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Critical analysis on criminalization against burning of widows

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Abstract
The glorification of Sati has culminated in India even after establishing her sincere claim as one of the incoming socio-economic power in the world. The most controversial Sati case has been that of an incident took place in 1987 which forced our lawmakers to think against such social onslaught activities as criminal offence. For this, law is not the only source to combat rather popular consciousness along with women empowerment is quite essential.

Keywords: Practice of Satee, Bengal Regulation of 1929, and Commission on Sati (Prevention) Act, 1987

1. Introduction
It is strange that in the 21st century, one should still come across the practice of Sati has been performing in India, which had outlawed by Lord William Bentinck, on an initiative taken by the great social reformer Raja Rammohan Ray in an early 19th century. Since that time, India grew as a nation, gained independence became one of the biggest economies of the world, developed nuclear capability and all indicators point to emergence of the country as a super power in another two decades. It is irony that even after more than a century and half years of the Bentinck's Regulation; the issue of Sati remain alive in our sub-continent, which shows that the status of women has continued to be so low that the society is not beyond burning widows to make her join her dead husband in his journey to the another world.

2. Historical Background on Practice of Sati
Max Muller gives references to the custom of widow burning among Greeks and Synthians. Similarly Barbosa, a Portugese traveler, described the practice of Sati was not only confined to the princely states but also to other states like Vijaynagra Kingdom [1]. It appears that the practice of Sati started in Brahmanical India a few centuries before Christ. None of the Dharmasashtras contain any reference to Sati. The Manusmriti is entirely silent on it, the Mahabharata is also very sparing in its reference to widow burning. In epigraphic records, reference is made to the practice of Sati in the Gupta-era. The *Jauhar* practiced by the Rajput ladies of Chittor are well known. Though several smritikars disapproved such a practice, once it took root, the learned commentators and digest writers were found to support it with arguments of heavenly abode, devotion to husband, etc. Harita says, "that woman who follows her husband in death purifies three families, namely, of her mother, of her father and of her husband" [2]. From the accounts of travelers, it appears that widow burning prevailed more in Bengal during the centuries immediately preceding its abolition than anywhere else in India. Cole Brooke wrote in 1795 A.D. that the martyrs of this superstition have never been numerous. He described it as a practice which was in vogue in some parts of Rajasthan.

During the British Regime, The Sati Regulation Act, XVII of 1829 was enacted after much consultation within and without the government. It was called:
"A Regulation for declaring the practice of suttee or burning or burying alive of the widows of Hindus, illegal and punishable by the criminal courts [3]."
Thus the Act was a major departure from the previous policy on Sati. It was intended to punish all Sati as a criminal act. There was no longer any distinction between legal and illegal Sati. Section 1 of this Act was more like a preamble. It stated:
"The practice of suttee or of burning or burying alive the widows of Hindus is revolting to the feelings of human nature: it is nowhere enjoined by the religion of the Hindus as an imperative duty…."
In unequivocal terms Section 2 declared Sati to be illegal and punishable by criminal courts [4].

3. Bengal Regulation 1929
It was 1929 that Lord William Bentinck with the help of Raja Rammohan Roy introduced a formal law prohibiting Sati, called "Indian Sati Regulation Act, 1829", which had immense impact. Aiding and abetting a sacrifice whether voluntary or not was deemed to be a culpable homicide and the Court had the discretion to decide the punishment after referring to the nature and circumstances of the case. The drafters of the Indian Penal code in 1860, under the East India Company watered down the severity of the penal provision on Sati when Sati, as a voluntary act got included in the general provision on suicide and such suicides were put outside the pale of legal definition of murder by inserting an exception number 5 to S.300, which says that: "Culpable homicide is not a murder when the person whose death is caused, being above the age of 18 years, suffers death or takes the risk of death with his own consent."
Sati, for the said section, is an offence only if the act appears to be involuntary. However, the act of committing Sati can be punished for culpable homicide [5] and abetment to commit suicide [6]. This act can also be punished under other provisions relating to offences affecting life covered under Chapter XVI of the code such has attempt to murder [7] and attempt to culpable homicide [8].

4. Legal Prohibition of Sati in Independent India

Sporadic incidents of Sati have been reported from time to time since 317 BC in the Punjab, right up to Roop Kanwar in 1987 and Mathura in 1991, Banda in 1992, a teenaged girl named Pawan, on September 26, 1994, who was saved by the Police in the nick of time and recently 65-years-old Kuttu on February 6, 2002. Till 1987, there were three laws in force regulating Sati. Two out of these were passed in the British times. The Regulations were (1) Bengal Sati Regulation, 1829, (2) Tamilnadu Sati Regulation 1830 and (3) Rajasthan Sati (Prevention) Act, 1987. The Roop Kanwar incident forced the then Rajasthan Government to bring in the State a Sati Prevention Ordinance, 1987, which was passed by the legislature on October 1, 1987. The Central Government followed it with a central legislation called the Commission of Sati Prevention Act, 1987, the sole legislation on this issue which applies to the whole of the country except Jammu and Kashmir. This Act overrides exception 5 of 300 of I.P.C and any law of any State in force on the day this Act was enacted. This Act adopts the provisions of the Ordinance passed by the Rajasthan Legislature. As per sec 3 of the Act any person who attempts to commit Sati forcefully or voluntarily and does any act towards such commission can be punished with imprisonment for a term of maximum one year or with fine or with both. Section 4 of the Act talks of punishing a person who abets a woman to commit Sati. The punishment prescribed for this is either death or life imprisonment besides the accused is also liable to pay a fine. The law also makes punishable any activity that could be termed as glorification of Sati as per Sec. 5 of the Act. Section 7 of part III of the Act provides for removing any structure that is used for worship or performing ceremonies to honour a woman who has committed Sati. This part also talks of provisions with regard to seizure of property by a magistrate and police. Cases with regard to this act, according to the statue have to be presented before special courts, which are constituted and function under part IV of the Act [9].

