

Gender Disparities in Religious Individual Law

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ABSTRACT:

India society is the amalgamation of several societies having different religion. There is a common law of Indian Constitution which is equal for every Indian citizen, but these citizens, as they are living in a particular community has to abide by their personal customs, i.e., Religious Personal Law, where inequality persists. The term personal law includes the scriptural commands and standard practices of that particular religion. These laws allude to the standards overseeing the arrangement of marriage and its disintegration, the separate rights, commitments and limits of marriage; the connection amongst guardians and children; conjugal property; child custody or guardianship and inheritance. One of the basic components of most Individual Laws is that women do not have equivalent rights with men. Much legislation has been done to eradicate the inequality against women but still the disparity persists.

Keywords: Indian Constitution, Customs, traditions, personal law

INTRODUCTION:

Multicultural society represents inherent values of equality, coexistence and cooperation among the diversified members. Sometimes the diversity is caused biologically, like in case of male and female however the need of equality is a demand on grounds. Thus, gender equality distinguishes itself from the other forms in a multicultural society. Different societies have different social norms and values. In some societies both man and women are assigned specific roles and duties. It was viewed as cultural factors therefore offer constraint to women participation.ⁱ This is more or less a reality in all the parts of the world. The project of trying to advance women's international human rights runs into problems with cultural claims. Over the past 20 years there has been increasing recognition that the earlier, post-world war II conceptions of human rights needs to be quite distinctly and radically rethought in order to fully include women's human rights. One of the major breakthroughs in International women's human rights movement was the International Conference in Beijing in 1995. The program stated that: while the significance of national and religious particularities in various historical, cultural and religious systems must be kept in mind, it is the duty of States regardless of their political, economic and cultural system to protect and promote all human rights and fundamental freedom.ⁱⁱ

Objectives of the Study:

The objective to study is to find the gender disparity in the society in the name of customs and traditions.

Methodology:

To study the research topic analytical method has been applied to study and to reach the finding.

Personal law in India

Since colonial times, personal law in India has owned a dual legacy. On the one hand, it was the government's way of promoting religious freedom and toleration. Permitting religious communities to observe their own laws of marriage, inheritance, adoption, or divorce was the British Raj way of maintaining social stability, thwarting rebellion, and even earning the favour of a religious community. On the other hand, personal law imposed a false uniformity by presuming that all members of a religion adhered to the same laws. Personal law was like a straightjacket which in the name of religious toleration, actually forced members of a religion to conform to laws they may never have observed. The state's recognition of personal law has also legitimated discriminatory treatment of women in the name of religion. How is it that a policy designed to recognize difference could also be an instrument of coercion, whether as an unwanted intrusion into family practices or as a rubber stamp for practices that hurt or disempower women?ⁱⁱⁱ

Contemporary India is a multicultural society that is pluralistic with respect to religious law. Personal laws in India have been raised a question in the name of gender inequality. India is a secular state where the moral, cultural, regional and religious beliefs of the people changes from person to person and territories to territories. To impart justice to these people we have different sets of law, personal law is one of them.^{iv} The term personal law includes the scriptural commands and standard practices of that particular religion. These laws allude to the standards overseeing the arrangement of marriage and its disintegration, the separate rights, commitments and limits of marriage; the connection amongst guardians and children; conjugal property; child custody or guardianship and inheritance.^v These laws are in force since the colonial time. Being a secular state and a home to the various and diverse communities, the laws are enacted in regard to their personal and cultural aspects. Hindu law governs Hindus including Sikhs, Buddhists and Jain, Muslim law was enacted for Muslims and Christians are governed by the Christian personal law.

Indian constitution has provided fundamental rights to its citizens where it is clearly mentioned that no rights should be denied on the basis of sex. Article 44, Directive Principles of State Policy, Indian Constitution states that "the State shall endeavor to secure for citizens a uniform civil code through the territory of India" Uniform Civil Code is one where common set of civil laws replace personal laws, i.e. laws that find their authority from customs, religious scriptures etc., for citizens of a country. While highly politicized debates surround it, a key issue that has emerged in the UCC is the submergence of equal rights for women under personal laws. Personal laws stem from highly patriarchal structures and women have historically not been engaged in their formation. While some effort has been made to bring greater uniformity and reforms in personal laws, the efforts remain in the form of piecemeal offerings and many resist these alteration.^{vi} Some of the example of this inequality is what we are about to discuss.

