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DIMENSIONS OF MODERNIZATION OF THE LAW IN FAVOR OF WOMEN EMPOWERMENT

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ABSTRACT:

There are various dimensions of modernization of the law such as constitutional perspectives reflected in Part-III, Part-IV and Part IV-A of the Constitution of India, modernization through reform of family law, reform of Court process, industrial reforms, agrarian reform, reforms in the field of right to information etc.

KEYWORDS: : various dimensions , Constitution of India , industrial reforms, agrarian reform.



INTRODUCTION

When dimensions of modernization of the law in favor of women empowerment are considered; it mainly includes constitutional perspectives and reform of family law.

OBJECTIVES

- To consider a concept of modernization.
- To enlist the dimensions of modernization of the law in favor of women empowerment.
- To discuss and analyze these dimensions.
- To draw a conclusion.

- To find out an outline for the scope of further modernization in family laws.

HYPOTHESIS

Dimensions of modernization of the law in favor of women empowerment have resulted into gender sensitization.

RESEARCH METHODOLOGY

Research Methodology adopted for the preparation of this research paper is Doctrinal Research Method

CONCEPT OF MODERNIZATION

Modernization is a specific type of social change wherein a traditional society inclines to develop new pattern of conduct in

response to new challenges of the new age. It is a process of becoming or being made modern, a change that uses the elements of science and technology for achieving a better and more satisfactory life.¹

According to view of T. N. Madan,² modernity means enlargement of human freedom and enhancement of the range of choices open to a people in respect of things that matter, including their present and future lifestyle. According to him, modernity is generally regarded as both practical necessity and a moral imperative, a fact and value...

Atal Bihari Vajapaye observed, "Since time immemorial Indian Society has rested on the three

¹ Ram Ahuja, Indian Social System, Rawat Publication, New Delhi 2002.

² T.N. Madan, Religion In India, ed. 1999, Oxford University Press, Delhi.

pillars of morals, ethics and values. Modernism does not mean repudiation of what lies at the core of Indian identity. Indeed, a modern India must also be a moral India. It is only when modernity and morality combine that we can have a forward looking, forward moving India, a country whose future would be known for its, manifold greatness.³

Yogendra Singh takes a synthetic view of modernization of Indian tradition by holding that modernization involved process of reinforcement of a variety of traditional institutions and that between the two there was no contrariety.⁴

Modernity does not mean a complete break with tradition. But it involves a change in traditional institutions as per the changing needs and goals of the society.

DIMENSIONS OF MODERNIZATION OF LAW

Dimensions of modernization of law in favor of women empowerment can be enlisted as –

- Modernization as a value – Constitutional perspectives under Part III, Part IV and Part IV-A of the Indian Constitution.
- Codification of the Indian Family Law
- Abolition of Polygamy
- Permission for inter-caste and inter religious marriage.
- Prohibition of child marriage.
- Abolition of devdasi custom
- Prevention of dowry system
- Right to claim maintenance
- Separation of family Courts
- Secular adoption
- All marriages shall be compulsorily registered
- Share of women in succession
- Reorganization of relationship in nature of marriage.

ANALYSIS OF THESE DIMENSIONS

Fundamental Rights under Article 15, 16, 17, 23, 25 etc. are related to social change and modernity. Rejection of religion, race, caste and sex as the grounds of discrimination, abolition of untouchability, reservation policy and social justice, prohibition of traffic in human beings, right to freedom of religion and secularism etc. are the major aspects/dimensions of modernity / modernization reflected in Part III of the Indian Constitution.

The Introduction of the fundamental duties in Part IVA (Article 51 A) of the Constitution has modernized the Constitution. Initially, 10 duties of its citizen were inserted by the Constitution (42nd Amendment) Act, 1976 and one duty of the parent and guardian was inserted by the Constitution (86th Amendment) Act, 2002.

From Article 51A(k), it becomes clear that parents would be responsible for sending their children to school. Just as Article 51A(a) does not penalize disrespect of the National Flag, Article 51A(k) does not penalize parents, guardian for failing to send children to school. There is, of course, legislation (the Prevention of Insults to National Honour Act, 1971) that gives teeth to Article 51A(a). Article 51A(k) indicates that it is parents, not the state, who are responsible for making sure children wake up on time and reach school. Thus, Article 21A read with Article 51A(k) distributes an obligation amongst the state and parents: the state is concerned with free education, parents with compulsory. Notwithstanding parental duty, the state also has a role to play in ensuring compulsory education.⁵

³ India Today, 20.08.2002.

⁴ Yogendra Singh, Modernization of India Tradition, ed. 1999, Rawat Publications, New Delhi, at pp. 202-205.

⁵ Ashoka Kumar Thakur v. Union of India, (2008) 6 SCC 1.

