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Gender Neutrality in Personal Law: A Critical Analysis

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ABSTRACT

Gender neutrality in personal law remains one of the most contested questions in Indian constitutional jurisprudence. Personal laws governing marriage, divorce, succession, maintenance, guardianship, and adoption evolved within patriarchal structures and are deeply tied to religion, custom, and community identity. Although Articles 14, 15, and 21 guarantee equality, non-discrimination, and dignity, these laws continue to contain provisions that are either overtly discriminatory or that perpetuate inequality in practice. This paper critically examines whether Indian personal law has evolved sufficiently to reflect constitutional morality, dignity, and inclusiveness. The paper begins with the constitutional framework, highlighting the tension between equality guarantees and religious freedom under Articles 25 and 26. It traces the judicial journey from State of Bombay v. Narasu Appa Mali (1952), which placed personal laws outside Article 13, to Joseph Shine and Navtej Singh Johar (2018), which emphasised constitutional morality over patriarchal and customary norms. The analysis then turns to Hindu personal law. Despite codification, patriarchal traces persist in the restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 (T. Sareetha; Saroj Rani), in the "natural guardian" provision of the Hindu Minority and Guardianship Act, 1956 (Githa Hariharan), and in the historical exclusion of daughters from coparcenary rights, remedied by the 2005 Amendment and Vineeta Sharma (2020). The paper observes that formal reform has not always produced substantive equality, as social pressure often prevents women from claiming their rights. In relation to Muslim personal law, the paper discusses polygamy, instant triple talaq (Shayara Bano, 2017), and its criminalisation under the 2019 Act. It also traces the maintenance debate from Shah Bano (1985) through the Muslim Women (Protection of Rights on Divorce) Act, 1986, Danial Latifi (2001) and Mohd. Abdul Samad (2024), and asks whether maintenance frameworks should recognise need and capacity rather than presume that financial dependency and responsibility follow gender. The exclusion of LGBTQ+ individuals is identified as a major limitation. While Navtej Singh Johar decriminalised homosexuality, same-sex couples remain without recognition in marriage, adoption, guardianship, and succession. In Supriyo Chakraborty v. Union of India (2023), the Supreme Court acknowledged discrimination but deferred to Parliament,

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exposing the limits of judicial activism in family law reform. The paper also considers the Uniform Civil Code debate under Article 44, weighing the argument that a UCC would remove discriminatory practices against the concern that uniformity may impose majoritarian norms and does not by itself guarantee justice, as the Goa civil code illustrates. The paper concludes that gender neutrality must avoid simplistic binaries. Gender-specific protections arose from historical disadvantage and cannot be withdrawn without addressing structural inequality, yet reliance on stereotypes about providers, caregivers, guardians, and heterosexual family forms conflicts with constitutional values. Courts have acted largely incrementally, and political and religious sensitivities slow reform. Genuine gender neutrality therefore requires both legal and social transformation, grounded in human dignity rather than gender stereotypes.

Keywords: *Gender Neutrality, Personal Law, Constitutional Morality, Articles 14 and 15, Uniform Civil Code, Judicial Activism, LGBTQ+ Rights, Gender Justice, Family Law*

I. INTRODUCTION

The concept of gender neutrality in personal law has become one of the most debated issues in contemporary Indian jurisprudence. Personal laws regulate intimate aspects of life such as marriage, divorce, succession, maintenance, guardianship, and adoption. Unlike criminal law, personal laws are deeply rooted in religion, custom, and societal structures. Historically, these laws evolved within patriarchal societies where men occupied positions of authority while women were often treated as dependants. Consequently, legal provisions across various personal law systems reflected unequal power structures and institutionalised gender distinctions.

The Indian Constitution guarantees equality before law under Article 14 and prohibits discrimination on the ground of sex under Article 15. Despite these constitutional guarantees, personal laws continue to contain provisions that are either directly discriminatory or indirectly perpetuate gender inequality. At the same time, certain provisions introduced to protect women from historical oppression have created debates surrounding the idea of formal equality and gender neutrality.

The question, therefore, is not merely whether personal laws discriminate against women or men, but whether Indian personal law as a whole has evolved sufficiently to reflect constitutional morality, dignity, and inclusiveness. Gender neutrality in personal law requires the law to move beyond traditional gender roles and ensure equal rights, obligations, and protections irrespective of gender identity. In modern constitutional democracies, personal laws cannot remain immune from the principles of equality and individual autonomy.

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This paper critically examines the position of gender neutrality in Indian personal laws through constitutional analysis, statutory interpretation, and judicial developments, while evaluating whether India has truly achieved equality within family law jurisprudence.

