CHAPTER THREE

The Property Laws and Women's Entitlement to Property

Considering the current situation of the law in India as it relates to women, in the last few years there have been major developments in our laws that have had a far-reaching impact on us as a nation and as women in particular.

Empowerment of women, leading to an equal social status in society hinges, among other things, on their right to hold and inherit property. Several legal reforms have taken place since independence in India, including on equal share of daughters to property. Yet equal status remains illusive.

Establishment of laws and bringing practices in conformity thereto is necessarily a long drawn out process. The government, the legislature, the judiciary, the media and civil society have to perform their roles, each in their own areas of competence and in a concerted manner for the process to be speedy and effective. To quote:

"...It is not easy to eradicate deep seated cultural values or to alter traditions that perpetuate discrimination. It is fashionable to denigrate the role of law reform in bringing about social change. Obviously
law, by itself, may not be enough. Law is only an instrument. It must be effectively used. And this effective use depends, as much on a supportive judiciary as on the social will to change. An active social reform movement, if accompanied by legal reform, properly enforced, can transform society. And an effective social reform movement does need the help of law and a sympathetic judiciary to achieve its objectives.\textsuperscript{112}

An obvious example is the Sati eradication movement. Raja Ram Mohan Roy’s campaign for eradication of Sati when backed by Lord Bentinck’s Sati Regulation of 1829 brought the practice to an end. The extent of the practice can be gauged by the fact that prior to the Regulation, in Bengal Presidency alone there were 600 satis every year! An attempt to revive and glorify the practice in 1987, the Roop Kanwar episode was fortunately nipped in the bud with the commission of Sati Prevention Act, 1987. In contrast, in the absence of a strong social reform movement, Dowry Prohibition Act, 1961 has not checked the practice of dowry and its accompanying evils.

(A) Inheritance

Despite the enactment of the Hindu Succession Act, 1956, establishing

\textsuperscript{112} Justice Sujata V. Manohar
the inheritance right of women equally with men and abolishing life estate of female heirs, the retention of Mitakshara coparcenary (joint family) with its attendant inequality between female and male heirs continues. That is, in the case of a joint family, a daughter gets only a smaller share than the son. While sharing of father’s property between brother and sister is equal, the brother—in addition—is entitled to a share in the co-parcenary from which the sister is excluded. Further, if the family owned a dwelling house, the daughter’s right thereon is confined only to the right of residence.

A very progressive development in this context is the enactment of the [Hindu Succession (Andhra Pradesh) Amendment Act, 1985]. According to this law, the rights of the daughter are absolutely equal to that of the son even in cases of application of Mitakshara system. The rationale of the law has been explained in terms of Mitakshara system being violative of the fundamental right of equality before law, apart from leading to the pernicious dowry system. The States of Tamil Nadu, Maharashtra and Kerala have also amended the law by including women as members of the co-parcenary.

The Indian Succession Act 1925 provided for uniform succession to all other than Hindus, Sikhs, Jains, Buddhists and Muslims. The Travancore High Court, however, held that the Indian Succession Act would have no application to the Christian women of the Travancore State in view of the Travancore Christian Succession Act, 1916. Under the State Act, the daughter of a person dying

113 Under this system property rights were given to male heirs only
intestate would be entitled only to one-fourth of the son's share or Rs. 5,000/- (Sthree Dhana) whichever is lesser. The application of the State Act was challenged in the Supreme Court in the famous Mary Roy's Case. The Court ruled that the Cochin and Travancore Christian Succession Acts had ceased to be operative on the Reorganization of States and that automatically made the Indian Succession Act applicable to all Kerala Christians bestowing on them equal inheritance rights.

