

LL.B. (3 years) Vth Semester
Optional Paper-VII- E
WOMEN AND LAW RELATING TO CHILDREN -I

UNIT-II

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| Syllabus | Preamble, Constitutional Safeguards for the Protection of Women, Personal Laws- unequal position of women, Gender Discrimination under Personal Laws (Hindu, Muslim and Christian Laws), Women rights regarding to Marriage, Divorce, Property and Maintenance. |
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| Lecture – I | Preamble & Constitutional Safeguards for the Protection of Women |
| Lecture – II | Unequal position of women & Gender Discrimination under Personal Laws |
| Lecture – III | Women rights regarding to Marriage |
| Lecture – IV | Women rights regarding to Divorce |
| Lecture – V | Women rights regarding to Property |
| Lecture – VI | Women rights regarding to Maintenance |

LECTURE -1: Preamble & Constitutional Safeguards for the Protection of Women

Previous year Questions

1. Discuss Articles 14 and 15 of the Indian Constitution in the light of women protection. Can state discriminate among the citizen on the ground of sex? Discuss. (2013) (2015)
2. “Special laws can be made in favour of women and children under Constitution of India.” Discuss. (2014)
3. Discuss the rights available to women under Part III of the Indian Constitution. (2017)
4. Write atleast five Supreme Court decisions which ensure constitutional right to equality to the women in India. (2021)

NOTES:

PREAMBLE: -

- The preamble of our constitution is non- discriminatory where all sections are treated equally and alike.
- The framers have historically examined the situation and incorporated provisions with the view to grant equal status to women in terms of all spheres.
- The preamble of the Indian Constitution declares social, economic and political justice to all its citizens. The mentioning of the terms simply means that neither men nor women should be denied from the fruits of justice.

FUNDAMENTAL RIGHTS: -

- Equality before the law for women (**Article 14**).
- The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (**Article 15 (i)**).
- The State to make any special provision in favor of women and children (**Article 15 (3)**).
- Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (**Article 16**).
Case Law: - Air India v. Nargesh Meerza (1981)
- Right to life and personal liberty (**Article 21**)
Case Laws: - Lata Singh v. State of U.P (Right to marriage of choice), Vishakha v. State of Rajasthan (Right to live with dignity at workplace), Olga Tellis v. State of Bombay (Right to livelihood) etc.
- Right against exploitation (**Article 23**)

DIRECTIVE PRINCIPLES OF STATE POLICY: -

- The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (**Article 39(a)**); and equal pay for equal work for both men and women (**Article 39(d)**).
- To promote justice, on a basis of equal opportunity and to provide free legal aid (**Article 39 A**).
- The State to make provision for securing just and humane conditions of work and for maternity relief (**Article 42**).
- The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (**Article 46**).
- The State to raise the level of nutrition and the standard of living of its people (**Article 47**).

FUNDAMENTAL DUTIES: -

- To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women (**Article 51(A) (e)**).

OTHER LAWS: -

- Reservation of seats for women (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) in panchayats (**Article 243D**).
- Reservation of seats for women (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) in municipalities (**Article 243T**)

Assignment Questions

1. How many types of justice are there in preamble of the Indian Constitution? Name them.

Ans.

2. Which part and Articles of the Indian Constitution deals with Fundamental rights? Mention them.

Ans.

3. Name some important case laws related to right to equality.

Ans.

4. Mention some of the areas widely interpreted by Supreme Court under Article 21 along with case laws.

Ans.

5. What are the articles under Directive Principles of state policy related to women rights?

Ans.

6. Mention the article under Fundamental duties which talks about women's rights.

Ans.

7. Which Articles deals with the reservation of women in local bodies?

Ans.

LL.B. (3 years) Vth Semester
Optional Paper-VII- E
WOMEN AND LAW RELATING TO CHILDREN –I
UNIT-II

LECTURE -2: Unequal position of women & Gender Discrimination under Personal Laws

Expected Question

1. Why women in India enjoy unequal position than men? What are the instances related to gender discrimination under personal laws?

