

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 4

2024

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Gender Justice and the Need for a Uniform Civil Code in India

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ABSTRACT

Gender justice is a cornerstone of social equality, yet it remains elusive in India due to the disparities entrenched in the country's plural personal law system. Personal laws governing marriage, divorce, maintenance, inheritance, and adoption vary widely across religious communities, often perpetuating gender discrimination and patriarchal norms. This paper critically examines the systemic gender injustices inherent in India's personal laws and advocates for the implementation of a Uniform Civil Code (UCC) as a necessary step toward achieving legal uniformity and gender equality. Drawing on constitutional principles, international norms such as CEDAW, and landmark judicial decisions, this study highlights the urgent need for reform. It underscores how a UCC can harmonize the legal framework, address existing inequalities, and provide a common platform that ensures justice for all citizens, irrespective of religion or gender. By proposing a balanced approach that respects India's cultural diversity while prioritizing constitutional ideals of equality and justice, this paper contributes to the ongoing discourse on legal and social reform in the country.

I. INTRODUCTION

India's legal landscape reflects its cultural and religious diversity, with personal laws governing marriage, divorce, inheritance, maintenance, and adoption for different religious communities. While this plurality upholds the nation's commitment to religious freedom, it has also entrenched systemic gender inequalities within the personal law framework. Many of these laws, rooted in religious doctrines and patriarchal traditions, perpetuate discrimination against women, impeding their access to justice and equality.

Gender injustices in personal laws manifest in several forms. For instance, under Muslim law, practices such as polygamy and triple talaq (recently declared unconstitutional) have historically undermined women's marital rights. Hindu law, while reformed significantly post-independence, still exhibits discrepancies in property inheritance, particularly concerning ancestral property. Similarly, Christian personal laws previously mandated a higher threshold

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for women seeking divorce compared to men, reflecting an inherent bias. These disparities extend to maintenance and guardianship laws, where women are often placed at a disadvantage due to traditional societal roles.

The consequences of these inequities are far-reaching, affecting women's socio-economic status, autonomy, and dignity. Despite significant judicial interventions and piecemeal legislative reforms, the fragmented personal law system continues to create inconsistencies, legal uncertainties, and barriers to gender justice. This raises fundamental questions about the constitutional promise of equality under Articles 14 and 15 and the State's directive under Article 44 to implement a Uniform Civil Code (UCC).²

A Uniform Civil Code represents a potential solution to these challenges by providing a single set of laws applicable to all citizens, irrespective of their religion or gender. It aims to eliminate discriminatory practices embedded in personal laws and uphold the constitutional ideals of secularism, equality, and non-discrimination. Moreover, the implementation of a UCC would align India's legal framework with international standards on gender justice, as mandated by instruments like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).³

This paper explores the intricate relationship between personal laws, gender justice, and the UCC, emphasizing the urgent need for uniformity in civil laws to ensure equality. It delves into the systemic gender biases within personal laws, evaluates the judiciary's role in mitigating these inequalities, and proposes actionable reforms for transitioning to a more equitable legal framework. Through this analysis, the paper highlights how a UCC can be a transformative step towards empowering women and fostering a more just society.

II. ANALYSIS OF GENDER BIAS IN PERSONAL LAWS

India's personal law framework, rooted in religious doctrines and traditions, governs marriage, inheritance, maintenance, and other civil aspects across communities. While this system aims to preserve cultural identity, it perpetuates significant gender biases, restricting women's autonomy and reinforcing patriarchal norms. Disparities in rights across personal laws, particularly in marriage, inheritance, and maintenance, reflect the systemic inequality that necessitates reform.⁴

² INDIA CONST. art. 14, 15, 44.

³ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

⁴ India Const. art. 14, 15, 25–28, 44.

Marriage: Gender Inequalities in Polygamy and Divorce

Under Muslim personal law, polygamy permits a man to marry up to four wives simultaneously, justified as a welfare mechanism for widows and orphans. However, in practice, it often exacerbates gender inequality, leaving women financially and emotionally vulnerable without adequate legal recourse. Comparatively, Islamic-majority nations like Turkey and Tunisia have abolished polygamy, setting an international precedent for balancing religious principles with gender equality.⁵ India's continued allowance of this practice highlights the disparity in rights for Muslim women compared to women from communities where polygamy is legally prohibited.

