



## Hindu personal law and conflicts in legitimacy: A social perspective

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### Abstract

Indian law is a result of an evolution, which includes personal laws for peaceful practice of social custom, culture and religious norm. But some time these social custom, culture and religious norms have contradictions with fundamental rights, directive principles and legitimacy. Hindu personal law is a branch of it. My research article is based on conflicts between Hindu personal law, Indian constitution, and societal law understanding and practice. I study how and why these are conflicting. Because for the ground applicability of fundamental rights it is necessary that personal laws follows to them. But a law must have 'Social acceptance'. Here we find that 'Social acceptance' Play an important role in building of legitimacy for any law and constitutional fundamental rights in social grassroots level. And it is difficult to think that without abolish this disconnection the practice and opportunity to consume fundamental rights would be increase.

**Keywords:** law, society, hindu personal law, legitimacy, conflict

### Introduction

The nature of Indian Law have a combination of religion, custom, arranging multiple community interest in same subject of law. It smartly adjusted the Manu law concepts with modern phenomenon of liberty, socialism, development, morality, social justice and legitimacy. But this matrix has contradictory and complex nature. My paper is on a particular stream of this contradiction - Hindu personal laws and conflicts in legitimacy of this law with the constitution and ground reality. I start it with defining to Indian law as Indian constitution with brief historical factors, because here I must remind that Indian legal system have major sign of British colonial period religious or culturic text interpretations, Acts, bill, institutional structure, administration etc. In second section I bring the societal perspective of law. Because "Society" is the basic unit of a nation. I use the word society rather than community, the reason behind this is -I am focusing on the Hindu Customary Law and in the Hindu Ancient text the word "Samaaj (society)" is the centre of law. Community reflects the relationship in humans with any similar "identity" which is historic, linguistic, culturic or any other commonality. But society reflects the relationship in humans with feeling of "sah-astitva, sah-kalyaan and manvavad". State establishment is an output of social contract of this society and Nation is an improved stage of this and its objective now is same "welfare of citizens". That's How We have to remind it how important role Society play in legitimacy of laws and my research papers try to study it. My third part will be start with introduction of Hindu customary law and after this I come to legitimacy importance to state government and laws. The fourth section of my research paper I try to show conflicts in Hindu family law. In my conclusion I briefly try to show the reasons of conflicts, how it decrease the legitimacy of Hindu customary laws and government democratic representative nature.

### What is Law

The both Divine theory and social contract theory of state hails from intention of 'balancing human society with help of some Law'. Several thinker theories are different about the 'nature of state human' and make it a base of their arguments in regarding state emergence. For example if human would be rational then they create some rule and law by their mutual understanding to secure their interests, peace and for security. That's how law is a fundamental aspect of human society and largely based on social values. Law has been defined by various approaches like; 1. By reason, religion, or ethics (natural law) approach. 2. By sources, custom, precedent or legislation. 3. By effects on the life of society. 4. by the method of its formal expression or authoritative and 5. By the ends that it seeks to achieve Julius Stone attempted a definition of law. He find that the various definition of law converge on the following seven steps;

"1. The meaning of law whole can only elaborate and not defined. 2. It includes Norms regulating human behaviour. 3. The norms are social norms. 4. These social norms are systematically arranged; it is in short a legal order". 5. Law consist of social norms which are 'coercive'. 6. The coercion operate according to 'establish norms'. 7. This institutionalised coercive order should be effective. People must obey it."

### Indian constitutions

Constitution is the main poll to state legitimacy and "law" define by constitution being important in that way. Indian Constitution Part 3, Article 13 specially (3) gives the definition of Law. I am going to discuss it with every words good understanding and a definition.

"Laws inconsistent with or in derogation of the fundamental rights".

This introduction of article 13 gives absolute power to supreme court. Because this line logical mean is Law not a

fixed phenomenon of rules and regulation etc., despite it it's always have a subsidiary relationship with fundamental rights. "The rule of change with time" works here and law may be change or increase their area but philosophy of fundamental rights held constant that's why the words inconsistent or in derogation used here.'

Article 13(3) says;

“(a) ‘Law’ includes any ordinance, order, bye-law, rules, regulation, notifications, customs, or usage having in the territory of India the force of law ; (b) ‘ laws in force ‘includes laws passed or made by a legislature or other competent authority in before the commencement of this constitution and not previously repealed not standing with that any such law or any part of there may not be then in operation either at all or in particular areas.”

