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WOMEN UNDER VARIOUS PERSONAL LAWS – A CRITICAL STUDY

By Ms. Shaheen Khan

Abstract:

Human beings by virtue of their birth belong to one or the other religion in this world. They practice their faith within the ambit of the prominent religious texts applicable to them. The religious texts which govern their day to day activities from cradle to death, primarily constitute to be the personal laws which are applicable to both men and women of that particular community. Women who constitute to be fifty percent are considered only next to the women in relation to all the traditions and customs falling under the personal laws. Under Hindu law women who were mostly on par with men except for the rights to lighting of the funeral pyres, has lost their position due to the invasions by foreigners who imposed their own personal laws when they took over the power from Hindu kings. The Muslim Women who are governed by Shariat under Islamic law has been given a special status women but it's more or less being a second class citizen amongst their community in comparison with their counter parts of other religion. The personal laws have been their first barriers in the path of their empowerment and equality with men and overcoming the same seems to be a distant reality.

Keywords: Women, Personal laws, relation, barriers, equality, empowerment,

Introduction

Women emerged as a distinct interest group in the 19th century primarily because the bourgeoisie democratic revolutions of 17th and 18th century that excluded women from their concept of equality. This distinction was based on gender. Since then women as a commune had waged struggle for recognition of their rights as a human being. Women's execute multilateral role in the society i.e. as a breadwinner of her family, as a care taker of her family as a mother, wife, daughter and service provider to the society. In spite of the fact that the women's contribution to the country's development is equal to that of their male counterpart, still they experience a number of limitations that restrain them from comprehending their potential for expansion. It was against this background that the government's all over the world felt the need to prioritize the interests of women and their participation at every stage of the development process.

The term Women's empowerment implies the ability of the women take all the important decisions independently related to her throughout her life span that will ensure her success in all aspects of life¹.

However these goals are far from being realized in a country like India. In fact often women in India are deprived of their fundamental right to dignity also leave alone the question of gender equality. The present paper explores the questions central to women's right in India that is fundamentally patriarchal in nature. The article attempts to grapple with the few challenges faced by the women in India like the dowry, female feticide, denial of inheritance, sale and trafficking of girls etc. The objective of the paper is analyze the position of women under various personal laws.

Protection of Women's Rights by the Constitution of India

The constitution of India confers special rights upon women. The constitution makers were well aware of the subordinate and backward position of women in the society. They made some

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¹ <https://www.ibose.org.in/images/WOMEN'S%20RIGHTS.pdf>, last accessed on 13TH June 2021

efforts for uplift of women in our society. The state is directed to provide for maternity relief to female workers under Article 42 of the Constitution, whereas Article 51-A declares it as a fundamental duty of every Indian citizen to renounce practices to respect the dignity of women. Indian Parliament has passed the Protection of Human Rights Act, 1993 for the proper implementation of Article 51-A. Indian Parliament over the years have taken significant steps for through legislations to achieve the goal of empowering the women in India. The significant among them are the Equal Remuneration Act, the Prevention of Immoral Traffic Act, the Sati (Widow Burning the rights of) Prevention Act, and the Dowry Prohibition Act etc. Apart from these, the 73rd and 74th Constitution (Amendment) Acts² provided for 33% reservation for women in both panchayat and Nagarpalika institutions as well as for the positions of chairpersons of these bodies. These two amendments removed the bottlenecks from the paths of women empowerment at the local level. In fact it has been found that the Karnataka sends maximum number of women to the PRIs followed by Kerala and Manipur. In order to facilitate equal participation of women at the national and state level politics, the bill providing for 33% reservation of seats for women in national and States legislatures has been introduced in Parliament³. Besides this, the government in India have enacted a variety of laws like Dowry Prohibition Act, Sati prevention Act etc to guarantee the rights of the women.

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India has always been the melting pot of various cultures and religion; with a continuous influx of people from across the globe the society has remained in a constant change and progress. The advent of British in India in the 15th century marked a fundamental change in life and behaviour of people. This change also brought in major changes in the legal system of India.

The Constitution of India acknowledges this intention of progressive India, therefore the forefathers, realising the fundamental need of this, ensured to incorporate the same as a fundamental right in the Constitution under Article 15.⁴

² ncrb.gov.in/CD.../statistics2012.pdf (2014) last accessed on 15th Jan 2016 at 3.20 pm

³ Mihra Sweta, Women and 73rd Constitutional Amendment Act: A Critical Appraisal, *Social Action*, 44, 16-30 (1997)

⁴ Narender Nagarwal, Gender Justice Ideology and the Indian Constitution: Analysing Equality Rights, 4 *Indian J.L. & Just.* 111 (2013).

