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FROM CUSTOM TO CODEX - HOW LAW RECONFIGURES SOCIAL CONSTRUCTS OF MARRIAGE AND KINSHIP

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I. ABSTRACT

The research paper examines the changing nature of the interrelationship existing between customary social practices and codified legal frameworks in India as far as the institution of marriage and kinship are concerned. Its key government inquiries are: What has been the effect of conventional precepts on the contemporary Indian calculations of marriage and family as law? And how far do the statutory laws resonate with or clash with the customary law, more so in the rural and diversely socio-cultural environments?

It involves the analysis of a doctrine of law, additional to the case law research, review of the statutory interpretations, and sociological implications through the information provided in the census and ethnographic reports. The discussion on the translation of customary norms into enforceable legal rights within the constitutional and statutory regime of India is put in the light of the Latin legal maxim *ubi jus ibi remedium* which, being translated into English, states where there is a right, there is a remedy.

The Indian marriage was celebrated as a holy life-long bond. This is no longer the case however, as it is controlled today by a dual religion or personal laws (e.g., the Muslim Personal Law (Shariat) Application Act, 1937) and secular statutory laws (e.g., the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954). The paper focuses on the tension between norms not stated in the letter of the law and normative democratic rules, particularly when traditional caste, religion, gender, or sexuality discourses add to legal interpretation and enforcement difficulties. In the findings, it is seen that patriarchal ideas of kinship are gradually being reconstituted through courts, especially in such aspects of life as adoption, inheritance and guardianship. It can be

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summarized in the paper that a balanced legal practice, one that reconciles the traditional legitimacy with constitutional value, is of essence to the provision of justice, which is inclusive yet culturally echoed within a pluralistic society such as India.

II. KEYWORDS

Hindu Marriage Act 1955, Special Marriage Act 1954, Muslim Personal Law, Marriage Laws, Kinship, Constitutional Morality, Legal Pluralism.

III. INTRODUCTION

Marriage and kinship form a very important pillar of social order in India. These underlying structures need to be dealt with, covered, and developed by the law in any properly functioning society. Marriage is never a personal arrangement of two people, but is closely related to family descent, inheriting and social hierarchies. The eventual replacement of *lex non scripta* (unwritten customary norms), with *lex scripta* (the written law of statutes) has seen historic times in India; with a move often full of controversy.

In the early centuries, the conjugal unions were usually determined by the dynamics of classes-involving such novel unions as *kayadanda* marriages (unions across wealth or property differences) or caste unions, which demonstrated the society of its time than personal volition. When India entered into the phase of constitutional democracy, the law came to the call of mediating between ritual based traditions and fundamental rights. Marriage in religions like Hindu and Christianity has long been considered as an untouchable sacrament. The particular sphere of the family has gained the status of a recognized legal construction, especially when it comes to the usage of the legal texts as a hidden source of informal social values.

This is added to by the fact that there is a maxim saying *ubi jus ibi remedium* where there is a right, there must be a remedy, and that where one has a right to family life, better protection should be involved in the legal approach. Marriages were governed under the ²*Dharm shastras* according to which there were rites, e.g. *saptapadi* (seven

² P.V. Kane, *History of Dharma sastra*, Vol. 2 (Bhandarkar Oriental Research Institute 1974).

steps) and the tying of the *maṅgalyapātra* (sacred thread) and a ban on marriages in *sapinda* relationship (same lineage). Social barriers were strengthened by castes being part of the marital setup. By the first half of the 20th century, constitutional idealists and social reformers started to criticize such norms as unfair and those that shut out. Following independence, the Indian State embarked on legal rationalization, which attempted to reconcile customary ways, with constitutionalism. For instance, ³Hindu Marriage Act 1955 (HMA) was highly different due to the beliefs that were purely religious as it opened the doors to such things as equality, consent, and monogamy in matrimonial regime. It kept practices that kept the culture identity intact, and those that did not go with constitutional morality.

