

WOMAN AND THE LAW *

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While some attention has been focussed on laws which deal with atrocities against women -- like the laws on dowry and rape -- and some comments have been made on the need to amend divorce and maintenance laws, the remaining legislation within our civil and penal codes has not been scrutinised to see if it contains any gender bias.

Perhaps it is a basic faith in the non-discriminatory nature of the law, seen as an instrument for procuring justice, which has led those concerned with women's rights to allow such legislation to escape such tests. But when we also accept that laws codify the social realities of their times and that a woman's secondary status is an intrinsic aspect of these realities, then it is important to examine if the same social values and norms which provide woman this status are reflected in the laws and their subsequent treatment of women's basic rights.

Examine such laws, and it is clear that -- be they laws of property, succession, land distribution, inheritance, citizenship, guardianship of children, or labour legislation -- they do not accord women with same rights and privileges as they do men.

Below is a brief summary of some sections of these laws and their impact on women. References are also made to articles, contained in the appendices, which deal with some of these matters in more detail.

CITIZENSHIP

Section 4 of the 1950 Indian Citizenship Act states that a person born outside India on or after the 26th January, 1950 shall be a citizen of India by descent if his father is a citizen of India at the time of his birth.

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This is contrary to Articles 5, 8 and 11 of the Indian Constitution which provide Indian citizenship by descent to an individual "either of whose parents or grandparents was born in the territory of India." Should the word 'father' then be substituted with "either parent ?"

DOMICILE

Section 7 of the Indian Succession Act of 1925 states: "The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled, or if he is a posthumous child, in the country in which his father was domiciled at the time of his father's birth."

According to a working paper distributed by the Law Commission last year which discussed areas within the Indian Succession Act, which needed reform, this section "does not accord with reality and may even create an anomaly."

When read with Section 9 of the Act, which states that "the domicile of origin prevails for a person until a new domicile is acquired", this section would create a situation when for 18 years, the child would continue to have his father's domicile even if the father was dead, the parents separated or if the mother with whom he was living had, after his father's death, migrated to another country.

It is important to realise that the status of a person, the matrimonial and family relations and many other important questions are governed by domicile, which is the basis of jurisdiction in many countries and the core of the system of international law.

Section 8 however provides that the domicile of origin of an illegitimate child must be the country in which, at the time of his birth, his mother was domiciled.

Should the word 'father' here be changed to 'either parent' with the clause that in the case of divorce or separation at birth, the domicile of the child should be the same as that of the parent with whom it is living. And if his mother is dead, his domicile

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shall be that which she last had before she died if he had lived with her and not with his father. This is the position in English law.

Section 15 provides that by marriage, a woman acquires the domicile of her husband, if she has not had the same domicile before.

Section 16 provides that the wife's domicile during her marriage follows the domicile of her husband.

Lord Denning has described this rule as the "last barbarous relic of a wife's servitude" and English law has been substantially altered to read that the domicile of a married woman shall, instead of being the same as her husband by virtue only of marriage, shall be ascertained by reference to the same factors as in the case of any other individual capable of having an independent domicile.

GUARDIANSHIP OF CHILDREN

The 1956 Hindu Adoption and Maintenance Act states that a married woman can only adopt a child if her husband has renounced the world, become insane or ceased to be a Hindu. This is an improvement of Hindu Personal Law which regards adoption as the taking of a son as a substitute when there is no male issue.

But the Act should be amended to provide that both husband and wife should have an equal right to adopt with the consent of the other spouse. The Act does not permit the adoption of a child of the same sex as the biological child -- should an exception be made here for female children. For further discussion of the Hindu Adoption and Maintenance Act, see Appendix I.

Section 60 of The Indian Succession Act states that a father, whatever his age may be, may by will appoint a guardian or guardians for his child, after his death, during the child's years of minority.

The Law Commission's working paper has stated that a similar right should be conferred on the mother, in the absence of the father or where the father is under disability. At the time when the section was enacted, social opinion in general, regarded the father as the only person primarily concerned with the future of the child.

Should the proposal be taken a step further to state that if the mother is alive and in a fit condition, she should be the guardian of

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the minor child on the death of the father. English law states that either parent, may be appointed a guardian of a minor child.

"The 1890 Guardians and Wards Act" created basically to legislate on the properties of minor children, not on their lives, in Section 19(b) clearly states that in every instance, the father's rights over the guardianship of the child is primary. If the father is alive, and not unfit, the mother cannot be considered an equally suitable option. This entire Act needs careful scrutiny.

Under the Nanafi school of Muslim law which covers the majority of Indian Muslims who are Sunnis, a mother is given custody of a boy until he is seven and of a girl until she reaches puberty. After that, the child is handed over to the father.

To be a custodian of the child, the woman has to be of sound mind, of good moral conduct, living in a place which poses no risks, moral or physical, to the child. This custody is not her's by right as a parent. It is a legal privilege, which can be taken away. A divorced woman retains this right till she remains unmarried. If her second marriage ends and the child is still within the specified age group, her custody over it can be revived.

Guardianship in Muslim law is divided into two aspects -- the mother has the "hizanat" of the child -- which means she is responsible for its day to day upbringing and physical custody. The "waliyat-e-naf" is with the father -- his is the power to make all the major decisions. However, the illegitimate child belongs to the mother -- her's is the entire responsibility.

