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HINDU PERSONAL LAWS AND RIGHTS OF WOMEN IN INDIA

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ABSTRACT

India's personal laws regulate various aspects of people's lives, including marriages, divorces, inheritances, and adoptions. These laws are often based on religious and cultural beliefs. In the past, personal laws have been a source of discrimination and inequality between men and women, with women playing a particularly prominent role in personal laws. However, reforms have been made over the years to improve gender equality and empower women in personal laws. The research work provides an overview of the evolution of personal laws in India, focusing on the rights of women within Hindu community. It examines the historical context of gender inequality within personal laws and highlights legislative reforms and judicial interventions that have sought to address discriminatory practices and promote women's rights. It also explores the impact of discriminatory personal laws on women's lives, including their socio-economic status, access to education, employment opportunities, and overall well-being. It finally underscores the importance of prioritizing gender equality and justice within legal framework governing personal laws in India.

I. INTRODUCTION

India's culture is rich and diverse, with a wide range of languages, religious beliefs, customs, and traditions woven into its tapestry. However, India's rich cultural heritage has also been marred by a long history of gender inequality and marginalization. For centuries, India has been ruled by patriarchal values and practices that held women to a lower status in society and in the private world. Women in India have been subjected to discrimination and marginalisation through various forms of exclusion, exclusion from education, exclusion from the workforce, inequality in property rights and widespread gender-based violence. These systemic inequalities have created a vicious cycle of gender inequality that impedes women's

empowerment and prevents them from fully participating in society, the economy, and politics. However, with the passage of time, India has made significant progress in addressing gender inequalities and promoting women's rights. Many personal laws and legislative frameworks have been amended over the years to ensure equality and safety for women.

Personal law reforms have been a key factor in improving women's rights in matters such as marriage and divorce, inheritance, guardianship, etc. For example, legislative changes have been introduced to prohibit practices like child marriage and instant divorce in Muslim personal law which have had a disproportionate impact on women. Women's rights and protections in the law have been further enhanced by landmark judicial decisions. The Indian judiciary plays an important role in interpreting and implementing constitutional provisions that guarantee equality between men and women and non-discrimination between women and men. Legal frameworks and mechanisms to fight gender-based violence and harassment have been established through landmark judicial decisions. For example, Vishakha, a judgment in which the court in Rajasthan held sexual harassment at the workplace to be a violation of women's fundamental rights.¹

In addition to legislative reforms, various social movements and government initiatives have promoted women's empowerment and gender equality. Programs such as girls' education, women's entrepreneurship, and women's participation in politics have addressed the underlying causes of gender inequalities and paved the way for women's progress. However, challenges remain, and India's progress towards gender equality is far from complete. Deep-rooted patriarchal attitudes, socio-economic disparities, and implementation gaps continue to impede progress. These challenges need to be addressed by all actors in society, including policy makers, civil society organisations, private sector players, and communities.

Personal laws refer to the rules and regulations that govern various aspects of one's personal life, such as matrimony, divorce, succession, and adoption. These personal laws are closely linked to religious and cultural traditions and vary from one religious' community to another in India, including Hindus, Muslims, Christians, and Sikhs. Historically, personal laws have reflected patriarchal values and practices, which have restricted women's rights and autonomy. For example, according to some interpretations of religious law, women have faced

¹ *Vishaka and Ors v State of Rajasthan* AIR 1997 SC 3011.

discrimination in matters like marriage, divorce and inheritance. Such practices, such as child marriage and polygamy, as well as the lack of equality in inheritances for daughters, have been common in India and have contributed to gender inequality in families and communities.

