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Sex, laws, and inequality: what India can teach the United States

In every house there is fear.
Let's do away with that fear.
Let's build a women's organization.

– “Mahila Samiti” (“A Women’s Organization”), song sung all over India in women’s groups

Hanuffa Khatoon, a citizen of Bangladesh and also an elected official of that nation’s Union Board, arrived at Howrah Station in Calcutta, India, on the afternoon of February 26, 1998, planning to catch the Jodhpur Express that

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night. Because her sleeping-car reservation had not yet been confirmed, she contacted the train ticket examiner, who asked her to wait in the ladies’ waiting room. At around 5 P.M., two railway officials came to confirm her sleeping berth; they also offered to show her to the station’s restaurant, where she could get dinner before the departure. Ms. Khatoon followed a station-boy to the restaurant and ordered some food, but immediately began to vomit. She returned to the ladies’ waiting room, quite ill. The railway officials then offered to take her to the official station hotel managed by the Railways Board. She insisted on checking their credentials first, but when the official on duty at the ladies’ waiting room told her that their credentials were in order, she agreed to go. In the hotel room she was brutally gang raped for several hours by a group of four station employees. Finally she escaped and returned to the platform, bleeding and in a state of shock. There she found another railway official who pretended to assist her. He said he would take her to his wife, who would take care of her until she could get another train in the morning. At the wife’s alleged residence she was brutally gang raped again, and two of the employees tried to suffocate her. Hearing

her cries, the landlord called the police, who finally rescued her.¹

What is significant – and specifically Indian – about this story, however, is not the sad fact of gang rape, familiar throughout recorded history in all nations. What is significant is its dénouement.

Two years later, in an unprecedented judgment, Ms. Khatoon won a large damage award from the Railways Board. It was a landmark case in which the Supreme Court of India declared rape to be a violation of the fundamental right to live with human dignity, under both the Indian Constitution and the Universal Declaration of Human Rights. “Rape,” wrote the Court, “is a crime not only against the person of a woman, it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. Rape is therefore the most hated crime. It is a crime against basic human rights and is violative of the victim’s most cherished right, namely, right to life which includes right to live with human dignity....”

It is a mid-April evening in Bihar, in northeastern India. A woman is sitting with her brother in the backyard of her mud hut in a poor area of this state, one of the most corrupt and anarchic in the nation. Women have traditionally had little political power in Bihar, where, in some regions, the sex ratio is as low as 75 women to 100 men – a figure indicative of the differential nutrition and health care of girls, sex-selective abortion, and, probably, outright infanticide. But Poonam Devi, mother of two girls, is a candidate for election to her *panchayat*, or local council, and she is arranging the

voting slips, with her number on them, to be given to voters on election day.² A gentle, soft-spoken woman, Poonam Devi has for two years been president of a woman’s collective, where she has helped to arrange loans for all fifteen members of her group.

What is most astonishing about Poonam Devi’s campaign, however, is not the fact of her candidacy – but the fact that she is running against her husband, who is affiliated with the BJP (Bharatiya Janata Party, the currently dominant party nationwide, with a Hindu fundamentalist program). Originally it was thought that this constituency would be among those reserved for women in the current election, so Poonam Devi’s husband groomed her for candidacy, assuming that he would be unable to run. But when the electoral plan was announced, the constituency was not reserved for women, and the husband could run. But Poonam Devi decided to run anyway, with support from her parents and brothers. Her husband asked her to withdraw, but she refused. He is angry. After all, he says, she is a weak and insignificant candidate next to him. He is educated, he owns some land, he has been a teacher – and, he points out, he is even unemployed, so he has lots of time for the council. A reporter from the national news media asks Poonam Devi, “Why are you fighting against your husband?” She questions right back: “Why can’t I fight the elections, husband or no husband? Why can’t a woman and a man be candidates from the same family?” Her platform focuses on unemployment, the old-age pension, and the insecure economic

2 In Indian elections, voters receive slips with the symbol of each candidate, and they then deposit the slip of their choice in the box – a procedure designed to make voting easy for illiterate voters.