(B) Observations / Recommendations of Committee on Status of Women in India (1975) on Inheritance

In order that a widow is not left completely destitute, the Indian Succession Act should incorporate restrictions on the right of testation, similar to that prevailing under Muslim Law;

Legislative measures are taken to bring Christian women of Kerala under the Indian Succession Act;

Indian Succession Act should be extended to Goa and Pondicherry respectively to undo the relegation of widows to fourth position in matters of succession and to undo the inferior position to which Christian women are relegated by not being considered as full owners of property;

114 Mary Roy Vs. State of Kerala, AIR 1986 SC 1011; 1986(2) SCC 209
With regard to succession to property among Hindus, the right by birth should be abolished and the Mitakshara co-parcenary should be converted into Dayabhaga.\textsuperscript{115}

The exception provided in Section 4 (2) of the Hindu Succession Act relating to devolution of tenancies should be abolished (this provision, as it stands now excludes devolution of tenancy rights under State Laws from the scope of the Act). The discrimination between married and unmarried daughters regarding right of inheritance of dwelling houses caused under Section 23\textsuperscript{116} of the Hindu Succession Act should be removed.

The right of testation should be limited under the Hindu Succession Act, such that female heirs are not deprived of their inheritance rights.

There is need for legislation in Muslim Law to give equal share of property to the widow and daughter along with sons as done in Turkey.

\textsuperscript{115} the retention of Mitakshara co-parcenary perpetuates inequality between sons and daughters as only males can be co-parceners, and inheritance is only through the male line

\textsuperscript{116} 23. Special provision respecting dwelling-houses.— Where a Hindu intestate has left surviving him or her both male and female heirs specified in class I of the Schedule and his or her property includes a dwelling-house wholly occupied by members of his or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling-house shall not arise until the male heirs choose to divide their respective shares therein; but the female heir shall be entitled to a right of residence therein:

Provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling-house only if she is unmarried or has been deserted by or has separated from her husband or is a widow.
(C) Matrimonial property

Legal recognition should be given to the economic value of the contribution made by the wife through household work for purposes of determining ownership of matrimonial property, instead of continuing the archaic test of actual financial contribution;

(D) Amendments recommended by the National Commission for Women

(i) Indian Succession Act, 1925: Sections 15 and 16 to be amended, removing mandatory linkage of wife’s domicile with that of the husband. Appointment of testamentary guardian to be the right of both the parents acting concurrently. Widow to be granted letter of administration to deal with the Estate of the deceased husband unless excluded by the Court for sufficient reasons [Section 219 (a)]. Application made by the widow to be disposed of within a year (Section 218 (2)).

(ii) Hindu Succession Act, 1956: Equal distribution of not only separate or self acquired properties of the deceased male, but also of undivided interests in co-parcenery property.

Daughter of a co-parcener in a Hindu joint family governed by Mitakshara Law to be co-parcener by birth in her own right in the same manner as her son;
to have right of claim by survivorship and to have same liabilities and disabilities as a son; co-parcenery property to be divided and allotted in equal share.

Right of any heir to claim partition of a dwelling house to arise only after settlement of widowed mother’s rights in case the deceased male is intestate.

(E) Amendments recommended by NGOs

Hindu Succession Act 1956: Co-parcenery remains a primary entitlement of males; the law, no doubt provides for equal division of the male co-parcener’s share on his death between all heirs, male and female; still, the law puts the male heirs on a higher footing by providing that they shall inherit an additional independent share in co-parcenary property over and above what they inherit equally with female heirs; the very concept of co-parcenary is that of “an exclusive male membership club” and therefore should be abolished.

Intestate self-acquired property devolves equally between male and female heirs; but in practice, female heirs are asked to relinquish their share by making relinquishment deeds on their signature and are commonly submitted in courts. If the intestate property includes a dwelling house, the female heirs have no right to partition until the male heirs choose to divide their respective shares.
If a Hindu female dies intestate, her property devolves first to husband's heirs, then to husband's father's heirs and finally only to mother's heirs; thus the intestate Hindu female property is kept within the husband's lien.

(F) Equality among unequals: A critical look at Hindu succession

The Hindu Succession (Amendment) Act, 2005 is to remove gender discriminatory provisions in the Hindu Succession Act, 1956 and gives the following rights to daughters under Section 6:

- The daughter of a coparcener ceases by birth become a coparcener in her own right in the same manner as the son;
- The daughter has the same rights in the coparcenary property as she would have had if she had been a son;
- The daughter shall be subject to the same liability in the said coparcenary property as that of a son; and any reference to a Hindu Mitakshara coparceners shall be deemed to include a reference to a daughter of a coparcener;
- The daughter is allotted the same share as is allotted to a son;
- The share of the pre-deceased son or a pre-deceased daughter shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter;
- The share of the pre-deceased child of a pre-deceased son or of a pre­
deceased daughter shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter.

