Sex Equality under the Constitution of India: Problems, Prospects and Personal Laws

Sidhartha Das[1], Nilanjan Chakraborty[2]
[1,2]Asst. Professor, Faculty of Legal Studies, Siksha O Anusandhan
Email- [1]sidharthadas@soa.ac.in, [2]nilanjanchakraborty@soa.ac.in

ABSTRACT

It is undertaken to give women of oppressed religious minorities equal rights under the Indian constitution and international law by family law. The sameness and difference predominating the legal model of equality criticized around the world. An alternative model that addresses dominance and subordination ordinary hierarchy is developed and illustrated through discussion of India's jurisprudence at the Supreme Court. An inability to adapt this pattern to family law is established, and the difficult question of ensuring a new approach to gender equality rights for Muslim women is suggested under the "special laws' of India. The conventional legal approach to equality that comes from the West is used mainly across the world. A promising alternative that is gaining popularity can already be found implicit in the Indian constitutional equality tradition at its highest, as well as in some Western equality legislation. This alternative has great potential for advancing social equality for women by law, including addressing the complicated political and legal questions raised by Indian family law, called "personal rules."

Keywords
Sex equality, Muslim personal law, fundamental right, right to equality.

Article Received: 10 August 2020, Revised: 25 October 2020, Accepted: 18 November 2020

Introduction

Almost everywhere, the meaning of equality in law descends in a direct line from Aristotle's dictum that equality means treating like, unalike. This creation, as formed through the Enlightenment, revolves around sameness and distinction. When people are seen as relevant their treatment is considered unreasonable and arbitrary and is prohibited by law as unfair under similarly imperative likes, but is not treated the same. When seen as different, they can be treated differently unalike; that, too, is regarded as equality. This norm, known as formal equality, is generally considered fair, objective, impartial, and socially progressive. It's empirical, in a sense: the law is about representing truth. The problem that he is trying to solve is classification. People must be the same as each other within a classification; people of different classifications must be different from each other. Equality is about treating the same people who are correctly classified as identical, differently who are specifically classified as different [1].

Without having given much critical thought on the level of the first principles, this model has been accepted either explicitly or tacitly as the obvious content of equality in most jurisdictions that have guarantees of legal equality. It prevails by international law and by the European Union legislation guides the interpretation of the Equal Protection Clause of the United States Constitution and has primarily defined the application of Article 14 of that country's Constitution by the Supreme Court of India, as seen in the foundational cases of Royappa and Dalmia. Surely that theory of the mainstream, it can be useful in tackling certain problems of inequality, including those afflicted by the elite as well as by some members of subordinate groups; it can be usefully deployed with creativity in the hands of those already committed to producing social equality through legal equality. Affirmative action, which treats unlike alike based on their unlikeness, is entirely Aristotelian, making the doctrine difficult for this theory of equality, even agonizing. Women's subordinate status relative to men is not prominent among the problems of inequality that the Aristotelian model has solved. The questions are why and what to do in this regard [2].

When created, this framework was not predicated on an understanding that women are the equals of men kept pervasively unequal by social orderings. Confining women to their homes, excluding them from voting and public office, preventing them from working, violating, and prostituting them were not seen as inequalities. Bluntly put, inequality between women and men was not a problem that Western equality thinking was created to solve, because it did not see women as the full human equals of men. To telescope a long story, this theory imagined women as different, which when measured by the human's tacitly male standard, translated into "inferior." Women, by the habit of thinking, were thought not to be entirely human despite the nature. This view has produced one contradiction between, on the one hand, the image of women put on a special pedestal or specially protected for their differences and, on the other, the reality of being abused, manipulated and murdered with widespread impunity same configurations and attributes supposed to support pedestals and protections [3].

The result was the rationalization of systemic social inferiority by identifying the distinction, making not discrimination problems at all to most sex- and gender-based subordination. The reality that feminism, as originally formulated in the West, was never meant to modify the pervasively inferior social status of women, and male legal status goes a long way to understanding why it did not. Understanding that the most widespread social inequalities faced by women have been imagined as women's differences from men, hence not inequalities, helps explain why equality law has traditionally not been used to address violence against women, one of the most commonly

occurring examples of gender-related unequal treatment. It seems that rape and battering have been implicitly seen as a feature of the gender difference. Looking across cultures, we see women being abused, exploited and violated in a range of practices that included rape, domestic violence, prostitution, and sexual harassment in their specific cultural forms, with equality law standing on the sidelines there [4].

Most cultures view such practices as unavoidable (if unfortunate) or illegal (if applied spottily) but not so unjust in the legal context. Practices seen as attaching to differences do not give rise to claims for unequal treatment because, in those respects, the genders are seen as being different rather than treated unequally. In Aristotle's terms, unlike, they are simply treated unalike. So little to nothing is being done about such practices, certainly not through the law of equality. Being defined as different-sex is generally seen socially as "the gender difference"—thus, under the traditional model of equality, it can result in being treated worse, or less, without considering that treatment as unfair. For example, when women do work differently than men, as do most women. They can be paid less for in the world, and this is not seen as a problem of inequality because the work is different, often even if it is of comparable value [5].

