper, I expand this function of ‘co-option’ to include subsuming the rights of one group of citizens to limit the freedoms of another. I discuss how backlash actors co-opted child rights using existing child protection laws to censure Fathima, and captured the discourse on body politics by repurposing it as one on child rights violation.

4.2 CENSURE

Censure, as resistance/backlash to feminist progress is discussed in academic scholarship as cultural, social or political censure (Fegan and Rebouche 2003; Hawkesworth 2020). I use ‘censure’ to represent the legitimate form of state administered punishment based on the presumption that the state holds a moral authority to punish citizens in proportional measure to the crime for which they are convicted (Metz 2000; Montague

2002). I discuss how state actors across governance structures used their legitimate power through processes and procedures set forth through the Constitution of India, criminal procedure code, and laws to censure Fathima for ‘Body and Politics’. It is important to note that ‘[I]n marked contrast to notions of impartiality, states actively produce difference, political asymmetries, and social hierarchies that simultaneously create the dominant and the subordinate’ (Hawkesworth 2020: 314).

I engage with the multiple instances when Fathima was censured by backlash actors to trace the pathways they used to co-opt the child rights framework. I identify ‘coercive power’ which I define as those actions of force or influence that actors with legitimate authority use which are beyond their mandate but available to them because of their legitimate authority. Coercive power, often occupying the same sites as legitimate power, is a form of social power exercised by the powerful actor over another individual or society based on fear of punishment or adverse consequences (Raven and French 1958). Mathur (1992) identifies coercion as a defining characteristic of the Indian state, a double-edged sword, which both facilitates the reproduction of dominance and order in society, but undermines legitimacy because of its coercive nature. Co-option through censure is also facilitated by certain pre-existing practices of actors with legitimate authority. In discussing censure theory Metz (2000) explains that censure by the state is squarely based on moral obligations. That is, punishment served is motivated by moral reasons to punish according to the injustice that has been done more than a utilitarian application of written law. Implementation of rights and lived experience of rights are consistently influenced by the local moral values and social norms (Nieuwenhuys and Hanson 2013; Moyn 2017). I trace the implementation of child rights against Fathima and bring out instances where censure leading to sanction against her was based on morality and not the letter of the law.

4.3 DISCOURSE CAPTURE

Co-opting progressive language associated with a liberal agenda, such as the child rights framework, by manipulating and controlling the discourse to serve anti-gender and anti-feminist politics is conceptualised as ‘discourse capture’ by Lewin (2021: 254). ‘The concept of ‘discourse capture’ is concerned with the dismantling of discursive systems established to protect women’s rights’ (*ibid.*: 256). Co-option through discourse capture relies on the ability of powerful actors to influence and manipulate discursive systems to create meaning, construct

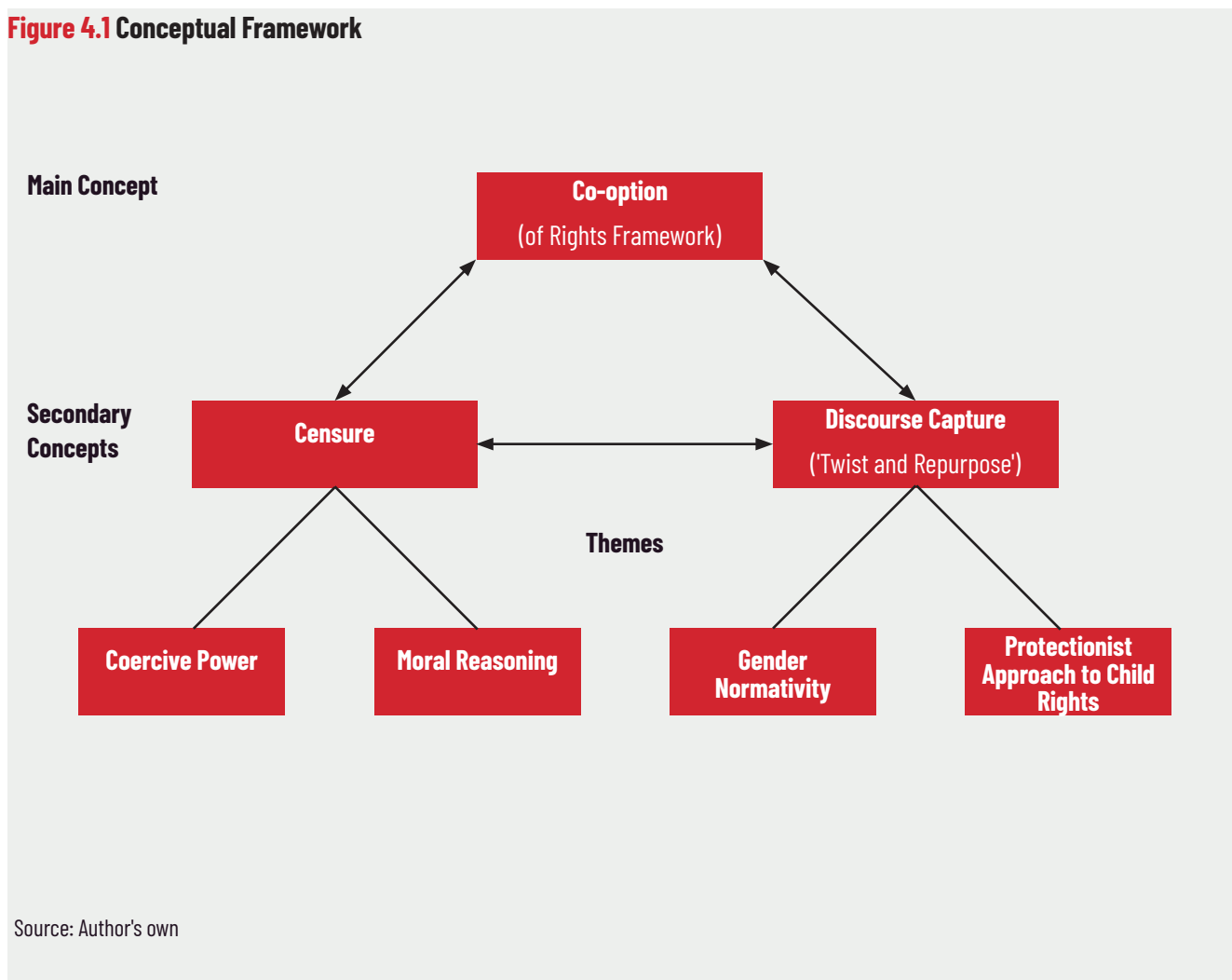
truth, and determine as well as control methods through which knowledge is formed and disseminated (Lewin 2021). This ability to 'normalise' ideas allows powerful actors to influence discourse, producing material consequences and constructing political realities, especially when rights are co-opted by those in power to limit disadvantaged actors who are challenging the status quo (Lewin 2021; Mansbridge and Shames 2008: 625). Lewin (2021) identifies four forms of operationalising discourse capture: resignifying, shifting, mimicking, and twisting. I argue that co-option of Fathima's political act through discourse capture is most aligned to 'twisting/repurposing' where Fathima's cause of body politics is redefined as an issue of child protection (Lewin 2021: 261).

