

Gender Neutrality in Family Law: The Constitutional Imperative for Equality before Law

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I. INTRODUCTION

Within Indian jurisprudence, family law holds a special place at the intersection of constitutional principles, religion, and custom. It regulates marriage, divorce, adoption, maintenance, and succession, among other intimate ties. Hindu, Muslim, Christian, Parsi, and secular legislation like the Special Marriage Act of 1954 make up the fragmented legal structure governing these domains. The majority of personal laws in India are still biased against women, despite the country's constitutional commitment to equality and non-discrimination.

In family law, gender inequality takes two forms: women are stereotyped as dependents in need of protection, while men are frequently assumed to be protectors and providers. As a result, men frequently experience unfair presumptions in maintenance and custody proceedings, while women endure systemic disadvantages in guardianship and inheritance. These binary frameworks marginalise those who identify outside of the gender binary and deny the uniqueness of both sexes.

Therefore, a family law system that complies with the constitution must go beyond gender stereotypes and acknowledge people as equal rights bearers regardless of sex or gender identity. This demand is a constitutional requirement based on Articles 14 and 15, which ensure equality before the law and forbid sex-based discrimination. It is not a question of legislative grace. The Supreme Court has stated time and time again that personal laws are subject to constitutional morality. This essay makes the case that in order to fulfil the Constitution's transformational potential, gender-neutral family law is required.

II. THE CONSTITUTIONAL STRUCTURE AND THE EQUALITY REQUIREMENT

The Indian Constitution's Preamble declares equality of position and opportunity, as well as social, economic, and political justice, to be the Republic's core principles. The constitutional trinity of equality and dignity is comprised of Articles 14, 15, and 21.

A. Equality before the Law and Article 14; "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India," according to Article 14. In *E.P. Royappa v. State of Tamil Nadu*, the Supreme Court ruled that any legislation or policy that is arbitrary is intrinsically unfair and that equality is incompatible with arbitrariness.¹ Article 14's guarantee is violated by family law measures that favour one gender over another, such as separate inheritance rights or unequal grounds for divorce.

B. Non-Discrimination on the Basis of Sex and Article 15; Discrimination "on grounds only of religion, race, caste, sex, place of birth or any of them" is forbidden by Article 15(1). Although specific accommodations for women and children are permitted under Article 15(3), patriarchal paternalism cannot be justified by this enabling article. Article 15(3) aims to empower people rather than reinforce prejudices.² In *Anuj Garg v. Hotel Association of India*, the Supreme Court made it clear that protected discrimination cannot uphold conventional gender norms.³ Consequently, gender-based distinctions in personal laws that portray women as helpless or reliant are unconstitutional.

C. The Right to Dignity and Article 21; The right to

¹ *E.P. Royappa v. State of Tamil Nadu*, AIR 1974 SC 555.

² *State of Kerala v. N.M. Thomas*, AIR 1976 SC 490

³ *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1.

autonomy, privacy, and dignity has been included in the broad interpretation of Article 21. The Court acknowledged privacy as essential to liberty and dignity in Justice K.S. Puttaswamy v. Union of India⁴. These aspects of individual autonomy are strongly impacted by family law problems that deal with marriage, reproduction, and sexuality. Article 21 encompasses the freedom to live without gendered limitations, to parent, and to marry or not to marry. Therefore, gender-neutral family regulations are required under the constitutional design. However, India's personal laws still uphold disparities that have their roots in religious conservatism and patriarchal.

III. INDIAN FAMILY LAWS' DISCRIMINATION AGAINST WOMEN

In all personal law regimes, gender inequity endures notwithstanding progressive judicial rulings. These prejudices are reciprocal; they disadvantage men in some situations and women in others.