On the same note, the Special Marriage Act 1954 (SMA) introduced a civil system of conducting inter-faith or inter-caste marriages, thus letting the people of this nation tie the nuptial knots without abandoning the religion. Such legislative trends reconstituted the legal validity of marriage, since instead of being a sacrament; it became a legal contract between the State parties. Nevertheless, the customary law is not totally replaced. Section 7 of the HMA allows solemnization to be determined by region-specific traditions as long as such do not conflict with statutory protect-ions. Although systems of personal law (Muslim Personal Law, Christian Marriage Law etc.) still enjoy separate existence, they are Islam or constitutally reviewable, especially under ⁴Article 14, 15, 25-30, 44 of the Constitution of India 1950.

The Supreme Court in *Lata Singh v State of UP* made several clarifications in regard to the fact that there is no law in regard to caste being a bar to marriage, the HMA does not prohibit inter-caste marriages, and the constitutional requirement, thus, reinforces the individual assertion over the community dictum. The Honor-based violence and Khap Panchayat diktats were criticized by the Supreme Court in ⁵*Shakti Vahini v Union of India* (2018), where the court ruled that customary law, family honor is not binding over personal freedom and the right to choose a marital partner.

³ Hindu Marriage Act 1955, s 5-13.

⁴ Constitution of India 1950, arts 14-15, 25-30, 44.

⁵ *Shakti Vahini v Union of India* (2018) 7 SCC 192.

The jurisprudence trend was enlarged to a greater measure in ⁶Navtej Singh Johar and others v Union of India (2018), where the Supreme Court held that privacy, dignity, and sexual orientation are fundamental rights and part of the marital and familial life. Although same-sex marriage is admitted statutorily, the jurisprudential trend is that of inclusiveness and embracement of non-traditional relatedness.

Although marriage is legally formalized, it has a lot of emotions and psychological relevance. It is not only legal terms such as a term of a mother, husband, or grandfather, but has social and psychological meaning which defines one, and their sense of belonging. The adoption of the law of adoption, guardianship and co-habitation proves to be the rising understanding that, kinship is no longer in the traditional boundaries- it is marked by the need and social development of man. Laws that were used to stop same-sex relationships in the past were usually influenced more by biasness than fairness.

Accordingly, family identity driven issues must become part of marriage law analysis whereas constitutional concepts of dignity and equality must be fully incorporated. Perhaps the history of the law of marriage in India is a history of social engineering. There were families before the State--but the State has come to regulate their structure, their operations and their limits. The law has switched to become *jus civile* (civil law) as opposed to *jus naturale* (natural law) to create marriage as a place of public concern. And as the maxim is *ubi jus, ibi remedium*, where there is a right, there must be a remedy by the law.

IV. RESEARCH OBJECTIVE

The main goals of this study are the following:

- To follow the history of the development of marriage and kinship legislation at Indian, whether commencing with the customary and religious laws, continuing with the codifications made during the colonial period and finally with concluding with the statutory law of the present day. This involves an

⁶ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

analysis of the process of transition of traditional norms as sapinda, saptapadi and caste-based rituals to formal law.

- To learn how some of the major laws legislated to date, especially the Hindu Marriage Act, 1955, and Special Marriage Act, 1954, have informed the legal and cultural perceptions of marriage and kinship in Indian society besides its influence in individual status and gender roles and expectations.
- In a bid to clarify the overlapping between the personal laws and the constitutional requirements particularly in circumstances that regard equality (Article 14), liberty of faith (Articles 25-28), and independent choice (Article 21). This is delving into the conflict and balancing between the community rights and the fundamental rights.
- To examine the influence of legal acknowledgment to individual and social identity: how marriage and family roles play into individual definitions of self-identity, social identity and identity of the greater culture of Indian society.
- In order to analyze judicial interpretations and ground-breaking judgments over inter-caste, inter-faith, and same-sex relationships which include how courts have weighed the traditionalism and value of progressiveness in the constitution and how the interpretations of these decisions play out in the socio-legal sphere of India.

V. RESEARCH METHODOLOGY

The current piece of work uses a doctrinal approach to legal research and writing, which entails the qualitative analysis of primary and secondary legal sources. It adheres to a normative and interpretative route that sets out to understand the process of legal evolution through constitutional laws, personal laws and the interpretation of the laws to meet the demands of new revised societal expectations.

