

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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GENDER INEQUALITY AND RELIGIOUS PERSONAL LAWS IN INDIA

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ABSTRACT

The intersection of gender justice and religious personal laws in India reveals significant inequalities that persist despite constitutional guarantees of equality. Various personal laws governing Hindu, Muslim, Christian, and Parsi communities often reflect patriarchal norms, adversely impacting women's rights in marriage, divorce, inheritance, and guardianship. Landmark judicial interventions, such as the Shayara Bano and Githa Hariharan cases, highlight the judiciary's crucial role in promoting gender equality within these legal frameworks. The discourse also addresses the Uniform Civil Code (UCC) as a potential means to unify disparate personal laws and enhance gender justice. However, the UCC faces considerable opposition from religious groups concerned about the erosion of cultural identities. A balanced approach to implementing the UCC is essential, respecting religious pluralism while advancing gender equality, underscoring the need for continuous legal and social reforms to uphold constitutional values in India's diverse society.

KEYWORDS: Gender Justice, Religious Personal Laws, Uniform Civil Code (UCC), Patriarchy, Equality before Law

I. INTRODUCTION

India is a diverse nation with a rich tapestry of religious, cultural, and legal traditions. Just as there are many different faiths, there are also a great deal of personal laws that regulate the general populace of those different religions. The term 'personal laws' encompasses the scriptural mandates and customary practices specific to a religion. Among these, religious personal laws have historically governed key aspects of family life, including marriage, divorce, inheritance, and maintenance, often reflecting the unique customs and beliefs of various communities. However, these laws, which differ across religious lines—Hindu, Muslim, Christian, and Parsi, have been a focal point of debate, especially in the context of

gender equality.¹

Despite constitutional guarantees of equality under Articles 14 and 15, religious personal laws in India have been criticized for perpetuating gender-based discrimination.² While men often enjoy more rights and privileges, women are disproportionately impacted by patriarchal norms enshrined in these laws. The actual reality of women subject to these laws differs from the ideal of gender justice envisioned in the constitution because these provisions frequently fall short of safeguarding women's rights to equality and dignity. Depending on their religious affiliation, women's rights and entitlements under these personal laws range greatly, resulting in disparate standards of gender justice.

For instance, Muslim women have faced issues such as unequal inheritance rights and the now-outlawed practice of triple talaq, while Hindu women have historically been disadvantaged in matters of property inheritance until recent reforms. Christian and Parsi women, too, have faced inequities in divorce and succession rights.

This tension between religious personal laws, and gender justice has led to significant judicial interventions. Landmark cases, such as *Shah Bano*³ and *Shayara Bano*,⁴ have ignited debates on the need for reforming personal laws to align them with constitutional principles of equality. At the same time, the call for a Uniform Civil Code (UCC), as envisaged by Article 44 of the Indian Constitution, has resurfaced in public discourse as a potential solution to harmonize personal laws and ensure gender justice.⁵

Although there have been legislative revisions in personal laws, especially in Hindu and Muslim laws, these changes have typically been reactionary in nature, resulting from court rulings or public outrage, rather than being proactive in promoting gender equality. Moreover, there is still a great deal of opposition to any change of personal laws in some religious communities, based on the arguments of religious autonomy and the constitutional right to religious freedom.⁶ The challenge, therefore, lies in reconciling the principle of secularism with

¹ Nishtha Jain, 'Gender Inequality in Hindu and Muslim Personal Laws in India', (2018), Volume 1, Issue 3, International Journal of Law Management & Humanities, 1.

² *Ibid*

³ *Mohd. Ahmed Khan v. Shah Bano Begum & Ors.* (1985) AIR 945

⁴ *Shayara Bano v. Union of India & Ors.* (2017) 9 SCC 1

⁵ INDIA CONST. art. 44

⁶ INDIA CONST. art. 25

the right to equality, as religious personal laws continue to serve as a site of conflict between gender justice and religious tradition.

