3 The state and the women’s movement

Instabilities in the discourse of ‘rights’ in India

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Recent international conferences, such as those held at Cairo (1994), Vienna (1994), and Beijing (1995) . . . give credibility to the local struggles by women’s groups and human rights groups. These international initiatives, however, also have a contradictory kind of impact. The homogenising impulse of the global articulations have obscured the specificities of micro-level situations. The ripple-effect created by the globalization of women’s rights has carried with it a conception of justice which is static and singular, corresponding to the perception of woman as a universal category.

(Anveshi Law Committee 1997: 454–5)

This chapter has its origins in a public lecture on violence, women and the state in India, written for an Australian audience during the 1992 India campaign undertaken by Amnesty International. My central purpose, that of publicizing women’s complex predicament in relation to the state and juridical rights in India, was on that occasion – as on many such occasions – made considerably more difficult by the prior necessity to re-frame the popular perception of ‘West’ as emancipatory individualism, and ‘India’ as hierarchical collectivity. Speaking to an audience that identified itself with a ‘West’ that has historically associated the third world with victimhood, India with caste, and Indianness with inequality and hierarchy, there was no direct route to focusing on the extreme victimhood of torture and rape: if the ‘third world’ is always-already victim, then what was unique to torture and rape? Similarly, if ‘Indian womanhood’ has been defined for western audiences since the days of Christian missions and the colonial state, as a life lived in eternal subordination, then how can one possibly elicit the historically changing and evolving nature of Indian women’s issues?

The task of shifting such perceptions is no easy one. Such polarized perceptions are as much the province of anti-colonial nationalisms as they are of western orientalism. Within the polarities induced by the complicated history of interaction between western colonialism and third world nationalisms, women’s access to justice and equity becomes all but impossible. Women who insist on their rights as individuals can be discredited as ‘western’, while women’s sense of themselves as social subjects – as members of collective identities of caste, kinship or religion – is reshaped and defined by nationalist politics. For women who directly experience the pincer-like grip of the colonialist/nationalist dialectic, the re-negotiation of modernity is an extraordinarily complicated matter. The figure of the sati, or the immolated widow, has ominously re-surfaced in India as a symbol of the spiritual potency of the devout and chaste Hindu wife, and implicitly, as a rallying point for a resurgent Hindu nation. While there have been extensive feminist campaigns to make illegal not only the actual burning of the widow but the glorification of these events, a significant number of women have also marched in support of sati.1 In its rallies and speeches, the Sati Dharna Raksha Samiti (translatable as the Committee for the Protection of Sati-as-Dharma), singles out for attack westernized individuals, and especially, the asad kism ki auraten, that is, the free/imoral women who oppose the Hindu dharma (Sangari and Vaid 1996: 264).2

Western feminist adjudications of human rights discourse remain divided between a liberal framework that sees the absence of women from the discourse as a simple omission, politically difficult to address, but theoretically unproblematic (Kerr 1993; Tomasevski 1993; cf. Siivies Chapter 1; Jolly Chapter 6), and more sophisticated post-structuralist feminist agendas whose extreme scepticism of the legacies of Enlightenment allows them at best a purely instrumentalist (‘strategic’) attitude towards the discourse of rights. Neither perspective is able to engage in a fruitful redefinition or expansion of key concepts such as ‘rights’, despite the fact that they continue to be central to women’s struggles in diverse locations across the world. My examination of Indian feminism suggests a different problematic, one which is at once engaged in attempting to realize the emancipatory promises of modernity, and which precisely through that engagement, delineates the critical fault lines and contradictions of modernity (Ram 1993, 1998).3 Western feminist deconstructions of philosophical traditions have raised several important issues: the relation between equality and sexual difference, between the universal and the specific, between ‘the human’ (modelled on the male subject) and ‘woman’ (modelled on that which diverges from the normative subject). For women who have experienced colonization, the critical agendas to be brought to bear on the concepts of modernity need to be more, not less, wide-ranging than this. For feminists in this situation, their interventions, if they are not to succumb to the delegitimization of being labelled ‘western’ and unrepresentative, are necessarily involved in the deconstruction of anatonomies such as East versus West, collective versus individual, hierarchy versus equality, modernity (as western colonialist) versus tradition (as nationalist heritage). The precise impact of colonization is varied. For immigrant women in the West, as for indigenous women living under settler colonial conditions, the weight of
racism and western representations is direct and unmediated. For women in India, on the other hand, it is mediated by fifty years of independent nation statehood, and by the long durée of colonialism's impact on relations of class, caste, ethnicity and religion.

It is precisely this feature that gives the Indian women's movement its peculiar importance for international campaigns that seek to bring about laws that constrain nation states to recognize women's rights as part of human rights. The Indian women's movement has accumulated twenty years of practical and theoretical experience in analyzing the interpenetration of juridical rights, a liberal democratic framework and a complex and diverse set of social relations of power. India is rarely discussed in representations of 'Asian democracy', demonstrating yet again that it is criteria of market-driven economic growth - not the professed criteria of liberal democracy - which primarily render an Asian society of significance to the West.

My argument is not that India has fulfilled the promise of liberal democratic values, but rather that here we have a polity where the familiar autonomies of liberal democracy as western and hierarchical collectivity as eastern cannot be held in place. Such polarities are readily exploited by regimes that purport to represent 'Asianness' to the world. In states like Singapore and Malaysia, paternalistic and authoritarian communitarianism combined with market-based economic growth represent 'Asian democracy'. Liberal democratic values can thus be discredited as 'western' preoccupations. They can be treated by these regimes as something external (cf. Stivens Chapter 1; Altman Chapter 10). In India, on the other hand, to the extent that liberal individualist notions of rights are formally enshrined in the parliament and law courts, and are taken up by diverse social movements and institutions, the instabilities of meaning occasioned by the gulf between liberalism and socially conferred identities reverberate internally, permeating the entire political process. In India, the contradictions are too easy to discern. The rights of citizenship posit an individual as the subject who makes political choices, yet electoral 'vote blocs' constitute afresh the collective identities of caste, religion, and region. Constitutional and juridical legislation address the individual as bearing the right to equality, freedom from discrimination on the grounds of religion, race, caste or gender, yet violations of these rights proceed to address and interpellate the individual primarily as a member of a social grouping.

