

# WOMEN AWAKE

Law Also Has Meaning For You

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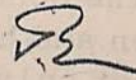


The Constitution has guaranteed equality to women and has directed the State, that women shall not only have equal rights and privileges with men but also provided that State shall make provisions both-general and special for the welfare of women. In pursuance of the Constitutional provisions, the Government has enacted a series of legislations to ensure that women get equality and also to safeguard their rights.

We recognise that in spite of very progressive legislation that the Government has adopted women have a long way to go before achieving equality. Social legislation to be effective, it is important to have a right environment in which changes can be brought about. Age old prejudices and men's vested interests are to a great extent responsible for tilting the balance against women. To remedy this, women have to take a lead in fighting for their rights and for this as a first step they should have knowledge of the existing rights available to them through legislation. This booklet is first in the series, to reach to women information in simple language regarding the existing enactments which could be of interest to them. It is hoped that individual women, voluntary groups and

educational institutions may find this handbook useful and help in further disseminating information regarding women's legal rights.

I would like to thank Dr. Lotika Sarkar for her valuable advise rendered in bringing out this handbook



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\*Are applicable to Hindus who include Buddhists, Sikhs and Jains and their legitimate and illegitimate children. Even if one of the parents belong to the religion mentioned and if the child has been brought up in the said religion, he/she would deem to be a Hindu. These Acts are applicable to the whole of the Country, except to the State of J&K. It applies to Hindus, domicile or living outside.

## CONSTITUTION AND EQUALITY

The Constitution provides equality to every person before law and equal protection of law. It also directs the State that it shall not discriminate against any citizen irrespective of race, religion, caste and sex. Further equality of opportunity for citizens has been ensured in matters of employment or office under the State. In addition, it has been laid down that State can take any special measures for the welfare of women.

The spirit of the fundamental rights mentioned above relating to women has been further elaborated in the Directive Principles of State Policy which relates to a variety of issues like Equal Pay for Equal Work, Humane conditions of work for Women, Maternity Relief, Free Legal Aid etc. The Directive Principles unlike the Fundamental Rights of the Constitution are intended to be Directives to the State for further course of action. On some Directive Principles action has been taken like the passing of the Equal Remuneration Act which gives right for equal pay for equal work, while on others action is to be taken.



## HINDU SUCCESSION ACT-1956

This Act has broken new grounds for women as it gives women the right to inherit property and to have absolute ownership.

Where a person dies without making a will his property devolves on his/her relatives "of the first degree", and failing which, on other relatives. Out of the twelve relations of the first degree, eight are women, viz., widow, daughter, mother, widowed daughter-in-law and widowed grand-daughter-in-law, grand-daughter by a son who has died, and great-grand-daughter by a grandson who has died. If a son or daughter has died before the intestate, then the share of such son or daughter will devolve on their respective spouses and children.

### **Rights Of Female Heirs**

#### *Widow:*

- (a) Under the Act, a widow inherits a share in her husband's property equal to that of a son.
- (b) A widow can even inherit her deceased husband's share in joint Hindu family property even though she is not considered a coparcener.
- (c) She inherits the property absolutely, i.e. there are no limitations on her powers over it and she can pass it on to her own heirs.
- (d) A woman staying away from her husband, either because of judicial separation or because he has forsaken her, is a legal heir and entitled to inherit as a widow.
- (e) Unlike under the old Hindu law, immorality in a widow is not a ground to debar her right to inherit.
- (f) Re-marriage by the widow, after inheriting does not divest her of the property inherited. In other words she is not bound to return it.

#### *Daughter :*

A daughter also inherits a share in her father's property equal to that of a son.



### *Mother:*

A man's mother is also an heir of the first degree and inherits a share equal to that of widow and/or children.

### **Right Of Residence To Daughters**

In Joint family dwelling house the right of residence is provided by law to : a) widowed daughter, b) daughter separated from her husband, c) unmarried daughter. The brothers or anybody else cannot debar her from this right. On partition of the property she gets a share of the property.

### **Succession To A Woman's Property**

Every women has the right to dispose of her property by will to whom so ever she pleases, without any restriction.

