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LAW AND SOCIAL TRANSFORMATION IN INDIA

“Evolution of criminal law addressing Sati and Dowry Practice in India”

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Abstract:

When it comes to criminal law jurisprudence in a country, the criminal justice system of Indian culture has evolved over time in all aspects, including socio-economic and political settings. To recognise the same historical development in the Indian criminal system, we must first understand Ancient India with all of its norms, rituals, customs, and beliefs. Criminal law has its roots in ancient India. Many crimes, as well as their definitions and penalties, altered over time as a result of social movements, societal changes, and other circumstances. This study discusses the evolution of criminal law, including the Sati, Dowry law, IPC and so on. This study will examine the social movements that arose to support these developments.

Keywords: Evolution of Criminal law, Abolition of Sati, Evolution of The dowry act, the Indian Evidence Act, 1872.

Introduction:

The history dates back to ancient times and civilization when it comes to crime, equality, peace and justice. To fight back these injustices, our civilization has evolved in the field of criminal law to eliminate the detrimental elements in the society. Whether it be in the religious context or Vedic texts, the wrong is always to be eliminated. The central virtue to human life and society has been the sense of justice and equality. For this very reason, there

have been many laws and regulations executed. In 1860, the Indian Penal Code (IPC) was implemented. Between 1833 and 1860, the criminal law underwent numerous revisions.

One of the most significant accomplishments of the Indian Law Commission was the creation of the Indian Penal Code, which was proposed by Lord Macaulay in 1837 and became law in 1860 after over thirty years of hard work. At the same time, they drafted the 1861 Code of Criminal Procedure. The majority of procedural laws followed this code. These laws were challenged at the time, but as we look back, we see that they created the foundation on which our justice system operates. The concepts of justice, equity, and good conscience form the basis of the laws contained in these Acts. From sanctions for Sati, bride burning, removing untouchables, or infringing on human rights, these laws raised the disadvantaged and provided a chance of justice for those who had been trodden upon. Other legislations punishing the aforementioned offences were also enacted as a result of the Indian Penal Code.¹

Evolution of Criminal law:

The history of modern criminal law codification in India traditionally begins with the arrival of British administration. Its origins, however, may be traced back to the Vedic period and the rule of numerous Hindu and Muslim kingdoms. English laws and procedures underpin the modern criminal justice system. These approaches are both practical and modern. As a result, a large portion of today's criminal laws are still based on British-era regulations.

INDIAN PENAL CODE (IPC)

What is the Indian Penal Code?

The Indian Penal Code, which was drafted in 1860, is India's official criminal code. Its goal is to provide the country with a general penal code. It is divided into 23 chapters and has 511 sections that provides a list of crimes as well as their definitions and punishments. The IPC has been changed numerous times, and it is now complemented by additional Acts. Except for the state of Jammu and Kashmir, it has jurisdiction over the whole country of India.

The IPC comprises 511 sections and is organised into XXII chapters. The country's experience with enforcing the IPC clearly shows that more than 40% of registered offences

¹ Srishti John, History & evolution of Criminal Law in India, September 6, 2020, Law times Journal, <https://lawtimesjournal.in/history-evolution-of-criminal-law-in-india/>.

fall into two categories: offences against the human body under Chapter XVI and offences against property under Chapter XVII. According to crime in India, the offences relating to public order, sexual acts, and economic crime totalled just 3.0, 4.7, and 5.0 percent, respectively, in 2014. This skewed distribution is the result of classificatory irregularities in the IPC, which, according to emerging trends, require reassessment.

Evolution of Indian Penal Code

In 1834, the First Law Commission, directed by Thomas Babington Macaulay, prepared a draught of the Indian Penal Code. Elements were also drawn from the Napoleonic Code and the 1825 Louisiana Civil Code. The initial completed draught of the IPC was presented to the Governor-General of India in Council in 1837, although it was changed later. The drafting was finished in 1850 and was presented to the Legislative Council in 1856. The draught did not become law until 1860, and it went into effect on January 1, 1862. As previously stated, the Indian Penal Code (IPC) governs a large portion of Indian criminal law. It defines a number of typical criminal offences.