Lewin identifies 'intent and scale' as key elements of discourse capture (2021: 254). The backlash actors in Fathima's case are mapped across multiple bodies of government, media, and the public, reflecting scale. I discuss how the actors reflect an aligned intent despite the lack of any overt attempts to organise, unlike the backlash actors in Lewin's examples. I argue that co-option as backlash against Fathima reflects a momentary retaliation to Fathima's feminist politics with the

intention of subverting attention from it (Piscopo and Walsh 2020: 266). Cohesiveness across actors is triggered, as Martinez *et al.* identifies, by a moral panic arising from the societal need to protect children by framing them as victims, and support for heteronormative gender roles, especially surrounding motherhood (2021: 31, 15). To map co-option through discourse capture across actors with seemingly aligned intent, I identify 'a protectionist approach to child rights' and 'gender normativity' as themes to observe how the discourse on Fathima across the three different sites – state actors, online media portals, and public discussion platforms of these online media portals – effectively suppress her activism.

I present a framework to observe how the main concept of co-option and the secondary concepts of censure and discourse capture discursively interact with each other to create backlash against Fathima. The operationalisation of the secondary concepts is facilitated by the themes that I observe across the response to Fathima's political act. This conceptual frame facilitates the process of identifying how various backlash concepts work with existing power structures to maintain unequal gender relationships.

Figure 4.1 Conceptual Framework



5 RESEARCH STRATEGY AND METHODS

To explore how co-option as a backlash strategy is operationalised against Fathima’s ‘Body and Politics’, I conducted a qualitative analysis of secondary data. I identified backlash actors involved in the case and developed selection criteria for data. I then sorted and thematically analysed the data based on the conceptual framework.

The data for this research was collected from open source platforms online. To develop evidence on how censure and discourse capture is used to co-opt the child rights framework, I identified three key actors of backlash: state actors, online media reports, and the public comment section of the online

media reports. The state represents ‘...a unique site as it is where hierarchical, coercive power and written rules coordinate action...’ to perform backlash (Sen *et al.* 2017: 10). Media has been recognised by backlash scholars as actively supporting the structural violence that forms backlash (Piscopo and Walsh 2020: 275). Fathima chose to present her political activism online; Subramanian (2015) points to the opportunity for feminist solidarity that online discourse presents while at the same time mirroring power relations offline leading to poor quality of discussion and backlash. Table 5.1 below shows the process adopted for collecting and selecting data representing backlash actors (see Annexe 2 for a list of secondary data).

Table 5.1 Data Collection and Selection

Group of Data	Selection Process	Data Collected
State actors	Identified state actors who responded to the incident - Kerala Police, the KSCPCR, the NCPCR, BSNL, the Kerala High Court (HC), and the SC. Evidence of their narrative response and action on the issue.	Publicly available official documents. News reports selected for their detailed reporting on the issue.
Online news portals	Selected 5 newspapers that have the highest circulation ¹⁰ in India; 3 in English and 2 in Malayalam. Collected all news articles from these 5 papers available online regarding the issue.	40 articles in Malayalam and English were collected.
Public comments	Comments sections of the 40 newspaper articles selected to gain an understanding of how the discourse translated to the public.	Of the 19 articles with comments, 9 with more than 10 comments were chosen. This added up to 297 comments across 9 articles. The comments on each article were collated to form threads of conversation for analysis.

¹⁰ I used a circulation evaluation of newspapers in India from the Audit Bureau of Circulation from 2019. I chose three English and two Malayalam newspapers which featured in the top twenty newspapers with the highest circulation. I then used the reports on their online portal as representative of news media content on the issue.

Data on both censure and discourse capture featured across the different sources, hence I was able to triangulate the data and check for inconsistencies or factual fallacies. Some of the comments and news articles were in Malayalam; as Malayalam is my mother-tongue I analysed these directly without translation.

After collecting data, I analysed it based on Braun and Clarke's thematic analysis (2006). I familiarised myself with the data and used Nvivo to code it. Codes were developed separately to trace the process of censure and discourse capture. The data capturing censure was coded for both censure and discourse capture.

Table 5.2 Thematic Analysis Frame

Approach	Concepts			Data Source (Secondary Data)	Method	Thematic Indicators
	Main	Secondary	Facilitating Themes			
Single case study	Co-option as gender backlash strategy	Censure	Coercive power Moral reasoning	Government documents Newspaper reports of state actors' response	Thematic analysis	Law and procedures on child rights used to censure Fathima. Space within laws and procedure for use of coercive power by state actors to issue sanction against Fathima. Morality around female body, motherhood, sexual impropriety and collective conscience used to rationalise legal sanctions against Fathima. Legal and moral defence presented by Fathima.
		Discourse capture (twisting /re-Purposing)	Gender normativity Protectionist approach to child rights	Government documents Newspaper reports of state actors' response Online news reports of the incident from identified news portals Selected discussions in the comment sections of identified news portals		Gender normative approach to motherhood and mother's body. Depoliticising feminist cause by using protectionist approach to child rights. Disregarding agency of the child. Creating a mother versus child narrative based on gender normativity and protectionist approach to child rights.

The codes were then reviewed to observe patterns, regularities, and commonalities to form themes that spoke to co-opting the rights framework through censure and discourse capture. The relationships among themes across the two concepts, and to existing literature informed the analysis and discussion of this paper. Table 5.2 illustrates the analytical process.

