

## A STUDY OF THE STATUS OF INDIAN WOMEN UNDER DIFFERENT LEGISLATIONS

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### ABSTRACT

We can easily believe by studying our History books that in ancient India, women enjoyed equal status with men in all aspects of life. Works by ancient Indian grammarians such as Patanjali and Katyayana suggest that women were educated in the early Vedic period. Rigvedic verses reveal that women married at a mature age and were probably free to select their own husbands. Scriptures such as the Rig Veda and Upanishads mention several women sages and seers, notably Gargi and Maitreyi. But Indian women's position in society further deteriorated during the medieval period when child marriages and a ban on remarriage by widows became part of social life in some communities in India. The Muslim conquest in the Indian subcontinent brought purdah to Indian society. Among the Rajputs of Rajasthan, the Jauhar was practised. In some parts of India, some of Devadasis were sexually exploited. Polygamy was practiced among Hindu Kshatriya rulers. During the British Raj, many reformers such as Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, Jyotirao Phule, Swami Vivekanand etc., fought for the betterment of women. Ishwar Chandra Vidyasagar's crusade for improvement in the situation of widows led to the Widow Remarriage Act of 1856. In 1929, through the efforts of Mahomed Ali Jinnah, the Child Marriage Restraint Act was passed, stipulating fourteen as the minimum age of marriage for a girl. Women in India now participate fully in areas such as education, sports, politics, media, art and culture, service sectors, science and technology, etc. Indira Gandhi the first woman Prime Minister of India for an aggregate period of fifteen years, is the world's longest serving woman Prime Minister.

The aim of the study is to check out those different legislations which have made special provision with regard to the status or protection or which have been enacted for improving their reputation and standard in society in comparison to those of women we have studied in our history books.

**Keywords:** The Constitution of India, coparcenary property, infanticide, gender discrimination

### INTRODUCTION

The society of human being is full of inequalities. There may be many reasons of it but the conclusion is that all human beings are not equal. The differences are physical and mental capacities, rich and poor, master and servant and of course man and woman. Few inequalities are natural and few are man-made i.e. unnatural. The natural inequality show that man and woman are made different by nature due to differences between their physical capacities but God has made them equal as to be human being. The unnatural difference has been made by man that is due to considering them strong and weak. The Indian society is considered to be a male dominating society. Less facilities and provisions are given to woman in comparison to man. The women are beaten to death if they do not give birth to a male offspring. They are killed if they do not bring sufficient dowry. Less wages are given to them for same type of work. They are harassed at every stage whether it is home, school or college and obviously after marriages. The special privileges are given to men to enjoy the prejudice of others such as being more dominating, more powerful, more honoured and to be in a position to exact obedience<sup>[1]</sup>. By the time being many changes are seen in the conditions of women. Now she is heading in all the bright directions of future whether it is education, Arts and entertainment, sports or the field of literature. Many women writers are prominent in Indian literature as poets and story writers, such as Sarojini Naidu, Kamala Surayya, Shobha De and Arundhati Roy etc. Sarojini Naidu is called the nightingale of India. Arundhati Roy won the Booker Prize for her novel *The God of Small Things* and is renowned in the novel world. The status of women has been improved a lot and in doing it the legislations have played an important role. Let's have a look upon these legislations which are landmark in the life of women in India.

### The Constitution of India

The fundamental rights have been provided to all the citizens of India by our Constitution. However, the State is free to make special provisions for the particular class or weaker section of society in their interest.

### Right to Equality

Articles 14 to 18 of the Constitution guarantee the right to equality to every citizen of India. Article 14 embodies the general principle of equality before law or the equal protection of law and prohibits the unreasonable discrimination between the persons. The Article 14 states two expressions i.e. equality before law and equal protection of law. Both the expressions are used in Universal Declaration of Human Rights<sup>[2]</sup>. The concept of equality before law is a negative concept implying the absence of any special privilege in favour of individuals whereas the equal protection of law is a positive concept implying equality of treatment in equal circumstances. Hence it expresses the rule that the like should be treated alike and not that unlike should be treated alike<sup>[3]</sup>. It contains the idea that in the interest of women special provisions can be made by the state. Amongst the equals the law should be equal and should be equally ministered<sup>[4]</sup>. Article 14 prohibits class legislation but permits reasonable classification. The classification must be based on some intelligible differentia and should have a rational nexus with the object sought to be achieved by the legislation. Article 14 of the Constitution recognises the women as a class and special provisions can be made by state for the upliftment of any class. In this way article 14 expresses the special status of women. In *Air India v Nargesh Mirza*<sup>[5]</sup> and others, the Supreme Court struck down the

Air India and Indian Airlines Regulations on the pregnancy bar on the services of air hostesses as unconstitutional on the ground that the conditions laid down therein were entirely reasonable and arbitrary.

