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## A STUDY OF THE STATUS OF WOMEN IN RELIGIOUS LAWS OF THE SAARC NATIONS

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### I. EVOLUTION OF THE PROBLEM:

*‘Nari shakti shaktishaali smaajasya nirmaanam karoti’<sup>1</sup>*

Empowered women can create powerful societies.

The above statement appears to be an irony since “second sex” and “weaker sex” etcetera are words often used in the context of women in the society. Gender inequality has been and still is deep rooted in the societal practices, culture, customs and usages of the world. The degree of such practice of differences between the male and female is directly relatable to the content of the religious texts and scriptures which are sources of religious laws and/or personal laws.

All major religions have deep influences upon the people that follow them and, in the countries, where they are dominant or where they are proclaimed as State Religion. Equality for women has been a controversial issue for centuries, sparking debates, marches, protests, and movement for the purpose of lifting women out of servitude to men.<sup>2</sup> It is often pointed out that biologically women are smaller in stature, delicate in structure and weaker in intellect and hence the male domination. History is witness to the fact that social existence is that of power struggle be it between tribes, political groups or gender. The power struggle is relevant to this day.

The heinous acts of rape, female foeticide, domestic harassment, eve-teasing and other plethora of crimes against women are the expressions of such power struggles. Laws emanating from religious diktat have given men an easy

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<sup>1</sup>SANSKRIT SHLOKA, <http://sanskritslokas.com/> (last visited Apr. 29, 2023, 11.00 a.m.).

<sup>2</sup>UK ESSAY.COM, <https://www.ukessays.com/essays/sociology/gender-inequality-in-religion-sociology-essay.php> (last visited on June 26, 2023, 2.00 p.m.).

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access over women in the name of “vulnerability” and “protection”. Cultural and religious practices have encouraged the commission of such crimes.

Even where there is no manifest commission of crime there is oppression, exploitation and deprivation in the name of religion. There is a socialisation of such practices which has eventually led to the formation of laws that have discriminated against women.

There is also an individualisation of women subordination to the extent that women themselves have become the propagators of the patriarchal values and structures. The differential social roles of men and women have never been recognised in law and in religion. Without the recognition of the differential social roles of the gender they cannot be made equal and the issue of one gender dominating the other will continue to have its roots in religion.

Among the Hindu's, in Manusmriti 9.1-3 it is suggested that women should be controlled, by her father, after him by her brother, after marriage by her husband and then by her son. On analysis, it appears that there is an embargo and a curb in the freedom of the rights of the women especially relating to ownership and control of property. Thus making the woman dependant on the man in perpetuity.

Manusmriti also states where woman are honoured gods dwell there. The goddesses and deity worship among Hindus is the most common practice however for a mortal female to be respected as the goddesses there is a myriad list of virtues and qualities which she must possess in order to pass the litmus test, yet not qualified. This is a social attempt at casting woman to the stereotype of a goddess. Men have no inner conflict in disregarding women and depriving her of her much owned rights as he sees the distinction between the goddesses and women.

The Sanatana dharma can be said to be the man's world, it lives through the male progeny, producing offspring, serving their ancestors and their salvation, and all the other facets of life are secondary. A man lives through his sons but a woman does not live through her daughters.

A women's role is to assist, serve and enable her husband to achieve the higher life, her role is secondary and subservient and are treated as per their physiognomy. Forbidding women to drive, sexual subjugation, limitations in right to divorce; right to education; right to travel; citizenship, practice of halala, dictums in clothing requirements, female infanticide and genital mutilations are rampant in the Islamic nations due to the fact that they are approved in their religious texts.

Among the Buddhists in Pali-Vinaya and other early scriptures, Buddha originally refused to ordain women as nuns. He said that allowing women into the sangha would cause his teachings to survive only half as long i.e. 500 years instead of 1,000 years. The Vinaya-pitaka records the original rules of discipline for monks and nuns. A *bhikkuni* (nun) has rules in addition to those given to a *bhikku* (monk). These include total subordination to monks; the most senior nuns are to be considered "junior" to a monk of one day.<sup>3</sup> Texts also reveal that there was a confusion as to how much devotion is required to achieve enlightenment for monk and how much more devotion for such enlightenment is required by a woman. A woman needs to be reborn as a man to be fully enlightened.<sup>4</sup>

Several of the Sutra or discourses of Buddha reflect the idea that Buddha actually felt that female seduction was a huge hazard to male monasticism. Buddha thought that the addition of nuns into religious orders just might be too much of a temptation for men.