NOTES:

- India is a secular country of people from diverse religions. There are many religions, which governs various personal laws, which are applicable to different sects.
- From ancient times, Indian society is considered a patriarchal society, where women have fewer rights than men do. These laws are more biased towards women.
- **Marriage: -**
A Hindu is entitled to marriage through the Hindu Marriage Act, 1955; A Muslim is entitled to marriage through the Muslim Personal Law. While Christian, Hindu, and Parsi marriages are treated as a sacrament, Marriage in Muslim is not a sacrament but a civil contract not requiring any religious ceremonies.
- **Divorce: -**
The grounds for divorce are different under different personal laws. Under Hindu law, the provision for the practice of polygamy can be a ground for Divorce. While under Muslim law, the practice of polygamy has been allowed under the law with some conditions.
- **Maintenance: -**
According to the given rights under personal laws, a Hindu woman enjoys more rights than a Muslim woman. Under Sec-37 of the Indian Divorce Act, a Christian woman can claim maintenance from her spouse through civil court or High court.
In **Mohd. Ahmed Khan v. Shah Bano Begum** (AIR 1985 SC 945) Case, The court also announces that Sec-125 of the Criminal Procedure Code is applicable to all citizens regardless of their religion.
- **Inheritance Rights: -**
The Hindu Succession Act, 1956, regulate the succession and inheritance laws for Hindus, along with Jains, Buddhists, and Sikhs. In the case of Muslims, personal law regulates inheritance laws. In case of Christians, the Indian Succession Act, 1925 regulates the inheritance rights of Christians.
- 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 21st Century.

- As we have seen different personal laws in India. These laws have also been shown discrimination against women. Religious Personal Laws suppress women.
- So, women can improve their status by being an educated woman and if there will be an educated society then it will think about the rights of everyone.

Assignment Questions

1. Mention the leading case on maintenance which talks about secular law.

Ans.

2. Which Act is applicable on Hindus for Marriage and Divorce?

Ans.

3. The succession of Hindus, Muslims and Christians is regulated by which laws respectively?

Ans.

4. What is the reason behind not bringing Uniform Civil Code in India? Give your opinion.

Ans.

5. According to you, how gender discrimination in society can be eliminated?

Ans.

LL.B. (3 years) Vth Semester
Optional Paper-VII- E
WOMEN AND LAW RELATING TO CHILDREN -I
UNIT-II

LECTURE -3: Women rights regarding to Marriage

Previous year Questions

1. Define and differentiate the term 'Void marriage' and 'voidable marriage' according to Hindu Marriage Act, 1955. (2016)
2. What are the essential conditions of marriage under Hindu Marriage Act, 1955? (2018)

NOTES:

Hindu Law on Marriage

- Hindus are governed by a law called the The Hindu Marriage Act, 1995, it is a law enacted by the Indian Parliament in 1955 as part of the Hindu Code Bills.
- People who can get married under the Hindu Marriage Act: - Hindu of any caste or sect or form or development, Buddhist, Jains, Sikhs & Anyone converted to any of the above mentioned religions.
- A Hindu Marriage must be solemnized according to the custom of the Hindus (Section 7).
- Conditions for a valid Hindu Marriage (Section 5)
 - Both the parties to the Marriage (bride and bridegroom) must be Hindus.
 - Neither party has a spouse living at the time of the marriage.
 - At the time of the marriage, neither party:
 - Is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
 - Though capable of giving a valid consent has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
 - Has been subject to recurrent attacks of insanity.
 - The bridegroom has completed the age of twenty one years and the bride the age of eighteen years at the time of the marriage.
 - The parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two.
 - The parties are not sapindas of each other (must not be in close relation to each other such as cousins), unless the custom or usage governing each of them permits of a marriage between the two.
- Section 8 of Hindu Marriage Act states that the state government may make rules for the registration of Hindu marriage.

Difference between Void and Voidable Marriage

| Void Marriage (Section 11) | Voidable Marriage (Section 12) |
|---|--|
| <p>If a marriage is performed in violation of some essential conditions of the marriage e.g. parties are related to each other within the degrees of prohibited relationships then it is a void marriage.</p> | <p>A marriage that can be avoided at the option of either of the parties is known as voidable marriage. Any voidable marriage shall become void if any of the party wished to do so.</p> |
| <p>In a void marriage, the parties do not have the status of husband and wife.</p> | <p>Husband and wife have the status in the voidable marriage.</p> |
| <p>In a void marriage, no decree of nullity is required.</p> | <p>In a voidable marriage decree of nullity is required.</p> |
| <p>A void marriage is none in the eyes of law.</p> | <p>A void marriage is to be declared void by a competent court.</p> |
| <p>The children in a void marriage are treated as legitimate.</p> | <p>The children in a voidable marriage are treated as illegitimate but this distinction is deleted by the Supreme Court and said a child cannot be said termed as illegitimate.</p> |
| <p>A wife does not have the right to claim maintenance in the void marriage.</p> | <p>A wife has the right to claim maintenance in the voidable marriage.</p> |