Muslim opinion must be obtained on this issue.

RIGHTS OF INHERITANCE AND SUCCESSION

"The 1956 Hindu Succession Act" retains the Mitakshara coparcenary system in which a female member of a Hindu joint family can never be the member of the coparcenary. Her rights to the family assets and property flow from the nature of her relationship with the male coparcenor. The Act gives all Class-I heirs equal shares in the male's property -- and here the woman gets her share as widow, mother, daughter, widow of pre-deceased son, daughter of pre-deceased son, along with males in the same category.

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But this still means that a male coparcenor can will away his entire rights to the family assets to whosoever he chooses or can distribute his assets in whatever manner he may choose.

Under the Hanafi doctrine of Muslim Sunni Law, if a husband dies without a child, the widow gets one-fourth of his property. If there are children, her share is reduced to one-eighth.

If a Muslim dies leaving a daughter and a son, the estate is divided into three sections, the son gets two parts and the daughter gets one. If a man dies leaving a daughter as his close relative, she will not be allowed more than half his estate.

As for Parsis, under the Indian Succession Act, a son's share of his father's property is twice that of the daughter's. The widow gets as much as her sons. If the intestate's parents survive him, the father gets half the share of the son -- which is the same as the daughter, but the mother gets only half the share of the daughter. The Parsi mother is thus in a worse position than the Hindu mother who under the Hindu Succession Act gets a share equal to that of the widow and the child. When a Parsi woman dies intestate, leaving her husband and children, the property is divided equally among the widower and the children.

For Christians, under the same Act, if a man dies, leaving a widow and lineal descendants, the widow gets one-third of his property. The rest goes to the children, equally, irrespective of their sex. If he has a widow and no lineal descendants, but kindred, then half goes to the widow and the rest to the kindred. If he has a widow but no lineal descendants and the property does not exceed Rs.5,000, all shall go to the widow. Where it exceeds Rs.5,000, just Rs.5,000 shall go to the widow.

The Travancore High Court has held that the Indian Succession Act does not apply to Kerala Christians. The Travancore Succession Act governs the Christians in Travancore, other than Protestants and Latin Catholics. The Cochin Succession Act governs Christians in the former Cochin State. Sections 16, 17 and 24 of the Travancore Act holds that a daughter's right to her family property ends when she is given 'Streedhanam' at her marriage. This amount is fixed -- Rs.5,000 or one-quarter the value of the son's share. A widow has only a life interest in her husband's property which ends with her death or re-marriage.

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The Cochin Act states that if the daughter gets one-third the share of a son, she is denied this if 'streedhanam' is given by the father at the time of marriage.

What should be done about these laws and how can they be amended ? As far as the laws of inheritance and succession are concerned, whether meaningful equality will be established within them is a matter of grave doubt. For the laws, in the present form have codified all the forces of a patrilineal society. They also reflect every existing concept of a woman's role in society, within a family and of her status within her relationship with a man, be he father, brother, husband or son.

The 1974 Committee on the Status of Women made one concrete recommendation regarding these laws as they occur within Hindu Law and the Indian Law of Succession which deals with Parsis and Christians.

It dealt with the wife's right to a moiety of the husband's property at his death. Unlike maintenance, this is not an absolute right, except in Muslim law. In Muslim law, a husband can only will away one-third of his property according to his wishes. The rest must be strictly portioned out in accordance with the law. So, although the woman always gets much less than the male heirs, she is nevertheless assured of what the law permits her.

But this is not so in the other systems. A husband can will away his entire personal assets according to his wishes, leaving his wife or daughter entirely at the mercy of the male heirs.

The committee therefore recommended that since both Hindu Law and the Indian Succession Act did not restrict this power, it must be adequately limited so that it does not deprive the legal female heirs of their rights.

The committee report stated that during the debates in the Lok Sabha, in the early part of the 1950s, when the fear was voiced that the absence of this restriction may lead to the rights of the female heir being defeated, the then Law Minister brushed aside this fear and was quoted as saying, "I believe that a normal father will never

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do any such thing and if at all he has to do it, for any reason, he will surely make a provision for his daughter when he is going to deprive her of her share by will."

This was stated despite Mrs Renuka Roy pointing out that an analysis of the inmates of rescue homes in the country proved that many of them were women who had been turned out of joint families.

The committee report stated that its own experience in many places, particularly in Benares during 1973-74, showed that there were many women who had been reduced to destitution and beggary because their families had deprived them of support.

It would be extremely simple to state that these sets of laws should be so amended that male and female heirs are given equal shares in inheritance and succession and any distinctions that are made should be according to the proximity of the heirs to the deceased -- sons and daughters should get more than others further down in lineage and so on.

But this will not be easily accepted. Although, in principle, everyone will agree that economic emancipation is necessary for an individual, the two most common protests will be that males have more financial responsibilities than women and that women may not know how to handle money as carefully and wisely as men.

Today, there are millions of families where women are the single, not supplementary bread earners. They need financial assistance as much as any male head of household. And it is women who handle the family budget judiciously enough to make the last paisa stretch to its furthest limits.