II. CONSTITUTIONAL FRAMEWORK AND GENDER EQUALITY

India's Constitutional framework includes a number of measures, most notably Articles 14 and 15, that aim to protect gender equality and prohibit discrimination. The "Right to Equality," as guaranteed by Article 14, requires that every citizen be treated equally in front of the law. This fundamental tenet emphasizes that laws, including personal laws must not discriminate on the basis of gender, caste, religion, or any other basis unless doing so would be justified by a legitimate classification.⁷ To strengthen the constitutional foundation for gender justice, Article 15 clearly forbids discrimination based on religion, ethnicity, caste, sex, or place of birth.⁸

However, religious personal laws, which govern critical aspects of marriage, divorce, inheritance, and maintenance, often perpetuate gender-based discrimination, especially against women. This has led to calls for legal reforms, most notably through the Uniform Civil Code (UCC) envisaged in Article 44, a Directive Principle urging the state to move towards a common legal framework for personal matters across all religious communities. While Article 44 is not enforceable by law, it highlights the vision of a secular legal system that guarantees equal rights for all citizens, regardless of religious affiliation.

In the World Economic Forum's Global Gender Gap Report, India is ranked 114th out of 142 nations, with a score of 0.6455 (with 0 being the lowest and 1 being the highest).⁹ It has restrictions on resources and assets, son favoritism, restricted civil liberties, discriminatory family codes, and more. The comprehensive scope of personal status law necessitates an examination of the systemic consequences that gender discrimination may have on women's equality, as well as the influence it has on women's ability to exercise specific rights and their fundamental and human rights.

This stark gender disparity in India can be attributed, in large part, to the various personal laws that are inherently gender-biased. These laws, rooted in religious and cultural practices, often place women at a disadvantage, particularly in areas such as marriage, inheritance, and

⁷ INDIA CONST. art. 14

⁸ INDIA CONST. art. 15

⁹ 2024 Gender Equality Report, <https://www.unwomen.org/> accessed 20 September 2024.

custody.¹⁰ The unequal treatment codified within these personal laws perpetuates systemic gender inequality, limiting women's ability to access resources, make independent choices, and exercise their civil and fundamental rights fully.

III. SUBJUGATION AND DISCRIMINATION IN RELIGIOUS PERSONAL LAWS

Religious personal laws in India reflect a deep-seated patriarchy, often entrenching gender inequality in matters of marriage, divorce, inheritance, and guardianship. Despite constitutional guarantees of equality, the legal frameworks governing Hindu, Muslim, and Christian communities frequently exhibit biases that disproportionately affect women. These personal laws, although intended to respect religious customs, have perpetuated gender-based discrimination, creating a legal environment where women are often subjugated in the name of tradition.¹¹

A. Hindu Personal Law: Inheritance, Marriage, and Divorce Disparities

Under Hindu personal law, Section 14 of the Hindu Succession Act, 1956, grants women complete ownership of their stridhan (personal property gifted to her, typically by her parents).¹² However, this provision does not extend to the assets of her spouse, limiting her financial security within the marriage to the right to receive maintenance. This demonstrates a significant shortcoming in providing women with equal financial rights in the marriage. Moreover, the traditional exclusion of Hindu women from coparcenary rights (joint family property) continues to reflect a patriarchal bias, despite amendments in some states such as Andhra Pradesh, Maharashtra, Karnataka, and Tamil Nadu.¹³ The 2005 amendment to the Hindu Succession Act, which aimed to provide daughters with equal rights as sons in coparcenary property, has not been uniformly implemented, particularly in rural regions where patriarchal customs continue to prevail.

The inequality becomes starker in the realm of divorce. Husbands seeking divorce often cite trivial reasons, such as a wife's refusal to cook or wear traditional symbols like sindoor or mangalsutra, as grounds for divorce. These allegations frequently paint

¹⁰ Tanja Herklotz, 'Religion Personal Laws in India from a Women's Rights Perspective', (2015), South Asia Chronicle 5/2015, Südasiens-Seminar der Humboldt-Universität zu Berlin.

¹¹ Juneja, D. (2024) Paternalistic approach of family law towards woman, Live Law, <https://www.livelaw.in/articles/paternalistic-approach-of-family-law-towards-woman-249601> accessed 21 September 2024.

¹² Hindu Succession Act, 1956, § 14.