Disadvantages are associated with pregnancy because pregnancy is a difference between men and women, resulting in unfavorable treatment of the actual or potentially pregnant being classically not seen as sex inequality. When subordination tracks lines of socially recognized difference, and it usually does, women can be subordinated to men following the rules of equality, as treatment is seen as equal treatment for equality.

Never mind that social subordination itself can not only create differences, such as reduced access to work qualifications among excluded groups, and the view that pregnancy is a disqualification of employment when it is not but can also create the impression of differences, including stereotyping and oppression internalized. Because unalike can be treated unalike, including worse than you like, dominance and subordination which form a hierarchy that can and do coexist with the rules of sex equality. Male dominance and female subordination are thus maintained seamlessly under legal regimes of equality across the globe [6].

Discrimination in the mainstream theory of equality is treating someone who has the same rank, status, or qualities as if they were not the same as others in that group. But if someone isn't in the category already, they aren't the same as those in it and maybe handled as well, so that's not the case.

All it does is treat them as who they are. Given that socially imposed inferiority has real or harmless consequences, how arbitrary, in the end, is it to treat someone who has been deprived of educational advantages as less educated? This approach to gender equality so it can map itself to existing social hierarchies, ratifying them instead of challenging them [7].

It makes perfect sense in this light that formal equality could justify racial segregation, as it did in the United States under the Equal Protection Clause. It drew lines of difference where society drew them up. In different railway cars, even those who were racially similar were treated equally. It also makes sense that the Third Reich 's policies could be and have been justified as consistent with the principles of equality. Through extermination, non-Aryans were treated differently from Aryans, legally. When Inequality practices are social tautologies, they can be ratified with no logical defect as equality. The results of those two examples were repudiated. It was not the reasoning that created them. And instead of being a means of putting an end to hierarchical relationships based on group rank, formal equality may be a way of preserving unjust status. Nonetheless, its success can contradict significant equality, which may entail social reform. Its methodology of categorization ascertaining reasonableness is to reflect reality as it is. The model works for them if an individual has managed to escape the hierarchically imposed status of their community, or succeeds in appearing equal despite social assignment as an unfair. But that's it not intended for those who haven't escaped their status-which, by definition, most members of socially subordinated groups will not have. Therefore it will become fair, not arbitrary, to represent their current status which is, in fact, the unequal status quo. Equality becomes a right such that those who are most in need are least well placed to claim, and those who are least in need are best placed to assert [8].

People who are already equal, that is to say, can claim injury most readily when treated as if they are not equal. This is not to say that people lacking qualifications or merits should be treated as having them. It's to ask, when will the paradigm of equality demolish large group-based inequalities? Where does this model leave those structurally unequal by sex? The empirical implementation of the current theory of equality has resulted in the deepest and most common inequalities, including gender inequalities, which cause the greatest damage and they were the most socially institutionalized. Even those prejudices that became real, and those cultural oppressions that became internalized they are least discussed. Because their doctrine is structured to give reward the greater the "thirds of scrutiny" under the U.S. Equal Protection Clause, reflecting greater regard for injustice, the greater the fact of social disparity that one lacks.The point is not that it is impossible to make this model work for some equal ends on the margins, with sufficient ingenuity and benevolent determination and intelligent layering. The argument is both that those ends are hypothetical, and that it is just as possible, if not more so, to use this theory to enshrine current social inequality, especially where there is a lack of ambition and desire to achieve equality. If, depending on extrinsic inputs, an equality doctrine can go either way, is this a doctrine of equality? Where goodwill and political will depend on a commitment to work, its secular tendency will be to fail precisely for those people and at those times where there is a lack of an egalitarian spirit, just when it is needed most. And that, in truth, is what has happened, probably. Sex equality laws exist nearly everywhere, and sex equality exists virtually nowhere. Another very distinct idea of equality derived from people subordinated based on race and sex has evolved beneath and next to this dominant paradigm an alternative definition that has motivated some legal work against racism in the US and violence against women all over the world. It takes the view that equality is not based on equality or vitiated by difference but is a practice of social subordination; second-class status, of inferior and superior ranking, produced and produced by historical hierarchy.

The opposite of equality, in her opinion, is not a discrepancy but a hierarchy. Equality, therefore, requires the promotion of status equality for historically subordinated groups, and the dismantling of group hierarchy. Given that the Aristotelian paradigm as applied would not effectively produce social equality in a diverse society, the Supreme Court of Canada embraced this alternative contextual notion as its standard for measuring the constitutional equality of law. This alternative influences South African constitutional jurisprudence court and the international rulings are increasingly animated. This alternative model is illustrated by the sexual harassment law, which first argued that being in a subordinate sexual position was not a sexual difference justifying sexual abuse but rather a violation of sexual equality rights. That sexual harassment is a common and cultural one, by another name ingrained practice between men and women, arguably part of what is known as the gender difference, was not permitted to obscure the fact that it is a practice of subordinate social status, hence an act of disregard [9].

