
WOMEN AND PERSONAL LAWS IN INDIA: A CONSTITUTIONAL STUDY OF GENDER JUSTICE AND SOCIAL TRANSFORMATION

Aleena Henry, LLM (Criminal Law), Bharata Mata School of Legal Studies, Aluva

Laxmi Priyaa N.P., LLM (Commercial Law), Bharata Mata School of Legal Studies, Aluva

ABSTRACT

In a pluralistic society such as India, personal laws regulating marriage, divorce, maintenance, guardianship, adoption, and succession occupy a distinctive and complex nexus at the confluence of religion, culture, and constitutionalism. Though historically enshrined to safeguard religious autonomy and cultural plurality, these laws, in their contemporary application, have perpetuated and entrenched systemic gender disparities, disproportionately marginalizing women within the private domain of familial relations. Through a rigorous examination of legislative reforms and seminal judicial pronouncements, including *Mohd. Ahmed Khan v. Shah Bano Begum*, *Danial Latifi v. Union of India*, *Githa Hariharan v. Reserve Bank of India*, *Mary Roy v. State of Kerala*, and *Shayara Bano v. Union of India*, the article elucidates the judiciary's evolving jurisprudential role in reconciling personal laws with the overarching constitutional ethos. This article undertakes a doctrinal and analytical inquiry into the status of women under the principal personal law regimes in India, namely Hindu, Muslim, Christian, and Parsi laws, and critically assesses their consonance with constitutional imperatives of equality, dignity, and non-discrimination and the advancement of women's rights within the ambit of personal laws. It concludes by advocating for a judicious and principled approach to family law reform, one that harmonizes respect for cultural diversity with an unwavering commitment to the supremacy of constitutional morality and substantive gender justice.

Keywords: Personal Laws, Women's Rights, Gender Justice, Constitutional Morality, Equality, Social Transformation.

1. INTRODUCTION

Law in every society fulfils a dual mandate by mirroring the prevailing social values as well as by serving as an instrument for catalyzing social change. This dialectical interplay between law and society is most pronounced in the realm of private or personal laws governing marriage, divorce, inheritance, and familial relationships. Unlike general civil statutes, these laws derive their legitimacy from religious texts, customary practices, and deeply entrenched traditions specific to particular communities. They oversee the most intimate dimensions of social life and are intricately linked to concepts of identity, faith, and moral values, influence the distribution of power, social and economic security of individuals within a family as well as in a society. Thus, personal laws have always been central to the construction of legal identity and social status of gender.

The genesis of personal laws in India is rooted in religious traditions that developed within profoundly patriarchal social frameworks. The hallmark of personal laws lies in their religious and cultural foundations. Distinct legal frameworks govern the personal status of Hindu, Muslim, Christian, and Parsi communities, thereby creating a pluralistic family law system. While this diversity embodies India's multicultural ethos, it concurrently engenders differential treatment of individuals, particularly women, based exclusively on their religious identity.¹

Historically, marriage was conceived either as a sacramental or contractual institution predicated on male authority; inheritance systems were designed to maintain agnatic lineage; and guardianship arrangements reinforced paternal dominion over offspring. These customary norms were later codified into binding legal statutes during the colonial era and subsequently preserved in the post-colonial legal order by conferring legal legitimacy upon customs that favoured men over women, personal laws functioned as instruments that institutionalized gender inequality.² Although shielded from state intervention, after independence their significant implications on exercise of fundamental rights guaranteed by the Constitution of India by women, particularly those of equality and dignity, have increasingly subjected them to constitutional oversight and judicial review.

¹ Flavia Agnes, *Law and Gender Inequality* (Oxford University Press 1999) 27

² Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (Oxford University Press 2003) 45.

2. HISTORICAL AND CONSTITUTIONAL FOUNDATIONS OF PERSONAL LAWS

Though India always had multiple religious and customary practices the historical underpinnings of all personal laws in India are rooted in ancient religious, customary, and social practices that regulated family relationships long before the advent of the modern nation-state. These normative frameworks developed within profoundly patriarchal social structures and were primarily focused on preserving lineage, property, and social hierarchies rather than safeguarding individual rights or promoting gender equality. The role and legal status of women was predominantly characterized by dependence, obedience, and subordination.

