



HARMONISING RULE OF LAW AND PERSONAL LAWS: THE PURSUIT OF GENDER EQUALITY IN INDIA

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ABSTRACT

The Rule of Law is a philosophical principle, typically interpreted as a safety mechanism against the arbitrary actions of the State. The true essence of the Rule of Law are ideals such as equality, fairness and justice, which not just act as a check on the State's actions but also help achieve a just society as envisioned by the makers of the Indian Constitution. Article 14 of the Indian Constitution embodies the true spirit of the Rule of Law, which guarantees "equality before the law and equal protection of laws".

India is a state deeply rooted in its customs and religion and the same is reflected in its legal framework, especially with respect to personal and family laws. This research paper through Doctrinal Methodology, shall analyse whether the personal laws are aligned with the ideals of the Rule of Law. The purpose for such an analysis is because, this area of law continues to reveal instances of gender-based discrimination which raises questions if constitutional equality is truly realised in personal laws. There have been multiple legislative reforms, amendments and precedents that have attempted to address these issues, but the co-existence of multiple personal laws prevents the uniform application of constitutional principles. A solution that is often presented while addressing these issues is the Uniform Civil Code (UCC), i.e., one law for all, which reflects equality and fairness. This might align with the Indian Constitution, but there are valid criticisms about UCC, undermining the religious and cultural diversity that holds the Indian Society together. By analysing these perspectives, the paper shall examine if India's current legal framework on personal laws aligns with the essence of the Rule of Law, or a reform is necessary to acknowledge equality within the nation.

KEYWORDS: Rule of Law, Hindu Law, Muslim Law, Equality.



HYPOTHESIS

The Personal Laws in India fail to uphold the ideals of the Rule of Law, such as equality and fairness resulting in gender-based discrimination.

SCOPE OF RESEARCH

This research will examine the nuances of Personal Laws in India by assessing them with the Rule of Law principles and the Constitutional guarantee under Article 14 to focus on gender equality. The purpose of this study is to understand how personal laws in India, specifically the Hindu and Muslim communities, echo patriarchal bias and how it limits the ideals of equality and fairness. Amendments and Judicial Precedents will be analysed to understand the legislators' attempt to align with the Constitutional principles.

The research shall give special focus to laws governing inheritance and succession within these communities and a comparative analysis of the same to see the balance achieved by both communities. The jurisdictional scope of this research is limited to India and the study shall analyse the potential of introducing a legal framework such as the Uniform Civil Code, which aims at promoting uniformity and equality amongst all. Thus, this research will be guided by the thick conception of the Rule of Law to assess whether personal laws adhere to equality principles.

METHODOLOGY

The Methodology adopted for this research paper is Doctrinal, since the research primarily involves an analysis of existing legal framework. The research will examine and analyse available material on core aspects such as the Rule of Law and Personal Laws in India. It shall primarily focus on the legal, constitutional and judicial frameworks governing the Personal Laws in India. This research will rely on secondary sources that include legislations such as the codified personal laws and the Constitution of India, judicial precedents advancing gender justice, reports and academic literature to understand the intersection of Personal Laws, the Rule of Law and gender equality.



EXISTING LEGAL SITUATION

The current legal system in India follows a pluralistic system, where we have separate personal law for each community, governed by their distinct practices. They highlight the historical, cultural and religious traditions followed by these communities.

- **The Hindu Law:** The Hindu personal laws on inheritance and succession was primarily codified through the Hindu Succession Act, 1956 which largely favoured the patriarchal society. A significant step that strengthened the ideals of the Rule of Law was the Hindu Succession (Amendment) Act, 2005, which gave daughters equal rights in ancestral/coparcenary property.
- **The Muslim Law:** The Muslim Personal Law (Shariat) Application Act, 1937, is the fundamental legislation that governs the Muslim community. It should be noted that women's rights were mostly defined by a patriarchal interpretation until judgments of the Indian Courts affirmed the unconstitutionality of certain acts and affirmed gender equality and justice under the Constitution.
- **The Constitutional Framework and Judicial Interpretation:** The Constitution of India guarantees equality before the law under Article 14 to all its citizens and directs the nation towards a Uniform Civil Code under Article 44. Judicial precedents such as *Shah Bano v. Mohd. Ahmed Khan* (1985), *Shayara Bano v. Union of India* (2017), *Vineeta Sharma v. Rakesh Sharma* (2020) and more have made an effort to harmonize personal laws with Constitutional principles, particularly concerning women's rights.

