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Gender inequality in Hindu and Muslim Personal Laws in India

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Abstract

India is a country of people from diverse religions and backgrounds. As there are many religions, so there are numbers of religious laws too, that governs the people of different religions. Every religion has its own personal laws relating to marriage, divorce, maintenance, guardianship and succession governing the Hindus, Muslims and Christians, etc. 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 give birth to many taboos; for instance patriarchy, early marriage, dowry, domestic violence etc. The society has plonked verdicts on the women. The women not only feel inferior but also helpless because the upbringing of the girls has been done in such a way that they do not raise their voices against such discriminations. Though the government has made the efforts to lift the status of women via implementing civil code, yet there is need to change the thinking pattern of people to give sense of credence to women about their potential. The present paper is highlighting the status of women in Hindu and Muslim religious personal laws and providing the glimpses regarding the effects of such religious personal laws on the lives of women.

Keywords: personal laws, gender, inequality, women

Introduction

There are various religious personal laws in India. But the status of women is of great concern as the religious personal laws portray women in subordinate position to men. Women have to encounter with so many disparities which lead to so many stumbling blocks in their journey. The present paper is focusing on the disparities which a woman faces through the religious personal laws. Due to such disparities there are lots of difficulties to live a life with self respect and dignity to a woman. These disparities and inequalities hinder the path of woman in the backward direction. Women have to fight against these inequalities to attain something. Things change with the time, but the mind sets of people regarding women is next to impossible to change. Though enough efforts have been made in the civil laws yet existence of personal laws don't let the women to come out of that to live a life with their own terms and conditions.

Gender Inequality

As a concept, "gender inequality" refers to the obvious or hidden disparities among individuals based on the performance of the gender. The term 'gender' depicts the social and cultural notion about the people. Gender is not based on the biological characteristics. This problem in simple terms is known as Gender Biasness, which means gender stratification or making difference between a male and a female (Garg, n.d.). According to Giddens (2006) sociologists define gender inequality as the difference in the status, power and prestige women and men have in groups, collectivities and societies.

Religious Personal Law

The term 'personal laws' circumscribes the scriptural mandates and customary practices within it. By religious personal law, we refer to rules governing the formation of marriage and its dissolution; the respective rights, obligations and capacities of spouses; the relationship between parents and children; marital property; child custody or guardianship; and inheritance (UNRISD, 2009) [14]. The personal laws tell stories about the culture, behaviors, beliefs and values that help to shape our views about which we are, where we came from, and where we are going".

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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 law because they don't have separate personal law. There are different laws like Hindu Marriage Act, 1955, The Hindu Succession Amendment Act, 2005, The Hindu Minority and Guardianship Act, 1956 and the Hindu Adoption and Maintenance Act, 1956 which govern the personal laws of the Hindus. In the same way the Muslim personal laws are also based on the proclamations of holy Quran which govern the Muslims. The Shariat Act, The Dissolution of Muslim Marriage Act, 1939, The Muslim Women Protection and Rights on Divorce Act, 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 are so many bigotry practices in our society. Women have to countenance to all these impediments.

• Women in Hindu law

Hindus have considered personal law based on the 'dharmashastra', a part of their Religious tradition (Reporter, 2010) [11]. Till the codification of Hindu law in 1955 and 1956 the Hindu women did not enjoy equal rights along with the Hindu men. Before 1955 polygamy was prevalent among the Hindus. The Hindu woman did not used to get the property from the parents, they used to get dowry only which is known as "Stridhan" at the time of the marriage. Even though the Hindu law has been codified, certain discriminatory provisions still exist even today. The highlights of these laws are as follows:

- i. **Right to adopt a child:** A woman gives a birth to a child but in the matter of adoption Hindu woman had no right to adopt a child on her own. She could not be the natural guardian of her children during the life of her husband. This is something unacceptable to a woman but this is the reality and giving a sense of inferior status of women in the society.
- ii. **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. This is so even if the house is part of the intestate's separate property. A female heir 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 (Chawla, 2006) [3]. A widowed daughter loses her right to residence upon remarriage. Thus, the law in this area reiterates traditional patriarchal concepts towards women. A woman doesn't get the right of dwelling house as a man. As a woman gets marry then she cannot stand for her right for dwelling house until her father gives her by his own wish. So woman is depending on the vehemence of father to give something to the daughter.
- iii. **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. There is preference for the agnates rather than the cognates. Succession to a female intestate's property

depends on the type of property. 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 as in the same or the other form the property is going to male and showing the patriarchal dominance in the laws.

