

**NATIONAL SPECIALISED AGENCIES AND WOMEN'S EQUALITY:
LAW COMMISSION OF INDIA. (1988) By Lotika Sarkar. Centre for
Women's Development Studies, New Delhi. Pp. xxiii + 118. Price Rs. 80/-.**

DR. VINA MAJUMDAR'S forceful preface to the work under review brings out its background. She notes: "Inequality, subordination, exploitation, and powerlessness were affecting a very large section of the people in different countries, but amongst them women invariably constituted the large majority. They were the poorest among the poor, the most malnourished amongst the hungry, the most overworked but with least rewards for their labour, and the most deprived of essential services like education, health care or knowledge of their legitimate rights".¹ The processes of development initiated by the governments throughout, she pointed out, contributed to the marginalization of women. The women activists and development analysts realized that if they are adequately armed with hard data, research, arguments and substantial backing by public opinion, it is possible to sensitize planners and bureaucrats to bring about 'occasional' changes in policy. With these perspectives in view, the Centre for Women's Development Studies undertook case studies of national agencies created to promote development in different sectors, economic, social and legislative; the aim is to stimulate debates, to devise new ways of participation and to achieve actual changes in policies. Noting that law is a primary instrument for bringing about changes in the status of women, the Centre chose the Law Commission for purposes of study and examination along with three other subjects. Apart from this basic thrust, the present report has another distinction. That is, after Upendra Baxi's scintillating chapter on the Law Commission,^{1a} this is the only work that examines the functioning of the Law Commission in some detail.

Lotika Sarkar in her introduction points out that "the Constitution clearly assigned primacy to law as the primary instrument to bring in... social revolution"² envisaged in the preamble to the Constitution, viz., social, economic, and political justice. She laments that the Law Commission has evaded the examination of the problems relating to juvenile delinquency, child labour, tribals, and the Scheduled Castes and that it was indifferent to the deprivation of women's entitlements in the public and private sectors. She urges that the Law Commission should be "the pace setter for what needs to be done to make social justice a reality for those who have so long been underprivileged".^{2a}

Chapter I traces the nature of codification embarked by the Law Commission in colonial India. With reference to the Law Commission after

1. Lotika Sarkar, *National Specialised Agencies and Women's Equality: Law Commission of India* x (1988).

1a. Upendra Baxi, *The Crisis of the Indian Legal System*, Ch. 9 (1982).

2. *Supra* note 1 at xix.

2a. *Id.* at xxiii.

Independence, the account brings out the doubts and reservations which Pandit Nehru had on the Law Commission of India which in turn inhibited its role in subsequent times.

The second chapter under the title 'Law Commission of India, Composition, Status and Functioning' adverts to the post-Independence Law Commissions. The chapter makes an interesting and enlightening reading as it portrays the many faults of the Commissions during their tenure. The author makes the noteworthy point that details in respect of the overall terms of reference, composition and proposed methods of functioning are rarely communicated to the public. Her account reveals that these terms of reference which generally differ from Commission to Commission, are to be gathered from most unexpected places. Thus the First Law Commission's terms of reference are to be found in the introductory chapter of the 14th Report, of the Tenth Law Commission in the Calcutta Weekly Notes of 1981; of the Ninth Law Commission in the 81st Report and of the Sixth Law Commission in Professor Baxi's work!

Incidentally, the chapter throws light on a matter of current interest, namely, irretrievable breakdown of marriage as a ground for divorce. Lotika Sarkar's account brings out the unseemingly haste in submitting the report; and the glib statement that only Hindus are put under severe restrictions as far as divorce is concerned, whereas divorce by mutual consent is available only in the personal law of Hindus.³ When a bill based on the Law Commission's recommendations was introduced in Parliament women's organizations registered their protest. She further notes that six years after the submission of the report, a question was asked in Parliament: "Whether there is a demand by women to make divorce still easier to obtain, its conditions less stringent and its procedure less cumbersome." The reply of the Minister for Law and Justice was: "No such demand has been received".⁴ Among other valid points, she regrets the lack of interest exhibited by the Commission on juvenile justice and uniform civil code.

The work categorizes the reports of the Law Commissions into two, viz; Women Specific and Family Law⁵ for study. The first part of chapter III

3. The ground of divorce by mutual consent has been made applicable to the Parsees by the Parsee Marriage and Divorce (Amendment) Act 1988.

4. The reports in this category are : i) Suppression of Immoral Traffic in Women and Girls Act 1956, 64th Report; Married Women's Property Act, 66th Report; Criminal Liability for Failure by Husband to Pay Maintenance or Permanent Alimony Granted to the Wife by the Court, 73rd Report; the Hindu Widows Remarriage Act 1856, 81st Report; the Guardians and Wards Act 1890 and Certain provisions of the Hindu Minority and Guardianship Act 1956, 83rd Report; Rape and Allied Offences : Some Questions of Substantive Law and Procedure, 84th Report; Grounds for Divorce amongst Christians in India, 90th Report; and Dowry Deaths and Law Reform: Amending the Hindu Marriage Act 1955, the Indian Penal Code 1860 and the Indian Evidence Act, 91st Report.