Unilateral divorce practices in Muslim law, such as *triple talaq*, have also epitomized gender bias. The landmark *Shayara Bano v. Union of India*⁶ (2017) judgment declaring *triple talaq* unconstitutional was a crucial step toward gender justice. Despite this, other forms of unilateral divorce, like *talaq-e-ahsan* and *talaq-e-hasan*, remain valid, perpetuating unequal power dynamics in marital relationships. These practices underline the urgent need for a uniform framework that ensures equality in marriage laws for all women, regardless of religious affiliation.

Inheritance: Disparities in Property Rights

Inheritance laws across religious communities exhibit systemic gender bias. Under the Hindu Succession Act, 1956⁷, daughters were initially excluded from coparcenary rights in ancestral property, a practice corrected by the 2005 amendment granting them equal rights with sons. However, challenges in implementation, particularly in rural areas, persist due to customary practices and societal pressures.

Muslim inheritance law provides women a share of property, but it is typically half that of male heirs, reflecting patriarchal assumptions about financial responsibility. This unequal allocation ignores the economic realities of many Muslim women who contribute significantly to family income. Similarly, Christian and Parsi inheritance laws under the Indian Succession Act, 1925⁸, offer gender-equal provisions, but societal norms often pressure women to forgo their claims.

These disparities highlight the inadequacy of piecemeal reforms in addressing the entrenched inequalities in inheritance rights. A Uniform Civil Code (UCC) could standardize these provisions, ensuring equal property rights for all citizens and promoting women's economic

⁵ Osmanlı Hukuku [Turkish Civil Code], art. 87; Tunisian Code of Personal Status (1956), arts. 18, 23.

⁶ [2017] 9 S.C.R. 797

⁷ Hindu Succession Act, No. 30 of 1956, India Code (1956).

⁸ Indian Succession Act, No. 39 of 1925, India Code (1925)

independence.

Maintenance: Inconsistent Protections Across Communities

The right to maintenance, critical for dependent spouses and children, varies significantly under different personal laws. Hindu law grants maintenance during marriage, but post-divorce provisions remain vague, creating inconsistencies. Muslim law confines maintenance for divorced women to the *iddat* period, leaving them vulnerable unless the *mehr* is substantial. The *Shah Bano v. Union of India*⁹ (1985) judgment attempted to address this disparity, but subsequent legislative changes curtailed its impact.

Christian and Parsi women, governed by the Indian Divorce Act, 1869¹⁰, and the Parsi Marriage and Divorce Act, 1936¹¹, face relatively equitable laws but encounter societal barriers that deter them from claiming maintenance. These inconsistencies across communities reflect the urgent need for a standardized framework.

A UCC could harmonize maintenance provisions, ensuring equitable entitlements for all women regardless of religion. By determining maintenance based on need, financial capacity, and equity, a UCC would address the vulnerabilities of dependent women and promote gender justice.

III. THE ROLE OF INTERNATIONAL NORMS

International norms and legal frameworks play a significant role in shaping the discourse on gender equality and influencing domestic legal reforms. India, as a signatory to various international conventions, is bound by its commitments to uphold principles of non-discrimination and equality. Among these, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) stands out as a pivotal instrument advocating for gender justice. This section explores how international standards on gender equality, particularly CEDAW, highlight the need for personal law reforms in India and the implementation of a Uniform Civil Code (UCC).

Globally, many countries have reformed their legal systems to align with contemporary notions of gender equality, often drawing from international conventions and human rights principles. For instance:

1. **Turkey:** As a predominantly Muslim-majority country, Turkey abolished polygamy in 1926 through its Civil Code and ensured equal rights for women in marriage, divorce,

⁹ Mohd. Ahmed Khan vs Shah Bano Begum And Ors 1985 AIR 945

¹⁰ Indian Divorce Act, 1869 (Act 4 of 1869).

¹¹ "Parsi Marriage and Divorce Act, 1936" (Act 3 of 1936).

and inheritance. This was a progressive step in harmonizing religious norms with gender equality.

2. **Tunisia:** The Tunisian Code of Personal Status, enacted in 1956¹², abolished polygamy and established equal divorce rights, showcasing a strong commitment to gender justice despite cultural and religious sensitivities.
3. **France:** The French Civil Code¹³, introduced in 1804 and subsequently amended, guarantees equal rights for men and women in marital and property matters, ensuring the uniform application of civil laws across its diverse population.
4. **South Africa:** South Africa's legal system, rooted in a multicultural society, abolished discriminatory practices in family law through its post-apartheid Constitution, which emphasizes equality and non-discrimination.

