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# Women Rights in India

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## ABSTRACT

*The study shall briefly analyse the track of women rights under the various family laws in force in India, post and pre independence. The article will encompass a summary of Hindu, Christian & Mohammedan laws which are advantageous & disadvantageous to women & their rights including: property, succession, unilateral divorce & pay of alimony. It will also highlight the rights of daughters & widows where inheritance is concerned. The conclusion will detail the possibility of UCC serving greater rights to women. I chose this topic, as I strongly believe that gender equality and the empowerment of women and girls is not just a goal in itself, but a key to sustainable development, economic growth and peace and security. Protecting women's rights makes the world a better place..*

## I. INTRODUCTION

India is a democratic country with wide range of religions, practises & known a secular country. Each religion having separate laws related to marriage, divorce, maintenance, adoption, custody of children, succession & inheritance to property & other related laws. Apart from this Art 14 of Indian constitution uplifts rights of women, their equality & protection. But not all women in the territory are aware of their safeguarding provisions. Only when women have full access to their rights, will true equality exist.

## II. WOMEN'S RIGHTS IN & AFTER MARRIAGE

Marriage is a concept which is legally and socially sanctioned union between man & women. Under Hindu Marriage Act 1955, spouses are deemed to have equal rights & obligations. This act prohibited polygamy. Sec 9 of the act which provides restitution of conjugal rights, where either of spouses abandons the other without reasonable cause, Sec 10 states about the judicial separation. The special marriage act passed in 1872, provided legal recognition and protection to interfaith and inter caste marriages, this act facilitated marriages outside traditional, social and religious boundaries. This act promoted the principles of secularism and equality by recognising the freedom. Right to live in the matrimonial home even if its not husband's home or even if he dies. If there is any contravention to this, she can file suit under Domestic violence act-2005. Protection against dowry demanded by husband or his family through Dowry

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prohibition act 1961 as its considered an offence. The married women's property act 1874 was an important step in giving rights to married women. Before, a married woman couldn't own or control her property.

Special Marriage Act, 1954 provides women with the rights to inter-caste marriage, love marriage and is only permitted for the girls above 18 years. The age of consent act of 1891 was introduced to protect girls from harmful practice of child marriage as it raised the minimum age for girls to marry from 10 to 12. Afore time the widows were not allowed to remarry but due to the enactment of Hindu widow's remarriage act 1869 a groundbreaking law that questioned the tradition of forbidding widows from getting remarried. This aimed to promote with support and security. Previously, the legislation of Indian divorce act 1869 divorce was not recognised within Christian marriages. The act made provisions for the dissolution of marriages on various grounds.

Also Sec 13 of the Hindu marriage act 1955 includes grounds for divorce [extramarital relationship, cruelty, desertion, conversion to a different religion, insanity, renunciation from the world, presumption of death, venereal disease, leprosy]. Special grounds for women included **acts of rape, sodomy or bestiality by the husband, non resumption of cohabitation after a decree/order of maintenance**. The Medical Termination of Pregnancy Act of 1971 offers a woman complete autonomy over whether or not to terminate a child without her husband's consent. The maximum time a kid can be aborted has been upped to 24 weeks. The right to abortion is one of the legal rights of a wife over the husband.

#### **(A) Muslim law:**

Marriage (Nikah) is defined to be a contract which has for its object the breeding and the legalising of children. The foundation of marriage in Islam has three aspects: Legal, Social, and religious. Legally, it is a contract and not a forfeit. Islam women enjoy equal right of selection or choice. The Muslim woman has the liberty of marital choice, her assent is vital for the validity of the marriage contract. A grown up girl shall be asked consent about herself and her permission is her silence and if she declines, there shall be no obligation on her. The Islamic laws have accepted women as free and responsible member of society. There are there are various types of divorce like talaq-I-tafweez, talaw-Ul-Sunnat, Zihar and Liam Khula etc. The triple talaq was declared void by the Indian Parliament and the husband pronouncing it is also liable for punishments. A Muslim wife can get a divorce on the grounds of cruelty, husband unheard for at least four years, husband sentenced to a term of imprisonment for a period of seven years or more, failure to provide maintenance to the wife for a period of two years or

more, failure to perform matrimonial obligations, insanity and impotency of the husband, leprosy, venereal disease, option of puberty. Triple Divorce and unregulated polygamy has often been the cause of attacks on otherwise quite progressive Islamic personal law. Polygamy may not be abolished completely but strictly regulated as directed by the Quran.