### **Intestate Succession :**

1. If a woman dies without making a will her property will be inherited by her husband and children in equal shares.
2. If any child or children have pre-deceased her, then the children of such child or children will inherit the share their parent would have got if he or she had survived the mother.
3. If a woman dies a widow and childless, the succession to her property is determined by the manner in which she acquired it :
  - (a) If the property (or part of it) was inherited from her parents, it is inherited by her own relations, i.e., mother father, brother, sister, and their children.
  - (b) If the property (or part of it) was inherited by her from her husband or his relatives (In-laws), her husband's relatives, i.e. parents-in-law, brothers-in-law sisters-in-law, are considered to be legal heirs.
  - (c) If the property is self-acquired, it will be inherited by the heirs as follows. First, the heirs of her husband, then her parents, then father's heirs, then her mother's heirs.



## MARRIAGE & DIVORCE

### To Whom Does This Law Apply :

The Hindu Marriage Act applies to all women who are Hindus by religion, which includes, Vaishnavas, Lingayats and members of the Brahmo, Prarthana, and Arya Samaj. It also applies to the Buddhists, Sikhs and Jains and to legitimate and illegitimate children of parents who belong to the above religions and sects. Even if one of the parents of a child belongs to above religions and sects and if the child has been brought up in the said religion or sect the Act will apply to the child. All "Hindus" who do not marry under the Special Marriage Act are governed by this Act.

### Under Hindu Marriage Act There Are Five Conditions For Marriage:—

- (a) Either spouse should not have an earlier living spouse.
- (b) Should not have mental problem, mental illness.
- (c) Man should be 21 years complete and girl 18 years complete.
- (d) The parties are not within the degree of prohibited relationship, unless the custom or usage governing each of them permits a marriage between the two.
- (e) The parties should not be sapinda to each other, unless the custom or usage governing them permits such marriages.

### Prohibited Degrees Of Relationship And Sapindas :

1. The couple to be married must not be related to each other as parent, grand-parent, great grand-parent, or step-grand parent etc.
2. The bride should not have been formerly the wife of the bridegroom's brother or of his father's or mother's brother, or of his grand-father or grand-mother's brother.
3. The couple should not be related to each other as brother and sister, uncle and niece, aunt and



nephew. The couple also should not be children of two brothers, or two sisters, or of a brother and a sister unless allowed under customary law.

Sapinda relationship extends as far as third generation in the line of ascent through mother and five generations in the line of ascent through father. Marriage with a sapinda is void and not acceptable, unless allowed under customary law.

A Hindu cannot contract a second marriage with another till the first marriage is dissolved by divorce, or decree. If this is done he/she can be prosecuted by law. A report given to the police by the near relative is entertained. If such a second marriage is proved he/she can be imprisoned and also fined.

#### **Void-Marriage**

Void marriage means no marriage. The Court merely passes a decree declaring the marriage as void on grounds referred below :

- (a) Marriage between prohibited degrees of relationship.
- (b) That at the time of marriage, either party has a spouse living.
- (c) The parties are sapindas to each other.
- (d) If proper ceremonies of marriage have not been performed.

#### **Voidable-Marriage**

Voidable marriage is annulled by the decree of the Court at the instance of the aggrieved party. The voidable marriage remains valid marriage till a decree annulling it is passed on grounds referred below :—

- (a) The spouse is not traceable for 7 years or more.
- (b) If marriage has not been consummated, owing to impotence of the husband.
- (c) That either party has recurrent fits of madness or of epilepsy.



- (d) That the consent of the petitioner to the marriage was obtained by force or fraud.
- (e) That the wife was pregnant by some other person at the time of marriage.

The Court entertains the petition for annulling a marriage, if the petition is presented within one year after the above had been discovered by the party concerned.

### **Fraudulent Marriage**

A marriage should be solemnised in accordance with the personal law of the parties or under customary rites. It is advisable to get the marriage registered as soon as it is solemnised under the customary law. As cases have come to notice where some lacuna is left in the customary performance of the marriage by dishonest persons intentionally and fraud has been played particularly on the woman by declaring the marriage as void later on.

### **Divorce**

When the spouses find it difficult to continue to live with each other, either of the spouse can apply for divorce under the Law.

For the dissolution of the marriage, the law has provided certain conditions only on which a decree for divorce can be granted by the court. However the dissolution of a marriage can be applied for not before the expiry of one year of marriage or of passing of the decree of judicial separation unless permitted by the court under special circumstances. The grounds on which the dissolution of the marriage can be granted by the court are as below:-

- (i) **Cruelty:**— The other party is guilty of causing physical or mental torture to the petitioner. Even if there is no physical torture, but the treatment met to her harms the health of the respondent, it should be determined as cruelty. Repeated insults, neglect, allegations of unfaithfulness, when not true etc. can cause mental cruelty.



