



LEGAL PLURALISM AND GENDER JUSTICE IN MARRIAGE: A COMPARATIVE STUDY OF PERSONAL LAWS

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Abstract

Indian legal pluralism presents a separate challenge to the gender equality sphere by involving elements related to marriage and the family as personal laws. The differences in Hindu, Muslim and Christian matrimonial law in India as Hindu, Muslim and Christian law remain as important examples are compared. This assessment aims at examining the means through which the aforesaid legal frameworks introduce or restrict the use of gender justice principles. This issue is further examined in the research regarding issues on marriage, divorce procedures, inheritance laws, and maintenance favored by Hindus, Muslims and others. Noteworthy about the case is that other side has been generating most of the issues that include triple talaq in Muslims, inheritance rights of women in different communities, and the age of marriage for women. This paper would be divided into two main parts. Discuss the historical development of the personal laws and their influence on gender equality within matrimonial relationships. In addition to that, it touches upon significant debates going on the family, norms and the advocacy efforts to repeal the gender discriminating laws and to bring about the equality. Eventually, this research contributes to the comprehension of the multifaceted aspects of legal plurality, women rights and cultural diversity within the Indian legal system, providing recommendations that could be acceptable by policy discussions and advocacy strategies aiming at inclusive and gender just marriage laws.

Keywords: Marriage, Personal Laws, Gender, Justice, Equality

1. INTRODUCTION

In legal pluralism, as in India, many legal systems work side by side to determine matters of a personal nature within varied religious communities such as marriage, divorce, and inheritance. Individuals in India are governed by the law of the land based on their religious faith. The laws applicable to people of a particular religion draw from their different religious traditions. Thus, this is the complex relationship of the gender justice in marriage that is within the law framework. Furthermore, in the context of the gender justice in the setting of marriage maintaining legal pluralism we encounter the need for the personal law's investigation. All these areas have their own different regulations and customs relating to marriage, divorce, alimony, and inheritance, which have great effect on the notion of gender justice. For example, Hindu succession act of 1956 and Hindu marriage act of 1955 have been reformed in such a manner to promote gender equality in inheritance and marriage under the Hindu personal laws. These legal frameworks have authorized women claims to inheritance and have turned down the vices like child marriage and polygamy. On the one hand, in India, Muslim personal laws, which are founded on Islamic principles, are often accused of discriminating, especially against women when it comes to divorce (talaq), maintenance (nafaqa), and inheritance (mirath). Procedures, such as triple talaq, where a Husband who can unilaterally divorce his wife pronouncing Talaq thrice in

a row, appeared to be very triggering in the discussions around gender justice and the legal reforms. Likewise, the personal laws of Christians in India are legislated through In the Indian Christian Marriage Act which is the law which regulates Christian marriages and marriage inheritance among Christians. Similarly, these laws play out in questions of gender, injustice and order in the world.

2. HISTORICAL DEVELOPMENT OF PERSONAL LAWS

Before the advent of Muslims in India, the term 'Hindu' had no creedal connotation. Then it had a territorial significance; probably it also denoted nationality. It seems that the word 'Hindu' came into vogue with the advent of the Greeks who called the inhabitants of the Indus valley as Indoi and later on this designation was extended to include all persons who lived beyond the Indus valley. Today, the term 'Hindu' has no territorial significance, nor is it a designation of nationality.

The Hindu community traditionally had unfettered authority to make their own personal laws. There was no specific TV about religion at this point. The Hindu era witnessed the administration of the society by sages who also relied upon the Vedas and other religious texts for matters concerning the personal laws. The sages were

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running the society during those times. The laws created by priests did not only address religious rituals, but had ethical and moral characteristics. There were common laws that were introduced by the clergymen of the society. There was no distinction between civil laws, religious and social rules. During this period the society was based on 'Dharma'.⁸¹ There was no segregation between law and religion. The king had very little authority to make laws and was required to govern according to Dharma. At the time of coronation, it was necessary for the king to take a vow that he would respect the laws and that he would not change them according to his desire. Therefore, it is evident that Dharma was the rule in Hindu India. From this description it is seen that in Hindu India, the society had supremacy over the state and religion. Thus, the laws were regarded by the Hindus as an integral part of their religion.

