

Barriers to Gender Equality for women in Polygynous Marriages- A view from India and South Africa

Transcript

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Hi, good evening everyone. Thank you so much. I thank the peace conveners for this opportunity. I'm Anjali. I'm a DPhil student in law faculty and I look at family law and human rights and I try and see how can we integrate constitutional law within the space of family equality from the perspective of lives of women in the context of polygyny. And I have to admit, I'm not part of the peace and conflict studies academic group. So this is my first attempt at it. So I have more questions for you than answers. And I'm hoping to hear what you think about it. So my research looks at the comparative context of India and South Africa. And the reason why I chose those countries is because they're both liberal democracies which have plural multicultural institutions which allow for the space where the family laws are not uniform like we are used to in the West. There is differential legal regulation of polygamy in both these countries, which I'll come to in a bit. And this conference is an invitation for me to think about how does this connect. How does family and how does inequality within the home connect with the larger peace and conflict space? So from what I perceive in the short time I've spent looking at the literature, I would say family law shapes women's security and access to justice. And gender equality within the family, particularly in the context of polygamy as I look at and legal pluralism, is essential to building inclusive, sustainable peace because until we address domestic harms and inequalities within the private sphere, we do not have meaningful peace. regardless. And there are studies from different scholars which actually show that post-conflict, the domestic abuse actually rises. And that's something we need to be cognizant of, that who is taking the brunt of this peace? Is the peace, is the conflict just shifting elsewhere? And so what I perceive from looking at resolution 1325, and I was quite intrigued with the pillars of the four pillars of the 1325 resolution, and I try and connect it to my framework of substantive equality, which I use in my thesis. So that will be the focus of my presentation today. So coming to the perils of legal pluralism for women, as I was explaining in the context of India and South Africa, we do have different laws for women in the context of polygyny, depending on which religion or which culture they belong to. And again, the history, the story behind this regulation is very colonial. It is rooted in, it's rooted in patriarchy. And part of the story has been that India had different family laws for all the religious groups during the British colonial rule. And it was almost as a response to it that we came up with imposing monogamy as the law in family law post, you know, post 1950s. But the South African story has been quite different because they had, they were under the crippling

forces of apartheid and colonialism. And the result, during the period of colonialism and apartheid, both those phases, customary law was suppressed to an extent where women who were in customary marriages were not granted any rights. So their response was almost the opposite, that as soon as South Africa had its own constitution, in 1998 we got the Reform of Customary Marriages Act, giving women in customary marriages equal rights as civil marriages. But of Because what that did is it legitimized and legalized polygamy in the process. But again, that was only done for women, black indigenous African women. It wasn't done for Muslim women. It wasn't done for Hindu women who also customarily and religiously practiced polygamy. And likewise in the Indian context, even though monogamy was brought about for Hindu women, Other women, be it the Muslims or the tribal communities, they were left out of that ambit because again, the idea was we reform the majority 1st and then we go back with a uniform civil code, which will then regulate the whole country with the same law. But that also misappreciates the problem. Women are not a monolith and we have been hearing it from different speeches over the day that women and their identities are intersectional. They do not, they do not fit. There is no one solution that fits the bill. So we do need to make contextualized assessments of what the women in question want. So basically to highlight that legal pluralism has created this volatility and selective protection for some. And it in fact reinforces some of these patriarchal norms for others. My proposal is that pluralism has to be accountable for gender equality. But then that brings us to another question. What do we mean by gender equality? Because of course, as again, we have been discussing, it can have different meanings. And in the contexts I am studying, India and South Africa, we also noticed that gender equality can be co-opted. And that's something I will elaborate in a brief very shortly. But before that, I'll just quickly introduce the structure I'm working with. So as I said, I'll be connecting the WPS pillars with my substantive equality framework. And I rely on Sandra Friedman's 4 dimensional substantive equality theory which basically talks about integrating and managing and balancing the different requirements. So be those redistributive needs, recognition needs, participation needs, and transformative needs, they all need to be in sync with each other. Because take, for instance, a woman who is a Muslim woman in India who can legally practice polygamy. So she does have her redistributive needs taken care of. She has, but on the other hand, the recognition and participation dimension is missing because we are not really asking what they want. We are simply going by what the Islamic family law requires of the women in that context. But again, at the end of the day, we also need to be worrying about prevention or transformation as I link it to the sphere where until and unless we tackle the larger structures which are posing as barriers. We are not actually going to move ahead. So as I said, mapping to WPS, participation is of course a clear mapping. Both these theories do require that. And I think we have heard enough from other people, so I'll not elaborate too much, but I completely agree that women's inclusion has to be has to be radical, because if it's inclusion in the status quo or on the terms of patriarchal

