
JUDICIAL INTERVENTION IN PERSONAL LAWS: ADVANCING EQUALITY, JUSTICE, AND GENDER RIGHTS

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ABSTRACT

This study examines the role of judicial activism in reforming personal laws in India, particularly in the domain of family law. Personal laws, rooted in religious practices, have often conflicted with constitutional principles such as equality and dignity. Through analysis of landmark Supreme Court judgments, the research highlights how the judiciary has intervened to ensure conformity with fundamental rights. The study concludes that while judicial activism has been instrumental in addressing inequalities, comprehensive legislative reform remains necessary for long-term consistency.

Keywords: Judicial Activism, Personal Laws, Family Law, Fundamental Rights, Gender Equality, Constitutional Law, Supreme Court of India, Uniform Civil Code.

CHAPTER 1 - INTRODUCTION

India's personal law system is unique to the world. It governs the family-related legal issues like marriage, divorce, maintenance, guardianship, adoption, and inheritance. Most legal systems across the world use a system of uniform civil codes. India, however, despite having family laws based on religion offers a family law system for each religion. These laws are based on a combination of religious scriptures, religious customs, colonial laws, and post-independence statutory laws.

India's plurality of personal laws demonstrates the country's respect for its religious diversity and the protection of the freedom to practice any religion guaranteed under Article 25 of the Indian Constitution. On the contrary, the existence of personal laws based on religion has raised a lot of issues relating to the Constitution, especially when they contradict some of the fundamental rights, such as, the right to equality, the right to dignity, and the right to non-discrimination.

Disputes pertaining to family law, in most instances, involve social practices and religious traditions that are quite old. Because of this, legal reforms in this area have always been made very slowly and many times, they are quite controversial. In these situations, the judiciary has had to squeeze the most out of personal laws and resolve the tensions that exist between the practice of religion and the Constitution. The improvement of family law in India have been positively affected by the courts, most notably in the instances when law within the custom or statute created an imbalance between the treatment of men and women. As such, court rulings have greatly assisted in the slow, but steady, evolution of personal law systems.¹

Judicial activism regarding personal laws has also involved laws that are discriminatory but also touch on religious and personal autonomy. This project explores how judicial activism has shaped personal laws in India. It looks at significant judicial decisions that have impacted family law, as well as how courts have construed personal law legislation with regard to the Constitution. Judicial activism in India has often emerged in areas where courts seek to harmonize statutory provisions with fundamental rights.² In the context of personal laws, this approach has enabled the judiciary to address discriminatory practices while maintaining respect for religious autonomy.

RESEARCH OBJECTIVES

1. To analyse the concept and scope of judicial activism in the context of personal laws in India.
2. To examine the role of the judiciary in interpreting personal law provisions in light of constitutional principles, particularly Articles 14, 21 and 25.
3. To critically study landmark judicial pronouncements relating to personal laws and assess their impact on family law reform.
4. To evaluate the extent to which judicial activism has addressed gender inequality within personal laws.
5. To assess the relationship between judicial intervention and legislative reform in the

¹ Flavia Agnes, *Family Law: Volume I – Family Laws and Constitutional Claims* (Oxford University Press 2011).

evolution of personal laws.

RESEARCH QUESTIONS

1. What is the scope and legal significance of judicial activism in the domain of personal laws in India?
2. How has the judiciary interpreted personal laws in light of constitutional principles, particularly the balance between fundamental rights and religious freedom?
3. What has been the impact of landmark judicial decisions on the reform and development of personal laws?
4. To what extent has judicial activism contributed to reducing gender inequality in personal laws?
5. Can judicial activism effectively ensure long-term reform in personal laws, or is comprehensive legislative intervention necessary?

HYPOTHESIS

The hypothesis of this research is that judicial activism is essential and has remained useful in the reform of personal laws in India to bring them into consonance with the constitutional guidelines, especially of equality and dignity. It is further hypothesized that the judiciary has remained the primary organ to fill the legislative gaps in personal laws after the prescribed limits had been crossed, and that judicial interpretation has, in fact, reformed family law by integrating religion and constitutional law. The research continues with the belief that while judicial activism can be useful in dealing with some issues, it cannot be the sole means of obtaining fully fledged legislative reform. For long-term consistency and uniformity in personal laws, some form of evaluative legislative action will be necessary.

