

Changing Dynamics of Gender Biasness and Laws in India Vis a Vis Uniform Civilcode

Chhavi Ahlawat¹

Abstract

India is a multi-religious nation with male-centric laws since beginning, because of the patriarchal notion of the society. Due to existence of different religions, there are different personal laws governing them dealing with family and proprietary issues. These personal laws include the lawfully recognized customs, which are gender-bias, few of them got repealed with time while some still exist. One landmark example is the recent abolition of Triple Talaq issue, a totally male-centric heinous custom, taking away liberty of woman. Yet, there has been a minor improvement in gender equality in recent years. When it came to women's economic involvement and opportunities, health and survival, and rankings, it was still at the bottom. This indicates that women are still underrepresented in public spaces and that majority lack stable employment. Even while India has witnessed important rulings in recent years that promote greater gender equality, the key question remains: Have gender perceptions actually evolved in our nation? We need to understand the changes in Indian society's attitudes regarding traditional gender roles, types of opposition these changes may encounter, and what may be done to make these changes even more pronounced. Most personal laws are unwelcoming and inconsiderate to the requirements of women. Although the Indian Parliament has frequently worked to remove discriminatory provisions from personal legislation, yet there is still no fairness in how these civil rights are applied. For many years now, women have been the victims of countless crimes against humanity, social injustices, and cultural standards in the context of family, the workplace, and other spheres. The Uniform Civil Code, which would grant women equal rights and equitable treatment while removing long-standing conventions that are no longer relevant in today's society, is considered to be one of the key tactics for promoting gender equality in real sense. *Keywords: Patriarchal notion, personal laws, gender equality, discriminatory provisions, Uniform Civil Code,*

INTRODUCTION

Sometimes the visible results of social change are evident, sometimes they are not. Not all women and all areas of life are experiencing change in the same way. Historically, both men and women were treated equally in terms of status and renown during the Rig Vedic period. Scriptures portray women as fearless warriors who uphold their equality and are more than just their partners. Throughout the early Vedic era, women had access to education. The "Swayamvar" system let women to select the spouses they wanted. Women were respected and loved despite patriarchal culture that predominated in ancient India. Yet, women's prestige and standing in society deteriorated throughout time. Because women were in such a precarious position, society began to create gender inequity. Throughout Vedic Period (about 1500–1000 B.C.), women were treated with same reverence as mother goddess (Shakti), exhibiting a high ability for sacrifice and tolerance.

¹ Research Scholar, Department of Law, Central University of Haryana, Mahendragarh, Contact No. +919667217949.

Every religion in India accords women a special place, which effectively blinds the public to the long-standing practice of many damaging acts (including those that are physical and mental) against women. India is well renowned for serving as an example of "harmony in diversity." Discriminatory practices in early Indian civilization included sati concept, nagar wadhu, dowry ritual, slaughter of female infants, purda system, devadashi system, and others. The patriarchal nature of society and the male superiority mindset are to blame for all of these wrongdoings. The male family members significantly limited women's sociopolitical rights, such as their autonomy, right to employment, and right to education. Women's sociopolitical rights, such as their freedom to make decisions, work, and pursue an education, were severely restricted by the male family members.² Some of these practices have been discontinued as a result of the tolerance of people in society who speak out against harmful practices towards women. Due to the amazing and tolerant Indians who spoke out against discriminatory behavior towards women, many of these awful customs have been abolished and made significant contributions to their advancement in Indian society. This civilization embraces the idea of equality in some contexts while categorically rejecting it in others. For instance, women were believed to be doomed to domestic violence. Violence seemed so commonplace that it was hardly even recognized as such. But, there is a notable change in how women view the violence that they are experiencing now. They are cognizant of the violence and understand it. Also, the legislation has provided people with a means of resisting the violence.³ Women's roles and family life too are not any longer restricted to the four walls of private residences. Women are entering the workforce and receiving education as well.

EMPOWERMENT OF WOMEN THROUGH UNIFORM CIVIL CODE: CHALLENGES AND ISSUES

For a very long time, women had to strive to get past obstacles that had been there for a very long time and enter territory dominated by men. History of ancient India attests to the privilege accorded to women. Yet, with introduction of new religious traditions in their personal laws, women lost their standing and were further pushed to the margins. Gender-based discrimination in personal laws reduced their social status. To increase their dominance, British enacted a number of laws. Members of the Constituent Assembly discussed necessity for a single civil code to be adopted by country to abolish discrimination based on gender and religion throughout their discussions. Yet, it was incorporated into Part IV of Indian Constitution in hopes that it would someday be enforced under more favorable conditions. Despite this, there are still difficulties in their emancipation. Women need to work hard to get past obstacles that have prevented them from entering a domain that has been dominated by men for millennia.⁴ In addition to other factors, crimes against women that have not been prosecuted are the main cause of women's problems. The ability to make judgements, the freedom to move about, access to education, employment opportunities, and media exposure are still lacking for women. There are several factors that contribute to the intricacy of India's issues with women's rights. The immediate empowerment of women in India will result from the resolution of these issues.