1 *Chairman, Railway Board v. Mrs. Chandrima Das* AIR 2000, SC 988.

position of single women and widows.³

The outcome of Poonam Devi's candidacy remains unclear. What is clear, however, is that the Seventy-Second and Seventy-Third Amendments to India's constitution, which establish a bold program of affirmative action for women in the local *panchayats*, are bringing large numbers of women into politics all over India, with clear results for the salience of issues pertaining to the welfare of women and children.

Inequality on the basis of sex is a staggering problem worldwide. India is hardly unique in this regard. Women in all nations – including the United States – still suffer serious inequalities in at least some central areas of human life.

Gang rape is hardly a problem indigenous to Calcutta: it is the regular fare of U.S. courts. (A recent showing of *Law and Order* reruns managed to fill an entire evening with programs on this one theme, most of them based on real stories.) And it is just one especially terrible aspect of the general worldwide problem of violence against women, a problem that seems to be particularly grave in the United States. (According to a report recently published in the *Journal of the American Medical Association*, one-fifth of the Massachusetts high-school girls studied have suffered some type of violence from a date, either assault or sexual violence. A recent national study concludes that 25 percent of adult women have experienced violence from a romantic partner. The Justice Department estimates that more than 1.5 million U.S. women experience physical or sexual violence each year from a

boyfriend, husband, or date.⁴)

Nor is lack of political power a distant difficulty. Women in the United States hold only 13.8 percent of its national legislative seats – one of the lowest figures among the developed nations, according to the *Human Development Report 2001*. And in no nation does the figure come very close to equality: Sweden and Denmark take the lead, with 42.7 percent and 37.4 percent, respectively; outside the Nordic countries, the highest figures are for the Netherlands at 32.9 percent and Germany at 30.4 percent; highest in the developing world is South Africa at 27.9 percent.

But women are also contesting age-old forms of subordination with increasing success, creating innovative proposals for change in both custom and law. And sometimes nations that are widely perceived as lagging behind the “advanced democracies” of the United States and Europe can actually take the lead, with bold measures like those that altered the lives of Hanuffa Khatoon and Poonam Devi.

In this essay I shall look at the problem of women's inequality through the lens of today's India, a nation with both enormous gender problems and rich political creativity. I shall begin by offering a thumbnail sketch of the situation of women in India and of the Indian constitutional tradition, which has been remarkably woman-friendly, and discuss conceptions of equality and the role of law that offer rich resources for those seeking to advance women's position in society. I shall then return to the cases with which I began, showing how a reasonable conception of affirmative action and a reasonable openness to the norms

3 See Mukul Sharma, “Bihar: Making of a *Panchayat* Election,” *Economic and Political Weekly*, 12 May 2001.

4 Erica Goode, “Study Says 20% of Girls Reported Abuse by a Date,” *New York Times*, 1 August 2000, A10.

of the international community (both rather lacking in current U.S. politics) have enabled India to progress.

It is extraordinarily difficult to sum up succinctly the situation of women in India, since there is probably no nation in the world with greater internal diversity and plurality. In what follows I shall be mentioning some of those differences (of caste, religion, regional background, wealth and class, and still others). All generalizations cover multiple differences.

India celebrated the fiftieth anniversary of its independence from Britain on August 15, 1997. It is the world's largest democracy, with a population of 846.3 million. It is a constitutional parliamentary democracy, with a written account of Fundamental Rights containing the abolition of untouchability and an elaborate set of equality and nondiscrimination provisions. Its legal system is in some respects similar to (and modeled on) that of the United States, combining a basically common-law tradition with the constraints of a written constitution including the extensive list of Fundamental Rights. Its Supreme Court, like ours, is the ultimate interpreter of these rights.

India's Constitution is in some ways very attuned to issues of sex equality, which were prominently debated when the Constitution was adopted in 1950. The framers of the Constitution were very conscious of deeply entrenched inequalities, both those based on caste and those based on sex, and they made the removal of them one of their central goals. The text of the Constitution is in many ways exemplary in its treatment of issues of gender and sex, particularly in the section dealing with Fundamental Rights.

Article 14 says that the state shall not

deny to any person "equality before the law or the equal protection of the laws." Article 15 prohibits state discrimination "on grounds only of religion, race, caste, sex, place of birth or any of them." Other rights that are highly relevant to sex equality include Article 13 (invalidating all laws inconsistent with the Fundamental Rights); Article 16 (equality of opportunity in public employment); Article 19 (protecting freedom of speech and expression, freedom of association, freedom of travel, freedom of residence, and freedom to form labor unions); Article 21 (stating that no citizen shall be deprived of life or liberty "except according to procedure established by law"); Article 23 (prohibition of traffic in human beings and forced labor); and Article 25 (freedom of conscience and religion). (Article 17 abolishes untouchability: "its practice in any form is forbidden.")