SIGNIFICANCE OF STUDY

The value of this study lies in understanding the evolving role of judicial activism in the development of family laws in India. Personal laws like marriage, divorce, maintenance, inheritance, etc. affect people's lives in a serious way. Hence, they need to be in tune with the constitution. This study also explains the role of judicial activism in safeguarding the

fundamental rights of the individuals, in particular, the rights to hold equal status and dignity, by removing the discrimination in personal laws. Hence, this aids in understanding the role of the courts in the interpretation of statutes and the constitution to do justice in the case of family law.

LITERATURE REVIEW

The question of judicial activism in the sphere of personal laws has spawned a huge amount of literature, particularly in relation to the constitutional position of a legal system based on religion and the extent of judicial supervision. Most of the legal scholarship on this subject has focused on how the courts have managed the tension between the practice of personal laws and the enjoyment of fundamental rights, particularly the right to equality guaranteed by Article 14 and the right to religion under Article 25.

A significant contribution of the literature taxonomy of the Indian personal law system is made by Tanja Herklotz in the Indian Law Review. Herklotz identifies the central constitutional question concerning the extent to which religion-based personal laws are subject to review against fundamental rights. The article notes that the judgment in *Shayara Bano v Union of India*² reignited some pertinent issues including whether triple talaq is an essential religious practice and whether courts can ever exercise a say in the governance of personal laws.³

Additionally, Herklotz notes that literature on personal laws tends to deal with three areas of law: first, doctrinal ambiguities within and between personal law systems second, the role of courts in the regulation of religion and lastly, the balancing of legislative sovereignty with the judicial activism of the courts. The article notes that the extent of judicial control of personal laws has grown in response to the challenge of equality, particularly in the areas of law that are traditionally viewed as personal. An additional essential scholarly examination is regarding the critical analysis of the Supreme Court's *Shayara Bano v Union of India*⁴ evaluation which is found in the NUJS Law Review article titled "Invalidating Instant Triple Talaq: Is the Top-Down Approach of Reforming Personal Laws Prudent?". The article claims the judiciary acts without a consistent doctrinal methodology when addressing the issue of personal law. The

² Shayara Bano v Union of India, (2017) 9 SCC 1

³ Tanja Herklotz, *Law, Religion and Gender Equality: Literature on the Indian Personal Law System from a Women's Rights Perspective*, 2 Indian L. Rev. 181 (2018).

⁴ Shayara Bano v Union of India, (2017) 9 SCC 1

authors contend that the judiciary has flipped from a position of judicial restraint to one of judicial activism i.e. when determining if the personal law is subject to the constitution.⁵

This article also critiques the judiciary's overreliance on the Doctrine of Essential Religious Practices and suggests that the judiciary has more often than not, constitutionally considered the practices of a particular religion, and, therefore, allows the judiciary to informally modify the personal laws of a particular religion while formally upholding the religion's autonomy.

Another scholarly analysis is from Saptarshi Mandal in the Indian Law Review, who analyses the Shayara Bano judgment. Mandal discusses several of the Supreme Court's approaches and identifies them as: Considering personal law as a matter of religious freedom, examining it from the standpoint of fundamental rights, and promoting internal principles of religious law as a means of reform. The article posits that the judgment indicates a developing trend of personal laws coming under the Constitution's scrutiny, particularly when the practice(s) involved are discriminatory. The interrelationship of judicial activism and personal laws is further elucidated when these scholarly views are juxtaposed with significant judicial rulings.⁶

RESEARCH METHODOLOGY

This research adopts a doctrinal method of legal study based on analysis of primary and secondary sources. Primary sources include landmark judgments of the Supreme Court of India and relevant statutory provisions governing personal laws. Secondary sources include journal articles and scholarly writings on judicial activism and family law. The study is qualitative in nature and focuses on judicial interpretation and constitutional analysis rather than empirical data.

CHAPTER 2 MEANING AND SCOPE OF JUDICIAL ACTIVISM IN PERSONAL LAWS

Judicial Activism is when courts take an expansive approach in interpreting statutes and constitutions and in promoting justice by addressing the protection of rights and the absence of laws. In the scope of the Indian legal system, judicial activism has significantly contributed to

⁵ *Invalidating Instant Triple Talaq: Is the Top-Down Approach of Reforming Personal Laws Prudent?*, 11 NUJS L. Rev. (2018), <https://nujlawreview.org/2018/05/01/invalidating-instant-triple-talaq-is-the-top-down-approach-of-reforming-personal-laws-prudent/>.

