

Impact of Hindu Law Reforms on Gender Justice in India

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Abstract – Constitution is rightly the most critical touchstone for deciding the scope of women's rights in the post-independence period. The provisions of adult franchise, non-discrimination based on sex and positive discrimination (or governmental policy regarding minorities in society) for women and children set Indian women a long ways in front of huge numbers of their western counterparts. Equality and non-discrimination wound up fundamental and enforceable legal rights. The scope of Article 21, could be extended to peruse into it issues of Social and Economic Justice. It is against this background we inspect the Major Law Reform of the Post-independence period. This critical goal could be accomplished just by weakening women's rights to touch base at a dimension of least accord so the agenda of change could be influenced absent much resistance. A few Customary rights were relinquished to touch base at consistency. The Statutes that were at long last enacted were simply ornamental as opposed to being markers of certified and solid endeavors at correcting the gender discrimination composed into the Hindu law. A portion of the irregularities inside the changed laws, just as the mind boggling and relentless procedure of the change is inspected here in this Article to dissect the stilted endeavors of the Hindu law Reforms for gender justice or gender equality in all angles.

Keywords: Women's right for equality, Gender Discrimination, Hindu Law Reforms, Customary Rights, Statutes, Constitution of India, Uniform Civil Code (UCC), Matrimonial Rights, Rights to Property, Coparcenary, Human Rights of Women etc.

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INTRODUCTION

The issue of women's rights and family law change has been progressively caught inside the polemics of character politics and minority rights. At one dimension, there is a propensity among social activists to extend the interest for a sweeping Uniform Civil Code (UCC) as an enchantment wand which will kill the misfortunes and sufferings of Indian women all in all and of minority women specifically. At another dimension, inside a communally vitiated political climate, the interest conveys an agenda of 'national integration' and 'communal harmony'. The interest is likewise loaded down with an ethical hint of nullifying polygamy and other 'primitive' customs of the minorities and stretching out to them the libertarian code of the 'illuminated majority'. The sharp polarization between the genius UCC campaign (with women's rights' gatherings offering an uneasy union to the Hindu fundamentalists) and the counter UCC campaign symbolized by Muslim fundamentalists, leaves almost no space for voicing hesitations about the plausibility of a comprehensive code, inside a socially different pluralistic society. The secular entryways requesting the insurance of women's rights, place gender as an impartial territory which is disjunctive from the contemporary political events. In this unique circumstance, it is important to

take note of the chronicled fact that in spite of the fact that the plank of social change has been 'women's welfare' the political maneuverings at each phase of change have brought about dealing endlessly pivotal economic rights of women. In the current political setting, the parallels inside which the interest is found, proposes comparable dangers. It is valid that the hardships and sufferings experienced by women everything being equal, minority just as greater part, can't be hidden away from plain view nor disregarded with the talk of freedom of religion. Be that as it may, inside a mind boggling social, political and economic structure, the interest of gender equality can't be restricted to a direct hill of allowing uniform rights to women everything being equal. So as to be applicable to women's lives, there is a critical need to contextualize the proposed reforms inside an exhaustive structure, comprehensive of political and economic diversities. Though, the improved Hindu law was anticipated as the perfect bit of legislation which liberated Hindu women, the fundamental and building an Integrated Nation. In the years that pursued, a few biased parts of the personal laws came up for judicial scrutiny under the constitutional command of equality and non-discrimination. In any case, the courts, as a rule, held back before proclaiming the prejudicial

viewpoints as unconstitutional. Throughout the years, the courts have held that the discrimination under the personal laws of different communities depends on sensible classification. This has thrown further hindrances in the way of gender equality.

CONCERNS GOVERNING THE REFORMS

The historical backdrop of Hindu Law change traverses a period of fifteen years from 1941 to 1956. It was talked about in three Parliaments of authentic importance for example the Federal Parliament, the Provisional Parliament and the principal Parliament of the recently independent nation. At each stage, it experienced a weakening of rights till at long last, the political interests of the decision party turned into the primary consideration. Be that as it may, the talk kept on being 'freedom of women'. The Hindu Law Committee, set up in 1941 to investigate the irregularities of the 1937 act, recommended a far reaching code of marriage and progression, which prompted the setting up of the second Hindu Law Committee in 1944. In the wake of requesting feelings of legal scholars and the public, the Committee submitted its report to the Federal Parliament in April, 1947. The recommendations were bantered in the Provincial Parliament somewhere in the range of 1948 and 1951 and again from 1951 to 1954. At long last, a weakened adaptation, as four separate Acts could be passed just in 1955-56.

