

Envisioning and Striving towards Gender Justice

FORUM AGAINST OPPRESSION OF WOMEN

The efforts of the secular women's movement have ensured that the debates on family laws are no longer framed in terms of uniformity, but gender justice. Progressive and forward-looking laws addressing familial violence, a range of partnerships and living arrangements, property and inheritance, divorce and maintenance, guardianship and custody, and disenfranchisement within families, will serve as an impetus for social change.

The recent Supreme Court judgment setting aside the practice of triple talaq, or talaq-e-biddat uttered at one time, that affect women in Muslim communities, has once again brought the question of gender justice for all women in this country centre stage. The triple talaq case had several petitioners who challenged the validity of the practice, with several women's petitions joining that of Shayara Bano who initially took her case to the Supreme Court in 2016. Alongside these petitions were those of several secular and feminist groups who challenged the constitutionality of the practice. There were also some women's groups that said that it was an un-Quranic practice. All these petitions based on the claims of Muslim women's right to equality were opposed by the All India Muslim Personal Law Board, a non-governmental organisation claiming to speak for the rights of the community. Ultimately, the Court delivered a majority judgment setting aside triple talaq uttered in one instant, with two judges out of five saying it is unconstitutional and one judge saying it is un-Islamic and therefore, illegal.

Beyond 'Personal Laws'

This particular case that represented a composite set of petitions, a majority of which were from women affected by the practice of triple talaq, highlighted the inequality experienced within marriage, as an institution, by women from Muslim communities. In fact, personal laws are referred so, since they deal with the personal sphere of the individual—the family—as against the public sphere. And whenever women have sought to challenge practices that discriminate against them in this personal sphere of the family—related to marriage, divorce, maintenance, inheritance, property rights,

custody, guardianship, and adoption—they have always fought on the plank of gender justice. Although, the Directive Principles of State Policy enjoins the state to enact a uniform civil code, it is due to the efforts of the secular women's movement that the debate is no longer framed in terms of uniformity, but *gender justice* in family laws. Such a notion of gender justice is contained in the fundamental rights guaranteed by the Constitution, guaranteeing justice to all women thereby minimising the divisions among them; for instance, in the case of preventing child marriage or now the challenge to marital rape. Uniformity is a misnomer when it is justice and equality that women have fought for, challenging the patriarchal power of the family and community.

Literature abounds with discussions on the history and emergence of personal laws; hence, the focus here is to address gender justice within the contemporary lived realities of people. Within families, women and children have to struggle against violence, abandonment, destitution, arbitrary practices such as denial of custody of children to women, property rights, and other forms of discrimination from entitlements and economic rights.

While this is the situation of discrimination within the familial sphere, neither the state nor society recognises the value of the labour of women within the private sphere. On the one hand, there is a complete lack of recognition of women's domestic labour within the private sphere. On the other hand, in the public domain, their primary role within marriage and family tends to relegate them to low value, insecure and unprotected forms of labour largely in the informal sector. Thus, for a majority of women in this country, marriage and familial obligations are a source of livelihood, despite being part of the working class.

Within the women's movement, seeking new laws or amendments to existing laws in consonance with the principle of gender equality and in keeping with the changed realities of women's lives, as well as that of marginal groups, has been part of the campaigns for social

transformation. But this secondary situation of women within the private sphere (where women share their lives and intimacies with others in families) as also the further marginalisation of women through their division into multiple categories of castes and communities, has been a matter of concern and a challenge for women's unity in the struggle against patriarchy.

There have been instances earlier, during the discussions on the Hindu Code Bill that later translated into watered down piecemeal provisions and the Shah Bano case, when the state buckled under pressure to religious patriarchal forces, thereby denying women gender justice within the familial sphere.

A Vision for Gender Justice

In striving towards a vision for gender justice, feminist groups have campaigned through laws as a mode of attaining social transformation. However, existing laws often do not help women realise gender justice, while their accessibility continues to be a challenge to a majority of women. And yet it is envisioning laws that are responsive to our changing social and economic conditions that will ultimately take us towards justice—of seeking equality despite our diverse and unequal social existence, within families, castes, communities. This was also in keeping with substantive gender justice, and not a majoritarian notion of uniformity that upheld the privileges of men in dominant groups.