⁶ Saptarshi Mandal, *Triple Talaq and the Constitution of India*, 2 Indian L. Rev. 233 (2018).

the evolution of different branches of substantive law, family law included, and most importantly, justice system and constitutional practice. Judicial Activism, in this regard, is a means of attempting to ensure compliance of laws to the constitutional and justice framework. This is even more pivotal in con-forming the legal framework to the norms of justice where the law is elusive/indeterminate or is in need of a legislative update.⁷

Judicial Activism in the realm of personal laws is observed the most in attempts of courts in striking a balance between interpretation of customary or religious legal systems and the rights encompassed in the constitution. Since personal laws in India are largely an amalgamation of customs and traditions, and their basis lie in the religious texts, they do not always embody the contemporary constitutional norms which address equality and justice for both sexes. The development of family law in India often hinges on the judicial interpretation of the statutes related to marriage, divorce, succession, and guardianship. Thus, courts become instrumental in resolving the ambiguities in the personal law statutes, and ensuring that these laws function within the parameters of the Constitution.⁸

Judicial activism in personal law cases generally occurs through several mechanisms.

First, courts can remove bias through construction of statutory provisions of personal laws. This is the method that courts can use to maintain the legislative intent of the personal law statutes by construction of statutes to the laws of harmony of the Constitution. Second, courts can determine whether some religious acts can be protected by the Constitution through Article 25. There is a thinking in the Indian Judiciary known as the Doctrine of Essential Religious Practices, which helps in deciding whether a particular act is part of a religion. Third, the courts can settle the competing constructions of statutes of personal law. For instance, the Supreme Court in the case of *Vineeta Sharma v Rakesh Sharma (2020)*⁹ adjudicated on the competing judicial opinions of the coparcenary rights of daughters under the Hindu Succession Act. The Court proclaimed that daughters are born coparceners which further the legislative intent of reinforcing the equality of discrimination of the laws of inheritance. The role of judicial interpretation in the Hindu personal law statutes is to ascertain the provisions of the statutes are in consonance with the Constitution. The integration of judicial activism in personal laws is vital for courts to balance the intricacies of the religious tradition with the constitutional

⁷ M.P. Jain, Indian Constitutional Law (8th edn, LexisNexis 2018).

⁸ Paras Diwan and Peeyushi Diwan, Modern Hindu Law (21st edn, Allahabad Law Agency 2018).

⁹ *Vineeta Sharma v Rakesh Sharma* (2020) 9 SCC

mosaic.

CHAPTER 3 - LANDMARK JUDICIAL PRONOUNCEMENTS DEMONSTRATING JUDICIAL ACTIVISM IN PERSONAL LAWS

The Supreme Court's judicial pronouncements significantly impacted India's evolving personal laws. Numerous times the courts have interceded when long-standing personal law customs have been at odds with the constitutional precepts of justice, legal equity, and constitutional fairness. These judicial interventions indicate the role of the judiciary in safeguarding constitutional values while enacting personal laws.

There are many pioneering decisions of the courts that have purged personal laws of their discriminatory elements, and therefore, reformed and modernized them, through the prism of statutory texts and the values enshrined in the Constitution.

4.1 Mohd. Ahmed Khan v. Shah Bano Begum (1985)¹⁰

Case Facts

Mohd. Ahmed Khan, an advocate based in Indore, is the first husband of Muslim lady Shah Bano, a 62-year-old woman. After being married and having five children, the husband married another wife and then divorced Shah Bano by way of triple talaq. After the divorce, Shah Bano petitioned her husband for maintenance, arguing that she could not support herself. This was her case under Section 125 of the Code of Criminal Procedure (CrPC), 1973. The husband contested the case claiming that under Muslim personal laws, he has obligation to maintain his divorced wife during the period of iddat, and that once her iddat period is over, he is completely free and legally not responsible to maintain her.

Legal Issue

The central question that the Supreme Court had to resolve was whether a Muslim husband could, and therefore, under Section 125 of the Criminal Procedure Code, be held liable to maintain his divorced wife beyond the iddat period.

¹⁰ Mohd Ahmed Khan v Shah Bano Begum, (1985) 2 SCC 556

Judgement

All citizens are equally covered by section 125 CrPC. This means that a Muslim husband must give maintenance to a divorced wife who cannot support herself. The Court said that Section 125 is a provision that is made to keep people from being destitute and therefore takes precedence over personal laws when it comes to maintenance.

