

Contract with Pardanashin ladies: A Critical Study

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Abstract

This paper aims to explore the factors affecting Pardanashin women and the law protecting them. It focuses on the history, factors, ability to enter into a contract and the level of protection provided to them. It evaluates the Section 16 of Indian Contract Act, 1872 and the need to bridge the gap between women and men.

Pardanashin women are those women who are completely secluded from the world. A woman is not a Pardanashin woman if she goes to court, settles rent, collects rent, gives evidence or interacts for business. Various factors affect them like psychological, effect of political and economical activities, globalisation, health and social relations. The Indian Contract Act, 1872 extends a special cloak of protection around them so they are not 'brought down' by the world. This paper also talks about some landmark judgements which helped in molding the law for pardanashin. Later, the authors suggest independence, modernity, education, awareness and compulsory election as solutions to help pardanashin women communicate with the rest of the world.

Keywords: Pardanashin, contract, protection, ability, communicate

Introduction

Law doesn't discriminate between male and female, hence supporting equality. One of the best examples being The Indian Contract Act, 1872. It provides basic guidelines to every human being for making a contract and supports the right of every person to enter into a contract with some reasonable restrictions as the law is equal for both men and women. Section 11 of Indian Contract Act, 1872 states that "Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject."¹

Women used to be oppressed by this law, especially Pardanashin women, their secularism was affected and their inability to read, write or the impact of old age on a woman was a huge drawback for them.

¹ Section 11 of Indian Contract Act, 1872

Research Objectives

This paper analyses the laws related to pardanashin women, scrutinises the factors affecting them, discusses the level of protection provided to them and amendments which took place in the Indian Contract Act, 1872. Lastly it proposes suggestions to improve the situation of pardanashin women.

Research Methodology

This paper probes into the actual factors affecting pardanashin women and laws revolving around them by using primary and secondary data throughout the paper. The primary data have been taken after analysing several laws and policies like Indian Contract Act, 1872 and Conduct of Election Rules, 1961. The secondary data has been used after evaluating various books and articles like S.R Myneni's book on Contract I, A.P Bhardwaj's book and much more.

Review of Literature

To carry out this research several books, commentaries and journals were referred. S.R Myneni's Contract I General Principles book was meticulously analysed to elaborate the meaning of Special Protection. Several cases like Hussain Bai v. Zohra Bai (AIR 1960 MP 60) was pursued to research the execution of contract by women like full understanding, effects and the effect of free will. Other cases like Sujan Kaur v. Chand Singh AIR 2003 P H 364, (2003) 134 PLR 441, Balai Chandra Parui v. Smt. Durga BalaDasi And Ors. AIR 2004 Cal 276, (2006) 1 CALLT 403 HC were examined to define "Pardanashin women".

Who are Pardanashin women?

Pardanashin women are those women, who are completely secluded from the world. They have not interacted much with the outside world and they usually stay behind a screen or under a "veil"². It is known that the Pardanashin women are easy prey for people, they can sue them dishonestly and can deceive them easily. Pardanashin women are not entitled to have independence; they have to work only under the guidance of any other family member. This custom is also known as 'Purdah'.

So to protect the Pardanashin woman the law provide special protection under the basis of principle of equity and good conscience³ it is known that the Pardanashin woman does not have much knowledge about the world, as they may be illiterate or they don't have much interaction with the people so it is presumed that a decision by a Pardanashin woman is under undue influence.

²Indian Law Portal. (2020, May 24). Legal Analysis of Pardanashin Women. Retrieved November 04, 2020, from <https://indianlawportal.co.in/legal-analysis-of-pardanashin-women/>

³ Page 179, Contract I, Dr. S.R Myneni

A woman is not a Pardanashin woman if she goes to court, settles rent, collects rent, gives evidence or interacts for business. If a woman in any way interacts with the world then they don't fall under the category of Pardanashin ladies.

Section 16 of the Indian Contract Act, 1872 provides special benefits for women (Pardanashin ladies) who are not able to enjoy their freedom as they are affected by undue influence.

History of Pardanashin women

A woman who conceals themselves from a purdah and is kept away from the rest of the world is known as a Pardanashin woman. Purdah was adopted from Persian practices . It was adopted by the Muslims first who were affected by Persia and it later came to existence in the Northern India during the rule of Mughals⁴. The Mughal Empire influenced the practice of Hinduism and the purdah was adopted by the Hindu upper class. At that time, The lower class women in India did not adopt Purdah as they had to manage the household as well as work in fields and interact with people, so they couldn't restrict themselves to secularism and that is why the Pardanashin ladies were only the upper class women.

