

IN this new book by Flavia Agnes, much of the analysis is devoted to exploring how and why the economic rights and power of women are affected by the personal laws of the various religious communities.

Agnes makes good use of her background as an activist and lawyer specialising in women's rights to draw widely from legal, academic, community and media sources. Her insightful overview of the origins and alterations of Indian personal laws shows how gender discrimination prevails in their interpretation and application despite constitutional guarantees of equality.

She argues that a strategy to improve women's economic rights in the family must appreciate how the actual implementation of personal law is itself heavily influenced by the political conflicts in India that exploit differences among the various religions and cultures. Agnes concludes that the Hindu Right makes its claims that India needs to abolish the personal laws of minorities because they are antithetical to gender equality, while really intending to use the differences between the Hindu Code Bills and the Anglo-Indian derived Muslim personal laws as a part of their struggle for political power. The Hindu Right criticises sexual discrimination within minority personal laws, while failing to interrogate Hindu personal law, and demands a uniform civil code of a similar type to the Hindu Code Bills, purportedly to liberate minority women.

Agnes describes the present juncture as a political stalemate for women's rights advocates dedicated to an affirmation of secularism as well as to a recognition of the differences among women, regarding the dilemmas that arise for women belonging to a minority constituency to dispute the authority of their community's personal laws. How can they challenge sexist personal laws without unwittingly aligning themselves with fundamentalists who are seeking to

BOOK REVIEW

Law and Gender Inequality

The Politics of Women's Rights in India

By Flavia Agnes

Oxford University Press, 1999, pp 250, Rs 495

Review: ○ Maneesha Deckha

harm their community, but at the same time build a large enough consensus within their group of affiliation, and in the larger society, to improve their situation as women? Her text is aimed at suggesting practical measures to dissolve this complicated stalemate in a way that addresses gender inequality in family property relationships while recognising the diverse concerns that these women face.

Agnes structures her argument into four parts. She first provides an account of precolonial and colonial legal structures which gives the reader a sense of their constructedness, and attendant mutability, starting with how various communities look upon family relationships. A brief overview imparts a sense of the plurality of factors other than religion by which communities adjudicate disputes about family property. She then discusses how, for political reasons, colonial lawmakers glossed over this plurality, categorised family property relationships as primarily legal matters to be governed by the colonial state's own versions of each group's religious laws, and facilitated the construction of an Anglo-Indian amalgam that has come to be known as 'personal law' for the various religious groupings in India.

In the second section, Agnes examines the progress - or lack thereof - of personal law reform of colonial statutes with respect to Hindus and Muslims after independence. She

explores both the positive and problematic effects of gender justice litigation. For example, Agnes touches on the communal undertones of recent judgments that popularise the view of minority rights as intrinsically anti-women.

In part three, Agnes applies the elements of her critique to briefly examine the legal significance of the Parsi and Christian community. Here, Agnes discusses the political reasons why Parsis and Christians had their own distinct personal laws whereas Buddhists, Jains, Sikhs and Jews did not.

Finally, Agnes outlines and provides criticism of model drafts of personal law reforms submitted by various parties over the last decade. She concludes with tentative suggestions to craft a reform platform that eludes the dichotomy which pits gender justice against minority rights, and seems to favour a strategy that does not attempt to erase religion just yet from the terrain of personal laws.

Although there is no dearth of writing on the subjects Agnes canvasses, this contribution enriches the emerging body of Indian feminist legal theory. Her charting of the evolution of personal laws illustrates the unstated and regressive political agendas often lurking behind the purported women's rights purposes of personal laws and their reform. For example, the reader learns of the

progressive nature of various provisions of precolonial pluralistic laws and practices with respect to women's rights, and the ways they were regressively altered during colonialism.

This data seriously undermines the British claim that colonialism was justified as a civilising mission to save Hindu women from their "barbaric" religious practices. The same information also enables the reader to confidently challenge similar claims currently emanating from the Hindu Right (and the West) vis-a-vis Muslim women and their supposed supremely discriminatory and sexist religion: '

"It is not intended to negate the fact that the customary practices, as well as the doctrinal precepts of the pre-colonial Indian society contained several anti-women stipulations. But the scriptures were not statutes and contained several contradictions and ambiguities both internally within each authority, as well as between the different authorities within a region. Further, the language and the context of these texts was open to several interpretations leading to diverse customs within a pluralistic society. Hence, it would be logical to infer that the customs and interpretations were not uniformly anti-women and that there were spaces for negotiating women's rights.

The English translations of the original texts had already subverted the context and meaning of these precepts. The anti-women biases and the orientalist approaches of the translators would also have coloured the translations. Within the new litigation fora, the coloured opinions expressed in these translated texts became definite legal principles of universal application. Published in law journals and relied upon in subsequent litigations, the most negative aspects of Hindu and

Muslim laws were highlighted and over a period of time became the settled infallible principles of Hindu and Muslim family law.

Many a times, the ancient texts were used mainly to co-opt the anti-women provisions of English matrimonial statutes. The application of the medieval European (Christian) remedy of restitution of conjugal rights (which was incorporated in the English matrimonial statutes in 1857), to both Muslims and Hindus in India by reinterpreting their ancient legal texts is one concrete example of this new trend.

Subversion of women's economic rights upon marriage, i.e., the Hindu woman's right to *stridhana* and the Muslim woman's right to *mehr* (both of which could include immovable properties) to the English concept of maintenance provides another example. The introduction of the English principle of widow's limited estate and the concept of "reversioner" (to whom the property would revert back upon the death of the widow) is a third example of this trend." (pp. 63-64)

With these and other examples, Agnes provides the facts to dispel long-standing myths about the backwardness of Hindu and Muslim laws in the area of gender equality. A second important merit of the work is its attention to devising effective steps to escape the stalemate confronting advocates today. As well as providing the informational tools to disarm the arguments of colonial and communal apologists, Agnes inspects the model drafts of legislative reform submitted by various state and civic actors such as women and lawyers groups, succinctly summarising the strengths and weaknesses of each. She is mindful of the need to revamp capitalist economic relationships - a formidable task - for the social position of most

Indian women to improve, but also suggests immediately implementable strategies that do not depend on a broad restructuring of Indian economic systems which can have a positive effect in the current situation for women in families where property actually exists. Instead of simply critiquing unjust laws, Agnes focuses on the practical work of creating just legal codes, a combination that is all too rare.

Agnes also allots significant attention to the personal laws of communities other than Hindus and Muslims, which is another pleasing and distinguishing trait. Further, although Agnes does not engage in a deep discursive analysis of the points she makes, such as the communal undertones of many recent important judgments, or the perils of an overly simplistic reliance on a merely formal framework of gender equality for recasting the legal aspects of marriage, she does seek to redefine feminist and other efforts at reform of personal law without disregarding the need for theory-making in this project. The end result is that her work will appeal to a wide cross-section of the reading public.

To be sure, closer editing would tidy the text a great deal. Agnes also seems to assume her readers' acceptance of certain of the points articulated, such as the desirability of substantive versus formal equality, before they are fully developed. Although her discussion never seems stunted or hurried, an extended version of some of her arguments would make them clearer and more persuasive to a reader less sympathetic to her interpretations, or one less familiar with feminist theories. Also, given the breadth of her overview of the evolution of personal laws, a table charting their metamorphoses for each religious sect discussed would be helpful to the reader as a reference while reading and thereafter.

Still, Agnes presents a cogent argument that is engaging, accessible and a solid read. □