The advent of the Muslims in India marked the foundation of a new era in the legal history of India. In the eighth century it was the Arab Muslims who first came and settled down in the Malabar Coast and in the Sind. Towards the end of the eleventh and the beginning of the twelfth century began the downfall of the Hindu period. The old Hindu kingdom began to disintegrate gradually. The political history of this period is full of constant struggles between a few powerful states for supremacy. An atmosphere of great mutual doubt was created amongst the contending states which prevented their political unity against the common enemy. It resulted in the frittering away of the economic and military resources of the country at a time when the country faced greater danger from foreign invaders. A proper leadership capable of controlling and guiding the political and military talents and uniting Indians against the common foreign enemy was also lacking. The enemy took full advantage of these weaknesses. Subsequently the Muslims invaded and acquired the territory of India.

The whole of Shariat law was never indiscriminately and rigidly applied to the Hindus in India. In fact, it has been said in the very Shariat itself that whole body of the Islamic law is not applicable to the non-Muslims. A systematic judicial procedure was followed by courts during the Muslim period. It was mainly regulated by two Muslim codes, viz. Fiqh-e-Firoz Shahi and Fatwa-e-Alamgiri. According to Fatwa-e-Alamgiri also non-Muslims are not subject to the laws of the Islam; their affairs should be regulated according to the principles of their own religion. Islamic law has interfered with non-Muslims only where they were directly or indirectly involved with Muslims—a good example is criminal law where Islamic doctrines were applicable to both the Muslims and non-Muslims.

3. IMPACT OF PERSONAL LAWS ON GENDER JUSTICE

Gender justice perspective on the Indian law of personal has been proved to be very important because these laws regulate issues related to marriage, divorce, inheritance, and custody. Nevertheless, they have been targeted with accusations that they may be a source of discrimination which in turn exacerbates gender inequality. One of the most burning issues in the matter of personal laws in the Indian is the practice of instant talaq, a kind of divorce

which is permitted in Islamic Sharia. This tradition has generally received much criticism as within it only the man can divorce her wife without a legal recourse to the woman being in place. In 2019, the Indian authorities adopted the rule prohibiting triple talaq which was considered a measure on the way to ensuring gender justice and equality of Muslim women.

Also, the inheritance laws in India which were against female heirs were another criticism for women. Like for instance, the Hindu Succession Act, 1956 did not permit daughters the equal rights as that of son to inherit the property, but was amended in 2005 that now daughters have equal rights as that of sons to inherit. Regardless of this, they persist to adhere to traditional ways that do not allow women to obtain their property. Personal laws, in India, in the case of domestic violence and marital rape have also borne the brunt of being inadequate in providing protection and justice for women. Lack of special law criminalizing marital rape in India has become a great obstacle to overcome this episode of violence against women. Personal laws in India play an important role in gender justice, and therefore they need to be amended to ensure that they are no longer restricting gender equality and provide the same rights and protection for all the individuals, irrespective of gender. Rights-based amendments and modernization of personal laws should be aimed at creating a society where the principle of gender justice and equality becomes the core pillar of the legislation.