But changes within these laws will be resisted because they challenge the role, hitherto accepted, of a male within society and the household.

The law of testamentary succession is supposed to have its genesis in Roman law. Through succession on intestacy, inheritance devolved on those members of the family who, at the time of the death of its head, had been under his paternal power and through his death became independent. The first to be considered as thus emancipated were, naturally, sons.

Add to this the fact that the overwhelming number of Indians follow the patrilineal system of descent where the boy is the

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perpetuator of the patriline. It is he who will continue the family name. A girl is of no use in this respect. Her contribution in creating this perpetuator will have to be made in some other house. Since the "family honour" thus depends so much on the male, the logical consequence of this is vesting him with the property or assets of the family itself. Change in such laws will also be resisted because they will mean a change in the image of woman as perpetuated and sanctified by tradition and religious lore.

Women are not part of the joint Hindu family coparcenary in their own rights. All their rights flow from their relationship to the male members. For with marriage being seen as the true destiny of a woman and with her important obligation to bear a son, the roles of wife and mother emerge as the proper role for a woman, in Hindu lore. A daughter's share, then is always less than that of a son -- for she is not an individual in her own right but a traveller within the home, who will soon leave and go to fulfil her ultimate destiny as the wife of another man.

The committee report stated that in Islam, in their relationship with the divine, men and women stand on an equal footing. Like man, woman is an individual who can pray to the Almighty and hope for redemption. A non-ascetic religion like Islam does not consider woman as an impediment in the path of religion nor does it consider her as the root cause of man's downfall. The Koran is replete with injunctions aimed at bettering the lot of women, who in pre-Islamic societies held an inferior and servile position.

This is reflected in some measure in the Hanafi doctrines of Sunni law. Here women, as mothers, grandmothers, sisters, uterine sisters, daughters, son's daughters, are all provided with specific shares in the wealth of the deceased. And as said earlier, a Muslim cannot will away more than a third of his property.

KORANIC STATUS

But as we have seen earlier, these portions are miniscule. For although women were given some status in the Koran, although women's rights to inheritance are significant in view of the fact that they are meant for patrilineal social structure, many of the

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practices, like a woman's right to hold or inherit property were often not held in practice.

This the report stated, is largely due to their seclusion. For with the emphasis given to modesty, decorum and chastity in the Koran, there were conflicting viewpoints on the veiling and seclusion of women. Their seclusion led them to lose their one important privilege -- participation in communal prayers. It also lent extra support to a series of restrictions. It kept them behind in education and health and prevented their participation in economic and social fields all of which has been a hurdle in the way of their realising their property rights. For it has made them heavily dependent on men for the business of living and for achieving any personal progress.

As far as Christianity is concerned, the report stated that the Biblical view of creation which said that Eve was created after Adam to act as his companion and helpmate, accorded a second place to women in domestic and social life. She has to be subordinate first to her father, and then to her husband. The mythic image of Eve as one who tempted Adam to eat the forbidden fruit put a permanent stamp on women as tempters and seducers.

This gave husbands the right to control the wife. And after him the power moved on to his son. One manifestation of this is the minute portion of a husband's wealth which can be inherited by her widow, with the bulk going to the son. But Christianity places both men and women as being created in the image of God -- one reason why, according to the report, in the late eighteenth and nineteenth century Christian women were well ahead in the fields of employment and education.

As far as the Parsis go, the report stated that although women hold a status on a par with men within the community -- which gives women inheritance rights both in their capacity as daughter and wife and which is also reflected in the fact that a widow does not have to forgo the inheritance of her husband's property if she remarried -- patriliney operates strongly against them. For a Parsi woman, if she marries a non-Parsi male, cannot bring her husband or child into the religion.

Such is the problem. Change in these laws means, first, challenging the image of women within different Indian cultures. One

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concrete way of doing this is to gather together data on women in these different communities. How many Parsi, Muslim, Christian and Hindu households are headed by women. What is the woman's contribution to the family income. What is her educational status and why is it low (if this is so) ?

MALE SUPPORT

How many women are single, married or divorced, and how they finance themselves, if they are without male support ? So far, data-gathering has been gender-specific without any community break-ups. It is important to do so because it will break the existing perceptions about a woman's role and contribution to her family's economic status.

Secondly, women must ask themselves some basic questions. While qualities of self-effaciveness, steadfastness and service are essential in any relationship, should this prevent them from challenging the forces of domination within such relationships and in society ? Will doing so be untrue to the image of woman not just as wife or daughter or mother but as a self-respecting individual ? Women must realize that to do so is to be true to the spirit of justice and equality, concepts essential to human growth. The journey, then is a long one.

LAND AND TENANCY RIGHTS

Laws enacted in the 1970's to set a ceiling on land and to provide for its redistribution have a distinct gender bias.

The Madhya Pradesh Ceiling on Agricultural Holdings (Amendment Ordinance of 1974), the Land Reform Act of 1974 of Karnataka and the Punjab Ceiling Act of 1977 permit a son to acquire title to holdings beyond the ceiling limit. It does not make a similar exception in the case of a daughter, married or unmarried.

