A COMPARATIVE STUDY ON EFFECT OF MARRIAGE ON WOMEN’S RIGHTS AND STATUS

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ABSTRACT:

*This chapter proposes to examine the property rights of Hindu and Muslim women in their personal laws. An attempt has also been made to compare the inheritance rights of women in their respective personal laws. The chapter also highlights the drastic reforms brought about in the Hindu women’s right to property by the Hindu Succession (Amendment) Act 2005 that conferred birth right to Hindu women in the Mithakashara joint Hindu family property. The property rights of Muslim women are also analyzed to bring forth the disparity in the property rights of women belonging to Communities.*

**INTRODUCTION**

Though the Indian constitution women identical rights and prospects, and a quantity of liberal laws such as the Equal Remuneration Act proclaim this value, India’s legal arrangement continues to differentiate counter to women. This is most apparent in two areas: the inheritance laws, and divorce and maintenance laws. Public dissertation on removing legal perception against females has concentrated on the claim for a uniform civil code. This claim has as a rule been maintained by Hindu religious frontrunners and intensely opposed by Muslim and Christian religious frontrunners. In actuality, however, nearly all personal laws, be it Hindu, Muslim, or Parsi, differentiate against women.

In mention 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.

**OBJECTIVES:**

1. Study on effect of marriage on women’s rights and status.

2. To know about how actually the constitution provides equality between men and women.

3. To know that what marriage makes in their own life duration after marriage.

**LIMITATIONS**:

1. Lack of secondary sources.

2. Restricted accessibility to primary source of data.

RESEARCH METHODOLOGY:

Type of research:

* Applied research
* Descriptive research

Research method:

Quantitative & Qualitative method

Data collection:

Secondary source of data that includes research papers, journals, books, and Articles.

**Gender Equality: Reforms in Hindu Law**

The history of Hindu Law reform starts with the Hindu Law committee (Rau Committee) set up in 1941. It was followed by second Committee in 1944. The committee finally submitted its report to the Federal Parliament in 1947. The recommendations of the committee were debated in the provincial Parliament. There was strong opposition against the introduction of monogamy, divorce, abolition of coparcener and inheritance to daughters from the orthodox Hindu community. The Congress legislator from West Bengal argued that only women of the lavender, lipstick and vanity bag variety were interested in the Bill. There were also fears among the orthodox Hindu men that if women were given property rights families would breakup. In 1948 there was an All India Anti- Hindu Code Convention. It was argued that the introduction of women’s share would result into disintegration of Hindu family system which had been working as a co-operative system for ages for preservation of family ties and property. It was also pointed out that the inclusion of daughter in the line of inheritance is due to European influence.

Although the top male congress leaders opposed the Bill, Jawaharlal Nehru and Dr.Ambedkar were committed to the Bill. Nehru personally believed in women’s claims to equal property rights. Dr.Ambedkar had to struggle much due to the strong resistance from the citadel of upper caste Hindus. In spite of the initial set back the Congress party could enact four separate Hindu Codes. The most contested area was women’s property rights. As far as the State is concerned unification of Hindu Law was paramount rather than women’s inheritance rights. She said that the hidden agenda was unification of the nation through uniformity in law. Establishing the supremacy of the State over religious institutions was another important consideration. This could be best achieved by re-defining the rights of women.There was strong opposition among the congress itself against conferring inheritance rights to daughters. Consequently the coparcenery system under the

Mitakshara law was left untouched. As a result women were denied rights in the ancestral property of a Hindu Joint Family. Only male members could become coparceners and property devolves on them through survivorship. Women are totally excluded from inheritance. So inequality continued in the matter of property rights even after the commencement of the Constitution. The daughters had equal rights only in the separate or self acquired property of their father. However the father can easily disinherit a daughter by executing a Will. Section 30 of The Hindu Succession Act 1956 provides that any Hindu may dispose of by Will or other testamentary disposition any property which is capable of being so disposed of by him in accordance with the provisions of the Indian Succession Act 192534. Wills were wholly unknown to Hindu Law according to Mayne. He says that there was no name for them in Sanskrit or vernacular language. He is of the opinion that Wills were brought to India during the Mughal rule and later by the westerners35. So the English concept of testamentary succession found its way into Hindu Succession Act 1956 by making section 57 of The Indian Succession Act 1925 to Hindus also.

