

WOMEN AND PREJUDICE:

Role of Lawyers, Judges and Courts in Women Empowerment

This article explains the historical background of International Women's Day (IWD) and is an introduction to a workshop on Women Empowerment.

This speech was delivered in a workshop 'Role of lawyers, judges and courts in women's empowerment' held by Chhattisgarh State Legal Services Authority on 17.03.2013 at the Chhattisgarh High Court, Bilaspur.

Namastey, Jai Johar, and a very good morning to all of you.

'A promise is a promise: Time for action to end violence against women' (for link see below)¹ is UN theme for this year's International Women's Day (IWD). It is to mark this day that we have organised this talk. But, what is this IWD and why is it celebrated?

Well, as the mythology tells us, gods were on the receiving end; they had lost the war with Mahishasur; they did not know what to do; they went to Vishnu for advise. It is there that they put together their powers with those of Brahma; Vishnu and Mahesh. This is how Maa Durga, the slayer of Mahisasur, was born.

She has hundreds of hands, having different weapons. She is an embodiment of *shakti*, all divine energy: she was empowered. With this might, she killed Mahishasur. But are today's Durgas, today's Mothers empowered? The answer is in negative. It

is necessary that they be empowered; they be made Durga again. It was to make the society understand the need for their empowerment that the IWD came to be observed.

IWD was first celebrated on February 28, 1909 at the instance of Socialist party of America. Thereafter, it came to be celebrated on the last Sunday of February.

¹ See at <http://www.un.org/womenwatch/feature/iwd/>



In 1910, the Socialist International conference, was held in Copenhagen. In this conference, it was given International status. At that time, almost in all parts of the world, women had no right to vote. And its main aim was to highlight the struggle for rights to have franchise for women.

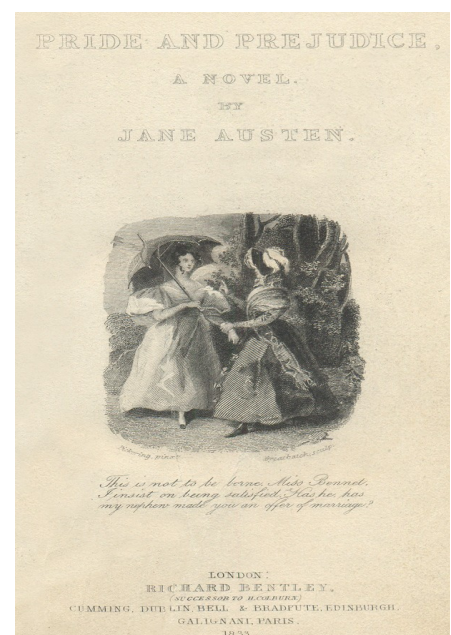
In 1917, women in Russia decided to go on strike on IWD for food and clothes. It was a historic strike: it led to February revolution and Tsar of Russia had to abdicate power. The new interim government gave right of suffrage to women. At that time, Russia had Julian calendar; whereas, almost rest of the World followed Gregorian calendar. There is difference in dates in these two calendars.

According to the Julian calendar, last Sunday of February in 1917 fell on February, 23 but according to Gregorian calendar, it was March, 8 in the rest of the world. It is for this reason that IWD came to be celebrated on March, 8.

In 1975, during International Women's Year, the United Nations began celebrating 8 March as International Women's Day. Two years later, in December 1977, the General Assembly adopted a resolution proclaiming a United Nations Day for Women's Rights and International Peace to be observed on any day of the year by Member States, in accordance with their historical and national traditions. However, in almost all countries it is celebrated on 8th March.

This year is important. It was two hundred year ago that Jane Austen wrote her classic 'Pride and Prejudice'. This year, it is being so celebrated. But why am I bringing it up today in a function to mark IWD. Oh, just wait, just bear with me.

