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LEGAL DISABILITIES OF  
INDIAN WOMEN


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A PLEA  
FOR A  
COMMISSION OF ENQUIRY.

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B.sc. (Econ.) Lond.

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Ms. No. 1000

Social Secretary

India Women's Conference

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## A Plea for a Commission on the Legal Disabilities of Women

**T**HE legal position of Indian Women is undoubtedly one of the most inequitable in the world today. It has entailed so much suffering and misery to the women in India that, were it not for the extraordinary apathy of the social conscience, it could never have been tolerated so long. Changed ideas regarding the position and status of women in society came into England and the West only about a hundred years ago. At one time, not so long ago, the status of English women in law was extremely low, and far more unjust as compared to that of women under Muhammadan Law, and the Hindu Codes of Ancient India. Yet today they have already attained a position of equality in law in regard to property and marital rights. In India, too, a changed outlook, as regards the rights of women, has been discernible for some time among a small minority of the progressive and liberal-minded, who have striven to bring about the regeneration of women; but the larger majority of Indian women have so long been entirely untouched by this newer spirit of progress. During the last fifteen years, a fundamental and momentous change is making itself manifest. True, women today have not attained a

tithe of their just rights, they still suffer under innumerable disabilities in law, countless numbers are often branded to a miserable existence due to the reigning social customs, but their 'Pathetic Contentment' is broken at last, they are alive and pulsating, and every year brings an increasing and more insistent demand from them that their just rights and duties be accorded to them once more. Much still remains to be done, but it is significant that so many of those who in the past used to suffer in silence are no longer inarticulate. Many of us find it difficult to realize to what extent the laws of the land have been accountable for the unjust and oppressive treatment meted out to large numbers of women.

Religious  
Injunctions.  
Changes  
in  
Interpreta-  
tion.

This position has clearly arisen because both Hindu and Muhammadan law are based on religious enactments, and it is upheld that these are immutable and cannot be changed. The policy of non-intervention which the Government of India have pursued in religious matters, has led them to leave the greater part of the Legal Codes entirely unaltered, and so they are perpetuating and upholding a system of laws which can have no place in a progressive and ordered modern State. Law can no longer remain static in a dynamic society. It is the duty of the State to adjust and suit the laws of a country to the requirements of the times. In spite of all sacraments and religious injunctions, the history of Hindu law will show that it has continually changed with the changing times, right down

to the advent of the British period. In Vedic India, when law and order prevailed both the legal code and social customs accorded a large measure of equality to women. It was during a period of strife and conflict, when ordered conditions of society could not prevail, and physical valour was the primary need of the day, that woman gradually lost her status in society. When times of peace came again, the demoralization of women was almost complete. As seen during the period of the Smritis there was a continuous and long struggle between the different law-givers as to the position of women and many contradictory enactments came into usage, according to the social ideas of the day. When the laws were applied during the British period, grave injustice was done to women, as the Pandits and Priests who were asked to expound the laws, gave the most reactionary interpretations in respect of women's rights, so that the little that law still allowed them was further curtailed.

In order to understand and appreciate the present position it is necessary to give a few broad general characteristics of the disabilities women suffer in law, in our country. There is a great diversity in law in India and it is necessary to deal with the different Codes separately. A minority of the people are governed by more liberal and progressive laws, such as the Parsis, Christians and all those who come under the Special Marriage Act and the Indian Succession Act. Women governed by these laws do

not suffer any particular disabilities as regards their marital and their property rights. Those who are married under Act. III of 1872 are governed by saner laws of marriage but it is one of the anomalies of the legal system that in regard to inheritance, they are guided by customary laws, which means that the inequitable laws of property of the older Code are enforced. For the vast majority of Indian women who come under either Hindu or Muham-madan law, the position is quite different.

Disabilities  
Regarding  
the  
inheritance  
of Hindu  
Women.

