

GENDER JUSTICE AND WOMEN UNDER PERSONAL LAW

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ABSTRACT

“All human beings are born free and equal in dignity and rights.”¹ Gender inequality is the major issue in today’s world. It is in the form of social discrimination, economic discrimination, lack of healthcare and access to education. It is an obstacle in the development and progress of women. It is time now that women should take stand for their own development. We see discriminations in all the aspects of women’s life as educational institution, workplace as well as in the home. Traditionally women are expected to take care of the husband as well as the family. Only men are allowed to go out and earn the livelihood. Men are in the position of control and authority over the women from the past years.

KEYWORDS- Gender inequality, discrimination, obstacle, livelihood, authority.

GENDER JUSTICE: MEANING

Gender justice means gender equality which means that there must be equal rights and opportunities to all genders. There must be equality between men and women. So that everyone can enjoy their human rights to its entirety. Women must have the right to education, employment and can participate in the process of decision making. It is necessary for empowering the women and to make sure that they can participate in the events of the society. Gender inequality can be of various kinds like unequal pay, non-participation in society etc.

PERSONAL OR FAMILY LAWS-

Rights of women in India have to be studied in the light of personal laws. The question that comes to our mind is what is a personal law? The term personal laws or family laws refers to the rights and obligations of persons belonging to different religions, in their personal or family matters such as marriage, divorce, maintenance, right to property, adoption, etc. different religious groups in India follow their religious laws in these matters. Therefore, we have Hindu, Muslim and Christian, Parsi and Jewish laws. In this section, we briefly discuss the personal laws of Hindus and Muslims only. For reasons of space, the Christian, Parsi and Jewish laws are not being discussed here. Hindu Laws- At the outset it must be noted that under the Indian constitution (Article 25 2 concerning freedom of religion) and the Hindu Marriage Act, 1955, and other Hindu Acts concerning succession, adoption, maintenance and minors and guardianship, persons who are Buddhist, Jaina, or Sikh are construed for legal purposes as “Hindus”. Thus, it means that the term “Hindu” includes persons following a Hindu religion in any of its forms such as Virashaiva, a linguist or a follower of the Brahmo. Prarthana or Arya Samaj and also those who are Buddhists, Jains or Sikhs. During 1955-1956 the Hindu laws were codified by the Parliament. Earlier these laws had customary status now they have not only been codified but also some reforms have been

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incorporated. Four Acts were passed by Parliament during these two years. They are:

1. The Hindu Marriage Act (HMA). 1955
2. The Hindu Succession Act, 1956
3. The Hindu Minority and Guardianship Act. 1956
4. The Hindu Adoptions and Maintenance Act, 1956

Let us discuss briefly about these laws-

The Hindu Marriage Act 3 deals with the conditions of marriage and divorce Conditions of Hindu Marriage- Following are conditions of Hindu marriage.

1. Both the man (bridegroom) and the woman (bride) must be Hindus. If one of them is not a Hindu, the marriage will be invalid the marriage must be solemnized in accordance with Hindu customs which generally includes a " homa" and the " saptapadi" Saptapadi means taking seven steps around the sacred fire. Saptapadi is one of the conditions for a valid marriage.

- 2 The Constitution of India, 1950

- 3 The Hindu Marriage Act, 1955

2. HMA prohibits bigamy the man nor must the woman be already married.

3. Both the boy and girl should be mentally sound.

4. The bridegroom should have completed 21 years of age and the bride should be at least 18 years of age.

5. Both the persons should not be closely related to each other. This means that cousins cannot marry. However, if the local customs permit marriages between close relatives, such marriages may be considered as legal/valid. For example, in south India there is a custom that the uncle of the girl (mama) can marry her (who is his niece).

