

## **Women and Personal Law**

“Man’s capacity for justice makes democracy possible, but man’s inclination to injustice makes democracy necessary”.

**P. Kavitha<sup>1</sup>Dr. A. Thennarasu<sup>2</sup>**

<sup>1</sup>Ph.D Scholar<sup>2</sup>Head & Associate Professor in History  
Government Arts College (Autonomous)Salem-7

Equality of opportunity for advancement and positive discrimination in favour of women may ensure social justice and human right to women. It would liberate her from traditional oppressive cultural forces and help her in improving self-esteem and self-image.

The need of the hour is to create an environment which ensures dignity to women. She should emerge from powerlessness and comforts of dependency and face the challenges of autonomy offered to her through human rights. This requires change in attitude of society and cultural transformation.

To develop a just and equal society, the government enacted a variety of legislations that were formed to safeguard the interest of women in society. Few noteworthy laws for women’s welfare are as follows,

### **Legislative Attempts for women’s Emancipation during British Rule**

#### **Prevention of sati Act**

Sati or the burning of the widow on the funeral pyre of the husband was the custom practiced extensively in Rajasthan, among Rajput princes, and also among the Brahmins in Bengal, and to some extent in Madhya Pradesh and other northern states.

Raja Ram Mohan Roy began the active campaign against sati. He studied Dharma sastra and showed that they did not enjoin ‘sati’. He pointed out that Manu never mentioned ‘sati’. The reformers said that it was a barbarous custom. In 1829 Lord William Bentinck, an enlightened Governor General, passed the prevention of sati Act, according to which any one abetting the commission of sati would be guilty of culpable homicide and any one taking part in compelling a widow to commit sati would be guilty of murder. There was no result but orthodox Hindu groups appealed to the Privy Council against the Act. The progressive group consisting of social reformers filed counter petition. The appeal was lost and sati was banned in British India and later on in the Indian states.

#### **Window Remarriage Act**

Yet another revolutionary social legislation of this period is the Hindu window Remarriage Act of 1856. It legalised the marriages of windows. It also declared the issue of such marriages as legitimate. The first widow remarriage according to this Act was performed in Calcutta in the very same year 1856. Iswar Chandra Vidhya sagar himself set an example by

getting his son married to a widow. As a result of this Act, the social reformers started widow's homes widow remarriage associations in different parts of the country.

## **Female Infanticide Prevention Act**

This Act was passed in the year 1870. Man Mohan Kaur has given details of this barbarous custom of killing the female infants as soon as they were born. Because of the difficulty in getting a bridegroom in the same sub caste and because, of the heavy dowry and marriage expenses the new born female children were put to death. So in 1870 legislation was passed prohibiting this custom and enforcing registration of births and deaths.

## **The Special Marriage Act of 1873**

This Act provided for marriage irrespective of differences in religion. This Act did not provide for intercaste marriages. This Act was amended in 1923 in order to permit the intercaste marriages. Because of Kashab Chandra Sen polygamy was abolished.

## **The Age of Consent Bill 1891**

Another important social legislation in pre-independent India was against child marriage. Little children of 5 to 10 years were being married. The leaders of Brahma samaj and Arya samaj protested against this custom. In 1860, at the instance of Iswar Chandra vidhyasagar the Indian penal code prohibited the consummation when the girl was less than 10 years old. Keshab Chandra sen carried on a vigorous propaganda against child marriage and the marriageable age was fixed at 14 for the girls and 18 for the boys according to the Brahma Act of 1872. In 1891, the Age of consent Bill was passed by the government prohibiting cohabitation with a wife under the age of 12. With further agitation the child marriage restraint Act was passed in 1929 raising the marriageable age of girls to 14 and of boys to 18.

## **The Sharda Act, 1929**

In 1891 the Age of consent Bill was passed. In spite of this, the evil persisted in the society. In 1927 Harbilas shards introduced a bill before the legislature to regulate marriage among the Hindus. This Act was subsequently known as the Child Marriage Restraint Act of 1929 or popularity known as Sharda Act as mentioned above. The operation of the Act extended to the whole of India. It fixed the minimum age of marriage for girls at 14 and for boys at 18 years.

## **Hindu Women's Right to Property (1937)**

One of the-most important enactments to give better rights to women with regard to property was the Hindu Women's Right to property Act, (1937) passed mainly due to the efforts of Deshmukh. The Act provided a powerful weapon in the hands of the progressive forces of Hindu society and had struck a powerful blow to the traditional authoritarian male dominated Hindu social edifice and marked a new phase in the history of women's struggle for equality with men in Hindu society.

This in the pre-independence era a series of acts as mentioned above, were promulgated for women's upliftment. Many Laws have been passed by the Indian parliament to uplift the status of women in India. Notable among these are the following

1. Hindu Married Women's Rights to separate Residence and Maintenance Act, 1946.
2. Hindu Marriage Act, 1955
3. Hindu succession Act, 1956
4. Hindu Adoptions, and Maintenance Act, 1956
5. Hindu Minority and Guardianship Act, 1956
6. Dowry prohibition Act, 1961.