The research is constricted by the following limitations: firstly, the analysis is based on secondary data from open sources. I did not approach Fathima herself or her children or the backlash actors identified due to ethical considerations. However, I sourced multiple documents and reports of each event to

triangulate data. I discuss Fathima's political act based on her submissions in court and media reports. I have refrained from discussing Fathima's children specifically, i.e., my analysis pertains to existing scholarship on the rights of children and its implementation. Secondly, while I have used data from online platforms this does not include social media platforms such as Twitter, Facebook, etc.; most social media site algorithms have a time limit feature which makes it difficult to identify older posts which led to limited hits for my search terms on these platforms. However, two of the opinion pieces featured in newspapers were originally social media posts, and there was strong public engagement online with newspaper articles.

6 'CO-OPTION' BLUEPRINT: MAPPING THE GENDER BACKLASH AGAINST FATHIMA

Speech and Action by Rehana Fathima

Fathima uploads video of her minor children drawing on her naked upper body titled 'Body and Politics' on social media.

Fearing arrest for investigation on child sexual abuse, Fathima files an anticipatory bail application and goes into hiding.

Fathima files special leave petition against the Kerala HC order in the SC.

Fathima surrenders to the Kerala police.

Speech and Action by State Actors

Cases against Fathima are filed in 2 different police stations.

SCPCR directs the police to register the case for child sexual abuse.

Police conduct a raid on Fathima's house and take computers and brush used to paint as evidence. Ask Fathima to report to police station.

NCPCR send a notice to Kerala DGP seeking a report on the matter and to check if Fathima's post amounts to child sexual abuse.

BSNL (govt telecom dept, Fathima's employer) sends Fathima an order to evacuate quarters within 30 days as police raid for child sexual abuse tarnished their image.

Kerala HC rejects Fathima's anticipatory bail application against arrest. Issues 27 page judgement detailing the duties of a mother.

Police continue search for Rehana Fathima.

SC dismisses Fathima's petition contesting the Kerala HC order.

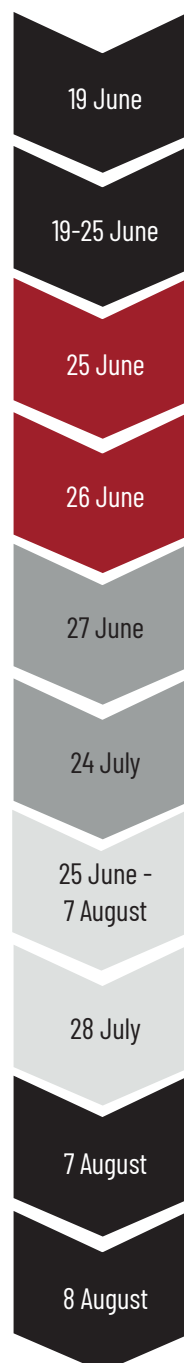


Figure 6.1 Timeline of Events 2020

Source: Author's own

To map the pathways operationalised to co-opt the child rights framework, I discuss the events from 19 June 2020 when Fathima uploaded 'Body and Politics', to 8 August 2020 when she surrendered to the Kerala police. I have compiled a timeline of the events in Figure 6.1 featuring 'speech and action by Fathima' on the left and 'speech and action by state actors' on the right. Annexe 2 lists government documents, news reports, and public comments that inform this analysis.

6.1 CENSURE BY STATE ACTORS USING THE CHILD RIGHTS FRAMEWORK IN INDIA

I discuss how multiple actors used their legitimate authority (see Annexe 1) based on the existing child rights framework to publicly censure Fathima. I argue that moral reasoning and coercive power were used by state actors to validate these actions.

While the Indian Constitution guarantees its citizens the fundamental right to equality before the law, in practice, state institutions can reinforce inequalities (Article 14, Constitution of India; Hawkesworth 2020). Here I illustrate two instances where moral reasoning, not process set forth in the law, formed the basis of censuring Fathima. In the first instance, Fathima filed an application with the Kerala HC for anticipatory bail claiming that her political act did not warrant custodial investigation for criminal offences of child sexual abuse or cruelty to children (see sections in Annexe 1). The Kerala HC was tasked with determining if, *prima facie* the video contained 'indecent or obscene representation of a child' for the purpose of 'sexual gratification'. As evidence, the court considered the English translation of Fathima's note of intent posted with the video, and the video itself. I present below two extracts from the judgment.

The court observed that,

...expression of the petitioner, while the children are painting on her breast, is also important. (Fathima vs State of Kerala 24 July 2020: 17)

Prima facie, I am of the opinion that the petitioner uses the children for the purpose of sexual gratification because the children are represented in the video uploaded in an indecent and obscene manner because they are painting on a naked body of their mother. (Fathima vs State of Kerala 24 July 2020: 17)

As Bhandari and Kovacs (2021: 53) argue the judgment does not explain what 'expression' on Fathima's face suggests 'sexual gratification', or why painting the naked upper body of a mother is representation of children in an 'indecent' or 'obscene' manner? The Kerala HC, without identifying how the actions

violate the law, denied Fathima anticipatory bail stating, '... considering the facts and circumstances of this case, I am of the opinion that this is not a fit case in which the petitioner can be released on bail' (Fathima vs State of Kerala 24 July 2020: 26).

In the second instance, Fathima filed a Special Leave Petition (SLP) with the SC asking to reverse the Kerala HC order. In her petition she raised two questions referring to her constitutional right to life and liberty (Article 21, Constitution of India).

1. *Whether female nudity (even when not visible) per se constitutes obscenity?*
2. *Whether children painting on their mother's body can be concluded to be "sexual gratification" and "child abuse" under these stringent laws (Live Law, 2020)*

The SC bench during the trial or in their judgment did not engage with the questions Fathima raised in her petition. Instead, they expressed their 'bafflement' and the presiding judge remarked, 'Not interested in this kind of a case. How can you make use of children for this? What kind of a culture will the children perceive?' (Chaudhary 2020). Fathima's counsel argued that a man in her place would not have been prosecuted; the bench responded that Fathima was '...old enough to understand these things' (Chaudhary 2020), implying an inherent understanding that persons of Fathima's age are expected to hold about gendered norms regarding nudity. When asked why her liberty should be curbed (by incarceration during the investigation), '... the bench hinted that it was necessary so that she won't indulge in it again' (Chaudhary 2020). The SC bench did not engage with case law precedents on the matter or child rights law, instead, they relied on a presupposed shared understanding of appropriate behaviour, perception of culture, and age appropriate understanding, revealing moral reasoning as the basis of their judgement.

