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DESTITUTE WOMEN AND WIDOWS – ARE THEY BETTER POSITIONED IN OUR COUNTRY?

AUTHORED BY - NAGASWETHA S

ABSTRACT:

Women in our Indian society play a vital role and occupy an estimable position in various fields; however, it is also apparent that they are the most affected section of our country. Though the position of women in our country has been improved in the recent years, the prevalence of social prejudice makes them vulnerable to violence and discrimination. Despite the fact that they constitute half of our total population, they are always considered inferior to men. Of late, in our country, crime count against the women, especially on those who are deprived of due to some reason, are mounting day-by-day causing the weaker section to become the weakest one. The Government of India has taken various measures by enacting number of laws for protection and improvement of women but their practical implementation had not been momentous due to various reasons. This article will provide a detailed understanding of the position and problems faced by the destitute women and widows in India. This article also enumerates the need of having a well thought law in our country to protect the rights of those destitute women and widows.

“The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little.”

- Franklin D Roosevelt.

INTRODUCTION:

Women in our country constitute approximately half of the entire population. Women are given the position of Goddess in this country but the problems faced by them are completely contradicting to their position. On one hand, they are worshiped and on the other, they are considered inferior and are abused in endless ways. As India being a patriarchal society, women are given only secondary importance and men are considered to be dominant when compared to women. Women in India are in a position where a peaceful social life is still a pipe dream. Gender discrimination, workplace harassment, dowry-related harassment, widowhood and

women destitution are few of such problems faced by women in India. Freedom for an Indian woman doesn't just mean the ones guaranteed by the Constitution but also means treating men and women equal, increase in job opportunity and augmented safety and protection. The Government of India is also taking various initiatives in the form of policies, schemes and acts to protect the welfare and uplift the status of women however, most of them are continuing to face such problems.

DESTITUTE AND DESTITUTION IN INDIA:

The destitute are those who are basically abandoned, forsaken and are deprived of minimum necessities in life. The destitution and destitute are being prevalent all over the world from the ancient times and is thus a universal phenomenon.

Indian society is one where women exercise power and hold top positions, yet on the other hand the largest part of the women population is mostly under-privileged. Poverty and backwardness acts as a great hindrance for a mother in providing adequate care to their children. In recent times, many women are falling victims to perverted men due to various reasons which results in molestation, harassment, kidnaps etc., compel the victims into many antisocial occupations such as prostitution, chain-snatching, robbery, beggary etc., making them destitute eventually. Prostitution indirectly causes destitution resulting in AIDS not only to the adult but also to the children hence resulting in complete prohibition of the families from their places¹. Early marriages which has been prevailing in our society for over centuries are also one of the main factors for women destitute. When the girls are married at the very young age to comparatively very old partner, they become widow at a young age itself which ultimately make them and their children destitute. The situation of women is considered to be the major factor of child destitution. In some cases, women are being mentally harassed and been thrown out either by their husband or even by their children and thus become destitute. Trafficking is one of the key foundations for destitution of women and even the young girls who are below the age of fifteen.

Our Indian law did not give any definition on destitute anywhere, however the Socio-Economic security embodied in our Constitution in number of articles can act as a mere perfect example for solving the issue of destitution in India. Article 14, 15, 29(2), 21(A), 23, 24, 39, 42 and 45 of the

¹ Vishal Jeet V Union of India, (1990) 3 S.C.C 318 (India).

Indian Constitution ensures security economically and socially. As per the Hindu Adoption and Maintenance Act, 1956² a woman who is divorced and deserted by her husband can claim for maintenance if she does not remarry.

The Ministry of Women and Child Development enacted various laws to protect the well-being of women, however, such women protection laws are just social legislations which do not have appropriate redressal of the victim nor have serious sanctions for those who are causing the sufferings. The Persons in Destitution (Protection, Care and Rehabilitation) Model Bill, 2016 was passed to address the problem of chronic beggary and homelessness in our country. Eventually, this bill was dropped as no movement was seen after the initial introduction.

It is unfortunate that most of the destitute who create a considerable amount of population in our country, do not have an identity. Due to this lack of identity they are not qualified to get any of the governmental benefits.

