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RELIGION AND STATUS OF WOMEN

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ABSTRACT

Religion cannot be seen in isolation from the society. Religion evolves from the society either by confirming or as reactions to the prevailing social norms. According to the French sociologist Émile Durkheim, religion is an expression of social cohesion, and an expression of collective consciousness, which is the fusion of all of our individual consciousnesses, which then creates a reality of its own.

In the context of the role the religion plays on the status of woman in Indian society, the religions not only act as carrier of social norms, religions many times tend to resist social change in the matter of the status of woman, if it goes against the religious prescriptions.

Once a religion passes through the formative stage and its systems of beliefs and practices are fully formed, the religion acts as a conservative force with respect to the social norms including the status of woman. Moreover, it tends to resist any efforts to change these norms, whether from inside or outside. However, the norms and practices prescribed by religion on social issues are seldom evolved from its fundamental belief system. They are rather social creation and permeated into the religion during the formative period of the religion due to the interplay between society and religion.

It has been noted that position of woman had received an upward lift in every religious group during the inception of a religion. Whenever a new religion emerges, it brings a progressive worldview to the contemporary society. Thus, not only in regard to the image of woman, a new outlook to different aspects of spiritual and social beliefs and practices is developed. This role of religion is often ignored.

The study of status and position of woman in different societies has increasingly become prominent in the recent times. In particular, the position of woman accorded by different

religions has drawn attention of many scholars and activists. Many times, scholars are seen to differ, in fact take diametrically opposite stands at times, in their opinions on the position of woman in a given religion.

KEYWORDS: Gender roles, Patriarchy, Gender equality, Religious conservatism, Feminism, Empowerment

1.1 INTRODUCTION

“You can tell the condition of a nation by looking at the status of its women”....

Jawaharlal Nehru

The status of women in society is very diverse worldwide. Among many important traits associated with the differentiation of gender inequality is religion, which itself must be regarded as a fluid concept with interpretations and practices ‘embedded’ and thus varying with respect to cultural and historical relations. Admitting the complexity of the issues, some religious norms and traditions can contribute to the formation of gender inequalities and to subordinate the role of women in society. Using an exploratory quantitative analysis, the influence of religiosity on gender inequality in social, economic and political spheres is examined. Three categories of states have emerged from the analysis: (a) states where the majority of inhabitants are without religious affiliation, which display the lowest levels of gender inequality; (b) Christian and Buddhist societies, with average levels of gender inequality; and (c) states with the highest levels of gender inequality across the observed variables, whose inhabitants adhere to Islam and Hinduism.

The worth of a civilization can be judged by the place given to women in the society. One of several factors that justify the greatness of India's ancient culture is the honorable place granted to women. The Muslim influence on India caused considerable deterioration in the status of women. They were deprived of their rights of equality with men. Raja Ram Mohan Roy started a movement against this inequality and subjugation. The contact of Indian culture with that of the British also brought improvement in the status of women. The third factor in the revival of women's position was the influence of Mahatma Gandhi who induced women to participate in the Freedom Movement. As a result of this retrieval of freedom, women in Indian have distinguished themselves as teachers, nurses, air-hostesses, booking clerks, receptionists, and doctors. They are also participating in politics and administration. But in spite of this amelioration in the status of women, the evils of illiteracy, dowry, ignorance, and economic

slavery would have to be fully removed in order to give them their rightful place in Indian society.

1.2 EVOLUTION OF WOMEN RIGHTS IN INDIA

India has always been the melting pot of various cultures and religion; with a continuous influx of people from across the globe the society has remained in a constant change and progress. The advent of British in India in the 15th century marked a fundamental change in life and behaviour of people. This change also brought in major changes in the legal system of India. Indian society, which had undergone a drastic change since the *vedic ages*, had curtailed several rights of women and had limited the participation of women in public life. The East India Company, though a blot on the glorious past of India, introduced several changes in the society, the major one being in the legal system of India and in unifying India as one nation with one law. This process of introducing progressive laws in British India dates back to 1829 when the then Governor General of India William Bentick abolished the evil practise of Sati. Since then India has gradually marched towards the goal of achieving inclusivity of women in all sectors and in pursuance to the same, has introduced several laws to achieve this goal. The Constitution of India acknowledges this intention of progressive India, therefore the forefathers, realising the fundamental need of this, ensured to incorporate the same as a fundamental right in the Constitution under Article 15.

