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GENDER JUSTICE AND WOMEN EMPOWERMENT: Legal Measures in India

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Abstract: Educating the girl child, creating job opportunities, putting women in decision making roles, and making pro-women laws protecting them from oppression were some of the many steps that were designed for women's empowerment. But many years down the line the quest for a just society that values women and accords them the necessary dignity and respect is still on. A paternalistic approach with the assumption that women were victims of the social divide was adopted to rid women of their troubles. Being vulnerable they required protection; and so a number of measures were required and adopted to empower her. The authors argue that the flaw in the law is in its paternalistic approach, which does not accord autonomy of self-governance or self-direction. The autonomy needs to be redefined as a relative idea where a just and compassionate society nurtures its members and creates social conditions that strengthens autonomous decisions, instead of impeding them, for the realization of their full potential. It can neither be a masculine versus feminine argument nor be attained in isolation.

Keywords: Autonomy, Empowerment, Feminism, Gender Justice, Laws, Patriarchal, Protectionism.

1. Introduction

Though many legal measures were adopted for the empowerment of women, women are still struggling for equality

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and gender justice. This paper examines the laws, especially in three important areas – Constitutional Law, Family Law and Criminal Law – and tests them from the perspective of gender justice. The authors argue that the laws remain largely insufficient to provide gender justice as they adopted a paternalistic and a protectionist approach. Women are not accorded autonomy of self-governance or self-direction where they can make informed decisions freely and work as per their own reasons. In fact both men and women have been victims of gender stereotyping, and the laws reinforced the stereotypes and curbed autonomy.

To examine the legal measures empowering women in India we begin with the Constitution of India, as it is the supreme law of the land and all statutory laws adhere to the values embedded in it. The first step towards the formulation of the State and the engineering of the society in the path of justice was initiated by the Constituent Assembly with the drafting of the Constitution of India. It is therefore necessary to examine the Constituent Assembly Debates on the provisions that pertain to gender justice.

2. Personal Law and Constituent Assembly Debates

Although the Constituent Assembly did discuss issues concerning women and equality, it did so with a mere fifteen women in the two hundred and ninety six member Assembly. Regardless, a perusal of the debates evinces the eagerness of the Constituent Assembly to grant equality rights, ensuring development of women in the society. Rajkumari Amrit Kaur and Hansa Mehta were instrumental in transforming ideas into provisions, as they were a part of the sub-committee on Fundamental Rights. Article 14 in Part III of the Constitution of India granted equality before the law and equal protection of laws to all. The State was also given power to make special provisions in favour of women and children.

A perusal of the Constituent Assembly debates reveals that with respect to personal laws, the Constituent Assembly members were reluctant to change the status quo. Personal laws were seen as belonging to the domain of religious freedom and hence

outside the domain of governmental regulation.[1] It was pointed out by Babasaheb Ambedkar that the British administration had refrained from interfering in religious practices, treating it as a matter that was not fit for secular legislation. This was based on the underlying belief that any interference with religious beliefs would hurt religious sensibilities.

Rajkumari Amrit Kaur and Hansa Mehta were sceptical about leaving the regulation of rights of women to religious considerations. It was in the personal laws domain that women faced the maximum discrimination. They thought it might preclude any reforms. Freedom of religion included the right to profess, practice and propagate one's religion. They suggested that religious freedom be confined to religious worship,[2] and the rest be dealt with under the fundamental rights.

The issue of personal laws once again surfaced during the discussion, on the adoption of a uniform code. Some of the Muslim members were against State interference in the personal law domain. The draft Article 35 on the adoption of a Uniform Civil Code was worded as follows: "The State shall endeavour to secure for its citizens a uniform civil code throughout the territory of India." Mohamad Ismail Sahib pressed for adding a proviso to the Article – "Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."[3] He believed that the introduction of Uniform Civil Code was to secure harmony through uniformity but he doubted that it would be achieved. He opined that following a religion is part of the fundamental rights of the citizens, and the State is not justified in interfering with it. B. Pocker Sahib Bahadur expressed his agreement with Mohamad Ismail Sahib. He questioned the right and the authority of the Constituent Assembly to interfere with religious rights of people. Mr

[1]For further reading, *Constituent Assembly Debates: Official Report,* Vol. VII, 1948-49, Lok Sabha Secretariat, 1950, 511-15, 540-52

[2]He opined that the presence or the absence of Article 35 does not preclude the Parliament in future to pass a uniform civil code.