Present law system is most of based on Classified personnel laws, land system, law institutional structure, legal system, parliament structure- proceedings law of the British colonial period. In the judiciary system, personal law, contract act, Indian penal code, code of civil procedure, partnership Act, The sales of goods act, Property Law extra have majorly impact of that time. The relevant point in the current context of the controversy is the manner and form in which the Hindu personal law had been codified and "reformed" virtually in total disregard of women's interests. Between 1860 and 1870 the British had carried out a number of reforms with several legislations being passed. Two of these were the Indian Penal Code and Indian Contract Act that form the bedrock of our present-day judicial system. It was during this period the term 'personal' came to be applied in the legal sphere. Strictly speaking, there are only two broad categories of laws -- civil and criminal -- and laws by their very nature are public. The British however made a distinction between 'public' and 'personal' this reformed law was supposed to achieve for women is intrinsically male-chauvinist. Under the British, the personal laws of Hindus and Muslims were administered in the regular courts by judges trained in, and familiar with, the style of the common law. 24 Until about 1860, the courts had attached to them "native law officers," pandits and kazis, to advise them on questions of Hindu and Muslim law. These bodies of personal law were administered by the courts of British India and (later) independent India. Because of this procedure Hindu and Muslim personal law have its ancient textual norms. Many time this being dialectical with modern fundamental right norms.

### **Society and Law**

Human is a social animal and society a fundamental need for them! But human is different regarding to another social animal like Ant, Bees etc; they have set of some rules, regulation, right charter with functional, structure, institutional approach. India has multi- culture, multi-religion, multi - language, cast - sub cast, region, custom-tradition heterogeneous society. The British colonial government was took many strategic step to broad this Gap like identical census, assembly reservation, separate legislature, *Banto Raj Kro Ki Neeti* etc. They were got success and India till the date still has these gaps even our politicians increases it and make it matters for their legitimacy in cabinet or *Sansad*.

Because of this gap every community have their own laws.

These laws are called customary, ancestral and traditional laws. Many time this becomes contradictory with other community customary laws, Modern democracy Phenomenon, nation development, subaltern development, even with human rights and there is a problem that western thinker relate it with backward-Ness of civilization. If we saw this in flash of historical context, historical development and empirical approach then we found that this is a 'culturic development'. Which has been continuing from many centuries and increasing indigenous heterogeneity of India.

### **What is Society?**

This is important basic philosophical and sociological question. August Comte saw society as a social organism possessing a harmony of structure and function. According to Talcott Parsons Society is a total complex of human relationships in so far as they grow out of the action in terms of means-end relationship intrinsic. Morris Ginsberg defines society as a collection of individuals united by certain relations or mode of behaviour which mark them off from others who do not enter into these relations or who differ from them in behaviour. Cole sees Society as the complex of organized associations and institutions with a community. According to Maclver and Page society is a system of usages and procedures of authority and mutual aid of many groupings and divisions, of controls of human behaviour and liberties. And my definition of 'society' is:

“An organisation or group- which practice, methodology, believes and mutual relations are healer for even a single human and part of environment”.

In ideal perspective whole world is a “society” but different kind of culture, nation interest, and nations- human and self interest are dividing it into two types of societies-1. Good society and 2. Bad society. 'Good society' is where human group or organisation work is good for every individuals and environment. They also care about others community or gender right, it's based on 'humanity'. 'Bad society' is the group or organisation, where human works or cares about their welfare/interest only, even it's come after suppression of another groups right, example ; criminals society- D company. The “one world Society” dream will come true if all societies have merits of 'good society' and they become agree to unite. If it's happened then all kind of Societies become good and the dream of 'unification of world' will come true. Because of countless culture there are possibilities for countless society with 'hierarchical modal of good and bad nature'. A law without society doesn't have any mean this is the main reason we should have a look on understanding of society. It also help me to criticize law's weakness in codified Hindu law.

### **Society; Self and Separate Understanding**

Every cultural and civilizing human group is a unique society in itself and its have their own social laws. I classify in 4 types to these laws: 1.generation to generation passed cultural practice 2. Moral behaviour laws 3. Festival laws 3. Religion believes as law 4. Law passed by society heads (Mukhiya etc.). The laws under these four types are often not similar in every society. With change of religion name the gap comes in society laws. Every community have their own understanding of 'law'. These Social laws are coded as personal laws in

Indian legal system and provide liberty to do practice of this. This legal right becomes a reason of two community society's conflict and politics give it a fire Ex. Mujjaffar nagar danga (U. P) 2014.