In contrast, India's personal law framework, fragmented by religious affiliations, continues to perpetuate gender-based disparities. While secular provisions like Section 125 of the Criminal Procedure Code (Cr.P.C.)¹⁴ offer some remedies, the overarching personal law system fails to meet the evolving global standards of gender equality. A Uniform Civil Code, as envisioned under Article 44 of the Indian Constitution, would align India's legal framework with international best practices and ensure compliance with its global commitments.

CEDAW and Its Implications for Personal Law Reform in India

Adopted in 1979 by the United Nations, CEDAW is often regarded as an international bill of rights for women. India ratified CEDAW in 1993, affirming its commitment to eliminating discrimination against women in all forms. Key provisions of CEDAW¹⁵ relevant to personal law reform include:

1. **Article 2:** Mandates state parties to abolish laws, customs, and practices that constitute discrimination against women. India's fragmented personal law system, which allows practices like polygamy and unequal inheritance rights, directly contravenes this provision.

¹² Code of Personal Status (1956) (Tunisia)

¹³ **Code Civil [C. Civ.] (Fr.).**

¹⁴ Criminal Procedure Code, § 125, No. 2 of 1974, India Code (1974)

¹⁵ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

2. **Article 5:** Calls for the modification of social and cultural patterns that perpetuate gender stereotypes and discrimination. The patriarchal norms underlying personal laws in India require urgent reform to align with this directive.
3. **Article 16:** Emphasizes equality in marriage and family relations, including rights to enter into marriage, choose a spouse, and dissolve marriage on equal terms. The disparities in marital and divorce rights under personal laws highlight India's non-compliance with this provision.

CEDAW's Influence on Indian Legal Reforms

India's ratification of CEDAW has spurred discussions on aligning domestic laws with international gender equality norms. Judicial pronouncements, such as the *Vishaka v. State of Rajasthan*¹⁶ (1997) case, have invoked CEDAW to address gender-based violence and discrimination. However, its application to personal law reforms remains limited due to political and social resistance.

For instance, while the *Shayara Bano v. Union of India*¹⁷ (2017) case outlawed triple talaq, broader reforms addressing gender biases in other personal laws, such as polygamy and unequal inheritance rights, remain elusive. The implementation of a UCC would bridge this gap by ensuring uniformity and equality in civil laws, fulfilling India's obligations under CEDAW.

The Case for a UCC Through an International Lens

Implementing a Uniform Civil Code in India would not only fulfill the constitutional mandate under Article 44 but also demonstrate India's commitment to international norms on gender equality. By harmonizing personal laws with CEDAW principles, a UCC would:

- **Eliminate Discrimination:** Address gender biases across marriage, divorce, maintenance, and inheritance laws.
- **Promote Social Equity:** Foster equality among citizens by removing religiously sanctioned privileges that disadvantage women.
- **Enhance Global Standing:** Showcase India as a progressive nation committed to upholding human rights and international standards.

In conclusion, international norms, particularly CEDAW, provide a robust framework for advocating personal law reforms in India. The disparities in gender rights under India's personal law system underscore the urgency of implementing a UCC. By doing so, India can align itself

¹⁶ AIR 1997 SC 3011

¹⁷ [2017] 9 S.C.R. 797

with global standards of gender equality, ensure justice for its citizens, and fulfill its international obligations. The next section will explore judicial and legislative responses to gender biases and the pathways for transitioning to a UCC.

IV. LEGISLATIVE RESPONSES

Legislative reforms have attempted to address gender inequalities in personal laws, albeit unevenly across religious communities. The following reforms illustrate these efforts:

The Hindu Succession Act, 1956 (Amended in 2005)¹⁸

The Hindu Succession Act was a landmark legislation aimed at codifying property rights within Hindu personal law. However, its original provisions excluded daughters from coparcenary rights in ancestral property, perpetuating gender disparity. The Hindu Succession (Amendment) Act, 2005, rectified this by granting daughters equal coparcenary rights alongside sons, irrespective of their marital status. This reform was hailed as a significant step toward gender equality, as it recognized women's equal stake in family property.

Despite its progressive intent, the Act's implementation faces challenges, particularly in rural areas where customary practices and societal pressures discourage women from claiming their rights. This underscores the limitations of piecemeal legislative reforms in addressing deep-rooted gender biases.