- iv. **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. After the death of the husband a woman can be maintain 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. 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. To get a brief idea about all these obligations and rules we can take an example like if a woman gets marry to a man and she is fully dependent on him for money. If the man died and transferred his property to third party by will. The woman can neither ask for the property nor expect the maintenance from in laws as now she does not have coparcenary property. Her parents are not legally bound to maintain her because she is not a minor and is married. The law casts an obligation on the husband's heirs (the third party) to maintain the widow. A better resolution would be to restrict the husband's testamentary powers so that he would be obligated to leave a specific percentage of his property for his dependents (Gopal, 1993) [6].

- v. **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.

• Women in Muslim law

Islam means serenity, and obedience. According to Agnes (2004) 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 (Mashhour, 2005) [9]. Islam introduced a system in which there would be no discrimination between male and female and will have the equal rights but the reality is just reverse to this. There is big gap between the scriptural i.e. the Quranic proclamations & Sharia'h formulation. The Quranic pronouncements are purely supermundane while the formulation of Shariah has been influenced by thinking of human beings on related issues of the lives. 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. The transcendental divine spirit was conveniently ignored & the prevailing situation was rationalized through contextual Quranic pronouncements.

- i. **Age for marriage:** Islam has laid down no age limit for marriage. Age of marriage depends on puberty, which may vary. So girls may marry early as they mature early. So marriage depends on the biological characteristics of the girls rather than the age, this is very astounding.
- ii. **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. That means as per the above law a single man has an equal status to two women. A woman is half to a man. This kind of discrimination is very ignoble to a woman.
- iii. **The aim of marriage:** In Islam 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 seems like women are just like objects that are used by men. The women don't get the respect which they deserve after marriage.
- iv. **Right of consent of marriage:** She has no rights, not even in the selection of her husband and determination of her own destiny. She cannot show her desire to get marry to a particular person.
- v. **Mahr:** Marriage is like a contract in Muslim personal law. At the time of marriage mahr given from the girl's side, no such rule for the boy's side. There is gender disparity.
- vi. **Polygamy:** In Islam polygamy is a very contentious issue. It is a manifestation of how Patriarchal interpretation can prevail and dominate (Mashhour, 2005) ^[9]. The sanction for polygamy among Muslims is traced to the Quran iv.3: which states "You marry two, three or four wives, but not more: but if you cannot deal equitably and justly with all you shall marry only one (Chawla, 2006) ^[3]. 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 Indian Penal code & the offspring of such a marriage are illegitimate. 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. These kinds of humbugs are really shameful and disrespectful for a woman.
- vii. **Divorce:** There was no limitation on the power of the husband to divorce the wife. If was sufficient to write a bill of divorcement dismiss the wife for no cause whatsoever the wife having no power to divorce to husband nor to apply even to the judge nor to release her from an irksome bondage. Particularly the method of divorcing the wife by the husband by pronouncing triple "Talak" is highly discriminatory. Recently the Allahabad High Court has held that the practices of the triple Talak is unlawful and void (Chawla, 2006) ^[3]. According to Muslim Law, any husband, who is of sound mind and has attained puberty, may divorce his wife whenever he desires, without assigning any reason at his whim or caprice. The woman has no absolute right to obtain a divorce in Muslim Law. She has that right only under certain specific contingencies.
- viii. **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 idaat period settlement. In 1985 the famous Shah Bano judgment on the right of a divorced Muslim woman to get maintenance was pronounced by the Supreme Court. The case was filed by Shah Bano, who had been thrown out of her house by her husband after thirty years of marriage. When she asked for maintenance in the court of the judicial magistrate, she was divorced by her lawyer husband who maintained that he had already given her mehar and maintenance and was not liable to pay any further amounts. The magistrate awarded a princely sum of Rs. 25 per month to Shah Bano and this sum was enhanced to Rs. 179.20 per month by the high court. Not willing to pay even that amount, the husband appealed to the Supreme Court, saying that he was not liable to pay any maintenance beyond the iddat period according to his personal law. The court held that the provision regarding the maintenance will applicable to all communities, that section 125 of criminal procedure code had been enacted in order to provide a quick and summary remedy to a class of person unable to maintain themselves and further that the religion professed by the party cannot have any repercussion on the applicability on such laws (Bindra, 2007) ^[2]. 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.

