

Constitutional Challenges to Personal Laws: A Study of Equality under Succession Laws in India

Archana Aggarwal

Research Scholar Amity Law School Amity University, Noida

Dr. Meenu Gupta

Professor Amity Law School Amity University, Noida

Abstract: India's family-law regime reflects a continuous tussle between personal laws and the Constitution's commitment to equality, dignity, and non-discrimination. While the Indian Constitution promises equality before the law under Article 14 and prohibits discrimination on the basis of sex under Article 15, right to live with dignity under Article 21, the inheritance in India is governed by diverse, religion-specific personal laws. This article examines the interplay between succession law of different religious communities-Hindu law, Muslim law, Christian law and Parsi law on one hand and the provisions of the Constitution of India (Articles 14, 15, 21 and 25) on the other. This article further also examine the response of judiciary and legislature towards discriminatory succession regimes. The article argues that the succession law is not a purely private, or religious, matter, but a public institution through which property, status and intergenerational security are transferred. And in the context, this article examines the landmark judgments like *Mary Roy v. State of Kerala*, *Vineeta Sharma v. Rakesh Sharma*, *State of Bombay v. Narasu Appa Mali* and the impact of Article 44's directive toward a bringing Uniform Civil Code in India. The study concludes that meaningful reform must harmonize personal-law pluralism with a minimum equality baseline, ensuring that community identity does not become a shield for civil inequality.

Keywords: Personal laws, Succession, Equality, Article 14, Gender justice, Uniform Civil Code

Introduction

The Indian Constitution was designed to transform a class-based society rooted in custom, social status and religion into a legal order committed to liberty and equal citizenship. Yet family law remains one of the most visible field where constitutional ideals confront inherited community norms. Personal laws regulate marriage, divorce, adoption, guardianship, maintenance, and succession, and as a such, they have a direct and significant impact on the life of the people. And among all these matters, succession is most important because its does not just govern property rights, but also have impact on balancing social power, family authority, and intergenerational security to transfer property. [4][1]

The principal challenge to constitutional validity is that it imposes a degree of discrimination on the basis of sex and gender identity that is prohibited by the Constitution, and yet immune from challenge on the grounds that personal laws are interwoven with religious practices and protected under religious freedom provisions.[1]

The article examines the concept of equality in context of inheritance laws and discusses the limits of a formal equality. In legal and political philosophy, the concept of treating everyone the exact same way—without accounting for pre-existing systemic or economic disadvantages—is known as formal equality (as opposed to substantive equality). Equality of inheritance is not simply a matter of equal shares, but equal shares is also about whether the legal systems are reproducing dependence, marginalisation and patriarchal family power. From a constitutional perspective, succession law should be subject to review not just under the lens of religious freedoms, but that of human dignity, autonomy, and substantive equality. It takes a theory-informed stance which considers rules of succession as a distributive institution and personal laws as constitutional actors

rather than as immunized private enclaves.[5][1] Succession laws are best conceptualised as a type of distributive institution, and personal laws as constitutional rather than as immunized, private enclaves.

Constitutional Framework

The Constitution of India has given ideals of **Justice, Liberty and Equality** to be **secure a just, fair, and democratic society**. These are the foundational principles on which India is built, The principles of equality enshrined in Articles 14, 15 and 21 are bound to be the most progressive constitutional provisions in the context, The right to equality before the law and equal protection of the laws is guaranteed in article 14, the prohibition of discrimination on certain specified grounds including sex is enshrined in article 15, and the fairness, dignity and reasonableness in State action is encompassed within article 21, particularly after Maneka Gandhi case, Articles” 14, 15 and 21 have been read and interpreted to the effect that even the procedural facet of law shall be made subject to the right to equality under “protection of life and personal liberty”. The right to freedom of religion is guaranteed under article 25 but this right is not absolute, and restrictions could be placed on it on account of public order, morality, and health. Further the state can also place restrictions or enact laws to regulate or restrict any financial, economic, political, or secular activity associated with religious practice and provide for social welfare and reform. By calling upon the State to pursue the introduction of a Uniform Civil Code for its citizens, Art. 44 beckons to a constitutional-standard answer—unity in the foundational aspects fundamental civil relations and social pluralism.[6][7][4][3]