The recent amendment to the Hindu Succession Act has made the daughter a member of the coparcenary. It also gives daughters an equal share in agricultural property. These are significant advancements towards gender equality.

The Hindu Succession (Amendment) Bill 2004, passed unanimously by the Lok Sabha, comes after a long gap: the Hindu Succession Act was passed in 1956. The present debate about removing discrimination against women to a large extent remains confined to the experts. The law, obtuse at the best of times, takes on an even more tedious character when it comes to inheritance laws.

For almost half a century since the passing of the Hindu Succession Act, 1956, there has been the widespread belief that under Hindu personal law daughters are equal to sons. This belief was based on Section 10 of the Act dealing with the distribution of property of a Hindu who has died without making a will, referred to as 'intestate' in law. The provision unequivocally declares that property is to be distributed equally among Class I heirs, as specified in the schedule. The schedule clearly lays down daughters, mothers and widows as Class I heirs entitled to a share equal to that of sons. This, though seemingly a huge step in favour of gender justice, was in fact more a sleight of hand.
The mischief lay in customary Hindu law and the concept of 'mitakshara coparcenary' property. A Hindu joint family consists of a common ancestor and all his lineal male descendants, together with wives or widows and unmarried daughters. The existence of a common ancestor, necessary to bring a joint Hindu family into existence, continues even after the death of the ancestor. Upper links are removed and lower ones are added; the joint family can continue indefinitely. Except in the case of adoption, no outsiders are permitted and membership to the joint family is by birth or marriage to a male member. A Hindu joint family is a unit and is represented by the 'karta' or head.

A coparcenary is a narrower body of people within a joint family, and is crucial to the inheritance of property under Hindu law. The 'sapinda' relationship and capacity to confer spiritual benefit on paternal and maternal ancestors play a significant role in inheritance under customary Hindu law. The sapinda relationship arises between two people through the "community of particles of the same body," namely that of the common ancestor. The foundation of the doctrine of spiritual benefit is the offering of 'pind-dan' to departed ancestors in the shradha fortnight every year. Pinda means 'ball' and is usually made from rice. The performer offers one full pinda each to his three paternal ancestors. Other offerings too are made to the ancestors, but they do not concern the formation of the coparcenary.

A coparcenary comprises the father and his three male lineal descendants. A coparcener has an interest by birth in the property of the joint
This interest is not a quantified one; it changes with births and deaths within the family. Every coparcener has the right to be in joint possession and enjoyment of joint family property. A coparcener also has the right to partition, to get his interest individualised and separated. However, the person's separate interest becomes communal property again on the birth of a son who acquires an equal interest in the property. On a coparcener's death, his interest passes by survivorship to the other coparceners. Women, whether daughters, mothers or widows, cannot be part of the coparcenary.

The Hindu Succession Act retained the coparcenary. In fact, Section 6 specifically declares that, on death, the interest of a male Hindu in mitakshara coparcenary property shall devolve by survivorship to other members of the coparcenary and not by succession under the Act. However, it laid down that the separate share of the deceased, computed through the device of a 'deemed partition' just before his death, would devolve according to the Succession Act.

The Act did not clearly spell out the implications of exclusion from membership to the coparcenary in respect of inheritance of property. Thus, if a widowed Hindu male died leaving a son and a daughter, then, according to the explanation in Section 6 of the Act, there will be deemed to be a partition just before the death of the person. In this deemed or 'notional' partition, the father and son share equally and each gets half the property. The father's half will be shared equally by his son and daughter as Class I heirs. In effect, therefore, the daughter gets one-fourth of the property, while the son gets his own half from the
deemed partition as a coparcener and an additional half from the share of his father. Together that would be three-fourths of the property. It is this inequity between son and daughter that has now been removed by the amendment.