Hindu Law is not uniform all over India and differs, according to the diversity of interpretations given, to the Vedic and Smriti texts in later times by successive commentators. This has given rise to the different schools of law. The Dayabhag and Mitakshara are the two main systems of law. Broadly, the former is prevalent in Bengal, and the latter in the rest of India, with the exception of Bombay, where the Mayukh school of law holds sway. The Mitakshara law again is not uniform and has sub-divisions, probably to suit the customs and requirements of the different parts of the country. So far as the rights of property are concerned, it is true of all the schools of law that a woman has no absolute rights of property, except under certain circumstances. In other words, she cannot dispose of, or sell property at her will. It is only in certain specific cases of "Stridhan" ("woman's property") known as "Saudayik" that this right accrues to her. She cannot, even dispose of

"Stridhan" which comes to her after marriage, without her husband's consent, even if it be her self-acquired earnings. It should be noted here that apart from the fact that a wife cannot be ejected from the dwelling house, and that the obligation to maintain her, remains binding on the husband, the latter can do as he desires with his property without consulting her. As the money is earned and contributed by him, the justice of this principle is not disputed in any legal code. Is it not only fair that a wife too should have complete right of disposal of the income she has earned by her own endeavour? Absolute right over property is only recognized by the Mayukh school in Bombay, so far as a daughter's right is concerned. Here the daughter is entitled to an absolute share in her father's property. The Mayukh law differs from the Mitakshara Code, only with regard to the daughter's rights of inheritance in her father's property. Under Dayabhag law in Bengal, a daughter has no right over her father's property. If she is an unmarried daughter, she is only entitled to bare maintenance and marriage expenses. The married daughter has no right of inheritance at all so long as sons, grandsons, widows, and unmarried daughters are alive, who inherit in the above order. Under Mitakshara law the position of the daughter is even worse, as due to the system of survivorship, if no immediate male heirs are alive, the property reverts to the coparceners.

**Inheritance  
of Widows.**

It is often held that once a Hindu woman is married, she belongs entirely to her husband's family where rights and duties are accorded to her, and so it would be unfair to the sons if women should also inherit property as daughters from their father's estate. If we probe deeper into the matter we will find that a woman's rights in her husband's family are very precarious. It is true that under Dayabhag law a woman who has no sons is given a limited interest in her husband's property; but she cannot dispose of, or sell or gift away this property, except under certain cases known as legal necessities. Often her heirs or 'reversioners,' as they are legally called, harass her and question her actions to such an extent when legal necessities arise, that even under these circumstances, she finds it difficult to sell her property except at a great loss. "Widow's Estate", as this property is commonly called, gives rise to so many law suits that few people are willing to take the risk of buying such property unless they are amply compensated. Whenever bills are brought forward to improve the position of women in regard to inheritance, a protest is invariably launched by certain reactionaries in Bengal, that under Dayabhag law, women's rights of inheritance are equitable and require no redress, unlike the law in other parts of India. The case of the widow without sons, who is given a limited interest in her husband's property, is cited to uphold this argument. Yet they forget to mention that a widow with sons is only entitled

to bare maintenance. If there is a partition of the property, then a widow is entitled to a share, but this is entirely at the will of her sons as she cannot ask for a partition. If her sons misuse her husband's hard-earned money, which occurs oftener than we imagine, she has no legal redress as long as she is given bare maintenance. As long as the father is alive, a "son's childless widow" is not even entitled to bare maintenance and her fate is most pitiable. Neither in her husband's family nor in her own has she any right. Married in childhood, and entirely helpless and unable to fend for themselves, these poor women are frequently left without any means of subsistence when they become widows. Few of us realize how many of these unfortunate women are ultimately compelled to lead a life of shame. Under Mitakshara law, a widow and a son's childless widow are both entitled to bare maintenance. The widow does not even inherit 'Life estate' in her husband's property even if she has no sons, for as shown in the case of the daughters, if there are no male heirs, the property reverts to coparceners.

