
BREAKING PATRIARCHAL BARRIERS: THE ROLE OF COURTS IN ADVANCING MARRIED WOMEN'S CONSTITUTIONAL RIGHTS IN THE DOMESTIC SPHERE IN INDIA

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ABSTRACT

The domestic realm has traditionally been understood as a private space protected from legal scrutiny and defined largely by patriarchal rules. Women have historically faced prejudice in marriage with respect to physical autonomy, reproductive choice, property rights, maintenance, domestic labour, domicile and protection from assault. These disparities were sought to be corrected by legislative reforms and judicial involvement has played an important role in changing the constitutional position of married women in India. Progressive judicial interpretations of Articles 14, 15, 19 and 21 of the Constitution have led the courts to broaden the scope of equality, dignity, privacy and autonomy within the institution of marriage.

This doctrinal study examines the role of judicial intervention in advancing the constitutional rights of married women within the domestic sphere in India. Through an analysis of constitutional provisions, statutory frameworks, and landmark judicial decisions, the article argues that the judiciary has played a transformative role in dismantling patriarchal structures and extending constitutional protections into family relations. The study concludes that while judicial activism has significantly advanced women's rights, achieving substantive equality requires complementary legislative reforms and broader social transformation.

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INTRODUCTION

Marriage is viewed as a social institution based on hierarchical gender relations, with women expected to assume duties of obedience, dependency and sacrifice. For a long time, the private sphere was considered outside the scope of constitutional review, enabling patriarchal norms to regulate intimate family relations. Married women were usually discriminated against on matters of residency, support, reproductive autonomy, inheritance and protection from domestic violence.

The Constitution of India provides for equality, non-discrimination, dignity, liberty and personal autonomy. But the translation of these basic safeguards into the daily experiences of married women has required ongoing judicial action. There is an emerging awareness in courts that constitutional rights do not come to an end at the barrier of marriage, that the family cannot be a constitution free zone. The judiciary has used judicial activism and constitutional interpretation to open up the legal personality of the married woman as a rights bearer and to challenge patriarchal norms.

Despite constitutional guarantees and legislative reforms, married women continue to encounter structural inequalities within the domestic sphere. This raises important questions regarding the extent to which judicial intervention has succeeded in transforming family relations and advancing constitutional rights. The present study examines the judiciary's role in challenging patriarchal norms and promoting substantive gender equality within marriage and evaluates the influence of judicial involvement on married women's social transformation and looks at the role of courts in promoting their constitutional rights in the domestic environment.

I. THE PATRIARCHAL FAMILY AND THE HOUSEHOLD SPHERE:

Patriarchy is the main social framework that governs gender relations in India and it has had a significant role in determining the status and rights of women within the family and society. Patriarchy is, in broad terms, a system of social structure where men dominate women through legal, economic, cultural and political institutions. In this context, the home has long been viewed as a male environment where women are expected to perform prescribed tasks of wifehood, parenting, caring, and domestic duty. Historically, these gender expectations have curtailed women's autonomy and reinforced their economic, social and legal dependency on

male family members. The family, envisioned as a private and holy institution, became a central venue for the repetition of patriarchal norms, so protecting gender inequities from external scrutiny and legal intervention.²

Ancient religious scriptures, traditional rituals and societal customs stressed female obedience, virginity and servitude. Here the idea of pativrata dharma placed married women under the control of their husbands, and dedication and self-sacrifice were the virtues of womanhood par excellence. Consequently, women were often denied separate legal identities and were considered solely in relation to male relatives. Marriage was not only a personal bond but is considered as a social institution, aimed to safeguard patriarchal authority and lineage, typically limiting women's participation in public life and decision-making.³

Marriage was an important institution for preserving and transmitting patriarchal power from one generation to the next. When women got married, they usually went to live in the household of the husband. The family system was patrilineal. This often led to economic dependency and limited decision-making. Women's job in the home is such as child-rearing, care-giving, and housework is considered as a family responsibility, not constructive economic activity. All this culminated in women's significant role in family welfare, but women were primarily denied their rights to property, finance and inheritance. Feminist scholars have claimed that this economic invisibility is the central cause for women's subordinate status and the continuation of gender inequalities in the domestic domain.⁴

Another important expression of patriarchy was the inheritance and property regimes. Under traditional Hindu law, women had very limited power, coparcenary and access to ancestral property was also restricted. Though there were some restricted property rights through the idea of stridhana yet the property rights of women were quite limited as compared to men. Similarly, the traditional practices of many communities supported male heirs and patrilineal succession. Denial of equal property rights deprived women of economic independence and entrenched their dependence on dads, husbands and sons. Thus, the legal regulation of inheritance became a crucial mechanism of sustaining patriarchal control over income and family resources.⁵

² Sylvia Walby, *Theorizing Patriarchy* 20–21 (Basil Blackwell 1990).