A political culture 'Glorification of Dialectical Cultural Identities' started by British rulers as a legal system have evaluated by Indian executives. As a result the societies self laws become stronger and contradictions are increasing. We can take the example of patriarchy and struggling women empowerment in Muslim societies supported by Indian legal system. Law implementation in self domain is also a base for these dialectics. Typical Gramin (village) societies, communal societies, common cast village societies are generally complicated, problematic, sophisticated, narrowed, and conservative in nature. These societies have their "self domain" to practice of 'their law' and often due to party politics the government don't take strong action regarding their illegal step like "honour killing". But few times Supreme Court's directions and judgement do works like a small water spray on this fire. In this 21<sup>st</sup> century; development, empowerment, human rights are main topic of global discussion but in above type of societies if women and lower caste seek to their development or empowerment the other identical member of society try to oppressed their human rights and the thought behind this is 'if they success to do it, the traditional values and laws will crack which is not good in their sense'. Finally we can say that these societies ruled their social laws in their self domain with their interest (interest connected to traditional laws-values).

### Legitimacy of Law in Society

In modern state and in democracy the legitimacy of law being an important element for state government authority power. But in post independent India, government continue the legitimacy modal of British rules to acquiring customary law as a base of nation's legal system. The legal system and political culture also sticks with this and many time get face to face dialectical path which have one way to customary laws and other way to legitimacy of modern or democratic state!

At this turning point we have a question that legitimacy of state political, legal, rule of law, authority and power based on morality of society and individuals welfare. Hence the legitimacy gain societal acceptance. State can't make a law which have no meaning for state society or citizens. In democracy there should be reason for societal acceptance. The acceptance by citizens in democratic government is important because it is the government- "for people by people through people". In a brief, societal acceptance for laws based on:

1. Society welfare; historical and logical fact behind emergence of state is for "making laws to balance society, give security, arrange resources, developed the individuals in inner and as outer etc". If we read this line again we find that all reasons are based on society or individuals. This is the main reason of legitimacy laying in society welfare.
2. Human rights; human right is a current hot topic on world discussion stage. There is a condition that any law or policy must be not denial to citizen human rights (exceptional case in criminal).
3. Individual and state development; state government's any step would not be a binding on state and individuals

development, it should be progressive for citizens, communities and economic structure etc. Therefore it could help for development of the whole civilization.

4. Environmental balance; future of upcoming generation are based on the earth resources, earth environment could be save or balance by national scale policy changes. This is the responsibility for every existing nation- state government that any policy or act do not harm any element of environment.
5. World coexistence ; for nation's peoples security, dependency, development, peace, and resources perspectives it is necessary for state to "maximum" try to make a harmony foreign policy-relation.
6. Indigenous knowledge; every territory have their own civilization history, ancient knowledge of – good relation, mathematics, astrology, statics, science, social science, medicine (Ayurveda), management, etc. Many times these are reserved as indigenous customary law practices.

Last point is a fact that customary laws many times contain the "indigenous ancient knowledge" which must have to reserve. But we should to do deep study of indigenous ancient knowledge for legal, social, moral legitimacy check.

### Hindu Personal Laws and Conflicts in Legitimacy

Hindu legal system has in existence for over thousands years and has continued to govern the social and moral pattern of Hindu life. Hindu law has always been much more than a fossilized book of law that could be reform by stroke of pen. Hindu concept of law is quite different from the Austinian concept. The concept of Hindu law is deeply rooted in Hindu philosophy and Hindu religion. According to Hindu philosophy, the ultimate aim of life is to achieve salvation: *Moksha* from this physical world. According to philosophy of karma is most important in whole life of human. That's why *Shashtra* create a particular way to live life to follow " *Varna Dharma and Asharma Dharma*". Present Hindu codified law in legal system have essence of it.

### Sources of Hindu law

Classical Hindu law build in Vedic period. There was no sudden change but a process of deconstruction and reconfiguration over a long time. The main sources of Hindu law are;

A. Ancient Sources: 1. The *Smritis/dharamshashtra (rigveda, yajurveda, samveda, atharveda, Yajanvalika, narada, parashara, brihashpati smiriti, sruta sutra, griha sutra, dharma sutra, dharmasashtra of Narada – Vishnu-Vrihaspati, -Katyana- Vyasa, puranas)* 2. The commentaries (*Mitaksharas a commentary by Vijnavalika, Dyabhaga by Jimutvahana, Viramitroda, Vivada, Dayatattwa, Dayakramasangraha by shri Krishna, shmriti CHandrika, parasara Madhviya, Vyavahara*) 3. Customs

B. Modern Sources ;1. legislation, (Child marriage restraint Act 1937, Hindu gains of learning Act 1930, Hindu women' right to property Act 1937, changes in law of marriage, adaptation, maintenance, guardianship, and succession etc), 2. judicial decision, 3. justice, Equity and good conscience.

