



**STATUS OF WOMEN IN DHARMASTRA & HINDU MARRIAGE LAW:
A REVISIT FROM ANCIENT TO MODERN**

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ABSTRACT

This study starts with the question of women's status or position in the then society and will also try to explore the hindrance of several Dharmasstras under the slaying of uniformity and divine spirit. The study also gives emphasis on Hindu Marriage Law which analyzes the views of both Dharmasastra and Court law. At present day our government promotes to save the girl child by raising slogan BETI BANCHA O BETI PADHA O, the same we found in the ancient texts, where girl child were regarded to be goddess Lakshmi (Goddess of Wealth), but in another way they were treated like property of their father's before marriage and property of husbands after marriage. In one hand the ancient sages told that marriage is to be constructed between two individual of full age with mutual consent where on other hand constraint marriage was also admitted by them. The study stands on the pillar of this conflict. From ancient to modern the views towards women or girls are unchanged. Some exceptions are always therein. In India we found many cases where the women are subjected to gang rape or they are burnt alive for dowry. But still by the support of the law of the land, handful of women gets justice. The number of cases where the women gets justice is comparatively low in ratio to the deprivation of justness. It can be concluded that women are empowered therein by their divine spirit. The law of the land only gives them weapons to fight.

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INTRODUCTION

Status of Indian Women

Though men and women are two basic component of nature, still often women are denied from their rights. Our mythology and ancient history bear a uniform spirit of reverence to women. But later history of India tells another story of women. There we found a poor picture of women who were merely considered as an independent individual. Several Smriti literature stated different types of barriers for women. All of them stated that women should not be given independence. They should be protected by their father in their maiden, after marriage by their husband and in old age they should be under their sons. In all circumstances women should remain dependent upon some of their guardian.

Women are always deprived by their male protectors. In Ramayana we found Sita as a wife of Rama, the king of Ayodhya, was repeatedly humiliated by her husband. Being a queen of Ayodhya, Sita was treated so badly by her husband then what will be the treatment of other women by their husband's? The pensive episode of Madhabi in Mahabharata was another example of deprivation by her male protectors.

Madhabi was the daughter of great king Yayati, who submitted her daughter, Madhabi to Galab, a Brahmin and disciple of sage Visvamitra. Instead of fulfilling the Brahmin's desire, 800 white horses with one black ear Yayati gave her daughter by saying this that his daughter was considered as Sulakshna (a woman with good signs) who could reproduce only male child by her the sage-disciple Galab will fulfil the demand of his Guru (teacher), the great sage Visvamitra. Then Galab fulfilled his desire by using Madhabi's womb and met up the demand of his Guru, Visvamitra. Galab neither loved Madhabi nor gave boons to her but blessed her sons very generously. Under the bearing of eloquent testimony deep deprivations were found among ancient women in literature. Sometimes the stories of deprivations were projected in a glorified way, so that Sita, Savitri etc became idol among the society people for the sacrifice of their family. Actually women of India are always taken for granted not only by the society but also sometimes by their own selves.

Objectives & Findings

Concept of Dharmasastra & Hindu Marriage Act (HMA)

The word Dharma has different types of connotations. It signifies the privileges, duties and obligations of men.¹ With an intention to add a touch of authenticity and unique

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authority, an element of divinity has been attached to it. It stands upon the original interpreters, preachers and custodians of law in initial stage but later upon Courts and the writers of Hindu Law.²

Hindu law has been greatly influenced by the British rule. The British brought with them the modern concepts of equality and justice though these concepts existed in a different form in Dharmasastras. But there was no practice of recording system of the cases and the judgements delivered. That was started from the British rule.

Sruti (Veda), Smriti (Polity Literature), Commentaries and Digests, Customs, Judicial Decisions, Legislatives enactments-these are the five literatures upon which the Hindu Law is administered. The entire code of life was preached by Srutis and Smritis in the form of Dharma, covering a wide range of topics from spiritual to temporal. There also includes the codes of marriage law because the ancient sages considered marriage as an institution which can be a basic unit to build a prosperous society. The Hindu marriage law is depicted from the Dharmasastras therefore from the social standpoint contemporary views of women are found within it.

Our ancient Indian society was very much orthodox about women. They considered women as their property therefore they wanted to avoid the inter mixing in different castes, culture and religion. To restrain women the authorities confined their activities within a safe custody of their inner part of the apartments. The free movement of women was totally banned during the rule of different religion. The violation of spiritual verdicts would have been strictly punished by the society people. These were practiced centuries after centuries in Indian society.