The understanding of equality in the Constitution is explicitly aimed at securing substantive equality for previously subordinated groups. The framers carefully distanced their conception from the idea, already familiar in those days, that equality requires treating everyone the same and not using race or sex as grounds for any type of differential treatment – an understanding that has been used in the United States to subvert affirmative action. In India, by contrast, the Constitution's so-called Directive Principles of State Policy (a nonenforceable section of the Constitution) devotes a great deal of attention to promoting economic equality, and the Fundamental Rights are themselves specified in a way that makes room for affirmative-action programs designed to advance the material situation of women and the lower castes.

Thus, Article 15 states that "Nothing in this article shall prevent the State from

making any special provision for women and children,” and that “Nothing in this article . . . shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.” Similar clauses appear in Article 16 (equality of opportunity in public employment) and in Article 19 (various other rights and liberties). Even before independence, quotas and other affirmative-action measures for deprived groups were an accepted part of the Indian scene, and they became even more salient at independence. In short, the framers understood the goal of equality in terms of an end to systematic hierarchy and discrimination based on both caste and sex.

In light of this tradition it is not surprising that India has long been a center of thought and planning about sex equality, or that, when the United Nations Development Programme needed a major report on gender and governance, it turned the writing of this report over to its New Delhi office.⁵

There is one great structural difference between the Indian legal system and the Anglo-American systems to which it is related: India has no uniform code of civil law (even within each region). Criminal law is uniform for the nation as a whole and is administered by the state. But with the exception of commercial law, which was uniformly codified for the nation as a whole by the British and has remained so, civil law remains the province of the various religious systems of law – Hindu, Muslim, Parsi, and Christian. These systems are

defined by laws passed in Parliament, but they assign to religious bodies considerable power in the areas of marriage, divorce, child custody, and property. There are some individual secular laws of property, marriage, and divorce, but they do not form a system, and, because one is typically classified into a religious system at birth, it is not so easy for individuals to disengage themselves, particularly when property is jointly owned in family consortia (as it often is) from which individuals may not extricate their shares. These systems of personal law have made it uniquely difficult to end discrimination based on caste and sex.⁶ To explore these difficulties, however, would take us rather far from our primary topic.

Unlike the United States, India is an extremely poor nation. It ranks 115th out of the 162 nations of the world on the Human Development Index of the 2001 *Human Development Report*. The average life expectancy at birth is 62.9 (as opposed to 80.8 in Japan, 76.8 in the United States, and somewhere between these two numbers in Canada and most of Europe⁷), and infant mortality is high, at 70 for 1,000 live births (although this represents a great decline from 165 in 1960).

Women do even worse than men in basic nutrition and health. If equal nutrition and health were present, it is

6 See my discussion in *Women and Human Development: The Capabilities Approach* (New York: Cambridge University Press, 2000), chap. 3.

7 Ireland and Denmark are the only nations in Western Europe to have lower life expectancy than the United States, although most of the nations of Eastern Europe and the former Soviet Union also have lower expectancy. Also ahead of the United States are Australia, New Zealand, Israel, Hong Kong, Cyprus, Singapore, and Malta; Costa Rica and Barbados are close (76.2 and 76.6, respectively).

5 This report will be published shortly; its authors include citizens of India, Sri Lanka, and the United States. (I wrote the introduction and the discussion of issues of sex equality within the family.)

estimated that the sex ratio would be approximately 103 women to 100 men. India's sex ratio has not been even 1:1 at any time since measurements began in the early twentieth century. From a high of 97 women to 100 men in 1901, the ratio dropped steadily, reaching a low of around 93:100 in 1971; after a slight rise, it declined again even further, reaching 92.7:100 in 1991. These are official figures. Things are probably much worse, at least in some regions. A house-to-house count by a good NGO in rural Bihar arrived at a ratio of 75:100, and a similar count in a region of Karnataka found 65:100. Some of these differences should be attributed to the differential nutrition of boys and girls and to unequal health care, but sex-selective abortion and active infanticide are playing an increasing role. A recent study by the Indian Association of Women's Studies estimates that 10,000 female fetuses are aborted every year. Some regions tell a very different story: Kerala, for example, has more women than men. (This situation results from a combination of relatively female-friendly traditions and gender-friendly state governance.) But clearly, on the whole, women face special obstacles in India.