Legislators tend to forget that it is the men who usually leave the land -- the mass male migration from the villages to towns is indication enough -- and leave the women to manage the land and fend for themselves and their children. Secondly, that unless a woman has independent access to land, she will be denied one important form of economic stability.

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It is assumed that economic independence and the responsibilities arising from it bring social and political maturity. One is told that a person has a basic human right to a decent source of income, one on which he can live and support his family. None of these rules apply to women.

Instead it is assumed that economic independence of the woman would disrupt "normal" family life. If she has her own independent source of income, she will become "uncontrollable". The same principle with which parents regulate the pocket money of their growing adolescent children apply to women. It is thought that domination will produce stability.

Kerala is a case in point. The amended 1969 Law of Land Reform sought to establish a ceiling on the amount of land that could be held by one family or person. But it gives women in monogamous marriage no rights of their own -- their only right to land is derived from their husbands. Only divorced and unmarried women are recognised as independent entities with the right to own land under this law.

There is further evidence of injustice. If the male head of a household in Kerala marries more than once, one of his wives (and he decides which one) and the husband are regarded as one unit. Every other wife is a separate unit and has her own right to land. And why does the acknowledged wife lose her rights -- because she has her husband's protection and his name. The other wives, because they do not have any such official status can be independent land-owners.

The gross chauvinism implicit in such a law, in the name of economic equality, reveals bias of the champions of social justice. Besides the scorn it shows for the principle, it is apparent how unfair the legislators are when they do not consult women about such legislation. For women could inform them of the uncertainties faced by a wife whose husband has several others and her legitimate desire to have some independent economic status apart from his and and security.

Land reform laws also discriminate against women by increasing their dependence on males. Some land reform laws perpetuate traditions which censure certain categories of women.

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Like widows, in India, land reform laws throughout the country prohibit subletting of farms and have abolished the use of rent collectors -- known earlier as zamindars. But there are some groups who are exempt from such laws. They are minors, military personnel away from home on duty -- and widows.

It is taken for granted that a woman without a man is helpless and that because of social ostracization, widows cannot deal with the community. A widow cannot manage her own land. She must not, therefore, break the various social taboos that limit her greatly after her husband's death.

Why can the law not insist that women take full responsibility for their possessions -- in this case, land. Elsewhere it is always assumed that with increased responsibility, people become mature -- yet a fully mature woman is denied the right to manage her own affairs.

Having denied her a basic right, the law does nothing to prevent her exploitation. In Punjab, if a tenant occupies land sublet to him by a widow, he has the right of pre-emption and purchase if he has been in continuous possession of it for four to 12 years, respectively. Even if she wishes to exercise her normal proprietary rights a widow is denied the right.

In a study on women's legal access to land in many Third World countries, Dr Christina C. Jones refers to two case studies on the dilemma of the women.

Unmarried, divorced or separated women are deemed as "disabled persons" in U.P. The U.P. Law of Zamindari Abolition and Land Reform (Act 1 of 1951) disfavours subletting and use of rent collectors. For everyone except the "disabled" woman. Such women can sublet and their tenants cannot claim heritable rights to land.

Family laws permitting unequal distribution of family assets between men and women in inheritance pursue goals which are, and should be, different from the goals of agrarian reforms. There is no need to reconcile the two.

What the law should do is make it difficult for a woman to transfer land that is rightfully hers to a male which is what often happens when she is under pressure.

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If the law requires she has male managers to do her work, it should at the same time ensure that such managers are accountable to her -- so that she is both informed and alerted about how her property is used.

But first of all, reform must aim at removing inequity -- not just between the rich and the poor, but between the sexes. There is no need to fear that independence of women will spell turmoil. You cannot believe in freedom and justice on the one hand and deny it to half of the Indian population.

WOMEN WORKERS

Among much else, the legislation dealing with women workers places no importance on protecting them from occupational health hazards. Appendix II outlines the health hazards which women workers have to face.

"The Factories Act" applies to millions of women workers in the country. It applies to any premises where 10 or more workers are employed and where a manufacturing process is carried on with or without the aid of power. The Act is enforced by the State Governments through their factory inspectorates.

It was amended in 1976 to include three sections which deal specifically with health hazards workers face.

The Act outlines the principal health risks to factory workers which arise from dangerous gases, acids and dust, harmful bacteria and micro-organisms, compressed and rarefied atmosphere, improper lighting, extremes of temperature, humidity and excessive strain.

But it is silent on the impact of all this on women workers. It assumes that their impact is the same on men and women. Their repercussions on women can be quite different because of the physical and psychological differences and can be complicated by factors like pregnancy, maternity and gynaecological issues. This is not in any way to suggest that women are more vulnerable to ill health than men -- but just to emphasize that their problems are sometimes different. Further, environmental factors like heat, humidity, noise, repetitive work, toxic substances affect women differently from men. But the law does not protect them adequately.

One reason is that little research work has been done on the occupational health hazards of women workers in the organised sector are far fewer than men. It is assumed that since women supplement the family

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income, employment is not really issue for them. They often stop working when they get married or after the first child and statistics are needed to prove this. Add to this her basic timidity and non-unionized status and it is clear why a woman worker's health problems are no one's concern.

