

FACTS against MYTHS

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INFORMATION BULLETIN

Strengthening or Weakening Women's Empowerment? The Myths behind Religious Personal Laws - Part II

“To leave inequality between class and class, between sex and sex which is the soul of Hindu society untouched and to go on passing legislation relating to economic problems is to make a farce of our Constitution and to build a palace on a dung heap. This is the significance I attached to the Hindu Code”.

(Resignation speech of law Minister, Dr. B.R. Ambedkar, when he quit the Cabinet over Prime Minister Nehru's repeated scuttling of the proposed wide-ranging pro-equity and pro-women reforms in the Hindu Code Bill, 10th October 1951.)

Comment:

Part I of this issue dealt partly with the Indian legal system that had evolved during British colonial rule. The British in their distinction between the role of the church and the State tended to view religion generally in the same light particularly Hinduism and Islam. They also distinguished between 'public' and 'personal' sphere of daily life, leaving the 'personal' domain out of the realm of uniform legislations. They also viewed religious communities in terms of "majority" and the "minority". The binary continues to hold sway to this day and partly responsible for the rise of religious intolerance. Yet, India continues to maintain the "tradition" of these colonial laws on family laws or personal laws. Article 44 of the Directive Principles of the Indian Constitution reads, "The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India". However, there has been no glimpse of "endeavoring" by the State to have a trickle-up approach in reforming the personal laws and has been reduced to a political tool¹

A serious lacuna however is the form in which religious laws totally disregard the issue of gender justice. Instead, patriarchal Victorian values of womanhood (chastity, innocence, self-effacement and passivity) govern women's lives. The objectification of women in this form stem from the prejudices and fallacies inbuilt in the religious personal laws. Dr. B.R. Ambedkar had attempted at great length to introduce major democratic reforms (See box page.4) in the religious laws despite vicious resistance from a section of the mainstream. His apprehension was that communal passions get exploited for political ends¹.

The debate of UCC emerged in 1985 when a Muslim woman Shah Bano was denied maintenance from her divorced husband which was challenged in the court by the former and was able to claim maintenance. This aroused vicious protest from the Muslim orthodoxy, to which the then Rajiv Gandhi government passed an ordinance overruling the judgment. This resulted in the rising organized protests by the Hindutva leaders with the argument of "minority

appeasement”.

The failure to prioritise gender justice has adverse implications. On the one hand the Muslim orthodoxy hide behind their ‘culture’ – that is, their religion is in “danger”, viewed as an illegitimate interference into their religion arguing that; unilateral divorce is an immutable law which they have been following for long. This position however collapses when Muslim majority countries like Bangladesh have since reformed their Islamic laws to the benefit of Bangladeshi women. (Their stand is similar to that of B.G. Tilak on the Age of Consent Bill 1891 - that is, the marriageable age for girls should be raised from 10 to 12.) On the other side, the right wing Hindu argument on UCC serves as a ploy to divert attention from the inequalitarian structure of Hindu personal laws; that it should serve as a model – an essential prerequisite for “national unity and integration” – for other

religious communities.¹

Similarly, the question of divorce. Among Hindus, Buddhists, Sikhs and Jains, there is very little social and cultural acceptance of divorce especially when initiated by women. There is also a huge stigma against divorce that is highly discriminatory with very little legal support and financial provisions. (A Bangladesh daily² reported that Hindu women in the country are desperate to seek divorce or to demand compensation from their husbands.) Most Hindus in the country continue to follow the age-old ‘Dayabhaga’ law according to which a Hindu woman does not have the right to divorce her husband). In India, recently, the Supreme Court granted divorce to a man on grounds of “cruelty” when his wife refused to share a home with his in-laws which effectively means that a married woman must live with her husband’s family – on the Judge’s ‘rationale’ that the wife was

Prejudice & Discrimination in Religious Laws

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 in her own. She could not be the natural guardian of her children during the life of her husband.

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. This 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.

Widows’ property rights: A widow has the right to inherit property from her husband’s estate, but her husband can transfer the property to third person through a will and she cannot oppose him. After the death of the husband a woman can be maintained by father in law due to legal obligation if she has coparcenary property and if the women 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 her in-laws. If the widow’s parents are financially unable to maintain their daughter only then she gets maintenance from them.

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 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 in the future.

inspired by “western thought process” or that she was “aping the West” in violation of the age-old, traditional Hindu value system.

