

# Reproductive & Sexual Rights in India

# Broad Framework of Laws

- Precolonial customary laws
- Colonial legal system
- The Constitution and laws

# Precolonial customs

# Precolonial customs

- Limited protection by law
- Personal laws usually protected
- Groups such as hijras, aravanis etc traditionally recognised
- So too were devadasis

# Colonial laws

- The Indian Penal Code
  - Sexual violence against women
    - Obscenity
    - Outraging the modesty of a woman
    - Rape except for rape by a husband
  - Sexual acts against the order of nature s. 377
  - Adultery by the wife
  - Causing miscarriage

# Other legislations

- Ban on prostitution
  - Criminalising of all acts related to prostitution
- Ban on nautch girls/ dancing girls adoption of daughters
- Restitution of conjugal rights introduced as a matrimonial remedy
- Child marriage law- minimum age of marriage
- Widow remarriage

# The Constitution of India

- Equality- affirmative action for women
- Personal laws cannot be tested on the Constitution, although this has happened to some extent nevertheless
- Directive Principles of State Policy

# Specific Provisions

- Equality, non discrimination, dignity, life (Articles 14, 15, 21)
- Special provisions for women and children (Articles 15(3), 16(3), 42 maternity relief and just and humane conditions of work, 39(e) non exploitation of men, women, children based on age or strength, 39(f) protection of youth and childhood)

# Rape law reforms

- Mathura rape case- evidence standards on the character of the witness (1972)
- The Nirbhaya case in 2012 leading to further reforms
  - Broader definition of rape to cover many forms of sexual assault not limited to penetration
  - Inclusion of sexual harassment as a crime
  - Voyeurism
  - Stalking
  - Trafficking

# Sexual Harassment at the Workplace

- The POSH Act lays down guidelines for sexual harassment at the workplace
- The workplace is broadly defined and includes universities
- Most universities have laws for women, ours is gender neutral
- Procedures are in the form of a fact finding/ disciplinary inquiry
- Complaints are rare due to various social and workplace environmental factors

# Changes in laws dealing with abortion

- Causing miscarriage as a crime under the Indian Penal Code
- The Medical Termination of Pregnancy Act
  - Risk to a woman's life
  - Risk to physical and mental health
  - Rape
  - Failure of contraception in the case of a married woman

# A background to the Act

- The Medical Termination of Pregnancy Act was passed in 1971, without any significant religious or political protest.
- This was mainly due to the fact that India was already facing a population explosion and a huge number of terminations by persons who were not qualified to do so.
- In India, the legal basis for permitting abortion stems more in terms of regulating the population explosion and protecting the reproductive health of women, and not in terms of a strong support for right to privacy/bodily autonomy/reproductive choice of pregnant woman.

# Sex selective abortions

- Child sex ratio, which shows the number of girls per 1000 boys between the ages 0-6, came down to 918 for India in 2011 from 927 in 2001, according to the latest data.
- No law dealing with sex selective abortions, but there is a law dealing with sex selection

# The PCPNDT Act- Preconception and Prenatal Diagnostic Techniques Act

- Prevents sex selection/ sex preselection
- Communicating sex of the foetus
- Advertising services
- Non maintenance of appropriate forms
- Non registration of equipment and clinics

# 2 child Norm

- Exists in some States
  - Prevents a person from holding public office in local self government
  - Challenged in court, but upheld

# Sex work

- Immoral Traffic Prevention Act penalises-
  - Trafficking
  - Soliciting in a public place
  - Running a brothel

# Sex worker groups and collectives

- Sex work as work
- Removal of barriers
- Safety issues
- Access to rights- bank accounts, citizenship documents etc
- HIV work gets hindered

# Definition of Trafficking now in the IPC

- Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—using threats, or
- using force, or any other form of coercion, or
- by abduction, or
- by practising fraud, or deception, or
- by abuse of power, or
- by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.
- **Explanations**
  1. The expression “exploitation” shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.
  2. The consent of the victim is immaterial in determination of the offence of trafficking.

# HIV/AIDS

- No provision to criminalise transmission (although regular IPC sections may be used, it has not been done)
- Laws to prevent discrimination

# Surrogacy

- Lack of a clear legal framework
- Banning of surrogacy for certain groups- non residents, single parents, homosexual couples
- Banning commercial surrogacy

# We still have a long way to go

- Successful convictions
- Marital Rape exception
- Child marriage
- Moving beyond decriminalisation of s.377 to equality in other laws
- Making workspaces safer for women...