When it's women and the sexual differences between men mean that men can sexually harass women in the standard terms of the model, treat them differently from men because women and men are sexually different either because sexual harassment is not sexual discrimination or because of a new vision of equality is needed. One is may agree with earlier courts that sexual harassment is not sex discrimination, or may see that sexual harassment is exactly what sexual discrimination looks like and envision a new model of equality: one that is neither seamless nor negated by variation, neither punishes variation nor protects seamlessness, but challenges social inequality by making civilly actionable as sex. Discrimination a practice through which members of one social group have been permitted to treat others as inferiors.

Literature Survey And Reason Of Discrimination Between Genders

Tribunals are well-suited to enforce the laws to prevent the discrimination utilizing a multitude of approaches because it is precisely the concrete historical reality that comes to the courts through the facts of the cases to which they are requested. The questioning of whether a particular group is historically disadvantaged, as does the alternative concept, is a factual investigation that builds

History meaning in. It requires courts to look at, not distance from, the reality of social hierarchy. They are subject to proof. It allows the acknowledgment of historical fact an adjudicative concept, rather than a disreputable moral humiliation or a practical strategic option for the cynical contester.

This alternative theory requires the law to promote equality for subordinated groups by putting an end to subordinating practices that promote group-based disadvantage. It merits the name of substantive equality because, at its point of arrival, it takes fundamental inequality as its starting point and creates equality in substance [10].

To put it somewhat differently, as discrimination is socially institutionalized, it generates differences between people that can themselves serve as excuses for treating people worse will not only seem to be fair and not arbitrary at all but will be. When reasonableness is defined by mirroring society as it is, an unequal status quo validates inequality. The alternative conception does not begin with these abstractions of sameness and distinction but in the sense of questioning whether there is a real, historical, social hierarchy.

Having concluded that no social group is inferior to the other, if its members are then found to be unequally classified or handled or socially positioned, social inequality has arisen and laws and policies and procedures that assist in that group's social inequality are unconstitutional.

India's equality jurisprudence has long exhibited inklings of the limits, undertakings, intransigence, and potential for the backlash of formal equality, and it shows a strong sense that a more substantive notion of equality is needed. Backward as 1963, Justice K. Subba Rao’s dissent in Lakshman Dass famously challenged classification theory as the be-all and end-all of equality. He grasped the important point: the tail wagged the dog as it had been between equality and classification. The separate view was motivated by a common interpretation Justice P. N. Bhagwati, in tandem with Justice Krishna Iyer in Royappa, where it is observed from the so-called modern doctrine that equality is 'a complex term with many facets and dimensions, and cannot be 'cribbed, cabinet, and confined within the boundaries of tradition and orthodoxy. Their level of anti-arbitrariness was resisting the same equality thinking I identified: the conventional boundaries of Western equality thinking that have "printed, cabined and limited" equality law in India, requiring a new departure to be true to the meaning of the theory, and in truth, produces equality [11].

If the possible dynamism inherent in the concept of equality is revealed in subordinated peoples' claims as illustrated in the alternative definition, a rich and concrete heritage of equality is revealed under India's current jurisprudence of equality. Along with the influential caste cases, perhaps the most noticeable examples,19 some women's rights cases, by specifically taking into account the social context of the sex-based disadvantage, foreshadow and represent a practical approach to gender equality.

The jurisprudence upholding sexual reservations in employment, along with some asymmetric lower court equality rulings allowing what is sometimes called female-friendly discrimination, and the international law-based sexual harassment rulings in Vishaka and Chopra, along with some equal pay and comparable value rulings all animated by a notion of substantive gender equality. One Supreme Court case acknowledges that prostitution is anathema to equality between sexes. Many of the latest radical rape rulings of the Supreme Court show sensitivity to sexual equality that awaits being branded so doctrinal only [12].

The constitutional text of India, which is central to such decisions, has considerable potential to strengthen women's subordination to men. A warning light compared to other guarantees of Western equality, in the structure and rules of the Constitution of India itself, the language of Article 15 acknowledges that sex has become a social disadvantage for women, in violation of the concept of equality. As in section 15(2) of Canada, Article 15(3) of India specifically provides for a substantive recognition of the inequality of women's

social standing by calling for special provisions to rectify inequalities.

As a result, steps to end men's hierarchy over women are not cast as violations of a rule of equality, which are nevertheless allowed. Rather, since such measures promote equality, they are no exceptions to the anti-discrimination rule; they are by no means discriminatory. Certainly, according to Article 15, one could not legally promote women's inequality by law. Such a substantive awareness is not present in most other countries of the world, especially in the West, as a basis for women's equality rights, much less is it given textual form. Article 15 provisions allow for a concrete lens by which women's rights to equality can be viewed [12].