In education, the male-female gap is even more striking: the adult literacy rate for women is 44.5 percent, as against 67.8 percent for men. (In China, the figures are 75.5 percent for women and 91.2 percent for men.) Such statistics are hard to interpret, since local governments tend to be boastful and since it is hard to establish a clear measure of literacy. Yet what is unambiguously clear is that, despite the fact that education is a state responsibility, India has done very badly in basic education across the board, and even worse in basic education for women. Although all Indian states have laws making primary educa-

tion compulsory, these laws have little relation to reality. Many regions utterly lack schools of any kind, just as they frequently lack reliable electricity, medical services, water, and decent roads; many local functionaries are corrupt, and so teachers in many regions take pay without ever even showing up in the region where they are supposed to be teaching. In some rural areas, female literacy is as low as 5 percent. The national government, though well-intentioned, has done little to fill these gaps, although some adult education programs have been established in some of the poorer states, and many nongovernmental organizations run both adult education programs and after-work programs for working girls.

Still, this does not seem to be a necessary or unbreakable pattern, since some otherwise poor regions have done extremely well. Kerala has adult literacy of 90 percent and near-universal literacy among adolescent boys and girls. This remarkable record is the outcome of more than a hundred years of concerted public action. Recently a constitutional amendment was introduced that would make the right to education a justiciable fundamental right in India.⁸ It may be hoped that the passage of this amendment will goad government into acting more aggressively on its good intentions.

Among the greatest obstacles to fully equal citizenship that women face, in all nations, is their unequal exposure to sex-based violence.⁹ In India the problem of

8 Amendment 83, to be inserted in the Fundamental Rights section of the Constitution as Article 21a. See the full text of the amendment in *From the Lawyers Collective* 13 (April 1998): 10.

9 For data on the United States, and the failure of law to deal adequately with these problems, see chap. 5 of my *Sex and Social Justice* (New York: Oxford University Press, 1999).

violence against women is compounded, often, by the low age of marriage and the lack of economic options for a woman with little or no education. The marriage of girls as young as four or six, although long since illegal, is a common reality, especially in some regions where it is traditional. Laws against it are not enforced, and it shapes a girl's life from birth, often discouraging her family from educating her.

Within marriage, at all ages, domestic violence is so pervasive that three states have adopted alcohol prohibition laws in response to women's lobbying in an effort to reduce such violence. Police do not aggressively investigate domestic abuse, and virtually no women's shelters exist. Rape within marriage is not even illegal. Thus, women who wish to protect themselves against marital violence have few options. If they are not equipped for employment outside the home, they have virtually no exit options; many women endure lives of abuse because they know that prostitution is their only alternative.

The problem of domestic violence is being addressed, above all, through education, credit, and economic options. Hundreds of nongovernmental organizations, from the large Self-Employed Women's Association (SEWA), with over fifty thousand members, to the small village-based women's collective led by Poonam Devi, have been educating girls and women outside the formal state structure, lending them money, and teaching them employment-related skills so that they can do something on their own if they decide to leave a bad marriage. Education, credit, and the reform of antiquated property laws to give women land rights in their own names are probably the three most significant strategies against domestic violence. At the same time, most local

women's groups also address domestic violence directly, and politicians such as Poonam Devi fight to make life a bit fairer for widows and single women, two groups that suffer greatly from discrimination and vulnerability to violence.

Rape, however – in India as in so many other nations – has been badly dealt with under the law for many years, and the number of rapes appears to be on the rise. It is easy to find cases in which acquittal was secured on the grounds that the woman was of low caste, or “immodest,” even when there is ample evidence of forcible rape in the particular instance. Rape is also used as a weapon against women crusading for political change. In 1993 Bhanwari Devi, a member of the state of Rajasthan's Sathin movement for women's welfare, was campaigning against child marriage when she was gang-raped by men from a community that supports the practice of child marriage. Because the men were influential community leaders, police refused to register the case until it was too late to perform the necessary medical examination; a lower court in Jaipur acquitted all the accused. Although Bhanwari appealed this judgment and the Rajasthan High Court agreed in 1996 to hear her appeal, arguments in the case have not yet been heard.

