

Indian Personal Law and Women's Rights

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Abstract: *Women rights are undeniably connected to personal laws, the Indian Constitution, and other particular laws in a multi-religious country like India. From an equality point of view, the personal law system in India is perceived as problematic since it provides for different laws for different communities. Also women under the attire of religion are often discriminated against in the matters of divorce, maintenance, inheritance etc. In such situation, the introduction of uniform civil code is thought to be a path towards gender justice securing rights of women. This paper shall examine different personal laws vis - a - vis women rights and whether UCC in India will be a boon or bane for women rights.*

Keywords: women, rights, Acts, personal laws, uniform civil code

1. Introduction

Women's rights are a longstanding topic. Men and women used to differ greatly from one another in terms of their social roles and global behavior paradigms. In order for women to be treated equally with men, a British court once had to rule that women were individuals. A woman called Emily Murphy submitted an application to serve in the Canadian Senate, which is one of the houses of the Canadian Parliament, in 1929. She was turned down because, according to Section 24 of the British North America Act of 1867, women were not then regarded as "persons." The British decision from 1876, which declared that women were "eligible for pains and penalties, but not rights and privileges," served as the foundation for this idea. The Privy Council, the British Empire's court of last resort heard Emily Murphy's case wherein the judges declared that women were 'persons' who could sit in the Canadian Senate. ¹Thus, historically not all people have been able to enjoy and exercise their rights in equal manner.

Throughout history, women have been afforded fewer rights than their male counterparts or have had to work harder to realize their rights in practice. Viewing women's rights as human rights has been fundamental in the struggle to ensure that women are treated fairly. Rightly yet steadily, world has witnessed a drastic shift towards the recognition of women's rights.

Achieving equality between men and women and ending all forms of discrimination against women are fundamental human rights and UN goals. In addition, the UN has launched a variety of worldwide programs to advance and safeguard women's status. In order to ensure that women's rights are respected by the law and to eliminate practices, prejudices, and inequities that negatively affect women's rights, state parties to international human rights treaties are obligated to take proactive steps. Women may also be entitled to particular additional rights under international human rights law, such as those pertaining to reproductive

healthcare. State parties must take the initiative to guarantee that the law upholds the human rights of women and to get rid of practices, prejudices, and inequities that have a detrimental impact on these rights.

Women therefore enjoy special status and protection within the UN and regional human rights institutions since they are a particularly vulnerable category. International human rights treaties forbid gender - based discrimination and mandate that States provide the defense and fulfillment of women's rights in all spheres, including equal access to education, political engagement, and property ownership as well as freedom from violence. ²

Article 7 of the Universal Declaration of Human Rights, 1948 provides for equality before the law and equal protection of the law without discrimination. Similarly, Article 3 of the Covenant on Economic Social and Cultural Rights 1966 and the Covenant on Civil and Political Rights 1966 stresses that State parties to these covenants should ensure equal rights of men and women to enjoy all human rights. Besides, some conventions have been exclusively made for catering to women issues. The Convention on the Elimination of All Forms of Discrimination against Women, 1979, has been a significant effort in this area.

India has ratified all these conventions and has honored the obligations imposed by them. ³ In India, equal status has been bestowed on women under Article 14 of the Constitution, which provides that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". This provision manifests that women in India have the right to equality and that any discrimination against them violates human dignity and equality of rights. The Constitution also provides under Article 15 that the State shall not discriminate against a citizen on grounds only of religion, race, caste, sex or place of birth or any of them. However, to improve women's status further, Article 15 (3) empowers the state to make

¹Seven reasons we still need to fight for women's human rights, available at: <https://www.amnesty.org.uk/blogs/yes-minister-it-human-rights-issue/seven-reasons-we-still-need-fight-womens-human-rights>(last visited Nov 26, 2022).