RESEARCH QUESTIONS

1. Does the principle of the Rule of Law influence the functioning of Personal Laws in India, particularly in matters of Inheritance and Succession concerning gender-equality?
2. What are the reforms needed within Personal Laws to uphold the Rule of Law and promote Equality while respecting India's religious and cultural diversity?



INTRODUCTION TO THE RULE OF LAW

A concept that has been established and acknowledged by many nations is the Rule of Law, where importance is given to 'Law' over arbitrary powers and actions of the state. This concept is derived from the Latin term 'La Legalite', which means a government according to the law and not on the whims of men holding these offices.¹ The Rule of Law strives to protect and promote law as reiterated by Dr. Rabindra Kr. Pathak, "There is an element of assurance that is deeply inherent in the concept of rule of law. A state where rule of law is "protected and promoted" is also taken to be a state where people are assured of their basic rights."² He further states that, "If respected by government, the Rule of Law inspires loyalty among citizens. By observing the Rule of Law, a nation demonstrates that it values individuals and their importance. Conversely, by ignoring the Rule of Law, a nation acts arbitrarily, capriciously and discriminatorily and illustrates that race, gender, wealth and power are the values most important to the regime. In the end, ignoring the Rule of Law produces an elitist society."³ This demonstrates that a healthy nation should implement the ideals of the Rule of Law to build assurance and trust amongst its people.

The most recognized interpretation of the Rule of Law is by Professor Dicey, who states three fundamental principles⁴:

- The first principle, "no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. In this sense the rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary, or discretionary powers of constraint."⁵ This emphasises the supremacy of law where without a clear violation of law no one can be punished.
- The second principle, "every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals."⁶

¹ Rabindra Kr. Pathak, The Virtue of Rule of Law, 7 RMLNLU L.J. 1, 2 (2015).

² Id.

³ Id. at 1.

⁴ A.V. Dicey, An Introduction to the Study of the Law of the Constitution (10th ed. 1959).

⁵ Paul Craig, The Rule of Law, in House of Lords Select Committee on the Constitution: Sixth Report, HL Paper 151 (2006–07)

⁶ Id.



This supports equality where everyone is subject to the law but does not consider the situations where the law itself can be biased.

- The third principle states that, “the unwritten constitution in the UK could be said to be pervaded by the rule of law because rights to personal liberty, or public meeting resulted from judicial decisions, whereas under many foreign constitutions such rights flowed from a written constitution”⁷ This is more a UK principle which highlights that the fundamental rights are developed through its courts and not the constitution.

The Modern Jurisprudence often interprets the Rule of Law as “thin” and “thick” conceptions. While the thin conception of Rule of Law is often viewed as a procedural concept focusing on the restrains on state actors where it involves determining the entities who can make laws, how these laws must be public record and readily accessible/available, that laws must treat similarly situated people equally, laws should be clear and consistent, generally prospective and not retroactive in nature and these laws must be reasonable such that the majority of the people should accept them.⁸ The thick conception reasoned by Lon Fuller⁹ and Ronaldo Dworkin¹⁰ insist that laws must incorporate elements like morality and fairness.

Joseph Raz observes that, “If Rule of Law is the rule of the good law, then to explain its nature is to propound a complete social philosophy. But if so, the term lacks any useful function. We have no need to be converted to the Rule of Law just in order to believe that good should triumph. A non-democratic legal system, based on the denial of human rights, of extensive poverty, on racial segregation, sexual inequalities and religious persecution may in principle, conform to the requirements of the Rule of Law better than any of the legal systems of the more enlightened Western democracies.”¹¹ This observation further highlights the need for law to conform to ideals such as morality and equality rather than mere compliance with procedural validity or governments recognition, since it could lead to exclusionary practices and potential discrimination against its people.