Several questions have been raised, such as what sorts of laws will provide justice to all women? Can we imagine laws that reflect the realities of women's lives? Can there be both laws and its mechanisms of justice delivery that will be equitable and accessible? Such questions fired a vision document exactly 20 years ago. At that time, the stirrings of queer and autonomous feminists within the women's movements posed this vision in terms of hetero-relational and homo-relational realities as the basis of how a dynamic response should inform laws governing our intimate social interactions, which constantly need to be reformed and updated, as the norms of what is acceptable and unacceptable

keep changing. The touchstone was to safeguard the rights of *all* women, while being responsive to the realities of those at the margins of caste, class, patriarchy, and dominant sexual norms.

The role of law, as those envisaged by some groups within the women's movement, is that it has to be progressive and forward-looking, and serve as an impetus for social change. This will then seem advantageous to women, who often approach the law only when all other modes of dispute resolution have been exhausted. Additionally, the mechanisms in the enforcement of laws have to be fortified, accessibility enhanced and procedures of the justice system smoothened. Social and governance systems of support have to accompany these legal systems for women to convincingly access the law. Such provisions in the law that were gained through struggle have to be publicised by the state, which is the least it can do in response to how movements hold it accountable to its citizenry.

Revisiting the 'Family'

In revisiting this vision in terms of justice, the family needs to be recognised as a site that mediates most, if not all of our intimate or "personal" relations irrespective of caste or class. Over the last couple of decades, there have been scant developments in terms of laws recognising violence within this sphere. In 1983, following the Criminal Amendment Act, Section 498A of the Indian Penal Code recognised cruelty to wives within marriage by husbands and members of his family. Subsequently, the Protection of Women from Domestic Violence (PWDV) Act, 2005 attempted to provide civil remedies, such as access to the matrimonial home, the property jointly acquired and built through the labour of all in the family, and other forms of maintenance and compensation. Marital rape still eludes justice. Cruelty and violence against children, specifically sexual violence, has only in 2012 seen the light of some remedy through the Protection of Children from Sexual Offences (POCSO) Act, 2012. Civil remedies for familial violence are still hard to come by.

The vision stated that at the core of this lack of justice to women, children

and other marginal groups is the heteropatriarchal structure of the family and the ideologies that support it. The understanding of the notion of family or intimate living arrangements have to move beyond this, to incorporate living arrangements outside of marriage, in diverse forms of partnerships and contracts that need recognition. These include same sex partnerships, communal living arrangements among transgender communities, families that include the very old and the very young having no adults in the labour force, single women headed households, and so on. Legal and social recognition of such arrangements would liberate marriage as an institution which is the seat of all conservative ideologies and is unequally structured. The vision envisaged is that while the status accorded to heteronormative, homonormative, and all other forms of contracts have to be equal, the laws governing these relations cannot be the same as the social recognition of the realities of the individuals is still obscure.

Limitations of Marriage for Women

In the current juncture, marriage is mostly seen as a sacrament but is an arrangement that gives men more control over social relations within it, with women obtaining the status of son-bearers. Instead, intimate relations, even if it were to be marriage, should be bound by a legally prescribed contract for companionship and commitment, entered into by consenting adults of any gender above 21 years. Cohabiting adults would have the same rights as married partners. The contract would include the means and mode of ownership and division of property, maintenance, including rights of partners to the matrimonial property and home, and decisions related to children and their future.

Similar to the lack of social recognition of women's labour in the domestic realm, the right to residence within the matrimonial home is never accorded with certainty due to the manner in which the patrilocal institution of marriage operates in our patriarchal society. Hence, the matrimonial home as the residence of a married woman has to be ensured in law, along with an equitable right of ownership

and access to all property belonging to the partners at marriage. Not only this, but the labours of women that go into maintaining the household and into care labour of the members of the household should accrue in the form of maintenance and hence, would need to be calculated by incorporating all her contribution in the household. In this way, maintenance would be an entitlement and not charity. If husbands are employed, the employers are liable to ensure the maintenance.

