BUCHBESPRECHUNGEN / BOOK REVIEWS

Kalindi Kokal, **State Law, Dispute Processing, and Legal Pluralism: Unspoken Dialogues from Rural India,** Routledge, London, 2020, 218 pages, £120.00, ISBN: 9781138625211

Indian non-state dispute settlement fora—most prominently *panchayats* (village councils)—have a bad reputation. The stereotypical image of a *panchayat* is one where a group of powerful old men sit together to decide about the fate of individuals, rendering judgements that are ridden by gender, caste and class biases and based on antiquated understandings of how people should behave in society. The individuals upon whose lives the *panchayat* decides, according to this narrative, have little or no chance of escaping the judgement of the village council, no opportunity to approach a more just state institution instead and no possibility of claiming their constitutional fundamental rights.

In *State Law, Dispute Processing, and Legal Pluralism: Unspoken Dialogues from Rural India*, Kalindi Kokal paints a much more nuanced and diverse picture of Indian non-state dispute settlement fora and the people who decide to use (or not to use) them. In her ethnographic study of dispute processing in two village communities in rural India—a fishermen's community in the costal village of Gonjhé in Maharashtra and an agrarian community in the Dharamgarh valley in Uttarakhand in the north of the country—Kokal engages with the interconnections between state and non-state legal systems and the relationship between legal pluralism and access to justice. The information that Kokal has gathered from participant observation and interviews make the book rich in first-hand material and provide the reader with a detailed image of the manifold ways of dispute processing "on the ground". She uses direct quotes, both in English and original languages with translations. Kokal is not only a skilled writer, but her mix of theory, thoroughly analysed case studies and large numbers of examples from her fieldwork, make this book not only an interesting read, but also a source of plenty of information about how communities live with legal pluralism.

Kokal's book should not only feature on the reading lists of scholars of law and / or anthropology who are interested in India. It also holds valuable insights for law and society scholars who work in and on those parts of the world where "legal pluralism is actually a social fact" (p. 24), hence virtually everywhere. This review will focus on four aspects that the readers of this book will find particularly interesting and enriching: the author's reflections about her own role as a socio-legal researcher, her elaborations on the diversity of dispute settlement mechanisms in India, her remarks on the "threat" of state law and her description of the assimilation-processes between state and non-state dispute settlement fora.

Reflections of a legal anthropologist and questions of access

Trained in India and Germany, not only in (doctrinal) law, but also in (legal) anthropology, Kokal knows how to look at the subject she studies from different perspectives. She describes her role as an anthropologist pursuing fieldwork in the two distinct communities as that of both an insider and an outsider. She is an insider in so far as due to her socio-cultural upbringing in India, she not only speaks the languages of the people she worked with, but she is also familiar with their traditions, cultural practices and ways of thinking. At the same time, however, Kokal is an outsider to the village communities, because as an educated upper caste / class woman who has been trained in the West, her life(style) differs significantly from that of the people she interacted with. Her own inter-caste marriage and the fact that after marriage she continued with her education and professional career show that her values and socio-cultural norms differ to a certain extent from those of the communities she studied. This insider-outsider perspective allowed her special insights. On the one hand, particularly the women in the community shared detailed information with her because she was seen as "one of them". On the other hand, especially the men—who mostly ran the various dispute settlement mechanisms—conversed with her more openly than they would with women from their own communities, precisely because Kokal was perceived as an outsider to the community.

The diversity of state and non-state dispute settlement mechanisms

Kokal is convinced that the coexistence of state law and state institutions on the one hand and non-state law and non-state dispute settlement fora on the other, is not only a fact, but also a necessity in India: in order to effectively manage large-scale dispute processing "a massive state like India needs recourse to, and thus also official recognition of, various forms of non-state methods for managing disputes" (p. 17). Kokal speaks of different "layers of legality", which community members can access when seeking to resolve a dispute: the family, community assemblies and village wisemen (and women), among others. Each of these layers not only involves the play of either state or non-state law, but also draws on different types of what Masaji Chiba terms "postulational values". While Kokal does not provide an extensive discussion about the different postulational values at play in each of the layers and their relationship and weight towards each other, she mentions a number of exemplary values for each layer. The key values she ascribes to the layers involving state institutions are fundamental or human rights and individual freedom / choice, while the central values prevalent in the communities she studied are *izzat*, i.e. honour or social reputation (whether that of an individual, a family or the community) and *dharma*, i.e. the notion of righteousness in Hindu philosophy. Whether this strict juxtaposition holds true in practice can be questioned. Scholarship[1] has certainly shown that Indian state institutions,