- One indication of the stigmatization of women's status is harsh treatment as a result of personal law inequalities, notably with regard to marriage and property rights.

² Sanket Prajapati, "A Study on Relevance of Indian Constitution and Uniform Civil Code," 1 *Revista Review Index Journal of Multidisciplinary* 11-5 (2021).

³ The Protection of Women From Domestic Violence Act, 2005 (Act 43 of 2005).

⁴ Md. Baharul Islam, "Women Empowerment and Gender Justice," 9 *Research Journal of Humanities and Social Sciences* 683 (2018).

- No equitable access to schooling.
- The traditional dominance of male parents, husbands, and other family elders usually restricts the extent to which women can exercise their legal rights. Changing societal attitudes have a significant impact on how these problems manifest.
- Not all women are treated equally. In the domains of power, job, and education, women's equality is still a personal rather than a communal success. The primary problem in India is gender disparity. Gender inequality manifests itself in several ways. Other causes include social prejudices, domestic violence, and societal violence.
- Other challenges with the justice system include the duration of proceedings and the existence of several operational problems.
- Despite the fact that child marriage is illegal in India and despite the fact that there are various secular laws in place to protect women from the violation of their fundamental rights, many women still get married before the age of consent, which is 18 years old. Despite various efforts by governmental and non-governmental organizations, there is still a significant gap between those who are protected and those who are not.

Since 73 years after the Indian Constitution was adopted, the goal of establishing a common civil code has not been achieved, despite the critical need it currently faces in society. The directive principles are also not enforceable in court because they fall under Part IV, despite the fact that they are very important to the governance of the country. There is a rising awareness in society today that women need to be empowered and liberated in order to contribute to the well-being and advancement of society.⁵

CONSTITUTIONAL BASIS FOR GENDER EQUALITY

Due to the way the nation is currently organized, gender equality is acknowledged as being of the utmost significance in the Preamble, Fundamental Rights and Duties, and Directive Principles of the Indian Constitution. To address social, educational, and political obstacles that women face, State is allowed to create laws skewed in their favor under Indian Constitution. Section IV A of Indian Constitution has clauses dealing with respecting and maintaining rich history of multifaceted ethnicity and rejecting behaviors that degrade women's dignity in order to ensure the general growth of society, including women. Due to the fact that it forbids discrimination, equal employment opportunities for all individuals are included in the protection of fundamental rights.⁶ Equality is resisted by laws that discriminate against women on a personal level. Constitution is not the source of personal laws; rather, it is the Bible. These personal laws must uphold the essential principles of the Indian Constitution; otherwise, they are void and unenforceable if they infringe fundamental rights.⁷

The rule of law, which is prohibited by Section III of the Indian Constitution, ensures that all individuals are treated fairly and equally and decreases arbitrary nature of governmental actions.⁸ Also, as women are given special regard for their advancement in society, it permits classification on justifiable grounds. For instance, a law mandating female quotas in Parliament is intended to help women get beyond long-standing obstacles to full participation in politics and the public sphere. If there is equality of

⁵ Arundhati Roy Choudhury, *Uniform Civil Code: Social Change and Gender Justice* (Indian Social Institute, New Delhi, 1998).

⁶ The Constitution of India, arts. 14, 15, 15(3), 16, 39(a), 39(b), 39(c).

⁷ The Constitution of India, art. 13.

⁸ The Constitution of India, art. 14.

opportunity in public employment, women have equal opportunities to work in that field without facing discrimination.⁹

It is in charge of creating policies to raise women's status in accordance with the state's Directive Principles. The government must also act to ensure that everyone, including women, has access to adequate resources, including equal compensation for work of same value.¹⁰ This is significant because males have historically paid women less because they think they are less active than men. Part IV of the Indian Constitution contains a codification of this moral ideal, which the administration is now willing to discuss. The next step is fair resource distribution between men and women. The state also ensures that all employees have acceptable and equitable working conditions. To safeguard women's health at work, maternity accommodations and nursing rooms are readily available.¹¹

The Panchayati Raj system, which considerably contributes to the empowerment of women, was made more uniform by the 73rd Constitutional Amendment Act of 1993.¹² The new Panchayati Raj was implemented with the intention of empowering women locally.