The other major trouble is that of triple divorce in one session. This form of divorce has really caused a lot of misery to a huge number of Muslim women in India the Prophet reserved the power of divorce overcome by husband and gave to the women the right of obtaining partition on reasonable ground. The Muslim Women (Protection of Right on Marriage) 2019 Act makes all assertion of talaq, remembering for composed or electronic structure, void. Talaq-e-biddat alludes to the training under Muslim individual laws where declaration of the word 'talaq' threefold at a time by an Muslim male The act makes revelation of talaq a cognizable offence, pulling in as long as three years 'detainment with a fine. Shayara Bano v. UOI & Ors. this case managed the divorce practice among Muslims, which is if on the off chance that any Muslim man said Divorce three times, at that point he is liberated from his marriage. The Supreme Court laid its verdict and said that "this non-religious if we check in to the Quran and such thing should be void and illegal" and shall not be encouraged ever at any cost. Presently no man can divorce from the spouse by only multiple times rehashing the words talaq. This additionally fortifies the Muslim women's status and rights in India.

If the marriage was consummated, wife may marry a further person after the completion of iddat, if the marriage was not consummated; she is liberated to marry immediately. If the matrimony was consummated, the wife unrestricted to immediate payment of the whole of the unpaid dower, both on time and overdue. If the marriage was not consummated, and the sum of dower was precise in the contract, she is entitled to partly that amount.

The divorced wife is at liberty to maintenance and accommodation till her period of iddat expires. Khula and Mubarat are two forms of divorce by joint consent. Khula means release and Mubarat means mutual separation, are two forms of divorces by the wife with the assent of her husband.

The Muslim Personal Law (Shariat) Application Act 1937 also recognised the rights of the wife to acquire divorce on two further grounds, i.e. (I) Ila & (ii) Zihar. The divorced wife is entitled to get maintenance from her ex- husband till she observes iddat which varies to different period in different cases. It is clear that there are no terms for the maintenance of a divorced wife in Muslim law after the epoch of iddat or the period after delivery and suckling of the child. Section 3(1)(a) from Muslim women (protection of rights on divorce) Act, 1986 which expresses that

“a sensible and reasonable maintenance and support to be made and paid to her inside the iddah period by her previous spouse”. In K Zunnaiddin v. Ameena Begam, case the court adhered that the word within in Section 3(1)(a) did not mean that the husband will have to pay only for the time between the time in iddah but what it really means is that he is liable to pay the wife until she marries again. So, if wife does not marry for her whole life again so husband will have to pay maintenance to her for the rest of her life.

### **(B) Christian law:**

Christianity imposes tight restrictions on the woman's life partner choice freedom. This is represented in the prohibition of her divorce from her husband whatever the reasons for separation, her compulsion into marriage with her brother-in-law when her husband happens to die according to the Mosaic Law. The laws regulating to solemnisation of marriage among Indian Christians is the Christian Marriage Act of 1872. The conditions for certifications of a marriage of Indian Christian have been provided in Sec.60 of the Act. Before this act, Christian women faced challenges in matters of marriage, divorce, and custody of children due to legal ambiguities. Therefore it gave clarity on the legal aspects of Christian marriages.

*Lakshmi Dhar v Sachit Kumar Dhar* is also the one where the courts considered the prevalent customary laws above the legislations i.e. the Christian Marriage Act, 1872 & the Divorce Act, 1869. In this case, the courts stated that, for the purpose of, deciding the validity of the marriage, the customary law in which the marriage between the parties was solemnised, will be taken into consideration i.e. the Canon Law of the Roman Catholic Church.

Section 10 of the Indian divorce act 1869 has grounds for divorce: not being heard for seven years, venereal disease in communicable form for two years, conversion to another religion, adultery, failure to obey the order for restitution of conjugal rights, cruelty, desertion for at least two years, wilful refusal to consummate the marriage, incurable insanity for more than two years, incurable and virulent form of leprosy for more than two years; wife's additional grounds if the husband is guilty of rape, sodomy, bestiality. *Seema v Ashwini Kumar*, marriage is compulsory under the Christian Marriage Act, 1872. Under the said Act, entries are made in the marriage register. However, the Act has not been enforced. So far as Christians are concerned, the Jammu and Kashmir Christian Marriage and Divorce Act, 1957 provides for registration of prevalent in many parts of the country.