Adjudication of Fathima's case by both the Kerala HC and the SC shows that censure of Fathima's political act was based on their discomfort (as admitted by the actors themselves) arising from patriarchal normative understanding of sexualised breasts, motherhood, and shame associated with female bodies (Matich *et al.* 2019). As Mathur (2008: 54) claims, 'The fact that the female body is constantly under pressure to conform and mould into prescribed social and cultural roles brings into question the spaces that need to be protected as well rights that need to be claimed so that women's bodily integrity is respected'. In Fathima's case spaces mandated to protect these rights relied on moral reasoning based on patriarchal normativity thus failing to uphold her rights.

I now elucidate how state actors used their legitimate mandate according to child rights law, which is structured to allow them to use their coercive power to conserve their interests aligned

with public morality. Mathur (1992) claims that the Indian State, to maintain dominance, tends to push the boundaries of its legitimate authority. The Kerala HC was mandated to determine the validity of applying POCSO 2012 which criminalises, 'the indecent or obscene representation of a child' (Section 13 (c)) against Fathima. However, POCSO 2012 does not define 'indecent' or 'obscene' representation, neither does the Indian Penal Code.¹¹ This allows for the judicial bench to make a judgement based on existing case law. In this case the Judge of the Kerala HC referred to Samaresh Bose and another versus Amal Mitra and another [(1985) 4 SCC 289], a case discussing obscenity in a book, in which steps have been laid out for judging obscenity (see Box 6.1 below).

BOX 6.1

Steps to Determine Obscenity

Summary of steps to determine obscenity (as cited in Fathima vs State of Kerala drawn from Samaresh Bose and another vs Amal Mitra and another [(1985) 4 SCC 289]).

- The judge should place himself in the position of the author and understand what he is trying to convey.
- The judge should place himself in the position of a reader of every age group and appreciate possible influence of the contents of the book.
- Finally, he should '...apply his judicious mind dispassionately...' to objectively judge if the specific contents and the book as a whole is obscene. In addition if he thinks that he is subconsciously biased he can draw from the evidence on record or call on other respected authors and take into account their perspective.

(Fathima vs State of Kerala 24 July 2020: 21-22)

The lack of a definition together with loose guidelines allowed for the judge to state,

I [the Judge] place myself in the position of the petitioner and from the viewpoint of the viewers of every age group in whose hands this video is reached by uploading the same by the petitioner. After applying my judicial mind, I am not in a position to say that there is no obscenity in the video when it is uploaded in the social media. (Fathima vs State of Kerala 24 July 2020: 22).

In being ambiguous about 'obscenity' and 'indecent', while at the same time framing these as key elements in determining the offence of child sexual abuse, the law gives space for the judge to decide subjectively but qualify it as an 'objective' decision by simply declaring that he 'dispassionately' reviewed the evidence.

The following arguments by Fathima's counsel and legal academics illustrate the subjective nature of the judgement. In counter argument to the SC, Fathima's counsel submitted that her purpose in uploading the video was '...to normalize the female form of body for her children and to not allow distorted ideas of sexualization pervade their minds' (Chaudhary 2020). Secondly, her body is fully painted, and hence its 'nakedness' is not visible in the video. Finally, female nudity per se cannot be treated as obscenity (Chaudhary 2020; Aavek Sarkar vs State of West Bengal 2014). As Bhandari and Kovacs (2021: 54) observe YouTube had already put an age restriction on the video so it was not accessible to viewers of every age group. These arguments cast aspersions over the process adopted by the court to determine the video to be 'indecent' and 'obscene'.

The structure of the law presupposes objective assessments while allowing public morality to be privileged by merging criminality and morality (Bhandari and Kovacs 2021: 56). Fathima faced material consequence, i.e. incarceration, because the procedure for implementing child rights law allowed the Kerala HC judge to choose such case law precedent to determine 'obscenity' that would allow them to cloak their merging of criminality and morality as objective analysis. Thus, the law holds space for state actors to use coercive power within the structures of legitimate authority and push the boundaries of their legal mandate.

It is important to note that while I have presented evidence separately for moral reasoning and coercive power these do not necessarily present separately in lived reality. Law, policy, and procedure intended to protect children from sexual abuse was co-opted using moral reasoning and coercive power and these intentional actions led to threat of sanction and incarceration for Fathima.

¹¹ Indian Penal Code 1860 is the comprehensive code for offences and punishments applicable in all of India except for the State of Jammu and Kashmir.

6.2 DISCOURSE CAPTURE USING THE CHILD RIGHTS FRAMEWORK

Co-option acted as a gender backlash strategy, captured and subverted the intent of Fathima's feminist political act. To evidence this I discuss how Fathima's discourse on body politics is twisted by reducing it to a mother's attempt to provide her children with 'sex education' and repurposed to discuss the appropriateness of such an action and possible violation of laws pertaining to child sexual abuse online. First, I present Fathima's political advocacy through the arguments she presented during the time that I followed her case. I then discuss how her political advocacy was reframed through responses by the state, the media, and in public discussion platforms; how these actors chose to engage with specific parts of her narrative and ignore others.

6.2.1 Fathima's Political Activism

Drawing from Fathima's post description uploaded with the video 'Body and Politics', and petitions filed in the Kerala HC and the SC, I summarise the discourse Fathima attempted to build through her activism.

- **Purpose:** Society's fascist morality creates illusions of the female body and restricts women from discussing their nudity and sexuality. This, Fathima claims, calls for a brave political act which exposes these fascist views of society.
- **Consequence of fascist morality:** Men and women are 'customized' to observe different rules of nakedness, where men can stand shirtless and expose their legs while women's fully clothed legs in tight leggings are said to cause sexual arousal. Children are forced to learn about sexuality from porn, which sets unrealistic expectations from women's bodies, leaving both men and women short-changed. This leads to criminal sexual behaviour and sexual violence against women, children, and animals.
- **Causes:** She identifies the lack of sex education, wrong sexual consciousness, and the forced gendered separation in society such as that of boys and girls in school, as the reasons driving criminal sexual behaviour.
- **Solution:** Sex education for children and building a healthy sexual consciousness from when they are young. 'No child who has grown up seeing his mother's nakedness and body can abuse another female body. Therefore, vaccines against these false preceptions [perceptions] and expectation about women's body and sexuality should be initiated from home itself' (Fathima vs State of Kerala 24 July 2020: 8). Fathima

ends with a call for action saying that, in a sexually frustrated society where women do not feel safe in clothes, women have to realise that their bodies are their best weapons.

