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Gender Analysis of the Indian Penal Code

Ved Kumari

Introduction

The Indian Penal Code 1860 (IPC) has been amended only sparingly since its enactment. The substantive penal provisions contained therein are applicable to the whole of India except the State of Jammu and Kashmir. The IPC originally had twenty-three chapters. Three more chapters, namely, offences relating to criminal conspiracy, election and cruelty to married women, have been added later.

Thematically, the IPC may broadly be divided into four sections. Chapters one to five contain general matters relating to the extent, definitions, principles of liability, etc. Chapters six to fifteen deal with public matters between individuals and the state. Chapters sixteen to twenty- two are primarily concerned with offences committed by individuals against individuals or legal persons other than the state. The last chapter twenty- three is residuary in nature, laying down the principle of punishment for attempt to commit an offence if no specific provision has been made therefor. In this scheme of chapters more serious offences precede the lesser offences, e.g. offences relating to state policy precede offences affecting individuals; offences relating to body precede those affecting property, and so on. Placement and the punishment provided for an offence by the IPC indicates the legislative perceptions about its nature and seriousness.

Serious offences are classified as cognizable and non-bailable by the Criminal Procedure Code 1973 (CrPC). Classification of offences as cognizable means that the police can initiate investigation into the offence on its own and arrest the accused without a warrant. In the case of a non- cognizable offence the victim is required to obtain an order from the magistrate for even an investigation to begin. The procedure requires the complainant to be present in the court on all the days of the hearing for the trial to continue. If such an offence is also declared as bailable, the accused is entitled to be released on bail as a matter of right. The victim may be more afraid to file the complaint for fear of harassment by the accused. The non- cognizable and/or bailable offences require the victim to have more perseverance, better resources and greater determination to prosecute.

This scheme of things applies equally to all persons irrespective of they being men or women. When presented in this manner, the IPC seems essentially and inherently gender neutral. This approach, however, does not take into account the differential impact of the scheme on men and women due to the differential status, socialization, role expectations and resources available to men and women in reality. A preliminary reading of the interpersonal offences between men and women and the punishments provided therefor in the IPC indicates the public-private dichotomy and patriarchal values to be at their base. A close examination of the extent to which the IPC has followed the private-public dichotomy and incorporated patriarchal values ensuring male domination, power and authority is, therefore, necessary.

The primary focus of analysis in this paper is the provisions of the IPC though incidental references have been made to the CRPC, the Evidence Act 1872 and other relevant special laws. The provisions relating to sexuality, procreation and marriage are the main focus of analysis as these areas are most affected by the private-public dichotomy and the resultant discriminatory application of law to men and women.

Analysis of the Indian Penal Code provisions

Before analyzing the specific provisions of the IPC, it is important to remember the distinction in the usage of 'he' by the IPC in contrast with 'man' and 'woman'. The general explanations in the IPC mention that the pronoun 'he' and its derivatives are used for any person whether male or female.¹ The word 'man' denotes a male human being of any age and 'woman' denotes a female human being of any age.² Usage of 'he' or 'man' in a section, therefore, determines whether it is applicable to both the males and females or it applies to either males or females.

Sexuality

The provisions relating to obscenity,³ sexual assault,⁴ flesh trade,⁵ kidnapping and abduction⁶ and custodial intercourse⁷ have been included in this section for closer analysis. Legal notions of sexuality of married women have been discussed under the section dealing with offences relating to marriage.

The following discussion brings forth the patriarchal values and Victorian morality underlying these provisions.⁸ It shows clearly that the criminal law does not interfere with their lives as long as people maintain heterosexual consensual relationships within marital boundaries in the private spheres of their lives. However, the law does not allow the emergence of sexuality in the public sphere

or any kind of sexuality even within the private sphere contrary to the heterosexual norm *Obscenity*.

In the Indian context, pornography and obscenity have become synonymous. The IPC declares any representation as obscene which is "lascivious or appeals to the prurient interest or if its effect ... is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely ... to read, see or hear the matter contained or embodied in it".⁹ This provision incorporates the *Hicklin* test¹⁰ based on the then prevalent narrow moral considerations and is not reflective of the current thinking on the subject.

At least four different positions have emerged among feminists concerning obscenity, namely, liberal, moral right, anti porn and feminists against censorship.¹¹ The liberal position defines pornography "as sexually explicit material designed for sexual arousal", and argues "that there is no scientific evidence that pornography causes harm to society and there are no sound reasons for banning it or taking any other action against it".¹² The position of the moral right is that pornography is a preoccupation with sex that is not related to the purpose of sex. They view pornography as a threat to traditional family values which reserve sex for procreation and within marital relations.¹³ The anti-porn feminists too take a similar position and view pornography as "the material which depicts violence against women and is itself violence against women".¹⁴ The approach taken by feminists against censorship is that it is not the images that cause men to rape but the fact that the pornographic genre is becoming the dominant form of representing women. The experience of Denmark demonstrates that when pornography is exposed to the light of day it loses its power, while censorship or suppression of such images brings pornography into existence, gives it power and invites policing.¹⁵

Censorship curtails the space for other forms of representation and alternative erotica. Feminists against censorship argue in favour of a multiplicity of images and the creation of space for alternative images. Suppressing existing images will end up simultaneously silencing alternative representations and interpretations that could help in promoting feminist, anti-racist or egalitarian values. This approach exposes the danger of resorting to legal strategies to fight pornography. Such recourse, in their opinion invariably collapses feminists' concerns about degradation and objectification into the discussion on how sex depraves and/or how representations of violence cause actual violence.

The Indian law does not reflect any of these new developments and continues to be limited to narrow moral considerations. The conception of depravity being limited to sexual depravity, images denigrating to women's equal status, reinforcing sexism, gender discrimination and misogyny are ignored by the legal

regime. Sexually explicit images are interpreted as tending to deprave and corrupt persons and therefore to be prohibited but the sexist, gender discriminatory or misogynous messages of other images are not considered as tending to deprave or corrupt persons. The sexism in non- sexually explicit representations remains untouched by any penal liability. Even the comparatively recent Indecent Representation of Women (Prohibition) Act 1986 has focused on the "depiction ... of the figure of a woman ... as to have the effect of being indecent".¹⁶ 'Indecency' too, is guided closely by conceptions of morality. Its focus on what is explicitly indecent diverts the attention from derogatory messages as well as from other derogatory though not explicitly indecent images of women. Such derogatory messages and images are much more harmful to women and responsible for increasing violence against women, but they remain outside the purview of legislation. The following standard of indecency has been suggested¹⁷ for inclusion in the Indecent Representation of Women Act-

[T]he depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way, as to have the effect of being indecent, or derogatory to, or denigrating women or is likely to deprave, corrupt or injure the public morality or morals. 'Derogatory Representation of Women' means the depiction in any publication in any manner, visual or otherwise, of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent or derogatory to her dignity as a person.