governance, then it's not going to actually help or change anything. Coming to the prevention, again, we have to focus on the structural drivers of gender-based violence and other forms of gendered inequalities. And something which I have found through my research is how marriage in itself is a legal and structural barrier to women's equality. And let me elaborate what I mean by that. I'm not talking about the theoretical conceptions of abolishing marriage, but I'm just simply talking about how formalities weigh women down. We are talking about women who have no access to perhaps no access to education, no access to stepping out of their houses. And we expect them to have registered marriages to prove that they're married. And there are so many such small barriers when it comes, and the sad part with family law issues is they do not actually come out until there is a dispute, right? So it's only when there's a divorce, there's a death in the family that these women have to go to court and claim their marital rights. And it's at that stage, they actually find out that what they thought was marriage is not even legally recognized as such. And those kind of barriers are caused by law's emphasis on formality. And this is also my gripe with the UNCEDAW treatment of polygamy. Polygamy, I completely understand how structurally unequal some of the polygamy looks like, but simply saying that we ban the institution doesn't actually resolve the underlying issues. And we in fact need to be looking at what these women in these polygamous marriages want. So on that front, I'm more aligned with the Mapoto protocol, which has come about in the context of African human rights, regional human rights. And moving on to protection, legal safeguards against inequalities, breach of fundamental rights. So not to pick not to pick on it too much, but I do have a problem with protectionism, because again, it can often undermine the recognition dimension I have spoken about earlier. And there is, I think there is some merit in understanding that even if the outcome is good, even if women get, you know, say the person who was the abuser is arrested and put in jail, it doesn't actually do anything to resolve the problem if stereotypical and stigmatic view of that violence is taken or we frame women as victims and passive victims who don't have agency. So it's important that when we talk about protection or access to justice, we are aware that we are not reinforcing the stigmatic view of what women need and their needs and their demands again need to be framed in a way that they do not breach any of the recognition, redistribution, participation and transformation dimensions. And then coming to relief and recovery, I think it sort of plugs in with the protection pillar. And again, I think that's in family law, that's honestly the biggest barrier. And before we even come to the content of the formal laws, reaching the law itself is a big challenge because even the bureaucracy, the enforcers or the guaranteed institutions as they should be working, they're actually, they're not interested in applying even the positive legal change that has happened. So moving on to a quick understanding of how India and South Africa works, I'm happy to answer questions or speak about my research in the Q&A or post the discussion. But I think what I really wanted to highlight for the purpose of this talk is to say that we need to understand conflict can be can be look, it can be very piecemeal. And in the context

of India, of course, we heard from Ufra about the Kashmir not even being labeled a conflict zone. And similarly, we have the northeast of India, which is facing a lot of state oppression, not actually labeled a conflict zone. Again, in the UN bodies, India doesn't acknowledge that it has indigenous populations. And that takes away or that homogenizes all of India's women as like singular, but they're not. They have their own requirements and forcefully changing top-down That's not going to cause the required legal change. What that will do is these women who could at least until now claim maintenance or some marital entitlements in the court of law are going to be just labeled as second wives or third wives. And they would not even get the legal recognition of being in a marriage situation. And of course, the rising Islamophobia in India is something which the whole world is aware of since 2014, since the rise of Modi government. And this politics of saving minority women from their men, it just further alienates these women. And it forces them, it corners them to choose between aligning with their communities and aligning with the gendered inequality that they face. And as I said, because the nature of this inequality is so everyday, so mundane, It doesn't really, if you say, oh, this was the issue which I had, it doesn't come across as something which needs like urgent, immediate, you know, justification, but it's the sum total, it's the oppression which sort of manifests totally, which needs to be resolved. So again, we need to be Perhaps questioning what conflict means and family law needs to be brought into the WPS agenda because be it a conflict situation or a non-conflict situation, however defined, family issues and inequalities within the private sphere continue. And another sort of difficulty is, as I said, India, when it passed the monogamy laws for Hindus, it did have the intention to pass it for the whole country. And that's something which is part of our Indian Constitution, Article 44, to pass a model Uniform Civil Code. And that has actually been started. They have passed Uniform Civil Code in one of the states. And there's a risk that this will happen for the rest of the country as well. Again, risking labeling all the problems which come from polygamy down to this binary of monogamy and polygamy as if monogamy has no issues, which we all are aware it does. Coming to South Africa, it's a relatively better legal system. But again, as I said, the formality of laws still limits the rights women have. So they still have to go to court, prove that they're legally married. In a lot of cases, customary marriages don't look, they're not a one-point affair. You know, they happen over a period of time. There's an exchange of conversation between the two families. So marriage, as I say, in some of the Eastern cultures or like non-North, global North cultures as a process rather than an event. And what that does is it, on this technicality, women are devoid of their legal entitlements. And South African court has done a ought to address it. However, sometimes it still remains a formal victory in the court and it doesn't get translated in real life. And empirical work on customary marriages has shown that women don't even know that they have these entitlements, even though the law was passed in 1998. So recognition of equality and gender, gendered rights is not really equivalent to lived equality. And I know the problem is not

as stark in South Africa as the Islamophobia issue. issue in India. But I think I perceive there's a big issue coming up with the anti-immigration sentiment and xenophobia. Because again, as I'm taking you back to the formality of marriage, it's only the black indigenous Africans of South Africa who are allowed to be in a polygamous marriage, which means that if a person from Zimbabwe and South Africa marry, they can only get married under civil laws, not under the customary laws. And that's the complication which we need to be addressing as well. So taking you to, I think, as I said, all I have are some points rather than solutions. So I would think. trying to actually implement this framework or these pillars or the four dimensions can help us come a little closer. And I know these institutions don't, cannot and do not offer full solutions, but they should at least be doing and implementing a vision of gender equality which is compliant with the constitutional norm of equality. So the focus has to be on overcoming everyday harms. We need to align these plural laws with constitutional equality and By that, we don't need knee-jerk responses to ban polygamy. We would not recognize any of cultural requirements, but we need to be in a conversation with the faith leaders, the progressive faith leaders, and make sure that we are all working together because state is not that powerful when it comes to family, especially in the legal pluralism context. And again, ensure participation, include the voices of these women in the reform process, integrate family law and domestic conflicts into WPS prevention and response, and perhaps revisit what conflict looks like. And again, data gap, funding gap, all of those administrative and other barriers definitely need to be overcome. I have no idea how we will do that, but my solution, at least in my immediate context, is to say there's a constitutional imperative and the states are under positive obligations to fulfill these duties, which they have taken on under these different international conventions. So in addition to transnational conflicts, we need to bring family and domestic conflicts as part of the agenda. So That's all the intervention I have for today, that we center substantive equality as a peace strategy, bring family, which is the basic unit in generating positive peace by oppressionizing family law reform with the WPS agenda. And yeah, thank you.