

# FAMILY LAW REFORMS IN INDIA- CRITICAL APPRAISAL

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## INTRODUCTION

The law and social transformation form essence of progressive societies where sometimes law changes the society and sometimes customs are acknowledged by law. According to Justice Bhagwati the progress of a society is dependent on proper application of law according to needs of society. Reforms through enactments itself cannot solve the problem of inequality unless the law is applied and interpreted correctly. There has been social reforms in family law during past years and process is still going on but how far we are successful in fulfilling our goal is quite debateable issue which need to be addressed. Constitution grants equality to woman and empowers the State to adopt measures to ensure gender equality and state has passed many laws in family matters to uphold dignity of both sexes in society. Although reformed personal laws are considered to be most ideal pieces of legislations to glorify her dignity but when we analyze the statutes enacted, several discriminatory aspects of the personal laws came up for judicial scrutiny under the constitutional mandate of equality and non-discrimination.<sup>1</sup> Swami Vivekananda had rightly remarked “Just as a bird could not fly with one wing; a nation would not march forward if the women are left behind.”

Awakening of the collective consciousness is the need of the day. Laws written in black and white are not enough. This responsibility has to be shared by the State, community organizations, law framers and the judiciary in order to give true meaning to spirit of the preamble of the Constitution. Despite constitutional safeguards, statutory provisions and plethora of pronouncements to support the cause of equality of women, changes in social attitudes and institutions have not significantly taken place at many areas. Thus It is necessary to accelerate this process of change by deliberate and planned efforts so that gender inequality may be completely eradicated to give a stimulus to the legal reform.<sup>2</sup>

## Historical Perspective

### Vedic and Post Vedic Developments in Family Matters

<sup>1</sup> :Shrinivas Gupta, "Sexual Harassment of Women at Work Place in India and Abroad, 24 (2000)

<sup>2</sup> Ahuja, Violence against women, Rawat publications, Jaipur and New Delhi (1998), p.153

Vedic period is termed as period of feminine glory. The woman enjoyed a position of honour, respect and equality during this period. She was entitled to participate in all the religious ceremonies along with her husband, and certain religious ceremonies performed by the husband in the absence of his wife were not considered as valid. During the post Vedic period the respectable position enjoyed by the women in the family began to decline and the position of women in the matrimonial home was not satisfactory. During Smriti period the status of women was adversely affected by the influence of later Vedic literature through religious injunctions. The Mughal period restricted their freedom of movement through Purdah system. Polygamy, Sati, Child marriage, female foeticide, devadasi system and domestic violence was very common.

### **Period of Social Transformation (Pre Independent & Post Independent Period)**

During the British reign, the condition of women started improving. Hindu Widow Remarriage Act, 1856 legalised remarriage of Hindu widows. The Child Marriage Restraint Act was passed in 1929 which prohibited child marriage. Hindu Women Right to property Act gave certain rights to widow to inherit husbands property as limited owner. Dissolution of Muslim Marriage Act, 1939 gave Muslim wife the right to divorce her husband which was denied to her earlier. Such legislations curbed social evils to a larger extent to improve the status of women<sup>3</sup>.

### **Legal Changes in Family Law in India After Independence**

Constitution is the most significant touchstone for determining the scope of women's rights in the post independence Period. The Preamble of our Constitution is a key to promote gender justice. It declares the rights and freedoms of the people of India by incorporating the words "WE, THE PEOPLE OF INDIA....." which includes men and women both. Indian Constitution aims to promote "dignity of individuals" including the dignity of women in its preamble itself and safeguarding her rights under article 14 and 21 which are key articles for rendering gender justice<sup>4</sup>. An active social and legal reform movement is need of the hour. Although the reformed family laws are projected as the ideal piece of legislations which liberated Hindu women in many respects and several customary laws were sacrificed to arrive at uniformity to promote socio-legal justice. An attempt is made to analyze some of the anomalies within the reformed laws in personal laws. Parsi Marriage and Divorce (Amendment) Act, Indian Divorce (Amendment) Act, Special Marriage Act 1954, The Hindu Minority and Guardianship Act 1956; Hindu Marriage Act 1955, Hindu Succession Act 1956 were some of the legislations which were enacted after Independence.

<sup>3</sup> Mamta Rao, Law Relating to women and children, eastend book company, Lucknow

<sup>4</sup> Monica Chawla, Gender Justice, Deep and Deep Publication Pvt. Ltd.

