



**IMPACT ON GENDER
DISCRIMINATION UNDER INDIAN
PERSONAL LAW BASED ON
RELIGION**

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ABSTRACT

This paper deals with the framework of gender discrimination under Indian personal law. In India is a country of people from diverse religions and backgrounds. Every religion has its own personal laws concerning marriage, divorce, maintenance, guardianship and succession governing the Hindus, Muslim. The religious personal laws give birth to several taboos; as an example patriarchy, early marriage, dowry, violence, divorce, maintenance etc. The society has plunked verdicts on the women. The women not only feel inferior but also helpless because the upbringing of the women has been wiped out such how that they are doing not raise their voices against such discriminations. Though the government has made the efforts to lift the benefits of women via implementing civil code, yet there's got to change the thinking pattern of individuals to give sense of credence to women about their potential. This further puts forth and analyses the current situation of personal laws with respect to women in India and the same have been discussed in the light of existing statutes and case laws. The Constitution of India not only removes inequalities but also provides special status to women and also provides various empowering provisions to bring up the dominated women in the society through various opportunities. This study deals with

gender discrimination in India, its various forms and its causes. Importance of women in development, legislation for women and solution for gender discrimination are also discussed in this paper. This chapter will discuss the discriminatory laws in various religions in India in relation to property.

Keywords – Gender discrimination, personal law, equality rights, Hindu law, Muslim law

CHAPTER 1

1.1 INTRODUCTION

As a concept, “gender inequality” refers to the obvious or hidden disparities among individuals based on the performance of the gender. Gender is a common term where as gender discrimination is meant only for women, because females are the only victims of gender discrimination. The women have fewer rights than the men under the religious personal laws. Religious personal laws allude to the standards overseeing the arrangement of marriage and its disintegration the separate rights, commitments and limits of marriage, conjugal property, child custody or guardianship and maintenance. Discrimination strikes at the very heart of being human. It is treating someone differently simply because of who they are or what they believe. We all have the right to be treated equally, regardless of our race, ethnicity, nationality, class, caste, religion, belief, sex, language, sexual orientation, gender identity, age, health or other status. The status of women is of incredible worry as these laws depict women in subordinate



position to men¹. As an idea, "gender inequality" alludes to the undeniable or concealed differences among people in view of the execution of the sexual orientation. The term 'gender' delineates the social and cultural notion about the general population. Gender is not based on the biological characteristics. In the notion women are constitutionally assured the elementary right to property. In exercise, the liberal nature of the constitution is compensated by a similar system of personal law that confines women's inheritance, protection, and maintenance rights. Inheritance laws are a salient instance of gender injustice in the control and circulation of properties.

BACKGROUND:

This scenario is not confined to India, but the women's rights in, access to, and control over land, housing, and other property continue to be limited all over the world. In India each community has its own personal law. The Hindus, the majority community have their separate family law; so have the Muslims, the biggest minority community. Personal laws in India deal with marriage and divorce, maintenance, guardianship and succession, joint family and partition, and can broadly be characterized as 'Family Law'. India has two systems of law, one territorial and one personal. Since personal law deals with the relationship between private individuals, it is clear that personal law cannot be public. A Muslim is subject to Islamic Sharia, a Jew to Halakhah, a Christian to Cannon Law, and a Hindu to Dharmashastra. Women's legal status, as affected by these laws, constitutes, therefore, a key symbolic battleground over which

conservatives and progressive forces are struggling to realize their visions of the future.

1.2 RESEARCH PROBLEM

The problem gender discrimination under Indian personal law on based on marriage, divorce. is more commonly happening in our country *Gender inequality* is a question mark in our country, which forces are struggling to realize their visions of the future still the many women from minority community were not considered at par with the men *Gender inequality in India* refers to health, education, economic and political inequalities between men and women *in India*. There should be same law for all human being in our country. Most of the Women facing for Uneducated and domestic violence in society. Women and men in both political believe sexual harassment allegations widespread societal problems.

1.3 LEGAL EXISTING SITUATION

Hindu Widow Remarriage Act 1856, the Hindu Women's Right to Property Act in 1937, (The Muslim Personal Law) the Shariat Act 1937 and the Dissolution of Muslim Marriages Act 1939.

