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Plight of Wives and Children in the Event of Divorce

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Abstract: ***Women constitute one half of the population of India, the other one half being constituted by the male counterpart. Since the Indian society like other societies of the world is patriarchal, women are unfavorably discriminated against through all stages of their existence and are a prey to the feeling of inherent weakness and become an emblem of grief and sorrow. During the period of Muslim, the position of women in society suffered a setback. The Muslims as invaders came to India without their womenfolk and made of any beautiful Indian woman, married or unmarried. The British professed a progressive attitude towards women.***

Keywords: Plight, Wives, Children, Divorce

I. INTRODUCTION

Divorce: "Legally it is a single event but psychologically it is a chain, sometimes a never ending chain, of events, relocations and radically shifting relationships strung through time, a process that forever changes the lives of people involved".

A. Judith Wallerstein Second Chances

Women constitute one half of the population of India, the other one half being constituted by the male counterpart. Since the Indian society like other societies of the world is patriarchal, women are unfavorably discriminated against through all stages of their existence and are a prey to the feeling of inherent weakness and become an emblem of grief and sorrow. It was well said by Manu, the great ancient law giver; that in the childhood a female is protected by her father, in her youth by her husband and in the old age by her son and therefore is not qualified for freedom. It can well be inferred from this statement that woman is created by nature only to serve man and therefore deprived of the right to claim equality with man in any walk of life. This was the beginning of the subordinate status and therefore the evolution of the idea of gender justice among the philosophers.

Golden period of women was the ancient period of Indian history. They were glorified by the various sages and 'Rishis' and enjoyed perfect equality with men in the religious, social and ceremonial activities of men. Savitri, Sita, Arundati, Parvati, Kunti etc. were women of great virtue and culture. The chariot of life, so proclaimed the Vedas, is balanced the other half wheel that is woman. She thus enjoyed an exalted status.

During the period of Muslim, the position of women in society suffered a setback. The Muslims as invaders came to India without their womenfolk and made of any beautiful Indian woman, married or unmarried. This state of affairs led to the observance of 'Purdah' and women started to live in seclusion from the society almost arrested within the precincts of their homes. That was the beginning of their ill fate cutting them off from all the progressive social trends. It is a matter of grave concern that the women calmly submitted to their lot. All the historic stories, deeds, valour and sacrifice were silenced. A Durgawati could emerge only now and then.

The state of affairs changed with the advent of the British. By the mid-nineteenth century women's education had become an issue and the Brahmos and Hindu had opened the schools in Bengal and in early nineteenth century were attended largely by girls from poor families. Adult education for women in Bengal also began to be provided at this time.

The movement against exploitation in the Assam tea plantations had started in 1880. The issues of forced recruitment, harassment and shortening of women factory workers hours were demanded as they were also to perform their domestic duties.

The British professed a progressive attitude towards women. The troubled conditions `of the middle ages gave way to unparallel peace and tranquility in the Indian society. The women began to come their own discarding their 'Purdah' and joining schools, college and universities etc. Women started distinguishing themselves as doctors and nurses.

In the view of Gandhi, the biological differences between men and women not only determined masculinity and femininity; they meant that each has a different role to play. The roles are complementary and each is equally important. The man's role is as

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breadwinner. The role of woman is as housewife and mother. Gandhi created the image of the mother as the repository of spiritual and moral values, as a preceptor for men.

From early nineteenth century definitions of the suffering of Indian women and the need for reform, the emphasis shifted in the early twentieth century to stressing women's right to be treated as useful members of society.

By the late twentieth century the women has demanded that they should have the power to decide their own lives. There was a change from needs to rights and within this from the restricted right to the larger right of self-determination.

The term 'self-determination' has become debatable in the Indian feminist movement. Equality with men in all conferred legal rights is an important part of it which implies that men and women should be regarded as the same but the issue of difference remains more important.

The disagreement that feminist organizational structures and modes of functioning have to be different from conservative ones, bases itself both on a critique of the latter as being hierarchical, power-based and male dominated, and on the premise that female forms of action must reflect the feminine values of gentleness and care.