The texts, ancient knowledge, patriarchal norms, Custom plays a significant part in Hindu law and is accepted as part of the Indian legal system. Thus we find a contradiction in

between constitutional fundamental rights, Hindu personal law and community social laws.

### **Conflicts in Marriage Laws**

After the Hindu marriage Act 1955, Hindu marriages still broadly have sacramental nature. By law it is a contract but in practical, “*sanskara*” play important role and with its help the society become main “subject of consent” beside of girls or boys interest. Marriage of the widow is a ‘bad stigma’ still now and society not ready to accept it after passing 60 years of Hindu marriage law. On this life decision her natal or first-in-laws family never supported in maximum cases. Along with this because of narrow minded society the second husband always seen her as a “used subject”. If we leave exceptional cases maximum widows face this social problem. Present Laws not so developed to handle this social problem. Hindu marriage Act about “*sapinda*” marriage “void ab initio” (invalid) but kept exceptions to “*shudras*” in this. With this provision of law itself make distinction in upper cast and *shudras* on the other hand our constitution in part 3, article-14, 15 and article 44 of part 4, ensure us to give equality. In our legal system we can see big conflicts like this.

When Hindu marriage act talks about the “*sapinda*” actually not so much clarify about “*gotra or sagotra marriages*” but in north Indian states *sagotra* marriages are strictly prohibited. Caste system have sub-caste and “gotra” in inner social structure. The sub castes and *gotra* follows ‘*sapinda* rule’ in marriages. The “gotra of father, mother, mother’s mother, father’s mother” are also prohibited to get marriage in practice, even the later 20 generation of any two person of a same family tree never have socially right to get marriage together. Present law give a opportunity to inter- religion marriage but on this “*sagotra* matter” the laws are silent or don’t say specifically.

The Hindu Marriage Act prohibits marriage between two persons within the prohibited degrees of relationships. For example, a Hindu cannot marry his own brother's or sister's daughter. However, the Act immediately adds that such marriages are valid if permitted by the customs governing the parties to the marriage. In the South there is a custom to marry one's sister's daughter, while in the North it is prohibited, the ‘*mitakshara*’ and ‘*dayabhaga*’ schools have different rules of succession with even different sub-schools within the former. For example, while in the North, in a partition between father and sons, the mother is given a share equal to that of a son. In the South, this practise has fallen into disuse and hence the mother would not get a share. Societal Conflicts, Law and Realities All the codified marriage legislations in India stipulate conditions of a valid marriage. The principal family law legislation in India i.e. The Hindu Marriage Act, 1955 does not render a marriage void or voidable in the event that the boy has not completed the age of twenty one years or the girl has not completed the age of eighteen years. Child marriages are performed even though The Child Marriage Restraint Act, 1929 provides punishment for solemnizing child marriages of boys below twenty years of age and girls below eighteen years of age. This practice is a harmony with reality. Child marriages in practically all religious communities in India are accepted practices, which obviously cannot be registered due to non-fulfillment of minimum age of

marriage. Consequences of non-registration of marriages have created a large number of abandoned spouses in India deserted by non-resident Indians who habitually reside abroad. Times have changed; laws have not. Education, economic prosperity, agricultural improvements, cross border migration and western influences have changed practices and lifestyles in urban India while rural setups are still struggling with adherence to customary practices in family law matters. Will society catch up with law or will the legislature enact a law on the asking of the courts to change societal practices?

### **Inter-Caste Marriage and Honour Killing**

The Constitution of India guarantees the fundamental rights to equality, freedom, protection of life and personal liberty. Equality of laws and equal protection of laws is the touchstone and the spirit of these rights. Additionally, the Directive Principles of State Policy give directions, that the State shall strive to promote the welfare of the people. However, the empirical fact is that in India when young men and women marry outside their castes or community, it evokes strong sentiments and honour killing happens. Instead there is no bar to inter caste marriages under any codified marriage law.

In one such recent decision rendered by the Indian Supreme Court in *Lata Singh vs State of UP*, reported at Judgments Today 2006(6) SC, 173, it was held that the caste system is a curse on the nation and needs to be destroyed for the better. Acts of violence and threats against such inter caste couples are wholly illegal and those who commit them should be severely punished. The administration and police authorities all over the country were directed by the Supreme Court to ensure that no inter caste couple is harassed by anyone, the message of the Court is clear, India of the twenty first century cannot be built on the basis of casteism. But how far can court decisions achieve this?