No Christian woman can be a priest and conduct mass. Like Buddhists, she is always junior/subordinate to a priest. Gender equality has been debated throughout society, and in a more narrow sense, in the Roman Catholic Church. Men are the dominant gender when looking at the Roman Catholic religion, as they have the authority and power to hold a church session and women do not. No women have ever been a priest or a pope.

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<sup>3</sup> Barbara O'Brien, *Buddhism and Sexism*, LEGAL RELIGION (June 25, 2019, 10:14 AM), <https://www.learnreligions.com/buddhism-and-sexism-449757>.

<sup>4</sup> Ibid.

In such a scenario it is pertinent to explore a way out and formulate secular laws to do away with the gender unequal religious laws which are followed even today.

## **II. STATEMENT OF THE PROBLEM:**

The Constitutions of India, Nepal and Bangladesh have an express mention of the word Secular yet there is a hesitation in embracing the secular laws in place of the religious laws SAARC nations. An in depth study and understanding of all the religious texts and scriptures show a degree of gender inequality still there has been no strong steps taken to do away with such archaic and oppressive laws. All the member states of the SAARC nations reaffirmed their commitment to peace, liberty, human dignity and human rights<sup>5</sup> but there is a vacuum since the religious laws have failed to lay down gender just laws of proper religious laws which are not gender biased and irrational when it comes to laying down dictums on the conduct of women.

Because of the discrimination and exploitation of women true development in the SAARC nations are still to be seen. Six out of the eight SAARC nations are underdeveloped whereas India and Sri Lanka are the developing nations. The child sex ratio, female literacy rate and gender inequality index of the SAARC countries reflect the dismal state of affairs unless a nation carries forward all their people without any bias, economic growth and other developments will remain a far cry.

## **III. RESEARCH QUESTIONS:**

1. What religious texts and scriptures of the SAARC nations have teachings, references and instances of gender inequality?

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<sup>5</sup>PEU GHOSH, INTERNATIONAL RELATIONS 240 (PHI Learning Private Limited, 2016).

2. Does gender inequality influence the development of the nation?
3. Are universal secular laws an answer to the gender biased religious laws?

#### **IV. HYPOTHESIS:**

It is a well-known fact that world over, there is a deep concern regarding the status of women. Over several decades it has been admitted that development is all inclusive. A nation cannot prosper if it is not able to improve the status of women. It is a well-recognised fact that if injustice occurs in one quarter there is a ripple effect everywhere. It is observed that the status of women is linked to religion and laws emanating from it. Hence, if secular laws imbued in principles of equality, justice, freedom, liberty and fraternity is given the predominance, superseding the religious- personal laws, the status of women will improve and that will usher in an era of development, well-being and human development index.

#### **V. LIMITATION OF THE STUDY:**

The limitation will be that only the religions of the SAARC Nations will be studied. The research will be theoretical in nature as it is a doctrinal work.

#### **VI. SCOPE OF THE STUDY:**

The scope of this research is to do an extensive study on the religious laws and to discuss and resolve the issues of gender inequality.

#### **VII. SIGNIFICANCE OF THE STUDY**

The significance of the research is that the researcher shall do an in-depth study of the personal laws relating to the women and propose secular laws for the SAARC nations.

## **VIII. METHODOLOGY**

In achieving the above-mentioned objective, it is proposed to conduct a Doctrinal study. The National and International instruments, Constitutional provisions of the SAARC Nations, Constitution Assembly debates, the personal laws of the SAARC nations, relevant case laws, reports, articles, research papers of national and international journals and other relevant statutory materials touching on the topic have been studied and analysed.

## **IX. OBJECTIVE OF THE STUDY:**

In the given research work the researcher proposes to study the status of the women in the SAARC nations and study the major religions of such countries namely: - Hinduism, Islam, Christianity and Buddhism and draw out the understandings and inferences of the teachings of these religion in order to bring out the correct and favourable conditions for the women of the SAARC nations. The researcher shall analyse the influence of religious laws on gender inequality issues.