⁷ Id at 5.

⁸ Randall Peerenboom ed., *Asian Discourses of Rule of Law: Theories and Implementation of Rule of Law in Twelve Asian Countries, France and the U.S.* (Routledge Curzon 2004).

⁹ Lon L. Fuller, *The Morality of Law* (1969).

¹⁰ Ronald Dworkin, *Law's Empire* (1986).

¹¹ Id. at 1.



Justice B.V. Nagarathna has expressed that “Law is not just about rules; it is about purpose. It is about creating conditions in which human dignity can flourish. It is also ensuring that every person regardless of wealth, status, caste, gender or belief is treated as an equal subject before the law”¹² which suggests that the Rule of Law is required for the advancement of rights, justice and equality. The Constitution of India has recognised the ideals of the Rule of Law in Article 14, which ensures that the law should treat everyone equally, irrespective of their gender, race, religion or culture. Interestingly, when it comes to guaranteeing equality within personal laws, issues still persist and this tension will be explored further in the following chapters.

PERSONAL LAWS IN INDIA

Personal laws in India have risen from practices specific to communities where intimate aspects of life, such as marriage, divorce, succession, inheritance and adoption is considered. The laws of the nation usually regulate the relationship between the state and the individual. Personal laws, on the other hand, have evolved over time, with prominence being given to religious, cultural and customary practices within each community.

Scriptures and literature during the Vedic period have attempted to balance gender roles in society, though this did not truly reflect equality. During this era, women were considered as ‘Ardhangini’, where they were given social recognition in rituals and participated in religious practices as a harmonizing partner of their husband, which shows acknowledgement of their role in society and gives them due importance.¹³ Over time, their individuality slowly depleted as reflected in this section, “Her father protects her in childhood her husband protects her in youth; her son protects her in age; a woman is never fit for independence. When she becomes a widow without sons then her husband's kinsmen are referred to her father's side to protect her. As a final resort, the duty devolves upon the king” highlighting the early patriarchal notion and the position of women in society.¹⁴

¹² Duty of Courts to Enforce Rule of Law Without Fear or Favour, PTI (Sept. 6, 2025) (statement of Justice B.V. Nagarathna).

¹³ Jyoti Rattan, *Women & Law: International Law, Domestic Jurisprudence*, United Nations, Human Rights of Women (2d ed. 2025).

¹⁴ Devendra, Kiran. “Status and Position of Women in India”, Shakti Books, New Delhi, 1985.



Since then social evils have crept into the society, especially during the 19th century, social reformers like “Raja Ram Mohan Roy, Iswarchandra Vidyasagar, M. G. Ranade, Mahatma Phule, Lokhitwadi, Durgaram and others from all parts of the country raised their voice against some of the unjust practices like “sati”, the ill-treatment of widows the ban on widow marriage, polygamy, child marriage, denial of property rights and education to women.”¹⁵, which reflects the patriarchal structure in the name of practices and religion for women in the society. This raises a question, does society recognise woman as an equal companion or not? As per the instances stated above, it suggests that society has failed to do so. The society failed to acknowledge that women are not inferior to men, rather she is also gifted with equal mental capacities and should have the same rights such as freedom, liberty and participation in all activities.¹⁶ At the same time, in the name of religion and customs, men have enjoyed a sense of superiority over women, which contradicts the ideals of the Rule of Law and balanced community.¹⁷ In practice, it is often observed that personal laws have historically favoured men while restricting their counterparts by reinforcing patriarchal norms.

Women under the traditional Hindu practices have often suffered due to concepts like early marriages, sati for widows and limited inheritance rights. Even post codification of Hindu laws, such as The Hindu Succession Act, 1956, bias towards women still existed, especially for ancestral estates where legal heirs for such properties were only male descendants.¹⁸ It was only by virtue of the Amendments that daughters were recognised as legal heirs, which tackled the imbalance by granting daughters equal rights.