The three significant factors which should be analyzed with regards to the Hindu law change are, (i) the restriction to it inside the Congress initiative, (ii) the political impediments which required the change, and (iii) the veracity of its double case of being a code and of freeing women. Resistance from Conservative Forces: Several provisions including the provisions of monogamy, divorce, abolition of coparcenary and legacy to daughters were contradicted. It was felt that the Hindu society will get an ethical difficulty if women were allowed the right to divorce alongside a right to acquire property. The reforms were contradicted by the then President and Constitutional head, Dr Rajendra Prasad, Senior Congressmen like Pattabhi Sitaramayya and the draftsman of the United Indian Nation, Sardar Patel, the President of the decision Congress, P.D. Tandon among others.

The agents of Hindu fundamentalist parties named it as 'against Hindu' and 'hostile to Indian' and raised the interest for a uniform code as a deferring tactic. Now, the women parliamentarians who had at first spread a uniform code, turned around their position and upheld the Hindu law change. This is a huge political move, since a firm interest for a uniform code would have implied a coalition with the most reactionary and enemies of women campaign and would have made a further difficulty women's rights.

Political impediments which required the change: The worries which were instrumental in realizing change in Muslim Law, for example of homogenizing a community by uniting them under one law, were likewise the main impetus for the Hindu law change. The integration of Hindus from three different political routines, for example British India, the royal states and the ancestral regions into one nation should most ideal be by bringing them under one law. Henceforth, the primary concern was to characterize the term 'Hindu' in its most stretched out sense and include all orders and castes and religious denominations inside it. The Hindu Law Committee had characterized 'Hindu' as anybody declaring the Hindu religion. Be that as it may, later the word 'affirms' was erased to widen its scope.

Analyzing the thought process in Hindu law change, Archana Parashar contends, that the concealed agenda was unification of the nation through uniformity in law. National integration was of principal significance. Building up the matchless quality of the state over religious institutions was another significant consideration. This could be best accomplished by re-characterizing the rights given to women. Through the re-introduction of female roles the state could supplant the case of religion and religious institutions over people's lives. While getting reforms the state depended upon two clashing cases of custom and innovation. While affirming that it was bound by the Constitution, the state anticipated the picture of a progression with the past (by saving the provisions from the old hallowed law) to acquire particular reforms.

For the state, the bringing together capability of the regular code turned out to could really compare to its potential for guaranteeing legal equality for women. Subsequently, a few customary rights of women, especially from the lower castes and the southern regions, were relinquished in the interest of uniformity. Neighborhood customs of matrilineal legacy and other customary protections were not incorporated into the New Code. For example, lower castes had a right of divorce and remarriage under the customary law with assent of the parties. Through the Marumakkattayam Act of 1933, (material to the Malabar region) the right of divorce by executing an enlisted instrument of disintegration by the concerned parties was allowed statutory acknowledgment. Further, under the scriptural law just as customary law, the right of females as stridhana beneficiaries was superior to their male counterparts and that of parents was superior to their male counterparts and that of parents was superior to in-laws. But under Section 15 of the Hindu Succession Act, 1956, sons and daughters were granted equal rights. Further, under the provisions of the Hindu Succession Act, the property of a childless woman devolves upon the husband's heirs and only in their absence would it devolve upon the woman's own parents. A

further and inexplicable distinction was made between the heirs of the father and those of the mother of a female and the mother's heirs were placed in an inferior category.⁹ Despite the wide diversity under the Hindu law the reforms relied upon one school irrespective of its provisions favoring women.

The Congress party was dominated by lawyers trained in British law or those who studied law in England and consequently imbibed all the colonial biases regarding the functioning of Indian society, as well as the changes that were supposedly needed to modernize it. There was a fascination among social reformers with uniformity as a vehicle of national unity. The notion of the state as an instrument of social reform to be imposed upon the people without creating a social consensus derives essentially from the norms of functioning inherent in the colonialist state machinery and ideology. The English-educated elite had faithfully imbibed the colonial state's ideology, projecting itself as the most progressive instrument of social reform.¹⁰

The reforms did not introduce any principle which has not already existed somewhere in India. Despite this, the reforms were projected as a vehicle for ushering in western modernity. There were, however, several liberal customary practices which were discarded by the Hindu code for the sake of uniformity. In their stated determination to put an end to the growth of custom, the reformers were in fact putting an end to the essence of Hindu law, and ironically, persisted in calling the codification 'Hindu'.

