CHAPTER 6

LAW RELATING WOMEN

“Oh God who does not exist, You hate women otherwise you’d have made them different”

Edna O’Brien

Legislation aimed to benefit women was not a concern for ancient times. The society revolved around male population. More over the puranas and Smritis which put guidelines for the social life also neglected the women. As the male dominated society had no consideration to females, the laws of the time reflected the view.

Women in Vedas and Upanishads

Among the Upanishads Isovasya, Kena, Mandookya does not refer the male-female status. Swethaswatharopanishath says that soul has no sexual differences. In Katopanishad Yamadharma offers Nachikethas beautiful ladies as gift. Thythireeyopanishad recommends the male to marry suitable lady and have children. Prasnopanishad says about sexual relationship with women and procuring good children. Women carefully treats the soul of husband which is transcended into her womb-(Aithereyopanishad). Men pours the semen, producing out of the cereal into the women to produce children (Mundakapanishad).Bruhadaranyakopanishad took an entirely anti feminist...

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1 In Girls In Their Married Bliss
stand and says "if women does not agree with man for procuring children, man can beat her for the purpose".

According to Manusmrithi chapter 3, 5, 9 rules relating to marriage and duties of women are described. Manu considered women as another object ‘which’ can be donated. According to him she can be gifted, purchased and has no right to express opinion in her marriage. In his Sthreedharma he instructs that women should not act according to her will during the period of teenage, young age and in older age. Wife as a women should obey the husband who is a male. Manu was against widow remarriage. But he recommends the remarriage of a widower. In chapter 9 (Dampatheedharmha) Manu declares his resentment regarding the freedom of women.

"Pitha rakshati koumare bhartha rakshathi youvane
rakshanthi sthavire puthra na sthree swanthanthryamarhathi"²

Arthasathra also considers women as an object ‘which’ is to be gifted. Moreover son is given prominence over daughter. Koutilya consider marriage as an exchange where women have no prominence. In chapter 11- Sankhavrutham koutilya advise to influence leaders by using beautiful ladies. Women can be used to make split among sena leaders which will help to win the battle.

² Manusmrithi, Mathrubhumi Books, Kozhikode.
Chanakya is of the opinion that, women should be submissive to men.

“Bharthruvahavarthini bharya”

Means – She who remains submissive to the husband is the wife.³

Chanakya considered women as inferior category.

He says-

1. “Sthreeshu kinchidapi na viswaseth” - One should not trust women at all.⁴

2. “Alohamayam nigadam kalathram” - A wife is non metallic shackle.⁵

3. “Na samadhi stheeshu lokanhatha cha” - Women should not have either composure or knowledge of the world.⁶

4. “Streemam bhooshanam laja” - Modesty is the ornament of women.⁷

Classics

Great classics of ancient India also viewed women inferior to men. Kunthi, Gandhari and Droupathi were the three main women characters in Mahabharatha. We can see that they were lived within the value limit of men.

Kunthi was compelled to give up his child (Karnan) to pretend as virgin

⁴ Maxims of Chanakya,p.61.
⁵ Maxims of Chanakya,p.61.
⁶ Maxims of Chanakya,p.61.
⁷ Maxims of Chanakya,p.62.
Gandhari decided to be blind only because her husband (Dhrutharashtrar) is a blind man. Droupathi had to accept four brothers of Arjuna instead of his sincere love towards Arjuna.

**Buddhism**

Buddhism also did not considered women equal to men. Buddhan himself gave up his family life. He had the opinion that married person could not attain Nirvana. Buddha was reluctant to give women entry into his Viharas. Later his favorite disciple Anandan compelled him to change his mind. He was of the opinion that presence of the women will destroy Viharas life. The guidelines Buddha put forward certain rules for admitting Bikshunis (Female monk).

