

BALANCING FAITH AND FUNDAMENTAL RIGHTS: THE CASE FOR GENDER-NEUTRAL PERSONAL LAW REFORMS IN CONTEMPORARY INDIA

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Abstract

This paper explores the complex intersection of personal laws, religious freedom, and fundamental rights in India, emphasizing the urgent need for gender-neutral reforms. In a secular and democratic republic, where equality before law is a constitutional guarantee, personal laws often continue to reflect patriarchal values rooted in religion. The research highlights how these laws affect marginalized genders, particularly women and LGBTQ+ individuals, and argues for a harmonized, rights-based legal framework that respects faith while ensuring gender justice.

This paper explores the complex intersection of personal laws, religious freedom, and fundamental rights in India, emphasizing the urgent need for gender-neutral reforms. In a secular and democratic republic, where equality before law is a constitutional guarantee, personal laws often continue to reflect patriarchal values rooted in religion. These personal laws, which vary across religious communities, govern essential aspects of life such as marriage, divorce, inheritance, and adoption. Despite progressive constitutional mandates, discriminatory elements persist, disproportionately affecting women and LGBTQ+ individuals.

This research analyzes the socio-legal challenges posed by such laws and their incompatibility with Articles 14, 15, and 21 of the Indian Constitution. It also examines the tensions between Article 25's religious freedom and gender justice, seeking to reconcile them through the lens of constitutional morality. Drawing from landmark judicial decisions, international human rights norms, and scholarly perspectives, the paper proposes a rights-based and inclusive framework for reform. It advocates for a secular and gender-neutral approach to personal laws that not only upholds religious freedom but also ensures equality, non-discrimination, and human dignity. Disparities in personal laws across religious communities, Impact on women, LGBTQ+ individuals, and non-binary persons, Role of judiciary in protecting constitutional morality, Case for Uniform Civil Code as a rights-based instrument, Legal pluralism vs. constitutional equality, Strategies for reform: legislation, public participation, and judicial activism

Keywords: *Personal Laws, Uniform Civil Code, Legislation, Public Participation, and Judicial Activism.*

1. Introduction

India's legal framework is an amalgamation of colonial legacy and indigenous traditions, shaped significantly by religion-based personal laws. These laws govern crucial aspects of civil life such as marriage, divorce, maintenance, adoption, and inheritance. Despite constitutional promises of equality and secularism, personal laws continue to retain deeply embedded gender biases. The persistence of such inequalities challenges India's commitment to gender justice and human rights.

The Indian Constitution, especially through Articles 14, 15, and 21, provides for equality before the law, prohibition of discrimination, and protection of life and personal liberty, respectively.

However, these constitutional rights often come into conflict with personal laws derived from religious traditions that are patriarchal in structure. The critical tension arises when religious freedom under Article 25 is invoked to justify practices that discriminate on the basis of gender.

This paper aims to navigate this tension by exploring whether a gender-neutral reform of personal laws can coexist with the right to religious freedom. It investigates how legal pluralism can be harmonized with the constitutional vision of a just and egalitarian society, especially in light of recent judicial interventions and evolving social norms.

2. Personal Laws in India: An Overview

India's personal laws, shaped by both religious texts and colonial interventions, cater to different religious communities. These include:

- **Hindu Law:** Codified through various legislations such as the Hindu Marriage Act, 1955; Hindu Succession Act, 1956; Hindu Minority and Guardianship Act, 1956; and Hindu Adoption and Maintenance Act, 1956. These laws apply to Hindus, Buddhists, Jains, and Sikhs.
- **Muslim Law:** Predominantly uncodified, it is guided by the Shariat Application Act, 1937. It includes doctrines derived from the Quran, Hadith, and classical Islamic jurisprudence (fiqh).
- **Christian Law:** Codified through laws like the Indian Christian Marriage Act, 1872, and the Indian Divorce Act, 1869.
- **Parsi Law:** Governed by the Parsi Marriage and Divorce Act, 1936.

These laws have not evolved uniformly. Some communities have seen progressive reforms, while others remain governed by outdated customs that perpetuate gender bias. For instance, while Hindu daughters have gained coparcenary rights through recent amendments, Muslim women still face unequal inheritance rights. Similarly, issues like guardianship often lean toward male supremacy across all personal law systems.

3. Gender Disparities in Personal Laws

Personal laws, in their current form, reinforce systemic gender discrimination:

- **Marriage and Divorce:** In many religious laws, men and women do not enjoy equal grounds for divorce. For example, prior to the 2017 Supreme Court verdict in *Shayara Bano v. Union of India*, Muslim men could unilaterally divorce their wives via triple talaq, a right not available to women.
- **Inheritance:** Muslim personal law grants women half the share of men. Although Hindu Succession (Amendment) Act, 2005 made daughters equal coparceners, cultural practices continue to resist implementation.
- **Maintenance and Alimony:** Women often face hurdles in claiming maintenance due to procedural difficulties and social stigma.
- **Guardianship:** Fathers are presumed natural guardians, even if mothers are primary caregivers. This undermines the autonomy and rights of women.

