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Hindu women personal law in Indian Constitution

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Abstract - The study of rights of Hindu women was undertaken with a view to finding out their emerging problems and status to enjoy their rights. It has also focused on the role of the state and Indian Courts in improving the legal rights of women in personal matters. The study reveals that Hindu women's rights are not only constrained by a uniform set of patriarchal norms but are also shaped and molded by several social, economic and political currents. Historical exploration was also undertaken to measure the nature and scope of law reforms. After examining and analyzing the issues pertaining to the Hindu women, it is justified to draw the conclusion that the place of women in every community is vital to the well being of the society.

In ancient India during the Vedic period, women were highly educated and perfect scholars of Vedas. Women as daughters, sisters, wives and mothers had an equally honoured place in the family, society and state alike. Like their brothers the girls wore the sacred thread and used to pass through a period of Brahmacharya. After that the Vedic woman carried on the study of Vedas.

The position of Hindu women improved during the British period. Mere traders to begin with, the British did try to improve their image by issuing directions. The British introduced female education in India. Although only a small section of women took advantage of these measures and privileges given, their initiation was indeed significant.

Key Words - Vedas, Brahmanas, Upanishadas, rishikas, brahmavadinis.

Introduction - The Hindu Marriage Act, 1955 makes monogamy the rule both for men and women. The evil custom of polygamy was given a mortal blow. Full equality of sexes can hardly be possible in a legal system which permits polygamy and a social system which tolerates it. Though the institution of Polygamy has prevailed traditionally in India in the last five or more decades, most marriages are today monogamous. A.M. Bhattacharjee said that in respect of the provisions of the then Hindu law (before passing Hindu Marriage Act 1955) which permitted plurality of wives but prohibited plurality of husbands, that is, which prescribed strict monogamy for the women but uncontrolled polygamy for the men, I do not think that there should be any scope for any doubt that the provisions were at once hit and struck down by Article 15 of the constitution.

Discrimination against women in India is prevalent in all fields of life and most women experience some form of disadvantage. They represent half the population of mankind. A family is not happy and strong until the women enacting the important roles of mother, housewife or daughter are themselves not happy. Inequality is a common feature among human beings.¹ Many disabilities have been imposed on women all over the world by the male dominated society. Rampant abuses against women have been excused, ignored or taken for granted.²

Women in Vedic India - Primitive man was just like a species of animal, governed by no fixed laws and with no responsibilities, climatic and other conditions played important

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role for the ascendancy gained by one sex over the other. In the early societies generally the males played an active role while the females played only the passive part. The societies were generally male dominated. However, there are contradictory views regarding the status of women in the ancient period. Before the Vedic period, calculated to be 2500 or 1500 B.C according to different authorities which gave India both Aryan paternalism and its great compilation of learning the Vedas, Brahmanas and Upanishadas, the subcontinent was probably matriarchal. The Mother Goddess was the eternal symbol of life.³ The clan life, in which the mother headed every family, created the Mother Goddess and raised her to the supreme position. Considering the analogy between seed and earth, and male and the female, men are thus dependent upon women, because she is the sole provider of his comforts. Women like earth gave life, sustenance and strength.⁴ Vedic era was the golden era so far as status and the personal freedom of women are concerned. They were given due respect in the family and society.⁵ They were given all types of freedom and rights to act according to their own choice. During that Vedic age the place of a woman in the family was recognised and honoured. The Rig Veda shows that women were fully the equals of men as regards access to and capacity for the highest knowledge, even the knowledge of Absolute or Brahma. The Rig Veda is a product of the highest religious thought, which was a result as contemplation in a life complete asceticism and penance of saints and seers. Expression to the truth had been revealed which were called Suktas. The Rig Veda is made of such suktas and hymns. Though the majority of these hymns were the work of male rishis, the Rig Veda contain hymns which were revealed by women seers also. The latter were called rishikas and brahmavadinis.⁶

Women and Hindu Religious personal law - In the early history of every nation religion came to be closely associated with the growth of law, for the simple reason that men feared God before they gave authority to kings. Divine sanction, rather than kingly edicts, was more powerful in enforcing such laws. That is how the code of Manu came into being. It is a compilation by the priestly class and it is ascribed to a mythical sage, Manu, to give it a religious sanction. The; laws of Shastras imposed many disabilities on women. Manu enunciated the perpetual tutelage in the following terms: Her father protects her in childhood, her husband protects her in youth, and her sons protect her in old age; Woman is never fit for being independent.⁷

Reformation of Law and Hindu Women's Rights:- Jawaharlal Nehru was one of the greatest figures of our generation, whose services to the cause of Hindu Women's

emancipation are unforgettable. The status of a Hindu woman under ancient Hindu legal system was far from satisfactory.⁸ The lack of enthusiasm on the part of leaders like Rajendra Prasad and Sadar Patel and the lukewarm attitude of many of the members in the Constituent Assembly itself, led to the Bill being stalled over for a year. Indeed, it was only after Patel's death that the Bill was once again taken up in 1951.⁹ In spite of all efforts of the Government the Bill made no headway. Opposition from within and without seems to have led the Prime Minister to slow down the pace. Four years elapsed before anything was done about the Bill. In 1955 in the changed atmosphere of the country, and with most of the opposition muted about social legislation the long-awaited Bill was pushed through. The Bill as mentioned earlier had to be split up in parts, viz.