An affirmation of gender-based difference, moreover, has been more explicitly made in the nineteen-eighties, when a stream developed within the feminist movement, which celebrates femininity as being pagan, intuitive, anarchic, inventive and nurturing. As against early twentieth century definitions of masculinity and femininity being complementary, however, there is here a privileging of the feminine and a certain rejection of the masculine.

In the coming centuries the march towards gender justice progressed almost lazily till the end of nineteenth century. It is only during twentieth century with the coming into light of the idea of United Nations and evolution of the idea of human rights that women welfare could see it's hey days.

The human rights are basically rights of the weak against the strong, rights of the 'have not' against the 'haves' and rights of the poor against the rich and therefore the world philosophy was directed in later half of twentieth century towards the women rights and their improvement, social, economic and political at the National and International level.

A golden stroke of nature brought into being the Constitution of India in the middle of the twentieth century coinciding with the birth of human rights at the International level. The central theme of the human rights is dignity of men as well as women and therefore there is hardly any adverse discrimination against women for "all men are born free and equal."

The Constitution of India embodies the spirit of human rights and guarantees fundamental rights that are available to men and women both. Going even beyond this, the Constitution enacts some special provisions for women to bring their status equal to that enjoyed by men and has envisaged this in the bedrock of Welfare State and Rule of Law.

Demands for a reformed, uniform and all-encompassing codification of Hindu personal laws had been first raised by feminists in the nineteen thirties. The age of consent and marriage, women rights to divorce, maintenance and inheritance, and treated dowry as stridhan were the questions raised by the women oranisations. In 1955-56, four different Acts were passed respectively: The Hindu Marriage Act, the Hindu Succession Act, the Hindu Minority and Guardianship Act, and the Hindu Adoption and Maintenance Act.

Equality against all discrimination including sex discrimination' was guaranteed by the Constitution of India. It resulted in a comparative silence in feminist activities and such a situation remained until the nineteen-seventies. A wave of new women's organizations began to be formed by the nineteen-eighties as a reaction to Constitutional promise of equality that was denounced as deception. The particular category of `women's activism' was developed with a view to addressing the problems of women with their vision and experience. `Logical' and organic links between feminism and Marxism, feminism and anti-communalism, feminism and anti caste discrimination, etc. were formulated.

Throughout the period most campaigns for an amelioration of women's conditions were based on the liberal-democratic premise that it was both wrong and unfair that certain categories of human beings (defined by circumstances outside their control such as birth) should be treated as inferior to other categories. The relationship between this premise, however, and the matter of gender difference was always an ambiguous one. In the early years of movements for women's rights, for example, it was more or less taken for granted that the difference between the sexes was such that their roles, functions, aims and desires were different. Hence not only had they to be differently reared but differently treated in general. Over time this difference was itself adduced as a major reason for reforming women's conditions. While early nineteenth century reformers argued that women's difference from men was no reason for their subjection, later reformers argued that it was precisely this difference which made women socially useful (women as mothers), and hence proper care for their conditions of being was socially necessary. As women themselves joined campaigns, and also formed their own organizations, this point of difference, being as mother, was again stressed, but this time as an argument for women's rights, to speech, education and emancipation. The terms, however, in which this argument was advanced, had changed: from earlier functionalist emphasis on rationalizing the family to the creation of a classic mother figure.

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Divorce as a popular concept is understood as *dejure* putting an end to the matrimonial tie with certain resultant consequences. Section 13 of the Hindu Marriage Act, 1955; Section 27 of the Special Marriage Act 1954; Section 32 of the Parsi Marriage and Divorce Act 1936; Section 10 of the Indian Divorce Act, 1869; Section 2 of the Dissolution of Muslim Marriage Act 1939; Section 18 of the Foreign Marriage Act, are the provisions of the matrimonial statutes dealing with divorce.

Divorce legally dissolves the marriage tie. But it cannot erase the past. Nor can it create an unrelated future. In a sense, it adjusts the relationship by realigning bonds between the parties. It has, therefore, been rightly said that divorce may end marital tie, it cannot end all family relations.

For at least two purposes, the relationship of the parties continues even after divorce. Firstly, insofar as one spouse is under a liability to pay for the maintenance of the other spouse, the relationship continues. Secondly, where there are children of marriage the relationship of the parties continue in relation to their custody, maintenance, education etc.

