

# Ethnography Of Adjudication

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THE TROUBLE WITH MARRIAGE: FEMINISTS CONFRONT LAW AND VIOLENCE IN INDIA

By Srimati Basu

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The book begins with an evocative gaze that lingers over the writing on the walls of family courts in Kolkata. The writing on the walls of the courts invites attention to what Srimati Basu characterizes as the disciplinary governmentality of courts; seductive calls for alternative dispute resolution; normative pictures of family and marriage and finally, a 'noble' feminism according women honour and protection within matrimony. The pedagogical function of the walls frames the discourses that a litigant engages with in the court or in a counsellor's office. This ethnographic account leads us to the multiple places where law sits and rises to adjudicate, mediate and constitute everyday troubles of matrimonial life. Looking at law anthropologically Basu challenges the idea that 'mediation' puts an end to the 'troubles of law' to suggest that 'mediation, as law's Other, is ambivalent in the same ways as law: new spaces and new modes of speaking do not necessarily alter legal authority'. Not only does Basu argue that 'law is creatively used to shape marriage, with and against women's agency', but she also demonstrates how the cunning of judicial reform functions simultaneously as 'poison' and 'medicine', by assuming that gender and kinship are stable categories.

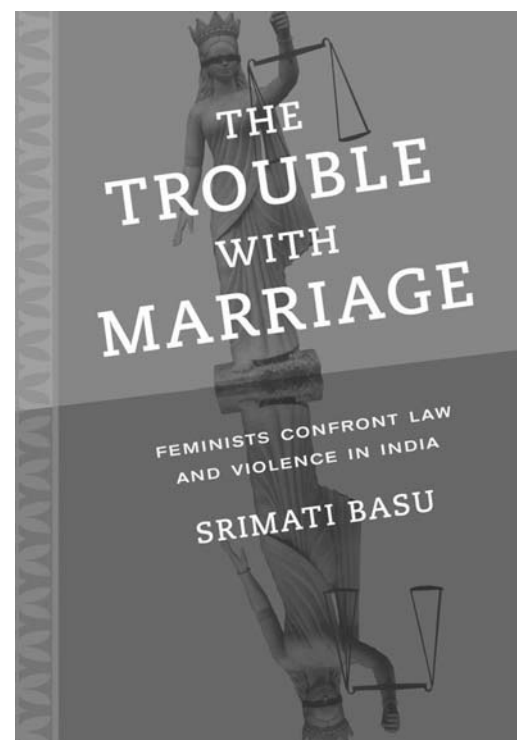
The fieldwork set in family courts in Kolkata, Delhi and Dhaka allows a rich ethnographic description of how law produces new forms of subjectivities and socialities. The thick description of what is at stake in doing courtroom ethnography is lucid and instructive in explicating the value of deploying the anthropological method in the field of law. This book is drawn from a valuable archive of 297 cases of which 234 have been documented in Kolkata. It is based on a multi-sited ethnographic project that follows different discourses, categories and institutions to describe how the object of research is constituted variously at different sites. The book undertakes a magisterial project to look at how disputes over divorce, marital violence, domestic violence, rape, sexual fraud, property and sexuality find judicial interpretation in a comparative framework while placing specific narratives of violence in a wider debate.

This is followed by an instructive and

insightful reading of what Basu identifies as four critical colonial and postcolonial moments: The *Dissolution of Muslim Marriage Bill* debates (1939), the *Hindu Code Bill* debates (1949), the report of the *Committee on the Status of Women in India* (1974), and the *Family Courts Bill* debates (1984). This chapter maps the genealogies of marriage law, and how colonial categories circulate to constitute new meanings in postcolonial contexts. The very issue of 'marital dissolution' Basu argues is 'a site for working out identity, rights, property and nation'. In doing so, Basu also explores 'questions of method and legibility in studying law'. The ethnography of mediation illustrated through cases on sexual consummation and potency describe the contradictory directions in which efficiency structures mediation yet erases the violence in matrimonial relationships now under the gaze of the mediator. The stunning ethnographic account of how women speak and how their silence is interpreted invites us to take courtroom performance seriously as constitutive of law's power. The author notes that the 'invitation to speak in court fetishizes speech as *the* mark of legal empowerment'; and yet 'contradictorily, however, litigants are asked to conform to legal process, by precisely recreating in *words* their *written* witness depositions'.

The complex forms of translation entailed in how people speak in court, how their silence is interpreted and how written record is constituted is brilliantly described. The particular forms of judicial pornography, a term used by Veena Das (1996) in relation to rape trials finds specific articulation in cases of sexual potency and consumption with an almost banal repetitiveness. The value of this ethnography lies in its deft navigation between different sets of laws, sites and frameworks to show how law can pleasure, disgust and humiliate.

The book provides us a fascinating picture of the everyday life of family courts in Kolkata. This chapter is perhaps the only thick description of Alternate Dispute Resolution (ADR), which speaks to anthropological work critical of how *alternate* such dispute resolution really is. Although these courts are freed of lawyers these continue to mimic judicial hierarchy suffused with ter-



ror and intimidation. The frequent translation of conciliation as 're-conciliation', the use of 'juridicalised notions' of therapy to push women into unsafe marriages and the underlying jurisprudential tendencies of law to preserve phallogocentric social orders find elaboration in this chapter.

Basu brings to us the visceral account of how even as kinship relationships break down; new forms of kinship are created—be these in fictive kin relations with counselors or the imaging of procedural law in the image of kin relationships. The active construction of women as bearers of tradition or modernity demands scrutiny since it passes judgment on whether or not the woman litigant as a *good* wife deserves legal redress. The circulation of affect in the making of these testimonies to what it means to experience conjugality or its breakdown is constitutive of families and their destinies. We repeatedly see how the re-making of the family is based on erasing narratives of violence and discrimination.

The book then goes on to explore the way the rape law and domestic violence law are used to negotiate property and marriage, often eliding the issue of violence. The author persuasively argues that there is a need 'to understand rape in terms of economies of alliance and property, and to critique protectionist laws which work to restore the patriarchal kinship order'. Basu refers to the recent Delhi protests and a gambit of cases to return to the 'the ways in which rape and marriage work in the shadow of each other'. Of particular significance is Basu's observation 'how these judgments emphasize visual rather than oral evidence of consent'. This important chapter, which challenges the

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popular reading of the *misuse* of the rape law, (and in the next chapter, of the dowry provisions) articulates a critique to commonplace understanding of law reform.

The claim of legal pluralism is critically reviewed in the next chapter by focusing on the 'criminal prosecution of domestic violence (S498A) alongside civil remedies and mediation'. The researcher follows litigants from Women's Grievance Cell run by the police, a state-sanctioned arbitration board, a politically influential NGO, and an independent feminist organization. These sites allow litigants to avoid going to court or to levy pressure to settle by raising the spectre of criminal prosecution. Describing the 'distinctive affective culture of S498A', Basu assesses the claims of misuse and yet finds that this law is hardly ever used to avert violence itself. In the author's words, 'the crux of S498A's potential is that it seems primarily successful when deployed against the grain to obtain civil remedies, rather than to cease or reduce violence'. This exciting critique of mediation or informalism in state law concludes with a conversation with the women's movements' engagement with law's trouble with marriage.

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