The Muslim personal law, on the other hand, has been shaped by the principles of Sharia. These laws were intended to regulate familial and social relations within religious frameworks. Just as the Hindu law, historically, these laws have favoured men, granting them a type of immunity and authority over crucial personal matters such as marriage and divorce. This can be observed in practices such as the Triple Talaq (Talaq-e-Biddat), which provides a unilateral right to the husband to divorce his wife by uttering “talaq” three times. The power he holds can be further affirmed by the fact that this can be done without her knowledge or consent and he need not

¹⁵ Id at 13.

¹⁶ Id.at 13.

¹⁷ Id.at 13.

¹⁸ Avadhani, C.L., 2024. *The Evolution of Hindu Law and the Conceptual Framework in Indian Constitution*. International Journal of Multidisciplinary and Current Educational Research (IJM CER), 6(4), pp.267–285.



provide valid reasons or justifications for the same. There is a clear violation of the ideals of the Rule of Law by virtue of the arbitrary action by the husband. This was later declared unconstitutional and illegal by judicial intervention.¹⁹ Other practices like polygamy and nikah halala also allow men a unilateral control over marriage and divorce, which places women at a disadvantageous position in society.

Over time, religious and customary practices were codified into Personal Laws and it should be noted that the very process of codifying personal laws subjects them to Constitutional scrutiny. This implies that provisions within the personal laws should not contradict the principles enshrined in the Constitution of India. It is arguable that practices and customs stated above should satisfy the constitutional principles, else they would be considered discriminatory, irrespective of being legitimised by virtue of codification. There have been various social evils within society that have sought legitimacy under the pretext of “religious customs” such as dowry, triple talaq and child marriage. Such requests, if complied with, would give these practices protection under the law, which would be absolutely unjust, as such customs do not align with fundamental human rights and are not an essential part of any faith.²⁰

In India, personal laws reflect deep-rooted traditions within the nation, with many practices that conflict with the principles of the Rule of Law and the Constitutional guarantee of Equality. The need to respect and recognise religious identity shouldn't override or justify the discriminatory practices, which is why personal laws must undergo reforms to uphold the principle of the Rule of Law and to balance the constitutional guarantee of equality to ensure neither is compromised in the pursuit of justice and gender equality.²¹

INHERITANCE & SUCCESSION UNDER PERSONAL LAW

Inheritance is a concept where the property devolves from a deceased individual to rightful legal heirs either by virtue of a Will or statutory provisions. According to Black's Law Dictionary, “inheritance is defined as: a.) Property received from an ancestor under the laws of intestacy; b.) Property that a person receives by bequest or devise.” Succession is the

¹⁹ Shayara Bano v. Union of India and Ors. AIR 2017 SC 4609.

²⁰ Government of India, Law Commission of India, *Consultation Paper on Reform of Family Law* (31 Aug. 2018).

²¹ *Id.*



acquisition of rights, title or ownership in the property by inheritance under the laws of descent and distribution.²²

There are two kinds of Succession: a.) Intestate Succession, which operates when an individual dies without executing a Will. This results in the distribution of the estate as per the personal laws or any other statute governing the same. b.) Testamentary Succession, which arises due to an instrument called 'Will', which designates the heirs to the estate.

This paper will further discuss the concept of Intestate Succession under the Hindu and Muslim Personal Laws to confirm if they align with the principles of the Rule of Law and Equality.

HINDU LAW

Inheritance under the Hindu law was primarily governed by two schools: the Mitakshara School of Law and the Dayabhaga School of Law. In India, the Mitakshara school of law is widely followed, where male heirs would typically inherit the ancestral estate. The concept of coparcenary is followed, where exclusive rights were recognised by birth. This right was enjoyed by the male members of the family where an uninterrupted line of descent from common ancestry existed. The Dayabhaga School of Law followed in Bengal and parts of Assam, where during the lifetime of the father, he would retain full ownership and only upon his death would the said property would devolve to his heirs. The concept of birth rights does not exist under this school and female members of the family are also part of the coparcenary, unlike the patriarchal framework of the Mitakshara School of Law.