Recent censorship and the litigation thereafter relating to the film *Bandit Queen*¹⁸ do reflect the conflicting perceptions about what constitutes obscenity. It is time for the law in India to recognise at the least that the words 'deprave and corrupt' are clearly capable of bearing a wider meaning. It has been held in other countries that depravity and corruption is not confined to sexual depravity and corruption. ¹⁹ *Miller v. California*²⁰ has expanded the test laid down in *Hicklin*. What is obscene can be determined by asking-

- (a) whether the average person, applying contemporary standards, would find that the work, taken as a whole, appeals to prurient interest,
- (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and
- (c) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

Rape and sexual assault

Various provisions in the IPC relating to sexuality reinforce not only Victorian morality but also the non-agency of women. In case of rape the general principle is that if a man has sexual intercourse with a woman below the age of sixteen years with or without her consent, he is guilty of rape.²¹ But if the woman is his wife and above fifteen years of age, the act is not rape.²² A nominal punishment is provided if the wife is between twelve to fifteen years of age²³ or is living separately from him under a decree of separation or under any custom or usage.²⁴ The undeniable conclusion is that a wife is presumed to have given irrevocable consent to sexual relationship with her husband even though there is no presumption of consent for any other purpose, including the marriage itself. The option of puberty given by Hindu and Muslim laws relating to marriage allows women to revoke their marriages performed before attainment of majority but there are no sanctions against a husband establishing sexual relationship within such a marriage. The husband is punishable at par with other rapists only if the wife is too young physically for sexual intercourse. Her mental maturity or her clear withdrawal from matrimony by living separately is of little protection to the woman against aggressive sexual access of her husband.

A woman may successfully prosecute a man for rape who had sexual intercourse with her consent when the man knew that he was not her husband and that she had consented believing him to be someone else to whom she was or believed herself to be lawfully married.²⁵ A similar mistake about the identity of the accused made by an unmarried, widowed or divorced woman provides her with no protection even if the man knows that she consented to the sexual intercourse believing him to be someone else. The message is clear. The tie between marriage and sexuality is unmistakable. The law protects virgins and chaste married women. A woman who is not married if she decides to be sexually active, she does so at her own peril. A man can swindle her for her promiscuity without any risk to himself. Any sexual activity beyond the private sphere of marriage is not worthy of legal protection. In fact, as the past sexual conduct of the prosecutrix is admissible in evidence²⁶ her promiscuity may be and is raised in cross-examination to injure her character as to shake her credibility. The assumption of the law apparently is that if she has an immoral or sexually promiscuous history, her cry of rape has to be a lie.

The assumptions under Sections 155(4) and 146 of the Evidence Act have been characterised as (i) women lie about rape; (ii) women deserve to be raped; (iii) women provoke rape. These assumptions reinforce the view that a woman is responsible for male sexual behaviour, that is, she is not only responsible for her sexual behaviour but also for a man's misbehaviour. The linking up of chastity to

the requirement of consent has resulted in denial of women's sexual autonomy and dignity.²⁷

The definition of rape itself also does not reflect a woman's experience. The existing law requires proof of penetration of the vagina by the penis. The penetration requirement is linked to conservative notions of chastity and the fear of pregnancy by someone other than the legitimate father. In other words, the priority given to penetration by the penis over all other forms of penetration or sexual assault is historically based on the need to defend the rights of the legitimate father rather than the woman's integrity. The requirement excludes all sorts of other ways in which women experience sexual abuse or violence that are no less humiliating, for example, insertion of the penis into the woman's mouth or anus or insertion of fingers or other objects into her vagina.

The availability of legal protection to sexual activity is not determined by whether it is happening in private or in public but whether it meets the traditional standards of morality. Homosexual relations are declared 'unnatural' and 'offences' irrespective of whether these are occurring in the private or public sphere. Such a declaration directly imposes a heterosexual marital code of sexuality.

It may be noted that the provisions relating to rape assume that women alone may be raped and that it is only a man who can rape a woman and not vice versa. A Woman can seduce a man. but not rape him. However, new Sections 376-B to 376-D²⁸ make a person in authority liable for inducing or seducing a woman only and not a man, for sexual intercourse. It is apparent that these provisions do not recognise any sexual initiative and agency in women. These provisions suggest that either women in authority do not/cannot exploit men in their custody or subordinate to them or even if the women may do so, men are capable of handling it themselves without the protection of law while similarly placed women are weak and in need of protection.

Sections 354 and 509 of the IPC lay down punishments for assault, use of criminal force, words or gestures intended to outrage the modesty of a woman. These sections clearly recognise gender-based assumptions of male and female sexuality. Any public gesture of sexuality towards women is outrageous to their modesty but similar actions by women towards men are outside the purview of law. The law seems to presume that either men have no modesty or their modesty is impossible to outrage or even when it is outraged they can take care of themselves without needing protection from law.

Further, the fact that only nominal punishment has been provided for outraging the modesty of a woman²⁹ gives the message that the law does not take a serious

view of such actions. The rationale for this approach can only be the sexist assumption that male sexual urges are naturally irrepressible.

Prostitution, trafficking and illicit intercourse

The criminal law as contained in the IPC and the Immoral Traffic Prevention Act 1986 perceive prostitution as a necessary evil which should be contained but not be completely prohibited. The laws do criminalise the outward manifestations like soliciting, brothel-keeping, trafficking in women for prostitution, but do not ban prostitution per se. Formulated in this manner, women in prostitution are exposed to harassment by the police and exploitation by pimps and customers.

The law still has not responded to women's demands for recognising that women in prostitution have made the best economic choice possible in the circumstances and that prostitution should be decriminalised to protect their legal rights.³⁰ It continues to view prostitution as a necessary social evil nurtured by immorality and illicit relationships.

