
EFFECTIVENESS OF INDIAN LEGISLATION FOR EMPOWERMENT OF WOMEN IN INDIA

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ABSTRACT: In 1947, India won freedom from foreign rule. In 1949 a Constitution was drafted which gave equal rights and status to all Indian citizens. Independent India has seen various reforms and programmes for the uplift of women of all communities. Indian women have played an important role from the very beginning of Independence in different walks of life. Women have taken bold steps in all nation building activities, which started with education and has now blossomed into women's involvement in every activity of India. They have participated in all activities such as education, politics, media, art and culture, service sectors, science and technology, etc.

Keywords: Women, politics, media, and culture, science and technology

INTRODUCTION

The first Law Commission in India was established in 1834 under Lord Macaulay, which recommended the codification of the Criminal Law (leading to the IPC), Criminal Procedure Law and other issues. The first Law Commission of independent India was established in 1955 for a three year term, and since then, has convened regularly to deal with legal matters. The latest, the Twentieth Law Commission, convened in January 2013, was chaired by former Supreme Court Justice, D.K Jain. The Commission examined existing laws in accordance with the government's directives or terms of reference, proposing amendments to the law as appropriate. The reports of the Law Commission are considered by the Ministry of Law in consultation with other departments and ministries, and its reports are submitted to the Parliament for consideration. The Law Commission has been asked twice to examine legislation related to rape; first in 1980 ('Rape and allied offences some questions of substantive law, procedure and evidence', Ninth Law Commission) and, more recently, in 2000 ('Review of Rape Laws', Fifteenth Law Commission). Based on the recommendations of the Ninth Law Commission in 1980, the Criminal Law (Amendment) Act 1983 was passed by Parliament. The Act made the following changes to the IPC: Section 376(2) (custodial rape); Section 276(A) (marital rape) and section 376(B&D) (sexual intercourse not amounting to rape). The amendments prohibited the disclosure of the names of victim(s) and perpetrator(s). The other key changes brought about by the 1983 amendments in the Code of Criminal Procedure were that it provided for medical examination of the rape victim (Section 164A) and trial for rape to be conducted 'in camera' to protect the privacy of victims (Section 327(2)). Consistent with the common law, there was no minimum punishment specified in rape cases. The 1983 amendments modified this, imposing a minimum of ten years of imprisonment for the rape of a girl under the age of 12, of a pregnant woman and also in cases of gang and custodial rapes. Section 376 further prescribes 'rigorous punishments of either description for a term which shall not be less than ten years (previously seven), but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine'. The

2013 amendments have been particularly severe in prescribing punishments for gang rape and repeat offenders. Under Section 376D (gang rape) the new provisions provided 'rigorous punishments for a term which shall not be less than twenty years, but which may extend to life, which shall mean imprisonment for the remainder of the person's natural life and with fine'. Under 376E (repeated offenders of rape) the new law provided life imprisonment and or death. Although there have been significant advances to the law governing sexual offences in the past year, there remain several specific areas which remain problematic. In the next section, we examine three of these: (i) marital rape immunity; (ii) pre marital and false promise; and (iii) homosexual law reform.

REVIEW OF LITERATURE

Preeti Rastogi (2000) collection of some of Madhu Kishwar's best and most controversial essays concerning topics central to women's issues in India today: the role of marriage payments and dowry, unwanted daughters, denial of inheritance and land rights to women, love, sex and marriage, sexual harassment, identities, beauty contests etc. Many of these offer a critical appraisal of Madhu Kishwar's activism and engagement. The essays are an attempt to grapple with one of the most serious challenges to women in India: Why is it that inspite of all the high profile attention on women's issues many remain unresolved? Most of the work thus far has resulted only through symbolic actions such as passing of laws, which very often are inappropriate and not implemented. In most cases where laws are misused it contributes to increasing the vulnerability of women's lives. The volume also a deal with Madhu Kishwar's moving away of 'ism-driven' politics and orthodox feminist thinking. The essays reject statist interventions in social reform and appeal to people's consciences to bring about any meaningful changes in the position of women.

LITERATURE ON MARRIAGE AND FAMILY LIFE OF WOMEN

Sudhir Chandra (1998), the first case filed in 1884 for restitution of conjugal rights and in detail. It also discusses the repercussions of the case on the society. Rakhamabai wedded Dadaji at an age at which she was incapable to give a wise consent. She refused to be obligated to a marriage solemnized when she was only eleven. During the eleven years of their unconsummated marriage she had grown to develop a strong dislike and argued that she was not bound to go to Dadaji. Dadaji moved the Bombay High court for the restitution of his conjugal rights, which resulted in strengthening her determination to resist the autocracy of indigenous social authority and colonial legal dispensation.

