

THE MATTERS OF WOMEN: A SOCIO-LEGAL SCENARIO

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Abstract

This paper aims to communicate the stature and standing of women within the Indian society as well as global societies of the previous century. This paper starts off by talking about the history of the progress and becoming of the society, and how the status of women had declined to a depressive low by the time our society reached the modern era, continuing towards the Rights of Women, talking about how women fought for gaining their right to inherit family property and for acquiring self- owned property as well.

Talking about the Indian scenario in particular, for a long period of time, before the British began to rule the country, Indians followed their local customary laws and acted according to family based established norms, however, after the British declared their admiration and dominance over the Indian territory they abolished all the said customary laws in favour of separate religious codes for all religions, making it harder for women to enjoy rights regarding marriage and inheritance of property.

Furthermore, the paper also talks about the standing of women within the society, the family she was born in and goes to upon her marriage. In addition, the paper also talks about the importance of consent of women regarding the decisions of her marriage, the practice of child marriage, the concept of divorce and the social stigma behind it along with the education of the girl child and the importance behind educating the daughters of the family for them to be aware about the flaws within the society and how they can protect themselves from it. Lastly, the paper talks about the rights of women who are unmarried, divorced, widowed or where her husband has been proved to be incompetent, to adopt a child of her own, which is governed by different laws for different religions.

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To protect women in times of war, we must make sure women receive equal rights in times of peace.

- Martti Abtisaari

INTRODUCTION

Since time immemorial we have heard the saying of women being the pride of their house and family, while the children are that family's future who would lead the family's name into a new dawn and bring glory.

If one has studied the subject History, one must know that History, as a subject, is divided into three portions of studies- Ancient History, Medieval History and Modern History.

The same is with our society. If we are to understand the becoming of our society it is imperative to understand the Ancient, Medieval and Modern History of our ever-growing society.

If we look at our society's structure and initial beliefs and philosophy, we would find that there have been texts regarding the steady and healthy progress of our civilization towards the right direction. Every social norm created or legal rule established were based on the needs of the people living within that society, accompanied by a justified reasoning. As backward as one would believe our society to be, we were the first civilisation which massively brought about modernity within the ancient times.

For Example, regarding the social norm established for women where they could not enter the kitchen, temple, or anywhere else while they were on their monthly biological cycle, the reasoning behind that was not related to any godly matters, but in turn for hygiene purposes. So, to save women from the hectic household chores which would only add to their burden, women were asked to rest and not perform in any household or temple rituals.

This, however, along with other established social norms which were unanimously classified as 'Customs' became stagnant and started to become a thorn in the way of the society being further progressed along with time.

In the Medieval Era, our society and culture got mixed with others. Although that made our social structure vast and our society colourful, there were new norms introduced by the heads of each State, so as to 'discipline' the people living within the society, and that norm was to make a Patriarchal social structure, with the head of the family making all decisions which everyone in the family was expected to follow.

The norm of not asking for an explanation from the elders of the family regarding certain customs became a cancerous habit of people, not tolerating anyone who penetrated the established structure and expected all to follow what was asked of them, like they were not part of a family but a mere property owned by the elders.

This trend was supposed to be for the protection of the members of the family from the evil eye of the society, but in reality, that was certainly not the case.

By the time our country got independence and our society was well within its modern era, the degradation of the status of women in our society had stooped to a depressive low. Women and children of every family, regardless of their status, were regarded as the property of the men folk, and were expected to behave in a certain way.

Women were ill-treated to such a level where they started to believe that that it was normal to be treated like this, and if anyone voiced their concern out, rather than supporting that woman, they would coax her into believing that such a behaviour is normal, shushing the anxiety out of the whole situation.

In Vedas, Quran, Bible, and every other religious text, there is a common message which has been laid out since their inception, and that is it is necessary to respect women, as it is the women who bears pain and gives birth to bring a new life into this world. A woman is the pride of her family she took birth in, and a blessing to the family she goes into upon her marriage.

It is clearly mentioned in Hindu Vedas, that the family which does not respect women, can never be successful, prosperous or happy. Every woman is an incarnation of a goddess herself, and disrespecting her, means that family is disrespecting the god himself, as it is the goddess who makes the god whole.

After decades of protesting, coaxing and persuading the society to understand this simple concept which has been established and partially understood since the inception of the society itself, the status of women has finally gotten better.

This situation was not just within our country or our society alone, but all around the world. The scenario regarding the status and standing of a woman within each and every society goes around in a loop. Although the situation has gotten better, it still does not reach up to the standardized mark.

HISTORY OF THE RIGHTS OF WOMEN

Women have a lot of significance and a great amount of impact on the social structure of a family. The human species who comes into this world automatically forms an unbreakable bond with the source of its existence. Children are considered to be the purest form of human species created. Regardless of their gender, children treat all the adults and other family members equally and love them all the same, however, there came a time where upon the birth of a child, they were taught different things and were treated differently, segregating their roles and putting them under a different spotlight based on their gender on the pretext of ‘upholding customary and social norms’ and ‘the honour of the family’.