### **Conflicts in Divorce**

Traditionally this not recognized by general Hindu law. The Hindu Marriage Act modified this position, however, creating nine grounds for both husband and wife to claim divorce, and some additional grounds available to the wife alone. According to section 29 of the Hindu Marriage Act, dissolution of a Hindu marriage can also be obtained through a valid custom. If he/she change her/his religion after marriage this will be a valid reason for asking divorce, simply it look like so easy but economically, socially, for future consent, personally it so much hard to this person which is being victim of this. And this is now used as a weapon to “*love jihad*”. the girls being victims of this majorly because they left their house, economically they are weak, socially they are not acceptable if it was a love marriage in inter-religion, personally they fall down in depression, all basis to terminate their relation are not strong and they just quit this idea or have so harsh future.

In 1898 the draconian Indian Lepers Act had been passed but in divorce act it would be a ground to file petition for divorce. There we saw a clear law conflicts in Indian legal system. And morally or as normative view of point it seems not right that you married a physically good person and when he become a leprosy patient, you make him to let you go from this “holy soul-mate relationship as Hindu philosophy”.



### **Divorce-Customs, Practice and Law**

Custom and the effect of codified law: Section 29 of The Hindu Marriage Act, 1955 gives statutory recognition to customary divorces. In *Subramani Vs. M. Chandralekha*, reported at Judgments 2005 (11) SC 562, the Apex Court following well-settled earlier principles of law, held that since there was no custom prevalent in the community to which the parties belonged for dissolution of marriage by mutual consent, the alleged deed of dissolution marriage could not be executed. It is common for parties in India to attempt to use customary divorce practices as a short cut to statutory procedures, but with the vigilant judiciary, such abuse of the process of law does not generally succeed. Regardless, multiple marriages are often solemnized in contravention of codified law by taking advantage of non-existent customs.

Keeping in mind that the institution of marriage in Indian society is largely still a sacrament and not a contract, especially under The Hindu Marriage Act, any major overhaul of the law may be counter-productive to the very concept of Hindu Marriage. The existing three-tier divorce structure in India, largely applicable to all communities i.e. fault grounds, break down theory and the mutual consent principle provide the codified and statutory grounds for divorce in Indian courts.

### **Conflicts in Adoption**

In female condition to adaption a freely right till she is unmarried, when she get marriage its main right to handover her husband!! and as a man husband have main right to adaption with consent of his wife. Here we saw that the adaption sought a solution to funeral rites and continuance of lineage only to a man in law too. And here the law ascertain the "yes" of his wife.

Adoption under the juvenile justice (care and protection of children) Act 2000 may do more harm than good to the cause of adoption. This is because it conflicts with the existing legislation and is riddled with inconsistencies. Some conflicts are;

1. Existence of a prior law relating to adoption for Hindus,
2. The non-existence of adoption laws for non-Hindu communities,
3. The prohibition of adoption in the religious laws of some communities, say, Muslims for instance,
4. The silence of the Act on the issue of inter-country adoptions.

Juvenile Justice (Care and Protection of Children) Act, 2000 does not discuss the issue of inter-country adoption, it is a well-settled principle of Jurisprudence that when there is a general and specific law on the same aspect of law, the latter has precedence over the former. Consequently, the Juvenile Justice Act is rendered fruitless and ineffective by the very presence of Hindu Adoptions and Maintenance Act, 1956, in case of Hindus.

### **Conflicts in Dowry**

The Indian criminal laws were comprehensively amended to include dowry as a punishable offence. Section 304B was added to the ("IPC"), which made a specific offence punishable with a minimum sentence of imprisonment for 7 years and a maximum imprisonment for life. It provided that if the death of a woman is caused by burns or bodily injury or

occurs in suspicious circumstances within 7 years of her marriage, and there's evidence to show that before her death, she was subjected to cruelty or harassment by her husband or his relative regarding the demand for dowry, then the husband or the relative shall be deemed to have caused her death. section 113 Evidence Act, 1872 ("Evidence Act"), Section 304B IPC along with Section 113B of the Evidence Act have enabled the conviction of many who were not caught by the Dowry Prohibition Act, 1961. Section 113A of the Evidence Act provides a similar presumption of abetment of suicide (which is an offense under Section 306 IPC), in case of death of a married woman within a period of seven years of her marriage.

The payment of dowry has been prohibited under specific Indian laws including, the Dowry Prohibition Act, 1961 and subsequently by Sections 304B and 498A. the Stanley J. Tambiah claims the ancient sanctioned dowry and bride wealth in ancient India.

