
PERSONAL LAW UNDER GENDER JUSTICE

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ABSTRACT

Personal laws in India regulate family relations such as marriage, divorce, maintenance, adoption, guardianship, and succession within different religious communities. These laws are often defended as expressions of religious identity and cultural autonomy. At the same time, they have been repeatedly questioned for reinforcing gender-based inequalities. The debate around gender justice in personal law lies at the intersection of constitutional guarantees of equality and dignity and the protection of religious freedom under the Constitution of India.

This article critically examines how personal law systems interact with Articles 14, 15, and 21, which guarantee equality, non-discrimination, and the right to life with dignity. It explores the extent to which personal laws can be subjected to constitutional scrutiny when they perpetuate structural disadvantages against women. Through an analysis of significant judicial decisions such as *Mohd. Ahmed Khan v. Shah Bano Begum* and *Shayara Bano v. Union of India*, the article highlights the evolving role of the judiciary in prioritising constitutional morality over patriarchal interpretations of religious norms. It also reviews statutory developments like the Hindu Succession (Amendment) Act, which strengthened women's inheritance rights, and assesses their contribution to substantive equality.

Feminist legal theory and constitutional principles, the article argues that gender injustice within personal laws is not limited to overt discrimination but also includes embedded social and economic inequalities that restrict women's autonomy. It emphasises the need for reforms that respect cultural diversity while ensuring that fundamental rights remain paramount. The discussion situates personal law reform within a broader framework of constitutional transformation aimed at harmonising pluralism with gender justice in India.

Keywords: Gender Justice, Personal Laws in India, Constitutional Equality, Religious Freedom, Feminist Legal Theory

Introduction

India's family law system is unique in that it recognizes different personal laws for different religious communities. These laws cover marriage, divorce, inheritance, maintenance, adoption, and guardianship, aiming to preserve religious customs and traditions. While this diversity reflects India's pluralism, it has often created challenges for gender equality. Women, in particular, may face unequal treatment due to traditional rules embedded in these laws.

The Indian Constitution establishes equality, dignity, and non-discrimination as fundamental values. It guarantees equality before the law (Art. 14), prohibits discrimination on grounds of sex (Art. 15), and protects the right to life and personal liberty, interpreted to include dignity (Art. 21). Simultaneously, it protects freedom of religion, allowing individuals and communities to follow religious practices (Arts. 25 and 26).¹ This dual commitment creates a tension when personal laws conflict with constitutional principles, requiring careful legal and moral balancing.

Constitutional Framework and Gender Justice in Personal Laws

The Constitution of India gives great importance to equality and dignity. It says that every person is equal before the law and that no one should be treated unfairly because of their gender. It also protects the right to live with dignity, which means every person should be respected and allowed to live a decent life

At the same time, the Constitution also protects religious freedom. People are free to follow their religion and manage their religious matters. Because of this, different religious communities in India have their own personal laws to deal with family matters like marriage, divorce, maintenance, guardianship, and inheritance. Problems arise when some personal law rules treat women and men differently. In such cases, there is a conflict between religious practices and the constitutional promise of equality. The courts then have to decide whether a particular practice should continue in the name of religion or whether it should be changed to protect fundamental rights.

In recent years, courts have clearly stated that customs and traditions cannot go against basic rights. If a practice harms women or treats them unfairly, it cannot be protected simply because

¹ D.D. Basu, *Commentary on the Constitution of India* 312–15 (26th ed. 2021).

it is part of religion. The courts have tried to ensure that women receive equal treatment and justice in family matters. Therefore, the issue of personal laws and gender justice is not only about religion. It is about making sure that the values of equality, fairness, and dignity are followed in every home and every family.

Constitutional Principles of Equality and Equality and Dignity

The Constitution emphasizes that all individuals must be treated equally and with respect. Article 14 ensures that equality is both formal and practical.² Women's rights in family matters must be protected to prevent them from being treated as dependent or inferior.

The right to dignity under Article 21 reinforces this principle, allowing individuals to make personal choices and live without fear or humiliation. In family matters, this means women should have equal say in marriage, divorce, guardianship, and property matters. Courts have emphasized that customs or traditions cannot undermine these basic rights.

Freedom of Religion and Personal Laws

The Constitution allows every person in India to choose and practice their religion freely. This right protects people's beliefs, customs, and traditions. It also allows religious communities to manage their own religious matters without unnecessary interference. This is important in a country like India where many religions exist side by side.