Mr. Charu Chandra Biswas, the then Law Minister, had expressed his opinion on the codification of Hindu law that "We male members of this house are in a huge majority. I do not wish that the tyranny of the majority may be imposed on the minority, the female members of this house."²³ His concerns were valid since the codified law on inheritance later followed a gender-based hierarchy where the male descents enjoyed coparcenary rights while excluding

²² Black Law's Dictionary, 8th ed., 2004.

²³ The Constituent Assembly of India, (Legislative) Debates Vol.VI 1949 Part II in 174th Law Commission Report, para 2.6.



women from joint ownership. This was widely criticised throughout India for its exclusionary and discriminatory practice against women.

The Law Commission, through its 174th Report, addressed these issues and made recommendations which led to revolutionary progress, the 2005 amendment of the Hindu Succession Act, 1956. This Amendment gave women coparcenary rights by birth to ancestral properties, eliminating the discriminatory practice within the Hindu Personal Law. This was truly a step towards recognising Article 14 of the Indian Constitution and the thick conception of the Rule of Law, giving daughters the same rights and liabilities as sons. The Statement of Objects and Reasons of the Hindu Succession (Amendment) Act, 2005, recognised the exclusion of daughters from the coparcenary estate and considered it oppressive/discriminatory in nature which violated the fundamental right of equality guaranteed under the Constitution.²⁴

It was further affirmed by the Supreme Court of India, where the Court clarified in *Prakash v. Phulavati*²⁵ that the right to coparcenary property shall apply to all living daughter of living coparceners as on 9th September 2005, irrespective of their date of birth and in *Vineeta Sharma v. Rakesh Sharma*²⁶ and *Prasanta Kumar Sahoo & Ors. v. Charulata Sahu & Ors*²⁷ the court affirmed that the provisions under the 2005 Amendment of the Hindu Succession Act, 1956 is retrospective in nature and that daughters have equal coparcenary rights in ancestral estates which ensured an impartial application of the amendment. Thus, the evolution of inheritance under Hindu law clearly establishes a gradual shift from patriarchal control and exclusion towards a more inclusive law which ensures gender equality and reflects harmonization of personal law with Constitutional principles.

MUSLIM LAW

The Muslim law on Succession and Inheritance can be traced back to the Holy Quran, along with customs having the Prophet's approval and recognition within the Islamic jurisprudence.²⁸

The Muslim community largely consist of two sects, mainly Shia's and Sunni's and in India

²⁴ Hindu Succession (Amendment) Act, 2005, Act No. 39 of 2005, India.

²⁵ *Prakash & Ors. v. Phulavati & Ors.* AIR 2016 SC 769.

²⁶ *Vineeta Sharma v. Rakesh Sharma & Ors.* (2020) 9 SCC 1.

²⁷ *Kumar Sahoo & Ors. v. Charulata Sahu & Ors.* (2023) 9 SCC 641.

²⁸ Mulla, *Commentary on Mohammedan Law* (Dwivedi Law Agency, Allahabad, 2006.)



the Sunni sect has more prominence. Under the Sunni law of inheritance there are two classes of successors (a) Relations by blood and marriage & (b) Unrelated successors. As per the Quran these successors have a fixed and specific share allotment such as²⁹:

Share allocation for children:

- If both sons and daughters coexist, each son will inherit double the share of each daughter ('A' leaves 1 son and 1 daughter to an estate worth 3 Acres, the estate will be distributed as 2 Acres to the son and 1 Acre to the daughter).
- If it's just 1 son, he inherits the entire estate after giving the fixed shares due to heirs like wife, parents, etc. If more than one son exists, after distributing the fixed share due to other legal heirs, they will split the rest of the estate equally amongst themselves.

