

Beyond Uniformity: Reconstructing Rule of Law within India's Multireligious Family Law Framework

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Abstract—The Indian legal system is one of the world's most heterogeneous and complex constitutional democracies in which plurality of legal forms coexists with constitutional supremacy. In India, the family laws, whether religious or state, are still framed through religion-based personal law systems that govern marriage, divorce, succession, maintenance, guardianship, and adoption. Even as these individual laws protect and establish cultural identity and religious freedoms, they also bring into dispute constitutional norms on equality, gender justice, secularism, dignity, and the Rule of Law. This debate about the Uniform Civil Code has been traditionally framed as a contention between equality guaranteed by the Constitution and freedom of religion. Yet this article contends that the real constitutional challenge is not around achieving legal uniformity, but about reassembling the Rule of Law in a way that can reconcile constitutional morality with genuine pluralism. I critically examine the extent to which India's regime of multireligious family law is in harmonious harmony with constitutional principles, including Articles 14, 15, 21, 25, and 44 (Constitution of India). It then investigates the judiciary's work in constitutionalizing family law in relation to transformative constitutional interpretation and progressive jurisprudence. Grounded in the study of landmark judicial judgments, feminist legal theory, legal pluralism, and constitutional morality, the article contends for a principled constitutional reconciliation instead of legal uniformity. Finally, the article suggests that the evolution direction of Indian family law hinges on the re-constitution of Rule of Law as one of the constitutional principles of democracy that not only safeguards equality, dignity, and justice but respects India's diverse society of minorities. **Keywords:** Rule of Law, Family Law, Legal Pluralism, Constitutional Morality, Uniform Civil Code, Gender Justice.

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I. INTRODUCTION

India's constitutional framework reflects a unique and occasionally painful balance between diversity and constitutional unity. The Constitution affirms equality, dignity, secularism, and a right to freedom of religion, culture, and society. This constitutional equilibrium is most marked in the area of family law, where religion-based personal laws continue to govern the most intimate areas of human affairs – marriage, divorce, maintenance, guardianship, succession, and adoption. Unlike the family law systems of many modern constitutional democracies which are based on a single-family law system, India operates under a legally pluralistic system where plural religious communities have their own separate personal laws. Hindu law, Muslim law, Christian law, Parsi law, and customary tribal laws have coexisted and exist as constitutional arrangements. This pluralistic model reflects India's multicultural identity, but has also generated enduring constitutional sensitivities about gender discrimination, discriminatory laws, legal inconsistency, and lack of access to justice. Constitutional validity of personal law is still one of the most contentious issues in Indian jurisprudential history. On the one hand, personal laws have been defended as expressions of religious freedom and minority identity safeguarded within Article 25 of the Indian Constitution. However, certain personal law practices have been criticized for violating the provisions of the Constitution (principles of equality, dignity, and non-discrimination guaranteed in Articles 14, 15, and 21). The debate has initially centered on the establishment of a Uniform Civil Code as provided for in Article 44 of the Constitution. This article, however, argues that it is not just about the binary of legal uniformity and religious autonomy, and that the constitutional challenge lies in this tension. So, the more fundamental question that this exercise poses are if Rule of Law itself can be redeveloped to make it

compatible with constitutional equality within a legally plural and culturally diverse society. Hence, this article explores the relationship between Rule of Law and India's multireligious family law system. It examines whether constitutional morality and legal pluralism can coexist, and if family law reform must be accompanied by absolute uniformity (in legal pluralism, too). It considers the role of transformative constitutionalism and judicial activism in reforming family law jurisprudence toward a more constitutionally accountable approach.