³ Uma Chakravarti, *Gendering Caste Through a Feminist Lens* 68–75 (Stree 2003).

⁴ Nivedita Menon, *Seeing Like a Feminist* 47–65 (Zubaan 2012).

⁵ Flavia Agnes, *Law, Justice and Gender: Family Law and Constitutional Provisions in India* 132–45 (Oxford

Women's bodily control and personal agency were likewise shaped by patriarchal norms. Education, employment, marriage, reproduction and mobility decisions were often dominated by male family members. Women's sexuality was often subject to social control to maintain family dignity and the purity of the lineage. As a result, family interests as a whole were given greater importance than the individual interests and aspirations of women. Such limits represented the social belief that women needed to be controlled and protected by men and hence it was right to limit their freedom and independence.⁶

Domestic violence is one of the most persistent forms of patriarchal authority in the home. For centuries violence against women was seen as a private family issue outside the realm of judicial prosecution. Social attitudes often normalised physical, emotional, sexual and economic abuse as part of marriage. The notion of privacy of the family often precluded state authorities from acting in incidents of domestic violence leaving women without any effective legal remedy. This refusal to recognize domestic violence as a violation of basic human rights was consistent with a larger societal norm that privileged the integrity of the family over the protection and dignity of women.⁷

The colonial legal system introduced several improvements for the enhancement of women's status such as legislation against sati, child marriage and widow remarriage. But these reforms did not really destroy patriarchal institutions inside the home. Colonial officials did attempt to modernize some parts of personal law but they did not generally challenge the patriarchal basis of marriage and inheritance. Thus, many discriminatory behaviours remained existing despite the intervention of legislation. Colonial rule left a complex legal environment, where official changes sat alongside entrenched socioeconomic inequalities.⁸

The Constitution of India adopted in 1950 was a major shift from the previous patriarchal standards which laid down the ideals of equality, liberty, dignity and non-discrimination as the basic values of the Constitution. Articles 14, 15 and 21 created a constitutional framework which may be used to challenge the gender-based discrimination in the domestic domain. But constitutional provisions did not suffice to abolish deep-rooted patriarchal behaviours. Family interactions remained to be regulated by rules of custom, personal laws and societal

Univ. Press 2011).

⁶ Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach* 91–112 (Cambridge Univ. Press 2000).

⁷ Indira Jaising, *Justice for Women: Concerns and Expressions* 97–118 (Universal Law Publ'g Co. 2005).

⁸ Geraldine Forbes, *Women in Modern India* 45–79 (Cambridge Univ. Press 1996).

expectations which often clashed with constitutional ideals. This prolonged judicial intervention was thus instrumental in the slow infusion of the constitutional ideals into the home domain, and the transformation of the legal status of married women. The courts have increasingly recognised that the family cannot be a constitution-free zone and that women's rights to equality, dignity, privacy and autonomy must be respected even in the context of personal relationships. The judiciary's engagement with issues such as domestic violence, maintenance, inheritance, reproductive autonomy and marital dignity is a continuous attempt to reconcile family law with constitutional mandates and to dismantle the historical structures of patriarchy that have long governed the lives of women.⁹

III. Constitutional Foundation: Rights of Married Women

The Constitution of India is not only document drafted to create institutions of government, but also to reform social relations in terms of equality, dignity, liberty and justice. Earlier marriage and family used to be regulated by personal laws and customary norms. Married women have also been regarded as autonomous rights-bearers whose fundamental rights are not to be restricted by patriarchal norms in an increasingly prominent manner in constitutional jurisprudence. The judiciary has played an important role in extending constitutional guarantees to the domestic realm and in subverting conventional norms of gender subordination. In this regard, the gradual expansion of the constitutional rights of married women and expansion of substantive gender equality in familial relationships through wide interpretations of Articles 14, 15 and 21 and doctrines of constitutional morality and transformative constitutionalism by courts have played a significant role.

A. Equality and Non-discrimination

The gender equality in India is based on constitutional principles mentioned under article 14 and 15. Article 14 deals with equality before law and equal protection of laws. Article 15 bans discrimination on the basis of sex and the same article allows the State to make special provisions for the advancement of women. All of these amount to a constitutional commitment to removing social and legal mechanisms that promote gender inequity.