[3]*Constituent Assembly Debates,* Vol. VII, 538, 540-552, debated on 23rd November 1948

Naziruddin Ahmad begged to move a proviso – "personal law of any community shall not be changed except with the previous approval of the community…" He expressed doubt as to whether this article would clash with the right to freedom of conscience and the right freely to profess, practise and propogate religion. Mahboob Ali Baig Sahib Bahadur also moved for a proviso to be added namely "…nothing in this article shall affect the personal law of the citizen." He expressed apprehension that 'civil code' would include laws relating to property, evidence, contract, etc. Laws as observed particularly by religious communities should technically be excluded. Mr Hussain Imam felt it was good to have a uniform civil code, but at a distant date.

Other members who considered inheritance and succession was part of personal laws also objected to uniform civil code. The problem of gender justice thus got eclipsed under the arguments that State should not interfere in personal laws. Constituent Assembly member K. M. Munshi favoured the adoption of a uniform code so that equality of the sexes was guaranteed,[4] while M. R. Masani, Hansa Mehta and Amrit Kaur pressed for a guarantee to enact this code within a period of 5 to 10 years;[5] but neither of the suggestions were accepted. Although there was a general agreement that women did not have equal status under the religious dictates, State interference in the matter was considered to be unacceptable due to secular principles.

Resultantly, the formulation of a uniform code was left as a goal in the Directive Principles of State Policy with no time span being specified, and inequalities in the personal domain remained. The Constitution merely accepted it as a separate normative system that remained and had parallel operation. As Sadhna Arya points out,

> Thus, if the Constitution treats gender inequality as not a problem needing special attention and care, nor feels the need to create a culture, through its laws and legal ideology – wherein the values of social inequality are accepted in

[4]Constituent Assembly Debates, Vol. VII 1948, 49, 550-51.

[5]B. Shiva Rao, *Framing of India's Constitution – Select Documents,* Vol. 1, Delhi, Universal Law Publishing 1967 Reprint 2006, 162

everyday life, it only means that the Constitution quietly and tacitly supports a male dominated society."[6]

On the one hand the Constitution formally granted equality and on the other hand it failed to secure substantive equality by leaving personal laws to the realm of religion. Caste (inequality amongst people) related troubles were wrenched out from freedom of religion but personal laws (inequality amongst the sexes) remained embroiled in it. Though a uniform code in the aftermath of partition was difficult to achieve, relegating the entire personal laws to the realm of religion and therefore not a matter for legislation by a secular State proved to be an obstacle in the path to gender justice and women empowerment. Questions of women's autonomy got historically subsumed within questions of religion, community and personal law. It never took the form of individual rights or justice. "Autonomy for women remained hostage to community rights."[7]

During the British rule, reforms were introduced in the personal laws. They successfully introduced changes in the criminal laws, evidence, contract, etc. that was hitherto governed by personal laws. It must also be noted that the Constituent Assembly had already agreed to the right to freedom of religion[8] that was made subject to public order, morality and health. It also stated that the State can make laws in the interest of providing social welfare and reform; thereby implying that social practices that stand in the way of the progress of the country but are not essential and integral parts of religion may be eradicated by the State. Hence the presence or absence of Article 35 would not have affected Parliament's capacity to make Uniform Civil Code at a future date. The crux of the matter lay in divorcing religion from personal laws in such a way that the way of life of people is

[6]Sadhna Arya, *Women, Gender, Equality and the State*, New Delhi: Deep & Deep Publication, 2000, 6.

[7]Paula Banerjee, "Women's Autonomy: Beyond Rights and Representations," in *The Politics of Autonomy: Indian Experiences*, Ranbir Samaddar, ed., New Delhi: SAGE Publications, 2005, 49

[8]Draft Article 19 and present Article 25 of the Constitution of India.

governed by secular laws, that accord equal treatment of women in matters of marriage, divorce, etc.

Although women rights under the personal law sphere were not completely clarified during the drafting of the Constitution, later legal developments see woman as an individual with civil and political rights. The Narasu Appamali[9] court held valid an Act that prohibited polygamy amongst Hindus as it was not an essential tenet of religion. Similarly Sati and the Devdasi system could be abolished.

It is submitted that right to freely practice, propagate and profess religious faith must be restricted to spheres which legitimately pertain to religion. All other subject matters must be regulated, unified and modified in the interest of a just society; only then can autonomy for women be extricated from religion, community and personal laws.