1. The Hindu Marriage Bill,
2. The Hindu Succession Bill,
3. The Hindu Minority and Guardianship Bill,
4. The Hindu Adoptions and Maintenance Bill

First Bill mentioned above got enacted in 1955 and the remaining in 1956.¹⁰

The British passed the child Marriage Restraint Act, 1929. Under this Act, the marriage of girls below 14 years and boys below 18 years of age was to be penalized. Besides removing the evils of child marriage, it promoted female education. This led to the improvement in the position of the women.¹¹ This Child Marriage Restraint Act, 1929 fixed the minimum age for marriage for male at 18 and for female at 14. While the Practice of child marriage was made a penal offence for parents or those performing, conducting or directing it and for the adult bridegroom, the validity of such marriage was left untouched. Now Hindu Marriage Act 1955 fixes the minimum age at 21 and 18 for males and females respectively. Compulsory registration of marriage operates as an effective check on child and bigamous marriages and also offers reliable proof of marriage. Section 8 of the Hindu Marriage Act, 1955, enables the State Governments to provide for compulsory registration of marriages.

The court ruled that polygamy was not based on necessity and urged movement on a Uniform Civil Code.¹² Polygamy proclaims the inferior status of the feminine sex. If woman is an equal partner of a man in marriage, this outrageous concept of polygamy should be condemned in severest terms. Marrying many wives has been the feature of Hindu society since ancient times. Once it used to be a status symbol also. Untold degradation it inflicted on women necessitated its abolition. A marriage contracted during lifetime of a spouse is void and punishment is provided by Sections 494 and 495 of the Indian Penal Code.¹³

Divorce was the most radical social reform. The dharmasastra did not recognize divorce. However, the Hindu adherence to the doctrine of the indissolubility of marriage did not mean that the need of divorce was not realized. Customary divorce prevailed among the lower castes and higher class seldom followed custom which permitted divorce. Nevertheless by 1955 marriage came to be accepted as essentially a contract. The issue of divorce then came as a natural consequence. Though people started to think seriously in terms of divorce, it was still reserved as the last resort. This led to development of the concept that marriage could be dissolved only in 'if; those cases where the party to the marriage violated its sanctity by his acts or behaviour.¹⁴

Regarding the adoption the foundation of the Brahmanical doctrine of adoption is the duty which every Hindu owes to his ancestors to provide for the continuance of the line and the solemnization of the necessary rites. But the legislature while passing Hindu Adoptions and Maintenance Act of 1956 has taken in view only the secular object of adoption. Under this Act a daughter could also be adopted whereas she can neither offer funeral cake nor can perform last rites of the deceased, but she can only continue the family line of the adoptive family. The Act does not provide for the performance of any religious ceremonies at the time of adoption. It prescribes only the ceremonies of giving and taking. This factor also renders adoption as secular Act.¹⁵ Before 1956, the father was given the unquestionable power to adopt irrespective of the wishes of the wife. But the Act now makes the wife's consent essential.¹⁶

Indian Judiciary and Hindu Women's Rights: A woman has a right to lead her life with dignity and without humiliations. She has a right to education and information. Constitution of India lays down the norm of gender equality in its Fundamental Rights Chapter (Part III of the Constitution). Further, the Constitution expressly recognizes that women are considered unequal and has therefore provided that "Special provisions can be enacted and made" for women to overcome their unequal status. The Indian Judiciary has been playing the role which is essential for effective exercise of such rights of women. Indian Judiciary has also developed a new trend to give widest possible interpretation to secure Hindu women's rights.¹⁷ Since our Constitution envisages one society with singular citizenship, it is highly desirable that one single set of civil laws should govern all its citizens. The need and justification to have a uniform civil code as mandated by Article 44 of the Constitution cannot be over emphasized.¹⁸ Under Section 14 of the Hindu Succession Act, 1956 any property possessed by a female Hindu whether acquired before or after the commencement of the Act was to be

held by her as a full owner and not a limited owner. This Section led to considerable litigation in the courts of law. The Supreme Court in *Kotturu Swami Vs Veeravva*³⁹ has held that where a woman is possessed of property (whether it is in her actual or constructive possession) though she has acquired the property subsequent to the commencement of the Act, the reversioners can not question alienation by her though the alienation is not for any religious purpose or for legal necessity of the family.

Conclusion - The permanent alimony should be only monetary maintenance and no immovable property is given. She is not given any share in the family property. A Hindu woman has a right to own and dispose of her personal property without any control from the husband. In the socio-economic situations prevailing in our country, the contribution of the wife to family's economy is not recognised. A woman's contribution in the acquisition of family property is not still evaluated in the terms of contribution. So, it is necessary that legal recognition should be given to the economic value of the contribution made by the wife for the purpose of determining ownership of immovable property. A child can be adopted by a married Hindu male with the consent of the wife. Hindu wife has also to be given equal right to adopt a child with the consent of the husband. It is also necessary to make uniform civil code applicable throughout India and to all the citizens of India. It will help to give justice to Hindu women. It can strive to realize the vision which is enshrined in our Constitution.

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