¹³ Professor Kusum, Family Law Lectures, Family Law I, (Third Edition, Lexis Nexis, Butterworths Wadhwa, Nagpur 2011) 356

women as failing to uphold traditional gender roles.¹⁴ Men may even invoke Section 498A of the Indian Penal Code—a law meant to protect women from cruelty in marriage—to file counter-claims during divorce proceedings, further entrenching a narrative of female non-compliance with traditional duties.¹⁵ In contrast, women often file for divorce based on life-threatening circumstances, including physical and emotional abuse, dowry harassment, eviction from the matrimonial home, and denial of maintenance or access to their children. This stark contrast highlights how men can rely on superficial claims rooted in patriarchal expectations, while women's pleas for divorce often reflect fundamental violations of their rights to dignity and safety.

Further, Section 24 of the Hindu Succession Act, 1956, which denied inheritance rights to widows who remarry, reflects an egregious gender bias that historically penalized women for remarrying.¹⁶ Though this section has been repealed, its existence underscores the deep-seated societal view of women as subordinate, especially in matters of family wealth and inheritance. The bias extends to guardianship, where Section 6(a) of the Hindu Minority and Guardianship Act, 1956, designates the father as the primary guardian of a legitimate child. A mother is relegated to a secondary role, and only in the father's absence is she considered the primary guardian.¹⁷ Though both parents now hold equal status as natural guardians under the law, societal norms continue to view the father as the main authority figure, marginalizing the mother's role in the child's upbringing.

B. Muslim Personal Law: Polygamy, Iddat, and Gender Imbalance

The Muslim Personal Law (Shariat) Application Act, 1937, reflects patriarchal traditions that subjugate women, particularly through practices such as polygamy.¹⁸ Under Muslim law, a man is permitted to marry up to four wives, provided he meets certain conditions, including treating each wife equally. This practice inherently places men in a position of power, granting them privileges that are not extended to women. Polygamy contributes to an unequal familial power dynamic, where a woman's autonomy and emotional well-being may be compromised. This structural inequality

¹⁴ Archana Parashar, 'Gender Inequality and Religious Personal laws in India', (2008), Vol. XIV, The Brown Journal of World Affairs, Issue 2, Spring/Summer, 103.

¹⁵ Indian Penal Code, § 498A.

¹⁶ Hindu Succession Act, 1956, § 24.

¹⁷ Hindu Minority and Guardianship Act, 1956, § 6(a).

¹⁸ Lal Mohd., 'Marriage and Divorce in Islam and Religious Tolerance', (30 Jul 2007), Ontario Consultants on Religious Tolerance.

affects women not just emotionally, but also financially and socially, as they often struggle to secure equitable treatment within polygamous marriages.

Another discriminatory feature of Muslim personal law is the concept of iddat, the waiting period a woman must observe following divorce or the death of her husband. During iddat, a woman is prohibited from remarrying. While the iddat period has religious significance, it imposes limitations on women's personal freedom, confining them to social expectations of mourning or separation. The paternalistic undertone of this practice assumes women's dependence on their husbands and reinforces the belief that women need a prescribed period to "purify" themselves before re-entering society or a new marital relationship.¹⁹ Men, on the other hand, face no such restrictions, underscoring the gendered nature of this provision.

C. Christian Personal Law: Inheritance Disparities

Christian personal law in India, governed by the Indian Succession Act, 1910, also reflects significant gender biases, particularly in matters of inheritance. Christian daughters are entitled to only one-fourth of the shares that sons receive, and any property exceeding this limit automatically passes to male heirs. This system of inheritance reinforces a patrilineal structure in Christian families, devaluing women's financial rights and perpetuating economic dependence on male relatives.²⁰ The unequal inheritance laws hinder Christian women from enjoying the same level of financial security and autonomy as their male counterparts. Moreover, this disparity is a clear reflection of the paternalistic approach embedded in Christian family law, where the male members of the family continue to hold dominant control over property and wealth.

D. Parsi Personal Laws

Parsi personal laws are governed by the Parsi Marriage and Divorce Act, 1936, and inheritance is covered under the Indian Succession Act, 1925. While these laws have undergone reforms, gender disparities still exist. Parsi women have historically faced restrictions, particularly in matters of divorce and remarriage. For instance, a Parsi woman who married a non-Parsi would lose her right to inherit her family's property, though this has been partially mitigated through legal reforms.²¹ While the Indian Succession Act, 1925, provides for inheritance rights for Parsi women, there remain

¹⁹ *Supra* at note 14

²⁰ *Supra* at note 1

²¹ Goolrok M. Gupta v. Burjor Pardiwala & Ors. SLP(C) 18889/2012

some patriarchal biases in practice. A male heir often enjoys a more prominent role in managing the estate, and women may face resistance in asserting their legal rights.

