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## REVIEW ESSAY

# GENDER FAULTLINES OF LEGAL LIBERALISM AND THE ADVANCE OF THE CONTEMPORARY RIGHT: THE CASE OF INDIA<sup>®</sup>

SUBVERSIVE SITES: FEMINIST ENGAGEMENTS WITH  
LAW IN INDIA

RATNA KAPUR & BRENDA COSSMAN

(New Delhi: Sage, 1996) 352 pages

BY RADHIKA DESAI\*

Ratna Kapur and Brenda Cossman's joint work hitherto comments generally on the legal and constitutional implications of the rise of the Hindu Right in India and specifically as they relate to women.<sup>1</sup> The work is already distinguished by a keen historical understanding of Indian law and discernment about what is at stake: the fate of India's enduring, but hardly flawless, liberal democratic constitutional polity. *Subversive Sites*<sup>2</sup> represents an extension and deepening of this progressive and feminist engagement. The book's fine and thorough research, as evinced in extensive and careful notes, places the Indian women's movement's engagement with the law and the perplexities with which it confronts Indian feminism in the historical perspective of the working of colonial and independent Indian law. Only such an account is capable of demonstrating the historical relationship

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<sup>1</sup> See in particular R. Kapur & B. Cossman, "Communalising Gender/Engendering Community: Women, Legal Discourse and Saffron Agenda" *Econ. & Pol. Wkly.* (24 April 1993) WS-35, and R. Kapur & B. Cossman "Secularism: Benchmarked by Hindu Right" *Econ. & Pol. Wkly.* (21 September 1996) 2613.

<sup>2</sup> R. Kapur & B.A. Cossman, *Subversive Sites: Feminist Engagements with Law in India* (New Delhi: Sage, 1996).

between the formatively-flawed liberalism of the Indian state and constitution on gender issues (and related ones of cultural difference), and the contemporary challenge the Hindu Right represents by advancing along precisely these fractures of Indian liberalism.

The authors bring a fertile combination of scholarly understanding and practical engagement to their task. Ratna Kapur is a lawyer and co-director of the Centre for Feminist Legal Research in New Delhi who has also been a visiting professor at the National Law School, and is engaged in training legal activists and in legal literacy. Brenda Cossman, of Osgoode Hall Law School, York University, directs the Institute of Feminist Legal Studies. The progressive, liberal, and feminist commitments of *Subversive Sites* enable an awareness of the historicity and contextuality of law and prevent it from minimizing the complexity and scale of either the problems or the solutions both of which the law, as they clearly see, has represented for Indian feminists. Even in its recourse to post-structuralism to comprehend the contingency and partiality of our knowledge and to help theorize the complex constitution of women's agency through intersecting and multiple discourses,<sup>3</sup> *Subversive Sites* steers clear of post-structuralism's incubus of political ambiguity and, for the most part, of textual turbidity.

*Subversive Sites* combines, then, a highly qualified authorship with a rare intellectual ambition. As such, I would argue, it should arouse interest well beyond Indianist and legalist audiences. Previously, the effort to integrate the modern Indian experience into broader understandings of the dynamics of modern capitalist societies has been effectively thwarted by a pervasive Indian exceptionalism rooted, unforgivably, in an exoticization, not to speak of orientalizing, of its specificities. The dominant trend of scholarship about India is one in which "[t]he persistence of the democratic form of government ... and the adaptations of that form [since independence] are often treated in isolation from each other." As a result, "[i]nnovative adaptations of democracy ... are treated as signs of degeneration and decay and are blamed on the absence of a democratic tradition and political culture."<sup>4</sup> Lamentably for scholarship, moreover, this has prevented the Indian experience "from being a source of reflection and enlightenment about the pathologies of the western [and generally non-Indian] ... social

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<sup>3</sup>*Ibid.* at 33-35.

<sup>4</sup> J. Lele, "A Welfare State in Crisis? Reflections on the Indira Rajiv Era," in N.K. Choudhry & S. Mansur, eds., *The Indira-Rajiv Years* (Toronto: Centre for South Asian Studies, University of Toronto, 1994) 39.

formation[s].”<sup>5</sup> Kapur and Cossman, in contrast, rightly take the liberal democratic and constitutional character of the Indian polity seriously. In doing so, they enable critical scholars to learn about and from Indian experience. The aspect of it which forms the subject of the book is ominously relevant well beyond India’s borders.