### **III. WOMEN'S RIGHTS IN PROPERTY**

Women on several occasions were deprived of property like at the time of inheritance or succession, division of family property, *StreeDhan* i.e. woman's property. But as the reforms

occur in society, women have been given the same right as that of men. In Hindu Law, the woman has the sole right on the property, gifts which she received at the time of marriage that is commonly known as StreeDhan. After the new amendment i.e. Hindu Succession (Amendment) Act, 2005 the women (mother, widow, daughter) are given equal rights as male on the family's property after the death of the owner of that property which was not provided in The Hindu Succession Act, 1956 previously. After the mother's death, her property is equally divided into sons and daughters. After the amendment of 2005, in a joint Hindu family, the daughter of a coparcener has been given the same right as the son that she from the birth will become coparcener of the property in the same manner as the son, she will be subjected to same liabilities in respect of the coparcener's property as that of a son.

The Hindu women's rights to property act passed in 1937, recognised Hindu women's right to inherit ancestral property. Traditionally women were often excluded from inheritance particularly in joint family set ups before independence, where male relatives held exclusive rights to family assets. So, it aimed to rectify discriminatory practices and ensure equal rights.

The Hindu inheritance act of 1928 and to remove certain gender based restrictions on women's inheritance rights within Hindu families. Traditional Hindu inheritance laws often discriminated against women, denying them their rightful share of ancestral property. It stopped discriminatory practices and empowered Hindu women to inherit ancestral property on an equal footing with male relatives. The Indian succession act of 1865 defined roles for inheritance and testamentary matters. Before this act, inheritance laws varied based on personal laws and customs prevalent among different communities. It achieved uniformity and equality in inheritance laws. This act acknowledged their entitlement to fair share of family wealth and assets.

Danamma v. Amar Singh In this case, the appellants were the two daughters of Late Shri Gurulingappa Savadi and his widow, Sumitra. The couple also had two sons, Arun Kumar and Vijay. Amar Singh, the son of Arun Kumar, filed the partition suit claiming a one-fifteenth share in Savadi's property. His claim was based on the fact that the property was in the possession of the two sons and the widow. He contended that the two daughters were not the coparceners, as they were born prior to the enactment of the Hindu Succession Act, 1956 as amended in 2005 (the Act). Following the Trial Court's decision favouring Arun Kumar, the appellants approached the High Court challenging the decision. The High Court upheld the Trial Court's decision, following which the appellants approached the Supreme Court.

The Supreme Court, however, held that Section 6 of the Act has a retrospective effect on the devolution of coparcenary property. Daughters are coparceners, irrespective of whether the father died before or after the 2005 Amendment. Ultimately, the contended was equally divided into five shares, one each for the two sons, two daughters, and the widow.

**(A) Muslim law:**

In inheritance, the daughter's share is equal to one half of the son's in keeping with the concept that a woman is worth half a man.

She has, however, and has always had full control over this property. It is legally hers to manage, control, and to dispose of as she wishes in life or death.

Though she may receive gifts from those whom she would inherit from, there should be no doubt that the gift is a means of circumventing the inheritance laws of one third of a man's share, since, under Muslim law. The shares of inheritance are very strict.

Daughters have rights of residence in parent's houses, as well as right to maintenance, until they are married. In case of divorce, charge for maintenance reverts to her parental family after the iddat period (approximately 3 months). In case she has children capable of supporting her. The charge falls upon them.

a. Wives:

In Islamic law a woman's identity, though inferior in status to a man's is not extinguished in him when she marries

Thus she retains control over her goods and properties. She has a right to the same maintenance he gives to his other wives, if any, and may take action against him in case he discriminates against her.

The Supreme Court has held that in the case of divorce, a Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of Section 3 (1Ha) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 and liability of Muslim husband to pay maintenance is not consigned to iddat period.

Right to mehr' according to the terms of the contract agreed to at the time of marriage.

She will inherit from him to the extent of one eighth if there are children or one fourth if there are none. If there is more than one wife, the share may diminish to one sixteenth. In circumstances, where there are no sharers in the estate as prescribed by law, the wife may inherit

a greater amount by will. A Muslim may dispose of one third of his property by will, though not to a sharer in the inheritance.

- A boy gets twofold the portion of the girl any property they together acquire.
- In instance of death: only one-fourth is given to the wife if both have no children on the contrary if there are children then only one-eighth of the total property.

b. Mothers:

In case of divorce or widowhood, she is entitled to maintenance from her children. Her property is to be divided according to the rules of Muslim law. She is entitled to inherit one sixth of her deceased child's estate.

