



WOMEN'S RIGHTS: BEYOND THE MAJORITY - MINORITY DEBATE



Women's Rights: Beyond The Majority - Minority Debate



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The issue of an Egalitarian Civil Code has become confined more than ever before within the framework of majority-minority community identity. Even those who strongly argue for equal laws for women tend only to emphasise the need to liberate women from laws based on different religions. The ruling class over the years has also maintained a status quo, without bringing changes in law, (except in the case of majority Hindus to some extent) by treating it as an issue of majority-minority identity. The question of women's rights in inheritance, marriage, divorce or custody gets obscured in all these calculations.

The women's movement over the years has been demanding an end to discriminatory personal laws based on religion and the need for equal laws for all women. The demand has always been to recognise women's contribution in the family and society and grant rights accordingly. The State has notoriously worked to maintain women's subordinate position, since guaranteeing equal rights would be a threat to patriarchal and class interests. The role of law, the contradictions in the Indian Constitution and the policies of successive governments, amply show that women's struggle is against the patriarchal institutions of family, religion and State. Women's subordinate position in society is maintained by an array of ideological forces and social and economic institutions with a material basis. It is a struggle to end exploitation of women's sexuality and labour. The demand for an Egalitarian Civil Code is a major step in this direction.

One major reason for a woman's exploitation within the family is that she has virtually no control over family resources, whether in the form of land, house, factory, shop or jhuggi. Total or partial disinheritance of women in families is an entrenched part of all personal laws. Once this is challenged, women come into conflict not only with religious forces, but equally importantly with caste, class and other powerful patriarchal interests. Confrontation at various levels is inevitable.

Instead of linking up the issue of discriminatory personal laws with community/minority identity, it needs to be seen in the context of the tremendous amount of work women do and the paltry rights they have in return. There is also need to look into the individual as well as collective struggles of women where inheritance, share in property, rights over the parental home, maintenance and control over common property resources have been the main areas of contest.

After years of housework, rearing children and maintaining the home, if a woman has to live separately, she can claim very little from the family, irrespective of her religion. Women's

workload is heavier in subsistence economies, both rural and urban, where women participate in various economic activities in addition to household responsibilities. In addition, many women are the sole bread-winners of their families, and the number of women-headed households is on the increase. The denial of equal rights for women in family and community resources is a devaluation of this labour.



Women's vulnerability to violence becomes even more acute due to lack of economic rights. It is difficult to step out of violent family situations as there is very little to fall back on. There is no experience or skill development for women to earn for themselves as they have been confined to the family. The lack of creche facilities and an adequate support system forces women to remain within the four walls of the house, precluding possibilities of vocational training and job opportunities.

At the same time, all those years of hard labour within the house deprives women of any confidence or self esteem to even hope to begin a dignified life independently. The drudgery of housework leaves little scope to prepare for so-called 'productive' jobs, while that same unpaid labour is taken for granted by the family and society.

As long as women do not claim their rights, they are the role model of the ideal wife and daughter. But when women wish to step out of their prescribed roles, they are faced with a sea of obstacles. Any claim to inheritance or maintenance ostracises women further, and women are forced to go into long drawn out processes of litigation. It is upon going to the courts for justice that a woman realises what little the courts have to offer by way of personal laws. The fight for justice may end in a woman getting a pittance for maintenance if she is lucky. Years of nurturing and rearing children are bypassed as the battle wages for custody of children, where issues ranging from her ability to rear children, to her moral character, become crucial determinants in the eyes of law. There is no access to matrimonial property, property accumulated during years of marriage, for which both partners had contributed. The stigma attached to divorce is well borne out in divorce litigation and the peculiarities of the concerned laws. All these laws reinforce the dependent status of women. Whatever her religion, a woman who has dared to defy, is sought primarily to be put back in her place.

Patriarchal power in the family stems from direct control over economic resources, where property goes down the male lineage. Over the centuries, every religion and society has kept the system entrenched through personal laws. In earlier times, women were hunted out of their villages as witches in order to prevent them from claiming their land rights - a practice is not yet dead. A modern day manifestation of the same patriarchal control is the abortion of female fetuses in hundreds, since daughters are viewed as a burden, and cost a fortune to be married off. The newly wed bride is burnt for net dowry demands and the man often remarries for a second dowry.

While women have advanced in some areas, economic independence has yet to be achieved. It is true that women are coming out of their houses and taking up jobs, but this does not imply freedom from the burden of housework and child rearing. Young women are joining factory work in thousands, only to save and put aside some money for dowry. The unorganised sector draws thousands of women to work. This hard labour of women within the home and outside goes completely unnoticed and undervalued. Making even sustenance and survival a battle.

The very existence of present day personal laws is thus a mockery of the reality of women's lives. Legal equality will not liberate women from these oppressive conditions. However, the attainment of laws which accept women's rights on an equal basis with men is important in so far as it would unleash a process which would eventually pave the way for achieving the ultimate objective of equality. The very basis of our demand for an Egalitarian Civil Code is to recognise women's contribution in family and society. It goes beyond the specific contents of any existing personal law. Finally it is a demand to recognise women as citizens in a democracy, where there is no place for unequal laws.

BOX

Mothers as Natural Guardians

Asha Mittal, a reader in Kirori Mal College of Delhi University had challenged the practice of entering the father's name in school certificates. She has been raising the issue since 1992 and again in 1994, when her two sons appeared in the Central Board of Secondary Examinations (CBSE). While the contribution of both parents goes into upbringing of children, this rule becomes even more inappropriate in the case of single mothers. Asha Mittal's resistance finally brought about a significant change in the rules of CBSE, giving the long overdue recognition to mothers. The CBSE revised its examination byelaws and amended Rule 68, which will come into effect from 1999 onwards. The Board issued a notification in July 1996 to the effect that the certificates for students finishing Class X and XII examinations, will include the mother's name, preceding the father's name. It is indeed one small significant victory in the direction we are working towards.

In January 1995, novelist Gita Hariharan filed a petition in the Supreme Court, against the Reserve Bank of India and the Government of India, challenging her non-recognition by the RBI as the natural guardian of her child. The petition puts forth the issue as a violation of Articles 14 and 15 of the constitution guaranteeing the right to equality. The legal battle continues.

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