Article 14 of Indian Constitution says that the state shall not deny to any person equality before or equal protection of the law, Article 15 says that no women can be discriminated against on the ground of sex, Article 15 (3) emphasis that the state shall make special provisions for women and children and Article 16 provides equality of opportunity in matters relating to employment by the state.

¹ Goel, Justice M. Gender Equality – Application of International Covenants in Domestic Sphere, in: E-law. Available from:

<http://www.w3c.org/TR/1999/REC-html401-19991224/loose.dtd> [Accessed 09/10/ 2020]



In Article 39(a) emphasis that the citizens men and women equally, have the right to an adequate means of livelihood, in Article 39(d) it says that the state should secure equal pay for equal work for both men and women and in Article 34 it provides that the state shall make provision for securing just and humane for work and for maternity relief. The 73rd and 74th Amendments of Indian Constitution in 1993 are the milestone in the history of India, which provides lot of powers for the local bodies. It paves the way for decentralisation, empowers the poor people as well as women. Section 23 of the Hindu Succession Act is again a glaring incidence of gender bias in law. One of the main driving factors behind the enactment of the Hindu Succession Act was to give right to property to women yet by enacting Section 23, the right to enjoy the property is very much restricted for women.

The genius of the Indian Constitution is its secular ambiguity-its unique feature of honouring religious sensitivities in a diverse religious scenario. Article 25 of the Indian Constitution provides that all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. Article 29 provides for the protection of interests of minorities and their right to conservation of a distinct language, script or culture.

1.4 LITERATURE REVIEW

➤ **BERTA ESTEVE – VOLART (2004)** described that gender discrimination against women in the market place reduces the available talent in an economy, which has negative economic consequences. Gender discrimination takes many forms. Many social practices seen as normal from a religious or cultural point of view (which

may have deep historical roots) have women out of the economic mainstream. These social practices may have profound economic consequences because they do not allow society to take advantage of the talent inherent in women.

➤ **TANJA HERKLOTZ (2017) LAW, RELIGION AND GENDER EQUALITY: LITERATURE ON THE INDIAN PERSONAL LAW SYSTEM FROM A WOMEN'S RIGHTS PERSPECTIVE**

The first looks at family law and jurisprudence from a feminist perspective. It points to discriminatory aspects and suggests particular measures for reform. The second strand comprises studies of legal anthropologists on how women “on the ground” manoeuvre through the intricacies of state law, religious and cultural norms and claims for gender justice. It acknowledges that the Indian State practically shares its authority over law-making and adjudication with various other stakeholders. The third strand of literature is situated in the area of gender studies and deals with the Indian women’s movement’s activism vis-à-vis the personal laws.

➤ **GENDER INEQUALITY AND RELIGIOUS PERSONAL LAWS IN INDIA FROM ARCHANA PARASHAR (2015)**

analyzes the emergence of Information Technology as a potential employment opportunity for women befitting their job environment and offering, in principle, least gender discrimination and attempts to analyze the issues of opportunities and constraints the women employees face in the Information Technology sector in India which resulted in women empowerment. The



research paper further reviews that, notwithstanding overall satisfactory gender-neutral pursuit by this sector, an optimal level of gender inclusivity is still to be achieved, especially to the senior level and this sector requires to be extra-careful in doing away with the prevailing maladies such as 'Feminization', 'Glass ceiling' etc.

➤ **GENDER DISCRIMINATION UNDER INDIAN PERSONAL LAW FROM DR. SHIKHA GOEL & DR. DARSHAN KAUR NARANG, (2012)**

The marital adjustment, mental health and frustration reactions of middle age males and females from Delhi, India in different occupations. The study reveals that females showed high level of recreational adjustment as compared to males but males are having better group-oriented attitude than females.

➤ **THE PERSONAL LAWS' INCLUDES THE SCRIPTURAL COMMANDS AND STANDARD PRACTICES OF THAT PARTICULAR RELIGION. AMTUL WARIS AND B. C. VIRAKTAMATH, (2013)**

Which has not equal considered gender equality as a critical element in achieving social and institutional change that leads to sustainable development with equity and growth. The study highlights discrimination against women in India, which started from early days and is evident in the skewed sex ratio. The present study analyzes the gender gaps and lists out the strategies in the twelfth Five Year Plan of Government of India for women's empowerment.