What the Factories Act does say is that women must be prohibited from employment in dangerous and heavy operations. No woman worker should be allowed to clean or lubricate or adjust any machinery while in motion or any part of it if her work exposes her to risk of injury from any moving part. No woman worker should be employed for pressing cotton in any ^{part} of a factory in which a cotton opener is at work. There are also specified limits on the amount of weight a woman worker can carry -- 65 lbs. for an adult female, 45 for an adolescent and 30 for a child.

The State Governments can, therefore, restrict or prohibit the employment of women in any operations which may expose them to serious risk of physical injury.

Much of this is a play on words. If a job is dangerous and risky, all workers must be protected, men as well as women. Why must a woman worker need more protection ?

We are told that the physical structure and maternal functions of a woman place her at a "disadvantage". Facts do not bear this out. Women have not shirked hard labour. Whether it is farming -- planting, transplanting, winnowing, weeding, harvesting, grinding, pounding, nothing holds them back -- or other work, it has been proved that work which is a physically very strenuous is done not by men but women. As head-loaders, handcart pullers, construction workers, women work side by side with men -- for longer hours, sometimes and for less wages.

Any "disadvantage" that a woman's maternal functions may cause is largely man-made. Male refusal to take on specific home and child care responsibilities is what places a double burden on the working woman. Pregnancy and lactation are the only major maternal constraints on a woman worker. They cannot be seen as problems but as vital functions, to perform which a woman must be adequately compensated.

Instead of outlining the kind of health hazards in modern industry for a woman, the law merely lays emphasis on the negative

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stereotypes of a woman worker which restricts her access to certain kinds of work.

The Act also says that there should be separate toilets and sanitary dressing rooms for women workers. It specifies the need for keeping both clean. Besides the obvious health reasons, what is not so well known is that modern industrial processes subject employees not only to dangerous dust and vapours but a variety of disease-breeding organisms that can be transmitted by fellow workers to one another. Hence the need for eliminating unhygienic contact between workers.

In study after study, women workers have complained of the absence or shortage of separate toilets in their work environment. Visit any group of factories at random and you will be horrified at the condition of toilets.

The fact is that the Factories Act is difficult to implement. The provisions of the law is enforced by factory inspectors. According to the Union Labour Ministry, there is on an average one inspector for 150 factories. Even if he withstands pressures from owners to gloss over defects, the enormity of his task is obvious.

Particularly in the field of occupational health, he is not qualified to see if a worker -- male or female -- is suffering from some occupational disease, particularly one which may not have obvious physical manifestations. Moreover, most common occupational health hazards are slow to show up; unless a worker is thoroughly and frequently examined by a physician, there is no way of finding out how sick he or she may be until it is too late.

Industrial dust and fumes whether metallic, chemical, vegetable or animal in origin are among the most insidious of health hazards. Their impact on individuals varies according to the proportion of contamination in the air or water supply. To monitor, trace and control this is beyond the capacity of the factory inspector. In the case of women, the diseases they may be suffering from have yet to be outlined by research. So the inspector does not even know what he has to look for.

The law requires little accountability by factory owners. While an application for approval of the arrangements a factory owner may say he "intends" to make -- for the discharge of effluents -- is with the concerned authority, the factory has the right to continue with the existing

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arrangements. Conviction of the owner, during this period, is illegal. So it suits an owner to see to it that applications remain pending as long as possible.

Punishment for failure to comply with the law is a fine of Rs.2,000. Prosecution is in the ordinary criminal courts involving delays and enormous expense. The factory inspector is the witness for the prosecution.

Not one women's organisation or a trade union is known to have prosecuted a factory owner for ignoring the health problems the factory causes to his female employees.

The Factories Act needs to be reviewed. It is time women's organisations tried to do what male-dominated trade unions do not -- look at women workers as vital to the work force and growth of the country's economy. The labour laws must protect their rights and misconceptions about their "needs" should be deleted. Like much else labour legislation, as it exists today is formulated on the basis of certain sexist assumptions about women and their strength. It is time these were challenged.

CONCLUSIONS

So numerous and varied are the lacunae in the laws within our statute books and so dramatic is their impact on women, that the Government, through the Law Ministry, must consider setting up a working group comprising of members of the Law Ministry, the Law Commission, women lawyers, women social workers and members from the different legal aid cells within the city to examine some of the major areas of legislative discrimination against women. For a start, the working group could take up the law dealing with maintenance, citizenship and domicile and succession and inheritance, and then proceed with other laws which affect the female citizenship.

Much spade work has already been done by the 1974 Committee on the Status of Women in India. The group could begin with the recommendations made by the Committee and then proceed to outline how legal reform can be implemented.

The Code of Criminal Procedure and the Indian Penal Code need thorough examination. Section 125 of the C.P.C. has provoked great outrage -- see Appendix III .

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The machinery for providing justice needs overhaul. This means establishing family courts to deal with matters concerning matrimonial disputes, rape and dowry cases and incorporating more women police into the police force. These are two ways in which the process of obtaining justice can be humanised and a woman can be protected against the brutality of a crowded impersonal courtroom and a male police force, which has itself acted as an oppressor of women.

Appendix T.