Historically, personal laws have been interpreted in ways that deny women agency and control over their lives and reinforce their status as second-class citizens within society. Women's rights activists and reformists have long called for changes in these laws to tackle gender inequality and empower women. Over the past decades, several legislative initiatives have been undertaken to amend and modernize personal laws to bring them in line with constitutional values of equality and fairness. These reforms have focused on strengthening women's rights and safeguards in matters such as matrimonial and divorce laws, inheritance laws, guardianship laws, and more. The Hindu Succession Law of 1956² was revised in 2005³ to give daughters equal inheritance rights to ancestral property, ending centuries of discriminatory practices that favoured sons. Similarly, the Protection of Muslim Women on Divorce Act of 1986⁴ offered Muslim women protection from arbitrary divorce and financial security through maintenance. The Hindu Marriage Act, introduced in 1955⁵, was another significant development in India's personal laws for women. This law introduced women's right to get a divorce on certain grounds of cruelty or desertion, adultery, etc. Previously, women had little or no choice in the event of a bad marriage and were forced to remain in abusive or unsatisfactory relationships. The Hindu Marriage Act introduced the idea of 'stridhan', which is a woman's claim on property or money that was given to her before or after she got married.

Muslims have their own personal laws, known as the Muslim Personal Law (Shariat) Application Act of 1937.⁶ This law governs the personal law of Muslim women. However, it has been accused of being discriminatory, particularly in matters of marriage and inheritance. There have been calls for a uniform civil code in recent years, which would unify all personal laws and remove discrimination based on sex. However, no such law has yet been enacted.

The Dowry Prohibition Act 1986⁷ was introduced by the Government of India to put an end to

² Hindu Succession Act, 1956 (38 of 1956).

³ The Hindu Succession (Amendment) Act, 2005 (39 of 2005).

⁴ The Muslim Women (Protection of Rights on Divorce) Act, 1986 (25 of 1986).

⁵ Hindu Marriage Act, 1955 (25 of 1955).

⁶ The Muslim Personal Law (Shariat) Application Act, 1937 (26 of 1937).

⁷ The Dowry Prohibition Act, 1961 (28 of 1961).

the practices of dowry. The practice of dowry is still practised in many areas of the country. Dowry is one of the social evils that has led to the exploitation and maltreatment of women. In some cases, dowry has even resulted in the death of the woman. The Act prohibits any person from giving or receiving a dowry. Violations of the law are punishable by imprisonment and fine.

In addition, several other reforms and initiatives have been taken in recent years to empower and safeguard women's rights. For instance, in 2005, the Protection of Women against Domestic Violence Act⁸ was introduced to provide legal protection against domestic violence which is a prevalent problem in India. Similarly, in 2013, the Prevention, Prohibition & Redressal of Sexual Harassment at Workplace Act⁹ was introduced to prevent and safeguard women against sexual harassment in the workplace. However, despite the progress made in the field of personal laws and women's rights, there are still many challenges that women face in India. These include gender-based violence, discrimination and lack of equal opportunities in education and employment. In order to truly achieve India's progressive and developed status, it is essential that the government and society work together to build a more equal and inclusive society where women can live in dignity, respect and equality. It is also essential that these laws are properly implemented and enforced to have a real impact on women's lives.

II. EVOLUTION OF PERSONAL LAWS IN INDIA

Personal laws in India have a long and complicated history, influenced by social, cultural, religious and political factors over thousands of years. From ancient times to modern times, personal laws have gone through many changes, reflecting the various legal traditions and practices that were prevalent in various eras of Indian history. In ancient times, personal laws were largely based on religious texts like the Vedas, the Dharmashastra and the Smritis. These texts laid down rules and regulations that governed many aspects of personal life such as marriage, inheritance and social conduct. Personal laws in ancient India were often linked to religious beliefs and rituals and played a major role in social norms and customs.

In ancient India, personal laws were integral to the social, cultural, and religious structure of the society. They governed the individual lives of the people, their rights and obligations within

⁸ The Protection of Women from Domestic Violence Act, 2005 (43 of 2005).

