

# The Lived Experience of the Law in India

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Kalpana Kannabiran's latest volume titled *Law, Justice and Human Rights in India: Short Reflections* brings together 67 pieces of public writing authored by her between 2000 and 2020. The volume contains opinion pieces written for newspapers, online news portals, and academic venues, such as this journal.

Given that the volume contains 20 years' worth of writing by one of the foremost thinkers on law, justice, and human rights in India, we should not be surprised by the depth and breadth of topics dealt with in the book. The first part of the volume covers a compendious range of issues relating to law, violence, and discrimination in contemporary India. These include articles on the Adivasi experience of the law, how courts have dealt with violence and discrimination against Dalits, and relating to the rights of religious, sexual, and gender minorities. It also contains essays on the relationship between legal and bureaucratic structures and human rights: on the idea of free speech, of the relationship between lawyers' associations and civil liberties, on judging judges, on democratic rights in university campuses, and on development of human rights cultures.

Given the vastness of this volume, the topics covered, and the arguments made, it would be difficult to provide an accurate picture of specific points made in each individual essay. Instead, I will attempt to highlight some of the key features of this volume.

## Approaching Law through Lived Experience

Given that the author was formally trained in law, sociology, and gender studies, it is unsurprising that the essays adopt an approach that straddles these various disciplines. To reduce the approach

## BOOK REVIEWS

**Law, Justice and Human Rights in India: Short Reflections** by Kalpana Kannabiran, Hyderabad: Orient Blackswan, 2021; pp 416, ₹1,500.

adopted in these essays to an “interdisciplinary” method, I think, would be to do them a disservice. Where an interdisciplinary scholar might look at law from the vantage point of, say, sociology, the essays in this book take a different starting point: an understanding of a lived experience that is rooted in looking at the structural violence of society. This approach comes out most starkly in an essay that intervened in the debates around caste and race that took place in the run up to the World Conference against Racism that took place in Durban in 2001. Kannabiran notes that, in arguing that caste and race were not similar, the Government of India used sociological categories. Instead, in highlighting the work of Dalit activists, she argues that we must pay attention to lived experiences to highlight the commonalities between caste discrimination and racism.

Similarly, in an essay seeking to draw commonalities between the trials of Pussy Riot in Russia to the “Pink Chaddi campaign” or “Slut Walks” in India, Kannabiran eschews received views of understanding feminist movements, and instead seeks to highlight what the unruliness of these movements can do in defence of democracy. This fore-fronting of a lived-experiential approach extends to Kannabiran's critique of legal texts as well. For instance, in an article criticising the *M Nagaraj and Others v Union of India* judgment that placed the “creamy layer” at the heart of reservation jurisprudence, the author looks at the way in which this amorphous idea,

that lacks roots in reality, operates in public discourse to deny the reality of caste discrimination.

## Place of Emotion

This emphasis on approaching law from the vantage point of lived experience involves another shift in approach: looking at law through emotion. As the author notes in the introduction, looking at law from the ground up

was based on a recognition that empathy and a self-reflexive approach to social location and questions of privilege were indispensable to writing in a deeply graded and unequal society. Emotion, therefore came to occupy a central place in my exploration of law. (p 1)

For example, the author's anger is searing in her assessment of the Laxmanpur Bathe massacre case—where members of the Ranvir Sena were acquitted of killing 58 Dalit men, women, and children. In another article, the author argues that the Andhra Pradesh (Telangana Area) Eunuchs Act—a legislation that mandated the “registration and control” of members of the transgender community, is unconstitutional and ought to be repealed. Here, what comes across strongly is the author's concern for the transgender community and, in particular, the ways in which the legislation has led to their criminalisation. In another article titled “We Shall Not Be Silenced” on the attacks against minorities and the impunity with which the current government operates, the mood is one of defiance.

This attention to emotion is not just meant for one's approach to thinking about the place of law in society, but ought to ground the practitioners of law as well. In an essay about the idea of “constitutional morality,” the author argues that “judicial empathy” is a necessary requirement for the act of judging in a violent, exclusionary society (p 59). In Part ix of the book, the author takes on one of the issues facing women in the legal profession—sexual harassment. In a context where women lawyers are regularly harassed—some to the point of committing suicide—the author argues

that the legal professional associations are out of step with core constitutional values.

At the core of the book lies the idea of hope—a hope that the law and the Constitution will live up to their promise of creating a more just and equitable society. It also hopes that those charged with working with the law—such as lawyers and judges—will seek to embody the radical change that the Constitution could bring about.