Thus, a basis and preparation for the next "next step" in the evolution of justice equality discourse this time for women are strongly prefigured in India's legal foundations and case law. Formal equality may be limited to Article 14. Article 15, in particular through Article 15(3), may provide the basis for a theory of substantive equality which is counter-disadvantageous: the dominance of men over women. Sex would embrace gender, its caste-like socially disadvantageous form, rather than in the narrowest sense being confined to biological sex "only" or sex "alone'.'

Some cases which were not traditionally doctrinally considered cases of sexual equality, such as the Mathura case, in which the Supreme Court found that a seventeen-year-old tribal girl sexually harassed by two police officers at a police station had not been raped, should be recognized as violations of constitutional sex claim to freedom. If the gender equality in substance achieved for women under other such legal doctrines is paired with innovations in equality law previously in pursuit of a unifying justification, a theory would be given that fits the vision and text already there, and the pieces would be given falls on the spot [13].

Having come so far for women in India's jurisprudence, carrying such a big pledge, one significant exception is notable. The judicial inability to apply the concepts of gender equality to the personal laws is out of step. With grades varying, the personal laws of all the religions of India included facial and sexual distinctions added to the disadvantage of women. Yet the courts still allow them in the family context, even as the rules are strained (sometimes to the breaking point) is to have an indication or presentation of the resulting gender equality. Unhesitatingly, the Supreme Court in the setting of work invalidated a rule requiring a woman, but not a male, to serve in the Indian Foreign Service to receive a government permit to marry. Contemplating the discrimination of the facial sex there, Justice Iyer questioned: "whether [articles] 14 and 16 belong to the theory or reality." However, when laws are made in the sense of family law, provisions of facial sex are unjust [14].

One wonders where the Court's focus on gender discrimination has gone since it read its 1996 upholding of the Hindu Succession Act's property partition provisions. Sons of intestate were permitted to arbitrarily obstruct the division of property on the sale of a dwelling by staying there, regardless of the marital status, such that the sons would inherit nothing before they left home, while the sons would only be allowed to live in the house if they were unmarried. Although women had fewer rights than men, the law was allowed to stand on a basis that implied that all turned out roughly equal. The case of Githa Hariharan challenges a Hindu law of guardianship providing that "after" a father's lifespan, the mother is the guardian of the infant, gives rise to similar discomfort. "After" was perceived as meaning "in the absence of," as if this would fix gender discrimination. The mother was the guardian of the child only in place of the father, not in her own right, her custody one just steps back, and the scale of his absence. Until recently, the Christian personal laws recommended separate divorce grounds for men and women.

Men were permitted to divorce on one soil while women were expected to have more than one. Muslim personal laws mandate that a Muslim wife be monogamous, while a husband can have as many as four wives. They also authorize husbands to divorce unilaterally, but not wives, without fault; institutionalize door agreements that are likely to amount to selling women in marriage, giving male heirs twice as many female heirs as possible, and banning mothers from becoming guardians of minor children. Also though, as some have from Shah Bano to Latifi, legal rulings in the family field support women's equality in their outcomes, courts avoid predicting the outcomes on grounds of sex equality. In these cases, it is not uncommon to not discuss gender equality in the legal context at all. Thus the Court insisted on nullifying the second marriage of a former Hindu man who converted to Islam on constitutional ground, instead of holding polygamy in the absence of polyandry or mutual consent of both, as a breach of the guarantees of sexual equality [15].

Despite some confusion with canons of statutory interpretation and the possibility of more scrutiny, courts tend to be more comfortable creating statutes to interpret personal laws within religious dictates this was the case with Shah Bano when the Court was bitterly resented for presuming to construe religious principles in the field of the family without the religious authority. It seems more appropriate to leave family life determinations to religion than to grant the constitutional and international rights to gender equality that the Court has shown itself to be so capable of guarantee in many areas and family law issues are so wide-ranging just-justified.

Glitches Associated With Gender Inequality

The decision in the case of Madhu Kishwar in 1996 expressed concern that invalidating existing law 'will confuse the current state of law. "If existing law is unequal, forcing it to be equitable would undoubtedly be unsettling, but it also offers evidence of the pervasiveness of the injustice that needs to be resolved rather than a justification why there is no injustice to be remedied. A more fundamental reason behind the reluctance to apply the principles of sexual equality to personal laws is the (tired but far from toothless) charge that sexual equality is a western and hegemonic idea that shows insufficient respect for the cultural disparity. As the initial research showed, the traditional theory of equality is Western, and the sketched alternative conception is not particularly so. In any known Western culture, women are not equal to men, either. Gender equality is not quite Western, even though the standard of gender equality is hardly Western unique in non-

Occidental cultures. Giving the West a level playing field obscures its influence, plurality, and dynamism as an ideal and partial truth across the world. This further distorts and undermines women's indigenous liberation movements everywhere as if their desire for liberation were not their own, as if they were not independent agents capable of understanding and acting in their interests [16].