3. Family Laws

In the 19th century, during the British rule, gender formed the centre stage of social and political reform discussions. Many social reforms were introduced in the personal law domain. "Public law was designed to encourage and safeguard the freedom of the individual in the marketplace and was established by statutes, personal law was intended to limit the extent of the freedom."[10] A number of social reforms like the Sati Prohibition Act, 1829, Hindu Widow Remarriage Act, 1856 were passed. The Age of Consent Act, 1891, which raised the legal age of marriage of women from 10 to 12 years faced stiff opposition from the local leaders who regarded it as an encroachment in their personal laws. The Indian Divorce Act, 1869 was passed, though not to bring equality among the sexes but so that the marriages solemnized in England, if required, could be dissolved in India. Yet, it may be noted that, though personal laws were considered to be in the domain of freedom of religion, many reforms were introduced modifying them by the State. Despite opposition it

[9]*State of Bombay* v. *Narasu Appamali* AIR 1952 Bom. 84.

[10]Banerjee, "*Women's Autonomy: Beyond Rights and Representations*," 50.

prevailed and social transformation followed, as they were backed by sanctions, or had the support of religious leaders and in some cases appealed to reason. These were piecemeal legislations that were gradually imposed to remove anachronistic practices from religion, improve the lot of women, achieve uniformity and certainty in the law, and participation of Indians in law making process.

After independence, the task of codifying Hindu personal law was taken up, though it was strongly objected by orthodox forces. The Hindu Marriage Act, 1955 amended and codified the laws relating to marriage, introducing separation and divorce which were not provided for in the Shastric laws. The Hindu Succession Act, 1956 granted women ownership of property acquired either before or after the commencement of the Act thereby abolishing their 'limited owner' status. However she was debarred from the right to claim partition. By a later amendment in the Act daughters were allowed equal receipt of property as with sons and were given the right to claim partition[11] as well. The Hindu Minority and Guardianship Act, 1956 also brought in reforms. Section 6 of the Act was interpreted in Geetha Hariharan case[12] to mean that the mother could act as the natural guardian, during the lifetime of the father, in his absence.

Laws were made that were heavily tilted in favour of women, extending protection during marriage and after divorce and making provision for maintenance. However, what remained doubtful was whether such reforms really improved lives of women. The laws had a patriarchal approach and they were premised on the belief that women are weak and required protection, reinforcing the weak stature and the vulnerability of the women. Certain areas in law remained intact as they were simply assumed to be correct.

The biggest bone of contention is the provision on restitution of conjugal rights, an alien concept that finds its origin in the Jewish personal laws. It was introduced in India by the British and

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[11]The Hindu Succession (Amendment) Act, 2005, <www.prs india.org / downloads / recent-acts / 2005 / > (16.02.2016).

[12]*Geetha Hariharan* v. *Reserve Bank of India,* 1999 2(SCC) 228.

continued its existence through section 9 of the Hindu Marriage Act, 1955. It requires both parties to the marriage to live together and cohabit. It is a remedy that has been misused significantly and strikes at the autonomy of the individual and the right to live with dignity. There are conflicting decisions[13] of the court as to the validity of the provision.

Though the Acts pertaining to Hindu personal laws were reinterpreted to make it more progressive, Muslim personal laws did not witness a similar wave of reforms. Whether a Uniform Civil Code would ensure it remains to be seen. For perusal of the debates show that the whole idea is overshadowed by thoughts of bringing uniformity, whereas reforms in personal laws are more about bringing gender justice. For example, it is argued that polygamy and triple talaq should be abolished taking cue from the Hindu Laws. Similarly Muslim personal laws protecting individual property rights could be adopted over the Hindu law that perceives the natural condition of a family to be joint. That would entail an overhauling of the tax laws. As Muslim marriages are contracts, *mehr* protects Muslim women, a protection that Hindu women do not have. But the absurdity of the whole discussion is that it does not talk about bringing Uniform Civil Code for the avowed objective of bringing in gender justice.

It is in the private sphere that women face violation of rights. The family and the socio-economic arena has been more challenging than the civil and political arena. The family being more closely governed by religious beliefs remained left out from state interference. Article 13 of the Constitution recognized only those laws that were consistent with Part III of the Constitution. The doctrine of eclipse[14] came to be applied to pre-constitutional laws that clashed with the fundamental rights, thereby

[13] *T Sareetha*v. *T Venkata Subbaiah* AIR 1983 AP 356, *Saroj Rani* v. *Sudarshan* AIR 1984 SC 1562.

