

Gender Inequality in Hindu and Muslim Personal Laws in India

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ABSTRACT: The paper aims to highlight the status of women in Hindu and Muslim religious personal laws and providing the glimpses of the effects of such personal laws on the lives of women. To achieve the objective of the paper, extensive research has been done and the analysis has been so penned down. To begin with, origin of the concept of religious personal laws and their selective reform by the State has been covered and aptly described. Current status of women in Hindu and Muslim religious personal laws are illustrated which includes how the shape of religious personal laws has repercussions for the design and scope of other laws. Effects of such laws on the lives of women of every strata of the society are covered. This paper further puts forth and analyses the current situation of personal laws with respect to women in India and the same have been discussed in the light of existing statutes and case laws. Landmark judgments have been used to further understand the judicial aspect of the laws prevalent in the society. Dilemmas like why this disparity still exists and what impacts it will have on the future generations are critically analyzed. An argument for a re-conceptualization of categories that allow for pursuing differences and justice together is developed.

I. INTRODUCTION

Contemporary India is a multicultural society that is pluralistic with respect to religious law. As there are numerous religions so there are a huge number of personal laws as well which oversees the general population of various religions. The term 'personal laws' includes the scriptural commands and standard practices of that particular religion. Religious personal 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. These laws recount anecdotes about the way of life, practices, convictions and qualities that assistance to shape our perspectives about which we are, the place we originated from, and where we are going. Each religion has its very own laws, for instance, Hindus, Muslims, Parsis, Jains, Christians, and so on. There is no uniform civil code in India.

The women have fewer rights than the men under the religious personal laws. The religious personal laws bring forth numerous taboos; for example man centric society, early marriage, endowment, aggressive behavior at home and so forth. The general public has plonked decisions on the women. The status of women is of incredible worry as these laws depict women in subordinate position to men. As an idea, "gender inequality" alludes to the undeniable or concealed differences among people in view of the execution of the sexual orientation. The term 'gender' delineates the social and cultural notion about the general population. Gender is

not based on the biological characteristics. Sociologists characterize 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. The ladies feel substandard as well as defenseless in light of the fact that the childhood of the young ladies has been done so as to not raise their voices against such separations. 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 people to give sense of credence to women about their potential.

II. THE ORIGIN OF THE CONCEPT OF RELIGIOUS PERSONAL LAWS

India's legal system is influenced by common law system – a relic of British colonialism. Amidst colonization, the standard natural connection between a lawful framework and its general public was savagely disturbed doubly by this examination. Indians came to have a legitimate framework created in light of the requirements of an altogether different society, that of England. Be that as it may, while laws in England have surrendered or adjusted the greater part of these legitimate ideas, India keeps up the "convention" of the pioneer laws. The idea of religious individual laws is one of those ideas.

Gradually legislative changes were also introduced, but despite these changes the idea that the religious personal laws are immutable still persists. The practice of applying laws of religious communities in personal matters was regarded as the "saving" of religious laws, in part because of the language used. Astonishingly, British policies determined what should be designated as a personal matter.

One marked element of most religious individual laws is that women have fewer rights than men. The state has specifically utilized the contention of religious sacredness of these laws however at different occasions presented authoritative changes. The vast majority of the progressions have been presented in the Hindu Laws however the adjustments in the minority networks' laws have been all the more stopping. For instance, in 2005, in the Hindu Succession Act, it was proposed keeping in mind the end goal to make daughters measure up to coparceners; be that as it may, the enactment by the by still leaves women with lesser rights than men. It is in these specific conditions that gender inequality for Indian women will probably be accomplished by presenting an administration of common family law that would lead to perceive the rule of gender equality as the characterizing highlight of the law.

III. WOMEN IN DIFFERENT RELIGIOUS PERSONAL LAWS

There are various religions like Hindu, Muslim, Sikh, Christian, Parsi, Buddhist, Jews, Jains who follow various religious personal laws and civil laws. There is no common law in India. Sikh, Buddhist and Jains

follow Hindu personal laws. There are different laws like Hindu Marriage Act, 1955¹, The Hindu Succession Amendment Act, 2005², The Hindu Minority and Guardianship Act, 1956³ and the Hindu Adoption and Maintenance Act, 1956⁴ which govern the personal laws of the Hindus. Similarly, the Muslim personal laws are also based on the proclamations of holy Quran which govern the Muslims. The Shariat Act, 1937⁵, The Dissolution of Muslim Marriages Act, 1986⁶, The Muslim Women (Protection and Rights on Divorce) Act, 1986⁷ etc. are the Muslim personal laws. As per these laws one can discern about the non uniformity of the personal laws. The status of women is not good in the personal laws as there is biasness towards the patriarchal society.