II. CONSTITUTIONAL FRAMEWORK AND PERSONAL LAWS

The Indian Constitution serves as the foundation of gender justice. Article 14 guarantees equality before law and equal protection of laws. Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Article 21 further expands this framework by recognising dignity, privacy, and autonomy as integral parts of the right to life.[1]

However, the constitutional relationship with personal laws has always been complicated. Personal laws derive legitimacy not only from statutes but also from religious customs and practices. This creates a tension between constitutional morality and religious freedom under Articles 25 and 26.[2]

In *State of Bombay v. Narasu Appa Mali* (1952), the Bombay High Court controversially held that personal laws were not "laws" within the meaning of Article 13 and therefore could not be challenged for violating fundamental rights.[3] This judgment has remained heavily criticised because it effectively insulated discriminatory religious practices from constitutional scrutiny.[4]

Over time, however, the judiciary adopted a more progressive approach. The Supreme Court increasingly emphasised constitutional morality over customary practices. In *Joseph Shine v. Union of India* (2018), the Court held that laws based on patriarchal assumptions violate constitutional equality.[5] Similarly, in *Navtej Singh Johar v. Union of India* (2018), the Court recognised dignity, autonomy, and identity as constitutional values transcending traditional social morality.[6]

These judgments indicate that personal laws cannot remain outside constitutional examination merely because they are linked with religion. Constitutional supremacy demands that family laws evolve in accordance with principles of equality and human dignity.

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[1] INDIA CONST. arts. 14, 15, 21; *see K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).
[2] INDIA CONST. arts. 25, 26.
[3] *State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84 (India).
[4] *See Indian Young Lawyers Ass'n v. State of Kerala*, (2019) 11 SCC 1 (India) (Chandrachud, J., concurring); LAW COMM'N OF INDIA, *Consultation Paper on Reform of Family Law* ¶ 1.16 (Aug. 31, 2018).
[5] *Joseph Shine v. Union of India*, (2019) 3 SCC 39 (India).
[6] *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

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III. Gender bias in Hindu personal law

Hindu personal law underwent major codification after independence through the Hindu Code Bills. Although these reforms improved women's rights significantly, traces of patriarchy still remain embedded within the framework.

A. Marriage and divorce

The Hindu Marriage Act, 1955 introduced monogamy and granted divorce rights to both spouses. On paper, the legislation appears gender-neutral because both husband and wife may seek divorce on similar grounds such as cruelty, desertion, or adultery.[7]

However, substantive inequality persists in implementation. Women often face greater social and economic consequences after divorce. Indian courts have also historically interpreted marital obligations through patriarchal lenses.

The concept of restitution of conjugal rights under Section 9 of the Hindu Marriage Act itself raises concerns regarding bodily autonomy and individual freedom.[8] Critics argue that compelling cohabitation indirectly undermines personal liberty under Article 21.[9] In *T. Sareetha v. T. Venkata Subbaiah* (1983), the Andhra Pradesh High Court held restitution of conjugal rights unconstitutional for violating privacy and bodily autonomy.[10] Although the Supreme Court later disapproved this view in *Saroj Rani v. Sudarshan Kumar Chadha* (1984) and upheld Section 9,[11] the debate continues regarding whether marriage can justify state interference in personal autonomy.

Thus, despite legal reforms, Hindu marriage law continues to reflect traditional assumptions regarding family structures and gender roles.

B. Guardianship and patriarchal presumptions

One of the clearest examples of gender inequality in Hindu personal law existed under the Hindu Minority and Guardianship Act, 1956. Section 6 recognised the father as the "natural guardian" of a child and the mother only after him.[12]

This provision institutionalised male superiority within family structures. The law presumed fathers to be primary decision-makers while reducing mothers to secondary status.

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[7] The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955, §§ 5, 13 (India).
[8] Hindu Marriage Act, 1955, § 9.
[9] *See* Flavia Agnes, Family Law Volume 2: Marriage, Divorce, and Matrimonial Litigation (Oxford Univ. Press 2011).
[10] *T. Sareetha v. T. Venkata Subbaiah*, AIR 1983 AP 356 (India).
[11] *Saroj Rani v. Sudarshan Kumar Chadha*, (1984) 4 SCC 90 (India).
[12] The Hindu Minority and Guardianship Act, 1956, No. 32, Acts of Parliament, 1956, § 6(a) (India).

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The Supreme Court attempted to correct this imbalance in *Githa Hariharan v. Reserve Bank of India* (1999). The Court interpreted the word "after" flexibly and held that mothers could also act as natural guardians during the father's lifetime.[13] This interpretation promoted constitutional equality without striking down the statute entirely.