These instabilities have not operated exclusively to undermine the notion of rights. The instabilities have worked just as effectively to broaden the concept of rights in favour of more collective, and more finely-tuned interpretations of power. The very salience of social relations and collectivities which can operate to reinforce hierarchy has meant that western discourses - such as discourses of democracy and rights - are re-constituted by local civil rights activists, the press, anti-

caste movements, and the women's movement, often in sociologically imaginative ways.

The Indian women's movement

The emergence of what has come to be known as 'the autonomous women's movement' in India is, in the reflexive understanding of Indian feminists (e.g. Kumar 1998; Gandhi and Shah 1992; John 1996a, 1996b), the product of a very diverse set of political struggles. The anti-colonial nationalist struggle is evidently one of the most potent of historical forces to have politically mobilized women in the subcontinent, but of particular importance after independence were the traditions of left movements, both parliamentary and extra-parliamentary. In the 1970s, immediately prior to the emergence of specifically 'autonomous' women’s organizations, there were a number of local struggles that were of particular significance: a movement against alcohol led by women in the landless labouring classes of Maharashtra (the 'Shakada movement'), the urban 'anti-price rise movement' in Bombay, and initiatives such as SEWA (Self Employed Women's Association) in Gujarat which brought together trade union activism with Gandhian traditions of collective social initiatives in changing the lives of women working in the economy's informal sector (Gandhi and Shah 1992; Kumar 1998).

The very necessity for a term such as 'autonomous' women's movement signals one of the greatest challenges confronting the movement: that of wresting a specifically gender-based politics from the already constituted politics of class and caste, and, more generally, from the politics of social reform. Socialist movements, of course, have long grappled with the difficulties of forging a new class-based identity out of existing collective identities of religion or caste. The challenges are far greater, however, when a movement desires to articulate a specifically female collective set of interests. Women are always found in relationships of dependency, but also of intimacy, with social groupings of families, kin groups, religion, and class. 'The concept of woman was not really part of an available vocabulary', writes Sara Suleri, looking back on her childhood and youth in Pakistan from her present vantage point as Yale Professor of English literature: 'we were too busy for that, just living, and conducting precise negotiations with what it meant to be a sister or a child or a wife or a mother or a servant' (Suleri 1990: 1).

For Suleri, the gap between these social identities of the subcontinent and the premises of western feminism represents a 'failed conversation' (1990: 2). Indian feminism, on the other hand, has negotiated this gap by partially re-shaping the premises of western liberalism. I say partially, because Indian feminism retains from liberalism an antipathy that pervades modernity itself: a distrust of certain kinds of collective identity, such as religion and caste, against which modernity has defined its own
forms of identity. However, Indian feminism has taken as its starting point the most collectivist of political traditions made available by modernity, that of the socialist left. Identities of class, particularly that of the labouring poor, have been inseparable from the earliest 'autonomous' feminist interventions in the public political arena (John 1996a; 1996b).

One could draw lessons for the struggle to secure women's rights as 'human rights' from any number of arenas of feminist struggle in India. I will limit myself here to an argument based on two broad areas of feminist campaigns which are also characteristic of two chronological phases in the women's movement: campaigns in the first phase focus on rape and dowry deaths; campaigns in the second phase focus on issues of Hindu religious nationalism and the victimization of religious minorities.

Class, caste and violence against women: Indian feminism's break with liberal and left discourses on women

Feminist campaigns in the late 1970s began with the issue of rape. The issue was not, however, understood exclusively as male violence against women (cf. Mackie Chapter 2). Instead, the emergent women's movement renewed its left orientation in the particularities of the rape experiences it naturally gravitated towards. The two women whose experience of rape became the focus of early campaigns were poor and of low status. Mathura was 'tribal' and Rameez Bee was a member of the minority Muslim community in India. In addition, both were raped by police. Their experience of rape dramatized not only the politics of class inequality, but the role of the state in forging relations of power and inequality. In 1978, Rameez Bee was gang-raped by four policemen in the city of Hyderabad. Her husband, a rickshaw puller, protested, and was beaten to death. In the second case that eventually became the basis for a nation-wide feminist campaign, the two policemen who raped Mathura were brought to trial and convicted in the High Court, but the conviction was overturned by the Supreme Court, and the men were acquitted.

Feminists were not necessarily the first to draw attention to these incidents. The rape of Rameez Bee was taken up by the Hyderabad women's group in part because their attention, attuned as it was to mass-based issues, was drawn to the incident by popular local outrage in Hyderabad. A crowd of 22,000 set fire to the local police station. The police treated the gathering as an unlawful assembly, opened fire and killed nine people. The whole city was placed under curfew, and a commission of inquiry was appointed. Rameez Bee was supported by left parties as well as by a strong local feminist organization, Stree Shakhti Sanghatana (Organization for Women's Power). The commission found the police guilty of rape and murder, and recommended prosecution. However, the Sessions Court of another state, Karnataka, acquitted the police on the grounds that the evidence recorded in a commission of enquiry cannot be used as evidence in a prosecution. At this point, a women's group filed a review petition and compelled the state government to prefer an appeal, which was dismissed. Two members of the original Hyderabad Stree Shakhti group write:

Looking back now, it seems that the focus was clearer in opposition to the state than in cases of family or organizational violence because the state was perceived as a secular institution that was biased, if at all, only along class lines. The perception of the state as carrying and reinforcing communal and caste identities was not clearly understood or articulated at that point. (Kannabiran and Kannabiran 1997: 271)

In retrospect, in the wake of the upsurge of religious nationalism, the fact that Rameez was a member of the minority Muslim community looms as all-important in feminist analyses (Kannabiran 1996). The early focus of the women's movement was not, however, on this crucial issue of communal politics during the Rameez Bee case campaigns, despite the fact that some of the public support for her was coming from a Muslim fundamentalist organization, the Majlis Itehadul Muslimeen (Muslim Unity Organization).