During the British period the British government tried to codify the Indian legal system under a uniform jurisdiction. Thereafter with the help of Indian scholars and intellectuals the British unified the Hindu and Muslim law with their own judicial system. Keeping face towards modernity they codified little legislation. After independence, in 1947 Anglo-Hindu Law, Anglo-Muhammadian Law (Islamic Law) and other personal laws came under the constitutional authority. In the early 1950s after the continuous debates the Hindu code bill was passed. Indian Parliament reconstructed the Anglo-Indian Law by rectifying its anomalies. Four major pieces of legislations were passed within 1955-1956. Under these laws the Modern Hindu Law became Hindu Marriage Act (HMA) in 1955 and many others including Special Marriage Act (SMA) in 1954. These laws help Indian women a lot to establish their rights.

Child Marriage Act (CMA)

Eight types of marriage were found in Vedic society. They were-1) Prajapati, 2) Arsa, 3) Saiva, 4) Gandharva, 5) Raksasa, 6) Asura, 7) Paisaca, 8) Supta. Then marriage between two matured persons with mutual consent was constructed but at the same time constraint marriage was also admitted by the society people. To build a healthy society along with men equal labour of women were required. Therefore physically and mentally matured women was accepted as a bride, gradually she become the Samranjji (mistress) of her family and to be a mother of sturdy sons.

Inter caste and inter religion marriage was restricted within the society in Vedic age. But under age marriage was acceptable. Several scriptures were found in favour of it. So it was very shameful for a father if his daughter was not getting married before her puberty.³ That little girl was also treated like Sudra (varsali) and for men if anyone getting marry with that girl would be degraded in the society. The composer of Naradasmrit⁴ added with this that in absence of the girl's father that responsibility will go to her brothers, maternal uncles, and grandfathers or even to her mother. This system ran till the beginning of Christian age. The different scriptures mentioned different ages for marriage of the girl. But no such mentions were found for boys.

According to Manusmriti⁵ the age of the girl would be 12, in Brihaspatisamhita⁶ the age would be 8. In the detective portion of Mahabharata⁷ it would be 10 and lowest 7. According to Haritsamhita⁸ the highest age would be 6 and lowest would be 4. In favour of this law the composers of Smritis explained their views that an early marriage of a girl would help her to devote herself to her family and husband. These explanations were quite acceptable by the society people. These views were also reflected in the ancient literature. Such practices had run centuries after centuries without having any objections. As we know very well that this type of marriage should not be healthy for a girl merely with 4 or 6 years old. In the time of British rule certain acts were passed substantially to recognize the rights and status of women. These acts gave favours to the Indian women and by these Court law women were recognised as an independent individuals in the society. Such laws were-in 1856 Widow-Remarriage-Act, Child-Marriage-Restrained-Act in 1929. Widow-Marriage-Act created a great instance among the Hindus. Hindu widows were deprived in every sphere of their lives. This law gave them another chance to live their life. But there was some drawback in this law. According to this law the widow would have to return back of her all acquired properties during her previous marriage if she will remarry. In case of Child-Marriage-Restraint-Act (CMRA) the marriage age of an Indian male would be 18 and a female would be 14. But in 1978 it was restrained subsequently through an amendment that it was restricted to be 18 to 21 for male and 14 to 18 for female. This reflection of legislature was very progressive towards women as well as for the society.

The prohibition of Child-Marriage-Act was passed in 2006 where completely prohibits child marriage and seeks to prevent it and also to protect the girl child from this type of marriage. If any person is promoting such marriage or any organization or abettor or promoter should be punished. Section 5 (iii) of Hindu Marriage Act, 1955 it was also mandate that the age of the bride should be 18 and a groom should be 21 years. Contravention of such mandate leads towards punishment under section 18 (a). By this section of law rigorous imprisonment is prescribed which can be extended to two years or fine extended to one lakh of rupees or both. This type of constrained marriage without the girl's consent will not become a void marriage. This law helps girls to fight against the evils of the society. Every day in news paper we found such cases but the mentioning thing is in many cases it is found that girls come forward and report to the nearest police station.