The Statesman May 7, 84

Mother and child left high and dry

WOMAN as mother—the rôle she plays as mother sanctifies a woman's entire existence. If the children are strong, strapping sons she enjoys quite a few perquisites. The only way to acquire motherhood is through marriage. She must be a good wife to reach the goal. The image of mother evokes enough maudlin veneration to make the most rational woman accept any humiliating compromise to marry and reach this, her final destiny.

If you want to be a successful mother to your children, you must remain a wife. A divorced woman—Hindu, Christian, Muslim or Parsi—cannot have complete responsibility for her children under the Indian law.

Take the Hindu law. The 1956 Hindu Minority and Guardianship Act makes the father the first natural guardian of the child—boy and unmarried girl. Only if he is unable to perform that function, will it devolve on the mother. Prior to this, under the Hindu law, a man could deprive his wife of the right to her children even after his death by appointing another guardian instead of her, during her lifetime.

The prior right of the mother in the case of her child is only for the custody of children below five.

After laying down such limitation the Act adds however, that the welfare of the child should be the paramount consideration when a decision on guardianship is being made.

There is a difference between custody and guardianship. The

Act. Besides perpetuating woman's subordination, it amounts to gross violation of Article 14 of the Constitution and all that equality between the sexes is supposed to mean. If the Act seeks to secure the future of the child why can each case not be decided on the merits of each parent? There is no justification for not accepting a mother or a father as the natural guardians of a child provided they are capable of caring for it. Instead women have been subjected to immense anguish by restrictions. A father has the right to refuse guardianship of his children if he finds it inconvenient. In the matrimonial court in Delhi, recently, the mother of six girls and one boy applied for divorce. The six girls were given to the mother, the father took the boy. So burdened are women by their "duty" to their children that few women will refuse to look after their

provide adequately for the maintenance of the child.

Maintenance of either spouse is covered by Sections 24, 25 and 26 of the Hindu Marriage Act. The maintenance and education of children is specified in Section 26 of the Act. Interim maintenance can be granted during the divorce or judicial separation proceedings which can be prolonged and a woman can be left to support herself as best she can.

Suppose a wife does not specifically apply for maintenance for her child under Section 26 to the Act. The courts of Bombay and Gujarat have held that maintenance cannot be granted to a child when no specific mention is made of Section 26 in the application. It is then assumed that the amount asked for by the applicant covers the maintenance of her children.

The Jammu and Kashmir High Court has stated that interim maintenance—that which is granted by the court to the needy spouse during divorce proceedings—cannot be given to children (Puran Chand versus Kamla Devi, AIR 1983 J&K 5).

There is also no clarity on the date from which interim maintenance if awarded for the child, is to begin. Some courts hold that they should begin from the date the petition is presented in court. Others like the Jammu and Kashmir court for instance, held that maintenance for children can begin only from the first hearing in the the court.

Everything depends on the disposition of the judicial officers.

Section 26 he would order this be provided for the children, there was a furor in the legal circles and the decision provoked much discussion in the court and law journals of the State. (Radha Kumari versus K. M. K. Nair 1982, K.I.T. 417).

The Karnataka High Court has also held that where the applicant has sought maintenance but not asked for anything specifically for the children, if she has small children of her own to support and look after, any interim maintenance that may be awarded to the wife would be meaningless if it was not given for the maintenance of the children also (D. Thimmappa versus Nagaveni AIR 1976, Karnataka 215).

But whereas the courts of Rajasthan, Punjab and Haryana and Andhra Pradesh have agreed and held that no separate application for the grant of maintenance to children is absolutely necessary under Section 26, and that the court should exercise its discretion and award maintenance for the children if the wife has asked for it under Section 24—the contrary view has been taken by Orissa, Patna, Allahabad and Jammu and Kashmir High Courts.

The Law Commission is writing a report on amending these sections of the Hindu Marriage Act on the maintenance of children. It is considering whether Section 26 should be amended verbally expressly dispensing with the need for a formal application or whether a new section should be inserted to pro-

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children even when they may be patently unable to do so.

Otherwise, with the children given to the father the mother, herself going through the trauma of separation or divorce from a husband also loses her children. Again in Delhi, a young woman who sued for divorce on the grounds of separation found the court informing her that she could only visit her two children

Slow death is their lot

ON THE eve of World Environment Day, while august bodies like the U.N. focus on growing desertification around the world, let us also look at an equally important issue—the slow death or constant suffering of many of the 31,338,937 women workers in India—caused by the polluted environment in which they earn their living.

For 94 per cent of women workers are found in the unorganized sector, working in conditions which can cause irreparable damage to their health. They enter their jobs already suffering from the usual characteristics of poverty—chronic protein and calorie malnutrition, and anaemia—69 per cent of Asian women are considered anaemic as against 10 per cent of the women from Latin America. The poor sanitary conditions in which they live, the unclean water they use means they could also be suffering from parasitic infection which further lowers their resistance to infection. The stress of being continuously pregnant or even that of maternity all affects a woman's system in ways yet unquantified.

And what sorts of jobs are women usually found in? Because women are ready to accept low wages (lack of education and skills limit their options), because they are ready to work longer hours (an increasing number of families are headed by women as sole or primary bread earners), because men are still selected in jobs in obvious preference to equally efficient women, women find themselves engaged in the lowest and hardest forms of labour. Most women work in their homes too as homekeeping and childrearing are considered exclusively female responsibilities. Add to this the non-unionization and economic weakness of the entire unorganized sector and it is clear that sheer survival, not demands for healthy work conditions, is the primary issue for these women.