[14] Article 13(1) of the Constitution provides that any law, which was made before the commencement of the Constitution, must be consistent with Part III the Fundamental Rights chapter of the Constitution. If it is inconsistent then it shall be unenforceable to the extent of such inconsistency.

invalidating it. But on the question whether personal laws are bad as they were inconsistent with the Part III of the Constitution, the Narasu Appamali court held personal laws were not laws. Hence they were immune from judicial scrutiny. The constituent assembly debates on the uniform civil code tacitly supports this position. Contrary to this in 1996 the Supreme Court said – "Personal laws conferring inferior status on women are anathema to equality … such laws must be consistent with Constitution."[15] But in 1997 again the court refused to test personal laws on the touchstone of equality.[16] The most important of all cases that highlighted how conflicts in personal laws can work to the detriment of gender justice was the Sarla Mudgal case. The Hindu husband converted to Islam, remarried and neglected his first wife. The court held that a Hindu marriage could only be dissolved under the Hindu Marriage Act.

The Shah Bano case[17] raised the question whether a Muslim woman could get maintenance from her husband under section 125 of the Criminal Procedure Code. Her husband claimed that compelling him to pay maintenance to his wife would conflict with his personal laws. But instead of deciding on whether Muslim Personal law was violative of Article 14 the court launched on to an elaborate discussion on how section 125 Criminal Procedure Code (CrPC) was not in conflict with the Quran. After the decision protests erupted and the Parliament enacted the Muslim Women's (Protection of Rights on Divorce) Act, 1986 barring Muslim women from relief under section 125 of Criminal Procedure Code. If the court would have decided on the equality factor the Parliament would have had a constitutional prescription to overcome. But that was not to be. Section 125 of the CrPC provides for an order of maintenance of wives, children and parents and states that a person is responsible for providing maintenance to the aforementioned categories of persons, in the event that they are unable to maintain themselves.

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[15]*C. Masilamani Mudliar* v. *Idol of Sri S S Thirukoil* (1996) 8 SCC 525.

[16]*Ahmedabad Women's Action Group* v. *Union of India* (1997) 3 SCC 573.

[17]*Ahmad Khan* v. *Shah Bano Begum* (1985) 3 SCR 844.

Although the provision is limited to cases where the wife is unable to maintain herself, courts have often placed an obligation on the husband to provide maintenance to his wife even if she is earning. The Supreme Court in *Shamima Farooqui* v. *Shahid Khan* held, "a woman, who is constrained to leave the marital home, … is entitled to lead a life in a similar manner as she would have lived in the house of her husband."[18] The Court was of the view that a man could not be permitted to plead his inability to maintain his wife due to financial constraints, as long as he was capable of earning. By doing so, the Court placed their stamp of approval on the patriarchal view that a wife's identity springs from the husband, since her lifestyle would have to bear an indication of how she lived with her husband. Moreover, it places the burden on the husband to provide, irrespective of whether he is able to do so or not, reiterating the paternalistic notion of the husband as the primary provider in a family. It does not place any such burden on the wife. Although the Court intended to help providing maintenance to the wife, in doing so it relegated her position to the perpetual receiver in the domestic set-up. The same view has been upheld by various courts in many cases.

The paternalistic attitude of the courts is also depicted in *Madhu Kishwar* v. *State of Bihar*,[19] where the Court looked into the constitutionality of the Chota Nagpur Tenancy Act, 1908 that allowed for succession of property through the male line only. The case involved the recognition of the interest of a mother with respect to the property. The Court held that the succession could pass from father to son, with a condition that the interest of the mother had to be protected. Although the Court protected the interest of the woman, it failed to recognize her right in the property.

4. Criminal Laws

Criminal Laws also extend a protectionist approach towards women. The Indian Penal Code deals with offences committed against the body, marriage, honour and modesty of a woman. The

[18]Criminal Appeal No. 564-565 of 2015.

[19]AIR 1996 SC 1864.

Indian Evidence Act formulates certain presumptions in her favour while the Criminal Procedure Code lays down safeguards in the interests of women during arrests. It also provides for no-fault maintenance. The Immoral Traffic Prevention Act, 1956, Dowry Prohibition Act, 1961, the Indecent Representation of Women Prohibition Act, 1986 and the Protection of Women from Domestic Violence Act, 2005 are the other women-specific laws passed by the State for the protection of women.