**(B) Christian law:**

The Christian women are concerned they are entitled to Stridhan and can claim a share of the father's property under Section 37 of the Indian Succession Act, 1925. A daughter and a son have the same rights, a Christian widow is entitled to one-third of her husband's property.

a. Daughters:

She inherits equally with any brothers and sisters to her father's estate or her mothers'. Entitled to shelter, maintenance before marriage, but not after from her parents. Full rights over her personal property, upon attaining majority. Until then, her natural guardian is her father.

b. Wives:

She is entitled to maintenance, from her husband, but his failure to provide the same is note by itself ground for divorce. Upon death of her husband, she is entitled to a one third share of his property, the rest being divided among the children equally. She must inherit a minimum of Rs.5000/- from her husband's estate. Supposing the estate is more than this amount. In case it is not, she may inherit the whole.

c. Mothers:

She is not entitled to maintenance from her children. In case any of her children dies without spouse or living children she may inherit one fourth of the assets.

**(C) Hindu law:**

a. Daughters:

Daughters have equal right of inheritance as sons to their father's property. Daughters also have a share in the mother's property. The Hindu Succession (Amendment) Act, 2005 (39 of 2005) came into force from 9th September, 2005. the Amendment Act removes gender discriminatory



provisions in the Hindu Succession Act, 1956 and gives the following rights to daughters. The daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son; The daughter has the same rights in the coparcenary property as she would have had if she had been a son; The daughter shall be subject to the same liability in the said coparcenary property as that of a son; The daughter is allotted the same share as is allotted to a son; A married daughter has no right to shelter in her parents' house, nor maintenance, charge for her being passed on to her husband. However, a married daughter has a right of residence if she is deserted, divorced or widowed. A woman has full rights over any property that she has earned or that has been gifted or willed to her, provided she has attained majority. She is free to dispose of these by sale, gift or will as she deems fit.

Prakash v. Phulavati: In this case, the respondent (Phulavati) had initially filed a partition suit before the Trial Court in 1992, after her father's death. She claimed 1/7th share in the properties that her father acquired from his mother. While the suit was still pending, the Hindu Succession (Amendment) Act, 2005 was made effective. The Amendment gave coparcenary rights to the daughters as well. Phulavati used the opportunity; she amended her previous claim as per the 2005 Amendment. The Trial Court only partly allowed her suit.

Following the Trial Court's order, Phulavati approached the High Court stating that she, being a coparcener as per the 2005 Amendment, has share equal to her brothers in the father's property. The appellant (Prakash, Phulavati's brother) contended that the 2005 Amendment will not apply in the present case, as the father died prior to 2005. The High Court ordered in Phulavati's favour and allowed the retrospective effect of the 2005 Amendment.

Aggrieved by the High Court's decision, Prakash approached the Supreme Court. Finally, the Supreme Court overruled the High Court's decision and held that the 2005 Amendment will not apply to any partition which was effected before its enactment.

b. Wives:

Property bought by a husband in his wife's name after their marriage becomes her exclusively and cannot be disputed under Section 14 of the Hindu Succession Act. A married woman has exclusive right over her individual property. Unless she gifts it in part or wholly to anyone. She is the sole owner and manager of her assets whether earned, inherited or gifted to her. Entitled to maintenance, support and shelter from her husband, or if her husband belongs to a joint family, then from the family. Upon partition of a joint family estate, between her husband and his sons, she is entitled to a share equal to as any other person. Similarly, upon the death of her

husband, she is entitled to an equal share of his portion, together with her children and his mother.

c. Mothers:

She is entitled to maintenance from children who are not dependents. She is also a Class I heir. A widowed mother has a right to take a share equal to the share of a son if a partition of joint family estate takes place among the sons. All property owned by her may be disposed by sale, will or gift as she chooses. In case she dies intestate, her children inherit equally, regardless of their sex.

#### **IV. CONCLUSION**

It can be concluded from the above discussion that women's status in Indian society has radically changed since Independence. Government after realising the situations of women and their worse position in the society took huge initiatives to bring about a change and improve the social, economic and political conditions of women. It cannot be said that the measures taken have been completely implemented in the society as still customs and traditions are given much more importance in a country like India, still, a gradual change has been experienced by the women over these years and they have become much more independent and aware in today's time. Adopting UCC is the best way to secularise and Integrate India. I strongly opine that UCC is a boon to Indian women. Undoubtedly, a Uniform Civil Code will ensure gender equality and will provide equal status to all citizens irrespective of the community they belong to. UCC will Give More Rights to Women as religious personal laws are misogynistic. It will help in bringing changes in the age-old traditions that have no relevance in today's modern society, where women should be given equal rights and should be treated fairly. Therefore to make the best use of the legal sanctions and statutes that are framed for the benefits and protection of the women, awareness is very essential to extract the best possible from what is provided and to be applied in ground reality.

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