Articles 14 and 15 are not of importance just for formal equality. Substantive equality is a growing topic in judicial interpretation. Substantive equality recognizes that equality of

⁹ Flavia Agnes, *Family Law Volume I: Family Laws and Constitutional Claims* 1–25 (Oxford Univ. Press 2011).

treatment can reinforce existing disadvantages in circumstances of structural disparities. Therefore, courts have tried to identify and remove those statutory provisions and social practices that perpetuate patriarchal inequities in marriage and family life.¹⁰

Many personal laws were predicated on concepts of subjection and dependency of women in marriage. Increasingly, the judiciary has tested those assumptions against the constitution. In the case of *Joseph Shine v. Union of India*, the Supreme Court struck down Section 497 of the Indian Penal Code, which criminalized adultery, ruling it to be unconstitutional as it viewed women as the property of their husbands and denied them sexual agency and autonomy. The Court observed that the equality provisions of the Constitution cannot be invoked to sanctify legislation founded on patriarchal concepts of female reliance and male supremacy.¹¹

Similarly, the Supreme Court in *Shayara Bano v. Union of India* struck down the practice of instant triple talaq on the ground of violation of fundamental guarantees of equality and dignity by arbitrary and unilateral divorce. The ruling highlighted the willingness of the judiciary to look at personal law practices in light of constitutional rights and gender equality.¹²

The constitutional commitment to equality has also percolated into judicial attitudes on inheritance and property rights. The Supreme Court in *Vineeta Sharma v. Rakesh Sharma* supports the equal rights of daughters by birth as coparceners under the Hindu Succession Act. The Court said that denial of equal rights of inheritance to women is a continuation of historical prejudice and against the core tenets of equality.¹³ These decisions demonstrate the potential of Articles 14 and 15 as significant instruments to combat patriarchal practices and advance the substantive equality of married women.

B. Right to life and personal liberty

Article 21 which states that No individual shall be deprived of his life or personal liberty except according to procedure established by law. The earlier restrictive reading of Article 21 has grown into a comprehensive constitutional clause that includes dignity, privacy, physical integrity, decisional autonomy, reproductive freedom and the right to live with dignity.

¹⁰ Catharine A. MacKinnon, *Toward a Feminist Theory of the State* 215–34 (Harvard Univ. Press 1989).

¹¹ *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39.

¹² *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1.

¹³ *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 S.C.C. 1.

The expansion of Article 21, is a transformative development particularly significant for married women, that demonstrates that constitutional rights are operative throughout the family and are not obliterated by marriage. Article 21 has been a powerful instrument for judicial interpretation to safeguard women from the encroachment of the State and society upon their autonomy and dignity.¹⁴

The Supreme Court in *Suchita Srivastava v. Chandigarh Administration* has declared that the right of reproductive choice is a part of the right to personal liberty guaranteed under article 21. The Court recognized that the woman's right to reproductive choice is part of her personal and bodily integrity. This was a substantial departure from previous approaches which had concentrated on women's reproductive roles in the context of family or community interests.¹⁵

In *K.S. Puttaswamy (Retd.) v. Union of India* the Court declared unanimously that privacy is a fundamental right enlarging the scope of Article 21. The Court noted that privacy comprises bodily integrity and personal choice, as well as decisional autonomy. These views have major ramifications for married women, especially in relation to reproductive rights, sexual autonomy, family planning and intimate decision making.¹⁶

In *X v. Principal Secretary, Health & Family Welfare Department, Government of NCT of Delhi*, the Supreme Court later emphasized that the right to reproductive autonomy and decisional autonomy is equally available to married and unmarried women. In the Court's view, marital status could not serve as a basis to deny constitutional protections for bodily integrity and reproductive autonomy.¹⁷ Article 21 has also been used as a means for acknowledgment of the right to protection from domestic violence, right to residency, economic security and freedom from humiliating treatment through judicial enforcement. They have constitutionalised family law problems by linking the concerns to dignity and liberty.

C. Transformative Constitutionalism and Constitutional Morality

The basic ideas behind the present constitutional adjudication in India are constitutional morality and transformative constitutionalism. Constitutional morality is devotion to the principles of the constitution such liberty, equality, dignity, fraternity and justice even when

¹⁴ Upendra Baxi, *The Future of Human Rights* 169–83 (3d ed. 2008).

¹⁵ *Suchita Srivastava v. Chandigarh Admin.*, (2009) 9 S.C.C. 1.

¹⁶ *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1.

¹⁷ *X v. Principal Sec'y, Health & Fam. Welfare Dep't, Gov't of NCT of Delhi*, (2023) 9 S.C.C. 433.

these ideals are at odds with prevalent social practices or with the beliefs of the majority. Transformative constitutionalism, however, views the Constitution as a method of social reform and the destruction of established systems of power and discrimination.¹⁸

These notions have been taking an increasingly prominent place in the development of the rights of married women, as patriarchal practices are often defended by tradition, custom, religion and social convention. Constitutional morality thus allows the courts to assess such conduct in terms of the principles of the constitution and not only because they are socially accepted.¹⁹

In the landmark Sabarimala case of *Indian Young Lawyers Association v. State of Kerala*, the Supreme Court held that constitutional morality should prevail over standards promoting prejudice. The issue was religious exclusion but the greater import of the case is that constitutional ideals cannot be surrendered at the altar of patriarchal traditions.²⁰

