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Implication and Challenges Related to Indian Society and Personal Laws: In special Reference to Marriage and Divorce

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Abstract: *There are several legal codes of marriage and divorce that are allowable in Indian society (The Indian Christian Marriage Act, 1872; The Muslim Personal Law; The Hindu Marriage Act, 1955). Although the religious freedom is maintained, it also leads to discrimination based on religion. Focusing on marriage and divorce, the study explores the intricate interdependence between Indian personal laws and social norms. Personal laws, that govern the private aspects of life in a diverse nation like India, draw their origin from religious traditions. These laws pose grave problems regarding equity, gender justice, and uniform legal standards despite being safeguarded by the constitutional promise of religious freedom. This paper delves into the implications of the existence of multiple divorce and marriage laws and the challenges individuals, particularly women, face in navigating them. It also looks at the need for changes in the law, the role of the court, and the debate over a Uniform Civil Code.*

Key Words: Gender Equality, Women's Representation, Uniform Civil Code, Religious Freedom.

Introduction

In India, marriage is a strongly rooted social institution with immense cultural, religious, and familial importance that transcends being merely a union between two individuals. It is often considered to be a

religious duty and an important juncture in one's life, strongly influenced by convention and social habits. Families remain in the forefront of selecting partners for horoscope-based arranged marriages, caste, religion, and social status. Marriage is considered a lifelong bond, and individuals—women especially—are often subjected to societal pressure to bear responsibilities as mothers, wives, and daughters-in-law. Married status greatly influences social prestige, and unmarried persons—particularly women—could be socially ostracized or stigmatized. Social and economic stability are also associated with marriage, especially for women in patriarchal societies. Nevertheless, there is a gradual movement towards love marriages, inter caste marriages, and relationships based on compatibility and respect for each other due to increasing urbanization, education, and exposure to international ideas. The complex social nature of Indian marriage is evident in the many issues still present despite such advancement, such as early marriage, dowry traditions, and gender imbalance in marital responsibilities.

Divorce in India has deep societal implications based on customs, religion, and culture. While divorce is legal, it is often a social taboo, especially for women. Men generally face less societal resistance compared to divorced women, who face tremendous social shame and strong criticism for walking out of the marriage. The families of divorced individuals can also become socially estranged, and this could affect their social standing and other members of the family's possibilities of marrying. There is huge pressure in rural and traditional settings to continue living in abusive or unhealthy marriages to maintain social status and honour for the family. However, attitudes are gradually shifting in urban and educated society, where divorce is being more and more seen as an individual choice and a means of keeping one's mental and emotional well-being intact. Divorce has a big impact on children and family members too, often resulting in emotional agony and taut relationships. Although support organizations such as NGOs, legal assistance, and counselling are expanding, they remain comparatively small and limited in scope, with a focus primarily on urban areas. The social aspects of Indian

divorce thus highlight the urgent need for gender-sensitive policy, greater awareness, and supportive social attitudes.

Every one of the numerous religious, cultural, and ethnic groups that constitute India's plural culture has a distinct set of personal laws relating to matters such as marriage, divorce, inheritance, and adoption. Personal laws find their basis in religious books and ancient practices, primarily consisting of Hindu, Muslim, Christian, and Parsi laws. They provide legal recognition unique to a group, yet they raise several questions and issues in today's Indian society. Discrete personal laws that govern family matters such as marriage, divorce, maintenance, and inheritance are one of the means by which India's legal system accommodates numerous religious denominations. These laws often clash with constitutional values such as equality and non-discrimination, although they ensure cultural and religious identities. India's commitment to diversity is revealed in the existence of numerous personal laws, but this also creates serious legal and social challenges. It remains challenging and ongoing to achieve a balance between constitutional ideals and cultural rights. Any reform, in compliance with the constitutional call for justice, equality, and secularism, has to be inclusive, participatory, and respectful of the interests of disadvantaged groups, especially women.