Share allocation for spouses:

- The wife shall inherit $\frac{1}{4}$ if they had no offspring and $\frac{1}{8}$ if they had issues.
- The husband shall inherit $\frac{1}{2}$ if they had no offspring and $\frac{1}{4}$ if they had issues.

Share allocation for parents:

- Both parents inherit $\frac{1}{6}$ if their child had offspring, if their child had no issues but siblings then the mother gets $\frac{1}{6}$ and the father's share is determined after the fixed shares are distributed and finally, if neither offspring nor siblings exist, then the mother inherits $\frac{1}{3}$ and the father's share is the remaining portion of the estate.

The current framework reflects a system of fixed shares allocation for each member of the family. It may be observed that, the share inherited by women is comparatively lower than their male counterparts. In the *Outlines of Mohammedan Law*, Fyzee quotes Imam Ja'far al-Sadiq when this disparity is questioned, who said "A female is excused from the performance of many duties imposed by law upon a male, such as service in the holy wars, maintenance or support of relations and payment of expiatory fines and for this reason her share of inheritance has been justly limited to half the portion of a male."³⁰ At the same time, it is vital to acknowledge that Muslim personal law on inheritance and succession has historically recognised proprietary rights of women at a stage when such acknowledgement was limited in other legal systems.

²⁹ Asaf A.A. Fyzee, *Outlines of Mohammedan Law* (Oxford University Press, New Delhi, 4th edn.,1974).

³⁰ *Id* at 29.



However, in current socio-economic context, the earlier reasonings may not correspond to present realities and that these provisions require reconsideration to uphold the principles of Rule of Law.

ANALYSIS

A broad overview of these personal laws on inheritance reflects the transition of the Indian society from a staunch patriarchal culture to a more inclusive framework. The Hindu law has been through significant changes and amendments, particularly The Hindu Succession (Amendment) Act, 2005, which aims to ensure equality amongst all Hindus by granting equal rights in coparcenary properties to both sons and daughters. Whereas, the Muslim Personal law has always had a structured share allocation for the purpose of inheritance, but these allocations reveal a more conservative approach, where women receive comparatively lesser share than their male counterparts.

The Supreme Court through various judgments has emphasised that Personal laws should not be immune to constitutional scrutiny. In *Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil*, the court affirmed that “.....after the Constitution came into force, the right to equality and dignity of person enshrined in the Preamble of the Constitution, Fundamental Rights and Directive Principles which are a trinity intended to remove discrimination or disability on grounds only of social status or gender, removed the pre-existing impediments that stood in the way of female or weaker segments of the society”³¹ thus, observing constitutional empowerment of women.

This was further affirmed in *S.R. Bommai v. Union of India*, where the Supreme Court held that, “The personal laws conferring inferior status on women is anathema to equality. Personal laws are derived not from the Constitution but from the religious scriptures. The laws thus derived must be consistent with the Constitution lest they become void under Article 13 if they violate fundamental rights. Right to equality is a fundamental right.”³² These judgments of the Supreme Court clarify that religious practices under the personal laws cannot justify

³¹ C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil, 1996 8 SCC 525.

³² S.R. Bommai v. Union of India, (1994) 3 SCC 1.



discrimination against women which is protected fundamental rights governed by the Rule of Law.

The Karnataka High Court in *Samiulla Khan & Others v. Sirajuddin Macci* made an observation that, “Women in India are all equal but the Personal Law according to religion makes difference among the women though they are Citizen of India. When under Hindu Law a daughter is given equal status and right in all respects enjoying rights as that of son, the same is not so under Mahomedan Law.”³³ This reasoning highlights the need for recognising the discrimination within personal laws since there is apparent inconsistency with inheritance laws in our nation. Although the Muslim law recognised women’s inheritance rights much prior to the Hindu law, the structure still requires necessary amendments to ensure equal share allocation to all based on gender parity.

