

THE LEGACY OF COLONIALISM

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ABSTRACT:

In pre-colonial India, the legal system was defined by two characteristics: legal pluralism and a customary nature of governance. After becoming subject to British rule in 1858, India's legal development became inextricably linked to England's, with ramifications lasting to the present day. This new Anglo-Hindu legal system wholly dismantled India's pre-existing laws, replacing them with a homogenized system based primarily on western ideology. This essay examines the development and reformation of laws regarding women's rights from pre-colonial to present day India, focusing primarily on eighteenth to twentieth century British rule. Specifically this paper focuses on the evolution of three areas of laws in India, all arising under nineteenth century colonialism and with marked similarities to reforms in English law: the first area concerns changes to laws regarding questions of agency, including age of consent and marital duties; the second concerns crimes of sexual violence and corresponding punishments; and the third regards changes to laws regulating the sex trade and prostitution. Additionally, this paper traces these reforms historically, referencing cases of historical value and modern court decisions which cite those cases.

Next, this essay examines the actors involved in the development of the Indian legal system under British rule; the British administrators and elite Indian men who played the most direct role in the country's development, the Indian women whose rights were dictated and constrained within these laws, and the British feminists whose limited understandings of the struggles faced by Indian women often undermined meaningful social progress. In a discussion of these areas of law and related changes to Indian society, I explore the ways in which the British administration, over the course of their nearly four-century involvement, operated under the guise of moral enlightenment and protection of women to consolidate their power. These findings cast doubt on the assertion that reforms to women's rights during this period were primarily enacted to protect Indian women from misogynistic practices. While some outcomes of India's colonial legal reform benefited women, more often it simply codified pre-existing patriarchal practices or introduced new ones all together.

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