The main issue that arises is about constitutional interpretation. A liberal constitution is one, that constrains the state but at the same time is the yardstick for how far communities may regulate status and property to the extent that such regulation does not infringe upon basic individual rights and the rule of law. Family law is not entirely a matter of private law as it as it governs juridical status, inheritance, and spousal and child support. There is a need to preserve diversity while ensuring that personal law regime is not at odds with constitutional rights, and in particular, equality is guaranteed both within communities and across them. That distinction is important: a plural system can accommodate difference, but it cannot justify discrimination.[1]

Therefore, the constitutional question is not whether there ought to be diversity. Is it equality or diversity that serves as the veneer of unequal citizenship? That answer on constitutional morality is no. In situations where the succession laws are naturally discriminatory against women or between different sects of a religion, the Constitution requires either judicial or legislative action. The problem is balancing the right to practice one's religion with a steadfast insistence on equality in civil status, where there is no room for compromise. [3][1]

Personal Laws and Article 13

Constitution of India being supreme law of the land, all laws of the country need to conform to its core principles Nevertheless, the *Narasu Appa Mali* case continues to serve as a powerful ruling that prevents any direct constitutional scrutiny of personal laws. Article 13 of the Constitution defines "law" with the purpose of safeguarding fundamental rights. It establishes that any past or future laws inconsistent with or violating these rights are void, thereby empowering the judiciary with the vital power of judicial review to ensure constitutional supremacy. The Court, in *Narasu Appa Mali* case, ‘distinguished’ personal law from “law” and “laws in force” under Art. 13 and thus effectively put non-codified personal laws outside the ambit of challenge on violation of fundamental rights. This is the principle established in cases like *Shri Krishna Singh v. Mathura Ahir* and *Reynold Rajamani v. Union of India*. So as a consequence results into constitutional asymmetry and religious-based laws can't get struck down. [1]

This divide is becoming more and more unmanageable. First, the supremacy of the Constitution entails that all rules forming part of law or having the quality of law are subject to its review. Secondly, modern Indian personal laws are not merely religious text based diktats, they are subject to legislation, judicial interpretation,

and state recognition. Thirdly, to exempt personal laws from the scope of article 13 means to create a sanctuary where discriminatory laws could continue to exist in the name of religion or custom."

However some of the later cases appears to have diluted the impact of Narasu's judgment, in which it was held that the personal laws can be constitutionally reviewed if they are codified. The Law Commission's opinion, as stated in its 2018 Consultation Paper, is that personal laws 'cannot violate fundamental rights' and even codification is not to 'freeze the position and/or crystallise the prejudice'. This is a constitutionally compelling perspective, because it transforms the inquiry from one of formal identity to one pertaining to "real effect.". It states that right question to ask is whether a civil status and property laws is so constitutionally offensive that it must be struck down no matter how much it is enmeshed with tradition and religion or custom, if answer is yes, they should be struck down. [1]

So the troubling normative aspects of Narasu's case should be better understood as quirks of constitutional doctrine, rather than strong constitutional ideals. It still holds but courts have also become increasingly sensitive and trying to bring change in existing family law rules.

Equal Rights of Succession

The rules of inheritance define a people's economic status, making succession the perfect lens to evaluate constitutional values. The availability of property rights to women may help her with some bargaining power, and depends on whether daughters share equally as heirs, and whether families constitute distributive justice or patriarchal institutions. Succession or inheritance laws may theoretically be linked to religion – but in reality they are a means to access to resources, shelter and social security.

Succession law is fragmented in many ways in India. Hindus, Muslims, Christians, Parsis and even a few tribal communities maintain their individual customary and or codified laws. However, the Indian Succession Act, 1925, takes a somewhat uniform approach for a few communities though it does not apply for Hindus, Muslims, Buddhists, Jains and Sikhs in the case of intestate succession by virtue of Section 29. Equal inheritance must be anchored in universal constitutional citizenship rather than particularistic community affiliations. Therefore, a woman's property rights ought to be guaranteed by her status as a citizen, rather than being subjected to the patriarchal or religious parameters of her natal community or marital status.[9]

In the view of the Constitution, this is a threefold opportunity missed and problem deferred. To begin with, this leads to the social inequality of various communities. It also solidifies gendered hierarchies in many of those communities. It commands the perspective that possession is chiefly a religious privilege, and not a civic right, to own property. Article 14 does not ensure equal protection merely because different laws are enacted for different sections of society: the question is whether such different laws themselves result in internal incriminations or structural exclusions. [3][1]