A. Hindu Law

Despite being historic codifications, the Hindu Succession Act of 1956 (HSA) and the Hindu Marriage Act of 1955 (HMA) maintained gendered presumptions. Daughters were not granted equal coparcenary rights prior to the Hindu Succession (Amendment) Act, 2005. This issue was fixed by the amendment, which acknowledged daughters as coparceners by birth. But when it comes to guardianship, the Hindu Minority and Guardianship Act, 1956 still names the father as the "natural guardian," giving the woman a secondary responsibility.⁵

In a same vein, although courts have recently interpreted the HMA's maintenance requirements (Section 25) more liberally, they still generally envision the husband as the provider. Women are disproportionately impacted by the Act's fault-based divorce system, which is founded on ideas of chastity and marital fidelity and reflects moral policing rather than legal logic.

B. The Law of Islam

Gender inequality is evident in Muslim personal law, which is based on Sharia. Despite being somewhat restrained by the Supreme Court in Shayara Bano v. Union of India,⁶ the husband's unilateral power of talaq (divorce) nevertheless reflects a male-centric society. In a similar vein, inheritance laws give male heirs twice as much as female heirs, which is supported by historical ideas that men should care for their families.⁷ Although women's rights to property and consent in marriage are acknowledged in the Qur'an, patriarchal interpretations have weakened these rights.

C. Parsi and Christian Laws

The Indian Divorce Act, 1869, which applied to Christians, initially offered uneven grounds for divorce: males may file for divorce based just on adultery, while women had to establish adultery plus another offence. Even if this discrepancy was addressed by the 2001 amendment, some bias still exists, such as procedural rigidity and moralistic overtones.⁸

Although the Parsi Marriage and Divorce Act, 1936, which governs Parsi personal law, is mostly gender-neutral in theory, patriarchal social norms nevertheless have an impact on its application. For instance, maintenance provisions consider the husband to be the primary provider.

D. The 1954 Special Marriage Act

The Special Marriage Act (SMA), which was created as a secular substitute, nevertheless perpetuates binary gender presumptions by utilising the terms "husband" and "wife" and failing to take gender diversity into consideration. Additionally, it imposes certain procedural costs, such as mandatory public notification, which has drawn criticism for infringing upon autonomy and privacy.⁹ As a result, even though the laws are progressively changing, their underlying gendered assumptions still conflict with constitutional equality.

IV. THE DEVELOPMENT OF JURISPRUDENCE AND JUDICIAL INTERPRETATION

⁴ Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

⁵ Section 6, Hindu Minority and Guardianship Act, 1956.

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

⁷ Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC

945.

⁸ Ammini E.J. v. Union of India, AIR 1995 Ker 252.

⁹ Pranav Kumar Mishra v. Govt. of NCT of Delhi, (2009) 171 DLT 223.

Aligning family law with constitutional morality has been made possible by the judiciary. The Supreme Court and High Courts have reinterpreted gender roles, equality, and autonomy through a number of rulings.

A. Transitioning from Formal to Substantive Equality

Religious personal laws were seen by early judges as exempt from constitutional scrutiny. Nonetheless, the judiciary has acknowledged that personal laws must adhere to the fundamental framework of the Constitution since *Kesavananda Bharati v. State of Kerala*. The Supreme Court ruled in *C. Masilamani Mudaliar v. Idol of Sri Swami Natha swami Thirukoil* that gender equality is a component of constitutional morality and that personal laws cannot infringe upon fundamental rights.¹⁰

Even if a statute is facially neutral, it can be overturned because of the Court's transition from formal equality (identical treatment) to substantive equality (equitable outcomes).

B. Marital Relationships and Individual Autonomy

The Court acknowledged that marriage does not eliminate individual autonomy in *Joseph Shine v. Union of India*, which overturned Section 497 of the Indian Penal Code (adultery).¹¹ It stated that it is against Articles 14 and 21 to regard women as their husbands' property. In a similar vein, *Navtej Singh Johar v. Union of India* upheld sexual orientation and choice as fundamental to privacy and dignity by decriminalising consenting same-sex relationships.¹² "These rulings suggest a constitutional approach that calls for equality and autonomy within family relationships itself, going beyond criminal law."