The history of the IPC provides useful insights into its character, scope, and ideas that have endured the test of time. The code was a result of 19th-century English law reform discussion, specifically Bentham's vision of thorough codification; however, unlike many British colonies, England never codified, despite Macaulay's expectations that the IPC would inspire stalled efforts there.

In conceptualising and considering a comprehensive law for contemporary India, the key concepts defining the philosophy of IPC were founded on the Utilitarian traditions produced by scholars such as James Mill and Bentham. According to Barry Wright, a Canadian Professor of Criminal Law, the IPC was the most Benthamic and possibly the most important British Criminal Code. Despite its effectiveness, the IPC could not overcome the contradiction that existed between the universal and situational principles, pragmatism, and deductive and inductive reasoning in Bentham's ideal notion of codification. Macaulay wished to shift law-making from the courts to the legislature and limit judges to mere legal application. Macaulay based the Code on numerous laws and documents, including the Louisiana Code of Law and the French Penal Code.

Despite many revisions since its inception, the core framework of the Indian Penal Code has remained consistent since its initial design. Judges lacked a standard set of norms and legal principles on which to base their rulings, and Hindu and Muslim law simply lacked the required ingredients of a contemporary legal system, which led jurists and historians to believe that India needed a new law as part of the reform process.

Overall, the IPC has performed admirably in meeting public expectations. The IPC has only had a few changes. And these adjustments were minor in nature. It is frequently felt that the design of offence and punishment in the IPC falls short of modern societal standards. Many changes in the nature of crime and criminal justice have occurred that are not reflected in the descriptions of offences contained in the IPC.²

Sati:

Suttee, Sanskrit meaning "nice woman" or "chaste wife," is an Indian practise in which a wife commits suicide, either on her late husband's funeral pyre or in another fashion, immediately after his death. The practise was first mentioned directly in Sanskrit in the famous epic Mahabharata. The act of burning a lady alive before her husband was likely to perish in battle was known as Jauhar. Only the Rajput caste in Rajasthan commits mass suicide, known as Jauhar, when vanquished in conflict.

Suttee was admitted voluntarily on occasion, but there have been reported cases of force, escape, and rescue. It still occurs on occasion, like in the example of Roop Kanwar, an 18-year-old widow who committed suicide in 1987. The incident sparked widespread outrage, with groups across India publicly praising Kanwar's conduct or saying that she had been victimised murdered.³

Abolition of Sati:

Sati was forbidden several times between the 15th and 18th centuries, according to historical records. Sati was forbidden by Mughal Emperor Akbar in 1582, and again by Aurangzeb in 1663. Even the Portuguese, French, and British who arrived in India during the European colonial period attempted to put an end to sati. The British tightened their anti-practice laws in 1850. Sir Charles Napier issued an order to punish any Hindu priest who presided over the burning of a widow. During that period, the princely states of India were also under pressure

² G.S. Bajpai, Time to revisit IPC, March 06,2016, Read more at: <https://www.deccanherald.com/content/532874/time-revisit-ipc.html>.

³ Wendy Doniger, Suttee-Hindu custom, last updated on dec 8,2022, Britannica, <https://www.britannica.com/topic/suttee>, last seen on 8/12/2022.

to rule out sati completely. Raja Ram Mohan Roy was one of the key reformers who opposed the practice.⁴

Despite widespread criticism, the practise persisted. During British authority in India in the nineteenth century, Sati was abolished in 1829 by William Bentick, a British citizen, and by 1862, the British had forced the Indian monarchs to stop practising it. Sati was forbidden by the Bombay government, and the Gujarat authorities were warned against it. However, many of them broke the law and were punished as a result. Sati came to an end during the British administration of India in the nineteenth century. Sati is currently considered a crime in India, and anyone caught performing it risks a mandatory life term in prison. However, the practise remained, and countless occurrences occurred each year go unreported.⁵

The Sati Regulation Act, XVII of 1829

After much debate, the "Regulation for declaring the practise of suttee or burning or burying alive of Hindu widows illegal and punishable by criminal courts" came into effect. Thus, the Act was a significant breakthrough in the fight against Sati since it made Sati a criminal offence that was prosecuted regardless of whether the Sati was illegal or legal. "The practise of suttee or of burning or burying alive, the widows of Hindus is abhorrent to the senses of human nature: it is nowhere prescribed by the religion of the Hindus as an imperative duty...", stated Section 1 of the Act. The zamindars (landlords), officers, and local agents were made the authorities' eyes and ears, and they were required to report any occurrence of intentional Sati. The officer was fined Rs 200 or imprisoned for six months for wilfully failing to report the occurrence.⁶

