

A Study of Women's Rights and Personal Laws under Different Marriages Laws

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Abstract – *The study of emancipation and increased status enjoyed by women in a society are good indicators of that society's progress. Despite the fact that countries' legal and cultural landscapes have always been impacted by gender, women have always remained a minority group in terms of global power and influence, despite their numerical equality. As long as half of the people is left behind, no country can progress in any way — socially and economically, as well as politically. Any civilization that denies women the fundamental rights of equality and freedom is committing a grave offence against human dignity, human rights, and development. During the Vedic period in India, female brilliance was at its peak; however, it has since experienced a steady fall. As soon as we gained our independence, our country's Constitution was amended to include protections for women and children as well as the wonderful concepts of equality, liberty, and social justice. Many laws were created to defend women's rights and promote their dignity in accordance with the Constitution's mandate. The right to equal pay for equal work, maternity benefits, Inheritance ownership or inheritance, and protection against husband cruelty through divorce or judicial separation are a few examples of such legal innovations. As a result of these legislative changes, a false impression has been created about Indian women's place in Indian society. Even while laws have been passed to aid some women, in practise only a small minority have reaped the benefits of those reforms. As a result of the fact that the majority of Indian women are still uneducated and unaware of their legal rights, very few of them own any real estate. As a result, women in India stay at the bottom rungs of society, both economically and socially.*

Key Words – Women's Right, Independence, Country's Constitution, Legal and Cultural Landscapes

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INTRODUCTION

Different human communities around the world have varying levels of equality for women. Women have a special place in any community, developed or emerging. Slowly but definitely, the social standing is shifting between countries due to many circumstances. Eastern and Western social systems are based on quite distinct concepts. There is a significant disparity in the status of women. There has always been a strict division between men and women in Eastern society, which has kept women confined to the home. Although women have always wielded tremendous influence, they are nonetheless constrained by social norms. There is no clear distinction between the worlds of men and women in the Western world. The foundation of Western culture is one of unity, which does not always imply equality for women. According to the United Nations Universal Declaration of Human Rights, everyone has the right to life, liberty, and the pursuit of happiness. Law and custom continue to limit women's rights to freedom, dignity, and equality, although men's are not. Society may sanction or tolerate gender-based violence and discrimination in several ways,

including through enacting legislation. Women's human rights are infringed on a daily basis, frequently on a systematic basis, regardless of whether the country is democratic or dictatorial, during wartime or peacetime. Women of all socioeconomic backgrounds, races, and ethnicities are affected. A large percentage of the world's population is subjected to torture, starvation, terror, humiliation and even death simply because they are female," argues Charlotte Bunch in her book, "Women's Rights in the Age of Globalization." The question of how men and women differ is not a new one, and it has been raised before our time. In other words, it's been around for at least two and a half thousand years. Plato explored it in its current form in his book 'The Republic'. There was a lack of regard and consideration for women in Athens. Aristotle believed that marriage and women's roles were to produce children. Because of their lesser mental and physical capacities and their inherent subordination to men, women were viewed under Aristotle's beliefs as not only socially subordinate but also physiologically inferior. Males are naturally superior to females, he remarked, "and while one

rules and the other is governed, one is superior to the other by nature." Later western intellectuals were greatly impacted by Aristotle's views on women. "As a horse, whether excellent or evil, requires spurs, so a woman, despite she may be good or terrible, requires flogging," the Romans fiercely stated. Chinese tradition also warns husbands to "hear their wives' advise but act against it." It's stunning to see how sexist men can be in this area. It is so entrenched in our culture that it is still perceived as inevitable or natural rather than as a politically manufactured, reality sustained by patriarchal interests, ideology, and institutions.

Indians live in a multi-ethnic country. There are eight major faiths and religious groups in India that date back to the period of the Aryans. The fact that Indians have always held ethnic, religious, and racial harmony as a sacred obligation has also been a pleasant surprise. As a result, a variety of personal regulations have developed in this country to keep people's private lives in line with their religious beliefs. To allow people from different religious backgrounds to follow their own personal laws in delicate subjects like marriage, divorce, and succession is only natural for a secular democracy like India. When it comes to family law, India's constitution states that any legislation that was in place before the constitution was enacted would stay in effect until it is changed or repealed by a competent legislature, a court of law, or any other competent body. In 1973, Cornwallis restated the intention of keeping personal laws for Hindus and Muslims in family affairs in the Preamble to Regulation III, stating that "the government's aim is to preserve the Indian Shastras and the Quran in the matters to which they have been habitually applied." "Nothing could be more obviously just than to determine private contest according to those laws which the parties themselves had ever considered as the rules of their conduct and engagements in civil life, nor could anything be wiser than by a legislative act to ensure Hindu and Mussulman subjects of great Britain that the private laws which they severally enacted would be recognised by the courts," wrote Sir William Jones, the Supreme Court at Calcutta.