Despite the enactment of stringent laws in India the status of women has not changed much in the rural region. The concept of equality is still at nascent stage in these areas, with women being considered as the possession of family and their honour. This mind set has led to killing of several women in the name of family honour and has razed several families at length. Gender based crime and discrimination is prevalent not just in the hamlets of India but across the length and breadth of India. ¹

1.3 HISTORICAL ASPECT

The patriarchal mind set of the medieval Indian society can be understood from the couplet of the famous hindi poet Tulsidas whodescribed the status of women, in his writings, in following manner “*dhor, ganwar, shudra aur nari, ye sab taadan ke adhikari*” which in its literal

¹ Anjali Chauhan, *Evolution Of Women Rights In India* ,INDIA LEGAL(July 11,2021,10:00AM), <https://www.indialegallive.com/special-story/>

translation means that animals, illiterate, untouchables and female deserve to be punished. The situation, since then has changed to a great extent and the Indian law makers and the Indian courts have played a very significant role in this change.²

During the Vedic era, male child was given preference over female child because people had a notion that sons would contribute more to the family. Sons were preferred because of their physical strength, their ability to fight and because they remained with the family even after they are married. This preference for boys is reflected in sacred literature, including the *Atharva-veda*, which contains rituals to guarantee the birth of a son.^[6] However, though daughters were preferred less than sons, they were still valued by their families. One of the *Upanishads* contains rituals which is for the birth of an intelligent daughter. Additionally, the *Rig-Veda* contains hymns that were divinely revealed to female;^[7] widows were viewed as unclean, but the *Rig-Veda* reaffirmed their value.

The medieval period in India began with the advent of Muslim rule, this period which lasted for nearly 500 years' saw a grave change and curtailment of women rights in India. Although, there were a few leading ladies of this era such as Razia Sultan, Nur Jahan and Jahan Ara who took active part in the affairs of the state, the status of women didn't change much. The situation improved after the Britishers arrived in India and made several changes to the social structure of India.

1.4 ROLE OF JUDICIARY IN RECOGNIZING WOMEN RIGHTS

Gender equality has always been an elusive concept in history, trodden with impediments of narrow mindedness of society which took fiendish delight in suppressing women's right. Even the judiciary remained oblivious to the rights of women. In *Bradwell v. State of Illinois*³ Justice Bradley of the US Supreme Court said, "*The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The permanent destiny of and mission of a women are to fulfil the noble and benign office of wife and mother. This is the law of the creator.*"

The earliest case in India pertaining to women right was *Air India v. Nargesh Meerza*⁴ where the Supreme Court held that the regulation of Air India pertaining to termination of an air

² Id.

³ 83 US 130 (1973)

⁴ (1981) 4 SCC 335

hostess if she were to get pregnant within 4 years of service was held to be arbitrary and unconstitutional. This judgment is etched in history of women rights as an apostle for organisations to regulate the working condition of women on par with their male counterparts. Article 15(3) of the Constitution empowers state to make special laws for protection of women and children rights. The reason for such law is that “*women’s physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence and her physical well-being becomes an object of public interest and care in order to preserve the strength and vigour of the race.*”

In *Dattatraya v. State*,⁵ it was held that educational institutions established by the State exclusively for women, or the reservation of seats for women in a college- does not offend Article 15(1).

In *Rajesh Gupta v. State of U.P.*,⁶ the Court held that reservation of 50% of posts in favour of female candidates is not arbitrary.

The above judgments are a clear example of how judiciary has recognised and has safeguarded the rights of women in India in public life and at work place. The case of *Vishaka and Ors. v. State of Rajasthan and Ors.*⁷ where the court laid down guidelines to regulate the conditions of working women and directed that guidelines and norms would be strictly observed in all work places for preservation and enforcement of right to gender equality of working women.

Equal rights and dignity of women in religious aspects has, recently, garnered great importance in social life and in legal sphere. Two of the most prominent judgments of Supreme court *Sabarimala case*⁸ and *Triple Talaq case* has brought an end to century old practise of curtailing of women rights, the court recognized customs within the definition of ‘law’ as per Article 13(3)(a) of the Constitution but declared the practices void as per Article 13(1), which were found in derogation of Fundamental Rights. Justice Nariman and Justice U.U. Lalit in *Triple Talaq case*⁹ applied the test for laws in force to recognize the custom of Triple Talaq as falling within Article 13(3)(a), they held it unconstitutional on the narrower ground of it being “manifestly arbitrary” as against Article 14.

⁵ AIR 1953 Bom 311

⁶ AIR 2005 SC 2540

⁷ (1997) 6 SCC 241

⁸ (2019) 11 SCC 1

⁹ *Shayaro Bano v. Union of India & Ors.*, (2017) 9 SCC 1

1.5 MEANING OF RELIGION

The Constitution does not define “religion” anywhere, but the Hon’ble Supreme Court gave a comprehensive definition of religion in *Commissioner, Hindu Religious Endowment v. Sri.Lakshmindra Thirtha Swamiar of Shirur Mutt*,¹⁰ in the following words:

Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic (belief in the existence of a god).

There are well known religions in India like Buddhism which do not believe in God or in any intelligent First cause (the belief that God has created the Universe)

Religion has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual wellbeing, but it would not be correct to say that religion is nothing else but a doctrine or belief.