Provision in Indian Penal Code

The Charter of 1833 authorized the East India Company to draught legislation for British India while keeping Indian customs and traditions in mind. T.B. Macaulay was tasked with creating a criminal code that would apply to the whole Indian subcontinent. Though he supported the 'Sati Pratha,' the influence of high-class Brahmins in the creation of the penal code resulted in the adoption of Exception 5 to Section 300 of the IPC, when death happened

⁴ Richa Jain, The History Behind Sati, a Banned Funeral Custom in India, 25 October 2022, culture Trip, <https://theculturetrip.com/india/articles/the-dark-history-behind-sati-a-banned-funeral-custom-in-india/>, last seen on 8/12/2022.

⁵ Gurpreet Kaur Dutta, Abolition of Sati: History & Facts, <https://blog.finology.in/Legal-news/abolition-of-sati>.

⁶ Andrea Major, 'Sati: a Historical Anthology' (Oxford University Press 2007).

owing to his own permission. Despite this, the IPC prohibits the taking of life, but the punishment varies depending on the facts and circumstances of each case.

According to the provisions of the IPC, everyone who aids and abets Sati's act is also accountable for his activities. Abetment can take several forms, including provocation, performance or omission of an act, purposeful helping or willfully concealing facts. The individual who pressed the Sati trigger will not go free, and the terms of the IPC have fully addressed the offences.

The Commission of Sati (Prevention) Act, 1987

The Act, first and foremost, repeals all prior legislations concerning the commission of sati and establishes a central act that not only makes sati unlawful, but also makes celebration of sati an offence under the act. The primary goal of the legislation was to make it a criminal offence, with even abetment, an attempt, or encouragement penalized as if it were murder. The Act makes it illegal to glorify sati for financial or political gain.

Roop Kanwar Case:

Roop Kanwar, an 18-year-old married lady from the Rajasthan town of Deorala, was forced to become sati in 1987 after her husband died after only eight months of marriage. She flatly refused. As a result, a gang of guys from the community drugged and immolated her. The men were arrested when police investigated the situation. In response to this incident, the government enacted the Prevention of Sati Act, which made it unlawful to force or urge a woman to do sati, and anyone who did so would face the death penalty.⁷

Convention On The Elimination Of Discrimination Against Women

The United Nations General Assembly passed the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in December 1979. It consists of 30 articles and a preamble that outlines the goal of the convention, which is to provide women

⁷ Richa Jain, The History Behind Sati, a Banned Funeral Custom in India, 25 October 2022, culture Trip, <https://theculturetrip.com/india/articles/the-dark-history-behind-sati-a-banned-funeral-custom-in-india/>, last seen on 8/12/2022.

around the world with a safe environment free of violence. India has ratified the Convention on the Rights of the Child. This signifies that it is more than just a signatory; it has decided to include the agendas and items in the Convention into the domestic laws of the country to improve the deteriorating situation of the women in the country.

Dowry:

Dowry was intricately interwoven in ancient history with the major institution of marriage and the position of women. Throughout history, marriage has been a vital part of most communities. Grooms were frequently compensated in Polynesia, ancient Greece, Rome, and ancient Babylon. Dowry and bride price were historic rituals associated with marriage in many parts of the world. Dowry culture has a long history, especially in Asia, Northern Africa, and Europe.⁸

During the origins and early phases of the dowry system, brides were given some wealth as a present from their parents at the time of marriage. Even after marriage, it served as a financial independence tool for the bride. It was common practise for the bride's family to receive gifts, jewellery, and other valuables as part of the pre-wedding conversation and settlement.⁹

Evolution

Various social reforms occurred in the nineteenth and early twentieth centuries, and many social reformers tried to eradicate a variety of societal ills, including the negative effects of the dowry custom. The Hindu Code Bill was introduced in 1930. The issue of dowry was addressed in two main aspects of this statute. It first addressed intestate succession and marriage, and subsequently sought to ensure equal property rights for women. Aside from that, the Bill proposes major modifications to the intestate succession to female property, i.e. dowry. In 1939, a few years before India's independence, the provincial administration of Sind passed the Sind Deti Leti Act, which abolished the dowry system. It was a significant state measure that was directly related to dowry, although it had failed to diminish dowry.