5. The Law Relating to Marriage and Divorce Amongst Christians in India, 15th Report; the Converts' Marriage Dissolution Act 1866, 18th Report; Christian Marriage and Matrimonial Causes Bill 1961, 22nd Report; Hindu Marriage Act 1955 and Special Marriage Act, 59th Report; The Hindu Marriage Act 1955: Irretrievable Breakdown of Marriage as a Ground for Divorce, 71st

deals with reports which are women specific and constitute a major segment of the study. Lotika Sarkar rightly faults the report on the Suppression of Immoral Traffic in Women and Girls Act, 1956 for its uncritical acceptance of the Western view that "the modern view is that the underlying causes of prostitution today are not economic but psychological". She criticises the report first for not identifying the measures which the government may take for preventing prostitution, second for its reluctance to deal with male prostitution and third, for evading the issue whether a person who hires a prostitute should be punished. It is needless to stress the importance of these issues raised by her in view of the growing threat of AIDS in contemporary times.

The 84th Report dealing with rape and allied offences was prepared at the express desire of the government. The account on the report within a short space of ten pages provides an excellent background material on the subject. It may be recalled that the Commission in its report rejected the suggestion that there should be a mandatory punishment provided for the offence of rape. On this, Lotika Sarkar points out that the view of the Commission is inconsistent with an earlier statement made by them that the punishment to be imposed should bring in the question of "general deterrence". More importantly she states: "[I]t is a pity that the Commission did not make a study of the punishments that courts have often imposed. They have in the past given such ridiculously low terms of imprisonment...."⁶ In conclusion, she assesses the Report as a "well-documented and sensitive report and one which the Government (with certain modifications) has implemented."⁷

The discussion of the 71st Report in the same chapter^{7a} gives further information and insights on the recommendation of the Law Commission suggesting the new ground of irretrievable breakdown as a ground for divorce. For example, the Ministry of Education, Department of Social Welfare of the Government of India was of the view that the ground is redundant in view of the already existing provisions for divorce. But the Law Commission was unable to accept the view. Without giving any reasons for its conclusion, the Law Commission stated: "on a consideration of the merits and demerits of the theory of irretrievable breakdown of marriage, we have come to the conclusion that...(it is) a good ground for the grant of divorce under the Hindu Marriage Act".^{7b} Echoing Baxi's statement, she notes that this type of approach borders on arbitrariness.

In a thought provoking and critical book of this kind, a few observations on some of the views stated are in order. The author's criticisms of the Law

Report; and Sections 24 to 26, Hindu Marriage Act 1955: Order for Interim Maintenance and Orders for the Maintenance of Children in Matrimonial Proceedings, 98th Report.

6. *Supra* note 1 at 64.

7. *Id.* at 71.

7a. *Id.* at 101.

7b. *Id.* at 103.

Commission on some points are on a low key. At page xx referring to imposition of restrictions on testation which was recommended by the Committee on the Status of Women in India (CSWI) and supported by women's organisations, the writer observes: "On this too, the Commission is yet to apply its professional expertise". What is not stated is that in spite of the existence of compulsory portion under continental legal systems, in spite of the existence of principle nearer home under Muslim law, in spite of the recommendation of the CSWI and in spite of the views expressed on this in Indian writings, the Commission did not even care to notice this aspect in its 110th Report on the Indian Succession Act 1925, an enactment which is the sole repository of the law of testamentary succession in India. Therefore, in 1988 the women's organizations were forced to renew their demand for compulsory portion with which efforts P.N. Bhagwati C.J., G. R. Rajgopal the doyen of the legal draftsmen and also the present writer were associated. Similarly, the 59th Report had the dubious distinction of having been presented in six week's time (to please the minister?) and did not touch upon important problems relating to bigamous marriages, restitution of conjugal rights, family courts, matrimonial property etc. The indifference (to put it mildly) exhibited by successive Law Commissions to relevant sociological studies, could have been emphasized. The Nehru Government preferred not to take any action on the reports dealing with the Indian Divorce Act 1869 and the Converts' Marriage Dissolution Act 1866. This is in contrast with zeal with which reforms in Hindu law were pushed ahead. Is this a matter of deliberate policy? Fortunately there are still some persons amidst us who can throw light on these aspects and personal interviews with them would have provided valuable insights.

The printing and get-up of the book are of high quality. Nonetheless some errors remain. To mention the glaring among them, *suo motu* has been printed as *suo moto* throughout. The 73rd Report dealing with criminal liability for failure to pay maintenance suggested draft provision numbered as 498 A of the I.P.C. which *inter alia* reads "contumaciously disobeys such decree or order" and this has been printed as "continuously disobeys such decree or order".⁸ It is incorrect to refer to Justice Mathew as "a retired Chief Justice of the Supreme Court."⁹

In sum the book under review is a candid and critical assessment of the work of the Law Commission of India. It is scholarly without being ostentatious and a valuable contribution to the existing sparse legal literature on the Law Commission of India. Lotika Sarkar deserves praise for the work.

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8. *Id.* at 55, fn 6.

9. *Id.* at 74.

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