Cases of liberating women: There is a general assumption that the Hindus are administered by a secular, populist and gender-simple code and that this code should now be stretched out to Muslims to liberate Muslim women. The judiciary has added to this fantasy by emphasizing that Hindus have spurned their personal laws and are administered by a typical code. This misguided judgment frames the premise of the interest for the Uniform Civil Code. Henceforth, the veracity of this interest should be intently investigated.

Since the political impediment to change Hindu law was grave, a few exercises in careful control must be performed by the state while transforming the Hindu law. Urgent provisions empowering women must be always watered down to achieve the dimension of least agreement. While anticipating to be star women, male benefits must be ensured. While presenting advancement, old Brahminical customs must be held. While usurping the power practiced by religious heads needs of rising capitalism must be shielded. Just through such exercises in careful control, the agenda of law change could be accomplished.

Tragically, the oddities and enemies of women predisposition inside the Hindu code were not examined generally in public gathering. They stayed covered up in resolution books and legal manuals. Here appeared to be just about a scheme of quietness underneath which these deficiencies were hunched. This prompted a fiction that the Hindu Code is adequately modernized and henceforth it is the perfect family code which should be reached out to different religious denominations so as to liberate women.

The Acts were neither Hindu in character nor dependent on present day principles of equality however mirrored the most exceedingly awful propensities of both. Legacy rights of daughters, the right of divorce for women and the burden of monogamy upon Hindu males were the issues which were seriously fought. A few parts of these issues are analyzed here.

ILLUSORY INHERITANCE RIGHTS

The degree of restriction inside the Congress to daughters acquiring property, was with the end goal that the then law Minister C.C. Biswas, in 1954, on the floor of the house, publicly communicated his disagreement with this provision. Because of serious restriction, coparcenary system must be kept up, which brought about the disavowal of rights to women in the ancestral home and property. When contrasted with the situation of the sibling, the sister's share was bleak. Since the prior defend given by the ancient law provides for women by method for stridhana, a vital concomitance to male coparcenary, had been consumed because of judicial decisions, forswearing of equivalent rights to daughters just served to broaden the inlet between the gender partition.

The daughters had equivalent rights just in the separate or self-procured property of their father. Be that as it may, daughters could be denied a share even in this separate property by tossing the property once again into the normal stock utilizing the precept of mixing or by framing new coparcenary. An incentive for such a move was given by the state by presenting charge reliefs for coparcenary under the Income Tax Act.

While at one dimension coparcenary was held, every one of the shields for security of women's rights were annulled. The fundamental component of the customary Hindu joint family was its unavoidable nature. Be that as it may, the new right allowed to the male individuals to will away the property, further debilitated the situation of female individuals. In this specific situation, the daughters' right to be kept up from the family property or to guarantee marriage costs out of this wound up fanciful. The property acquired by the child from the father presently turned into his separate property

⁹ S. 15 (1)(d) and (e) of Hindu Succession Act, 1956.

¹⁰ Kishwar, M., 'Codified Hindu Law : Myth and Reality,' Economic and Political Weekly, XXIX/33 (1994), p. 2145.

and the female individuals couldn't lay any cases to it. While the English idea of alienation through testamentary progression was incorporated into the Hindu Succession Act, the security allowed to the family individuals under the English law did not discover a mention here. In this way, individual men could give away both their share in the joint family property just as the entire of their separate property with total abandonment. Amid Parliamentary discussions, these provisos were explicitly indicated out the individuals who were contradicting the provision allowing property rights to daughters to demonstrate how they could go around the provisions of the Act.

While there were no shields to ensure the right of daughters in their natal family, the capitalist, consumerist forces changed the ancient custom of stridhana into an advanced bending called share. Under its cutting edge pretense, the daughters lost control upon this property, which was probably given for her benefit, to verify here joy in her wedding home. In the subsequent years, the interest for share turned into an instrument of viciousness and subjugation of the recently hitched ladies.

IMPLICATIONS OF FORMAL EQUALITY

The Hindu Marriage Act of 1955 depended on a formal idea of equality where the companions were considered equivalent and had equivalent rights and obligations towards one another. The two men and women were conceded equivalent rights to wedding cures and auxiliary reliefs.