- (ii) **Adultery:**— Having intercourse with any person other than his/her spouse.
- (iii) **Unsoundness of Mind :**— If the respondent is of unsound mind suffering from mental illness and there is medical evidence that the respondent's condition is incurable.
- (iv) **Desertion:**— Deserting the applicant for a continuous period of two years preceeding the presentation of the petition.
- (v) **Not being alive :**— The spouse has not been heard as being alive for a continuous period of seven years or more.
- (vi) **Suffering from Disease :—** The other party has been suffering from venereal disease or leprosy in a communicable form.
- (vii) **Mutual Consent :—** Both the parties to a marriage can present the petition to the Court that they have mutually agreed to the marriage being dissolved.



## MAINTENANCE & CUSTODY OF CHILDREN

### **Maintenance During The Pendency Of Proceedings**

Either party can apply in the Court for maintenance during the pendency of the aforesaid proceedings from the other, if he or she has no sufficient means of his or her own either to support himself or herself and/or for the necessary court expenses. The amount of maintenance is accorded on the basis of the income of the other party. The applicant's own income if any, is also, taken into consideration. The income can be proved by salary certificates etc. and the defaulting party can be compelled to pay by taking action for contempt of Court.

### **Permanent Maintenance**

The Court can order the other party to pay for the future maintenance at the time of giving divorce. This may be by way of a lump sum or by way of monthly or periodical payments.

In passing such an order the Court will take into consideration the income and property of both the parties and their conduct as well as other circumstances of the case. The maintenance-payment can also be secured by creating a binder on the other party's property.

The Court cancels the order for providing maintenance in case of remarriage or unchastity is proved of the receiver of the alimony.

### **Guardianship Of Children**

When the aforesaid proceedings are pending, the Court can pass interim orders and at the time of concluding the proceedings, the Court passes final order in respect of the custody, maintenance and education of minor children, if there are any. These orders may be passed or changed, on application by any of the parties even after a decree has already been passed.

The court is solely guided by the considerations of the welfare of the children in making such orders, if they are mature enough to express them, even though, the law recognises father as the natural guardian.

The parent who is not given custody of the child is, generally, granted access to the child so that he or she is not completely deprived of the child's company.



## Conditions for Valid Adoption

- (1) The child should be a Hindu and not already adopted. He/She should be below normally 15 years of age and should not have been married unless permitted under customary law.
- (2) The age difference of the father adopting a daughter should not be less than 21 years. Similarly the age difference between the mother and the adopted son should not be less than 21 years.
- (3) The adoptive father at the time of adoption of a son should not have a living son, grandson and great-grandson. In the case of adopting a daughter, he should not have a living daughter or son's living daughter.

The adopted child can not divest any person of any estate which vested in him or her before adoption. The adopted son/daughter is for all practical purposes treated exactly like a natural born child. The only exception is that he/she cannot marry within the prohibited degree and sapinda relations of his natural family.



## PROSTITUTION

This means forcing a women for illicit intercourse for monetary benefit. However, it also applies to women and girls voluntarily taking to prostitution as a profession. The gravity of the offence depends upon the category of the persons concerned such as :-

- a) Women indulging voluntarily in prostitution,
- b) Women forced and sold, let hired or disposed in for the purpose of prostitution,
- c) A minor sold or purchased for the purpose of prostitution

The persons who disposed the minor to a prostitute or a brothel will be presumed to have done it with the intention of using her for prostitution. The offence is punishable with imprisonment upto a period of 10 years or fine or both,

While buying the minor for prostitution for hiring, for using the minor under 18 years of age for prostitution and illicit intercourse or for immoral purpose, the offence is also punishable up to 10 years of jail or fine or both.

### **Procuring Of Women For Prostitution**

For procuring women for prostitution or for other immoral purpose, the punishment is imprisonment for a minimum period of one year and on second or subsequent conviction, the punishment is normally not less than two years.

