

FOREWORD

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It is based on materials contained in 45 issues of the Commonwealth Law Bulletin 1974-1985 published by the Legal Division of the Commonwealth Secretariat. The work is not comprehensive; it could not be. It is already 350 pages long. However, it draws on materials from 35 Commonwealth countries in various stages of development and discloses many interesting trends.

Australia is in the forefront in legislating to enhance the status of women; this is not unexpected in the country of origin of Germaine Greer. It is also not unexpected to find that enhancement of the status of women follows closely on economic development. Development of the economy enables more women to enter employment and to become more economically independent. A buoyant economy means that the fear of unemployment recedes and equal wages for women doing the same jobs as men is politically more readily acceptable.

From Australia to Cyprus to Saint Vincent and the Grenadines there is much concern with the status of children born out of wedlock. This is the area of law in which there has been the most widespread legislation.

Domestic violence is another topic on which many countries including Canada, the United Kingdom and Papua New Guinea are all actively trying to find legal solutions. Legislation is not always a sufficient answer until women are prepared to come forward and prosecute their partners. The less developed the economy the more dependent are women on men for the support of themselves and their children and the less likely they are to make criminal accusations against their partners. However, it is not clear that the problem is a serious one in the less developed jurisdictions and it may be that domestic violence goes hand in hand with the stresses of more complex societies.

The case of D.P.P. v Morgan (1975) 2 All E.R. 347, a House of Lords decision, has given rise to many questions in regard to the nature and proof of consent of a woman in a rape charge. In D.P.P. v Morgan the defendant stated that he believed that consent had been given because the woman's husband agreed to the defendant having sexual intercourse with his wife. The husband at that time had immunity against prosecution for the rape of his wife. In many jurisdictions this decision has been challenged and in the Scottish case of H.M. Advocate v Duffy 1983 S.L.T. 7, the court held that this immunity could not be taken as a matter of principle in view of the fact that the status of women to-day was very different to that when the principles of the law governing rape were laid down. The court held that it must be a matter of degree but could not be affirmed as a matter of principle that the law in Scotland to-day is that a husband can in no circumstances be guilty of the crime of rape upon his wife. The question of whether to introduce legislation to remove the husband's immunity from prosecution for the rape of his wife is being considered in Australia and New Zealand.

Abortion is one of the most controversial areas of law with ethical, religious and social attitudes varying from country to country. An

allied topic is that of family planning and the International Agreement on the Promotion of Family Planning as a Human Right is very largely ignored in many countries in which contraception is unacceptable for religious, ethnic and demographic reasons.

Exercising the minds of women's groups in many jurisdictions is the question of what are now commonly called de facto relationships. The Christian concept of a Hyde v Hyde-type marriage has become inappropriate in many societies and national governments have had to face up to the fact that many couples are choosing to live together and have children without formalising their union by a form of marriage. This has led to a spate of legislation and judicial decisions on the rights and duties of the partners and the rights of children of such a union. One of the interesting aspects to emerge from a brief look at the law in this regard is that the courts, in looking at a de facto relationship in say New Zealand or the United Kingdom, are reaching decisions in regard to the rights and duties of both parties and their children which are very similar to those being reached in, for example, Swaziland where courts are adjudicating upon the rights of parties and children under a customary law marriage.

Some work has been done recently in both Australia and New Zealand on the phenomenon of the increase in the numbers of women offenders before the Courts. What is not clear is whether women are in fact committing many more offences or whether there is what is called a "masked" factor. This theory is that women are not in fact committing a greatly increased number of offences but because of the change in the role of women in society there is no longer any reluctance to prosecute women offenders. It is said that the "mask" has been lifted and women committing offences are now just as likely to be prosecuted as men. This does not, however, take into account one other point that is clear from the statistics which is that women are offending in areas of crime which were previously the domain of male offenders; viz. robbery, burglarly and fraud offences.

It is good to see the promulgation in India of the Suppression of Immoral Traffic in Women and Girls Act 1978 and in Bangladesh the Dowry Prohibition Act 1980 and the Cruelty to Women (Deterrent Punishment) Ordinance 1983 although it is sad to learn that the Dowry Prohibition Act is not being observed.

This work forms only a stepping-stone on the way to further analysis and research which needs to be carried out into the law governing the status of women in the Commonwealth. There are two ways in which this could be done. The first method is to take one topic, for example "women and violence" which has been done by Jane Connors for the Women and Development Division of the Commonwealth Secretariat and research it on a Commonwealth-wide basis; this was also done by Rebecca Cook on abortion laws in the Commonwealth. The other is for a researcher in any one region to produce a comprehensive work on women and the law or the legal status of women in South Asia or East and Central Africa or the South Pacific. Regional researchers might be in a better position to say whether or not laws which have been passed are in fact being enforced. Let us get on with it!

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