² Women's Human Rights, available at: <https://ijrcenter.org/thematic-research-guides/womens-human-rights/>(last visited Nov 26, 2022)

³Aggarwal, H.O. (2016). *International Law and Human Rights*.Allahabad Central Law Publication, 849.

special provisions for women.⁴ As a result, various legislative provisions aimed at ensuring women's equality and eliminating discrimination against them has been implemented. Some women - specific legislation includes: Protection of Women from Domestic Violence Act, 2005⁵; Dissolution of Muslim Marriages Act, 1939⁶; Maternity Benefits Act, 1961⁷; Muslim Women (Protection of Rights on Divorce) Act, 1986⁸; Medical Termination of Pregnancy Act, 1971⁹; The Dowry Prohibition Act, 1961¹⁰; The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013¹¹; Pre - Conception and Pre - Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994¹²; Family Courts Act, 1984¹³; Hindu Widow Re - marriage Act, 1956¹⁴; Immoral Traffic (Prevention) Act, 1956; National Commission for Women Act, 1990¹⁵; The Commission of Sati (Prevention) Act, 1987; The Criminal Law (Amendment) Act, 2013; The Indecent Representation of Women (Prohibition) Act, 1986^{16, 17}.

⁴Pandey, J. N. (2016). *Constitutional Law of India*. Allahabad Central Law Agency, 136.

⁵ An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

⁶ The object of this Act is to clarify the provisions of Muslim law relating to suit for dissolution of marriage on certain grounds by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie.

⁷ The main object of the Act is to provide security to the dignity of motherhood by providing full and healthy benefit for the child and the mother.

⁸ An Act to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto.

⁹ The object of this Act is to provide for the termination of pregnancy under certain conditions by registered medical practitioners.

¹⁰ This Act intends to prevent and penalize the giving or receiving of a dowry.

¹¹ This Act seeks to protect women from sexual harassment at their place of work.

¹² This Act provides for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female feticide and for matters connected therewith or incidental thereto.

¹³ This Act is to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.

¹⁴ This Act removes all legal obstacles to the marriage of Hindu widows.

¹⁵ This Act intends to constitute a National Commission for Women. Commissions to investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws and to provide for matters connected therewith or incidental thereto.

¹⁶ An Act to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and for matters connected therewith or incidental thereto.

Women rights under Personal laws

There are numerous personal laws in India. A collection of regulations known as personal laws regulate and control relationships that result from specific connections between people. The three guardians of the connection are affinity, blood, and marriage. Personal laws govern matters pertaining to guardianship, succession, marriage, divorce, maintenance, and minorities. Generally speaking, the applicability of these rules depends on the religion that various societies practice. While Muslims are subject to Muslim law, Hindus, Buddhists, Jains, and Sikhs are controlled by Hindu law. In addition, Parsi law governs the Parsis, while Christians are subject to Christian law.

Hindu Law: while considering the rights of Hindu women, the nature of Hindu marriage becomes compulsory. The nature of Hindu marriage is described under the Vedas. According to Vedas, a Hindu marriage is an indissoluble union till eternity. It is indissoluble in the sense, the woman cannot ask for another husband, even if he is cruel, drunkard, impotent, insane or whatsoever. It is eternal and continues for lives in the sense that she cannot take another husband even after his death. Husband and wife becomes one person in the sense she cannot have any individuality of her own. But the husband could enter into the sacramental fold of marriage any number of times because unlimited polygamy was permitted. This was the pre amendment notion of marriage and divorce under Hindu Law.

The Hindu Marriage Act, 1955 has removed these disparities to a large extent. It has made monogamy the rule for both men and women. Woman can dissolve her marriage and freely enter into another marriage, as per the law. The Hindu Marriage Act, 1955 has enumerated the grounds for divorce and also lays down the conditions for a marriage. It says both the parties to the marriage should have the capacity to give consent to the marriage¹⁸. If the consent was obtained by force or fraud then the marriage is voidable.¹⁹

Property rights: The sole proprietors of the joint family property before codification were coparceners. As a result of their inability to coparcener, women were not entitled to own property. 1937 saw the passing of the Hindu Women's Right to Property Act. Property rights were granted to women by it. She did not, however, acquire total control over the land. The Act pertaining to Hindu Succession was passed in 1956. It allowed women to own property. The Class - I heirs were the mother, wife, and daughter. It remained the same that a daughter could not be a coparcener and that only sons may be. Women's status was maintained below that of men's even after the Hindu Succession Act of 1956 was passed. That changed drastically, however, with the passage of the Hindu Succession (Amendment) Act, 2005. The daughter now enjoys the same rights as a son with regard to the coparcenary property.