Along these lines, while an essential inequality among men and women persisted inside the scheme of legacy rights, under the perverse rationale of equality the Hindu lady was under a legal obligation to keep up her husband. The idea did not exist under any pervasive thought of marriage in the Indian setting—Hindu law, either scriptural or customary, or the Muslim law or even in the cutting edge and secular Special Marriage Act, enacted in 1954. The idea was presented out of the blue under the Hindu Marriage Act and depended on the western thought of formal equality.

It is pertinent to take note of that the enactment of 1955 did not concede Hindu women the right of divorce by common assent which had just been presented under the Special Marriage Act in 1954 as it was considered too radical for the conservative Hindu Society. But then women from such conservative societies were esteemed to be adequately dynamic, liberated and economically progressed in order to give support to their husbands. While a kid of 18 years was not qualified for case support from his father on the ground that he had achieved the time of larger part and subsequently is fit for acquiring his own job, an adult male was allowed the benefit of practicing a decision of staying unemployed and asserting upkeep from

his employed wife. This, notwithstanding the social reality that an expansive number of women are occupied with unpaid household work and among the individuals who are occupied with compensation work, a noteworthy percentage are in low paying jobs or in the disorderly sector.

Unexpectedly, while women were loaded with the duty of keeping up the husband under a cutting edge idea of equality, the courts kept on undermining a lady's right to hold her job against her husband's desires under the ancient thought of the Lord and Master and conceded them the benefit of deciding the decision of marital home. In the event that the lady was employed at a spot far from the wedding home, the husband could guarantee compensation of marital rights against the spouses.

For a considerable length of time after the enactment, in a progression of decisions, the courts held that Hindu marriage is a sacrament and it is the consecrated obligation of the wife to pursue her husband and reside with him wherever he resides. In every one of the cases, the women were working and supporting the family. The husbands had moved toward the courts for reestablishing conjugality just to demonstrate hatred for the women. The courts maintained the husband's rights and conceded them an announcement of compensation. The decisions are abridged underneath:

In 1958 in *Ram Prakash v Savitri Devi* the court held According to Hindu Law, marriage is a blessed union for the performance of marital duties with her husband where he may reside and to satisfy her duties in her husband's home.

In *Tirath Kaur v Kirpal Singh*, the wife argued that she was eager to continue with the marriage however was not set up to surrender the job. Be that as it may, the court prohibited her request and ruled for the husband as pursues: The wife's refusal to surrender the job adds up to abandonment. This would entitle the husband for an announcement of compensation of marital rights.

In 1966, the Madhya Pradesh High Court held: A wife's first obligation to her husband is to submit her dutifully to his position and to stay under his rooftop and security.

In 1973, in *Surinder Kaur v Gardeep Singh* it was held: The Hindu law forces on the wife the obligation of attendance, submission to and adoration for the husband to live with him wherever he resides.

In 1977, the issue came up before the Full Bench of the Punjab and Haryana High Court on account of *Kailash Wati v Ayodhia Parkash*. The wife was employed before the marriage. Seven years after

the marriage, the husband requested that the wife leave her job and on her refusal to do as such, petitioned for compensation of marital rights. The wife stated that she was set up to respect her wedding obligations yet was not set up to leave her job. The Full Bench of Punjab and Haryana High Court held: According to Hindu Law marriage is a sacred union for the performance of marital duties with her husband where he may reside and to satisfy, her duties in her husband's home. The court reaffirmed that the wife's refusal to leave her job adds up to withdrawal from the husband's society, and allowed the pronouncement for the husband society, furthermore, allowed the pronouncement for the husband.

So while under the cutting edge idea of equality, the husbands reserved the privilege to be kept up by their spouses, under the idea of a sacramental marriage, hello could limit them structure beneficial employment. The right depended on a supplication that it was the holy obligation of a Hindu wife to reside under the consideration and insurance of her husband, her ruler and ace. While the husbands' request isn't amazing, the judicial certification of this supplication under a cutting edge resolution is exasperating. It is just around 1975 that the courts started to perceive the lady's right to clutch a job far from her husband's residence. Three significant judgments of this time, verified for women their constitutional right of holding a job far from their husband's residence. The Gujarat High Court while denying the husband the relief pronounced:

In the advanced viewpoint, the husband and wife are similarly allowed to take up a job and hold it. Since there had been a shared arrangement, it was anything but a situation where one might say that the wife had pulled back from the society of the husband.