1.5 SCOPE AND OBJECTIVE:

The paper focuses on gender discrimination under Indian personal law and on based on religion in India, the scope of this exploratory study is to assess trends and patterns in judicial decision-making at the domestic level that applies constitutional provisions to address gender discrimination and rights when they are affected by customary, religious or patriarchal laws or practices. In India because of discrimination different practice religious the scope extent to landmark judgment decision of India with respect to different discriminatory and personal law.

Object:

1. To understand the scope of discriminations around the personal law system
2. To analyze the judicial aspects of such laws with the help of landmark judgments.
3. To assess the dominant wellbeing and supporting system of the gender equality in Good customary based on personal laws in our country

1.6 RESEARCH QUESTIONS

1. Are customary laws discriminatory in nature? Which are the laws and how do they discriminate on the basis of gender?
2. How gender discrimination specify under personal laws and difference in Hindu and Muslim laws?
3. Analysis laws protecting women from gender discrimination Amendments and policy measures?

1.7 HYPOTHESIS

The paper hypothesized the good customary practice in Indian personal laws are supporting the concept the achieving the gender inequity.



1.8 METHODOLOGY

The methodology followed in this paper is 'Doctrinal Method of Research' as research is based on legal statutes and case laws to arrive at conclusions. Also, it follows content analysis methodology as secondary sources such as journals, news articles, blogs and interviews are referred to

RESEARCH DESIGN: The project is analytical as well as doctrinal method. This scheme is followed on the basics of humanism. Primary sources and Secondary source had been referred. A host of leading textbooks as well as relevant articles from leading law journals had been referred

1.8 CHAPTERS SCHEME

CHAPTER 2 WOMEN IN HINDU LAW

- 2.1 Marriage and Divorce Laws
- 2.2 Property Rights of Women
- 2.3 Matrimonial Property
- 2.4 Law of Adoption
- 2.5 Maintenance law

CHAPTER 3 WOMEN IN MUSLIM LAW

- 3.1 Marriage and Divorce Laws
- 3.2 Property Rights of Muslim Women
- 3.3 Maintenance
- 3.4 Right of consent of marriage
- 3.5 Polygamy

CHAPTER 4 LAWS PROTECTING WOMEN FROM GENDER DISCRIMINATION

- 4.1 Gender equality and the Indian constitution
- 4.2 Discriminatory Customary Laws in India
- 4.3 Solution for Gender Discrimination
- 4.4 Amendments and policy measures

INTRODUCTION

Gender is a common term where as the gender discrimination is meant only for the women, because most of females are the only victims for gender discrimination. In Denial of equality, rights, opportunity and suppression in any form on the basis of the gender is only gender discrimination.

DISCRIMINATION

- ❖ Abortion of the female gravida with the help of scanning.
- ❖ Feoticide (By giving in liquid extract from the cactus / opuntia, giving raw paddy to the new born female baby, by in pressing the face by the pillow or by breaking the female baby's neck)
- ❖ To females Not giving enough nutritious food
- ❖ Family members Not allowing to go to school (Denial of education)
- ❖ Not giving needy in health care while they are in ill health
- ❖ Doing Early marriage
- ❖ Eve teasing, Rape and Sexual harassment
- ❖ Dowry
- ❖ Divorce, Destitution even for the silly or without any reason.

CAUSES OF GENDER DISCRIMINATION

The causes of gender discrimination are

- Educational backwardness
- Caste
- Religious beliefs
- Culture
- On the name of family history
- Customs and beliefs
- Races

CHAPTER 2 WOMEN IN HINDU LAW 2.1 MARRIAGE AND DIVORCE LAWS



In the ancient Hindu Law discriminated the women in all respects. The marriage laws were not equal for the men and women. The nature of the Hindu marriage is described under the Vedas. According to Vedas the Hindu marriage is an indissoluble union till eternity. It is defined in a union of “bones with bones, flesh with flesh and skin with skin, the husband and wife become as if they were one person. Hindu marriage is a sanskara or the Sacrament². It is indissoluble in the sense, the woman cannot ask for the another husband, even if he is cruel, drunkard, impotent, insane or whatsoever. It is eternal and continues for the lives in the sense that she cannot takes another husband even after his death also. Husband and wife become one person in the sense that she cannot have any individuality of her own. But the husband could enter into the sacramental fold of the marriage any number of the times because unlimited polygamy was permitted under the Hindu law before enactment of the Hindu Marriage Act, 1955.