4. GENDER JUSTICE AND MUSLIM LAW

Gender equity in the framework of Muslim marriage law remains a controversial and delicate issue after the discussion and debate for long. In Islam, precise and significant that as it is meant to be built on mutual respect, love, and cooperation between partners relationship is viewed. While some features of Muslim marriage law are appreciated for giving women more protection and voice, some others have also been criticized as unfair towards women. During the debate on gender equality in the Muslim marriage law a certain problem is brought up related to practice of polygamy. Islamic men may have up to four wives but they must know how to live their wives with fairness and equality. Nevertheless, the issue of polygamy still has its critics not because its causes abuse and mistreatment of women, but also because the power imbalances between the two genders are evident. There is also a discussion of the rights of men in talaq that means the right of a husband to divorce that come with gender equity in marriage laws in Islam. According some schools of Islamic law, a husband can divorce his marriage by just saying it thrice without any proceedings or the presence of a court. The fact that this custom may lead to women being susceptible to an unjustified and arbitrary marriage dissolution, with no protection whatsoever for women when a divorce does occur, has been a subject of condemnation among many people. Recurring controversies concerning the Muslim marriage law have instigated activism within the Muslim community to counter these issues and seek gender justice. Particular Muslim scholars and activists have claimed that the marriage custom that promotes the rights and sanctity of both sexes should be the basis of a more uniform religious teaching.

5. GENDER JUSTICE AND HINDU LAW

Quite complicated subject of gender equality in Hindu law of marriage in India, where the many activists and public support the reforms which will provide equality and empowerment for women in a married status are. From the very beginning, the laws of marriage in Hindu tradition have been conservative, while their females are getting little access to the rights and freedom within the marriage. The practice of dowry is one of the majorly connected to the marriages in Hindu India since ages is a major point of debate. Dowry is a payment or owed by the bride's family to the groom's family occurring during the wedding process. This custom, unfortunately, has had a denotation of gender violence and discrimination against ladies: it has forced a lot of money and gifts upon bride's relatives, which impose a tough financial burden and can even trigger violence.

In recent years, these issues had been the main focus of the progressive movement aiming at advancing gender equality and justice in Hindu marriage provisions. The Hindu Marriage Act of 1955 was a very significant step forward in many senses. Said legislation not only gave women equal rights with men but also defined a frame of restrictions, stipulations, and rights for married women in different situations such as divorce, maintenance in case of separation and inheritance. Yet, the journey is not complete. Undeniably, there are quite a few steps to take so as to achieve the equality of all genders under the Hindu marriage cards in India. Some key areas for reform include: Some key areas for reform include:

- i. The first thing is to speak out against and phase out the tradition of dowry and to make laws and also enforcement system tougher to prevent dowry-related violence and harassment of women.
- ii. Stabilizing the property rights of women, particularly in the marriage through securing their right to inherit ancestral property and the ownership of shared property amidst the marital dispute.
- iii. Consolidating lawful protections allotted to women through established legal mechanisms when dealing with domestic violence and abuse women endure inside their marriage.
- iv. Thus, creating consciousness and mentoring through gender equality and women's rights in all the social settings and life calls for action.

The push for gender justice in Hindu marriage laws in India is an ongoing struggle, but one that is crucial for promoting the rights and dignity of women in marital relationships. It is important for lawmakers, activists, and society as a whole to continue working towards a more equitable and just legal framework for Hindu marriages in India.

6. COMPARATIVE ANALYSIS BETWEEN PERSONAL LAWS GOVERNING MARRIAGE IN INDIA

The Hindu Marriage Act of 1955 applies to Hindus in India whereas the Muslim Personal Law (Shariat) Application Act of 1937 is applicable to Muslims. A

comparison of gendered justice between Hindu and Muslim laws related to marriage in India entails delving into different aspects of law, society, and culture. Indisputably, the Indian legal system has personal laws for different religions, namely, that of Hinduism and of Islam, that govern matters of marriage, the divorce and inheritance within their respective communities.

Marriage

Hindu Law: According to Hindu law, marriage is considered to be a sacrament and the Marriage Act of 1955 governs marriage, divorce and succession of Hindu, Buddhist, Jain and Sikh communities. The Act helps to offer equal rights to both spouses in terms of marriage and divorce procedures.

Muslim Law: Marriage is a contract as per Islam and the Muslim personal law in India allows men to marry more than once (up to four under certain conditions). Nevertheless, the Muslim Women (Protection of Rights on Divorce) Act, 1986, grants the right of maintenance and property after divorce to Muslim women.