HINDU PERSONAL LAW

We can trace back to Manusmriti to see the relevance of Hindu personal law. Several Hindu personal laws were codified during the colonial regime and acquired their present form immediately after independence. The Anglo-Hindu law was the first attempt to transform traditional Hindu principles from the Dharmashastra to codified laws. This led to customs and rituals that were earlier governed by scriptures getting a legislative foundation. Abrupt interference to the age old rituals and customs of the Indian people may cause resentment so to create an illusion the British created the Anglo-Hindu Law, which is the combination of English law and Hindu traditions. This was created in 1772 and gained

legislative foundation in 1864 and is considered as the most crucial legacies of the British rulers. This forms the basis of the present Hindu Personal Law.

THE HINDU MARRIAGE ACT, 1955: The Hindu Marriage Act, 1955 codifies laws and rules regarding marriage customs amongst Hindus. One of the most important provisions of dissolving a marriage was not properly codified as the concept of divorce was regarded as blasphemous by Hindu orthodoxy. The British did not want to anger the Hindu orthodox sections and as a result did not include provisions for divorce when drafting the Anglo-Hindu law. Hindu Marriage Act, 1955 is thus regarded as landmark as traditional concepts of marriage and divine unity were meticulously codified where for the first time, various provisions for dissolution of marriage were created where women could also initiate divorce proceedings. However, the bare act has never been amended despite several criticisms it has faced due to the irregularities in terms of the unequal rights of women.

THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956: This Act was enacted in 1956 as part of the Hindu Code Bills. The Hindu Adoptions and Maintenance Act codify the rules regarding adoption of children by Hindu adults and maintenance of spouse and parents by Hindu male.^{vii} Prior to the Hindu Adoption and Maintenance Act, 1956; women had no right to adopt a child even if her husband consents. Only the father had right to adoption without the consent of her wife. A widow could also adopt a child but must have had obtained the prior consent of the husband. Only the male could be adopted. But after the Act, any sound and major person who is competent can adopt a male or a female child with the consent of his wife. Widows can also adopt a child without obtaining the prior consent of the husband. Even an unmarried is eligible for the adoption of child with certain conditions to be fulfilled like she must be major, sound mind etc.^{viii} The Personal Laws (amendment) Bill, 2010 was passed where a new section for section 8 was substituted and section 9 was amended in the Hindu Adoption and Maintenance Act, 1956 to make adoption more gender neutral. The passing of this amendment was a major boost for gender equality in matters of adoption.^{ix}

THE HINDU SUCCESSION ACT, 1956: The succession and inheritance right in Hindu society considers male as the coparcener and have rights over property of his family by birth. Women were subjected to be the property and liability of men. All the decisions of the family are taken by male and female are subjected to his consent.

There are two systems of inheritance namely, Mitakshara and Dayabhaga. Mitakshara determined the property rights by the family relatives of the deceased karta (male of the family). Mitakshara school lays down its principles on the basis of doctrine of representation which states that the share of the property, after the death of the father or grandfather or both, goes to the son, son's son and son's grandson. It clearly states the male dominated society. In Dayabhaga School, the principle of religious efficacy prevail which states that the deceased head member of the family shall be given the shares of the property. Again according to the Hindu law only a male heir of the family is supposed to do this religious offerings and not a female. Then the Succession Act of 1956 was enacted which broadened the concept to order of succession where women's right were also recognized. But after the Amendment of this Act in 2005, the daughter of the deceased was entitled to be a coparcener by birth and equal share and liability as son or other male coparcener.^x

WIDOW PROPERTY RIGHTS: Earlier women were not entitled to her husband's property. But after the coming of Hindu Women's Right to Property Act, 1937, widow of deceased person will be given same status as her husband. A widow has the right to inherit property from her husband's estate, but her husband can transfer the property to a third person through a will and she cannot oppose him. After this rule the Hindu Succession Act, 1956 was enacted which provided that the widow mother is entitled to take one share of the property. The provision was more improvised when the Hindu Succession Act, 2005 was passed, the widow of a pre-deceased son or a pre-deceased son or brother can inherit the property even after remarrying.

MAINTENANCE LAW: Maintenance to a deserted wife under Hindu Personal Law, maintenance can be provided to the wife in the form of all the needful commodities. In Hindu Law the husband has to provide maintenance to his family and wife during his lifetime. There is no way to ensure that the husband will regularly make payments. As neither the police nor such authority will come to the deserted wife's help. The only way to get maintenance after divorce is to go to court and court will decide the case. She will in such cases have to go to the court again, which is never an easy way out for a woman. In India majority of women hardly get the maintenance to live a better life further.

ADOPTIONS: Before the coming of Hindu Adoption and Maintenance Act, 1956; women had no right to adopt a child even if her husband consents as according to Hindu Law. Only the father had the right to adoption without the consent of wife. A widow could also adopt a child but must have had obtained the prior consent of the husband. Here only male child could be adopted. But after the coming of this Act any person of sound and major who is competent can adopt a male or a female child with the consent of his wife. Widow can also adopt child without obtaining prior consent of the husband. Even an unmarried is eligible for the adoption of child with some conditions to be fulfilled.