The Hindu Marriage Act, 1955 has removed these disparities to the large extent. It has made monogamy the rule for both the men and women. Woman can dissolve her marriage and freely enter into the another marriage according to law. The Hindu Marriage Act, 1955 has enumerated in the grounds for divorce. In Section 5 of the Hindu Marriage Act, 1955³ lays down in the conditions for a marriage. . It says both the parties to the marriage should have to be in the capacity to give her consent to the marriage. In the Section 12(c) of the Act⁴ says that if the consent was obtained by the force or fraud then the marriage is voidable. If the consent is not obtained from person at

all then it will be not affect the validity of the marriage. This applies only both to husband and the wife. But it practically, what happens in the male dominant society is that, only in the consent of the boy is obtained, and consent of the girl is ignored. The boy may be much older to girl, absolutely not suitable for her but without taking her consent the marriage takes place. However, on this ground the marriage cannot be dissolved. She has to bring it under the grounds for the dissolution of marriage provided under the Hindu Marriage Act, 1955 otherwise dissolution of the marriage is not possible. If the marriage was solemnized without her consent or in against her wishes, she still continues to be in the marriage fearing society or because of parental pressure. But in under Muslim law, if there is no free consent, then there is no marriage. If the marriage has taken place against his or her wishes, the marriage will be void. Property Rights of Women This provision is not available to Hindu women. Though in divorce is recognized under all the personal laws only a woman who has her own income or who has be wealthy parents to the support can opt for it. The laws relating to the maintenance of a divorced woman and her children are not strong enough to the give protection for her.

2.2 PROPERTY RIGHTS OF WOMEN

There were different schools of the Hindu law prior to codification. Under these schools of law only coparceners are the owners of the joint family property. In Women could not be a coparcener and hence had no property rights. It was in 1937, the Hindu Women’s Right to Property Act was passed. It conferred property rights to the women. But

² SHYAMA CHARAN SARKAR, VYAVASTHA CHANDRIKA 480 (1883).

³ The Hindu Marriage Act, 1955, S 5.

⁴ Id. S 12(1).



it did not give her absolute right over the property. In 1956, The Hindu Succession Act was passed. It gave property rights to the women. In Mother, wife and daughter were made Class-I heirs. The concept of the coparcenary in that only a son can be the coparcener and daughter cannot be a coparcener did not in change. Even after passing of the Hindu succession Act, 1956, women were not kept in par with their male counterparts. But the Hindu Succession (Amendment) Act, 2005 has made a drastic change. Now the daughter has the same rights in the coparcenary property as that of a son.⁵ But in even after this amendment, there is every possibility that the women can be in deprived of the property rights. Because in the male dominated society, it is believed that only sons are entitled to the property. The male coparcener who has the power in dispose of his property by the executing the will in Matrimonial Property⁶ may be dispose of the property in the favor of his sons, to avoid the property going to his daughter. Without keeping the check on the testamentary capacity of Hindu male, the Hindu succession Amendment Act, 2005 may not serve its true purpose

2.3 MATRIMONIAL PROPERTY

In matrimonial property it is an unwritten rule in the Indian society that taking care of the household and the children is only the duty of women. A man is able to earn the money only with the support given by his wife. Only when she takes care of the household and children so he is able to concentrate on the economic growth. But this contribution of the wife is never taken into the consideration. Whatever the property is purchased only by

the couple, by in their common effort, that is generally purchased in the name of the husband only. Then that property belongs only to the husband. If for any some reason, the marriage breaks, then she has to ask her husband for the maintenance. In India we don't have any law relating to matrimonial property as it exists in foreign legal systems, where the interests of the women are protected.

