

Role of family law in gender equality and woman's right

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ABSTRACT:

In India, women were always given importance and also they are known to their motherhood. They used to run the family and a family without a woman is considered to be dark. Rivers were called with a name of a woman and also the country Bharat was worshipped as Bharath Mata. But things changed after various invasions and during these women were treated very unequally. Many practices like child marriage, sati etc affected them severely. Also various wars by Mughals who after winning the war killed the women brutally by raping and making them as slaves.

So after India became sovereign it mainly focused on women development and equality. The practices like child marriage and sati became illegal and had been completely wiped out from the country.

Family law plays an important role in women development and gender equality. It provides equality in areas for women and also ensure that their rights are given properly. This article mainly focus on the role of family law in women development and gender equality.

1. INTRODUCTION

Family law is a body of law regulating family relationships including marriage and divorce, the treatment of children and related economic matters. It is a branch of civil law that focuses on legal issues and matters relating to family relationships. It consists of a wide range of topics, including:

* **Child Custody and Visitation:** Determining the custody of children in cases of divorce or separation is a crucial aspect of family law. It includes decisions about

where the children should live, visitation rights of noncustodial parents and the allocation of parental responsibilities.

* **Adoption:** Family law addresses the legal aspects of adopting a child. It ensures that the rights of both biological and adoptive parents are protected and that the adoption is in the best interest of the child according to Hindu adoption and maintenance act.

* **Child Support:** Family law determines the financial support that one parent may be required to provide for the upbringing of their child. Child support is calculated based on factors like income and the needs of the child.

* **Marriage and Divorce:** Family law deals with the legal aspects of marriage and divorce. This includes the procedures for getting married, requirements for a valid marriage, and the legal processes involved in obtaining a divorce.

* **Spousal Support or Alimony:** Family law determines whether one spouse is entitled to receive financial support from the other after a divorce. This is often based on factors such as the length of the marriage and each spouse's financial situation.

* **Prenuptial and Postnuptial Agreements:** Family law governs the enforcement and validity of prenuptial and postnuptial agreements. Couples may enter into agreements before or after marriage to outline how their assets and other issues will be handled in the event of divorce or separation.

* **Domestic Violence and Protective Orders:** Family law gives mechanisms for obtaining protective orders in cases of domestic violence which are designed to protect individuals from abuse and provide legal remedies for victims.

* **Surrogacy and Reproductive Rights:** Family law deals the legal issues related to surrogacy, which includes the rights and responsibilities of surrogate mothers, intended parents and the child born through surrogacy.

* **Estate Planning and Family Inheritance:** Family law also deals with estate planning, mainly concerning issues like wills, trusts and inheritance matters within a family.

Family law varies by jurisdiction, and its primary focus is to provide a legal framework for resolving conflicts and ensuring the well-being of individuals within familial relationship

2. FAMILY LAW HELPING IN WOMEN'S RIGHT AND GENDER EQUALITY:

In Hindu marriage act 1955, both the husband and wife are treated to be equal and they have equal rights and obligations towards each other. Some of the laws which gives importance for women and promote gender equality are mentioned below

Polygamy has been prohibited and the concept of monogamy was introduced. Before this act many male marries more than one wife which was stopped after this act.

2.1 Restitution of conjugal rights:

Section 9 of the HMA talks about restitution of conjugal rights. This act ensures that if one of the spouse withdrawn or abandoned from society of other without any reasonable excuse then the affected spouse can approach the court under this section 9 of conjugal rights. So this section ensures that a husband cannot leave his wife without any reasonable excuse which often occurs in the society.

2.2 Judicial separation:

Section 10 of HMA talks about judicial separation where if one party feels difficult to continue with another party then judicial separation is given under this act. This is different from divorce because here only active marital life between the couple is suspended. This act gives protection to women by giving them right to live separately if they face any difficulties from their husband.

Right to live in matrimonial house: A women after her marriage have right to live in her husband's house even if the house is not owned by her husband. If there is any violation of this right she can approach court under domestic violence act.

2.3 Protection against Dowry:

Dowry prohibition Act 1961 ensures that women are provided with protection regarding dowry (cash, jewel, valuables or property) demand by husband or his family which now is a criminal offence

2.4 Right to Streedhan:

Hindu succession law says that the gifts received by a woman during pre marriage or marriage ceremonies or childbirth is a property of her.