There is no law that can take the place of the Indian Constitution or contradict its principles. The Indian Constitution upholds the notion of positive discrimination in order to offer women in society an equal footing with men. One of the guiding principles of state policy, the universal civil code, is an important component that would help to achieve gender parity by uplifting women who have through the years lost their position and dignity. A universal civil code must be adopted immediately in order to manage civil issues like marriage, adoption, property, maintenance, and other issues uniformly and without establishing distinctions based on gender or religion.

LEGISLATIVE STRUCTURE TO PROMOTE GENDER EQUITY IN INDIA

The legislature passed series of Acts to empower women on secular basis in an effort to close the gender gap. Without any distinction, these laws are applicable to all country residents. A brief overview of a handful of the secular provisions provided by the Acts are listed below-

- Anybody involved in a marriage from receiving or providing a dowry, including the couple's parents, is forbidden.¹³ The Indian Criminal Code of 1860 too specifies the consequences for spouses' or other family members' aggression against women, as well as the sanctions for dowry-related cruelty, dowry-related death, and assisting homicide.¹⁴
- To protect and advance women by lowering infanticide and female foeticide, abolishing gender discrimination, providing clean water and food near to houses, rehabilitating and protecting girls from exploitation, abuse, and assault.¹⁵
- Commission created to assess constitutional and legal safeguards provided to women, provide suggestions on remedial legislative acts, facilitate conflict settlement, review issues pertaining to women's policy, and provide funding for legal awareness initiatives and so on.¹⁶

⁹ The Constitution of India, art. 16.

¹⁰ The Constitution of India, art. 39.

¹¹ The Constitution of India, art. 42.

¹² The Constitution of India, art. 243D.

¹³ The Dowry Prohibition Act, 1961 (Act 28 of 1961).

¹⁴ The Indian Penal Code, 1860 (Act 45 of 1860), s. 498A.

¹⁵ National Plan of Action for Girl Child (1991-2000).

¹⁶ National Commission for Women Act, 1990 (Act 20 of 1990).

- The term "domestic violence" emphasizes on support offered to impacted women, including financial compensation, legal safeguards, and the chance to cohabit with another family.¹⁷
- Maternity leave from 12 to 26 weeks with compensation and special benefits for adoptive mothers. Every company with 50 or more employees is required by law to provide potential hires with information on the maternity benefits that are available to them.¹⁸
- Civil unions between citizens and foreigners of Indian descent, regardless of either party's faith or creed.¹⁹
- Improve institutions, methods, and initiatives for assistance and the prevention of such violence, which includes dowries and sexual abuse on the job as well as the elimination of physical or psychological violence against women, including those that result from accepted conventions, traditions, or practices, whether they occur in the home or throughout society as a whole.²⁰

ROLE OF INDIAN JUDICIARY TO PROMOTE GENDER EQUITY AND UNIFORM CIVIL CODE

In a country where gender inequality is literally ingrained in every aspect of life, Indian courts have crucial role to play to remove gender biasness by arguing for the necessity of enforcing the universal civil code. A unified civil code is a device that nurtures both national peace and equity before the law.

- In a relevant case, Apex Supreme Court ruled that girls in Hindu Undivided Family have equal coparcenary right from birth and can't be denied an inheritance, regardless of whether they were born before 2005 amendment to the Hindu Succession Act, 1956.²¹
- In another case, Apex Court determined that no one can be denied employment on the basis of sex. For in-flight services, emphasis was placed on the employees' height, good looks, and glamour factor. Such terms were challenged in court and later overturned for being offensive and insulting.²²
- Rise in abortion of female foetuses was noted with development of prenatal diagnostic methods to identify foetus' gender. The PNDT Act was passed by the Indian government in 1996 to stop female feticide. Apex Court ordered Central and State governments to promptly implement provisions of Act and outlawed all pre-natal sex determination-related ads.²³
- Apex Court, in a judgment, found that Constitution of India's Golden Triangle supports gender equality.²⁴ Sexual harassment at work is a clear violation of these rights and the principle of gender fairness. International treaties and rules can be helpful in the absence of domestic legislation addressing sexual abuse.²⁵
- In another ruling, it was held that it is court's duty to declare as unconstitutional any laws that violate idea of gender equality and were disrespectful to women's dignity.²⁶

¹⁷ The Protection of Women From Domestic Violence Act, 2005 (Act 43 of 2005).

¹⁸ Maternity Benefit Amendment Act, 2017 (Act 6 of 2017).