- **Type of Researchable Nature**
 - **Type:** Qualitative
- **Method: Doctrinal and analytical**

- Focus: Descriptive, interpretative and evaluative of law principles and norms of the socio-cultural aspects
- **Research Design**
 - **Historical Analysis:** This is chronological analysis of how laws have been evolving on marriage since the ancient principles of Hindu Dharma shastra to what statutes have been passed after Independence.
 - **Comparative Analysis:** Among different personal laws (such as Hindu, Muslim and Christian) and the statutory frameworks such as Limited Marriage Act.
 - **Case Law Analysis:** An enhanced critique of the land marking judgments like:
 - Lata Singh v. State of UP (2006)
 - Shakti Vahini v. Union of India (2018)
 - Navtej Singh Johar v. Union of India (2018)
 - S. Khushboo v. Kanniammal (2010)
- **Data Collection**
 - **Primary Sources:** Statute (e.g. Hindu Marriage Act 1955, Special Marriage Act 1954, Muslim Personal Law (Shariat) Application Act 1937, Dissolution of Muslim Marriages Act 1939, Indian Christian Marriage Act 1872). The Constitution of India 1950 (in particular articles 14, 15, 21, 25/30, and 44). Highest court and High Court rulings on the interpretations of these laws
 - **Secondary Sources:** Elegant discussions by renewed scholars (e.g. Dharma shastra by P.V. Kane, Indian Constitutional Law by M.P. Jain). Papers published by well-known law periodicals (e.g., Journal of Indian Law and Society, NUJS Law Review, Indian Journal of Gender Studies). Reports of the government (e.g. Law Commission Reports). The scholars

in the field of legal sociology and gender studies write books and publications.

- **Analytical Framework**

- **Doctrinal Analysis:** Analysis of legal texts, constitutional provisions and cases.
- **Socio-legal Approach:** Assessment of the interaction of the law in relation to culture, caste, religion and social change.
- **Critical Legal Theory:** The involvement in the analysis of Critical Legal Theory of feminism jurisprudence, constitutional morality, and legal pluralism in order to comprehend the more profound presumptions associated with family law.

- **Scopes and Limitations**

The study is mainly about Indian personal laws and development of statutory laws; the study has some moments of comparative glances of other jurisdictions wherever possible. It does not study individual experiences empirically but undertakes a conceptual, legal, and normative inquiry into marriage and kinship.

VI. RESEARCH QUESTIONS

- Are the marriage and kinship legislations commensurate to the constitutional view of equality and justice in India?
- Operating under the framework of personal laws, marriage, and other arrangements institute a violation to the existence of fundamental rights that are enshrined in the Constitution of India.
- Are the issues surrounding marriage and kinship in India practical to climb up between the old and the new law?
- Is the legalization of different kinds of relationships, including inter-caste, inter-faith relationships, live-in partnerships and same sex unions, sufficient in answering the changing social norms and perceptions in Indian society today?

VII. RESEARCH PROBLEM

- Has the change from traditions to laws in India resulted in any inconsistency or conflict in how marriages and kinship are recognized under various personal laws?
- How strongly do Indian laws backup the rights of individuals and their family situations, given the variations from traditional values as society develops?

VIII. LITERATURE ANALYSIS

Researchers have long published how the tradition that used to govern marriage and family in India transformed to being printed in black and white. According to some thinkers and scientists, marriage, family, have their basis within the society and is influenced by religion, social strata, gender and cultural practices of various regions. The acknowledgement of these principles by the law has made people argue on how to incorporate the traditional values and the ideas of constitutionalism within the pluralistic society like India.

Traditionally, scriptures and native practices provided the majority of rules that governed Indian marriage and instead, the state had minimal participation in Indian marriage laws. In their narrations, ⁷Derrett (1999) and ⁸Galanter (1989) described this as a result of necessity of various laws created by different religions and castes; a phenomenon that has been witnessed over the years and caused legal pluralism to exist. To bring in modernization to these ancient rules, the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 were enacted and inducted into the same legal framework. Nevertheless, these legislations attempted to glamorize the tradition without a significant alteration of the dominant culture. To illustrate, the Hindu Marriage Act preserved the sacramental character of Hindu marriage but ensured that the couples have been of legal age, faithful towards one another and grounds to divorce one another.