Sections 372 and 373 of the IPC declare as offences the selling or buying of minor/s for the purpose of prostitution. These sections apply to males and females below the age of eighteen years but provide extra protection to women. Explanations to these sections lay down the presumption that possession of a female by a prostitute or a brothel-keeper is for the purpose of prostitution. These sections also apply if the minor is sold or purchased with the intent that such minor, at any age, shall be employed or used for illicit intercourse or for any unlawful and immoral purpose. For the purposes of these sections illicit intercourse is limited to heterosexual intercourse between two persons not united by marriage.

It may be noted that while Sections 372 and 373 recognise that a minor, either male or female, may be sold or purchased for the purposes of illicit intercourse or for any unlawful and immoral purpose, Sections 366, 366-A and 366-B of the IPC, dealing with kidnapping, abduction, inducing, procuring, importing for the purpose of illicit intercourse, apply only when such actions are directed against women. Though Sections 366-A and 366-B apply to a girl below the age of eighteen and twenty-one years respectively, Section 366 applies to females of all ages. The rationale for excluding men from these provisions may be traced to the notions of morality, virginity and chastity applicable to women. Men found in situations of illicit intercourse do not suffer either a social stigma or a psychological scar, as it is acceptable behaviour given the assumptions about the nature of male sexuality. But women lured into such situations will perhaps end up being prostitutes due to the social and psychological repercussions of illicit

intercourse with them. That also explains the inclusion of prostitution, and illicit intercourse in the same sections.

All offences relating to sexuality, except rape of a wife between 12-15 years of age, are cognizable even though the punishment prescribed for some of these offences is as low as imprisonment up to three months,³¹ one year³² and two years.³³ Among these the more serious offences punishable by up to ten years of imprisonments³⁴ and life imprisonments³⁵ are declared as non-bailable while others are bailable. These provisions are a clear indication that the state takes a very serious view of the exploitation of women for illicit intercourse by coming down heavily on the persons accused or found guilty of these offences. However, nominal punishments actually imposed by courts in rape cases and the gender biases operating in their determination led to the demand for prescription of mandatory minimum punishments and changes in the principles of evidence³⁶ resulting in amendment of the law.³⁷ A new provision has been incorporated which makes disclosure of the identity of a rape victim punishable.³⁸

Procreation

Sections 312 to 318 of the IPC relate to miscarriage, injuries to unborn children, exposure of infants and concealment of births. Abortion (except for the purpose of saving the life of the woman³⁹), causing death of the woman in an attempt to abort,⁴⁰ preventing a live birth or causing death of child after⁴¹ birth, causing death of quick unborn child⁴² and exposure and abandonment of a child under twelve years of age⁴³ are all offences under the IPC as the scheme of these sections indicates that those offences are considered as serious by the IPC. The periods of imprisonment prescribed are quite substantial ranging from seven years to ten years and life except under Sections 312 and 318. All offences except that under Section 312, are cognizable and non-bailable-another indicator of the framers' perception of their serious nature. These sections are formulated in gender neutral terms adopting the sameness approach and deal with men and women in the same manner. In fact they seem to be protective of women as they lay down a greater punishment if the offence is committed without the woman's consent. A deeper analysis of the operations and the assumptions underlying the law bring out the gender biases inherent in these provisions.

The gender-neutral terms of these provisions concerning the sex of the foetus aborted or the infant banned or killed ensures their equal application whether the foetus or child victim in question is male or female. Male foeticide and infanticide, however, are exceptional in India. The problem is of female foeticide and infanticide. These provisions by their gender neutrality hide the real problem. In fact the instances of female infanticide and foeticide were found to be far too many to be dealt with under a gender-neutral law and special penal

statutes, namely, the Female Infanticide Act 1864 and the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994 were required to be enacted to deal with both these evil practices.

Nature has ordained a primary role to women in procreation of children. It is women who bear and give birth to children. Logically they should, therefore, be able to decide whether to have a child or not and be equally responsible for aborting a foetus or injuring an infant. The social and physical child-bearing experiences of Indian women, however, require a different approach.

The majority of the Indian population is Hindu, mostly patriarchal and within Hindu thought sons are required to carry the family name. The belief and practices of the majority community influence the attitudes of other communities as well. Most Hindus believe that they will go to heaven if their son performs the last rituals after their death. It is considered almost a sacred duty of a married Hindu woman to give birth to a son. As daughters they are less wanted, less taken care of, less fed, less educated and so on. Women are denied the opportunities for development of basic social and psychological abilities needed for decision making. At the end of the road as women they have a lower social status than men. They get fewer chances to deal with the world on their own and depend heavily on men even for their survival. In most instances women do not have the social status, economic standing and psychological strength to go against the decision of the men.

The gender-neutral terms of the IPC provisions making women equally liable for abortion or injury to foetus and infants ignore that women in India are socialised in the religious and cultural environment of 'son preference'. Women suffer numerous pregnancies and abortions injurious to their own health under the tremendous social and psychological pressure generated by this belief. The law further ignores women's experiences by keeping certain other aspects of child-bearing outside its ambit. For example, impregnating a woman regardless of her wishes or against the advice of a doctor remain outside the realm of the IPC. It is also not an offence to abandon a pregnant woman or to deny her required medical care and attention during pregnancy or at childbirth or soon thereafter.

A comparison of the assumptions underlying the provisions relating to sexuality with those relating to procreation reveals the double standard of law not only between men and women but also among different subject matters concerning women. In matters relating to her sexuality within or outside marriage it is assumed that she is incapable of forming a will. When it comes to pregnancy whether through a forced or consensual sexual intercourse, it is assumed that she has the capacity to take decisions with or without the agreement of the man responsible for such pregnancy. Not only is this differential approach to

women's agency based in the private-public dichotomy and patriarchy, it also does not give any space for a differential experience in either situation.

The underpinnings of the policy of the law against abortion have another gender dimension also despite its apparent moral basis in the natural right to life. Women's right to life includes the right over their body and should give them an absolute right to decide whether to bear a child or not. The right to life for the unborn means the right to be born. The Medical Termination of Pregnancy Act 1971 allows abortion only in specified circumstances, e.g. where the health of the pregnant mother is endangered, failure of contraceptives. The grounds permitting abortion of a foetus do not have even a semblance of balancing the right of the unborn to be born and the right of the woman over her body. The Act curtails the right of the unborn to be born, without recognising women's right over their bodies. The Act was and continues to be a population control measure and does not recognise a woman's right over her body.

