
Book Reviews

Jinee Lokaneeta, Editor

Tools of Justice: Non-discrimination and the Indian Constitution. By Kalpana Kannabiran. New Delhi: Routledge, 2012. 505 pp. Rs 995, \$105.00 cloth.

Reviewed by Rohit De, Department of History, Yale University

The Indian Constitution promulgated in 1950 created, in the words of its chief draftsman Dr Ambedkar, a “life of contradictions”. It ushered in universal adult suffrage and a judicially enforced bill of rights to a population that was marked by stark inequalities of caste, gender, religion, and class. The constitutional values were not part of the lived experience of most of the people. The liberal republican document perched uneasily upon an administrative structure—the police, the judiciary, the bureaucracy, and the army—that retained both the practices and personnel of the colonial state. The activist and the relatively autonomous Supreme Court reflects this tension through its dramatically divergent readings of the constitution, for instance, recognizing the rights of transgendered people while upholding colonial legislation criminalizing sodomy.

Kalpana Kannabiran lays out a radically new approach to constitutional interpretation by making nondiscrimination the central organizing concept. Arguing that the fundamental rights cannot be disaggregated, she demonstrates how Article 21 (guaranteeing life and liberty), Article 14 (guaranteeing equality before law), and Article 19 (listing the freedoms of expression, association, and movement) are intrinsically connected to Article 15 which prohibits the discrimination on grounds of religion, race, caste, sex, or place of birth. In doing so, she seeks to “sustain and develop” the creative articulations of constitutional morality and limit the possibility of reductionist readings of rights.

This is a strategic move as Indian courts have been receptive to intertextual readings centering on Article 21, the right to personal life and liberty. In 1978, the Supreme Court had imported the requirement of due process into any law that limited the right to life and personal liberty holding that “no fundamental right is an island in itself” (*Maneka Gandhi v. Union of India*, 1978). The Supreme Court has also successfully amplified the right to life and liberty

under Article 21 beyond civil liberties to include rights to education, healthcare, information, clean environment, etc., on the grounds that life did not mean “bare life” alone but included access to all necessities of life. The courts have repeatedly held that there is a nexus between liberty and equality. This rights jurisprudence has migrated to South Africa, Pakistan, Bangladesh, Israel, and Sri Lanka.

By making nondiscrimination central, Kannabiran expands the reach of the constitution in all areas of the society. Article 15 is applicable against private entities unlike the majority of the fundamental rights which can only be enforced against the state. The article specifically guarantees access to public places, such as shops and restaurants, and facilities, such as wells, tanks, and roads. Recognizing the limits of formal equality, the article also permits positive discrimination in the favor of women, children, and socially and educationally backward groups. This article emerged from the political struggle against untouchability and for women’s rights, and reflected the awareness that social practices were unlikely to keep pace with legal changes. Kannabiran makes an important distinction between equality and nondiscrimination. Under the constitutional schema, it is state arbitrariness that violates equality. However, discrimination is caused through a “systematic, planned and systemic deployment of power” (p. 457).

Kannabiran focuses on the “progressive and purposive interpretation” of the fundamental right to nondiscrimination, by remapping the jurisprudence relating to discrimination against six groups—*dalits*, tribals, women, religious minorities, people with disabilities, and sexual minorities. Kannabiran admits that the organization of the book is internally diverse, there is no common structure that runs through each section and it draws on an eclectic selection of sources and disciplines; making the six rich detailed case studies difficult to read sequentially (p. 41). The unevenness of materials does not detract from the cohesiveness of each individual section which provides a comprehensive review of sociological and historical scholarship, legislative debates and extensive jurisprudence relating to each indexes of discrimination.

Through these case studies, Kannabiran builds upon two radical constitutional concepts that have been offered by the courts in India. The first is the idea of “hostile environments” articulated in the *Vishaka v. State of Rajasthan* (1997) judgment, where the Supreme Court held that sexual harassment need not require physical contact but included any act that created a hostile work environment, including lewd jokes or viewing pornography. Kannabiran expands the analogy beyond the bounded space of the workplace to bring in domestic violence, social boycotts against *dalits*, the ghettoization of Muslims in urban areas, and the

arbitrariness of the forest bureaucracy against tribals into the ambit of constitutional remedies. Secondly, Kannabiran advances the interpretive strategy of “analogous grounds” of discrimination to give groups, such as the disabled, people with HIV, and sexual minorities that are not mentioned in the constitutional texts, the benefit of constitutional protections (p. 28).

Kannabiran makes a case for insurgent constitutionalism, which is not confined to courts or judicial interpretations. To do this, she draws upon the visions that guide the various movements for social transformation in India, be it arguments made by LGBT groups or strategies adopted by *dalit* political parties. However, rather than mapping a terrain of popular constitutionalism, the book recognizes that the tools of insurgent constitutionalism are crafted by the state in response to subaltern resistance (p. 465) and provides a corpus of materials and arguments to judges and lawyers who provide constitutional justice. Kannabiran’s magisterial account is an essential reading for those interested in questions of justice in unequal societies and makes a substantive addition to the scholarship on comparative constitutional law.

References

Maneka Gandhi v. Union of India All India Reporter 1978 Supreme Court 597.
Vishaka v. State of Rajasthan All India Reporter 1997 Supreme Court 3011.

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The Street Politics of Abortion: Speech, Violence, and America’s Culture Wars. By Joshua C. Wilson. Stanford: Stanford University Press, 2013. 260 pp. \$85.00 cloth. \$24.95 paper.

Reviewed by Helena Silverstein, Department of Government and Law, Lafayette College

The Street Politics of Abortion chronicles a particular front in the fight to reverse the 1973 ruling in *Roe v. Wade* (1973): anti-abortion activism that took shape at the doorsteps and on the sidewalks of abortion clinics. Rising to prominence in the 1980s and 1990s, this grassroots direct action campaign was one component of a larger movement-counter-movement battle. As street-level counseling, protests, blockades, and violence increased, clinics and