⁹ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013).

the family and society. These laws were deeply embedded in the religious faith and practices of the people, and played an essential role in the formation of social norms and social values. In ancient India, there were four social classes: Brahmins, Kshatriya, Vaishyas, and Shudras. Each of these social classes had its own personal laws, which were based on the principle of dharma (meaning duty, justice, and moral order).

Public and personal laws were not clearly separated in the early Hindu world, as they were intertwined and often treated as if they were the same. Only later texts began to treat personal laws as distinct from public laws. Manu is credited with the origin of the first legal code, the Manu Smriti, which is composed of chapters on various legal subjects, such as civil law, criminal law, moral law, and religious law.

During the time of the sages, the king did not interfere in the personal affairs of the people. However, he was subject to the laws laid down by the sages and these laws were considered as self-enforcers and part of the Hindu religion. While the religion governed the behavior of the people, the local customs and the approved usages also had legal meaning.

The concept of marriage was one of the most important personal laws of ancient India. Marriage was a sacred bond between a man and woman and was considered a lifelong commitment. There are eight types of marriage mentioned in the Vedas. The most common type of marriage in ancient India was an arranged marriage. The bride and groom did not have to agree to get married. Their families made the decision. Monogamy is the most common form of marriage. Polygamy is only allowed for the king and members of the high varnas.

Inheritance laws also played an important role in personal law in ancient India. Inheritance laws were based on the patrilineal system of inheritance where the eldest son inherits the father's property. Daughters did not inherit any property except the gifts that the father gave during his lifetime. If there were no male heirs, then the nearest male relative inherited the property. However, due to the influence of Buddhist and Jain beliefs, daughters got equal inheritance rights in some areas of ancient India.

Another important factor that affected personal laws in the ancient India was the caste system. Caste determines an individual's social position and the rights and privileges they enjoy in society. A man's caste determines his profession, who he marries, and even his diet. In ancient

India, purity and pollution laws were strictly adhered to, and inter-caste marriage was prohibited. Caste was so deeply embedded in the society that it played an important role in personal laws.

The medieval period in India was a time of political, social and cultural upheaval. It was also a time when different dynastic and imperial powers ruled over different parts of India. The 12th century rise of Islam also had a major impact on personal laws of people living in those areas. Personal laws, also referred to as family law, are the rules and practices that shape a person's personal and family life. In medieval India, personal laws were largely determined by religious belief and practice. Hinduism, the dominant religious faith in India, played a major role in shaping personal laws in Hindu communities. The main sources of Hindu personal laws in medieval India were the Manusmriti, a compilation of ancient Hindu legal texts that defined the rules for matrimony, inheritance and succession. Personal laws were also shaped by local custom and tradition.

The British ruled India for nearly two centuries, from the middle of the 18th century to the middle of the 20th century.¹⁰ During that time, the British introduced various laws and regulations in order to regulate the Indian society. These laws did not stop at administrative and economic matters; they also included personal laws that governed people's lives. These personal laws are based on religious and customary principles, and they were often controversial. The Hindu Law was one of the most important personal laws that the British introduced. It was based on the tenets of Hinduism and applied to Hindus, Sikh, Jain, and Buddhist individuals. It governed matters such as matrimony, inheritances, adoptions, and succession. The British codified and standardised Hindu Law, which previously followed religious texts and customary practices. This resulted in uniform application of the law in different parts of India.

The Hindu Law also introduced significant changes to women's rights. Before the British Raj, women had limited rights. They were under the control of their father, husband or other male relative. The Hindu Law gave women the right to property and inheritance. Women were also allowed to get a divorce in certain cases. However, the rights of women were limited and they were still discriminated against when it came to inheritance and divorce.

¹⁰ Aditya Mukherjee, 'Empire: How Colonial India Made Modern Britain' (2010) 45(50) Economic and Political Weekly 11-17 <<https://www.jstor.org/stable/25764217>> accessed 7 April 2024.