**State Amendments to Hindu Succession Act 1956**

Meanwhile some States took the progressive step to confer birth right to Hindu women in the joint Family property. The Constitution permits Central and State Governments to enact laws on matters of succession and hence the States can enact their own variations of property laws within each Personal law. It is worth mentioning the land mark amendments made by five southern States in India56, namely Kerala, Andhra Pradesh, Tamilnadu, Maharashtra and Karnataka. As per the law of these States except Kerala, in a joint family governed by Mitakshara law the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as son. The Andhra Pradesh Hindu Succession (Amendment) Act 1986 thus raised the status of a daughter to that of a coparcener in a Mitakhara Coparcener. This has been eloquently reflected in its Preamble itself where it is stated that the Constitution of India has proclaimed equality before law as a fundamental right; whereas the exclusion of the daughter from participation in coparcener’s ownership merely by reason of her sex is contrary there to.

**Inheritance Rights of Muslim Women under the Muslim Personal Law**

Muslim women rights have been a topic of discussion ever since the Constitution came into force in 1950. Islamic law (Shariah) is considered by many as patriarchal and oppressive to women. However the Quran has addressed women’s issues fourteen hundred years ago by creating some reforms to improve the status of women though these reforms do not seem to be practiced in Muslim society today. Though Islam as revealed to the prophet Mohammed is not oppressive to women its interpretation enacted in the family law, and every day living is patriarchal. In fact the oppression of Muslim women is due to the conservative readings of Shariat which also include gender discriminating customary norms that are presented as god’s immutable words. Muslim feminists trace the source of women’s oppression to the same Shariah laws which interpret the divine laws wrongly.

Further Islamic law is saturated with pro-patriarchal interpretations. Although the status of women improved during the time of the prophet it was only short lived Muslim masses do not look beyond Islam and they view it as complete way of life. The law of Divorce has become a tool in the hands of the husbands to oppress the Muslim women. The Muslim scholars are of the opinion that the Muslim Personal law as practiced under the Shariat Act had brought untold miseries to Muslims women and if Allah appears in person, he would roll his head in shame over the plight of Muslim women.

The Constitution of India the spine of all nationwide laws preserved within it the very significant code of justice, liberty, equality and fraternity for all people of the nation. This central law of our land guarantees the self-respect of persons regardless of their gender, religion or place of birth. While making the Constitution, the makers were well conscious of the several unfair practices and dominance of women’s rights by the male-controlled society. Therefore some general as well as explicit provisions were integrated for the safety and development of the females. Thus Article 15(3) proclaims that nothing in this article shall prevent the state from making any special provision for women and children.

The courts have also supported the legitimacy of many distinctive laws backing the welfare of females. But in the situation of Muslim female the law is to be principally verified on the standard of Muslim personal law. Therefore there are child marriages, one-sided annulment (Talaq) and polygamy in the Muslim communal. The Muslim female gets maintenance lone up to the iddat time-period and they are left out from the protection of Section 125 of CRPC. Therefore the Muslim females get neither the security from the State nor are they secured by their personal extremely male-controlled personal law.

Whereas the Christian and Muslim females are till now being ruled by their Canon and Islamic Laws, the advancement of Hindu females after freedom was so speedy that they attained complete gender parity in the issue of property rights. The property rights of females of other religions are uneven and partial. Hindus, Sikhs, Buddhists and Jain are ruled by one code; Muslims do not have a codified law regulating property rights.

**Property Rights of Muslim Women under the Customary Law**

In pre-Islamic Arabia the law of heirloom was grounded on comradeship-in arms and henceforth even wife and children were left out from legacy. In datum the law of heirloom was built on the values of agnatic liking and barring of females. Thus a daughter or a sister or daughter’s son or sister’s son could not succeed to the property.30 It is apparent from this that earlier to the arrival of Islam females were not only dispossessed of their right to legacy but their very fate was in the influence of her husband’s band or with her relatives. In the pre-Islamic culture males relished superior hand over women in issues related to legacy.

When a man lost his life, his successor would assert the right over the widow and weds her. Subsequently after marriage, he rejects her right to assert the part of legacy instituted by the dowry. He can also take the wedding gift and request another man to marry her. Furthermore, fatherless children certainly not received; instead they were ill-treated and not observed after well and young girls would turn into victims of sexual abuse. But the prophet completely transformed the pre-Islamic law of legacy without repealing all the customs of the pre-Islamic Arabia. He reserved in their unique practice many Arabian customs which did not clash with the elementary beliefs of Islam. The prophet detached some economic and social ills then prevailing.