Thus, divorce is not the end of the whole episode, certain relationships and obligations do survive divorce.

The resistance put to the introduction of divorce, it seems, was mainly focused on its aftermath in relation to the hardship caused to women. But it seems that the post divorce problem, particularly of children, was not canvassed in the proper prospective. One reason for the absence of such a debate may be that in 1950s the English matrimonial statutes had yet not realised the gravity of the problem. So this research work will work upon such problems.

For the last four decades, society have been participating in a great social science experiment regarding divorce. The end result has been disposable marriages and shattered lives. Society's Cavalier attitude towards marriage and divorce is not a positive phenomenon and has perpetuated a cycle of failed marriages and a lengthy list of associated social problems detrimental to children and to wives. Divorce is not a solo-act, nor is it a victimless phenomenon. There is no debate that divorce has brought enormous physical, emotional and economic harm to families and to society at large.

Divorce marks the end of a committed, intimate relationship, and the loss and its associated life change often dragger increased, larks of stress. Stress is one of the key risk factors for depression. So individuals experiencing stressful events such as divorce should pay close attention to maintaining overall physical and emotional wellness.

Termination of a marriage by a court decree is also known as marital dissolution.

A divorce decree establishes the new relations between the parties, including their duties and obligations relating to property that they own, support responsibilities of either or both of them, and provisions for any children. When a marriage breaks up, divorce law provides legal solutions for issues that the Husband and Wife are unable to resolve through mutual cooperation. Historically, the most important question in a divorce case was whether the court should grant a divorce. When a divorce was granted, the resolution of continuing obligations was simple: The wife was awarded custody of any children, and the husband was required to support the wife and children.

Modern divorce laws have inverted the involvement of courts. The issue of whether a divorce should be granted is now generally decided by one or both of the spouses. Contemporary courts are more involved in determining the legal ramifications of the marriage breakup, such as spousal maintenance, child support, and child custody. Other legal issues relating to divorce include court jurisdiction, ante nuptial and postnuptial agreements, and the right to obtain a divorce. State laws govern a wide range of divorce issues, but district, county, and family courts are given broad discretion in fixing legal obligations between the parties.

In early civilizations, marriage and marriage dissolution were considered private matters. Marriage and divorce were first placed under comprehensive state regulation in Rome during the reign of Augustus.[1] As Christianity spread, governments came under religious control, and the Roman Catholic Church strictly forbade divorce. The only exception to this ban was if one of the parties had not converted to Christianity before the marriage.

During the 1500s, the Protestant Reformation movement in Europe rejected religious control over marriage and helped to move the matter of divorce from the church to the state. European courts granted divorces upon a showing of fault, such as Adultery, cruelty, or desertion.

Due to the political and policy implications of the economic situation associated with divorce, much attention has focused on its economic impact women generally experience a decline in their economic situation in case of divorce whereas men undergo lesser declines or slight increases in their economic status.

The children also suffer and live in very poor condition. The children who appear to be most vulnerable socially and emotionally are those who experience multiple transitions in parenting arrangement throughout their child hood.

[1] 27 B.C.–A.D. 14

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Maintenance is most often used to provide temporary support to a spouse who was financially dependent on the other during the marriage. Temporary maintenance is designed to provide the necessary support for a spouse until he or she either remarries or becomes self-supporting. Many states allow courts to consider marital fault in determining whether, and how much, maintenance should be granted. These states include Connecticut, Georgia, Hawaii, Iowa, Kansas, Kentucky, Maine, Massachusetts, Missouri, Nebraska, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Virginia, West Virginia, and Wisconsin.

Like the entire body of divorce law, the issue of maintenance differs from state to state. If a spouse is found to have caused the breakup of the marriage, Georgia, North Carolina, Virginia, and West Virginia allow a court to refuse maintenance, even if that spouse was financially dependent on the other. North Carolina requires a showing of the supporting spouse's fault before awarding maintenance. Illinois allows fault grounds for divorce but excludes consideration of fault in maintenance and property settlements. Florida offers only no-fault grounds for divorce but admits evidence of adultery in maintenance determinations.

Under the old Hindu Law, the liability of the husband to maintain his wife was absolute and a personal one. The wife's first duty to her husband is to submit her obediently to his authority.