Consequently, most are in jobs labelled, from the health and environment points of view, as 'hazardous'. Women are employed in construction work, in

mining, as agricultural labourers. Be it the bidi workers of Nipani, the cashew-nut processors and coir workers of Kerala, the tobacco workers of Gujarat or the tea pickers of Assam—women in these occupations are exposed to the kind of serious health hazards of which evidence has only just begun to be collected.

Most surveys of occupational diseases are made of male intensive occupations and it is assumed that women suffer or react in ways similar to males. But this is quite untrue. Some occupational hazards affect women's genital systems, in ways which may cause malfunctioning of her ovaries, neurovascular or neurosecretory disorders or increase her risk to abortions. For instance, there is a high incidence of tumours of the uterus among sedentary female workers like typists and dressmakers.

Women doing heavy muscular work since adolescence can have pelvic deformities which affect her reproductive system. Ovulation disorders can cause sterility or complications during delivery or for a nursing mother during her lactation period. Chemical agents like lead can cause a high percentage of stillbirths and other chemical agents can kill the ovum before or after fertilization.

Further, men and women can be working on the same jobs but women can, for a variety of reasons, be affected worse than their male colleagues. Of the agate workers surveyed in Gujarat, it was found that lung disease affected 70.6% of women but 60.4% of the men. Pneumonia and TB affected 19.6% and 21.6% respectively of the women compared to 17.9% and 12.9% of the males.

What scanty surveys exist are urban based and concern women employed in traditional occupations like teachers, scientists, hospital staff and laboratory technicians. Which does not minimize the extent of their suffering. Laboratory technicians and electronic workers are in jobs which constantly expose them to organic and inorganic chemicals which leave them with serious skin infections.

The use of the microwave system in many manufacturing operations in the public and private sectors such as drying and sealing units, plastic sealing and packaging results in changes in the women workers' menstrual pattern, retarded foetal development and miscarriage.

A quick overview of the jobs which employ predominantly women will destroy two myths—that women are mainly 'housewives' and that the poor woman is a sturdy, healthy creature unaffected by any amount of work.

Of the 27 million women in agriculture, the largest number are agricultural workers. These women suffer from tetanus, bovine TB, anthrax. Their exposure to grain dust, coconut fibres and hay results in their being afflicted by a wide range of respiratory diseases. Extremes of climatic conditions under which they work, and the nature of their heavy manual work can result in retarded foetal development and miscarriages. In addition, they are prone to all the afflictions caused by the heavy use of pesticides and fertilizers as in Maharashtra, Punjab, Tamil Nadu, Gujarat and Karnataka.

According to the 1961 census, out of the 900,000 bidi workers in the country, 77.3% of those in Andhra Pradesh, 60.9% of those in Maharashtra and 47.5% in Rajasthan are women. They suffer from scabies, fungal infections, and tobacco dust causes neurological and respiratory problems like asthma, bronchitis, and the tobacco harvesters suffer from palpitation.

The cashew-nut processing industry in Kerala is sustained mainly by women. The skin reaction caused by the cashew shell liquid leaves the fingers of the women workers looking as though they have been affected by leprosy, pus infected and torn. Others suffer from allergy and dermatitis.

The coir workers, also women of Kerala, have a higher morbidity rate than other workers in similar socio-economic conditions. The main cause of their sickness is skin and respiratory diseases, and

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elephantiasis.

Women in the ceramic and pottery industry are known to suffer from acute silicosis and TB.

The environment, sanitation and working conditions of the brassware workers of Moradabad are appalling. The high female morbidity here is caused by respiratory diseases, accidents, foreign bodies in the eyes and heat exhaustion.

About 97 per cent of the 45,000 chikan workers of Lucknow are women. The majority are widowed or deserted by their husbands. Entire families are supported by the earnings of these women. Yet most of them spoil their eyesight by the time they are 30 and become almost blind, totally incapable of stitching, by the time they reach 50.

Women in the soap industry, because of their physical contact with fats and

caustic soda suffer from burns, scalds, chemical burns and allergy. Those employed in non-edible oil pressing like castor oil, for instance, face asthma and hay fever.

Women in the apparel industry have shown a higher incidence of cancer than others—reasons for this are yet to be assessed. The incidence of cancer is also high among women working in the rubber industry.

The small-scale match industry has a large proportion of women workers. They face fire and explosion hazards, the problems of chemical toxicity, dermatitis, postural defects and acute spinal problems.

Women handcart pullers of Ahmedabad—carts are pulled here by a team of man and woman—when surveyed by the Self-Employed Women's Association (SEWA) were found to be affected severely

by the constant friction caused to the lower part of the abdomen, while they pulled their handcarts which gave them a variety of abdominal problems and affected their reproductive systems in many ways.

The tea pickers suffer from accidents and falls while they work on the hill slopes, many of them with babies tied to their back. They are affected by insects and snakebites, severe pesticide hazards and asthma due to the tea dust that covers the area.