⁷ Derrett, J.D.M. *Religion, Law and the State in India* (Oxford University Press, 1999).

⁸ Galanter, M., *Law and Society in Modern India* (Oxford University Press, 1989).

Several legal experts such as ⁹Agnes (2001) and ¹⁰Sarkar (1999) hold the view that the Indian family laws in this manner tend to safeguard the authority of the male in the family name in interest of acting in accord with time eternal traditions. Agnes argues that codification of laws is usually a step in the middle analysis of the religious practices, and it is modeled to react or substantiate the central position that the society holds. As it can be observed not every community receives equal legal protection. Most Muslim women face legal issues regarding divorce and maintenance since the application of the Muslim Personal Law in 1937 is not the same as those of the reforms brought about by the Hindu Succession Act.

Research has indicated that there is a gap between what the written law entails and the behavior of people. ¹¹National Family Health Survey (NFHS-5), 201921 (International Institute for Population Sciences, 2022) shows that 23.3 percent of Indian women aged between 20 and 24 were married at the age of less than 18 years, which indicates that, most likely, these practices are connected to living in rural and underprivileged areas. The research indicates that the enactment of law is not all it takes in order to have a drastic impact in society. In some instances, the law exists but it is seldom applied in the instances of a caste or patriarchal society.

The Indian judicial system has caused a significant transformation in the sphere of adoption, guardianship and succession. With the help of the Hindu Adoptions and Maintenance Act, 1956 and the Guardians and Wards Act, 1890, a host of the previously semi-official relation in families became fit to be recognized by the law. Nonetheless, the way the code applies to non-traditional families including those with live-in partners or people who are queer have not been clearly spelt out. Court decisions as in *Navtej Singh Johar v. Shafin Jahan v.*, (2018) and *UOI*.

Indeed, Asokan K.M. (2018), have made progressive changes over time in the significance of family under the constitutional law by establishing that, along with individual autonomy, personal dignity is another criterion defining intimate

⁹ Agnes, F., *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, 2001).

¹⁰ Sarkar, L., *Law and Status of Women in India* (Academic Foundation, 1999).

¹¹ International Institute for Population Sciences, *National Family Health Survey (NFHS-5), 2019–21: India* (IIPS, Mumbai, 2022).

relationships. The Supreme Court has over and over again postulated that the judgments passed by the state authorities on such issues ought to conform to the morality that is prescribed by the constitution rather than what is perceived to be right or wrong by the society or the tradition. Indeed, statistics posit that the number of non-traditional unions is on the increase. According to Pew Research Center (2022), an estimated 6 per cent of Indian sexually active persons in the age group of 18 to 35 were in cross-religious relationships and 9 per cent were in inter-caste relationships, a higher degree of acceptance now among the youths (Pew Research Center, 2022, accessed 17 June 2025).

The laws have not always reflected the changes in the society. In legal and political circles, people have talked a lot about the absence of Uniform Civil Code (UCC). ¹³Baxi (2003) also suggested that the move to harmonize personal laws should be preceded with resultant consequences on the inequality of circumstances and the inequity of the law systems.

The aspect of literature relative to psychology contributes to the manner in which marriage and family formation in terms of law are accepted. According to ¹⁴Erikson (1968), much of early adulthood is focused on creating intimacy and a sense of identity, and these things are highly influenced by social and family pressures. How the society regards an identity; whether legal or otherwise, has a significant influence on the feelings of belonging and self-esteem of an individual. An example would be that, when same-sex marriages are outlawed, then this would create an inequality, and that inequality affects people as they become more isolated and develop mental health problems, and it goes against the idea that laws are mere rules as these are symbols that possessed people.

To sum up, it can be concluded in the literature that despite the development of Indian law in applying social structures such as marriage and family to the law, it still

¹² Pew Research Center, 'what it Means to be Indian: Identity, Citizenship, and Belonging in Contemporary India' (2022) <https://chatgpt.com/c/68519525-7fc8-800e-92d3-9351a9fb8321#:~:text=https%3A//www.pewresearch.org/fact%2Dtank/2022/06/21/what%2Dit%2Dmeans%2Dto%2Dbe%2Dindian/> 17 June 2025.

