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# Family Law Reforms in India: A Critical Analysis with Comparative Perspectives

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SAFIULLAH<sup>1</sup>

## ABSTRACT

*Family law in India is shaped by a complex mix of religious practices, personal laws, and constitutional principles. Over time, it has seen gradual reforms aimed at aligning with evolving societal norms, gender equity, and human rights. However, contradictions persist across religious groups and between legislative intentions and judicial interpretations. This paper offers a critical examination of family law reforms in India, particularly in areas like marriage, divorce, maintenance, guardianship, and inheritance, while comparing them with global best practices from jurisdictions like the UK, USA, and Canada. It advocates for a unified and secular legal framework that prioritizes constitutional values over traditional patriarchal structures.*

**Keywords:** Family Law, Reforms, Gender Equality, Personal Laws, Secularism, Comparative Law, Uniform Civil Code, Marriage, Divorce, Maintenance, Inheritance, Guardianship.

## I. INTRODUCTION

Family law has been extensively studied in relation to gender rights, religion, and constitutional morality. Key contributions include:

- Flavia Agnes offers a critical analysis of how codified personal laws continue to reflect patriarchal values and the discrepancy between constitutional ideals and social practices.
- B. Sivaramayya advocates for a secular family law regime, emphasizing equality and non-discrimination as the core principles for reform.
- Reports from the Law Commission of India, notably the 227th and 262nd reports, propose a gender-neutral, uniform family law system and encourage reform through democratic consensus rather than imposition.
- International scholars like Martha Fineman and Judith Butler argue that the state should remain neutral in regulating personal relationships while safeguarding individual autonomy.

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<sup>1</sup> Author is a Student at Khwaja Moinuddin Chishti Language University, Lucknow, India.

- Comparative studies from the **UK** and Canada highlight how state-centric models of marriage and parenthood can dismantle patriarchal norms while fostering personal liberty and equality.

## **II. KEY AREAS OF REFORM**

India's personal laws have historically been influenced more by religious doctrine than by a unified constitutional vision. As a result, reforms have been inconsistent and uneven across different communities. To understand family law reforms in India, the following key areas must be critically analyzed: marriage and divorce, maintenance, guardianship and child custody, inheritance, and adoption.

### **A. Marriage and Divorce**

Marriage laws in India are governed by religious statutes such as the Hindu Marriage Act (1955), Muslim Personal Law, Indian Christian Marriage Act (1872), and the Parsi Marriage and Divorce Act (1936), with the Special Marriage Act (1954) offering a secular alternative. However, the Special Marriage Act is seldom used due to bureaucratic hurdles and social stigma.

**Problems:** Each law has varying requirements for age, consent, divorce grounds, and rights during and after marriage. Despite codification in Hindu and Christian laws, patriarchal assumptions remain. Muslim law permits unilateral divorce (talaq) by men, though triple talaq was struck down in *Shayara Bano v. Union of India* (2017). Christian women faced stricter divorce conditions until the 2001 amendment.

### **Comparative Perspective:**

- The UK offers gender-neutral marriage and divorce laws, recognizing same-sex marriages under the Marriage (Same Sex Couples) Act 2013.
- The US has adopted no-fault divorce laws, and same-sex marriages were legalized by *Obergefell v. Hodges* (2015).
- Canada applies a uniform divorce law, focusing on the irretrievable breakdown of marriage and ensuring equal rights for both spouses.
- Reform Needed: India requires a uniform, secular marriage and divorce code that ensures equal rights for both genders and provides comprehensive divorce grounds, including the recognition of marital rape.

## **B. Maintenance and Alimony**

Maintenance laws are critical in ensuring gender justice postmarriage. Section 125 of the CrPC provides a secular remedy, but it is often delayed or overridden by personal laws and community pressures.

**Problems:** Hindu law offers maintenance under the Hindu Adoption and Maintenance Act (1956), while Muslim law restricts maintenance after the iddat period. The Shah Bano case led to the Muslim Women (Protection of Rights on Divorce) Act, 1986, which diluted maintenance rights for divorced Muslim women.

### **Comparative Perspective:**

- In the UK, the Matrimonial Causes Act (1973) ensures fair financial settlements, factoring in future needs, earnings, and living standards.
- In the US, spousal support is governed by statespecific statutes, with guidelines addressing income disparity and marriage duration.
- Canada’s Spousal Support Advisory Guidelines provide an equitable framework for determining support obligations.
- Reform Needed: India needs a uniform, needs-based maintenance framework applicable across all communities, emphasizing the economic rehabilitation of divorced women.

## **C. Child Custody and Guardianship**

Indian custody laws still reflect outdated assumptions about maternal care and paternal guardianship.

**Problems:** Hindu law gives the father natural guardianship, while Muslim law places guardianship in the father’s hands, with the mother only being a custodian. Custody cases under the Guardians and Wards Act (1890) are often lengthy and biased.

### **Comparative Perspective:**

- The UK follows the principle of “shared parenting,” prioritizing the child’s best interests.
- In the US, custody is increasingly shared, with legally mandated parenting plans.
- Canada has shifted to “parenting responsibilities” under the Divorce Act (2021), promoting cooperative parenting.

- **Reform Needed:** India needs to move towards a genderneutral guardianship model, ensuring that child welfare and not parental entitlements guide judicial decisions.

#### **D. Inheritance and Succession**

Inheritance laws in India reflect deep-seated gender inequalities, particularly in Muslim and Christian communities.