Women construction workers, besides facing all the problems that affect women carrying heavy loads, are usually young women below 35. Most work till the last month of their pregnancy. The result—high infant mortality.

This then is the vast nature of the problem. What are the solutions?

The Statesman, June 4, 1984

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Heads he wins, tails she loses

A GROUP of angry Muslim women are out crusading against Section 125 of the Code of Criminal Procedure. They are protesting against what they call misuse of Muslim personal laws by Muslim males. Part of Kalyani, a women's organization based in the capital, these women are victims of polygamy and oral divorce.

They point to a law that is enacted to provide speedy justice for women in distress. It is so formulated that it can be implemented by magistrates and not within the civil courts where delays virtually negate the eventual relief. Yet because laws generally seek to protect society and not women's rights, laws that are ostensibly for women end up being ineffective.

On paper, the section reads well. If any man with sufficient means neglects or refuses to maintain his wife (who is unable to maintain herself) or his legitimate or illegitimate minor children, or an older child who though married has some physical or mental abnormality and injury, or even old parents unable to sustain themselves, the affected, with adequate proof, can complain to a First Class Magistrate. The magistrate can then order the man to give a monthly allowance to the wife or children or parents as the case might be.

"Wife", here, includes a person who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

The monthly allowance demanded of the man should not exceed Rs 500, holds the section.

However, if a man offers to maintain his wife on condition that she live with him and if she refuses to do so, the magistrate has the right to reconsider the entire matter.

And what are the "just" grounds of refusal allowed to a woman—only if the husband has contracted marriage with another woman or kept a mistress has she the right to refuse to live with him. No wife shall be entitled to an allowance from her husband if she is living in adultery or if "without any sufficient reason" she refuses to live with her husband or if they are living separately by mutual consent.

The reason for placing within the Criminal Procedure Code a civil matter with provisions relating to maintenance of wives and children was that a remedy faster and cheaper than what the civil courts offered could be provided to the aggrieved. The purpose of this section, according to the 41st

Report of the Law Commission, was to "prevent starvation and vagrancy leading to the commission of crime".

But what if a magistrate passes an order and the husband declines to obey it? The matter can be taken entirely out of the magistrate's hand if the husband files an appeal in a civil court, which could immediately order a stay until such time as the matter was decided. Which means that the husband need not pay any maintenance allowance to his wife and can go on filing appeal after appeal taking the matter all the way up to the Supreme Court while precious years pass by.

And there is nothing to assure the woman that even after all this she can get her due support.

Lawyers dealing with such matrimonial disputes have expressed despair at the manner in which such a section can be abused. They talk of maintenance cases being kept pending for a minimum of five years, leaving the aggrieved women in various

stages of desperation. According to Ms Urmila Kapoor, president of the Indian Federation of Women Lawyers, such cases should be allowed to be heard only up to the level of High Court; the Supreme Court should debar itself from hearing such cases except in well-defined exceptions.

Or else, she suggests, no stay on the maintenance order should be allowed by the civil courts. If it is found later that the husband had no reason to pay his wife, the money thus procured can be got returned.

For the matter does not end after the maintenance amount is sanctioned for payment by court. There follow the execution proceedings of actually obtaining the money from the husband. Husbands may use a variety of means to delay such payments. According to Ms Kapoor, she has been fighting for maintenance in several cases for periods ranging from eight to 12 years without eventually being able to obtain relief.

If Section 125 is to serve its purpose, the first amendment necessary would be removal of the right to appeal except in specific cases, to the civil courts. The Law Commission Report explicitly stated that the Act should

not be appealable—"a right to appeal will result in unduly protracted proceedings and the defeat of the primary object of this section which is to provide a speedy remedy for destitute wives and children". However, in the same paragraph it stated: "The aggrieved party can move the civil court to get the order modified or varied."

If it is accepted that overwhelmingly it is women who because of low literacy and vocational skills, the traditions of early marriage and the burdens of housework are the ones who need financial support, then surely the section can be amended to stipulate that at least while the matter is being decided in the civil courts the maintenance allowance must continue.

The magistrate has no authority to attach the salary or property of the husband immediately after passing a maintenance claim. So it cannot really be ensured that the wife receives her due. This is another aspect that needs attention.

There also lurks an arbitrary interpretation of sub-Section 3 of the Section—that if the husband offers to maintain the wife on condition that she live with him and if she refuses "without any sufficient reason", the husband need not meet her financial needs. Justifying the ambiguity of this section, the Law Commission stated: "We do not consider it necessary or desirable to enumerate exhaustively the various grounds which would justify a wife's refusal to live with her husband. These may be left to the decision of the courts."

And why? Because the purpose of such legislation is to protect society from fragmentation—the law-makers were keen not to stand in the way of a possible reconciliation between husband and wife.

However, the Commission was wise enough to state that the definition of a wife's living in adultery should be interpreted as indicative of an adulterous course of life—"as distinguished from a single lapse from virtue... to deprive her of maintenance for an occasional lapse may force her to lead a sinful life and give her no chance to redeem herself". Sanctimony apart, the Commission has touched on an important handle which the husband can operate against his wife. But the law-makers have not cared to incorporate any such elaboration into the amended Code.—

SHAHNAZ ANKLESARIA.

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