Marriage

Prior to 1983, Chapter XX of the IPC dealt with offences relating to marriage. It included offences relating to cohabitation and sexual access by persons through deceitful inducement of belief of marriage, bigamous marriage, adultery and enticing or taking away a married woman. In 1983, a new Chapter XX-A 'Of Cruelty by Husband or Relatives of Husband' consisting of only one Section 498-A was added in the IPC. In 1986, Section 304-B dealing with dowry death was inserted in the IPC.

Offences relating to marriage

Three of the six sections included in this chapter are concerned with sexual relationships and marriage and may be committed only by men.⁴⁴ The exclusion of women from penal liability for these offences is directly linked to stereotyping and role socialisation of male and female sexuality.

The sections relating to offences of bigamous marriage⁴⁵ and fraudulently going through marriage ceremony without a lawful marriage⁴⁶ use the word 'he'. In contrast the sections dealing with inducement of a belief of marriage in order to cohabit or to have sexual intercourse use the word 'man'.⁴⁷ As usage of the word 'he' in contradistinction to 'man' changes the scope of a provision in the IPC, the former set of offences may be committed by either a man or a woman but it is only the man who is liable for the latter offence. There are two plausible explanations for exclusion of women from this offence. Either the law does not believe that women can induce a belief of marriage in a man in order to cohabit or to have sexual intercourse or even if they can do so men will not suffer any

adverse consequences because of that. Men can look after themselves in such situations.

The provisions relating to adultery make liable only the man in the adulterous relation and not the married woman.⁴⁸ It is further provided that the aggrieved person entitled to file a complaint of the matter is the husband.⁴⁹ The underlying patriarchal notions are too apparent to be ignored. First, these provisions look at married women as victims, incapable of either expressing their sexuality or to protect themselves against the lecherous behaviour of other scheming men. Second, the husband is conceived as having the sole proprietary rights over his wife's sexuality, which are violated by the intruder. Third, the law does not take cognizance of the situation when the man committing adultery with another married woman, may himself be married. By denying a criminal remedy to the wife of an adulterous husband, the law monopolises access of the husband to his wife's sexuality. The wife has no legal protection to secure similar reciprocal monopoly over her husband's sexuality. Interestingly enough, one of the justifications offered for this discriminatory approach is that whereas a wife by an adulterous affair can burden her husband with an offspring not his own,⁵⁰ no such possibility exists with the husband's sexual relationships outside marriage. This rationale is offered despite the fact that all parents are obligated to maintain not only their legitimate but also illegitimate children.⁵¹

A comparison of Section 375 fourthly and Section 493 bring out another discrepancy. Both sections punish the man who cohabits with a woman to whom he knows he is not married and that she has given the consent for cohabitation believing herself to be married to him. Section 493 applies when the man deceitfully created the belief of marriage but the woman was not mistaken about the identity of the man.⁵² But if she was under a misconception as to his identity, even though he did not create that misconception, the man is liable for rape.⁵³ With the introduction of mandatory minimum punishment of seven years imprisonment for rape, the man convicted under Section 493 may receive very much less punishment even though the substantive nature of the activity under both sections remains the same. In fact, the man liable under Section 493 is more devious as he not only exploits the wrongful belief but also deceitfully creates that belief in the woman according to the requirement of the section. Further, it is provided that cognizance of this offence cannot be taken by any court unless the complaint is made by the aggrieved party,⁵⁴ i.e. the woman deceived, while court's jurisdiction can be invoked in rape cases by information of the offence by anyone.

Section 498-A makes a husband and his relatives liable to imprisonment up to three years if they subject the woman to cruelty. Cruelty includes two kinds of actions-(a) any wilful conduct of a nature which is likely to drive a woman to

commit suicide or cause grave mental or physical injury or danger to life, limb or health; and (b) harassment for meeting unlawful demand for property or valuable security or on account of failure to meet such demand.

At the outset it may be noted that this chapter has been inserted between the chapter dealing with offences relating to marriage and another dealing with defamation. Thematically this placement indicates that the offence contained therein is considered closer to offences relating to marriage 'rather than offences affecting the human body and that it is not a serious offence.

This perception is further fortified by the fact that limitations on initiation of prosecution under this chapter are similar to those provided for offences relating to marriage. Section 198-A of the CRPC requires that courts can take cognizance of this offence only on a police report or complaint by the woman, her closest relatives or with the leave of the court by any other person related to her by blood, marriage or adoption. By this provision the state continues to show its hesitation to intervene in the realm of family and marriage even if it is likely to cost the woman's life. The state machinery comes into operation suo motu after she loses her life and not on a reasonable possibility of such an eventuality if she or her kith and kin do not complain.

Section 498-A itself has further limitations on its scope and does not take cognizance of a woman's day to day experience of violence in the household. The section takes cognizance of cruelty only by husbands and his relatives, precluding imposition of any liability if an unmarried, widowed or separated woman is subjected to cruelty by members of her natal family. Reports of brothers subjecting their sisters to cruelty to sign off their share in property are not unknown. Further, it takes cognizance of only such conduct which is likely to drive a woman to commit suicide or to cause 'grave' injury or danger to life. Many women are subjected to such cruelty but almost all women suffer from cruelty of lesser degree in the household. A woman subjected to occasional beatings not causing 'grave' injury is not entitled to any protection from the state. The family ideology, stereotyping of woman's role and behaviour are further hindrances to getting any action initiated for a non-cognizable offence like hurt caused by a husband, even if a woman chooses to file a complaint before a magistrate.

Dowry death

Section 304-B of the IPC read with Section 113-B of the Evidence Act deals with a married woman's death within seven years of marriage due to burns, injuries or in circumstances other than normal. These provisions lay down that if soon before her death she was subjected to harassment for dowry by her husband or

his relatives, such death shall be presumed to be dowry death and such person shall be deemed to have caused her death. Mandatory minimum imprisonment of seven years but which may extend to life has been prescribed for the offence.

