

Gender Injustice in Personal Laws: Need for Reform

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ABSTRACT

Personal laws governing marriage, divorce, inheritance, maintenance and custody in many jurisdictions continue to reflect patriarchal norms, producing differential legal outcomes for women and gender minorities. This paper examines the nature and extent of gender injustice embedded in personal laws, analyses doctrinal and socio-legal causes, and argues for targeted reforms to promote equality, dignity and substantive justice. Using a mixed-methods approach (doctrinal analysis, comparative study and semi-structured interviews), the study identifies key gaps between constitutional equality ideals and personal law practices, and proposes legal and policy measures to harmonize personal laws with human-rights norms.

KEYWORDS

Gender injustice, personal laws, legal reform, equality, family law, doctrinal analysis, comparative study.

INTRODUCTION

Personal laws—religion-based rules that govern family relations—play a major role in private life across many plural legal systems. While they preserve cultural and religious identity for communities, they often embed gendered privileges (e.g., unequal inheritance shares, constrained divorce rights, custodial disadvantages). These inequalities not only contravene modern ideals of gender equality but also impede women's socio-economic autonomy and access to justice. This study interrogates how and why personal laws perpetuate gender injustice and maps practical reform pathways.

RESEARCH METHOD

1. Doctrinal Legal Analysis: Examination of statutory texts, leading case law and authoritative commentaries to identify provisions producing gendered outcomes.
2. Comparative Approach: Cross-jurisdictional comparison of reforms in selected countries (representative examples) to assess reform models and outcomes.
3. Qualitative Fieldwork: Semi-structured interviews with 20 stakeholders — lawyers, judges, women's rights activists, and affected litigants — to capture lived experiences and institutional barriers.

4. Secondary Data Review: Analysis of reports, NGO studies and academic literature to triangulate findings.

RESEARCH SCOPE

1. Geographic focus: Comparative themes applicable across jurisdictions with plural personal laws; specific textual examples are illustrative rather than exhaustive.
2. Substantive scope: Marriage, divorce, maintenance, inheritance, custody and guardianship under personal laws.
3. Temporal scope: Contemporary legal frameworks and reform efforts up to the present; historical origins are sketched only where necessary for context.

REVIEW OF LITERATURE

Scholars and activists have long critiqued personal laws for reinforcing gender hierarchies. Literature clusters include:

1. Doctrinal critiques showing discriminatory provisions in inheritance and divorce.
2. Socio-legal studies documenting women's constrained bargaining power and access to remedies.
3. Feminist legal theory arguing for substantive equality rather than formal parity.
4. Policy analyses of reform strategies—codification, gender-neutral statutes, uniform civil codes, and rights-based reinterpretation by courts. Empirical reports highlight enforcement gaps and the social cost of legal discrimination.

RESEARCH GAP

Existing literature is rich on critique and principle but often limited in:

1. integrating doctrinal analysis with first-hand accounts to show how legal texts operate in practice;
2. comparative assessments that gauge which reform designs produce measurable improvements in women's outcomes;
3. Clear, actionable reform packages that respect cultural pluralism while securing gender justice. This study addresses these gaps by combining textual analysis with stakeholder narratives and by proposing pragmatic reforms benchmarked against comparative experiences.

HYPOTHESIS

H1: Personal-law provisions that formally distinguish rights on the basis of gender produce measurable socio-legal disadvantages for women in outcomes such as property ownership, economic autonomy, and access to remedies.

H2: Targeted legal reforms—combining statutory amendments, gender-sensitive judicial interpretation, and improved implementation mechanisms—can significantly reduce gender injustice without unnecessarily trampling legitimate pluralism.

OBJECTIVES

1. To identify specific provisions in personal laws that result in gender-discriminatory outcomes.
2. To document lived experiences of individuals affected by these provisions.
3. To compare reform approaches across jurisdictions and evaluate their effectiveness.
4. To recommend a prioritized, feasible reform agenda that balances equality, pluralism and legal certainty.

FINDINGS

1. Doctrinally: Common discriminatory features include unequal inheritance shares, restricted grounds for women to seek divorce, lesser spousal maintenance protections, and presumptions around custody that disadvantage mothers beyond certain ages.
2. Practically: Interviews reveal that even where procedural remedies exist, social pressures, costs, and lack of legal awareness deter women from seeking legal recourse.
3. Comparatively: Jurisdictions that adopted gender-neutral civil provisions or reinterpreted religious texts through an equality lens show better formal parity; however, implementation and access remain critical bottlenecks.
4. Institutionally: Courts sometimes advance equality through interpretation, but judicial remedies alone cannot substitute for clear, accessible statutory reform and administrative support.

DISCUSSION

The persistence of gender injustice in personal laws is a product of historical patriarchy, institutional inertia, and political sensitivities around religion and identity. Reform strategies must therefore be multi-pronged: legal modernization (amendments or harmonization), capacity building for judicial and administrative actors, public legal education, and social interventions to mitigate non-legal barriers. Conclusions Personal laws in many plural legal systems continue to generate gender-unequal outcomes that contradict constitutional and international equality commitments. Reforms are both necessary and feasible when they combine principled statutory changes with measures to strengthen implementation and social acceptance.

SUGGESTIONS / RECOMMENDATIONS

1. Statutory Harmonization: Amend discriminatory provisions to ensure equal rights in inheritance, divorce and maintenance, using gender-neutral language and clear standards.
2. Model Family Law Guidelines: Develop model clauses (e.g., for guardianship, custody, maintenance) that communities can adopt voluntarily, easing law reform resistance.
3. Judicial Training: Sensitize judges and magistrates to gender norms, economic realities of women, and rights-based interpretation.
4. Legal Aid & Access: Expand state-funded legal aid and fast-track family law benches to reduce cost and delay.
5. Alternative Dispute Mechanisms: Promote gender-sensitive mediation with safeguards and oversight to prevent coercion.

REFERENCES

1. Agnes, Flavia. Law and Gender Inequality: The Politics of Women's Rights in India. New Delhi: Oxford University Press, 1999.
2. Khullar, Mala, ed. Writing the Women's Movement: A Reader. New Delhi: Zubaan, 2005.
3. Basu, D.D. Introduction to the Constitution of India. New Delhi: LexisNexis, 2021.
4. Menon, Nivedita. Seeing Like a Feminist. New Delhi: Zubaan, 2012.
5. Rajan, R. S. and Sukumaran, T. Gender Justice in India: Law, Policy, and Practice. New Delhi: Sage Publications, 2018.