They are:

1. Bhikshunis should respect all Bhikshus (male monks)
2. Bhikshunis should not act without the direction of the group.
3. Bhikshuni should not curse a Bikshu
4. Bhikshuni is not eligible to give advise to a Bikshu.\(^8\)

Buddha was of the opinion that among the seven type of wives servant is best. “One resembles a murderer, the second robber, the third a mistress,

\(^8\) A group of writers, Buddhism Philosophy and History, Kerala Bhasha Institute,1973, P.57.
the fourth a mother, the fifth a sister, the sixth a friend and the seventh a servant.\(^9\)

**Jainism**

Since from the time of Parswanathan women did the religious rituals.\(^10\) But Digambaras believed that women get perfection only through the rebirth as men. But swethambaras had the opinion that women will get Moksha without the rebirth. They points out the example of Malli, the lady who became the 19\(^{th}\) Theerthankara of Jainas.\(^11\)

But both the Swethambaras and Digambaras are of the same opinion that Men will be a better Monk than a women. Some of the chapters in their religious texts were not recommended for the women. They believed that women had no mental courage to study the same. It was also said that a male monk who studied for three years had the ability to become a Guru of a female monk of having experience of 30 years.\(^12\)

**The concept of women in Christianity**

Bible put forward a philosophy based on Father-Son concepts. There is no prominence for motherhood or mother-son relation. The presence of girl or

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\(^10\) Pruthi, p.158.


\(^12\) Pruthi 1994:159.
sister is namesake. The principle that women is made from the bone of man itself created a secondary image to women. Moreover women got an image that she was responsible for losing heaven. According to bible men equals human. No prominence is given to women. According to old testament, the portions beware of bad women, faithfulness in wedlock advises men to escape from the trap of women. According to Samuel duty of women is to bring food and prepare it in the early morning. In a letter to Korinthoses (New testament), Paulose says after the death of husband the life of a widow is good for women.

Islam and women

According to Quoran also women is made of men's bone. For the same reason Islam consider women inferior to man. In Quoran chapter four-Annisa au, 24 surathannur refers to women and their status. According to the text daughter's claim in property is half of a son. Men has the right to beat the women who is not obedient towards his advices. Hadeeeses also admits the right of a man to use power against women in case of disobedience. Bukhari

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14 Ibid.p.642.
15 Ibid. p.663.
16 Ibid., p.185.
17 Quoran ,translated by a group of wriers,Current books, Kottayam, 4.11.
muslim joint Hadees says that hell is full of women who showed disobedience against men.\(^{18}\) Fikh Hussuna treats women as an instrument for enjoyment.\(^{19}\)

While passing through most of the religious texts we can see that women enjoyed secondary status only. Such a social situation influenced customs and conventions prevailed at that time. Right of the women over the property of her family property is limited. Marital rights were also less.

**Widow Remarriage**

The problem of widow in India is a prominent example for the denial of justice to the women. While widow suffers fulmination from the society widower did not face any such discrimination. Conventional society considers widow as bad omen and keep away them from pleasant occasions like marriage. Moreover proprietary rights were deprived from the widows without any reason which is against the principles of social justice. While considering the system prevail in other religion Hindu community is more cruel towards them; mainly in the case of remarriage.

Widow remarriage is not allowed in most of the Hindu communities. Although a man may grieve for his deceased wife, a widow may face not only a personal loss but a major restructuring of her life. Becoming a widow in

\(^{18}\) (Faizy Ebrahim Puthoor, Buchari Muslim Samyukta Hadees Paribhasha, Bayaniyya Book stall, Parappanangadi, 1988 p.165.

\(^{19}\) (Sabib sayyed, Fikh Hussuna, Islamic publishing House, Kozhikode, 1992, p.15)
India is not a benign or neutral event. A man's death, particularly if it occurs when he is young, may be attributed to ill fortune brought upon him by his wife, possibly because of her sins in a past life. In traditional Hindu society, widows are treated as social pariahs. They are not welcome to participate in family functions and their mere presence is considered inauspicious.