Section 372 and 373 provide for punishment of persons trading in minor girls for prostitution or immoral purposes. The Indian Penal Code does not tackle the problem of prostitution itself. This is done by a Special Act known, as the Supression of Immoral Traffic in Women and Girls Act. 1956. India signed the International Convention for the Suppression of Immoral Traffic in women and girls. In pursuance of signing this International



Convention, the SITA Act was enacted. The SITA Act makes the following acts as offence :-

- (a) Keeping a brothel
- (b) allowing a premises to be used as brothel
- (c) living on the earnings of prostitution
- (d) procuring, inducing or taking a woman or girl for the sake of prostitution.
- (e) detaining a woman or girl in premises where prostitution is carried on
- (f) prostitution in or in the vicinity of places such as places of worship, educational institutions, hostels, hospitals and so on.
- (g) seducing or soliciting for the prostitution
- (h) seduction of a girl or woman by a person having custody or charge of that person,

The Act also provides for sending a woman convicted for offences under the Act to a protective home with a view to rehabilitating her. The protective homes are to be run by the State Government or with such sanction and proper licence from the State Government

The Act creates special inspectors for each area to implement the Act. The offences under this Act are triable by special Magistrates appointed under the Act.



## OUTRAGING A WOMAN'S MODESTY

Outraging the modesty of women is considered an offence and is punishable under section 354 of the Indian Penal Code. The offence is punishable with imprisonment upto two years or five or both. Assault or use of criminal force on any woman means physical force with the intention of causing injury, fear or annoyance to the woman or for outraging her modesty. The norms of modesty of a woman also depends upon the social and cultural values and customs. The assault is defined under section 351 of the I.P.C. and reads :-

*“Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gestures or preparations will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person is said to commit an assault”.*

### **Insulting The Modesty Of A Woman :**

This offence under the section is a lesser one than under section 354. **The ingredients of this offence are :-**

Insult caused by words, gestures or exhibiting any objects. It could also be by intruding upon the privacy of a woman with intention to insult the modesty of a woman.



## RAPE

1. A man is said to have committed 'rape' if he has had sexual intercourse with a woman in circumstances falling under any of the following conditions :-

- (a) Against her will.
- (b) Without her consent which includes cases where the woman is imbecile or drugged.
- (c) By obtaining her consent, when her consent has been obtained by putting her to the fear of death or fear of hurting any other person in whom she is interested.
- (d) With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is the man to whom she believes herself to be lawfully married.
- (e) With her consent, when at the time of giving such consent she is of unsound mind and she is unable to understand the nature and consequences of the consent which she gives;
- (f) With or without consent, when she is below 16 years of age.
- (g) Offence of rape is not committed if a man has sexual intercourse with his own wife, provided the wife is above 16 years of age. If the wife raped is above 12 and under 16 years of age, the punishment is imprisonment upto two years or fine or both.

2. When 'rape' is committed, medical examination of the victims and of the offender should be done as early as possible, as it is very vital to establish the offence of rape.

3. Time taken in lodging the First Information Report and the report of the medical examination become important piece of evidence. The conviction of the the accused person can take place even on the sole



testimony of the raped woman provided it is supported by the circumstantial evidence.

4. The crime of rape is considered more heinous when the accused are men who have been entrusted with the care and custody of women as public functionaries such as a Police Officer, Incharge of a Women's Institution, staff of Jails Remand Homes, Hospitals etc. Therefore the punishment for this category of men committing rape could be upto 10 years unless there are compelling reasons to reduce it for certain reasons.
5. A new Section 228 A has been inserted in the IPC by Criminal Law (Amendment) Act, 1983. According to this Section, printing or publishing of the name or any matter which may make known the identity of any person against whom an offence under these Sections has been committed, is prohibited. Any violation of this mandatory provision is punishable by imprisonment which may extend to two years or fine.



## BEATING OF WIFE

The offence of beating amounts to causing hurt or grievous hurt. Causing hurt or grievous hurt is considered as an offence under Section 319 of the Indian Penal Code. When hurt or grievous hurt is done intentionally the punishment under Section 323 of I.P.C. is imprisonment for a period of one year or fine which may extend to Rs. 1,000/- or both. The offence is non-cognizable and bailable.

A report to this fact can be lodged by the petitioner or on behalf of the petitioner to the police. But action for investigation can be taken-up by the police only on an order of a magistrate. The gravity of beating or causing hurt is considered on the gravity of the offence. Slapping of a wife or beating her with a weapon such as stick, an iron rod or any sharp edged thing for causing hurt is assessed for offence in accordance with the gravity and intention to hurt by the offender. Thus the punishment accordingly varies in accordance to the gravity of the offence.