During the trial, through her petitions, Fathima defended her political act using moral and legal defences,

- **Public morality as a defence of political action:** Fathima argued that only a pervert could see a child drawing on his naked mother and see sexuality in it. She further said that Indians consistently pray at temples which are adorned with sculptures of deities with naked breasts. This does not lead to sexual arousal but only devotion; the same, she claimed, should be true for all naked female bodies.
- **Legal defence of political action:** Fathima argued that under case law the SC had already ruled that female nudity per se cannot be construed as obscene. Additionally, her body was painted and hence not naked in the video, her children were fully clothed, and they do not view her body as a sexual object only as a canvas to paint on. Further she argued that the law cannot rely on public morality based on Brahmanical patriarchal notions instead it must protect the legal and constitutional rights of citizens.

Having summarised Fathima's intent in performing 'Body and Politics', I argue that it was twisted and repurposed, and discuss the factors that facilitated this discourse capture.

Censure of Fathima for 'Body and Politics' by state actors was extensively reported in the media and discussed publicly which led to twisting the discourse on sexual violence that Fathima's political act attempted to inspire. State actors firmly situated the political act which aimed at desexualising the female body and responding to sexual violence against women, as an act of sexual abuse of children, ignoring Fathima's stated intent (see timeline in Figure 6.1 and Annexe 1). In this context I submit two observations - firstly, that the state actors (police, judiciary, etc) did not respond to the issue of sexual violence against women or female nudity raised by Fathima. Secondly, the National or State Commissions for Women,¹² the quasi-judicial bodies responsible for upholding women's rights, did not respond on



Men and women are 'customized' to observe different rules of nakedness, where men can stand shirtless and expose their legs while women's fully clothed legs are said to cause sexual arousal.

¹² Statutory body established by the Government of India at both national and state levels to advise them on matters relating to women.

the issue at all, whereas their counterparts on child rights did so extensively. The continuous 'speech' and 'action' (see Figure 6.1) by state actors censoring Fathima meant that reports of censure based on child rights law occupied most of the space in the media (see Annexe 2); 70 per cent of news report titles that I reviewed referred to Fathima being censored for her action. Further, 41.15 per cent of the news reports' content was about either state action to censure Fathima or child rights laws under which Fathima was being prosecuted. In comparison only 15.44 per cent of content reported Fathima's narrative. This narrative of criminality is readily taken up in the public comment sections of the nine news reports that I analysed - eight threads of discussion strongly recommended jail time for Fathima for the abuse of her children, and comments on the ninth article which reported on BSNL asking Fathima to vacate her house, found overwhelming support with reasoning that for such actions she '...deserves to be made homeless'.¹³ Thus the state actors, along with the media, and the public discussion platform twisted the narrative in 'Body and Politics', to one about child sexual abuse online.

Twisting and repurposing are not necessarily linear or separate actions; Fathima's narrative was twisted through censure and media coverage of the censure, and her political act itself was repurposed as an attempt to teach her children sex education. Kerala HC uses her mention of sex education (see 'causes' and 'solutions' above) and repurposes her act as an attempt to provide sexual education to her children. This is evident in the framing of the core consideration identified in the Kerala HC judgment,

According to the petitioner, she is teaching sex education to her children by uploading the video!... Whether such a video can be uploaded in social media and the petitioner can escape by saying that she was trying to teach sex education to all children is the question to be decided. (Fathima vs State of Kerala 24 July 2020: 15)

And in deciding on the matter the Kerala HC claims,

The petitioner feels that, she should teach sex education to her children. For that purpose, she asks her children to paint on her naked body and then uploading the same in social media. I am not in a position to agree with the petitioner that she should teach sex education to her children in this manner. (Fathima vs State of Kerala 24 July 2020: 20-21)

Thus, the court successfully undermined the political challenge to public morality posed by Fathima by depoliticising her activism, and repurposing it as an attempt at sex education



The process of capturing and containing the discourse is strongly rooted in a heteronormative understanding of 'mothering practices'¹⁴.

and questioning whether 'sex education' is adequate reasoning for uploading the video. The news articles reviewed readily comply with this twisting and repurposing by state actors. In 62.5 per cent (25 of 40) of the media articles, Fathima's cause for activism is not referred to at all or referred to in a reductive manner, i.e., using quotes from state actors and their understanding of Fathima's act. More than half of the articles (22 of 40) refer to the incident directly as Fathima's attempt at imparting sex education to her children. Most quote the Kerala HC to refer to Fathima's political act as violating child rights law because she chose to upload a video of sex education. The four opinion pieces analysed refer to the political act as a method of sex education. Concerns raised in these articles include that Fathima's hypothesis for her method of sex education can only be tested when the children become adults, and they may grow into sexually deviant individuals (Times of India 2020). The comments analysed also regard Fathima's political act as sex education, and some of these were regressive, i.e., rejecting the need for sex education. Others were sexually suggestive and abusive towards Fathima and her 14-year-old son. Finally, some comments referred to how such 'sexual experiments' with children are dangerous and Fathima's method inappropriate. Thus, the discourse on 'Body and Politics' was captured by twisting the focus from Fathima's political act and repurposing its core contention. Similar to other gender restrictive actors documented globally, the backlash actors generated a moral panic about the sexual safety of children. It successfully caused a victim-perpetrator reversal where Fathima who had framed herself as a representative of women whose bodies are sexualised and subjected to violence, is now reframed as an alleged perpetrator of child abuse; thus controlling '...which ideas are in circulation' (Paternotte and Kuhar 2017: 15; Lewin 2021: 256; Martínez *et al.* 2021: 32).

The process of capturing and containing the discourse is strongly rooted in a heteronormative understanding of 'mothering practices'.¹⁴ Fathima framing herself as a mother while choosing to expose her naked upper body, her breasts '...is particularly disruptive to the patriarchy, as it blurs the border between the normative feminine identities of mother and sex object...' (Matich *et al.* 2019: 337). The Kerala HC, in their

¹³ The quoted comments are translations from Malayalam.

