

“I don’t see what is happening within universities as separate from what is happening in the political arena” – Kalpana Kannabiran

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2017-5-17

*Following the Constitution panel at India @ 70: LSE India Summit 2017 Rebecca Bowers interviewed panellist **Kalpana Kannabiran** about the narrowing space for freedom of expression on Indian university campuses, the teaching of constitutional law, and the new Disabilities Act.*



RB: Given a growing number of incidents on university campuses what can be done to ensure that freedom of expression is upheld in India?

KK: The troubles of university campuses are linked to the threat that higher education poses to political orders. This is not the first time that students have been targets, it happened during the Emergency of 1975, where students were disappeared, there was arbitrary arrest and torture in custody and a number of people died. All of those cases were brought to court and inquiry committees were set up. Since the post-emergency mobilisation against state violence there have been incidents, but this kind of systematic targeting of campuses is quite unprecedented.

There are two aspects to this that I think that are important. One is that in this intervening period we have seen the rise of Dalit movements and the large entry of Dalit students into universities, both through reservation policies and through the general quota (so it’s not true to say that Dalit students have come in only through reservations). All of these students have come from families and social backgrounds where they have actually witnessed and experienced discrimination and they bring the seeds of resistance with them to university campuses hoping that university campuses will nurture the power of questioning.

The university is a transformative space and these students come with aspirations of social justice and with the idea that they can – through the medium of university education – transform societies and in the process transform the university as well. But what they find is that there are problems with interpersonal relations, whether it is between faculty and students or between different students, and with the curriculum and the approach to the curriculum. There are also deep seated prejudices around reservations, particularly on the part of the administrative and academic community. There are exceptions and exceptions are important, but on a broad level you have a mismatch between their expectations and aspirations of what a university should be and what a university turns out to be.

Then university is then a conflicted space because you are dealing with social conflicts that are outside within the university space, but you are also contesting the terms on which this education is delivered to you and insisting they change. This brings in a cogent critique of caste and linking it to the larger right to political dissent and free speech. It is that constellation that is very new in the movements that you are witnessing in the universities and the linkage of these movements to rights and political movements outside.

As a result, you hear the different resonances of *azaadi* within the university campuses and this can be quite unsettling for a dominant, authoritarian community that is in control of the governance of the university. So of course when you are threatened and you are do not understand what and how pedagogy of practice needs to be reshaped within these spaces you turn to repression. Either the police will not take your permission when they enter, or either you will give the police your permission to enter as we witnessed in the University of Hyderabad. You will have the lathi charge and student arrests, as you witnessed both in Hyderabad and in JNU. The conservative student

elements can never reach this height of violence if they are not shored up by the administration, the police, and politicians. The source of their courage is the guarantee of impunity. So I actually don't see what is happening within universities as separate from what is happening within the political arena. It was never separate.

The second point is that whatever violence you see within universities and whatever reduction and negation of association or free speech you see within universities, is also tied to governmental policy on higher education. For example you have a directive that all of the centres of social exclusion and inclusivity are shut down because you have refused to renew their grants. They are on planned grants every five years, but with no notice they are terminated. Those centres were first established by an extremely proactive chairman of the University Grants Commission in response to this pattern of education within universities where questions of exclusions and discrimination do not enter the formal curriculum. He tried to bring in a social consciousness, by mandating centres that would then function within schools of social sciences and that would link up with different departments but focus on exclusion and discrimination.

If you shut down those centres at this political moment then you are making sure that all that work goes out of the window. It's not only centres of social exclusion, it's also centres for human rights and women's study centres. These are the centres that have promoted and nurtured dissent in fundamental ways and that have posed a challenge to the status quo. So you actually what you are doing is that you are choking off higher education.

At the same time you have the RSS leader [calling a meeting](#) with Vice Chancellors and senior academics, several of whom attended this meeting in order to talk about how they are going to change the course of higher education. So it's not a small thing that's happening you know? It's a very concerted political movement, with people losing their lives, and others losing jobs or the right to higher education.

lin the panel you mentioned the educational value of Article 17 of the Constitution. How might this be recognised and incorporated in legal education?

I taught in a law school for a decade and found that constitutional law was a very potent subject. There were some parts of the Constitution that were taught: 15.3 which talks about special provisions for women was taught a little bit, 15.4 that talks about reservations for scheduled castes and scheduled tribes was taught. But 15.1, which defines discrimination, was not taught. Even with teaching law around reservations, you are never taught the principle of reservation without immediately skewing it by talking about the 'creamy layer'. Similarly, you don't talk about Article 17 – i.e. the abolition of untouchability – at all. Professor Baxi has called it the only constitutional criminal law provision, which it is because the constitution does not have any other bans of conduct.