Under Hindu law, familial relations were governed by sacred texts such as the Vedas, Smritis, and Dharmashastras, with the Manusmriti exerting profound influence. These scriptures framed marriage as a sacramental bond (sanskara), inherently indissoluble, wherein a woman was expected to remain under the guardianship of her father, husband, and son at successive stages of life.³ Women's property rights were largely confined to stridhana, while succession followed a predominantly patrilineal pattern. The concept of divorce was non-existent in classical Hindu jurisprudence.⁴ The ideal Hindu woman was envisaged as embodying chastity, obedience, and domesticity, thereby reinforcing patriarchal dominance within the familial sphere.

Muslim personal law evolved from classical Islamic jurisprudence (fiqh), deriving its authority from the Quran, Hadith, Ijma, and Qiyas. In principle, Islamic law acknowledged women as legal entities with autonomous rights to enter contracts, inherit property, and receive mahr.⁵ However, its practical implementation often reflected patriarchal interpretations that favoured male authority, especially in matters of divorce and guardianship. Although marriage (nikah) was regarded as a civil contract, the husband retained unilateral powers of divorce through various forms of talaq, thereby constraining women's security within the marital relationship.⁶

Christian personal law in India developed within ecclesiastical traditions, wherein marriage was regarded as a sacrament regulated by church doctrine. Historically, divorce was

³ Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (Oxford University Press 2003) 56.

⁴ Paras Diwan, *Family Law* (10th edn, Allahabad Law Agency 2019) 34.

⁵ Tahir Mahmood, *Muslim Law in India* (Universal Law Publishing 2010) 21

⁶ Flavia Agnes, *Law and Gender Inequality* (Oxford University Press 1999) 102.

prohibited, and women's autonomy within marriage was markedly constrained.

Similarly, Parsi personal law, rooted in Zoroastrian customs, embodied gender hierarchies, particularly in relation to succession and community membership.⁷

In pre-colonial India, personal laws were predominantly uncodified and administered through customary practices overseen by religious authorities. While this system allowed for regional and cultural adaptability, it also rendered women's rights vulnerable to prevailing local patriarchal norms. Custom, rather than principles of equality, served as the dominant guiding force. Consequently, from their very inception, personal laws were shaped more by mechanisms of social control than by ideals of justice or gender equality.

The colonial rule represented a pivotal juncture in the development of personal laws in India. The colonial administration officially pursued a policy of non-interference in religious matters, ostensibly to respect indigenous traditions. However, this stance was applied selectively through judicial interventions that significantly transformed the character and application of personal laws.⁸ Under the judicial framework established by Warren Hastings in 1772, Hindu and Muslim laws were to be enforced in cases concerning inheritance, marriage, and religious practices, with pandits and qazis providing assistance to British judges.⁹ Over time, colonial courts increasingly relied on translated religious texts and commentaries, leading to the development of Anglo-Hindu and Anglo-Muhammadian law. This process converted adaptable customary practices into inflexible legal regulations upheld by state authority.

A significant outcome of colonial codification was the ossification of customary law. British judges frequently favoured orthodox and conservative exegeses of religious texts, thereby marginalizing more progressive customary practices that, in certain regions, had afforded women greater agency.¹⁰ This selective hermeneutics served to entrench patriarchal norms under the pretext of religious legitimacy. Consequently, women's subordinate position became legally institutionalized rather than remaining a fluid social condition subject to negotiation.

Concurrently, the colonial administration enacted a series of limited legislative reforms

⁷ Mamta Rao, *Law Relating to Women and Children* (4th edn, Eastern Book Company 2018) 327.

⁸ Bimal N Patel et al, *Indian Legal System* (Oxford University Press 2014) 218.

⁹ Marc Galanter, 'The Displacement of Traditional Law in Modern India' (1968) 24 *Journal of Social Issues* 65.