Divorce

Hindu Law: The Hindu Marriage Act, 1955, is a legislation that allows for divorce on the basis of cruelty, adultery, desertion, conversion to another religion, mental disorders, and incurable diseases. Not only can each partner ask for the divorce.

Muslim Law: Islamic law provides for divorce in different forms namely, talaq (divorce initiated by husband), khula (divorce initiated by wife) and mubarat (mutual divorce). Talaq has faced reprimands for unilateral and instant divorce, urging legal changes like the Muslim Women (Protection of Rights on Marriage) Act, 2019, which outlaws instant triple talaq.

Maintenance and Property Rights

Hindu Law: Equal rights of daughters in ancestral property is provided by Hindu Succession Act, 1956. And Hindu Adoption and Maintenance Act, 1956 bestows upon wives, children, and dependent parents' maintenance rights.

Muslim Law: Muslim women, under Islamic law, have rights to be maintained by their husbands during the marriage and after the divorce is final. On the other hand, inheritance laws may differ according to individual interpretations and customs, thus making property law inequitable in effect.

Polygamy

Hindu Law: The Hindu law does not allow polygamy, and a Hindu husband has only one wife at a time according to the Hindu Marriage Act of 1955.

Muslim Law: The Islamic law allows polygamy with some conditions like giving each wife adequate attention and financial support.

Reform Movements:

Hindu Law: Over the years, Hindu laws of person have seen reforms aimed at achieving gender justice, such as amendment of inheritance and property rights, protection of women from domestic violence under Protection of

Women from Domestic Violence Act, 2005 and granting of equal rights in ancestral property to daughter by Hindu Succession (Amendment) Act, 2005.

Muslim Law: Albeit Muslim personal laws have faced criticism and reformation in connection with triple talaq, polygamy and gender rights in marriage and divorce. The first Muslim women (Protection of Marriage Rights) Act, 2019, was a meaningful move towards safeguarding Muslim women from forced divorce rituals.

Societal and Cultural Factors

Hindu Society: The India Hindu society is a vast mosaic of marriage, inheritance, and family structure patterns. The modern legal reforms are to level up the existing practices in line with gender equality and justice.

Muslim Society: The Muslim society in India has also been pluralistic, with dissimilar interpretations of Islamic law playing an integral role in the institution of marriage, divorce and inheritance. The discussion and debate is continuously ongoing regarding the conciliation of the Muslim's personal laws with the contemporary notions of gender equality.

Equal Rights

Hindu Marriage Act: The law stipulates those mutual rights of men and women in marriage. The parties of both the sexes may ask for a divorce, property access, or maintenance.

Muslim Personal Law: The law receives a reaction, which finds it puts men first. In the Islamic law, men have the power over their wives to divorce as they desire, but women have a scarce share in the process of divorce.

Custody of Children

Hindu Marriage Act: Under this Act, the mother is the one that takes the baby for custody until the child becomes five years old. Beyond the age perspective of 5 years, the child's protection comes into play.

Muslim Personal Law: In the Islamic laws, the mother is granted with custody of children until they reach the age of about (seven for boys and nine for girls). These options can also include custody of the father or other family members.

Although the Hindu and Muslim personal laws in India have been revised to increase fairness for women, some stringent laws and procedures still require further discussion and legal amendments which will be a continuous process. The task of balancing religious traditions with constitutional concepts of equality and fairness with regard to gender justice requires a more conducive social legal framework for all areas of India. While the Hindu Marriage Act and Muslim Personal Law in India both contain some requirements for the female, the former is generally equated with gender and equality which is mostly absent in the latter. The critics of Muslim Personal Law have expressed their frustration with the denial of equal treatment in regards to the matters of divorce, maintenance and so on.