However, the judgment also demonstrates judicial limitations. Instead of directly invalidating the discriminatory provision, the Court relied on interpretative creativity. This reveals judicial hesitation in confronting personal law discrimination directly.

C. Inheritance and succession

The Hindu Succession Act, 1956 originally excluded daughters from coparcenary rights in joint family property.[14] Sons possessed birthrights in ancestral property while daughters remained dependent upon marital families.

This discrimination reflected the patriarchal belief that women eventually become part of another household after marriage. Economic power remained concentrated within the male lineage. The Hindu Succession (Amendment) Act, 2005 marked a transformative reform by granting daughters equal coparcenary rights.[15] In *Vineeta Sharma v. Rakesh Sharma* (2020), the Supreme Court clarified that daughters possess coparcenary rights by birth irrespective of whether the father was alive at the time of the amendment.[16]

This judgment was a milestone for gender justice because it recognised daughters as equal participants in ancestral property structures. Nevertheless, social realities continue to obstruct implementation. Women frequently relinquish property rights due to societal pressure and familial expectations. Therefore, legal reform alone cannot guarantee substantive equality unless accompanied by social transformation.

IV. Gender inequality in Muslim personal law

Muslim personal law in India remains largely uncodified and derived from classical Islamic jurisprudence. While Islamic law historically granted women certain rights unknown in medieval societies, several provisions today conflict with constitutional equality standards.[17]

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[13] *Githa Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228 (India).
[14] The Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956, § 6 (as originally enacted) (India).
[15] The Hindu Succession (Amendment) Act, 2005, No. 39, Acts of Parliament, 2005 (India).
[16] *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1 (India).
[17] *See generally* Asaf A.A. Fyzee, Outlines of Muhammadan Law (Tahir Mahmood ed., Oxford Univ. Press 5th ed. 2008).

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A. Polygamy

One of the most debated issues is the permissibility of polygamy for Muslim men. A Muslim man may marry up to four wives, whereas Muslim women cannot practise polyandry.[18] Supporters argue that polygamy is religiously sanctioned and subject to conditions of fairness.[19] However, critics contend that the practice inherently violates equality and dignity because it grants unequal marital rights based solely on gender.[20]

The constitutional validity of polygamy remains controversial. Although courts have avoided directly striking it down, the practice increasingly appears inconsistent with constitutional morality and modern understandings of equality.[21]

B. Triple talaq and judicial intervention

The practice of instant triple talaq represented one of the strongest examples of unilateral male privilege in personal law. Muslim husbands could dissolve marriages instantly without procedural safeguards. In *Shayara Bano v. Union of India* (2017), the Supreme Court, by a majority of three to two, set aside the practice of instant triple talaq.[22] Nariman J., writing for himself and Lalit J., held that the practice was manifestly arbitrary, because it allowed the marital tie to be broken capriciously and without any attempt at reconciliation, and therefore violated Article 14.[23]

The judgment was historically significant because it subjected a personal law practice to fundamental-rights review.[24] However, the subsequent criminalisation of triple talaq through the Muslim Women (Protection of Rights on Marriage) Act, 2019 generated debate.[25]

Critics argue that criminalising what ought to remain a civil wrong may further destabilise families while singling out Muslim men.[26] Thus, although the judgment promoted gender justice, legislative implementation remains contested.

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[18] Fyzee, *supra* note 17.
[19] *Qur'an*, Surah al-Nisa 4:3.
[20] LAW COMM'N OF INDIA, *supra* note 4, ¶¶ 2.91, 2.99.
[21] *See* LAW COMM'N OF INDIA, *supra* note 4, ¶ 2.91 n.76 (noting that challenges to polygamy were pending before a Constitution Bench of the Supreme Court); *see also* JUSTICE FOR WOMEN: PERSONAL LAWS, WOMEN'S RIGHTS AND LAW REFORM (Indira Jaising ed., The Other India Press 1996).
[22] *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).
[23] *Id.* (Nariman, J.).
[24] *See* LAW COMM'N OF INDIA, *supra* note 4, ¶¶ 1.16, 2.83.
[25] The Muslim Women (Protection of Rights on Marriage) Act, 2019, No. 20, Acts of Parliament, 2019, §§ 3–4 (India).
[26] Shraddha Chaudhary, *Criminalisation Without an Object: Critical Reflections on the Muslim Women (Protection of Rights on Marriage) Act, 2019*, 17 SOCIO-LEGAL REV. 105, 120, 130, 132 (2021), https://repository.nls.ac.in/slr/vol17/iss2/1.

