



Unpacking Conundrum Of Patriarchy In Indian Legal System

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ABSTRACT

The Indian legal framework presents a conundrum where the constitutional pledge to gender equality often collides with patriarchal traditions embedded in personal and religious laws. The conundrum became evident in multiple legal laws. The Sabarimala verdict¹ highlights the tension between women Right to temple entry and equality and the patriarchal tradition based religious restrictions. In Muslim personal law, practices of polygamy and sanctioning triple talaq² sustain Male authority within family structure. This paper scrutinizes the role of Indian law and how it negotiates the tension between its principles and patriarchal norms.

KEYWORDS: Patriarchy, Mitakshara, Dayabhaga, Legal, Hindu joint family, Feminist approach.

INTRODUCTION

Patriarchy in India is not just a societal attitude; it is legally institutionalized in structures that govern family dynamics, interpersonal relationships, and property. Despite the principles of equality (Articles 14, 15, and 21) and non-discrimination enshrined in the Indian Constitution, personal laws of various religions—including Hindu, Muslim, and Christian laws—are structured around male dominance and subjugate women. The Indian legal framework is marked by a duality between constitutional morality and religious personal laws. Patriarchy is defined as a system of social structures and practices in which men dominate and suppress women².

¹ Indian Young Lawyers Association v. State of Kerala, (2018) 10 SCC 1. ² Mohd.

Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945.

² Sylvia Walby, Theorizing Patriarchy (Basil Blackwell 1990)

The concept of Brahmanical patriarchy described by Uma Chakraborty, that where gender hierarchy is inextricably linked to caste and religious tradition. This dynamic frequently results in conflict, as judicial decisions and legislative reforms aimed at promoting gender justice encounter resistance from religious communities seeking to preserve their traditions.

Landmark cases such as the Sabarimala³ temple entry case (2018), the Shah Bano⁴ case (1985), the Daniel Latifi⁵ case (2001), and the reforms under the Hindu Succession Act of 2005 are prime examples of this tension.

By analyzing the statutory framework, judicial pronouncements, and traditional institutions like the Hindu joint family and schools of Hindu law (Mitakshara and Dayabhaga), this paper seeks to unpack the inherent contradiction in the country's legal system. The study highlights that patriarchy is not merely a social phenomenon but is codified into law, which continues to pose a challenge to achieving genuine equality for women.

LITERATURE REVIEW

Legal experts who study patriarchy in Indian law emphasize that gender inequality is perpetuated by both codified legal texts and the interpretive practices of courts and the legislature. Legal scholar Flavia Agnes highlights how the interaction between personal laws, statutory frameworks, and social power structures produces discriminatory legal outcomes for women. Her work proves that a formal change in law does not always translate into true equality, as reforms are often undermined by socio-political resistance.

Based on Nivedita Menon⁶, a cultural and political critique of law's approach to gender asserts that seemingly impartial legal doctrine can promote patriarchal beliefs. She argues that feminist legal reforms must address how law itself shapes and constructs notions of "women," "family," and "religion," underscoring how legal equality is limited by ingrained structural disparities.

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³ Indian Young Lawyers Association v. State of Kerala, (2018) 10 SCC 1.

⁴ Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945.

⁵ Danial Latifi v. Union of India, (2001) 7 SCC 740.

⁶ Nivedita Menon, *Seeing Like a Feminist* (Zubaan Books 2012).

⁷ Indian Young Lawyers Association v. State of Kerala, (2018) 10 SCC 1.

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Based on constitutional jurisprudence like that of DD Basu¹¹, gender equality is provided a legal structure in the provisions of Articles 14, 15, and 21. However, critics note that despite this strong foundation, implementation gaps persist due to the deeply rooted personal law system and a hesitant judiciary that is reluctant to invalidate religious traditions.

A significant body of legal commentary analyses judicial intervention in cases such as the Shah Bano case, the Sabarimala verdict, and VINEETA SHARMA V. RAKESH SHARMA¹², exposing the judiciary's conflicting tendencies. At times, the courts have been progressive in expanding women's rights, but they also appear constrained by political pressure and deference to community identity.

For instance, the Shah Bano case demonstrates how legislative backlash can swiftly undo judicial gains for Muslim women's rights. Similarly, the Sabarimala verdict shows the resistance that constitutional principles can provoke when challenging patriarchal religious practices.

¹⁰ Nivedita Menon, *Seeing Like a Feminist* (Zubaan Books 2012).

¹¹ D.D. Basu, *Introduction to the Constitution of India* (LexisNexis, latest ed.); Granville Austin, *Working a Democratic Constitution* (OUP).

¹² Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1.

Examining legal changes, such as the Hindu Succession Amendment Act of 2005, reveals mixed outcomes. Even though it was appreciated for giving daughters equal coparcenary rights to ancestral property, the changes have faced challenges due to poor enforcement and persistent social practices that impede women's inheritance. While the VINEETA SHARMA case clarifies that daughters have coparcenary rights by birth, this progressive legal change is still limited by patriarchal resistance within society.

