

Women and Colonial Law

This book introduces students of law and history to key colonial moments that have shaped women's legal status up to the present day. It introduces students and general readers to the critical events and legal decisions that determined the place of women under law. It also introduces readers to terms that are critical to understanding women's legal status in India today. In addition to bringing together the latest developments in Indian historical research with advances in feminist legal studies, it tracks the shifts and changes that have occurred, especially over the last 30 years, to feminist standpoints on women and law. Using examples and cases from different regions of India, it also weaves together a complex and nuanced account of colonial social history more generally.

Janaki Nair retired as a professor of History at the Centre for Historical Studies, Jawaharlal Nehru University, New Delhi, in 2020. She had also been associated with the Centre for Studies in Social Sciences, Kolkata, and the Madras Institute of Development Studies, Chennai. Her published works include *Miners and Millhands: Work Culture and Politics in Princely Mysore* (1998), *The Promise of the Metropolis: Bangalore's Twentieth Century* (2005) for which she won the New India Foundation Book Prize and *Mysore Modern: Rethinking the Region under Princely Rule* (2011–12). She has also published widely in national and international journals. Additionally, she has held visiting appointments at the University of California, Berkeley; University of Würzburg; German Historical Institute London; National Museum of Ethnology (Japan), Osaka; and Azim Premji University, Bengaluru.

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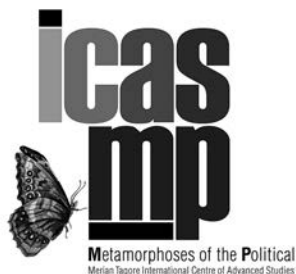
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A Feminist Social History

2nd Edition

Janaki Nair



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*To the memory of my mother, Vadasseri Kuttiparu Amma, for whom a knowledge
of rights, rather than duties, would have made a difference*

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Preface

Nothing short of a tectonic shift in feminist legal studies has occurred in the two decades since *Women and Law in Colonial India* was published in 1996. Where I had, at the end of the introduction to the original edition, lamented that a significant body of legal historical scholarship was yet to take shape, the intervening period has seen the emergence of a very sophisticated set of historical investigations which have uncovered not only new kinds of archives, but suggested innovative ways of interpreting old ones. In part, the scholarship has paralleled the extraordinary visibility of legal institutions and questions of law in determining the contours of gender justice and gender relations more generally. The new scholarship has had the effect of challenging some of the assumptions of the earlier edition, refining many of its enquiries and adding to the insights that it drew on.

The new historical investigations have been prompted in part by developments in three interlocking spheres: first, the concerns, disappointments and engagements of contemporary Indian feminism with the domain of law reform, including emerging disagreements between feminists themselves on the wisdom of expanding the domain of state law into greater areas of women's social lives, and possible alternatives that can be explored, given the limits of due processes; second, an increased legal literacy in Indian society more generally, including perverse and wilful use of the legal system as a weapon, and not always as an instrument of change; and, third, a broader set of political transformations that have made feminist understandings of women and law available to jurisprudential practice and to political readings of the place of law in matters of right versus faith, family versus individual, community versus women's rights, and so on. These are at times aligned with, while at others they remain disjunct from, feminist law reform and legal strategy.

In classrooms and seminars, streets and courtrooms alike, in two of India's most tumultuous decades, the relationship between women and the law has been

critiqued, redefined, redrawn and generally productively recharged. The massive public participation in the redrafting of the Criminal Law (Amendment) Act of 2013, following national public outrage at the ‘Nirbhaya’ rape of 16 December 2012, renewed memories of the incredible optimism about law and its transformatory capacity in the 1983 amendments to the rape law. Currently raging debates about the outlawing of ‘triple talaq’ in particular and reform of personal laws more generally take us back to the compromises that were made following the Shah Bano case in 1985. The Indian #MeToo movement, which erupted in 2018, has revealed women’s impatience with the tedious turns of the law on questions of sexual harassment at the workplace; though confined to the upper echelons of the economy in media and film worlds (which was preceded by an attempt to use tactics of anonymously ‘naming and shaming’ against male faculty in Indian academia), the movement has had a swift and encouraging impact on deterring perpetrators and on rethinking workplace norms. Today, there are also entirely new reworkings of the relationship between faith and right, as in the increasing claims of women to the right to worship in public spaces and equally in the legal prohibition of women from such spaces.

There are unmistakable signs, in short, of the contradictory appeal of law as a possible site of justice among women in India today.

Would such major transformations in the public life of law not warrant an entirely new book? Can all the stimulating additions and changes of the past 20 years be accommodated in the book’s original framework? For some time now, there has been an encouraging use, both in law schools and elsewhere, of *Women and Law in Colonial India* as an introduction to how the law has historically framed women, and the importance of those legacies for how women have refashioned the law in contemporary India. For the most part therefore, this revised and enlarged version remains a work of historical synthesis, rather than offering original commentary on contemporary concerns. In short, it continues to meet the need for a text intended primarily for undergraduates in India to begin their engagements with our rich and contradictory historical legacy. It brings the method of social history to the law student as much as it generates debates and discussions about how the law has framed history, particularly in matters concerning the status of women, for the history student.