The Muslim Law was another important personal right introduced under British rule. It was based on Shariah law and applied to Muslims throughout India. It governed matters such as matrimonial and divorce laws, inheritance laws, and adoption laws. The British codified and standardised Muslim law, which had previously been governed by various schools of Islamic law. This allowed the law to be applied uniformly across the Indian subcontinent. Women had even less rights under the Muslim law than under the Hindu law. They could not inherit property and were limited in their divorce rights. The British made some attempts to reform the laws and give more rights to women, but these were resisted by conservative Muslim leaders.

In addition to Hindu and Muslim law, the British introduced laws for the Parsis, Christians, etc. These laws are based on their religious texts and practices. Some of the important laws that were introduced during this period include the Parsis Marriage and Divorcing Act 1865¹¹ and the Christian Marriage Act 1872.¹²

The British also introduced civil and criminal law in India. Civil law addresses disputes between individuals and is based on principles of justice, fairness, and conscience. On the other hand, criminal law addresses crimes against the state and is based on English common law. The introduction of civil law in India brought order and fairness to the society. However, it was also accused of being prejudicial to the British and the upper castes.

One of the biggest criticisms of the British personal laws is that they imposed them on the Indian people without taking into account their cultural and religious background. They were seen as a tool for the British to control and exploit the Indian society, rather than for the benefit of the Indian people.

III. HINDU PERSONAL LAWS AND WOMEN'S RIGHTS

The policy of maintaining personal law for Hindus and Muslims in matters of family life was so strict that Article 372 of the Constitution of India¹³ states that the law enforced in the country prior to the entry into force of the Constitution shall remain in force until such time as it is amended, revoked or modified by a competent legislative or other competent authority.

¹¹ The Parsi Marriage and Divorce Act, 1936 (3 of 1936).

¹² The Indian Christian Marriage Act, 1872 (15 of 1872).

¹³ The Constitution of India, art 372.

In India, each community has a distinct personal law. Hindus, the majority community, have their personal law; so, do the Muslims, the largest minority community. The Christian, Parsi and Jewish communities, whose numbers are not very large in comparison to India's total population, also have their personal law. Personal law in India deals with marriage and divorce, maintenance and guardianship, succession and joint family and partition, and can be broadly described as Family Law. India has two systems of law: the territorial and the personal. Because personal law concerns the relationship between individuals, it can't be public. A Muslim is governed by Islamic Sharia. A Jew is governed by Halakhah. A Christian is governed by Cannon Law. A Hindu is governed by Dharmashastra.

Personal laws are legislative. The state may not be the ultimate source of their power, but it makes them legally and socially authoritative and confers its authority on them. Just as family is not personal in the sense, it does not need to be governed by law. If the authority of the personal laws is other than legal, there is no need to regulate them. Women have always been marginalized in almost every society and context without any legal protection. Law was originally created as a tool to improve our social condition. It has its roots in the western philosophy of enlightenment. Locke, Rousseau, and Aristotle based their natural law on the idea that it is natural for a woman to be subject to her husband. Therefore, she cannot be considered as a naturally liberated and equal individual. Similarly, in the south eastern Indian tradition, Manu ruled that as daughter women should obey their father, as wives their husband, and as widows their sons.

III.I WOMEN IN HINDU MARRIAGE

A marriage is a social or religious contract or legal agreement between a husband and wife that creates rights and obligations among them, their children, and their relatives. The Act of Marriage typically creates a legal obligation between the parties and their descendants. Marriage is often considered a contract. A marriage can take place in a civil ceremony or a religious ceremony. The right to marry is one of the fundamental rights of a person. Article 21 of the Constitution of India¹⁴ provides that no person shall be 'deprived of his right to marry or to enjoy his personal liberty according to the procedure laid down by law.' This right has been recognised by the United Nations Convention on the Rights of the Child under Article 16.

¹⁴ The Constitution of India, art 21.