A substantive equality theory is useful here. Formal equality wants to know: "Are men and women who are governed by the rule, on the same footing?" Substantive equality interrogates whether a rule plays any role in perpetuating or exacerbating inequality. Impersonal rules such as survivorship, coparcenary, or desert in legacies, are often given voice in ways that make a masculine ideal of family. Therefore, the letting task of the constitutional is to be neutral in treatment (substantive equal treatment). Hindu Succession The segment of Hindu succession law that has witnessed maximum constitutional revolution. "Hindu Succession Act, 1956 was an instrument of the post independence reformist agenda and the 2005 amendment that greatly enhanced the rights of daughters as coparceners was clearly in that stream of reforms. However, the decision of the Supreme Court in Vineeta Sharma v. Rakesh Sharma has already held that daughters are coparceners by birth and their coparcenary status is not dependent upon whether the father was alive on the date of the amendment. The ruling has been celebrated as a milestone in gender equality and replaced an oppressive read on the statute by held that daughters are now also regarded as coparceners in the HUF.[10][11]

In fact, the constitutional significance of the Vineeta Sharma decision is what it represents: The Court treated the succession law as an equality prism rather than a codifier of patriarchal norms that had gone untouched. This holding is an admonition that succession - transformed by statute - is not to become a shelter under constitutional jurisprudence. On the one hand, it indicates the court's readiness to apply interpretative methods to reduce inequality, even at the expense of preserving and further strengthening the personal law system in its entirety.[10]

Mary Roy v State of Kerala had been a landmark judgment in its own right, yet its impact was all the more resounding on Christian Succession in the erstwhile princely State of Travancore. The Supreme Court held that the Travancore Act is violative of the right to equality enshrined under the Indian Constitution, and provided for considerable congruity in succession. In line with Mary Roy, Vineeta Sharma establishes that equality in succession in Indian law has largely been achieved through judicial activism in the absence of legislation to be interpreted/harmonised.[12][13]

But the reform of Hindu law of succession also exemplifies a broader constitutional lesson: equality is not realized solely through State compulsion. But systems of patriarchal inheritance continue to be codified until they are confronted with constitutional morality. [10][1]

Muslim Succession

According to the traditional Muslim inheritance laws, that depend on gender, it's also true that women receive a portion of the inheritance but daughters receive less than the sons. Asking how community autonomy might fare as a constitutional ideal of equal respect, and potentially come into conflict with it, is in order. The largest structural constitutional takeaway from Muslim family-law cases is that courts have consistently made efforts to protect women in the worst manifestations of gender injustice by picking off discrete practices, and not the entire succession regime. Shayara Bano v. Union of India (instant triple talaq) was held unconstitutional declaring that religious practices could be invalidated if they are in violation of equality and dignity. Of course the case was a divorce case and not a succession case, but is nevertheless significant because it discredits the assertion that "family law" is immune from constitutional review. The holding of this case also embodies a more general rule: even the equal civil status requirements of due process may not be violated under the cloak of religion. [1]

Yet the issue of succession is still undecided. Women have very limited rights in the Muslim law of inheritance and no entire reform has been brought about in the law by the Court or the statute. Consequently, equal protection under the Constitution is vindicated only as against a species of optional civil regimes, interpretive and reformative, and not as against direct invalidation.[9] [1]

Christian and Parsi Law

Law of succession of Christians in India Viewed from the histories of region, this piece contends that Christian law of succession enacts constitutional inequality within the binary organisation of a plural legal system in and a unified system of personal laws. Mary Roy waged a successful battle for equal property rights for women in the Indian Succession Act wherein equal rights were given to the Syrian Christians of Travancore. Importance of the case The case dubs that the inheritance rules of a particular religious sect can itself be plural in nature[13][12] and if such legal anachronism is discovered, constitutional relief is also available. Montesquieu's understanding of the modern rational is such that Parsi succession law and other customary laws are generally recognised as being more liberal than other customary laws, yet there are certain particularistic clauses of discrimination, that are even more crystallised in other areas but once more is the whole equal to is considered as the response of the community. The question was not one of deciding whether a particular community rule was more liberal than another, but rather whether plural succession could be sanctioned under a common constitutional minimum standard. The logical conclusions of equality would appear

to compel some minimal standard of nonviolence and non-strife within each other at least for all communities as a condition, even though they can have ritual differences and culturally circumscribed families of life.[3][1]

Tribes and Exceptions

However, this must be balanced against the legal complexities surrounding indigenous and tribal communities. In these regions, autonomy over core personal matters—such as inheritance, succession, marriage, and divorce—is constitutionally shielded by customary laws. This protection spans from the decentralized governance of the Sixth Schedule of the Indian Constitution to the legislative safeguards of Articles 371A to 371I. These provisions are not mere legal loopholes; they are foundational guarantees of cultural self-determination in historically unique regions.[1]