Later during the British rule, Purdah got widespread and was strictly followed. But in modern times, the use of purdah has decreased and the number of Pardanashin ladies have decreased. There are not many women who hide under the "veil" and women in modern times have become more open and independent. Our history has been changing and is bringing positive changes for the people as well as the law.

Factors affecting Pardanashin woman

1. Psychology⁵- It is a generally accepted truth that the Psychology of Pardanashin womens are limited because mobility is restricted and they don't have a very strong social network because of their disallowance to interact much outside their houses. They have a very small circle where they can move and outside that circle they are not allowed to connect. Mental Growth and development of these women also get affected due to this Pardanashin Custom.
2. Participation in economic activities- Pardanashin women do not participate in economic activities like employment or independence in the economic sector. They are not allowed to do anything to earn and this promotes dependence of Women over the husband. Pardanashin Women usually stay at home and their husbands are the breadwinners of the house. This feature of Pardanashin women affects the importance of women in society as they are not independent and they are totally dependent on the husband for livelihood. Sometimes it also leads to cruelty over the Women as husbands start misbehaving and

⁴Purdah | Islamic custom. (2020). Retrieved 4 November 2020, from <https://www.britannica.com/topic/purdah>

⁵Purdah | Islamic custom. (2020). Retrieved 4 November 2020, from <https://www.britannica.com/topic/purdah>

acting dominantly in front of their wives and Pardanashin Women aren't able to raise their voice against their husbands.

3. Participation in political activities- Pardanashin women restrict themselves from taking part in the political activities as that will mean that interaction with the society. They do not enjoy several rights like, right to vote, participation in trade unions etc, which are provided by the constitution of India. Constitution of India provides various rights irrespective of sex, even then the society using such prathas violate rights of women to caste vote, taking part in the election, forming and participation in trade unions. This is only because of the reason that if they do so, then women have to interact with the society and it could lead to interference in the Pardanashin custom.
4. Globalisation- As our country is rising, the use of veil is decreasing and women are moving freely around the country. There are several areas where there are women who still put "veil" but now they are known as backwards and are not supported by many people. And hence, Globalisation can be said as a gift to the Pardanashin women because globalisation is giving a place to the women to interact with the society. The impact of Pardanashin women is decreasing day by day. Today, many women's rights organisations have victims of Pardanashin pratha and they raise their voice against these customs.
5. Health- Pardanashin customs have also restricted women from accessing health care or family planning services. They are not able to access their rights freely because of the need to be accompanied by somebody and not able to roam freely or visit doctors on their own. Pardanashin women always follow the direction of husband or any other male family member. Women are not allowed to visit or consult any person, even a Medical Practitioner. Women who are not in contact with society are mostly shy in nature and they are not open to share their medical problems in front of any male member even their husbands which sometimes results in Negative effect on the health of the women.
6. Social relations – Pardanashin women are not supposed to interact with any other person other than her family members. Such women couldn't work for increasing social contact as it is against their custom. And hence they couldn't develop themselves. Social relations play a great role in living a reputed life but Pardanashi women have to live under the direction of the husband no matter what her wish is. The only wish that matters is what the dominating person wants. If Pardanashin women have good social contacts then they can help her when she is in need.

Can a Pardanashin woman make a contract?

A Pardanashin woman can make a contract, even if they have no communication with the outer world. It is necessary that the contract is done with free consent. The Pardanashin ladies can be old and sick⁶ they don't have much understanding of the law and are miles away from knowing about the contract or its execution. They may have a lack of appreciation of the transaction or they may be illiterate so they will not be able to understand the contract properly. These women are also restricted from personal, social and economic activities outside their house. Their Societal or family traditions do not allow them to interact with any person in general. They are not supposed to move outside their house without the accompanying of any other male member of the family.

