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## **17. Women Empowement through Gender Equality and her Status in Family Laws - An Overview**

**Dr. Pooja Prashant Narwadkar**

Principal, Bharati Vidyapeeth's New Law College, Sangli, Affiliated to  
Shivaji University, Kolhapur.

Attaining equality between women and men and eliminating all forms of discrimination against women are fundamental human rights. Can be quoted as "Women's Rights are Human Rights. Women's Rights are the Human Rights that are enshrined by the United Nations conventions, declarations and agenda for various conferences. The theme for the year 2021 on Human Rights day is 'Equality- reducing inequalities, advancing human rights.'. Yet, the fact remains everywhere around the world, women and girls are still denied them, often simply because of their gender.

Empowerment of women is also called gender empowerment. The empowerment of person or group of people is a process of giving them power and status in a particular situation. In India it has been observed that women community is suffering from thousands of years due to social structure, superstitions and religious constraints. Women and their problems have acquired a steadily growing importance in our social milieu. But even today nowhere do women have equal rights and status with men in practice. Our tradition bound society has not left her free, and the strategies for her empowerment are still the dire need of the day. Her basic rights from the very physical survival to the full realization of her personality is a matter of global concern and it's denial is the harsh reality. The efforts of legal community to empower her may prove insufficient if studied in isolation from social and other perspectives. Hence with the objective of tracing the legal strategy to generate gender equality in the present context is necessary.

**Key - words - Gender, Empowerment.**

India has always been the melting pot of various cultures and religions; with a continuous influx of people across the globe the society has remained in a constant change and progress. Indian Constitution being the law of the land has always expressed concern on bring unity and integrity, it has assured the equality, justice and liberty to its citizen and made every possible

effort to bring that in reality, Despite the enactment of stringent laws in India the status of women has not changed much in the rural region. The concept of equality is still at nascent stage in these areas, with women being considered as the possession of family and their honour. This mind set has led to killing of several women in the name of family honour and has razed several families at length. Gender based crime and discrimination is prevalent not just in the rural parts but even in urban areas in fact across the length and breadth of India.

Attaining equality between women and men and eliminating all forms of discrimination against women are fundamental human rights. Can be quoted as "Women's Rights are Human Rights. Women's Rights are the Human Rights that are enshrined by the United Nations conventions, declarations and agenda for various conferences. Basically Gender equality and women's empowerment are two sides of the same coin. progress toward gender equality requires women's empowerment and women's empowerment requires increases in gender equality. The theme for the year 2021 on Human Rights day is 'Equality- reducing inequalities, advancing human rights.'. Yet, the fact remains everywhere around the world, women and girls are still denied them, often simply because of their gender.

Empowerment of women is also called gender empowerment. The empowerment of person or group of people is a process of giving them power and status in a particular situation. In India it has been observed that women community is suffering from thousands of years due to social structure, superstitions and religious constraints. Women and their problems have acquired a steadily growing importance in our social milieu. But even today nowhere do women have equal rights and status with men in practice. Our tradition bound society has not left her free, and the strategies for her empowerment are still the dire need of the day. Her basic rights from the very physical survival to the full realization of her personality is a matter of global concern and it's denial is the harsh reality. The efforts of legal community to empower her may prove insufficient if studied in isolation from social and other perspectives. Hence with the objective of tracing the legal strategy to generate gender equality in the present context is necessary.

Sex is the creation of God and sexual differences are essential for procreation, but gender is not God's creation. Gender is social construct. It is in terms of this Gender inequality is since time immemorial deeply rooted in the social structure. It is mixed in cultural components in such a way that it cannot be separated and studied in isolation. Speaking about empowerment this gender has pivotal role to play. Hence it becomes inevitable in the present situation to investigate

through traces of various legislations the impact on the status and its role in empowerment of women. The legal system has responded favorably towards the recognition of her rights and protections even before the independence where the social reforms were motivated and legal sanctions were provided for its implementation. After India became independent, it was made obligatory to consider women as weaker section, in need of protective discrimination and was guaranteed special rights and protections through the law of the land. Several programmes and policies for bringing about empowerment were launched.

Though the Constitution provided protective discrimination<sup>1</sup> to protect her rights, it has kept the applicability of personal laws domain to govern her in certain personal matters, and has allowed the issues which question her status to hamper in practical life. In ancient India the law of Manusmriti the male dominance has created woman dependent entity at all stages of her life on the male counterpart in the name of father, husband and the son. And society being fully male dominated woman's life was akin to slavery although she was worshiped as deity in home. In this patriarchal society men are role models of old age support and giving birth to girl child is seen as "watering the plants of neighbors'." India is a country in which there are bundle of personal laws, each religion has its own personal laws and various matter of concern regarding marriage, divorce, adoption, guardianship etc is governed by these personal laws. Personal laws of the country in each religion place women in their own style being subjugated and give them unequal, subsidiary status. They give discriminatory treatment through personal laws.