II. CONCEPTUAL FOUNDATIONS OF RULE OF LAW

The Rule of Law constitutes one of the basic principles of constitutional governance. Traditionally associated with the writings of A.V. Dicey, the doctrine asserts supremacy of law, equality before the law, and defense against arbitrary exercise of power. Rule of Law in modern constitutional democracies is not just a formal right but also has constitutional values in character including dignity, due process, accountability, access to justice, and safeguard of fundamental rights. The constitutional system in terms of India cannot be characterized as having anything less than this but, indeed, Rule of Law is rather deeply established in the constitutionally provided constitutional system. The Supreme Court of India has long accepted Rule of Law as a fundamental part of the Constitution. Articles 14, 15, 19, 21, and 32 make up the fundamental normative set-up within which Rule of Law functions in India. The constitutional framework of Rule of Law in India is transformed from procedural legality to substantive constitutionalism. Rule of Law has increasingly been seen by the judiciary to require not just good governance, but also to be constitutional and protect individual dignity. Therefore, laws which have the objective and justification of sustaining discrimination, arbitrariness, or social oppression could violate the Rule of Law under constitutional principles, even assuming their formal legal existence. This broader conception is especially important in family law because family relations have historically been dominated by patriarchal practices, religious customs, and community forms of hierarchical authority. Thus, considering if these personal laws satisfy substantive constitutional notions of equality

and justice is part of the process of constitutionalizing family law.

III. LEGAL PLURALISM AND PERSONAL LAW IN INDIA

Legal pluralism refers to the existence of many legal systems under one political and constitutional regime. India is one of the clearest examples of legal pluralism where state and religion-based personal law systems coexist. The origins of India's personal law system can be extensively traced to colonial governance in India. During British reign, personal relations concerning marriage, succession, inheritance, and religious customs all continued to be managed by their own religious laws through separate laws. The uniformity of criminal and commercial laws eventually emerged, whereas the fragmentation of family law was preserved within religious communities. After independence, the Constitution embraced a secular democratic form that maintained religious personal laws. Hindu law was quite strongly codified in acts such as the Hindu Marriage Act, Hindu Succession Act, Hindu Minority and Guardianship Act, and Hindu Adoptions and Maintenance Act. Yet Muslim personal law remained mostly in the manner that it was at an uncoded religious level, with legal and regulatory intervention being directed at certain sections of the religion. That pluralism had both benefits and disadvantages. Proponents of legal pluralism contend that personal laws safeguard minority identity, cultural self-determination, and religious liberty. They argue that forced uniformity works against constitutional secularism by forcing majority rule into minority communities who have little legal power or resources to challenge it. Critics, however, contend that pluralism in the personal law tends to result in gender discrimination and patchwork legal standards. Women who belong to contrasting faith communities usually enjoy disparate rights against divorce, inheritance, maintenance, guardianship, and marital rights. It is often a paradox of legal pluralism that the right to a legal identity can also have an effect of "differentiated" citizenship, and that this "different" nature produces some of the most fundamental distinctions in which the rights of people in a constitutional sense become contingent on their religious backgrounds. The constitutional problem, then, is that of the issue of how to reconcile

multicultural accommodation with constitutional equality.

VI. CONSTITUTIONAL MORALITY AND REFORM OF THE FAMILY LAW

Constitutional morality has become a keystone of present Indian jurisprudence since the Constitution. The doctrine argues that constitutional governance should be based on constitutional values, not social prejudice, religious orthodoxy, or majoritarian morality. Since 2017 the Supreme Court has been giving more weight to constitutional morality in assessing family law practice and personal law values. Constitutional morality puts dignity, self-rule, freedom, equality, and personal choice before discrimination and oppressive traditions. The question of constitutional morality became glaringly apparent in the case of *Shayara Bano v. Union of India*, whereby the Supreme Court banned instant triple talaq. The Court held that arbitrary unilateral divorce transgressed constitutional guarantees of equality and dignity. It was a critical constitutional turning point in the trajectory from unabashed religious autonomy to constitutional responsibility for one's personal laws. In the same vein, in *Navtej Singh Johar v. Union of India* the Supreme Court reiterated that constitutional morality was at the top of the agenda, above social morality. The case pertains to the criminalization of same-sex relations, but its broader constitutional rationale deeply shapes family law jurisprudence on the grounds that autonomy, dignity, privacy, and personal identification are central constitutional values. Interfaith marriage, choice of partner, live-in relationships, and women's inheritance rights have also been influenced by constitutional morality. Decisions such as *Shafin Jahan v. Asokan K.M.* and *Lata Singh v. State of Uttar Pradesh* consolidated the principle of constitutional protection of individual decisions against societal and familial coercion. The continuing constitutionalization of family law reflects the judiciary's tendency to re-make personal law systems not merely through religious norms but rather through constitutional provisions consistent with the Constitution itself, in attempts to change personal law in accordance with constitutional rules of the people's rights and the rule of law.