The Uniform Civil Code (UCC), according to Article 44 of the Indian Constitution, is intended to introduce a uniform civil code that all citizens, irrespective of religion, can apply in lieu of personal laws that follow religion. Because most of the personal laws, be they Hindu, Muslim, Christian, or Parsi, contain discriminatory provisions that oppress women in terms of marriage, divorce, inheritance, and maintenance, the UCC is particularly critical as far as the rights of women are concerned. For example, the constitutional principles of equality and non-discrimination are constantly breached by practices including gender discriminatory guardianship laws, limited inheritance rights, and unilateral talaq. Legal inequalities driven by religious conventions could be eliminated by passing a gender-equal UCC that would ensure women of all religions equal rights in family and property cases.

Minority groups, especially, have resisted the proposal of a UCC on the grounds that it would infringe upon their religious freedom and cultural self-determination. Critics argue that reforms should be initiated by the people through community-driven change and debate, rather than through legislation imposed from above. But supporters argue that for women to experience real gender justice and for a secular, equalitarian Constitution to be realized, civil law has to be uniform. Any step towards the UCC controversy must ensure inclusivity, sensitivity, and a rights-centred approach that empowers women without excluding communities since ultimately it is not just a legal matter but also one that is extremely social and political. In India, private laws trace their origin to colonial legal codes that ratified local customs. India retained this legal pluralism after independence. The Hindu Marriage Act of 1955, the Muslim Personal Law (Shariat) Application Act of 1937, the Indian Christian Marriage Act of 1872, and the Special Marriage Act of 1954 are significant acts of legislation. Despite the fact that such laws promote local tradition, they often replicate unequal gender roles and patriarchal attitudes. Patriarchal values still remain in many personal laws. For instance, women are under more constraints under classic Muslim law, yet men can divorce (talaq) unilaterally. While triple talaq was banned, broader reforms are still needed.ⁱ

Research Questions

- In what ways do religious communities' personal rules governing marriage and divorce concur with or diverge from India's constitutional principles of gender justice, equality, and nondiscrimination?
- What are the primary legal and social barriers that individuals, especially women, need to navigate when negotiating religious personal laws in the process of marriage and divorce?
- How effective is the Special Marriage Act as a secular alternative to personal laws, and what are the impediments to its greater adoption and use?
- What would be the implications of a Uniform Civil Code (UCC) on India's plural society, and how could such reform balance gender equality, legal uniformity, and religious liberty?

Objective

- To examine how gender equality is influenced by personal law, in particular as it concerns the rights of women in marriage and divorce.
- To examine how religious identity and cultural norms influence the way personal laws are interpreted and applied in Indian society.
- To consider stakeholder and public views about India adopting a Uniform Civil Code.
- To suggest recommendations for personal law reforms that balance religious freedom with the requirements of the constitution for equality and legal uniformity.

Review of Literature

A large body of scholarly writings analysing the intersection of gender, religion, and law in India is available in the literature review of this topic. Researchers such as Tahir Mahmood and Flavia Agnes have analysed in considerable detail how religiously based personal laws often embody patriarchal values and generate gender disparity, particularly regarding marriage and divorce. Several reports of the Law Commission of India, including the 21st and 243rd Reports, have suggested constitutionally founded reforms and highlighted the discriminatory and uneven aspects of personal laws. The stigma based on society for divorce, especially for women, and the unequal access to legal redress have been attacked in academically written articles brought out in journals like the Indian Journal of Gender Studies and NUJS Law Review. While noting the constraints of judicial activism in the lack of legislative intent, literature also identifies the judiciary's revolutionary role for advancing gender justice with path-breaking judgments such as Shah Bano and Shayara Bano. Much debate is also seen regarding the **Uniform Legal/Civil Code (UCC)** with some scholars advocating a single code of law to ensure equality and others warning against the potential loss of cultural-religious identity. Overall, the study indicates that it is becoming more and more agreed upon that reforms in personal law need to balance gender equity, religious liberty, and legal uniformity.

Research Methodology

The research article adopts a socio-legal, doctrinal, and qualitative methodology. This approach involves a critical examination of the statutes, legal texts, and landmark court judgments that govern marriage and divorce between India's many religious communities. The juridical source of this research comes from primary sources such as the Indian Constitution, the Hindu Marriage Act, the Muslim Personal Law (Shariat) Application Act, the Indian Christian Marriage Act, and the Special Marriage Act. In order to understand the broader implications of these laws on Indian society, secondary sources such as academic articles, Law Commission reports, judicial notes, and socio-legal critiques are also analysed. To bring in a gender equity approach, the research also considers the social realities that individuals, particularly women, have to deal with while applying personal laws. The research is also enriched by a comparison between the secular and religious legal systems and the ongoing debate about the Uniform Civil Code. This method allows one to gain a complete understanding of the social implications and legal challenges associated with personal laws within Indian marriage and divorce.