Feminists and progressives everywhere have registered the threats of extreme right forces, themselves of differing strengths in different countries. Less noticed is the more uniformly pervasive emergence, in the wake of the neo-liberal new Right, of similar forms of conservatism and illiberalism within mainstream discourses. They focus primarily on culture without, of course, entirely abandoning neo-liberal economic themes. Indeed, they build upon, supplement, and occlude them as necessary. While pegged on nationally specific concrete issues in each case, and therefore at first glance quite different, ideologically these forms of conservatism and illiberalism are united by an attack on the structures and practices of a grossly undertheorized and therefore vulnerable progressive liberalism. It is on the one hand a majoritarian attack on *cultural* difference disguised as a defence of liberal values and practices (e.g., the attack on “political correctness” so familiar in the English-speaking world) and on the other, a re-subordination of women, in new socio-economic conditions, in the guise of a valorizing and naturalizing of *gender* difference. The close relationship between the extreme and mainstream forms of this emergent right discourse is particularly clear in the Indian Hindu Right. In its ideological and programmatic oscillation between the extremists within its fold and the lure of power through a “mainstreaming” of its discourse, the Hindu Right is poised precisely between these two equally dangerous forms of authoritarian conservatism. These various national right discourses also share structural similarities arising from similarities of the terrains on which they have arisen,<sup>6</sup> the tasks they face,<sup>7</sup> and the social forces they

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<sup>5</sup> J. Lele, “Orientalism and the Social Sciences,” in C. A. Breckenridge & P. van der Veer, eds., *Orientalism and the Postcolonial Predicament: Perspectives on South Asia* (Philadelphia: University of Pennsylvania Press, 1994) 45 at 56.

<sup>6</sup> A certain institutional and discursive embeddedness of liberalism is an example.

<sup>7</sup> For example, reinforcing patriarchy in new conditions, especially those in which extensive participation of women in the labour force must now be a given, and establishing majoritarian cultural identities.

represent: a broad swath of professional and business middle classes increasingly resentful of political assertions from below.<sup>8</sup>

Insofar as this Right must often operate, as in India, on a terrain of already established liberal and democratic institutions, its distinctive engagement with these institutions demands understanding, both comparatively and with an eye to each national historical specificity. The history of the Right is, after all, a history defined by neither organizational nor theoretical continuities, though some recurring thematics can also be discerned.<sup>9</sup> Rather, it is defined precisely by opportunistic denaturing of existing institutions and discourses with a view to the exigencies of the times and to the tasks it is called upon to perform at given historical conjunctures. In going about this, the Right exploits and lays bare the limitations of liberal and progressive institutions and forces. These are processes that must be understood anew in each historical phase of the consolidation of the Right and they also raise anew important questions about the strategies progressive forces must use against these threats in each national context. Necessarily, these must involve not a simple-minded defence of the existing (already flawed) laws and institutions, nor a reliance on them to hold the fort against the right (in which they are apt to fail and in failure, to disillusion progressives into various dangerous forms of illiberalism of their own), but a more fundamental strategy reintegrating them to the purposes of further progressive social change, clear-eyed about their potential and historical flaws and limitations. What is the nature of the Right as it is reconstituting itself today? In particular, what challenges does it present for feminism? What is the terrain on which it operates and what specific weaknesses of the liberal order, in particular its legal form, and progressive forces does it exploit? And finally, given the lessons of the past, what strategies, in particular what legal strategies, can and should be employed against these forces by feminists and progressives? These are the questions *Subversive Sites* asks about the Indian case. And I think I could fairly say to progressives everywhere, as Marx said to Germans who complacently believed that the depredations of industrial capitalist development described in *Capital*

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<sup>8</sup> S. Zizek, "Multiculturalism, or, the Cultural Logic of Multinational Capitalism" (September-October 1997) 225 *New Left Rev.* 28; T. Brass, "Moral Economists, Subalterns, New Social Movements and the (Re-) Emergence of a (Post-) Modernised (Middle) Peasant" (1991) 18 *J. Peasant Stud.* 173; and T. Brass, "The Agrarian Myth, the 'New' Populism and the 'New' Right" *Econ. & Pol. Wkly.* (25 January 1997) PE-27.