Likewise, the Madras High Court, for a situation where the wife's income was utilized to support herself and her child, ruled: 'Under the advanced law, the idea of the wife's acquiescence to her husband and her obligation to live under his rooftop under all conditions does not make a difference'. In another huge development, the Delhi High court in 1978, in *Swaraj Garg v R.M. Garg* contradicted from the Full Bench decision in *Kailash Wati* and held that without a pre-marriage agreement between the parties, it can't be said that the wife who had a permanent job with a decent income needed to inhabit a spot dictated by the husband when the husband did not acquire enough to keep up the family. Giving constitutional legitimacy to the wife's right to clutch the job, Justice Deshpande ruled that an elite right to the husband to choose the marital home would be violative of the equality of genders proviso under Article 14 of the Constitution. In every one of the cases, the fact that the spouses were procuring more than their husbands and were substantially contributing towards household consumption appears to have impacted the judges

while precluding husbands the pronouncement from claiming compensation of marital rights.

OUTCOMES OF MONOGAMY

The Hindu Marriage Act presented the Christian idea of monogamy into the Hindu marriage and this provision appears to have caused a lot of resentment among Hindus. The famous help for the interest for a Uniform Civil Code is established in the resentment that while the sexual propensities of Hindus males are controlled by the presentation of monogamy, the Muslim males are without left to appreciate the benefits of bigamous marriages. The provision of monogamy was acquainted apparently with lift the status of Hindu women and it was an interest brought by women up in the nationalist movement. Subsequently it would to be sure be interesting to see how the provision of monogamy under the Hindu Marriage Act has influenced women.

In spite of the fact that it was asserted amid Parliamentary discussion that Hinduism isn't a religion yet an aggregation of culture and the Act changed the Hindu marriage from status to a solvent contract, the type of solemnizing the contract stayed Brahminical and scriptural with saptapadi (seven stages round the sacrosanct flame) and vivaha homa (the hallowed flame) as its fundamental highlights. However, inside a pluralistic society, the Act additionally needed to approve differing customary practices, But the thought of a legitimate exclusively stayed ancient and that of days of yore, as stipulated under the English law. This blending of Brahminical ceremonies toward one side, customary practices at the other, with English principles thrown in for good measure, has brought about foolish and silly decisions in regards to the legitimacy of Hindu marriages and women have been the most noticeably awful sufferers of these legal absurdities.

During the time spent urbanization, most customary structures have been changed and urban communities living in nearness have received a blend of marriage ceremonies. The structures go from exchange of garlands to applying sindoor (vermilion) on the lady of the hour's forehead, announcing themselves hitched by marking on a stamp paper in a lawyers chamber or performing a few customs before a god in a specific sanctuary (for example, marriages contracted at the Kalighat sanctuary in Calcutta). The media and all the more especially the Hindi movies have added to the perplexity by anticipating these practices as substantial types of Hindu marriage.

This vagueness with respect to the legitimate type of marriage isn't to be found under any law administering minority communities. Under the laws of minority communities, the conventions of

solemnizing marriage are carefully recommended and the directing cleric needs to give the essential document by method for a marriage declaration or he is required to enlist the marriage with the Registrar of Birth, Deaths and Marriages. Since Muslim, Christian and Parsi religions are progressively institutionalized, their rules and methodology for contracting marriage are unmistakable and unambiguous and are carefully controlled by the religious pecking orders. Be that as it may, Hindu marriages (just as the Hindu law) which depended more on community practices are moderately less institutionalized and consequently their legality is increasingly questionable. Because of the breakdown of conventional communities inside which these marriages were performed, the circumstance has additionally deteriorated.

This equivocalness has given a Hindu male sufficient scope to contract bigamous marriages. Since the law perceives just monogamous marriages, the women in polygamous relationships are set in a helpless circumstance. Without any unmistakable confirmation, the man has the decision of conceding either the first or his subsequent relationship as a substantial marriage and departure from financial duty towards the other lady. At the point when the man won't approve the marriage, the lady loses her right to upkeep as well as faces embarrassment and social shame as an escort. Such a great amount of is in question for the lady that it's anything but an unprecedented sight for two women who are competing with one another for the status of a wife to get into a fight amid the court procedures.