Conditions of Hindu Divorce-

There are many conditions of divorce in a Hindu marriage. It could flow out of delinquent behavior such as adultery, desertion, cruelty of the other spouse conversion of the spouse to any other religion, renunciation (sanyasa), and unsound mind. It could also be because of health reasons like incurable form of leprosy, suffering from venereal diseases Or presumption of death (eg husband unheard of for seven years) non resumption of cohabitation between the spouses for a period of one year or more after passing of the decree for restoration of conjugal rights, remarriage by the husband, repudiation of child marriage, and divorce by mutual consent (added through 1976 amendment). To get divorce, an application has to be filed in the civil court for which the woman is entitled to get free legal aid from the government If she desires, the proceedings of the court may also be held in camera. An application for divorce can be filed only after one year of marriage In exceptional cases the court may waive off this rule.

Maintenance under Hindu Law-

In Hindu Adoption and Maintenance Act 4 , maintenance denotes "provision for food. Clothing, residence, education and medical attendance and treatment". A wife is entitled to be maintained by her husband so that she can support herself. She can claim maintenance as long as she is chaste and does not convert to any other religion she is entitled to receive maintenance even while living separately from her husband in such cases as desertion/cruelty by her husband, incurable disease, and remarriage of the husband. The amount of maintenance

will be decided by the court on the basis of husband's income. 4 The Hindu Adoptions and Maintenance Act, 1956 The divorced wife is also entitled for maintenance under Sec 125 of Criminal Procedure Code. 5 After the Marriage Law Amendment Act, 2001 the quantum of maintenance to be awarded has been left to the discretion of the Court Custody of Children, Succession and Right to Property- The mother may get the custody of her children until they are five years of age and till she is proved unfit to rear them. In deciding whether the child should stay with the mother or father, the court takes into account the welfare of the child, i.e. the material and emotional needs of the child. If the welfare of the child dictates that the child has to go to a mother who cannot support herself. The father will have to pay for the maintenance of the child. Under the Hindu Succession Act 6, women have a share in the properties of their parents or other relatives. These rights were limited in nature their share was not equal to their brothers in the ancestral property till 2004. In fact, daughters did not have a share in ancestral property by birth. They only had right to basic requirements out of this property. An amendment effected in 2005 now grants equal share to the men and women in ancestral property A woman enjoys better rights in case of acquired property as against the ancestral property.

Muslim Personal Law-

Muslim Personal Law is codified in three Acts the Shariah Act of 1937, the Dissolution of Muslim Marriage Act 1939, and the Muslim Women (Protection of Rights on Divorce) Act, 1986. Muslim Personal Law treats marriage as a contract. Man and woman are equal in laying down conditions of

Marriage and their consent is essential for the solemnization of marriage. If the bride is a minor at the time of marriage, she has the right to repudiate that marriage on attaining adulthood provided the marriage has not been consummated. The groom has to pay a dower (Mehr) amount to the bride agreed upon at the time of marriage. This Mehr is her property and acts as a source of financial security for her There are many grounds for divorce under the 1939 Act 7, which include cruelty.

5 The Code of Criminal Procedure, 1973 6 The Hindu Succession Act, 1956

7 The dissolution of Muslim Marriage Act, 1939 husband absconding for four years, husband failing to provide maintenance for two or more years, husband sentenced to imprisonment for a term of seven years or more, failure to perform marital obligations for a period of three years or more. insanity, and incurable diseases. Upon divorce, a Muslim woman has a right to receive the following things from her husband:

- Mehr amount
- Maintenance for the children till they are two years of age
- All gifts given to her at the time of marriage
- Maintenance during period of iddat
- After the period of iddat the magistrate can order the maintenance from the parents, children, the relatives who are entitled to inherit the property and the state waqf board. Muslim women could claim maintenance under Sec 125 of the Cr PC till 1986. Many Muslim women have benefited from this in the past. However, after the Shah Bano Judgment, the 1986 Muslim Women (Protection of Rights on Divorce) Act was passed, which exempts them from availing this provision of the Cr PC. Now they are solely dependent on their relatives or the Waqf

board for their maintenance after the iddat period comes to an end. The Muslim woman also has the right to inherit ancestral property from her maternal side but her share is half of that of her brothers. But in certain situations, the woman is entitled to a share higher than her male siblings.