## **X. LITERATURE REVIEW:**

### **ARTICLES REFERRED:**

1. Avani Mehta Sood “Redressing Women’s Rights Violations through The Judiciary” 1 Jindal Global Law Review 137 (2009).

The author of the article has discussed regarding the redressal mechanisms of the women in the courts of law through the mechanisms of PIL. The concepts of equality and discrimination and the ratio decidendi of the various judgments given in the cases relating to the women have been discussed elaborately.

The researcher will be categorically dealing with the major religions of India and the laws thereof. The researcher shall study and analyse how far the religious laws are gender equal to the women.

2. Iftexhar Ali & Debaditya Das, “Gender Justice Property Rights of Hindu Indian Women with special emphasis on Paternal Property” 6 IHRLR 292 (2015).

The author of the article has discussed regarding the historical perspectives and development regarding the Hindu personal laws, the issues of discussion during the draft of the Hindu Code prepared by the Rau’s Committee and the changes it underwent before being formed as the law.

The Researcher shall deal with the rights of the women relating to not only the paternal property but also the various other rights such as marriage, adoption, maintenance and inheritance rights of the women in the SAARC nations.

3. Indravijay Singh Rajput and Vijayshri Suryavanshi, “Outraging the Modesty of Woman” 5 IHRLR 157 (2014). The authors have discussed and elaborated the meaning of ‘outraging the modesty’ and dealt with the cases of insult and molestation of the women as well. It had stated the initiative taken and the role of the Judiciary in preventing such crimes. The recommendations of the various committees and commissions that have been given in prevention of crimes against women has also been elaborated in the article. The author has discussed regarding the attitudinal change of society which is required in order to curb the women related offences in the society. The Researcher shall deal with the other crimes of discrimination, deprivation of rights to the women in her research. It will be the research relating to all the major religions of the SAARC nations in regards to the gender inequality.

4. Mark L. Rienzi, "The case for religious exemptions-Whether Religion is Special or Not" 127 Harvard Law Review 1395 (2014).

The author has written about the religious diversity. He has discussed the situations where questions relating to the tolerance of religion have arisen. The concept of 'no exemptions' to any religion or their beliefs which does not coincide with that of the

State have been discussed. The article gives an understanding of the term religion. The Researcher shall deal in the understanding of the religions of Hinduism, Islam, Christianity, Buddhism, Jainism, Judaism and Zoroastrianism in relation to their faith and belief that is followed in the SAARC nations.

5. Matthew Harding, "Trust for Religious Purposes and the Question of Public Benefit" 71 The Modern Law Review 159 (2008).

The author of the article has discussed that those beliefs and faiths of religious purposes in respect of which there is no evidence of tangible public benefit ought to be struck down. The religious laws which are not in consonance of the benefit of the public or jeopardise the rights of some sects of people should be rethought about.

6. R. N. Sharma, "The Ideal of Dharma or Justice" 35 & 36 Ban. L. J. 114 (2006-07).

The author of the article has discussed regarding the dark and the bright zones of the justice, the functional role of justice, the ancient Indian concept of Dharma as justice and the religious philosophies. The article states regarding the rights of a person in the multi-religious society.

## **BOOKS REFERRED:**

1. Anita Dhanda & Archana Parashar, *Engendering* (Eastern Book Company, Lucknow, 1999).

The book is a compilation and work by the author and relates to gender justice. The broad headings under which the various essays have been compiled are legal institutions, legal norms relating to gender justice, Law and the Society and reforms taken in law in order to do away with the gender inequality issues.

2. Chief Justice A.S. Anand, *Justice for Women* (Universal Law Publishing Co. Pvt. Ltd, 2002).

The book has dealt with the topics such as dynamics of gender justice, crimes against women and the women empowerment as the key to achieve the millennium development goals. It also states few landmark cases relating to the offences committed against women with their facts, judgments and ratio decidendi and critics.

3. Dr. Shabbir Manchanda, *Parsi Law in India* (The Law Book Company (P) Ltd., Allahabad, 1991).

The author has dealt in the laws relating to the marriages between parsis, the requisites of a valid parsi marriage and the punishments for the commission of various crimes against women in the knot of marriage. It also deals with the matrimonial suits and the laws relating to the property.