So this is the duty of husband to maintain his wife during the marriage as far as after divorce. Section 125 of Criminal Procedure Code and Section 25 of Hindu Marriage Act provides the provisions of maintenance of wife.

"A condition of maintenance for life to the divorced wife is absolutely necessary, provided she leads as chaste life and does not remarry.

In the case of "Shah Bano",[2] the important guidelines are given about maintenance.

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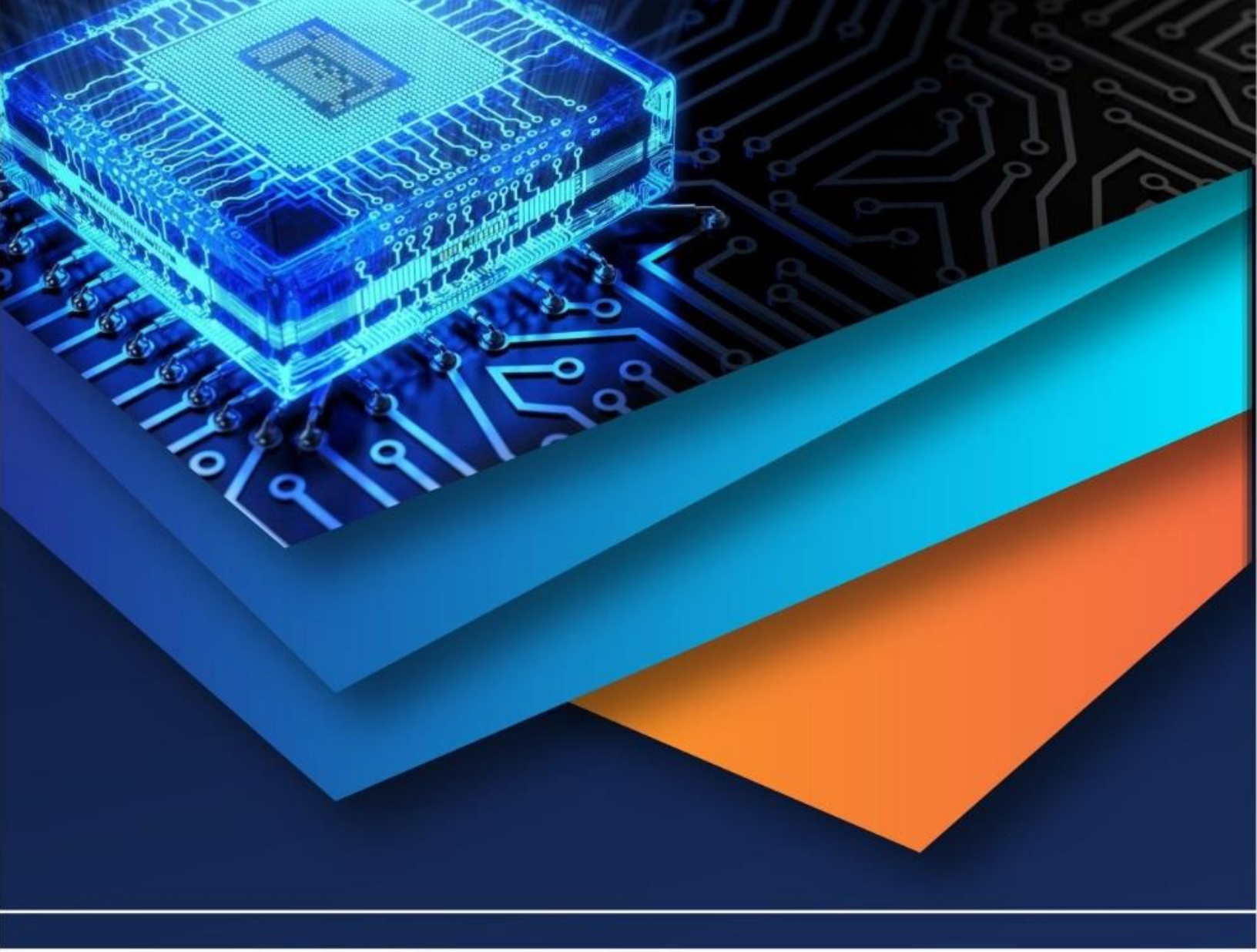
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