In a major blow to patriarchy, centuries-old customary Hindu law in the shape of the exclusive male mitakshara coparcenary has been breached throughout the country.

The preferential right by birth of sons in joint family property, with the offering of ‘shradha’ for the spiritual benefit and solace of ancestors, has for centuries been considered sacred and inviolate. It has also played a major role in the blatant preference for sons in Indian society. This amendment, in one fell swoop, has made the daughter a member of the coparcenary and is a significant advancement towards gender equality.

Daughters will now get a share equal to that of sons at the time of the notional partition, just before the death of the father, and an equal share of the father’s separate share. However, the position of the mother vis-à-vis the coparcenary stays the same. She, not being a member of the coparcenary, will not get a share at the time of the notional partition. The mother will be entitled to an equal share with other Class I heirs only from the separate share of the father computed at the time of the notional partition. In effect, the actual share of the mother will go down, as the separate share of the father will be less as the property will now be equally divided between father, sons and daughters in the notional partition.
The original bill, introduced in 2004, exempted agricultural land from the purview of the amendment. A considerable section of society is totally against equal shares to daughters with respect to agricultural land. The inclusion of agricultural land in the amendment, giving equal shares to daughters and overriding state-level discriminatory tenurial laws, is a great credit to parliament. Effective lobbying by women's groups must also be given due credit.

The equal sharing of the father's property applies in cases where he dies intestate -- that is, without making a will. Given the bias and preference for sons and notions of lineage, discrimination against daughters in inheritance through wills is bound to remain. In most cases, the terms of the will would favour the son. Perhaps the share of property that can be willed by a person could be restricted, as a step towards greater gender equality. For example, Islamic jurisprudence lays down that a person can only will one-third of his property. Provisions to check the prevalent practice of 'persuading' daughters to give up their share in joint family property is another area that requires attention. This is an opportune time to keep up the momentum for further reforms to reduce gender inequities and move towards a more equal society.

On the negative side, the amendments will reduce the shares of the deceased's widow and mother. It would have been better to abolish the Mitakshara coparcenary system altogether, and partially restrict the right to will, as suggested by some. Nevertheless the amendments are laudable.
Declarations and Reservations of Government of India to the Convention on the Elimination of All Forms of Discrimination Against Women

There has been a disinclination or hesitation in the implementation of the Uniform Civil Code, which stems from the cautiously rationalised argument that the concerned communities themselves should proactively come forward with demands for appropriate legislative measures. While ratifying the UN Convention on the Elimination of All Forms of Discrimination against Women (1993) also, India made the following declarations and reservation:

With regard to articles 5(a) and 16(1) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without their initiative and consent.

With regard to article 16(2) of the Convention on the Elimination of All forms of Discrimination Against Women, the Government of the Republic of India declares that though in principle it fully supports the principle of compulsory registration of marriages, it is not practical in a vast country like India with its variety of customs, religions and level of literacy.
Reservation

With regard to Article 29 of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it does not consider itself bound by paragraph 1 of this article.

THE CASE OF MARY ROY: Another important development in law for the benefit of women came about with the Supreme Court’s ruling in the case of Mary Roy\textsuperscript{117}. The ruling brought the female Christian population of Kerala within the ambit of the Indian Succession Act, applicable to all Christians. The Act provides for equality in succession to property. The case pertained to a section of such women suffering discrimination in inheritance rights in cases of interstate succession.

The judgment of the Supreme Court of India in favour of Mary Roy and others is another instance where anomalies in the law, detrimental to women, in this case some sections of the Indian Christian community in certain parts of Kerala and the Kanyakumari district of Tamil Nadu, have been acknowledged and rectified.