¹⁴ I use the word mothering to include the wide range of practices and behaviours normative and otherwise that are ascribed to parenting as a mother.

judgement, considered it necessary to identify a 'good mother' as the 'anchor' and 'moral compass' of her child (Fathima vs State of Kerala 24 July 2020: 22-25). The NCPDR's notice to the Kerala police reads, [1]It is regrettable that a mother has involved her children in such an indecent act' (Sharma 2020). And the SC showed concern about the future of her children if Fathima performed such political acts (Chaudhary 2020). The concerns raised on appropriate mothering practices by these state actors were reported by the newspapers. Additionally, the opinion pieces held Fathima responsible for any abuse her son might face from his peers and society (e.g. the sexually suggestive comments discussed above) for his participation in her political act (Times of India 2020; Manorama 2020). The public comments extensively and crudely discuss the political act alluding to the probability of an Oedipus complex,¹⁵ the ridicule Fathima's son will have to face in public, and calling Fathima perverted. Further, both the HC and opinion pieces in the newspapers suggest that the political act could have been done in Fathima's private space at home, and identify uploading the video as the potentially criminal and inappropriate act (Fathima vs State of Kerala 24 July 2020; Times of India 2020). Thus, these actors successfully limit motherhood to gender normative definitions of the mother-child relationship, the mother's body, and the spatial limits of mothering, i.e. to be practised in the private sphere and not in the public sphere. They curb Fathima's political act to redefine the female body, however they do not contest the act itself but rather the pressure it puts on the public to acknowledge women's sexuality and sexual violence against them. Additionally, the lack of concern about Fathima's daughter who is also featured in the video indicates the inherent notions of gender normativity where child sexual abuse in this case is conceived exclusively within heteronormative binaries.

Gender backlash in Fathima's case is the conventional understanding, i.e. a short-lived reaction to progressive feminist politics. Fathima was released from jail and the last order passed was a stay against the trial on 24 August 2020. These proceedings in favour of Fathima were not reported in the media. The courts have not posted the case for hearing since 9 November 2020, despite a mandate under POCSO for a speedy trial. As Lewin (2021: 257) identifies, there is a masking of intent by backlash actors as they operationalise discourse capture, in Fathima's case by acting as protectors of child rights and experts on parenting. Child rights were also used to create moral panic, for example, the Kerala HC and SC expressed concerns about the need for a 'moral compass for a child' and

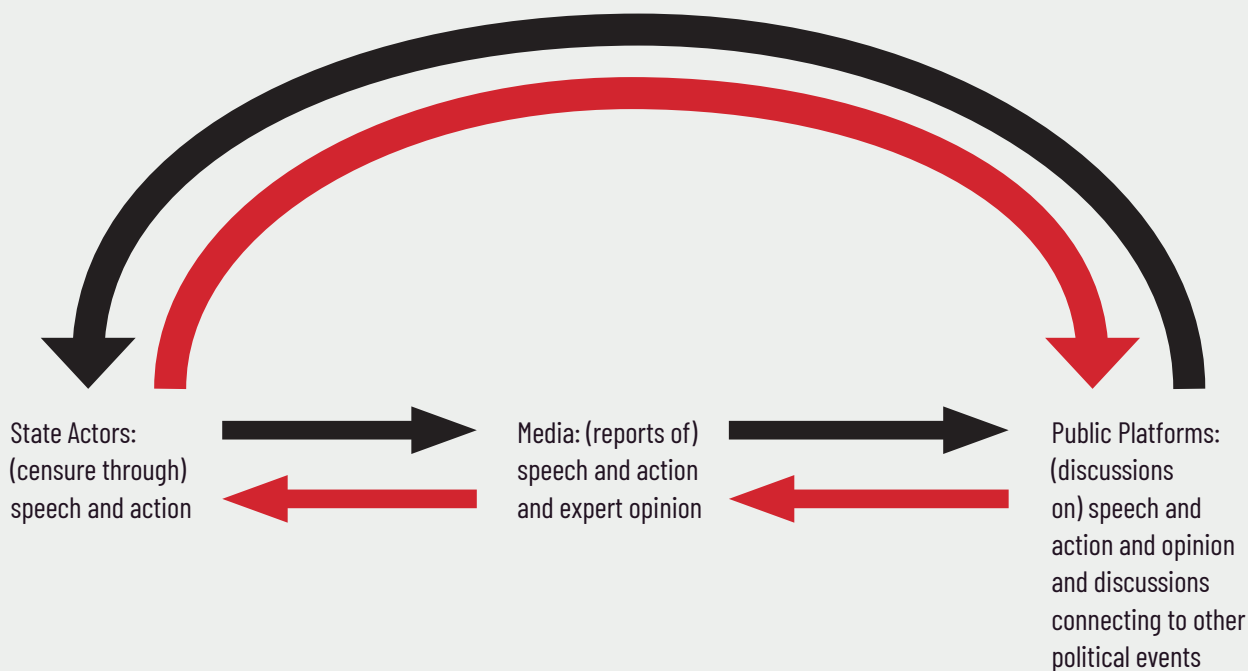
'children's perception of culture' respectively, opinion pieces in the newspapers discussed violation of the 'sanctity of childhood', and even suggested increasing state control on the parenting process. However, these protectionist approaches to child rights can be construed as a tool of backlash because there is minimal intent from actors to engage with child rights as a whole (see section 6.3 below), or to even follow up on the case. The protectionist approach created cohesion among backlash actors leading them to influence, support, and magnify each other in the process. However, it is not clear whether the public outcry against the video forced the state actors to take action, or whether it provided them with a fertile opportunity to do so.

Unlike Lewin's (2021) description of discourse capture, appropriating Fathima's political act was not an organised counter movement. The cohesion displayed across various actors was possible because the discourse capture was based on Brahmanical patriarchal norms that are coded into the social fabric and pre-exist the discourse capture. The control the state actors exercise over Fathima's body and her mothering practices refer to a pre-existing understanding as stated both in the Kerala HC order such as with respect to Fathima's facial expressions, and the discussion during the SC hearing with respect to the expectation for Fathima to display age appropriate understanding around nudity, the lack of which justified curtailing her freedom. This is readily taken up in opinion pieces and in the comments section of newspaper articles because such a social understanding exists in the form of Brahmanical patriarchal codes. Hence while specific actions might be different and dictated by the more modern norms of their micro environments (i.e. a court cannot identify her Muslim identity whereas this is openly discussed in the comments on the public discussion platforms), these backlash actors are able to work towards the same interests on the larger scale to subtly capture discourse and maintain status quo.

“
The protectionist approach created cohesion among backlash actors leading them to influence, support, and magnify each other in the process.