- ix. **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. In pre-Islamic days woman had no right of inheritance. In some communities in Jammu and Kashmir, a daughter can succeed only in the absence of all male agnates of the deceased (Saxena, 2008) ^[12].

• Polygamy in India

Polygamy exists among both Hindus and Muslims. Though it has no legal sanction but the incidence of polygamy among Hindus are higher than those of Muslims.

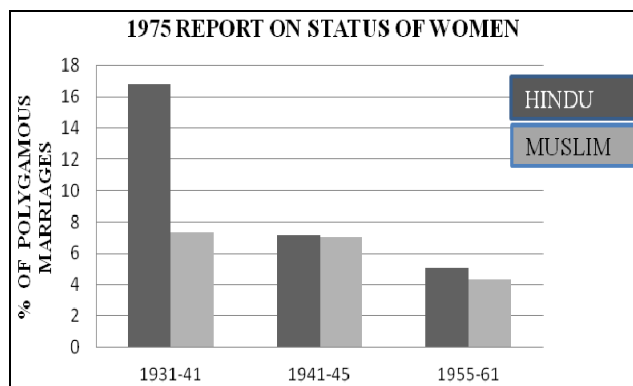


Fig 1: 1975 Report of the committee on the status of women in India.

Let the facts speak according to the 1975 report of the committee on the status of women in India, 1937-41, 1941-45, and 1955-61. The percentages of polygamous marriage among Hindus were 16.79, 7.15 and 5.06. The corresponding

percentage for Muslims was 7.29, 7.06 and 4.31 (Mukherjee, 1998) [10]. So polygamy is not only in Muslim community as polygamy is acceptable in Muslim religious personal law but it also exists in Hindus without the mentioning in the personal laws.

• Religious Personal Laws: Hurdle in the Path of Women

We have seen that there is Gender Inequality in our religious personal laws. Somehow Religious personal laws promote patriarchy for instance in Muslim personal laws marriages occur due to consent of parents and there is no specific age of marriage also so, it may cause to early marriages. If early marriage happens then definitely there will be lack of education. In our country, it is considered that if girl is not educated then give more dowry so that it can be compensated. Dowry further leads to Domestic violence. Dowry occurred from Religious personal laws & now it has become the taboo for our society.

As many as 15,000 women annually are killed by their husbands in disputes over dowry. Reported dowry deaths have increased by 170 per cent in the past decade. Thousands more are injured and maimed because the husband, 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. 4000 women are burned every year (Sinha, 2010) [13]. The international centre for research on women, in a study on domestic violence, found that 12% of Indian women cited dowry harassment as the cause of domestic violence (Kashyap & Panchal, 2014) [8]. 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 somehow many societal issues emerge from the religious personal laws along with the gender inequality.

Conclusion

"Half of the Indian populations too are 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" said by Justice K. Rama Swamy (Chawla, 2006) [3]. As said by Justice Rama Swamy there is discrimination with girls in India. There are various religions and personal laws too, which were formulated as per the necessity of particular religion. Religious personal laws have been shown discrimination with the women. There are mentions of many discriminatory jurisprudence for the women. Such discriminations are not present in Civil laws. The civil laws have better position of women as compare to religious personal laws. In Muslims the position of women is very bad, as muslims follow religious personal laws very strictly. It can be due to patriarchal set up and culture of dependency of women on men in India. 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.

"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" (Kader, 1998) [7].

Religious personal laws really suppress the women. 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 his lap then always education play a very important role to pull it from the bottom. So women can improve their status by being an educated woman and also if there will be an educated society then it will think about the rights of everyone. The taboos and societal issues can be eradicated by spreading the awareness among the people regarding the equal status of men and women. Let the women fly in the sky by removing the oppression posed on her and enlighten her world with new dreams, aims and aspirations.

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