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***Private International Law and Patriarchy: Critiquing the  
Domicile of Dependence in India***

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***Abstract***

Domicile of dependence is accepted as an old concept in private international law. By operation of law, the wife is to be in the place where her husband is, hence the origin of this doctrine. Tracing its roots to 19<sup>th</sup>-century English common law, the doctrine considered that the legal personality of a married woman was merged with that of her husband and, therefore, deprived her of the capacity to maintain or acquire her own domicile. While most countries moved away from such gender-based legal assumptions, India still recognizes the concept of domicile of dependence in some areas, especially in personal law, succession, and conflict of laws.

This article contains a critical feminist and constitutional analysis of the doctrine of domicile of dependence, examining how the doctrine institutionalizes the dependence of women on their husbands within patriarchal systems. It will look at how the doctrine violates the guarantees of equality, individual freedom, and non-discrimination under Articles 14 and 15 of the Indian Constitution and place these concerns in the context of India's international human rights commitments, especially under the CEDAW, to which India is a party.

The article calls for a radical reform of India's approach to domicile in private international law. It argues toward recognizing married women as holders of independent legal status and domicile rights, in line with constitutional values and legal developments in other countries like the UK, Canada, and South Africa. Retaining this antiquated doctrine is not only a legal disadvantage to India but also detracts from the constitutional and human rights framework of the country. Gender-sensitive reform is the need of the hour, both in essence and morality.

## Introduction

The idea of domicile is fundamental in private international law, especially for resolving cross-border legal issues concerning personal status, marriage, inheritance, and divorce. It refers to a person's permanent home, the place where they have the strongest connection and intend to live for a long time. Traditionally, common law systems recognize three types of domicile: Domicile of origin – acquired at birth, usually from the father, Domicile of choice, acquired by a legally capable person through residence and the intention to stay and Domicile of dependence, assigned to individuals who cannot create their own domicile intent, such as minors and historically married women.<sup>1</sup>

The doctrine of domicile of dependence suggests that a woman, upon marriage, automatically adopts her husband's domicile. This rule started in 19th-century English common law and was based on the patriarchal idea of “unity of personhood” in marriage, with the husband's legal identity overshadowing his wife's. In Blackstone's Commentaries on the Laws of England, it is stated, “By marriage, the husband and wife are one person in law.” These legal fictions erased a woman's independent legal status and made her unable to hold a separate domicile.<sup>2</sup>

While the United Kingdom and many common law countries have already abolished this principle, as seen in the UK's Domicile and Matrimonial Proceedings Act, 1973, which gives married women an independent domicile, India still retains the domicile of dependence doctrine, especially in areas influenced by personal law and inheritance. Indian courts have implicitly supported this colonial-era view in cases like *Prakash v. Mst. Shahni* where domicile played a key role in evaluating the validity of foreign marriage decrees.

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<sup>1</sup> Lawrence Collins, et.al., Dacey, Morris and Collins on the Conflict of Laws.

<sup>2</sup> William Blackstone, Commentaries on the Laws of England, Book I, Chapter 15.

This ongoing adherence to the doctrine in India is concerning. It reflects a legal fiction that undermines married women's constitutional identity and autonomy, violating the rights to equality (Article 14) and non-discrimination based on sex (Article 15) under the Indian Constitution. The doctrine upholds outdated patriarchal norms and contradicts India's international commitments, particularly under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which calls for equal rights for women in matters relating to marriage and personal status.

This article argues that the doctrine of domicile of dependence reinforces structural gender inequality and calls for its elimination from Indian private international law. Using doctrinal, feminist, and constitutional critiques, the article stresses the urgent need for reform to recognize married women as legally independent in matters of domicile, aligning Indian law with both constitutional values and current international human rights standards.

### **Legal Framework and Historical Background under Indian Law**

The domicile of dependence refers to the legal idea where certain individuals, traditionally wives and children inherit their domicile from another person, usually the husband or father. This means their domicile is not based on their own choice or residence but is automatically linked to that of the person they depend on legally. The origins of the doctrine lie in English common law, which was developed to maintain family unity and provide certainty in legal jurisdictions. In early English law, a wife's legal identity was merged with her husband's, known as coverture. Thus, a wife's domicile was automatically considered that of her husband, regardless of her actual residence or desires.<sup>3</sup> This principle was absorbed into Indian law during the colonial era and became deeply rooted in personal law frameworks and the broader conflict of laws system, given that India adopted English common law principles unless specifically changed.