Sources of Data

- **Primary Sources:**
- **Statutes:** Hindu Marriage Act, 1955; Muslim Personal Law (Shariat) Application Act, 1937; Dissolution of Muslim Marriages Act, 1939; Muslim Women (Protection of Rights on Divorce) Act, 1986; Muslim Women (Protection of Rights on Marriage) Act, 2019; Indian Christian Marriage Act, 1872; Special Marriage Act, 1954; Indian Divorce Act of 1869; Parsi Marriage and Divorce Act, 1936; The Constitution of India 1950
- **Judicial Decisions**
- **Secondary Sources:**
- Books, journals, and legal commentaries
- Reports from the Law Commission of India
- Articles, editorials, and interviews
- Government publications and parliamentary debates
- NGOs and feminist legal critiques

Discussion

India's private laws have often been criticized for being discriminatory towards women's rights, particularly in the spheres of inheritance, maintenance, marriage, and divorce. These laws, which are primarily based on religious practices and culture, often reflect patriarchal norms threatening the equality and non-discrimination enshrined in the constitution. Ever since the *State of Bombay v. Narasu Appa Mali*ⁱⁱ, judgment, the position of personal laws remained more or less unchanged. In judgments like *Reynold Rajamani v. UOI*ⁱⁱⁱ, the court had once again repeated the same "non-interference" policy and held that personal laws cannot be judicially tested against fundamental rights guaranteed under Part III and Article 13 of the Constitution. The courts, however, recently took a different approach to the issue, often deviating from the policy of non-interference and assessing personal laws on the basis of the criterion of fundamental rights. Both codified and traditional personal laws can be tested for fundamental rights, the courts are saying. Due to the inherent foundation of the constitution, judicial review does not even need Article 13.^{iv} Assuming that an individual is entitled to practice his religion whether it's a tradition or something in scriptures of religion provided these practices are not subject to any fundamental rights, the same power should also hold for personal laws.

For instance, triple talaq, which was in contravention of a woman's right to equality and dignity, allowed a husband to divorce his wife on his own will and instantaneously under classical Muslim personal law, without any legal process or chances of the woman reacting. Despite being held illegal in *Shayara Bano v. Union of India*, this practice illustrated how religious laws could be in contravention of women's fundamental rights.

Even after reforms initiated by the Hindu Marriage Act of 1955, women in Hindu personal law continue to face challenges when seeking equal rights in divorce and property. For example, it is often harder for women to establish cruelty or desertion as a cause for divorce, and social stigma discourages them from going to court. As a result of persistent social and family restrictions, equal inheritance rights are still not effectively enforced despite legal amendments. The Hindu Marriage Act of 1955, the Hindu Succession Act of 1956, the

Hindu Minority and Guardianship Act of 1956, and the Hindu Adoptions and Maintenance Act of 1956 mostly enact the personal laws governing Hindus in India. Although the intention behind these post-independence reforms was to enhance women's rights and legalise Hindu personal laws, a majority of patriarchal customs still exist in the way they are interpreted and practiced. The Hindu Marriage Act, where both spouses can petition for divorce on similar grounds, has provided formal equality to Hindu women within marriage and divorce processes. But women are often barred from effectively availing of these rights through social shame, economic dependency, and bureaucratic delay.^v

A Hindu wife's right to maintenance from her husband even in judicial separation is provided for in the Hindu Adoptions and maintenance Act. In practice, however, there are numerous women who are forced to seek redress through law to get the maintenance to which they are entitled, often facing lengthy court cases and minimal monetary compensation.^{vi}

Previously, Christians have also been gender-biased by setting more demanding conditions for women compared to men to obtain a divorce. Women's agency and rights continue to be affected by these disparities despite advancements. Legislation such as the Indian Divorce Act of 1869 and the Indian Christian Marriage Act of 1872 primarily governs such matters for Christians. Even though the intention behind all these laws was to provide the Christian communities with a legal framework, they have historically stood for gender prejudice and colonial thought, particularly against Christian women.