The unavailability of these later insights at the time does not minimize the significance of what the women's organizations were already accomplishing. The left had addressed police rape as an effect of the state's role in supporting class oppression. The very nature of the state's mode of handling custodial rape required feminists to attend to more than the economic relations of class dependence in understanding why the state did not provide justice to victims of rape. It required feminists to pay attention to the symbolic construction of gender, and to the particular place assigned to a construction of female sexuality in the constitution of wider collectivities. The Supreme Court's acquittal of the policemen who raped Mathura was based on their ability to cast aspersions on Mathura's moral character. They were able to cite the lack of evidence of physical resistance as proof that the rape never occurred. The judges pointed to the fact that Mathura had a boyfriend as evidence that she was a 'loose' woman who could not, by definition, be raped (Kumar 1993: 129). In the case of Rameez Bee, too, the state commission of inquiry made attempts to establish that her marriage was illegal, that she had married several times earlier, that she was a prostitute by profession, and that her husband was a pimp (Kannabiran 1996).

The terms employed by a moral discourse of this nature evidently allowed the state to effectively bypass the moment of rape itself. In
investigating the terms of this moral discourse, women’s organizations
began to elucidate the systematic framework of power and meaning
which linked the state’s modernized version of patriarchy to other, prior
and more enduring forms of patriarchal forms of power and authority.
The fact that these discoveries concerned a state that had set out to forge
a new beginning, a post-colonial, modern and progressive force in society,
gave these investigations their peculiarly subversive force.

It did not require feminists to produce a collectivist understanding of
rape. Rape in India clearly conveys to all concerned the desire of the
aggressor – usually conceived of as a member of a social category – to use
the female body as the vehicle by which her family, her clan, her caste
and religious group can all be punished and taught the lesson that it is
not within their power to act as custodian of the terms on which her body
may be used. This understanding is reflected in the categories of rape
employed in public discourses of the media: landlord rape, where the
landlord exercises the right to rape ‘his’ female wage workers or the
wives of male wage workers; caste rape, in which women of lower castes or
‘tribal’ membership are raped. Rape by state personnel such as the police
and army are linked to these older collective categories of rape through
a common framework of meaning which constructs the female body as a
fragile carrier of the values of purity and chastity. Attempts by the state to
establish the fact that victims of rape had already ‘fallen’ from the status
of women of honour draw on these pre-existing understandings, which
make a woman who has to work in the public sphere by virtue of her class
and caste status into an emblem of her caste’s inability to keep her virtu-
ously secluded. Feminist investigations began to elicit the common
framework which binds the moment of rape to perfectly everyday social
constructions of collective control over the female body in the interests
of preserving caste and class hierarchy. These range from daily controls
over female mobility and visibility, to the group’s control over her sexual-
ity and fertility by attempting to ensure her marriage as a virgin to a
partner appropriately matched in status, caste and religion (Chowdhry
1998; Chakravarty 1996; Jayawardena and de Alwis 1996). In this context,
the common, spontaneous understanding of rape cannot but bypass the
injury to the woman, in favour of concentrating on the social categories
to which the aggressor and the victim belong.

We find these common understandings re-confirmed in popular ideas
of what might be entailed in securing justice for the woman. In local
organs of justice (e.g. in rural panchayats or village bodies of self-
government), and in the powerful representations of the film industry,
justice for the victim of rape is secured by the social collective pres-
suring the rapist to marry her. The assumption here is that the main
dilemma confronting the raped woman is the loss of membership in her
assigned social collective. These popular ideas of the nature of
victimhood for the woman who is raped also shape the nature of
collective female (and, in some cases, even feminist) demands for justice.
A Tamil women’s liberation group, the Rural Women’s Liberation
Movement, parades the rapist in front of local women, who demand that he
marry the woman or provide for her some means of subsistence such
as land (Gandhi and Shah 1991: 43).

We may utilize the precise nuances of these demands for justice in
order to gain further insight into the nature of dominant social relations
on the subcontinent. The demands vary by class. The demands of rural
women’s groups, for instance, do not primarily rest on an understanding
of rape as sex without consent. Such an understanding of rape is, in any
case, only present in the weakest of forms, even in western liberal democ-
racies where women’s individualism as citizens is only partially detached
from their dependent status as daughters, wives and inferiors (Pateman
1980). From the perspective of rural Indian women, the distinction
between rape and their everyday experience of sexual relations within
marriage – particularly their first experiences of sex as a new bride – is
not based on the absence or presence of their consent. Such a form of
consent is simply not solicited in either instance. The distinction is based
rather on the absence or presence of the support (economic, emotional
and social) extended by wider groupings of kin, caste, and neighbor-
hood. The support is extended when sexual contact with the woman
consolidates the norms of group custodianship, and withheld when
sexual contact reveals a breach in group custodianship over women. In
challenging this system, the women of an organization such as the Rural
Women’s Liberation Movement ask that these forms of social support
remain extended to them even as victims of rape.

Urban women’s organizations, on the other hand, are heir to a consid-
erable history in which middle-class women have been the object and
(occasionally) the subject of public contestations over ‘western’ versus
‘Hindu’ conceptions of marriage. Controversies going back to the public
furore over the Rakhmabai case (1884–88) explicitly revolved around the
challenge posed by an educated upper-class woman named Rakhmabai
to the legal validity of marriages solemnized in childhood, without the
consent of the woman concerned (Kosambi 1996). Contemporary
middle-class women’s organizations are therefore able to draw on this
history in asking for a space in which the pain of rape can be heard as the
pain of the individual woman, and not as the trauma of her group. Such
a space is fragile but necessary in a society where rape is understood
primarily in its collective dimensions.