With the death of her husband, a woman's auspicious wifehood ends, and she is plunged into dreaded widowhood. The very word *widow* is used as an epithet. As a widow, a woman is devoid of reason to adorn herself. If she follows tradition, she may shave her head, shed her jewelry, and wear only plain white or dark clothing. Widows of low-ranking groups have always been allowed to remarry, but widows of high rank have been expected to remain unmarried and chaste until death. In earlier times, for child brides married to older men and widowed young, these strictures caused great hardship and inspired reform movements in some parts of the country. The taboo on widow remarriage stems from man's desire to monopolize all the good things in life.

In the past, the ultimate rejection of widowhood occurred in the burning of the Hindu widow on her husband's funeral pyre, a practice known as 'Sati' (meaning, literally, true or virtuous one). Women who so perished in the funeral flames were posthumously adulated, and even in the late twentieth century are worshiped at memorial tablets and temples erected in their honor.
In western India, Rajput lineages proudly point to satis in their history. Sati was never widespread, and it has been illegal since 1829, but a few cases of sati still occur in India every year. In choosing to die with her husband, a woman evinces great merit and power and is considered able to bring boons to her husband's patrilineage and to others who honor her. Thus, through her meritorious death, a widow avoids disdain and achieves glory, not only for herself, but for all of her kin as well.

By restricting widow remarriage, high-status groups limit restructuring of the lineage on the death of a male member. An unmarried widow remains a member of her husband's lineage, with no competing ties to other groups of in-laws. Her rights to her husband's property, traditionally limited though they are to management rather than outright inheritance, remain uncomplicated by remarriage to a man from another lineage. It is among lower-ranking groups with lesser amounts of property and prestige that widow remarriage is most frequent.

**Property Rights of Widows in Hindu community**

Although the Hindu Succession Act 1969 made women eligible to inherit equally with men and some individual states have legislated equality provisions into inheritance law widows are mostly deprived of their legal rights. Local interpretations of the custom of the caste determine whether or not a widow will be granted some permanent or temporary share of the joint
family's land or property. In rural India land ownership tends to engender the bitterest family disputes - never more intense than when a husband dies. A full account of land inheritance in India would have to distinguish between 1) traditional law 2) modern law, and 3) actual practice.

The inheritance rights of the majority of Indian rural widows are governed by actual practice. Practice can differ from village to village, even in the same region and among the same caste. Patrilocal residence and patrilineal inheritance (the wife goes to live in her husband's village; only males can inherit) is a fundamental source of the poverty and marginalization of Indian widows. Patrilineal inheritance effectively denies widows inheritance rights over their father's property, and their customary and legal rights over their husband's share of family property are often violated. An Indian wife becomes the property of her in-laws family, and when her husband dies they can decide what to give her and how to treat her. Having broken all intimate ties with her birth family, when her husband dies a widow has no freedom to "return" to the parental home, or to her brothers. She remains in her husband's village whether or not her owned land or property.

If there is land, under most caste codes the widow should be allotted some for her needs, but she is not given ownership rights; she cannot mortgage, sell or gift it away. She only has the "use" and very limited rights.
If she marries away "going for nata", has no children, is judged to behave badly, she may be sent away.

The fact is that limited as they are, the accepted property rights of widows are often violated in practice. In a study in 1994, 30% of the widows in a study reported serious conflicts over inheritance, land, property, and residence. Conflicts often ended in violence.

Conflicts over land and property are often so bad that brothers-in-law force the widow to leave the village. Conflicts are usually of two types: the brothers-in-law insist on sharecropping or managing the widow's land themselves, or they simply deprive her of her share (often rationalizing their claim by arguing that they spent money on her husband's funeral or on her children's maintenance; they might even bring up the dowry question and say that money was owed). Even if she owns land, she may have no access to wells, ploughs and bullocks. In their attempts to gain control of land and property, the brothers-in-law may (often abetted by their wives) harass, persecute, beat and torture and even arrange the murder of the widow. Long after the abolition of Sati, there continue to be reported cases of women being forced to kill themselves on the death of their husband, in order for relatives to seize her inheritance.
Cultural, Social and Emotional Deprivation