Constitutional morality was also a major factor in the Court's rejection of legal notions based on old-fashioned ideas about women in marriage in *Joseph Shine*. The Court found that marriage does not erase personhood in women, and that women are entitled to equal constitutional protection as autonomous persons.²¹ Transformative constitutionalism has influenced court responses on maintenance, inheritance, domestic abuse and reproductive rights. Judges who see the constitution not as a codification of existing social arrangements but as an instrument for reforming them have extended the legal status of married women from dependents of the patriarchal household to independent constitutional subjects with enforceable rights. The evolution of the legislation in this field is an example of a resolve to reconstruct family relations in the spirit of constitutional norms of equality and decency. The growing application of constitutional morality and transformative constitutionalism is a welcome development in Indian jurisprudence. Courts are slowly moving away from the idea of family law as a separate domain, governed primarily by personal law and tradition, and are increasingly submitting the domestic sphere to constitutional review. This has enabled the judiciary to examine discriminatory practices, to defend the autonomy of women and to

¹⁸ Karl E. Klare, *Legal Culture and Transformative Constitutionalism*, 14 S. Afr. J. Hum. Rts. 146 (1998).

¹⁹ Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* 25–47 (HarperCollins India 2019).

²⁰ *Indian Young Lawyers Ass'n v. State of Kerala*, (2019) 11 S.C.C. 1.

²¹ *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39.

promote genuine gender justice within the context of marriage and family life.

V. Protection of the victims of domestic violence

Perhaps the greatest contribution of the Indian judiciary towards the cause of the rights of married women has been the elevation of domestic abuse from a private family issue to one of constitutional concern. Violence in the household was traditionally viewed as a private family matter and beyond the reach of the state. Social conventions that stressed family seclusion and marital unity prohibited women from seeking legal recourse against abusive spouses and relatives, leaving them susceptible to physical, emotional, sexual, verbal, and economic abuse. The judiciary has played a crucial role in dispelling this impression by treating domestic abuse as a breach of a woman's fundamental rights to equality, dignity, physical integrity and personal liberty under Articles 14, 15 and 21 of the Constitution.

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) was a major legislative milestone but it is the court interpretation which has given real substance to the Act. Courts have repeatedly adopted a purposive and liberal approach to ensure that the statute achieves its aim of providing effective protection to women facing violence in domestic relationships. Judicial pronouncements have widened the definition of domestic violence beyond physical attack to emotional, psychological, sexual and economic abuse, thus recognizing the multifaceted reality of women's experience in marriage.

In *V.D. Bhanot v. Savita Bhanot* the Supreme Court declared that the protection offered under the PWDVA can be extended even to the acts of domestic violence committed before to the coming into existence of the Act, and therefore, to ensure wider protection to the women.²² Similarly, in *Krishna Bhattacharjee v. Sarathi Choudhury*, the Court observed that deprivation of property and economic resources of a woman may amount to continued domestic violence and so, the Court recognized economic abuse as a severe infringement of women's rights.²³

The judiciary has frequently held that marriage does not provide immunity from abusive behaviour. The courts have held that a woman's right to live with dignity does not end with marriage and the family cannot be viewed as a constitution-free zone. The judiciary has played a vital role in removing patriarchal beliefs that normalize violence against women through such

²² *V.D. Bhanot v. Savita Bhanot*, (2012) 3 S.C.C. 183.

²³ *Krishna Bhattacharjee v. Sarathi Choudhury*, (2016) 2 S.C.C. 705.

decisions and has reinforced the legal framework safeguarding married women in the domestic domain.

VI. Protecting Women's Right of Residence and Shared Household

The right to residence has developed as one of the most important rights of married women in India which is judicially protected. Historically, marital disagreement or domestic violence commonly led to women being forced out of their marital homes and becoming economically vulnerable due to their dependence on husbands and in-laws. Women were often forced to stay in abusive relationships because they feared being homeless, which in turn reinforced patriarchal dominance in the household.

The judiciary has also played a transformational role in interpreting the term of 'shared household' under the PWDVA, being cognizant of this fact. In a growing number of cases, the courts have found housing security to be a fundamental aspect of women's dignity, safety and equality. The courts have intervened to make sure that women are not forced homeless simply because a marriage has gone sour.

In *Satish Chander Ahuja v. Sneha Ahuja*, a historic development occurred when the Supreme Court established a broad interpretation of the word "shared household".²⁴ The Court however rejected the earlier limited views and found that a woman can claim residence rights in buildings which constitute a shared home even if she is not the owner thereof. This ruling went a long way in bolstering the protective edifice available to married women and took note of the realities of joint family living arrangements obtaining in India.

The courts' approach to housing rights suggests a broader recognition that economic stability and shelter are essential components of substantive equality. Courts' protection of women's rights to residence has lowered their vulnerability to coercion, abandonment and economic dependency. In this manner the judicial recognition of the rights of residency has become a significant tool for the advancement of gender equity inside the family.