Each community in India is governed by its own set of rules. Family law is distinct for Hindus, who make up the vast majority, and Muslims, who constitute the largest minority. Minority groups, such as Christians, Jews, and Parsis, which have a relatively small number of adherents in India's total population, have their own family law. Marriage and divorce in India, maintenance, guardianship and succession, a joint family and partition, can all be referred to as "Family Law" in the context of Indian law. Both a territorial and a personal system of law exists in India. Due to the nature of personal law, it's evident that it cannot be open to the general public. A Christian is bound by Canon Law, a Jew by Halakhah, a Muslim by Islamic Sharia, a Jew by Halakhah, a Hindu by Dharmashastra. For conservative and progressive groups alike, these laws represent an important symbolic battleground in their efforts to achieve their visions of a better future for women's rights. Personal

laws are enacted into legislation. Even if the state isn't the ultimate source of their power, it's made them legally and socially authoritative by bestowing its authority on them. Similarly, if the authority of personal laws were not legal, there would be no need to enact them, just as if family were personal in the meaning of the word. Nearly every society and culture has historically treated women as second-class citizens who are not afforded any legal protections. The western enlightenment concept, on which the rule of law is based, was initially meant as a tool for improving our social state. By citing Aristotle's natural law, Locke and Rousseau asserted that a wife's subordination to her husband was an inalienable right. Consequently, she cannot be considered a free and equal individual. As in South Eastern Indian traditions, the law of Manu dictated that women should obey their fathers as daughters, wives as wives, and widows as sons. This norm was followed to the letter. Discrimination against women is still prevalent over the world, and much of it is openly allowed or even legal. It is absurd that the right to equality has been repeatedly recognised in international law, the United States Constitution, and other treaties. These include the Declaration of Human Rights, the Covenant on Civil and Political Rights, and the Convention against the Elimination of All Forms of Discrimination against Women. There needs to be an end to all existing legislation that discriminate against women based on their sexual orientation, according to the Beijing Plan for Action approved at 1995's United Nations Fourth World Conference on Women. Laws that restrict women's rights to marry, divorce, and remarry, and allow for polygamy, nevertheless exist in family law. Polygamy is not permitted in the majority of cases; however it is permitted in a limited number of cases, such as when a widow is in need of assistance. Females are subjected to a variety of vicious behaviours, including discrimination, oppression, and violence, from the time they are born to the time they die. Only a sliver of the iceberg consists of laws that explicitly discriminate. Equal chance in education and work, exclusion from political representation, loss of sexual and reproductive rights, as well as the use of social pressures and physical violence to frighten and subordinate women is all abuses of the rights to equal opportunity.

GENEALOGY OF RELIGIOUS LAWS:

Hindu Law

Hindu law has a long history. Law and Dharma were seen to be inseparable in the orthodox perspective. Both law and Dharma had a shared origin. Law was held in the highest regard by Hindu seers and sages because they considered it divine revelation. Since it is regarded divine law, it cannot be changed by any human agent, hence the Dharmashastra writers codified the laws in order to provide certainty to them. Law in Hinduism is based on Sanskrit comments and digests, which are then reinforced by

local custom. This is what Mayne calls "Smritis" law. Law in Hinduism is based on the smritis.