The Dowry Prohibition Act, 1961 consolidated the anti-dowry laws which had been passed on certain states. This legislation provides for a penalty in section 3 if any person gives, takes or abets giving or receiving of dowry. The punishment could be imprisonment for a term not less than 5 years and a fine not less than ₹15,000 or the value of the dowry received, whichever is higher. Dowry in the Act is defined as any property or valuable security given or agreed to be given in connection with the marriage. The penalty for giving or taking dowry is not applicable in case of presents which are given at the time of marriage without any demand having been made. Similarly, section 4 of the Act provides a the penalty for directly or indirectly demanding dowry and provides for a penalty involving a prison term of not less than 6 months and extendable up to two years along with a fine of ₹10,000. Dowry agreements are void and if any dowry is received by anyone other than the woman, it should be transferred to the woman. Under its powers to frame rules for carrying out its objectives under the Act, the government of India has framed the Maintenance of Lists of Presents to the Bride and the Bridegroom Rules, 1985. There are also several state level amendments to the Dowry Prohibition Act.

Further, Section 498A IPC was specifically included in 1983 to protect women from cruelty and harassment. The constitutionality of Section 498A was challenged before the on grounds of abuse, on grounds that it gave arbitrary power to the police and the court. However, it was upheld in *Sushil Kumar Sharma v. Union of India (2005)*. The provides that for the prosecution of offences under Section 498A IPC, the courts can only take cognizance only when it receives a report of the facts from the police or upon a complaint being made by the victim or her family.

### **Conflicts in Protection of Women from Domestic Act 2005**

The "Domestic Violence Act" was passed in order to provide a remedy for the protection of women from domestic violence. The Domestic Violence Act encompasses all forms of physical, verbal, emotional, economic and sexual abuse and forms a subset of the anti-dowry laws to the extent it is one of the reasons for domestic violence. Section 3 of the Domestic Violence Act specifically incorporates all forms of harassment, injury and harms inflicted to coerce a woman to

meet an unlawful demand for dowry. Some of the common remedies under the Domestic Violence Act include: protection orders - prohibiting a person from committing domestic violence, residence orders - dispossessing such person from a shared household, custody orders - granting custody of a child and compensation orders - directing payment.

Despite the Indian government's efforts, the practice of dowry deaths and murders continues to take place unchecked in many parts of the country and this has further added to the concerns of enforcement. There is criticism by women's groups that India's dowry harassment laws are ineffective because the statutes are too vague, the police and the courts do not enforce the laws and social mores keep women subservient and docile, giving them a subordinate status in the society. Further, many women are afraid to implicate their husbands in a dowry crime simply because the Indian society is viewed as having conditioned women to anticipate or expect abuse and in some sense eventually, endure it. While the laws give great powers, they are not effectively enforced by the police or by courts. It can take up to 10 years for a case to go to court and even once in court, husbands and in-laws end up getting away with extortion or even murder because the women and their families cannot prove " that they are the victims of such, as there are rarely any outside. Moreover, when deaths occur through, itself is usually lost in flames.

There is growing criticism that the dowry laws are often being misused, particularly section 498A IPC. According to the statistics, in 2012, nearly 200,000 people including 47,951 women, were arrested in regard to dowry offences. However, only 15% of the accused were convicted. According to Shonee Kapoor, to minimize the misuse of such laws, false dowry complaints should be punished.

Section 498A IPC was challenged but upheld by the in 2005. In 2010, the Supreme Court lamented about the possible misuse of anti-dowry laws in *Preeti Gupta & Another v. State of Jharkhand & Another* and recommended a detailed investigation. A) CrPC which instructs state of following certain procedure before arrest, and went on to observe that the 498A had become a powerful weapon in the hands of disgruntled wives where innocent people were arrested without any evidence due to non-bailable and cognizable nature of the law.

On April 19, 2015, the Indian government sought to introduce a bill to amend Section 498A IPC based on the suggestions of the Law Commission and Justice Malimath committee.

### **Conflict in Maintenance**

Section 25(3) of the Hindu Marriage Act, 1955, providing for permanent alimony and maintenance, allows the Court to rescind the order of maintenance if it is convinced that the wife has not remained chaste; \* Section 37 of the Special Marriage Act, 1954 and Section 40 of the Parsi Marriage & Divorce Act, 1936 provides the same; \* Section 125 of the Cr.P.C. The right to maintenance, however, is based on a recognition of women's economic dependency. It is not an entitlement based on contribution, but rather, based on providing for an economic need. Maintenance rights are also governed by Section 125 of the Code of Criminal Procedure (Cr.P.C). However, this right is qualified by the personal laws, thus restricting the scope of a women's entitlement to the

same.