VII. Maintenance, Economic Justice and Recognition of Women's Contributions

Historically, one of the main ways patriarchies have been supported in marriage is through

²⁴ *Satish Chander Ahuja v. Sneha Ahuja*, (2021) 1 S.C.C. 414.

economic reliance. Traditional legal approaches frequently considered maintenance as a philanthropic responsibility on the part of husbands to dependent wives, rather than recognition of women's contribution to family life. Over time, the judiciary has altered this view by tying maintenance to constitutional ideals of dignity, equality and economic fairness.

Courts have increasingly recognised that women's unpaid domestic labour makes a significant contribution to household welfare and national economic development. Women's contributions to child care, caregiving, household administration and emotional support, among other critical responsibilities, have historically been inadequately recognized in the law. Judicial intervention has sought to redress this imbalance by highlighting that maintenance should not only be determined on the basis of subsistence needs but also on the style of life enjoyed throughout the marriage.

The Supreme Court in *Rajnish v. Neha* laid forth broad principles for determination of maintenance and pointed out the need for reasonable and uniform maintenance payments.²⁵ The Court acknowledged that maintenance is designed to promote financial dignity and to prevent women from being left destitute once a marriage breaks down. The ruling was also intended to avoid the delays and inconsistencies that often diminish the efficiency of maintenance proceedings.

The judiciary's appreciation of unpaid domestic employment was amplified in *Kirti v. Oriental Insurance Co. Ltd.* where the Supreme Court acknowledged the economic worth of homemakers' labour, stating that household work is constructive economic activity entitled to legal recognition.²⁶ This compensation law case is important more generally for challenging patriarchal norms that devalue domestic work as economic activity.

With these advances, the courts have changed the jurisprudence of maintenance from a charity-based paradigm to a rights-based approach based on constitutional principles. More and more courts are acknowledging that financial security is a key element of women's liberty, dignity and equal involvement in society.

²⁵ *Rajnish v. Neha*, (2021) 2 S.C.C. 324.

²⁶ *Kirti v. Oriental Ins. Co. Ltd.*, (2021) 2 S.C.C. 166.

VIII. Judicial Recognition of Reproductive and Bodily Autonomy

The judiciary has done a lot to recognize that married women are adults in their own right and should have autonomy over their own bodies and reproductive choices. In the past, family expectations, societal norms, and patriarchal conceptions of women's roles as wives and mothers have frequently shaped decisions about reproduction. In the context of marriage union, individual liberty in terms of sexuality and reproduction was thought to be sacrificed.

The judiciary has continuously negated these assumptions by reiterating that constitutional rights to dignity, privacy, bodily integrity and personal liberty are completely applicable inside marriage. In doing so, the courts have adopted an expanded interpretation of Article 21 to include the reproductive autonomy as an integral aspect of women's fundamental liberty.

In *Suchita Srivastava v. Chandigarh Administration*, the Supreme Court stated that reproductive choice is an integral part of personal liberty and physical autonomy.²⁷ The Court acknowledged a woman's right to reproductive choice without coercion or interference reaffirming the primacy of autonomy in the context of women's bodies.

The acknowledgment of privacy as a basic right in *K.S. Puttaswamy (Retd.) v. Union of India* considerably increased the constitutional protections for married women.²⁸ The ruling held that the constitutional right to privacy includes decisional autonomy, bodily integrity, and intimate personal decisions. The consequences of these concepts for such matters as contraception, pregnancy, reproductive health care, and marital decision-making are significant.

In *X v. Principal Secretary, Health & Family Welfare Department, Government of NCT of Delhi*, the Supreme Court later held that the right to reproductive autonomy is vested in all women irrespective of their marital status.²⁹ The Court underlined that constitutional safeguards of bodily integrity and decisional autonomy cannot be made contingent upon social expectations or traditional concepts of family life.

In these judgments, the judiciary has radically changed the legal conception of married women as not just wives and mothers but as free constitutional citizens entitled to make choices about

²⁷ *Suchita Srivastava v. Chandigarh Admin.*, (2009) 9 S.C.C. 1.

²⁸ *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1.

²⁹ *X v. Principal Sec'y, Health & Fam. Welfare Dep't, Gov't of NCT of Delhi*, (2023) 9 S.C.C. 433.

their own bodies and lives.

IX. Economic Empowerment and Property Rights

There are many pillars to women's empowerment and one of the most important pillars is property ownership. Economic independence strengthens women's bargaining power at home, lessens their vulnerability to abuse and promotes substantive equality. But, as a rule, patriarchy's methods of inheritance purposefully barred women from ownership and management of family property, thus perpetuating economic dependency.

The judiciary has played a seminal role in breaking down such inequalities by interpreting the succession laws in consonance with the constitutional principles of equality and non-discrimination. Judicial pronouncements have also increasingly recognized that economic empowerment is critical to achieving true gender justice.