In general, delays in the criminal justice system often create a lapse of ten years between rape and court date, making it very difficult for women to pursue their cases, even when they want to. Often they don't want to, because a woman's sexual history is still admitted as evidence, and assumptions about the woman's behavior and dress continue to influence the resolution of rape trials. Defendants can usually win a continuance on the flimsiest of pretexts, and their strategy typically is to delay and delay until the woman gives up the pros-

ecution. A friend of mine who is a professor of philosophy and women's studies at University of Lucknow urged a former student to pursue her rape complaint and promised to join her in court whenever the case surfaced – until, after five years, the woman had remarried, and didn't want to think about her rape any longer.

One case that spurred awareness of women's grievances in this area was the 1979 case of Mathura, a sixteen-year-old tribal woman who was raped by two policemen within a police compound. The lower court acquitted the policemen on the grounds that Mathura had eloped with her boyfriend and hence was "habituated to sexual intercourse"; they thus reasoned that she could not be an unconsenting victim – therefore she was not, technically, raped. The High Court overturned the decision, holding that mere passive surrender under threat cannot be counted as consent to intercourse. The Supreme Court, however, reinstated the lower court decision.

This judgment triggered widespread public protest and publicity; rape and rape law were discussed widely and openly for the first time. Four Delhi University law professors wrote a petition to the Supreme Court calling for a rehearing of the case. The petition, unfortunately, was dismissed. It did, however, energize the women's movement to demand legal change. More important, a law commission was set up by the government to consider changes in rape law.

One significant result was a shift in the burden of proof in custodial rape cases, as well as a set of mandatory minimum sentences for rape. Other feminist demands, such as the demand that a woman's prior sexual history should not be deemed relevant evidence, were not included in the version of the new legislation that was passed in 1982.

Recently, however, the Supreme Court, at least, has shown greater sensitivity to the issue of sexual violence. Hanuffa Khatoon's case shows a determination to confront the problem head-on, using the resources of the constitutional tradition, which has already held that the right to life guaranteed in Article 21 includes a right to life with human dignity. (The landmark case was one defending the rights of the homeless.) In an earlier case not centrally dealing with rape, the Court had already opined that rape is a constitutional issue, and they quoted from that case at the outset of their opinion in Hanuffa Khatoon's case, declaring that rape is a "crime against the entire society" because it "destroys the entire psychology of a woman." It is therefore a "crime against basic human rights" and a violation of the right to life with dignity guaranteed under Article 21. This judgment the justices then applied to Ms. Khatoon's gang rape by the railway employees. The justices argued, moreover, that the fundamental right to life with dignity belongs not only to citizens of India, but to all "persons" (like the Bangladeshi visitor Ms. Khatoon) within the territory of India.

Then, in a most interesting discussion, the courts pointed out that the Fundamental Rights are closely modeled on the list of rights in the UN's Universal Declaration of Human Rights. They mention particularly the declaration's emphasis on equal human dignity (Article 1); the right to life, liberty, and security of person (Article 3); the prohibition of "cruel, inhuman or degrading treatment" (Article 5); the guarantee of nondiscrimination and the equal protection of the laws (Article 7); and the prohibition of arbitrary detention (Article 9). They argue that the purpose of the section on Fundamental Rights in the Indian Constitution was to enact the

Universal Declaration and “to safeguard the basic human rights from the vicissitudes of political controversy. . . .” This being so, the meaning of the word “life” in the Indian Constitution can be further interpreted with reference to the declaration. They note that earlier Supreme Court decisions have already given “life” a broad construction, including the idea of life with human dignity. Since gang rape is obviously inconsistent with human dignity, and the rape was committed by government employees, the judgment of the Calcutta High Court awarding Ms. Khatoun damages from the Railways Board was upheld.