<sup>9</sup> See J.Z. Muller, ed., *Conservatism: An Anthology of Social and Political Thought from David Hume to the Present* (Princeton: Princeton University Press, 1997).

only concerned England, "*De te fabula narratur!*"—the story is about you.

Drawing on the most insightful analyses of the Hindu Right in India, Kapur and Cossman see it involved in a "struggle for ideological hegemony [which] includes an effort to rearticulate an identity for women which is thoroughly imbued with the discourses of family and tradition and yet thoroughly rooted in the material conditions of the late twentieth century."<sup>10</sup> Kapur and Cossman do not mistake the "religious" or "fundamentalist" archaic character of the Hindu Right for the chief source of its reactionary authoritarianism, but correctly focus on its cultural majoritarianism, in which, continuing the colonial legacy, culture is collapsed into religion. Cultural majoritarianism is actually articulated as a purer "secularism" and has become disturbingly "mainstream," deploying apparently liberal arguments in a contest over the meaning of the central liberal ordering principles of the Indian polity, such as secularism and equality, thereby seeking to move them decisively to the right. Indeed, the section entitled "Women and the New Tradition,"<sup>11</sup> relying on some of the best Indian feminist legal and historical research,<sup>12</sup> reveals the complex modernity of the Hindu Right which appropriates the liberal language of equality and women's rights including that to paid employment in creating a "modern but not western"<sup>13</sup> identity for Indian women.<sup>14</sup> Like forces of the Right elsewhere, the Hindu Right also freely appropriates "feminist" issues like violence against women and "obscenity" regulations.

The Hindu Right's chief and legal demand for a Uniform Civil Code (UCC) would dissolve the admittedly unsatisfactory regime of different personal laws for different religious communities. Although usually regarded as a legacy of a form of colonial rule that rested centrally on dividing the major religious communities from each other, it is actually a more complex product of modern India's own community,

<sup>10</sup> *Supra* note 2 at 274-75.

<sup>11</sup> *Ibid.* at 265-73.

<sup>12</sup> That of Urvashi Butalia, Amrita Chhachhi, Uma Chakravarty, Lata Mani, Kum Kum Sangari, Tanika Sarkar, Rajeshwari Sunderrajan, Sudesh Vaid and others.

<sup>13</sup> *Supra* note 2 at 267.

<sup>14</sup> Similar aspects of the Right's discourse elsewhere largely remain unremarked. But see B. Campbell, *The Iron Ladies: Why Do Women Vote Tory?* (London: Virago, 1987). In the Indian case, Tanika Sarkar's pioneering work—T. Sarkar, "The Woman as Communal Subject: Rashtriyasevika Samiti and the Ram Janmabhoomi Movement" *Econ. & Pol. Wkly.* (31 August 1991) 2057—on which this book relies, must be mentioned, as must the collection she edited with Urvashi Butalia, T. Sarkar & U. Butalia, eds., *Women and the Hindu Right* (New Delhi: Kali for Women, 1995).

gender, and class structures and their colonial underdevelopment. The Indian *Constitution*<sup>15</sup> itself regards this as a temporary measure, providing in its *Directive Principles of State Policy*<sup>16</sup> that they eventually be replaced by a UCC, a provision which aims to direct the further evolution of Indian society in a more liberal direction. However, instead of replacing it with a progressive code including urgently-needed provisions for effective gender parity, the Hindu Right would establish a UCC which “would be based most closely on existing [elite] Hindu norms and practices,”<sup>17</sup> while denying formal equality to women by retaining the heavy patriarchal bias of the existing regime of the supposedly “reformed” but in fact<sup>18</sup> highly-discriminatory Hindu personal laws. Kapur and Cossman also neatly show the Hindu Right’s demand for a UCC can appear fairly mainstream precisely because it actually exploits already-existing flaws in the legal regime:

