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Paper Authors **UDAYA KRISHNA B, DR. PAWAN KUMAR**



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## **A STUDY OF STATUS OF INDIAN WOMEN IN THEIR RESPECTIVE PERSONAL LAWS**

**CANDIDATE NAME= UDAYA KRISHNA B**

**DESIGNATION= RESEARCH SCHOLAR SUNRISE UNIVERSITY ALWAR**

**GUIDE NAME= DR. PAWAN KUMAR**

**DESIGNATION= ASSISTANT PROFESSOR  
SUNRISE UNIVERSITY ALWAR**

### **ABSTRACT**

An overview of Indian women's history, legal evolution, and constitutional protections has been presented in the preceding chapters. The purpose of this chapter is to investigate the legal rights of women in India and the ways in which they are treated unequally and unfairly. Since personal law has its origins in the family unit, it is sometimes referred to by the more colloquial term "family law." Given that a person's religious affiliation and the cultural norms practiced by his family have such a profound impact on his identity formation and social standing. It's hard to picture a functioning social order in which neither the family nor women play any significant roles. A woman's entire existence is dedicated to providing for and caring for her family. She is the future's background, since she produces, reproduces, and generates it for her family. The fact that she was female, feminine, and a feminist meant that she was denied equality despite being the backbone of the family and half of the human race. Outside of the house precincts, her personality causes her to be treated differently, but she also faces discrimination within the home precincts when issues arise. General Law legislation afforded her protection, elevated her standing, and limited her exploitation, but in terms of personal law, she faced discrimination, and the laws on the subject were in their infancy. Following independence, much was done for women, and the horrors caused by the arbitrary nature of personal laws were greatly reduced. However, unless we secure measures like the Uniform Civil Code, each community's own personal law will apply to women.

**KEYWORDS:** Indian Women, Personal Laws, family law

### **INTRODUCTION**

According to Owmn, T.K., and Venugopalan, C.N.'s theory, "in all human societies social differentiation between sex the male and female existed in the overwhelming majority, of them women were assigned inferior position," this is the case Women's human rights would be at the forefront of society and gender discrimination would be a thing of the past if they had been afforded the same respect from the start of civilization as men were

in the realms of personal and family life and religion. In this chapter, we assume that personal rights are fundamental rights and explore and analyze issues related to personal law from a human rights perspective and in the chronological order in which these issues have evolved under the law.

### **POSITION OF HINDU WOMEN**

Hindus have played an important part in the development of Indian civilization ever since its inception. From the time of the

Indus Valley Civilization to the present day, when India has entered a new millennium, the lives of Hindu women have taken many unexpected turns, but they have still not achieved equality. They do not have the same protections under the law as men do in any of the categories of personal legislation. In Hindu culture, tradition is decisive. Hindu personal law did become subject to legislation after independence, but legislation was also influenced by custom and custom had an impact on pre-independence legislation as well. In *Collector of Madura vs. Mootoo Ramlinga*, According to the Privy Council, a written book is the most reliable source for establishing the validity of a custom. In the aforementioned context, however, written literature includes not only legislation, a contemporary source of Hindu Law, but also the Vedas, Smritis, etc., and the writings of scholars.

### **Status of Hindu women in martial affairs**

Hindu marriage has been a religious event with both secular and non-secular goals ever since the Vedic period. It establishes a permanent bond between the couple. Women were simply allowed to accept and carry out the ritual, not make any decisions about it.

The Hindu Marriage Act of 1956 is the primary piece of legislation dealing with Hindu marriages. Some prior Acts dealt specifically with the issue. Prominent laws included the Aryan Marriage Validity Act of 1937, the Widow Remarriage Act of 1856, the Aryan Marriage Act of 1909, the Sharada Act of 1929, the Hindu Marriage Disability Removal Act of 1946, the Special Marriage Act of 1872, and the Hindu Marriage Validity Act of 1949.