C. Extending the Concept of Parenthood and Family

Different family configurations outside of the heterosexual marriage model have been identified in recent examples. The Supreme Court recognised that "familial relationships may take the form of domestic, unmarried, or queer partnerships" in *Deepika Singh v.*

Central Administrative Tribunal.¹³ Gender-neutral family law reforms that include non-traditional families are made possible by such progressive acknowledgement.

V. A COMPARATIVE VIEW OF GENDER-NEUTRAL FAMILY LAW

Due to changing perspectives on equality, autonomy, and human rights, a number of jurisdictions have already made the shift to gender neutrality in family law, according to comparative legal analysis.

A. The United Kingdom

Gender stereotypes have gradually been abandoned in the UK thanks to the Matrimonial Causes Act of 1973 and other changes. Gender roles are no longer the guiding considerations in maintenance and custody decisions; instead, justice and the child's wellbeing are. Additionally, the Equality Act of 2010 requires all courts and public agencies to end discrimination and advance equality.¹⁴ British courts prioritise the "best interests of the child" over the gender of the parents in custody disputes. A completely gender-neutral legal understanding of family is demonstrated by the Civil Partnership Act of 2004 and the Marriage (Same Sex Couples) Act of 2013, which grant same-sex couples equal marital rights.

B. Canada

The constitutionalizing of family law is best illustrated by the legal system of Canada. Section 15 of the Canadian Charter of Rights and Freedoms ensures equality before and under the law, including on the basis of sexual orientation and sex. In 2019, the Divorce Act (R.S.C., 1985) was modified to make it gender-neutral and to give family violence and children's best interests top priority.¹⁵

Furthermore, same-sex partners' rights to maintenance were acknowledged by Canadian jurisprudence in *M. v. H.* (1999), which held that excluding same-sex relationships violates equality requirements.¹⁶ This illustrates how family law can be directly altered to reflect modern social realities through constitutional

¹⁰ *C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil*, (1996) 8 SCC 525.

¹¹ *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

¹² *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

¹³ *Deepika Singh v. Central Administrative Tribunal*, (2022) 7 SCC 546.

¹⁴ Matrimonial Causes Act, 1973 (U.K.); Equality Act, 2010 (U.K.).

¹⁵ Divorce Act (R.S.C., 1985, c.3 (2nd Supp.)), Canada.

¹⁶ *M. v. H.*, [1999] 2 S.C.R. 3 (Canada).

equality.

C. Australia

When deciding parental responsibility, property partition, and maintenance, Australia's Family Law Act, 1975 has a gender-neutral stance. Without regard to gender, the Act clearly highlights "equal shared parental responsibility" and "best interests of the child" as important factors.¹⁷ For the purposes of family law remedies, the law also acknowledges same-sex partnerships and de facto relationships.

D. Lessons for India

These legal systems highlight how gender neutrality in family law promotes social stability rather than undermines it. It upholds individual autonomy, guarantees justice, and represents constitutional obligations. By substituting neutral terms like "spouse" or "partner" for gendered terms like "husband/wife," India can imitate similar examples. However, religious liberty and pluralism must be respected in the Indian setting. Under Articles 25–28, reforms must strike a balance between religious freedom and constitutional equality.

However, fundamental rights cannot be superseded by important religious activities, as the Supreme Court ruled in the Indian Young Lawyers Association v. State of Kerala (Sabarimala case).¹⁸ Therefore, even in personal legal systems, gender equality must be upheld.

VI. OBSTACLES TO INDIA'S REFORM OF GENDER-NEUTRAL FAMILY LAW

A. Constitutional Complexity and Religious Pluralism

One major issue is India's pluralistic legal system. The right to freedom of religion protects religiously based personal laws. Gender neutrality and uniformity initiatives are frequently met with opposition since they are seen as violations of religious identity. This conflict is best shown by the discussion of a Uniform Civil Code (UCC) under Article 44.¹⁹ Gender-neutral reform, however, can imply guaranteeing equality within each personal law system rather than

consistency. Consistency in the constitution should be prioritised over uniformity.