We need to take into account both kinds of conceptions of what it
might mean to secure justice for victims of rape, when re-framing human
rights discourse. The Indian campaigns raise the difficult question of
how it is possible to expect poor, labouring and minority women to be
able to separate their female experience from their experience as a
member of a disadvantaged group. Can a Mathura or a Rameeka Bee
experience rape by police other than as a woman who is regarded by police as a ‘tribal’ or a ‘Muslim’ or as one of the multitude of the poor? How can the fight for ‘women’s rights’, and by extension, for ‘human rights’ incorporate this radical difference internal to the very constitution of ‘woman’?

The urban women’s organizations and their demands for justice as victims of rape, on the other hand, problematize the communitarian versions of human rights discourse that many have found to be a characteristic of non-European cultures and also of minority groups, but which are also increasingly taken up by western communitarian critics of liberalization. Uncritical communitarian renditions of human rights threaten to bypass the woman in favour of the group all over again.

‘State custodianship’ and women: custodian of citizenship or custodian for ‘missing’ male authority?

Can we ask the state to act as custodian of a newly reformed version of human rights? What is the relationship between the culture of the state and the culture of the society at large? This is the question explored in this section, again utilizing political campaigns as the medium for doing so.

Even as women’s groups agitated and succeeded in gaining legal recognition for the ‘custodial rape’ (Kumar 1993: 137), feminist investigations into the patterns of violence by state personnel against women began to elaborate an ever-widening circle of power relations entailed in the phenomenon of ‘custodianship’. On the one hand, the state steps in wherever male custodianship is deemed to be missing or in need of reinforcement. As such, the state may step in to provide such women with ‘protection’ against the fallen status of ‘prostitute’ by placing them in remand homes. On the other hand, women attempting to escape from overt or covert coercion by their families fall into the category of ‘bad’ women; that is, women simply without male custodianship and patronage, judged therefore to be without morality. This overriding notion of morality, taken in conjunction with the role of the state as enforcer of law and order, has permitted a peculiar interpretation of the function of the state by male members of state personnel such as the police. Women stepping outside the bounds of the custodianship of patriarchal familial units are deemed immoral and therefore punishable by policemen. The civil liberties organization, the People’s Union of Democratic Rights, found that in Delhi several cases where police had raped women involved eloping couples.

[It was found that]... the victims had run away from home with the men they loved but whose marriages [sic] were not permitted by their families; that they had newly arrived in the city; and that the police, having stopped them, had used their ‘runaway’ status as a reason to separate them from their men and to rape them.

(Kumar 1993: 137)

Protection and punishment often seem to merge in the treatment meted out to women. A Calcutta women’s organization found that many women were in jail, indefinitely detained, for ‘wandering’, or for being ‘destitute’ (Gandhi and Shah 1992: 228). The jails in which women are placed either as punishment or as ‘protection’ provide fresh opportunities for enforcing patriarchal constructions of women’s bodies. Women’s prison testimonial in the prisons of West Bengal (Panjabi 1997) testify to the centrality of the ‘moral’ construction of women as chaste mothers entailed in the very modes of torture inflicted on women. Women are separated from their infants immediately after childbirth, stripped and raped in front of their children, and even forced to give birth under conditions that kill either baby or mother and infant. In torture, both pregnancy and maternity become transformed into new opportunities to force on the woman a stereotype of “ideal womanhood”, [while simultaneously] making it impossible for her to achieve it’ (Panjabi 1997: 157).

Equally, police complicity with enforcing the norms of caste and class patriarchy emerges in the form of non-interference when male heads of households and caste-based panchayats (juridical bodies of self-government) take action against couples who wish to exercise their own choice in marriage. Panchayats in rural north India, adjacent to the national capital, have ordered the killing of couples found guilty of inter-caste elopement. The police, themselves drawn from dominant upper castes, feel that ‘social issues must be resolved by the caste leaders or the caste panchayat and not the law of the land, which applies a different criterion of justice’ (Chowdary 1998).

Similar structures of complicity are linked to the seeming inability of the police to check the illegal occurrence of sati which has re-surfaced since 1981 among particular caste groups in Rajasthan. Despite the fact that these events are watched by thousands, ‘the movement of hastening crowds remains invisible to the police’ (Sangari and Vaid 1996: 256). Sangari and Vaid (1996) argue that the collective and public accounts of the event are constructed in full and conscious awareness of the weaknesses in the existing law, as well as in anticipation of the inability of the law to deal with community crime.

The revival of sati is not the first time the women’s movement has come up against the ramifications of the ideology of women sacrificing themselves for the welfare of their husbands and husbands’ families. In the 1970s, feminists interviewing women in jails came across the extraordinary phenomenon of women as ‘proxy convicts’:

the majority of those convicted for murder, theft and vagrancy were
They had highlighted the mutual implications of open violence and questions of ideology, representation and the cultural construction of gender. The campaigns of this period amply demonstrate the fact that the abuse of human rights is not only something that occurs at the moment of the torture, the beating or the rape. The ground is prepared for such moments by the way in which men and women are constituted as unequal and hierarchically related subjects, embedded in larger collectivities such as class and caste which are also hierarchical and unequal. Feminist investigations revealed that these collectivities generate constructions of a gender-specific version of ‘morality’, which visualize women as ‘moral’ only if their mobility is contained, their chaperoned, veiled, secluded, and kept in the custody of parents, brothers, husbands and sons. Women are ‘moral’, and therefore deserving of ‘protection’, only if in so far as they sacrifice themselves for the welfare and honour of the clan they are born into, or are married into. Collectively, these gender-based notions of morality make the notion of civil rights and citizenship a prerogative well out of the reach of women. The abuse of women’s bodies and spirits by the state, the police and the army build upon the pre-existing structure of familial custody of women’s bodies, within which they can be beaten, raped, and murdered with impunity. Equally, the campaigns highlighted the range of the everyday, ‘normal’ forms of control which annex women’s sexual and reproductive bodies to the demands of clan networking, patronage, alliance building, and paying the dues of caste and class subservience.