In today's Hindu society, women's rights in the context of marriage are safeguarded by various provisions under the Hindu Marriage Act, 1955 (hereinafter 'HMA'). One of the basic principles under this act is that both partners must give their consent voluntarily before entering into the marriage. The section 5 of the HMA¹⁵ defines the conditions under which a Hindu marriage is valid. One of those conditions is that both parties must give their consent freely before entering the marriage. Section 5 states that a marriage between two Hindu individuals may be solemnized if neither of them has a spouse at the time of marriage, both of them are able to give valid consent and neither of them is unfit for marriage according to the provisions of the law.

The HMA also states in Section 7¹⁶ that the marriage can be performed by the Hindu marriage registry if both parties consented to the marriage. This strengthens the notion that consent is necessary for the marriage to be valid under Hindu law.

In addition, the act prohibits forced marriages and provides for the annulment of marriages concluded without free consent. The section 12¹⁷ of HMA states that a marriage can be annulled "if either party was unable to give valid consent by reason of ill health, mental illness, or repeated attacks of madness." This provision safeguards people from being forced to marry against their will or when they are not mentally well enough to make such a choice.

The HMA and its subsequent amendments have played a crucial role in ensuring equal rights of men and women in Hindu matrimonial life. The Hindu Marriage Act guarantees equal rights of women and men in the matrimonial life, including property rights, education and career opportunities.

While the HMA doesn't directly address women's right to pursue career, it indirectly promotes women's autonomy and agency by levelling the playing field between spouses and improving women's access to education, and property rights. Women are now more empowered to work, contribute to the household budget, and pursue rewarding careers along with their marital duties.

¹⁵ The Hindu Marriage Act, 1955 (25 of 1955) s 5.

¹⁶ The Hindu Marriage Act, 1955 (25 of 1955) s 7.

¹⁷ The Hindu Marriage Act, 1955 (25 of 1955) s 12.

While the HMA primarily addresses the legal aspects of marriage, it intersects with other laws that protect women's rights, including the Protection of Women from Domestic Violence Act, 2005. The DV act recognizes that violence can take various forms including physical, emotional, sexual, and economic abuse. This broad definition ensures that women are protected from different types of abusive behavior within the domestic sphere.

One of the most important provisions of DV Act is that women have the right to apply for a protection order from the court. A protection order prohibits the abuser from engaging in acts of domestic violence, from communicating with the victim or from entering the joint household. The Act also allows women who have been the victim of domestic violence to apply for a residence order. A residence order grants the woman the right to live in the joint household, even if she has no legal rights over the property. This means that women do not have to face homelessness or displacement as a result of domestic violence. Another important provision is that women who have been victims of domestic violence have the right to financial relief. The court can order the abuser to pay the victim for their maintenance and support as well as any medical expenses incurred as a result of the violence.

Overall, the author concludes that the DV Act of 2005 is an important law that supplements the HMA by providing additional protection and remedies to women who face domestic violence in the context of marriage. By recognising the various forms of domestic violence and enabling women to avail of legal redress and support services the Act seeks to address the widespread problem of domestic violence and to ensure the safety and prosperity of women in India.

III.II MAINTENANCE RIGHTS OF WOMEN

HMA recognizes the right of Hindu women to maintenance or financial support from their husbands during the subsistence of the marriage and in the event of divorce or separation. This provision is essential for ensuring that women are economically provided for, especially if they are financially dependent on their spouses. It provides for maintenance to be paid while the proceedings are pending or after the completion of the proceedings under HMA.

In Section 24¹⁸, it states that either spouse may file an application for maintenance before the court. The court has jurisdiction to grant interim maintenance orders taking into account the

¹⁸ The Hindu Marriage Act, 1955 (25 of 1955) s 24.

financial situation and resources of both spouses.

The section 25¹⁹ also deals with maintenance and alimony after the dissolution of the marriage. In this section, the court orders the husband to pay maintenance and support to the wife, whether in the form of a lump sum or in the form of regular payments. The amount of maintenance and alimony is determined by various factors, including the income and assets of both spouses, their financial requirements, their standard of living during the marriage and any other factors.