### **Hindu Married Women's Rights to separate Residence and Maintenance Act 1946.**

The Act empowers the Hindu married women to claim for maintenance while residing separate from their husbands on the following conditions:

1. In case the husband is suffering from some loathsome disease not contracted from the wife.
2. In case husband behave inhumanity and the stay of wife with her husband is dangerous or harmful.
3. If the husband deserts her without her without her willingness.
4. In case the husband adopts some other religion.
5. In case the husband keeps some concubine
6. Any other cause justifiable for separate residence.

But a woman found guilty of adultery or religious changes cannot claim the above stated right according to this Act.

### **The Hindu Marriage Act, 1955**

This Act has introduced following changes in the life of the Hindus

1. Classification of Hindu Marriages as void, voidable and valid.
2. Determination of marriageable Age: According to the Act the lower age limit for girl is 18 years and whereas for a boy is 21 years.
3. Provision for Monogamy: Section 5 and Clause I of the Act declares monogamy as the form of Hindu marriages.
4. Mother's Guardianship: After the death of the father, mother will be the guardian of a minor son or daughter.
5. Provision for divorce: According to the Hindu Marriages Act, wife as well as the husband has been allowed to seek divorce in certain conditions.

### **The Hindu Succession Act, 1956**

This Act entitles the female children to share the property of their father along with their brothers. The women have the right to use, sell, mortgage or dispose of the inherited property in the way they like.

## **The Hindu Adoptions and Maintenance Act, 1956**

No husband can adopt a child without taking permission from his wife. The rights of adoption are available to issueless windows also. No adoption can be legal unless it fulfills the following conditions;

- a. After the death of her husband every widow with sound mind has the right to adopt or even give her child for adoption.
- b. Every husband of sound-mind with the consent of his wife can adopt a child.
- c. The unmarried adult woman has the right to adopt a child.
- d. The adopted, person shall be less than 15 years and should be unmarried unless the custom of child marriage is in Prevalence in his community.

As a regard to the maintenance the following provisions have been made:

- The Hindu wife during the life time of her husband will have the right of maintenance.
- The widowed daughter-in-law or granddaughter in-law will also have the right of maintenance
- The widow or unmarried daughter will have the right for maintenance upon her father.
- The minor children, if they are illegitimate will have their right for maintenance from parents, up to the time they remain minor.

## **Hindu Minority and Guardianship Act, 1956**

With the regard to guardianship the following provisions have been 'made by this Act:

- A child will remain under the guardianship of mother till the age of 5 years and after that the father can claim for guardian ship. After the death of the father, the child will again be under the guardianship of the mother till he does not become adult.
- In case of unmarried daughter or illegitimate son, till the mother is alive the right of guardianship shall be with her.
- The legal guardians will have the right to do such thing as are considered necessary and in the interests of the child.
- For the purpose of this Act, the age of minor is up to 18 years.

## **Dowry Prohibition Act, 1961**

The cruel practice of dowry has become a deep-rooted social malady leading to the economic exploitation of women. Due to the materialist approach towards life and westernization the demand for dowry has become rampant and too much exacting. The dowry system has indeed made great in roads with the budget of the poor and middle class families while people of higher strata of society can cushion the pressure of dowry demand. Hence the Congress Government passed this Act in 1961 making the giver as well as receiver of the dowry punishable. According to this Act the demand for Dowry has been prohibited and provision is made for, severe punishment of such demands. Thus this custom was legally abolished but in the absence of sufficient, awareness and favourable social attitude, the law remains ineffective.

## Effects

Above mentioned legislations have introduced the following changes in the life of Indian women;

1. Equal right of male and female: This has ended the subjugation of women and also their subordination.
2. End of domination: The Hindu family life is no more arbitrarily a male dominated family.
3. Abolition of polygamy: Polygamy has been abolished. Monogamy has been introduced.
4. Restriction on child marriages: With the increase of the marriageable ages the evil of child marriages has been abolished.
5. Women have given the right to inheritance in parent's property.
6. Women have been awarded equal rights of guardianship.
7. With the provisions for the old age, disablement maintenances of life has improved in the society.

## Conclusion

The Hindu Marriage Act of 1955 abolished all caste restrictions as a necessary requirement for a valid marriage. Thus for the first time the Hindus of all castes have the same rights with respect to marriage: intercaste marriages are now valid. Secondly, by not prescribing any specific form of ceremony for the solemnization of a marriage. The Act, while giving authority to the various customs prevailing in various groups also provides with a secular outlook with respect to marriage and enables the registration of marriages. Thirdly, this Act enforces monogamy and thus brings equality between the two sexes. It also provides for judicial separation and divorce or dissolutions of marriage so that the rights of men and women are the same. The Hindu succession Act of 1956 confers for the first time absolute rights over the property possessed by a Hindu Woman. Secondly both the sons and the daughters get the right of inheritance from the property of an intestate Hindu. Thus, this Act overcomes the prejudice against women getting the property of the father. The Hindu Adoptions and Maintenance Act, 1956 is also a significant departure regarding the status of women. It permits the adoption of a son or a daughter and makes adoption for a secular act than a religious one. Further it makes the consent of the wife necessary. Finally the widow has got the right to adopt. Since, a long, time, many states had passed the Dowry Prohibition Act, 1961 making the giver as well as receiver of the dowry punishable. But this is another piece of social legislation which is absolutely ineffective. One sees hardly any change in the situation as a consequence of this Act. The social norm in other words, has not been affected by this Law and the society follows the social norm rather than legal norm in this field.

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