Muslim Law

Along with the rise of Islam, the foundations of Muslim law were established. According to Islamic tradition, the Quran and the Hadith (Sayings of the Prophet) or Sunnat were its primary sources (traditions of Prophet). Muslims believe that the Holy Book was given to the Prophet Mohammad (PBUH) by the Angel Gabriel, according to their faith. Zaboor, Taurate, and Injeel, together with the Quran, are considered divine books by Islam. This religion is the only one in which God serves as the source of law. Since it is a divine law, it cannot be amended, repealed, or altered, although all other laws can be amended, repealed, or altered. It applies to individuals who believe in God and recognise his power over their lives and their acts. Islam's definition includes it. According to the Encyclopaedia Britannica, the Arabic root "SLM" means "to be in peace" or "to be an integral whole," and Islam, which means "to surrender to God, law, and so to be an integral whole," is derived from this origin. Muslims are those who do just that. Because of this, a Muslim must submit to the will of God, which is made clear in the preceding definition. When discussing Islamic private law in today's world, the term "Muslim Law" is commonly used to refer to Islamic personal status, family ties and succession. In many nations where Muslims make up the majority population or there is a sizable Muslim population, this legislation is still relevant to Muslims. Muslim family law has, however, undergone a large codification and reform process, notably in the areas of bigamy, divorce, and women's rights, in the majority of Muslim countries.

Christian Law

"Christian" is defined in the Indian Christian Marriage Act, 1872 as someone who professes the Christian faith. Native Indians who converted to Christianity are included under the term "Indian Christian" under the Act. Even if they aren't baptised, someone who professes Christian faith is considered a Christian. Children of Christians are included in the term "anyone who professes the Christian religion." The English law governs the household obligations of Indian Christians because they lack a personal law of their own.

Parsi Law

The word "Parsi" is derived from the Persian province of Pers or Pars, where the Parsis first arrived in India. The terms "Parsi" and "Zoroastrian" are interchangeable because the Indian Parsis follow the Zoroastrian religion. According to Zoroastrianism, there is only one God, and the essential precepts of good thought, good words, and good deeds form the basis of the religion's foundation. Parsi law governs the following in modern India:

- i. Persons who are descendants of Persian emigrants, who are born of Zoroastrian parents, and who profess Zoroastrian faith.
- ii. Persons whose father is (or was) a Parsi and mother an alien but admitted to Zoroastrian faith.
- iii. Zoroastrian from Iran, who are either temporarily or permanently residing in India.

Jewish Law

An Israelite is a member of the Hebrew ethnic group. There is only one type of Jew: the one who adheres to the Jewish faith. The Personal Law of the Jews is founded on rabbinical code, and the Jewish people are spread all over the world. The Jewish community in India does not have a legislative law governing marriage and divorce. The Shulchan Anuch, a compilation of Mosaic and Talmudic law dating back to the fifteenth century, was a name given to this work. The marriage law was contained in the third and last section of the code, which was referred to as Eben-Ha-Ezen. His book, "Jewish Law of Marriage and Divorce," was based on these findings. An authoritative and accurate overview of Jewish law is found in this work. It is not a race, but a religion that is meant when the name "Jew" is used in India.

WOMEN RIGHTS UNDER DIFFERENT PERSONAL LAWS

However, one may also discover oppressive and horrific comments about women throughout the scriptures of all religions. This is not an isolated phenomenon. For the time being, our goal is to determine whether religious scriptures are supportive of the advancement of women in all areas of life and work, as well as to determine whether or not religious doctrines stand in the way of these advancements. Rather than trying to argue the superiority or precedence of one religion over another, this is an objective effort to show that religion (as a whole) has not been a factor in the overall backwardness of women. Women have fewer privileges than men in most RPLs (Religious Personal Laws). The Patriarchal domination of men and the unequal treatment of women are recurring threads in India's religion personal law system. It is clear from the history of RPL changes in the independent Indian state that the ideal of gender equality is usually put aside in favour of other political reasons. The so-called religious personal rules, which deny women even formal legal equality in personal relationships, are a major source of discrimination against women. A legal process exists to ensure compliance with the law through courts, but because women are socially and economically subordinate, they are either uninformed of or unable to take use of this legal recourse. Additionally, Indian women are currently engaged in a campaign for the ability to share in marital inheritance, a right that is

consistently denied to them regardless of religious affiliation. When women are still considered Inheritance, social acceptance of women's rights and an equal social standing is difficult and the path ahead is long and rocky.

Women in Hinduism: It is believed that women were created by Brahman as part of creation's dualism, to give companionship for males and aid in the production of children and future generations. The Vedic period was a time when women held prominent religious and social positions. The Vedas and Upanishads contain several allusions to female saints and sages who were held in high regard for their spiritual and religious knowledge. Women have been raised to the status of deity in Hinduism. A woman's autonomy, on the other hand, is strictly constrained by convention. In a household ruled by men, she is a pawn in the game. Stricter laws for women are advocated by Manu Smriti, who sees women as Inheritance.