WIDOWHOOD IN INDIA:

A loss of companion which is basically widowhood might be one of the most agonizing and traumatic events that could happen in one's life. Since the Hindu brides in India are likely to live with their husband's family, with the death of their husband millions of them are expunged out of their houses and eventually become destitute. Destitute women and widows in India face many deprivations and hardships due to the social restrictions placed upon them and the adverse social attitude toward them. Such problems faced by women are mainly due to the gender construction of our society. It is apparent that the widows in India are the most affected than in any other countries as India being the 2nd most populated country and women constituting half of the entire population, the affected women are comparatively huge in number. There are about 55 million and more widows in India which is as same as the population of the countries like South Africa and more than the entire population of South Korea³. They just exist in the shadows of the society and are considered unlucky and subjected to various kinds of discrimination and even ostracism.

In historic times, 'Sati' or 'widow burning' was prevailing in our society and was considered to

² Hindu Adoption and Maintenance Act, 1956, No. 78, Acts of Parliament, 1956 (India).

³ C.P Chandrasekar & Jayati Gosh, *What it means to be a widow in India today*, Business Line (Oct 9, 2017), <https://www.thehindubusinessline.com/opinion/columns/c-p-chandrasekhar/what-it-means-to-be-a-widow-in-india-today/article9895691.ece>.

be the traditional norm of Hindu society for widows. It is basically a practice in which the widow sacrifices her selves in the funeral fire of her husband. The Britishers who were ruling India during that period, opposed this inhumane act and enacted Bengal Sati Regulation, 1825 and the person who attempts, abets or glorifies such act of burning or burying alive shall be punished with imprisonment under section 3, 4 and 5 of Commission of Sati (Prevention) Act, 1987.⁴ The Britishers also legalized widow remarriage in India by enacting Widow Remarriage Act, 1856. The following are some of provisions under law which speaks about widow's rights:

- **Section 2 of the Widow Remarriage Act of 1856⁵**, forbids women from inheriting their husband's property after his death. It says that, all the rights and interest of the widow which she has in her husband's property will cease to exist after the demise of the husband and the next legal heir of the deceased or any other person who has the rights to the property after her death shall succeed the same. However, under a provision of Hindu Succession Act, 1956, women who choose to remarry were allowed to inherit her deceased husband's property. Section 10 of this act gives equal share in property to the intestate's widow just like the entitled heir⁶. The present scenario is that both Widow Remarriage Act, 1856 and Hindu Succession Act, 1956 exist in our country and Section 2 of the Widows Remarriage Act, 1856 is neither amended nor omitted making the issue a controversial one and having adverse impact on Hindu woman who remarry after the death of her husband. However, Patna High Court has held that the forfeiture of women's right on remarriage is based upon general principles of Hindu Law apart from the provisions of section 2 of Hindu Widow's Remarriage Act, 1856.⁷ Another view is that the Hindu Widows' Remarriage Act, 1856 is not repealed but Section 4 of the Hindu Succession Act, 1956 in effect abrogates the operation of that Act in the case of a widow who succeeds to the property of her husband under the present section and Section 14 has the effect of vesting in her that interest or share in her husband's property as full owner of the same⁸. However, the fact remains that in absence of clarity either from the Supreme Court of India or from the Government of India on this aspect the controversy still persists acting as a sword of Damocles hangs over the Hindu women who remarry after her husband's death.

⁴ Commission of Sati (Prevention) Act, 1987, No. 3, Acts of Parliament, 1987 (India).

⁵ Widow Remarriage Act, 1856, No. XV, Acts of Parliament, 1856 (India).

⁶ Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956 (India).

⁷ Mt. Anarajia vs Tengari Kabar And Anr, A.I.R 1962 Pat 65 (India).

⁸ D.F. Mulla, Mulla's Hindu Law 796 (13th ed. 1966).

- **Section 19** of the **Hindu Adoption and Maintenance Act**⁹ states that the father-in-law is obliged to provide maintenance to his widowed daughter-in-law in case where she is unable to maintain herself with her own savings or if she is not able to get maintenance from her deceased husband's property. However, this would be made enforceable only if the daughter-in-law has a share in the coparcener's property which is in the possession of her father-in-law. This has been affirmed in the case *Raj Kishore Mishra v Meena Mishra*¹⁰.

Under **section 21 (iii)** of the same act, a widow is considered to be a 'dependent' as long as she remarries. If the widowed dependent has no shares in the property of the deceased husband, the legal heir of the deceased is bound to maintain the dependent as per section 22 of the act. She loses her right to be maintained once she is remarried.¹¹

- **Section 8** of the **Hindu Succession Act, 1956**¹² states that the widow has an equal right in the property of his husband dying intestate.