It also obscures their global leadership for women's empowerment. It was Hansa Mehta, not Eleanor Roosevelt, who was responsible for what is reflected in the Universal Declaration of Human Rights as regards sexual equality. The United States has also not ratified the UN Convention to Eliminate All Forms of Discrimination against women.

For certain cases, the argument that gender equality is a foreign concept is a characteristic of men's culture. It is the near-universal response of men around the world to women who see their worth in terms that they have been denied by men when women reject their denigration as they have to give all their culture. Non-Western women need only equate their treatment to see the issue, not with the treatment of Western women but with that of men in their own cultures. The notion that Western feminism serves to justify targeting minority religions in favor of Western dominance and legitimizing its intervention has a lot of traction and not without justification. But what the West has to benefit in advocating equality for women in India today, equality it does not practice or even preach at home, is rarely defined. It is beyond irony that too much the idea of cultural particularity is invoked by Westerners defending subordinating people of subordinated minority's women within their communities, and even so little known [17].

Finally, even the wrong people have the right idea, even though they convey it in egregious ways. The historical example comes to mind of eleven-year-old Phulmani Bai, who died of her husband's sexual intercourse in 1891. The parliamentary measure to increase the age of marriage from ten to twelve was resisted, even by those who supported it, because the British who were said to interfere with religious affairs and couched their opposition in religious terms were in favor of the proposal.

The education of young women has certainly become an excuse for patriarchal colonialist interference. Yet does this mean that it does not affect girls who are raped to death in marriage (behavior hardly limited to India)? Would that mean that we will not do anything? Defending something that harms your people because it seems to be a sign of a colonized mind to be against those who harm you.

The fundamental, almost axiomatic explanation for the refusal to invalidate sex-based family laws appears to be the fact that the family is involved in those rules. Looking deeper at this family's truth in the cross-cultural light sphere, called "personal," together with attention to how women are handled there a significantly traditionally marginalized community one sees that the family is a crucible of unequal status and inferior treatment of women in term of sexually, mentally, socially and in a civilian sense [18].

Women are required to take responsibility for children within the family and are often given few resources to care for them and little voice in decisions that affect their shared lives. The family is a site of violence against women across cultures, a place in which women are raped with distinct and almost perfect impunity. It is a world in which others are not permitted to be born based on sex and gender, are not fed or nurtured, are not even allowed to grow up for battering, raping, and murder. Within this "personal" domain, women are often effectively sold to and owned by men across cultures; women's labor is abused with little to no remuneration; women are often left dependent within a relationship at the pleasure of men as long as it persists and discarded into destitution and civil exile when it ends. The whole of society participating, It has been said by the expert that women are discriminated against in jobs based on sex.

States are far from involving themselves in the so-called personal domain. In other aspects, they join it by legislating and implementing family law that effectively promotes such activities. If the state never enters an arena at all, one kind of equality problem emerges. But once they enter, they have to enter on a sex-equal basis, under well-established constitutional and international principles. Perhaps when states legislate on sex discrimination, imposing the subordinated social status of women to men along the lines just mentioned, constitutional and international responsibilities are breached no less than when states behave officially in every other area of society to the detriment of one sex [19].

Nonetheless, we find a pervasive and categorical reluctance in the family to accept the rights of sex equality. This reluctance is not peculiar to any one society but is expressed throughout the world by patriarchal societies (and most societies are male-dominated while forms vary). For example, the U.S. Supreme Court has so far looked at family law under equality rubrics only for facial differences, when in fact family law in the U.S. acts as a complex mechanism for impoverishing women and for creating and increasing their unequal status as a wide-ranging sex society [20].

A majority of women marry by law in the United States and most divorce through the legal process. However, no gender equality principles have been extended to the outcomes or expectations of either method, resulting in, for example, the marriage contract being scrutinized and the quality of living for women after a divorce is permitted to drop. Since courts do not seem to want to accept that, under the law, the family is a domain of sex discrimination, sex discrimination within it and on dissolution has been largely exempted from legal action on gender equality. The outcome is family publicly governed, to the detriment of women. The family is well known as a fundamental force in the public organization of gender relations and, in all its various ways, as a crucible of ideology and worldwide realization of male supremacy. As the Latifi Court placed it in India's family sense, Indian society is both male and gender dominated economically and socially, and women are inevitably given a dependent role, regardless of the class of society to which they belong. In most religious and cultural communities, if the family is an organ of the male domination in different ways and with variations.