These instances of gender discrimination and subjugation in Hindu, Muslim, Christian and Parsi personal laws demonstrate the entrenchment of patriarchal norms within the legal frameworks governing personal matters in India.

IV. ROLE OF THE JUDICIARY IN ADDRESSING GENDER INEQUALITY

The judiciary has often adopted judicial activism to reform personal laws, stepping in to uphold constitutional principles of equality, especially in the absence of legislative intervention. However, there have been instances where courts have exercised judicial restraint, recognizing the sensitive nature of personal laws rooted in religion, and leaving reforms to the legislature. Despite the challenges, judicial activism has been crucial in pushing for gender equality within religious personal laws.

The Shayara Bano case, also known as the Triple Talaq judgment, stands as a landmark in the pursuit of gender justice in India.²² The five-judge bench of the Supreme Court, by a 3:2 majority, declared triple talaq unconstitutional. The Court held that the practice was arbitrary, as it permitted men to divorce their wives without due process or any reasonable grounds, thereby infringing upon Article 14. The majority opinion emphasized that such a practice, which provided men with unchecked power to dissolve a marriage, was inherently unequal and discriminatory towards women. Further in the case of Githa Hariharan vs. Reserve Bank of India,²³ the Supreme Court addressed gender bias in guardianship under the Hindu Minority and Guardianship Act, 1956. The Act gave fathers a superior right to be the natural guardian of a minor child. The Court held that the mother could also be considered a natural guardian, challenging the patriarchal assumptions in the law and upholding the rights of mothers.

Through these landmark rulings, the judiciary has played a critical role in advancing gender equality within religious personal laws. The courts have balanced the need to respect religious customs with the imperative to uphold constitutional rights, fostering greater protection for women in matters of inheritance, marriage, divorce, and guardianship.

²² Shayara Bano v. Union of India & Ors. (2017) 9 SCC 1

²³ Githa Hariharan vs. Reserve Bank of India, 2001 7 SCC 740.

V. WAY FORWARD

The Uniform Civil Code (UCC) has been a long-standing subject of debate in India, particularly as a means of ensuring gender equality. Proponents argue that a UCC, which would replace the diverse personal laws governing different religious communities with a single, unified legal framework, is essential for upholding constitutional principles like equality before the law and protection against discrimination.²⁴ Under the current system, personal laws often perpetuate gender inequality, especially in areas like marriage, divorce, inheritance, and maintenance, where religious practices discriminate against women. A UCC would create uniform legal standards that provide equal rights to men and women, regardless of religious affiliation, thereby promoting gender justice. However, the implementation of the UCC faces significant challenges, particularly from religious groups that see it as an infringement on their freedom of religion (Article 25). Many religious communities fear that a uniform code could dilute their cultural and religious identity, as personal laws are often intertwined with religious practices. The opposition is strongest among minority groups, particularly Muslims, who view the UCC as a threat to their autonomy and a potential imposition of majoritarian Hindu norms.²⁵

The feasibility of the UCC in a pluralistic society like India is a complex issue. India's diversity, with its multitude of religions, customs, and traditions, makes the task of crafting a common legal framework challenging. Any move towards a UCC must be carefully balanced, ensuring that it promotes gender justice while also respecting religious pluralism.²⁶ A gradual and consultative approach, which builds consensus among various communities, may be more effective in implementing the UCC, ensuring that it does not become a tool of alienation but rather one of empowerment and equality.

Ultimately, gender equality should not be compromised, and the state must continuously strive to uphold constitutional values in both legal and societal domains.

²⁴ Madhushala, Need for Uniform Civil Code in India: A human rights perspective, <http://centreright.in/2011/10/need-for-uniform-civil-code-in-india-a-human-rights-perspective> accessed 21 September 2024

²⁵ *Ibid.*

²⁶ Donna. J. Sullivan, 'Gender Equality and Religious Freedom: Toward a Framework for Conflict Resolution,' 23 New York University Journal of International Law and Politics 795.