7. LEGAL REFORMS AND JUDICIAL PRECEDENTS

In India, personal marriage laws that govern the unions are based on religious customs and traditions, with each religious community having its own law for Hindus, Muslims, Christians, and others. This has, therefore, created a complicated legal scenario in which individual minority members are governed by different laws on the basis of their religious affiliations. Of late, there are demands for personal laws remodeling to ensure gender fairness in the union. Indian authorities reformed India's law in addressing issues of gender discrimination, inequality and violence within marital relationships among others. An illustration is the Muslim Women Act on (Protection of Rights on Divorce), 1986, which had the objective of upholding Muslims women's rights in divorce proceedings. Alongside judicial precedents in India, the promotion of gender justice in marriage is also seen as taken to the next level. The Supreme Court of India releases a number of remarkable verdicts that have added more rights of women, such as saving marriage, owning property and receiving maintenance. For instance, in the decision of *Shah Bano v. Mohd. As a result, Ahmed Khan case*, the Supreme Court ruled that Muslim women shall receive maintenance beyond the Iddat period.

1. Legal recognition of marital rape: Marital torture is not defined as a crime in India. The legislation should be amended to consider all acts of sexual violence within a marriage as a punishable offense.
2. Equal rights in marriage: Both in a marriage, there must be equal rights and duties equally shared. The container of these rights is made up of property rights, decision making power, and access to resources.
3. Strengthening laws against dowry and domestic violence: Courts should apply strictly the laws prohibiting dowry and domestic violence, and the perpetrators should be brought to book.
4. Education and awareness: It is advisable to run on a broad scale project of educational and awareness campaigns that change the public mindsets on gender roles and stereotypes of marriage.

Judicial Pronouncements

Navtej Singh Johar v. Union of India This landmark judgment criminalized homosexuality that have brought freedom of choices for people of what their sexual orientation and identity are. The judgment was seen as an indication of the value of independence and the provision of equality to all, including male and female citizens, and persons of all sexual orientations.

Shayara Bano v. Union of India This case put in question the using of instant divorce custom by Muslim men in India. The Indian Supreme Court annulled the custom of oral divorce and its violation of women's constitutional rights, giving Muslim women a better legal setting and protection in divorce and marital proceedings.

Sabarimala Temple Entry Case In this context, the honorable Supreme Court of the India announced that the rule restricting women of menstruation age (10-50) years from going inside the Sabarimala temple of Kerala was

illegitimate and discriminatory. The judgment highlighted the significance of gender equality and the necessity to decline from discrimination grounded on the biological specifics.

Indra Sarma v. V.K.V. Sarma In this context, the Supreme Court of India has granted freedom to a married woman to live, independently from her husband, considering her as a separate legal entity and the owner of property. The decision outlined the significance of women's personal autonomy, financial independence, and economic power in marriage.

Vishwa Lochan Madan v. Union of India This issue of widow discrimination, as treated by the Hindu Succession Act in which women got the lesser share in inheritance compared to male heirs, has been brought forth by this case. The Indian Supreme Court ruled in favour of gender equality in an approximately number of heiress right cases, where all sexes are treated equally on the basis of property management.

8. CONCLUSION

The legal pluralism, as outlined in the world within marital concerns, clearly affects the gender relationships. The existing coexistence of various legal systems may hold within themselves different and often opposing sets of norms and operations that make the enjoyment of women's rights or freedoms more complicated. The institution of marriages has been tool through the ages to maintain gender bias, by ensuring already existing gender discrimination and inequality. This study lays emphasis on the need to reform and synchronize the personal laws so as to achieve fairness and social justice for the benefit of all people irrespective of their religions and cultures. Actions geared at promoting legal reforms should concentrate of women's rights protection, with their right to autonomy, economic independence, and freedom from violence being a core aspect. With time, legal systems also need to adapt accordingly to the changes in societal preferences and common values to allow for the full extent of gender equality. If gender discrimination is going to be eliminated in marriage, this calls for integrating the complexity of gender, religion, culture and the law into the approach being considered. Through identifying the specific difficulties that women encounter in numerous legal systems, policymakers and actors can develop bigger and better strategies to build a more balanced and acceptable legal system that takes care of the rights and dignity of all people.

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