Guardianship is a joint responsibility, where both partners are natural guardians of the children. The struggles and campaigns of individual women have ensured piecemeal access to rights of guardianship and custody, inheritance, or right to divorce and maintenance. Gender-just laws will ensure that these rights are equitably accessed by all women from any background of caste and religious affiliation, as well as persons from marginal groups/non-normative genders and sexualities.

Breakdown/Dissolution of the Marriage Contract

The breakdown of contracts should be left to the judgment of the consenting parties to the contract, while the legal machinery should intervene in arriving at a fair settlement rather than opining on the validity of the dissolution. No-fault divorce should be the norm following six months of the establishment of the contract, and irretrievable breakdown of marriage should be a clause available to both partners.

In a patriarchal society, men need to be subject to strict conditions of respecting the terms of the contract and fulfilling all commitments and obligations. Due to the status of dependency that women are subjected to within marriage (which they see as a source of livelihood and sustenance, and which forms the basis for discrimination within society), in the event of any breakdown, there has to be sufficient compensation and settlement ensured by the legal system. Adequate material compensation is the only viable means to avoid the destitution of women through breakdown in the institution of marriage.

Further, custody of children should go to the parent who has predominantly committed to the caring and upbringing of the child. At present, international migrant wives are struggling to seek the custody of children, resisting charges of kidnapping by well-established husbands and negotiating with patriarchal states that refuse to stand by their women citizens.

Inheritance and Care

Inheritance is one of the most contested of social relations within families. It was only in 2005 that the Hindu Succession Act of 1956 could be amended, thereby obliterating discrimination in women's access to landed property. Thus, radical visions for equitable rights in property and inheritance would need strong political will. The vision is that only children and dependent parents can be legal heirs. If there are no heirs and the person dies intestate, then the property will be put into a social security fund. However, if there are several dependents and the primary earning members of the family die or the family breaks down, the young and old dependents need to be supported through *social security* rather than the family. The notions of ancestral and coparcenary rights ought to be relinquished. This can be a radical step towards addressing wealth inequality. All property is either inherited or self-acquired. Adoptive and biological children will inherit from parents. Since there is deep socio-economic inequality that coexists alongside the immense wealth that a few possess, the notion of an inheritance tax could be another means of achieving socio-economic equity. Needless to say, its corollary would be that no form of family should enjoy tax exemption or tax rebate of any sort.

Women Disenfranchised within Families

Just as the state has ensured employment guarantee schemes, such as the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), 2005 as a means of social security for the rural poor in the context of jobless growth, so also the state must introduce provisions in law to provide social security for women and other marginal individuals within

the marital home and family. This will ensure that women, whose marriages dissolve or find themselves abandoned and deserted, would not find the access to justice a long haul. The concept of social security should be broad enough to ensure the inclusion of all dependents.

This will not seem far-fetched if we take stock of the social reality of a majority of women, old people and the very young in this country, who are in families where the men are mostly employed in the informal sectors and that find accessing courts burdensome. Marriage, as the only means of providing economic security to women, needs to be undermined through state provision of housing facilities through working women's hostels, preferential housing for single women at subsidised rates, short stay housing for migrant women and so on.

The state's provision of welfare to individuals, presumed to live in families, ought to be accessible to women and all dependents as much as social security is available to workers. While it is a fact that the latter is still a far cry for workers in the informal sector with the persistent onslaught of capital over labour and the continuing precarity of workers in this country, that should not preclude the state from offering social security to women who seek maintenance for their contribution to the family.

Seeking to achieve gender justice and paving the way for formulating gender-just laws has primarily to be a consultative process with women who have themselves approached the existing laws in search of justice. Organisations in the women's movement, who have stood by women seeking legal remedies and who have long years of struggle behind them, could be the spokespersons for gender justice. It is only then that gender justice will not just remain within the reach of heteronormative cis men alone!

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