In 2009, the Right of Child to Free and Compulsory Education Act, 2009 was passed and came into force with effect from 1.4.2010. The Act imposes many duties on the state and private institutions to give education to every child between the ages of 6-14 years (Standard I to VIII). It provides to construct school for primary education from class I to V within one kilometer and for class VI to Class VIII within three kilometers. The Act also calls for a fixed students-teachers and infrastructure ratio with assurance of qualitative teachers and that Government has to appoint adequate and qualified teachers within three years from the date of implementation of the Act (i.e. 1st April 2010). It also insured admission of not-admitted child in appropriate class. The Act prohibits any kind of discrimination, punishment, fee, etc. in both government and private schools and insured development based curriculum with 25% reservation for deprived classes in private schools. The Act says after completion of education, the child is entitled for a certificate. It also says that teacher will not be deputed for any other duties except election and census duties. The Act appoints National Commission for Protection of Child Rights (NCPCR) as a monitoring agency. The financial burden will be shared between state and central government.⁶

The codification may be summarized as : (i) The Hindu Widows' Remarriage Act, 1856; (ii) The Indian Divorce Act, 1869; (iii) The Christian Marriage Act, 1872; (iv) The Married Women's Property Act, 1874; (v) The Indian Majority Act, 1875; (vi) The Guardian and Ward Act, 1890; (vii) The Hindu Disposition of Property Act, 1916; (viii) The Indian Succession Act, 1925; (ix) The Parsi Marriage and Divorce Act, 1936; (x) The Shariat Act, 1937; (xi) The Dissolution of Muslim Marriage Act, 1939; (xii) The Special Marriage Act, 1954; (xiii) The Hindu Marriage Act, 1955; (xiv) The Hindu Minority and Guardianship Act, 1956; (xv) The Hindu Adoption and Maintenance Act, 1956; (xvi) The Hindu Succession Act, 1956; (xvii) The Dowry Prohibition Act, 1961; (xviii) The Family Courts Act, 1984; (xix) The Muslim Women (Protection of Rights on Divorce) Act, 1986; (xx) The Commission of Sati (Prevention) Act, 1987; (xxi) The Wakf Act, 1995; and (xxii) The Prohibition of Child Marriage Act, 2006.

Before independence, polygamy existed in all corners of India, whereas it was an offence punishable under section 494 of IPC, with exception of the customs. In India, law of marriage is governed by the personal laws. The Muslim law restricted it to four marriages at the time, when there was not any restriction under other personal laws. The Christian law prohibits polygamy by Section 60 of the Indian Christian Marriage Act, 1872, Parsis were restricted and polygamy made punishable under section 494 of IPC, by section 5 of the Marriage and Divorce Act, 1936, and Hindus were restricted to one marriage by section 5 of the Hindu Marriage Act, 1955.

The Government of India has restricted child marriage and enacted the Child Marriage Restraint Act, 1929, and makes it punishable. According to this Act "child" means was a person who, if a male, has not completed 18 years of age, and if a female, has not completed 15 years of age.

In 1978, the definition of child was raised to 21 years for boy and 18 for girl, some offences also were made cognizable and triable by Metropolitan Magistrate or Judicial Magistrate of First Class. According to the statements of objects and reasons of the amendment Act of 1978, the main purpose of this law is to create a check on population growth as it would result in a lower fertility rate, since it reduces the time period of marriages. It was also passed to eliminate potential dangers to the life and health of female children, who cannot withstand the stress and strains of married life, and also to avoid early deaths of minor mothers. A 'child marriage' is a marriage where either of the contracting parties is a child. The criminal provisions of this Act do not apply to children.

According to some customs, the elder daughter provides service to temple, and was called devdasi, in some parts of India. Similarly, in some parts of the country, especially in upper castes rich persons were having customs of dasis. In this system some women dasis were sent along with the bride to take care of the bride. They were treated as property and were supposed to act according to the requirement of bridegroom. Some States also have enacted law to prevent the provision of devdasis.

⁶ Retrieved from Malik and Raval, Law & Social Transformation In India, 4th ed. 2014. Rep. 2015, Allahabad Law Agency, Faridabad, at p. 356.

In 1954, an Act was enacted in the form of the Special Marriage Act, 1954 under which a registered marriage may take place between a boy above 21 years of age and a girl above 18 years of age, of any caste or religion and it will be treated as valid marriage. If any marriage is solemnized under this Act, in that case for all the provisions relating to matrimony will be allowed under this Act only.