Because of this freedom, family matters are often regulated by personal laws based on religion. Different communities follow different rules for marriage, divorce, inheritance, maintenance, and guardianship.³ These rules are connected to religious teachings and long-standing customs. The purpose of keeping separate personal laws is to respect the faith and identity of each community.

At the same time, religious freedom has limits. It cannot be used to justify unfair treatment or injustice. The Constitution makes it clear that all laws, including personal laws, must respect basic rights like equality and human dignity. If any practice harms individuals or discriminates against women, it can be challenged. So, freedom of religion and personal laws must work together with constitutional values. While traditions are respected, they should not deny justice

² Paras Diwan, *Modern Hindu Law* 120–25 (8th ed. 2018).

³S.K. Sharma, *Law of Marriage and Divorce in India* 78–82 (2nd ed. 2017).

or equality to any person within the family.

Conflict Between Personal Laws and Gender Justice

Personal laws in India are based on religious beliefs and long-standing customs. They regulate important areas of family life such as marriage, divorce, inheritance, maintenance, and guardianship.⁴ These laws were created to protect religious identity and allow communities to follow their traditions. However, some of these rules do not treat men and women equally. This creates a conflict between personal laws and the idea of gender justice.

Gender justice means that women and men should have equal rights, equal opportunities, and equal protection under the law. The Constitution supports this principle by promising equality and banning discrimination based on sex. When personal laws give more power or rights to men, or place restrictions on women, they seem to go against constitutional values.

The problem becomes more serious when unfair practices are defended as religious traditions. While religion is respected, it cannot be used as a reason to deny women their basic rights. Courts are often required to examine whether a personal law practice is truly essential to religion or whether it violates equality and dignity. This conflict shows the difficulty of balancing cultural traditions with modern ideas of justice. To achieve true gender justice, personal laws must reflect fairness and respect for women's rights. Protecting tradition is important, but it should not come at the cost of equality and human dignity.

Role of the Judiciary in Protecting Women's Rights

The judiciary plays a very important role in protecting women's rights in India. Courts act as guardians of the Constitution and ensure that laws follow the principles of equality and dignity. When women face discrimination or unfair treatment, especially under personal laws, they can approach the courts for justice. The judiciary then examines whether such practices are consistent with constitutional values.

In many cases, the courts have stepped in to correct inequalities. Judges have clearly stated that traditions or customs cannot continue if they violate fundamental rights. When personal law rules place women in a weaker position, the judiciary has the power to interpret the law in a

⁴ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 45–50 (2nd ed. 2011).

way that supports fairness and equality.

The courts have also expanded the meaning of rights such as equality and the right to live with dignity. They have recognised that women must have equal protection in matters like marriage, divorce, maintenance, guardianship, and property. Through progressive interpretations, the judiciary has helped strengthen women's legal position within the family and society.

Judicial decisions often encourage lawmakers to bring reforms. Important judgments have led to changes in legislation and public awareness about gender justice. In this way, the judiciary does not only resolve disputes but also promotes social change. Overall, the judiciary acts as a protector of women's rights by ensuring that justice, equality, and dignity are upheld in both public and private life.

Important Supreme Court Decisions on Personal Law

The Supreme Court of India has delivered several important judgments that have shaped personal laws and strengthened gender justice. Through these decisions, the Court has clarified that personal laws must respect constitutional values such as equality, dignity, and fairness.

One landmark case was **Mohd. Ahmed Khan v. Shah Bano Begum**.⁵ In this case, the Court held that a divorced Muslim woman had the right to receive maintenance under the general criminal law of the country. The judgment emphasized that a woman's right to financial support cannot be denied on the basis of personal law. This decision highlighted that secular legal protections apply to all citizens, regardless of religion.

Another significant judgment was **Shayara Bano v. Union of India**,⁶ where the Supreme Court declared the practice of instant triple talaq unconstitutional. The Court found that allowing a husband to end a marriage instantly and unilaterally was arbitrary and violated the principle of equality. This ruling was seen as a major step toward protecting Muslim women's rights.