The demand for a Uniform Civil Code is articulated within the discourse of formal equality. ... When the Hindu Right argues that all women must be treated equally, they mean that Muslim women should be treated the same as Hindu women. ... [Dominant traditions in Indian law, as much as the Hindu Right’s proposals] are based on treating women differently than men. Women are different than men and need to be protected from men. The discourse of equality is at one and the same time being used to reinforce the idea that all women are or should be the same, as well as the idea that women are not and should not be the same as men. Two models of equality converge to allow the Hindu Right to delegitimise the recognition of religious and cultural difference without challenging the assertion of natural gender difference.<sup>19</sup>

Nehru’s hailing of this reform as revolutionary in symbol, “the outstanding achievement” of his time, tended to obscure the extent to which this reform was symbolic rather than substantial, which is precisely what the conservatives intended. As one member of the old guard, who laboured to ensure that the “reform” remained well within the limits of orthodoxy, commented: “what is important is that henceforward daughters would have a *sense of property* irrespective of what actual property she would get under the law.”<sup>20</sup> That this reform also affords the dominant Hindu community the luxury of an air of liberal superiority

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<sup>15</sup> *Constitution of India* (1950).

<sup>16</sup> *Ibid.* Part IV.

<sup>17</sup> *Supra* note 2 at 261.

<sup>18</sup> This is the case on all fronts—marriage, divorce, maintenance, adoption, inheritance.

<sup>19</sup> *Supra* note 2 at 256-57.

<sup>20</sup> R. Som, “Jawaharlal Nehru and the Hindu Code: A Victory of Symbol over Substance” (1994) 28 *Mod. Asian Stud.* 165 at 191-92 [emphasis in original]. See the article for a discussion on the limitations of the “reform” of Hindu laws and the Hindu Civil Code and its history.

over other “unreformed” communities, in particular Muslims, is the corresponding flaw in the dominant discourse also exploited by the Hindu Right. It can argue that the extension of this Hindu code to other religious communities would be an advance towards a more authentic secularism while burying questions of gender equality.

In this book, structured rather like a Russian doll with three sets of arguments each nestled inside another, Kapur and Cossman’s arguments about the Hindu Right are only the innermost. They are contained within, and made fully comprehensible only by their argument about the hegemonic discourse regarding women in India which governs the law’s relationship with women. This relationship involves not only “laws that explicitly discriminate against women” but also those “that have been designed for women’s benefit,” and not only the content of the law regulating women in India but also its working even in “attempts to address women’s subordination through the law.”<sup>21</sup> These pre-existing limitations leave the door open to the depredations proposed by the Hindu Right; the “ideological appeal of the Hindu Right lies in the extent to which it deploys this already hegemonic ideology, which ... deeply imbue[s] the legal regulation of women.”<sup>22</sup>

Kapur and Cossman argue that there is a “dominant familial ideology” which “shapes the legal regulation of women” morally, where “women are constituted as, and judged in accordance with the standards of, loyal ... self-sacrificing wives,” and economically, where “women are constituted as economically dependent” in a way which extends to “the legal regulation of women in the labour market and even to the (de)regulation of women in the new economic policies.”<sup>23</sup> This commendably simple and clear argument serves to make the subject of women’s status in India and its relationship to the law both more comprehensible in its specificity and comparable to other national cases.<sup>24</sup> It achieves this within the broader historical and theoretical understanding of the distinction between public and private in modern capitalist societies as it also underlines the similarity of the Right’s exploitation of the gender limitations of established legal discourse.

Of course, the Indian situation also has its specificity: “In India, the nuclear family is not the dominant ideological form,” but “the joint

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<sup>21</sup> *Supra* note 2 at 16.

<sup>22</sup> *Ibid.* at 274.

<sup>23</sup> *Ibid.* at 15. See also at 147-51.