1 See for instance *Pratiksha Baxi*, Public Secrets of Law: Rape Trials in India, New Delhi 2014.

such as police stations and state courts, too often deviate from adhering merely to the value of fundamental rights and individual freedom, and draw on specific (gendered) notions of honour, chastity, and how to live as a good Hindu (woman). On a broader scale, however, the communities might indeed rather adhere to one set of values, while state institutions adhere to another set; the demarcation lines are, however, blurry.

Kokal shows that the community members she spoke with frequently perceived state law (and its postulational values) as foreign: as "received laws" or the laws of "others". It is the communities' own laws and (religio-cultural) values that "cultivate the community's sense of order and social structure" (p. 165). This perception of foreignness and ownesss with regard to laws, values and institutions significantly impacted people's decisions about dispute processing. Kokal shows that disputes typically proceeded from the non-state layers into the state-layers. Usually, people first approached an (extended) family member, a village wiseman or the local community councils (e.g. the *mandal* or the *samaj*), before turning to the police or a state court. At the intersection between state and non-state institutions operated individuals whom Kokal terms "barefoot lawyers". These were men who, despite not having any formal legal training, were knowledgeable about and familiar with both the state and the non-state legal systems and had ample networks in both. They functioned "as niche actors not only advising but also representing parties, and taking a lead in the realm of settlements that are the fate of many court cases in India" (p. 114).

Beyond the levels of the community and the state, however, people also approached another entity with their concerns and disputes: deities. The invocation of a goddess was often an *ultima ratio*: When the parties of a dispute "remained dissatisfied with the dispute processing in all [other] layers, they could turn towards seeking the intervention of religious and supernatural elements in the outermost layer" (p. 75). For this purpose individuals met with a priest and underwent specific ritualistic practices. In Kokal's experience, "when a disputant invoked the intervention of the goddess [...], all other mechanisms of dispute processing came to a halt. [...] The goddess was perceived to have exclusive jurisdiction" (p. 71). Kokal's interview partners told her that the goddess they approached was "like the judge: she will hear the parties and make a decision about the type of punishment" (pp. 89.90). Misfortunes related to an individual's financial or social situation or their health as well as general turmoil in their household were considered such penalisation by the deities.

Kokal's depiction of the heterogeneity with regard to the communities' dispute settlement systems shows that the stereotypical image of the *panchayat* does not adequately describe how dispute processing works in rural India. She also points out that not all non-state fora hold patriarchal views. She narrates the case of a girl who eloped with and married a boy from another village, shortly before she was supposed to marry a man her parents had chosen for her against her will. In response to this event, the village council that decided upon the matter ordered the girl's family to pay the boy's family 10,000 rupees, interestingly however, not primarily to compensate the latter for the losses experienced when preparing for the wedding, but rather so as to "curtail families from forcing their children into marriages against their will" and out of a concern for "individual choice" (p. 113).

The threat of state law

When trying to assess where non-state dispute settlement fora are most common, one assumption articulated in the academic literature is that distance from the state institutions plays a crucial role. Non-state dispute settlement mechanisms, it is claimed, are particularly prevalent in "remote" areas, where the state law does not "reach" the people, and where individuals have no knowledge about state law and no easy access to state institutions, such as police stations and state courts.