The Supreme Court has stated that 'honor' killings have become commonplace in many parts of the country, particularly in Haryana, western U.P., and Rajasthan. Often young couples who fall in love have to seek shelter in the police lines or protection homes, to avoid the wrath of kangaroo Courts. There is nothing 'honorable' in 'honor' killings, and they are nothing but barbaric and brutal murders by bigoted, persons with feudal minds. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilized behavior. All persons who are planning to perpetrate 'honor' killings should know that the gallows await them.⁷

The Legislature has enacted special law on prohibition of dowry, called the Dowry Prohibition Act, 1961; the aim of this Act is to prohibit giving or taking of dowry. It came into force w.e.f. 1st July, 1961. This Act provides penalty for giving and taking of the dowry and punishment was enhanced twice, first in 1985 and second time in 1986. This Act also exempts some gifts at the time of marriage. It further prohibits the demanding of dowry and makes any agreement for giving or taking dowry to be void. If, any dowry is given, it shall be transferred to the woman in marriage and if not transferred, such person is punishable. Offences under this Act are cognizable for certain purposes and are to be non-bailable and non-compoundable.

In 1985, the Supreme Court allowed Muslim woman to claim maintenance from her husband under section 125 of the Code of Criminal Procedure. The Supreme Court held that provisions relating to maintenance under section 125 of the Code are secular in nature and applicable to all citizens of India, irrespective of any religion.

In 1984, the Family Courts Act, 1984, was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and, family affairs and for the matters connected therewith. State Government has to establish family court in every town, whose population exceeds one million.

Now, CARA Guidelines 2011 has substituted both the guidelines and came up with single guidelines for inter-country along with in-country adoptions. The legislature made the provisions under the Juvenile Justice (Care and Protection of Children) Act, 2000, and specially amended by the Amendment Act, 2006. This Act authorized any person to adopt a child, irrespective of having any number of children and the matrimonial status. According to the guidelines, it governs adoption of child in need of care and protection (abandoned or surrendered child) who can be declared free for adoption by the Child Welfare Committee and then the District Court has to give child in adoption. Under these provisions any person can adopt the child irrespective of their religion, caste, marital status, number of children they already have etc. but, everything should be done in the interest of the child.

Under the Special Marriage Act, 1954 which applies to Indian citizens irrespective of religion, each marriage is registered by the Marriage Officer specially appointed for the purpose. The registration of marriage is compulsory under the Indian Christian Marriage Act, 1872. Under the said Act, entries are to be made in the marriage register of the concerned Church soon after the marriage ceremony, along with the signatures of bride and bridegroom, the officiating priest and the witnesses. The Parsi Marriage and Divorce Act, 1936, make registration of marriages compulsory. The Foreign Marriage Act, 1969, also provides for registration of marriages.

Under section 8 of the Hindu Marriage Act, 1955, certain provisions exist for registration of marriages. However, it is left to the discretion of the contracting parties to either solemnize the marriage before the Sub-Registrar or register it after performing the marriage ceremony in conformity with the customary beliefs. However, the Act makes it clear that the validity of the marriage in no way will be affected by omission to make the entry in the register.

⁷ Bhaqtuan Dass v. State (NCT of Delhi), 2011 (6) SCC 396.

Hindu women are having equal share in the succession according to the Amendment of 2005 in the Hindu Succession Act. It is not a totally new right but extends initial provisions. In 1874 an Act was enacted in the form of the Married Women's Property Act, 1874, which provides for certain liabilities on the husband of a married woman, but, was applicable to Christians only. Married women's wages and earnings shall be their separate property. This Act further explains the liability of husband and wife when arises in cases of postnuptial and ante-nuptial debts, or breach of trust. Any benefit from, the insurance of herself and her husband shall also be their separate property. At present this provision is also applicable to Hindus and Mohammedans.

It is being argued that India has recognized 'live-in relationship'. No, in fact India has recognized 'relationship in nature of marriage'. It was observed that a live-in relationship between two consenting adults of heterogeneous sex does not amount to any offence (with the obvious exception of 'adultery', even though it may be perceived as immoral. A major girl is free to marry anyone she likes or 'live with anyone she likes⁸. In 2005, first time statute has recognized the term 'relationship in the nature of marriage by the Protection of Women from Domestic Violence Act, 2005.

From aforesaid analysis it is clear that the various dimensions of modernization of law have resulted into women empowerment.

CONCLUSION

Dimensions of modernization of the law in favor of women empowerment have resulted into gender sensitization in true sense.

FURTHER SCOPE

Under the provisions of Hindu Succession Act, wife is not entitled to claim partition. In this field there is a scope of modernization of Hindu personal law.

Under Muslim Personal law various provisions which are unfavourable to the Muslim Women such as triple talaq, halala, polygamy should be abolished through modernization of Muslim Personal Law.

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⁸ Lata Singh v. State of UP, AIR 2006 SC 2522 affirmed in S. Khushboo v. Kanniammal, AIR 2010 SC 3196.