¹⁵ A Freudian concept that refers to a subconscious attraction that boys develop towards their mother while viewing their father as a rival.

Figure 6.2 Discourse Capture as Reactionary Backlash



Source: Author's own

6.3 HOW IS THE RIGHTS FRAMEWORK USED TO SUPPRESS WOMEN'S ACTIVISM IN INDIA?

Rights frameworks, designed to serve liberal agendas, have been conventionally used by progressives including activists and development practitioners in India to advocate for changes in law, policy, and implementation of child rights and gender justice. However, as my analysis shows, in this case, the child rights framework was co-opted through censure and discourse capture by backlash actors to suppress Fathima's activism.

I argue that backlash actors instrumentalise the child rights framework to serve their own agenda. As Bhandari and Kovacs (2021: 54) discuss and as was corroborated by my analysis, despite state actors, the media, or the public acting on their legitimate and/or self-assigned roles as protectors of child rights, they failed to engage with critical concerns in upholding the rights of Fathima's children. For example, none of the actors discussed the issue of acquiring the children's informed consent for participating in the political act. Similarly, the court claims that if the activity shown in the video had been kept within the home it would be permissible by law. However, Bhandari and Kovacs (2021) point out that this is not tenable with POCSO

2012; if the activity is considered sexually abusive to children it will remain so whether it is uploaded on social media sites or not. Hence child rights were merely used as a tool to achieve gender backlash by state actors without providing agency or protection to children. Secondly, child rights are used in this case as the marker of the limit of women's 'permissible' activism. Progress on gender justice does not always trigger gender backlash; especially in a state like Kerala whose performance on human development indicators is noteworthy (Mansbridge and Shames 2008: 268; Lieten 2002). However, Townsend-Bell (2020: 287) conceptualises a 'DO NOT CROSS' line which when crossed triggers backlash. In this case that do not cross line can be identified as attempting to reinterpret the mother's body, leading to moral panic to protect the rights of Fathima's children, and limiting her activism. These lines move closer to everyday lived experience when you occupy more marginalised identities (Townsend-Bell 2020: 291). The public comments analysed showed that Fathima's previous activism on religion and gender, as well as her identity as a Muslim woman were identified as red flags for potential inappropriate behaviour. Most newspaper articles dedicated space to discuss her previous activism, specifically her attempt to enforce the right of menstruating women to enter the Sabarimala shrine. These identities increase her vulnerability to backlash.

7 CONCLUSION

Discussing Fathima's feminist political act, 'Body and Politics', I mapped the process of co-option of the rights framework to form gender backlash, allowing me to make three conceptual observations. Firstly, censure and discourse capture affect each other and operate together to allow for co-option of a set of actions and narratives on child rights facilitating gender backlash against feminist activism. Secondly, the existence of 'moral reasoning' and space to use 'coercive power' within institutions with the mandate to protect rights lead to censure becoming a tool for co-option of child rights. Thirdly, pre-existing norms of gender normativity and a protectionist approach towards child rights based on Brahmanical patriarchal social codes, allow for cohesion among heterogeneous backlash actors facilitating discourse capture.

The story of Fathima's political act adds one more instance to Kerala's history of state and societal backlash against attempts by women to control their own bodies and narratives. The politicisation of the international child rights framework and national laws by powerful actors to control female bodies in a state like Kerala that boasts of progress brings to light limitations of the transnational application of a rights framework and development interventions, especially without political

mobilisation of communities that the rights aim to serve. My analysis of Fathima's case highlights the following:

- Gender backlash by co-option of child rights pits the political rights and freedoms of women, in this case mothers, against the right to protection of children without benefitting either group of actors. Hence, it is important to form strong allyship across spaces of activism on gender rights and child rights.
- Unlike the social norms that assure cohesion among heterogeneous backlash actors, a relative lack of access to power historically means that gender justice actors must build these feminist norms. This necessitates further exercises to map not just backlash efforts but counter backlash efforts so that opposition to backlash can be met with a diverse but cohesive force.
- As Devika (2009: 23) points out, female sexuality outside of biological needs is a topic that development agendas, even in progressive spaces like Kerala, steer shy of. Taking inspiration from Fathima, sexuality as a concept not just of the body but of the mind as well, must feature centrally within feminist development agendas.

ANNEXE 1: LIST OF STATE ACTORS (BOTH CENTRAL AND STATE GOVERNMENT) AND THEIR MANDATE UNDER LAW IN FATHIMA'S CASE

State Actor	Laws Applied	Description	Mandate as per Law
Kerala Police – law enforcement agency responsible to investigate cases against Fathima	Section 75, Juvenile Justice (Care and Protection) Act 2015	Punishment for cruelty to a child by someone who is responsible for the child leading to child abuse.	<p>One or all of these laws mandate the following,</p> <ul style="list-style-type: none"> • Mandatory reporting of crime • Non-bailable offence, i.e., bail is not a right and hence accused can be arrested and held in custody for investigation or because they pose risk of flight or tampering with evidence.
	Section 13 (c) and 14 of Protection of Children from Sexual Offences Act 2012	Punishment for indecent or obscene representation of a child for sexual gratification in any form of media.	
	Section 67 B (d) of Information and Technology Act 2000	Mandates punishment for publishing/transmitting sexually explicit content online facilitating child abuse.	
NCPCR/KSCPCR – commission with the mandate to ensure implementation of the POCSO Act	Protection of Children from Sexual Offences Act 2012	Monitor implementation of POCSO.	Can review cases and instruct law enforcement agencies to expand investigation to include POCSO.
BSNL – government telecom company who was Fathima’s former employer	Protection of Children from Sexual Offences Act 2012	Allows for internal enquiry/ suspension of employees if they have a charge of POCSO 2012 against them. [G S Rajaneesh vs Senior Divisional Security 2017]	In Fathima’s case since she was dismissed for her earlier activism against religious purity, this case was used to ask her to vacate the government allocated quarters.
Kerala High Court	Anticipatory Bail	A person who anticipates arrest can move to a Sessions Court or High Court and request bail prior to the arrest under 438 (1) of the CrPC. The opposing party can contest bail as the Kerala State Government did in Fathima’s case.	Since child sexual abuse offences are non-bailable, the High Court can deny bail if the petitioner cannot prove with evidence presented before the court that the laws under which they are being investigated do not apply.
Supreme Court of India	Special Leave Petition	Provides special permission for an aggrieved party to take a petition to the Apex Court against an order/ judgment by any court of tribunal in India.	The Supreme Court may grant or dismiss any leave to appeal under its discretionary powers as per Article 136 of the Constitution of India. In Fathima’s case the court dismissed the petition.