The assumptions under the section and its formulation are also far from being unproblematic. It assumes that a woman is harassed in marriage only for dowry or that harassment for dowry alone is worthy of legal protection. A woman in India may be harassed because she is of dark colour or because some disaster befell the household with her entry into the household or that she is infertile or that she has failed to give birth to a son and so on. If she is found dead in the circumstances mentioned in Section 304-B, conviction of her husband or his relatives for murder or abatement to commit suicide is almost impossible in the absence of enough proof. As the harassment and death occurs in the husband's house, proof of such harassment or how actually the death occurred, is not available to the prosecution. The same problem was faced in case of harassment for dowry and that is why the presumption of harassment was laid down in the case of dowry death. However, death of a woman in unnatural circumstances preceded by harassment for any reason other than dowry, has not been taken cognizance of by the legislature. It may be noted that Section 304-B applies if a woman harassed for dowry dies 'within seven years of her marriage'. If she survived the torture and bore the harassment for seven long years but dies in abnormal circumstances after that, her death is dealt with at par with other deaths in similar circumstances. The assumption of the law is that once the magic seven years of marriage are over, either the torture/harassment ceases or it was non-existent in the household for the woman to have survived that long or it was not grave for the woman to have endured it. Prima facie, no presumptions may be raised if a woman dies of burns etc., or in circumstances other than normal even if there was proof that she was being harassed for one or the other reason before her death.

The section further poses new interpretational challenges. When can a person be said to have died "otherwise than in normal circumstances"? Suicide may be included and sudden heart failure excluded but what about a woman who dies in the absence of proper medical care? Further, what is the meaning of 'soon before her death'? When will an instance of harassment be soon enough to qualify for proving this requirement of dowry? If a woman was being harassed for dowry for three years but was not so harassed for the last one, two or six months before her mysterious death, will earlier harassment constitute 'soon before her death'? A comparison of the penal, procedural and evidentiary provisions relating to Sections 498-A and 304-B shows that the state has followed the policy of symbolic intervention in the private sphere of family at the request of the woman aggrieved by severely injurious conduct of her husband or his relatives. A married woman is required to lose her life for the state to swing into

action. Even though the state responded to the demand of the women's movement of the early and mid-eighties and amended the laws relating to rape, marital rape and dowry harassment, the provisions fell short of women's expectations.

It is also necessary to take note of the fact that all offences relating to marriage under Chapter XX, marital rape and rape of the separated wife are non-cognizable and bailable,⁵⁵ even though the punishment prescribed for some of the offences is up to seven and ten years of imprisonment.⁵⁶ The non-cognizable nature of these offences not only makes initiation of investigation possible only after an order to that effect by a magistrate but also conveys a message to the investigating agency that the offence is not considered serious enough. It also provides the magistrate an opportunity to exercise discretion in ordering initiation of investigation. In view of the generally prevalent and accepted patriarchal norms, it is not unlikely that the order is guided by such considerations rather than by an objective assessment of whether prima facie a case is made out. The offence of cruelty against married women is cognizable if the persons specified therein file the complaint. It is only after a married woman loses her life for dowry that the offence within marriage is considered serious enough to be fully cognizable.

Classification of a majority of these offences as bailable.⁵⁷ Suggests that these are considered to be not serious and may also dissuade a victim from filing a complaint for fear of reprisals from the accused who can avail bO as a matter of right in these offences.

The combination of long sentences with classification of offences as non-cognizable and bailable in case of offences relating to marriage are in interesting contrast to the punishments and classifications concerning offences relating to sexuality. Obscenity under Section 294 is punishable with as low a punishment as imprisonment up to 3 months but the offence is cognizable. In fact, almost all offences relating to sexuality are cognizable though the punishment ranges from imprisonment up to one year to 10 years or life imprisonment. The link with the private-public dichotomy in these hands-off and hands-on pattern in relation to marriage and sexuality is apparent.

Miscellaneous

Some other provisions too reflect the values and norms of the time when the IPC was enacted. The definition in Section 27 Of the IPC clarifies that when property is in possession of a person's 'wife', (clerk or servant), on account of that person, it is in the person's (husband's) possession within the meaning of this Code. As some other sections in contradistinction have used the words 'wife or husband',

e.g. Section 52-A, it is pertinent to ask whether the same rule will apply to the property of a wife in possession of the husband on her account and will she be considered to be in possession for the purposes of this Code?

Section 477 lays down, among other things, punishment for wilful destruction of a document that is an authority to adopt a 'son'. The reference to adoption of a son was justified in the period when the section was enacted as at that time the old Hindu law permitted adoption of sons only. But in today's era when either a son or daughter may be adopted, the continued reference to son only in the section is outdated. It may justifiably be asked today whether wilful destruction of a document authorizing adoption of a daughter will be an offence under this section? Positive answers to these questions may be given by a liberal construction of 'wife' as referring to spouse' and 'son' to 'child' but in criminal law the rule applied is of strict interpretation and all benefits accrue to the accused. Further interpretational difficulties may be faced in view of the distinction expressly mentioned in the usage of man and woman. As a section using the word man or woman does not connote a reference to a human being, it will be difficult to interpret 'son' as 'child' or 'wife' or 'husband' as 'spouse'.

Section 361 lays down the cut-off ages of sixteen and eighteen years for boys and girls respectively for the purposes of kidnapping from lawful guardianship. The section adopts a protectionist approach reinforcing the idea that women are weak and require protection for a longer period. By the same token, it curtails the liberty of the females between the age group of sixteen to eighteen while leaving the male of that age group free of legal regulations. It may be recollected that a woman above 16 years is considered capable of giving valid consent to sexual intercourse but she cannot give consent to be taken away from lawful guardianship. The interplay of the public-private dichotomy and patriarchal values has operated to give advantage to males in both situations. If a young unmarried woman indulges in extra-marital sexual activities, the law looks at her with suspicion and allows evidence of her moral character to the advantage of the man charged with rape. But if she remains a virgin and under the lawful control of her guardian (usually her father), the law protects the rights of the guardian by punishing the intruder. The consent of the girl of 16-18 years of age does not absolve an accused charged with the offence of kidnapping while it can in case of rape.