Women in Islam: First, Islam recognised women as legal entities and offered them all the rights that men had, making it the first religion in the world to do so. As a result of Islamic teachings, women were freed from the shackles of servitude, granted equal rights, and recognised as unique human beings. Rights to Inheritance, ownership, inheritance and education were instituted in Islam, which helped to elevate the status of women. The Qur'an makes a revolutionary claim: that men and women are created equal, and that the rights of women are equivalent to the obligations of men. According to Maulana Abul Kalam Azad, a well-known Qur'anic scholar, the passage in question is a groundbreaking assertion of gender equality. This fundamental Quranic directive necessitates a revision of Shariah law. Because of the ulama and jurists' opposition, this fundamental principle has remained undefined to this day. This particular society did not accept Quranic injunctions on women since they directly challenged men's perceived power and made women equal to men in every way.

Women in Christianity:

Patriarchal societies, in which men hold positions of power in the family, society, and government, gave rise to Christianity. Women were not ordained to the priesthood in the early centuries, but Christianity developed a monastic tradition that included the establishment of convents, through which women as religious sisters and nuns, played an important role in Church life and have continued through history; particularly in the establishment of schools, hospitals, nursing homes, and monastic settlements. All Christians agree that Jesus treated women with compassion, kindness and dignity. In Jesus' short ministry, women had more influence than they would have in the next thousand years of Christian history, according to historian Geoffrey Blainey.

Women in Parsi Religion: Laws enacted by the Parsi community that have no basis in their religious beliefs discriminate against Parsi women. The inheritance rules of the Parsis, a majority-literate ethnic group, are among the most unfair in the country. This proves once and for all that Progressive education does not eradicate discrimination and gender biases. There were no women on the Parsi Law Association's legislative recommendation group. Women in the Parsi community share a dread of communal extinction, and most have fought changes in their personal rules.

MARRIAGE UNDER DIFFERENT PERSONAL LAWS

In a marriage, the rights and responsibilities of couples, their children, and their in-laws are established by a socially or ritually recognised union or legal contract between them. There are often legal or normative responsibilities attached to marriage, as well as any children it may produce. It is often seen as a binding agreement. In a religious setting, a wedding ceremony can serve as an alternative to a secular civil ceremony for tying the knot. 'No individual should be deprived of his life or personal liberty unless in accordance with the method established by law,' states Article 21 of the Indian Constitution. Even the 1948 Universal Declaration of Human Rights recognised this right in Art.16.

HINDU MARRIAGE

Even if a spouse dies, the marriage bond is unbreakable in Hindu thought, and the wife is bound to her husband no matter what. 'While young, she remains under the jurisdiction of her father, after marriage under the control of her husband, and on his death under the control of her sons,' according to the legendary Hindu jurist Manu. No matter how hard she tries, she will never be free.' It means that a woman is under constant supervision from the moment she is born until she dies. Until she marries, she is guarded by her father or a representative of his, with the husband taking on the role of swami and protector for the wife afterward.

Duteous girl obey her father

And the husband sways the wife

Son controls the widowed mother

Never free is women's life,

From her father, son or consort

Women never should be free

For her wilful separation

Stains her husband's family (Manu,V,148to150)

Act, ceremony or process of establishing the partnership between husband and wife are all examples of marriage. A marriage is a gift from the father of the bride's mother to the husband in accordance with Hindu law. The daughter has no say in the matter; she is under no obligation to give her assent and may not even be aware of the act's nature or the consequences it would have on her life. According to Raghunandan, a Hindu marriage entails the groom accepting the bride as his wife through a ritual rite called as Kanyadan. 14 When it comes to marriage, the bridegroom and her guardian are both parties, but the bride is merely the recipient of a gift from the bridegroom. The girl's permission or lack thereof has no bearing on the contract of her marriage under Hindu law, which places her solely under the control of her parents and guardians. It is said in the Rig-Veda that a girl is a gift from the God of Fire, who has given her father with the task of raising and giving her away to someone who is deserving by calling the Fire God.