4. Ian Brownlie & Guys S. Goodwin Gill, *Basic Documents on Human Rights* (Oxford University Press, New Delhi, 5<sup>th</sup> edn.).

The book contains the list of laws relating to the human rights documents. The author has given a comprehensive understanding of the laws relating to the women as well. There is an understanding about the making of these laws and their critics.

5. Justice P.S. Narayana's, *Laws Relating to Christians in India* (Gogin Law Agency, Hyderabad, 2010).

The laws relating to the adoption, marriage, property rights has been discussed. The book also deals with the Christianity as practised in the various states of India. It also deals with Christianity and the Constitution of India.

6. J. Duncan. and M. Derret., *Religion, Law and the State in India* (Faber and Faber , London).

This books deals with the understanding of the religion, law and the state. It deals with the concept and relationship between religion, law and state. It has stated the influence of religion on the laws made by the state for the control mechanisms in the society.

7. Monica Chawla, *Gender Justice- Women and Law in India* (Deep & Deep Publications, New Delhi, 2006).

The author has given a vivid description of the laws relating to the personal law and their implications on women. The laws relating to maintenance, guardianship, adoption and succession have also been discussed by women.

8. Patrick Olivelle, *Manu's Code of Law* (Oxford University Press, New Delhi, 2005).

Manu's Code of Law is an elaborate discussion on the tradition of dharma and artha. It gives an understanding of Manu's Code of Law and is a translation of *manava dharmasastra*.

9. Prof. R.K. Raizada, *Women and the Law* (The Bright Law House, Rohtak, 1996).

It is a compilation of the articles edited by the author. The book covers the articles relating to the equality and welfare of women, sexual wrongs against women, Hindu women and restitution of conjugal rights and uniform civil code for women rights.

10. Rais Siddiqui, *Islam – Faith, State and Law* (Anmol Publication Pvt. Ltd., New Delhi, 2005).

The book has been dealt with the concept of religion and its basic philosophy. The author has also discussed the concept of eternal religion and compared the western thought, socialist thought, communist thought and the modern thought in relation to the concept of religion. Mr. Rais has analysed the readings of the revelation, stated the God's words and transmission of law.

11. South Asian Human Rights Documentation Centre, *Introducing Human Rights including Issues of Gender Justice, Environmental and Consumer Law* (Oxford University Press, New Delhi, 2007)

The author has dealt with the concepts of gender justice, gender and employment and violence against women. The author of the book has also discussed the need for a uniform civil code.

## **LITERATURE SURVEY:**

### **ARTICLES:**

1. Avani Mehta Sood “Redressing Women’s Rights Violations through The Judiciary” 1 Jindal Global Law Review (2009).
2. Iftekhhar Ali & Debaditya Das, “Gender Justice Property Rights of Hindu Indian Women with special emphasis on Paternal Property” 6 IHRLR (2015).
3. Indravijay Singh Rajput and Vijayshri Suryavanshix, “Outraging the Modesty of Woman” 5 IHRLR (2014).
4. Mark L. Rienzi, “The case for religious exemptions-Whether Religion is Special or Not” 127 Harvard Law Review (2014).
5. Matthew Harding, “Trust for Religious Purposes and the Question of Public Benefit” 71 The Modern Law Review (2008).
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2. Chief Justice A.S. Anand, *Justice for Women* (Universal Law Publishing Co. Pvt. Ltd, New Delhi, 2002).
3. Dr. Gangotri Chakraborty, *Law of maintenance* (Sodhi Publications, Allahabad, 2003).
4. Dr. Kande Prasada Rao, *Christian Law in India* (Universal Law Publishing Co., New Delhi, 2010).
5. Dr. Shabbir Manchanda, *Parsi Law in India* (The Law Book Company (P) Ltd., Allahabad, 1991).
6. Ian Brownlie & Guys S. Goodwin Gill, *Basic Documents on Human Rights* (Oxford University Press, New Delhi, 5<sup>th</sup> edn.).