The Act challenged was the Travancore Christian Succession Act, 1092 (1916). Under this Act, in a case of intestate (without a will) property the daughter

\textsuperscript{117} Mary Roy Vs. State of Kerala, AIR 1986 SC 1011; 1986(2) SCC 209
was entitled to only a fourth of the son's share of the estate or Rs. 5000, customarily meant for Streedhana, whichever was less. Though this was supposed to constitute the law for intestate succession among Christians as the name implies, it excluded Protestants and Catholics living in some districts and taluks of the State among whom their customary law of equal sharing of property obtained. Similarly, in the neighbouring State of Cochin the restriction on the daughter's share was to a third of the son's share. The section of Christians affected were the Syrian Christians, Jacobites and the members of Mar Thoma Church. The anomaly can be appreciated that whereas, for example, if they lived in the neighbouring state of Tamil Nadu the women of these communities would be entitled to share the estate equally with their brothers, in their natal place, they had to accept only a proportionate share.

The Indian Succession Act 1925 provided a uniform succession law to all except Hindus, Sikhs, Jains, Buddhists and Muslims and for equality in the sharing of intestate property.

Furthermore with the amalgamation of the erstwhile princely States with the Union of India, the 1951 Part States (Laws) Act provided for the extension of certain laws of the Indian Union to the amalgamating States. Under this Act the Travancore Cochin Christian Succession Act of 1916 and 1921 would have been considered automatically repealed.

The controversy, however, arose because the former Travancore Cochin and the Madras High Courts held that despite the passage of the 1951 Part B
States (Laws) Act, Christian women of the above communities could not claim to be governed by the more liberal Indian Succession Act. The Supreme Court's verdict was that:

"........ on the coming into force of the Part B States (Laws) Act 1951, the Travancore Cochin Succession Act stood repealed and Chapter 11 of Part V of the Indian Succession Act 1925 became applicable, and intestate succession to the property of members of the Indian Christian community in the territories of the erstwhile State of Travancore was thereafter governed by Chapter II of Part V of the Indian Succession Act, 1925". This ruling rightly places Christian women of Kerala on par with the men of the community in respect of inheritance of intestate property. The Indian Succession Act, 1925, will now govern them like all other Christians.

While this is no doubt welcome, the judgment of the Supreme Court sadly does not refer to the vital grounds, mentioned in the petition, where the Travancore Christian Succession Act violates the Constitutional guarantees under the Section - Fundamental Rights. These are Article 14 "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India" and Article 15(1) "The State shall not discriminate
against any citizen on the grounds only of religion, race, caste, sex, place of birth
or any of them", and the Directives of State Policy as laid down in Article 44 that
"the State shall endeavor to secure for the citizen a uniform civil code throughout
the territory of India.

The question may well be asked, "why has it taken over thirty five years to
rectify this gender injustice and discrimination?" The answer is because of two
very powerful inhibitory factors, tradition and vested interests. So deep is the
ingrained fear of and unquestioning obedience to the dictates of the Church that
any kind of challenge was plainly inconceivable. For years women's
organisations in Kerala have been protesting, moaning and groaning. But Mary
Roy's\textsuperscript{118} was the first case to have the issue clarified by the Supreme Court.

Vested interests comprise the establishment, the church and the Christian
male who would resent any dilution of their proprietarily rights. In fact, so
powerful was the opposition to the verdict, that the Government of Kerala
submitted a writ petition to the Supreme Court seeking elimination of the
retrospective nature of the ruling for reasons of 'administrative complications'.
The Supreme Court dismissed this petition.

The judgment ensures retributive justice and a new dawn for the women
of the communities concerned, free from unwarranted deprivation and distress.

\textsuperscript{118} Mary Roy Vs. State of Kerala, AIR 1986 SC 1011; 1986(2) SCC 209
THE BIG STEP BACKWARDS: While these are invaluable gains in our movement towards equality, the Muslim Women's (Protection of Rights on Divorce) Act, 1986 denies divorced Muslim women the protection under law that's available to women of other communities in similar circumstances. Considered from the perspective of women's rights and the imperatives of national development and integration, the Act is retrograde, impractical and ill judged. For the thousands of divorced indigent Muslim women and their children, the prospect is one of destitution. The Act is a blatant example of violence by the State on a section of society silenced and unable to defend itself.

MUSLIM WOMEN'S (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986: The Muslim Women's (Protection of Rights on Divorce) Bill was introduced in Parliament. There was a ground swell of opposition to the provisions of the Bill. Every form of democratic expression of protest was used - meetings, debates, seminars, marches, resolutions and the national press played on effective role in analysing and educating the public on the issues involved.