In *Vineeta Sharma v. Rakesh Sharma*, the Supreme Court achieved a major milestone by finding that daughters acquire coparcenary rights by birth and have the same rights and duties as sons under Hindu law.³⁰ The court dismissed biased interpretations that had previously denied women equal rights to inherit and highlighted that constitutional equality demands equal treatment in relation to property ownership.

Earlier, Supreme Court in *Mary Roy v. State of Kerala* had struck a tremendous blow against gender discrimination by providing equal inheritance rights to Christian women in Kerala.³¹ The ruling modified the rules of succession and considerably improved the economic security of women.

The consequences of judicial enforcement of inheritance rights extend well beyond property rights. Such efforts subvert the economic base of patriarchy by redistributing access to resources and empowering women in the family structure. Equal property rights have been a key tool that courts have used to foster more economic independence and greater capacity for women to exercise autonomy and reject discrimination.

In this way, the court's role in the evolution of property rights law is among the most prominent examples of societal transformation through constitutional adjudication. Courts have

³⁰ *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 S.C.C. 1.

³¹ *Mary Roy v. State of Kerala*, (1986) 2 S.C.C. 209.

contributed to the undoing of traditional patterns of economic subjugation and the realization of the constitutional promise of gender equity through progressive interpretation of equality and succession provisions.

X. Challenging Gender Stereotypes in Judicial Decision-Making

One of the major advances in contemporary gender jurisprudence has been the extension of the judicial recognition of the damaging effect of gender stereotypes on the administration of justice. For some time, feminist legal scholars have argued that legal systems tend to reinforce patriarchal norms by treating stereotypical assumptions about women as objective standards of behaviour. These assumptions animate judicial reasoning on marriage, sexuality, family relations, employment, reproductive autonomy, and gender-based violence. Therefore, the elimination of gender stereotyping is one of the main components of substantive equality and gender justice.

According to Rebecca J. Cook and Simone Cusack, gender stereotypes are generalized notions or beliefs about the qualities, attributes, or roles women and men are or should be assigned.³² Gender stereotyping, they argue, is a form of discrimination because it limits individual autonomy and reinforces unequal social structures.³³ Courts are important in their analysis to identify and dismantle stereotypes that deny women equal recognition under the law.³⁴ This understanding has been increasingly reflected in modern judicial approaches that examine how legal rules and social practices buttress discriminatory gender norms.

Modern constitutional courts have pointed out that a woman should not be judged according to a patriarchal idea of morality or gender roles that are socially determined. Judicial reasoning has increasingly departed from the assumption that women must conform to standards of modesty, chastity, obedience, or domesticity to be within the ambit of legal protection. Instead, courts have increasingly recognized women as independent rights holders who are entitled to dignity, privacy, liberty and equality. This shift reflects the broader constitutional commitment to substantive equality, which requires the law to address structural disadvantage, rather than simply to provide formal equal treatment.

³² Rebecca J. Cook & Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives* 9 (2010).

³³ *Id.* at 20–25.

³⁴ *Id.* at 81–92.

The academic literature has also shown that gender bias often works through implicit assumptions about women's credibility, emotional stability, sexual behaviour, reproductive choices and family obligations in judicial institutions.³⁵ Such stereotypes can influence the interpretation of evidence, the evaluation of witness testimony, sentencing practices, and the determination of legal rights. "Gender bias in our courts often manifests in the form of unconscious attitudes that affect judicial conduct and legal decisions, which erodes the public's confidence in the justice system," Lynn Hecht Schafran notes.³⁶ Thus, gender-sensitive adjudication has become an important mechanism to ensure fairness and impartiality in judicial proceedings.

A further important jurisprudential development has been the increasing resort to constitutional morality instead of social morality in judicial decision making. Judges must uphold fundamental rights and constitutional values in accordance with constitutional morality, even when the attitudes of society are still influenced by prejudice or discriminatory traditions. This is particularly important in gender justice cases where social norms can encourage unequal power relations between men and women. In this context, courts have sought to counter practices based on patriarchal assumptions and cultural stereotypes by prioritising constitutional principles of equality, dignity, liberty and non-discrimination.

International human rights scholarship, too, recognizes wrongful gender stereotyping to constitute a serious human rights violation. The Office of the United Nations High Commissioner for Human Rights has stressed that gender stereotypes are often the source of discrimination against women in the public and private spheres.³⁷ Human rights bodies have increasingly called on states and judicial institutions to identify, prevent and eliminate stereotyping in legal proceedings. This is a sign of the growing consensus that equality cannot be achieved unless courts actively challenge the social assumptions that sustain gender discrimination.

The courts' rejection of gender stereotypes is not only about individual cases, but part of bigger social change. The normative significance of judicial decisions is high because they influence the public discourse, the legal culture and the institutional practices. Courts that explicitly reject

³⁵ Deborah L. Rhode, *Justice and Gender: Sex Discrimination and the Law* 312–18 (1989).