IV. WOMEN IN HINDU LAW

‘Dharamshastra’ is the basis of Hindu law along with other sources like Vedas, Smritis, Shrutis, etc. Codification of Hindu law started in 1995, but still the women were not considered at par with the men. These discriminatory provisions still exist, some of the are as follows -

- **Right to adopt a child:**

A woman gives a birth to a child but in the matter of adoption Hindu married woman had no right to adopt a child on her own, not even with the consent of her husband. In *Malti Ray Chowdhury v. Sudhindranath Majumdar*⁸, the deceased female had adopted a female child while she (the deceased) was in a married state. The physical handing over of the child and the ceremony of adoption was performed in the presence of the deceased’s husband, without his raising any objection whatsoever, and yet, the court held that the adoption was not valid.⁹ The court remarked-

*“Adoption has to be taken factually or legally by the male in case of marriage, and not by the wife. In other words, wife has no capacity to adopt even with the consent of the husband...”*¹⁰

- **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

¹ The Hindu Marriage Act, 25 of 1955, 1955.

² The Hindu Succession Amendment Act, 39 of 2005, 2005.

³ The Hindu Adoption and Maintenance Act, 78 of 1956, 1956.

⁴ The Hindu Minority and Guardianship Act, 32 of 1956, 1956.

⁵ The Muslim Personal Law (Shariat) Application Act, 26 of 1937, 1937.

⁶ The Dissolution of Muslim Marriages Act, 25 of 1986, 1986.

⁷ The Muslim Women (Protection and Rights on Divorce) Act, 25 of 1986, 1986.

⁸ A.I.R. 2007 Cal. 4 : (2007) 1 Cal. L.T. 323 HC

⁹ *Ibid.*

¹⁰ A.I.R. 2007 Cal. 4, p. 7

who is a daughter has the right of residence in the dwelling house only if she is single, has been deserted by or is separated from her husband, or is a widow. A widowed daughter loses her right to residence upon remarriage. In *Hira Dei vs Bodhi Sahu And Ors*¹¹, Hira devi became the victim of such law as she was denied her residence upon remarriage. Thus, the law in this area reiterates traditional patriarchal concepts towards women.¹²

- **Property succession of male and female intestates:**

In coparcenary properties, a son, a son's grandson acquires the right to property by birth. No female can be a member of coparcenary, so this is promoting inequality between males and females. Under the Hindu Succession Act, the property of male and female intestates devolves differently. In the absence of children, property inherited from the female intestate's parents devolves upon her father's heirs. If a woman doesn't have children then the property inherited from her husband or father-in-law would go to the husband's heirs. In the case of female intestate's self-acquired property, a gift, or property received under a valid will first would go to her children and her husband. In the absence of children and husband, the property devolves upon her husband's heirs and then upon her parents. Once again, concepts of gender equality can be seen.

The Hindu Succession (Amendment) Act, 2005¹³, amended Section 6 of the Hindu Succession Act, 1956¹⁴, allowing daughters of the deceased equal rights with sons. In the case of coparcenary property, or a case in which two people inherit property equally between them, the daughter and son are subject to the same liabilities and disabilities. In *Krishan Gupta & Anr. v. Rajinder Nath & Co HUF & Ors.*¹⁵,

*“The Court held that in case of the male dying intestate, the daughter becomes a coparcener and receives a share equal to that of the sons. The amendment essentially furthers equal rights between males and females in the legal system.”*¹⁶

- **Widows' property rights:**

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 can not oppose him. It was held in *Vimalben Ajitbhai Patel v. Vatslabeen Ashokbhai Patel and Ors.*¹⁷ –

“After the death of the husband, a woman can be maintained by father in law due to legal obligation if she has coparcenary property and if the woman cannot maintain herself through her parents, children, or their estates.

¹¹ A.I.R. 1954 Ori. 172

¹² *Ibid.*

¹³ *Supra at 2.*

¹⁴ The Hindu Succession Act, 30 of 1956, 1956.

¹⁵ 2014 (9) R.C.R. (C) 2368.

¹⁶ *Ibid.*

¹⁷ 2008 (4) S.C.C. 649.

If the woman remarries to someone in that case she cannot get the maintenance from the in laws. If the widow's parents are financially unable to maintain their daughter only then she gets maintenance from the in laws. The law casts an obligation on the husband's heirs (the third party) to maintain the widow.”¹⁸

- **Maintenance law:**

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. 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.