A closer look at the laws will show why in spite of these legal measures protecting women in almost every sphere, gender justice is not realised in the society. For example, according to the law relating to adultery[20] the husband can sue a third person who tries to take away or entice his wife. The law does not provide the same relief to a woman who finds her husband taken away or enticed by another woman. In *Sowmithri Vishnu* v *Union of India*[21] the petitioner's husband had filed a complaint against a person alleging him of having an adulterous relationship with her. The petitioner filed a claim for dismissal of the complaint, on the ground that Section 497 of the Indian Penal Code was in violation of Article 14 as well as Article 21 of the Constitution. The basis for this claim contained several arguments. Firstly, her claim was that the provision allowed for a remedy to the husband only. While it permitted a husband to obtain remedy against a man who was having an adulterous relationship with his wife, it provided no relief for a woman whose husband was having an adulterous relationship with another woman. The petitioner described the provision as an example of 'gender discrimination', 'legislative

[20]Section 497 of the Indian Penal Code defines Adultery as follows: Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

[21]AIR 1985 SC 1618.

despotism', 'male chauvinism' and 'romantic paternalism'.[22] It was claimed that although the provision appeared to benefit women, it equated them to property belonging to men. Secondly, the petitioner claimed that by not making the woman a party to the case, the verdict would be reached without bearing a reflection of the woman's voice in the matter. However, the outcome would have a definite impact on the life and dignity of the woman. As a result, she would be reduced to a mere spectator in a matter concerning her. This, according to the petitioner, was in violation of the right to dignity granted under Article 21. Chandrachud J., speaking for the three-judge bench, dismissed the petition by stating that although it displayed emotionally compelling contours, it lacked the necessary legal basis. The court believed that the law was shaped in the manner that it read because the man was considered as the seducer.

This can be seen as having paternalistic contours, since the wife was considered to be the property of the husband and any person taking away the wife irrespective of her choice was considered to be committing an offence against the husband. The woman has no say in the event. The absence of women in the language of the provision creates a notion that women do not possess the necessary autonomy to engage in such relations. It is a statutory declaration for the absence of autonomy in women.

The patriarchal mindset is also evinced in a number of decisions of the court. The Mathura case[23] wherein a 16 year old girl was raped by the police at the police station acquitted the accused holding that a woman of easy virtue could not be raped. It stands testimony to the insensitivity towards rights of women. In yet another case[24] the court approached rape as man's uncontrollable lust and hence made concessions in punishment instead of treating it as an act of violence against women. In yet another recent case a judge remarked that suffering violence at the hands of the husband is quite common and that it does not merit a complaint!

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[22] AIR 1985 SC 1618.

[23] *Tukaram and another* v. *State of Maharashtra* AIR 1979 SC 185.

[24] *Phul Singh* v. *State of Haryana* AIR 1980 SC 249.

There are many decisions, on the other hand, that display sensitivity and care in handling women's issues. In far reaching decisions the court held that the testimony of the woman in the absence of corroborating evidence was enough for conviction,[25] there is no license to rape a woman of easy virtue[26] or delay in lodging FIR does not raise the inference that the complaint is false.

Soon after the Delhi gang rape and murder incident there was a huge demand to make criminal laws pertaining to rape more stringent. The Criminal Law Amendment Act 2013 was passed. Yet safety and security of women remains an elusive goal. There are two broad approaches in this regard. In the rights approach, women's rights are defined and then laws are laid down to protect these rights. These would include right to equality, basic freedoms, autonomy, bodily integrity, freedom of expression, safety, etc. The Verma Committee was entrusted with the task of suggesting modification to criminal laws partly adopted this approach.[27] The second approach is what absolutist states adopt. It strengthens security, intensifies surveillance over citizens, disciplines sexual behaviour of individuals and monitors conduct through law enforcement agencies. This approach tends to perceive justice is served only when the guilty is severely punished. Hence demands for death penalty arises.

Paternalistic laws have done little to secure women empowerment. The patriarchal society endorsed certain standards behaviour. It dictated patterns of conduct, including ways of dress. While men are considered to be promiscuous, women are considered to be the opposite, ignoring the fact that women might be promiscuous and men might be at the receiving end of the sexual attacks. The non-inclusion of marital rape simply reinforces the sexual prerogative of the husband. Sexual attacks on women are considered to be a case of lost honour. Instead of voicing complaint seeking retribution it is a matter that needs to

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[25]*Bharwada Bhoginbhai Hrijibhai* v. *State of Gujarat* AIR 1983 SC 753.