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V. MAINTENANCE AND ECONOMIC DEPENDENCY

Maintenance laws across personal law systems have historically been shaped by assumptions that men occupy the role of economic providers and women that of dependants. A gender-neutral analysis, however, must distinguish protective remedies responding to structural disadvantage from rules that perpetuate fixed roles, and must examine the legal availability of maintenance without treating dependency as inherently gendered.[27]

In *Mohd. Ahmed Khan v. Shah Bano Begum* (1985), the Supreme Court held that a divorced Muslim woman who could not maintain herself could claim maintenance under Section 125 of the Code of Criminal Procedure, 1973 (CrPC), a secular remedy framed to prevent destitution.[28] The judgment placed the provision's social-justice purpose above an interpretation that would exclude a divorced Muslim woman solely because of her religion.

The enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, following the political controversy surrounding *Shah Bano*, raised questions about the relationship between secular maintenance law and Muslim personal-law remedies.[29] The Act's constitutional validity was considered in *Danial Latifi v. Union of India* (2001).[30] The Supreme Court upheld the Act by construing Section 3(1)(a) to require a former husband to make and pay a fair and reasonable provision for the divorced woman's future, extending beyond the iddat period; the provision must be made within the iddat period, but its scope is not confined to maintenance for that period alone. The Court also interpreted the statutory framework harmoniously with the woman's rights and the constitutional commitment to equality and dignity.[31]

In *Mohd. Abdul Samad v. State of Telangana* (2024), the Supreme Court reaffirmed that a divorced Muslim woman may pursue maintenance under Section 125 CrPC and that the 1986 Act provides an additional remedy rather than excluding the secular remedy.[32] The Court clarified the concurrent availability of the two frameworks, subject to accounting for amounts already awarded to avoid duplication.[33] The decision strengthens the understanding that maintenance is a social-justice entitlement and that statutory remedies should not be read as mutually exclusive merely because a claimant is Muslim. The broader gender-neutrality

[27] *See generally* Agnes, *supra* note 9.
[28] *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556 (India); The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974, § 125 (India). The provision is now § 144 of The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India), in force from July 1, 2024.
[29] The Muslim Women (Protection of Rights on Divorce) Act, 1986, No. 25, Acts of Parliament, 1986 (India).
[30] *Danial Latifi v. Union of India*, (2001) 7 SCC 740 (India).
[31] *Id.*
[32] *Mohd. Abdul Samad v. State of Telangana*, 2024 INSC 506, Crim. App. No. 2842 of 2024 (July 10, 2024) (India).
[33] *Id.*

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question remains: whether maintenance frameworks and their application should recognise need and capacity, rather than presume that financial dependency and responsibility necessarily follow gender.[34]

VI. LGBTQ+ EXCLUSION FROM PERSONAL LAWS

Perhaps the greatest limitation of Indian personal laws is their exclusion of LGBTQ+ individuals. Most personal laws recognise only heterosexual marriage structures.

In *Navtej Singh Johar v. Union of India* (2018), the Supreme Court decriminalised consensual same-sex relations between adults and affirmed constitutional protection for sexual orientation and identity.[35] The judgment emphasised dignity, autonomy, and equal citizenship.

However, decriminalisation did not automatically translate into family rights. Same-sex couples still lack recognition under marriage, adoption, guardianship, and succession laws.

This issue reached the Supreme Court in *Supriyo Chakraborty v. Union of India* (2023), where petitioners sought recognition of same-sex marriage. Although the Court acknowledged discrimination faced by queer individuals, it declined to legalise same-sex marriage and left the issue to Parliament.[36]

The judgment exposed the limitations of judicial activism in personal law reform. While the judiciary recognised constitutional values of inclusiveness and dignity, it ultimately deferred to legislative authority. Consequently, Indian personal law continues to exclude queer relationships from legal recognition.

VII. UNIFORM CIVIL CODE AND GENDER NEUTRALITY

The debate regarding a Uniform Civil Code (UCC) is closely linked with gender neutrality in personal law. Article 44 directs the State to strive for a uniform civil code applicable to all citizens.[37]

Supporters argue that a UCC would eliminate discriminatory religious practices and establish equal rights regardless of gender or religion. They contend that equality cannot co-exist with separate personal law systems containing unequal standards.[38]

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[34] *Compare* Hindu Marriage Act, 1955, §§ 24–25 (maintenance on the application of "the wife or the husband"), *with* Code of Criminal Procedure, 1973, § 125(1)(a) (maintenance of a "wife").
[35] *Navtej Singh Johar*, *supra* note 6.
[36] *Supriyo Chakraborty v. Union of India*, 2023 INSC 920 (India).
[37] INDIA CONST. art. 44.
[38] *See* 7 CONSTITUENT ASSEMBLY DEBATES (Nov. 23, 1948) (India) (statement of K.M. Munshi) (debate on draft Article 35, later Article 44); *Shah Bano*, *supra* note 28.