PROPERTY RIGHTS

From the 1800s, be it the royal family or that of a Popper’s, women did not have rights to any sort of family property and everything under the family’s name would go to the young male adults of the family. This norm was uprightly based off on the basis of the patriarchal policies of the society, where the woman of the family would ultimately get married off to another family and would share the status of her husband and enjoy the assets equally as her husband would. Divorce was looked down upon and was not considered as an option, adultery or a ‘second marriage’ entered into by a man was not commented on by others, but blamed the females for lacking something, and due to all these factors, this social norm came out to be a thistle to the rights of inheriting family property.

Talking about the Indian scenario in particular, for a long period of time, before the British began to rule the country, Indians followed their local customary laws and acted according to family based established norms, however, after the British declared their admiration and dominance over the Indian territory they abolished all the said customary laws in favour of separate religious codes for all religions, making it harder for women to enjoy rights regarding marriage and inheritance of property.

As we know, the history of law in our vast and diverse society starts from the religious texts of different religions residing within the domain of our society. Social and Customary Laws are man-made which drew their inspiration from such texts. It was only after the invasion of the Britishers that the Indian society had to experience a barrel of Western Laws, which not only included British laws but Portuguese Laws as well.

This left an impact on our Constitution even today, as we can see that our Constitution has taken inspiration and some influence of various Constitutions around the world, like the French, British, American, etc.

The Hindu Woman Rights to Property Act, 1937 was the first time where the rights of women to own property was accepted as a solidified law within the society, and then in 1956, after the commencement of the Hindu Succession Act, 1956, the rights of women to inherit family property was further coagulated.

In the Hindu Women's Right to Property Act, 1937, only the widows were considered to inherit the property after the demise of their husband and only if the husband dies intestate (dies without leaving a Will behind)¹ did his widow(s) were given the right to inherit property accordingly.

The devolution of property under this Act has been given in section 3, where it is mentioned that the widow(s) of the late owner would enjoy the property equally, and that they have the right to inherit and enjoy the property or properties (in case there are more than one asset left intestate) equally as the men of the family.

However, considering the fact that a society has been functioning in a particular way and following certain norms and regulations derived from their own religious texts since a very long time, changing the society and the people living with a particular mindset is not easy just because a particular law has been established.

Within the Hindu Succession Act, 1956, inheritance of property self-owned by women was also included ²and addressed which was seen as a milestone in the improvement of the status of women. The new Act of 1956 also divided people of the family in different classes according to the relationship with the deceased, which included women in all categories. Although some people might not believe or might not want to follow the new rules laid down, the fact that these concepts have been solidified into Laws and have been recognised by most, says a lot about the progress of the society. The people are moulding the society as it should be and slowly bringing it towards the right path of progress.

RIGHTS ON MARRIAGE AND DIVORCE

¹ Section 5 of the Hindu Women's Rights to Property, 1937

² Sections 15 and 16 of the Hindu Succession Act, 1956

Marriage, which is also known as Holy Matrimony, is considered as a sacred bond between two individuals. Upon the performance of certain religious rites, the union of the two individuals is considered sacred and legally binding as well. This concept has been believed and followed within all societies and performed by people belonging to various religions around the globe since the beginning of the concept of 'Marriage'.

However, as Holy the union as one might understand it to be, the reality behind the consent of both parties to this union is distant from reality. There was a time where neither of the parties even knew how their partner looked like. The families of both the individuals would just come to an agreement about their 'Marriage' and act as if a liability has been done with.

In previous centuries, Child marriages were considered quite common and were practiced openly. Families would argue that it was important for a girl and her family to have assurance of her having a man and his family behind her as she grows, moreover, it would help her to adjust with the family of her husband well which would ultimately avoid any clashes within the family. This concept however made no legal sense, as the girl who was married off at a young age automatically became a woman with no identity of her own. Having to handle family not of her own blood and descent but that of someone whom she barely knows, who could be of her age if she's lucky or even twice her age if her family decides, ultimately making her lose her identity as an individual human being.

The concept of divorce was seen as a separation of the 'unified couple' into separate rooms or separate parts of the house previously, and even that was frowned upon if anyone found out about it. The concept of Legal and Judicial separation came within the society, specially in our society, quite later on. The mission for normalising the concept of Divorce in India had been a long battle path to cover. The Indian Divorce Act, 1869 was the first Act legalising the concept of Divorce within the society. This Act gave the power to either of the parties to file for an annulment of marriage, having the marriage be treated as Void or Voidable and confirming the Judicial separation of the couple.

The concepts of adultery, bigamy, incompetency, forceful marriage, underage marriage, and lunacy were the grounds for a Divorce which was progress and a revolution in itself within the society.

This right of getting a divorce however did not socially vest with the females of the society, and this concept was applicable to all societies worldwide within the previous century. The idea of

divorce and even re marriage after that was looked down upon to say the least, specially for the women folk. Socially this concept was not accepted, regardless of the provision being legally established, there wasn't much which either of the party could do but exist with each other, while watching their marriage fall apart.