Personal laws also serve to legalize this superiority of men over women in specific types of men's unilateral divorce in others, inadequate maintenance after-religion divorce in another, inheritance by men only in another, sex ownership and control of property and succession laws in others, multiple marriages only for men in others, custody of children to men only when dissolved in others, and so on. The common factor is sex, that is, male dominance

inequality in a manner culturally unique and not infrequently rationalized by religion [21].

Result And Discussion On The Reasons Of The Discrimination

Within this environment, the use and reference of the word "personal" are reminiscent of its role in the context of the sexual harassment statute. Sexual assault has long been considered personal in that a man sexually assaulted a woman, it was viewed as a straightforward matter between him and her sense that did not arise from the collective social roles of the parties as members of their sex or other hierarchies or that involved society at large. This in particular, by being sexual, was regarded as intimate, therefore unacceptable and off-limited for legal intervention. Since sexual assault was first taken to trial as a sex discrimination allegation, the response of the courts was precisely that it was intimate, and not sex-related. What they meant was that because sexual harassment is sexual, it's private, personal, and individual, therefore intrinsically unsuitable for governmental, institutional, and categorical legal regulation. In response, it was argued that the acts involved might have been intimate with the man, but the only sense in which the harassment was intimate with the woman was that it violated her intimately. It may have been personal to the attacker in the sense of involving him as a particular entity, but it failed to take into consideration the personal interests of the women who did not want it. It was also not personal to the victims in the sense that as members of their gender-based community, they were subjected to it because they were women. When the courts replied favorably to this claim and came to see sexual assault as actionable discrimination based on sex, what they did was understand that it did not make sense of calling this violence personally, as it happened to women as women [8].

There is nothing truly personal about them when law and care are focused on sex. Calling sex-based law "personal" then becomes a way to mean that women a category whose position is constructed so unequivocally as personal belonging to the arenas will not have recognized legal rights to equality. The injury can be cut near the female, as many facets of group identity and life do, but it becomes sex-based when the experience is shared with other women, including other women of one's faith. It's no mistake what is called the very position where sexual discrimination between women and men is crucially enforced. The personal exception from the ideals of sexual equality is a way of suggesting that women do not have equal rights under the law where they matter the most. As the Indian Supreme Court forthrightly admitted in the Masilamani Mudaliar case, "personal laws conferring inferior status on women are anathema to equality." When it is understood that the family is a terrain of sex discrimination, making the law of that area personal is exposed as nothing more than a way to avoid the assertion of equality by women there.

Through this context, it could be said that the term "personal laws" is something of an oxymoron, one that the 1952 Narasu Appa Mali holding through Bombay on the Hindu Bigamous Marriages Act tried to rationalize by ruling that because personal laws do not derive their authority from legislation, they are not "laws in effect" and thus not laws for Article 13 of the Constitution targets. The legislation is on personal rules. The State may or may not be the ultimate source of its authority, but legally and socially authoritative, and gave them authority [7].

Like, if a family were personal in the true sense of the term, it wouldn't be if the jurisdiction of personal laws is to be regulated by law there will be no need to legislate on them other than legitimate ones. Rather, such so-called personal legislation is described as off-limits for judicial interference when questioned by those they injure and are legally and judicially otherwise forced to follow like any other law. Standards on gender equality control the rules. Or, better, whatever they do or something else may be, they're rules that they're regulating. When not, regardless of therules are referred to as "private," the term is disclosed as exemption code an exception deal men make with each other here, some people can in return for these, encourage other men to appeal to women on their terms some men have the same relationship with their wives on the own words.

This is as if people agree with one another on civil peace state of reverence for the revered mores of each group for exe oppression, at the detriment of each group of women. It is this commonality between men as supreme to women that extends through rank and ethnicity, not their discrepancies on those grounds that can be used to decide whether the personal laws should be regulated by constitutional principles of sex equality. Through this light, it is the superiority of men in the definition of family in any religion that is at stake in what is viewed as religious and cultural diversity; it is the terms of the control of men over women in the family that some people allow other people to establish for religious purposes. Where personal legislation is subject to sex standards of equality, the contract whereby men accept each other mastery over women, every group of men in their way, will be off to them all. In the case of sexual assault, before this same contract became revealed as a form of sexual abuse, sexual assault distributed sex and money to keep ownership of both in the hands of men and to keep women poor so that they had to perform sexually to survive, without legal intervention. When you do have sex the ideals of equality are inoperative, both sexual harassment and personal laws leaving women and money in the hands of men, the terms of their distribution negotiated between men. In comparison to formal equality which can leave this system, the principle of substantive equality, emphasizes on who is doing what to gain and expenses [22].

The law on sexual assault has proven capable of addressing various grounds for discrimination, a flexibility that is still desperately needed in the field of personal law. A challenging question for a concrete anti-hierarchical equality theory occurs when women are subordinated within subordinated societies and it is believed that the subordinate group will be denied self-determination, autonomy, or equality by the participation of women in their cultural forms of subordination. Substantial equity has a double ability to rectify the subordination, as demonstrated by the initial sexual assault lawsuits brought by African-American women at the bottom of the labor market. Their converged sexism by sexual harassment, until discussed in substance, solved the sexual issue harassment for all, and reference to

how sexual access and use were and could be both racist and sexist.