## Nature of Marriage

Marriage is voluntary act which confers marital status of the spouses. Hindus call marriage as sacrament but it is not purely a sacrament because there are provisions for divorce under Hindu Marriage Act. It is not purely a contract because under section 5 of Hindu Marriage Act one of the essential of marriage is 18 and 21 but in case of contravention Hindu Marriage Act is silent whether it is void or voidable<sup>5</sup> marriage but Child Marriage (Amendment Act makes it voidable so Hindu marriage is assemblage of both. Under Muslim law marriage is a contract because it is solemnised with the consent of the spouses but marriageable age is puberty which is 16 years and as such do not comply with the Indian Majority Act. Whereas Christians and Parses recognise it as a contract as per Indian Christian Marriage Act 1872 and Parsi Marriage and Divorce (Amendment ) Act 1988 and all the essentials of marriage fulfils the criteria of contract.<sup>6</sup>

## Divorce

Under Hindu Marriage Act, Parsi Marriage and Divorce Act and Indian Divorce Act adultery, cruelty, desertion, conversion, unsound mind venereal disease, incurable leprosy, renunciation of world, presumption of death and failure to comply with decree of restitution of conjugal rights are grounds of divorce given to both husband and wife but in Muslim law unilateral divorce is recognised to man without assigning any reason to wife. However wife can seek divorce under Dissolution of Muslim marriage Act but she has to prove the grounds of divorce. Apart from the grounds mentioned, a Hindu wife may invoke any of the special grounds, namely, remarriage by husband, husband being guilty of rape, sodomy or bestiality, non resumption of cohabitation by the spouses in spite of a decree for maintenance of wife and option of puberty .These special grounds have been incorporated by the marriage laws (Amendment)Act, 1976 .

## Maintenance

Section 24 of the Hindu Marriage Act makes a provision for grant of Maintenance pendent lite and expenses of proceedings to either spouse and Section 25 contains similar provisions regarding payment of permanent alimony and maintenance. Same provisions are laid down in parsi and Christian law. The Muslims marrying a Muslim have a choice between Muslim Women Act 1986 and Section 125 CR.P.C, but if she chooses under personal laws, she is entitled to maintenance till period of iddat or delivery of child whichever is earlier from her husband and for rest of period if she is not able to maintain herself, parents/relatives/wakf Board is required to pay her. The Code of Criminal Procedure, 1973, a secular code, provides a comprehensive scheme for the maintenance of wife, children and aged parents. The provisions are contained in Sections 125-128, Cr.pc. The

<sup>5</sup> Section 5,12 of Hindu Marriage Act

<sup>6</sup> Mamta Rao, Law Relating to women and children, eastend book company, Lucknow

proceedings under this section are not punitive but of a civil nature<sup>7</sup>. This section is a measure of social justice and falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of, the Constitution of India<sup>8</sup>. In Shah Bano case<sup>9</sup> the Supreme Court has clearly explained the rationale behind Section 125, CrPC to make provision for maintenance to be paid to a divorced Muslim wife and this is clearly to avoid vagrancy or destitution on the part of a Muslim woman<sup>10</sup>.

### **Inheritance**

The Hindu Succession Act enacted in 1956 was the first law to provide a comprehensive and uniform system of inheritance among Hindus and to address gender inequalities in the area of inheritance. Section 14 of the Hindu Succession Act removed the disability of a female to acquire and hold property as an absolute owner, and converted limited estate into absolute ownership. In the case of V. Tulasamma & Ors. versus V. Sessa Reddi<sup>11</sup>, the Supreme Court of India clearly laid down the scope and ambit of Sections 14(1) and (2) of the Hindu Succession Act, in which a fine distinction was made by the court recognizing the woman's right to property through her pre-existing right to be maintained. Hindu Succession (Amendment) Act, 2005 has totally changed the concept of Mitakshara coparcenary because the daughter has been treated like a son under the Hindu Succession Amendment Act of 2005. She becomes entitled to a share in coparcenary by birth. She by birth becomes a coparcener in her own right in the same manner as the son.

### **Conclusion and Suggestions**

Despite constitutional safeguards, statutory provisions and so many judicial decisions for gender justice, there is not much change in social attitudes and institutions significantly. This reflects that laws written in black and white are not enough. Awakening of the collective consciousness is the need of the day. No doubt Indian Judiciary is playing a significant role to uphold the dignity and worth of Indian women. It has expanded the horizons of human rights jurisprudence. This responsibility has to be shared by the State, community organizations, legislators who frame the laws and the judiciary which interprets the Constitution to make effective legal reform in the field of gender.

<sup>7</sup> Nanak Chand v. Chandra Kishore, (1969) 3 SCC 802: 1970 SCC (Cri) 127.

<sup>8</sup> Captain Ramesh Chander v. Veena Kaushal, 1979 Cr LJ

<sup>8</sup> (1985) 2 SCC 556.

<sup>6</sup> Ibid.

<sup>8</sup> (1977) 3 SCC 99

<sup>9</sup> Mohd. Ahmed Khan v. Shah Bano Begum (AIR 1985) 2 SCC 556

We have covered long distance but still have to cover more to promote socio economic justice in Toto by giving woman equal rights to that of men. We can fill up the gaps to bring desired transformation. by educating the society, legal community and the by organizing legal-aid camps at the grass-root level . There is need to constitute the Forums at different Levels in Society to implement the laws effectively and lastly one must give up Policy of Religious Appeasement.