Another disturbing issue is the status of widows. In India, widows who make up more than 60 per cent of the women over the age of 60 rarely remarry. They must remain celibate, wear white, curb any sensual impulses, avoid wearing the Bindi). All this is to honour their dead husbands. (Yet, widowers can remarry freely).

Such forms of double standards is prevalent in all religious communities. Yet, those shouting from the rooftops for enforcing Uniform Civil Code as a imperative need for women’s

empowerment must also be viewed in their loud silence over the 33% women reservation in parliament and their declaring marital rape as a personal and private affair.

What all this amounts to is the fact that today the traditional outlook on religious laws with its inbuilt gender discrimination is no longer acceptable and this ‘status quo’ is challenged. The demand instead is for a uniformity of rights -- not for a uniformity of laws (as demanded by the Hindu mainstream). There is therefore the need to dismantle the various misconceptions underlining the UCC.

Prejudices Against Women and Marriage

Conservative and orthodox sections within all religious communities continue to harbor a number of prejudices on women and marriage. For instance,

- The Hindu Marriage Act prohibits marriage between two people within the prohibited degrees of relationships. For example, a Hindu cannot marry his own brother’s or sister’s daughter. However, the Act immediately adds that such marriages are valid if permitted by the customs governing the parties to the marriage. In the South there is a custom to marry one’s sister’s daughter, while in the North it is prohibited;
- Though ‘Saptapadi’ is essential for solemnizing the marriage but not so if it is not required under the customs governing the parties to the marriage;
- In the matter of succession and inheritance, the ‘mitakshara’ and ‘dayabhaga’ schools have different rules of succession with even different sub-schools within the former. For example, while in the North, in a partition between father and sons, the mother is given a share equal to that of a son. In the South, this practice has fallen into disuse and hence the mother would not get a share;
- Elaborating further, communalism Combat³ illustrates the enormous diversity within all the personal laws, viz.
- The different rules for taking a child in adoption
- Adivasis who are governed by customary law. Among the Santals and Bhils women cannot hold property. It is only recently they have begun demanding protection against polygamy;
- Christians in Assam and Coorg and other Christians among Adivasis in Bihar and Orissa have been exempted from the application of the Indian Succession Act, 1925;
- Even the Shari’at Act of 1937 codifying Muslim law and binding civil courts to apply its provisions to all Muslims relating to matters of family laws and relations is out of bounds for Muslims of J K where the existing customary law takes precedence over it;
- For the Muslims of
- Goa, the Portuguese Family Law and Succession Law continue to apply;
- For the Sunni Bohras of Gujarat and Muslim Ghirasia of Bharuch, Hindu customary law has been applied pre-and post-Independence ‘in the interest of uniformity’.

Muslims of Kerala have retained their ‘marumakathaya’ system. It is not shared by Muslims in other parts of the country.

The Hindu Code Bill, February 5, 1951

The Hindu Code Bill was series of laws that were finally passed after a long opposition in Parliament between its 1955-56 sessions. It was principally the creation of Dr. B.R. Ambedkar and Pt. Jawaharlal Nehru. They held that for a complete upliftment of the nation, social development was a necessary prerequisite. Therefore it was first reviewed in 1948 by Dr. Ambedkar himself. It was aimed to provide a civil code in place of the Hindu Personal Law which had been amended to only a limited extent by the British colonial power. The codification of the Hindu bill had 2 main aims. Firstly, to elevate the social of Hindu women and secondly to abrogate social disparities and the gross inequality of the caste system. The salient features of the codification are:

- * The property of a dying man must be shared equally among his widow, daughter and son who according to previous laws was entitled only for his son;
- * The right of any woman over her inherited/self obtained property should not be limited, Instead it was made absolute i.e. it can be processed as she wished;
- * Allowing either partner to file for divorce on certain grounds such as domestic abuse, infidelity, etc.
- * Granting maintenance to the wife if she decides to live separately due to divorce on grounds as mentioned above;
- * Making monogamy mandatory.
- * Allowance of inter-caste marriage and adoption of children of any caste;
- * Decision regarding the guardianship of the child in case of divorce.