At the Centre for Women's Development Studies (CWDS) Faculty and Staff met to discuss the implications of the Bill for women and for the nation as a whole, and had this report:

"This meeting of the Faculty and Staff of the Centre for Women's Development Studies records its considered view that the action of the Government of India in introducing the Muslim Women (Protection of
Rights on Divorce) Bill in Parliament, is retrograde, imperatives of national development and integration. The Bill violates the basic constitutional principle of equality before the law by denying to women of one community a protection offered under Criminal Law whose jurisdiction covers all citizens of India. It also goes against the Directive Principle of State Policy as the maintenance provision under the Criminal Code is meant to prevent vagrancy and destitution of all Indian women."

(ii) QUESTIONING THE ACT - IMPRACTICAL & UNJUST : The Act is impractical in its expectation that parents, brothers and other relatives will shoulder the responsibility for a divorced woman's and her children's maintenance. Such an expectation reflects utter lack of awareness of establishment trends in the structure, values and obligations of families in India, irrespective of communities. As is well known among the poor who form the majority of the population - families are in no position to support even unmarried daughters or sisters. Exposures of questionable 'marriages' of young Muslim girls to foreign tourists, by poor families, of continued 'sale' of young women of different communities, and the high incidence of suicides, and destitution among poor Muslim women after Talaq, provide substantial evidence of the inability of their parents or other relatives to provide maintenance.
More impracticable, unrealistic and unjust is the expectation that a divorced woman will sue her parents/other relatives to obtain maintenance. It is an unfortunate fact of life that the inheritance right of daughters to their fathers' property generally remain unimplemented because most women find it inadvisable to sue their brothers. Field research provides ample evidence that widowed, divorced or deserted women dependent on their parental families find their lives unbearable, particularly after the death of the parents. Also social research among poor women of all communities have already identified growing irresponsibility of husbands and fathers as a serious problem. The question also needs to be asked - why should the brother in the case of Muslims shoulder the responsibility, while the husbands, responsible (in the majority of cases) for the act of divorce are absolved of all responsibility?

Still more unrealistic, and undesirable, is the expectation of the Wakf Boards undertaking the responsibility of maintenance. Apart from their financial position reported as most inadequate even to carry out their existing functions, making divorced women dependent on these bodies for their survival would open the floodgates for corruption and exploitation of the worst kind.

Instead of acknowledging and strengthening women's rights, human dignity and progressive secular values as the most powerful forces for national integration and development, the Government has chosen to ally itself with an irrational minority of the community, whose demands cannot be substantiated either by objective religious authority, or the process of legislative adaptation of
Koranic Law in leading Muslim countries. The Act will only encourage those communal elements, which oppose the democratic and egalitarian values enshrined in our Constitution.

(iii) QUESTIONING THE ACT – CONSTITUTIONAL VALIDITY: Such reactions also came from women's organisations and civil rights groups, supported by opinions of scholars and jurists. Jurists particularly questioned the constitutional validity of the Act. Prof. Upendra Baxi said it "not merely repudiate fundamental rights which limit with crystal - clarity the power of Parliament, but also repudiates each and every relevant directive principle fundamental to the governance of law and the making of law. It also violates Fundamental Duties."

Justice Krishna Iyer, retired judge of the Supreme Court in an open letter to the Prime Minister said, "the Preambular Pledge of equality of status and the fundamental right to equal protection of the laws, with special provision for women and children make legal protection of the laws, with special provision for women and children make legal discrimination or the ground of religious denomination anathema and invalid. To keep harrowing Muslim women out of the benign orbit of Section 125 when traumatically talaqed by heartless husbands and to promise them the illusory prospect of being free-fed from a bizarre basket is blatantly unconstitutional."

These opinions and views went unheeded. The Act was passed with one amendment not indicated in the Bill stage. This in effect states that if both parties are agreeable they have the option of applying to the courts for consideration
under Section 125 of the CrPC. It is unlikely that any Muslim male would choose this option when the Bill gives him a charter of freedom. Moreover, this is a further affront to the woman to whom the right of appeal to the courts for maintenance is now totally denied.