¹⁰ Archana Parashar, *Women and Family Law Reform in India* (Sage Publications 1992) 49.

targeting egregious social injustices. Statutes such as the abolition of sati (1829), the Hindu Widow Remarriage Act (1856), the Age of Consent Act (1891), and the Child Marriage Restraint Act (1929) were introduced with the intent to ameliorate women's conditions.¹¹ Nonetheless, these interventions were cautious and incremental, largely designed to appease social reform movements rather than to fundamentally overhaul entrenched gender hierarchies. Crucially, colonial interventions left the patriarchal underpinnings of personal laws intact. Although certain practices were subject to regulation, the fundamental frameworks governing marriage, inheritance, and guardianship remained predominantly male-oriented. Thus, colonial rule bequeathed a paradoxical legacy: it simultaneously introduced the concept of legal reform while entrenching gender discrimination within personal laws. This dual legacy has had a profound and enduring impact on post-Independence legal discourses surrounding personal law reform and the advancement of women's rights.

The adoption of the Constitution of India in 1950 signified a decisive rupture from the colonial legal framework, ushering in a transformative vision centred on social justice, equality, and human dignity. In contrast to prior legal systems that primarily aimed to maintain social order, the Constitution was deliberately crafted as a catalyst for social transformation. This vision held particular importance for women, whose subjugation under customary and personal laws had long been legitimized under the guise of tradition and religion. Articles 14, 15, and 21 of the Indian Constitution collectively constitute the foundation of gender justice in the country. Article 14 ensures equality before the law and equal protection under the law, while Article 15 specifically prohibits discrimination based on sex. Article 21, safeguarding the right to life and personal liberty, has been expansively interpreted by the judiciary to encompass the rights to dignity, autonomy, and self-determination.¹²

In addition to safeguarding equality, the Constitution also guarantees religious freedom under Articles 25 to 30. Article 25 secures the freedom of conscience and the right to freely profess, practice, and propagate religion, subject to considerations of public order, morality, and health. Personal laws have frequently been defended as integral to religious practice and identity, thereby seeking constitutional protection under these provisions.¹³ This accommodation of personal laws exemplifies India's commitment to legal pluralism, the acknowledgment of multiple normative systems coexisting within a single legal framework.

¹¹ Paras Diwan, *Family Law* (10th edn, Allahabad Law Agency 2019) 61.

¹² The Constitution of India, arts 14, 15 and 21.

¹³ Tahir Mahmood, *Religion and Personal Law in India* (Universal Law Publishing 2005) 42.

While such pluralism fosters cultural diversity, it also engenders intricate tensions when religious norms come into conflict with constitutional principles, particularly those pertaining to gender equality.

Women's rights have often become the focal point where this tension is most pronounced. Practices such as unequal inheritance, unilateral divorce, and constraints on women's autonomy have been justified as religiously mandated, even when they stand in opposition to constitutional mandates. Thus, the central challenge for constitutional law has been to harmonize respect for cultural and religious diversity with the imperative of achieving justice.

This historical and constitutional framework reveals that personal laws in India, though rooted in tradition, operate within a modern constitutional order that increasingly demands conformity with principles of equality and dignity.

2. WOMEN UNDER DIFFERENT PERSONAL LAW REGIMES

2.1 WOMEN UNDER HINDU LAWS

The position of women under Hindu personal law has undergone a significant transformation from classical, text-based norms to a modern statutory framework shaped by constitutional values. Yet, this transformation has been neither uniform nor complete. While legislative reforms and judicial interventions have substantially improved women's legal status, remnants of patriarchal ideology continue to influence the practical operation of Hindu family law.

Before the codification of Hindu law in the mid-twentieth century, the legal status of women was governed largely by religious texts, commentaries and customary practices. Classical Hindu law, particularly as reflected in the *Smritis* and commentaries such as those of Manu and Vijnaneshwara, conceived the woman as being under perpetual guardianship, first of her father, then of her husband, and finally of her son.¹⁴ Marriage was regarded as a sacrament (*sanskara*), indissoluble in nature, and divorce was virtually unknown.¹⁵ Women's proprietary rights were limited primarily to *stridhana*, a narrow category of property over which they exercised restricted control. Succession was predominantly patrilineal, and the

¹⁴ Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (Oxford University Press 2003) 78.

¹⁵ Paras Diwan, *Family Law* (10th edn, Allahabad Law Agency 2019) 112.

Mitakshara coparcenary system excluded women from acquiring rights in ancestral property by birth.¹⁶ This legal framework reinforced women's economic dependence and social subordination, rendering formal equality inconceivable within the family structure.