2.4 LAW OF ADOPTION

In the Shastric Hindu Law of adoption differed from one school to the another. But in the Hindu Adoption and the Maintenance Act, 1956 introduced uniformity in the law of adoption among the Hindus. Under the Shastric Hindu Law, a Hindu woman was permitted to adopt a child only under in rare circumstances. Her right to adopt a child was very limited. Though under the Hindu Adoption and Maintenance Act, 1956 the right of a woman to adopt a child is recognized, discrimination against the woman continues. According to the Hindu Adoption and Maintenance Act, 1956, a married man can be adopt but in a married woman cannot adopt⁷ during the subsistence of the marriage. Now in this disparity has been removed by the⁸ Personal Laws Amendment Act, 2010.

2.5 MAINTENANCE LAW

There is no way to ensure in that the husband will be regularly make payments. As neither the police nor such authority will come to the deserted wife's help. She will in such cases have to go to the court again, which is never an easy way out for the woman. In India,

⁵ The Hindu Succession (Amendment) Act, 2005, S. 6.

⁶ The Hindu Succession Act, 1956, S.6

⁷ The Hindu Adoption and Maintenance Act, 1956, S.8.

⁸ The Personal Laws Amendment Act, 2010, S. 8.



majority of the women hardly to get the maintenance to live in a better life further.

CHAPTER 3 WOMEN IN MUSLIM LAW

3.1 MARRIAGE AND DIVORCE LAWS

A Muslim marriage called nikah is not a sacrament but a civil contract made for the purpose of procreation. Consent of the bride and the bridegroom is the basis of this contract⁹. So, if the parties are adults, then their free consent is essential for a valid marriage and nobody else's consent is required¹⁰. If there is no free consent, then there is no marriage. In case of minor or person of unsound mind consent can be given by guardian. In such cases the minor on attaining majority can either ratify the marriage or repudiate the marriage. It is called option of puberty. So, a girl cannot be forced into marriage. Even if she is forced into it, it is not valid marriage. She can exercise the option of puberty and dissolve the marriage¹¹. This legal provision seems to be in favour of women giving her right to decide about her marriage. But she can exercise the option of puberty, only when she can support herself or where somebody is there to support her. Under the Muslim Law, the law of the maintenance of women after dissolution of marriage is not in the favour of women. A Muslim divorced wife can get maintenance from her husband only during the period of idaat¹². After that, if she is not able to maintain her then her children, her parents, and her other relatives who will inherit her property on her death that has the liability to maintain her. If no one is in the position to maintain her, then in the court she

may order the State Wakf Board to maintain her. Like other 'divorced wives' who are governed by other personal laws in a Muslim divorced wife cannot get maintenance from her husband under the criminal Procedure Code. Only when she and her husband agree to be governed by the provisions of Criminal Procedure Code, 1973 relating to the maintenance if they can get relief under the Criminal Procedure Code, 1973. Also under Muslim law unrestricted powers are given to the Muslim husband to the dissolve the marriage. But, in a Muslim woman has no such rights. She can dissolve her marriage only in the according to the provisions of the Dissolution of Muslim Marriage Act, 1939. Hence in the grounds available are limited and the same constraint follows. A Muslim woman can opt for the divorce only in when she can support herself or somebody is there to support her.

Under the Muslim Law a Muslim husband is to permitted to have four wives at a time. Quran says: 'Marry of the women, who seem good to you, two or three or four, if you fear that you cannot do that justice to so many, then one only. But in a Muslim woman can have only one husband. If she contracts a second marriage during in the subsistence of the first marriage, then the second marriage is void. She can be punished for the bigamy under the Indian Penal Code, 1860. A Muslim man can marry a Muslim girl, a Christian or a Jewish girl. But in a Muslim girl can marry only a Muslim man. If she marries a Hindu, Jew or a Christian man, then that marriage is void.

⁹Amina v. Hassan Koya, (2003) 6 S.C.C. 93..

¹⁰ The Fatwai Alamgiri, I 405; The Hedaya, 95.

¹¹ The Dissolution of Muslim Marriage Act, 1939, S 2.