The developments in law are made to bridge the gap between man and woman therefore, law is throwing a "special cloak of protection"⁷ around the Pardanashin woman so they are not 'put down' by the law. Law is extending support to them and if there is even a hint of undue influence then they have the ability to go to the court of law to seek relief. The court of law is trying to help the Pardanashin woman and are trying to show that the illiteracy, age or any other factors isn't a disadvantage for Pardanashin ladies. They are safeguarded to contract as per the terms of Indian Contract Act, 1872 which states that a contract must be without undue influence, coercion, misrepresentation, fraud, mischief and with free consent of both the parties. Either of the parties can declare the contract void if any of the above conditions haven't been fulfilled. Hence, They are only continuing a contract if it is equal for both the parties and the woman wants to do it freely. There are many cases where the Pardanashin woman has got justice against one who wants to undue influence on her to form a contract. It is the fact that the condition of Pardanashin women in recent scenarios is not the same as it was in previous centuries. And now there are various laws which can help pardanashin women in getting justice. Precedents play an important role in it.. Some of the recent important precedents are listed below.

1. Balai Chandra Parui v. Smt. Durga BalaDasi And Ors.⁸

In the present case, the court had to ascertain the Pardanashin woman is understanding the contract she is coming into, the burden of proof lay onto the person who was entering into a contract with the Pardanashin woman. The woman didn't understand the contract and it was held voidable. Here, it was proved that the burden of proof was on the other party which helped the pardanashin women indirectly and in the end the decision was in her favour.

⁶ Page 179, Contract 1, DR. S.R Myneni

⁷Pardanashin Women. (2020). Retrieved 4 November 2020, from <http://www.clcbd.org/lawdictionary/201.html>

⁸ AIR 2004 Cal 276, (2006) 1 CALLT 403 HC

2. Ashok Kumar And Anr. vs Gaon Sabha, Ratauli And Ors.⁹

In present case, it was observed that law provide protection to the pardanashin women not only by reason of pardah itself but by reason of hoe disabilities to which the life of a section of people living in isolation gives rise to the disabilities and with which a pardanashin lady suffers.¹⁰

Because of her disabilities and incapability to understand the terms and conditions of a contract, a pardanashin woman can be easily influenced by any person. Pardanashin women can be influenced to sign a contract that is not in her favour and even harms her or can be used against her right . Anybody can use her disabilities against her for their own benefit only because of her disabilities and the reason that she can be influenced easily because she is unaware what is right or wrong. She may not be even aware about her own rights which she can enforce. The legislature understood this issue and found that there is a need to protect Pardanashin women. They did this by protecting them under Contract law.¹¹ She is protected by the provision for undue influence (section 16).

A pardanashin woman is at risk to undue influence and thus, the law throws around her a “Special cloak of protection” i.e. Where such a woman signs a sale, mortgage, gift or release, the person obtaining her signatures has to prove that the contract was not only explained to her but also that she had understood the contract and that there was no undue influence.

3. Laxmi Narain & Another v. Hubraja¹²

In the present case it was held that the Rules relating to a Pardanashin lady’s transactions apply equally to an analphabetic and ignorant woman, though she may not be a Pardanashin. It is not because of the Parada itself that the law gives its protection to a Pardanashin lady, but because of the disabilities that lived a life of alienation. Illiteracy or ignorant women are deemed equal to the Pardanashin women and possess the same right as a pardanashin women. Therefore, Rights are given to empower women against their weaknesses irrespective of what their weaknesses are.

⁹ AIR 1981 All 222.

¹⁰ Ashok Kumar And Anr. vs Gaon Sabha, Ratauli And Ors AIR 1981 All 222.

¹¹ Indian Contract Act, 1872

¹² 1989 (7) LCD 284

Execution of a contract by Pardanashin woman

A Pardanashin lady can sign a contract but the court has to satisfy that-

1. She has executed the contract after full understanding¹³ and just by knowing the mere points. She knows what contract she is signing and she has to execute in the present or future.
2. She has knowledge about the effects, and fully knows the contract, the material points as well as the general nature of the transaction. She must be aware of the facts of the contract.
3. She had independent advice and the advice she got isn't in interest of somebody else. Her Contractual ability will benefit her and not a third person and the contract will be in disinterest and she will be getting healthy advice which will be for her own good.
4. No undue influence is used and there should be no essence for undue influence. The contract should be of her will and not influenced by anybody else or it will be voidable. There must not be any ingredient of Undue influence of anyone else even her husband over the women. (section 16, ICA, 1872)
5. She is giving free consent and she is making the contract on her own free will and not in force or undue influence of somebody else. She must be willing to enter into a contract without anybody's influence on her.
6. She is entering into the contract after understanding it thoroughly means she has complete knowledge regarding the contract which includes effects of the contract pre or post contract condition and everything.
7. She is well versed with all the terms and conditions of the contract and she has knowledge regarding the effect or consequences of the contract in long and short run.