¹⁹ The Special Marriage Act, 1954 (Act 43 of 1954).

²⁰ The National Policy for the Empowerment of Women, 2001.

²¹ *Vineeta Sharma v. Rakesh Sharma* (2020) 9 SCC 1.

²² *Air India v. Nargesh Meerza*, 1982 SCR (1) 438.

²³ *Centre for enquiry into Health and Allied themes (CEHAT) v. Union of India*, (2003) 8 SCC 412.

²⁴ The Constitution of India, arts. 14, 19, 21.

²⁵ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 24.

²⁶ *Shayara Bano v. Union of India*, AIR 2017 9 SCC 1.

- In a different ruling, Apex Court ruled that a woman can act as a child's legal guardian whether or not the child's father is still alive. By this ruling, legislation and practices that discriminated against women were declared unlawful.²⁷

The Indian Constitution's specific provisions are to be interpreted and upheld by court. Primary objective of law is to provide justice to those who have been injured. Because of an increase in lawsuits regarding unfair and discriminatory personal legislation, the implementation of UCC has recently taken the top spot on the judiciary's priority list. The adoption of a uniform civil code is anticipated to lessen the burden of legal actions alleging that people's civil rights were denied based on their gender and to boost women's empowerment across the nation.

CONCLUSION AND SUGGESTIONS

Throughout early childhood, women have been taught only ideals that promote inequality, servitude, humiliation, unfairness, and insults. Their upbringing imparts these ideals and restrictions, which then influence their personalities and behaviors. These also result in some stereotypical expectations that society has of them, such as how to act and what to say and not say. It is fairly normal for men to leave or forsake their wives, and society generally accepts this. But, if a woman announces she wants to remain alone or asks for a divorce, she is defying social expectations and stereotypes. Thus, in the Indian society, gender inequality is pervasive. Even being a worldwide phenomenon, it has particularly a strong presence in patriarchal Indian society. Even after various legislations for the upgrading of women status, they are still viewed as liabilities in many Indian societies. Despite economic advancement, gender parity has not been attained in true sense and the patriarchal structure of Indian society is the primary contributor to such gender disparity. Social policy has advanced, yet gender inequity still exists, though not like before. The educated population should raise awareness of gender equality on a national level. Changes in how people view women are required. Only if women are treated equally and are not denied their rights would human civilization be at its most advantageous.

When we talk about the investment we are making in altering things and gender attitudes, the price a woman pays for defying the gender standard is the backlash and the mental and physical hardship she experiences. For both men and women, dialogue is a tremendously effective technique for fostering change and critical thinking. To the contrary, the conversation should be founded on communication, equality, and mutual empowerment. The provision of facilities that enable women easing the burden that is stereotypically hers or her job and the elimination of the constraining factor are structural necessities. Thus, it is vital to have very strong support networks nearby. Because schooling teaches so much inequity, systemic transformation is required. Women are frequently very reactive to acts of violence and discrimination starting in childhood, and most of their behaviors and emotions are incident-based. Because of being deeply ingrained, mental structures and mental models need to be improved. No matter whomever it is a male, woman or trans-person, getting out of this is difficult because it shapes their identity. Another structural change is the normalization of the idea that men are responsible for production in the public sphere and women are responsible for reproduction. This understanding of the sexual division of labor and how it creates responsibilities and obstacles for all women is another structural development. Because of their enormous obligations, there are also fewer women in public politics. For instance, numerous studies have demonstrated that women are typically very young or

²⁷ *Githa Hariharan v. Reserve Bank of India*, AIR 1999 SCC 228.

considerably older, notwithstanding the reservation for women in Panchayati Raj institutions. They avoid entering politics when they are of childbearing and domestic duties age. Ladies choose to remove their wings. The laws also serve as a reflection of societal trends. Yet, laws alone also don't solve the problem because the implementer is still in charge. It calls for a change in perspective and the recognition of equality as a core value. It can only be achieved by conversation, not by arguing or adopting a rigid stance. Let's promise to uphold an egalitarian society where men and women are equally free to share their thoughts and opinions and further both their own individual goals and community's welfare. The nation's Constitutional founders originally intended to implement the Uniform Civil Code for India, thus the government should move quickly to fulfill their objective as the common civil code can also prove to be one of the bigger factors to bring a social change by codifying the personal laws with respect to civil rights and ultimately remove the "unequal" obstacle from the way of achieving gender equity in real sense. Therefore, with the pressing need for women's empowerment, the time is now auspicious for the implementation of the Universal Civil Code with a strong support from all the individuals of the nation.