This creative judgment shows how a legal tradition can be fruitfully mined to give women redress against violence. Thus far, it has a function similar to that of the U.S. Violence Against Women Act, passed by Congress in 1994, which offered victims of sex crimes a federal avenue of redress, given the evident unevenness and unreliability of the criminal justice system in the states.¹⁰ (Of course, our Supreme Court, moving in the opposite direction from its Indian counterpart, has declared the 1994 Violence Against Women Act unconstitutional on the grounds that it allegedly exceeds the power of Congress.¹¹) But the Indian Supreme Court’s judgment shows something more: it shows that a national legal tradition may deepen and strengthen its fundamental rights through incorporation of the rights guaranteed in the international documents it has ratified.

This move has been made before in

10 On this issue see Stephen J. Schulhofer, *Unwanted Sex: The Culture of Intimidation and the Failure of Law* (Cambridge, Mass.: Harvard University Press, 1998).

11 *U.S. v. Morrison*, 120 S. Ct. 1740 (2000).

India. In another significant judgment concerning sexual harassment, the Supreme Court ruled that the guidelines on harassment in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) are binding on the nation through its ratification of that treaty.¹² In this way the universal human rights guaranteed in treaties may enter a nation without violation of its democratic sovereignty and after due deliberation by the body that has been entrusted with the interpretation of fundamental rights.

In short, when a nation understands itself to be a member of the world community, committed to taking its treaty obligations seriously, creative legal change may ensue. Unfortunately, the United States is currently reverting to old isolationist habits, giving the impression that it does not need to consult with any other nation and that it is powerful enough to show disdain for the world community.

The surprising candidacy of Poonam Devi also is the fruit of creative constitutional thinking. At the time of India’s founding, in keeping with the generally substantive understanding of equality in its Constitution, various schemes of affirmative action on behalf of traditionally subordinated groups were contemplated. The Constitution created a system of representation meant to reflect the proportion of every caste and tribe in the total population of each state. The system works by a complex scheme of rotations: in successive elections, only members of certain groups may run for office, although all citizens

12 *Vishaka v. State of Rajasthan*, AIR 1997, 6 SCC 241. Compare the invocation of CEDAW as binding on the nation in a nationality case in Botswana: *Attorney General v. Unity Dow*, 1992 LRC (Cons) 623 (July 2, 1992).

may vote. Despite controversy and many complaints, the system seems to have worked reasonably well, effectively enfranchising a variety of previously disadvantaged groups and promoting their economic and social well-being. There is little doubt that it would have been difficult to achieve progress against the deeply entrenched realities of caste without such affirmative legal measures.

On the other hand, legitimate objections can be made to the system. First of all, no reserved seats have ever been created or even seriously championed for Muslims, arguably as vulnerable a minority as the Scheduled Castes and Tribes. Second, the practice of reservation has led over time to a situation in which castes at the very bottom of the social ladder do considerably better than those just above them. Thus, more recently, as a result of the 1980 report of the Mandal Commission, reservations for OBCs (Other Backward Castes) were added to the list. (Estimates of the proportion of India's population that belongs to OBC groups range from 25 percent to 37 percent, and many of these people are economically advantaged. Thus it can now be argued that the system of reservations no longer protects the most vulnerable and otherwise unrepresented groups.) As a result of the system of representation, a politics of caste has to some extent displaced a politics of national issues, and recent governmental instability at both regional and national levels can be partially attributed to the proliferation of caste-based parties. Despite these problems, however, the quota system seems to most Indians to be a source of more good than harm, and there is no serious demand for its abolition.

Reserved seats for women have been discussed since before independence. Early feminists opposed reservations,

arguing that they would compromise the struggle for women's full equality. At independence, accordingly, reservations for women were rejected, although, as noted above, affirmative action on the basis of sex won general support in the Constitution. In 1971, the government appointed a Committee on the Status of Women in India to study the progress that had been made by women since independence. In its famous 1974 report *Towards Equality*, the committee delivered a scathing critique of the political process, arguing that the political position of women in India had, if anything, worsened since 1950, and that women were neither able to claim their legal rights nor, in many cases, even aware of them. The majority of the committee continued to oppose reserved seats as a remedy, but a minority report signed by some especially prominent feminist leaders argued that this remedy was necessary for the resumption of social and political progress for women.