The codification of Hindu personal law through the Hindu Code Bills marked a decisive shift in the legal status of women. The enactment of the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956 sought to replace diverse customs with a uniform statutory framework grounded in modern legal principles.¹⁷ One of the most significant changes introduced by the Hindu Marriage Act, 1955 was the recognition of monogamy as a condition for a valid marriage.¹⁸ This provision directly curtailed the practice of polygamy, which had been a source of profound insecurity for Hindu women. The Act also introduced statutory grounds for divorce, including cruelty and desertion, thereby acknowledging women's right to exit oppressive marriages.¹⁹ Procedural barriers, social stigma and economic dependence continued to constrain women's access to matrimonial remedies.²⁰ Economic security is a crucial dimension of women's substantive equality. Under Hindu law, the right to maintenance has been recognised both under the Hindu Marriage Act, 1955 and the Hindu Adoptions and Maintenance Act, 1956.²¹ These statutes impose a legal obligation on the husband to maintain his wife during the subsistence of marriage and, in appropriate cases, even after its dissolution. Under the Hindu Minority and Guardianship Act, 1956, the father was originally designated as the natural guardian of a minor child, with the mother's role being secondary.²² This statutory preference reflected the persistence of patriarchal assumptions even after codification.

Judicial interpretation has consistently emphasised that maintenance is not a matter of charity but a legal right flowing from the status of marriage. In *Chaturbhuj v Sita Bai*, the Supreme Court underscored that the object of maintenance provisions is to prevent destitution and vagrancy of women.²³ This approach aligns maintenance law with the constitutional vision of dignity under Article 21. In *Githa Hariharan v Reserve Bank of India*, where the Supreme Court held that the term "after" in Section 6 of the Hindu Minority and Guardianship Act,

¹⁶ Bina Agarwal, 'A Field of One's Own: Gender and Land Rights in South Asia' (1994) 1 *Feminist Economics* 24.

¹⁷ *Supra* note 15, 145.

¹⁸ The Hindu Marriage Act 1955, s 5(i).

¹⁹ *Id.*, s 13.

²⁰ Flavia Agnes, *Law and Gender Inequality* (Oxford University Press 1999) 162.

²¹ The Hindu Adoptions and Maintenance Act 1956, ss 18–20; The Hindu Marriage Act 1955, s 24.

²² The Hindu Minority and Guardianship Act 1956, s 6.

²³ *Chaturbhuj v Sita Bai* (2008) 2 SCC 316.

1956 does not mean “after the lifetime of the father”.²⁴ The Court recognised that the mother could be a natural guardian even during the father’s lifetime, thereby aligning guardianship law with constitutional principles of equality. This decision marked an important step in affirming women’s parental authority and rejecting the notion that motherhood is legally subordinate to fatherhood.

Despite progressive reforms in marriage and guardianship, Hindu women’s property rights remained severely constrained under the original Hindu Succession Act, 1956. The Act retained the Mitakshara coparcenary system, under which only male members acquired rights in ancestral property by birth. Women were excluded from coparcenary and were confined to limited inheritance rights.²⁵ This exclusion had far-reaching implications for women’s economic independence and bargaining power within the family. The Hindu Succession (Amendment) Act, 2005 sought to remedy this historic injustice by conferring equal coparcenary rights on daughters.²⁶ The Supreme Court, in *Vineeta Sharma v Rakesh Sharma*, clarified that daughters acquire coparcenary rights by birth, irrespective of whether the father was alive on the date of the amendment.²⁷ This reform represents one of the most significant strides towards substantive gender equality in Hindu personal law, as it directly challenges the economic foundations of patriarchy.

The evolution of Hindu personal law illustrates both the potential and the limitations of legislative reform. While statutory changes have substantially improved women’s formal legal position, social and institutional barriers continue to impede the realisation of these rights. Access to courts, evidentiary challenges and social pressures often discourage women from asserting their entitlements. Nevertheless, Hindu law reforms demonstrate that personal laws are not immutable and can be reshaped to reflect constitutional values. The gradual shift from a status-based, patriarchal regime to a rights-based framework underscores the role of law as an instrument of social transformation.