#### Personal Law and Women in India

- Sec 10 of Indian Divorce Act 1869 (prior to amendment in 2001) laying down grounds for divorce for a wife were not the same.
- Proviso to Sec. 6 of Child Marriage Restraint Act, 1929 not allowing a woman to be punished with imprisonment upon conviction for contracting a child marriage or permitting a child marriage.
- The provision of Sec 8, and 15 of the Hindu Succession Act, 1956 relating to succession of Hindu males and females.
- The provision of Sec 15 of the Hindu Adoption and Maintenance Act, 1956 relating to adoption of children
- Enacting Immoral Traffic Prevention Act, 1956 for protection of trafficked women and girls

- Incorporation of Sec. 498A of I, P.C and enacting of Protection of Women from Domestic Violence Act,2005
- Exempting women from rigors of PWDVA2005 and PCPNDT act under Sec 19(1)(b) and sec. 23(4) respectively.
- Amendment to the Juvenile Justice (Care and Protection of Children) Act,2000 granting equal right to all to adopt any child
- Sec.56 of CPC1908 prohibiting imprisonment of a woman in execution of decree of money.
- 50% reservation for women in primary schools as teachers
- Provision for in camera / in chamber trials for offence against women and children.
- 1% stamp duty rebate on documents executed by women
- Charge of abandonment of child under Sec. 317 of IPC upon a woman who abandons an infant in a police choky compound
- The provision of Sec 15(b) and (c) of Hindu Succession Act showing the heirs of a Hindu female upon intestate succession are mentioned
- The provision of appointment of lady judge for family court and female prosecutors for cases of children under POCSO Act.
- Provision under Sec. 15 of Hindu Adoption and Maintenance Act1956 disallowing same sex children to be adopted.
- Sec 6 of Minority and Guardianship Act under which the father and mother are appointed as guardians. The interpretation of Geeta Hariharan Case in this respect is very important as it reflected the intention of legislators of the word 'in absence of father mother is guardian' that physical absence doesn't mean death of father but if he is absent physically or at abroad then also mother is guardian.
- The provision in the Indian Succession Act (prior to amendment of 1991) that the son would take double the share of mother upon intestate succession of Parsi
- Dismissal of suit filed by a sister against her brother under sec 23 of Hindu Succession Act for partition of the residential flat upon death of her parents.

Looking at all these examples we find that certain matters like marriage, inheritance, succession, adoption etc are totally governed under the personal laws, and each religion has its own faith and beliefs wherein women from one religion get different treatment from women

following different religion, Some provisions in particular religion may be good enough to empower women but some sort of constraints would make her life miserable, here she had no option to use the beneficial provision in her interest and leave other provisions left for, this creates confusions and resentment. Sometimes male domination reflects in using the religious guards to commit exploitation of women, examples of using the privilege of marrying four wives at a time, triple talaq provisions cause the miserable lives of women, using conversion with fraudulent intentions few men take undue advantage of provisions and the cases like Sarala Mudgal<sup>2</sup>, Shah Bano<sup>3</sup> give rise to think whether the society is mature enough enjoy religious freedom given by the law of the land. Having personal laws in these matters is now looked with suspicion and day bay day the demand for the uniform civil code is increasing. A division bench of Supreme Court advocated the need of UCC in India. It hold that conversion of Hindi male to Islam only for the purpose of contracting the bigamous marriage is punishable offence<sup>4</sup> and injustice done to the first wife, who is legally wedded. Even the court expressed concern for the inactiveness of the government to implement the Constitutional mandate<sup>5</sup>.the idea behind the guiding principle of UCC was to provide protections to minorities and personal laws to be rationalized to develop religious and cultural amity. In Lily Thomas v Union of India<sup>6</sup> while dealing with the validity of the second marriage contracted by Hindu husband after his conversion to Islam uttered the same observation in favour of UCC.

### Conclusion

In India, the woman belongs to a class of society, which is in a disadvantaged position because of several social barriers and exclusion even in this 21<sup>st</sup> Century. As we have seen different personal laws in India. These laws have also been shown discrimination against women. Religious Personal Laws suppress women and do intervene the process of empowerment. It has been found that still there is wide gap between the goals enunciated in the Constitution, legislation, policies, plans, programmes and related mechanism on one hand and another side is the situational reality of the status of women in India. Therefore, effective implementation of Constitutional and legislative provisions is the need of the hour. It can be well observed that though much is done on paper, still lot much to be done in practice. Women empowerment is not individual responsibility but collective task. Well coordination amongst every sector and segment like NGOs, local autonomous bodies, government bodies would work

towards destination. It was rightly observed by Dr, Babasaheb Ambedkar that, "I measure the progress of a community by the degree of progress which women have achieved."

