

## GENDER INEQUALITY IN RELIGION AND PERSONAL LAW IN INDIA

By

—Dr. G. PADMA, Associate Professor,  
PMR Law College, L.B. Nagar,  
Hyderabad, A.P.

“Human rights are not worthy of the name, if they exclude the female half of humanity. The struggle for women’s equality is part of the struggle for a better world for all human beings and all societies”. *Boutros Boutros Ghali* — Former U.N. Secretary General. Women have a unique position in every society whether developed, developing or underdeveloped. It is because of various roles played by women during various stages of life as wife, mother, sister and daughter. In spite of her contribution in the life of every human being she belongs to a class or a group which has disadvantageous position on account of social barriers.

Undoubtedly Indian Constitution has enacted and enforced various laws to protect the women rights.

1. *Constitutional Law of India*: Promotes right to equality and prohibits discrimination against women.
2. *Criminal Law*: Has various provisions to deal with crimes committed against women Ex. Rape, Adultery, Kidnap *etc.*
3. There are no. of *labour and industrial laws* to safeguard the welfare of women. Ex: Maternity benefits, basic facilities for working women *etc.*
4. There are other laws which prohibit evil practices against women.
  - a. Dowry Prohibition Act 1961.
  - b. Immoral Traffic Prevention Act 1986 to prevent flesh trade.
  - c. Pre Natal Diagnostic Techniques (Regularization and Prevention

Act 1994) to prevent Female Foeticide & Infanticide.

- d. Domestic Violence Bill passed on Oct. 26, 2006. To prevent domestic violence against women.

There is uniformity in criminal, civil and other laws. But there is no uniformity in personal laws. While one’s religion determines which law will apply to him or her regarding marriage, divorce, maintenance, guardianship, adoption, inheritance, and succession<sup>1</sup>, a common thread woven through all of India’s religious personal law systems is the patriarchal dominance of men and the unequal treatment of women. Given the seemingly strong protections of gender equality in India’s Constitution, however, it is puzzling that the Indian Government can uphold facially discriminatory laws against women, especially when such laws affect women’s lives so intimately. In the name of protecting the rights of religious communities, Parliament has thus far skirted its responsibilities to some of the most vulnerable individuals within those communities – the women.

The religious personal law systems of India have not helped Indian women, nor have they been effective in protecting the rights of the religious communities in which Indian women live. Rather, the preservation of these separate laws has served to deepen the division between the majority Hindu population and minority religions, particularly Islam.

---

1. Laura Dudley Jenkins, Personal Law and reservations: Violation and Religion in Contemporary India, at 104.

In this presentation I would like to highlight the provisions of personal laws which are discriminatory against women in India.

### ***Personal Law:***

The laws which are based on religion are called as personal laws. The major religions in India are Hinduism, Islam and Christianity. Therefore discrimination against women under these religions are highlighted. The human relationships like marriage, divorce, inheritance, maintenance, adoption and guardianship are regulated by personal laws.

#### ***1. Matrimonial Legislations:***

*Hinduism:* Even though H.M.A insists on compulsory registration of marriage, minimum age limit often it is violated because of no strict implementation. Dowry is another evil which exist everywhere.

*Islam:* Muslim women are minority among minorities. Muslim laws are patriarchal in nature. According to Islamic laws marriage is a civil contract women is property and dowry in price paid to her. In India, only Muslim men may practice polygamy<sup>2</sup>. The husband can take four wives at a time.

*Christianity:* In practice the common Hindu customs are followed like dowry.

#### ***2. Matrimonial Remedies:***

Most of the personal laws provide matrimonial remedies like A. Restitution of Conjugal Rights. B. Judicial separation C. Divorce.

*A. Restitution of conjugal rights:* After marriage if any one of the spouse withdraws from the society then aggrieved party can claim restitution of conjugal rights.

Withdrawal from society without a reasonable cause is ground for Restitution of Conjugal Rights.

The interpretation of reasonable cause is left to the discrimination of the Court. Judicial experience reveals that when wife joins and serves a job at a different place is considered as withdrawal from society. Therefore it amounts to cruelty. This is gross violation of Fundamental Rights of Article 19(1)(e) Freedom to reside and settle in any part of India. Article 19(1)(g) Freedom to practice any profession. When there is a conflict between personal law and Constitutional law always Court maintains public and private spears distinct and interprets that cold principle of Constitutional law which weakens the marriage bond<sup>3</sup>.

*B. Judicial Separation & Divorce:* Hindu wife is blessed with Section 13 of H.M. Act she can get rid of unwanted or unhappy marriage. Under Muslim Law dissolution of marriage can be done without going to Court.

*Dissolution:* Marriage can be dissolved by any one of these 3 modes.

1. Talaq (unilateral desire of husband)
2. Khula (desire of wife)
3. Mubarat (dissolution by mutual consent).

The question is when the Muslim marriage is a contract how can that be dissolved unilaterally.

But interestingly AIMPLB<sup>4</sup> which is an apex body put up the issue of Triple Talaq in its Agenda for discussions and review. But desired effect was not achieved.

Later in Bhopal Declaration the AIMPLB adopted Model Nikhanama to avoid complications in relation to marriage but kept quiet on triple talaq.

2. Martha C. Nussbaum, women and human development: the Capability approach (229 to 30) e.d 2000.

3. D.H.C. Harvinder Kaur v. Harvinder Singh.

4. All India Muslim Personal Law Board

*Christian Laws* : Christian Divorce Act till 2001 was gender biased. In 2001 all gender biased laws were amended.