**Problems:** The **Hindu Succession (Amendment) Act, 2005** granted daughters equal inheritance rights, but its implementation remains uneven. Muslim law grants daughters half the inheritance share of sons, and adopted children are not recognized as legal heirs. Christian women face exclusion from parental property due to customary practices.

#### **Comparative Perspective:**

- In the **UK, US, and Canada**, succession laws are genderneutral, protecting the rights of dependents in intestate succession.
- **Reform Needed:** India requires a Uniform Succession Code that overrides community-based exclusions and recognizes the rights of adopted children, step-children, and live-in partners.

#### **E. Adoption and Family Structure Recognition**

India lacks a uniform adoption law, with the Hindu Adoption and Maintenance Act (1956) allowing full adoption. Non-Hindus, including Muslims, Christians, and Parsis, cannot adopt, though they can become guardians under the Guardians and Wards Act (1890).

**Problems:** The absence of a secular adoption law denies equal parenting rights to non-Hindus, **LGBTQ** individuals, and single parents.

#### **Comparative Perspective:**

- **Canada and the UK** recognize diverse family structures and allow adoption by same-sex couples, single parents, and unmarried partners.
- **US** adoption laws vary by state but are generally inclusive.
- **Reform Needed:** India requires a secular, inclusive adoption law that prioritizes the child's best interests and removes religious and marital barriers.

### **III. COMPARATIVE PERSPECTIVES**

A comparative analysis of family law systems in countries such as the **UK, US, and Canada** reveals a shift towards uniform, secular, and gender-neutral frameworks that emphasize

individual rights and familial welfare. These jurisdictions offer valuable lessons for India, where family laws remain governed by religious doctrines, creating inconsistencies and inequalities.

In the **UK**, family law is governed by civil legislation, applying uniformly across all citizens. Child custody decisions are based on the child's best interests, and adoption laws are inclusive, allowing diverse family structures. In the **US**, the trend towards no-fault divorce, same-sex marriage, and shared custody reflects progressive family law reforms. **Canada** offers a unified framework that addresses spousal support and child custody in a fair and genderneutral manner.

In contrast, India continues to have segmented family laws that often perpetuate gender discrimination. A move towards a secular, harmonized family law system in India is essential to ensure equality, justice, and individual rights, aligning with global standards of family law.

### **Challenges to Family Law Reform in India**

Despite judicial activism and increasing demands for equality, several entrenched obstacles continue to hinder the reform of family law in India:

1. **Religious Sensitivities and Political Opposition:** Religious communities view uniform laws as a threat to their cultural identity and autonomy. The debate around the Uniform Civil Code (UCC) has become politicized, leading to resistance from both religious minorities and the majority community, who fear cultural dilution or imposition of a majoritarian perspective.
2. **Lack of Political Commitment:** Governments have been reluctant to push for the implementation of the UCC due to its controversial nature. Reforms in personal laws are frequently postponed or selectively applied, resulting in inconsistent progress.
3. **Judicial Activism Without Legislative Support:** Although the Supreme Court has made progressive rulings (e.g., Shayara Bano, Navtej Johar), the lack of corresponding legislation causes uneven enforcement and a lack of structural change.
4. **Patriarchal Traditions and Social Stigma:** The entrenched patriarchy within families obstructs the acceptance of laws promoting gender justice. Women who assert their legal rights often face social exclusion or retaliatory actions, both legally and socially.
5. **Fragmented Legal Framework:** The existence of multiple personal laws leads to ambiguity, inconsistent application, and the opportunity for forum shopping, which undermines equitable access to justice.

#### IV. POLICY RECOMMENDATIONS

To build a more just and inclusive family law system in India, the following reforms are proposed:

1. **Introduce a Gender-Neutral Uniform Civil Code:** A UCC that prioritizes individual rights over communal identities, initially voluntary, can serve as a bridge between traditional values and modern legal principles.
2. **Standardize Personal Laws with Uniform Gender Equality Provisions:** Rather than enforcing a single law, it is crucial to codify personal laws in a way that includes fundamental guarantees of gender equality, consent, and procedural fairness.
3. **Increase Public Legal Education and Awareness:** Educating citizens about their legal rights and available remedies can help dispel misconceptions and foster greater support for reforms.
4. **Strengthen the Family Court System:** Providing specialized training for family court judges, implementing fast-track procedures, and involving counselors can improve the accessibility and sensitivity of family courts.
5. **Facilitate Consultative Reform Processes:** Engage civil society, women's organizations, religious leaders, and legal experts in the reform process to ensure changes are participatory and not imposed from the top down.
6. **Acknowledge Diverse Family Structures**  
Family law statutes should be inclusive, recognizing same-sex partnerships, live-in relationships, and other non-traditional family models.

#### V. CONCLUSION

India stands at a critical juncture where the constitutional guarantees of equality under Article 14 and the right to life and dignity under Article 21 must be realized within the private domain of family life. Although there have been advancements in Hindu family law and certain progressive judicial rulings, the broader family law framework remains uneven, patriarchal, and exclusionary.

The global experience shows that legal uniformity does not require cultural uniformity. Instead, it ensures equitable access to justice regardless of personal beliefs or backgrounds. Family law must evolve to reflect modern values of mutual respect, individual dignity, consent, and non-discrimination.

A comprehensive and inclusive family law reform, rooted in constitutional principles and

human rights, is not just a legal requirement but a societal necessity. Although the journey may be complex and contested, its realization will mark a significant milestone in the pursuit of democracy and justice.

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