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ADMINISTRATION OF JUSTICE : DISCRIMINATION ON THE BASIS OF SEX BY LAW AND ROLE OF CASTE-PANCHAYATS

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The Preamble of the Indian Constitution states :-

We, the people of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens : Justice, Social, economic and political, liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote among them all; Fraternity assuring the dignity of individual and the unity and integrity of the nation; in our Constituent Assembly, this twenty-sixth Day of November 1949, do hereby adopt, enact and give to ourselves this constitution.

Articles 12 to 35 of the Fundamental Rights, especially Article 14—Equality before the Law—“The State shall not deny to any person equality and before the law or the equal protection of the laws within the territory of India”, and Article 15 : Prohibition of Discrimination on grounds of Religion, Race, Caste, Sex or Place of birth—“The State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them.”

Part IV of the Indian Constitution enunciates the Directive Principles of State Policy from Articles 36 to 51 and these Directive Principles have provided some special concession to women. Article 39 enunciates certain principles of policy to be followed by the State—The State shall, in particular, direct its policy towards securing that citizens, men and women, equally have the right to an adequate means of livelihood, and “that there is equal pay for equal work for both, men and women”.

Article 42 enunciates provisions for just and human conditions of work and maternity relief : “The State shall make provision for securing, just and human conditions of work and for maternity relief.”

Different laws have been enacted from time to time for the protection of the interests of the Indian women. Some of them are as follows :

(1) Hindu Marriage Act, 1955

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- (2) Hindu Succession Act, 1956
- (3) Hindu Adoption And Maintenance Act, 1956.

As far as the interests of the Muslim women are concerned, there are only two Acts :

- (1) Shariat Act, 1937
- (2) The Dissolution of Muslim Marriage Act, 1939.

The primary objective of this research paper is to ascertain whether the rights and interests of the Indian women are safe guarded and whether the law, discriminates between men and women.

On a minute and microscopic study of these Acts, some significant paradoxes and dissimilarities come up before us.

1. HINDU MARRIAGE ACT, 1955 :

“Section-17 : Punishment for bigamy—Any marriage between two Hindus solemnized after the commencement of this Act is void at the date of such marriage either party had a husband or wife living; and provisions of sections 494 and 495 of the Indian Penal Code.”

It is essential to prove beyond doubt that the second marriage was solemnized with all formalities. Under this section, read with Section 497 of the Indian Penal Code, the courts shall consider the case according to Section 117, the procedure of punishment; and not according to the Section 11 of this Act. The marriage was fully and customarily solemnized shall have to be proved. Then, and then alone, there shall be established an offence under. Section 494 of the Indian Penal Code.¹

The procedures under this Act are so complex that usually male do not get punished because the female does not forthrightly establish the second marriage; and moreover, the male community observes utmost care in second marriage that they do not get the invitation-cards for the second marriage printed and not even permit to take its photographs. Therefore, the first wife becomes helpless and cannot do anything.

2. HINDU SUCCESSION ACT, 1956 :

Section 23 details the special provisions full credence to the old Hindu Law and provides a special sub section for the partition of the dwelling house. It says, “Where a Hindu intestate has left surviving him or her both male and female heirs and his or her property includes a dwelling house wholly occupied

¹ See AIR 1965, Supreme Court 1564, 1965 ACD 543, 1965 MPLJ 873, 1965 Allahabad Criminal Report 323, Bhaurao Shankar V/s the State of Maharashtra.

by the members of his or her family, then notwithstanding anything contained in this Act, the rights of any such female heir to claim partition of the dwelling house shall not arise until the male heirs choose to divide their respective shares therein; but the female heir shall be entitled to a right to reside therein.

Rights of a Daughter in the Dwelling House :

'A' died in 1958 and was survived by three sons, one daughter 'B' and a widow 'C'. The widow wrote her share of the dwelling house to her daughter 'B' and her son 'D' through a document and gave it to her. Daughter 'B' and her son filed a suit for the partition of the dwelling house. It was held that the daughter does not have any right for partition. "

In this manner, this Act clearly discriminates between male and female. The female is deprived of her right simply because she is a woman.