⁸ Patrick Heady and Lale Yalcin Heckmann, Implications of Endogamy in the Southwest Eurasian Highlands: another look at Jack Goody's Theory of Production, Property and Kinship, History and Anthropology, Volume 31, 2020-issue 2, available at <https://www.tandfonline.com/doi/full/10.1080/02757206.2019.1640693>.

⁹ Subham Chatterjee, "Stridhan: A Study on Women's Property under Hindu Law" available at: <https://lawcorner.in/stridhan-womens-property-under-hindu-law/>.

Post-Independence

Many efforts were made after independence to better the status of women. The Indian Constitution was written, enacted, and put into effect. The fundamental rights provided by Articles 14, 15, and 16 of the Indian Constitution ensured that women in India were not subjected to inequitable treatment. Women are inferior to men in every way. The state was bound by Article 15 (3) to make specific arrangements for the welfare of women and children. As a result, through empowering the legislation and implementation of several Acts and laws ensuring women's rights¹¹⁸, Article 15 (3) gave substantial quality. Under Article 39, one of the Directive Principles of State Policy mandated the state to guarantee equal opportunity and rights to all people, regardless of gender. The Hindu regulations were altered again in 2005, this time to provide women the same rights to ancestral property as men. The Hindu Law has been amended to provide daughters the same rights as sons. Daughters' liabilities, allotment of shares, and obligations were made the same as those of sons.

The scourge of dowry has become more acute over time, spreading over the entire country and into virtually every element of society. Some governments, such as Andhra Pradesh and Bihar, have experienced first-hand the horrific consequences of dowry and have enacted the "Bihar Dowry Restraint Act, 1950" and the "Andhra Pradesh Dowry Prohibition Act, 1958" for their respective states.

However, these activities, too, fell short of their intended goal. There was constant political and societal pressure on the government to pass specific legislation outlawing all forms of dowry giving and taking. As a result, a Bill outlawing dowry was submitted in Lok Sabha on April 24, 1959. Following multiple debates and deliberations, it was referred to the joint committee of Parliament. The joint committee offered various amendments that were not unanimously approved by both houses. The Bill was finally passed in a joint session of both chambers in May 1961, after lengthy arguments.¹⁰

The joint committee of the houses presented recommendations to enact amendments to the Indian Penal Code, 1860, Indian Evidence Act, 1872, and Cr.Pc, 1973 after gathering answers from the government. Section 498-A was included to the Indian Penal Code when it

¹⁰ "History of Joint Sessions of Parliament", The Times of India (March 26, 2002) available at: <https://timesofindia.indiatimes.com/anti-terror-law/History-of-joint-sessions-of-Parliament/articleshow/4916708.cms>

was updated in 1983. Cruelty to a wife was elevated to a cognizable and non-bailable offence punishable by up to three years in prison and a fine. The IPC contains various provisions devoted to preventing dowry-related crimes against women. These limits have helped to lessen offences including as abuse by husbands and in-laws, dowry murders, and aiding and abetting suicide. The Dowry Prohibition Act of 1961 was specifically designed to eradicate the practise of dowry from society. The Evidence Law incorporates sections 113A and 113B of the Code.

Brig Lal v. Prem Chand, a similar case, included a husband who was always bickering with his wife and demanding dowry and money from her. One terrible day, she rebelled against these repeated dowry demands by claiming that death was a better option than such a dreadful life. The spouse stated that he would have preferred that she died right away. After hearing this, the wife set fire to herself. The Supreme Court ruled that he had incited his wife to commit suicide.¹¹

In a similar case, State of Punjab v. Dal Jit Singh, the woman was summoned four years after her marriage to collect dowry from her parents in order to send her husband's younger brother abroad. It could not be labelled dowry demand, but because she was pursued for it and compelled to end her life as a result, a crime under Section 498A was constituted.