But special protection does not mean a general license to discriminate. The Law Commission discussion paper observed that “there may be tribal practices that promote the survival of community identity but are also detrimental to women and that each such case will have to be viewed on its own facts.” In that regard, the constitutional question of law to be remembered is a difficult one: How do we recognize collective autonomy without consigning women as the bearers of such oppression?[1]

A good metaphor here is ‘accommodated pluralism’. In keeping with this philosophy, the language of the Constitution,” also permits a few local exceptions to be made on matters that could jeopardize the life of the community and the preservation of special identity, but only so long as certain minimum standards of equality are met. It’s like “plain vanilla” uniformity, but with a little bit more subtlety. It thereby allows for a degree of plural legal orders as consistent with the constitution but at the same time it rejects that customary practice that amounts to a permanent exemption from discrimination. A more sophisticated constitutional bar is whether accommodation may be extended without being transformed into subordination.[1]

Exercise of Jurisdiction

The Indian courts have no uniform approach for deciding matters of personal law. Largely the court have adopted a hands-off approach, declining to interfere in traditional, community-based, or non-state religious practices. They treat religious personal laws as autonomous spheres outside the strict scrutiny of constitutional law. Indian courts have traditionally applied the doctrine of non-interference, interpreting *State of Bombay v. Narasu Appa Mali* and subsequent rulings to mean that uncodified personal laws are immune to constitutional scrutiny, as they do not fall under the definition of ‘laws in force’ within Article 13 of the Constitution. Selective constitutionalization is the process where courts interpret existing codified personal laws through the lens of constitutional equality, famously exemplified by the Supreme Court’s verdict in *Vineeta Sharma v. Rakesh Sharma* and the Kerala High Court’s ruling in *Mary Roy v. State of Kerala*. Conversely, practice-based invalidation is a method where courts strike down patriarchal customs. This is best illustrated in the *Shayara Bano v. Union of India* case, where practices violating fundamental rights to equality and dignity were voided.[8][12][10][1] What we end up with is after the fact adjudication of exceptions to the rule, rather than a consistent constitutional principle. This creates a problem in constitutional law because it makes equality dependent on the subject matter of the dispute. From the policy “shell,” however, it serves to shield large swaths of family law from repudiation.

The right answer to this question would be that any personal law concerning right and duties of individuals, that is, which has public implications, is amenable to constitutional scrutiny. We don’t need to dismantle all the community specific traditions. It’s not a matter of denying that religious provenance is ipso facto enough to trump equality analysis. The moral authority of the Constitution The Constitution is morally authoritative because it can protect individuals, not merely groups[3][1]” Any explanatory account of personal-law reform will have to be more nuanced than “uniformity versus diversity.”

Reform

Structuring a comprehensive legal reform agenda requires immediate parliamentary action to repeal discriminatory inheritance provisions across various personal laws, establishing a baseline of gender equality in succession. Furthermore, all codified personal laws must be subjected to constitutional judicial review regarding civil and property rights, with community-specific reforms driven by dialogue rather than imposed uniformity.[3][1]

In practice, this requires harmonizing rules of maintenance and succession across all communities to guarantee daughters and widows equal inheritance rights. It aims to eliminate the legal vulnerabilities that force women to seek court intervention for fundamental civil dignity. Furthermore, it firmly establishes personal laws within the framework of the Constitution and Article 13, ensuring that constitutional rights to equality are not undermined by arbitrary classifications. The goal is not to erase religious or cultural identity, but to ensure that identity can no longer serve as a rationale for gender-based discrimination."

India's pluralistic framework of personal laws must be actively harmonized with Part III of the Constitution. The primary jurisprudential objective is not to eradicate religious and customary diversity, but to ensure that the constitutional guarantees of equality and personal liberty are equally secured for every individual, overriding any discriminatory practices.[3][1]