Reasonable man/woman

Another important aspect that needs to be examined is the concept of reasonableness that permeates the administration of criminal justice. Reasonableness of the behaviour of the accused and victims at and around the time of offence plays an important role in determining the guilt of the accused

and the quantum of punishment. Depending on the judge's perception of what is reasonable or unreasonable, an accused may be convicted/acquitted, his/her punishment reduced/increased. Western feminist lawyers and writers have been challenging the male standards underlying the concept of 'reasonable man'. In the English case of *R. v. Ahluwalia*⁵⁸, Kiranjeet Ahluwalia sprinkled petrol on her husband after he had gone to bed and set him on fire. She was convicted for murder by the lower court. On appeal the charge was reduced to manslaughter by reference to diminished responsibility in view of her long-term battering. She had been married for ten years and was frequently and severely abused physically by her husband during that period. Cases of battered women who kill tend to follow a pattern. The woman waits till the batterer is drunk or in bed before striking. The theory of slow burn and battered woman syndrome have been advanced before the US courts as justifying and excusing defences when such women kill the aggressor's.⁵⁹

Katherine O'Donovan⁶⁰ brings out the male experiences and male standards underlying the very formulation of the defences of grave and sudden provocation and private defence. The defence of grave and sudden provocation may reduce the charge of murder to culpable homicide if the victim was killed whilst deprived of the power of self-control due to sudden and grave provocation. It took 274 years from the first announcement of the defence of grave and sudden provocation to recognise that wives who killed their husbands or their husbands' lovers too may suffer a jealous rage similar to men and avail themselves of the defence.⁶¹ In case of battered wives the very nature of prolonged violence, the apparent initial tolerance by the victim, and her failure to respond violently immediately is contrary to 'the heat of the moment' requirement of the current definition of provocation. Delay in reacting to the violence and waiting till her tormentor went to bed denote 'revenge'.

The law of private defence requires existence of an imminent danger and use of reasonable force to repel that force. The idea of force proportional to the attack is based on the notion of persons roughly equal in strength and aggression. Use of a weapon by a woman in response to a fist or a boot does not satisfy the proportionality test. For a woman smaller in size and lighter in weight than her aggressor, use of physical force to repel the attack is not practicable. Use of poison in such instances indicates a strong element of planning to the male view of the situation. For a woman violently battered over a long period of time, temporary withdrawal of the batterer from active aggression does not signify cessation of danger. She may have a well-founded fear of future attack based on previous experience but that is not imminent danger as formulated by law. Given women's lesser violence, it is likely that the law of self-defence evolved in the context of male patterns of behaviour. And it continues to judge a woman's

reaction to what she perceives as an imminently dangerous situation by male standard of reasonableness.

There are numerous instances in the Indian case law to show that when it comes to offences involving women victims and women offenders, rhetoric and passion guide the decision instead of objectivity and reason. The standards applied to judge a woman's behaviour are malecentric. At other times stereotypical role expectations and patriarchal values decide the issue.

For example, in a bride burning case, the Rajasthan High Court ordered public hanging of the accused for this barbaric offence and directed amendment of the jail manual for the purpose if need be. The Supreme Court reversed this decision saying that it had been made more out of anger than on reasons. Judicial discretion should not be swayed by emotions and indignation.⁶² The Delhi High Court imposed the sentence of death on the paramour and life imprisonment with a fine of rupees one lakh on the wife for having killed her husband. On appeal the Supreme Court found the trial court had been guided by the unrepentant attitude of the accused whilst the High Court was more on the moralistic aspect of the matter. Even if these two aspects were allowed full play, the apex court ruled, the case did not come within the criterion of rarest of rare required for the imposition of the death sentence. The death sentence of the paramour was therefore reduced to life. The woman never appealed and ended up with life imprisonment and the huge fine.⁶³

In Sathin's case,⁶⁴ from Rajasthan, the sessions judge acquitted the accused because, among other things, immediate report of her rape by the victim, Bhanwari Devi, straight to the police without first informing her in-laws was 'unnatural'. In *State of Haryana v. Prem Chand*⁶⁵, the judges gave less than the mandatory minimum punishment because of the victim's conduct in reporting the rape five days later. The sessions judge in *Bhanwari's case* expected her to take some time before reporting, and the Supreme Court judges gave benefit to the accused when the victim delayed the reporting of the matter in *Prem Chand*.

In *Raju v. State of Karnataka*⁶⁶ the sessions judge considered imprisonment till the rising of the court and fine of rupees five hundred adequate punishment for rape. The High Court increased the imprisonment to seven years. The Supreme Court reduced it to three years. It said that the victim had agreed to sleep in the same room with the accused and the young accused were overpowered by lust during the course of the night. The victim was to be responsible not just for her own but- for their sexuality as well.

Another woman, Gyarsibai jumped into a well with her children due to continuous bickering with her sister-in-law. Her children died and she was

convicted for murder.⁶⁷ Her action did not constitute a reasonable excuse for mitigating the charge to culpable homicide. She could have moved out from the unhappy situation is the usual refrain. Moving out of an unhappy marriage is an option from a male perspective. There is complete absence of any psychological and physical support structure for women in such an eventuality. Women experience many more unending and insurmountable problems rather than the end of their problems by moving out.

Criminal law in India needs to control the double standards and male-centred standard prevailing under the concept of 'reasonable man' and reasonableness'.

Conclusion

The above analyses show the latent and patent gender biases operating in the conceptualisation, formulation and operation of criminal law. In its present form it excludes perspectives, interests, and experiences of women to a large extent by maintaining the private-public dichotomy and incorporation of patriarchal values. It also reinforces the typical stereotypical image of women as weak and in need of protection. With its current patriarchal nature and gender biases, it is not surprising that the law enforcement officers have negative attitudes towards offences against women, resulting thereby in their refusal to register complaints, or in frivolous and delayed investigations or acquittal or imposition of nominal punishments in case of conviction. As a result women who take recourse to legal remedies find the system to be more cumbersome than supportive. This in turn results in hesitation to take recourse to criminal law in times of distress.

Gender injustice resulting from the patriarchal nature of the law has led to active discourses for reconceptualisation and reformulating of the law. The National Commission for Women has proposed enactment of a comprehensive code on criminal laws relating to women and had nation-wide consultations on its advisability. The proposal has been mooted "in order to obtain justice to women in the true sense of the term.... This venture ... is an exploratory exercise, as many of the crimes being perpetrated against women today, has (sic) not found an adequate place in any of the existing laws".⁶⁸ The Commission is seeking to:

examine the inadequacies and adequacies of criminal laws relating to women and efficiency of their administration; draw out either a separate comprehensive code or a separate chapter in the IPC relating to crimes against women; emphasise payment of compensation to women victims of atrocities; draw sentencing guidelines; emphasise setting up of special courts to handle atrocities against women.⁶⁹

Many debates took place in the Conference organised by the National Commission for Women in Delhi on whether the proposal was for codification or rather consolidation or compilation of 0 relevant existing laws relating to women. Though the National Commission for Women did clarify that its ultimate objective is codification, the proposal in its present form neither contains an exhaustive list of all criminal laws relating to women nor the concrete amendments to such provisions or suggestions of new sections nor has it found much support from participants either in Delhi or in Hyderabad.