<sup>24</sup> See, for example, M. Barrett & M. McIntosh, *The Anti-Social Family* (London: Verso, 1982).



family” which is supposed to include “parents, sons, their wives and children and unmarried daughters.”<sup>25</sup> Unsurprisingly, the modern legal entrenchment of this ideology is a colonial artifact, traceable to Orientalism: “Sir Henry Maine ... believed that he had discovered in India a living example of the patriarchal family in ancient times ... held together by subjection to the eldest living ascendant father, grandfather or great-grandfather.”<sup>26</sup> Equally unsurprisingly, like dominant familial ideologies elsewhere, this one too functions as a repressive ideal imposed over widely different realities: “A.M. Shah’s studies on the family in India have suggested that this joint family was not in fact the more prevalent form of household structure in the past, particularly in rural areas,” and it “may have been more prevalent in traditional urban areas.”<sup>27</sup>

Other studies have revealed that there are in India “as many as eleven different family types” and that

the majority of Indians do not live in joint families, but rather in either joint or supplemental nuclear families, that is nuclear families with at least one additional adult member such as an elderly parent or an unmarried daughter [and that t]here has been an enormous increase in female headed households ... [which] now constitute 30-35 percent of rural households...<sup>28</sup>

In Indian law the ideology of the joint family enforces women’s subordinate position by constructing them as weak and in need of protection, formally equal but getting different treatment because they are not the “same” as men. Kapur and Cossman work out their argument through a discussion of the gamut of legal areas relating to women: marriage, inheritance, employment, pornography, and so on. It can perhaps be sampled through a brief look at one—inheritance laws.

Governed by assumptions about women’s economic dependence within a patriarchal and patrilineal joint family, the law is marked by a denial of even formal equal rights. Whereas the Hindu Right, fully exploiting the symbolic value of the “reform” of Hindu personal laws, has tended to focus on the limitations of, in particular, Muslim personal laws, Kapur and Cossman, not only point to the still glaring discrimination against women in Hindu laws, but also elaborate usefully the feminist important argument that the law of succession, like many other laws “discriminates against women as daughters and wives” across

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<sup>25</sup> *Supra* note 2 at 91.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.* at 92.

<sup>28</sup> *Ibid.*

virtually all personal laws.<sup>29</sup> This argument shifts the discussion of the issue out of the mire of the comparative “progressiveness” or otherwise of this or that personal law and religious community which, in any case, risks running afoul of the Hindu Right’s discourse, and points to the more pervasive national flaws on which progressives and feminists must focus.

The *Hindu Succession Act, 1956*<sup>30</sup> had been successfully limited by its opponents from granting equal property rights to women: it would be “equality run mad” and “lead to a breakdown of the joint Hindu family.” It justified the discrimination in a denatured equality argument claiming that “women had equal rights under Hindu Law, but that the Hindu conception of sex equality involved dissimilarity, not identity.”<sup>31</sup> So while the *Act* gave women full ownership rights in property they inherited from their husbands, rather than the mere life interest they had hitherto had, and daughters were given equal rights as sons in their father’s self-acquired estate, several other discriminations remained. The assumption that the joint Hindu family consists only of the male line whose members acquire an interest in ancestral property at birth was left in place, while also discriminating against women in regard to the proportionally preponderant ancestral property.

The assumption of patrilocality of the joint Hindu family gives female heirs no rights in relation to the family dwelling house. Moreover, the gender-neutral granting of full testamentary power to all persons over their property “in practice ... can be and often is used to disinherit females.”<sup>32</sup> Laws governing succession to the property of Hindu women also serve “to guarantee that property continues to be inherited through the male line from which it came—either back to her father’s family or back to her husband’s family.”<sup>33</sup>

With the exception of Parsi personal law, the personal laws of other religious communities also discriminate against women on the matter of succession. In the laws of the Hanafi School, for example, which govern the majority of Indian (Sunni) Muslims, “the general

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<sup>29</sup> *Ibid.* at 133-34. This is not surprising in view of the dominant *Indian* family ideology which also governs non-personal and therefore religiously-unspecific laws affecting women such as those related to paid work.

<sup>30</sup> 1956, no. 30 (India).

<sup>31</sup> *Supra* note 2 at 56. See J.M. Everett, *Women and Social Change in India* (New Delhi: Heritage, 1979) at 176.

<sup>32</sup> *Ibid.* at 136. See B. Agarwal, *A Field of One’s Own: Gender and Law Rights in South Asia* (Cambridge: Cambridge University Press, 1994) at 215.