A WOMAN'S RIGHT TO THE DWELLING HOUSE: Female heirs to a male Hindu intestate's property cannot ask for a partition of the intestate's dwelling house in which the intestate's family lives until the male heirs choose to divide their respective shares. A female heir who is a daughter has the right to residence in the dwelling house only if she is single, has been deserted by or is separated from the husband, or is a widow. A widowed daughter loses her right to residence upon remarriage. Thus the law in this area reiterates traditional patriarchal concepts towards women.^{xi}

MUSLIM PERSONAL LAW:

All the Muslims in India are governed by the Muslim Personal (Shariat) Application Act, 1937. The Muslim Personal Law was passed with the aim to formulate an Islamic law code for the Indian Muslims. The British, who were at this point in time governing India, were trying to ensure that Indians were ruled according to their own cultural norms. This law deals with marriage, succession, inheritance and charities among Muslims. Just like Hindu law, Muslim law is also subjected to some principles which are against women's equal status and gender equality.

MUSLIM LAW IN MATTER OF MARRIAGES: Islam has laid down no age limit for marriage. Age of marriage depends on puberty, which may vary. So, marriage depends on the biological characteristics of the girls rather than the age which is very astounding. The proposal and acceptance should be made in

presence and hearing of two adult man witnesses or one male and two female witnesses. The inclination of marriage is towards the males. The purpose of marriages is to give comfort and pleasure to man, to intercept debauchery and rapes and to produce children. It is evident that women are treated as objects used at the whims and fancies of men.^{xii} A woman has no rights in the selection of husband as women are considered inferior to a man. She can be married by her guardian's consent.

DIVORCE: The marriage can be dissolved either on the death of spouse or by the divorce. When husband dies, wife cannot remarry without observing an iddat period while the husband can marry immediately after the death of his wife. The grounds of the divorce available to the man are more than women under Muslim law. A husband can divorce his wife at his will without any reason given to the wife but it is not same in matter of wife. The wife needs consent or an agreement in which a husband delegates his right to divorce to the wife.

To ban the evil practice of Triple Talaq was a demand from the Muslim women for a very long time. Shayara Bano a woman from Uttarakhand, who suffered mental and physical torture by her husband and his family for not fulfilling their demand for dowry, was granted instant Triple Talaq by her husband through a letter, ending their 14 years marriage. Her husband denied her the custody of her two children. She challenged this practice before the Supreme Court on the ground that the said practice is discriminatory and against dignity of women. Supreme Court found that the said practice of divorce to be manifestly arbitrary, in the sense that, the marital tie can be broken capriciously and whimsically by a Muslim husband without any attempt to reconcile to save the marriage. Supreme Court, in a majority judgment rendered on 22nd August, 2017, set aside the practice of divorce by pronouncing instant Triple Talaq as violative of Article 14 of the Indian Constitution. To give immediate effect to the verdict of the Supreme Court the Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 was promulgated on the 19th September, 2018 and two more Ordinances were promulgated thereafter. Lok Sabha passed the Muslim Women (Protection of Rights on Marriage) Bill, 2019 on 25th July, 2019 and the Rajya Sabha too passed it on 30th July, 2019. After receiving the assent of the President of India, The Muslim Women (Protection of Rights on Marriage) Act, 2019 came into force with retrospective effect from the 19th day of September, 2018 giving continued effect to the first Ordinance promulgated on 19th September, 2018. After this Act, the practice of Triple Talaq provides for imprisonment for a term up to 3 years and fine to the husband. The Muslim woman, upon whom Talaq was pronounced, also granted custody of children and subsistence allowance to be paid by the husband. The Muslim women now have a legal protection against the whimsical and irrational pronouncement of Triple Talaq.^{xiii}

MAINTENANCE: In the matter of maintenance the divorced Muslim wife is not required to be maintained beyond the 'iddat' period. A divorced woman is legally entitled only to her mehr and maintenance for the duration of iddat period settlement.^{xiv} A widow does not get her maintenance neither as a mehr nor for the iddat period by the husband as her right to the inheritance prevails.^{xv}

POLYGAMY: In Muslim law, a man can marry up to four women but not more than that, whereas woman should have only one husband. But if she marries another husband she will be liable for bigamy and their children will be considered illegitimate.