Along with economic deprivation, when a woman becomes a widow, stringent moral code is imposed on her, whereby her emotional and physical needs are not taken care of. When the husband is alive she is supposed to deck herself in colorful attire, wear ornaments, wear flowers, put sindoor and kumkum. But after the death of her husband she is doomed to live a life without any of these adornments. Widows are expected to remain in mourning during the remaining part of her life. She is disfigured to the extent of shaving off her hair and wearing white sari. The explanation given to such an act is that the widow should not induce carnal pleasures in another man. She is expected to remain inside the home and is allowed to perform personal pujas only. She is forbidden to take part in any joyful occasion or to attend any family festival because her very presence would be considered as an evil omen.

The patriarchal nature of Indian society vests all economic and social powers in a man. In the name of religion males perpetuate innumerable atrocities against their woman. Even a tottering old man tries to marry after his wife dies. But a young woman rendered a widow is barred from marrying even if she is only in her teens. She has to control her emotions and feelings and live like a recluse all her life and die as a widow. This rule that widow should not remarry is even more atrocious than that of 'Sati', as sati at least
puts an end to her tragedy immediately. But if the widow is living, her life is socially, culturally and emotionally dead. She has to live all her life facing the slings and arrows of society as a widow. The laws of the religion, as interpreted by the men in the society, prohibit a widow from remarrying even if she has never experienced the pleasures of a married life.

Higher the caste, more likely the widow remarriage is forbidden. Though remarriage is not forbidden in the religious books as stated earlier that the Rigveda has a direct connotation on widow remarriage, which is conveniently not read by the religious leaders. Hence even the poorest Brahmin feels indignant at the very suggestion of widow remarriage. The overall probability that a widow will remarry is quite low, perhaps of the order of 15 to 20 percent in India as a whole.

There are exceptions. A child widow or a young childless widow may usually remarry. If the widow is very young, her parents may arrange another marriage for her. If they are poor and cannot afford another dowry, the second marriage is often full of problems - the husband may be an elderly widower, a divorcee, or sick and handicapped. In some castes leviratic marriage is practiced; the widow is taken by a brother. In some areas of Indian society, a widow chooses not to re-marry but is forced to live with the younger/youngest brother of her deceased husband for "protection", a crime which condemns her to a lifetime of repeated rape.
There is an emerging trend towards prohibiting and discouraging remarriage even in the lower and middle castes as a means of achieving higher social status but most widows interviewed do not wish to remarry. They fear ill treatment in a new family, especially abuse of their children. The common restrictions on residence, ownership, remarriage and employment place a widow in the most economic, social and physically vulnerable group of women within a given population. A survey highlighted the health problems of the widows. About 45 per cent of the elderly widows suffered from chronic health problems in both rural and urban areas. The percentage of physical immobility due to chronic illness and old age was found to be consistently higher for women than men in all states of the country. The older widows in India today face situations of poverty, malnutrition, poor health care, physical overwork and unhealthy work environments in their younger years. It is estimated that nearly 50 per cent of the population of the elderly widows in this country, are in need of some form of supportive services.

A study conducted by ‘The Guild of Service’ supported by National Commission For Women, observed piteous atmosphere in which widows were living. Some of the findings were given below (Studies based on the widows living in Varanasi and Vrindavan).

- 1. Economic deprivation and insecurity.
- 2. Restricted mobility due to ill-health.
- 3. Physical insecurity.
- 4. Reduction in dignity and self-esteem.
- 5. Loneliness due to rejection.
- 5. Lack of meaningful occupation and leisure activities.
- 6. Lack of protective supportive shelter. (Published in Commonwealth Human news letter)

While analyzing the situation prevail in other religions Muslim and Christian women also suffer the disasters of personal laws. Two important examples are Mary Roy case and shah Bano case.