¹² The Muslim Women (Protection of Rights on Divorce) Act, 1986, S. 2(b)



3.2 PROPERTY RIGHTS OF MUSLIM WOMEN

In property rights of Muslim women Till the passing of the Shariat Act, 1937 the Muslims in India were governed by customary laws which were highly unjust and were against the women. After in the Shariat Act, 1937 Muslims in India came to be governed in their personal matters, including the property rights, by the Muslim personal law. But this did not make any major changes in the property rights of women. Under the Muslim law, men and women have equal right of inheritance. If a Muslim male dies, and his heirs include the both male and female, both will inherit the property simultaneously. But the man's share of the inheritance is double that of a woman in the same degree of the relationship to the deceased. The quantum of the property inherited by the female heir is half of the property given to the male of the equal status. It is a manifest sample of the unequal treatment of women under Muslim law.

3.3 MAINTENANCE

In the matter of the maintenance the divorced Muslim wife is not required to be maintained beyond in the 'Iddat' period. A divorced woman is legally entitled only to her mehr and maintenance for the duration of the iddat period settlement. In *Khurshid Khan v. Husnabanu Mahimood Shaikh*¹³, in case it was observed by the Court that "the divorced wife is entitled to mehr and that it is in accordance with the law for the duration of iddat period settlement. A widow woman is also not liable to get maintenance from the in-laws. If the women is divorced by her husband, cannot remarry him, till she is married another person and has a sexual

intercourse with him and thereafter he divorces ¹⁴her." In the case of *Mohd Ahmed Khan v. Shah Bano Begum*¹⁵, in the court it was held that divorced Muslim women had the right to maintenance even after the iddat period was over.

3.4 RIGHT OF CONSENT OF MARRIAGE

A woman has no rights, not even in the selection of her husband and determination of her own destiny. She cannot even show her desire to get married to a particular person as she is considered inferior to the man. Whatever her family decides for her is considered as the supreme value.

The aim of marriage: The inclination of the marriage is towards the males. The purpose of the marriages is to give comfort and pleasure to the man, to intercept debauchery, rapes and to produce children. It is an evident that women are to be treated as the objects used at the whims and fancies of men.

Mahr: Marriage is like a contract in the Muslim personal law. At the time of the marriage mahr (which is considered as a gift) is given from the girl's side and there is no such rule for the boy's side. There is an undoubtedly a gender disparity in the existence here.

3.5 POLYGAMY

In Islam, the polygamy is a very contentious issue. A Muslim man may marry number of wives but not exceeding four but in a Muslim woman can marry only one husband and if she marries another husband, she is liable for bigamy under Section 494 of

¹³ 1976 Cri. L.J. 1584

¹⁴ Ibid

¹⁵ AIR 1985 SC 945(1985) 2 SCC 556



IPC¹⁶ and the offspring of such a marriage is illegitimate. Under Section 494 states the “Marrying again during lifetime of the husband or wife. Whoever, having the husband or wife living, marries in any case of which such marriage is void by the reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for the term which may extend to seven years, and shall also be liable to fine¹⁷.”

CHAPTER 4 LAWS PROTECTING WOMEN FROM GENDER DISCRIMINATION

4.1 GENDER EQUALITY AND THE INDIAN CONSTITUTION

In Religion functions, often simultaneously, on the different levels: as faith, as the vehicle for the social custom, as a mobilizing force in national and international political arenas, and as a medium of individual and collective identity. In order to assess in the significance of the religious law or the practice within a particular belief system, and its effects on the women's equality, the religious law or the practice must be viewed in the context of the prevailing political, social and the economic structures.

The genius of the Indian Constitution is its secular ambiguity-its unique feature of honouring religious sensitivities in a diverse religious scenario.

In Article 25 of the Indian Constitution provides that all persons are equally entitled

to the freedom of conscience and the right freely to profess, practice and propagate religion.

In Article 29 provides for the protection of the interests of minorities and their right to conservation of a distinct language, script or the culture.

CONSTITUTIONAL PROVISIONS IN INDIA

The Constitution not only grants equality to women, Within the framework of a democratic polity, our laws, development policies, Plans and programmes have aimed at women's advancement in different spheres. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993 Part III of the constitution deals with fundamental rights. They are human rights i.e. the inherent entitlement of every man, woman and child by the virtue of being human beings and have been made enforceable as constitutional or fundamental rights in India.

- ❖ Article 14 provides for equality. “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”
- ❖ Article 15 specifically prohibits discrimination on the ground of sex.
- ❖ Article 15 (1) The State shall not discriminate against any citizen on grounds

¹⁶ The Indian Penal Code, 45 of 1860, 1860, Section 494.