<sup>33</sup> *Supra* note 2 at 135-36.

principle is that the female heir will take half the share of the male” and there is an assumption that “women do not need as much property as men.”<sup>34</sup> What is common to all these laws is that the law

continues to be shaped by the patrilineal and patrilocal nature of the ideologically dominant family, and its assumptions of women’s economic dependency. The assumption that property should descend primarily through the male line has not been completely displaced. Nor has the assumption that married daughters become the economic responsibility of their husband’s families. Despite reforms to these laws, the rules of inheritance continue at some level to both assume and inscribe women’s economic dependency on some male member in the family—unmarried daughter on her father, wife in her husband and widow on her adult son(s).<sup>35</sup>

Moreover, across all personal laws, there is no recognition of marital property such that

[t]he contribution that the woman may have made to the marital relationship in terms of domestic labour and child care is not recognized as a contribution to property. ... Familial ideology defines these activities as the “natural” concern and obligation of women in their capacities as wives and mothers and not as the basis for any property entitlement.<sup>36</sup>

Judicial decisions have thwarted challenges to these discriminatory laws. For example, when the provision that a property inherited by a wife from her husband was to devolve upon her husband’s heirs was challenged on the grounds that it was discriminating—there being no reciprocal provision for the property a husband inherits from his wife—the challenge was rejected: “the court held that the rules were enacted with a clear intention of ensuring the continuity of the property within the husband’s line.”<sup>37</sup>

As is well known, the law, however discriminatory, acquires a large part of its legitimacy by actually working on its own terms. The “progressive” content of Indian law derives from a constitutional recognition of the special disabilities suffered by disadvantaged groups such as women (and the low castes and the tribes) and a commitment to rectify these through minimal compensatory action. However, the fact that it “*does not acknowledge* any moral responsibility for the grave social injustices perpetrated by the traditional oppression of women and the perpetuation of the caste system”<sup>38</sup> is exactly what leaves it open to the

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<sup>34</sup> *Ibid.* at 136-37. Christian law similarly discriminates against wives, but not daughters.

<sup>35</sup> *Ibid.* at 137.

<sup>36</sup> *Ibid.* at 139.

<sup>37</sup> *Ibid.* at 200.

<sup>38</sup> A. Mahanta, “The Indian State and Patriarchy” in T.V. Sathyamurthy, ed., *State and Nation in the Context of Social Change*, vol. 1 (Oxford: Oxford University Press, 1994) 90.

contemporary right-wing attack, like affirmative action everywhere nowadays. Thus, the assumptions of the economic dependency of women actually means that “the law treats female heirs as mothers preferentially to male heirs as fathers”<sup>39</sup> and through the obligation of heirs to maintain the dependents of the deceased, not forsaking them.<sup>40</sup>

Judicial decisions have upheld these small compensating privileges such as in sex discrimination challenges brought by men to the provision in the *Hindu Succession Act* which gives a female Hindu the right to absolute ownership of her property:

The court stated that “it may well be that in view of the inferior status enjoyed by the [sic] females, the legislature thought fit to put the [sic] females on a higher pedestal,” ... It further held that women as a class were different from men as a class and the legislature had merely removed the disability attaching to women. ... In the court’s view, as a special provision intended to benefit and protect women who have traditionally been discriminated against in terms of access to property, it was not open to Hindu males to challenge the provision as hostile discrimination.<sup>41</sup>

It will be clear from the foregoing that this book’s account of law is embedded in a rich understanding of the social and political context in which law operates and the political struggles, of which legal struggles are a part, which drive the historical evolution of the law. It is this sort of understanding which can provide some clear, if also necessarily complex, answers to one of the most enduring questions which has dogged feminists, not to speak of other progressives, everywhere: whether “the law can play [a role] in challenging existing social relations ... in the often quoted words of Audre Lorde, ... whether the master’s tools can be used to dismantle the master’s house.”<sup>42</sup> As Kapur and Cossman put it: “Is law a subversive site?”<sup>43</sup> The authors would answer with a tentative “yes it can be,” if feminists have first examined “the extent to which law constitutes and sustains the subordination of women. We cannot, in other words, explore the possibilities of law without first, or at least simultaneously, engaging with the limitations of law.”<sup>44</sup> But simply admitting and accounting for the role of the law in perpetuating women’s subordination is only the beginning and addresses only a certain rhetoric about the irredeemably patriarchal character of modern

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<sup>39</sup> *Supra* note 2 at 135.