Legal Reasoning

The Court said that the purpose of Section 125 was to ensure that those who are unable to support themselves are financially able to do so by someone who is legally responsible to support them. The judges analyzed certain verses of the Quran related to maintenance and found that the Islamic system of law does not forbid divorced women from obtaining maintenance. The Court also said the husband's submission was not in accordance with the true meaning of Islamic law and the spirit of the Provision of the CrPC.

The Shah Bano case is often cited as an example of extreme judicial law making in the area of Indian family law. It stated that personal laws cannot be allowed to override welfare legislation. After the case sparked enormous political controversy, Parliament passed the Muslim Women (Protection of Rights on Divorce) Act, 1986, which sought to dilute the effect of the judgment.

4.2 Sarla Mudgal v. Union of India (1995)¹¹

Facts of the Case

The case included several petitions from Hindu women whose husbands converted to Islam to take second marriages while the first marriages were still intact. Bigamy is illegal under Hindu law, which states that second marriages during the existence of a previous marriage is an offence in the eyes of Section 494 of the Indian Penal Code. The husbands claimed that after they converted to Islam, they fell under the jurisdiction of Muslim personal law which allows for polygamy.

Legal Issue

The Supreme Court needed to address the issue of whether a Hindu husband, after converting

¹¹ Sarla Mudgal v Union of India, (1995) 3 SCC 635

to Islam, is allowed to take a second wife without terminating the first marriage that is governed by Hindu law.

Judgment

The Supreme Court found that for a marriage to a wife governed by Hindu law (i.e. wife of a Hindu) end, the husband must convert to Islam, which does not dissolve that marriage. The Court stated that first marriages, bigamy, and polygamy, are illegal under Section 494 of the Indian Penal Code, and remain valid until an end is lawfully provided under the Hindu Marriage Act, 1955. Thus, a Hindu husband who converts to Islam and marries again without terminating the first marriage is committing bigamy under Section 494 IPC.

Legal Reasoning

The Court noted that a failure to honor the obligations of one personal law through a conversion would yield legal disorder and inequity. The judges remarked that a marriage under Hindu law establishes a legal bond that is governed by a particular statute. A conversion does not end that bond. This case reaffirmed that for family law, legal obligations cannot be avoided by religious conversion. The Court asserted that the current state of affairs is a consequence of the absence of a Uniform Civil Code in Article 44 of the Constitution, which is an integral part of the Directive Principles of State Policy.

4.3 Daniel Latifi v. Union of India (2001)¹²

Background

Following the Shah Bano case, the Muslim Women (Protection of Rights on Divorce) Act, 1986, was passed. This Act seemed to only make a husband liable for maintenance during the iddat period. This was challenged in the Supreme Court as being in violation of the Constitution - Articles 14, 15, and 21.

Legal Issue

The question was whether the Act of 1986 was unconstitutional for robbing Muslim divorced

¹² Daniel Latifi v Union of India, (2001) 7 SCC 740

women of the right to maintenance after the iddat period.

Judgment

The Supreme Court, while confirming the Act, took an approach that safeguarded the divorced Muslim women's rights. It was said that the husband is under obligation to make a "reasonable and fair provision" for the future of the divorced wife, and this case should be during the iddat period, but goes beyond that. The Court provided that the "reasonable and fair provision" pertains to the husband's obligation to make a financial provision that supports the divorced wife after the iddat period. In so doing, the Court restored many of the entitlements previously enjoyed under the Shah Bano judgment.

The case was a demonstration of how the courts can balance the different branches of the State as they maintain consistent with the Constitution and the application of fundamental rights. The Court was correct in finding that the Act fell short of the Constitution.

4.4 Shamim Ara v. State of Uttar Pradesh (2002)¹³

Facts

The husband stated that he divorced his wife years ago by doing triple talaq. The wife on the other hand, maintained that the divorce was not valid, and she applied for maintenance.

Issue

Is it enough for the husband to say he has done triple talaq for the marriage to be dissolved?

Judgment

The Supreme Court stated that for talaq to be valid, the following must be present:

1. The talaq must be pronounced.
2. There must be a justifiable reason for the divorce.
3. There should be some reasonable efforts at reconciliation between the parties.