[26]*Premchand* v. *State of Haryana* AIR 1989 SC 937.

[27]Ratna Kapoor, "Gender Justice, Interrupted,"<http://www.thehindu.com/opinion/lead/gender-justice-interrupted/article4559007.ece> (17.10.2015).

be hushed up lest others should know. While the perpetrators roam around freely it is the woman who is put to shame and has to shoulder her own burden. Violence against women attracts much attention but little attention is paid to women empowerment.

Criminal laws have been very narrow in their approach. Instead of breaking these gender stereotypes they reinforce them. Making stricter laws and enhancing punishments may not really bring about gender justice and empower women. The prevalent social conditioning needs to be uprooted, since it blinds individuals' capacities to think clearly. The gender stereotypes that are present in the paternalistic society need to be dealt with. As long as victims of sexual violence are looked down upon with shame, gender justice cannot be achieved. Laws need to understand the nature of the individuals it seeks to regulate. It needs to sufficiently empower them and accord rights to fight the violence and exploitation experienced by them.

It also needs to ensure law conditioned officials, be it the police, the advocate, the counsellors or the judges. Each one of the officers of law needs to think and act in the right manner. They should promote the purpose of the law. "The protestors after the Delhi rape were demanding justice in the form of more freedom not autocracy, respect not fear, and a more egalitarian society, not a reaffirmation of the established gender and sexual hierarchies of power."[28] A focus on deterrence does not bring gender justice, it merely empowers the State and the criminal laws.

5. Paternalistic and Protectionist Approach

Gender Justice means that no one is denied justice or discriminated based on one's gender.[29] Laws, as seen above, are heavily tilted in favour of women, and adopt a protectionist

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[28]Kapoor, "Gender Justice, Interrupted."

[29]Justice Yatindra Singh, "Gender Justice – A Legal Panorama," a talk delivered in the colloquium on "Gender and Law" organized by the National Judicial Academy, British Council and Allahabad High Court at JTRI, Lucknow on 14 Oct. 2001 <www.allahabadhigh court. in / event / Gender_Justice_-_A_Legal_Panorama.odt> (16.02. 2016).

approach. The paternal agent prevents harm and promotes good. Liberty is thereby curtailed. State paternalism in laws is very common. This is particularly predominant in laws concerning women, which has been designed in a manner that treats them as a group requiring protection. In certain cases it even treats women as properties of their fathers, husbands or sons who need care and protection. Coupled with this, gender stereotyping and social conditioning[30] make matters worse. Hence the fundamental flaw is in the paternalistic and protectionist dimension of the law itself, as it interferes with the autonomy of individuals, snatching away the person's decision-making power and decides on her behalf.

Feminist legal theories aim at "understanding and exploring the female experience, figuring out if law and institutions oppose females, and figuring out what changes can be committed to."[31] They maintain that law emerges from patriarchal mindsets to reinforce patriarchal values, endorsing the gender stereotypes. It is believed to speak of the male experience and portray male norms in the male voice, while ignoring women's experiences and voices. Some features of the law may not only be non-neutral in the general sense but also 'male' in the specific sense,[32] and thereby contributing to women's oppression. Finley argues that even the language used by the law is male legal language, which significantly influences the way we comprehend the world around us. Since men have had an overpowering voice in making

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[30]Radical feminists argue that the root cause of women's oppression is in the traditionally pre-defined gender roles. The social institutions and structures are constructed around male supremacy. They militate against patriarchy and male supremacy and argue that a significant overhauling of the whole society is required to rectify this.

[31]Claire Dalton, "Deconstructing Contract Doctrine," in *Feminist Legal Theory: Readings in Law and Gender*, Katharine T. Bartlett and Rosanne Kennedy, ed., New York: Harper Collins, 1992 <https://en.wikipedia.org/wiki/Feminist_theory#cite_ref-Dalton2_81-0> (16.02.2016).