The goal of marriage in Hinduism was a lofty one. The purpose of marriage, as stated by Apasthamba, was to perform good deeds and acquire Moksha. When a Hindu couple gets married, one of their main goals is to have a child who will help them escape the torments of Hell. This is one of the unique aspects of Hindu marriage.

Eight sorts of marriage are recognised by Hindu law, covering about every possible manner of obtaining an attractive female. Weddings between Brahma, Daiva, Arsha, and Prajapatya were accepted, whereas marriages between Paishach, Asura, Gandharva, and Rakshasa were regarded disgusting and unacceptable. They were viewed as scandalous due to the fact that these arrangements recognise abduction, kidnapping, and rape as legitimate marriage forms. Although modern legislation does not require all of Hinduism's elaborate marriage ceremonies, the religion nevertheless prescribes many of them. Under the modern law, a Hindu marriage may be validly performed in the following two modes:

Shastric rites and ceremonies.

Customary ceremonies

The Hindu Marriage Act of 1955, which governs Hindu family law, was passed in an effort to relieve women of their traditional roles and the frequently intolerable social situations they faced.

CONCLUSION

Globally, gender inequity is one of the most persistent kinds of injustice that affects every member of society and is essential to the establishment of a fair society. There are many ways to look at the subject of "gender justice," which encompasses a vast and ever-expanding range of possibilities. Human dignity and human rights are being violated all across the world as

a result of the uneven treatment of women. Personal growth, freedom of thought and expression, and gender parity in the political, social, economic, and cultural spheres all go hand in hand with a country's progress, as do social harmony and stable families. Many nations have long been concerned about the issue of gender equity, which includes discrimination against women as well as other forms of bias based on a person's gender. Despite the fact that institutionalised discrimination has been officially abolished, the engrained attitudes and mindsets persist and have not been totally eradicated. There is still a lot of prejudice against women around the world. With its ungenerous monstrosity, the disease can make the entire concept of man ridiculous and destabilize its entire structure, making it a laughing stock.

Due to the lack of an universal legislation governing Indian women's Inheritance rights, these rights are decided by a variety of factors, including their religion, marital status, where they live in India, whether or not they are tribal, and so on. What unites Indian women is that, despite the Constitution's guarantee of equality for all, their Inheritance rights remain unaffected by these differences, making them vulnerable to discrimination and arbitrary decisions. Additionally, Hindu women's Inheritance rights are highly fragmented on a number of other variables, including as religion and geographic location. Hindu women's Inheritance rights differ depending on their family position and marital status, including whether they are daughters, wives, widows, or mothers. When looking at a certain type of Inheritance, such as land, a house, or marital Inheritance, it is important to know what kind of Inheritance one is looking at.

REFERENCES

1. Agnes, Flavia (1996). Economic Rights of Women under Muslim Personal Law, Economic and Political Weekly, Vol. XXXI, pp. 2832.
2. Ahmed, Furqan (2015). Understanding Islamic Law in India: An Assessment of the Contribution of Justice V.R Krishna Iyer: A Tribute, 57, JIL, pp. 307-332.
3. Arindam, Madhuryya (2006). Inheritance Rights of Hindu Women through the Ages, (III), GLT (HC).
4. Aziz, Abdul (1983). Discussion, Economic and Political Weekly, Vol. xviii, no. 15, pp. 603-604.
5. Babu, Js. Rajendra (2007). "Gender Justice, Indian perspective" 145 AIR.

6. Bakshi, P.M. (1988). Wife's House and Husband's Rights The Lawyer's Collective, Vol. 3 No. 1.
7. Chadha Purva (2002). Hindu Family Inheritance Law In India And Gender Inequality: An Analysis Of The Hindu Succession Act, 1956, Supreme Court Journal, Vol. 2.
8. Chakravarty, Padmaja (2003). Stridhana and Woman's Inheritance Rights: Critical View Under Hindu Succession Act, 1956 and Customary Hindu Law, 1 ACE.
9. Chowdhry, Prem (1997). A Matter of Two Shares: A Daughter's Claim to Patrilineal Inheritance in Rural North India, Indian Economic and Social History Review, Vol. xxxiv, no. 3, pp. 321-354.
10. Desai, D. A. J. (1988). The Status of Women in India in Relation to Inheritance, Religion and Society, Vol. XXXV No. 1.

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