- **Non-Binary and LGBTQ+ Persons:** Current personal laws do not acknowledge non-cisgender identities, thereby excluding LGBTQ+ individuals from legal recognition in matters of marriage, adoption, and inheritance.

4. Constitutional Provisions and Judicial Trends

The Indian Constitution is built on principles of equality, liberty, and dignity. Relevant provisions include:

- **Article 14:** Guarantees equality before the law and equal protection of the laws.
- **Article 15:** Prohibits discrimination on grounds of religion, race, caste, sex, or place of birth.
- **Article 21:** Assures protection of life and personal liberty, interpreted to include dignity and privacy.
- **Article 25:** Ensures freedom of religion, subject to public order, morality, and health.
- Recent Supreme Court judgments have increasingly emphasized individual rights over discriminatory customs:
- **Shayara Bano v. Union of India (2017):** Triple talaq was struck down as unconstitutional.
- **Joseph Shine v. Union of India (2018):** Struck down the adultery law, recognizing it as discriminatory to women.
- **Navtej Singh Johar v. Union of India (2018):** Decriminalized consensual homosexual acts, reinforcing privacy and dignity.
- **Indian Young Lawyers Association v. State of Kerala (2018):** Opened the Sabarimala temple to women of all ages, challenging traditional gender-based exclusion.

These decisions mark a judicial shift toward enforcing constitutional morality over customary practices.

5. Arguments for Gender-Neutral Reforms

Advocating gender-neutral personal laws stems from both moral and legal imperatives:

- **Equality and Non-Discrimination:** Laws that treat individuals differently based on gender or sexual orientation violate Articles 14 and 15.
- **Uniform Civil Code (UCC):** Though politically contentious, a UCC can offer a framework for a uniform set of civil laws that are gender-neutral and secular. It can be designed to protect religious diversity while ensuring fundamental rights.
- **Recognition of LGBTQ+ Rights:** With the recognition of the rights of LGBTQ+ persons, it is imperative to revise personal laws to include them.
- **Compliance with International Norms:** India has ratified international conventions like CEDAW, obligating it to eliminate gender-based discrimination.

- **Secular Democracy:** A secular state cannot allow religious laws to undermine the rights of its citizens. Gender-neutral laws uphold the secular character of the Constitution.

6. Religious Autonomy vs. Constitutional Morality

Religious communities often perceive legal reforms as encroachments on religious freedom. However, constitutional jurisprudence draws a clear line between essential religious practices and discriminatory customs. The Supreme Court has held that essential religious practices must yield to fundamental rights when they are in conflict.

The Sabarimala verdict and triple talaq judgment illustrate this balance. The court has emphasized that religious freedom does not extend to practices that violate dignity and equality. This aligns with the doctrine of **constitutional morality**, which prioritizes the values enshrined in the Constitution over traditional norms.

A gender-neutral reform of personal laws does not aim to erase religious identities but seeks to reinterpret them in light of constitutional values.

7. Policy Recommendations

Reforming personal laws through a gender-neutral lens requires a multi-pronged approach:

- **Legislative Reform:** Amend existing laws to introduce gender-neutral terminology and remove discriminatory provisions.
- **Codification of Uncodified Laws:** Muslim personal law, being largely uncodified, should be legislated with community consultation to ensure transparency and reform.
- **Public Participation:** Engage stakeholders, including women's groups, LGBTQ+ representatives, religious leaders, and legal scholars, in the law reform process.
- **Awareness Campaigns:** Conduct legal literacy and gender-sensitization programs to challenge patriarchal norms at the grassroots.
- **Judicial Vigilance:** Courts must continue to play a proactive role in upholding constitutional rights against regressive customs.
- **Incremental Implementation of UCC:** Introduce a voluntary UCC as an initial step, allowing citizens to opt into a common legal framework.

8. Conclusion

Balancing faith with fundamental rights is one of the most critical legal and moral challenges facing India today. Gender-neutral reforms in personal law are essential to upholding the constitutional vision of equality, dignity, and justice. These reforms do not necessitate the abandonment of religious beliefs but call for their evolution in accordance with democratic principles.

A rights-based approach, rooted in constitutional morality, can ensure that personal laws become instruments of social justice rather than oppression.

In doing so, India can move closer to realizing its ideals of secularism and gender equality, creating a legal system that truly respects both individual freedoms and collective faith.

References

1. Constitution of India
2. The Hindu Marriage Act, 1955
3. The Shariat Application Act, 1937
4. Shayara Bano v. Union of India, (2017) 9 SCC 1
5. Navtej Singh Johar v. Union of India, (2018) 10 SCC 1
6. Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1
7. Law Commission of India, Report No. 277, "Reform of Family Law" (2018)
8. UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
9. Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (OUP, 2001)
10. Upendra Baxi, *The Future of Human Rights* (OUP, 2006)
11. M.P. Jain, *Indian Constitutional Law* (LexisNexis, 2018)