

Domicile and Gender Equality: An Examination of Private International Law

¹DR. K. PRASANNA RANI

Assistant Professor of Law, University College of Law
Telangana University

²Sabavath Sreenivas

Research Scholar (PH.D), UCL, Telangana University

Abstract: This paper explores the dynamic relationship between domicile, a central connecting factor in Private International Law and gender equality, a fundamental principle of human rights law. Historically, domicile law has mirrored patriarchal structures, wherein a woman's domicile was legally dependent on her husband's. Despite global legal progress and the influence of conventions such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), domicile continues to function in ways that reinforce gender hierarchies, particularly in jurisdictions with colonial legal legacies.

The study employs a doctrinal and comparative legal approach to trace the evolution of domicile from a gendered construct to a potential instrument for equality. It examines the tension between domicile's traditional concepts like origin, choice, and dependency and the modern imperatives of gender autonomy, mobility, and digital citizenship. Drawing upon case law from India, the United Kingdom, Canada, and the European Union, the research argues for a gender-neutral and context-sensitive framework of domicile determination.

In the academic world and in the context of international bodies, the year 2020 saw discussion and analysis of the intersection between habitual residence and gender equality.

Hence, this paper aims to propose the development of a "Gender-Responsive Domicile Model", which integrates equality principles, feminist legal theory, and global best practices. This paper concludes that reforming domicile law is not merely a procedural necessity but a moral and constitutional imperative to ensure substantive equality in cross-border justice systems.

The important issues of the research topic are discussed under six headings on par with introduction and conclusion.

i) Historical Aspect of Domicile and Gender Bias, ii) Domicile and Gender Equality in International Law, iii) Domicile and Women's Legal Identity in India, iv) Comparative Jurisdictional Insights, v) Habitual residence and gender equality: vi) Theoretical Framework The Gender-Responsive Domicile Doctrine (GRDD). And finally, recommendations and conclusions.

Keywords: Gender, equality, discrimination, responsive domicile and cross border justice

1: Introduction:

1.1 Background and Context

Domicile remains a foundational determinant in Private International Law, guiding jurisdiction, choice of law, and personal legal status. However, its historical development reflects gender bias most notably in the derivative domicile rule, which subjected women's legal identity to that of their husbands. The emergence of global feminism, transnational migration, and plural family structures necessitates a re-examination of domicile through the lens of gender equality and human rights.

1.2 Research Problem

While gender equality has become a cornerstone of constitutional and international law, domicile doctrines still perpetuate indirect discrimination by prioritizing traditional family hierarchies and disregarding the socio-economic constraints faced by women.

1.3 Objectives

- i) To trace the historical and theoretical evolution of domicile in Private International Law.
- ii) To examine how domicile rules have perpetuated gender inequality.
- iii) To analyze the reforms adopted in selected jurisdictions promoting gender neutrality.

iv) To develop a theoretical and practical framework for a **Gender-Responsive Domicile Doctrine (GRDD)**.

1.4 Research Methodology

i) **Type:** Doctrinal and comparative analysis

ii) **Sources:** Statutes, case law, international conventions, and scholarly literature

iii) **Jurisdictions covered:** India, United Kingdom, Canada, Sweden, and the EU

iv) **Theoretical lens:** Feminist jurisprudence and intersectionality

2: Historical Aspect of Domicile and Gender Bias:

2.1 Domicile as a Patriarchal Legal Construct

i) Roman and feudal origins of domicile refer to a notion of "household allegiance." This concept of "household allegiance" refers to the loyalty, support, and obligation that members have toward their family unit, which can function as a core political and social entity. This loyalty is historically important and continues to influence social and political behaviors in many societies today.

ii) Under English common law, a married woman's domicile automatically followed her husband's (*derivative domicile doctrine*).

The Derivative Domicile Doctrine is a legal principle where an individual's domicile is not determined by their own choice, but is instead acquired based on the domicile of a person they are dependent on. This typically applies to children, married women, and mentally incapacitated individuals who are considered unable to acquire a domicile of their own choice. Their domicile is said to "derive" from or be dependent on the domicile of the person they depend on, such as a parent or husband, and changes automatically if the primary individual's domicile changes.

This dependency persisted through colonial legal systems, including India, restricting women's access to independent legal status.