### Directive Principles of State Policy

The Directive Principles of State Policy, embodied in Part IV of the Constitution, are directions given to the State to guide the establishment of an economic and social democracy, as proposed by the Preamble. They set forth the humanitarian and socialist instructions that were the aim of social revolution envisaged in India by the Constituent Assembly. The State is expected to keep these principles in mind while framing laws and policies, even though they are non-justiciable in nature. The Minimum Wages Act of 1948 empowers government to fix minimum wages for people working across the economic spectrum. The Equal Remuneration Act of 1976 provides for equal pay for equal work for both men and women<sup>[6]</sup>. In **State of Madhya Pradesh v Pramod Bhartiya**<sup>[7]</sup>, it was held that the doctrine of equal pay for equal work is enshrined in Art.14 and flows from it. The doctrine is also stated in Art. 39(d), a Directive Principle which ordains the state to direct its policy towards securing equal pay for equal work for both men and women. The Sampoorna Grameen Rozgar Yojana (Universal Rural Employment Programme) was launched in 2001 to attain the objective of providing gainful employment for the rural poor. Art. 42 provides for just and humane conditions of work and maternity relief. The provision of maternity relief is the great feature of these principles as the poor women are dying in absence of any such facilities and in the burden of work sometimes cause to miscarriages and if born they are not able to provide the nutritious food to their children.

### Fundamental Duties

Article 51-A (e) talks about the Spirit of Harmony and Dignity of Women. Article 51A(e) desires the promotion of harmony and the spirit of common brotherhood among all the people of India transcending religious, linguistic and regional or sectional diversities and renunciation of practices derogatory to the dignity of women. It is couched in broad terms but it should be clear that attacks on minority communities or minority opinions are frowned upon. Respect for both are essential and the wording lends support to a broad humanism to cover such differences as may exist. The study of fundamental duties show that this is the duty of everyone to respect the women and not to do any such act which is derogatory to the dignity of any woman.

### The Hindu Marriage Act Age of Marriage

Section 5(iii) states that the bride must have been completed the age of eighteen years at the time of the marriage. The age has been increased by an amendment in 1978 by removing the words fifteen years.

### Additional grounds for Divorce to Wife

Section 13<sup>(2)</sup> of the Hindu Marriage Act provides additional grounds to wife only on the basis of which she can file for divorce. This is stated as under:

<sup>(2)</sup>A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground-

(i) in the case of any marriage solemnized before the commencement of this Act that the husband had married again before the commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner. Provided that in either case the other wife is alive at the time of the presentation of the petition;

(ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality; or

(iii) that in a suit under Section 18 of the Hindu Adoptions and Maintenance Act, (78 of 1956), or in a proceeding under Section 125 of the Code of Criminal Procedure, 1973, (Act 2 of 1974) or under

corresponding Section 488 of the Code of Criminal Procedure, (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards; or

(iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation: This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Law (Amendment) Act, 1976.

### Rule of Monogamy

Section 5 (1) of Hindu Marriage Act, 1955 states that if a person has more than one wife, the marriage with second wife will be void. It clears that a marriage between two Hindus is void,

if either party has spouse living at the time of marriage. Polygamy has been abolished and the rule of monogamy has been enforced.

### The Dissolution of Muslim Marriage Act, 1939

This act provides several grounds of Divorce to Muslim Woman.

1. If the whereabouts of the husband are not known for a period of four years.
2. Failure to perform marital obligations without reasonable cause.
3. Impotency of husband at the time of marriage.
4. Repudiation of marriage by wife by her right of option of puberty
5. Sentence of imprisonment on husband for a period of seven years.
6. Failure of the husband to provide maintenance to wife for a period of two years
7. Cruelty by husband

### The Hindu Succession Act, 1956

Section 6<sup>[8]</sup> of the Hindu Succession (Amendment) Act makes the provision regarding the rights of property of women.

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this

Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

#### Indian Penal Code, 1860

Section 497 of the code which describes the offence of Adultery does not have the provision of punishing the woman commits adultery. The academicians have stated that this is violative of the provisions of Constitution described in Article 14 i.e. Right to Equality as only man is punished and not the woman. The section runs as follows:

"Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor."

