

ABSTRACT

INDIAN WOMEN'S JOURNEY TOWARDS ECONOMIC JUSTICE: A SOCIO-LEGAL HISTORY OF INDEPENDENT INDIA

This study takes law to be the arena where the economic rights of women are worked out. It also uses the background of laws and their interpretation to study the definition and development of women's economic status within the family in independent India. Several questions regarding women's socio-economic status within the family are addressed and attempted to be understood through the study of laws that regulate their economic rights. It was found that law is essentially a mirror to society and the way law is interpreted in the courts shows how much social prejudice and stereotypes inform the actual implementation of law. Thus it is evident that the legal status of women and their social status are deeply related to each other.

For the purpose of this enquiry into the development of women's socio-economic rights in independent India, I have looked into the background of modern law - making on women's rights and the salient features of the system of dispensation of justice and some important features of the procedure of law that have come down to us from the colonial period. The impact of the colonial period both on the nature of the laws and the way justice is administered, has been profound. Chapter I of this thesis concentrates on the colonial period.

The Constitution marks the demarcation between the colonial and independent India. Legally the Constitution is meant to be the fountainhead of all the laws operating in the country. The Constitution declares unequivocally that men and women are equal as citizens of India. Secondly, the Constitution works out a system of inalienable rights that must be guaranteed to all. It stresses non-discrimination on the basis of sex, among other things. It was important to delve into these legal aspects of Constitutional law to find out how societal norms, primarily patriarchy has tampered with the application and creation

of just laws. It is found that the Constitutional notion of gender equality has been sidelined and the Constitutional right of freedom of religion has been used to perpetuate laws that deprive women of basic economic relief. Chapter II examines the rights guaranteed to women under the Constitution and their interpretation in the post independent period. It is found again that socio-religious traditions have a greater hold over how women's rights have been interpreted and articulated in independent India.

This work also endeavours to understand how women's rights and gender equality has been worked out under international law (mainly the United Nations documents) as it has been found that it was greatly on the basis of the United Nations Declaration of Human Rights that our Constitution makers formulated the section on the fundamental rights in the Constitution. Only those documents have been studied that have helped to define the rights of women. The direct impact of international law is the Status of Women report of 1975 and the creation of the Human Rights Commissions and the Women's Commission in India that have helped to extricate women's rights from the realm of socio-religious traditions to a more modern interpretation in terms of human rights. Several laws, including the Equal Remuneration Act and the more recent Domestic Violence Act have been brought into being due to the pressures of international law. These are dealt with in Chapter III of this study.

The actual study of the laws effecting women's right over the control of resources (as economic rights have been understood for the purpose of this study), has been taken up under three sections- the rights of women in the natal home; the rights of the married woman; and lastly the rights of working women and its impact on their status within the family. These three sections are dealt with in Chpters IV, V and VI respectively.

The first section deals with the inheritance rights of women under the Indian Succession Act, The Hindu Succession Act and under Islamic Law. Here the reform of the Hindu Laws have been dealt with in greater detail as they were the first and only attempt in independent India to codify the inheritance laws of any religious group. The study of the debates on the Hindu Code bill both in the Constituent Assembly and the newly formed

Parliament throws light upon the political aspect of women's economic status and also reveals to a great extent why no such attempt at codification of the personal laws has ever been made again in the sixty years of independence. In this regard another significant study has been that of the views on gender equality as expressed by the Father of the Nation Mahatma Gandhi and the Father of our Constitution, so to say, Dr B R Ambedkar. The study of their views shows the difference between the socio-religious and the purely legal interpretation of gender equality which we are slowly moving towards in the present day. This difference of opinion, perhaps lead to the taking up of the codification at the time when the Constitution itself was coming into being. This Chapter also examines the working of the laws and their application in the courts through the study of landmark judgements. It finds the loopholes in the personal laws and their working for the detriment of women. It is found that all the laws of inheritance are biased against women. The reluctance of women asserting their rights in their natal property also appears to stem from social reasons. Some landmark judgements like that of Mary Roy have been examined and their impact has also been studied. The Dowry Prohibition Act has also been studied in this chapter because the dowry is often said to be the given in lieu of inheritance in the natal property. The implementation of this Act is also examined which shows the persistence of social bias in the granting of property rights for daughters.

Chapter V studies the laws governing the economic rights of women in the matrimonial home. The absence of matrimonial property rights is brought forward as the reason for women's subordination within the family. The presence of maintenance rights is shown to further put women in an inferior position in the matrimonial home as she is deemed to be a 'dependent' of the husband. The question of the location of the matrimonial home and women's right over it is also examined in this chapter. Maintenance rights under all the personals laws are examined in detail, maintenance rights under the Criminal Procedure Code has also been studied and its value as a uniform law coming to the aid of all deserted and destitute women has been looked into. In this context the move for a uniform civil code has been evaluated while discussing the Shah Bano case after which the debate on the Uniform Civil Code came to a head.

Chapter VI deals with the laws governing women who are engaged in work outside their home. Due to the vastness of laws on this subject, only those laws have been tackled that affect the woman's social status and position in the family. Thus some aspects of the Equal Remuneration Act, the Maternity Benefit Act and the Sexual harassment in the workplace rules have been discussed with special reference to the impact of these laws on woman's status. It is found that prejudice exists in the implementation of these laws too which arise due to the stereotyping of women.

In conclusion I submit that there is great scope in understanding the development of the social position of women in independent India through the study of the laws and their interpretation. Thus law as a source of History was found to be of great value to me as a researcher. The socio-legal history of the development of women's economic rights reveals that though progress has been slow, women's rights initiatives have changed for the better. From bringing about the 'welfare' of women, policy is now geared towards their 'empowerment'. However, the nature of the changes that are required are still a matter of debate.