7. Justice P.S. Narayana's, *Laws Relating to Christians in India* (Gogin Law Agency, Hyderabad, 2010).
8. J. Duncan. and M. Derret., *Religion, Law and the State in India* (Faber and Faber , London).
9. Monica Chawla, *Gender Justice- Women and Law in India* (Deep & Deep Publications, New Delhi, 2006).
10. Patrick Olivelle, *Manu's Code of Law* (Oxford University Press, New Delhi, 2005).
11. Prof. R.K. Raizada, *Women and the Law* (The Bright Law House, Rohtak, 1996).
12. Rais Siddiqui, *Islam – Faith, State and Law* (Anmol Publication Pvt. Ltd., New Delhi, 2005).
13. S.A Desai, *Mulla Hindu Law, Vol 1* (Lexis Nexis Butterworks, New Delhi, 19<sup>th</sup> edn.).
14. S.A Desai, *Mulla Hindu Law, Vol 2* (Lexis Nexis Butterworks, New Delhi, 19<sup>th</sup> edn.).
15. South Asian Human Rights Documentation Centre, *Introducing Human Rights including Issues of Gender Justice, Environmental and Consumer Law* (Oxford University Press, New Delhi, 2007).

**WEBSITE REFERRED:**

1. <https://www.unwomen.org/en/digital-library/annual-report>
2. <https://wcd.nic.in/documents/hlc-status-women>
3. <https://www.unwomen.org/en/csw>
4. <http://hdr.undp.org/en/content/status-women>
5. <http://www.unesco.org/new/en/communication-and-information/resources/publications-and-communication-materials/publications/full-list/global-report-on-the-status-of-women-in-the-news-media/>
6. <https://www.iwmmf.org/wp-content/uploads/2018/06/IWMMF-Global-Report.pdf>

## **XI. CHAPTER SUMMARY**

### **INTRODUCTION**

**Chapter 1 - Theoretical and Conceptual Framework of Religious Laws.** This chapter examines the status and meaning of personal laws. It also discusses the evolution of personal laws and the views of legal philosophers in context to the personal laws.

**Chapter 2 - Politics of Personal Laws.** The chapter incorporates the politics during the British era in context to the personal laws. It explains the democratic politics behind enacting the laws to regulate the personal laws in India during the 1950s, 1980s and 2018. The chapter also discusses the unpleasant politics behind the righteous policies framed in India.

**Chapter 3 - Personal Laws and the issues of Gender Inequality.** The chapter examines the personal laws prevailing in India and highlights the issues of gender inequality in them. The laws on marriage, nullity of marriage, maintenance, restitution of conjugal rights, divorce, judicial separation, inheritance, guardianship and adoption applicable to the Hindus, Christians, Parsis and Muslims in India have been critically examined on the basis of gender inequality.

**Chapter 4 - Judicial Opinion whether Personal Law is a Law Under Article 13 of the Constitution of India.** The chapter has recorded the evolution of 'Personal Laws' in India starting from the neutrality of British towards the Hindu and Muslim law to the time of the legislating laws on personal law and subsequently the Constitution Assembly Debates. The chapter analyses the interpretation of various judicial pronouncements on whether the Personal Laws are 'Laws' under Article 13 of the Constitution of India.

**Chapter 5 - Comparative Study of the Personal Laws of the SAARC nations.** It examines the status of personal laws in the Constitution of every SAARC nation. The chapter also analyses the laws governing the aspects of marriage, maintenance, divorce, inheritance and guardianship of the SAARC nations on the basis of its application and justness to the women.

**Chapter 6 - International Instruments relating to Gender Equality.** The chapter extensively elaborates on the gender equality issues dealt by the various international instruments of the United Nations. The chapter focuses on the agendas relating to the gender just laws discussed in the various SAARC summit. The Beijing Declaration, the UNDP Gender Equality Strategy 2018-2021 and the Sustainable Development Goals also finds the place of discussion in the chapter.

**Chapter 7 - Scope, Ambit and Applicability of Secular laws in the SAARC Nations.** The chapter elaborates on the concept of secularism imbibed in the Constitution of all the SAARC nations. The chapter also examines the shift in the conceptual meaning of secular laws as explained in different countries and the politics behind it. It studies the government and the societal respect for religious freedom in every SAARC nation.

**Chapter 8 – Conclusion.** This chapter concludes the entire research work by providing a detailed description of each chapter. The chapter also incorporates the suggestions and recommendations to ensure gender just personal laws.

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