The Indian Succession Act also reflects the traditional view of a woman's legal identity being tied to that of her husband, particularly when it comes to domicile. Section 15<sup>4</sup> of the Act deals

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<sup>3</sup> Lawrence Collins, et.al., Dicey, Morris and Collins on the Conflict of Laws.

<sup>4</sup> Section 15, Indian Succession Act, 1925 (Act 39 of 1925).

with how a woman acquires a new domicile through marriage. It states that when a woman gets married, she automatically takes on her husband's domicile, unless she already shared the same domicile before the marriage. In simple terms, if the husband is from a different country or region, the wife is legally considered to belong there too, purely by virtue of being married to him. Section 16<sup>5</sup> goes a step further and explains this rule in more detail. It reinforces the idea that throughout the duration of the marriage, a wife's domicile continues to follow that of her husband. This means that regardless of where the wife lives or what her personal intentions may be, her legal "home" is considered to be wherever her husband is domiciled. These provisions highlight how the law has historically viewed a married woman not as an individual with her own legal standing in matters like domicile, but as someone whose status is automatically linked to her husband's.

The Transfer of Property Act, 1882 also indirectly refers to domicile as a linking factor in property deals, though it does not specifically mention domicile of dependence.<sup>6</sup> Domicile is not directly mentioned in Sections 15 to 18 of the Transfer of Property Act, 1882, which mainly deal with future interests, accumulation of income, and the rule against perpetuity. However, it can play an indirect role in certain situations, particularly when the transfer involves a person domiciled outside India or when there's a conflict between Indian and foreign laws. In such cases, domicile helps determine which legal system applies, especially in matters involving wills, trusts, or succession governed by personal law. So, while domicile doesn't influence these sections on the face of it, it can become relevant behind the scenes when cross-border or personal law issues arise.

Section 2 of the Indian Divorce Act<sup>7</sup>, which applies to Christians in India, places a significant condition for filing a divorce petition: the courts can only hear the case if both spouses are domiciled in India at the time the petition is filed. This requirement has led to serious challenges, especially for women whose husbands have permanently moved abroad, leaving them behind in India. The issue arises because if a man settles in another country and establishes a new domicile there, his wife is automatically deemed to share that domicile, even

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<sup>5</sup> Section 16, Indian Succession Act, 1925 (Act 39 of 1925).

<sup>6</sup> Sections 15–18, Transfer of Property Act, 1882 (Act 4 of 1882).

<sup>7</sup> Section 2, Indian Divorce Act, 1869 (Act 4 of 1869).

if she continues to live in India. As a result, Indian courts may lose jurisdiction over her divorce petition, simply because her husband has chosen to live elsewhere. Recognising the unfairness of this situation, the Law Commission of India proposed that this outdated rule be changed.<sup>8</sup> It recommended that Section 2 of the Indian Divorce Act be amended to abolish the concept of dependent domicile for wives, in line with the reform already made in England, where married women can now have their own, separate domicile regardless of their husband's.

Indian courts have, over time, continued to apply the common law principle that a wife's domicile is tied to her husband's. In *State of Bihar v. Kumar Amar Singh*<sup>9</sup> the Supreme court held that the wife was still domiciled in India even though she had moved to Pakistan, because her husband's domicile remained in India. Similarly, in *Prakash v. Mst. Shahni*<sup>10</sup>, the Jammu & Kashmir High Court addressed the issue of a widow's domicile following the death of her husband. The Court held that the domicile of the husband continues to attach to the widow even after his death, unless she consciously alters it by her own voluntary act, such as by remarrying or establishing a permanent residence elsewhere. This decision affirmed the principle that a change in marital status due to the husband's death does not, in itself, result in an automatic change of domicile for the widow. Rather, the widow retains her deceased husband's domicile until she takes active steps to acquire a new one. These cases illustrate the persistent application of the dependent domicile doctrine a doctrine that no longer aligns with modern views of gender equality and individual autonomy.