NATIONAL COMMISSION FOR WOMEN (NCW)-

The National Commission for Women (NCW) was constituted by Central Government in 1992 under the National Commission for Women Act, 1990. The NCW consists of the following: Chairperson who is a person committed to the cause of women and is nominated by the central government. Five Members, nominated by the central government from amongst persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry or organization committed to increasing the employment potential of women, women's voluntary organizations (including women activists), administration, economic development, health, education or social welfare. At least one Member each is nominated from amongst persons belonging to the Scheduled Castes and Scheduled Tribes respectively. The Chairperson and every Member hold office for a maximum period of three years, as may be specified by the Central Government. 8

Member-Secretary- An expert in the field of management, organizational structure or sociological movement, or an officer who is member of a civil service of the Union or of an all-India service with appropriate experience is appointed member Secretary of the commission.

Committees-

The NCW is authorized to appoint committees to deal with special issues as may be taken up from time to time. If deemed fit it can co-opt as members of any committee such persons who are not its basic members. The co-opted members have the right to attend the meetings of the committee and take part in its proceedings but have no right to vote. They are, however, entitled to receive prescribed allowances for attending meetings. 9

Functions of NCW- The functions of NCW are as follows:

Regarding constitutional and other legal safeguards-

- a) To investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws.
- b) To present to the central government, annual as well as special reports (whenever necessary) upon the working of those safeguards.
- c) To make recommendations for the effective implementation of those safeguards for improving the conditions of women.
- d) To review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto for meeting any lacunae, inadequacies or shortcomings in them.
- e) To take up the cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities.

8 Section 4, National Commission for Women Act, 1990

9 Section 8, National Commission for Women

Act, 1990 **Regarding dealing with complaints-**

To look into complaints and take suo moto notice of matters relating to-

- i) deprivation of women's rights;

ii) Non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development.

iii) Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with appropriate authorities.

Finding strategies against discrimination-

To call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal.

Promotional and educational research-

To undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity.

Planning and development-

To participate and advise on the planning process of socio-economic development of women. To evaluate the progress of the development of women under the Union and states.

Regarding women prisoners-

To inspect or cause to be inspected jails, remand homes, women's institutions or other place of custody where women are kept as prisoners or otherwise, and take up cases with the concerned authorities for remedial action.

Legal aid-

To fund litigation involving issues affecting a large body of women. Submission of reports-

To make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil.

Other related matters-

To deal with any other matter which may be referred to it by the Central Government? All the reports of the Commission are to be submitted to the Central Government and laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations. Where any such report or a part of that is related to the functioning of any state government, the same has to be forwarded to that government to be laid before the state legislature concerned.

Powers of NCW-The NCW has, for the purpose of investigating any matter, all the powers of a civil court regarding:

a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

b) requiring the discovery and production of any document:

;s human rights is the focus of the Convention on the Elimination of Discrimination Against Women (CEDAW). Regarded as the global bill of rights for women, the Convention establishes national action plans to combat discrimination against women and defines what

types of discrimination are relevant. Since gender justice is an essential part of our work and an issue that crosses all of our portfolios—justice, security, and human rights, for example—UNDP strives to ensure that gender justice stays high on the global agenda. Globally, UNDP is extending the strength of its relationship with UN Women on gender justice by collaborating on research studies on women’s roles in the justice and security sectors, implementing programming initiatives in overt contexts, and expanding its network of partners. The team consistently provides technical, financial, and policy support to country offices in order to help them achieve gender justice and equality. This support includes work on legal protection, gender-sensitive justice and security sector reforms, the creation of legal aid services, women’s meaningful inclusion in transitional justice mechanisms, and constitutional reforms.

CONCLUSION

A human right is gender equality. Women have a right to a dignified life free from abuse, fear, and want. Reducing poverty and promoting development are also contingent upon gender equality. Women who are empowered enhance the prospects for the next generation and increase the general health and productivity of their communities and society. However, gender equality is still an unfulfilled promise in spite of strong evidence showing how important women’s empowerment is to eradicating poverty, promoting development, and tackling the most pressing issues facing the globe.

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