The Court stated that a claim during the divorce proceedings that there was a divorce is not

¹³ Shamim Ara v State of UP, (2002) 7 SCC 518

enough for a valid talaq.

Significance

This judgment helped put a stop to arbitrary divorces and also brought in some procedure reforms to the system. This decision was also a building block for the Shayara Bano, which also outlawed instant triple talaq.

4.5 Shayara Bano v. Union of India (2017)¹⁴

Facts

Shayara Bano challenged the practice of talaq-e-biddat (instant triple talaq) after her husband divorced her by pronouncing talaq three times. She filed a writ petition under Article 32 of the Constitution, arguing that the practice violated fundamental rights.

Issues

The Court considered whether the practices of: triple talaq, nikah halala, polygamy were constitutionally valid.

Judgment

By a 3:2 majority, the Supreme Court declared instant triple talaq unconstitutional.

Legal Reasoning

The majority held that the practice was manifestly arbitrary, as it allowed the husband to terminate the marriage instantly without any safeguards. Such arbitrariness was inconsistent with Article 14 of the Constitution, which guarantees equality before the law. The decision marked a major reform in Muslim personal law and strengthened legal protection for Muslim women.

Following the judgment, Parliament enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, which made instant triple talaq a criminal offence.

¹⁴ Shayara Bano v Union of India, (2017) 9 SCC 1

CHAPTER 4 JUDICIAL EXPANSION OF WOMEN'S RIGHTS IN HINDU PERSONAL LAW

Judicial interpretation has played a vital role in the evolution of Hindu personal law post-independence. The changes in law concerning judicial interpretation of the Hindu Marriage Act of 1955, the Hindu Succession Act of 1956, the Hindu Adoption and Maintenance Act of 1956, and the Hindu Minority and Guardianship Act of 1956, and the Hindu Guardianship Act of 1956, all of which impose a legal obligation to the marriage/death of a husband, still remain to be a source of disputes concerning the rights of women.

The judiciary has constitutively been concerned with the interpretation of these statutes and has provided interpretations which balance these statutes with the principles of the Constitution, amongst which are the principles of equality and dignity. Through a number of landmark judgments, the Supreme Court has been the body that has resolved the obscured interpretations, and increased the scopes of women's rights concerns to disputes of legal inheritance, guardianship, and of property.

The pioneering cases that judicial interpretation has most contributed to the development of Hindu personal law are as follows.

5.1 Mary Roy v. State of Kerala (1986)¹⁵

Background

The case dealt with the rights of inheritance concerning the Christian women of the former princely state of Travancore. Before the Indian Independence, the succession of the Syrian Christians of Travancore was governed by the Travancore Christian Succession Act of 1916. The Act provided that daughters had a lesser and limited distributive gift right to their father's estate than what was provided to the sons.

The enactment of the Indian Succession Act of 1925 gave rise to the concern of whether the enactment of the Travancore legislation was still applicable or if the central legislation superseded it.

¹⁵ Mary Roy v State of Kerala, (1986) 2 SCC 209

Case Summary

Mary Roy, a Syrian Christian of Kerala, challenged the legislation of the Travancore Christian Succession Act. She argued that the Act deprived daughters of equal inheritance rights and that the Indian Succession Act, 1925 should apply instead.

Legal Issue

The central question of the Supreme Court case was the Travancore Christian Succession Act's applicability after Travancore merged with the Indian Union and if the Act was replaced by the Indian Succession Act.

Judgment

The Supreme Court determined that the Indian Succession Act of 1925 was applicable to Christians in that area, and thus, the Travancore Christian Succession Act was not applicable to the region's inheritance. Consequently, under the Indian Succession Act, daughters were entitled to equal rights to inheritance.

Legal Reasoning

The Court reasoned that post the merger of the princely states with the Indian Union, the Indian Succession Act prevailed over Christians in that region. Hence, the discriminatory clauses in the Travancore Act were not operational.

The judgment enhanced the inheritance rights of Christian women in Kerala by guaranteeing equal shares to daughters in the property. It also highlighted the role of judicial interpretation in eliminating discriminatory provisions of law that were out of tune with prevailing statutory law.

5.2 Githa Hariharan v. Reserve Bank of India (1999)¹⁶

Background

Section 6 of the Hindu Minority and Guardianship Act, 1956 states, "The natural guardian of

¹⁶ Githa Hariharan v Reserve Bank of India, (1999) 2 SCC 228

a Hindu minor is the father, and 'after him' the mother". This language seemed to imply that the mother could be a natural guardian only after the father's death.