2.2 WOMEN UNDER MUSLIM PERSONAL LAW

The status of women under Muslim personal law in India presents a complex interaction between classical Islamic jurisprudence, statutory interventions and constitutional

²⁴ *Githa Hariharan v Reserve Bank of India* (1999) 2 SCC 228.

²⁵ The Hindu Succession Act 1956 (prior to 2005 amendment), s 6.

²⁶ The Hindu Succession (Amendment) Act 2005, s 6.

²⁷ *Vineeta Sharma v Rakesh Sharma* (2020) 9 SCC 1.

adjudication. Unlike Hindu personal law, which has undergone comprehensive codification, Muslim personal law continues to be largely governed by the Muslim Personal Law (Shariat) Application Act, 1937 and the uncodified principles of *fiqh*. This has resulted in a legal regime where progressive judicial interpretation coexists with traditional doctrines, producing both continuity and change in women's rights.

Muslim personal law derives from four primary sources: the Quran, the Hadith, Ijma (consensus) and Qiyas (analogical reasoning). In India, the Shariat Act, 1937 mandates the application of Muslim personal law to matters of marriage, divorce, maintenance, inheritance and guardianship.²⁸ In theory, Islamic law recognises women as independent legal persons with the capacity to own property, enter contracts and seek judicial remedies. Marriage (*nikah*) is treated as a civil contract, and the wife is entitled to *mahr* as a form of financial security.²⁹

Under Muslim law, marriage is concluded through offer (*ijab*) and acceptance (*qubul*), requiring the consent of both parties. However, the distribution of rights within marriage has historically favoured men. One of the most controversial aspects of Muslim personal law has been the husband's unilateral power of divorce through *talaq*.³⁰ Classical jurisprudence recognises different forms of *talaq*, namely *talaq-e-ahsan*, *talaq-e-hasan* and *talaq-e-biddat*. While the first two incorporate procedural safeguards and opportunities for reconciliation, *talaq-e-biddat* (instant triple *talaq*) permitted immediate and irrevocable dissolution of marriage.³¹ This placed women in a position of acute vulnerability, as marital security could be terminated unilaterally and without notice. Women's avenues for divorce, such as *khula* (divorce at the instance of the wife with consideration) and *faskh* (judicial dissolution), were comparatively restricted and often dependent on the husband's consent or judicial discretion. The resulting asymmetry in marital power relations exemplified the structural gender imbalance within traditional Muslim personal law.

Maintenance has been the most significant site of constitutional intervention in Muslim personal law. Traditionally, a Muslim husband's obligation to maintain his divorced wife was limited to the *iddat* period. This position was challenged in *Mohd. Ahmed Khan v Shah Bano Begum*, where the Supreme Court held that a divorced Muslim woman is entitled to

²⁸ The Muslim Personal Law (Shariat) Application Act 1937, s 2.

²⁹ Tahir Mahmood, *Muslim Law in India* (Universal Law Publishing 2010) 32.

³⁰ A.A.A. Fyzee, *Outlines of Muhammadan Law* (5th edn, Oxford University Press 2008) 152.

³¹ *Id.*, 155.

maintenance under Section 125 of the Criminal Procedure Code, a secular provision applicable irrespective of religion.³² The Court emphasised that personal law cannot override a woman's right to live with dignity under Article 21. The political backlash to *Shah Bano* led to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which was widely perceived as diluting Muslim women's maintenance rights. However, in *Danial Latifi v Union of India*, the Supreme Court adopted a harmonising interpretation, holding that the husband must make a "reasonable and fair provision" for the future of the divorced wife, payable during the *iddat* period but covering her entire life.³³ This judgment effectively restored substantive equality by aligning Muslim women's maintenance rights with constitutional standards of dignity and non-discrimination.

The practice of instant triple talaq remained a contentious issue until it was conclusively addressed in *Shayara Bano v Union of India*. The Supreme Court, by a majority, held that *talaq-e-biddat* is unconstitutional as it is arbitrary and violates Article 14 of the Constitution.³⁴ The Court rejected the argument that the practice was an essential religious practice protected under Article 25, thereby affirming the primacy of constitutional morality over social or religious morality. The decision marked a watershed in personal law jurisprudence by subjecting a core religious practice to fundamental rights review. It signalled a clear shift from judicial deference to a rights-centred approach that prioritises women's dignity and equality. Subsequently, Parliament enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, criminalising the pronouncement of instant triple talaq. While the criminalisation aspect has generated debate, the legislative response underscores the State's commitment to securing Muslim women's marital security.