<sup>40</sup> *Ibid.* at 136.

<sup>41</sup> *Ibid.* at 198-99.

<sup>42</sup> *Ibid.* at 286.

<sup>43</sup> *Ibid.* at 11.

<sup>44</sup> *Ibid.* at 74.

states and laws. The question is also prompted by the more pervasive feeling in the Indian women's movement, as in others, that although generations of women and feminists have looked to the law to transform women's situation, all too little seems to have altered in women's day to day lives.<sup>45</sup>

A profusion of feminist debates have attempted to comprehend the inability of women's formal legal equality to lead to substantive equality. Reviewing these, Kapur and Cossman argue that this failure is inaccurately construed as a failure of the law; it is because the protagonists in these debates are burdened by an "under-theorization of the role of law in social change."<sup>46</sup> The centrality of the law in modern organized efforts to improve women's status can hardly be disputed. The three broad successive phases of the movements for women's rights in India correspond to the three types of discourses about women and law—protectionism, equality and patriarchy. Each of these has left a layer of sediment in the soil of Indian law: "the [male] social reformers in the nineteenth century with a protectionist approach, in seeking protective legislation for women; the women in the independence movement with an equality approach, in seeking equality rights and the elimination of discrimination; and the contemporary women's approach with a patriarchy approach."<sup>47</sup>

The discussion practically demonstrates Kapur and Cossman's thesis that law is "an important site of discursive struggle ... where contests over the meaning of equality, of secularism, of political liberty are fought out and where dominant meanings come to inform not only judicial approaches, but also come to shape the way we understand the world that we live in."<sup>48</sup> These larger political projects and contests define and limit the possibilities for legal change. For example, the religious articulation of the question of the legitimacy of colonial rule in the first half of the nineteenth century meant that the discourses of both the reformers and their religious opponents was informed by religious

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<sup>45</sup> *Ibid.* at 11. However, the reasons why this is so are open to dispute: "Is it because law is inherently conservative and designed to resist the progressive agendas of feminist visionaries? Is it because law is one of the many discourses which operate to sustain and naturalize unequal power relations? Has law been too central in our struggles, or have we not fully exploited its potential? Are we rightly disillusioned with law, or only with the unrealistic expectations we have of it?" *Ibid.* at 21.

<sup>46</sup> *Ibid.* at 21.

<sup>47</sup> *Ibid.* at 44.

<sup>48</sup> *Ibid.* at 41-42.

particularism and legal reform was channelled into a protectionism toward women:

Women were not assumed to be equal to men; indeed, the discourse of equality was strikingly absent from the debates, as were the voices of women themselves. Social reformers sought to eliminate customs and practices that they considered to be evils perpetrated on women. They sought protective forms of legislation, prohibiting these practices.<sup>49</sup>

Kapur and Cossman urge, against the grain of fashionable post-modern feminist disillusionment with the potential of the law, that, conceived broadly as essential elements of broader political struggles and projects, the law—legislation, litigation and legal literacy—can be seen as an important instrument of struggle. Through a wide-ranging and sensitive discussion of the pitfalls of the law, the authors insist that legal strategies should not be abandoned to the Right. There are a whole series of problems that have historically plagued feminist and generally progressive engagement with the law. These include the possibility of failure and disillusionment, the problem of accountability, the potential erasure of specificities which the dominant liberal legal discourse contains, the difficulty of evolving legal strategies in situations of multiple and intersecting oppressions, and the legalization of struggles. All these and others, the authors carefully argue, can be addressed by a critical awareness of them, to which the final chapter so well contributes. The message is that legal solutions are possible and necessary to progressive change and worth working towards. But these emerge from broader political understandings of the issues and possibilities, forged in discussions with potential allies and, like political struggles generally, offer no guarantee of success but which cannot, therefore, be eschewed.

Kapur and Cossman's message is an important one when the situation of the disadvantaged the world over is plagued with twin dangers: first, that of an ascendant Right discourse powerfully waging political and legal struggle to move established discourses and laws to the right; and second, that of a fashionable post-modernist disdain for liberal values and political and legal struggles in favour of equally-fashionable "social" movements of dubious effectiveness against it.

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<sup>49</sup> *Ibid.* at 52.