The provisions of the Hindu Marriage Act, 1956 have been instrumental in transforming marriage into a central social institution. It has strengthened this fundamental institution, and occasional revisions have made the marriage shine. The Act's contribution also includes safeguards for families and protections for women's rights. Section 13-B of the Act, which addresses many of the problems that have plagued Hindu marriage up until, then, has fundamentally altered the institution of matrimony in India.

### **Adoption rights of Hindu female**

From ancient times until the passing of the Hindu Adoption and Maintenance Act in 1956, it was illegal for a Hindu woman to adopt a male child. This could only be done with her husband's permission, and even then, a Hindu woman would only adopt for her husband.

The spiritual benefit and the continuation of the descendant line were the fundamental goals of adoption, not the devolution of property. They served no purpose in this procedure. This bias persisted until the Hindu Adoption and Maintenance Act was passed in 1956. As a result of the Act, women are no longer considered agents of their husbands when adopting, and the concept of adoption has been fundamentally altered. Adoption is now widely recognized as a crucial service and an issue of gender-based social equity. Women can adopt whether or not they are married currently. The Act has been amended so that a woman who is not married may adopt in her own right. The Act not only gives women the legal right to adopt but also prods the right of husbands to adopt.

The Hindu Adoption and Maintenance Act of 1956, Section 8, states that any Hindu woman can adopt a child if she meets the following requirements: To a Hindu woman,

- (a) Who is of sound mind,
- (b) Who is not a minor, and
- c) Who has never been married, or whose marriage has been dissolved, or whose husband has died, or who has renounced the world, or who has ceased to be a Hindu, or who has been declared by a Court of competent jurisdiction to be of unsound mind, has the legal right to adopt a child.

In addition, Section 11 of the aforementioned Act makes it more difficult for Hindu women to adopt a child.

Whenever a Hindu bride takes on the role of wife, it is always for her husband's benefit. If a wife adopts a child before she marries or after her marriage ends (whether that be through her husband's death, a divorce, or the marriage's invalidity), she has no legal standing to make decisions that affect him. Consequently, in the aforementioned scenarios, she is free to change her marital status. Since the marriage was never valid to begin with, the woman in the void marriage is free to adopt a child without her husband's consent. However, if she subsequently has a kid, she is no longer considered issueless and therefore cannot adopt. If they have a kid after they divorce, she will no longer be eligible to adopt. The foregoing explanation makes it obvious that women may be able to adopt more than one kid under certain circumstances, something a Hindu man is unable to accomplish. From the perspective of Hindu women, the aforementioned Act strikes a

good compromise between religious standards and secular needs.

### **Property right of a Hindu woman and inequalities**

Women's property rights as daughters, wives, and mothers have been subordinated to those of men in Hindu personal law literature from the very beginning. Even though she was not a coparcenary in her Hindu household, she nevertheless faced a number of forms of prejudice and inequality. Some work has been done over a period of time to improve her situation. In theory, she is the sole or joint owner of the Stridhan and Women's estate, depending on the marital status of the parties involved.

- (a) Property with full ownership. (Stridhan)
- (b) Property with limited ownership. (Women's state)

She owns all ownership rights to the Stridhan. She was given permission to use the land as she saw fit. A woman's right to dispose of or alienate the Stridhan is complete because of her absolute ownership of the property. So, she can dispose of it in any way she sees fit, be it sale, gift, mortgage, lease, exchange, or otherwise. After her passing, her heirs inherited all Stridhan strains. In case *Bhagawandin vs. Mainabai*, Privy Council had propounded that the property obtained by her husband is not Stridhan. In *Pratibha Rani vs. Suraj Kumar*, The Supreme Court ruled that the property she received as a gift is her Stridhan, which gives her full legal title and control over the property. After a woman's death, her estate will pass to the next in line of the last full owner, regardless of whether or not she made any contributions to the property during her

lifetime. There are a few different kinds of assets that make up her estate, and they are listed here. Inheritance a. Property received by a will. Partitioning-obtained share (b). In *Janaki Ammal vs. Narayan Swami*, The Privy Council has ruled that a woman has the same restricted ownership rights as any other person in the event of her passing. She shuts out everyone till the end of her life, making it impossible for anyone else to develop an interest in anything.