The judgement of the Supreme Court of India in favour of Mary Roy and others is another instance where anomalies in the law, detrimental to women, in this case some sections of the Indian Christian community in certain parts of Kerala and the Kanyakumari district of Tamil Nadu, have been acknowledged and rectified. The Act challenged was the Travancore Christian Succession Act 1092 (1916). Under this Act, in a case of intestate (without a will) property the daughter was entitled to only a fourth of the son's share of the estate or Rs. 5000, customarily meant for Streedhana, whichever was less. Though this was supposed to constitute the law for intestate succession among Christians as the name implies, it excluded Protestants and Catholics living in some districts and taluks of the State among whom their

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20 1994 4 SCC (Jour) 9
customary law of equal sharing of property obtained. Similarly, in the neighbouring State of Cochin the restriction on the daughter's share was to a third of the son's share. The section of Christians affected were the Syrian Christians, Jacobites and the members of Mar Thoma Church. The anamoly can be appreciated that whereas, for example, if they lived in the neighbouring state of Tamil Nadu the women of these communities would be entitled to share the estate equally with their brothers, in their natal place, they had to accept only a proportionate share. The Indian Succession Act 1925 provided a uniform succession law to all except Hindus, Sikhs, Jains, Buddhists and Muslims and for equality in the sharing of intestate property. Furthermore with the amalgamation of the erstwhile princely States with the Union of India, the 1951 Part States (Laws) Act provided for the extension of certain laws of the Indian Union to the amalgamating States. Under this Act the Travancore Cochin Christian Succession Act of 1916 and 1921 would have been considered automatically repealed.

The controversy, however, arose because the former Travancore Cochin and the Madras High Courts held that despite the passage of the 1951 Part B States (Laws) Act, Christian women of the above communities could not claim to be governed by the more liberal Indian Succession Act. The Supreme Court's verdict was that ".......... on the coming into force of the Part B States (Laws) Act 1951, the Travancore Cochin Succession Act stood repealed and Chapter 11 of Part V of the Indian Succession Act 1925 became
applicable, and intestate succession to the property of members of the Indian Christian community in the territories of the erstwhile State of Travancore was thereafter governed by Chapter II of Part V of the Indian Succession Act, 1925". This ruling rightly places Christian women of Kerala on par with the men of the community in respect of inheritance of intestate property. They will now be governed like all other Christians by the Indian Succession Act, 1925.

While this is no doubt welcome, the judgment of the Supreme Court sadly does not refer to the vital grounds mentioned in the petition, where the Travancore Christian Succession Act violates the Constitutional guarantees under the Section - Fundamental Rights. These are Article 14 "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India" and Article 15(1). "The State shall not discriminate against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them", and the Directives of State Policy as laid down in Article 44 that "the State shall endeavor to secure for the citizen a uniform civil code throughout the territory of India".

Shah Bano, a 62 year old Muslim woman and mother of five from Indore, Madhya Pradesh, was divorced by her husband in 1978. The Muslim

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22 Ibid p.5  
23 Ibid P. 17
family law (marriage, gifts, inheritance, adoption and a few other civil laws are under the purview of personal laws in India - they are different for Christians, Muslims and Hindus) allows the husband to do this without his wife's consent. Shah Bano, because she had no means to support herself and her children, approached the courts for securing maintenance from her husband. The case reached the Supreme Court of India, the Court invoked Section 125 of Code of Criminal Procedure, which applies to everyone regardless of caste, creed, or religion. It ruled that Shah Bano be given maintenance money, similar to alimony. But due to the wide protest from the part of Muslim religious organisations government passed an act that nullified the Supreme Court's judgment in the Shah Bano case. This act upheld the Muslim Personal Law (1986) and writ as excerpted below:

"Every application by a divorced woman under section 125... of the Code of Criminal Procedure, 1973, pending before a magistrate on the commencement of this Act shall, notwithstanding anything contained in that code... be disposed of by such magistrate in accordance with the provisions of this Act."  