I knew for a fact that my students were not taught Article 17 in their constitutional law class. So from my second year onwards I started to look at the paths of criminal law that are *not* taught. Which parts of the constitution that are not on the curriculum? Then I incorporated that with the readings from social movements in my sociology of law class. Once I started opening the field out, many of the students got quite excited by what they were learning. Sexual offences were very often not taught, and the SC/ST prevention of atrocities act was never taught in criminal law. I used to teach those in sociology too. There is a huge issue around how formal law teaching structures itself along lines of the status quo. You will find a handful of teachers, now perhaps more, but between 1999-2009 there were very few who touched disability, or caste, all of these issues.

How might the law be able to identify and address discrimination in its intersectional forms?

You know the standard approach of courts has been to see non-discrimination in isolation. Article 15.1 has a rather interesting structure that talks about nobody being discriminated against on grounds of sex, caste, religion, race, place of birth 'or any of them'. One of the arguments which I elaborated on in my book on constitutional law is that 15.1 is a provision that coaxes you to take an intersectional view of discrimination. When I looked at a dictionary of legal usage I found that the term 'or' can be 'more' or 'and' in legal usage.

I argue that you never have discrimination on one ground only. In its manifestation, it is always intersectional and just because it's intersectional you can't refuse to look at it. So you can't be discriminated against on these grounds or any other. So both intersectionality and analogous interpretations are written into Article 15. I don't know how many takers I had but I did make that argument.

Finally, would you say the Disabilities Act goes far enough?

Following a major process we have a new one. There are many contestations, one of which is that it is not strong enough on gender and disability – the gender provisions are rather weak. On the other hand, if you look at what we had prior to this, it is a huge jump and I guess the best that we have for the moment.

I was a part of the team that appeared before the parliamentary standing committee for the new Act. We conducted a national consultation, got opinions on the draft legislation and then submitted written submissions to the parliamentary standing commission and so on. I was an interested bystander because a lot of my work also focuses on people with disabilities in rural areas and urban poor neighbourhoods and so on. If I look at it from that stand point, and the responses of the people who were organising on the ground, those groups welcomed the advance that it represents. It is a huge leap forward from what we had: it incorporates a lot of the provisions, whether it is due diligence or the definition of disability which has expanded considerably, and the non-discrimination provisions are strong. We will need to work this through, but at least they didn't just repeal the act and leave nothing in its place.

And this can potentially be further amended?

Of course, it is a statute and can be amended further. I think increasingly we need to bring disability within the purview of constitutional jurisprudence because courts are adamant that Article 15 cannot be read analogously and grounds have to be specific. I took a case to the State Human Rights Commission on preserving seats for disabled candidates in the local bodies elections and they said 'You can't argue this under 15 it will only go under 16' (Equality of Opportunity in Matters of Public Employment). I said 'I want to argue it under 15 as an analogous ground being immutable'. I pointed them to the fact that Article 15 does not mention tribe. 15.1 says race, caste, sex, place of birth or any other, but tribe has been brought under 15.1 right on the founding of the constitution. It hasn't registered that it has been brought in analogously because people tend to think of Scheduled Caste and Scheduled Tribe as twin categories and so although caste is mentioned you read tribe into that but tribe is not explicitly mentioned.

So we have a history of analogous interpretations in Article 15, but you still need a judge who will accept the argument. I constantly make a distinction between the text and what we as academics invested in the constitution: what are the ways in which we can throw light, new light on the text of constitutional conditions? Which are the interpretative traditions that we celebrate and which are the ones that we would discount in our reading of the constitution? I think that's really important.

Image credit: A Constituent Assembly of India meeting ([Public Domain](#)).

Watch the India at 70 Constitution panel in full [here](#), and read an overview [here](#). You can also see a short video with Professor Kannabiran reflecting on victories of the Constitution of India [here](#).

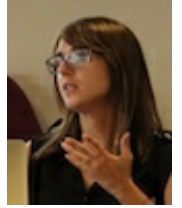
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About the Authors

Kalpana Kannabiran is Director of the Council for Social Development, Hyderabad. Trained as a sociologist (PhD-Sociology), and as a lawyer (LLM-Jurisprudence) she has combined research, teaching (law and sociology), activism, pro bono socio-legal counseling and rights advocacy in her work. She has written extensively on questions of justice, gender, caste, tribe, disability, and free speech.



Rebecca Bowers is a final year PhD student in the Anthropology Department at the London School of Economics. Rebecca's research explores the lives of female construction workers and their families in Bengaluru, India.



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