## **POSITION OF MUSLIM WOMEN IN THEIR PERSONAL LAW**

Before Islam, women's lives were far more difficult in the Arabian Peninsula. During the dark ages preceding Islam (the *Jahiliyya*), women were subservient to either their male kin or their male husbands. They were property that could be acquired, traded, or passed down via families. They were completely subjugated by men. They weren't people in and of themselves. It was common for a man's sons to inherit his widow as though she were a piece of property. They were barred from participating in the community's political or social life. They had no respect for them and were used as mere sex objects. Even in pre-Islamic Arab societies, they were seen as a financial and emotional burden. Among the Arabs, 'female infanticide' was a prevalent practice. In *Jahiliyya* culture, men held supreme authority over women in all marital and legal concerns. He could marry as many women as he liked and divorce them whenever he wanted. In the time before Islam, the concept of a permanent institution of marriage did not exist.

After a divorce, a woman loses her right to receive spousal support payments, while

the man is released from all financial obligations and has no legal repercussions. Most pre-Islamic urban women seem to have been raised in a male-dominated environment with little legal protections.

With the advent of Islam, people finally had a set of rules to live by and a way to construct a stable social structure. The origin of the faith is where its uniqueness really shines. There's no room for traditions, and everything is set in stone from day one. In certain locations, laws aren't being passed that would protect Muslims, and courts aren't being able to interpret the laws that have been passed.

Mohammad was the pioneering feminist. He abolished the practice of executing female infants, legalized property ownership by women, divorced them, and opened the door for them to hold political office. There is no hard and fast rule against women ogling other males. Women are not allowed to sit in the same room as men or to stare at them in a way that could have negative consequences. Men are prohibited from having intimate encounters with unknown women due to Shariah law. Similarly, a woman's body is off-limits to any male outside her husband. The prophet (peace be upon him) left a clear tradition urging women to pray in the privacy of their own homes, saying, "The best mosques for women are the inner parts of their houses." Women persisted in visiting mosques despite the fact that the Prophet had not explicitly forbidden their presence there. However, it became increasingly apparent after his passing that women attending mosques for prayers was beneath the honor and dignity of Muslims. Khalifa Umar ordered women to forgo mosques in favor of private offerings.

The institution of marriage was governed after the rise of Islam. It strongly suggested that men only have one wife, only allowing them to have up to four in exceptional cases. Islam recognizes only marriages between adults. The legislation protects the bride's right to marry whoever she pleases by requiring that the dowry be given to the bride rather than her parents. Her consent is required in a Muslim marriage. In the case of a female ward who is a widow or divorcee, her permission is required. However, a virgin's silence is to be seen as her approval. In order for a nikah to be recognized in Islam, the man who marries a woman must provide her with a dowry. Even though Islam permits divorce, the Prophet says, "Of all things that Islam has permitted, divorce is the most hated by Allah" (Talaq is a right available mainly to the husband, but not to the wife). This is (Abu Danrid). Instead of severing ties, Muslims are urged to work toward reconciliation between estranged partners. In accordance with Shariah law, regardless of a husband's financial situation, he must provide for his wife's needs.

In Islamic law, females are allowed to legally possess their own homes. She also has the legal capacity to buy and sell real estate. Islamic law does not restrict women from engaging in trade, professional practice, or government service.