Despite the enactment of stringent laws in India the status of women has not changed much in the rural region. The concept of equality is still at nascent stage in these areas, with women being considered as the possession of family and their honour. This mind set has led to killing of several women in the name of family honour and has razed several families at length. Gender based crime and discrimination is prevalent not just in the hamlets of India but across the length and breadth of India.⁵

Role of Judiciary in Recognizing Women Rights

Equal rights and dignity of women in religious aspects has, recently, garnered great importance in social life and in legal sphere. Two of the most prominent judgments of Supreme court *Sabarimala case*⁶ and *Triple Talaq case*⁷ has brought an end to century old practise of curtailing of women rights, the court recognized customs within the definition of ‘law’ as per Article 13(3)(a) of the Constitution but declared the practices void as per Article 13(1), which were found in derogation of Fundamental Rights. Justice Nariman and Justice U.U. Lalit in *Triple Talaq case* applied the test for laws in force to recognize the custom of Triple Talaq as falling within Article 13(3)(a), they held it unconstitutional on the narrower ground of it being “manifestly arbitrary” as against Article 14.

All human beings are born equally and freely in rights and dignity, and all have the freedoms and rights without any differentiation of any kind, such as language, religion race, colour, sex, birth or another event. However, it is most unfortunate that in almost all societies of the world, women have suffered from inferiority status to men. In ancient India, women used to enjoy equal status with men in all the spheres of life. Later women spread between the middle and modern ages have been deprived of a place worthy of their honour and a vortex of innumerable castes and communal assemblages, frightening ties to the education and welfare of women banning child marriages, marriage, sati, widows divorce, to name a few atrocities on them. There is no doubt that the rule of gender equality is enshrined in the [Constitution of India](#). The Constitution of India guarantees adult suffrage and provides full opportunities and framework to women to

⁵J P Attray, *Crime against Women*, Vikas Pub. House, New Delhi, 1988

⁶2019) 11 SCC 1

⁷ *Shayaro Bano v. Union of India & Ors.*, (2017) 9 SCC 1

participate actively in politics. But it is a pity that the post-independence decades saw a decline in women's participation in politics⁸.

Women and Divorce in India

Grounds for Divorce under all Religions:-

Ground on Hindu divorce –a) Adultery, b) Cruelty, c) Desertion, d) Conversion, e) Unsound mind, f) Leprosy, g) Venereal disease, h) Renunciation of the world i) Unheard of for seven years or more j) Wife ground of divorce- i) Bigamy, ii) Rape, sodomy or bestiality, iii) Reputation of marriage, iv) Non-resumption of cohabitations after passing and order of maintenance. k) Divorce by mutual consent.

Ground on Muslim Talaq (divorce)- a) By the death of the spouse) Talaq –lusunnat c) Talaq Ahsan ,d) Talaq Hasan, e) Talaq-ul-Biddat, f) Ila ,g) Zihar h) Talaq by wife- talaq tafweez i) Talaq by mutual consent- i) Khula, ii) Mubarat J) Independent right to divorce of the wife i) li'am, ii) Impotency, iii) Insanityleprosy-virulent disease iv) Cruelty, ill- treatment, desertation, v) Apostasy from Islam.

Grounds on Christian divorce-a) Ground of divorce for husband- adultery by the wife is one of the most important factors b) Ground of divorce for wife – husband adultery and cruelty c) Divorce by mutual consent.

Grounds on Parsi divorce are- a) Wilful refusal to consummate b) Unsoundness of mind c) Adultery, Fornication, Bigamy d) Cruelty.

Grounds on Jewish divorce- a) Ground of divorce for husband- (i) immoral deportment, (ii) Apostasy, (iii) Refusal to have marital intercourse, (IV) Unjustified refusal to follow husband to another domicile, (v) Violation of ritual law in the management of her household, (vi) Incurable disease rendering cohabitation dangerous, (vii) Insulting her husband or her father-in-law in the public, (viii) Barrenness after ten years of marriage. ,b) Ground of divorce for wife - (i) Cruelty,

⁸<https://blog.ipleaders.in/politics-women-rights-india/> last accessed on 20/03/2021 last accessed on 05th Jan 2020 at 7.25 pm

(ii) Apostasy, (iii) Chronic disease rendering cohabitation dangerous, (iv) Licentiousness, (v) Repulsive occupation, (vi) Refusal to support, (vii) Refusal of marital Intercourse, (viii) Physical impotence. c) By the court against wishes of the parties d) Divorce by mutual consent. (Ranga, partima devi 2014)