The case in favour of the modern views is *Shiv Indersen Mirchandani Of Bombay And vs Natasha Harish Advani Alias Natasha*<sup>11</sup>, the court looked closely at how domicile, a person's legal home, affects the validity of foreign divorce judgments. Traditionally, a wife was expected to have the same domicile as her husband, which meant that only the courts in the husband's country could decide on marital issues. But the court recognized how unfair this rule could be, especially for women who had built their lives in another country. It supported a more modern and practical approach, a wife should be able to file for divorce in a country where she

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<sup>8</sup> Law Commission of India, Report No. 224, Amendment of Section 2 of the Divorce Act, 1869 Enabling Non-domiciled Estranged Christian Wives to Seek Divorce (2009).

<sup>9</sup> *State of Bihar v. Kumar Amar Singh*, AIR 1955 SC 282.

<sup>10</sup> *Prakash v. Mst. Shahni*, AIR 1965 J&K 83.

<sup>11</sup> *Shiv Indersen Mirchandani v. Natasha Harish Advani*, 2002 (2) Bom CR 436.

truly lives and belongs, even if her husband is domiciled elsewhere. This view respects a woman's independent legal identity and aligns with international principles and Indian legal thinking, especially as seen in the Narsimhrao case<sup>12</sup>.

## **Critical Analysis of the Doctrine**

### Gender Bias and Patriarchal Foundations

The doctrine of domicile of dependence enshrines gender bias by tying a married woman's domicile to her husband's. This legal structure enforces a woman's dependency, limiting her autonomy, mobility, and identity under private international law.

This doctrine traces back to the common law principle of coverture, which viewed a married woman as legally merged with her husband's identity. Blackstone noted that a married woman's legal existence was "incorporated and consolidated into that of the husband"<sup>13</sup>. As a result, for legal purposes, including domicile, the woman did not have a separate legal identity. Her domicile was automatically set by her husband's domicile; she could not acquire or maintain her own. This was confirmed in cases like *Le Mesurier v. Le Mesurier*<sup>14</sup>, in which the Privy Council held that domicile, for the time being, of the married couple, is the sole basis for jurisdiction to dissolve their marriage under international law. The case also clarified that the wife's domicile is generally the same as her husband's, and she cannot independently establish a separate domicile.

Linking domicile to the husband limits women's autonomy after marriage. It threatens their ability to make independent legal decisions about where to live and which laws apply to them. Unlike men, who can establish a domicile based on intent and residence, women under this doctrine lack such freedom. This limitation goes beyond domicile, affecting jurisdictional rights, property ownership, inheritance, and access to courts. For example, a woman may be legally prevented from asserting rights or starting proceedings in the area where she lives if her husband's domicile is in a different location.

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<sup>12</sup> Y. Narasimha Rao and Ors. v. Y. Venkata Lakshmi and Ors., (1991) 3 SCC 451.

<sup>13</sup> William Blackstone, *Commentaries on the Laws of England, In Four Books, Vol. 1* (Clarendon Press, Oxford, 1765–1769).

<sup>14</sup> *Le Mesurier v. Le Mesurier*, (1895) AC 517 (PC).

The domicile of dependence isn't a neutral legal rule. It is embedded in patriarchal power structures that subordinate women's legal identities to men's. By legally tying a woman's domicile to her husband's, it reinforces patriarchal control by making women dependent on men for legal recognition of their residence, limits women's freedom to move and make personal choices as changing domicile relies on the husband's decisions, and sustains inequality by maintaining legal standards that deny women agency and uphold male authority in family and society.

Feminist legal scholars have long criticized this doctrine as a tool for gender subordination. Carol Smart argues that such rules make "women dependent subjects in private law," perpetuating structural inequalities<sup>15</sup>. In India, the ongoing application of this doctrine reflects and strengthens the broader social patriarchy that controls women's rights and freedoms, especially through personal laws governing marriage, domicile, and family relations<sup>16</sup>.

### **Violation of Constitutional and Human Rights Norms**

It conflicts with Article 14 (equality before law), Article 15 (prohibition of discrimination based on sex), and Article 21 (right to personal liberty) of the Indian Constitution. It also stands in contradiction to international human rights treaties that India is a party to, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR), both of which emphasize eliminating gender discrimination. The doctrine is increasingly seen as outdated and inconsistent with modern constitutional values.