Section 113 B of the Indian Evidence Act of 1872 defines dowry death presumption. This provision states that anytime there is an issue of dowry death, if it is established that the woman was subjected to cruelty or harassment in regard to dowry demand immediately before her death, it will be assumed that the husband caused said dowry death. In such circumstances, the prosecution need simply prove that a dowry death happened before shifting the burden of proof to the accused to prove his innocence.

The Dowry Prohibition (Amendment) Act, 1986 inserted Section 113 B of the Indian Evidence Act, 1872 and Section 304 B of the Indian Penal Code (IPC) to ensure swift justice in cases of dowry fatalities and to safeguard women from such torture.¹² The Indian Evidence Act (IEA) was amended to include a presumption of aided suicide,

¹¹ AIR 1989 SC 1661

¹² Aarushi, Dowry death And Presumptions under Section 113B Indian Evidence Act, <https://www.lawyersclubindia.com/articles/dowry-death-and-presumptions-under-section-113-b-indian-evidence-act-14596.asp>

which is a type of dowry death, as well as a separate presumption of dowry death (Ravikanth, 2000). Section 113A of the IEA empowers the court to presume abetment on the part of the husband or his relatives if a woman commits suicide within 7 years of marriage after being subjected to abuse by the husband or his relatives. Section 113B states that the courts "must" presume dowry death in the case of an unnatural death of a woman within 7 years of marriage where the husband or his relatives subjected the woman to harassment or abuse previous to death. The Law Commission's 91st Report outlined the necessity for such a presumption in order to ensure that an unnatural death of a woman results in "a compelling requirement for inquiry by the police or an inquest by the Magistrate into the cause of death." The 91st Report of the Law Commission (1983) on 'Dowry Deaths and Law Reform' underlined the need for the addition of sections 113-B and 304B to the Penal Code.

The Supreme Court addressed section 113-B in *Shamlal v. State of Haryana*: AIR 1997 SC 1830. It noted that in order to invoke the presumption under section 113-B, it is necessary to demonstrate that she was subjected to such treatment of cruelty or harassment" short before her death."

The presumption was held attracted in a case where the victim girl's parents and brother were not informed of her death and the accused hurriedly incinerated the deceased body: (*Shanti v. State of Haryana*) (1991 CrLJ 5 1713) (SC).¹³

In this regard, it should be observed that section 113-A and section 113-B differ slightly. Whereas the legislature used the phrases 'may presume' and 'having regard to all the circumstances of the case' in section 113-A, it uses the words 'shall suppose' and does not use the words 'having regard to all the circumstances of the case' in section 113B. Section 113B, on the other hand, includes the phrase "soon before death," which is missing from section 113A. Section 304-B deals with dowry death, while Section 113A deals with 'abetment of suicide'.¹⁴

S. 8-A. Burden of proof in some cases- When a person is charged for taking or abetting the taking of any dowry under section 3 or demanding dowry under section 4, the burden of

¹³ The social construction of 'dowry deaths' *Social Science & Medicine*

Volume 119, October 2014, Pages 1-9, <https://www.sciencedirect.com/science/article/pii/S0277953614004730>

¹⁴ Review of The Indian Evidence Act, 1872, Report No. 185, Section 113B, Advocatekhaj,
<https://www.advocatekhaj.com/library/lawreports/evidenceact1872/138.php?Title=Review%20of%20the%20Indian%20Evidence%20Act,%201872&STitle=Section%20113B>.

demonstrating that he did not commit an offence under those sections is on him.¹⁵

Conclusion

Criminal law can be traced back to ancient India. Many crimes, as well as their definitions and penalties, evolved over time in response to social movements, cultural changes, and other factors. Its roots can be traced back to the Vedic period and the reigns of numerous Hindu and Muslim emperors. The current criminal justice system is based on English laws and customs. Following independence, the Law Commission published a slew of suggestions to modernise the Criminal Procedure Code. One of these changes was the abolition of Sati and Dowry practise. The primary goal of these reforms was to make the criminal justice system more efficient and effective.

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¹⁵ Ins. by Act 43 of 1986, S.8 (w.e.f. 19-11-1986).