A generation later, the representation of women in central and state government continues to be very low: 6–7 percent in the Lok Sabha (the analogue of the House of Commons), one of the lowest parliamentary figures in the world. Political parties have talked about reserving a certain proportion of their own candidacies for women, but have done nothing about it. At the same time, women's voter turnout has significantly increased and is now at 55 percent, only slightly less than the national average. In this situation, it is not surprising that the idea of reserved legislative seats for women has attracted new political and constitutional attention, in connection with a push for greater local self-rule.

Arguing, like John Stuart Mill, that participation in local politics teaches citizens how to appreciate the common good, national legislators successfully

amended the Constitution in 1992 to give formal legal status to the system of *panchayats*, or local village councils, an aspect of governance central to Gandhi's vision of India but never fully implemented. The Amendments established a 33 percent quota for women in the *panchayats* and set up a system of rotation that is similar to that by which reservations for lower castes have already been implemented at the national level.

Initially, advocates for women were split about the merits of this system. Many feared that the women who would be selected would simply be tools of male interests. But nearly ten years of experience with the plan has shown that, on balance, its merits outweigh its drawbacks. Certainly in some cases women do initially function as proxies for the powerful men in their families. Poonam Devi was initially groomed for office by her husband, who believed that he would be unable to run for the seat. But even such women learn political skills in the process. Poonam Devi became so interested in politics that she is now running for office *against* the wishes of her husband. Whether she wins or loses, she is gaining valuable experience; if she loses, in due course she will be able to run for a reserved seat.

Moreover, the new system's extension of political power to poor and illiterate women has been dramatic. Studies show that a majority of women who serve in the *panchayats* are illiterate or barely literate. Moreover, approximately 40 percent of female representatives come from families with income below the poverty line. Women report many obstacles to their effective participation, including harassment and the threat of violence. Nonetheless, a number of women are evidently learning political skills and participating in decision-making in a way that would not have

been possible without the Amendments. In addition, the system has increased demands for female education: mothers can now urge their daughters to go to school in order to prepare themselves for a role in politics. They report that this gives them more power in the family to decide which children shall go to school.¹³

More recently, proposals to introduce reservations for women at the national level have encountered tremendous opposition – largely from lower-caste parties, who fear that the new quotas would result in fewer lower-caste legislators, since they believe that educated women will be the most likely to be elected. They propose a subquota in the general women's quota for lower-caste women, but so far proponents of the Amendment have rejected this proposal. Certainly such a quota for lower-caste women would exacerbate some of the problems already produced by caste-based reserved seats at the national level. A possible outcome of the current debate is that parties will agree to reserve a certain proportion of their tickets for female candidates (as they do in France and quite a few other countries).

It is ironic – and telling – that similarly creative proposals are non-starters in the United States. Even though the United States has one of the lowest proportions of women in the national legislature within the developed world, we are not looking around with genuine curiosity to see what other nations have done about

¹³ On all these matters, see Nirmala Buch, *From Oppression to Assertion: A Study of Panchayats and Women in Madhya Pradesh, Rajasthan and Uttar Pradesh* (New Delhi: Centre for Women's Development Studies, 1999); I am also grateful to Zoya Hasan and to Niraja Gopal Jayal for allowing me to read unpublished works on this topic, and for discussion.

this problem.

This is not to say that the Indian solution fits the U.S. situation. Very likely it does not. Quotas for women in the *panchayats* are a solution well adapted to the situation of the rural poor in India, where illiteracy and lack of employment outside the home pose daunting obstacles to women's political participation. In the United States, by contrast, many more women already work – and no real equivalent of India's *panchayats* exists.

Still, Indian politicians and jurists are *thinking* – as ours have too often refused to think – creatively. We should more vigorously confront the problem of violence against women and the problem of the underrepresentation of women in politics by considering a wide range of remedies – first on the list being campaign finance reform, which has at least received a hearing. But systems of multi-

ple voting and proportional representation, which have been used successfully by some municipalities for years to enfranchise underrepresented groups, should also be considered. In general, we should attend to the issue, debate it without phobic reactions (such as the term “affirmative action” so often evokes), and learn from other nations.

Both of these issues show us one large fact: the world is moving on, with or without U.S. participation, to find creative solutions to pressing problems of human inequality. Usually U.S. citizens don't know anything much about these developments, and some of our politicians encourage disdain for what is happening elsewhere. We need to learn new habits of curiosity and respect if we are to be productive members of an increasingly interdependent global community.