The Law Commission of India is in the process of finalising its report on the IPC. It has already submitted its report on the CRPC to Parliament. The Commission has made various suggestions for special protection for women victims and offenders. The main thrust of the suggestions is to involve women, as many and as often as possible, in the various stages of proceedings. The suggestions proceed on the assumption that integration of women during investigation and trial will automatically result in feminisation of proceedings. (What it ignores is that men and women are the product of similar socialisation processes.) Their value patterns. are the result of their upbringing and not only their sex. Women may be as paternalistic as men once they are in position of power. The criminal procedure needs to be changed to bring in democratisation and empowerment of its subjects rather than its enforcers.

Paternalism and exclusion of women have been the main focus of feminist critique of the legal system. The Law Commission does very little to change that through its suggestions. The Law Commission has suggested exclusion of women prisoners sentenced to life imprisonment from Section 433-A of the CRPC. The suggestion betrays the paternalistic and stereotypical notions of women at the base. Section 433-A has been held not to apply to juveniles convicted under the Borstal Schools Act applicable in Andhra Pradesh. Consequently, the Commission had recommended that a similar approach should be adopted in regard to women prisoners, particularly because long and continuous imprisonment of women prisoners might prejudicially affect the welfare and well-being of other members of their families.

The suggestion in its essence equates women with children. It also reinforces their role as homemakers. The objection is not to the suggestion but to the logic of the suggestion. The emphasis on having only women, as far as possible, as investigators and judges will lead to another kind of exclusion from the legal system-exclusion from the mainstream of the law. What we need is not soft and segregated justice for women but integration of women's experiences and concerns in the entire legal system. It is not possible at this juncture to predict the fate of the proposals made and about to be made by the Law Commission. It is certain though that the criminal law needs an exhaustive review.

It has long been recognised that law is an instrument of social change as well as of the maintenance of status quo. Criminal law too serves both the purposes. It is used to curb certain social practices considered as evil, inhuman, oppressive, etc., by a given state at a particular time. Criminal law and policy, like any other law, is influenced by and incorporates the values and norms of the dominant groups in the state. Feminist writings have brought to light how the public-private dichotomy of various political theories have kept women out of realm of law and legal regulations to their detriment⁷⁰ More and more feminist writings continue to expose the patriarchal biases incorporated in various laws and legal principles securing better rights to men and reinforcing stereotypical inferior images of women.⁷¹

The history of legislation in India does show that laws have been amended numerous times pursuant to social movements and pressure from elite groups. Such amendments, however, have been piecemeal and not aimed at structural changes. The criminal law needs to be gender sensitised in its conception, formulation and administration to actually ensure equal protection to women. Criminal law or for that matter any other law, is not a solution to all the problems facing women but its importance in laying down new norms cannot be ruled out.

Equality has been accepted as the basic principle of civil society. All laws need conceptual scrutiny but criminal law needs it the most. Criminal law in India for far too long has ensured law and order by maintaining status quo among various groups in the state. As in other societies, men as a group in India have enjoyed a better social and political status compared to women. Piecemeal amendments and innovative interpretations introduce a perception of equality to women without bringing any structural changes in the law. A protective approach is entrapped in paternalism and the sameness approach ignores the difference in the social reality for men and women. The challenge is to ensure equality while respecting the differences between men and women to ensure substantive equality to women.

References

1. Section 8, IPC.
2. *Id.*Section 10.
3. *Id.*Sections 292 to 294.
4. *Id.*Sections 354, 375, 376, 376-A, 376-B, 376-C, 376-D, 377, 509.

5. *Id.* Sections 372, 373.
6. *Id.* Sections 366, 366-A, 366-B.
7. *Id.* Sections 376-B, 376-C and 376-D.
8. The Victorian middle class ideal of womanhood made women '*the angel in the house*', the '*relative creature*' who maintained the home as a haven. The transition of society from feudalism to capitalism involved a recodification of women's roles as mothers and wives. Evangelicalism provided a crucial influence on the definition of home and family and women were projected as custodians of morality and spirituality. Evangelicals expected women to sustain and even to improve the moral qualities of the opposite sex. See, generally, Catherine Hall, *White, Male and Middle Class: Explorations in Feminism and History*, Polity Press, U.K., 1992, pp.75-93; Roberta Hamilton, *The Liberation of Women: A Study of Patriarchy and Capitalism*, Allen and Unwin, London, 1978, pp.23-49.
9. *Id.* Section 292.
10. *R. v. Hicklin* (1868) LR 3 QB 360, namely, whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall.
11. *Comments by the Centre for Feminist Legal Research on the First Report of the UN Special Rapporteur on Violence Against Women, including its causes and consequences*, Centre for Feminist Legal Research, New Delhi, 1995, pp.6-7.
12. *Id.* at p.6
13. *Id.* at pp.6-7.
14. The anti-porn approach has been criticised by other feminist on the following grounds: - (a) the anti-porn position reduces misogyny and sexism to sexuality and its representations; (b) it diverts attention from the sexism and misogyny at work within the traditional institutions like family, religion, judiciary; (c) the focus on explicitness assumes that it is the explicitness that causes men to rape; (d) it poses the danger of providing a ground for mitigation of sentence of rapists; (e) it also risks forming alliances with the moral right which are pro-family and anti-feminist.
15. *Id.* at p.7.

16. Section 29c) of the Indecent Representation of Women (Prohibition) Act 1986.
17. See the amendments proposed by students of National Law School of India University, included in *Shifting Boundaries: A report and commentary on the workshop on women, law and media*, Centre for Feminist Legal Research in association with the Asia Pacific Forum on Women, Law and Development, Annexure N, Centre for Feminist Legal Research, New Delhi, 1994.
18. *Bobby Art International v. Om Pal Singh Hoon*, (1996) 4 SCC 1.
19. E.g. in *Calder (John) Publications Ltd. v. Powell* 1965 (1) All ER 159, it was held that *Cain's Book* might property be found obscene, on the ground that it "...highlighted as it were, the favourable effects of drug-taking and, so far from condemning it, advocated it, and that there was a real danger that those into whose hands the book came might be tempted at any rate to experiment with drugs and get the favourable sensations highlighted by the book".
20. 413 US 15 (1973)
21. Section 375 sixthly, IPC
22. *Id.* Exception to section 375.
23. *Id.* Section 376(1) lays down imprisonment of either description up to two years or fine or both.
24. *Id.* Section 376-A lays down imprisonment of either description up to two years and fine.
25. *Id.* Section 375 fourthly.
26. Sections 155(4) and 146 of Evidence Act 1872.
27. Shomona Khanna and Ratna Kapur, *Memorandum on Reform of Laws Relating to Sexual Offences*, Centre for Feminist Legal Research, New Delhi, 1996.p.11.
28. Inserted by Criminal Law (Amendment) Act 1983.
29. Section 509, IPC lays down simple imprisonment up to one year or fine or both.