**Footnotes**

1. Art 15(3) of Constitution of India
2. Sarala Mudgal v Union of India (1995)3 SCC635
3. Mohammed Ahmed Khan v Shah Bano Begum 1985AIRSC945 In this case, the court held that a Muslim divorced wife is entitled to maintenance even after the period of iddat if the wife is unable to maintain herself. The court also announces that Sec-125 of the Criminal Procedure Code is applicable to all citizens regardless of their religion, and just in case of a clash between Personal Laws and provisions of Sec-125, the Criminal Procedure Code would be given dominance
4. Sec 494 of Indian Penal Code
5. Art 44 of Constitution of India
6. AIR 2000 SC 1650



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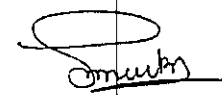
*Certificate*

This is to certify that Dr. Pooja Prashant Narwadkar, Principal, Bharati Vidyapeeth's New Law College, Sangli, Affiliated to Shivaji University, Kolhapur. has participated / presented research paper entitled "Women Empowerment through Gender Equality and her Status in Family Laws - An Overview" in the A One-Day Multidisciplinary National Conference on "ROLE OF EDUCATION IN GENDER EQUALITY AND WOMEN EMPOWERMENT" organised by SHRIMATI SUSHILADEVI SALUNKHE COLLEGE OF EDUCATION, OSMANABAD on 15<sup>th</sup> December 2021.

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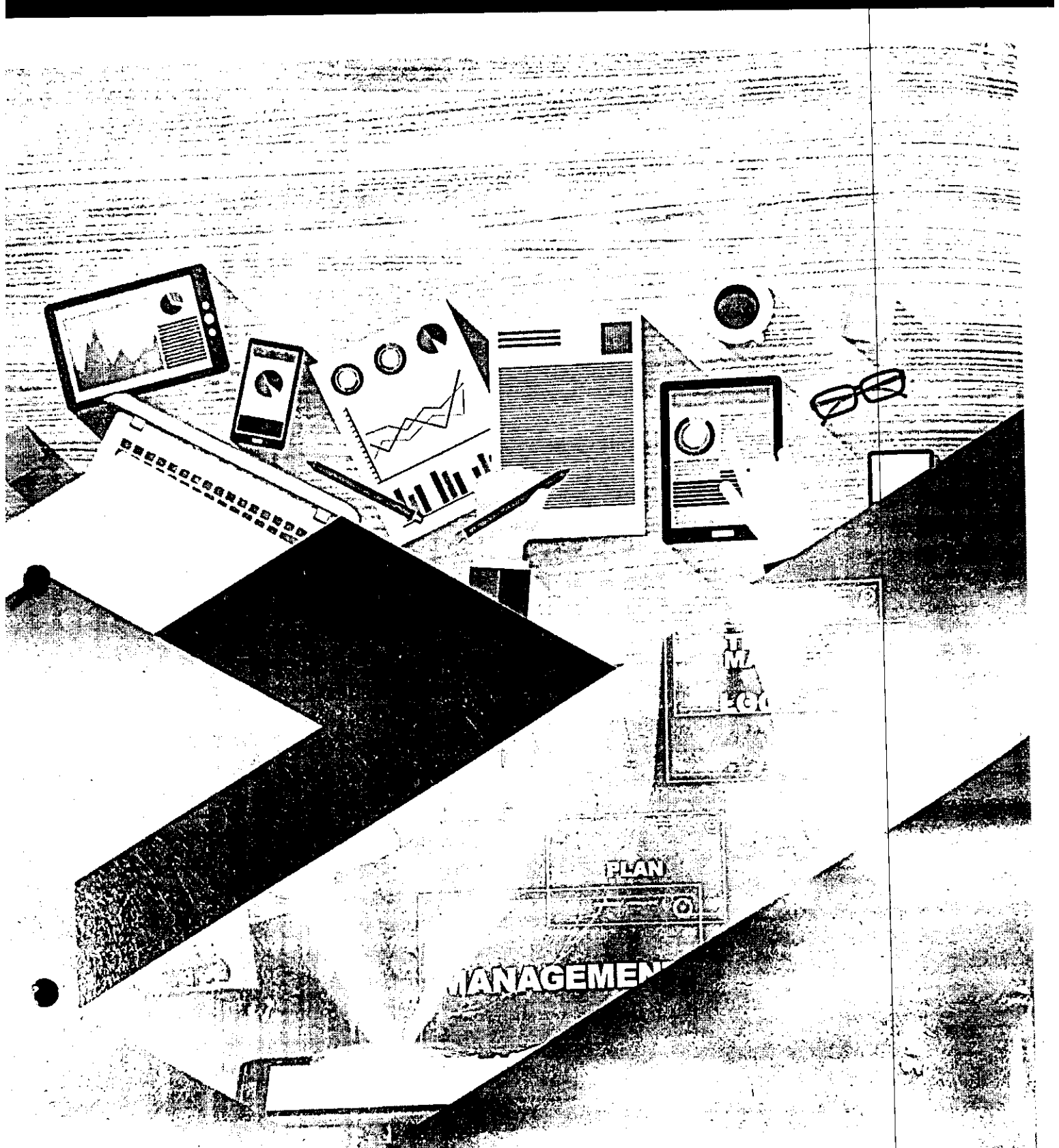
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