The attention in this book has remained focused largely therefore, though in a richer, fuller way, on its earlier themes: why, and since when, the law became the most important, and hopeful, site for transforming the position of women in Indian society; the tangled histories of personal law, and consequences for questions of marriage, inheritance and divorce within communities; legal protections for women who labour; questions of political representation; and regulations of sexuality and reproductive family forms. It does not include criminal law except

insofar as it became the concern of colonial administrators interested in stable and reliable labouring populations, as in the attempts to curb female infanticide, or in discussions of sexual violence within and outside the home.

Footnotes have been retained as an impetus to further reading and research. Changes in language and terminology, especially where they are the result of sustained feminist campaigns, have also been noted and incorporated.

Acknowledgements

This book began as a ‘revision’ and ended up as a complete ‘rewrite’. There is still no excuse for the long gestation period of what I intended as a 20-year anniversary publication. Still, I have been assured, by those who have used this work for teaching, that a rewrite is both welcome and perhaps even urgent. Meanwhile, the original version has gone out of print.

I have a long list of people who despaired at the thought of ever seeing this book in print and yet honoured my every request with grace and great alacrity. I owe them more than a mere word of thanks. Meenu Deswal patiently collated, early on, a lot of material for me to read and occasionally gently prodded me, wondering if her efforts had gone to waste, since nothing appeared on the horizon for years. Other students, such as Prachi Bhagwat, Adhitya Dhanapal, Madhavi Jha, Divya Kannan, Karventha Maagaraj, Megha Sharma and Swathi Aravind were very prompt in scouring the internet for many and frequent requests. I have many who have more actively egged me on, and have also promptly sent me materials and comments, for fear that I might take their silence as a discouragement. To the feminist scholars and friends who have all obliged me from time to time, a warm and grateful salute—of these, a special word of thanks to Mary John, Poorva Rajaram and Ratna Appendar for painstaking reads of the whole manuscript. J. Devika, D. W. Karuna, Padma Anagol-McGinn, Rashmi Pant, Radhika Singha, Samita Sen, Mrinalini Sinha and Rachel Sturman also suffered many queries and confusions. To my Feminist Kitchen at Jawaharlal Nehru University, New Delhi, which sustained whacky and sometimes irreverent conversations over the years, while allowing me to persist with my pessimism, heartfelt thanks for that daily witches brew. And to Steve Legg, who furrowed his brow on my behalf and cheered me on, a salute.

The real impetus to bring this work to a close was the M. S. Merian–R. Tagore International Centre of Advanced Studies ‘Metamorphoses of the Political’ (ICAS:MP) senior fellowship, granted to me for travel and stay at the University of Würzburg in 2020. But, alas, the unprecedented disruptions of the COVID-19

pandemic added another two years to the protracted rewriting process. When I finally got to Würzburg, in May 2022, the support and encouragement I received was unmatched by any previous experience in an educational institution. In addition to support from Heeba and Jacqueline who ferried and downloaded books for me, there were Judith Unterdorfer, Pauline and Anna Esposito who solved many computer, book and health issues. To my Indology colleagues, I owe much for the pleasures of undisturbed reading and writing, which often ended in equally pleasurable evening rituals. They included Jörg Gengnagel, Karin Steiner, Barbara Lotz and Elisabeth Kusterer Schömbucher. Heidrun Brückner nurtured me throughout my Würzburg stay, providing in equal measure intellectual stimulation and wonderful and educative distraction. Anette Finger-Albert, Laila Abu-er-Rub and Himanshu Chawla disentangled many knots to make travel and stay easy and painless.

To the late Professor N. R. Madhava Menon, who saw the virtue in sponsoring the original avatar of this book, despite many reservations, I owe a special thanks; he encouraged debate, discussion and disagreement about many issues, especially those relating to women's rights, in the institution that he had just founded, the National Law School (NLS; later National Law School of India University), Bengaluru. I was able to test many ideas among students there, with courteous assistance from V. S. Elisabeth and others, as well as visitors to NLS like myself, such as Nandita Haksar, Flavia Agnes and Ratna Kapur. My original manuscript was read and thoroughly critiqued by Tanika Sarkar and Uma Chakravarti, and I am certain they will be pleased with the rewrite. Debjani Mazumder of ICAS:MP, Shalini Shekhar and Priyanka Das have been great supports in bringing this to a satisfactory conclusion. And to all my students (now teachers) and friends (also teachers), who have urged me to do this rewrite since they have used it for their teaching, a special salute. Thanks, too, to the three reviewers, whose comments may not entirely have been taken on board. I also owe Padma Raju many thanks for her help.

I was sustained in the earlier period of writing by Jagan Mohan and Kamala. In my more recent household, Rebecca and Valli have withheld their scepticism about my preoccupations with the computer and maintained a safe but supportive distance. Zui remained a permanent and loyal distraction, and to Devayani, heartfelt gratitude for simply being around.

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Janaki Nair