Facts of the Case

Petitioner Githa Hariharan submitted an application to the Reserve Bank of India to place certain bonds in the name of her minor son. The RBI stated her application was rejected because she was not considered a natural guardian of the child while the father was still alive, and she challenged this by saying the RBI provisions are unconstitutional as they are discriminatory against mothers.

Legal Issue

The question the Supreme Court was tasked with answering was concerning the phrasing, "after him", and whether it should be considered as being after the father has died, or post his lifetime.

Judgment

The Supreme Court interpreted the phrase, "after him", being more of an absence of something, more specifically the father. This opened the window for the mother to be a natural guardian when the father was not involved. The Court stated that an interpretation of the statute to be after the lifetime of the father constitutes a breach of the constitutionally guaranteed right to gender equality. Thus, this provision was designed to ensure that both parents can and should actively participate in assuming the role of a guardian when the situation so requires.

This judgment legally recognized the position of mothers as guardians of their children under the Hindu law, and also showcased the extent of judicial interpretative power in reconciling the provisions of the statute with the provisions of the Constitution.

CHAPTER 5 - CRITICAL EVALUATION OF JUDICIAL INTERVENTION IN PERSONAL LAWS

There has been a significant amount of judicial activity in the reformation of personal laws. The role that these activities play in Indian constitutional jurisprudence has led to a great deal of controversy. Personal laws in India are intertwined with religion, cultural practices, and communal values. For this reason, attempts to change them are politically and socially charged.

Since the enactment of the Constitution, the judiciary has intervened, either through statutory interpretation or through the principles of the Constitution, whenever the practice of personal laws appears to conflict with the Fundamental Rights enshrined in the Constitution.

Hence, for the purposes of the above, in the face of legitimacy of religious laws, judicial intervention in personal laws has for the most part been the only way to legitimize the obtrusion of the Constitution in the personal law domain by virtue of the respect for the principles of equality, dignity, and justice. However, in the wake of the aforementioned, the ever-increasing role of the courts in this domain has been indicative of the need to determine the role of the judiciary in terms of the law and the separation of powers with the legislature. Analyzing judicial activism in personal law is symptomatic of the constructive role that it plays in the legal system and democracy and the problems that it also creates.

The Dominance of the Constitution

The most significant of the contributions of the judiciary to personal law has without a doubt has been the protection of the Fundamental Rights of the Constitution. The most dominant of these has been the subjugation of women. Historically, women's personal law subjugate women in matrimony, divorce, inheritance, and guardianship, etc. These subjugations of women, in the personal law system, mirror social circumstances, and patriarchal systems that prevailed at the time such laws were conceived.

The Indian Judiciary has played an instrumental role in redressing a lot of this injustice, and has had, and continues to have a pivotal part in the constitutional interpretation process. In a number of instances, the courts have reiterated that personal laws must conform to the principles of equality and dignity enshrined in Articles 14, 15, and 21 of the Constitution of India. The judicial process has also been a great effort in aligning the personal law provisions with the constitutional aspirations, and the Judicial process has also tried to ensure that the religious customs do not undermine basic human rights.

Several landmark decisions demonstrate this approach. In *Mohd. Ahmed Khan v Shah Bano Begum (1985)*¹⁷, the Supreme Court recognized the right of a divorced Muslim woman to claim maintenance under Section 125 of the Code of Criminal Procedure, thereby emphasizing the secular obligation of maintenance irrespective of religious personal law. Similarly, in *Daniel*

¹⁷ Mohd Ahmed Khan v Shah Bano Begum, (1985) 2 SCC 556

*Latifi v Union of India (2001)*¹⁸, the Court interpreted the Muslim Women (Protection of Rights on Divorce) Act, 1986 in a manner that ensured fair and reasonable provision for divorced Muslim women.

Another important development occurred in *Vineeta Sharma v Rakesh Sharma (2020)*¹⁹, where the Supreme Court affirmed that daughters have equal coparcenary rights in ancestral property under the Hindu Succession (Amendment) Act, 2005. Likewise, in *Shayara Bano v Union of India (2017)*²⁰, the Court declared the practice of instant triple talaq unconstitutional, thereby strengthening the constitutional commitment to gender justice. These decisions illustrate how judicial interpretation has helped correct discriminatory aspects of personal laws and advance the protection of women's rights.