³⁶ Lynn Hecht Schafran, *Gender Bias in the Courts: An Emerging Focus for Judicial Reform*, 21 Ariz. St. L.J. 237, 240–46 (1989).

³⁷ Simone Cusack, *Gender Stereotyping as a Human Rights Violation* 11–16, Office of the U.N. High Comm'r for Human Rights (2013).

patriarchal assumptions and recognize women's autonomy and equal standing help change societal notions of gender roles and relationships. Thus, judicial intervention becomes an important tool to challenge systemic discrimination and to promote substantive equality.

Thus, the changing anti-stereotyping jurisprudence has reflected the transformative role of the judiciary in the promotion of gender justice. Courts, by eschewing gender-based presumptions, espousing constitutional values and deploying gender-sensitive adjudicative strategies, contribute not only to the protection of individual rights but also to the larger cause of social change. The deconstruction of gender stereotypes in judicial decision-making is still needed for the full realization of equality and the guarantee that women are treated as full and autonomous members of society.

XI. Judiciary as an instrument of social change

In democratic societies, the judiciary has emerged as one of the most powerful institutions in bringing about social change and gender justice. Legislatures create laws, and executives implement them; but courts have a special role in interpreting constitutional principles and in ensuring that legal norms develop in accordance with changing social realities. In terms of women's rights, judicial intervention has frequently served as a trigger for social reform by challenging entrenched patriarchal structures, broadening constitutional protections, and helping to foster increased recognition of women's autonomy and equality. Also, courts have been agents of social transformation through their progressive interpretation of the constitution, altering the legal understanding of marriage, familial relationships and gender roles.

The concept of substantive equality is closely related to the judicial recognition of human dignity as a fundamental constitutional value. For Martha Nussbaum and others, dignity entails respecting the autonomous agency of individuals who are capable of making meaningful choices about their lives and relationships.³⁸ The courts increasingly have employed dignity to shield women from practices that intrude on their bodily integrity, personal autonomy and social standing. The focus on dignity has helped transform the legal paradigm from paternalistic to one that views women as autonomous rights-bearing citizens who deserve equal respect and protection before the law.

The judiciary has also played a key role in challenging discriminatory customs and patriarchal

³⁸ Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach* 70–96 (2000).

social norms. Social change often involves challenging practices that have long been accepted as cultural traditions, even though they have a discriminatory effect. Legal scholars have observed that courts can be transformative institutions by looking at customs and practices that are at odds with the values of the constitution.³⁹ Courts have increasingly challenged social practices that reinforce gender hierarchies and sustain the subordination of women through constitutional review and progressive interpretation. These interventions show the capacity of the judiciary to bring about social reform and also to make the constitutional guarantees meaningful to an ordinary man.

Another important aspect of judicial change has been the recognition of women's autonomy in marriage. Historically, women in law were primarily viewed as wives and mothers, restricting their capacity to assert their own rights and make their own decisions. This conception has been more and more rejected by the affirmation in contemporary jurisprudence that marriage does not extinguish the individual constitutional rights. According to the academic literature, personal autonomy is a key component of citizenship and democratic participation.⁴⁰ In this way, the recognition of women's autonomy by the judiciary has bolstered the protections of personal liberty, privacy, bodily integrity, reproductive choice, and decision-making in intimate relationships. The change is part of a wider trend in the way marriage is seen, as a partnership of equals rather than a hierarchy built on traditional gender roles.

In addition, judicial activism has helped to move from formal to substantive equality in gender jurisprudence. Sandra Fredman argues that substantive equality requires remedial intervention for disadvantage, fighting stigma, improving participation and accommodating difference.⁴¹ Increasingly courts have adopted this view, recognising that equal treatment does not always lead to equitable outcomes. Substantive equality, on the other hand, entails an understanding of the social realities that influence women's experiences and opportunities. Thus, judicial decisions have sought to dismantle structural barriers and establish the conditions for women to exercise their rights on equal terms with men.

The most significant contribution of modern courts has been the recognition of married women as independent constitutional citizens. In many traditional patriarchal legal systems women

³⁹ Upendra Baxi, *The Avatars of Indian Judicial Activism: Explorations in the Geographies of [In]Justice*, in *Fifty Years of the Supreme Court of India: Its Grasp and Reach* 156–209 (S.K. Verma & Kusum eds., 2000).

⁴⁰ Jennifer Nedelsky, *Reconceiving Autonomy: Sources, Thoughts and Possibilities*, 1 *Yale J.L. & Feminism* 7, 12–27 (1989).

⁴¹ Sandra Fredman, *Discrimination Law* 15–35 (2d ed. 2011).

were treated as dependents. They lost their legal identities within the family. This approach has been criticized by feminist scholars for denying women full citizenship and for reinforcing women's subordinate position in society.⁴² Modern constitutional jurisprudence has increasingly departed from this model, recognizing that marriage cannot be used to abridge the constitutional rights of an individual. The courts have held that women have the right to equality, dignity, liberty, privacy and autonomy irrespective of their marital status. The acknowledgment is a sea change in legal thought, moving women from objects of familial authority to independent constitutional actors.