[32]Katherine T. Bartlett, "Feminist Legal Methods," Vol. 103, *Harvard Law Review*, 829, (February 1990), 836-37, <http://scholarship. law. duke.edu/cgi/ 1119> (9.02.2016).

the laws, defining it and shaping it, it reflects significantly how they see the 'other'. Even where they accommodate the 'other', by making equality provisions in the laws, they do it in their own light and understanding and hence it is fundamentally flawed.[33] Thus, legal reasoning and language of the law are gendered. Indira Jaising, a noted lawyer, points out that "the court is still all too 'male'. Women, especially at the Bench and at senior levels are very poorly represented."[34]

6. Conclusion

From the discussions above it can be seen that the laws provide formal equality by the grant of right to equality. It also provides for the State to make special provisions for women. But by leaving personal laws in the domain of religion substantive equality could not be achieved. Though the State has enacted piecemeal legislations in favour of women, the protectionist approach failed to ensure autonomy for women. So *firstly,* it ended up reaffirming the patriarchal mindset, and women are still left demanding autonomy and self governance. *Secondly,* it assumes that men are already privileged as they are free to make their own decisions. It ignores the fact that men too are trapped in these socially stipulated roles and their decisions are thereby not really autonomous but rather governed by societal dictates. Law, thus, binds men and women both in stipulated roles, dictated by patriarchal mindsets. Undue paternalism whether it is interpersonal or through legal instruments, strikes at autonomy.

It is submitted that gender justice cannot be seen exclusively as a male-female argument. It is necessary that each individual breaks free of the social conditioning and makes autonomous choices keeping one's roles and responsibilities in mind. It is

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[33]Lucinda M. Finley, "Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning," *Faculty Scholarship Series*, Paper 4011, 1989 <http://digitalcommons.law.yale.edu/fss_papers/4011> (4.3.2016).

[34]Indira Jaising, "Gender Justice and the Supreme Court," in *Supreme but not Infallible in Honour of the Supreme Court of India,* B N Kirpal et al., eds., New York: Oxford University Press, 2001, 288.

pertinent to note here that roles and responsibilities are social phenomenon, that is there to stay, as human beings are social beings and belong always to a community. Only an individual who lives solitary will have the pleasure of having no roles or responsibilities. We live in a society wherein members are interdependent. A just society looks at the overall well being and nurturing of the true potential of its members, values relationships and fortifies, and allows people to have and make choices, by enabling free growth, etc. Hence pluralistic ideas need to be encouraged. As individual autonomy and community considerations conflict, there can be no single principle of autonomy. It calls for dialogue and negotiation between autonomies in the context of its application. Absolutist tendencies prevent people from solving this impediment. Since individual autonomy and communitarian responsibility are considered as opposing notions, it is generally believed that a choice between either is necessary.

In case of conflict between individual autonomy and community interests, practical reasonableness provides a solution. The coming to terms with the internal self and the community around calls for a decision on preferences. This would involve several measures, and require an individual to break free from conventional gender roles. They would have to make an assessment of the roles 'assigned' to them in a society and understand the role of their gender in such assignment. They would then have to break free from such assignemtns, while retaining their commitment towards the society around them. It would have to be a constant process of rethinking and development.

The presence of strong and comprehensive legal measures based around the idea of obligation is required because individual actions are heavily influenced by law. In case autonomy has to flourish, legal measures have to be reduced to a bare minimum. It does not, however, denote the absence of a legal system, since that could entail the descent of such a society into chaos. A constant balance between individual autonomy and community

considerations has to be made. Hence it is necessary to have a relook at the legal measures empowering women.

Conscious steps should be taken to break free of social conditioning. Laws should be scanned for the repercussions it has on the mindsets of the society. The Law Commission or a panel specifically appointed for that purpose should be set up to make an impact assessment of the existing laws on gender justice. Laws that reinforce patriarchal mindsets should be modified. An education based on reflective exercises could create a society of thinking individuals, rather than conformists. A society of thinking individuals might have more frictions. Laws then should focus on eliminating individual instances of injustice to men and women, instead of bringing a uniform notion of equality. A pluralistic conception of justice is required that looks at each case on its own merit instead of applying a single idea of justice to all cases. Laws should focus on availability of the means of good life, leaving the rest to individuals' autonomous choices, and focus on creating conditions that maximize choices that individuals have.

There is a need to create conditions that provide autonomy to individuals, irrespective of their sex or gender. This may be easier said than done. Law is only one of the means of social change. For true gender justice gender stereotypes need to be attacked. Hence gender neutral institutions and social structures needs to be encouraged. Law is one of the many means of social change, but it plays a major role in conditioning societal mindsets. Hence we need to look beneath the surface of the law, identify what assumptions have led to their formulation, strip it off its gendered implications and rectify accordingly.