CHAPTER-9

SOME ANTIQUATED LAWS AND LAWS RELATING TO WOMEN
CHAPTER 9

SOME ANTIQUATED LAWS AND LAWS RELATING TO WOMEN

There are some antiquated laws in the Indian Penal Code that need to be amended to suit the present socio-cultural times. These laws pertain to homosexuality, adultery and offenses against women, to name a few.

The law on adultery, section 497 IPC, is indeed archaic. It reads thus: whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor. Let us take a hypothetical case as an example-Mr. and Mrs. 55 is a couple. If Mrs. 55 gets into an adulterous relationship with Mr. X, Mr. 55 can lodge a criminal case. But it's Mr. X who will shoulder the entire blame and take the fall for it.

That's the law on adultery, section 497 of the Indian penal Code, which dates back to 1860. Mrs. 55 will not be responsible for the situation at all despite being a consenting party to the crime. She, as an "abettor", will get away with it.

Mr. X will land in jail, if found guilty, for five years. Mrs. 55, in the meantime, can move on to Mr. Y, Z and others. The law of the land gives complete protection to Mrs. 55, the adulterous wife.

Legal experts say amendments are necessary in the adultery law to correct this gender bias born of feudal attitudes that relegated a married woman to the status of property owned by her husband.
In a society where we talk of equality and where moral values are changing at a very fast pace, there is a need to make some amendments to this law.

And why not. If women want to be considered equal to men, they should then also share the blame for their actions including an adulterous relationship, which in this case, could never have happened without the consent of both Mrs. 55 and Mr. X.

If Mrs. 55 was not a consenting party to the relationship, Mr. X can be accused of rape. But if it’s not rape, why should Mr. X be held solely responsible? Women of substance must stand up and own up too.

Then again, the law does not give adequate protection to the man responsible, Mr. X. The complaint is lodged directly in a court of law. There is no need for investigation by the police. It is a non-cognisable case.

In fact, the police cannot investigate such a case at all even if a complaint was lodged with them. There is rarely any material evidence. The case is usually tried on the basis of corroborative evidence. Who can be a complainant in adultery? It can either be the husband of a woman who gets into an adulterous relationship with a married or a single man. Or, the wife of the person who commits adultery with a married woman. The key point is, a married woman cannot get into a relationship outside marriage. And, if she does, the man responsible will be tried as if he were trespassing. For the law regards the woman as property. The law is considered biased for other reasons. If a married woman indulging in adultery is an adult, why shouldn’t her consent be given weight age? Besides, if a married man gets into a relationship with a single woman, then there is no adultery. But when the situation is reversed, and someone’s wife gets into a relationship with a single man, the man can be charged with adultery.

The existing law should be scrapped because, among other things, if glorifies gender bias and this is something that women themselves find distasteful. When the law was written 145 years ago, women were seen as an oppressed class in need of protection.
But what kind of protection is this, which demeaningly regards them as man's property. If women can become the Prime Minister and head major corporations, why can't they be held responsible for their actions the same way men are? Let both partners to the crime of adultery share the blame.

The law of unnatural offenses. Section 377 IPC reads thus: - Whoever, voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years and shall be liable to fine. Explanation: - penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

This section 377 IPC is totally irrelevant is the present times when homosexuality has been recognized as normal by the global medical fraternity. In many countries, same sex marriages have been legalized. India is amongst the minuscule minority of countries where homosexuality is illegal. This archaic law in causing great hardships to the gay community. It is a convenient tool for corrupt policemen to make a quick buck. This law is totally untenable in the face of modern medical and scientific discoveries. This law is also causing great difficulties in our fight against HIV and AIDS. As this law penalizes the gay community, they have to go under ground and hence also out of the reach of HIV prevention strategies. As aids awareness and prevention mechanisms cannot reach these marginalized community, the disease continues to spread in a clandestine fashion.

Apart from the above mentioned two sections of IPC there are other provisions law relating to women which need to be urgently amended. *The Malimath Committee* has pointed them out with clarity and has suggested the way out of the problem. The Malimath Committee recommendations are reproduced below:
Offences Against Women

There are several shortcomings or aberrations in dealing with the offences against women which need to be addressed. The Committee feels that a man who marries for a second time during the subsistence of the first wife should not escape his liability to maintain his second wife under section 125 of the Code on the grounds that the second marriage is neither lawful nor valid.

The Supreme Court has held that, for proving bigamy, it is to be established that the second marriage was performed in accordance with the customary rites of either parties under the personal laws, which is not easy to prove. Therefore the Committee feels that evidence regarding a man and woman living together for a reasonably long period should be sufficient to draw the presumption that the marriage was performed according to the customary rites of the parties.

As a man can be punished under section 497 of IPC for adultery, for having sexual intercourse with a wife of another man it stands to reason that a woman should likewise be punished if she has sexual intercourse with another married man.

There is a general complaint that section 498A of the IPC regarding cruelty by the husband or his relatives is subjected to gross misuse and many times operates against the interest of the wife herself. This offence is non-bailable and non-compoundable. Hence husband and other members of the family are arrested and can be behind the bars, which may result in husband losing his job. Even if the wife is willing to condone and forgive the lapse of the husband and live in matrimony, this provision comes in the way of spouses returning to the matrimonial home. This hardship can be avoided by making the offence bailable and compoundable.

As instances of non-penile penetration are on the increase and they do not fall in the definition under the offence of rape under section 375 of the IPC, the Committee feels
that such non-penile penetration should be made an offence prescribing a heavier punishment.

The Committee is not in favour of imposing death penalty for the offence of rape, for in its opinion the rapists may kill the victim. Instead the Committee recommends sentence of imprisonment for life without commutation or remission.

The Committee however feels that investigation and trial of rape cases should be done with most expedition and with a high degree of sensitivity. The Committee therefore, makes the following recommendations:

Definition of the word 'wife' in section 125 of the Code be amended to include a woman who was living with the man like his wife for reasonable long period.

Section 494 of the IPC be suitably amended to the effect that if the man and woman were living together as husband and wife for a reasonable long period the man shall be deemed to have married the woman according to the customary rites of either party.

Section 497 of the Indian Penal Code regarding offence of adultery be amended to include wife who has sexual intercourse with a married man, by substituting the words "whosoever has sexual intercourse with the spouse of any other person is guilty of adultery".

The Code may be suitably amended to make the offence under section 498 A of the IPC, bailable and compoundable.

Forcible penetration, penile/ oral, penile/anal, object or finger /vaginal and object or finger / anal should be made a separate offence under the IPC prescribing appropriate punishment on the lines of section 376 of IPC.
The Committee is not in favour of prescribing death penalty for the offence of rape. Instead the Committee recommends sentence of imprisonment for life without commutation or remission.

A suitable provision should be made requiring the officer investigating to complete investigation of cases of rape and other sexual offences on priority basis and requiring the court to dispose of such cases expeditiously within a period of four months.

Specialised training should be imparted to the Magistrates in regard to trial of cases of rape and other sexual offences to instill in them sensitivity to the feelings, image, dignity and reputation etc. of the victim.

Provision should be made in the Code permitting filing of FIRs in respect of offences under sections 376, 376-A, 376-8, 376-C, 376-D and 377 of IPC within a reasonable time.