The Hindu Code Bill was subject to strong opposition from orthodox Hindus and the RSS, Hindu Mahasabha, etc., who believed the Code to be highly derogatory and against basic Hindu laws that were governed by 'Dharmasastara' (the texts dealing with issues of marriage, adoption, inheritance in the Hindu Code). Some of them raised the bogey of "Hinduism in Danger"

Following Independence, the country was faced with a number of problems. A major one among these was the various laws governing different sections of society. For instance, on the status of women it is well known that women in the Hindu (Indian) community have historically been denied political, social and economic rights. Brahmanical texts denied women education. Sati, child marriage, widow ostracism were used to deny them their rights to property. Dr. Ambedkar felt that it was essential to free them from the grip of obnoxious laws. He drafted and introduced the Hindu Code Bill on February 24, 1949. Through this Bill, Dr. Ambedkar wanted to put to an end, for instance, to the various marriage systems prevailing at the time and to legalise monogamous marriage and allowing for divorce. Most importantly, however, the Bill sought to confer on women the right to property. It also sought to provide equality to women and men in all legal aspects.

However, as the situation began to evolve sections of the casteist Hindu "leaders" began to oppose it lock stock and barrel. Dr. Ambedkar and his team however were undaunted and presented the draft bill to Nehru's cabinet which unanimously approved it.

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Emboldened with this move, Dr. Ambedkar introduced the bill on February 5, 1952 to the Parliament. But to his dismay some members including those who had earlier approved it in the cabinet openly opposed it, viz., Sardar Patel, S. P. Mookerjee of the Hindu Mahasabha and Madan Mohan Malviya. Dr. Sarojini Naidu even threatened to go on a hunger strike. Pattabhi Sitaramayya also opposed it seeing it as a negative impact on Hindu votes in the election of 1951-52 would shatter the magnificent structure of Hindu culture and stultify a dynamic and catholic way of life that had wonderfully adapted itself to the changes for centuries. Even women belonging to the Hindu Mahasabha came to the forefront. The Hindu Women's Conference of the Hindu Mahasabha in a letter to President Rajendra Prasad, Janakibai Joshi, President of the All India Hindu Women's Conference of the Hindu Mahasabha wrote in February 4, 1950 that any move to replace the Hindu concept of a Hindu marriage as a sacrament by making it contractual would destroy the entire family system of the Hindus. The Hindu family should be taken as a unit and fragmentation of the property should not be allowed so as to go away to other family through the daughter.

Dr. Ambedkar was also severely criticized for his stand on women rights. The orthodox Hindu elements along with the moderate Congress leaders whipped up a communal passion by raising the bogey of "Hinduism in Danger" especially in the hands of an "untouchable".

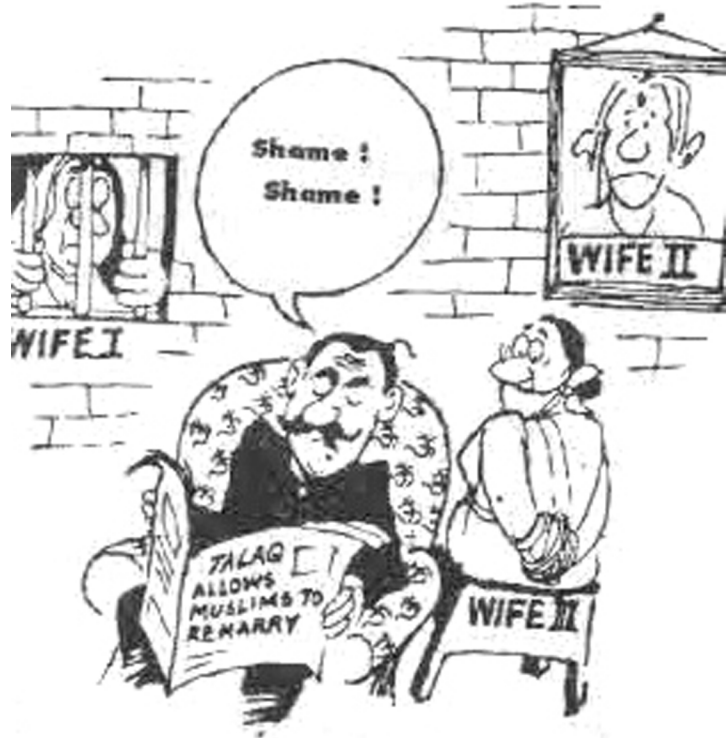
By allowing for divorce, Ambedkar's version of the Hindu Code conflicted with traditional Hindu personal law, which did not sanction divorce (although it was practiced). It also "established one joint family system of property ownership for all Hindus" by doing away with regional rules. It allotted portions of inheritance to daughters, while giving widows complete property rights where they had previously been restricted.