2.2 Colonial and Post-Colonial Legacy

The colonial and post-colonial legacy of domicile is defined by the creation of social and political inequalities based on colonial policies, the establishment of discriminatory land and residency laws, and the enduring influence of these systems on identity, economic opportunity, and social hierarchy. Colonial powers often created hierarchies based on race, class, or other factors that determined who had rights to land and residency, leading to long-lasting disparities. These systems have persisted in many post-colonial nations, creating ongoing challenges in achieving social justice and equal rights for all citizens.

i) Colonial impact on domicile:

- Artificial divisions: Colonial powers created divisions based on race, religion, and other factors, which were then used to determine who was entitled to rights and who was not.
- Economic control: Laws were often designed to exploit resources and labor, with little regard for the economic well-being of the local population. This led to increased inequality and the suppression of indigenous industries.
- Land and residency laws: New land ownership laws were established that often favored colonial settlers and their local allies, dispossessing indigenous people and creating new inequalities.
- Artificial populations: Colonial administrations sometimes encouraged migration, leading to new demographic shifts and creating new conflicts over resources and identity in the post-colonial era.

ii) Post-colonial challenges:

- Persistent inequality: Many post-colonial nations continue to struggle with the economic and social inequalities created by colonial policies, which can lead to ongoing issues with poverty and lack of access to education and healthcare.
- Legacy of discrimination: Laws and social structures that were put in place during the colonial era can continue to discriminate against certain groups, perpetuating a cycle of inequality.
- Struggle for identity: Post-colonial citizens often grapple with a sense of displacement, caught between their own culture and the imposed or mimicked culture of their colonizers.
- Need for reform: There is a need for post-colonial governments to address the legacy of colonial policies through reforms, such as revising laws, reevaluating curricula, and addressing the impact of past injustices.

In India, domicile principles derived from British common law were absorbed into national jurisprudence. The Indian courts (e.g., *Satya v. Teja Singh*, AIR 1975 SC 105) upheld domicile as a

question of intention and residence, but the law still lacked **gender-specific reforms**. The post-independence era retained these colonial principles, leaving women's domicile rights ambiguous in cases of marriage, divorce, and migration.

2.3 Doctrinal Underpinnings

- **Domicile of Origin** – inherited from father's domicile.
- **Domicile of Choice** – dependent on voluntary residence and intention (*animus manendi*).
- **Domicile of Dependency** – the most gendered, as it subordinates certain individuals (historically women and minors) under others' domicile.

3: Domicile and Gender Equality in International Law

3.1 The International Legal Framework

i) CEDAW (1979): The essence of CEDAW 1979 is to set an agenda for, elimination of discrimination against women for national action to end it in political, economic, social, and cultural fields. Articles 2 and 15 mandate the elimination of discrimination in all matters relating to domicile and residence. It is also known as the "international bill of rights for women," it commits signatory states to incorporate equality into their legal systems, abolish discriminatory laws, and ensure women have the same rights and opportunities as men in all areas of life. The treaty came into effect in 1981 and requires states to report on their progress to the CEDAW Committee, an international body of experts.

Key aspects of CEDAW

- **Definition of discrimination:** CEDAW defines discrimination as any distinction, exclusion, or restriction made on the basis of sex that impairs or nullifies the recognition, enjoyment, or exercise of human rights and fundamental freedoms by women.
- **Legal obligations:** States that ratify CEDAW are legally obligated to take all appropriate measures to eliminate discrimination, which includes:
 - Incorporating the principle of equality into their legal systems.
 - Abolishing discriminatory laws.
 - Establishing public institutions to protect women from discrimination.

- **Scope of action:** The Convention mandates that states take action in all spheres, including political, economic, social, and cultural fields. It requires governments to focus not only on discrimination in the public sphere but also in private life.
- **Core rights:** CEDAW ensures that women have equal access to and participation in political and public life, as well as education, health, and employment.
- **Implementation:** A CEDAW Committee of independent experts monitors the implementation of the convention by reviewing country reports and making recommendations.
- **Other provisions:** The convention covers a wide range of topics, including provisions on legal equality, reproductive rights, and the modification of social and cultural patterns that perpetuate gender-based stereotypes.

ii) Universal Declaration of Human Rights (1948): Recognizes equality before the law and the right to nationality and residence.