VII. THE RULE OF LAW AND GENDER JUSTICE

One of India's most serious criticisms of its personal law is gender inequality. Historically, various personal laws mirrored patriarchal social structures which subordinated women's rights in matters of marriage, succession, guardianship, and family relations. The commitment in Articles 14 and 15 to gender equality under the Constitution directly undermines discriminatory personal regulation in the sphere of personal law. Feminist legal scholars have held that because family law is rooted in religious tradition, it also cannot escape constitutional review in our judicial system. The Hindu Succession (Amendment) Act, 2005 was an important legislative attempt to promote gender equality when it passed as a law that consented to the status of coparcener in joint family property to daughters as coparceners. The Supreme Court's judgment in the case of *Vineeta Sharma v. Rakesh Sharma* further fortified women's rights on inheritance in that it recognized equal coparcenary status regardless of the living status of the father. In a similar vein, the Protection of Women from Domestic Violence Act, 2005 broadened legal recognition of women's rights based on domestic relationships, including live-in relationships. This law was indicative of a more general constitutional inclination toward "substantive gender justice" that was not limited to the traditional relationship of marriage. The abolition of instant triple talaq also showed the judiciary's willingness to challenge patriarchal religious actions in contradiction to constitutional equality. Yet gender inequality persists in a number of family law areas such as inheritance, guardianship, marital rape, maintenance, and reproductive autonomy. Women who are identified as members of minority communities generally bear a double burden arising from both patriarchal social structures and the political sensitivity regarding reforms of minority personal laws. As such, the Rule of Law requires more formal legal equality. It must also have substantive constitutional protection against systemic discrimination within personal law systems.

VIII. PRACTICALITY OF THE UNIFORM CIVIL CODE AND CONSTITUTIONAL REFORM

Section 44 of the Constitution tells the State that it shall endeavor towards the establishment of a Uniform Civil Code for India's people. The question of the Uniform Civil Code continues to be one of the most politically volatile constitutional questions since independence. Advocates of the Uniform Civil Code insist that an institutionalization of family law would enable equality, national unity, gender-based justice, and constitutional secularism. They argue that constitutional rights should not always depend on the religious identity or personal belief of individuals and so laws applicable to people ought to comply with those provisions of modern constitutional law. In several high-profile cases such as Shah Bano, Sarla Mudgal and Jose Paulo Coutinho it was underlined by the Supreme Court whether a Uniform Civil Code was desirable. The Court criticized this in Shah Bano while granting maintenance rights to a divorced Muslim woman under secular criminal law rules. Yet, opponents claim that the debate over the Uniform Civil Code is politically motivated and can endanger minority identity and religious preference. Critics also argue that mere legal uniformity is not always synonymous with substantive equality. A so-called uniform law might in fact still represent dominant cultural attitudes and exclude minority customs. The constitutional challenge will lie in distinguishing between principled constitutional reform and coercive legal homogeneity. Rather than imposing identical legal rules upon all communities, reform should focus upon establishing non-negotiable constitutional principles including equality, dignity, liberty, and gender justice across all personal law systems. Such a policy would save both legitimate diversity and constitutional accountability.