¹³ Baxi, U., *The Future of Human Rights* (Oxford University Press, 2003).

¹⁴ Erikson, E.H., *Identity: Youth and Crisis* (W.W. Norton & Company, 1968).

struggles to apply diversity and similarity and custom to constitutional rights. Not only should new laws be written, but they should be enforced in the manner that encourages justice and equality and does not violate the dignity of people. The necessity of the involvement of the courts, the need of the governments to bring forward the laws and the society to remain alert to keep the laws of India move in tandem with the different times is still a burning issue.

IX. INTRODUCTION: THE SOCIO-LEGAL MATRIX OF MARRIAGE AND KINSHIP

This section outlines the main point behind the text: While marriage and kinship arose through society and culture, they have experienced many changes in the law. By using the legal maxim *Ubi societas, ibi jus* (Where there is society, there is law), it explains how these aspects are important to the issue of legality, morality and identity. Important articles from the Indian Constitution are mentioned – Articles 14, 15, 19, 21 and 44 – that form the basis for the legal control of personal relationships.

A. Historical Underpinnings: Custom, Religion, and Colonial Codification

In this part, the paper explores the origins of marital and kinship behaviors in pre-modern India by highlighting ideas present in Vedic, *Dharmashastric* and Islamic belief systems. According to tradition, marriage used to be a very important sacred practice designed to sustain lineage, castes and the traditional order of religious ceremonies. Islamic law looked at marriages a contract called *nikah*. The British began changing these traditional laws with new acts, starting with the Hindu Widows' Remarriage Act (1856) and the Child Marriage Restraint Act (1929). Another way to say it is *Consuetudo est altera lex* which reveals that colonial administrators turned native traditions into laws without affecting the main social structures.

B. Codification of Hindu, Muslim, and Secular Personal Laws

India, following independence, took on the tough job of creating personal laws that led to the creation of the Hindu Marriage Act of 1955. There are two laws on marriage: the Muslim Personal Law (*Shariat*) Application Act, 1937 and the Special Marriage Act,

1954. In this part, the laws' roles in establishing marriage requirements, marriage ceremonies, ending marriage and defining the rights of the partners are examined.

C. Kinship and Inheritance: Blood, Marriage, and the Law

Property and the patriarchal caste system have long shaped the way Indian families are related. This part of the essay review show inheritance and adoption laws either agree with or contradict these norms. Various laws are explored, including the Hindu Succession Act, 1956 and its amendment in 2005, the Hindu Adoptions and Maintenance Act, 1956 and the Guardians and Wards Act, 1890. Laws that assume a child's legitimacy and who is responsible for them (Section 112 of the Indian Evidence Act) are clearly biased toward males. The concept *Familia est fundament civitatis* (The family is the foundation of the state) helps explain how definitions of kinsfolk matter to peoples' economic and emotional lives.

D. Gender and Patriarchy in Matrimonial Legislation

Legal changes have not fully overcome the patriarchal influence on many matrimonial laws. This part of the study talks about how dowry, child marriage, domestic violence and unequal property rights are still present in the laws. The Dowry Prohibition Act, 1961; Analysis of the Prohibition of Child Marriage Act, 2006 and the Protection of Women from Domestic Violence Act, 2005, highlights that the law and what happens in practice are not the same. Using the phrase *Fiat jus ticiaruatcaelum*, people point out that justice has been slow in reversing longstanding gender inequalities.

X. QUEERING KINSHIP AND MARRIAGE: LAW AND THE LGBTQ+ PARADIGM

This new conversation questions the traditionally fixed ideas about marriage and family. Section 377 IPC was applied in a narrower way in Navtej Singh Johor. Although India's Union law of 2018 abolished criminal charges for same-sex relationships, individuals have not been granted the same rights as others within a family. It examines discussions around same-sex marriage, transgender parenthood and the different family arrangements of queer individuals. International jurisprudence (e.g., Obergefell v. Hodges, USA) serves as an

example to bring attention to the lack in Indian law. The theory that every right has an appropriate remedy is brought up when rights are denied even though the constitution is followed.