The doctrine of domicile of dependence not only holds onto patriarchal control but also directly contradicts constitutional guarantees and international human rights standards that India has committed to uphold. Its ongoing use violates fundamental principles of equality, non-discrimination, and personal liberty outlined in the Indian Constitution and the international human rights framework.

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<sup>15</sup> Carol Smart, *Feminism and the Power of Law* (1<sup>st</sup> edn., Routledge, London, 1989).

<sup>16</sup> Nivedita Menon (ed.), *Gender and Politics in India* (Oxford University Press, New Delhi, 1999).

Article 14 ensures that “the State shall not deny to any person equality before the law or the equal protection of the laws.”<sup>17</sup> By tying a woman’s domicile to her husband’s, the doctrine creates unequal legal status between men and women, denying women equal protection. It treats married women as a special, subordinate class lacking independence, which is arbitrary and prohibited under Article 14<sup>18</sup>. Article 15 forbids discrimination based on sex.<sup>19</sup> The domicile of dependence enforces sex-based discrimination by denying women legal autonomy solely because of their gender and marital status. The Supreme Court in *Vishaka v. State of Rajasthan* (1997) and other gender rights cases has emphasized the constitutional duty to eliminate all forms of gender discrimination.<sup>20</sup> The right to personal liberty under Article 21<sup>21</sup> includes autonomy and dignity<sup>22</sup>. The domicile doctrine violates a woman’s right to liberty and personal choice by limiting her ability to determine her residence and legal identity. It reduces her to a legal dependent, infringing upon her dignity and freedom.

CEDAW mandates that States eliminate discrimination against women in all areas, including legal status and rights related to marriage and family life<sup>23</sup>. The doctrine’s denial of domicile autonomy to married women goes against CEDAW’s main principles. India ratified CEDAW in 1993, committing to reform such discriminatory laws<sup>24</sup>. Article 26 of the International Covenant on Civil and Political Rights (ICCPR), 1966 guarantees equality before the law and equal protection without discrimination on any grounds, including sex.<sup>25</sup> The doctrine violates these protections by legally subordinating women based on gender and marital status.

Articles 1 and 7 of Universal Declaration of Human Rights (UDHR), 1948 affirm the right to equality and non-discrimination, highlighting the inconsistency of domicile of dependence with

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<sup>17</sup> The Constitution of India, art. 14.

<sup>18</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

<sup>19</sup> The Constitution of India, art. 15.

<sup>20</sup> *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241; AIR 1997 SC 3011.

<sup>21</sup> Constitution of India, art. 21.

<sup>22</sup> *Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.*, (2017) 10 SCC 1; AIR 2017 SC 4161.

<sup>23</sup> Convention on the Elimination of All Forms of Discrimination against Women, arts. 1 & 15, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13.

<sup>24</sup> CEDAW Committee, General Recommendation No. 21: *Equality in Marriage and Family Relations*, CEDAW/C/21/Rev.1 (1994).

<sup>25</sup> International Covenant on Civil and Political Rights, art. 26, Dec. 16, 1966, 999 U.N.T.S. 171.

modern human rights standards.<sup>26</sup> UN human rights bodies have repeatedly urged States to eliminate legal doctrines that foster gender-based dependency and limit women's autonomy<sup>27</sup>. Continuing to use the domicile of dependence in Indian private international law represents a backward legal position that conflicts with the constitutional promise of equality and international human rights commitments.

### **Practical and Legal Consequences**

The doctrine of domicile of dependence operates not just in theory but has real, significant effects on the lives and rights of women in India. By denying women independent domicile status, the doctrine impacts various legal areas like matrimonial property rights, inheritance, jurisdiction, and access to justice, often causing serious hardship and injustice. A woman's domicile often decides which laws apply to her property rights, inheritance claims, and support. When her domicile is tied to her husband's, who may live in a different state or country, it can limit her ability to assert claims under local personal laws or civil codes that favour her rights. For example, with regard to inheritance, a woman generally cannot inherit property on her own or challenge wills if her domicile is viewed as her husband's, even if she is residing somewhere else.

Since a woman's domicile is linked to her husband's, depending on jurisdictional issues, it restricts the grounds on which she can file for divorce or maintenance. It consequently makes her litigate in distant or outlandish places, and so unnecessarily escalates the expenses and inconvenience. Also, judicial decisions sometimes exacerbate the problem by rejecting the recognition of a woman's separate domicile for some claims, so that she is deprived of timely relief.