This provision guarantees that women who have sacrificed their careers or prospects for the marriage will not be financially disadvantaged in the event of a divorce or separation. The HMA recognises the economic contribution of the spouses to the marriage and seeks to provide equal relief to the wife in order to ensure her financial well-being.

All in all, the Hindu Marriage Act ensures that Hindu women have the right to maintenance and that they will not be left destitute or deprived of financial support in the event of marital disagreement or dissolution. This law reflects India's commitment to the economic rights and well-being of women in the institution of marriage.

III.III WOMEN'S RIGHT TO PROPERTY

The Hindu Succession Act, 1956 (hereinafter 'HSA') as amended in 2005 has been one of the most important pieces of legislation in terms of gender equality in Hindu inheritance matters. Hindu women had limited inheritance rights in ancestral property and were often discriminated against in inheritance matters before the amendment. However, with the 2005 amendment, women got equal inheritance rights both in ancestral property and self-acquired property. Prior to the amendment in the HSA, Hindu daughters did not enjoy the same inheritance rights as sons. Son was considered coparcener by birth in HUF and had preferential inheritance rights. Daughters only got limited shares and were often subject to complicated rules and conditions. The 2005 amendment introduced the concept of 'coparcener in their own right', which allows daughters to inherit ancestral property along with sons. In other words, daughters have the same right to inherit ancestral property as sons, regardless of whether the property is inherited from their parents before or after the law was enacted. The 2005 amendment also abolished 'limited

¹⁹ The Hindu Marriage Act, 1955 (25 of 1955) s 25.

estate' for Hindu women, which ensures that they have full ownership rights over their portion of inherited property. This has empowered Hindu women in both economic and legal terms, enabling them to take control of inherited assets and utilize them for their benefit and financial security.

CONCLUSION & SUGGESTIONS

To conclude, Hindu Personal Laws have been a thorn in the side of women's rights in India for a long time. The Hindu Personal Laws, which regulate family matters like marriage, divorce, inheritance, etc., have often been accused of being discriminatory against women. Over the years, several attempts have been made to reform and modernise these laws in order to better safeguard the rights of women in India. In 2005, one of the most important reforms was introduced in the Hindu Succession Act (Amendment) which granted equal inheritance rights to daughters. In other words, daughters got the same inheritance rights as sons. Women's rights activists hailed this as an important step towards gender equality.

One of the most important aspects of Hindu Personal Laws is marriage and divorce. The law allows for divorce under certain conditions, but it also creates hurdles for women who want to get out of their marriage. For instance, the concept of 'irretrievably breakdown of marriage' is not recognised, and a woman has to show cruelty, desertion or adultery in order to get out of her marriage. This burden is placed on the woman and leads to long and costly legal proceedings. Polygamy is a common practice among Hindus, particularly in rural areas. Not only does it discriminate against women, but it also limits their property rights and inheritance rights. The law prohibits polygamy, but it is not enforced and many women suffer because of this outdated practice.

The lack of uniformity of Hindu Personal Laws is another pressing issue. This leads to confusion and inconsistency when it comes to legal matters. This is especially true for women, especially when it comes to marriage and divorce, as the laws may differ depending on the religion or sect of the woman. In order to address these issues, calls have been made for the introduction of a Uniform Civil Code in India. This law would provide a uniform set of laws to all citizens, irrespective of their religion. Not only would it promote gender equality, but it would also make legal matters easier for everyone. Besides legal reforms, there are also social and cultural changes that need to be made in order to ensure women's rights in the Hindu Personal Laws.

To sum up, while some progress has been made in the area of women's rights under Hindu Personal Law, there is a long way ahead of us. We need to work together with the government and society to bring about real change in laws and practices to protect and empower women. The battle for gender equality will continue and it is everyone's duty to contribute to a better and equal society.