One of the principal criticisms of the Indian Divorce Act, 1869, prior to amendment in 2001 was that it was discriminatory against women. According to Section 10 of the pre-amendment Act, a Christian man could get divorce on grounds of adultery alone, while a woman was required to establish adultery along with further grounds like cruelty, desertion, or bigamy to be entitled to divorce.^{vii} This obviously went against the principle of gender equality guaranteed in Articles 14 and 15 of the Indian Constitution.

In addition, the limited provisions in their personal laws have often created challenges for Christian women applying for maintenance or alimony. The Criminal Procedure Code's Section 125, a law based on secularism which grants maintenance to abandoned wives, widows, and children, has been applied by courts at times, though its application has not been uniform or systematically enforced across jurisdictions.

In interpreting and sometimes expanding Christian women's rights, the judiciary has played a pivotal role. Indian courts have underscored the need for equality in personal laws in various cases, reiterating that women's basic human rights cannot be withheld due to their religion. However, there remain problems with the absence of comprehensive and modernized reforms in Christian personal laws. Even as Christian personal laws provide family affairs with a legal framework, women have traditionally been disadvantaged in them. A greater reform movement of aligning these laws with constitutional values of gender justice has to be undertaken to ensure equality and dignity to Christian women in India, even as judicial activism and legal reforms have redressed some of the inequalities.

Although becoming increasingly gender-neutral, Parsi personal laws according to the Parsi Marriage and Divorce Act, 1936, nevertheless involve complex legal processes. Particularly in rural or disadvantaged communities, women belonging to all religions oftentimes encounter long-drawn-out legal processes, restricted legal aid access, and a shortage of financial assistance both when separated and afterward.

The constitutional obligation of gender equality pursuant to Articles 14, 15, and 21 is often not satisfied by these personal laws, often missing universal standards. To ensure equal treatment of women across all communities and to respect cultural diversity, several legal commentators and human rights practitioners support modification of personal laws or implementing a Uniform Civil Code (UCC). Personal laws will still pose major challenges to Indian women's realization of full and equal rights until these reforms are made.

Personal laws with respect to marriage and divorce are different in religious communities, including the Hindu Marriage Act, 1955; the

Muslim Personal Law (Shariat) Application Act, 1937; and the Indian Christian Marriage Act, 1872, The Muslim Women (Protection of Rights on Marriage) Act, 2019. These laws, though preserving cultural and religious identities, tend to inculcate patriarchal sentiments and lead to discriminatory treatment, especially of women. For example, the traditional practice of triple talaq by the husband unilaterally in Muslim law, subsequently overruled in *Shayara Bano vs Union Of India And Ors.*, revealed the gender discrimination contained in some of the personal laws. Ms. Shayara Bano and Mr. Rizwan Ahmed were married in April 2002 in Uttar Pradesh. Ms. Bano alleged that her husband 'forced' her family to provide dowry for their marriage. She reported that her husband and his family had drugged, beaten her, and left her sick when her family was unable to pay more dowry.

Instant triple talaq, or talaq-e-biddat, was the practice employed by Mr. Ahmed to divorce Ms. Bano in October 2015. By uttering the word "talaq" three times, a man is able to instantly divorce his wife under the religious ceremony called talaq-e-biddat. The consent of the wife is not required for the practice. In February 2016, Ms. Bano moved the Supreme Court to have polygamy, nikah-halala, and talaq-e-biddat declared unconstitutional. Being a religious custom in Islam, polygamy allows men to marry up to three women at the same time. In nikah-halala, a Muslim woman should marry and divorce her second husband if she has to remarry her first husband after divorce.

For safeguarding Muslim women's rights, the Muslim Women (Protection of Rights on Marriage) Act, 2019 was enacted, declaring instant triple talaq (talaq-e-biddat) as a crime. Any oral, written, or electronic statement of immediate talaq was held to be unlawful and invalid by this provision, which also made it a criminal offense that could land the husband in jail for a period of three years with no chance of being granted bail. The Act, which secured Muslim women rights such as subsistence allowance and custody of minor children and afforded them legal protection against arbitrary divorce, was a significant step towards gender justice under the umbrella of Muslim personal law. Yet some provisions of the Act have condemned it for criminalizing civil issues and allegedly targeting a specific group. The potential abuse of the legislation and the impact of the law on couple

reconciliation attempts are also under criticism. The law, nonetheless, is an innovative attempt to address equality and dignity enshrined in the constitution, empower Muslim women, and harmonize religious practices with basic rights.