The essence of the Universal Declaration of Human Rights (UDHR) is that all humans are born free and equal in dignity and rights, and are entitled to a core set of universal, inalienable rights regardless of their race, sex, nationality, religion, or any other status. It establishes that these rights are interconnected and indivisible, encompassing both civil and political freedoms (like the right to life and freedom of speech) and economic, social, and cultural rights (such as the right to health and education). The UDHR acts as a global standard and a foundation for international human rights law, aiming to promote peace, justice, and freedom for all.

Key principles

- **Universality:** Every person, everywhere, is entitled to the same human rights, without any discrimination.
- **Inalienability:** Human rights cannot be taken away, except in specific situations and according to due process.
- **Equality:** Everyone is born free and equal in dignity and rights.
- **Interdependence and indivisibility:** All rights are equally important, and the violation of one right negatively affects others.

- Foundation for law: The UDHR is the foundation for many international human rights treaties and conventions, even though it is not a legally binding treaty itself.
- Common standard: It serves as a "common standard of achievement for all

iii) Beijing Declaration (1995): Calls for gender equality in family and nationality laws.

This declaration was adopted in 1995 at the Fourth World Conference on Women. It is a landmark global blueprint for gender equality and women's empowerment. It was endorsed by 189 nations and identifies 12 "critical areas of concern," such as poverty, education, health, and violence against women, to guide actions and promote equal rights.

Key aspects:

Global framework: It provides a comprehensive agenda for achieving legal and social equality for women worldwide,
Twelve

Critical Areas of Concern: The declaration focuses on 12 areas where urgent action is needed to advance gender equality, including:

- Poverty
 - Education and training
 - Health
 - Violence against women
 - Armed conflict
 - Economy
 - Power and decision-making
 - Institutional mechanisms
 - Human rights
 - Media
 - Environment
 - The girl child
- Women's rights as human rights: It reinforced the principle that the human rights of women and girls are an "inalienable, integral and indivisible part of all human rights and fundamental freedoms".
 - Significance for India: India is a signatory to the Platform for Action and has used its framework to enact laws like the Protection of Women from Domestic Violence Act (2005) and the POSH Act (2013).

3.2 Feminist Legal Critiques

Carol Smart, Hilary Charlesworth, and Ratna Kapur offer critical feminist perspectives on how Private International Law (PIL) systematically perpetuates gendered citizenship by masking patriarchal assumptions under a veneer of neutrality. They challenge PIL's fundamental structures, showing how the supposedly "gender-blind" rules and methods entrench inequalities for women and other marginalized groups.

Hence, feminist theory reinterprets domicile not as a fixed legal status but as a reflection of agency and identity.

3.3 Gender Equality and Judicial Trends

i) The European Court of Human Rights (ECHR) has upheld gender-neutral interpretations of domicile and residence.

ii) Canada and Sweden have codified independent domicile rights for spouses, ensuring equal legal recognition.

iii) In India, the issue of gender equality in domicile has been a significant point of legal and judicial contention, revolving around outdated provisions in the Indian Succession Act, 1925.

iv) While constitutional principles guarantee equality, the dependent domicile rule for married women has historically created systemic disadvantages. Judicial trends show a progressive movement towards recognizing women's independent legal identity, though legislative reform remains necessary.

4: Domicile and Women's Legal Identity in India

4.1 Judicial Interpretation

- Courts have recognized domicile as "a matter of intention," yet the patriarchal assumption persists.
- Landmark cases: *Satya v. Teja Singh, Kedar Pandey v. Narain, Central Bank of India v. Ram Narain*. (1975) The Supreme Court emphasized that foreign judgments that offend India's public policy or are obtained through fraud cannot be enforced. The decree was found to be fraudulent because Teja Singh had misled the Nevada court about his domicile and intentions.

4.2 Domicile in Marriage and Divorce

- In matrimonial cases, women's domicile often determines jurisdiction for divorce petitions.
- The absence of statutory reform in India leaves ambiguity in cases of interfaith and transnational marriages.