HYPOTHESIS

1. The Indian legal system has historically been male-dominated, and this continues to affect personal and marriage laws.
2. Women's access to justice, especially regarding property, religious matters, and reproduction, is obstructed by patriarchal norms and structures.

RESEARCH QUESTIONS

1. How does the Sabarimala verdict expose a conflict between male-centric ideologies, religious sentiments, and constitutional values?
2. To what extent did the status of women decline and lead to the patriarchal system in the Later Vedic period?
3. Do Muslim personal laws regarding polygamy and triple talaq reinforce patriarchy in the Indian legal framework?
4. To what extent does the Hindu Succession Act challenge Hindu patriarchal property inheritance?
5. To what extent did Hindu school laws on inheritance lead to patriarchal aspects in Indian society?

RESEARCH GAPS

1. Cross country empirical work — There is a lack of sufficient empirical data comparing the effects of reform across religious traditions.
2. Longitudinal study — The long-term repercussions of judicial decisions on women's economic and social status have not been adequately traced.
3. Micro foundation and societal level outcomes — There is a notable research gap regarding how changes in official legal doctrine shift everyday social practices.

RESEARCH OBJECTIVES AND METHODOLOGY

OBJECTIVES

This research paper seeks to examine the conflict between the constitutional guarantee of equality and the continued gender-based discriminatory practices found in personal laws, revealing how patriarchy and law are intertwined. Some objectives are:

1. To examine the constitutional framework
2. To examine historic court decisions
3. To evaluate legal modifications
4. To evaluate the broader societal consequences.

METHODOLOGY

This research adopts a traditional legal framework that critically analyses legal provisions and judicial decisions, and incorporates a socio-legal analysis to understand how patriarchal norms are ingrained in personal law and reinforced by the judiciary.

ANALYSIS AND DISCUSSION

Indian women face a deep-seated conflict between constitutional values and traditional statutes. While the Constitution guarantees them equality and freedom through Articles 14, 15, and 21¹³, discriminatory personal laws, which are based on patriarchal power structures, are still permitted. This creates a dilemma for women, highlighting the difficulty of bridging these contradictory legal systems and revealing that patriarchy is entrenched in law, not merely a societal construct.

1. PATRIARCHY AND ADHERENCE TO CONSTITUTIONAL VALUES

The creator of the Indian constitution i.e., Dr. B.R. Ambedkar envisioned a society where individual rights would overcome social and religious bias. He argues that constitutional principle must prevail over societal customs in conflict, though this idea has been selectively applied.

When it comes to legal decisions on gender equality, courts frequently weigh constitutional principles against traditional religious sentiments. The Sabarimala¹⁴ Temple entry case was a clear example of this conflict. By a 4:1 majority decision, the Supreme Court invalidated the custom that forbade women aged 10 to 50 from entering, declaring the restriction to be discriminatory and unconstitutional. Justice D.Y.

¹³ Uma Chakravarti, "Conceptualising Brahmanical Patriarchy in Early India," 28 Econ. & Pol. Wkly. 579 (1993).

¹⁴ Indian Young Lawyers Association v. State of Kerala, (2018) 10 SCC 1.

Chandrachud opined that the ruling was met with widespread public backlash and the review petition demonstrated the societal resistance to dismantling patriarchal tradition.

2. PATRIARCHY WITHIN MUSLIM PERSONAL LAW

Fundamentally based on Shariat, it created gender inequality in marital, divorce, and inheritance matters. Patriarchy in the family has been reinforced by polygamy and triple talaq. Although constitutional law provides via Articles 25 and 26 for religious communities to follow their own law, this fundamental right conflicts with women's rights.

MOHD. AHMAD KHAN V. SHAH BANO BEGUM¹⁵ (1985) marked a pivotal role in the controversy. The Supreme Court affirmed the right to maintenance to a Muslim woman under Section 125 of CrPC to receive financial support. However, due to political backlash, the government enacted the Muslim Women (Protection of Rights on Divorce) Act, which weakened the judgment to placate orthodox religious sentiments.

In the DANIAL LATIFI case (2001), the Supreme Court held that divorced Muslim women are entitled to maintenance for the future and should not be left destitute. In SHAYARA BANO (2017), the Supreme Court held that instant triple talaq is unconstitutional.

3. PATRIARCHY IN HINDU PERSONAL LAW: FAMILY AND PROPERTY FRAMEWORK

The Hindu personal law has been modernized through several codifications, but some patriarchal structures remain prominent in family and property matters. The Hindu Succession Act of 1956 was initially seen as a progressive step for granting women inheritance rights in their father's self-acquired property. However, it was later criticized for preserving the patriarchal Mitakshara coparcenary system. The Hindu Succession Amendment Act 2005¹⁶ gave daughters an equal share as sons. In VINEETA SHARMA V. RAKESH SHARMA¹⁷ (2020), the Supreme Court held that daughters have coparcenary rights by birth.