A religion may not only lay down a code of ethical rules for its followers to accept, but it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral part of religion, and these forms and observations might extend even to matters of food and dress.

Under Constitution of India, Right to Freedom of Religion Articles 25-28.

Indian Young Lawyers’ Association v. State of Kerala, (2019) 11 SCC1

Sabarimala Temple Entry for Women

- Sabarimala Temple is a temple at Sabarimala in Pathanamthitta District, Kerala.
- In the past, women devotees of menstruating age were not permitted to worship here, this ban being said to be out of respect to the celibate nature of the deity in this temple.
- In September 2018, the Hon’ble Supreme Court ruled that all pilgrims regardless of gender, including women in the menstruating age group, should be allowed entrance to Sabarimala.
- The Constitution bench of Supreme Court held that the exception to entry of women because of biological differences violates the Constitution – that the ban violates the right to equality under Article 14.
- It was further held that the practice violated the fundamental right to freedom of religion of female worshippers guaranteed under Article 25(1).

¹⁰ AIR 1954 282

1.6 UNIFORM CIVIL CODE

Uniform civil code basically, precisely and in a lay man's language means one country one rule, legally the term civil code means to cover the entire body of laws governing rights relating to property and otherwise in personal matters like marriage, divorce, maintenance, adoption and inheritance. Uniform civil code essentially means unifying all these "personal laws" to have one set of secular laws dealing with these aspects that will apply to all citizens of India irrespective of the community they belong to, though an exact figure has not been painted yet but Though the exact contours of such a uniform code have not been spelt out, it should presumably incorporate the most modern and progressive aspects of all existing personal laws while discarding those which are retrograde. Uniform Civil Code is both a bane and a boon, it will solve the legal complexities and pave way to justice in a speedy manner and ensure that justice prevails but the path that leads to making of uniform civil code is harsh.¹¹

It is essential to understand the roots of the Article 44, and to understand the origins behind Article 44,¹²necessitates the understand of the history behind the concept of a "uniform civil code".

This is one of the major turning points in Indian legal system that changed the course of law complicating the matter further with a multitude of codes dealing with various aspects, the complexity of laws both in the contexts of Hindus and Muslims led to controversies which have caused an intellectual paradox. The lack of uniformity has led to confusion and intricacies that seem solution less in the current times. Goa is the sole state in India where there is a Uniform Civil Code that is material.¹³

Not only did these codes cause a legal paradox but also heightened the feeling of animosity between Hindus and Muslims. The Muslims constantly are under the speculation regarding the motif behind the leaders pushing towards changes in their personal laws.

For the second time in the case of Smt. Sarla Mudgal, President, Kalyani & Ors. v. Union of India & Ors. ¹⁴While deciding the case of bigamy through converting into Muslim just for

¹¹ Anubhuti Rastogi, *Uniform Civil Code*, <https://lawtimesjournal.in/uniform-civil-code/>

¹² Article 44, The Indian Constitution, 1950

¹³ Id.

¹⁴ AIR 1995 1531

getting marriage second time while still being married; after going through the various cases where status of women is getting degraded in society economically and morally due to practice of age-old customs till date. Kuldip Singh J. has requested the parliament to take step towards enactment of Uniform Civil Code so that there can be uniformity in Succession and Maintenance laws throughout India.

However, these judgments raised a huge hue and cry from the minority community as they were reluctant to accept the changes in their personal law.

1.7 SECULARISM V/S UNIFORM CIVIL CODE

The spine of controversy revolving around UCC has been secularism and the freedom of religion enumerated in the Constitution of India. The preamble of the Constitution states that India is a “secular democratic republic” This means that there is no State religion. A secular State shall not discriminate against anyone on the ground of religion. A State is only concerned with the relation between man and man. It is not concerned with the relation of man with God. It does not mean allowing all religions to be practiced. It means that religion should not interfere with the mundane life of an individual.¹⁵

Protection to Vulnerable Section of Society: The UCC aims to provide protection to vulnerable sections as envisaged by Ambedkar including women and religious minorities, while also promoting nationalistic fervour through unity.

1.8 CONCLUSION

The depleting condition of women rights in India, regardless of their religion, has a great linkage to the medieval age and the British rule, who in their attempt to make a secular society with secular laws, made a direct attack on the diversity and heterogeneity and religious beliefs of Indian society. Modern India is a direct result of this contradiction in the colonial mission in which Hindu, Muslim, Christian women of other religion experienced profound differences in legal rights and political agency.

History has always posed the importance of gender-neutral laws which has led to several changes in the social structure of the society. The relation between laws and religion, in this

¹⁵ Id.

country, are interlinked for they are dependent upon each other with former deriving its legislative backing from the latter. This article recognizes gender as one form of reference and difference which intersects with different forms of experiences, such as religion, caste, status etc., and delved into the role of various interlopers, from historical to contemporary period, who have played a vital role in shaping the current legal system of this nation.

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