References

- Law Commission of India. (2018). *Consultation paper on reform of family law*. Government of India. <https://archive.pib.gov.in/documents/rlink/2018/aug/p201883101.pdf>
 - *Mary Roy v. State of Kerala*, Supreme Court of India. (1986). Discussion and analysis available at <https://blog.ipleaders.in/mary-roy-v-state-of-kerala-1986-case-analysis/> and <https://www.juscorpus.com/case-analysis-mary-roy-v-state-of-kerala/>
 - *Shayara Bano v. Union of India*, Supreme Court of India. (2017). Discussion in Law Commission consultation paper and related legal sources. <https://archive.pib.gov.in/documents/rlink/2018/aug/p201883101.pdf>
 - *State of Bombay v. Narasu Appa Mali*, Bombay High Court. (1952). Discussion in scholarly article. <https://vulj.vupune.ac.in/archives6/3.Constitutional%20Challenges%20to%20Personal%20Laws.pdf>
 - *Vineeta Sharma v. Rakesh Sharma*, Supreme Court of India. (2020). Discussion at <https://blog.ipleaders.in/personal-laws-part-iii-indian-constitution/> and <https://www.vintagelegalvl.com/post/vineetha-sharma-v-rakesh-sharma-others-2020-9-scc-1>
 - Vishwakarma University Law Journal. (2024). *Constitutional Challenges to Personal Laws*. <https://vulj.vupune.ac.in/archives6/3.Constitutional%20Challenges%20to%20Personal%20Laws.pdf>
1. <https://www.ijllr.com/post/constitutional-equality-and-the-status-of-women-s-succession-rights-in-muslim-law>
 2. <https://vulj.vupune.ac.in/archives6/3.Constitutional Challenges to Personal Laws.pdf>
 3. <https://archive.pib.gov.in/documents/rlink/2018/aug/p201883101.pdf>
 4. <https://visionias.in/current-affairs/monthly-magazine/2024-09-12/polity-and-governance/uniform-civil-code-ucc-1>

5. <https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/01/2024011635-1.pdf>
6. <https://supremetoday.ai/issue/key-judgments-article-14-21-india>
7. <https://blog.ipleaders.in/article-21/>
8. <https://www.livelaw.in/columns/do-personal-laws-come-within-the-ambit-of-the-constitution-the-conundrum-continues-156154>
9. <https://www.ijllr.com/post/a-constitutional-critique-of-personal-succession-laws-in-india>
10. <https://ijlae.com/wp-content/uploads/2024/07/PERSONAL-LAWS-AND-GENDER-EQUALITY-IN-INDIA.pdf>
11. <https://www.vintagelegalvl.com/post/vineetha-sharma-v-rakesh-sharma-others-2020-9-scc-1>
12. <https://www.juscorpus.com/case-analysis-mary-roy-v-state-of-kerela1/>
13. <https://blog.ipleaders.in/mary-roy-v-state-of-kerala-1986-case-analysis/>
14. <https://ajmaliasacademy.in/equality-in-inheritance-the-supreme-courts-dilemma-on-personal-laws/>
15. <https://www.youtube.com/watch?v=WVX-l4R2raE>
16. <https://www.ijllr.com/post/the-constitutionality-of-the-hindu-succession-act-and-the-legal-validity-of-personal-laws-in-india>
17. <https://ijirl.com/wp-content/uploads/2024/07/ANALYTICAL-STUDY-RELATING-TO-UNIFIED-LAW-IN-THE-GLOBALISED-ERA-IN-RELATION-TO-INHERITANCE.pdf>
18. <https://www.ijfmr.com/papers/2024/6/31550.pdf>
19. <https://www.juscorpus.com/wp-content/uploads/2024/08/64.-Yash-Patidar-1.pdf>
20. https://ilj.law.indiana.edu/articles/83/83_2_Chibber.pdf
21. <https://blog.ipleaders.in/personal-laws-part-iii-indian-constitution/>
22. https://en.wikipedia.org/wiki/Mary_Roy
23. <https://www.vintagelegalvl.com/post/a-legal-overview-of-vineeta-sharma-v-rakesh-sharma>
24. https://ijcl.nalsar.ac.in/storage/2020/07/8IndianJConstL65_Raiz-Naushad.pdf
25. <https://www.whiteblacklegal.co.in/details/vineeta-sharma-v-rakesh-sharma---paving-the-way-for-women-s-property-rights-by---insia-arora>
26. https://en.wikipedia.org/wiki/Uniform_Civil_Code
27. <https://www.scobserver.in/journal/the-right-to-life-and-personal-liberty-under-article-21-a-timeline/>
28. <https://www.lawjournal.info/article/90/4-1-8-824.pdf>
29. <https://ignited.in/index.php/jasrae/article/download/11573/22949/57337>
30. <https://www.drishtias.com/daily-updates/daily-news-analysis/uniform-civil-code-15>