As per Ms. Bano, such actions are contrary to rights of livelihood, equality, and non-discrimination. She also argued that the right to freedom of religion did not protect these practices as it can be subject to public order, morality, health, and other basic rights. The Supreme Court directed the Union Government, All India Muslim Personal Law Board (AIMPLB), and women's rights organizations such as the Bhartiya Muslim Mahila Andolan and the Bebaak Collective to file written submissions on the matter by February 16, 2017. Apart from the AIMPLB, all these organizations also filed arguments in Ms. Bano's favour.^{viii}

The judiciary has played a transformative role in challenging discriminatory practices through progressive judgments like *Mohd. Ahmed Khan vs Shah Bano Begum And Ors*^{ix}, highlighting the tension between personal law and constitutional rights such as equality^x and non-discrimination.^{xi} The limited application of the secular Special Marriage Act of 1954 reinforces the disparities and legal uncertainty brought about by the coexistence of multiple legal systems. The debate on Article 44 of the Constitution's Uniform Civil Code (UCC) underscores the need for a homogeneous legal system that safeguards religious diversity and ensures equal rights for all citizens. The imperative need for well-balanced reforms that reconcile personal laws with constitutional precepts and contemporary norms of human rights is thus highlighted in the law discourse.

For couples of different faiths or those who prefer not to abide by religious ordinances, secular laws such as the Special Marriage Act of 1954 offer a choice; however, their implementation is occasionally hindered by opposition from the public and bureaucratic delays. The disparity in enforcement, patriarchal mindsets, and procedural complexity remain serious challenges for women divorcing under all personal law regimes. To truly empower women in India's personal law structure, legal reforms need to be complemented with institutional backing, legal literacy, and popular consciousness.

Recommendations

- India require an all-around approach to reconcile religious freedom with constitutional rights:
- For assuring gender equality, the personal laws need to be modified.
- Promote legal literacy and consciousness, especially among women.
- Support the Special Marriage Act and other secular legislation to be enforced more strongly.
- Facilitate an open debate on the Uniform Civil Code.

Conclusion

Personal laws and basic rights engage in complex manners, particularly when they trespass the thin line between religious liberties and gender equality. During the pre-constitutional era, the paradoxes between the guaranteed rights and personal laws could perhaps have been tolerated, but considering the extent of discrimination they promote now, it cannot be allowed. In India, marriage and divorce rules in the personal sphere occupy the fulcrum of society, religion, and law. For aligning personal laws with constitutional requirements, reform needs to be introduced incrementally and in consultation. The system of personal law governing marriage and divorce in India has significant implications for social harmony, equity, and justice. It maintains discrimination and unequal treatment of rights, particularly for women, while protecting religious and cultural identities. The challenge lies in reconciling the constitutional principles of equality and dignity with freedom of religion. In a modern democratic society, an equitable and inclusive marriage and divorce system must be designed through legal reforms, education, and judicial sensitivity.

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ⁱ *Shayara Bano v. Union of India*, AIR 2017 SC 4609.

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ⁱⁱ AIR 1952 Bom 84.

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ⁱⁱⁱ 1982 AIR 1261.

<https://indiankanoon.org/doc/81548/>

^{iv} *Marbury v. Madison*, 1 Cranch 137 : 2 L Ed 60 (1803). The court has stated that where there is a conflict between ordinary laws and constitutional law, constitutional law would prevail over ordinary law as the purpose of drafting a constitution would be defeated otherwise.

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^v Hindu Marriage Act, 1955, Sections 13 and 13B – Provide grounds for divorce, applicable equally to both spouses.

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^{vi} Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India*, Oxford University Press, 2001.

^{vii} *Ammini E.J. v. Union of India*, AIR 1995 Ker 252

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^{viii} <https://www.scobserver.in/cases/shayara-bano-union-india-triple-talaq-case-background/>

^{ix} 1985 AIR 945.

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