The campaigns directed early attention to the class-specific nature of patriarchal oppression. Rameez Bee and Mathura were judged ‘immoral’ by the police who raped them and by the state which stood in judgement over them because, as women from the labouring classes, their very mode of existence as workers in the public sphere violated the norms of the upper-caste secluded woman. The educated women who suffered abuse and murder at the hands of their aaffles in the affluent suburbs of the nation’s capital were trapped, on the other hand, by their normative dependence on a family structured by its position as upper-caste/middle-class transmitter of cultural and material capital.

Religious community as a site of female identity: challenge to both state and the women’s movement

I have argued that Indian feminism was able to successfully generate an analysis of gender that was able to do justice to the collective affiliation of women to classes and castes. Caste could be understood as a form of class power without doing too much violence to the category. The same is not true of collective identities based on religion. Identities based on religion have been understood by secularists, the left and civil libertarians, as well

serving sentences in proxy for their husbands or family. Most were extremely bitter because they realised that the sacrifice did not mean much to their matrimonial family which would forget or discard them on their return home.


Women’s extreme dependency on their degree of acceptance within the affinal home had long been a concern of feminist campaigns in Indian cities. The deaths of newly married brides, commonly known as ‘dowry deaths’, display a pattern of violence which strains any simple understanding of conjugal or domestic violence as that which is perpetrated by husbands against wives. The very nature of the kinship unit in the property classes exceeds the boundaries of the conjugal couple or the nuclear family. Feminist campaigns have highlighted the social and kin-based organization of female vulnerability in the middle class. Dowry deaths are orchestrated with the complicity of the husband, but the key actors in the long campaign of abuse and murder of the bride involve the aaffles or in-laws. The key unit is not the nuclear family, but the entire kinship structure which isolates the in-marrying bride from her natal family and makes her entirely reliant on the wishes of her aaffles for her well-being. Violence is already embedded in the symbolic construction of the group of wife-givers as the inferior party (the giver of gifts), and of the group of wife-takers as the superior party (the receiver of gifts).

Again, the state has proved complicit. Existing legislation prohibiting the giving or taking of dowry but not of ‘gifts’ has allowed the structure of violence to go unchallenged because dowry is understood commonly in terms of the ideology of the ‘gift’. Indeed, the virgin bride is the most important ‘gift’ of all, with both givers and receivers entitled to expect that she will, as a gift given to her husband’s kin group, be entirely absorbed into it. Such expectations actively shape judicial decisions where the place of domicile becomes an issue between aaffles and daughter-in-law. In a detailed review of judicial case law on marital disputes, Uberoi finds the judiciary repeatedly leans towards a view of marriage as sacramental, undermining the ‘contractually’ oriented reformulations of Hindu marriage law (Uberoi 1996).

Apart from highlighting the homelessness of women who wish to leave a violent affinal home, women’s groups instinctively drew on their left heritage to analyze the wider class dimensions of ‘dowry burning’. The campaigns highlighted the impact of commercial capitalism and competition on the values of the middle class, which was turning to dowry in order to add to ‘the immediate consumable family capital’ (Sri Sangharsh, Draft Manifesto, cited in Kumar 1993: 118).

The feminist campaigns of the 1970s and early 1980s had therefore already gone a considerable distance towards interrogating the connections between class, caste, the ‘domestic’ sphere, and the state.
as by the women’s movement, as symptoms of backwardness, a divisive legacy of colonialism, a mystification of class interests. Although one of the key organizations of the self-styled ‘Hindutva’ movement, the Rashtriya Swayamsevak Sangh (Organization for National Self-Help) has had a continuous existence over the last seventy years, the movement has spawned new organizations and increased its strength since the 1980s. The emergence of religion as a source of nationalist identity in the 1980s and 1990s has been answered by sectarian groups with a renewed criticism of the state for failing to provide adequate safeguards to the rights of religious minorities. However, religious nationalism has confronted Indian modernity with a more fundamental challenge than such demands will allow. The ‘Hindutva’ movement in India is a sophisticated discourse, not easily classifiable as traditionalist. The movement has increasingly appropriated the language of modernity, including its concepts of rights, citizenship and progress. The repercussions of this appropriation, coupled with the collapse of the Communist regimes, and the rise of globalized ‘liberalization’, have produced profound instabilities for social movements which have been working towards emancipation within the framework of modernity. The women’s movement, exemplary in this regard, has been directly affected.

In 1985, controversy erupted over ‘the Shah Bano case’. A Muslim woman, Shah Bano, had pursued her deserting husband for maintenance through the court system for ten years. The High Court found in her favour, and her husband appealed to the Supreme Court on the grounds that the High Court judgement violated the terms of Muslim personal law as stated by the shariat. The Supreme Court overruled his appeal, and found in favour of maintenance. The Bench also commented on the injustices to which women were subject under religion, and urged the government to frame a common civil code that would ‘help the cause of national integration’ (Supreme Court Judgement, cited Kumar 1993: 168). The terms of the judgement allowed the Hindu nationalist parties and groupings an opening from which to argue that cultural pluralism and secularism were harmful to national integrity. From this point onwards the gender question has been central to the rise of communalism (Hasan 1994: xviii-xix). In anticipation of the Supreme Court judgement, a Muslim League member of parliament introduced the Muslim Women’s Act in February 1986. The bill was designed to close off existing loopholes in the legislation that had allowed Muslim women like Shah Bano to seek redress under secular criminal law and to the Muslim women, more completely than before, to their families and to religious institutions for economic support. Meanwhile, the Hindu nationalists appropriated the platform of gender equality to argue that Muslims were backward and oppressive to women, and that the state was ‘pampering’ the Muslims by allowing them to enjoy an unqualified form of patriarchy. The edge to this charge is given by the fact that the state did introduce some reforms in Hindu religious law in 1956, with the Hindu Code Bill, and overrode vigorous opposition from religious spokesmen to allow inter-caste marriage, to enforce monogamy and to make divorce possible. The reform was partial. Marriage, divorce and inheritance continue to be governed by religious identity for those defined as ‘Hindus’, that is, for those who are not covered by Muslim or Christian personal law.