Section 14 lays down that the property of a Hindu female to be her absolute property. It says, "Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. Under this sub section property includes both, movable & immovable properties acquired by a female Hindu by inheritance or dower, or at a partition or in lieu of maintenance or arrears of maintenance or by gift from any person whether relative or not, before or after her marriage, or by her own skill or exertion or by purchase or prescription or in any other manner, whatsoever and also any such property held by her as 'Stridhana' immediately before the commencement of this Act."

Thus a Hindu female acquires whole rights in the inherited property after the commencement of this Act, but practically a female does not use her 'Stridhana' without the consent of her husband.

3. HINDU ADOPTION AND MAINTENANCE ACT 1956 :

Every male Hindu, who is of sound mind and has attained the age of discretion, even though he may be a minor, may adopt a son or a daughter, but if his wife is alive then till his wife has finally and fully not revoked the world or she no longer remains Hindu or she has not been declared lunatic by any competent judicial court, then he will not adopt without consent of his wife.

Actually, the consent of the wife is assumed, it is never essential to obtain. On the other hand, the right to adopt by a female is not free, but restricted. A Hindu female can adopt only if she is unmarried or if she is married and her marriage has been annulled or her husband has died or totally and wholly revoked the world or is no longer a Hindu.

See AIR 1985, ORISSA 70, Putti-Ramulu and others V/s Smt. Kon Gulamma and others.

This law does draw a clear line of demarcation between a male and a female.

The position of the female in the Indian social structure is such that she has been putting her signatures on the documents related to property, expenses and income-tax. In majority of cases, she does not even know what rights these documents provide to her? She might be the owner of a very huge property in the documents, but factually she is not aware of the type of property she owns; and she cannot use property according to her own discretion also.

As far as Muslim females are concerned, there were no legal rights provided for them before the enactment of the Muslim Personal Law (Shariat) Application Act, 1937. This Act gives her rights of marriage, divorce, maintenance and patronage. But due to illiteracy and 'purdah' system and religious taboos usually they do not go to the court to claim their rights.

4. THE DISSOLUTION OF MUSLIM MARRIAGE ACT 1939 :

Under the Mohammedan Law, there is the particular provision of divorce wherein a husband may divorce his wife in any situation without her prior consent. As per the traditional rules, a male may divorce his wife. In the absence of any rational cause or in wife's absence; whereas the muslim female does not enjoy any such right. Clearly, the divorce procedure of muslims is tilted in favour of males. females have to undergo the legal processes to get divorce which is not only troublesome for them, but also make their position awkward. To obtain divorce from her husband, she has to prove that her husband is absconding since last four years and that she is not able to make a living, that he is not able to discharge the material obligations, that he is of insane mind. It is very difficult to prove this impossibility in the male dominated society. This is very well known to the wife and she becomes helpless before arguments in the Court.

The second object of this research paper is also to ascertain as to how far the effective role of the courts have been in restoring the legal rights to the women of the rural areas, or how far the caste-panchayats of the rural areas have succeeded in patronising the rights of women?

It has been observed normally, that the Cast-Panchayats of the backward caste people, though placed at the lowest rank of the caste system, even now play an important role in controlling their behaviour. The complex processes of the court, illiteracy, poverty and delay caused in the procurement of justice are some such reasons due to which the backward caste people abide by the decisions taken by their respective caste panchayats instead of the courts. They all accept the punishments given by such caste panchayats.

