

## All personal laws in India are discriminatory

The Supreme Court's decision to strike down triple talaq should be the trigger to generate a candid debate on religion-based personal laws in the country.

Thirty-two years ago when Shahnaaz Shaikh filed a public interest litigation (PIL) challenging the triple talaq given to her by her husband at midnight, it acquired the hue of identity politics. The petition stated that Sharia law subjugated Muslim women by imposing purdah, allowing polygamy and unilateral divorce and depriving divorced Muslim women of maintenance rights.

Women activists soon discovered that this kind of discrimination was true for all existing personal laws.

For example, Hindu daughters were deprived of joint heirship in parental property as per the codes of Mitakshara, a school of Hindu law governing succession. It was only after Lata Mittal (case filed in 1985) won a 20-year legal battle in the Supreme Court that Hindu daughters were given equal rights in the ancestral property.

Similarly, Christian women could not obtain divorce on the grounds of adultery committed by the husband; it had to be coupled with cruelty, bestiality and sodomy. On the other hand, Christian husbands could simply declare their wives as adulteresses and divorce them. These antiquated laws were enacted in the colonial period to serve the interests of the British bureaucrats who had their legally wedded wives in England and were cohabiting with a local. Due to pressure from Christian women, the government last year cleared a proposal to amend the antiquated Christian Divorce Act 1869.

Questions are asked as to why Parsi daughters who married non-Parsi men lost their property rights and non-Parsi wives of Parsi husbands were entitled to only half of the husband's property as per the Parsi personal law. At the moment, the Parsi community is debating this issue in its conventions.

For that matter, tribal women in Maharashtra and Bihar have filed petitions demanding land rights in the Supreme Court. Several women's groups (Saheli, Vimochana and Forum against Oppression of Women) and human rights lawyers' teams (Lawyers Collective and Indian Social Institute) have prepared drafts containing technical details of gender-just and secular family laws.

After the Supreme Court judgment in the Shah Bano case—in which a 60-year-old mother for five from Indore filed a petition asking for alimony from her husband who had divorced her in 1978—the Muslim Women (Protection of Rights on Divorce) Act 1986 was enacted; but the misery of divorced Muslim women was not alleviated. Bharatiya Muslim Mahila Andola and Awaz-e-Niswan are voicing the concerns of these women. The subtext of all these personal laws, regardless of religion, is that women are not equal to men. They, therefore, discriminate against women in marriage, inheritance and guardianship of children.

Individual women from different communities have been challenging the constitutional validity of the discriminatory aspects of the personal laws in courts. Their main concern is the threat of forced marriage, murderous attacks in cases of inter-caste, inter-class and inter-religious marriages and property disputes even while they have to deal with issues like adultery, bigamy, polygamy, divorce, custody of child/children, property and incest in their marital homes.

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