

Law's Violence

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WOMEN AND LAW: CRITICAL FEMINIST PERSPECTIVES

Edited by Kalpana Kannabiran

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'Personal is political'—a revolutionary slogan of the women's movement summed up the felt need for state intervention in what was considered as private/domestic sphere. This gendered unequal private sphere was where women faced the worst forms of discrimination and violence and relations within the public space were a reflection of it.

In India, the central focus of the feminist movement has been 'negotiations around law and justice delivery for women'. Feminist campaigns have focussed on making demands on the Indian state to legislate in 'favour' of its women citizens. As a result of this many laws have been passed in the last three decades. However, when we talk of women and law it is not just restricted to these women-centred laws dealing with rape, dowry, sati, entitlements etc. but as Kalpana Kannabiran, the editor points out, it is about the 'violence of an unequal social order and more importantly, law's violence.'

The book in its thematic scope is expansive; divided into eleven chapters it covers a wide range of issues organically linked to women's lives. With the exception of adivasi and Muslim women—that too in the context of forest rights and identity issues respectively—this book does not classify women into categories of class and caste. At one level women's experiences with law or state's conception of a woman may be similar across groups but on scratching the surface disparities come to the fore. This book definitely misses out on the fact and doesn't take into account divergences in women's experiences of law based on their social location.

The authors are drawn from diverse backgrounds: legal experts, feminist scholars, civil rights activists. There is a disparity in the book in terms of quality of academic research and arguments made. Like most edited books this one has some very interesting chapters with certain novelty about the themes and arguments and then there are those one has heard time and again.

The chapter on 'Pre-natal Diagnosis: Where Do We Draw the Line' by Anita Ghai and Rachna Johri poses a very interesting question: The contestation between women's right to abort and right to life of fetuses diagnosed as potentially disabled. While, sex-selective abortion is illegal there is legitimization of abortion of potentially disabled fetuses by the PNDD Act.

Their empirical research amongst mothers of disabled children proves that one of the primary reasons these women would have chosen to abort their children—if they knew about disability well in time—is due to lack of social support for bringing them up. They point to the social construction of individual choice 'reified' by the PNDD Act.


'Bringing Rights Home: Review of the Campaign for a Law on Domestic Violence' by Indira Jaising takes the reader through the tumultuous journey of the law on domestic violence. The Delhi High Court comment equating 'introduction of constitutional law in the home' to that as 'introducing a bull in a China shop', gives away the viewpoint of (even) higher judiciary regarding preserving the sacrosanct domestic space. This chapter discusses the inadequacies of the criminal law system in dealing with domestic violence and the need for a civil law; section 498 A and 304 of CrPc deal only with married women and definition of cruelty is also very vague.

The Protection of Women from Domestic Violence Act, 2006 was passed by the Parliament unanimously which according to Indira Jaising is an acknowledgement of the fact that women face violence in homes. The campaign, process of framing of law, debates on draft bill, evaluation of implementation, attitude of judiciary are all discussed at length. This chapter gives us a holistic view of the issue of domestic violence as well as the law enacted to deal with it.

Flavia Agnes in 'Conjugal Property, Morality and Maintenance' raises several issues regarding divorce and entitlements of women. Drawing upon case laws she builds the argument that economic entitlements received by a woman on death of her husband or breakdown of marriage is a reflection of the gendered social order. A woman's 'unpaid' domestic labour is never taken into account as economic contribution towards property of household. On death of a man, the wife is seen as a 'beneficiary' just like children. As her contribution is never taken into account therefore in cases of breakdown of marriage or divorce there is never a division of property but just a 'maintenance' allowance. Maintenance is invariably linked to 'sexual morality' of the women and husbands in order to avoid payment of maintenance try and prove wives as adulteresses. Agnes raises the question of bigamy under the Hindu Marriage Act and rights of second wives. In several cases in order to evade payment of maintenance to second wives men have resorted to proving bigamy and with impunity. The issue of Muslim women and maintenance, Shah Bano case and Muslim Women (Protection of Rights on Divorce) Act are also discussed at length in this chapter. Going beyond the prevalent feminist discourse which sees Muslim Women (Protection of Rights on Divorce) Act simply as state's attempt to placate the conservative Muslim religious leadership, Flavia Agnes argues that courts came up with innovative interpretation of this law to the benefit of Muslim women. While Sec 125 dealt only with preventing women from becoming destitutes, this new law did provide for economic entitlements for women from well to do families.

Kalpana Kannabiran's 'Judicial Mean-derings in Patriarchal Thickets: Litigating Sex Discrimination in India' establishes a remarkable argument that 'differentiation and classification (can) be a source of discrimination.' A sociological analysis of case laws regarding disparate issues like—entry of women into educational institutions; procedure to be followed in the case of money suits; discriminatory sections of Court of Wards Act regarding management of estates; rules about service and receipt of summons, etc., proves the argument.

This article goes on to analyse equality/ discrimination in relationships spousal and in employment. Definitions of adultery denies women agency, she is treated as a chattel within marriage and courts have by and large accepted this logic. Regarding issues around employment besides the famous Air India cases and Vishakha judgement there is a discussion of how even when railways thought of reserving clerical posts in reservation offices for woman because of their efficiency arising out of being less susceptible to improper influence, and so on it was

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land in South Asia. Particularly remarkable is the description of women's struggle against occupation of land by the army in Pakistan.

On the whole, this book is a useful reader for academics interested in discussing several facets of woman and law. Readers not exposed to

women's studies literature will find it fascinating

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