An irregular look at law diaries would uncover how broadly predominant is the poly of declining to approve the marriage in support procedures by Hindu husbands.

The other side of this predicament in upkeep procedures is the issue looked by women in criminal procedures in cases of plural marriage. Here, long stretches of case neglected to finish in conviction for the errant male because of the courts embracing an inflexible view that Saptapadi, Vivaha homa and Kanyadan and so forth are basic for solemnizing a Hindu marriage. In the event that these services couldn't be demonstrated by the primary wife in regard of her husband's second marriage, the husband could wriggle out of conviction despite the fact that he had lived together with the second wife, the community had acknowledged the man and the second wife as husband and wife or regardless of whether he had fathered children during that time wife.

Later investigations uncovered that regardless of the provision of monogamy under the transformed Hindu law, the percentage of polygamy among Hindus is more prominent than polygamy among Muslims. So the dynamic sounding provision of monogamy ended up being a joke as well as in fact considerably more detrimental to women than the un-systematized

Hindu law which perceived rights of spouses in polygamous marriages. For example, for a situation for upkeep where the husband argued that since the lady was his second wife he was not qualified for pay her support, the court took plan of action to the un-systematized Hindu law and held that since the couple is administered by the ancient Hindu Law (which permits plural marriage) and not by the changed code, the second wife is qualified for upkeep. This judgment talks much for a law which was introduced with incredible ballyhoo as an instrument of empowering Hindu women.

CONSTITUTIONAL CHALLENGES IN THE MANNER PROVISION OF EQUALITY

It isn't amazing that the primary test to the constitutional provision of Equality originated from the Hindu male testing the provision of monogamy. A petition was documented in the Bombay High Court testing the monogamy forced by the Bombay Hindu Marriage Act. In its energy to maintain the standard of monogamy among the Hindus, the Bombay High Court in *State of Bombay v Narasu Appa Mali* held that the personal laws are not 'laws in power' and consequently they are not void notwithstanding when they collide with the provision of equality under the Constitution.

In a subsequent case, *Srinivasa Aiyar v Saraswati Ammal* it was contended that denying polygamy denied Hindu men equality under the watchful eye of the law and equivalent assurance of law and further that it victimized Hindu men on the grounds of religion as it confined the right to uninhibitedly claim, practice and proliferate religion. The Madras High Court did not address the issue whether the term 'Laws in power' incorporates personal laws however held that notwithstanding expecting that the term 'laws in power' incorporates personal laws, the Act does not outrage Article 15 which stipulates non-discrimination based on sex.

The judgments ruled that unfair personal laws don't abuse the constitutional provision of equality. For acquiring the transient addition of shielding the provision of monogamy for Hindu males, the judiciary raised a difficult hindrance for gender equality inside personal laws, by giving a legal premise to the continuation of prejudicial personal laws. In any case, in a recent judgment, *C. Masilamani Mudaliar v Idol of Sri Swaminathaswami Thirukoil*, the Supreme Court, while not alluding particularly to the rule set down in *Narasu Appa Mali*, has certainly overruled the equivalent. The Court held as pursues:

The personal laws presenting mediocre status on women is utter horror to equality. Personal laws are gotten not from the Constitution but rather from the religious sacred writings. The Laws in this way inferred must be predictable with the Constitution in

case they become void under Article 13 on the off chance that they disregard fundamental rights.

The second issue which came up for judicial scrutiny was the provision of Restitution of Conjugal Rights under Section 9 of the Hindu Marriage Act. Justice Chowdhary of Andhra Pradesh in July 1983, struck down this provision as unconstitutional on the ground that it establishes the grossest type of infringement of an individual's right to protection. The court held that it denies the lady her free decision whether, when and how her body is to be turned into the vehicle for the multiplication of another human being and consequently is in disregard of the right to protection guaranteed by Article 21 of the Constitution.

In spite of the fact that Section 9 of the Hindu Marriage Act, 1955 depends on formal equality and there is no qualification between the rights of husband and wife the court held that equality of treatment paying little mind to equality of the unequal circumstance is neither just nor equivalent. By treating husband and wife who are inherently unequal as equivalent, the judge held that this segment insults the rule of equivalent security under the laws guaranteed by Article 14 of the Indian Constitution. He further included that in actual fact, the cure works just to serve husbands and is severe to women.