The author looks at ancient shastric Hindu law in matters of rights of women; sati practices, the involvement of the British in enacting laws to protect women's social status. It examines views, interpretations of courts, legislature in matters of bigamy, conjugal rights, inheritance, divorce, maintenance under Hindu marriage act and Muslim personal laws. It also looks at the Muslim community views. It examines the provisions of criminal procedure code and the Indian penal code in relation to above topics. This article cites instances, circumstances of litigation and court interpretations and views. In this article an attempt is made by the author to critically examine the social status of women by way of legislation, judicial interpretations and processes.

Chowdhary Prem (2004) explores the apparently progressive practice of widow remarriage in the state of Haryana in India which has several possible repressive aspects, including forcible remarriage into mismatched and undesirable alliances, polygamy and being deprived of inheritance rights. Widow Remarriage in its levirate form is popular among the landowning classes as it emanates out of the desire to retain landed property within the family. The author shows how the state by its own legislative measures contributes not only to subverting the more positive facets of widow remarriage but it also becomes an accomplice in the subversion of the potentially beneficial effects of its laws, making them ineffective and in fruituous.

LITERATURE ON VIOLENCE AGAINST WOMEN

While the women's organizations in India have opposed individual acts of violence against women ranging from amniocentesis, female infanticide, rape, dowry deaths and sati, there has been little attention given to the theoretical understanding of the causes of violence. The essay therefore discusses some recent Indian feminist theorising of violence by activist leaders closely involved in movements of women as peasants, forest dwellers and members of the lower castes. The author, while discussing violence in traditional Marxist and Radical Feminist theories delves into the emerging theories of violence in India. The essay focuses on Sharad Patil's theory, a combination of Marxism and Phule- Ambedkarism, where violence against women is understood as a reflection of the relations of production of a class-caste society; Sharad Joshi's theory influenced by radical feminism, where violence is central to the process of capital accumulation and women's power is the central force of liberation; and eco-feminist, Vandana Shiva's theory, influenced by Gandhian thought where violence seen as inherent in 'western cultures' and women as protectors of nature and the traditional community. The essay apart from bringing out the complexities involved also provides an insightful critique of each of the theories.

Ram Ahuja retired as Professor of Sociology from the University of Rajasthan in 1988 after completing a teaching career of more than 3 decades. He is on the visiting faculty of various national institutions and police academies and has authored numerous research articles and books.

The book while noting the rise in violence against women attempts to answer questions regarding the nature of and causes for violence against women, if any theoretical analysis could be offered explaining the etiology of violence and the effectiveness of women's groups in tackling issues of sexual exploitation and harassment of women. These and other issues are critically examined from sociological perspective. It also deals with issue of trauma faced by victims of violence as they seek acceptance in a hostile environment. The book also offers suggestions regarding treatment of such issues through preventive measures, redefining patriarchal norms, developing support for victims within the family and through women's organizations etc. thus providing a balance between practical and theoretical issues.

HISTORY OF INDIAN LAW

Ancient India represented a distinct tradition of law, and had an historically independent school of legal theory and practice. The *Arthashastra*, dating from 400 BC and the *Manusmriti*, from 100 AD, were influential treatises in India, texts that were considered authoritative legal guidance. Manu's central philosophy was tolerance and pluralism, and was cited across Southeast Asia. Early in this period, which finally culminated in the creation of the Gupta Empire, relations with ancient Greece and Rome were not infrequent. The appearances of similar fundamental institutions of international law in various parts of the world show that they are inherent in international society, irrespective of culture and tradition. Inter-State relations in the pre-Islamic period resulted in clear-cut rules of warfare of a high humanitarian standard, in rules of neutrality, of treaty law, of customary law embodied in religious charters, in exchange of embassies of a temporary or semi permanent character. When India became part of the British Empire, there was a break in tradition, and Hindu and Islamic law was supplanted by the common law. As a result, the present judicial system of the country derives largely from the British system and has little correlation to the institutions of the pre-British era.

ANCIENT PERIOD

From the available documentation, it is revealed that women enjoyed a fair amount of freedom and equality with men in the fields of education and religion during the Vedic period. According to A.S. Altekar, in his well known book "Position of Women in Hindu Civilisation", wrote that in the Vedic period, women from higher sections of society were given equal rights in the field of religion, and they attained distinction in the realm of theological studies and philosophy. Distinguished women such as Gargi and Maitrayee are well known names of this period, who excelled as scholars in their own right. During the

ancient period, there were icons such as Sita, Damayanti, Draupadi and three of the Panchkanyas, Ahilya, Tara, Mandodari, who are still remembered with great reverence in Indian society. It was in the later period, approximately 500 BC, that the status of women gradually declined with the Smritis and other religious texts giving *diktats* which adversely affected women's freedom and rights. With the rise of Brahminism and due to conflicting religious and social thoughts, the place of women remained subordinate and unsatisfactory. Buddhism and Jainism, however, continued to give a place of honour to women. Women were eligible for admission to the religious order in both Buddhism and Jainism. Bhikshuni Sanghamitra was one of the main proponents of Buddhism of her time.