Maintenance of the women in the joint family was an important system and this was followed as a tradition which governed the families. It was the obligation of the head of the family (*karta*) to look after the women of the family i.e. their wives and their daughters until they were married. Later when the women grew older it was the duty of their children to mother and other old women of the family. The un-chastity on part of the women disentitled them to maintenance. Under this philosophy we find a patriarchal feeling of take a woman as bodyguard or guardian in her whole life. This is legal conflict with article 14,14,15 and the women empowerment.

Under the section 18(1) of the HAMA, 1956 wife is entitled to maintenance by her husband for lifetime i.e. she will be given maintenance until she dies or her husband die. Under CrPC, only wife (a woman who has been divorced by or has obtained divorce from her husband & hasn't remarried) can claim for maintenance. Means if a female caught in bigamy, cruelty & adultery her husband don't sue her to maintenance! There are we found also a conflict with article 14 and 44. Maintenance to unmarried daughter has so much low possibilities that it would be given. The modern globalization and in market economy context has changing the social boundaries and the cases of self-decision and because of this, women conflicts with family are increasing. Many girls leave their house to break social stigma and want their maintenance rights. At this point, law have conflicts with social stigma or Hindu narrow minded practice of Hindu customary laws as *Karta*. The long legal procedural path of getting right through sue is break the situation of petitioners already they have pressure of socially, emotionally, family, economically.

### **Woman, Succession Act and Conflicts**

The existing personal laws promote cultural diversity but fail to provide social justice particularly equal rights for women. Besides, the controversies and implications of the issues have been inextricably linked with the political agendas of the various political groups. Personal law regimes affect the roles, rights and burdens of women.

The concept of coparcenary was introduced in the ancient India. Over the period of years the circumstances changed, and with the need of the hour Hindu Succession Act, 1956 which was again amended in 2005. The Hindu Succession (Amendment) Act, 2005, amended Section 6 of the Hindu Succession Act, 1956, allowing daughters of the deceased equal rights with sons. In the case of property, or a case in which two people inherit property equally between them, the daughter and son are subject to the same liabilities and disabilities Position of Women after Enactment of Hindu Succession Act, 1956- The section 6 of Hindu Succession Act, 1956 was amended in 2005.

Constitutional Provisions ensuring Gender Equality- The framers of the Indian Constitution took note of the adverse condition of women in society and a number of provisions and safeguards were included in the Constitution to ward off gender inequality. In this context, Articles 14, 15(3) and 16 of the Constitution can be mentioned. Despite these provisions for ensuring equal status, unfortunately a woman is still not only neglected in her own natal family but also the family she marries into because of certain laws and attitudes.

## Conclusion

Johan Austin “positive law” theory separating moral values from laws but in context of customary laws it is being necessary to look harder in these laws on the basis of morality and legitimacy. Because customary law are product of ‘culturic development’ and many times there were the specific class contractor of this customaries laws. Thus it may have many wrong social rules and regulation in present legal system, which must have to renew or update. India is a representative democratic nation state and every class or section of citizens should not discriminate at any basis of different “Identity” like Indian constitution Article 14,15,16,44 says. This merit of constitution and law making procedure bring the “legitimacy to law and government”. But as we have seen there are many social, constitutional, legal, moral, psychological conflicts in our codified and un-codified law system. In my thinking if the law itself countered to Indian constitution (father of legal system), then legitimacy of this is decrease and create cases of un-application in society. The government nature is to give an opportunity to use laws, but not have urge to see what happens in ground society level. If we try to search the Reason of conflicts in legitimacy we find that following variables play important role;

### Blind Customary legal empowerment

Ruling political party government many time make his rule longer or attract to particular community voters, passed un-logical bills to legalised customary laws. For example in present time “the beef bans” shows this mentality. Firstly the beef includes the meat of bull, buffalo and cow but they look this name as only meat of cow. BJP party government in states passed the beef ban Acts for example Maharashtra, Rajasthan, Hariyana have a bill like it in their legislature etc. if they try to preserve any customary law they must have to classified it to “cow meat” it give opportunity to eat other animals beef if they are not Hindu. Like this blind legalisation of customary law is a clear bad game with legitimacy of democracy and an attempt to make society unbalanced.