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However, critics argue that uniformity does not necessarily guarantee justice. A poorly designed UCC may simply impose majoritarian norms upon minority communities. Moreover, gender inequality exists not only within religious laws but also within broader societal structures.[39]

The challenge therefore lies not merely in creating uniform laws but in ensuring genuinely inclusive and gender-just laws.

Goa's civil code is frequently cited as an example of a uniform system.[40] Yet even Goa's framework contains certain gendered provisions and exceptions.[41] Therefore, the mere existence of uniformity cannot automatically resolve issues of discrimination.

VIII. CRITICAL EVALUATION

The discourse surrounding gender neutrality in personal law must avoid simplistic binaries. Indian personal laws simultaneously reflect two realities:

- Historical discrimination against women requiring legal protection.
- Continued exclusion of men and LGBTQ+ individuals from equal recognition.

Certain gender-specific protections emerged because women historically lacked economic independence, property rights, and legal agency.[42] Removing these protections without addressing structural inequalities could further marginalise vulnerable groups.

At the same time, excessive reliance on stereotypical assumptions prevents personal laws from evolving into genuinely egalitarian frameworks. Laws based upon the following assumptions are increasingly inconsistent with constitutional morality:

- Men are providers.
- Women are caregivers.
- Fathers are guardians.
- Heterosexual marriage is the only legitimate family structure.

[39] LAW COMM'N OF INDIA, *supra* note 4, ¶¶ 1.15, 1.17, 1.21; *see also* 7 CONSTITUENT ASSEMBLY DEBATES, *supra* note 38 (statement of B. Pocker Sahib Bahadur).
[40] *See, e.g.*, *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*, 2019 SCC OnLine SC 1190, ¶ 21 (India).
[41] Dário Moura Vicente, *Family Law in Goa after the Act of 2012: Key Concepts in the Portuguese Civil Code of 1867 and the Code of Gentile Hindu Usages and Customs of 1880*, 5 SALGAOCAR L. REV. 93, 94, 103–04 (2019) (describing the 1880 Code as a set of exceptions to the Civil Code, and its rule that the joint family was managed by its oldest male member); *see also Coutinho*, *supra* note 40, ¶ 21.
[42] *Cf.* INDIA CONST. art. 15(3) (permitting special provision for women and children); *see generally* Agnes, *supra* note 9.

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The judiciary has undoubtedly played a transformative role in challenging discriminatory practices. Judgments such as *Shayara Bano*, *Vineeta Sharma*, *Joseph Shine*, and *Navtej Singh Johar* collectively demonstrate judicial commitment toward dignity and equality.[43]

However, judicial intervention alone remains insufficient. Courts often adopt incremental approaches instead of directly confronting discriminatory statutory provisions.[44] Political reluctance and religious sensitivities further slow reform processes. Therefore, achieving genuine gender neutrality requires both legal and social transformation.

IX. Conclusion

Gender neutrality in personal law represents one of the most complex constitutional challenges in India. Personal laws are not merely legal frameworks; they are deeply intertwined with religion, culture, identity, and social power structures.

Although significant reforms have improved women's rights in areas such as inheritance, divorce, and maintenance, Indian personal law still contains several patriarchal assumptions. Simultaneously, the exclusion of LGBTQ+ individuals demonstrates that family law continues to operate within narrow heteronormative boundaries.

The Indian judiciary has progressively expanded constitutional values of equality, dignity, and autonomy through landmark judgments. Nevertheless, complete gender neutrality remains unrealised because personal laws continue to prioritise traditional social morality over constitutional morality.[45]

True reform requires balancing religious freedom with constitutional supremacy. Gender neutrality should not mean erasing protections for historically marginalised groups; rather, it should ensure that rights and legal recognition are based upon human dignity rather than gender stereotypes.

A modern constitutional democracy cannot permit family laws to remain insulated from equality principles. Personal laws must evolve in accordance with changing social realities and constitutional ideals. Only then can India move toward a truly inclusive and gender-just legal framework.

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[43] *Shayara Bano*, *supra* note 22; *Vineeta Sharma*, *supra* note 16; *Joseph Shine*, *supra* note 5; *Navtej Singh Johar*, *supra* note 6.
[44] *See* Law Comm'n of India, *supra* note 4, ¶ 1.16; *Githa Hariharan*, *supra* note 13.
[45] *See Navtej Singh Johar*, *supra* note 6; *Supriyo Chakraborty*, *supra* note 36.

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