AREA OF STUDY**CHHATTISGARH**

1. Area	:	96080 Sq. Kms
2. Total Population	:	1,21,67,483
3. Male Population	:	60,99,377
4. Female Population	:	60,68,106
5. Harijan Population	:	15,06,804
6. Percentage of Harijan Population	:	12.38
7. Tribal Population	:	33,91,907
8. Percentage of Tribal Population	:	27.89
9. Administrative Units		
(a) Divisions	:	Raipur, Bilaspur
(b) Districts	:	Rajnandgaon, Durg, Raipur Sarguja, Bilaspur, Raigarh
10. Total Literate Population	:	39,67,506
11. Literate Female	:	9,37,666
12. Literate Male	:	25,29,840

DURG DISTRICT

1. Geographical Area	:	8573 Sq. Kms
2. Number of Villages	:	1869
3. Population	:	18,90,467
4. Male	:	9,54,758
5. Female	:	9,35,709
6. Scheduled Caste	:	2,23,870
7. Scheduled Tribe	:	2,38,923
8. Urban Male Population	:	3 19,270
9. Urban Female Population	:	2,81,834
10. Rural Male Population	:	6,35,488
11. Rural Female Population	:	6,53,875

The Bhilai Steel Plant brought about the process of Industrial development in the Chhattisgarh area. This plant has become the beacon of industrial progress in this region. This plant is located in Durg District. Ancillary industries, fabrication units, repair units have been established on a large scale and processing units and chemical units have also been established. This plant has accelerated the process of industrialisation in this district.

Four villages in the district of Durg were selected by random sampling for the study by us. The objective behind selecting Durg district was to ascertain whether the extensive industrialisation awakens the legal awakening in the people? The four villages of Durg district, namely : Borsi, Ahiwara, Batang and Jhalamala, were selected in view of the majority of low caste people in them :

Sl. No.	Village	Majority Low Caste	Cases related with women	Cases Pending in Courts	Cases decided by Caste Panchayats	No. of people disobeying the decisions of Caste Panchayats.
1.	Borsi	Teli 64% of Population	Concerning inheritance=4 Legal rights of wife =2	Inheritance=2 Legal rights of wife =0	4 —	0 —
2.	Ahiwara	Satnami 72% of Population	Concerning inheritance=3	—	3	—
3.	Batang	Raut 54% of Population	Concerning motherhood of illegitimate child =2	0	2	0
4.	Jhalmala	Gond 61% of the Tribal Population	Concerning inheritance=4 Concerning motherhood of illegitimate child =2 Desertion by husband=1	Concerning inheritance=2 0 0	4 0 0	1 0 0

Since Chhattisgarh is basically an agrarian region, therefore, after the death of the husband, especially the cases of inheritance rights pertaining to agricultural land are observed here. Due to illiteracy, there are efforts by brother-in-law or father-in-law to evict the widow from the land. In such circumstances, the widow invokes the caste panchayat for administration of justice and the panchayat gives its verdict after listening to all the concerned parties. Under the present study, about eleven cases connected with inheritance were heard by the caste panchayats and seven cases were successfully disposed. In four cases people were not satisfied with the decision of the caste panchayats. Two resorted to the courts and two did not agree to the decision of the Caste Panchayats. The caste panchayats are helpless for the cases which seek resort to the court, but those who do not accept the decision of the caste panchayats, have to leave the village ultimately. Rigid and strict restrictions are placed on social relations with them, and, there is non-

cooperation with them in the daily routine life. Nobody of the caste agrees to marry their children. As a result of it, they are compelled to accept the decision of the caste panchayat after a few months or years. Persons, who take their cases to the courts, are normally the people who work in the nearby factories and are capable of earning their livelihood by shifting to the urban areas in the event of non-cooperation by the caste people.

In the rural structure, the cases of leaving the wife for illegitimate sexual relations and/or widow becoming a mother are numerous. The caste panchayats adopt a very strict attitude towards them and usually the decision in such cases goes in favour of the woman. Thus, afterwards, she not only legitimizes the child, but also successfully leads a normal married life. Whereas, in the urban areas, the position of the women turns shameful.

CONCLUSIONS :

1. Some vital and important laws pertaining to women are still partisan and are in favour of males.
2. Judicial delays and the complexities of the judicial processes deter the women from their rights.
3. Women are prevented from protecting their rights due to economic dependence on others.
4. The caste panchayats of the rural areas are playing a very successful and effective role in protecting the rights of the women.
5. It is imperative that laws pertaining to inheritance of women have to be simplified.
6. There should be provision of special courts to hear cases related to women.

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