

Country Code (Eleventh Amendment) and Women's Right

Reforms incorporated in the Country Code (Eleventh Amendment) Bill

Daughters are accepted as heir: the Bill accepts the concept that daughters as well as sons are entitled to have inheritance rights by birth to the ancestral property. Previously it was provided that only an unmarried daughter above the age of 35 has this right.

Full right to widow in inheritance: It has removed the provision that a widow attain the age of 30 to live separately before taking her share of property. A widow is entitled to use her share as she wishes even if she gets remarried.

Right of wife in husbands property: The Bill removes the condition that women must attain age 35 and complete 15 years of marriage before she can live separately and take her share from her husband.

Right of upbringing of the daughter: Only the son has the right to upbringing and daughters were denied this right. The Bill grants the right to fooding, clothing, appropriate education and health treatment to daughters as is provided for sons.

Effectiveness in judgment execution in the case relating to share: To address the problems that may arise in the execution of the judgement relating to partition and to make such execution effective, the Bill provides for imprisonment up to one to five years or a fine of up to five thousand or both to the party who denies giving the details of property.

Inheritance right to divorced woman: In the existing law, a woman is denied the right to property from both her parents and from her in-laws in the case of divorce. The Bill has provided that partition must be made between the husband and wife at the time of divorce. Likewise, if a divorced woman wants to have yearly or monthly expenditures instead of taking her share, the court may set such expenditure on the basis of husband's property and level of earnings. A woman can have such expenditure until she gets remarried.

A married woman may adopt a son under some conditions: The Bill changes the provision that women whose husbands are still living or who have living sons of their own or of co-wives are precluded from adopting a child. It provides that a wife who has

separated from her husband after taking her share of property may adopt a child, if she does not have her own son.

Repeal of the concept of the Dolaji: The discriminatory provision that only if there is no son and there is a daughter, such daughter shall be kept as *Dolaji*. This concept has been repealed.

Right to divorce in the situation of sexual intercourse with third person: The Bill provides that a husband or a wife shall have the right to divorce, if he or she has sexual intercourse with any other person. At present, only husbands have right to divorce on this ground but not wives.

Adoption is restricted in case of one daughter: The Bill prevents parents from giving the child up for adoption if they have only one daughter as it is restricted in case of one son.

Equal right in intestate property to unmarried daughter as of son: The Bill has provided the equal right to unmarried daughters as of son by reforming the existing discrimination in the matter of priority for getting the intestate property.

Women's right to abortion up to 12 weeks of pregnancy: The Bill provides that any pregnant woman may procure an abortion up to 12 weeks of pregnancy upon her voluntary consent.

Abortion right in case of rape and incest: The Bill provides the right to an abortion up to 18 weeks in case the pregnancy is due to rape or incest. Currently abortion is not allowed even in case of rape and incest.

Abortion right at anytime in special situation: The Bill provides for the right to perform abortion with the advice of medical practitioner at anytime, in case any pregnancy poses danger to the life of the pregnant woman or to her physical or mental health or it leads to the birth of a disabled child.

No abortion on the basis of sex identification: No one shall conduct an aminocentesis test to perform an abortion on the basis of sex. The Bill establishes punishment of imprisonment of 3 to 6 months if the person conducts or causes to be conducted such aminocentesis test and additional punishment of one year imprisonment to the person who performs or causes to be performed an abortion on the basis of sex.

Increment of Punishment in Rape Case: The Bill increase the punishment in rape. It provides for 10 to 15 years punishment in case a victim is under the age of 10 years, imprisonment of 7 to 10 years in case a victim is above the age of 10 and under the age of 16 years and imprisonment of 5 to 7 years in case a woman is 16 years or above.

Appropriate sensitivity toward the rape case: Bill requires that the victim's statements be taken only by female police officers. Additionally, during the hearing, only certain people will be allowed to appear before the court.

Equal punishment to men and women in bestiality: The Bill provides that there must be equal punishment of imprisonment of up to 1 year or fine up to five thousand for both men and women who commit bestiality.

Increased punishment for child marriage: The punishment for child marriage has been increased upto 3 years and a fine of up to ten thousand to discourage child marriage.

Equal punishment in marriage by misrepresentation: The Bill provides for a fine of up to ten thousand rupees for man or woman who commits marriage by misrepresentation.

Additional punishment for gang rape and rape against a pregnant and disabled woman: The Bill provides for additional punishment of 5 years imprisonment for the crime of gang rape and also for the rape of a pregnant or disabled woman.

Punishment and compensation for pedophilia: The Bill regards pedophilia as rape and provides for an additional year's punishment over the sentence imposed for rape and appropriate compensation for the victim.

Equality in age for marriage: The Bill provides for equality in age for marriage for both men and women. Both sexes have to be 20 years old to marry without parental consent. Men and women can marry at age 18 with the consent of their parents.

Discriminatory Provisions Prevailing in the Country Code (Eleventh Amendment) Bill

Daughters should return her share after marriage: Although the daughter is recognized as heir equally as the son, the Bill provides that daughters should return her share to the heir in case she gets married after taking her share.

Discrimination among the daughter on the basis of marital status: The Bill discriminates among daughters on the basis of marital status or between married and unmarried daughters in partition, intestate property and in transaction of property etc.

No provision about the impact of bigamy: In case of bigamy, the first wife, son and daughter must share their property with the second wife and her children. This has

significant impact on the share of the first wife and her children, which the Bill does nothing to remedy.

No Provision about interim relief: Women need interim relief during the pendency of hearings on partitions and domestic violence but the Bill does nothing to address these concerns.

Only the men are entitled to divorce, in case of not having children: The Bill established that men are entitled to divorce if it is proven by the Medical Board recognized by HMG that they have no children within 10 years of their married life. Women are not entitled to divorce on the same ground.

A married woman is not entitled to adopt child except in limited situation: The husband has the first right to decide about the adoption of a child. Except in limited situations, women whose husbands are still living or, who have a living son of her own or of co-wives are precluded from adopting a child.

While adoption, it should be from men's relatives: The Bill has not been able to change the requirement that when adopting, the child should be from men's relatives as far as possible.

Daughter should return intestate property after her marriage: The provision in the Bill that daughter should return intestate property after her marriage is more discriminatory than the existing law where a daughter is not required to return intestate property once she gets it.

No provision regarding to the women who are imprisoned for abortion: The Bill does not have any provision to release women who are in prison or in detention on the charge for conducting abortion.

Narrow definition of rape: The definition of Rape is very narrow and incomplete. It should be defined comprehensively according to changing situations and as it is comprehensively defined in various countries.

Marital rape is not included in the Bill: Marital rape is regarded as an offence in various countries. The Bill does not include it. All types of unconsensual sexual contact must be included within the definition of rape.

Assumed rapist as husband: The existing law presumes that a rapist is a husband. Though it was proposed to replace the phrase in the original Bill, the current version of the Bill did not reform it.

No provision to invalidate bigamy: Bigamy should be strictly prohibited without exception. No second marriage should be legally recognized unless the spouses are divorced or one is dead. The Bill fails to address this.