4.3 Impact on Rights and Access to Justice



- Domicile affects rights in succession, inheritance, taxation, and adoption.
- ncy in domicile restricts women's ability to claim independent legal rights abroad.
- Gender-based depende

5: Comparative Jurisdictional Insights

Jurisdiction	Key Features	Gender Reforms
United Kingdom	Retains domicile of origin but abolished derivative domicile post- <i>Domicile and Matrimonial Proceedings Act 1973</i> .	Fully gender-neutral.
Canada	Recognizes independent domicile for spouses; influenced by equality clauses under the Charter of Rights and Freedoms.	High gender sensitivity.
Sweden	Follows "habitual residence" model; domicile independent of marital status.	Feminist legal model.
India	Common law-based domicile with limited reform.	Retains dependency in practice.

Observation: Jurisdictions adopting **habitual residence or gender-neutral domicile laws** ensure greater equality and legal certainty in cross-border family matters.

6. Habitual residence and gender equality:

Domestic violence and child abduction: Research in 2020 discussed the impact of the 1980 Hague Convention on Child Abduction on women, particularly those fleeing domestic violence. The concept of "habitual residence" is central to this convention but lacks a precise definition, leading to differing interpretations. Academic papers noted that in child abduction cases, sexism and violence can motivate mothers to flee, challenging the standard operation of the return mechanism.

- India and NRI women: A 2020 report noted that the Indian Ministry of External Affairs recorded a significant number of domestic violence and harassment complaints from Indian women living overseas between 2017 and 2019. Many of these women were on dependent visas and faced issues related to abandonment. This highlights how legal concepts like habitual residence can intersect with gender-specific vulnerabilities in international legal frameworks.
- Gender issues in private international law: General scholarship examined how private international law methodologies are being adapted to incorporate human rights and gender concerns. Some studies addressed gender-affected topics like marriage, divorce, and child abduction, though they acknowledged that patriarchal cultures can challenge gender-sensitive reforms.

7. Theoretical Framework — The Gender-Responsive Domicile Doctrine (GRDD)

This paper proposes the Gender-Responsive Domicile Doctrine, built upon three theoretical pillars:

1. **Autonomy Principle** – Every individual, irrespective of gender or marital status, possesses the right to determine their domicile.
2. **Equality Principle** – Domicile laws must align with constitutional equality guarantees and international human rights obligations.
3. **Intersectionality Principle** – Legal recognition must account for socio-economic, cultural, and digital realities affecting women's domicile choices.

Key Components of GRDD:

- Independent determination for spouses and domestic partners.
- Inclusion of digital and transnational mobility in domicile recognition.
- Codification of domicile rules in gender-neutral language.
- Gender-sensitive judicial interpretation and training.

8: Policy Reforms and Recommendations

1. **Statutory Codification** – India should enact a *Domicile Act* clearly defining independent domicile rights for men and women.
2. **Gender-Neutral Language** – Amend civil and family law statutes to replace terms implying dependency.
3. **Integration with CEDAW Obligations** – Align national laws with international gender equality commitments.
4. **Awareness and Access to Justice** – Establish legal aid and awareness programs for women in cross-border disputes.



5. **Global Harmonization** – Support a Hague Convention on “Gender and Domicile Equality.”

9: Conclusion

This research reaffirms that **domicile is not merely a territorial or legal fiction but a lived experience shaped by gendered realities**. While the principle of domicile anchors personal law, its historical bias has marginalized women’s agency. Through the **Gender-Responsive Domicile Doctrine**, the study envisions a future where domicile operates as a vehicle of empowerment rather than exclusion — integrating equality, mobility, and human dignity within the global legal order.

10: Select References

- Dicey, Morris & Collins. *The Conflict of Laws*. (Sweet & Maxwell, 2020).
- Cheshire, North & Fawcett. *Private International Law*. (Oxford, 2020).
- Satya v. Teja Singh, AIR 1975 SC 105.
- Mulla, D.F. *Principles of Hindu Law* (LexisNexis, 2018).
- Charlesworth, Hilary. *Feminist Approaches to International Law*. (1991).
- CEDAW General Recommendation No. 21 (Equality in Marriage and Family Relations).
- Svensson, E. *Progressive Approaches to Domicile in Sweden*. (2016).
- Khan, R. *Access to Justice for Women: Challenges and Opportunities*. (2019).
- Hague Conference on Private International Law, *Habitual Residence and Gender Equality in broader*, 2020.
- Your preferred **citation format** (APA, Bluebook, OSCOLA).
- Whether you want the focus to remain **India-centric, comparative global, or feminist-legal theoretical**