The story in the novel is set at the turn of the 19th century but it still retains a fascination for modern readers as well and continues to be the 'most loved books'. It is one of the most popular novels in English literature and has sold more than 20 million copies worldwide. There are number of dramatic adaptations and it has been made into film, several times.



Front page of the first illustrated 'Pride and Prejudice'

In 1985, Doordarshan also adopted it for one of the serials 'Trishna'. It involved an Indian middle class family. It had all the characters of the novel, with their traits, as in the book.

A Bollywood style adaptation of the novel titled 'Bride and Prejudice' was also made in 2004, a romantic musical film, primarily in English, with some Hindi and Punjabi dialogue.

The story of the novel centres around Bennet family, consisting of the bookish Mr Bennet, his wife, a woman somewhat lacking in social graces and primarily concerned with marriage of their five daughters.

Mr. Bennet has a respectable income from his estate but because of peculiarity of English law of 'entailment' his estate was to be inherited by next closest male relative, Mr. Collins. This troubled Mrs. Bennet, who is worried about her daughters' welfare after Mr. Bennet.

Mr. Collins proposes to the second daughter Elizabeth, who is the protagonist of the novel. But she refuses. The story unfolds from her view-point as she deals with issues of manners, upbringing, morality, education, and marriage (basically of women) in the society of the landed gentry of early 19th-century England.

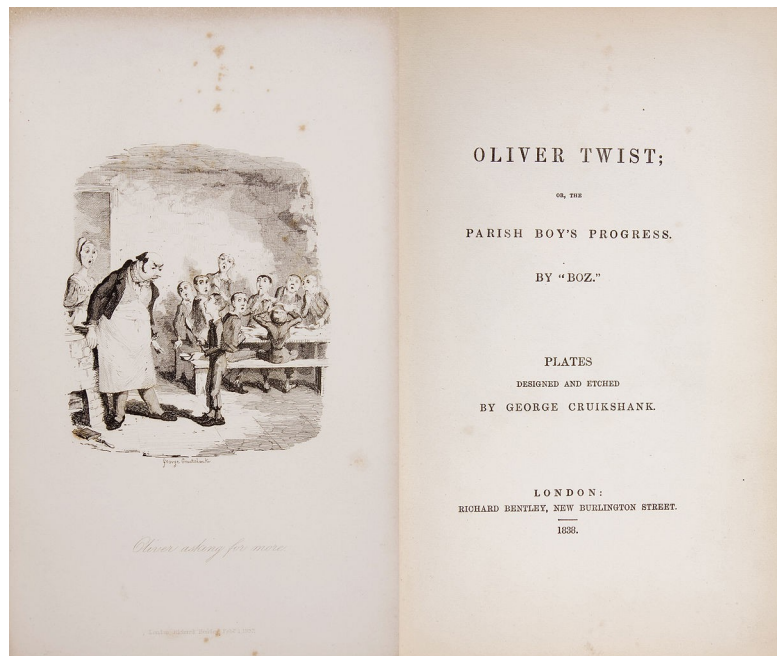
The reason that I wanted to bring this story up was to bring about the strange facet of English law of 'entailment' and the devastating effect it had on women empowerment in India.

In common law, fee tail or entail is an estate of inheritance that cannot be sold, devised by will, or otherwise alienated by the owner; it which passes by operation of law to the owner's heirs (male) upon his death. It was for this law that estate of Mr. Bennet was to go to his nearest male heir Mr. Collins. It was abolished by the Law of Property Act in England in 1925.

Eighteenth and nineteenth century was the time that legal doctrine of coverture (sometimes spelled couverture) was enforced in England. Under this doctrine, a

husband and wife were supposed to be one person and that person was the husband. A married woman could not own property, sign legal documents or a contract, get an education against her husband's wishes, or keep a salary for herself.

In some cases, a woman did not have personal legal liability for her misdeeds, since it was legally assumed that she was acting under the orders of her husband. And this doctrine gave one of the most quoted quotation of all times.