Muslim Law on Marriage

- Muslim marriages are governed by the Islamic law i.e. Shariah
- There are two schools of Islamic law: Sunni Law and Shia Law. Majority of Sunni Muslims in India are governed by the Hanafi School and Shias by the IthnaAsharia School.
- The essential of a valid muslim marriage are as follows:
 - There should be a proposal made by or on behalf of one of the parties to the marriage. There should be an acceptance of the proposal by or on behalf of the other party. This is called Nikah.
 - The written document of Marriage contract is NikahNama.
 - A Muslim marriage requires proposal 'Ijab' from one party and acceptance 'Qubul' from the other side. This must be done in one sitting.

- The proposal and acceptance must both be expressed at one meeting orally.
- The parties must be competent i.e. they must be sane and adult, if the parties or one of them is either a minor or insane, the consent has to be given by the guardian. The consent will be deemed free when it is made at will and given voluntarily and not under any coercion or fraud.
- There must be two witnesses, who must be sane and adult (Not needed in Shia Law)
- Neither writing nor any religious ceremony is needed.

Christian Law on Marriage

- All Christians are governed by The Christian Marriage Act, 1872.
- All persons practicing the Christian religion such as Roman catholic or Protestants can get married under this law.
- Under Christian law marriage may be solemnized appointed by the church to solemnize the marriage according to the customs of Christians or by a marriage registrar.
- A marriage registrar is appointed by the State Government.
- A notice in writing is given to the Registrar by one of the persons getting married.
- The marriage is to be solemnized in the presence of two witnesses and one of the parties has to take an oath that there is no lawful objection to the marriage.

The Special Marriage Act, 1954

- Sometimes people following same or different religions don't want to get married under their personal laws
- In such cases they can get married under The special Marriage Act, 1954
- Under this law marriage is performed by the special officer appointed under the Act
- Any two persons who wants to get married under this law have to fulfill the following conditions:
 - Neither the man nor the woman must be already married.
 - They should be mentally sound so that they can give a valid consent.
 - The girl should be at least of 18 years of age.
 - The boy should be at least of 21 years of age.
 - They should not be closely related to each other (in the prohibited degree).

Assignment Questions

1. What is Void marriage?

Ans.

2. What is Voidable marriage?

Ans.

3. What is the age of bride and bridegroom for marriage under Hindu law?

Ans.

4. Which provision provides for registration of marriage?

Ans.

5. What are the two schools of Muslim Law?

Ans.

6. By which law, Muslim marriage is governed?

Ans.

7. Under which law, people from different religions can get married?

Ans.

LL.B. (3 years) Vth Semester
Optional Paper-VII- E
WOMEN AND LAW RELATING TO CHILDREN -I
UNIT-II

LECTURE -4: Women rights regarding to Divorce

Previous year Questions

1. On what grounds a Muslim wife can obtain a decree of divorce under Muslim Law? Discuss. (2016)
2. Discuss the grounds on which a Hindu wife may seek divorce from her husband. (2017) (2021)

NOTES:

Hindu Law on Divorce

- As per the ancient Hindu laws there was no place for divorce and it was with the codification of Hindu law that the grounds dissolution of marriage by a decree of the court laws were laid down. Divorce between two persons married under the Hindu Marriage Act is also governed by the same Act.
- Both men and women can get a divorce on various grounds given in the law. Women also have some additional grounds of divorce.
- Grounds for Divorce: (Section 13) of the Hindu Marriage Act, 1995
 - **Adultery [Section 13(1) (i)]:** If the husband cohabits with other women after marriage has taken place, then the wife can ask for divorce.
 - **Cruelty [Section 13(1) (i) (a)]:** If a husband treats his wife with physical or mental cruelty, then she can ask for a divorce.
 - **Desertion [Section 13(1) (ib)]:** If the husband leaves his wife for no fault of hers, she can get a divorce. Desertion must be for at least 2 years before she can ask for the divorce. Desertion are of three types:
 - Actual desertion
 - Constructive desertion
 - Willful neglect
 - **Conversion [Section 13(1) (i)]:** If the husband converts to any other religion, wife can ask for divorce.
 - **Insanity [Section 13(1) (iii)]:** If the husband has been incurably of unsound mind or has been suffering from mental disorder, wife can ask for Divorce.
 - **Venereal Disease [Section 13(1) (v)]:** If the husband is suffering from Venereal Disease in communicable form wife can ask for divorce.
 - **Renunciation from the world [Section 13(1) (vi)]:** Like conversion Renunciation is also a ground for divorce. If the husband renounces the world for religion wife can ask for divorce.
 - **Presumption of Death [Section 13(1) (vii)]:** If the husband is unheard for seven years it will be a presumption of death. In such a case wife can get the divorce from the court.