IX. RECONFIGURING RULE OF LAW IN A CONSTITUTIONAL PLURAL WORLD

The trajectory of Indian families might not turn for an era of perfect legal uniformity but one of restating the Rule of Law within the framework of constitutional pluralism. Constitutional pluralism acknowledges that diversity and constitutional equality are not mutually exclusive. Rather than abolishing all personal laws, constitutional governance may set out a common

constitutional framework that constrains legal diversity. Under it, personal laws may continue to exist, but only insofar as they comply with constitutional values of dignity, equality, non-discrimination, and procedural rights. Acts that violate basic interests would be impermissible under the constitution if justified under religion. Such a reconstructed model of Rule of Law would have the following elements:

- Constitutional examination into private law discriminatory practice under personal laws.
- Integration of individual laws with gender justice principles.
- Valuing individual autonomy based on family relations.
- Protection of minority cultural identity within constitutional limits.
- Access to justice expands through family law reform.
- Judicial accountability to maintain a balance between religious freedom and constitutional equality.

This framework also bypasses risks of constitutional fragmentation and coercive legal uniformity. Crucially, rebuilding Rule of Law in constitutional pluralism is going to require recognizing India's social contexts. Judicial intervention alone cannot deliver family law reform. In order to achieve real change, social reform, legal education, legal literacy, institutional readiness, accessibility of legal structure and access to an independent judiciary and meaningful change are still the key to successful change.

Judicial activism, transformative constitutionalism in the service, legal literacy and judicial activism. India's judiciary has become one of the major institutions driving constitutional transformation in recent developments in family law has been the principal driver of the constitutional revolution sweeping through the Indian judiciary. Progressive constitutional reading of the Constitution, progressive interpretation has expanded the courts have increased the concept of dignity, freedom, privacy, respect and privacy rights, dignity, autonomy and equality and equality. Transformative constitutionalism sees the constitution as a living device designed to change the inequitable social order and to provide substantive justice. In the realm of family law, transformative constitutionalism has helped courts challenge oppressive customs and reinterpret legal norms by

invoking values enshrined in the Constitution itself. Judicial interventions on gender-inclusive access by way of inheritance right, live-in status, sexuality and gender equity, interfaith marriage and individual freedom, demonstrate the juridical revolutionaries' role.

Nonetheless, judicial activism also raises questions about judicial activism that cast doubt on the democratic authority of judicial scrutiny and judicial activism: legitimacy as an indicator of legitimacy and overly constitutional intervention in religion is also problematic. Unelected judges who have not received election criteria from the constitution are critics, critics say, should not impose constitutional morality on established social as well as religious tradition, they believe, and unelected judges should not enforce constitutional morality on tradition that pervades in a society and religion that runs deep social and religious traditions. But it is the mission of constitutional courts to protect the wellbeing of our society, constitutional courts have the responsibility to safeguard fundamental rights as well as to prevent unjust judicial adjudication and the danger to constitutional injustice. In structures of inequality and social hierarchy, judicial constitutionalism is inevitable for safeguarding vulnerable groups. The issue is thus one regarding judicial discretion with constitutional compliance.

X. CONCLUSION

Multi- religiously, India's family law is one of the most tortuous legal difficulties for contemporary democratic government. The tension between legal pluralism and constitutional equality cannot be settled just by asking for nothing more than uniformity or religious un-restraint. The real constitutional issue is whether Rule of Law can be re-stitched to reflect diversity without undermining constitutional justice. This article contends that constitutional statecraft should abandon the inflexibility of binary order for a principled model of constitutional pluralism. In such a system, personal laws could continue to exist and yet they only do so within constitutional parameters that are characterized by equality, dignity, liberty and non-discrimination. In the end it seems legal morality must triumph over discrimination and patriarchy. The future of Indian family law cannot depend on the elimination of diversity, but on the constitutionalization of diversity. Rule of Law needs to become not merely a

formal principle of legal uniformity, but an actual constitutional principle that allows the integration of multiculturalism with justice. And only through that kind of reconstruction can India maintain both its constitutional identity and its pluralistic society.

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