Front and back page of the first edition of 'Oliver Twist'

You remember Charles Dickens, his birth bi-centenary celebrations, just went by in 2012: Dickens was born 1812. In his classic 'Oliver Twist', Mr Bumble was the beadle at the parish workhouse, where Oliver was born. Later, Mr Bumble married dominating Mrs Corney, who was the matron of the parish workhouse. She had stolen a trinket that belonged Oliver's mother. However, because of the doctrine of 'coverture', Mr. Bumble was accused. This is how the scene is described in the novel,

"It was all Mrs. Bumble. She *would* do it," urged Mr. Bumble; first looking round, to ascertain that his partner had left the room. That is no excuse," returned Mr. Brownlow. "You were present on the occasion of the destruction of these trinkets, and, indeed, are the more guilty of the two, in the eye of the law; for the law supposes that your wife acts under your direction."

If the law supposes that," said Mr. Bumble, squeezing his hat emphatically in both hands, "**the law is a ass — a idiot**. If that's the eye of the law, the law is a bachelor; and the worst I wish the law is, that his eye may be opened by experience — by experience."

Let us see, what effect entailment and coverture had on women rights in India.

Women's estate or widow's estate was unknown to Mitakshra and widow or daughter never had limited rights under Hindu law: they inherited like male heirs. Privy Councillors, the British Judges could not imagine rights of women otherwise. They—warped by status of women in England² and influenced by later developments in law of Dayabhag (by Jimutvahan to get over difficulties in Bengal)—interpreted the women's rights limiting them to the lifetime of women³. Widow's right or limited rights for women was gift of British Judges to the Indian women, denuding them the power that Durga had.

I see some students in the audience. I will be happy if they undertake a research project on the topic 'Entailment , coverture and Widow's limited rights in Mitakshra'.

England abolished 'entailment' in 1925 but it took us 50 years more to do so under the Hindu Succession Act. This was role of law in women empowerment.

Howsoever important law may be in women empowerment but it (women empowerment) cannot be brought about merely by changing laws. It has to come through a change in the status of women in the society: this is where role of lawyers and courts are important.

The first step for changing women's status in the society is to change the mental set up of the society. Has our mental set up changed, it is not an easy question to

2 Those who are interested in knowing about status of women in England and how it changed may read the chapter 'The Story Of Emancipation' in part six, 'The Deserted Wife's Equity' part seven and 'The Wife's Share In The Home' part eight of the book 'The Due Process Of Law' by Lord Denning. Some indications are also given in S vs. HM Advocate 1989 SLT 469 quoted in R vs. R (rape: Marital exemption); (1991) 4 All ER 481 mentioned in paragraph 36 of this article.

3 See 'Evolution of Ancient Indian Law': Tagore Law Lectures 1950 by Dr. N.C. Sen Gupta pages 185, 190,1991-192, and 195.

answer. Let me put a problem.

A father and a son were going in a car. They meet with an accident. The father dies on the spot. The son was taken to the hospital, but the surgeon refused to operate him saying,

'I cannot operate, the boy is my son'.

Is it possible: the father had died in the accident?

If you can find solution to this problem, then one can say that society is mentally ready for the change. Even if you are not able to find the answer, don't despair: a lot of progress has been made. Though, a lot is still to be achieved.

Will there be complete women empowerment in this century, is for future to answer but we can only make efforts. About half a century ago, someone (Robert Kennedy) said,

'Some men see the things as they are and say why, I dream things that never were and say why not?'

If we think about women empowerment, talk and dream about women empowerment, then there is no reason, why we will not achieve it.

What were those dreams that we have had; what role has the lawyers, law and courts have played in those dreams; what role they should play in future, is the theme of today's talk. And who can better tell us than our guest of honour Justice Gyan Sudha Misra and our chief guest Justice HL Dattu.

Thank you very much, *Jai hind*

EndNote-1: All pictures are from Wikipedia.