In any case, later around the same time, the Delhi High Court took a very surprising position and kept up that Section 9 of the Hindu Marriage Act isn't disregarded Article 14 and 21 of the Constitution. The Court held that the object of the compensation order is to realize living together between the repelled parties so they can live respectively in the marital home in friendship. As indicated by the judge, it is a two-in-one provision. From one perspective, it empowers the court to urge and persuade the parties to continue marital life and is intended to energize compromise.

The court ruled further: 'Presentation of constitutional law in the home is generally wrong. It resembles pushing a bull into a china shop. I will turn out to be a heartless destroyer of the marriage organization and all that it represents. In the protection of the home and the wedded life neither Article 21 nor Article 14 have wherever'.

Subsequently, the Supreme Court maintained this judgment in *Saroj Rani v Sudarshan Kumar Chaddha* and stated the provisions of compensation of matrimonial rights fills a social need and overruled the judgment of the Andhra Pradesh High Court. The principle goal of this provision has dependably been to guarantee conjugality through coercive measures. Regardless of whether the constitutionality of a legal provision can be tested by crediting to it a commendable social reason for which it was never implied for, is a far from being obviously true inquiry.

CONCLUSION

So while the Codification has conveyed a few increases to Hindu women by conceding a right to outright ownership of property, monogamy and the right of divorce, these rights are more applied than actual. While endeavoring to determine a few issues, the codification has fore grounded others which presently can't seem to locate a satisfactory arrangement. As indicated by Hindu Law just as Mythology however it has been delineated that they respect women and dependably them similarly yet in genuine way the conduct of every single renowned person whom the society view as a perfect person is one-sided with the women regardless they feel that they can't be given equivalent rights in light of such a significant number of irrational convictions of their own society and community. The progression unto reforms has just made ready to new convictions and propelled few to thoroughly consider the issues identified with women on human grounds.

REFERENCES:

1. In contract, the Canadian women were granted the right of equality in 1982, the Swiss women were granted the right to vote in 1972 and the United States has not yet endorsed the Equal Remuneration Act.
2. Art 21 of the Constitution ensures Protection of life and personal liberty. In recent years, the Supreme Court has read various socio-economic measures into this right to life. For instance in *People's Union of Democratic Rights v Union of India* (1982) 3 SCC 235, the Supreme Court read the right to minimum wages into Art 21.
3. In *Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545 it was held that the right to life includes the right to livelihood. In *Mohini Jain & Ors v State of Karnataka* (1992) 3 SCC 666 and *Unnikrishnan J.P. & Ors v State of AP* (1993) 1 SCC 645, it was held that the right to education is a fundamental right.
4. Lateef S., 'Defining Women through Legislation,' in Hasan, Z. (ed) *Forging Identities: Gender, Communities and the State*, New Delhi: Kali for Women (1994), p. 51.
5. Karat, B., 'Step by Step Approach—Equal Rights, Equal laws,' in *Women's Equality* v/1, p.20.
6. Parashar, A., *Women and Family Law Reform in India*, New Delhi: Sage Publications (1992), p.103. 1 Ibid., p. 140.