B. Social Structures That Are Patriarchal

Deeply ingrained social patriarchy cannot be eliminated by legal reform alone. Even progressive legislation have limited transformational power due to women's economic dependency, societal expectations, and the stigma associated with divorce or remarriage. On the other hand, males might oppose changes that they believe will lessen their privileges. Therefore, gender-sensitive programs and public education must go hand in hand with gender neutrality.

C. Political and Legislative Reluctance

Gender legislation reform has been hindered by political prudence and legislative inertia. Political polarisation causes sensitive topics like child custody, maintenance, and marital rape to be avoided. The gap has been somewhat filled by judicial activism, but legislative commitment is necessary for long-lasting change.

D. Conceptual Confusion: Gender Neutrality versus Gender Equality

Conceptual clarity is a major obstacle. The goal of gender equality is to address the historical injustices that women have experienced; if gender neutrality is implemented rigidly, it may mask these injustices. In order to be truly neutral, one must be sensitive to the situations of power and vulnerability and be substantive rather than formal. It's Gender responsiveness and gender neutrality should be combined in a well-rounded strategy²⁰.

VII. THE WAY FORWARD: DEVELOPING A FRAMEWORK FOR GENDER-NEUTRAL FAMILY LAW

Both legislative change and jurisprudential development are necessary for a thorough, gender-neutral reform of Indian family law.

A. Reforming the Law

- *Codification of Gender-Neutral Terminology:* Use neutral terms like "spouse" and "parent" in

¹⁷ Family Law Act, 1975 (Cth), Australia.

¹⁸ Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1.

¹⁹ Article 44, Constitution of India.

²⁰ S. Khanna, "Gender Neutrality in Law: Equality or Erasure?", Indian Journal of Constitutional Law, Vol. 9, 2021, p. 114.

place of gender-specific terms like "husband/wife" and "father/mother."

- *Uniform Guardianship and Maintenance Principles*: The rights and responsibilities of custody should be equal for both parents. Gender should not determine maintenance; instead, capacity and necessity should.
- *Equal Inheritance Rights*: Using the Hindu coparcenary model from after 2005, extend parity to all personal law systems.
- *Acknowledgement of Non-Traditional Families*: Protect cohabiting, homosexual, and unmarried unions under family law.

B. Doctrinal and Judicial Reform

Family laws should be interpreted by courts in accordance with constitutional morality. To guarantee equality in the private sector, judicial reasoning must be guided by the transformative constitutionalism doctrine.²¹

C. Public Conversation and Education

Legal texts shouldn't be the exclusive domain of reform. Stereotypes about gender roles in marriage, motherhood, and property can be broken by educational initiatives and awareness campaigns. Additionally, inclusive ideals must be reflected in the language and reasoning of the judiciary.

VIII: CONCLUSION & SUGGESTIONS

Because the Indian Constitution's framers envisioned an egalitarian, dignified, and discrimination-free society—an ideal still hampered by personal laws rooted in religious orthodoxy and colonial codification—gender neutrality in family law is a constitutional requirement rather than a radical change. Together with comparative observations from other democracies, the judiciary's progressive interpretation of equality, dignity, and privacy offers a solid constitutional basis for reform and demonstrates how gender-neutrality promotes justice, autonomy, and family stability. Adopting clear policy measures, such as codifying consistent gender-neutral principles across family-law domains, reviewing out-of-date

personal-law provisions to ensure constitutional compliance, incorporating gender-neutral legislative language to eliminate interpretive bias, bolstering judicial and practitioner capacity to reduce stereotyping, and raising public awareness to build acceptance of gender-neutral reforms, is crucial to realising this vision. Gender-neutral family laws would fulfil the promise of equality before the law and strengthen India's character as a contemporary, secular, and just republic. They are based on transformative constitutionalism, which views the Constitution as a living, changing text.

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