30. See *Submissions Pertaining to the Discrimination Against Women in response to the GOI Third Periodic Report under the International Covenant on Civil and Political Rights*, Centre for Feminist Legal Research, New Delhi, p.7 and *Comments* by Centre for Feminist Legal Research, *supra*.11 at pp.4-5.
31. Section 294 IPC.
32. *Id.*Section 509.
33. *Id.*Section 292, 354.
34. *Id.*Sections 366, 366-A, 366-B, 372, 373, 375.
35. *Id.*Sections 375, 376.
36. See Upendra Baxi et.al., "Open Letter to the Chief Justice", (1979) 4 SCC (Jour) 17; "Memoranda for Amending the Rape Law" (Mimeo) 1980; 8th Law Commission Report on *Rape and Allied Offences: Some Questions of Substantive Law Procedure and Evidence*, Controller of Publications, New Delhi, 1980.
37. E.g., Section 376, IPC; Section 114-A, Evidence Act.
38. Section 238-A, IPC.
39. *Id.*Sections 312, 313. The Medical Termination of Pregnancy Act 1971 has legalised abortion in case of failure of contraceptives and in case the pregnancy will be against the mental or physical well-being of the mother.
40. Section 314, IPC.
41. *Id.*Section 315.
42. *Id.*Section 316.
43. *Id.* Section 317.
44. *Id.* Sections 493, 497 and 498.
45. *Id.*Sections 494, 495.
46. *Id.* Section 496.
47. *Id.* Section 493.

48. *Id.* Section 497.
49. Section 198(2) of the CrPC
50. Section 112 of the Evidence Act provides a presumption of legitimacy of a child born during subsistence of a valid marriage or within 280 days after its dissolution.
51. Section 125 of the CrPC.
52. Section 493 of the IPC reads: Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of for a term which may extend to ten years, and shall also be liable to fine".
53. Section 375 fourthly of the IPC reads" with her consent, when the man knows that he is not her husband, that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
54. Section 198 of the IPC.
55. Except for offence under Section 493 of the IPC.
56. E.g., *id.* offences under Sections 493 to 496.
57. Except for offences under Sections 304-B, 493 and 498-A of the IPC.
58. 1992(4) All ER 889.
59. L. Walker, *The Battered Woman*, Harper, New York, 1979; *The Battered Woman Syndrome*, Springer Pub. Co., New York, 1984. The idea of slow burn has been considered by the California Court in *People v. Berry* 18 Cal 3rd 509 concerning male defendants.
60. Katherine O'Donovan, "Defenses for Battered Women who Kill", 18(2) *Law and Society, Summer* 1991, p.219.
61. *Id.* at p.226.
62. *Lichma Devi v State of Rajasthan* 1986 Raj LR 83; *Lichma Devi v. State of Rajasthan* (1988) 4 SCC 456: 1988 SCC(Cri) 978.

63. *Ashok Kumar v. State* 1995 Supp(4) SCC 513.
64. For an extract of the Sessions Court judgement See 11(1) *The Lawyers Collective*, January 1996, pp.7-12 and 26-28.
65. (1990) 1 SCC 249: 1990 SCC (Cri) 93.
66. (1995) 1 SCC 453: 1994 SCC (Cri) 538.
67. *Gyarsibai v. State* AIR 1953 MB 61.
68. *Report on National Debate on Codification of Criminal Laws Pertaining to Women*, National Commission for Women, New Delhi, July 27, 1996, p.1
69. *Proposal for Codification of Criminal Law Pertaining to Women*, National Commission for Women, New Delhi, 1996.p.2.
70. See generally, Mary Lyndom Shanley, and Carole Pateman (eds.) *Feminist Interpretation and Political Theory*, Polity Press, U.K., 1991, for the analysis of various political thinkers' assumptions about women's inferiority at the base of the natural law human beings by nature are ordained to attain their full potential. Becoming male is attaining full potential of birth. Female body does not have than potential and, therefore, he assumed natural inferiority of the female. She is who failed to become male. He excluded females from the rights of citizenship and thereby involving themselves in the governance of state because of their inferior intellectual capacity. When he said that the state is natural and its function is to bring out the best in men, he was talking literally of propertied men to the exclusion of slaves and women. See also, Carol Patman, *The Sexual Contract*, Polity Press, U.K., 1988, for the feminist critique of the social contract theory. The standard commentaries on the classical social contract theory do not usually mention that women were excluded from the original pact. But it was men who made the original contract. The device of the state of nature was used to explain why, given the characteristics of the inhabitants of the natural condition, entry into the original contract was a rational act. Only masculine beings were endowed with the attributes and capacities necessary to enter into contracts, the most important of which was ownership of property in the person. Only men were 'individuals'. State was created by thinking rational human beings for protection of life and its functions were limited to its preservation. Beyond that every person was free to do whatever one liked without any interference from the state. Keeping law out of the private sphere of family ensured liberty of men. However, this private-public division considered so essential for man's fell in the private sphere where man was the monarch without any

control of law. Women found themselves at the mercy of men. See Maria Mies, et al. *Women: the last Colony*, Zed Books Ltd., London and New Jersey, 1988, for a feminist analysis of the Marxist theory of society. Marxist theory of society is based, in essence, on the assumption that overcoming oppression and exploitation depends on the development of the productive forces. Exploitation of propertyless wage-workers resulting in surplus value and capital accumulation in the hands of the owner of the means of production are of central concern to the theory. Women's work of producing and raising children are essential for the capitalist in order to have the labour force but not of direct importance as they are concerned with increasing profit. Marxist theory too gives only secondary importance to the women's work and its appropriation. Women's salvation lies in the forward march of the productive forces.

71. E.g., L. Sarkar and B. Sivaramayya (eds.) *Women and Law: Contemporary Issues*, Vikas, New Delhi, 1994; Brendra Cossman and Ratna Kapur, *Subversive Sites- Feminist Engagements with law in India*, Sage, New Delhi, 1996.