¹⁷ National Commission for Women, available at <http://new.nic.in/important-links/List-of-Laws-Related-to-Women> (last visited Nov 25, 2022).

¹⁸ Section 5 of the Hindu Marriage Act, 1955

¹⁹ Section 12(c) of the Hindu Marriage Act, 1955

Muslim Law: Muslim marriage or nikah, is a legal contract intended for procreation rather than a sacrament according to Islamic law. The foundation of this agreement is the consent of the bride and groom. Therefore, in order for a marriage to be deemed lawful if the parties are adults, their free permission is necessary and no further consent is needed. There can be no marriage if there is no free consent.

Option of puberty: A guardian may grant consent in the event that the subject is a minor or mentally incompetent. When the minor reaches majority, they have the option to either ratify or repudiate the marriage. It's known as the puberty option. So, a girl cannot be forced into marriage. Even if she is forced into it, it is not valid marriage. She can exercise the option of puberty and dissolve the marriage²⁰.

Maintenance: During the period of iddat, a Muslim divorced wife can get maintenance from her husband. Following that, her parents, siblings, and other surviving family members who will receive her property upon her death are responsible for providing for her if she is unable to do so. If no one else is able to support her, the court may order the State Wakf Board to do so. Besides this, if she and her husband agree to be governed by the provisions of Criminal Procedure Code, 1973 relating to maintenance they can get relief under the Criminal Procedure Code, 1973 for maintenance even after Iddat period²¹.

Property Rights: Muslim women are not deprived of their rights of inheritance. Islam gives women half the share of man, besides Mehr²². It might seem to be unjust, yet in fact it is just when viewed under the light of fairness and rightness. Since sustenance of women, be it mother, wife, sister or daughter has to be provided by father, husband, son or brother and not vice versa. To cater to such responsibilities, thus man is given twice the share of women.

UCC vis a vis Women's Rights: Are we romanticizing UCC?

In India, the argument between personal laws and UCC has always been linked to women's rights. The origins of this system of personal laws can be traced back to colonization in India, which had a profound impact on the formation of personal laws. At that time it was of fundamental importance that affections of Indians be conciliated and that nothing could be more effective than tolerance in the matters of religion. For that matter, the Warren Hastings Plan of 1772 provided for the establishment of civil and criminal courts. Such a move explicitly saved the rights of the Hindus and Muslims to apply their own personal laws in the civil matters.²³

After India's independence not many efforts were made by the then leaders in matters concerning personal laws rather they engaged in drafting the Indian Constitution that faced major debate toward the issues of personal law. The members of the Constituent Assembly were of the view that

there ought to be a Uniform Civil Code, but this issue created stern objection. The Muslim members disliked the concept of UCC and further argued that the inclusion of the Article advocating UCC would violate the fundamental rights. But having much debates and concerns the Constituent Assembly was hesitant to pass Article 35 (Uniform Civil Code) and kept aside for more debate and discussion under the banner of Article 44²⁴ (earlier Article 35) under Directive Principle of State Policy. Thus, the Constitution of India is secured with fundamental rights and the rights to enforce them through the courts. And the other rights that were not secured or could not be achieved immediately were placed within the Directive Principle of State Policy. There were direction to the Indian States to implement them in due course of time but till today the issue to UCC is big commotion where each successive government has not shown the necessary gumption and courage to act upon it.