A. Judicial Interventions and Constitutional Morality

The presence of constitutional morality has allowed the judiciary to change the rules of personal law for the better. Here, we review significant court rulings such as:

- Shayara Bano v. Union of India (Triple Talaq),
- Joseph Shine v. Union of India (Adultery decriminalization),
- Shakti Vahini v. Union of India (Honor killings)

Lata Singh v. Uttar Pradesh State has a law to prevent disagreements over inter-caste marriage. Even when the courts find that religious law goes against the principles of dignity and equality, they still apply these constitutional standards. By following *Audi alteram partem* (Let the other side speak) courts aim to keep reform and justice in balance.

B. Social Resistance and Cultural Stagnation

While laws encourage equal treatment, many still hold conservative beliefs and prevent these laws from working well. In India, as stated by **NFHS-5 (2021)**, 4 in 10 women are married by 18 and very few participate in marriages with others of a different caste or religion. The reason for the resistance is mainly *casteism*, communalism and patriarchal customs. This area uses social psychology to explain the conflict that arises from differences between law and the norms in particular cultures. The law protects individuals, but many groups still expect a wider public acceptance of these activities. There is a major theme about old habits being hard to break.

XI. THE UNIFORM CIVIL CODE: ONE NATION, DIVERSE MARRIAGES

Article 44 of India constitution decrees that high aims will be the efforts of state to furnish citizens with a common civil code at the level of the whole territory of India.

This directive principle is aimed at the consolidation of the personal laws to integrate and have equality. But its application forms one of the most controversial discussions in Indian constitutional law.

A. The Philosophical and Constitutional Foundations

They claim that UCC is indispensable to gender justice, equality before Law (Article 14), and non-discrimination based on religion (Article 15). They further feel that the singular legal system would do away with discriminatory nature of different personal laws that benefited some over others and specifically women by means of unequal rights to divorce, inheritance restrictions and polygamy in some communities.

However, the critics say that the UCC can provide the large majority of the Hindus dominating certain norms in society over the religious minorities, thereby breaching the constitutional protection of the freedom of religion under Article 25. In *Shah Bano v.*, the Supreme Court held that: The *Shah Bano* judgment has a long history of only having relatives to turn to. The *Shah Bano* decision has a long family of relatives to take to. This debate was once again revived through *Union of India* (1985 AIR 945) and the end result of that case was the enactment of Muslim Women (Protection of Rights on Divorce) Act, 1986 which is highly controversial.

B. Law Commission Reports Studies

The 21st Law Commission Report of 2018 on Reform of Family Law did not welcome a comprehensive UCC but recommended the reforms to be adopted on piece meal basis to all personal communities on the arena of gender equality. According to the report, it was stated that:

Uniform Civil Code is not a necessity or even desirable at this point of time in the country. But the 22nd Law Commission (2023) was bullish about this modest tone and, through a notice issued to the public on 14 June 2023, sought opinion of citizens and stakeholders on practicality and form of a possible UCC. The Commission stated that: Society keeps changing and the UCC might contribute to preserving the values of equality and justice without invading on religious freedom. This represents a return

by the government and legal reformers to interest in standardizing civil laws although no binding recommendations have been put on the table as yet.

C. Political and Governmental Positions

In front of the Supreme Court and the Parliament, the Union Government has persistently emphasized that a UCC is required to entail national integration and equal acceptance of the basically different shades of femininity in the country. In 2023 and early 2024, the Ministry of Law and Justice threw weight behind the re-examination of UCC by the Law Commission, presumably implying that reforms were necessary in a democratic state governed by rule of law, rather than by religion. Nonetheless, critics representing opposition parties and minority groups claim that the bill to pass UCC is political, and it will marginalize the diverse identities under the homogeneous pattern.

D. Goa Model Case Analysis

Goa is commonly quoted as being one of the examples of successful application in a UCC. The Portuguese Civil Code, 1867 is continuing to be applied to family affairs in Goa and it is uniformly applied to everyone who lives in the state irrespective of their religion. It has clauses relating to monogamy, equality in inheritance, and the requirement that marriages have to be registered.

However, some researchers like Flavia Agnes warn that Goa law is not quite the same, when it comes to practice. A Hindu man is still permitted to engage in bigamy under certain customary circumstances (e.g. no offspring of the first marriage), and personal custom may remain a determining factor in action. Therefore, despite the fine example brought about by Goa in general it is not devoid of traditional exceptions and gender prejudices indicating that even the existence of common civil code does not necessarily mean equity is built in.