In **Yusuf Abdul Aziz v. State of Bombay**<sup>[9]</sup>, it was held that section 497 is not unconstitutional and the penal provisions protecting women are completely constitutional. Justice Bose observed that: Article 14 is general and must be read with the other provisions which set out the ambit of fundamental rights. Sex is a sound classification and although there can be no discrimination in general on that ground, the Constitution itself provides for special provisions in the case of women and children. The two articles read together validate the impugned clause in section 497 of the penal code. Again constitutionality of section was challenged in **Smt. Sowmithri Vishnu v Union of India**.<sup>[10]</sup> It was pleaded by petitioner that Sec. 497 was an instance of gender discrimination and was a kind of Roman Paternalism which stems the presumption that women like chattel are the property of men. Further, it was contended that it was violative of Article 14 of the Constitution because it makes an irrational classification between man and woman. The Chief Justice Y.B.Chandrachud delivering the judgement defended the last line of the section which states, the woman shall not be punishable as an abettor. He observed that "the contemplation of the law is that of wife who is involved in an illicit relationship, with another man, is a victim and not the author of crime and an unfaithful husband risks, invites a civil action by the wife for separation. Thus, he was of the opinion that it is an under inclusive definition and is not necessarily discriminatory."

#### Dowry Prohibition Act, 1961

In 1961, the Government of India passed the Dowry Prohibition Act<sup>[11]</sup> making dowry demands in wedding arrangements illegal. However, many cases of dowry-related domestic violence, suicides and murders have been reported. In the 1980s, numerous such cases were reported. In 1985, the Dowry Prohibition (maintenance of lists of presents to the bride and bridegroom) Rules were framed.<sup>[12]</sup> According to these rules, a signed list should be maintained of presents given at the time of the marriage to the bride and the bridegroom. The list should contain a brief description of each present, its approximate value, the name of who has given the present, and relationship to the recipient. However, such rules are rarely enforced. A 1997 report claimed that each year at least 5,000 women in India die dowry-related deaths, and at least a dozen die each day in 'kitchen fires' thought to be intentional. The term for this is "bride burning" and is criticized within India itself. Amongst the urban educated, such dowry abuse has reduced considerably.

#### Pre-natal Diagnostic Techniques(Regulation and Prevention of Misuse)Act,1994

Female infanticide is rampant in India as the Govt. of India as well as of States are not taking the Pre-natal Diagnostic Techniques(Regulation and Prevention of Misuse)Act,1994 seriously. This is because of this lack of implementation of act by the states that the Supreme Court has to reprimand state governments for not doing sufficient efforts to prevent the female infanticide as was decided in CEHAT<sup>[13]</sup> case. As women were supposed to be and in some areas of India are still considered to be curse by some strata of society their birth was taken as a burden. So in past times they were killed as soon as they were born. In some of the Rajput clans of Rajasthan newly born girl children was dropped in a large bowl of milk and were killed. Today with the help of technology the sex of the unborn baby is determined and if it is a girl child then it is aborted. In all this procedure women do not have any say they have to do according to the wish of their husbands even if she does not want an abortion, she has no choice.

#### CONCLUSION

As we all know that India is a male dominating society where he is greatly revered. Therefore women get very little respect in this country. The women of the household are required to prepare the meal for the men, who eat most of the food. Only after the males are finished eating, can the females eat. Typically the leftover food is meager, considering the families are poor and have little to begin with. This creates a major problem with malnutrition, especially for pregnant or nursing women. Very few women seek medical care while pregnant because it is thought of as a temporary condition. This is one main reason why India's maternal and infant mortality rates are so high. Starting from birth, girls do not receive as much care and commitment from their parents and society as a boy would. Even though the constitution guarantees free primary schooling to everyone up to 14 years of age (Indian Parliament), very few females attend school. Only about 39 percent of all women in India actually attend primary schools. There are several reasons why families choose not to educate their daughters. One reason is that parents get nothing in return for educating their daughters. Another reason is that all the females in a household have the responsibility of the housework. Most jobs women perform are agricultural or domestic which do not require a formal education. Another reason girls are not educated is because families are required to supply a chaste daughter to the family of her future husband. By the study we can say that the status of women in modern India is a sort of a paradox. If on one hand she is at the peak of ladder of success by the newly created legislations on the other hand she is suffering the violence afflicted on her by her own family members. As compared with past women in modern times have achieved a lot but in reality they have to still travel a long way. They had proved themselves. But in India they are yet to get their dues. The sex ratio of India shows that the Indian society is still prejudiced against female. There are 917 females per thousand males in India according to the census of 2011, which is much below the world average of 990 females. These lacks are needed to be removed and this is possible by the efforts of society including the individuals and academicians as well as by the laws made by Parliament.

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