The Muslim law on inheritance is not just complex with various criteria for the purpose of inheritance but also may reflect elements of gender disparity when examined through the principles of the Rule of Law. The notion that male relatives usually maintain their female relatives during all stages of life is an argument usually observed when this disparity is questioned. This rationale was examined as early as 1974 by the Committee on the Status of Women in India where they state that, “Unequal economic, social and political status and position of women is an outcome of patriarchy and the deeply entrenched sociocultural stereotypes about women. This is sometimes perpetuated by laws, regulations and policies which do not sufficiently address the subordinate status of women.”³⁴ The Committee highlights the need to improve the status of women within the society by making legislative amendments that address such discrimination, else the position of women will be dependent on their male counterparts leaving them vulnerable.

The Supreme Courts ongoing deliberation in *Dharma v. State*, has expressly framed the question, “Whether Muslim women have right to claim equality in succession in view of the mandate of Constitution of India under Articles 14 and 15 thereof in the light of Article 44”³⁵

³³ *Samiulla Khan & Others v. Sirajuddin Macci*, RFA NO.935 OF 2020 (2025 LiveLaw (Kar) 13).

³⁴ High Level Committee on the Status of Women in India, Report of the High-Level Committee on the Status of Women in India (Ministry of Women & Child Development, Government of India, June 2015).

³⁵ *Dharma v. State*, Diary No. 21450/2016, 2024 LiveLaw (SC) 396 (Supreme Court of India).



which clearly reflects the judicial recognition of these inconsistencies and the need for possible reforms that would align with the constitutional provisions.

Justice B.V. Nagarathna, in her address at the Jharkhand Judicial Academy, emphasised that, “The narrative of women's empowerment would be incomplete without referring to the aspect of her right to property, including economic power in a broad sense of the term which includes the right to livelihood also. Women's access to property is a more crucial determinant of an equitable gender pattern of wealth distribution, household bargaining power and decision making.”³⁶ She further stressed that, “Laws designed to overcome systemic discrimination against women, particularly in relation to the right to property, must be accepted by the male members of the family and by the society at large.”³⁷ conveying that gender equality can be achieved by legislative reforms and it requires societal acceptance thereby, ensuring gender equality and dignity that a woman rightly deserves.

Justice B.V. Nagarathna further remarked that, “Talking of the Constitution of India, we are all reminded of Article 44 which speaks of uniform civil code. It is an ideal to be achieved because our country which comprises persons belonging to different religions, communities, ethnic and tribal groups confront complexities of great magnitude. While much is to be achieved in this regard as Article 44 is a DPSP, its absence cannot be a reason to escape the constitutional discipline anchored in part three of the Constitution, particularly in Articles 14 and 15 on the aspects of gender equality. Article 15(3) of the Constitution in fact permits special rights and protections to be extended to women in order to secure that they are protected from any form of manifestation of discrimination. Such constitutional protection and affirmative action ought to be borne in mind while enacting, applying or interpreting any law which has implications on the rights of women, even when such laws are based on the personal law system”.³⁸ This observation further supports the need for exploring gender neutral laws by introducing Uniform Civil Code, where individuals will not be able to take shelter in the name of religion and religious practices, placing women on an equal footing. Thus, the legislators should strive to

³⁶ Justice B.V. Nagarathna, Speaker, “Women’s Rights to Property: Road to Empowerment,” Address at the Jharkhand Judicial Academy, reported in LiveLaw (12 Oct. 2022).

³⁷ Id.

³⁸ Id at 35.



achieve laws reflecting gender parity which ultimately reflects the ideals of Rule of Law, leading to a healthy society.

This was earlier discussed in *Mohd. Ahmed Khan v. Shah Bano Begum* where the Supreme Court held that “Article 44 has remained a dead letter”³⁹, stressing that a common civil code would help in the advancement of gender justice and national integration. Similarly, the Karnataka High Courts in *Samiulla Khan & Others v. Sirajuddin Macci*⁴⁰ was of the opinion that a law on Uniform Civil Code and its enforcement would give justice to women, achieve equality of status and opportunity for all and shall accelerate the dream of equality among all women in India irrespective of their caste and religion. The Court further reiterated that our Country needs a Uniform Civil Code in respect of Personal Laws and Religion, only then the object of Article 14 of the Constitution will be achieved.