In **Vineeta Sharma v. Rakesh Sharma**,⁷ the Court strengthened women's property rights by confirming that daughters have equal coparcenary rights in Hindu joint family property by birth. This decision reinforced the idea that daughters and sons must be treated equally in

⁵ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 S.C.C. 556 (India)

⁶ Shayara Bano v. Union of India, (2017) 9 S.C.C. 1 (India).

⁷ Vineeta Sharma v. Rakesh Sharma, (2020) 9 S.C.C. 1 (India)

matters of inheritance. These judgments show that the Supreme Court has played a powerful role in examining personal laws and ensuring they do not conflict with constitutional principles. By doing so, the Court has contributed significantly to promoting fairness and gender justice within family law.

Impact of Patriarchal Values in Family Laws

Patriarchal values have had a strong influence on family laws in India. Patriarchy refers to a social system where men are given more authority and power than women, especially within the family. Many personal laws were developed during times when society largely viewed men as the head of the household and women as dependent on them. As a result, some legal rules still reflect these old attitudes.

In several areas of family law, women have historically been placed in a weaker position. For example, men were often given greater control in matters of divorce, guardianship of children, and management of family property. In some communities, women's rights to inheritance or financial support were limited compared to men. These rules reinforced the idea that women were economically and socially dependent on male family members.⁸

Such patriarchal assumptions affect women's independence and decision-making power. When laws favor men or fail to recognize women's equal status, they make it harder for women to achieve financial security and personal freedom. This can also impact their confidence, opportunities, and overall dignity within the family structure.

Although many reforms have been introduced over the years, traces of patriarchal thinking still remain in certain aspects of personal laws. Recognizing this influence is important for achieving true gender justice. Family laws must move away from outdated beliefs and reflect modern values of equality, fairness, and mutual respect between men and women.

Need for Reform in Personal Laws

Personal laws in India were created to respect religious diversity and protect community traditions. However, many of these laws were framed in a social context where women did not enjoy equal status with men. Over time, society has changed. Women are now active participants in education, employment, politics, and public life. Despite this progress, some

⁸ Shirin M. Rai, *Gender and the Judiciary in India* 55–60 (2013).

personal law provisions still reflect old beliefs that place women in a secondary position. This gap between social development and outdated legal rules makes reform necessary.

Reform in personal laws is important to ensure that constitutional values are fully implemented in family life. The Constitution guarantees equality before the law, prohibits discrimination on the basis of sex, and protects the right to live with dignity. When personal laws treat women differently in matters such as inheritance, divorce, guardianship, or maintenance, they may conflict with these guarantees. Reform helps align family laws with modern principles of justice and fairness.

Another reason for reform is the changing nature of family structures. Today, families are not always joint or male-dominated. Women often contribute equally or even primarily to household income. In such a context, laws that assume women are financially dependent on men become unrealistic and unfair. Legal reform can ensure that property rights, financial support, and decision-making authority reflect present-day realities.

Reform is also necessary to remove ambiguity and inconsistency. Different personal laws sometimes provide different levels of protection to women from various communities. This can lead to unequal outcomes depending on religious identity. A fair legal system should not result in unequal protection simply because of one's faith. Therefore, gradual and thoughtful reform is needed to bring greater uniformity in principles of justice while still respecting cultural diversity.

However, reform does not mean rejecting religion or tradition. Instead, it means re-examining practices in light of constitutional morality and human rights. Many religious scholars themselves argue that faith and equality are not contradictory. Through dialogue, judicial interpretation, and legislative action, personal laws can evolve in a way that respects both tradition and gender justice.

Ultimately, the need for reform arises from the desire to create a legal system that reflects contemporary values of equality, dignity, and mutual respect within the family. Laws must grow with society, and reforming personal laws is a step toward ensuring that women enjoy equal rights in both public and private spheres.⁹

⁹Lotika Sarkar, *Family Law and Gender Justice* 33–38 (2005).

Uniform Civil Code and the Debate on Equality

The idea of a Uniform Civil Code (UCC) has been discussed for many years in India. The concept refers to a common set of civil laws governing marriage, divorce, inheritance, adoption, and other family matters for all citizens, regardless of religion.¹⁰ The goal is to promote equality and national unity by removing differences in personal laws.

Supporters of a Uniform Civil Code argue that it would strengthen gender justice. If one common law applied to everyone, women from all religious communities would receive equal rights and protection. This would prevent situations where women's rights depend on their religious identity. A uniform system could reduce discrimination and ensure that constitutional principles of equality are consistently applied.