¹⁷ See Vrinda Narain, Women's Rights and the Accommodation of "Difference: "Muslim Women in India, 8 S. CAL. REV. L. & WOMEN'S STUD. 43,

62 (1999) ("One objection raised by the Muslim community to the enactment of a [uniform civil code] is the fear that it would be influenced by a Hindu perspective presented as neutral and secular, and this fear must be addressed.") Accessed 29/10/ 2020



only of religion, race, caste, sex, place of birth or any of them.

❖ Article.15(3) Nothing in this Article shall prevent the state from making any special provision for women and children. Article 16 provides for equality Art. 16 (1) provides there shall be equality of opportunity for all citizens in matters relating to employment and Art.16(2) provides there shall be no discrimination on the basis of sex in respect of any employment or office under the state. Under Article 21 provides for right to life which includes right to live with dignity

❖ Article 44 directs the State to secure for citizens a Uniform Civil Code applicable throughout the territory of India so as to have the uniformity in the civil laws relating to family life

❖ In Article 39(a) emphasis that the citizens men and women equally, have the right to an adequate means of livelihood, in Article 39(d) it says that the state should secure equal pay for equal work for both men and women and in Article 34 it provides that the state shall make provision for securing just and humane for work and for maternity relief. The 73rd and 74th Amendments of Indian Constitution in 1993 are the milestone in the history of India, which provides lot of powers for the local bodies. It paves the way for the decentralisation, empowers the poor people as well as women.

4.2 Discriminatory Laws in India

In Existing Discriminatory Provisions the Section 8 to 13 deals with rules regarding Hindu males whereas S.14 to 16 lay down rules regarding Hindu females .Following is the gender discrimination that follows:

1. The presence of different rules for succession is in itself a contradiction to

equality under Article 14 of Indian constitution.

2. According to S.15 (1) of Hindu succession Act, the property of a Hindu female intestate devolves firstly upon sons, daughters and husband. In case of males, mother of the intestate categorised as Class I heir, inherits equally with the children and wife of the deceased son. The Presence of children and husband excludes mother from inheriting property of her daughter.

3. According to Section.15 (2), in the absence of children or children of predeceased child, the property would devolve upon her father's heirs or husband's heirs based on the source of acquisition i.e. if the property is acquired from her parents then the father's heirs possess the right to inherit the property and if the property is acquired from her husband or her father-in law, the property would devolve upon the heirs of the husband.

4. The property of a Hindu woman dying intestate will devolve first upon her children and husband. And after that, upon the heirs of her husband, before her own family. In case of self acquired property, S.15(1)(b) puts heirs of the husband ahead of her father's heirs as in (1)(d) and mother's heirs as in (1)(e).

In case of self acquired property, S.15(1)(b) puts heirs of the husband ahead of her father's heirs as in (1)(d) and the mother's heirs as in (1)(e). Thus, there is a possibility that her in laws might inherit over her own parents.

When the wife was thrown out of the matrimonial home after unfortunate death of her husband by her in-laws, she acquired considerable wealth through her job and lived along with her parents. Later she died



intestate. Her mother and her in-laws filed for the grant of a succession certificate under Section 372, Indian Succession Act. The Supreme Court held that in case the intestate woman dies issueless, the heirs of her husband would be given preference over her parents.

4.3 SOLUTION FOR GENDER DISCRIMINATION

1. Various movements, programmes are being carried out by the Government, voluntary organizations and by lot of social activities for women's development and against the gender discrimination. In some cases India's jurisprudence had some areas been quite progressive with regard to women's rights, this has not been the case in the area of personal laws. Even when the judges decide in a manner that is ultimately favourable for the women concerned (in cases such as *Shah Bano* or *Danial Latifi*), the courts usually do not ground their decision on sex equality¹⁸.

2. Education

The Education develops the skills, imparts knowledge, changes in the attitude and improves the self confidence. It provides an employment opportunity and increases income. Hence educating women is the prime factor to the combat gender discriminate and for the up liftment of the women. Not only the female, the society must be educated to give all equal right for the female

3. Employment

In Employment gives the income and it improves in the economic position of the women. Employed women are given importance by the family members. Employment gives in the economic independence for the women.