MEDIEVAL PERIOD

The medieval period saw further deterioration in women's position in society and their subjugation in the religious and legal spheres. This was a period when important scriptures propagated the idea that women were unfit for freedom and deserved no Independence. They should be kept under the authority of men in all stages of life. During the early ADs due to foreign invasions and later in the early years of British rule in India there was further set back in the position of Indian women. The *purdah* system, which was not practiced as a rule in the Indian society, became prevalent due to uncertain socio-political reasons. The growing incidence of female infanticide, the custom of child marriage, and the inhuman practice of *sati* became a part of the social culture, along with the religious ban on widow remarriage.

Though there are conflicting opinions about the status of women in this period, it was in this period that India saw the floodgates open to social reforms. In spite of many handicaps the medieval period also had its share of great women in the fields of politics, literature, education and religion. Women were equally eminent in the field of administration and state crafts. Razia Sultana, Empress Noorjahan, Chand Bibi, Maharani Jija Bai, Rani Padmini are some women with exemplary achievements. The Princesses of the Mughal courts and women from higher social circles were well educated and pursued many cultural activities. Jahanara Begum and Princess Zebunnissa were well-known poetesses and they also influenced the ruling administration. The *Bhakti* movement brought many women poet saints from different social and economic classes to join Vaishnav and other traditions of devotion, and also the sufi traditions in different parts of India. Akkamadevi, Mirabai, Rami Janabai, Lal Ded, etc. are well known names in the field of devotion and poetry.

MODERN PERIOD

In the modern period, the status of Indian women can be divided into two distinct periods, the British Rule, i.e. Pre-Independence India and Post-Independence India. The British Rule in the 18th Century brought in some degree of political orderliness, but the social structure, customs and practices remained unchanged. It was mainly during the 19th Century that the reform movement undertaken by enlightened thinkers and leaders of Indian society understood the importance of women's participation that the status of Indian women started changing for the better. Though initially all the leaders were men, women gradually came into the scene and played their role not only in changing history but also the society as a whole, through their efforts in different areas of work such as education, politics and freedom movement, women's movement and social welfare. Mrs. Annie Besant, Dr. Sarojini Naidu, Kamladevi Chattopadhyay, Mrs. Nellie Sengupta, and many others gave a direction to Indian womanhood towards change and betterment. Indian women actively participated in the freedom movement, which also had different thrusts and ideologies. The founding of the Indian National Congress in 1885 and Mahatma Gandhi's non-violent movement not only led to political emancipation but also was a step in the right direction for social and national reconstruction. Women took equal initiatives and participated in all types of struggle for freedom, i.e. non-violent movement advocated by Mahatma Gandhi and the National Congress, as well as in the violent and armed movements advocated by other leaders in different parts of the country. Women's

enthusiasm in participating in the armed revolution helped Netaji Subhash Chandra Bose to set up the Rani of Jhansi Regiment of the Indian National Army. Women's participation in the freedom movement was so extensive that the achievers are many in number. Some names of great significance are Smt. Kasturba Gandhi, Madam Bhikaji Cama, Sarla Devi, Muthu Lakshmi Reddy, Aruna Asaf Ali, Sucheta Kriplani, Durga Bai Deshmukh, Priti Lata Waddedar, Captain Lakshmi and Janaki Davar of INA, Jahanara Shah Nawaz, Randhabai Subbarayan, etc.

NEED OF THE RESEARCH

In the era immediately after independence, the female population of our country was not well educated. The condition of women in our Indian society was always considered secondary to that of men. This scenario was more pronounced after our independence than it is today. Women in that era were mostly housewives, but the phenomenon of DINK couples soon rose with the economic prosperity and increase of literacy among women.

Women are part and parcel of the labor force of the most menial and often dangerous occupations in India. As such, they are at a high risk of developing various occupational and environmental diseases. Higher mortality and lower life expectancy have been observed among Indian women in many different occupations. According to the 1991 census of India, out of the total population of 838.6 million, 403.4 million were women. Approximately 23% of women work outside the home. Of these, 34.6% work in cultivation, 44.2% in agricultural labour, 5.9% in household industries, and 15.3% in other professions. According to the Indian Ministry of Labor, in 1994 about 497,000 women worked in factories, 56,000 worked in mines, and 558,000 worked in plantation industries.

CONCLUSION

India has the world's largest number of professionally qualified women. India has more female doctors, surgeons, scientists and professors than any other country in the world. On an average however, women in India are socially, politically and economically weaker than men. There is room for policy changes, which might promote both female labour supply & equal role sharing by male & female. Women skill can be utilized in major decision making process more properly. Moves are underway to empower women. But there is need to find out whether women are aware about their legal rights.

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