In matters of inheritance, Muslim law follows the fixed-share system (*faraid*), under which female heirs generally receive half the share of male heirs of the same degree. This rule is often justified on the ground that men bear greater financial responsibilities. Guardianship under Muslim law traditionally prioritises paternal authority, although mothers are recognised as custodians (*hizanat*) of minor children. Indian courts have increasingly emphasised the welfare of the child over rigid personal law rules, thereby expanding women's custodial rights through judicial discretion. This welfare-centric approach aligns guardianship law with constitutional

³² *Mohd Ahmed Khan v Shah Bano Begum* (1985) 2 SCC 556.

³³ *Danial Latifi v Union of India* (2001) 7 SCC 740.

³⁴ *Shayara Bano v Union of India* (2017) 9 SCC 1.

principles of equality and dignity.

The evolution of Muslim personal law in India demonstrates a gradual but significant transition from religious orthodoxy to constitutional engagement. Unlike Hindu law, reform in this area has occurred primarily through judicial interpretation rather than comprehensive legislative codification. Courts have repeatedly sought to harmonise Muslim personal law with the guarantees of equality, dignity and non-discrimination. Nevertheless, the absence of comprehensive codification has resulted in uncertainty and uneven protection for Muslim women. Social resistance, political sensitivities and concerns about cultural homogenisation have impeded legislative reform. Consequently, Muslim women continue to rely heavily on constitutional remedies and judicial interpretation to secure their rights.

2.3 WOMEN UNDER CHRISTIAN PERSONAL LAW

Christian personal law in India is primarily governed by statutory enactments introduced during the colonial period, most notably the Indian Christian Marriage Act, 1872 and the Indian Divorce Act, 1869. These laws were heavily influenced by Victorian moral values and ecclesiastical doctrines, which conceived marriage as a sacramental and indissoluble union. The legal position of Christian women under these statutes has historically been marked by significant gender inequality, particularly in matters of divorce and matrimonial remedies. Although judicial intervention and legislative amendments have brought about important reforms, remnants of this colonial legacy continue to shape women's lived realities within the Christian family law framework.

Marriage under Christian law has traditionally been viewed as a sacrament rather than a mere civil contract. The Indian Christian Marriage Act, 1872 regulates the solemnisation of Christian marriages in India, reflecting the ecclesiastical understanding of marriage as a lifelong and exclusive union.³⁵ This sacramental conception historically limited women's autonomy within marriage by emphasising permanence and moral duty over individual choice and equality. The indissolubility of marriage, rooted in religious doctrine, had particularly adverse consequences for women trapped in abusive or oppressive marital relationships. While the law recognised certain grounds for judicial separation or dissolution, the moral stigma attached to divorce often deterred women from seeking legal remedies.

³⁵ The Indian Christian Marriage Act 1872.

The most striking manifestation of gender inequality under Christian personal law was found in the original provisions of the Indian Divorce Act, 1869. Under Section 10 of the Act (prior to amendment), a Christian husband could obtain divorce on the ground of adultery alone, whereas a Christian wife was required to prove adultery coupled with an additional offence such as cruelty, desertion or incest.³⁶ This asymmetrical standard reflected patriarchal assumptions about female chastity and moral responsibility. Such differential treatment was increasingly criticised as incompatible with the constitutional guarantees of equality and dignity. In *Ammini E.J. v Union of India*, the Kerala High Court held that the discriminatory provisions of the Indian Divorce Act violated Articles 14 and 21 of the Constitution and directed Parliament to bring about necessary reforms.³⁷ This judicial intervention marked a significant step in the constitutionalisation of Christian personal law. Subsequent legislative amendments to the Indian Divorce Act introduced gender-neutral grounds for divorce, such as cruelty and desertion, thereby bringing greater parity between spouses. Christian women often rely on general provisions of criminal and civil law, such as Section 125 of the Criminal Procedure Code, to claim maintenance.³⁸

Judicial interpretation has consistently emphasised that maintenance is not a matter of charity but a right grounded in the need to prevent destitution and ensure dignity. However, the absence of a community-specific, gender-sensitive maintenance regime means that Christian women often face procedural hurdles and inconsistent outcomes in maintenance litigation. Economic vulnerability thus remains a significant concern, particularly for women who lack independent sources of income or social support.