4. Economic Independence

In India, mostly, women in the young age in depends her father, in the middle age- she depends on her husband and in the older age depends on her son. The Woman always depends on the somebody for her livelihoods hence, independent in the economical aspects are imperative for the women's development. In Economic independence will free for the women from the slavery position and boost in the self confidence. The Economic independence of the women also helps in the national economic development.

5. Empowerment

In the Empowering women with the help of laws, education and employment will makes the society to accept the women as an equal gender like male. Female also have all the potential and empowering women will help to use all her full capability and the mitigate in the economic dependency of women.

6. Self-confidence

The Self confident due to prolonged in suppressment, Indian women, an especially uneducated and unemployed woman hasn't had in the self-confidence. Women need self confidence to fight against all the atrocities against her and to live self esteemed life. Hence, boosting the morale and self confidence of the women, is the key to eliminate the inferior complex of her.

6. Decision Making

Even in the family as well as in the society the decision making power of women is denied. Mostly males make the importance decision in the family and in the society. This makes women as voice less and destroys herself confidence and she feels less important in the family as well as in the society. So, it to end gender discrimination

¹⁸ *Danial Latifi & Anr v Union of India* AIR 2001 SC 3958



women must empower with decision making power.



4.4 AMENDMENTS AND POLICY MEASURES

In India, the several laws, legislations, policies and institutional reforms have been enacted to carry out the gender action plan for the development of women. Legislation is an important instrument for bringing about a change in the unequal economic and social status in India. In pre-independent India, few laws were passed in response to social demands and on the basis of humanitarian consideration. They are Bengal Sati Regulation Act of 1829 and similar Anti-Sati laws in Madras and Bombay, Hindu Widow Remarriage Act 1856, the Hindu Women's Right to Property Act in 1937, (The Muslim Personal Law) the Shariat Act 1937 and the Dissolution of Muslim Marriages Act 1939.

After the Independence, there have been important changes in legislation and the litigation which have facilitated the increased participation of women in political activities as well as in the socio-economic development activities and the increase appear to be more likely at the lower level than at the highest centres of decision making¹⁹.

➤ **EQUAL REMUNERATION ACT, 1976** This act upholds article 14 of the Constitution, by the way of promoting Equality that is both men and women should be paid equally.

➤ **DOWRY PROHIBITION ACT, 1961** This Act bans Dowry and makes it a punishable offence which is a relief for woes and its family members .

➤ **THE NATIONAL COMMISSION FOR WOMEN ACT, 1990**²⁰ The NCW represents the rights of women in India and provides a voice for their issues and concerns. The National Commission for Women Act aims to improve the status of women and worked for their economic empowerment.

➤ **SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013** This Act aims to prevent, Prohibit and provide Redressal to sexual harassment at workplace.

CHAPTER 5

CONCLUSION

There are adequate legislations in India which not only removes the discrimination against women but also empowers the women. The Constitution itself

¹⁹ <https://indconlawphil.wordpress.com/tag/sex-discrimination/>

²⁰ NCW (National Commission Of Women)



makes room for the discriminatory laws in favour of the women who are considered the weaker sex, disadvantaged and discriminated in the male dominated society.

Gender analysis of family law relating to women reveals a pattern that no matter how much changes has happened, how much developed this nation has been, but still we are subjecting ourselves in the anarchism of one-sided laws. If the statute erases these inequalities, the core power of societal harmony will be broaden as family is the basic seed of society and if we have to maintain the democracy in family law we should remove these chaos, otherwise these inequalities will be raising more and more family dispute and thereby creating disorder in society. In our country from changing the societal and Political system where by which it would help women to progress and grow by the way of which Gender Equality would be upheld along with Gender Equality there should be increased awareness among women about their rights.

SUGGESSTIONS

Suggesting that we have been the existing problems and the rights which women are facing while trying to obtain and use their fundamental rights .There are few suggestions which would help in better implementation of the Rights. A nation or society, without the participation of women cannot achieve development. If we eliminate gender discrimination, women will deliver all the potentials, skills, knowledge to develop the family, the nation and the whole world. There should be Sex education imparted in the schools as it would have a positive effect on the children and would promote Gender Equality as well as reduce the male dominant

mindset bring about a progressive change in the society..

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