V. WOMEN IN MUSLIM LAW

Islam means serenity, and obedience. According to Agnes, Islam also means peace and submission. “Shari’ah is an Arabic word that means the “Path to be followed,” referring to a number of legal injunctions known as Islamic law. The primary source of Islamic law is the Quran, which Muslims believe to be God’s words. Though the Quran does contain legal prescriptions, it is mainly concerned with general ethical principles and guidelines rather than strict instructions. Therefore, the Quran is supplemented by other sources to form the basis of Sharia. The Shariah is a result of what people understood out of those holy pronouncements. The cardinal notion is different from what we brought in the form of Shariah. Women are myrmidon to men in this patriarchal society.

- **Age for marriage:**

Islam has laid down no age limit for marriage. Age of marriage depends on puberty, which may vary. In *Yunusbhai Usmanbhai Shaikh v. State of Gujarat*¹⁹, Justice J.B. Padriwala said,

“According to the personal law of Muslims, the girl, no sooner she attains puberty or completes 15 years of age, whichever is earlier, is competent to get married.”²⁰

So marriage depends on the biological characteristics of the girls rather than the age which is very astounding.

- **Witnesses at the time of marriage:**

Among the Sunnis, the proposal and acceptance should be made in presence and hearing of two adult male witnesses or one male and two female witnesses. In *Abdullah v. Beepathu*²¹, the Court held,

¹⁸ *Supra at 17.*

¹⁹ 2015 S.C.C. Guj. 6211.

²⁰ *Supra at 19.*

²¹ I.L.R. (1921) 1 Ker. 361.

“...the marriage invalid as there were two female witnesses only. That means as per the above law a single man has an equal status to two women. A woman is half to a man which is nothing but sheer discrimination.”²²

- **The aim of marriage:**

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.

- **Right of consent of marriage:**

A woman has no rights, not even in the selection of her husband and determination of her own destiny. She cannot even show her desire to get married to a particular person as she is considered inferior to a man. Whatever her family decides for her is considered of supreme value.

- **Mahr:**

Marriage is like a contract in Muslim personal law. At the time of marriage mahr (which is considered as a gift) is given from the girl's side and there is no such rule for the boy's side. There is undoubtedly a gender disparity in existence here.

- **Polygamy:**

In Islam, polygamy is a very contentious issue. A Muslim man may marry no. of wives but not exceeding 4 but a Muslim woman can marry only one husband & if she marries another husband, she is liable for bigamy under Section 494 of IPC²³ & the offspring of such a marriage is illegitimate. Section 494 states:

“Marrying again during lifetime of husband or wife.—Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before

²² *Ibid.*

²³ The Indian Penal Code, 45 of 1860, 1860, Section 494.

such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.”²⁴

In *State of Bombay v. Narasu Appa Mali*²⁵, Chagla, C.J. observed –

“There can be no doubt that the Muslims have been excluded from the operation of the Act in question. Even section 494, Penal Code, which makes bigamy an offence applies to Parsis, Christians and others, but not to Muslim men because polygamy is recognized as a valid institution when a Muslim male marries more than one wife...”²⁶

The logic behind the polygamy is that during pregnancy or menstruation it is better that man have other legally married wife rather than going to other women. Monogamy results in promoting the institution of prostitution. This mentality is extremely shameful and disrespectful for women and an individual in general as well.

- **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.

In *Khurshid Khan v. Husnabanu Mahimood Shaikh*²⁷, it was observed by the Court that –

“the divorced wife is entitled to mehr and that it is in accordance with law for the duration of iddat period settlement. A widow woman is also not liable to get maintenance from the in-laws. A lady divorced by her husband, cannot remarry him, till she married another person and has a sexual intercourse with him and thereafter he divorces her.”²⁸

- **Woman’s share of inheritance:**

Under both the schools, the male generally gets a share twice of what his female counterpart gets. When the son and the daughter inherit together the son gets twice of what the daughter gets. 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.²⁹

VI. RELIGIOUS PERSONAL LAWS: HURDLES IN THE PATH OF WOMEN

We have seen that there is Gender Inequality in our religious individual laws. Some way or another Religious

²⁴ *Ibid.*

²⁵ A.I.R. 1952 Bom. 84.

²⁶ *Ibid.*

²⁷ 1976 Cri. L.J. 1584.