In India, the word divorce came as laws to protect the right of both men and women. The Hindu marriage act 1955 and new marriage law (amendment) act 1976 which added mutual consent divorce, gave a much needed change to Hindu society by allowing dissolution of marriage to both parties based on some factors. Factors which lead to divorce are as follows;

- 1) Adultery: - Which means when one partner cheats on another partner.
- 2) Financial difficulty: - When expectation never met what they plan for future due to uneducated of finance lead to problems such as argument, fighting and etc.
- 3) Work stress and obligation:- Different work timing like night shift, or lot of work pressure at office also become reason for divorce.
- 4) Addiction:- This is one of a most important factor due to the addiction of drinking, gambling and etc. lead to violence at home, financial crisis and etc. (Bari Z Weinberger ,2012),
- 5) Other factors:- i) When you've lost your individual identity ii) Depend on paternal income iii) Not the same way of thinking different vision iv) Bad sexual life v) Lot of expectation vi) Can't fix the problem without a fight vii) You're interested in the different thing. viii) No showing of physical affection between both (Lisa L. Payne, Kim Olver, 2016) ix) Children from previous relationship x) Intrusive parents xi) Privacy problem xii) Communication differences xiii) Mother- in- law and daughter-in-law conflict. xiv) Conspiracy against the boy and his family xv) Misconception that second or third marriage would bring more happiness in life (Elsa vulliamy , 2016)
- 6) Recent important factors like; Women education which allowed them to know their Constitutional rights, Women becoming financial independent, Marriage against the wishes of man and women.(Dr A.S Kalra, 2014).

In most of the religion divorce is not encouraged. Traditionally in Hinduism there is no concept of divorce .Marriage is a sacraments, it is sacred relationship between two people. After the civil law was guarantee by Indian constitution to protect the right of men and women, practice of divorce came into Hinduism society. In Muslim marriage is a contract known as nikaahnama, it is signed not only by the couple but also by walises and the maulvi. In Muslim religion, husband can dissolve marriage tie at his will but wife cannot divorce her husband without his consent. Dissolution of marriage under Muslim marriage act 1939 allowed getting divorce to both husband and wife and also mutual consent. In Christianity marriage is one of the sacraments and is indissoluble. Indian divorce acts 1896, allowed christen men and women to get divorce. In Buddhism, marriage is considered as a personal and individual concern, not as a religious duty. In Buddhism marriage is a secular affair and it is not sacraments as a result in Buddhism In most of the religion divorce is not encouraged. Traditionally in Hinduism there is no concept of divorce .

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Conclusion:

The researcher made an intensive study on the personal laws of the prominent religions of the

world practice in India that is Hinduism, Islam, Christianity, Parsis and Judaism. The source of the personal laws has been from the various religious texts, customs and practices from time immemorial. In Hinduism, the status of women has been on par with the men. Women are equally worshipped as goddesses but due to changing times and effect of other invasions their rights were curtailed and discrimination between men and women increased. Except for the lighting of pyres by the men only there doesn't seem to be any sort ample proof in Hinduism where it can be proved that discrimination exists from the personal laws of Hindus emanating from religious texts only.

Contrary Islam right from worshipping to other aspects discriminates amongst men and women over their rights. A Muslim women shall offer her prayers only by standing a step behind her male counter part and shall not venture out without a male companion who must in a relationship of consanguinity within if she is unmarried and if married with husband only. She cannot go out to work and is permitted only certain cases. She cannot attend a burial and so she is subjected to the hijab practices as per the personal law. The shariat imposes lot of restrictions on the Muslim women there by increasing the discrimination between men and women practicing Islam. The Muslim women on the other side have a upper hand in case of their marriage and matter of Meher where the consent of women for marriage is compulsory and the Meher belongs to women only. Their condition is worse in the matter of marriage and maintenance as per their personal laws.

Christianity on the other hand provides complete equality to women as per the Christian laws or religious texts. Women assemble along with men in churches, marriages and funerals on par with men actuate western outfits also. Hence the first hypothesis of the research work is partly proved as the personal laws of Hindus an Christians doesn't encourage discrimination between men and women whereas discrimination is comparatively higher between men and women in case of Islam. The Parsis and Jewish communities profess a moderate discrimination in case of property inheritances and are flexible. They Parsis doesn't allow inter-religion marriages of both men and women as per their personal laws. Hence the first hypothesis is partly proved as per the research undertaken in chapter two and three mostly.