In this context of the upsurge of Hindu nationalism, Muslim religious leaders responded with militant fervour on behalf of an Islam under siege, making personal law the chosen marker of identity. Their discourse on identity was in fact contested, not only by the all-India women’s movement, but by secularists and liberals and educated women within the Muslim community. Such demarcs, however, were not taken seriously by those constructing ‘the Muslim vote’ for government purposes, and, against the backdrop of large scale conflict, the Muslim Women’s Bill was passed. Shah Bano, under pressure, ‘gave up the right she had fought for for so many years, asking the Supreme Court to record that she now stood against the petition they had upheld, and abjuring the maintenance the court had accorded her’ (Kumar 1993: 171).

In 1987, the women’s movement was confronted with the glorification of sati – by women as well as men – as the heroic ideal of the authentic spiritual Hindu woman, and, implicitly, of the newly assertive Hindu nation. In 1992, the Hindu nationalist parties scored a key victory by successfully demolishing a Muslim mosque, the Babri Masjid, which had become a symbol of re-claiming the nation from the usurping Muslim presence. Thousands of women came as celebratory witnesses or as participants in the demolition.

The challenge of religious identity to feminist identity has been insidious. Hindu nationalism produces the figure of the spiritual sati in order to de-legitimize feminism as western and inauthentic. However, it employs multiple strategies of de-legitimation. In usurping the demand for a uniform civil code, it has also taken over the very language, tactics and symbolic apparatus of the women’s movement, using it to undermine the equally democratic principle of minority rights (Kumar 1993; Agnes 1995; Banerjee 1995; Bacchetta 1994; 1996).

It is important, given the weight of colonialist representations of India, to recognize that these conflicts are not the result of immutable ‘religious’ hostilities, but are given shape by the conflicting meanings of modernity itself. Equality may be understood both as undifferentiated sameness and as the systematic privileging of disadvantaged groups. Given these conflicting meanings, tensions may erupt not just in India but wherever there is a backlash against social democratic states that have attempted to secure minority rights. Writing from my location in Australia, the current conflict over land rights legislation for the
Aboriginal people bears many similarities to the political crisis in India. Both Hindutva and the ‘Hansohnism’ of the One Nation Party speak an identical language of championing the democratic rights of a ‘neglected’ majority who stand for equality (understood as undifferentiated treatment by the state).

The nature of the challenge to the women’s movement is spelled out in Sarkar and Bhutalia’s introduction to a timely volume analyzing women’s participation in the Hindu right.

Politically and methodologically this assertive participation of women in right-wing campaigns, pulled many of our assumptions into a state of crisis, for we have always seen women as victims of violence rather than its perpetrators and we have always perceived their public, political activity and interest as a positive, liberating force... For we do have before us a large-scale movement among women of the right who bring with them an informed consent and agency, a militant activism.

(Sarkar and Bhutalia 1995: 3-4)

The intellectual responses of the women’s movement to this crisis of legitimacy have been diverse and divided. A common response, uniting different political strategies, has entailed a re-emphasis on history. What is at stake is an attempt to understand the constitution not only of the Indian post-colonial state, but of the sphere of ‘religion’ and ‘religious community’ in the sub-continent. The terms in which ‘personal law’, and the status of Muslims as a minority have been elaborated in post-colonial India are in striking continuity with an ethico-political discourse pioneered by the colonial state in India. This discourse separated religion from the purview and codification of the state, ostensibly in order to leave native society intact and governed by ‘religious’ law. At the same moment, by virtue of this separation itself, the field of religion was redefined. One of the effects of this redefinition was to cause religion to coincide with the ‘personal’ and the ‘familial’: the spheres of marriage, divorce, maintenance, succession to property, inheritance, the custody and guardianship of children and related matters. Not only did the sphere thus defined (and labelled as ‘personal law’) become static and curiously divorced from political processes, but the neutralization of religion in its public implications allowed the colonial state to locate issues of women’s inequality squarely within the sphere of ‘native backwardness’ (Mani 1989). At the same time, an exclusively upper-caste version of Hinduism, a version which excluded the diverse practices of ‘tribal’ and dalit groups, became codified as personal religious law (Mukhopadhyay 1994; Chhachhi 1994; Sangari 1995).  

At the level of scholarly historical reflection, there appears to be an emergent consensus that despite claims to secular tolerance, the Indian state has never transcended a Hindu imaginary. Perhaps one of the most striking feminist enquiries into the way religion and gender fused in the very founding manoeuvres of the post-colonial state is the work that has been done on ‘recovery’ of women after the Partition of the subcontinent into Pakistan and India. Menon and Bhasin (1996, 1998), as well as Bhutalia (1995), have documented the determination of the Indian state to bring back to India the women who had been abducted during the forced mass movement of refugees from one part of the subcontinent to the other. The ostensible motivation, concern for the safety and happiness of the women themselves, was overridden by the anxiety on the part of the state to uphold the boundaries of national honour. Even women who had successfully integrated themselves into their new lives were forcibly repatriated to India, their unborn children forcibly aborted, their new families torn asunder. In the previous section, I looked at the evidence for the state acting as the custodian for disrupted patriarchal authority. In the perspective supplied by the work on Partition, the nation-state itself appears to have been founded on moral custodianship over women at the very time that the constitution constructed women as citizens.

If there is an emergent consensus on the patriarchal construction of the nation in the nationalist imagination, this consensus is not matched by a uniformity of feminist responses towards the political crisis engineered by Hindu nationalists. Although the women’s movement demanded a uniform set of laws governing all women and men long before the political crisis, there are now profound dilemmas confronting the movement in its ability to extricate the demand for gender justice from the communalist discourses. Can a uniform civil code still be a feminist demand? If so, can it be fought for in the present political conjuncture? What should the contents of such a code consist of? Answers to these questions divide the women’s movement (Sangari 1995; Anveshi Law Committee 1997).