Under **section 14** of the same Act, the property in possession of the Hindu female shall be held by her as an absolute owner and not as a limited owner, whether it was obtained before or after the commencement of the Act. In the case of *Chinnappa Goundar and Anr v. Vallaimmal*¹³, the father-in-law died on providing some property to the widowed daughter-in-law for the purpose of her maintenance. While the daughter-in-law demanded for her share of maintenance during the time of partition of the coparcener's property, the other family refused to give her contending that she has to include the properties given to her in the deed in order to claim her share. In this case, the court decided in favour of the daughter in law saying that she is not obliged to surrender the properties held by her under the maintenance deed as it was not mentioned anywhere in the deed.

⁹ Hindu Adoption and Maintenance Act, 1956, No. 78, Acts of Parliament, 1956 (India).

¹⁰ *Raj Kishore Mishra v Meena Mishra*, A.I.R 1995 All 70 (India).

¹¹ *Pramila And Ors. vs Sarvar Khan And Ors*, A.I.R 2003 ACJ 542 (India).

¹² Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956 (India).

¹³ *Chinnappa Goundar And Anr v Valliammal*, A.I.R 1969 Mad 187 (India).

- **Section 2 (q) of Protection of Women from Domestic Violence Act, 2005¹⁴** states that an aggrieved wife can also seek relief against the relatives of the deceased husband.
- **Section 125 of the Criminal Procedural Code, 1973¹⁵** talks about maintenance of wife and also child and parent, the term wife includes divorced wife, divorced and not remarried, widow within the realm of wife and as such. Nevertheless, they are not eligible if they live in adultery, refuse to live with them without a valid reason or being separated from their husband by mutual consent. This provision also covers the right of women who possess Islam or any other religion¹⁶.
- Under **Muslim personal law**, the widow is entitled to get one-eighth of the share in the property of the deceased husband, if she has children and in case of no children, she is entitled to one-fourth of the share. In cases where there is more than one widow, each of them is entitled to one-sixth of the share¹⁷.
- **Section 33, 33-A and 34 of the Indian Succession Act, 1925¹⁸** deals with the right of succession to a Christian widow. As per this Act, a Christian widow is entitled to one-third of share in the property of the deceased partner and the remaining two-third will be given to his lineal descendant. If the widow has no children, she is bound to get half a share in the property and Rs. 5000. She would get the right to entire property only in the absence of the distant kin of the deceased husband.

Absence of exclusive law on the safety and security of widows in our country makes their position most onerous. There were few attempts in our parliament where Bills were introduced with a view to enact laws on this subject namely THE DESTITUTE AND NEGLECTED WOMEN (WELFARE) BILL, 2006 and THE DESTITUTE WOMEN AND WIDOWS WELFARE BILL, 2009. The Bills were aimed to provide for the welfare and maintenance of the destitute women and widows by setting up a welfare board and providing incentives. Being single member Bills, these proposed laws were not appropriately discussed in the parliament and did not see the light of the day.

¹⁴ Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliaments, 2006 (India).

¹⁵ The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

¹⁶ Shamima Farooqui V Shahid Khan, A.I.R 2015 SC 2025 (India).

¹⁷ Muslim Personal Law (Shariat) Application Act, 1937, No. 26, Acts of Parliament, 1937 (India).

¹⁸ Indian Succession Act, 1925, No 39, Acts of Parliament, 1925(India).

CONCLUSION:

Despite so many laws being enacted to safe guard the women in India, most of them fail to serve the purpose. Although “Sati” system has been abolished in our country, the widows are still expected to mourn for their deceased husband forever. According to the National Crime Bureau, violence against women is the fastest growing crime where for every 34 minute a woman is raped and every 43 minute a woman is kidnapped¹⁹. Our country being a welfare state, its primary duty should be to rehabilitate such unfortunate widows and to implement welfare schemes for them. But even after more than half a century has passed since independence many destitute women, widows and divorced women still remain deprived of Government assistance and facilities. Most of such women are poor, unemployed and are short of even the basic necessities for their survival. They are also suffering from many numbers of diseases. It is so awful to know that over 55 million widows in India are deprived of their basic dignity as a penitence for some sin. Hence, it is the primary responsibility of the Government to ensure that they are provided with all such opportunities and facilities so that they may live and nurture in a healthy atmosphere and are protected from all kinds of exploitation.

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¹⁹ ANI, *International Widows' Day: What it's like to be 'vidhava' in India*. India.com (Jun. 23, 2016 9:43 AM), <https://www.india.com/news/india/international-widows-day-what-its-like-to-be-vidhava-in-india-1280901>