5. Comparative analysis of the regulation of 1829 and the act of 1987

The Regulation of 1829 was in force from the time of its promulgation throughout the territories immediately subject to the Presidency of Fort William which was essentially the region around modern Kolkata. It is essentially administrative in nature and declared Sati as amounting to culpable homicide that could be tried by a Criminal Court, which would use its discretion in awarding the punishment. The regulation laid down stringent provisions obliging a host of officers to furnish information on the proposed or actual event of Sati in their jurisdiction. It sanctioned a fine of Rs. 200. And in event of failure to pay the fine, the accused would have to undergo imprisonment for a maximum of 6 months on the officers appointed by the British Government who fail to furnish required information about the crime. Aiding and abetting sacrifice whether voluntary or not was deemed to be culpable homicide. Punishment was at the discretion of the court according to the nature and circumstances of the case. No plea for leniency was to be admitted on the ground that the victim had desired to be sacrificed. The regulation also clarified that none of the provisions of the regulation may be read to mean that death penalty could not be handed to the accused in Sati cases.

The Act of 1987 bears a worthwhile comparison with the regulation of 1829 though they are different in their focus and content. Whereas the regulation was strictly administrative in nature, and focused on the methods to get a proper enforcement of the law of the land treating Sati as culpable homicide, the act passed in 1987 on the other hand criminalized the act of abetting Sati in any manner and laid down a definite punishment for the crime of committing Sati and participating in its glorification in a special enactment. The regulation did not prescribe any punishment for those that actually committed the crime but it imposed harsh fines and even imprisonment on a very large number of land revenue functionaries, police authorities who allowed sati to take place due to their tacit support. The main culprits were meant to be prosecuted under the criminal law of the land. There is no administrative injunction of the Government even today which comes down so heavily on officers and other quasi-government authorities who could have been in a position to prevent the commission of sati but failed to do so. The present Act focuses on the persons directly concerned with the act of sati and defines what sati implies and even what is meant by glorification.

The new Act has taken a major step ahead of the 1829 regulation as it prohibits the practice of sati glorification which could well be considered as a part of freedom of citizens to practise their religion guaranteed under Art.25 [10] of the constitution and section 295 [11] of Indian Penal Code that prohibits defiling damaging of places of public worship. In 1829 the British rulers were careful not to mention the word religious practices in the regulation and no offence has been made of glorification as such or to worship of sati in temples. The rulers were so circumspect of the religious sensibilities of the subject people that in the first draft of the regulation they had even advised that the criminal cases involving sati should not be tried by a Mohammedan judge, but, later after a public debate on the issue, perhaps realizing that by doing so these may encourage the people view sati as a lighter offence than a culpable homicide, they dropped this provision. In 1987 the government has shown greater confidence in handling religious sensibilities of people and the Act criminalizes sati worship, sati glorification and arms the executive with the power to remove a sati temple. These provisions however need to be implemented so that they do not remain empty words on paper.

The main thrust of the regulation of 1829 has however not been replicated in the 1987 Act. The regulation created a moral fear amongst all concerned authorities under Government who did not actively participate suppressing sati and there is no provision paralleling the administrative measures in the 1829 regulation which will make the police remain on their toes to check sati from being committed. In the present situation it becomes necessary for the media to play the role that was meant to be performed by the various levels of Government functionaries and bring all case of sati to the knowledge of the public. It is said that before Roop Kanwar incident took place there had been another incident of sati which encouraged the Roop Kanwar sati incident and that the other sati had gone unnoticed. Fortunately due to technological revolution it is not necessary to depend on Government functionaries alone and the roving cameras of the media can help in law enforcement as well. Media has assumed an important role in the proper enforcement of the sati prevention laws.

6. Conclusion

The practice among the Indian women of ending their live by setting themselves ablaze with the pyre of their deceased husbands or being forced to do so, in the yesteryears – the "Sati Pratha" though banned now, reflects the extent of dependence of women on their men. However, legislation alone cannot by itself solve deep-rooted social problems; one has to approach them in other ways too. Therefore, what is required is not only a strong legal support network but also opportunities for economic independence, essential education and awareness, alternative accommodation and a change in attitude and mindset of society, judiciary, legislature, executive, men and the most important woman herself.

7. References

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2. Ibid, at. 182.
3. Regulation Act 17 of. R.M. Roy, 'A Conference between Advocate for and an Opponent of the Practice of Burning Widows Alive', Nov. 30, 1818; A second Conference on said subject on dt. Feb. 26, 1820. See more details V.P.Varma, 'Modern Indian Political Thought, 11th Edn. Patna. 1929.
4. Section 5 of the Regulation.
5. S.299 of Indian Penal Code
6. S.306 of Indian Penal Code
7. S.307 of Indian Penal Code
8. S.308 of Indian Penal Code
9. Sati Verses Murder, The Hindu, 3 December, 1999.
10. Article 25 makes it clear that all persons are equally entitled to freedom of Conscience and right freely to profess, Practice and propagate religion.
11. S.295 of the Penal Code provides that this section penalizes destruction, damage or defilement of places of worship and places of veneration with the intention or knowledge to insult the religions feelings of any class of person.