4. THE JUDICIAL ROLE

The judiciary in India often fills the gap between modernity and tradition. Landmark cases like the Sabarimala verdict, the SHAYARA BANO case, and the VINEETA SHARMA

¹⁵ Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945.

¹⁶ Hindu Succession (Amendment) Act, 2005; see commentary in Archana Parashar, Women and Family Law Reform in India (Sage).

¹⁷ Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1.

case illustrate the court's courage; however, there are also instances where judges have shown caution and avoided confronting orthodoxy directly. The judiciary's oscillating position reflects the broader dilemma of the Indian state, caught between honoring religious liberty and enforcing gender equality.

FINDINGS

1. Patriarchy in Indian law functions through personal law regimes which value religious autonomy over gender equity.
2. Judicial reform has made significant progress, yet societal resistance curtails the practical impact of progressive rulings.
3. Equality under law is often formal rather than substantive, given that women continue to be limited by cultural and institutional biases.
4. The lack of a Uniform Civil Code perpetuates gender-based inequality across different religious communities.
5. Constitutional morality provides a normative tool to challenge patriarchal practices, but these principles face challenges in effective implementation due to institutional grounding.

SUGGESTIONS AND RECOMMENDATIONS

1. Align personal laws with constitutional guarantees of equality and worth. The principle of constitutional morality, as elucidated in the Sabarimala verdict and Navtej Singh Johar, needs to be integrated into public administration, court systems, and legal education.
A. Mandatory judicial training:- Periodic orientation sessions should be conducted for judges and magistrates to guarantee that gender justice is not compromised by personal or cultural biases.
B. Constitutional Reviews:- Every new statute, particularly those pertaining to family, real estate, or religion, should undergo a constitutional review to ensure compliance with Articles 14, 15, and 21. **Public Participation:-** The doctrine of constitutional morality must be promoted through public awareness, highlighting equality, dignity, and non-discrimination as core public values.
2. Adopt a phased Uniform Civil Code through comprehensive and inclusive dialogue. Feminist Analysis of legal neutrality.
3. Feminist jurisprudence challenges the notion law is truly objective or unbiased. Scholars argued that it solidifies male control by defining what constitutes reasonable, moral, or natural behavior.(Carol Smart, Feminism and the Power of Law (Routledge 1989).In the Indian context, the judicial system often shows deference toward 'personal law autonomy', which effectively protects patriarchal customs and traditions from constitutional scrutiny. According to some feminist critiques, it is revealed how the structure of law favors male experience. The use of masculine norms as universal standards—whether in defining religious authority, family roles, or ownership—creates an implicit bias that sustains gender inequality.
4. Introduce gender-sensitivity training to legal professionals and judges.

5. Enhance the implementation of women's property and maintenance rights through legal aid and awareness initiatives.
6. Incorporate feminist jurisprudence into legal education and judicial training programs.
7. Promote inclusion of women's representation in law-making and the judiciary. Fundamental reform is required within the judiciary and legal framework in order to dismantle gender discrimination. Representation :-The proposal is to implement the reservation of women in bar councils, law commissions, and other judicial appointments, and to ensure that a minimum of one-third of all judges at the district and High Court levels are women by 2030. A framework for ensuring responsibility:- Establish an ombudsman for gender equality within the legal system, tasked with investigating and resolving complaints that address workplace discrimination and harassment. Gender equality issues:- Incorporate courses on gender studies and feminist jurisprudence into the standard curriculum of law schools across nationwide. Mandatory training sessions focused on gender sensitivity for all legal professionals, including judges and court staff.
8. Clarify the constitutional limits on religious liberty when it infringes upon women's rights.

9. CONCLUSION

The conundrum of patriarchy in the Indian legal framework arises from the uneasy coexistence of constitutional morality and religious personal statutes. Notwithstanding progressive reforms and landmark judgments, the legal system reflects patriarchal principles rooted in culture and religion.

Judicial activism has played a transformative role, yet achieving gender justice requires more than court decisions—it necessitates a redirection of law, policy, and society towards substantive equality. To realize the Constitution's vision, India must move beyond patriarchal legal structures and reaffirm the dominance of constitutional morality.

Only by harmonizing law with equality can the Indian state uphold its lasting pledge of justice, freedom, liberty, equality, and dignity for all. Justice D.Y. Chandrachud stated in the JOSEPH SHINE V. UNION OF INDIA judgment that “the inherent value of individual cannot be subordinated to patriarchal social norms.” The elimination of patriarchy in law is not merely a matter of gender equality but an essential command of the Constitution and functioning democracy.

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