XII. LEGAL PLURALISM VS. UNIFORMITY: RECONCILING CUSTOM WITH CODEX

This segment discusses the idea of many legal systems coexisting with the principles found in universal constitutions. With legal pluralism, each group has more power,

while with uniformity, justice is supposed to be the same for everyone. The issue is whether laws should help change society or mirror its values. *Lex iniusta non est lex* criticizes situations where what look like laws are just patriarchal customs in disguise. The state faces the challenge of respecting religious freedom (in Article 25) and maintaining equality (in Article 14).

A. Future of Kinship: Assisted Reproduction, Surrogacy, and Digital

Parenthood Technology-based forms of family creation like IVF, surrogacy and Internet co-parenting need legal acknowledgment. These two Acts—Surrogacy (Regulation) Act, 2021 and Assisted Reproductive Technology (Regulation) Act, 2021—are reviewed for limiting themselves to heterosexual parents. Legal terms such as intended parent and the difference between biological and legal parenthood push classical notions of family law. The law often does not keep up with the latest developments in science which is captured in the idiom.

XIII. CONCLUSION: TOWARDS INCLUSIVE LEGAL RECOGNITION AND ITS SUGGESTION

The society is constantly moving ahead and the legal frameworks of it should do the same. The cultural change and social developments require that laws should be living, adaptable, and practical to the lives of its subjects. The core of identity and cultural continuity is tied to marriage, kinship and familial structures and the latter must therefore be revisited in a legal system that accepts change as well as tradition.

Decriminalization has to be culturally unmoved, though. Blank importation of the foreign legal patterns, in particular, those based on other historical or sociopolitical platforms, may lead to the development of legal imperialism. Indifferent to the rich social structure of the country, these transplantations do not only fail, but also stir up resistance to the culture. Indian law, thus, has to be founded on lived lives of the people of India, and at the same time on the universality of ideals of justice, liberty, equality and dignity (as embodied in the Constitution).

The challenge is to strike a balance between universality of values of the constitution and pluralist values of India. Law must allow the cultural landscape to exist in a state

of motion and defend the interests of individuals when the religion is strict and continues the old ills in the society, particularly the issues related to women, LGBTQ+ individuals, and other minorities. Both religion and tradition should not be considered in the orthodox terms but in terms of constitutional morality which believes in individual rights and not in the majority beliefs.

A. Overall Message of Key Findings

Cultural legitimacy cannot be undermined by the flexibility of law. The constitutional morality plays a crucial role to beat the discriminating practices. The principles of dignity, equality, and inclusion should be implemented to reform and provide people with freedom to live, love, and create families without discrimination. Its reaction to the concept of *jus gentium*, the law of nations, can assist in the realization of the global best practice that may be adapted to surroundings unique to India.

B. Proposals on Legal Reform

Enact gender neutral, inclusive personal laws that can take into consideration the variously formed families with queer unions and live in allied partners. Get rid of religiously authorized discriminatory acts against the right to equality and dignity, including such practices as unilateral divorce or unequal inheritance. Promote courts activism and clarity on the statutory front to reconcile the individual laws with constitutional requirements. Make consultation of the people, and community norms during reform institutional to eliminate the possibility of legal imposition.

C. Fine Print of the Present Study

The analysis used here is conceptual and mainly philosophical; it is not backed up by empirical study that could have been conducted in the field or the community at the form of interviews. It is less concerned with specific jurisprudence of minority personal laws (e.g. Muslim, Christian, Parsi) but more concerned with Hindu laws and secular laws. It uses the comparative legal theory (e.g. *jus gentium*) but does not engage necessarily deeply in particular national models of reform.

D. Future Research Recommendations

An on-region study would be possible to test how communities think about reform of personal law, and how legal consciousness is regional, and representative of different identities. Pending or challenged constitutional appeals to discriminate personal law provisions could be analyzed by doctrinal legal approach. A combination of anthropology, sociology and religious studies might help in determining how meanings of family and kinship have evolved in India.

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