¹³Hussain Bai v. Zohra Bai, AIR 1960 MP 60

Level of protection granted to Pardanashin woman

Pardanashin women are kept under a special cloak of law as discussed above but they are not given any different treatment. The extent of protection granted to them is same as

- Illiterate women- As they are unable to read and write and do not understand the contract, a special treatment is given by the Judicial precedents to such women to safeguard them.
- Ignorant woman- As they are not aware of the conditions and implications of the contract.¹⁴ It wouldn't be possible for them to compete with its terms and condition, in this case also Judicial precedents are proved as a safeguard for Pardanashin women.

The level of protection is the same as them because the law doesn't want a Pardanashin woman to get into an unfair deal and that is why they are given the benefit of turning a contract into voidable. The same case is with them. Illiterate and ignorant women are exposed to the same kind of danger of unfair deal as they are not aware of what they are getting into. It is the assumption behind that Pardanashin women are not allowed as per their tradition to interact with the public due to which they have less or no social interaction and they may not be able to understand what is Right and What is Wrong for them, They might not able to understand the long run impact or result of forming any contract without understanding the terms and conditions of the contract. They are ignorant regarding conditions of the contract and also they couldn't do in depth study about the contract. Hence, To safeguard such women from fraudulent acts some Special privileges are given to Pardanashin women to declare contract voidable at the option of the party. And this can be a very beneficial step for such women who are illiterate, ignorant or pardanashin.

In *Sujan Kaur v. Chand Singh* on 25th April 2003,¹⁵ The woman is not a Pardanashin lady but the fact remains that she herself was old, illiterate and a villager who was a widow. Her position wasn't any better from the Pardanashin lady. The contract signed by her wasn't free willed as she wasn't aware of the terms and the contract wasn't executed further. Hence, Pardanashin women must include any illiterate, ignorant or any women having no knowledge about the outside world would enjoy all the rights of a pardanashin woman.

¹⁴CLAT and LLB by AP Bhardwaj. (2020). Retrieved 4 November 2020, from https://books.google.co.in/books?id=ZeJ-8Xhj17MC&pg=PA176&lpg=PA176&dq=research+paper+on+pardanashin+woman&source=bl&ots=f-xj-JH2tp&sig=3fHIQpgeH_PVrR5HI9owuOkYYIA&hl=en&sa=X&ved=2ahUKEwiCu9rtw-fdAhUcTI8KHUGeBKE4ChDoATAFegQIBhAB#v=onepage&q=research%20paper%20on%20pardanashin%20woman&f=false

¹⁵*Sujan Kaur v. Chand Singh* AIR 2003 P H 364, (2003) 134 PLR 441

Important case laws related to Pardanashin ladies

1. Apili v. Durga on 25th April 2014¹⁶

In the present case, Sita Devi executed two sale deeds, but there was no doubt that she was an illiterate woman. As being pardanashin or illiterate the burden of proof lay on the other party that they have read the deed to Sita Devi and she is aware about the terms and conditions and understands the material points as well as the generalisation of the contract. Hence the burden of proof to prove that the woman was aware of the terms and conditions and facts of the contract lies on the other party.

2. Rajalaxmi v. Sengammal on 27th August 2012¹⁷

It was held that the woman could not be asked to prove undue influence, fraud or misrepresentation as the Pardanashin lady is illiterate and is not aware of the content she is signing. The woman can't be forced to prove. Again, in case women claim that the contract was under undue influence or fraud or misrepresentation then the pardanashin lady could not be asked to prove it while the other party has to prove vice- versa.

3. Radhabai v. Arunagiri on 24th January 2008¹⁸

It was held that Undue Influence was used on the Pardanashin woman. The circumstances were examined closely and later the suit was in favour of the Pardanashin woman. Section 16, 17 were applied to the Indian Contract Act 1872 and the suit became voidable. Also according to Section 111 of Evidence Act the Pardanashin lady was entitled to benefit.

4. In Mst. Kharbuja Kuer v. Jangbahadur Rai and Ors¹⁹,

In the present case, Supreme court observed that the rule evolved for the protection of pardanashin ladies shall not be confused with other doctrines, such as "fraud, duress and actual undue influence, which apply to all persons whether they be pardanashin ladies or not. The burden can be discharged not only by proving that the document was explained to her and that she understood it but also by other evidence direct and circumstantial.