The Government with its absolute majority passed the Muslim Women (Protection of Rights on Divorce) Act, 1986 to dilute the secular judgment of

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24 AIR 1985 SC 945
the Supreme Court. The Statement of Objects and Reasons of this Act (i.e. the objective of the Act) needs a mention. According to the stated objects of the Act, where a Muslim divorced woman is unable to maintain herself after the period of iddat, the Magistrate is empowered to make an order for the payment of maintenance by her relatives who would be entitled to inherit her property on her death according to Muslim Law. But where a divorced woman has no relatives or such relatives has no enough means to pay the maintenance the magistrate would order the State Waqf Board to pay the maintenance. The 'liability' of husband to pay the maintenance was thus restricted to the period of the iddat only.

But the legal experts and major social organizations criticized the act as impractical in its expectation that parents, brothers and other relatives will shoulder the responsibility for a divorced woman's and her children's maintenance. According to them such an expectation reflects utter lack of awareness of establishment trends in the structure, values and obligations of families in India, irrespective of communities.

As is well known among the poor who form the majority of the population - families are in no position to support even unmarried daughters or sisters. Exposures of questionable 'marriages' of young Muslim girls to foreign tourists, by poor families, of continued 'sale' of young women of different communities, and the high incidence of suicides, and destitution
among poor Muslim women after Talaq, provide substantial evidence of the inability of their parents or other relatives to provide maintenance.

More impracticable, unrealistic and unjust is the expectation that a divorced woman will sue her parents/other relatives to obtain maintenance. It is an unfortunate fact of life that the inheritance right of daughters to their fathers' property generally remain unimplemented because most women find it inadvisable to sue their brothers.

Still more unrealistic, and undesirable, is the expectation of the Wakf Boards undertaking the responsibility of maintenance. Apart from their financial position reported as most inadequate even to carry out their existing functions, making divorced women dependent on these bodies for their survival would open the floodgates for corruption and exploitation of the worst kind. Instead of acknowledging and strengthening women's rights, human dignity and progressive secular values as the most powerful forces for national integration and development, the Government thus submitted itself with an irrational minority of the community, whose demands cannot be substantiated either by objective religious authority, or the process of legislative adaptation of Koranic Law in leading Muslim countries.

The complex ways in which the position of women is structured make it impossible for collective women's action to make patriarchies the specific target of attack or reform. Patriarchies function with and alongside other
forms of stratification which are called simultaneously into question when any serious campaign for social transformation is mounted. Legal solutions to pervasive gender discriminations therefore must take into account the ways in which such discrimination receives meaning in and through other structures of Indian society.

The forms of discrimination faced by Indian women as they have discussed above are not only a feature of Indian social structures, but ironically, are supported by the ambiguities of the legal -juridical framework. Indian constitution has assured women an enviable degree of equality in its guarantee of equality as a fundamental right. Thus Article 15 which deals with prohibition of discrimination says "the state shall not discriminate against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them"

Yet within the constitution itself what has been given with one hand has been taken with the other, thus Article 25(1) which protects the right to freedom of religion:

"subject to the public order, morality and health and to the provisions of this part all persons are equally entitled to the freedom of conscience and the right freely to profess, practice and propagate religion"

On the face of it article 25 does not appear to contradict the Article on fundamental rights listed in part III of the constitution. yet in the name of
freedom of religion, which leaves personal laws strictly alone, women are discriminated against in the most fundamental ways: large sections of women are denied equal rights to property, to rights within the family, to maintenance, to divorce, guardianship and adoption. Whatever the intentions of the framers and interpreters of personal law may be, the affect of such laws is the subordination of women in all spheres that they corner. Here the remarks of Upendra Bakshi, in a discussion of the state of legal status of India, is relevant:

"...legal history is typically conceived in India as a history of the growth of judicature and the too at the level of normative law minutiae having no redeeming social significance ... a social history of Indian law is indispensable for the maturation of concern with a sociology of law in India".26

26 Upendra Bakshi, Toward a Sociology of Law, Satavahan, Delhi 1986 p.20.