Underlying the specific controversies over legal uniformity is a broader disagreement over how far modernity, and the discourses of rights, citizenship, and secularism can provide an adequate framework for further emancipatory struggle. Furthermore, given that the Indian state itself was founded on the promise of modernity, any fundamental crisis in relation to modernity is immediately reflected in the assessment of the Indian state. The kinds of questions now being raised mirror the intimate relationship between the two. Should the women’s movement continue to engage with the state and pressure the state to live up to the unfulfilled promises of its founding charter (Menon 1996; Anveshi Law Committee 1997)? Can the language of rights and justice adequately represent the structures of violence that the women’s movement and the civil liberties movement have sought to highlight (Tharu 1995; Pandey 1991)? Have intellectual activists identified too closely with the perspective and interests of a nation state viewed as intrinsically progressive and reformable (Pandey 1991)?
To some intellectual activists, the discourses of modernity now stand as a marked category, shaped by the dominance of upper-caste, urban Hindu males. Moreover, in the post-Shah Bano era, feminists from the minority communities have alerted the women's movement to its own upper-caste, urban middle-class and implicitly Hindu culture (Agnes 1995), so that 'feminism' no longer symbolizes an unambiguously oppositional identity to be contrasted with religious identity. It has become difficult to discuss 'women' and 'women's rights' in abstraction from the further question as to whether we are discussing women who are members of a dominant upper-caste Hindu culture, or women who are members of minority Muslim and Christian populations.

To other feminist intellectual activists, the increasingly critical stance taken by many feminists towards the legacies of modernity is both unwarranted and debilitating. In an empirically sustained and closely argued examination, Sangari (1996) puts together the compelling evidence for both difference and sameness in the multitude of patriarchies that mark a complex and diverse social formation like that of India. She finds that the complexities of difference — born of caste, region, variable histories, and religious differences — are overridden by the complexities of interconnections and mutual entanglements between these multiple patriarchies. Such interconnections cannot be successfully opposed, she argues, by feminists duplicating among themselves the identities of caste and religion. She therefore calls on feminist and left groups not to retreat from 'a secular democratic agenda and from a commitment to common struggles' (Sangari 1996: 3294).

Such an affirmation of the values of modernity is, characteristically, tied to a more hopeful view of the state. In this view, the state is not simply upper-caste, masculine and Hindu. It is also the site of contradictory tendencies, some of which need to be strengthened at the expense of others. This is the view with which Kumar concludes her richly illustrated history of the women's movement from 1800 to 1990, entitled The History of Doing (Kumar 1993: 193).

The experience of 'race' and ethnic relations in western societies has shown women from minority communities that it is comparatively easier for women who belong to the dominant racial and ethnic group to affirm the values of universalism. However it is not only women from the majority Hindu community who argue in favour of the values of modernity in India. For many Muslim women, the discourse of equality, citizenship, and alliances across religious boundaries is a crucial resource, a means of placing pressure on the state and on society at large. Zoya Hasan, active in the Committee for the Protection of the Rights of Muslim Women during the campaign against the Muslim Women's Bill, and editor of the book Forging Identities: Gender, Communities and the State (1994), acknowledges the communist appropriation of the concept of equality as a means of undermining minority rights, but affirms that 'struggles for secularism and equality are nonetheless imperative for the entry of women into the realm of citizenship' (1994: xix). Like Kumar, she too views the state as 'demonstrating a dual and contradictory character', rather than as simply elaborating the power of Hindu upper castes. Zareena Bhatti, a Muslim sociologist and activist on labour issues affecting women in the informal sector, has opposed the ghettoization of Muslim women in India through her publications (Bhatti 1988), as well as by personal example. She speaks now of her despair at seeing feminists define themselves as 'Hindu' and turn their backs on the possibility of a common struggle for all women. These women are among a much wider social stratum of 'urban, employed and largely middle class' Muslim women who have ‘voiced a powerful demand for equal treatment’ (Hasan 1994: xvii).

Conclusion
The women's movement has striven, in its fight against inequality, to realize the emancipatory promises of modernity. In the course of these efforts, the movement has provided a critical perspective on the contradicoricness and limitations of modernity. In the broad sweep of its campaigns, the women's movement has consistently demonstrated the inadequacy of a purely formal, juridical concept of rights. Such constitutional rights can be fought for and won, while being completely undermined by the 'state within the state': that is, by the custodianship exercised over the bodies of women by family, clan, caste and religious group. Unless specifically challenged, a liberal democratic state can co-exist quite comfortably with a state culture that regards itself as responsible for sustaining the morality of group custodianship over women. We have seen that the Indian state performs this function either by non-intervention, as with sati and dowry deaths, or by actively intervening to fill any breach in male custodianship that arises in the course of conflict between groups. The police, the army, the parliament and the judiciary reflect this patriarchal morality. The women's movement has revealed the violence towards women that underpins the workings of such a morality, both in large-scale political events that mark the founding of the nation state, such as Partition, and in the micro-politics of everyday conflicts, such as over a woman’s desire to choose her own marriage partner.

In its first ten years of campaigns and scholarship, the women's movement played an active and confident role in exposing the contradictions of post-colonial modernity at the institutional level. I have suggested that Hindutva's ability to destabilize the women's movement is based in part on weaknesses in secular modern adjudications of religion. However, the destabilization is also due in part to the fact that after playing an active role in relation to the institutional contradictions of modernity, the movement has been placed in the more passive and traumatic role of having to confront contradictions.
which exist right at the very heart of the discourses of modernity itself. Concepts such as equality and sameness are being mobilized to defend privileges of religion, caste and gender, whereas it was once assumed that this was a language which could only be used to challenge these privileges. The language of modernity – of citizenship, rights, and gender equality – cannot; it would now seem, be used to expel these instabilities. Modernity cannot therefore perform the function of acting as a bulwark against power and inequality as it was once assumed, by the Indian women’s movement no less than by its western counterparts.