The transformative role of the judiciary is not limited to settling individual disputes. Court decisions affect social attitudes, create legal culture, govern public institutions, and contribute to normative change. Courts are part of a larger process of social transformation by articulating constitutional principles in ways that challenge gender hierarchies and promote equality. Their interventions re-frame the family relationships, the public understandings of citizenship and gender, and the constitutional commitment to justice and human dignity.

Judiciary has thus emerged as an important agent of social change by constitutionalizing family relations, expanding the concept of equality and dignity, questioning discriminatory customs, recognizing women's autonomy and promoting substantive equality. The courts have played a key role in these developments and the reconstruction of gender relations and the development of women's rights. An emerging jurisprudence suggests an understanding that constitutional democracy requires not only legal reform but also the transformation of social structures that sustain inequality and exclusion.

XII. Continuing challenges

While the judicial improvement in the protection of women's rights in the domestic domain is commendable, there still remain major impediments to the realization of substantial gender equality. In many sectors of society, patriarchal attitudes run deep and as such, progressive legal ideas and judicial pronouncements have not been effective in many circumstances. Enforcement restrictions of judicial directives are commonly attributed to institutional constraints, lack of information, insufficient enforcement and socio-cultural resistance at grass-root level. Economic dependency prevents many women from asserting their legal rights, or

⁴² Carole Pateman, *The Sexual Contract* 154–88 (1988).

seeking remedy against discrimination and abuse, and thereby perpetuates uneven power dynamics inside the family. Social stigma, financial uncertainty, emotional dependency and fear of hurting the reputation of the family further contribute to the widespread underreporting of domestic violence. Another important legal vacuum is the absence of a complete legislation on matrimonial property that recognizes the work of women in the household and equal distribution of assets in case of a divorce. The ongoing exclusion of marital rape from the purview of criminal law is likewise controversial and points to the continuation of old notions about consent and conjugal relations. The unresolved difficulties show that judicial interventions, though transformational and vital, are not sufficient on their own to address fundamental gender inequities. Sustainable social change involves coordinated legislative action, effective policy execution, accountability of institutions, economic empowerment of women and more broadly, societal activities to confront discriminatory attitudes and behaviours. Judicial reforms along with the interventions of legislators and long-term changes in the mindset of the society can lead to real gender justice.

XIII. Conclusion

The evolution of judicial jurisprudence on the rights of married women in India is an example of the deep impact of the judiciary on social change and gender justice. Courts have interpreted constitutional guarantees in a dynamic and progressive manner, broadened the scope of fundamental rights and made the principles of equality, dignity, liberty and non-discrimination applicable to the domestic sphere. Judicial intervention has challenged the traditional view of marriage as a private institution beyond the scope of constitutional scrutiny and has instead acknowledged that women retain their status as autonomous constitutional citizens regardless of their marital status. Through its decisions, the judiciary has enhanced the legal protections available for women against domestic violence, guaranteed women's rights to residence and maintenance, furthered reproductive and decisional autonomy, furthered equal property rights and has gradually disavowed gender stereotypes which perpetuate discrimination.

The transformative role of the judiciary is most visible in its attempts to constitutionalize family relations and move the legal discourse from formal equality to substantive equality. In recent years, courts have recognized that real justice means confronting structural inequalities and historical disadvantages that continue to affect women in the family and society. Judicial decisions have not only protected individual rights but have also advanced the larger project of

transforming societal attitudes about gender roles and women's status by prioritizing constitutional morality over patriarchal social norms. In that sense, the judiciary has played an important role as a catalyst for social change, reaffirming democratic values and advancing a more inclusive understanding of citizenship.

Yet despite these impressive achievements, the achievement of substantive gender equality remains an unfinished constitutional project. The continued existence of patriarchal mindsets, the poor implementation of judicial orders, economic disparities, under-reporting of domestic violence, lacunae in the laws relating to matrimonial property and the absence of criminalization of marital rape are indicative of the limitations of judicial intervention in the absence of wider institutional and societal reforms. But, for gender justice initiatives to succeed in the long run, courts can interpret and enforce rights, but effective legislative action, responsive governance, institutional accountability, and sustained social transformation are needed.

The road to gender equality in India is a continuing interplay between constitutional principles, judicial innovation and social change. The judiciary's interventions have transformed the legal and constitutional position of married women by asserting their rights, autonomy and equal citizenship, albeit there are significant challenges. One of the great achievements of Indian constitutional jurisprudence has been the gradual broadening of women's rights in the domestic sphere. As society moves forward, the judiciary will continue to be an important institution for the protection of the constitutional values and to ensure that the promise of equality, dignity and justice becomes a lived reality for all women.