Islam taught them to give women the same respect as men and provided her with Qisas (retaliatory punishment, like-for-like) for any violation of this code, for which the Islamic State was held accountable. Fornication and sexual assault against women are considered serious crimes and moral transgressions in

Islam. Their opinions on political topics were highly regarded, and they held significant sway inside their own civilizations. Case in point: Asia and Ummsalama. Islam promotes tolerance and respect between the sexes because it recognizes women as fully human beings on par with men.

## **MARRIAGE AND DIVORCE IN ISLAMIC LAW**

For private concerns, the British in India permitted the application of personal laws. The Shariat Act of 1937 established British recognition of Shariah law as applicable to Muslims.

According to Section 2 of the Shariat Act of 1937, only Islamic law can be used to settle disputes amongst Muslims.

In *Mohammad Yunus vs. Saidunnissa*, It has been decided that Muslims cannot be subjected to any tradition that goes against Sharia law. When dealing with Muslim cases, the court must follow Muslim Personal Law.

It is less likely that a Muslim in India will refer to a source other than the Quran or Sunna.

A Muslim's marriage and divorce are governed by a set of principles that are distinct from cultural norms.

The Quran permits a Muslim man to take four wives. It is mentioned in the Quran that "if you have confidence in the case of destitute you can make Justice, then you are allowed for four and if fear that you cannot make Justice, then do only one." This Sunnat of Mohammad Sahab has strong historical recommendation and is also mentioned in the Ayat of Quran." When people behave similarly, they show each other equal amounts of care and compassion.

Islam permits polygamy, but only under extremely strict circumstances, making it practically hard to practice. First and foremost, Islam views marriage not as a sacrament but as a civil contract between a man and a woman. 'Nikah' is considered a form of Jihad in Islam, and it is required for a man to get married. There are three types of persons whom Allah adores, according to the Quran. God will plant the seed of love for his wife in the heart of her new husband. A good wife is compared to a treasure chest. Mohammed observed that the best Muslims are the ones who treat their wives well. Islam's "Nikah" institution of marriage and family is a step toward a more just society. Despite its contractual basis, it also incorporates religious principles.

The inequity with Muslim women has not been rectified even if the basics of an Islamic marriage are similar to a contractual commitment. The minimum age for marriage is appropriate, and the "Child Marriage Restraint Act, 1929" regulations apply. Justice with Islamic Women is not served by the current laws addressing marriage consent, religion, marriage procedures, or bans. What sets it apart is the novel concept of foster care. The dowry is a mandatory part of the Nikah ceremony. It's like the 'Nikah' dowry in that respect. The husband, however, presents it to his wife for her own advantage and autonomy. Dower, which is not just a monetary gain, has long been recognized as a crucial aspect of marriage and a means by which divorce can be indirectly limited. A various progressive rights have been given to Muslim Women regarding 'Dower'. These

are as, (a) Once right to dower is vested, it never lost.

## CONCLUSION

The way women are treated is a good barometer of a society's level of development. A society's values can be gauged by looking at the position of its women. Despite the Vedic period where women was given position of high esteem, in the later periods they became subservient of men due to rituals, paganism, and Brahmanical doctrines. The rights, duties, liabilities, and right to property entrusted in women determine their position in any legal system. The ladies at Manusmriti were not permitted to lead separate and equal lives. During this time period, women were not given equal rights. Even when adjustments were made by different civilizations, the issue persisted. Rajputs, Muslims, and everyone else all had complicated ideas about them, making things worse day by day. The introduction of Western culture ushered in a new era for the advancement of Indian women. Sex equality and women's economic and social security are just two examples of the goals that modern society aspires to realize. The status of women in Indian society originally became a topic of discussion during the British colonial era of the nineteenth century. This was mostly caused by the adoption of novel political structures, intellectual pursuits, and technological tools. The newly enlightened people saw that the treatment of 'half' of their society was unfair. During that time period, social reformers discovered inequality based on caste and gender that was both widespread and illogical. The British rulers were made aware of the condition of Indian women, and they took

steps to eliminate 'uncivilized' practices from Indian culture.

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