These instabilities and weaknesses of modernity, both at the institutional and the discursive level, go right to the heart of the human rights movement. The human rights movement can enrich itself by attending to these complex experiences which tell us where some of the fault lines of modernity are to be located. Equally, it is evident that there is no better way to locate these fault lines than in the very process of attempting to realize the emancipatory promises of modernity, even as these are reinterpreted by subordinate groups in diverse social locations.

Notes
I wish to thank the Australian Research Council for the Fellowship which funds the scholarship for this paper. I wish also to thank the participants in venues where earlier versions of this paper have been presented: "Translating: A Conference on the Role of Language in Cultural Debate", organized by the South Asian Studies Association and the National Centre for South Asian Studies at the Art Gallery of NSW, 4–7 July 1997, where I was able to present my summation to many of the Indian feminists whose work is represented in this paper; and at the weekly Colloquium series of the Anthropology Department, Macquarie University, 11 September 1997, where my departmental colleagues engaged in a lively discussion of this paper. The public address for Amnesty International was delivered along with other panel members at the Australian National University on 30 June 1992.

1 The commission has resulted in new legislation which prevents both sati and its worship, the Commission of Sati Prevention Act, 1987.
2 Dharma may be glossed as normative codes of righteousness which became particularly elaborated and established in the classic Sanskrit Vedic period from the first century AD onwards. For an adjudication by a historian on the relationship between the ‘Hinduism’ of Hindu nationalism and the historical evidence of the ancient period, see Thapar (1992).
3 I have examined in another paper the way in which the Indian women’s health movement has creatively expanded on the modern concepts of bodily autonomy and choice in contesting state and middle-class appropriations of these terms (Ram 1998).
4 Some of these strengths are not peculiarities of Indian social movements alone. Yash Gai (1995) has argued that resistance to human rights violation is typically pursued by the category of the group rather than the individual in India. Human rights along more communication lines are a common feature of other kinds of movements, such as struggles for indigenous rights and sovereignty (Wilson 1997; Merry 1997; Gledhill 1997).
5 I am indebted to Grevel’s thoughtful discussion (1994) of Suleri’s Meatless Days in making these remarks.
7 The term ‘tribal’ (‘adivasi’ or original settlers, in Hindi) is inherited from British census and ethnological classifications to designate a population who have historically been hunters and gatherers rather than settled cultivators. Subject to both marginalization and incorporation by caste society over the centuries, they have become a semi-proletarian grouping in capitalist India, still marked by differences in modes of social organization.
8 The translations of organizational names are my own, and therefore only approximate in meaning. The term shakti or power represents a feminist appropriation of Indian cosmology which attributes to women an inherent power that exceeds male control.
9 Popular understandings of what constitutes a radical or bold departure from these orthodox conventions also necessarily work within the terms supplied by this dominant discourse. See Sunder Rajan’s detailed analysis (1993) of a Tamil story, subsequently made into a film, in which the raped woman, rejected by her husband, shames the rapist by living with him. The rapist subsequently experiences a redemptive moral transformation. The film was widely regarded by many women and rural women activists I spoke to as a brave and positive representation of a woman’s agency in the face of rape.
11 The shari’ah is Islamic personal law based on the Qur’an.
12 The bill sought to make deserted wives reliant on wudh, boards, which are religious trusts.
13 Militant segments of castes previously designated as unclean and of low status are now reconstituting themselves as a movement of ‘dalit’, or ‘the oppressed’.
14 See also Dau (1995) commentary based on this body of research.
15 Given the limits of space, I have been unable to do justice to the diverse class strands of feminism in India. These are covered better in book-length treatments, e.g. Kumar (1998) and the pioneering treatment of women in the Telengana peasant movement by Sree Shakti Sanghatana (1989). See also my account of women in the poor fishing communities of south India (Ram 1991).
16 Personal communication, Delhi 1996.

Bibliography


4 Dead daughters, dissident sons, and human rights in China

Antonia Finnane

When the subject of human rights is raised in international contexts, words such as "Tibet", "Tiananmen" and more recently "Falun Gong", along with the names of prominent dissidents such as Wei Jingsheng, Harry Wu and Wang Dan, all spring quickly to mind. This may be due in part to the vexed state of human rights in China, but it is also attributable to the fact that discussion of human rights abuses has become a convenient way of talking about the so-called 'People's Republic', now a major player in global affairs. As the present chapter is being written, Australian media are carrying news of the repression of the Falun Gong sect alongside reports of a call by Australian Greens Senator Bob Brown for the Australian government to scrap human rights talks with China, following his visit to Tibet. 'Senator's Tibet call likely to anger Beijing', runs the headline, in a statement of the obvious (The Age, 29 July 1999).

The name Zhu Qingping, although also publicized in a human rights context, is perhaps less likely to be recalled. An illegal immigrant, Zhu became pregnant with her second child while in a holding centre in Australia. She failed to gain refugee status, but begged to be allowed to remain at least until the child's birth. Failing in this too, she was flown back to China when eight months pregnant and was apparently compelled to have an abortion (The Age, 8 June 1999). Independent Senator Brian Harradine raised Zhu's case on human rights grounds in the Federal Parliament in May 1999, and the Senate established a committee of Inquiry. The terms of reference, however, concerned decision-making processes in Australia itself rather than human rights in China. Certainly Zhu's fate provided no-one with grounds to call for the scrapping of the controversial human rights talks.

Tibet, with its Dalai Lama and issues of national sovereignty and cultural integrity, arguably offers more obvious case of 'human rights' abuses than that presented by the plight of Chinese women in their reproductive years, probably a majority of whom have undergone or have already undergone one or more involuntary abortions without the benefits of an anaesthetic. The former case encapsulates classic 'rights of man' issues, with their emphasis on freedom of thought, the press and association.