**A Commitment to Public Speech**

This hope is not only evident in the tone of the individual pieces, but also in the form that this volume takes. This book, comprising op-ed-length articles, is premised on the idea that public writing and speech can make a change for the better. Instead of writing in the style required of an academic journal, which speaks to particular audiences, this volume contains

short opinion pieces that built bridges, opened out debates and conversations around the making of law, critiqued judicial

deliberations of law and rights, opened up a space for public discourse on dissent, and provided this alternative space for an expansion of deliberative dialogue. (p 2)

These articles have been written with a hope that they can simultaneously create the space for public debate and to intervene in those public discussions.

This commitment to creating and intervening in public debates can also be seen in how the articles have been curated. They are not arranged in a chronological order, but appear in such a way as to create a dialogue within the book, enabling the reader to get a sense of the different facets of a particular idea. For instance, the section on free speech traverses a number of different issues: the ability of Dalit intellectuals to speak freely without police interference; the threats to free speech from within the university; the threat to free speech from the judiciary; and, in writing about the assassination of Gauri Lankesh and the threats to Kancha Ilaiah, the

violence against which the freedom of speech is claimed.

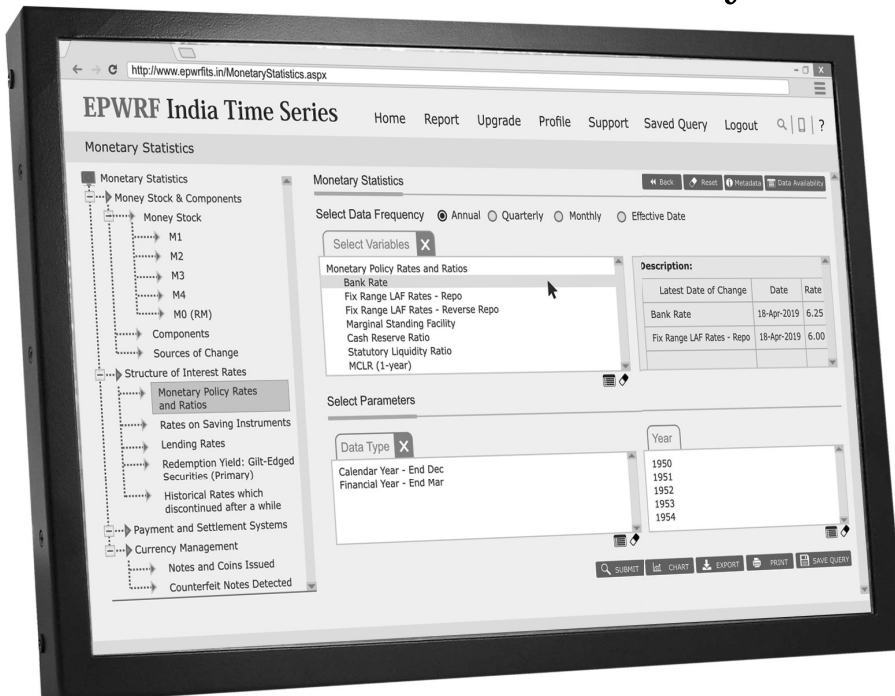
At the heart of this book is an understanding that India’s society is not as it should be and that it can be better. While many chapters in the book are aimed at persuading readers to live up to the promise of the Constitution, this commitment to think about how things can get better is the most evident in the last section of the book.

**Writing for the Future**

These articles were written largely after the present government was voted into power. The main issue that these articles seek to answer is how one can maintain hope in a climate where fundamental rights are under threat and minorities face a precarious existence.

The author argues that one way to do this is to keep one’s memory alive. We must keep alive the memory of the violence of the present historical moment—the lynching in Dadri; the forced suicide

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of Rohith Vemula; instances of state-supported mass violence, whether in Gujarat of 2002 or Delhi of 2020; and the attacks by police on universities. We must remember the struggles of people like Radhika Vemula, Gauri Lankesh, Safoora Zargar, and G N Saibaba. These memories are not about preserving the past, but about reimagining the future. The book argues that the path towards

this better future is, I believe, through a commitment to public discourse and valuing of speech and dissent, even in the darkest of times.

This book itself performs a memorialisation for the future. At a time when public discourse is devalued through over-populated television panels, or when WhatsApp forwards compete for space with newspaper op-eds, one wonders

about the ability of public writing to intervene in public debates. Nevertheless, one way of valuing this book is to imagine reading it for posterity—to know that as India's state devoured its people and society turned against itself, there were those who refused to remain silent.

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