Kokal's case studies show that this is not always the case and in fact, sometimes the opposite may be true. She agrees indeed that knowledge about state law and "connections" to state institutions (via a family member or one's social network) make it easier for people to access the state legal system. On a broader scale, however, her comparison between the two regions of her fieldwork shows that the more "remote" areas, i.e., the valleys in the mountain region where state institutions are far away and visitors from urban areas are an exception, have fewer layers of legality and fewer non-state dispute settlement mechanisms in place than the fishermen's village, a place that is located in close proximity to popular tourist destinations and is well connected to other villages and towns and where the police and the state court are not too far away. Kokal provides the following interesting and plausible explanation for this finding: In areas where state law and state legal institutions are easily available, these systems (and the postulational values they adhere to) strongly compete with the non-state dispute settlement systems and their respective postulational values. Maintaining or strengthening non-state law and non-state dispute settlement fora is thus also an act of keeping out "foreign" values and protecting community values. When individuals in "remote" areas have lesser access to state law and state institutions, this also means that lesser state law and its "foreign" values trickle down to the community. Hence, protection is less important.

The urge to protect community laws and values is based on an understanding that somewhat subordinates the individual to the community. In both of Kokal's fieldwork areas, people described the community as a hand: Just as each finger alone is of little use and the hand can only function with all of the fingers working together, the individual alone would not get far and only in collaboration with others—as a community—could achieve anything. The individual was thus as dependent on the community as the community was on the individual. Non-state dispute settlement fora often decided primarily in the interest—and according to the values—of the community, and thereby also considered the fact that "even after the dispute, the disputing parties must continue living together" (p. 125). In the above-mentioned case, where the girl had eloped with her boyfriend—an act that was perceived as dishonouring not only the boy's family, but also the boy's family's village as a whole, the community council's order for the girl's family to pay the boy's family a fine was primarily a means to re-establish the public and social order (and not so much an instrument of personal redress). Kokal reports that the village council upon giving its verdict held: "This fine will act as a deterrent to families from creating such situations again" and

that it reminded the audience that "such situations create ill feelings between our communities" (p. 111).

The focus on community values and community harmony also somewhat discouraged individuals from pursuing their (state guaranteed) rights by approaching the police or the state court. Kokal narrates the story of a woman who regularly faced violence from her alcohol-addicted husband and decided to report her husband to the police. When the woman approached one of the village's wise women about her plan, the latter convinced her that filing a complaint against her husband would only lead to "gossip" in the village and that she would not benefit from seeing her husband in jail. Instead, the wise woman asked her own husband—a retired police officer—to speak to the abusive man informally and in private so that he bettered his behaviour.

Assimilation process between state and non-state dispute settlement systems

In their competition with the state actors, many of the non-state dispute settlement fora that Kokal studied underwent a process of formalisation and began to "look more and more similar to the state actors" (p. 100). For example, they made sure that the meetings of the dispute settlement bodies were held on a regular basis, they sent out formal written invitations to the attendees of the meetings and they provided written documentation about their proceedings. (This also explains why speaking of "informal" dispute settlement fora when referring to non-state fora is somewhat misleading, as Kokal elaborates in her introduction.) The *samaj* in Gonjhé, for instance, "maintained written records of the proceedings of every meeting, and also encouraged written applications from those who had enquiries or wanted the *samaj* to look into their grievance or dispute" (p. 101). Information was mailed out to the parties of a dispute, who upon receiving a notification had to affix their signature or their thumb impression on the document. "When we send a notice, it lends a tone of seriousness to our working. It helps reinforcing our authority in this community", stated a member of the *samaj* in Gonghé, whom Kokal interviewed (p. 101). The non-state actors in Gonjhé also debated "whether or not to adopt the practice of following precedents" (p. 100), which would mean assimilating even more with a state court under the common law tradition.

Kokal ends by explicitly encouraging law schools in India to move away from a purely doctrinal understanding of the law and a mere focus on state law. Legal education, she holds, should instead embrace a more interdisciplinary approach and a more integrated view of what the "law" and what dispute processing means—a call, that is certainly relevant not only in India, but for many law schools around the world. Kokal's book certainly provides an important step in this journey.

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