In the normal happy home, legal distinctions do not matter, and it would be a gross exaggeration to say that the majority of women in India are not happy or treated well because their legal status is so low, but as in the case of the widow in regard to property, so in the case of the married woman, if she does need redress, the law of the land is against her.

Other legal  
disabilities  
of Hindu  
Woman.  
Marriage.

A Hindu woman has no choice in marriage. In a way it may be said that she merely changes the guardianship of the father for that of the husband when she marries and as things stand no matter what he is he has almost absolute right over her. She has no redress, whether he be suffering from the worst diseases, or be guilty of adultery, cruelty or desertion—and as such is the irony of fate, that she has no redress even if he marries again in her lifetime, because that is not only allowed by law, but considered only right and just if she be childless. So for all practical purposes, a man has the right of dissolution of marriage and his wife can only claim bare maintenance of him. Divorce is entirely banned by Hindu law and society, as marriage is a sacrament, but no sacrament holds, when a man takes unto himself a second wife, and this is considered entirely equitable if the first wife is given maintenance and a right to live in the dwelling house. Even judicial separation is not allowed in Hindu Law, except if cruelty can be proved to amount to a personal danger to life. According to recent rulings of the Courts, marriages to lunatics are considered invalid, but under no other circumstances can a Hindu woman be freed from an unhappy marriage. Aborigines and those Hindus who do not come under Brahminical law, have rights of divorce. Women who are the home-builders, the mothers of the race, surely cannot want to break up the home and family life, and yet there must be some reason why thinking men and women consider that the rights

of divorce should be allowed. We do not want divorce to be introduced for any flippant reason but for only those reasons brought under the light of modern conditions, which even the old Hindu system considered right and just, as expounded in the Smritis of Narad and Vasista.

The guardianship of children is another matter which is of special importance to the women as the mother. Not only the wishes of the father but even of other male relatives, such as the maternal uncle, take precedence over those of the mother in regard to her children, under certain circumstances. We hear so much of the glories of motherhood, and yet the mother, whose natural and moral right cannot be denied, is by a system of retrograde laws deprived of her greatest right, because she does not earn her living and agrees to give her life to rearing the family instead. Can anything justify such a system?

Guardian-  
ship of  
Children.

As regards the adoption of children, a privy Council ruling allowed certain rights to accrue to woman—but only recently there was a Bill in the Bombay Legislature to preclude her from this right.

When we turn to Islamic Law we find that the rights of property are far more equitable to woman. Although a daughter is not given an equal share with the sons, she is given a definite share of her father's and also of her husband's property. But a grave injustice is done to the women of many Muhammadan communities in parts of Bombay, The

Legal dis-  
abilities  
under Isla-  
mic law.

Punjab, Gujarat and Kathiawar, as these communities are not governed by Islamic Law but by customary law. Consequently the rights of Muhammadan women of these communities are guided by the unfair Hindu laws of property. As regards marital rights, the Muhammadan woman is often in a far worse plight than her Hindu sister due more to the backwardness of her community as a whole, than to her position in strict law. Plurality of wives is not only allowed by law, but even today it is frequently found that a man has more than one lawfully wedded wife. Recently due to the advance of modern ideas and the exigencies of economic necessity, there is a great decrease in this practice and number of such cases. Amongst Hindus, although law allows a man to marry again, yet cases of this nature, if not non-existent, are extremely rare. The principle of divorce is recognized in Muhammadan law, but it is only at the will of the husband that a woman can obtain a divorce. A man is entitled to obtain a divorce at his mere will to do so, and so a woman not only does not receive redress when she is in need, but also may find her home broken up, at the mere caprice of the man, as her consent to the divorce is unnecessary. It must, however, be admitted that the law of dower mitigates to a certain extent the harshness of the provisions relating to divorce. Sometimes she can purchase her divorce by giving up her property, and this is called "Khula", but even here the husband's consent is necessary. The usual mode is 'Mubarat', where the woman receives back her

full share of the property when divorce takes place. So we find that alterations in Muhammadan law, are also necessary.