Domicile is crucial in determining a court's jurisdiction in civil and criminal petition cases arising from matrimonial disputes or family matters. The privilege of a woman's limited choice

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<sup>26</sup> Universal Declaration of Human Rights, arts. 1–7, Dec. 10, 1948, U.N. Doc. A/RES/217(III).

<sup>27</sup> UN Committee on the Elimination of Discrimination against Women, *Concluding Observations on the Fourth and Fifth Periodic Reports of India*, CEDAW/C/IND/CO/4-5 (2016).

of domicile thus concede her the denial of access to courts in her locality, thereby inhibiting her legal recourse to claims of abuse, domestic violence, or custody.

Women moving or living separately for work or education remain legally tied to their husband's domicile, affecting their legal rights and social recognition. In cross-border marriages or when husbands work abroad, wives face difficulties in having no legal domicile in India; this affects their property and legal rights in their home country. Women have reported challenges in claiming maintenance rights or accessing social welfare programs because their legal domicile does not match their actual place of residence.

Charlesworth and Chinkin point out that international law has long been shaped by a male-dominated perspective, where women's identities and rights are often seen as extensions of the men in their lives. One striking example of this is the legal concept of domicile. In many countries and international treaties, a woman's domicile has traditionally been automatically linked to her husband's, without considering her own choices or circumstances. This has very real consequences. Even if a woman moves abroad for work, studies, or even for her own safety, the law might still consider her as living wherever her husband is. This not only undermines her personal autonomy, but also affects her ability to access legal remedies, such as filing for divorce, claiming citizenship, or securing property rights on her own terms.

Charlesworth and Chinkin use this to highlight a deeper issue in international law: it often fails to recognise women as independent legal persons. Instead, women are frequently treated as legally invisible, with their rights and status defined in relation to men. They argue for a much-needed rethinking of legal systems, one that puts women's real-life experiences and autonomy at the centre of the law.<sup>28</sup>

### **Comparative Perspectives**

The doctrine of domicile of dependence is rooted in patriarchal legal traditions. Many common law jurisdictions that have influenced India's legal system have either abandoned or reformed this doctrine. In the United Kingdom, The Domicile and Matrimonial Proceedings Act 1973 ended the automatic dependency of a wife's domicile on her husband's. After the reform, spouses are regarded as individuals with their own domicile status, giving women legal agency

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<sup>28</sup> Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, Manchester, 2000).

over their domicile choices<sup>29</sup>. Canadian law accepts the domicile of choice principle and has removed the doctrine of dependence, reflecting modern constitutional values of equality and autonomy<sup>30</sup>. Countries like Australia and New Zealand have moved towards recognizing individual domicile status, regardless of marital status, reinforcing personal freedom and equality before the law<sup>31</sup>.

The United Kingdom, where the domicile doctrine first emerged, was one of the first common law jurisdictions to abolish the doctrine of domicile of dependence. The Domicile and Matrimonial Proceedings Act, 1973 (UK) eliminated the rule that a married woman's domicile was automatically her husband's. This law allowed women to establish and keep a domicile separate from their spouse<sup>32</sup>. The Act acknowledged the right to individual autonomy in domicile matters. It reflects the broader change towards gender equality and women's legal independence following the feminist movements of the 1960s. This change allowed women to declare their legal domicile based on their actual residence and intentions. It ensured equal treatment in matters related to property, marriage and jurisdiction.

Canada, as an important common-law nation operating under a federal framework, gradually set aside the doctrine of domicile of dependence through both court rulings and new statutes. The principle of domicile of choice now stands at the forefront. This shift permits every adult, married women included, to select and move their domicile free from a partners decision. The 1968 Divorce Act already eased the matter by removing domicile as a gateway requirement within its own jurisdiction. Provincial reforms that followed echoed the change, giving women equal standing in family law and conflicts of law.

Other nations have taken similar strides, placing gender equality and personal freedom at the heart of domicile rules. In Australia, New Zealand, and Ireland, sweeping legal updates now treat married women as individuals when it comes to where they call home. Australia's 1975 Family Law Act, for instance, swept away dependent domicile, empowering both partners to keep or create their own abode. A year later, New Zealand's Domicile Act likewise scrapped

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<sup>29</sup> Law Commission (UK), Report No. 96: Domicile (HMSO, London, 1971).