7. S. 15 (1)(d) and (e) of Hindu Succession Act, 1956.
8. Kishwar, M., 'Codified Hindu Law : Myth and Reality,' Economic and Political Weekly, XXIX/33 (1994), p. 2145.
9. Ibid.
10. See the comments made by the Supreme Court in a recent judgment, *Sarla Mudgal v Union of India & Ors.* (1995) 3 SCC 635.
11. S. 7 (2) of the Hindu Marriage Act, specifically mentions *saptapadi* which is a Brahminical ritual. Most lower castes were not permitted the ritual of *saptapadi*. Among some castes five steps were permitted and among others only four. Further, the ritual for the marriage of virgin brides differed from that of the second marriage of widows and divorcees.
12. Kishwar, M., 'Codified Hindu Law: Myth and Reality', p. 2154.
13. For instance, as per the provisions of S. 6 of the Hindu Succession Act, 1956, in a family where there are two sons and one daughter, upon the death of the father each of the sons would inherit one-third of the property as coparceners. The remaining one third, is the father's separate property which would be divided in four parts, one for the wife, one for the daughter and one each for the sons. So while the sons would be entitled to one-third plus one-twelfth, the daughter's share would only be one-twelfth of the property. This dismal share is projected as gender equality.
14. Under s. 10.2 of the Income Tax Act an exemption is granted to income from the Hindu Undivided Family (HUF). Under SS.20 & 20A of the Wealth Tax Act, certain tax concessions are granted to members of HUF at the time of partition.
15. Under S.29(2) of the Hindu Succession Act, a power was granted to individuals to will away their property and in subsequent years this provision was used mainly to deprive the daughters their share in their parental property.
16. See the decisions in *Commissioner of Wealth Tax v Chandra Sen* ILR 1986 370 and *Yudhishter v Ashok Kumar* AIR 1987 SC 558, where the court held that the property inherited by the son in his separate property.
17. The English statute, Inheritance (Family Provision) Act of 1938 provided for a legal remedy, if the husband failed to make reasonable provisions for his wife and children. The right of a former wife who is entitled to receive maintenance was protected through the Matrimonial Causes (Property and Maintenance) Act of 1958 (subsequently re-enacted in the Matrimonial Causes Act 1965). Since this enactment placed a divorced wife in a superior position relative to the surviving spouse, a further statute was enacted entitled, Inheritance (Provision for Family and Dependents) Act 1975 through which the surviving spouse could claim not only maintenance but also a share in the capital.
18. Kishwar, M., 'Codified Hindu Law: Myth and Reality', p.2155.
19. M.N. Srinivas has argued that modern dowry is entirely the product of the forces let loose by British rule such as monetization, education and the introduction of the 'organized sector'. To equate it with *dakshina* is only an attempt to legitimize a modern monstrosity by linking it up with an ancient and respected custom. See Srinivas, M.N. *Some Reflections on Dowry*, New Delhi: Oxford University Press (1984), p.11-13.
20. Hindu Succession Act, note 13.
21. SS. 24 and 25 of the Hindu Marriage Act, 1955. Also see S. Khanna, *Padmasini's Quest for Justice*, in *The Lawyers VII/2* (1992), p.25.
22. This concept has subsequently been incorporated into the Parsi Marriage & Divorce Act, 1936 by the 1988 amendments (SS.39 and 40 of the Act).
23. The remedy of divorce by mutual consent was introduced into the Hindu Marriage Act in 1976 through S. 13 B of the Act. Cruelty and desertion as grounds of divorce were also introduced in 1976.
24. As per the Report of the Committee on the Status of Women, Towards Equality in the year 1971 only 11.86% of women were employed and they constituted only 17.35% of the total labour force (p.153) and women constituted only 10.9% of the labour force in the organized sector (p.184).
25. S.9 of the Hindu Marriage Act.
26. AIR 1958 Punj 87.

27. AIR 1964 Punj 28.
28. Gaya Prasad v Bhagwat AIR 1966 MP 212.
29. AIR 1973 P&H 134.
30. ILR (1977) 1 P&H 642 FB.
31. Praveenben v Sureshbhai AIR 1975 Guj 69.
32. N.R. Radhakrishna v Dhanalakshmi AIR 1975 Mad 331.
33. AIR 1978 Del 296.
34. S. 7 (1) & (2) of Hindu Marriage Act, 1955.
35. In Divorce and Matrimonial Cases (1994), Volume I reported cases where validity of marriages was an issue while claiming maintenance, were as follows:

Reported cases relating to maintenance: 40-100%

Cases where validity of marriage was an issue: 9-36%

Cases where the Husband's plea was upheld: 4-16%

Admittedly Polygamous Marriages: 6-24%
36. For a detailed discussion on this issue, see Agnes, F., 'Hindu Men, Monogamy and the Uniform Civil Code,' in Economic and Political Weekly, XXX/50 1995), p. 3238.
37. Report of the Committee on Status of Women Towards Equality, pp.66-7.
38. Anupama Pradhan v Sultan Pradhan 1991 Cri.LJ 3216 Ori.
39. AIR 1952 Bom 84.
40. AIR 1952 Mad 193.
41. (1996) 8 SCC 525, decided by Justices K. Ramaswamy, S. Saghir Ahmad and G.B. Pattanaik.
42. T. Sareetha v T. Venkatasubbiah AIR 1983 AP 356.
43. Harvinder Kaur v Harminder Singh AIR 1084 Del 66.
44. AIR 1984 SC. 1562.
45. See Bhattacharjee, A.M., Matrimonial Laws and the Constitution, Calcutta Eastern Law House (1996), p.19.

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