(iv) SHAH BANO AND THE MUSLIM WOMEN’S ACT – THE MEDIA’S STAND: By any yardstick, the national press gave the Shah Bano case and the subsequent introduction of the Muslim Women’s Bill, the attention they deserved as matters of grave national importance.

The coverage can be demarcated into editorial comment, news items, leading articles, features - and last but not least, letters to the editor. Editorially, it is heartening to see that the national press is firmly on the side of the angels. The Shah Bano verdict has been welcomed, the Muslim Women Bill, stood condemned. But whether the press has been bothered more by the tiff between the Government and the judiciary, or by the fact that the welfare of women is at stake, is difficult to make out. Here, both these issues have combined to make a tremendous story. And the communal element has added piquancy to the whole affair.

There is perhaps only one aspect over which the press has not been as vociferous as it ought to have - making the connection between the introduction of the Bill and the Congress I setbacks in the recently held by-elections from Muslim dominated constituencies. The Deccan Herald, one exception, put it bluntly across and described the introduction of the Bill as a "panic reaction" to
the electoral defeat. This issue could have certainly been highlighted if anything to elicit some reaction from the Government that has still not offered any satisfactory, let alone sane explanation for its conduct.

This apart, on every other issue the national press has taken a firm and rational stand. Mr. Arif Mohammad Khan's resignation from the Cabinet had the media cheering for a man who will stick to his principles. Mr. Z. A. Ansari's condemnation of the Supreme Court judges has been loudly declaimed. Even the Hindustan Times described the two-hour tantrum as "vituperative slander" and the Times of India deplored Rajiv Gandhi's "gratuitous defence" of what was indefensible. All the papers welcomed the announcement regarding the Prime Minister's proposal for a background paper on the issue, the Times described the two-hour tantrum as "vituperative slander". One paper felt that it probably had been prepared, for Rajiv Gandhi is a man of his word - but had not been released because the findings may have been embarrassing.

The Newspapers were also united over the matter of the common civil code. The Indian Express made a call for a comprehensive Family Laws Act, but underlined that it ought to be made available as an option to all citizens and would not affect those who prefer to follow existing or reformed personal law. The Statesman advised against the imposition of a civil code (even though this has been done in Islamic countries) because of the "sensitive" nature of the Muslims in India arising from their minority status. Muslims are likely to interpret any such code as an imposition of Hindu law and as an attempt to strangulate their
religious beliefs. The paper adds however, that obscurantist forces must not be allowed to force their views either and that the law of the land must apply to all.

The Times of India objecting the enactment of a uniform civil code pointed out that while most Muslims are against the code, not all are against changes in Muslim law - particularly where women were concerned.

While the editorials deal with the "rights" and "wrongs" involved, the leading articles and features, between themselves, provide a frame-by-frame analysis and breakdown of the whole matter. Arun Shourie in the Times of India goes into the details of how the Prime Minister apparently let down Arif Mohammed. At first, when the Banatwala bill was introduced and brought down by Arif Mohammad - who demonstrated its untenability in terms of the Shariat itself he was congratulated for his effort by the Prime Minister. The volte-face began, according to Shourie at the time of the Assembly elections and after the Prime Minister had consultations with Muslim leaders. And before he knew it, Arif Mohammad had been left out in the cold - with a choice to either change his tune, or resign. Much to his credit he chose the latter.

Daniel Latif, in a two-part article, also in the Times, dismantled the Bill clause by clause, pointing out errors, inadequacies and vagueness. According to him, the reasons given for the introduction of the Bill were based on a fallacious reading of the Supreme Court verdict in the Shah Bano case. The Supreme Court had made no attempt to interfere with Muslim Personal Law. All it did was
to hold that Shah Bano had not been paid "the whole of the sum which under
customary or personal law was payable on divorce".

Another important point made by Latifi regarded the provision that
maintenance must be provided by the wakfs. "The law of Islam is very strict on
the point that a benefaction must be applied to the purpose specified by the wakf
founder of the trust". It cannot be changed by anybody.