ANNEXE 2: LIST OF SECONDARY DATA DOCUMENTS

Censure		
Document	Type of Document	Source
Fathima vs State of Kerala, Bail Application No 3861 of 2020	Court document: Judgment	High Court of Kerala
Fathima vs State of Kerala, Bail Application No 3861 of 2020	Court document: Case Status	High Court of Kerala
Fathima vs State of Kerala, Special Leave to Appeal No 3480/2020	Court document: Order	Supreme Court of India
'How can you use children for this?': SC refuses pre-arrest bail to Rehana Fathima in POCSO case over video showing her children painting on her semi-nude body	Media report on Supreme Court proceedings	Live Law News Network
Mother publishing video of children painting on her nude body: Kerala HC prima facie says its use of child for sexual gratification	Media report on High Court proceedings	Live Law News Network
'Nudity per se not obscenity': Rehana Fathima, booked for video showing her children painting on her semi-nude body, moves SC for bail	Media report on Rehana Fathima Special Leave Petition	Live Law News Network
Kerala HC dismisses activist Rehana Fathima's anticipatory bail plea	Media report containing action by KSCPCR	Deccan Herald
Kerala activist seeks anticipatory bail from court in semi-nude post case	Media report containing action by KSCPCR	NDTV
NCPCR letter to Kerala police about Rehana Fathima	Government document	NCPCR
Child rights body seeks report on Rehana Fathima's controversial video with kids	Media report on action by NCPCR	The News Minute
Police raid Rehana Fathima's house in Kochi	Media report	Kaumadi Online
Despite the Thunderbolt Force being called in to search for her Rehana was hiding right under the police's nose (translated)	Media report	Malayala Manorama Online
BSNL directs former employee-activist Rehana Fathima to vacate quarters	Media report	Press Trust India
BSNL Vacation Notice	Government document	BSNL

Discourse Capture: Online News Articles

Name of Article	News Media Portal
"Body art': Rehana Fathima booked'	Times of India
'Search at Rehana Fathima's house'	Times of India
'Psychiatrists slam Fathima for using her kids in video'	Times of India
"Body art': Semi-nude video with kids: Rehana Fathima booked for sexual harassment, say Kerala police	Times of India
'Semi-nude video with kids: Government opposes Rehana Fathima's anticipatory bail plea'	Times of India
'Can't agree with Rehana Fathima, says HC; denies anticipatory bail'	Times of India
'SC dismisses anticipatory bail plea of Activist Rehana Fathima'	Times of India
'Painting by kids on semi-nude body: SC junks activist's pre-arrest bail plea'	Times of India
'Activist Rehana Fathima surrenders in Kerala's Ernakulam'	Times of India
'Activist Rehana Fathima surrenders before police'	Hindustan Times
'Is female nudity obscenity? Plea asks Supreme Court to decide'	Hindustan Times
'Kerala activist booked for posting video of kids painting on her body'	Hindustan Times
'No anticipatory bail, SC pulls up Kerala activist for 'obscenity''	Hindustan Times
'Rehana says kids painted her body for sex education, court rejects argument, bail plea'	Hindustan Times
'POCSO case registered against activist'	The Hindu
'Kerala HC rejects the plea of Rehana Fathima'	The Hindu
'SC dismisses Rehana Fathima's bail plea'	The Hindu
'Activist Rehana moves SC against HC's denial of bail'	The Hindu
'Activist Rehana Fathima moves court for anticipatory bail in body painting incident'	Manorama Online (English)
'Activist Rehana booked over video of her minor children painting on her nude body'	Manorama Online (English)
'Kerala HC rejects anticipatory bail plea of Rehana Fathima'	Manorama Online (English)
'Rehana Fathima asked to vacate BSNL quarters amid POCSO case'	Manorama Online (English)

Discourse Capture: Online News Articles

Name of Article	News Media Portal
'Activist Rehana Fathima surrenders before police'	Manorama Online (English)
'Body politics should not be expressed by using your child' (translated)	Manorama Online (Malayalam)
'Will Rehana Fathima's supporters try this at home?' (translated)	Manorama Online (Malayalam)
'What is wrong with Rehana Fathima's actions? A doctor answers those who ask this question' (Translated)	Manorama Online (Malayalam)
'What is the message in this? You are spreading sexual impropriety; SC rejects Rehana's bail application' (translated)	Manorama Online (Malayalam)
'Rehana does not get anticipatory bail. Rehana Fathima says she will approach the SC'	Manorama Online (Malayalam)
'Despite the Thunderbolt Force being called in to search for her Rehana was hiding right under the police's Nose' (translated) (used for censure as well)	Manorama Online (Malayalam)
'HC rejects anticipatory bail plea; Rehana Fathima to move SC'	Mathrubhumi (English)
'Rehana Fathima moves HC seeking anticipatory bail in POCSO case'	Mathrubhumi (English)
'Kerala HC order on activist Rehana Fathima's anticipatory bail'	Mathrubhumi (English)
'SC junks Rehana Fathima's Plea against POCSO charges'	Mathrubhumi (English)
'Kerala govt to move SC opposing Rehana Fathima's anticipatory bail plea'	Mathrubhumi (English)
'Activist Rehana Fathima surrenders before police'	Mathrubhumi (English)
'Case against Rehana Fathima uploading a video of her children drawing on her naked body'	Mathrubhumi (Malayalam)
'Drawing on naked body: Laptop confiscated from Rehana Fathima's house'	Mathrubhumi (Malayalam)
'The raid tarnished our image; Rehana Fathima asked to vacate the quarters by BSNL'	Mathrubhumi (Malayalam)
'Kerala State Government will oppose Rehana Fathima's anticipatory bail plea'	Mathrubhumi (Malayalam)
'RF surrenders under the case where she made her children draw on her naked body'	Mathrubhumi (Malayalam)

297 comments from 9 of these articles were chosen to represent public discourse. Since comments can be traced to individual online accounts, details of chosen comment threads are not included due to ethical considerations. All documents used for censure were also coded for discourse capture to trace the narrative flow and actions between backlash actors. Rehana Fathima's narrative on discourse capture was developed from her submissions to the Kerala High Court and Supreme Court.

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