### 3. Maintenance:

All can claim maintenance under Section 125 of Cr.P.C. while awarding maintenance the Court considers the status of parties. But in practice the maintenance given to Hindu wife never exceeded 1/3 of Husband's income.

In 1978, a seventy-three-year-old Muslim women named *Shah Bano* was unilaterally divorced by her affluent lawyer husband after forty-three years of marriage. After becoming impoverished, she appealed to the Courts for maintenance under Section 125 of the Criminal Penal Code – a code that applies to all Indians regardless of religion.<sup>5</sup> Her husband argued that Section 125 did not apply to him because Muslim Law obligated him only to pay maintenance during the period of Iddat.<sup>6</sup> Ruling in *Shah Bano's* favour, Chief Justice *Chandrachud* of the Supreme Court noted that the Criminal Penal Code overrides personal law when there is conflict,<sup>7</sup> but the Court ultimately held that no conflict between the laws existed here because Islamic Law obligates husbands to provide maintenance to impoverished wives beyond the Iddat period in certain circumstance.

The *Shah Bano* decision outraged the Muslim community because a “non-Muslim secular jurist trained only in secular law interpreted significant Islamic Law principles, upon which there is not even consensus among trained Islamic legal scholars. Muslims were equally agreed over *Chandrachud's* disrespectful tone toward Islam. The opinion created further controversy because in

dicta, *Chandrachud* urged the Parliament to follow through on drafting a uniform civil code, thus reinforcing Muslim fears about losing group autonomy and identity. The interference with Islamic Law coupled with the threat of a Uniform Civil Code sparked Muslim protests nationwide. In response, the Congress Party rushed through Parliament the Muslim Women's (Protection of Rights on Divorce) Act. Despite its benign – sounding name, the Act was intended to reverse the *Sabah Bano* decision by exempting Muslim men from Section 125 of the Criminal Penal Code.<sup>8</sup>

After Seven years of litigation, *Shah Bano* renounced any award she may have received from the favorable decision, stating that she was unaware that what she was seeking was against Muslim Law. In the end, what is surprising is not her renunciation of the maintenance, but her strength in the face of so much opposition to fight for it in the first place. There are not many *Shah Banos*; the majority of the women in her situation will go unnoticed by the Courts.<sup>9</sup>

Christian Indian Divorce Act fixes the maintenance amount not more than 1/5 of husband's net income.

### 4. Guardianship :

Always women is given second position. Father is considered as the guardian. Now-a-day this trend is slowly changing, it is welcomed.

### 5. Right to residence :

Married women has no right to matrimonial residence unless she is divorced or widowed. This is a burning problem today. She has to live as a silent sufferer along with her husband.

5. Aylet Shachar, Multi Cultural Jurisdictions: Cultural differences and women rights 39 (2001).

6. *Khan v. Begum*, AIR 1985 SC 945, 946, 947.

7. Iddat is an approximately 3 months period following a divorce during which remarriage is prohibited.

8. *Latifi v. Union of India*, AIR 2001 SC 3958, 3973.

9. Sylvia Vatuk “where will she go? What will she do?” at 226, 240.

### 6. *Property Rights* :

In India only five States, A.P, Karnataka, Tamilnadu, Maharashtra, Kerala made State law making daughters equal coparceners along with son in H.U.F.

*Muslims* :—There is no legislation to give equal shares in property to widow and daughter along with sons.

*Christians* :—They have equal inheritance rights along with male.

### *Conclusion* :

The analysis of various decisions given by Supreme Court reveals that there is no uniformity in decisions of Supreme Court dealing with Personal Laws. It appears that there is a clash between human rights of women and protection of minority right both being fundamental rights. When an individual

member of a minority community seeks protection from the State in opposition to her group's laws or customs she is effectively being forced to choose between her rights and her community<sup>10</sup>.

When India submitted its first report on CEDAW at UN on 22nd Session at New York the committee questioned Indian representative regarding gender bias in personal laws the Indian representative could not give a satisfactory reply because in India religion is blended with laws.

Law is subjected to change since ancient times. Under modern legislation a traditional norms have been replaced and modified but still certain social practices still count and have greater hold on individuals rather than law. Therefore the social and legal reforms must move together to ban social evils and to uphold women's human rights.

10. Madhavi Sunder, *Piercing the veil*, 112 *yale L.J* 1399, 1461 (2003).

## GENDER IN INEQUALITY AND THE HUMANITARIAN LAW

By

—M. CHAKRAVARTHY, L.L.M.,  
Faculty of Law

“Devi Bhagavatham”<sup>1</sup> and “Devi Puranam”<sup>2</sup> which are the integral parts of Indian Philosophy enunciates that the cosmic energy pervading this Universe says:

- i. I am the inception and conception and conclusion of this Universe.
- ii. I am both active and passive.

- iii. My existence ranges from micro-lecithin eggs<sup>3</sup> to macro-celestial<sup>4</sup> bodies.
- iv. Without my commandment, not even a sub-atomic particle undergoes displacement.

Philosophy says, woman is the half of the man without whom a man cannot found

1. DEVI BHAGAVATHAM = The book that deals with origin, administration, destruction of Universe in Philosophy.  
2. DEVI PURANAM = One of the text in 18 puranas in Indian Philosophy.

3. Micro-lecithin eggs = Eggs that can be viewed under electron microscope.  
4. macro-celestial bodies = Stars, planets, meteors, comets and sati lights can be viewed with telescope.