<sup>30</sup> Peter W. Hogg, *Constitutional Law of Canada* (Toronto, 5th edn., 2007).

<sup>31</sup> Gino E. Dal Pont, *Law of Domicile and Choice of Law* (Australia, 2016).

<sup>32</sup> Section 1, *Domicile and Matrimonial Proceedings Act, 1973* (c. 45) (UK).

the idea that a wife's legal residence must shadow her husbands. With the Domicile and Recognition of Foreign Divorces Act, 1986, Ireland followed suit and eliminated the practice of automatically assigning a wife's domicile to her husband. By guaranteeing that a woman's legal identity and rights are not absorbed under those of her spouse, these reforms demonstrate a larger commitment to gender equality.

### **Counterarguments and Challenges**

Despite criticism of the domicile of dependence doctrine for being discriminatory, traditional justifications have been used to defend it. These arguments emphasize family unity, legal clarity, and protecting so-called "weaker parties" in marriage. Some people claim that a single domicile simplifies legal processes, which helps maintain matrimonial stability. This section critically reviews these claims and explains why they do not justify ongoing gender discrimination in the doctrine.

### **Family Unity**

Supporters of the doctrine argue that giving a single domicile to the family promotes unity by recognizing the husband and wife as one legal entity. This approach supposedly helps resolve jurisdictional issues, prevents conflicting laws, and reduces family disputes over domicile.

Family unity is a valid goal, but it should not come at the expense of limiting individual legal identity and autonomy, especially for women. Modern family law increasingly recognizes the individuality of spouses, in line with constitutional guarantees of equality and personal freedom. Families can stay united without laws that make women give up their own legal identity. Many places manage family law matters with separate domiciles for spouses, while maintaining legal clarity. Thus, the doctrine's approach is outdated and overly restrictive.

### **Legal Certainty and Simplification**

Another defence claims that a uniform domicile for married women simplifies jurisdictional questions, lowers legal complexity, and reduces conflicting claims. This, in turn, supposedly gives clear guidance to courts and litigants about applicable laws<sup>33</sup>.

Legal certainty is important, but it cannot replace principles of equality and justice. The aim for simplicity should not support doctrines that continue discrimination. Advances in conflict of laws and judicial procedures now allow for multiple domiciles without much confusion. For example, adopting the domicile of choice for all individuals, regardless of marital status, shows evolving legal standards that balance certainty with fairness.

Moreover, denying women control over their domicile leads to more legal uncertainty and injustice, such as wrongful jurisdiction exclusions and a lack of access to courts, which undermines the certainty the doctrine aims to deliver.

### **Protection of the “Weaker Party”**

Historically, supporters of the doctrine argued that it protects women, seen as the weaker party in marriage, by tying them to their husband's domicile. This ensures their maintenance and legal status align with their spouse.

This paternalistic view is fundamentally flawed and belittling. It assumes that women lack legal capacity and need to be dependent, stripping them of agency and autonomy. Modern constitutional law and international human rights norms reject such stereotypes and emphasize empowerment and equality. CEDAW General Recommendation No. 28, issued in 2010, helps clarify what countries need to do under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. It makes it clear that governments can't stop at just passing laws, they must also actively work to eliminate discrimination through real action, including practical policies, programs, and measures that bring meaningful change in women's lives<sup>34</sup>.

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<sup>33</sup> Cheshire, North & Fawcett, *Private International Law* (14<sup>th</sup> ed., 2008).

<sup>34</sup> Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, 16 December 2010

Legal protection should come from clear laws on maintenance, inheritance, and family welfare, rather than limiting domicile rights. In fact, the doctrine restricts women's access to justice and independent legal options, contrary to its intended protective purpose.

### **State Interest in Uniform Domicile for Matrimonial Stability**

Some scholars argue that the state has a vested interest in keeping uniform domicile rules for stability and predictability in family law cases. They contend that different domiciles could complicate custody, divorce, and property decisions. While stability in marriage is essential, it cannot justify institutionalized gender discrimination. A stable marriage law should respect and empower both spouses equally. Moreover, jurisdictions around the world have shown that matrimonial issues can be effectively handled without taking away women's domicile rights e.g. UK Domicile and Matrimonial Proceedings Act 1973.