### Unconstitutional Extra Judicial Courts

A blow to Codified Laws Community practices in certain states and in certain religious denominations In India have led to the creation of community or religious courts which do not have the legitimate backing of the system of law and have no sanctity in the official legal system. It is in the matter of inter caste or inter religious marriages or divorces that such self-styled extra-constitutional authorities take upon themselves the power of courts of law to issue community mandates to people within the community. Such religious edicts result from summary hearings often in violation of fundamental rights guaranteed by the Constitution of India. The caste *panchayats* (*khap*) of Haryana and U.P which have a powerful influence in its socially and culturally backward villages. Many positive step has been taken by the court but there cannot be a constructive outcome because society accepted their decision itself. Clearly, the duty of the state to enforce the law of the land is the need of the day. The courts unhesitatingly should strike down all mandates of any such extra-judicial bodies which have no legal sanctity in a civilized society.

## Strengthening hybrid justice system

Government policy of decentralization and power distribution to lower administration body or judiciary body is defiantly a good policy but make hybrid with “ *society mukhiyas*” with policy of “*gram nanya panchayat*” are majorly negative judicial step in legal system. Already this *Mukhiya or khap panchayat* empowering their caste hierarchy, patriarchy along with help of this, some particular caste take a strong back in leading national and state political parties. These are a” political *chkravihu*” and they are continueslly increasing. The society continueslly divided in two classes centralised and marginalised, social injustice increase by political -culture, procedure, competition and parties. The hybrid justice system works here as a ‘*sanjeevni*’ and make reason to bring legal conflicts with constitution.

### Government biased policies

Gradually the Indian Political system due to representative democracy become a battle ground of political parties competition and in huge no the new state and national political parties are emerging, the “caste and religious political culture upsurge” is raising this nature of politics. This form a compulsion to biased-ness in policies for example- because of notion of patriarchy the Women bill still stuck in parliament since 10 years.

Due to Globalization, new capitalism, market economy government nature of state is changing. We can see the direct impact of market and ruling capitalist-companies on policy making. Even the election subsidies data shows to the donations of big companies to the main political parties. This relation or strategy is a mirror to elite ruling nation with co-advantage. All these are sign of a state decreasing legitimacy and laws legitimacy. The state is forgetting to the reason of their basic establishment contexts in liberal market economy state.

### Uniform civil code

Right from the Constituent Assembly debate on the present Article 44 of the Constitution directing the State to endeavor to secure a uniform civil code for all citizens to the Supreme Court Judgment on the Sarla Mudgal case and all that has occurred since, it becomes obvious that the major source of confusion is the obsessive and maniacal insistence on uniformity especially by communal groups as against the demand for equal rights and justice for women.

### Judicial Activism

Judicial Activism in Family Laws is a Turning Point too. A series of decisions by the Supreme Court of India in the areas of family laws in the recent past has gone to show that the Apex Court is motivating a lot of positive and well-meaning reforms which have become necessary over a period of time. Three recent decisions of the Apex Court can be cited in support of this proposition: In, In Re: Enforcement and Implementation of Dowry Prohibition Act, 1961, reported as Judgments Today 2005(5) SC 71, the Apex Court directed the Indian central and state governments to implement all the interim directions issued by the Supreme Court earlier and take effective steps for framing rules and enforcing the provisions of the Dowry Prohibition Act. Judicial activism is a

positive stream of legitimacy of law. It try to bring different colour of legitimacy from balancing to constitution, codified laws and social acceptance.

Politics is the main elements which effects to the law making, implement, social ground of law. So it should be ethical, moral respective to citizens. there are must have be a feeling of sociological despite of individual interest at the stage of using state institutional, executive or administrative post. In Making the Law the constitutional directions should be seriously followed for keep out from conflicts in law. In actual; Laws is changing – increasing through the time but the maximum time purpose are political not social. Society is their but maximum busy in “The game of survival”. If any citizen has time and consciousness to rise objects oppressed by the practice of ‘Foucault theory of apparatus’. Legitimacy meaning is changing now for government and soul of democracy – political parties. Coalition with capitalist class, market companies are form of legitimacy for them. Hindu costmary Laws small level reform idea may scream to the main national parties to thought of a slap on hindu patriarchy. Let I agree that in India where the heterogeneity is rooting in multi-culture society, the running to government would be a tough duty. But in blindness of survival of a political party, in filling your pocket from money, making so much famous to yourself at the level of some important executive post!, arise a ground of riots in nations field to prove your party dedication to nation!, is it right ways to circulate politics ?? is it have legitimacy in state?? If there are not superior body of you but don’t forget the absolute sovereignty still lay in citizens of India. State is a saviour not a predators! This is the basic political reason of nature of legitimacy in law.

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