The idea of a Uniform Civil Code is mentioned in the Directive Principles of State Policy under Article 44 of the Constitution. Although it is not legally enforceable, it encourages the State to work toward creating uniform civil laws for all citizens. Supporters believe that implementing such a code would fulfill the constitutional promise of equality.

However, there are also concerns and debates surrounding the UCC. Critics argue that India is a country of great cultural and religious diversity. They fear that a single uniform law may ignore minority traditions and weaken religious freedom. For many communities, personal laws are closely connected to identity and faith. Therefore, any attempt to replace them must be handled with sensitivity and consultation.

Another concern is whether uniformity automatically ensures equality. A law may be uniform but still contain unfair provisions if not carefully drafted. Therefore, the focus should not only be on making laws uniform but also on making them just and gender-sensitive.

The debate on the Uniform Civil Code reflects a larger question: how to balance unity with diversity. Some suggest gradual reform within each personal law system instead of immediate replacement. Others believe that a carefully framed, inclusive, and consultative Uniform Civil Code could protect both equality and cultural identity.

In essence, the discussion on the UCC is not only about legal uniformity but also about

¹⁰ G.C. Venkata Subramanian, *Uniform Civil Code in India: Legal and Social Perspectives* 12–18 (2018).

¹¹ G.C. Venkata Subramanian, *Uniform Civil Code in India: Legal and Social Perspectives* 12–18 (2018).

achieving fairness. The challenge lies in creating a system that protects women's rights while respecting India's pluralistic character.

Challenges in Achieving Gender Justice

Achieving gender justice in personal laws is not an easy task. One major challenge is the deep connection between religion and family law. Since personal laws are seen as part of religious practice, any attempt to change them may be viewed as interference in religious freedom. This can lead to resistance from communities who fear losing their cultural identity.

Another challenge is the persistence of social attitudes shaped by patriarchy. Even when laws are reformed, social practices may continue to favor men. Legal change alone cannot immediately transform long-standing beliefs about gender roles. For example, even if women are granted equal property rights, social pressure may discourage them from claiming their share. Therefore, achieving gender justice requires not only legal reform but also social awareness and education.¹²

Political considerations also play a role. Family law reforms can become sensitive political issues, especially in a diverse society. Governments may hesitate to introduce major reforms due to fear of public opposition or misunderstanding. As a result, changes often occur gradually rather than through sweeping transformation.

Lack of awareness among women about their legal rights is another obstacle. Many women may not know the protections available to them or may not have access to legal assistance. Without awareness and support, even progressive laws cannot fully achieve their purpose.¹³

Additionally, differences between various personal law systems create complexity. Each system has its own history and interpretation. Reforming them requires careful study and dialogue with religious scholars, legal experts, and community leaders. Balancing constitutional values with religious sensitivity is a delicate process.

Despite these challenges, progress has been made through judicial decisions, legislative amendments, and growing public awareness. Civil society movements and women's organizations have also played an important role in demanding equal rights. Achieving gender

¹² Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 45–50 (2nd ed. 2011).

justice is a gradual process that involves cooperation between courts, lawmakers, and society.¹⁴

Conclusion

The issue of personal laws and gender justice reflects the complex nature of Indian society. On one hand, India values religious diversity and respects the customs of different communities. On the other hand, the Constitution firmly establishes equality, dignity, and non-discrimination as core principles. When personal laws conflict with these principles, a serious question arises about how to balance tradition with justice.

Reforming personal laws is necessary to ensure that women are not placed at a disadvantage within the family. Equality must not remain only a written promise but should be visible in everyday life. Whether through gradual reform within communities or through broader discussions like the Uniform Civil Code, the ultimate goal should be fairness and equal protection for all women. At the same time, reforms must be carried out with sensitivity and respect. Changes imposed without dialogue may create misunderstanding or resistance. A meaningful approach requires consultation, education, and awareness so that communities understand that gender justice strengthens society rather than weakens tradition.

Gender justice in family law is not only a legal issue but also a social and moral commitment. It involves recognizing women as equal partners in family and society. When laws reflect equality and dignity, they contribute to stronger families and a more just nation.¹⁵

¹⁴ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 45–50 (2nd ed. 2011).

¹⁵ Ratna Kapur, *Gender, Law and Justice* 60–65 (1st ed. 2015).