- **Wife's Special Ground for Divorce[Section 13(2)]:**
 - Pre-Act Polygamous marriage of the husband [Section 13(2)(i)]
 - Acts of Rape, Sodomy or Bestiality by the husband [Section 13(2)(ii)]
 - Non-Resumption of Cohabitation after a Decree/Order of Maintenance [Section 13(2)(iii)]
 - Wife was married before she was 15 years old and decide to repudiate the marriage after attaining the age of 15 years but before attaining the age of 18 years.
- **Sec 13 B: Divorce by Mutual Consent:** - It is the fastest way or procedure of getting divorce. All marriage which have been solemnized before or after the Marriage Law (Amendment) Act 1976, are entitled to make use of the provision of divorce by mutual consent.

Muslim Law on Divorce

A Muslim man can divorce his wife without going to the court by the following ways:

Type of Divorce under Muslim Marriage

- Extra Judicial Divorce by husband:
 - Talaq: It is of two types: Talaq-ul-Sunnat & Talaq-ul-biddat
 - Talak-ul-Sunnat is further divided into: 1) Talaq-e-Ahsan and 2) Talaq-e-Hasan.
 - Talak-ul-biddat is further divided into: 1) Triple Divorce 2) One irrevocable Talaq
 - Ila
 - Zihar and Lian
- Extra Judicial Divorce by Wife:
 - Talaq-i- Tafweez
 - Khula
 - In ShayaraBano v. Union of India, the Supreme Court decided that pronouncement of three Talaqs (Triple Talaq) at the same time which results in instant dissolution of Marriage without having chance of revoking the talaq is unconstitutional. The Government of India has enacted Muslim women (Protection of Rights on Marriage) Act 2019 which declares triple talaq as void. Husband who has pronounced triple talaq to the wife is liable to punishment also.
- Extra Judicial Divorce by Mutual Consent: called Mubarat.

Judicial Divorce

The Right for divorce by a Court's decree is exclusively available to Muslim wife by the dissolution of Muslim Marriages Act 1939 in cases of:

- Cruelty
- Husband unheard for at least four years
- Failure to provide maintenance to the wife for a period of two years or more
- Husband sentenced to a term of Imprisonment for a period of seven years or more:
- Failure to perform matrimonial obligation for a period of 3 years
- Insanity of the Husband for over 2 years
- Impotency of the husband at the time of marriage
- Leprosy

- Venereal Disease
- **Option of Puberty:** If the girl was married before attaining the age of fifteen years by her guardian then she can ask for a divorce from the court if the marriage has not been consummated or the marriage has been repudiated by her before attaining the age of 18 years.

Christian Law on Divorce

- All Christians are governed by the Divorce Act 1869 as amended in 2001 by the Indian Divorce (amendment) Act 2001.
- Grounds of divorce after the amendment of section 10 of the Divorce Act 1869.
 - Conversion to another religion
 - Adultery
 - Cruelty
 - Desertion for at least two years.
 - Incurable Insanity for more than two years.
 - Incurable and virulent form of leprosy for more than two years.
 - Willful refusal to consummate the marriage.
 - Not being heard for seven years.
 - Venereal disease in communicable form for two years.
 - Failure to obey the order for restitution of conjugal rights.
- Wife's additional grounds if the husband is guilty of: Rape, Sodomy & Bestiality
- Section 10-A deals with dissolution of marriage by mutual consent

Assignment Questions

1. Which section provides for ground of divorce for both husband and wife under Hindu law?
 - a. Section 13(2)
 - b. Section 13(1)

2. How many grounds are available to wife for the dissolution of her marriage?

Ans.

3. What does the provision Section 13B of Hindu marriage Act states?

Ans.

4. Which Act provides right for divorce which is exclusively available to Muslim wife?

Ans.

5. What is option of puberty?

Ans.