5. In Ismail Mussajee v. Hajiz Boo²⁰,

In the present case, it was held that a woman who goes to the court and gives evidence, settles rents with her tenants and collects rents and communicates in a matter of business and deals for business with other men than her family member is not a pardanashin woman. Hence, a lady to avail rights of a pardanashin women must be

¹⁶MANU/OR/0080/2014

¹⁷MANU/SCOR/17308/2014

¹⁸(2008) 2 MLJ 880

¹⁹ 1963 AIR 1203

²⁰ (1906) 33 Cal. 773

pardanashin women and must not interact with society freely, then only she can be considered as pardanashin women otherwise she may not be considered.

6. In Kalibaksh Singh v. Ram Gopal Singh²¹

In the present case, it was held that the evidence must go so far as to show positively and decisively that the deed was not only executed by, but also explained to, and was really understood by the grantor. In such cases, it must also be established that the deed was not signed under duress and also arose from the free and independent will of the grantor.

This case specifies what the other party has to prove in order to satisfy their duty of providing proof against the pardanashin woman.

7. In Chidambaram Pillai v. Muthammas²²

In the present case, it was held that a pardanashin lady may not be illiterate. If she is fractional, excluding communication outside void, she will fall in this category. This case further explains the class of pardanashin women. It gives explanation by providing the essential elements for a woman to fall under the domain of 'pardanashin women'.

Suggestions

1. Independence : This is a very important factor for a Pardanashin woman, to live with self identity in the society which can only be achieved by being an independent person. Independence to a pardanashin women should be given to give her liberty to live her life and achieve her goal.
2. Modernity : A Pardanashin woman should not hide herself behind a parda because in the current era a woman might not get succeed to compete in society being with traditional approach so there is an urgent need to follow the concept of modernity. Our society is developing day by day and to cope up with the world we have to upgrade oneself otherwise the person will lay behind. Hence Traditional approaches sometimes need to change into modern approaches.
3. Education: Education is a very essential factor to live peacefully and survive in the competent world. Especially for a pardanashin woman as in such tradition women were not allowed to interact with the society which restricted them to certain boundaries and they weren't able to develop. Hence, Education

²¹ (1913) 41 IA 223

²² (1993) ILW 466.

can be a great factor for their development and they will also get aware about not to follow tradition blindly and find the reasoning behind it.

4. Awareness : It is salient to make aware all the pardanashin women about their rights. They should know their own importance. Traditionally, Pardanashin women didn't have permission to interact with the society but in today, to get success in life it is very much essential to leave the traditional approach of Parda.
5. Compulsory voting: A Pardanashin woman thinks that she has no rights but every person above the age of 18 has the right to vote from her free will. Hence, the right to vote shall be made compulsory in India. If women will participate in economic and political activities then they themselves will be making social connections and will get the chance to utilize their own free will in choosing the side, she deems fit. Changes shall be made in the Conduct of Election Rules, 1961. Compulsory voting will also help in reducing the influence of a few people and will give the chance to each and every person to form their own opinion.

Conclusion

From the analysis of the situation of pardanashin women and studying various cases related to it, we can safely interpret that, The situation of Pardanashin women is highly improving as day by day the number of women practicing parda tradition are reducing. Today, most of the Pardanashin women have started living their life independently and did not limit themselves to the direction of their tradition (pratha). Even the women who were practicing purdah tradition are now joining their businesses and have favourable laws supporting them and the law is guarding them in some way or the other. Contract between Pardanashin women and other parties have become easy and if there is any undue influence then the law supports them.

Hence, Concerned authorities took necessary steps before completing the procedure of a contract and the court of justice will only move further when they are satisfied that the Pardanashin woman is happy with the contract and she has signed it with free will. The word Pardanashin women is very widely interpreted and provides protection through all four corners of law. They widened the scope of this category for all who are illiterate, ignorant and unable to make their own decisions and also narrowed it so as to bar women who practice this custom only partially. Protection of Pardanashin women is based on the principle of equity which will be followed throughout.

However, the proposed suggestions shall also get implemented, because making laws is not enough but implementing them are. Independence, modernity, education, awareness will only help in development of the Pardanashin women, our economy and most importantly it will set an example for the coming generations and will portray the importance of right to freedom.

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