Concept of Divorce

The word divorce means dilution of the sacramental bond of marriage. In India conception of marriage for Hindu is a union of life for several births. But in ancient India the concept of divorce was present. In Smriti literature we found some cases where divorce in form of contracting a new marriage. A wife during her husband's life time is allowed to marry with another. That occasion was called Tyaga means a neglected wife leaving her husband but without taking any maintenance.⁹ An abandonment of a faithful wife was counted as a serious crime which must be expiated by a severe penance. According to Yajñgavalka¹⁰ and Narada¹¹ any serious offence against a husband might be a ground of divorce. They gave reasons for justifying this kind of treatment. These were attempt to murder, wasting property or procuring abortion.

At present divorce is granted distinctively to men and women. In India this concept is now accepted by the society. Indian Court law introduced the concept of divorce with an advent of Hindu Marriage Act, 1955. This act was introduced for those enable women who could not tolerate marriage. For those this act liberates themselves from the wedlock legally. Accordingly this acts (HMA & SMA) enumerates in which circumstances a marriage can be legally broken but it does not explain what marriage means nor enumerates the responsibilities of a wife or a husband towards themselves or their children or both sides of the family or the society.

Section 498A of Indian Penal Code (IPC), Domestic Violence Act, Dowry Prohibition Act and other related acts of civil and criminal laws enhance the power of women to fight against society evils. Under these sections innumerable number of cases is lodged every year by several women. But whether all women are getting justice against violence?

ANALYSES AND CONCLUSION

This study stands on the search of the position of under the pillars of Dharmasastra and Hindu marriage law. Our sages showed a uniform spirit of reverence to women. If it is true in sense then why in society women were considered as property of their father before marriage and husband after marriage? Why women in the society are treated like commodity? This scenario is not changed, till today. Today by using beauty of women, products of use for male are sold.

In early civilisation the society was divided into bond of labours. After discovering iron the society became affluent by using iron tools and started acquiring fertile lands. Then upper class families engaged servants in vogue and physical labour of women in field no longer remained essential in everyday life. Gradually women became subjected as measures to fulfil the physical desire of men and do the house hold chores. Thus society laid norms of marriage because they scared that women could be extracted at any time. In those days polygamy was practiced in full fledge among men and women. Without women a society could not survive. If women moved freely from one place to another then the children of a particular man could not be identified. That's why in ancient India marriage was envisaged as a sacramental union of two souls and it was practised centuries after centuries. So in Ramayana, Sita being a queen was turned away by her husband Rama without any reason but still she wanted to be the wife of Rama in her every birth. In this way the ancient society represented all ill-treatments with women

in such glorified manner, so that by observing this other women could follow and they were said that by doing this they would be considered as great and they would make their family renounced.

During the British period the system of Indian Court law was developed with a high British influence. There we found so many laws which were formed with the help of the great social reformers to empower women. In the, then society widowhood was considered as curse. Widow women were tortured terribly. Sati was a largely defunct custom in Hindus where a widow woman was immolated alive in her husband's funeral pyre. It was also said to the women that if a woman committed herself as Sati, she will go to heaven and in her next birth she would be free from the curse of womanhood. So in brief it can be said that women in every sphere of her life were dominated and miss-treated. Their position can be considered as second class citizen of the society according to ancient texts.

Hindu Marriage Law is quite progressive towards society as well as for women. Amendments of acts time to time also make it meaningful for today's women. Prohibition of Child Marriage Act, Dowry Prohibition Act and Domestic Violence Act, these three acts are considered as most strong weapons for women. It might be said; by these acts women become powerful.

Now social attitude towards women become changed. This change comes due to female education. Now women are no more dependants to their so called guardian. They are their own guardian. Financial stability is another solid reason for making women independent.

But several cases of violence on women are still found. In 1829 the custom of Sati was abolished but after many years of independence we found forty recorded cases of Sati. Vimla Dang and Roop Kanwar were two well-known unfortunate women who were committed as Sati. Above this many cases are found where women are either subjected to burn alive or murder brutally after gang rape or survive with an ugly face due to acid attack. Our prolong court procedure often helps criminals to make them free and the sufferers move from one court to another for seeking justice. Here we found justice is seeking for justice. Above all it may be concluded by saying this, that neither law and order or judicial system can change a woman's fate or make her empowered, it is her duty to make herself empowered. Every woman has an eternal divine spirit inside. To raise this spirit the important thing is education and self respect. A woman should learn first, to respect her womanhood and consider herself as an individual and then built up her in proper manner so that world can salute her.

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