Other Legislative Reforms

- The *Hindu Marriage Act, 1955¹⁹*, and the *Hindu Adoption and Maintenance Act, 1956*, introduced measures to protect women's rights in marriage and family matters, but they continue to rely on traditional gender roles.
- The *Muslim Women (Protection of Rights on Divorce) Act, 1986²⁰*, passed after the controversial *Shah Bano* case, attempted to address the financial security of divorced Muslim women but fell short of providing comprehensive protection due to its restrictive scope.
- The *Prohibition of Child Marriage Act, 2006²¹*, strengthened the legal framework against child marriage, but enforcement remains weak, particularly in patriarchal settings.

¹⁸ Hindu Succession Act, No. 30 of 1956, amended by Hindu Succession (Amendment) Act, No. 39 of 2005, India Code (2005).

¹⁹ Hindu Marriage Act, No. 25 of 1955, India Code (1955).

²⁰ Muslim Women (Protection of Rights on Divorce) Act, No. 25 of 1986, India Code (1986).

²¹ Prohibition of Child Marriage Act, No. 6 of 2007, India Code (2007)

While these legislative measures represent progress, the lack of uniformity across personal laws creates inconsistencies, leaving many women without adequate legal protection. This fragmentation reinforces the need for a Uniform Civil Code to harmonize personal laws and ensure equal treatment for all citizens.

V. PATHWAY TO REFORM

Achieving a Uniform Civil Code (UCC) that integrates gender justice requires a multifaceted approach that respects India's cultural diversity while addressing the systemic inequalities embedded in personal laws. Reform must balance the constitutional mandate for equality with the sensitivities of religious and cultural groups. To ensure success, strategic measures must focus on legal, social, and political dimensions.

A key strategy for integrating gender justice into a UCC is the creation of a comprehensive framework that eliminates discriminatory practices in areas such as marriage, divorce, maintenance, inheritance, and adoption. The new code must prioritize equality and fairness, moving beyond the patriarchal norms entrenched in existing personal laws. For instance, provisions for equitable division of marital property, equal inheritance rights for daughters and sons, and uniform maintenance rights for spouses must form the foundation of the UCC. Lessons from countries like Turkey, Tunisia, and South Africa, which have successfully reformed personal laws while preserving cultural nuances, can provide valuable guidance for India's UCC.

The gradual implementation of a UCC is essential to ease its acceptance. A phased approach, beginning with an optional civil code that individuals can voluntarily adopt, would allow communities to transition more comfortably. This period could also serve as an opportunity to address challenges, build trust, and refine the framework. Public awareness campaigns and legal literacy programs are equally critical. These initiatives must highlight the benefits of a UCC in promoting equality and justice while addressing misconceptions. Empowering women through education about their rights and the implications of a UCC would further strengthen its foundation.

Resistance from cultural and religious groups is a significant hurdle that requires thoughtful engagement. Open dialogue with religious and community leaders can help address their concerns and clarify that the UCC is not an attack on religious identity but a step toward ensuring social justice. Emphasizing the non-religious nature of the UCC and its alignment with constitutional principles can mitigate fears of cultural erosion. Additionally, preserving cultural practices that do not conflict with equality and non-discrimination principles can help reduce

opposition from minority groups.

Political will is essential for the successful implementation of a UCC. Consensus across political parties can prevent the issue from becoming overly polarized. Framing the UCC as a matter of human rights and gender justice rather than religious uniformity can garner broader support. Judicial oversight will also play a critical role in ensuring the effective enforcement of the UCC and resolving conflicts that may arise during its implementation.

VI. CONCLUSION

The implementation of a Uniform Civil Code is a pivotal step toward achieving social and legal equality for women in India. Personal laws, as they exist today, reflect patriarchal traditions that disadvantage women and conflict with constitutional principles of equality and non-discrimination. Despite legislative reforms and landmark judicial interventions, the fragmented nature of personal laws continues to create inconsistencies, legal uncertainties, and barriers to gender justice. A UCC would address these challenges by providing a unified legal framework applicable to all citizens, regardless of religion or gender.

The resistance to a UCC from cultural and religious groups underscores the need for a sensitive and inclusive approach to reform. Engaging stakeholders in open dialogue, addressing concerns of cultural erosion, and preserving non-discriminatory cultural practices can help build trust and acceptance. Public awareness campaigns and educational programs can play a crucial role in fostering understanding and empowering women to assert their rights.

Ultimately, the UCC is not merely a legal reform but a broader social transformation that seeks to empower women and promote equality. By harmonizing personal laws and eliminating gender biases, the UCC would reflect India's commitment to its constitutional ideals and its international obligations under conventions like CEDAW. Its implementation would contribute to a more just and equitable society, ensuring that all citizens enjoy equal rights and freedoms, as envisioned in the Constitution of India.
