



Women and law: Critical feminist perspectives

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BOOK REVIEW

Women and law: Critical feminist perspectives, edited by Kalpana Kannabiran.
New Delhi, SAGE Publications, 2014, 305 pp., US\$55.00 (hardback), ISBN
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Women and Law, edited by Kalpana Kannabiran, is a collection of 11 essays that map the engagement of women and law in India. The book debunks the myth of gender neutrality in law because, although there may be enormous progress in women equality around the world, the legal resistance against women's equal rights still continues, particularly in India. Having said that, the tone of gender neutrality in law is actually a misnomer, considering the patriarchal nature of the legal system and the cultural view of women being subordinate to men.

From the western viewpoint, this book is a wake-up call. Much has been done to elevate the role of women in society and to recognize that their rights are human rights. However, while women in the West are already enjoying some form of equality in terms of domestic and economic rights, women's rights in India still have far to go. The writers in this book have shown this struggle and the persistence of women and activists who continually seek reforms in legislation that touches their lives. Although most of the essays were originally published in 2009 (which begs the question of possible updates), the theme of women and law certainly catches the discerning eye of anyone who wants to delve further into women issues.

This collection of essays is limited in its scope as it focuses solely on the quality of the relationship between women and law in India. The relevant issues around women are dealt with meticulously and, although it does not pretend to be exhaustive, it is in all likelihood a comprehensive study of women and law in the region. For easy browsing, a summary of each essay is introduced in the first few pages of the book.

Most of the essays have been published elsewhere before. The issues are approached from feminist perspectives. This does not mean, however, that these are treated aggressively at the expense of men's rights. The first of the essays is Indira Jaising's "Bringing Rights Home: Review of the Campaign for a Law on Domestic Violence." This charts the development of the 2005 Act that protects women from domestic violence and the problems encountered in its

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implementation. The passage of the Act was particularly onerous because of “a consistent denial of the existence of domestic violence against women and a refusal to address the issue” (13). Its eventual enactment was a victory but it still struggles to address the dispossession of women from their homes. Jaing revisits how domestic violence eventually became legally recognized, but still laments that its recognition alone does not necessarily end violence at home and via access to the law; instead, it created a “backlash” (29) where women who do seek their rights were accused of “misusing the law” (29). However, there is room for optimism as the law that protects women, albeit in its infancy, is now starting to benefit women in India.

In “Conjugality, Property, Morality and Maintenance” (32), Flavia Agnes argues for economic security and further legal protection in the distribution of property when marriage comes to an end. The vulnerability of women, with respect to their economic rights and entitlements, is highlighted as it corresponds with the dictates of morality. It shows that claims for post-marriage maintenance and financial support may be easily hindered by counter-claims of adultery and sexual immorality. The onus thus lies on the woman to disprove such allegations, causing her further humiliation.

Sagari R Ramdas in “Women, Forestspace and the Law: Transgressing the Boundaries” (59) and Meera Velayudhan in “Women’s Rights and Entitlement to Land in South Asia: Changing Forms of Engagements” (86) reflect on women’s rights to land among the Adivasi communities in South Asia in general. This is particularly thought provoking, in that that only less than two percent of women in India have ownership rights to land. Many women may have access to land via the rights of their fathers or brothers, but actual control of the land is still denied to them. Velayudhan asserts that although there may be other claims of ownership rights, there is a notable disparity in law.

Unpaid work is the concern in Padmini Swaminathan’s “Outside the Realm of Protective Legislation: The Saga of Unpaid Work in India” (115). The writer emphasizes the failure of the law to fully recognize the economic contribution of women. Unpaid work at home and in the domestic sector is not only disadvantageous to women, but it also perpetuates their relegation to domestic work as women’s work and therefore continue to remain unpaid.

Meanwhile, D Nagasaila examines gender equality in the workplace in her essay “Gender Equality at Workplace: A Frozen Agenda” (143). It is pointed out here that there are only a handful of legislations that deal with women in the workplace and much of these hardly empower women at all. The writer argues for inclusion of women in trade unions and collective bargaining platforms and not to rely heavily on courts for legal relief. This is putting women in the heart of the participative process, given the assumption that they see themselves as equal to men, both in terms of their work and negotiation skills. This is women’s empowerment. However, there is also much to be said about establishing solid legislation that protects women in the workplace and making sure that this is effective so that the women themselves are empowered to place themselves in

collective bargaining positions. The writer recognizes this and points out that the equality agenda may also be able to help.

Kalpana Kannabiran's essay "Judicial Meanderings in Patriarchal Thickets: Litigating Sex Discrimination in India" (172) explores extensively the digressive tendency of the judicial system on the issue of sex discrimination. It highlights arbitrary application of the law by the courts, such as where it is not deemed discriminatory if a woman's salary is reduced because she was erroneously paid equal to men but discriminatory if a man is denied promotion for a post designed for women. Kannabiran points out the need to redefine sex, update legal language, and overhaul constitutional interpretations.

Shruti Pandey's "Women's Health and Law in India: Trends of Hope and Despair" (206) touches on women's health concerns and examines the patchy legislation associated with this issue. It discusses case studies to illustrate the danger of independent legislations on different aspects of health issues that affect the common rights of women. It also details the conflict between the need for a universal health care legislation against "market and profit-driven health care" (232).

Anita Ghai and Rachana Johri, on the other hand, focus centrally on maternal health and women's choice around the issue of foetal testing for sex and disability selection in their essay "Prenatal Diagnosis: Where Do We Draw the Line?" (240). The writers argue that choice, as espoused by the law on prenatal diagnosis, is "socially constructed and contextually located" (240) and that prenatal testing does not amplify women's choices. It is worth noting that medical ethics and the reliability of technology itself is not given relevance here. Perhaps, this would open up a can of worms, but given that this essay was first published in 2008, medical technology may have improved since then. However, this essay picks up on the fear that free choice may potentially result in a possibility of "designer babies" (260). This is a valid question but one that legislation must address extensively because, at the end of the day, a woman's choice, provided it is informed, means complete autonomy over her own body.

Anita Tiphagne's "Women and State Violence: Where is Justice?" (274) is a compelling portrayal of violence against women perpetrated by the state, with examples from the hunt of Veerappan. It vividly illustrates the intrinsically crooked justice system that allows women to be tortured under false and made-up charges.

This last essay aptly sums up the whole book: that all the issues that touch women's lives have legal underpinnings and the inequality and injustice that women in India are undergoing can be described in one word—violence. It would seem that law in India has not moved much beyond the norm of patriarchy. It continues to discriminate women and after 30 or so years of activism, pressure, and negotiation to change the law, much still needs to be done and only a ripple has so far been achieved, but a ripple nonetheless.

Notes on contributor

Zandra GREEN was Co-Director of the first Gender and Development Centre in Caraga Region, Philippines. She was a lecturer at St Paul University, Surigao. She now resides in England where she gained her law degree. She currently works for a local authority in the edge of the Peak District.