In Hindu law a wholesale revision is absolutely necessary as regards inheritance and marriage, if we are to remove the disabilities under which women suffer. We have had great champions and liberators from time to time, from Rammohun Ray downwards, who have espoused women's cause and sought to redress her grievances. But it is clear that individual efforts alone will not suffice to ameliorate the legal position of women. Even today with the championship of Rai Harabilas Sardas Bahadur, and Sir Hari Singh Gour and other liberal-minded men, efforts are being made again and again to improve the legal status of women, but in spite of all their gallant help it cannot be denied that redress is slow to come. Mr. Harabilas Sardas efforts to remove the legal difficulty with regard to women's rights of property and inheritance, are a clear indication of the slow procedure. His first Bill which aimed at a real removal of grievances was thrown out completely by the Assembly, and even his Widow Maintenance Bill, which was very much a half-measure, has not been taken up by the Assembly this year. The Council of State is now considering a Bill on women's inheritance, but there is little chance of its becoming law. A complete change and wholesale revision is necessary. Palliatives and half-measures cannot do any longer. Apart from these, anomalies will always creep in when laws are amended by a patchwork

The Necessity for a Commission of Enquiry.



method. As in the case of Sarada's Child Marriage Restraint Act, amendments will become necessary to enforce the provisions of the acts passed. For all these reasons, the representatives of India's women, at the last Session of the All-India Women's Conference, considered that an Enquiry Commission should be set up to suggest reforms under the light of modern conditions and ideals, and that the recommendations of this Commission should be embodied in a Bill before the Assembly and passed into law. They feel that if the Government of India realizes that they are earnest about their demands and that it is the express desire of thinking men and women from all over the country, we shall be able to obtain the establishment of this Commission of Enquiry. It should have a large non-official element, including prominent lawyers and liberal-minded men. Women should also be adequately represented by their chosen representatives. The work of the Commission will help to create a widespread public interest and opinion in the matter, and to lay bare to the country at large the great evils that are rampant as a result of the present legal codes. The materials collected by the Commission will help it considerably to suggest a simplified system, which will recognize a code of laws, where women will be given equal rights with men, and which will yet be in conformity with true Indian culture and traditions. The enlightened States of Baroda, Mysore and Travancore have already reformed their laws regarding the disabilities of women on the

recommendations of Commissions of enquiry set up by them and the result has been very satisfactory.

It is surely not too much to expect that women in British India will be afforded a similar concession.

The Hindu Widow Remarriage Act gives the widow a legal right to marry again, but few widows use this privilege that law allows them, and so, it is sometimes argued that a removal of the disabilities in law will not alter the status of women, to any considerable degree, as custom is rigid, and until the prejudices are removed from society, the law will be a dead letter. It is true that social prejudices hamper the work of reform considerably, and law cannot alter these, if changed ideas do not come in simultaneously. The propaganda and work the Commission will do while it is holding its session, will have a tremendous effect on the popular mind. Apart from this, social conventions are already changing rapidly and women have shown that when their help is needed in the social or political sphere, they have proved themselves more than equal to the task. Not only is it unfair that the legal system should hinder them from attaining their emancipation, but until an atmosphere of comradeship between men and women pervades society and the social environment is unfettered by legal restrictions and blind prejudices, it will not be possible for India to work up for herself a position of dignity and equality in the comity of nations.

[NOTE. Rammohun Roy has shown in his pamphlet on "Brief Remarks regarding Modern Encroachments on the Ancient Rights of Females,..." that according to the ancient legislators, such as Jainavalkya, Katyayana and Manu, the daughters are entitled to one-fourth part of the portion which a son can inherit. In this connection reference should also be made to another paper of Rammohun on "The Rights of Hindoos over Ancestral Property, according to the Law of Bengal." Ed., M. R.]

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