Solutions of legal equality for subordinates within subordinated societies question the law of equality but also offer an incentive to foster equality across the board. With this in mind, the successful protection of legislation from the constitutional and international review is called private, laws that are public and indeed political in the sense that they regulate sexual relations between men and women is a way to institutionalize male domination and subordinate women by statute [23].

Not upholding equality in family law is also an official way of keeping second-class women residents in society. This aspect is veiled behind religion when it comes to discussing personal laws as a matter of cultural diversity. As applied to the personal laws, the substantive equality approach frames the question as one of disentangling male dominance from cultural survival, so that cultures can freely flourish, and women can too.

Indian courts appear in cases which question sexual discrimination in personal law paralyzed by the belief that a brush of cultural insensitivity would tarnish them. Insensitivity to the rights to sexual equality of women in minorities, they are guilty of life around. Family and faith, as they put it, require reform to be imposed from within rather than from without.

In this context, one potential way out of the legal and political thicket a compromise that faces the fact that many of these laws violate sex equality requirements but acknowledges the judicial unwillingness (however unprincipled) to invalidate them could to enact a uniform code of family law in compliance with the Directive principle that provides for sex equality in all respects between women and men on its face and in the application, with its use optional at a woman 's discretion, even as a relief for confirmed sex discrimination in a community 's rule. Communities should wholeheartedly follow the uniform code. But to them that was not the case, if, under the substantive reading of Article 15, a provision of any religion's law was challenged and found to be disadvantageous to women, such litigation infusing life into the interpretation of its substantive provisions at the same time as allowing the woman to elect a remedy for a civil code provision comparable to the religious law in which her family is concerned.

And in this way may Article 15 be used where sex is made a disadvantage. If one woman had challenged a rule, all women equally situated without litigation should have the same choice available. Instead of invalidating the sex-discriminatory provisions concerned, a declaration would be preferable in principle but politically inexpedient, to promote sexual equality, any woman who chose to be governed by the provisions of the code instead of the religious one [24].

No-one will be subject to sex equality. It would be women who wanted to be regulated by their community's rules. But any woman who wanted to choose sexual equality might, of whatever gender. Courts have found that ''judicially imposing on [each faith or culture] the values of personal laws applicable to all, on an elitist approach or equality theory, through judicial activism, is a challenging and mind-boggling effort.'' This implies that equality means uniformity when it should be intended to mean non-subordination. The problem is not diverse standards for different communities; standards that delegate women to people do. If this equality is too difficult for courts to contemplate, then women of every religion and culture can provide the state's support for themselves. The women of each faith determine are of their cultures and there is no presence of cultural imperialism [25].

This relief option would be eligible for adoption by entire societies but also by women of any religious community who wished to elect it, one at a time. For example, if Muslim women were confronted with maintenance ending with Jidda and a uniform code provided for a longer time as a remedy for gender inequality in family and society, those who were unable to support themselves after divorce would not need to invalidate or override Muslim law. It will have been simply determined which legal regime to nominate, obtain maintenance longer, or do without it holding for religious reasons. As to whether a husband could marry an additional wife, perhaps a uniform code would provide for two-person marital units, or perhaps the existing wife or wives' consent to the family's expansion, because it is their family too [26].

Conclusion

Such a solution would be compatible with India's reservation to CEDAW that family laws should not be enforced on minority groups except on their initiative and not without their permission. Under the proposal proposed here, all religious communities should have access to sex-equal family law on the initiative and with the approval of the women of the communities concerned. Women in non-adopting groups will be taking the initiative, and any woman will consent. No woman who did not want the standard sex-equal code to regulate her marriage should have it imposed on her. Certainly preferable to amend sex laws that are discriminatory to those affected.

Other unreserved parts of CEDAW can compel the same outcome. But the implied agreement is compatible, reserved or not, with India's international obligations.

This idea would be promoting reform from inside. The legislation will not be considered law. Courts would not apply sex-discriminatory legislation facially, as if it were consistent with guarantees of constitutional and international gender equality. Tortured constitutional definitions rationalizing the laws. It should stop discrimination based on sex and religion together. Secular judicial bodies by establishing the purpose of their laws will no longer offend religious groups. It will also be much more difficult for the courts to refuse to give women of every community and choice for sexual equality. This would exercise as it was for the same courts to refuse to abolish laws presented as the laws of their culture, whether or not women had a voice in their creation. This proposal is in line with the impulse behind other innovations in the tradition of equality, in which sex-unfair laws are not always struck down but sometimes read up. Yet, it encourages equality.