Even if women suffered from domestic violence, dowery related violence from her husband and in-laws or suffered due to her husband having extra marital affairs, was incompetent or lunatic, women had to keep everything to themselves and deal with all the atrocities as they had nowhere to go and no one to turn to, having the family and society she took birth in turning their backs on her. One of the main reasons for the silent suffering of women were their lack of education.

Women were, and in some families still are, considered as in house property of the family- for the one she took birth in and for the one she got married into. It wasn't considered necessary to educate girls as it was apparently a given factor that women were born to be married off, bare children, raise them along with her husband and serve the family until the last min of her life. The family also considered it unnecessary as they considered that upon educating women, they'll carve a path of their own, and considering they were considered, in the name of 'pride', the property of the family that was certainly not acceptable.

When people started to understand the value of educating women and made them go to schools and colleges, it became near impossible to take them seriously, as by nature women were mistreated as being incompetent and weak, so taking their suggestions and point of views into consideration came out as a very big task for the society.

In today's time, there are various laws for people belonging to different religious communities which govern the concept of divorce and how women have the right to issue the beginning of the proceedings if they are not being treated with the respect they deserve, or if the marriage as such has failed without any scope of repair.

The benefit of educating the girl child however, did not come handy when it came to using the education for herself and her protection. Even an educated family did not have any regard for the law or their educated daughter in-law, treating her how they please, proving social male supremacy. Astonishing as it maybe, the concept of divorce is still considered as a social taboo and is vastly frowned upon, nit-picking at the female who even wishes to seek a Judicial separation. The fact that people still believe in the fact that once a couple is married or tied in 'Holy Matrimony' and cannot separate themselves just by signing a piece of paper is still very

much stuck on the surface and is proving hard to be removed. For a woman to seek divorce, she needs to take all factors into consideration, such as, the future of her children, if she has any, her family's reputation along with her own. It is very easy to preach about putting oneself and going to the authorities, implementation of the same, however, always proves to be difficult.

Although these factors are present and are a constant, the society is ever changing and evolving with time. The West considered Judicial Separation as normal quite a while back, and as far as our society is concerned, with the rising rate of understanding and educating the girl child, the understanding of the society regarding human relationships and treating every individual as they should be, regardless of their gender and roles within the family, this concept of Divorce is slowly being normalised instead of it being viewed as a forbidden act.

ADOPTION BY WOMEN

The concept of 'Adoption' by a single woman is a very controversial topic which is till date not understood by some and considered as unconventional by many.

In this Patriarchal society, the fact that an unmarried, widowed or a divorced woman could adopt a child and name the child after her has not had a kind view of the society in general. According to a general opinion which is widely accepted by the people of all communities, is that every child needs both the parents, a Mother for her care and a Father who can protect. This ideology in today's world, however, does not seem relevant to today's generation.

Women are now treated as their own person, with their own individual identity, they are furthermore, not forced to take on their husband's name upon their marriage, although the child born within the wedlock would take their Father's last name, women aren't bound to be known as someone else entirely. Having the right to their own person, women began protesting and demanding the right to become a single parent by adoption, a practice which wasn't widely accepted but they openly challenged.

Now-a-days, the society is evolving and the concept of accepting the concept of adoption by single parents is being seen in a new light. Due to the rising global population, people are wanting to adopt and nurture a child who is already in this world rather than having biological children of their own. Some people, who are quite self-aware of their own sexuality and do not want to get married and are normalising the concept of adopting a child and becoming a parent. People are starting to accept that bearing a child of one's own bloodline is not necessary to become a parent, and even an adopted child can be loved as their own as well.

There are different laws governing the rules for adoption for people belonging to different religions.

The Laws for Adoption for Hindus³ is laid down within the 'Hindus Adoption and Maintenance Act, 1956'. The Act allows any Female⁴, regardless of her being unmarried, divorced, widowed or her husband has been proved to be incompetent, to adopt a child of her own, considering she should herself be of sound mind and body and should not be a minor (being below the age of 18years).

There aren't any particular Laws or rules governing the adoption of children for the Muslim community as they do not recognise full adoption. However, religious neutral laws such as the Juvenile Justice Act, 2000 allows Muslims to adopt a child as their own, regardless of the religion that child had been born into. Also, according to the Guardians and Ward Act, 1890, a person can legally take that minor child's guardianship.⁵

The same scenario is with the Christian and Parsi communities. Although they don't recognise full adoption, they can take children under their foster care. They can take a child's legal guardianship or adopt the child according to the Acts mentioned previously- The Guardians and Ward Act, 1890 and Juvenile Justice Act, 2000.

CONCLUSION

Although the women folk of the world have always been on the receiving end of the lash, being targeted and mistreated since a very long time, we have seen that progress and development of the society and the status and standing of women alongside have improved drastically. Although there are still some people who don't understand or don't want to adapt to the progress visible within the society, women are slowly but surely heading towards their goal of having an equal status and an equal standing within the society. With the ever-changing nature and acceptance of new practices and characteristics, the society is finally on the right path to development and innovation, taking the stature of women towards improvement.

³ Includes Sikhs, Jains and Buddhists

⁴ Section 8 of the Hindus Adoption and Maintenance Act, 1956

⁵ Section 8 of the Guardians and Ward Act, 1890