For example, in pre-Islamic Arabia, females had no right to heirloom. So Islam made husband or wife a successor. Women and cognates were made capable to receive. Parents and ascendants were assumed the right to receive even when there were male offspring. As a broad rule women were allowed one half the share of a woman. Thus Islam gave a portion to females who were deprived of a portion in pre-Islamic Arabia. The pre-Islamic Arabs were in contrast to the legacy to woman because of her softness. She is not accomplished of doing actions of resistance and courage. Hence the distant males of the family innate the property. When Habit, the well-known poet of the Arabs expired leaving after him a wife and few daughters, the sons of his uncles detained all his property and saved nothing for his wife and daughters. The widow protested to the prophet. Then the prophet narrated to them the verse that was discovered to him. So Quran generated legacy rights for women at phase when no such rights were present. The daughter acquires half the portion of the brother.

Though Islam approved female the right to legacy, her portion is by no means reasonable and equivalent to that assumed to men. The brother takes double his sister’s portion.

This has been looked upon as discrimination against women. The woman is given a lesser share because Quran has assured inheritance to women not only as daughters but also as mothers and wives. Moreover, in Islam the husband had to take care of his wife even if she is wealthy enough to maintain herself. Legally she is entitled to claim maintenance. At the same time she is not obligated to spend any of her wealth on the household.

Again at the time of marriage, the Muslim women receive Mehar which she is free to use, spend or invest it in any way she likes. Therefore as a wife she adds to whatever she receives through inheritance in her capacity as daughter and that she does not have to support either herself or her children. Therefore the position of a Muslim woman is secure as far as inheritance is concerned. Their financial situation is completely guaranteed by the Islamic law.

All the key Islamic legal materials generally support women’s right to acquire, hold, use, administer and dispose of property. A Muslim woman possesses independent legal, economic and spiritual identity and independence. The Quran notes that women shall be legally entitled to their share and that to men is allotted what they earn, and to woman what they earn. Only if women choose to transfer their property can men regard it as lawfully theirs. The Islamic laws supporting property rights of women are drawn from a variety of fields such as marriage, dower, inheritance and maintenance.

**SUGGESTIONS:**

* Government should work to develop some comprehensive human rights education programme.
* To raise awareness among women of their human rights and raise awareness among others of the human rights of women.
* Laws must be drafted in a way that there is no ambiguity.
* Awareness must be created among women about the laws related to them.
* National Commission for Women (NCW) must be consulted before the law is finalized.
* It is also very essential to change the mindset of the people of the society to maintain a healthy environment in the society.

CONCLUSION:

The Hindu Succession Act of 1956 was envisioned to expand the rights of Hindu women. Though the Act has condensed some gender disparities, many till now continue. Under Hindu law, sons have an autonomous share in the family property. However, daughters‟ portions are grounded on the share got by their father. Hence, a father can efficiently disown a daughter by relinquishing his share of the family property, but the son will remain to have a portion in his personal right. Moreover, married daughters, even those fronting marital nuisance, have no domestic rights in the family home.

Though laws themselves have not been gender-equitable, even the weak rules protecting females have not been sufficiently applied. Consequently, in exercise females continue to have little entrance to land and property, a chief source of revenue and continuing economic safety. Even when the state deliberates rights on the underprivileged by land reform, the ownership to the land is consistently in the designation of the male head and is hardly held together with his spouse. And authoritative farmer lobbies in north India have in recent times wanted to deprive females of minimal property rights. Great amount of females continue to be oblivious of their rights of inheritance; and, where informed, social powers prevent women from challenging these rights. Females themselves frequently repel variations in inheritance arrangements, with two of three females being apparently against girls getting an equal portion with boys in parental belongings

By customary definition, the family properties are those assets attained from father or paternal grandfather or paternal great-grandfather or portion attained on partition or self-attained properties or distinct properties of a person thrown into the combined family properties. In the Indian Succession Act, 1925, which is also pertinent to Hindus, both men and women have unobstructed right of testamentary character, while the Muslim Law confines the said right to only 1/3rd of the domain after reducing funeral expenditures and arrears.

The Law Commission has been trusted with the duty of reviewing the Central Acts to streamline them and to eliminate irregularities, vagueness and discrimination. From July 2005 the new Act has come into power and the daughter is allocated the same portion as is allocated to a son. The daughter shall have a right to assert partition in the joint household properties in addition to the right to assert right of partition in the residence house of the joint family and she shall also have a right to assert partition during the lifespan of her father. This opportunity is only given to Hindu females. The laws pertinent to Muslims & Christians do not give equivalent position to females.

When the constitution of India and the laws recently enacted are in approval of giving equal position to the females, the females are concerned in asking for lesser than what they are eligible for and they are trying to apply the Women’s Bill where they shall have only 33% right.

Both Hindu and Muslim personal laws do not recognize marital property. Hence, at the period of divorce, females have no rights to their household or to other assets gathered during marriage; in consequence, their assistances to the maintenance of the household and gathering of family assets go unrecognized and unrewarded.