These observations highlight that inheritance rights are not just legal entitlements but essential for achieving gender equality and balanced power dynamics. When examined through the lens of the Rule of Law, no doubt the Muslim personal law has always allocated a share to women within the family a degree of imbalance between genders may still persists, thus being inconsistent with the thick conception of the Rule of Law and the constitutional principles. The need of the hour is reform of discriminatory personal laws within the nation. This can be achieved by simplification of heir classifications, ensuring equal allocation of shares and aligning it with the constitutional principles. Such an attempt to reform would bring India closer to the commitment to gender justice and the constitutional vision expressed in Article 44, which aims to ensure uniform civil rights to all leading to equality and upholding the Rule of Law. Thus, reforming inheritance laws in India would not only uphold the constitutional vision of equality but also reaffirm India's commitment to the Rule of Law as an evolving principle of justice.

³⁹ *Mohd. Ahmed Khan v. Shah Bano Begum*, 1985 AIR 945, 1985 SCR (3) 844.

⁴⁰ *Samiulla Khan & Others v. Sirajuddin Macci*, RFA No. 935 of 2020.



CONCLUSION

The hypothesis proposed in this study that **the Personal Laws in India fail to uphold the ideals of the Rule of Law, such as equality and fairness resulting in gender-based discrimination, stands partially proven.** The Hindu Succession (Amendment) Act, 2005 reflects a constitutional shift towards equality yet the Muslim personal laws continue to reflect gender-based differentiation towards women. India must ensure that no individual's rights are compromised by age-old discriminatory customs or patriarchal traditions.

The Rule of Law is not just a tool for mere legal restrictions and procedures, its true essence signifies values such as equality, fairness and justice for every individual. For India, it is this principle that needs to be incorporated into personal laws to ensure that the Constitutional rights are upheld. Meaningful reforms in the inheritance laws can help bridge this gap which would lead to harmonising personal laws with the principles of the Rule of Law. Ultimately, the goal is to have a legal framework that promotes equality without undermining the religious beliefs of such a diverse nation.

SUGGESTIONS

The earlier discussions reveal that the Constitution of India and the thick conception of the Rule of Law guarantee equality to all, while the coexistence of diverse personal laws creates challenges to uniformly realise these ideals. This tension has been persistent within the nation and a gradual shift by virtue of reforms is observed to tackle issues that exhibit discrimination and gender bias. Thus, it is essential to strike a cautious balance between respecting religious and cultural diversity on one side and ensuring individual rights, especially for women, so that, in the guise of tradition or faith, it must not be compromised. The following recommendations will attempt to address this conflict and move towards harmonizing personal laws while emphasizing on Rule of Law and Constitutional principles.

- Standardise the inheritance laws across India, ensuring that all heirs, irrespective of gender or religion receive an equal share.
- To subject all Personal laws in India to constitutional scrutiny, ensuring compliance with Article 14 and the broader ideals of the Rule of Law.



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- Muslim law on inheritance requires reforms by simplifying heir classification and aligning the framework with other personal laws to ensure fairness and equality for all.
 - The personal laws in India require periodic reviews to recognise the dynamic evolution of the societal norms, morality and gender position and thus these changes need to be reflected in the laws as well.
 - Increase the representation of women in areas responsible for drafting, reviewing and reforming personal law legislation to ensure gender sensitive and inclusive law making.
 - Develop a uniform legal framework for areas such as inheritance, marital rights, adoption and guardianship without immediately implementing a complete Uniform Civil Code, so that all communities across India can gradually recognize these rights as an essential for every citizen of this nation. Thus, a gradual shift towards gender-neutral laws, ensuring discrimination does not persist and gender parity is upheld.
 - Such legal reform should also be accompanied by education and awareness initiatives that will help resonate these principles into social reality.