Filling Legislative Gaps

Judicial efforts have also contributed to situations where legislative changes have been slow to develop or are uncertain. Family law can include elements of social customs and religious concerns that are politically sensitive. Because of this, a statute or law may have specific provisions that are outdated or leave a large portion of legal questions unanswered.

In such situations, the courts can intervene legally to provide a full explanation. The courts' interpretations of the law help to settle disputes and contradictions between legal provisions. It also promotes uniformity and helps individuals avoid the legal void. The courts have sought to align personal laws to a more social relevant context by balancing law interpretation to the constitutional provisions.

This is the same function exhibited in the case of *Vineeta Sharma v. Rakesh Sharma (2020)*, where the Supreme Court addressed the varying interpretations of the scope of a daughter's coparcenary rights under the Hindu Succession Act. The previous contradictory rulings of the Court left uncertainty and confusion on whether the father had to be alive on the date of the 2005 amendment for the daughters to claim coparcenary status. The Court ruled that daughters, like sons, acquire coparcenary rights by birth and is, therefore, entitled to equal rights in inheritance.

¹⁸ Daniel Latifi v Union of India, (2001) 7 SCC 740

¹⁹ Vineeta Sharma v Rakesh Sharma (2020) 9 SCC

²⁰ Shayara Bano v Union of India, (2017) 9 SCC 1

The legislative framework and personal laws have, therefore, been adequately interpreted by the judiciary to pursue and achieve the goals of social justice and gender equality.

Concerns Regarding Judicial Overreach

The increased use of courts in some aspects of personal law reform has raised worries about judicial overreach even when there have been positive results from some of these judicial reform activities. Critics argue that the judiciary must, even in the modern era, exercise some restraint in addressing issues that impinge upon or intersect with religion and the socio-cultural aspects of the community. In this regard, the courts should not be seen as trespassing on legislative functions and making what would be deemed a reform that impinges upon the exercise of religious rights.

Personal laws are generally not just legislative provisions; they are, within the community, seen as religious laws. Therefore, the social and political ramifications of some of the judicial pronouncements that strike down or change particular aspects of personal laws are considerable. This has led some researchers to the conclusion that change in personal laws should not come from the judiciary. Instead, it should come from the legislature in the form of laws on the reasoning that the legislature is the representative body of the people and is, therefore, able to consult with the various segments of the community.

The separation of powers is a crucial consideration as well. Within the framework of a democracy, the functions of the legislature are, in the main, to make laws, while the functions of the judiciary are to interpret and apply the laws. When a court takes it upon itself to reinterpret a given provision of the law, it can be argued that these are functions that are distinct and without the court stepping beyond the bounds of its assigned functions. While judicial activism with respect to a particular issue can, in some instances, be viewed as a progressive step, when taken to excess, judicial activism can spawn a level of legal uncertainty created by differing interpretations by various benches.

Need for Comprehensive Legislative Reform

The continued reliance upon judicial pronouncements to provide solutions with respect to personal laws illustrates the void which can only be filled by comprehensive reform within the legislature. While the interpretative powers of the courts can provide resolution to particular

conflicts and clarity within the four corners of a legal provision, judicial decisions cannot provide comprehensive solutions to this legal problem.

In India, a systematic methodological approach to legal reform is implemented through laws and regulations. While courts focus on case-by-case legal determinations, legislatures and governments have the ability to make more extensive policy determinations after public engagement on the issue through debates and consultations.

In India, under Article 44 of the Indian Constitution, Article 44 mandates the Indian State to make efforts to enact a Uniform Civil Code (UCC) applicable to all citizens of the country. This directive is an attempt to achieve legal uniformity in the areas of Marriage, Divorce, Succession, and Adoption and equally make laws applicable to all persons. However, the implementation of a Uniform Civil Code is an issue that is still complex and controversial, especially in a country like India with multiple religions, and because of how personal law reforms are perceived.

In the absence of comprehensive legislations that are fully responsive to the needs associated with these issues, the courts will continue to interpret, and the resolutions to these issues will continue to be contextual, as are most of the judicial decisions. In the practice of judicial decision making, the courts will continue to fully respect religious and/or cultural diversity, and the role of the courts will remain to ensure that within the jurisdiction of personal law, religious and/or cultural laws, the provisions of the Fundamental Rights remain. However, most of the above identified concerns require reform through Legislative processes, and the reform process will be effective if there is a conducive socio-political environment that will merge with the legal process.