2.5 Divorce:

Section 13 of Hindu marriage act provide right to get divorce for both man and woman for the grounds which includes extramarital relationship, cruelty, desertion, conversion of religion, insanity, renunciation from world, presumption of death, venereal disease, leprosy etc. This ensures that here woman and man are treated equally. Also this section special grounds for women for divorce which includes pre act polygamous marriage of the husband, act of rape, sodomy, or bestiality by the husband and non resumption of cohabitation after a decree/order of maintenance .

A girl who got married before age of 15 can repudiate the marriage before she attains age of 18 years.

Muslim law and Christian law also provide with different grounds for the divorce.

2.6 Right to 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 after 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.

In Muslim Law, the women have also been given rights on the property the same as that of men and some other exclusive rights depending on the Muslim school she belongs to- Shia or Sunni. Some of the Islamic Principles of succession which were propounded by the Prophet are:

The husband and the wife are equal and they are entitled to inherit from each other.

Some near cognates and women are also enumerated as heirs.

The share of the daughter is half of the share of the son.

According to Muslim Law, the wife is entitled to get some amount of money or property from the husband on the marriage which is known as Dower or Mahr. It is an integral part of the marriage. If Mahr is not given to her as decided by the parties then she can go to the Court and she can also refuse Conjugal rights. There is a concept of the right to retention also, which means that when the husband dies the wife will get her Mahr out of her husband's property. A Muslim man bequeaths one-third of the total property but in case a woman has no blood relation and her husband would be the only heir, then she can bequest half of the property.

As far as the Christian women are concerned they are entitled to Streedhan 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.

2.7 Maintenance:

If a woman earns less than her husband or cannot earn at all, then she can claim for maintenance for her and her children from her husband under section 24 and 25 of Hindu marriage act. She is entitled to get maintenance until her lifetime. Also can even claim maintenance after judicial separation under particular grounds like if husband involves in desertion, cruelty, resides with concubine in same house etc.

A divorced woman in Muslim law is entitled to get maintenance under Muslim Personal Law (Shariat) and Muslim Women (Protection of rights on Divorce)

Act,1986. Also section 3 of the said act tells about the entitlement of the divorced woman.

A Christian Woman can claim Maintenance under Section 36 and 37 of the Indian Christian Marriage Act, 1872.

2.8 RIGHT AGAINST DOMESTIC VIOLENCE:

A woman has right against domestic violence which includes physical, emotional, sexual and economic violence under the Protection of Women from Domestic Violence Act, 2005. The benefits available to a woman this Act include a woman's right to reside in the shared household with her husband, and if the husband violates the protection orders then he will be liable for punishment extended up to one year or a maximum fine of INR 20,000. This act provides the right to an order of protection, the right to live in the same house, the right to claim compensation and maintenance and the right to custody.

2.9 OTHER RIGHTS:

Women have the rights to the custody of children under family law. This right is a very important concern for women facing domestic violence, as due to fear of losing the custody of children many women continue to live in a violent relationship. As the primary caretaker of the children, she is responsible for their protection and hence entitled to their custody and guardianship. The principle enshrined in the United Nations Declaration of the Rights of the Child– the best interest of the child is considered or applied while deciding the custody and it is mostly in favour of mothers in India.

3. CONCLUSION:

In this article we clearly came to know about the role of family law in women empowerment and in gender equality. Rights like conjugal rights , right to Streedhan, right to property, right to maintenance and right to child custody ensure s that women are treated equally and respected in the country. Protection against dowry and domestic violence ensures that they are protected from male dominance in the society. Also by divorce, they can put an end to their marriage if they cannot

live with their husband. Gender equality is maintained here. Putting an end to Child marriage and practice of sati saves many women's life from dark and ensures their development as equal to men.

Even though family laws helps in developing women in the nation and ensuring their equality but still some laws are one sided to male dominance. For example recently the practice of triple talak as been banned by an act .But if we see after 75 years of independence, now only we had banned the triple talak. Also there are many laws in Muslim law where women's right is a question mark and also many laws wierd and clearly support male dominance still in this 21st century.

We all know that India is secular country where everyone is treated equally irrespective of their religion. But having different laws for each religion in family law should be changed soon because women should get their proper rights irrespective of their religion. Uniform civil code is going to implemented soon which we all can hope that all the women in India will be treated equally important irrespective of their religion without hurting their religious feel. Hence role of family law in future development of women is more important for the nation's development too.