References

[1] Government Of India, "Children in india 2012- A Statistical Appraisal," *Soc. Stat. Div. Minist. Stat. Program. Implementation, Govt. India*, 2012.

[2] G. of India, "Constitutional and Legal Provisions for Women in India," *BEST Int. J. Humanit. Arts, Med. Sci. (BEST IJHAMS)*, 2015.

[3] A. B. Siddiqui, "Problems Encountered by Women Entrepreneurs in India," *Int. J. Appl. Res. Stud. iJARSI / Issue II*, 2012.

[4] L. Romanow, "The Women of Thailand," 2012.

[5] K. McBroom, "Litigation as TB rights advocacy: A New Delhi case study," *Health Hum. Rights*, 2016.

[6] N. S. Siegel and R. B. Siegel, "Struck by stereotype : Ruth bader ginsburg on pregnancy discrimination as sex discrimination," in *The Legacy of Ruth Bader Ginsburg*, 2015.

[7] A. Wallace, "Policymaking in a 'Christian nation': women's and LGBT+ rights in The Bahamas' 2016 referendum," *Gend. Dev.*, 2017, doi: 10.1080/13552074.2017.1286802.

[8] J. Sloth-Nielsen and B. Van Heerden, "The 'constitutional family': Developments in South African child and family law 2003-2013," *International Journal of Law, Policy and the Family*. 2014, doi: 10.1093/lawfam/ebt018.

[9] F. Kornbluh, "Queer Legal History: A Field Grows Up and Comes Out," *Law Soc. Inq.*, 2011, doi: 10.1111/j.1747-4469.2011.01241.x.

[10] H. ADHIKARI, "Why So Much Sexual Violence Against Women In Globalized India?," *Gend. Stud.*, 2015, doi: 10.1515/genst-2015-0014.

[11] V. Patel, "SEXUAL HARASSMENT AT THE WORKPLACE IN URBAN INDIA.," *Res. Horizons*, 2014.

[12] S. Bhan, "Inclusion of Children with Visual Impairment in India," *Eur. J. Soc. Behav. Sci.*, 2012, doi: 10.15405/futureacademy/ejsbs(2301-2218).2012.3.3.

[13] Ministry of Statistics and Programme Implementation, "Children in india 2012-A Statistical Appraisal," 2012.

[14] P. Uberoi, "A suitable romance? trajectories of courtship in Indian popular fiction," in *Images of The "Modern Woman" in Asia: Global Media, Local Meanings*, 2013.

[15] I. I. Thusi, "Harm, Sex, and Consequences," *Utah Law Rev.*, 2019, doi: 10.1017/CBO9781107415324.004.

[16] C. Jefferson-Jenkins and M. H. Hill, "Role of federal government in public education: Historical perspectives," *Leag. Women Voters*, 2011.

[17] F. S. Khunou, "Traditional Leadership and Independent Bantustans of South Africa: Some Milestones of Transformative Constitutionalism beyond Apartheid," *Potchefstroom Electron. Law Journal/Potchefstroomse Elektron. Regsbl.*, 2017, doi: 10.17159/1727-3781/2009/v12i4a2741.

[18] S. Dharmapuri, "Why Women? It's Equality Stupid," *Women's Policy J. Harvard*, 2012.

[19] B. Singh and K. Singh, "The Hermeneutics of Participation of Transgender Athletes in Sports - Intensifying Third Force," *Phys. Cult. Sport. Stud. Res.*, 2011, doi: 10.2478/v10141-011-0013-9.

[20] K. Alam and U. K. Halder, "Human Rights and Right to Education in India," *Int. J. Res. Anal. Rev.*, 2018.

[21] R. De, "Rebellion, dacoity, and equality: The emergence of the constitutional field in postcolonial India," *Comp. Stud. South Asia, Africa Middle East*, 2014, doi: 10.1215/1089201x-2773839.

[22] A. Khanna, "Three Hundred and Seventy Seven Ways of Being - Sexualness of the Citizen in India," *J. Hist. Sociol.*, 2013, doi: 10.1111/johs.12007.

[23] P. Giri, S. Nagaonkar, R. Shidhaye, and P. Shidhaye, "Study of knowledge and attitude regarding prenatal diagnostic techniques act among the pregnant women at a tertiary care teaching hospital in Mumbai," *J. Educ. Health Promot.*, 2012, doi: 10.4103/2277-9531.102049.

[24] Z. Mabe, "Section 27 of the insolvency act 24 of 1936 as a violation of the equality clause of the constitution of South Africa: A critical analysis," *Potchefstroom Electronic Law Journal*. 2016, doi: 10.17159/1727-3781/2016/v19n0a577.

[25] B. A., "Psychiatric aspects of domestic violence and newer protection women against d v act 2005," *Indian J. Psychiatry*, 2016.

[26] L. D. Jenkins and M. S. Moses, *Affirmative action matters: Creating opportunities for students around the world*. 2014.