CHAPTER 6 - CONCLUSION

Judicial activism has certainly contributed to the development of personal laws in India. With family law still being regulated by various religious systems in India, the judiciary has taken the lead in checking the operation of family laws in relation to the Indian Constitution. The Supreme Court has consistently stated that personal laws cannot be immune from the constitutional challenge as it relates to the fundamental right to equality, the right to be heard and the right to dignity.

Judicial activism has strengthened Women's rights in personal laws. In maintenance, inheritance and custody, the courts have interpreted the relevant statutes to lessen the discrimination. The judiciary lens that a daughter is a coparcener by birth and the banning of arbitrary instant triple talaq are both manifestations of the judiciary ensuring both de jure and de facto equality.

However, the judicious activism in personal laws invites critiques on the scope of the judicial power. Since personal laws are integrated with the religious and cultural beliefs of the people, so in exercising too much judicial power, it may seem that the judiciary is entering the exclusive domain of the legislature. Thus, the judiciary is cautious and prefers interpretation of the statute rather than striking the law to mix and match constitutional supremacy and religious autonomy.

In my opinion, it is both necessary and justified to consider directing activism in a judicial capacity within the context of personal law, particularly when law reform is slow and/or politically sensitive. The job of the judiciary is to be a protective constitution and to ensure that individual rights are protected from the threat of compromise based on the context of custom and religion. The restriction on the level of judicial activism in the personal law context should law reform be introduced is on the basis of, that, such activism should, in fact, be a substitute for activism of the legislature.

The reliance on the judiciary to provide solutions to problems in personal law is an indication of the need for parliamentary activism of a systemic and uniformed nature. The reform requires consistency, clarity, and equality when addressing the problems of personal law systems, and although the UCC is as yet to be implemented, it is reform that is much needed.

In judicial activism, India has witnessed the modernization of personal laws, and with the advancement of judicial activism, it should focus on the protection and advancement of fundamental rights overall while encouraging the legislature to be proactive in initiating reform. The modernization of family law should be in a manner that is consistent with justice, equality, and the rule of law.

At the same time, judicial activism cannot substitute for comprehensive legislative reform. Personal laws continue to be governed by multiple statutory and customary systems, which sometimes create legal inconsistencies. The continued debate regarding the implementation of a Uniform Civil Code under Article 44 highlights the challenges involved in harmonizing

personal laws with constitutional principles.

Ultimately, judicial activism in personal laws represents an ongoing effort to reconcile religious traditions with constitutional mandates. While courts must exercise caution in matters involving religion, their role in protecting fundamental rights remains indispensable in ensuring that the legal system promotes justice, equality, and the rule of law.

REFERENCES

1. Tanja Herklotz, *Law, Religion and Gender Equality: Literature on the Indian Personal Law System from a Women's Rights Perspective*, 2 Indian Law Review 181 (2018).
2. *Invalidating Instant Triple Talaq: Is the Top-Down Approach of Reforming Personal Laws Prudent?*, 11 NUJS Law Review (2018).
3. Flavia Agnes, *Triple Talaq: A Briefing Note*, 10 NUJS Law Review (2017).
4. Saptarshi Mandal, *Triple Talaq and the Constitution of India*, 2 Indian Law Review 233 (2018).
5. Flavia Agnes, *Personal Laws and Gender Justice*, 41(27) Economic and Political Weekly (2006).
6. Flavia Agnes, *Family Law: Volume I – Family Laws and Constitutional Claims* (Oxford University Press 2011).
7. M.P. Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2018).
8. Paras Diwan and Peeyushi Diwan, *Modern Hindu Law* (21st edn, Allahabad Law Agency 2018).
9. B.M. Gandhi, *Hindu Law* (4th edn, Eastern Book Company 2016).

Case Laws

10. *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556.
11. *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635.
12. *Daniel Latifi v. Union of India*, (2001) 7 SCC 740.
13. *Shamim Ara v. State of Uttar Pradesh*, (2002) 7 SCC 518.
14. *Shayara Bano v. Union of India*, (2017) 9 SCC 1.
15. *Mary Roy v. State of Kerala*, (1986) 2 SCC 209.
16. *Githa Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228.