²⁸ *Ibid.*

²⁹ S.A. KADER, *Muslim Law of Marriage and Succession in India*. Easter Law House, New Delhi, 1998.

personal laws advance man controlled society for example in Muslim laws marriages happen because of assent of guardians and there is no particular age of marriage. On the off chance that early marriage happens then unquestionably there will be absence of proper education. In our nation, it is viewed that if a girl isn't instructed well enough then more dowry needs to be given. Moreover, this then additionally prompts Domestic violence. Dowry occurred from Religious personal laws & now it has become the taboo for our society. Thousands of women annually are killed by their husbands in disputes over dowry. Reported dowry deaths have increased since the past decade. Thousands more are injured and maimed because the husband, or the husbands, or the husband`s family, is dissatisfied with the dowry brought by the wife. In India, sometimes women are burned if their parents didn`t pay enough dowry when the girl got married. This is often called a “kitchen accident”; in 99% of these “kitchen accidents” a woman is murdered. If women get the divorce then women go in the state of loneliness. Loneliness further leads to psychological harassment. Divorce creates problems for maintenance because there is no such law for maintenance. An early marriage also leads to early children that cause to mother`s poor health and mother`s mortality. So overall, many societal issues emerge from the religious personal laws along with the gender inequality.

VII. CONCLUSION

“Half of the Indian population too is woman. Women have always been discriminated against and have suffered and are suffering discrimination in silence. Self-sacrifice and self denial are their nobility and fortitude and yet they have been subjected to all equities indignities, inequality and discrimination” was said by Justice K. Rama Swamy. There are different religions and individual laws as well, which were detailed according to the need of specific religion. Religious personal laws have been demonstrated to show discrimination with the women. There are notices of numerous prejudicial statutes for the same. In Muslims, the situation of women is terrible, as Muslims take after religious personal laws strictly. It can be because of the patriarchal set up and culture of reliance of women on men in India. The women themselves consider that it is their destiny to rely upon men. The women consider that it is their fate to depend on men. In India, women grow in such a conditioned way that they think that men are superior and women are on subordinate position. In India, we have various civil laws which cater the gender equality but those laws are not in practice, they are just on the sheets of paper. It is rightly said that *Religion is a matter of belief; belief is a matter of conscience, and freedom of conscience is the bedrock of modern civilization.* In a multi-religious country like India which has opted for a secular State, it is the right of every citizen to elect to be governed by secular laws in matters personal and it is the duty of the State to provide an optional secular code of family laws. But, the Indian Parliament is adopting an ambivalent attitude due to political compulsions.

Religious personal laws suppress the women. Undoubtedly, the males are in supremacy than the females. So there should be common uniform laws for all religions, so that position of women can be improved. Education is a path which can lead to women to equality, because whenever any taboo take the society into its lap then always education play a very important role to pull it from the bottom. Need of the hour is to spread awareness and make people realize that men and women have equal status.

BIBLIOGRAPHY**BOOKS AND PERIODICALS**

1. A. Bindra, *Women and Human Rights*. Manglam Publishers and Distributors, Delhi, 2007, 31.
2. Alka Singh, *Women in Muslim Personal Law*. Rawat Publications, 1992.
3. Anthony Giddens, *Sociology*. Polity Press, UK, 2006, 468.
4. Flavia Agnes, *Constitutional Challenges, Communal Hues and Reforms within Personal Laws*. Combat Law. 2004.
5. Gopal G., *Gender and Economic Inequality in India: The Legal Connection*. Boston College Third World Law Journal, 1993.
6. Kulwant Gill, *Hindu Women's Right to Property in India*. Deep & Deep Publications Pvt. Ltd., New Delhi, 1986.
7. M. Chawla, *Gender Justice: Women and Law in India*. Deep and Deep Publications, New Delhi, 2006.
8. P. K. Das, *Handbook on Hindu Succession (Property Rights of Women and Daughters)*. Universal Law Publishing Co. Pvt. Ltd., Delhi, 2007.
9. R. K. Sinha, *Women Across Generation*. Mohit Publications, New Delhi, 2010.
10. R. Mukherjee, *Women, Law and Free Legal Aid in India*. Deep and Deep Publications, New Delhi, 1998.
11. S. A. Kader, *Muslim Law of Marriage and Succession in India*. Easter Law House, New Delhi, 1998.
12. S. M. Asay, J. Defrain, M. Metzger & B. Moyer (Eds.). *Family Violence from the Global Perspective*. Sage Publication, 2014, 69.

WEBSITES

1. www.heinonline.org
2. www.jstor.org
3. www.manupatrafast.com

www.scconline.com