



WOMEN AND THE LAW (1993). By Lina Gonsalves. Lancer Paperbacks, New Delhi. Pp. 129. Price Rs. 55.

THE INDIAN Constitution, article 14, assures equal treatment to both men and women. Despite this constitutional mandate the bias against women continues and forces them to accept the status of second class citizens in the society. The persistent patriarchal character of the Indian society expects the woman to be submissive and docile. The message given to her all the time is that her very existence is meant for the man and her imperative duty is to pander to his every need. It is this distinct gender bias against women that prompted the author to write this book.

The aim of the book¹ is to make the reader aware about the insensitivity of enforcement agencies such as the police, public prosecutors and judges in dealing with matters relating to women. The author has revealed very lucidly how gender biased the existing legislation is and with the help of select case law has shown the failure of the judiciary in bridging the gap of inequality between men and women.

The book under review has been divided into 14 chapters. Chapter 1 introduces the woman as being only the shadow of man. It rightly views the world as a product of male consciousness which prevents the man from viewing women objectively.² Chapter 2 evaluates the predominant role played by religion in controlling the lives of Indian women beginning from the *vedic* period upto the modern times. The author has very aptly asserted the fact that even though the traditional practice of female worship forms a very important aspect of Hinduism yet it has not led to empowerment of the Hindu women.³ In fact, it is true that since time immemorial women have been oppressed in the name of religion and many practices like *sati*, *pardah* and polygamy were perpetuated in the name of religion.

In order to reduce the degree of gender bias against women the need for enactment of a uniform civil code which would put an end to discriminatory nature of the personal laws of all religious communities has been emphasised in chapter 3 of the book.⁴ Chapter 4 discloses how the law of inheritance reinforces and strengthens the foundation of a patriarchal society and compels a woman to be economically dependent on men. With the help of case law it shows how a woman's right to property is far from being equal to that of the male. For example, under Hindu law, a female, major or minor has no share in ancestral property.⁵

1. Lina Gonsalves, *Women and the Law* (1993)

2. *Id.* at 2.

3. *Id.* at 7.

4. *Id.* at 14.

5. *Id.* at 23-9.



The inadequacy of maintenance laws whether it be under the Criminal Procedure Code, Hindu law or Christian law has been dealt with in chapter 6. The judicial cases cited in the chapter show that whenever women go to the court to claim maintenance the amount awarded is extremely low.⁶

Chapter 7 deals with the marital duties that a woman is expected to perform after marriage. Quoting relevant case law it reveals how gender biased the matrimonial laws are, for, in most cases where both the husband and wife are working, the Hindu law gives exclusive right to a husband to determine where the matrimonial home ought to be.⁷ It is submitted that such a trend reflected by the judiciary reinforces the inferior status of the woman and is not suited to the present day conditions as in view of the changed social and economic conditions both husband and wife may want to work.

The gender insensitivity of the law relating to custody of the child is highlighted in chapter 8. The author has cited case law to show how the Hindu Minority and Guardianship Act 1956 and the Guardians and Wards Act 1890 bestow a superior right on the father *vis-a-vis* the mother with respect to custody rights.⁸

Chapter 9, which deals with the law relating to adoption shows how the legal system has treated women in relation to adoption even after enactment of the Hindu Adoption and Maintenance Act 1956. Since the Islamic and Christian laws do not recognise adoption, the author has emphasised the need for a uniform law of adoption so that people from all religious communities can adopt.

The complete domination of men over women and the fact that women are viewed as the property of men has been reflected by the author in chapters 10 and 11 while dealing with the law governing adultery and rape. The chapter on adultery shows the irrationality of the law of adultery as it unjustifiably denies women the right which is given to men. For example, section 497 of the Indian Penal Code confers upon the husband the right to prosecute the adulterer but it does not confer any right upon the wife to prosecute the woman with whom her husband has committed adultery.⁹ Similarly, the law relating to rape has given a distinct advantage to men as it is the woman victim who has to prove that she did not give consent which in most cases of rape (as cited by the author) becomes very difficult.

Most glaring example of gender bias in law is evident in the Suppression of Immoral Traffic in Women and Girls Act 1956. Chapter 12 highlights the fact that the law on prostitution regards the woman victim as the guilty party and punishes her and not the man.

Chapter 13 deals with violence related to dowry. It shows insensitivity of the police, judges and society towards domestic violence.¹⁰ It highlights the failure of legal reforms in transforming the social order and uprooting dowry as a social evil.

6. *Id.* at 35.

7. *Id.* at 44.

8. *Id.* at 56.

9. *Id.* at 70.

10. *Id.* at 100.



By citing case law the author in chapter 14 shows how difficult it is to convict the husband and in-laws on the basis of a dying declaration made by a married woman. In the cases elucidated the gender-insensitivity of the judges is obvious as the defence of the husband that the wife committed suicide has more often been accepted than the prosecution's plea that the woman was either murdered or driven to committing suicide.¹¹

The extent of gender bias that exists in law, particularly in family law as well as in the society at large, has been successfully unearthed by the author of the book. The book gives a very important message which is that the position of women must change in the legal, religious and social perspective. The author has unfolded very meticulously the unhealthy gap that exists between the theoretical aspect of law and its application by the judiciary.

However, by completely ignoring the citing of progressive judgments the author tends to give a very negative and one-sided view of the judiciary. In the past decade or so there have definitely been judgments where the judiciary has fallen heavily on the male offender and given noteworthy justice to the woman victim.

The usefulness of the book would have been further enhanced if a separate chapter suggesting amendments and improvements in existing legislations had been included. In this context, to cope with the rising graph of crimes against the weaker sex, some comments on the suggestion made by the National Commission for Women that a single legislation be enacted to bring all crimes against women under one umbrella, would have been welcome. In a nutshell, the book deserves commendation and is useful for lawyers, jurists, academicians and social activists.

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11. *Id.* at 109.

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BOOKS RECEIVED FOR REVIEW

M.S. RAJAN, *United Nations and World Politics: Essays from a Non-aligned Perspective* (1995). Har-Anand Publications, 364A, Chirag Delhi, New Delhi-110 017. Pp.343. Price Rs.350.

M.S. RAJAN, *World Order and the United Nations: Essays from a Non-aligned Perspective* (1995). Har-Anand Publications, New Delhi. Pp.364. Price Rs.350.

P.S. NARAYANA, *Law of Injunction* (3rd ed.1995). Asia Law House, Opp.High Court, Hyderabad. Pp.74+724. Price Rs.395; \$ 40; £ 25.

S.P. GUPTA, *Commentaries on Public Premises (Eviction of Unauthorised Occupants) Act, 1971* (2nd ed.1994). Eastern Book Co. 34 Lalbagh, Lucknow-226 001. Pp.xxiv+450. Price Rs.275.

SURENDRA MALIK, *Supreme Court Yearly Digest 1994* (1995). Eastern Book Co., Lucknow-226 001. Pp.cxxiv+3470. Price Rs.375.

TIWARI AND KUMAR, *Law of Public Premises* (8th ed.1995) revised by Ashwini Kumar. Om Law Book House, 1st Floor, 27-28 Gokhale Market, Delhi-110 054. Pp.xxiv+445. Price Rs.350.