### **Recommendations and Way Forward**

#### **1. Legislative Reform: Repeal or Replace with Gender-Neutral Law**

The first step must be a legislative one. Parliament should consider fully abolishing the doctrine of dependent domicile. In today's context, where individual identity and equality are fundamental, a law that legally binds one person's status to another's simply because of marriage is indefensible. If immediate repeal is politically difficult, the doctrine should at least be recast in gender-neutral terms, so it applies equally to all spouses. A similar move was taken by the UK in 1973, where the Domicile and Matrimonial Proceedings Act ended automatic dependency of a wife's domicile on her husband. A clearly worded, updated law would reduce judicial confusion and reflect the principle that domicile should be based on personal facts and intention, not marital ties or gender.

## 2. Judicial Interpretation Through a Constitutional Lens

Even without new legislation, courts have the power to lead reform. Indian judges have, in past landmark rulings, stepped in to expand rights and rectify inequalities. The same spirit should guide the courts in interpreting domicile-related disputes. The Constitution provides strong tools, Articles 14, 15, and 21, which guarantee equality, non-discrimination, and liberty. Courts should also make greater use of international conventions like CEDAW to guide their reasoning, using them not just as persuasive texts but as reflections of India's global commitments. Reinterpreting domicile rules in this light can bring immediate relief and gradually build a new jurisprudence of gender-sensitive private international law.

## 3. Clear Legal Recognition of Independent Domicile Post-Marriage

Legislators should also introduce a provision that explicitly affirms an individual's right to determine their own domicile, regardless of whether they're married, and regardless of their gender. This clarity is critical for real-world legal issues, divorce proceedings, jurisdictional matters, succession, or property claims, where a woman's legal standing should not depend on her husband's. Countries like Canada, Australia, and New Zealand have already made such reforms, recognizing that marital status should never erase individual choice. India can and should follow suit.

## 4. Aligning with Global Human Rights Standards

India's domestic legal frameworks must also evolve to reflect its international responsibilities. Bodies like the UN Committee on the Elimination of Discrimination Against Women have repeatedly pointed out that laws tying a woman's legal identity to her marital status are inherently discriminatory. By reforming domicile laws in line with such global standards, India will not only strengthen its human rights record but also protect the legal independence of millions of women. This is not just a legal obligation, it's a moral one.

## 5. Data Collection and Research Support

There is a critical lack of empirical data on how the domicile of dependence doctrine affects women in litigation. The government and research institutions should fund qualitative and quantitative studies, especially on how courts treat domicile issues in cross-border divorce, succession, or custody cases. Documenting lived experiences will help humanise the issue and build stronger policy arguments.

## Conclusion

The doctrine of domicile of dependence isn't just a technical aspect of the law, it touches something much deeper. It shapes where a woman is considered to "belong," often without giving her a say. In India, when the law says that a married woman's legal home is automatically the same as her husband's, it doesn't just place her address on a map, it places her identity in someone else's hands. It quietly reinforces an old idea that a woman's place is not her own, that her choices don't quite carry the same weight.

This has real consequences. A woman's ability to access justice, to inherit property, or to be treated fairly in a divorce case can all depend on this outdated rule. She might find herself unable to claim rights in the place she lives or has ties to, simply because the law insists her legal home is wherever her husband's is.

Other countries with similar legal systems have recognized how unfair this is. They've reformed their laws to respect a woman's right to choose her own legal home. India, by holding on to this rule, remains out of step, not just with global standards, but with its own promises of equality and dignity under the Constitution.

Behind every legal rule are people whose lives are shaped by it. And in this case, it's women who are denied something as basic as the right to decide where they legally belong. Reform isn't just about catching up with the rest of the world, it's about listening to the quiet but powerful demand for fairness and autonomy.

The way forward is simple and urgent. Indian law must recognize that women, married or not, have the right to choose and retain their own domicile. This change would do more than fix a legal technicality. It would be a step toward restoring control, respect, and recognition to the many women whose voices have long been ignored by tradition. It would show that the law sees them not just as someone's wife, but as full and equal individuals in their own right.