INHERITANCE OF PROPERTY: In Muslim law the women are entitled to the share in the property but the men get twice the women's shares. A woman is the sole and limited owner of her and shares there are no provision excluding women from the right to inherit the property but the men get more and women get less.^{xvi} When the son and the daughter inherit together the son gets twice of what the daughter gets. For instance, the husband gets 1/4th share and the wife 1/8th share when there is a child and when there is no child 1/2th and 1/4th respectively.^{xvii}

CHRISTIAN PERSONAL LAW:

Against the dual legacy, Christian personal laws carry a unique history, partly because the religion presents no clear textual basis for a personal law. Under British rule, Christian communities of India had tended to take on the laws of their nationalities. However, Indians who became Christian posed a dilemma- what law would they follow? To which nationality did they belong? For a time, colonial courts managed to cope with varied and ambiguous practices of Christian converts. In the famous succession case, *Abraham V Abraham* (1863), a wealthy Tamil Dalit liquor vendor died without a will and the judiciary had to decide whether his brother or his Anglo-Indian wife should succeed him and inherit his wealth. It is ruled because the Christian religion taught no personal law; the court had to examine the family's cultural habits. If these habits were predominantly "Hindu", then the laws of undivided families should be applied and the brother and sons of the deceased husband should inherit the family estate, even though they were Christian. But if the family's customs were mostly English, then the wife should succeed the husband as the head of the household. After several appeals, the wife won.

Such painstaking examination of customs by the courts, however, would not last very long. With the passing of the Indian Succession Act 1865, revised in 1925 or the Divorce Act 1869, a more uniform English law was applied to Christian families.

Since Independence court cases involving Christian Personal Law has tended to concern the rights of women to inherit property. The famous case of *Mary Ray* 1986 upheld the rights of Syrian Christian women inherit ancestral property equally with their male siblings. The battle waged against traditional patriarchal norms with the Church has once again compelled society to weigh religious rights against more egalitarian human rights.^{xviii}

PARSI PERSONAL LAW:

MARRIAGE: In Parsi Individual Law, if a woman marries someone who is not Parsi, their children are not accepted as a part of the Parsi community. However, this is not applicable to man.

INHERITANCE: A non- Parsi woman who is married to or is the widow of a Parsi man cannot inherit on his death though their children can inherit his property.^{xix}

Findings:

Personal law is very sensitive; it is based on long practice of customs and traditions rooted in the culture of the respective religions. Many legislations has been done on religious laws such as , Lok Sabha passed the Muslim Women (Protection of Rights on Marriage) Bill, 2019 on 25th July, 2019 and the Rajya Sabha too passed it on 30th July, 2019. After receiving the assent of the President of India, The Muslim Women (Protection of Rights on Marriage) Act, 2019 came into force with retrospective effect from the 19th day of September, 2018 giving continued effect to the first Ordinance promulgated on 19th

September, 2018. After this Act, the practice of Triple Talaq provides for imprisonment for a term up to 3 years and fine to the husband. The Muslim woman, upon whom Talaq was pronounced, also granted custody of children and subsistence allowance to be paid by the husband. The Muslim women now have a legal protection against the whimsical and irrational pronouncement of Triple Talaq.

Inheritance of ancestral property by female in Christian personal law is passed is noteworthy. According to Hindu Adoption and Maintenance Act, 1956 widow can also adopt child without obtaining prior consent of the husband. Even an unmarried is eligible for the adoption of child with some conditions to be fulfilled. The Hindu Succession Act, 1956 was enacted which provided that the widow mother is entitled to take one share of the property. The provision was more improvised when the Hindu Succession Act, 2005 was passed, the widow of a pre-deceased son of a pre-deceased son or brother can inherit the property even after remarrying. This shows the significant increase in minimizing the gender disparities in personal laws. But the issue is the society which still follows some illogical religious practices in the backdrop of the law.

CONCLUSION:

In India an array of personal laws exists. Generally, the applicability of this law is based on the religion professed by different communities. The only common feature of all these personal laws is that, they are prejudiced towards women and showed favoritism to men. The women have fewer rights than the men under the religious personal laws. The term gender delineates the social and cultural notion about the general population. Sociologists characterized gender disparity as the distinction in the status, power and eminence women and men have in groups, collectivities and social orders. Women need to experience with such a large number of inconsistencies which prompt such huge numbers of hindrances in their excursion. Despite the fact that the legislature has attempted the endeavors to lift the status of women, yet there is need to change the thinking pattern of the people to give sense of credence to women about their potential. Many modification has been done by the legislature but the ideas of religious personal law is immutable still persists. The practice of following religious rules in personal matters is regarded as the conservation of religious laws. Wherein, inequality remains in the name of conservation. These inequalities can be minimized if not completely eradicated through the formation of various uniform civil codes that will emphasize on gender equality and human rights in good spirit.

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