

# TEACHING FEMINIST LEGAL THEORY IN AN INDIAN LAW COLLEGE

**I**f you have heard of Pune India then it might be because it is home to the Osho International Meditation Resort, founded by Osho (born Chandra Mohan Jain) who was an Indian mystic, guru, and spiritual teacher who garnered an international following of those searching for a dose of eastern spiritualism, yoga and enlightenment. Or it might be because of the local enthusiasm for cricket and the presence of the international Jawaharlal Nehru Stadium full to capacity whenever a match is staged.

Pune, named Poona by the British, is also a bustling university town. It is located 147 kilometres inland from Mumbai, is the eighth largest metropolis in India, the second largest in the state of Maharashtra after Mumbai, and the largest city in the Western Ghats with a population of approximately 3 million. In 2006, upon the recommendation of a colleague, I travelled to Pune to spend 5 months of my study leave at the Indian Law Society (ILS) Law College, The ILS Law College was founded by the Indian Law Society in 1924 and has since then established itself as one of the top law institutes in India. It has approximately 3,000 students, only law is taught, and the buildings are grandly located on spacious, rambling colonial-style grounds. The College invited me to teach feminist legal theory during my time there and since 2006 I have travelled back Pune to teach the course 5 times. The course last ran in January of 2010 and will run next in November of 2012.

I chose the ILS Law College for my sabbatical in part because of its high percentage of women staff, including a female Principal and Vice-Principal, unusual in India, and in part because of the legal literacy “human rights” camps it runs for women in the rural villages of Maharashtra. The students use street drama to act out a range of scenarios in which basic principles of law relevant to the lives of rural women are portrayed in an initiative aimed at addressing the 33% rate illiteracy amongst rural women across the state.

When visiting Pune I often stay in an Indian household, sharing with another staff member at the College. She has five people who work for her including a cook, a cleaner, an odd jobs person, a gardener and a driver. My western discomfort at being party to this arrangement coupled with the knowledge of the role of caste in the employment of home help in India is balanced by the realisation that she is supporting the livelihoods of five families, including such things as contributing financially to the employees’ children’s (expensive) marriage celebrations. Over the years I have developed a taste for Indian sweets which has resulted in Indubai the cook generously preparing on each visit for me two dozen ladoos (a very sweet sweetmeat made with chickpeas, ghee, nutmeg, cloves, raisins, milk and coconut) to bring back to Australia. Not having the heart to tell her that fresh milk products cannot pass through our strict quarantine I eat as many as possible en route to the airport and distribute the rest to pavement dwellers. In India, an estimated 16 million people live on the pavements, fashioning shelters from cloth, corrugated iron, cardboard, wood, and plastic.

Each morning I walk for twenty minutes to get to the College and each day there is a new adventure en route - an elephant which a young boy rides daily along the road, tribal kids living on a construction site with their parents who move from site to site and work 6am until dusk for 100 rupees per day (\$2), cows and bullocks wandering the streets amongst the smartly dressed young people

with mobile phones, spirited conversations with the fruit seller near her makeshift stand, which neither of us understand – she in her local language, Marathi and me in my mixture of ‘Singlish’, a combination of not song, but sign and English. Despite our conversational challenges we still manage to effect a transaction each morning which ensures my supply of figs and mangoes for the rest of the day.



The students use street drama to act out a range of scenarios in which basic principles of law relevant to the lives of rural women are portrayed in an initiative aimed at addressing the 33% rate illiteracy amongst rural women across the state.

The first time I taught feminist legal theory at the ILS College in 2006 the course had an enrolment of 30 students with equal numbers of female and male participants. The last time the course was taught in 2010 the enrolment had jumped to 90 students. Preparing the course materials for the first time I contemplated how much of the feminist legal theory course which I had previously taught in the UNSW law school was appropriate in the Indian context. Should I include, for example, Martha Fineman's work on dependencies and her contention that the state should dispense with marriage as a legal institution leading to rights and obligations replacing it instead with a model in which dependency forms the basis from which relevant rights and obligations flow (such as property division, spousal maintenance and custody) making any state concern with sexual intimacy (and marriage) redundant?<sup>1</sup> Would such a piece be too challenging in a country where marriage is considered to be the "cornerstone" of society, where some 97% of the population 18 years or over are or have been married,<sup>2</sup> where the overwhelming majority of marriages are arranged<sup>3</sup> and where only 1.1% of marriages result in a divorce.<sup>4</sup>

Should I include the debate within the LGBT community on the merits of same-sex inclusion into legal definitions of family? On the one hand some members of the LGBT community demand to be included on the basis that the historic and continuing exclusion of same-sex relationships from many of the legal protections afforded to heterosexual relationships is discriminatory and violates equality rights. On the other hand other members of the LGBT community argue that the institution of family is heavily implicated in the oppression of women (in their sexuality, their reproduction, and in the division of labour) and engagement with it merely strengthens it as an exclusionary institution.