On the other side, those opposing the Bills believed these would bring about change that strayed too far from the classical Hindu order and were too radical. They argued that practices such as divorce were absolutely not in line with Hinduism. "To a Hindu the marriage is sacramental and as such indissoluble". Further, should equal property rights be given to women, the Mitaksara concept of a joint family collapse, as would the foundation of Hindu society? They also insisted that if daughter and wives were given inheritance, more conflicts would multiply within families. Thus, opposing the Hindu Code bills, morchas were held and propaganda material distributed whilst organizations were formed to lobby for the defeat of the bills.

Dr. Ambedkar however strongly supported the Bill and asked the intelligentsia and the media to support the Bill. Most of them however failed to respond favourably, unable to see beyond their casteist outlook. Nehru fearing a severe backlash from the conservative Hindus was forced to dilute the Bill. He asked Ambedkar's committee to present a new draft that complied with many of the demands of the opposition, including the reinstitution of the 'Mitaksara' joint family system, an amendment to allow for brothers to buy out the daughter's share of the inheritance, and a stipulation allowing divorce only after 3 years of marriage. After the bills were defeated again in the Assembly Dr. Ambedkar, hurt by the lack of concern and commitment to the idea of a positive change and Nehru's backtrack, he resigned from the Union Cabinet on September 27, 1951.

MYTH: Hindu law has already been reformed into an egalitarian law and Hindu women enjoy equal rights.

FACT: However, the Hindu Personal Law was merely codified, and even that was in the face of vicious attacks from the orthodox sections of Hindu society including from leaders of the Indian Congress. Most of all, the changes failed to embody gender equality. "While reforms made to Hindu law were designed to give women more legal rights, it was never the intention to give complete legal equality to women...By projecting the aim of incorporating sex equality and uniformity in Hindu law as desirable goals the political leaders used law reform as an instrument of political development rather than as a means of ensuring legal equality per se".⁴



Constitutional rights of married women

In India a great deal is said about marriage and responsibilities but often silent on the rights that the Constitution of India bestows on women. Though they may have family support or may be in immense emotion trauma, they must demand maintenance rights for themselves and for their child from the Court.

The Constitution provides a number of rights to married women. Some of these are

- * **Right to Streedhan.** A wife has ownership rights to all her 'streedhan' that is the gifts and money given to her before and after marriage. The ownership rights to streedhan belong to the wife, even if it is placed in the custody of her husband or her in-laws;
- * **Right to Residence.** A wife has the right to reside in the matrimonial home where her husband resides, irrespective of whether it is an ancestral house, a joint-family house, a self-acquired house or a rented house;
- * **Right to a Committed Relationship.** A Hindu husband cannot have an affair or marry another woman unless he is legally divorced. He can be charged of adultery if he is in a relationship with another married woman. His wife also has the right to file for divorce on the grounds of his extra-marital relationship;
- * **Right to live with dignity and self Respect.** A wife has the right to live her life with dignity and to have the same lifestyle that her husband and in-laws have. She has also the right to be free of mental and physical torture;
- * **Right to maintenance by husband.** A wife is entitled to claim decent living standards and basic comforts of life by her husband as per his living standards;
- * **Right to Child Maintenance.** Husband and wife must provide for their minor child. If the wife is incapable of earning a living, the husband must provide financial support. If both the parents are financially incapable, they can seek help from their grandparents to maintain their child. A minor child also has the right to seek partition in ancestral property.

Furthermore, the laws relating to marriage and inheritance was dropped on the eve of the first general elections (Dr. Ambedkar had famously resigned as the Law Minister on this issue – and it was only in 1955-56 that parts of it were pushed through by Nehru as the Hindu Marriage Act, the Hindu Succession Act, the Hindu Minority and guardianship Act, and the Hindu Adoption and Maintenance Act.)

What the Hindu Code achieved was the codification of the vast and heterogeneous practices of communities termed, “Hindu” if they were not Muslim/Parsi/Christian; bringing them into conformity with what was assumed to be “Indian” and “Hindu” norm – i.e. North Indian, upper-caste practices. Other practices that did not match this norm were explicitly dismissed

as being unIndian. Thus, these Acts were by no means an unqualified advance for women’s rights.⁵ In addition, the provisions sanction sexism. For instance,

- Inheritance. The property of a woman who dies without a will is handled differently from that of a man. In the absence of a spouse or children, the husband’s heirs inherit the woman’s estate;
- Age of Consent. Sex with a girl below 18 years is considered rape. However, as child marriage are not illegal, a man can legally have sex with his wife even if she is a minor, as long as she is above 15 years of age. Above all, marital rape is not declared a crime in India!

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Next Issue:

Sardar Sarovar Project

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