LL.B. (3 years) Vth Semester
Optional Paper-VII- E
WOMEN AND LAW RELATING TO CHILDREN -I
UNIT-II

LECTURE -5: Women rights regarding to Property

Previous year Questions

1. Discuss the rights to property of a female Hindu under Hindu Succession Act, 1956. What is the impact after the 2005 Amendment? (2015)

NOTES:

Hindu Women's Right to property

- The Hindu Succession Act 1956 provides equal right of Mother, widow, Son and Daughter to share a person's property on his death. Both Son and Daughter inherit the property of Mother on her death.
- The Hindu Succession Act, 1956 was gender discriminatory. To remove the said gender discriminatory provisions The Hindu Succession (Amendment) Act, 2005 was passed and the said Act came into force on 9th September, 2005 and it gives the following rights to daughters.
- In a joint Hindu family the daughter of a coparcener shall:-
 - (a) By birth become coparcener in her own right in the same manner as the son;
 - (b) Have the same rights in the coparcener property as she would have had if she had been a son;
 - (c) Be subject to the same liabilities in respect of the said coparcenaries property as that of a son, and any reference to a Hindu coparcener shall be deemed to include a reference to a daughter of a coparcener:
- Thus, a daughter has a similar right like son to claim partition of coparcener property. She would have to go to civil court of competent jurisdiction seeking partition.

Muslim Women's Right to property

- There are two broad schools of Muslim in India as follows: i. Sunni ii. Shia.
- The main point of differences between the two is that Sunni rules only count those relatives as heirs whose relation to the deceased person is through a male- son's son and father's mother.
- Shias include even those persons as heirs who are related to the deceased through a female e.g. daughter's son, daughter's daughter.

LL.B. (3 years) Vth Semester
Optional Paper-VII- E
WOMEN AND LAW RELATING TO CHILDREN -I
UNIT-II

LECTURE -6: Women rights regarding to Maintenance

Previous year Questions

1. Does the Muslim Women (Protection of Rights on Divorce) Act, 1986 protect the rights of women in real sense? Discuss. (2014)
2. Explain the right of maintenance of wife under Hindu Adoption and Maintenance Act, 1956 and Hindu Marriage Act, 1955. (2021)

NOTES:

Maintenance under Hindu Law

- The wife can get as much maintenance as required for her to live according to her status in life. The limit depends upon the husband's earning capacity. The amount is given on a monthly or lump sum basis.
- The wife will not be entitled to get maintenance once she remarries, or does not remain chaste. If the husband refused to pay the maintenance amount settled by the court, he will be imprisoned.
- Under the Hindu Adoption and Maintenance Act, 1956, Section 3(b)- "Maintenance" includes-
 - (i) In all cases, provision for food, clothing, residence, education and medical attendance and treatment;
 - (ii) In the case of an unmarried daughter, also the reasonable expenses of and incidents to marriage
- Under the Hindu Marriage Act, 1955
 - Section 24: Maintenance Pendente lite and expenses of the proceedings.
 - Section 25: Permanent alimony and maintenance.
- Section 18 of Hindu Marriage Act - A Hindu wife is entitled to be maintained by her husband during her life time.
- Section 125 Cr.P.C.- If any women is unable to support herself, she can file an application for maintenance in the Criminal Court Section 125 of the Criminal Procedure code (Shah Bano v. Union of India).

Maintenance under Muslim Law

As per the Muslim Personal Law (Shariat) a Divorced Woman has a right to get the following things from her Husband:

- A sum equal to dower (Mahr) settled at the time of marriage.
- All the gifts given to her by anyone at the time of marriage.

- Maintenance during the period of Iddat.
- Maintenance for herself till their child attains the age of two years.
- Claim of Maintenance during Subsistence of Marriage: A Muslim wife is entitled to be maintained by her husband during the subsistence of marriage.
- Maintenance under Cr.P.C- Section 125: - A Muslim woman can get maintenance from her husband even after the period of Iddat by filing a petition under section 125 of Criminal Procedure Code (Shah Bano v. Union of India).

Maintenance under Christian Law

- Under section 37 of the Indian Divorced Act 1869, the wife can seek permanent alimony after dissolution of Marriage or decree of Judicial Separation.
- Under section 125 of CrPC a Christian woman can also claim maintenance from her husband as explained earlier too.

Assignment Questions

1. Which section under the Hindu Adoption and Maintenance Act, 1956 provides for Maintenance?

Ans.

2. Which section is a secular provision for maintenance of women?

Ans.

3. What was held in Shah Bano v. Union Of India related to maintenance of women?

Ans.

4. Under of the Indian Divorced Act 1869, the wife can seek permanent alimony after dissolution of Marriage or decree of Judicial Separation.

5. As per the Muslim Personal Law (Shariat) a Divorced Woman has a right to get some things from her Husband. Mention some of those.

Ans.