Additionally, presenting same-sex relationships as the "same" as heterosexual relationships obscures the diversity of relationships within the LGBT community and negates their

"subversive" nature.<sup>5</sup> In India same-sex relationships are generally considered a taboo subject by both Indian civil society and the government. India's transgender community, the "hijra", are one of the most disempowered groups in Indian society. They face extreme discrimination in health, housing, education, employment, immigration, law and violence against hijras, especially hijra sex workers, is often brutal, occurring in public spaces, police stations, prisons, and in their homes.<sup>6</sup> I chose, after deliberation, to include Fineman and to exclude the debate on same-sex rights within law.

Arriving at the College, I am usually met by the resident family of dogs who pepper the landscape both in and out of the classroom. "More dogs than students attending my lectures" an Indian colleague quipped. The first day in the classroom came with the realisation that I had a lot to learn about India and teaching in an Indian law school. The students were enthusiastic, the readings completed, and discussion robust and vibrant. My style of teaching was unusual for the students, who were more used to a lecture format, but facilitation of class discussion was easy, the students all wanted to contribute. One student asked after class why I hadn't included same-sex issues in the course, and caste and religion were central to every discussion. Both impacted on everyone in a variety of ways. Some students had discarded their family name because it revealed their caste, one calling himself simply 'Kranti' which translates to 'revolution.' Half way through the first class, held in a large open room with fans and minimal facilities there was a sudden silence, the lights went out and the fans stopped. I stopped also but the students kept writing and looking at me expectantly. The power they explained shuts off every day for three hours. In some districts of Maharashtra, there are four to twelve hours of daily, scheduled power outages. Oh! The College has a generator but most days it doesn't work so we continued in the dark and the oppressive heat. The next day our classroom was double booked so we went to the only available space for the class (the roof of the College) and the class

proceeded in the outdoor heat without any teaching facilities or fans.

I have taught the course five times since its inception in 2006. Now a number of classes are taken by local Indian speakers and the course has dramatically changed to include topics much more relevant to the student's lives. Key topics include, first, the feminisation of poverty defined as a process through which a greater burden of poverty is borne by women. The topic is very relevant in India where the largest percentage of the worldwide poor live (40% of 1.3 billion). While Indian women and men often live together in poverty, their lives differ dramatically. Women are paid less than men for the same work, have less access than men to credit, limited access to productive resources such as irrigation, water, fertilizers and technologies, unequal access to family resources and land and unequal access to essentials such as food and health care, and thus, suffer disproportionately from malnutrition, morbidity, and mortality.<sup>7</sup>

A second topic is child marriage where, according to UNICEF, 47% of Indian girls are married by 18 years of age, and 18% are married by 15 years of age. These marriages are often performed without the consent of the girls involved in the marriage and although Indian law has made child marriage illegal, it is still widely practiced throughout India.<sup>8</sup>

A third topic is the devadasi system, a religious tradition in which girls are “married” and dedicated to a deity or to a temple - in short a life of unpaid sex work in the name of religion, which continues in Maharashtra despite being made illegal in 2005.<sup>9</sup>

Fourth, sex selective abortions, the practice of terminating a pregnancy based upon the predicted sex of the fetus are common in India despite legal restrictions making it illegal to use ultrasounds to determine the sex of a fetus.<sup>10</sup> The laws are rarely enforced and private medical practices are largely unregulated with the result that the sex ratio in Maharashtra languishes at 889 girls to 1000

boys. In India, sons continue to be preferred for the economic support they provide for the household, particularly in their parents' old age. Daughters are not seen as a source of financial support, especially since typically they leave the parental home to live



A third topic is the devadasi system, a religious tradition in which girls are “married” and dedicated to a deity or to a temple – in short a life of unpaid sex work in the name of religion, which continues in Maharashtra despite being made illegal in 2005.<sup>9</sup>

with their husband's family after marriage. In addition, parents of daughters often still pay a dowry, despite the practice being illegal since 1961.<sup>11</sup>