The proponents of UCC are of the view that due to the disagreement among the leaders and the member of the religious communities' women have to suffer the burden of the religious customs and tradition. Since, the main purpose of the Uniform Civil Code is to eliminate the contradiction based on religious ideologies and promote a concept of national integration irrespective of any social discrimination like religion, caste, and gender. It would also focus on the stability in the socialist and political pattern of living. Besides this, the one of the most important features of the Uniform Civil Code is that it can restore the idea of women empowerment which India always talks about. Secondly, that Uniform Civil Code (UCC) is very important for the protection of oppressed women, to protect their rights, to eliminate prejudices against religion, community, society, and tradition. Also, women are not treated equally and are discriminated in the matters of marriage, divorce, maintenance, and inheritance. In these circumstances, a gender - just code is required to deliver justice and equality to women.

However, there are already various reforms made in laws dealing with women rights at both legislative as well as judicial level. In analysis of uniform civil code in enhancing the rights of women, it ought to bring forth the following:

- Over a period of time the maturation and amendment of certain personal laws has definitely improved the status of women. For instance, prior to Hindu Succession Act, 2005, Hindu women were deprived of their inheritance rights. They had no right to claim share in their parental property except stridhan (kanyadaan). SC²⁵ has held that daughters will be given a share in coparcenary property even if father died before 2005. While pointing to the Act SC also held that it is to remove gender discrimination.
- Again talking about Hindu Women, in 1950's the Hindu personal law has been codified to remove the unjust provisions within law.
- So far as Muslim women are concerned, judiciary has from time to time uplifted their position through various

²⁰ Section 2 of The Dissolution of Muslim Marriage Act, 1939.

²¹ Mohd Ahmad Khan v. Shah Bano Begum AIR 1985 SC 945.

²² An obligation imposed upon Husband to give something valuable to his wife in consideration of marriage.

²³ Jain M.P (2014) *Outlines of Indian Legal and Constitutional History* Lexis Nexis, India Pvt. Ltd, 612.

²⁴ Article 44 states that it is the duty of the State to secure for the citizen a Uniform Civil Code throughout the territory of India.

²⁵ Vineeta Sharma v. Rakesh Sharma & Ors. (2020) 9 SCC (1).

judgements viz., Ahmed Khan v Shah Bano Begum²⁶ where in SC held that a Muslim Women can now claim maintenance beyond her iddat period under Section 25 of Crpc in case she remains unmarried and is unable to maintain herself²⁷ and ShayaraBano²⁸: invalidating practice of triple talaq.

The perusal of laws in favor of women at all levels viz., International, Constitutional, special legislations and rights under personal laws determine that all laws running in favour of women are more than sufficient for her protection. In addition to this, there is no settled blueprint of what uniform civil code will look like, the notion that it will automatically lead to women empowerment seems hazy and idealistic.

Thus, ability of uniform civil code to benefit women is still very much debatable question.

2. Conclusion

India in present century is hogging limelight with the world powers. Each and every move of India is being watched world over. Hence, before stepping into any unfriendly zone which would rough up its feathers with world power India should take steps very cautiously. And in order to address the problem of gender unjust or inequality, the focus must be to make personal laws non-discriminatory than touting UCC. A recent example of the reformation where the SC outlawed the practice of Triple talaq shows how negative aspects of personal laws against women can be weeded out while the more positive ones can be allowed to continue. e. g., Mehr for the protection of women. Not only this, the Sabrimala temple prohibited the entry of menstruating women aged between 10 and 50 into the temple. However, SC condemned the prohibition as hegemonic patriarchy²⁹ hence an unconstitutional move.

From legal awareness to being at fore front of justice delivery system can help in empowerment of women folk. After all there is a correlation between women police officers and reporting of crimes against her.

Besides the set of legislations, a balanced, well informed and unbiased judicial decision making is much essential for ensuring justice to women and to make legal system more workable towards women.

²⁶ AIR 1985 SC.

²⁷ Mohd Ahmad Khan v Shah Bano Begum AIR 1985 SC 945.

²⁸ ShayaraBano v UOI and Ors. AIR 2017 9 SCC 1 (SC) Invalidating practice of triple talaq.

²⁹ That patriarchy has become such an over arching idea that discrimination appears to be common sense to such an extent that even women become the supporters and perpetrators of that very discriminatory notion.