A.G. Noorani, in a two-part article in the Indian Express, written more it
seems for lawyers than newspaper-readers, blasts the Supreme Court for its
"ardent espousal" for the demand for a uniform civil code. He claims that the
advocates of the Supreme Court miss out the "possibility of radical reform within
the framework of the Shariat". There is however, a useful description of the types
of divorce permitted under Islam and Noorani maintains that the infamous oral
"talaq-talaq-talaq" divorce is not as easy as has been made out to be, and the
most frowned upon by Islam.

The press has also covered the reaction of ordinary Muslims to the Shah
Bano verdict and the Bill though there has been no systematic state-by-state
study. And certainly there are contradictions:

Hasan Suroor, in an article entitled "most Muslims in U.P. opposed to the
Bill", in the Statesman, writes "there is a widespread feeling in U.P. that (the Bill)
is an attempt to appease the conservative Muslims after their hysterical reaction
to the reopening of the disputed shrine at Ayodhya to Hindu devotees". He claims
that fear of the mullahs is what is preventing many Muslims from taking a public stand on the issue. A visit to some of the towns and villages in U.P. shows how "tenuous" is the claim that the Bill enjoys the majority support of the community.

Som Anand, also writing in the Statesman, finds however that "Muslim newspapers and journals are unanimous that by accepting Shah Bano's claim the Supreme Court violated the laws of the Shariat", and that there was overwhelming opposition to the imposition of a common civil code, even though many Muslims admitted their personal laws may be inadequate.

Taking a wider perspective he calls for the removal of the poverty and backwardness of the Muslim community and mentions the fears and prejudices that the community is subject to in a Hindu-dominated society.

Shri B. M. Purandara, in the Times of India, documents cases where patently unfair divorces have taken place, leaving women destitute and devastated. An interesting sidelight in the Indian Express - "Row in Goa over Talaq" points out that the imposition of a civil code by the Portuguese in 1870 - and still valid today - makes that Union Territory the only place in the country where Muslim Personal Law is not applicable. Now naturally, even that issue is on the boil.

An indication of how deeply the public has got involved in the issue comes from the enormous numbers of letters-to-the-editors that have been published. Readers have forcefully taken sides, praised or criticised editorials, given their
own analysis, clarified points and have simply stated what they feel. But at the outset one fact stands out above all: Among all the letters that have criticized the Shah Bano verdict and consequently welcomed the Bill, not one of these letter-writers mentioned that it was patently unfair for a husband to be able to jettison all responsibility towards his wife and children after the iddat period was over. One woman writer - and there may have been others - claimed that no divorced Muslim women would ever stoop to accepting alimony from her ex-husband - she would rather starve. That may well be the case, except that it is doubtful whether any woman would simply stand by, pride intact, and watch her children starve too.

While the memorandum signed by 125 eminent Muslims (including K. A. Abbas, Salim Ali, Shabana Azmi, Moonis Raza, Muzaffar Ali, Daniel Latif etc.) is heartening, it was sad to note that an overwhelming majority of the Muslims among whose letters were published, took the opposing viewpoint. And as the editorial pointed out, it does indeed appear that the Muslim community is afraid that its religious identity is at stake. This is perhaps the most tragic aspect - for in any clash between religion and reason (any religion) - religion generally comes out on top - and most often at the cost of natural justice. The politicians, knowing this, use it to further their ends. In this case, the Supreme Court of the country stands humiliated and the lot of Muslim women takes a backward plunge. But at least the press is not going is not going to give up. Not without a shout.
THE BRIGHTER SIDE WITH ITS DIMMERS: In the last century and a half, protests and pressures from social reformers have been instrumental in combating to some extent, the more glaring injustices in society. In 1829, sati was outlawed. However, to this day we still hear of sati being committed in parts of the country. Widow remarriage was made legal in 1856. But socially, the chances for a widow to remarry even today remain restricted. In 1870 female infanticide was banned. Today, amniocentesis skirts this issue with impunity. The Child Marriage Restraint Act was passed in 1929. In parts of Rajasthan and Gujarat group marriages of under tens still take place, the law turning a blind eye.