Finally, the topic of same-sex relationships now has a solid place in the course including discussion of the much heralded case of 2009 where the Delhi High Court struck down section 377 of the Indian Penal Code which criminalised consensual sexual acts of adults in private, holding that it violated the fundamental right of life and liberty and the right to equality as guaranteed in the Constitution.<sup>12</sup> The ruling overturned a 148-year-old colonial law which described same-sex relations as an "unnatural offence" and through which homosexual acts were punishable by a 10-year prison sentence. Throughout all class topics, caste and religion are central. Religion (in the form of Hinduism, Islam, Christianity, Sikhism, Buddhism and Jainism) is central to Indian life. Although discrimination on the basis of caste – a system of social stratification in the Hindu majority with five different levels (Brahmin – those engaged in scriptural education and teaching, Kshatriya – those who work in public service, including administration, maintenance of law and order, and defence, Vaishya – those who engage in commercial activity, Shudra – those who work as semi-skilled and unskilled laborers and finally the Dalits, formerly known as the untouchables) – was made unconstitutional in 1947, caste still operates in all aspects of Indian society.<sup>13</sup>

My experiences in India have been life changing and have caused me to reflect on legal education generally. A major difference I have found between the Indian Law College and the law school culture in Australia is the level of engagement with community. While initiatives such as community legal centres and clinical legal education programs try to bridge this gap in Australia – I was particularly interested in the Indian approach. On one of my visits to the College I was invited to travel with 3 other staff and 40 students to participate in a 5 day legal literacy camp in rural Maharashtra. We stayed at a girls' school

run by an NGO which houses nearly 60 girls aged from 5 to 18 who live at the school, returning home only for brief holidays. In many cases the school pays the parents a stipend to send the girls to the school recompensing them for the lost wages that the girls could earn in the fields. We were accommodated in basic rooms which surrounded a circular courtyard. Each morning we awoke to a roaring fire in the courtyard lit and tended by the girls who were heating up water for an early morning spicy cup of masala chai. Breakfast and all other meals consisted of daal (lentils) and chapattis (bread) which we ate cross legged in a circle. Facilities were minimal and school resources are non-existent.

During the 5-day visit over 100 women arrived on foot from villages in a 20 mile radius. The students used street drama to act out a range of scenarios relevant to the lives of the village women present which showcased laws relating to child marriage, dowry, maintenance, bigamy, and domestic violence. The street drama is part of a much broader project run by the College where students regularly perform in villages around Pune, informing locals of their legal rights. Students also regularly visit and engage with orphanages, old-age homes, jails and other institutions. In particular the College has an ongoing relationship with Ekalavya, a school for the children of sex-workers, located close to Pune's "red light" district. The school is located inside a rambling three story building where the 100 children, aged from 3 to 18, live, eat and study in basic conditions with the support of volunteers and community.

Teaching in India and spending time at the ILS Law College has impacted on my teaching in the Australian context. It has broadened my horizons, taught me patience, and challenged my assumptions. I have discovered that despite the benefits of high tech facilities, a large and comprehensive library with contemporary electronic resources, and comfortable air conditioned classrooms and offices, learning can occur in any setting with minimal resources, with dogs wandering in and out of the classroom, or with a new adventure as your teacher.

## REFERENCES

- 1 Martha Fineman, *The Neutered Mother, the Sexual Family, and Other Twentieth Century Tragedies* (Routledge: 1996); *The Autonomy Myth: A Theory of Dependency* (The New Press, 2004); *The Vulnerable Subject: Anchoring Equality in the Human Condition* (Princeton University Press, 2011).
- 2 B Gupta, *Do Cultural Values Override Incentives? Sex Ratio, Caste, and Marriage in India* (2011) Working Paper. Department of Economics, Warwick, Coventry.
- 3 C Fuller & H Narasimhan, "Companionate Marriage in India: The Changing Marriage System in a Middle-Class Brahman Subcaste" (2008) 14 *Journal of the Royal Anthropological Institute*, 736 – 754.
- 4 See online <http://www.divorcerate.org/divorce-rate-in-india.html>
- 5 E Stein, "Marriage or Liberation?: Reflections on Two Strategies in the Struggle for Lesbian and Gay Rights and Relationship Recognition" (2009) 61 *Rutgers Law Review* 567.
- 6 A Patel, "India's Hijras: The Case for Transgender Rights" (2010) 42 *George Washington International Law Review* 835.
- 7 R Pande, "Gender, Poverty and Globalization in India" (2007) 50 *Development* 134.
- 8 *Prohibition of Child Marriage Act, 2006* (India). See J Sagade, *Child Marriage in India: Socio-Legal and Human Rights Dimensions* (Oxford University Press: 2005).
- 9 *Devdasi System (Abolition) Act 2005* (Maharashtra).
- 10 *Preconception and Prenatal Diagnostic Techniques Act 1994*.
- 11 *Dowry Prohibition Act 1961*.
- 12 *Naz Foundation v. Govt. of NCT of Delhi*, 160 Delhi Law Times 277 (Delhi High Court 2009).
- 13 A Zacharias, "Caste Stratification and Wealth Inequality in India" (2011) 39(10) *World Development* 1820.