Succession under Christian personal law is governed by the Indian Succession Act, 1925. However, in certain regions, particularly in the erstwhile princely State of Travancore, Christian succession was governed by the Travancore Christian Succession Act, 1916, which imposed discriminatory inheritance rules on women. Under this regime, women were often restricted to nominal shares or *streedhanam*, while male heirs enjoyed preferential treatment. This inequality was decisively addressed in *Mary Roy v State of Kerala*, where the Supreme Court held that the Indian Succession Act, 1925 applied uniformly to Christians in Kerala, thereby invalidating the discriminatory regional law.³⁹ The judgment conferred equal

³⁶ The Indian Divorce Act 1869, s 10 (prior to amendment).

³⁷ *Ammini E.J. v Union of India* 1995 (1) KLT 916.

³⁸ Code of Criminal Procedure 1973, s 125.

³⁹ *Mary Roy v State of Kerala* (1986) 2 SCC 209.

inheritance rights on Christian women and marked a watershed in the struggle for gender equality in personal laws. The *Mary Roy* decision is widely regarded as a landmark example of the judiciary's role in dismantling entrenched gender discrimination under the guise of custom and colonial legislation.

The reform of Christian personal law demonstrates the growing influence of constitutional values in the domain of family law. Courts have increasingly insisted that personal law provisions must conform to the guarantees of equality, dignity and non-discrimination enshrined in the Constitution. At the same time, the pace of legislative reform has been cautious, reflecting concerns about religious autonomy and social sensitivities. The position of women under Christian personal law today reflects both progress and persistence of inequality. Judicial intervention and legislative amendments have removed some of the most overtly discriminatory provisions, particularly in the areas of divorce and succession. Christian personal law thus illustrates the broader challenges of reforming personal laws in a plural society: how to respect religious traditions while ensuring that women's rights to equality and dignity are fully realised.

2.4 WOMEN UNDER PARSI PERSONAL LAW

Parsi personal law in India is governed primarily by the Parsi Marriage and Divorce Act, 1936 and the relevant provisions of the Indian Succession Act, 1925. Although the Parsi community is numerically small, its personal law regime raises significant constitutional and feminist questions, particularly concerning the tension between community autonomy and women's right to equality and dignity. The legal position of Parsi women has historically been shaped by strong notions of community identity and endogamy, which have often operated to their disadvantage.⁴⁰

Marriage within the Parsi community has traditionally been closely linked to the preservation of religious and cultural identity. As a result, strict norms of endogamy have been socially enforced, and Parsi women who marry outside the community have frequently faced exclusion from certain religious and community privileges, including access to fire temples and participation in community rituals. In contrast, Parsi men marrying outside the community have not always been subjected to the same degree of social or religious ostracism. This

⁴⁰ Mamta Rao, *Law Relating to Women and Children* (4th edn, Eastern Book Company 2018) 342.

differential treatment reflects a gendered conception of community membership, where women's marital choices are perceived as a threat to collective identity. Such practices raise serious constitutional concerns under Articles 14 and 15, which guarantee equality before law and prohibit discrimination on the ground of sex.⁴¹

The Parsi Marriage and Divorce Act, 1936 provides a statutory framework for matrimonial relief, including grounds such as adultery, cruelty and desertion, and establishes special Parsi matrimonial courts for the adjudication of disputes. On its face, the statute appears largely gender-neutral, offering similar remedies to both spouses. However, the social context in which these remedies are exercised often undermines women's effective access to justice. The small and closely-knit nature of the Parsi community, combined with the fear of social stigma and ostracism, discourages many women from initiating legal proceedings. Procedural complexities and the public character of matrimonial litigation further exacerbate these difficulties, thereby limiting the practical utility of formally available remedies.⁴²

In matters of succession, Parsis are primarily governed by the Indian Succession Act, 1925, which generally provides for equal inheritance rights among heirs. In principle, this places Parsi women in a relatively better position compared to women under certain other personal law regimes. However, the interaction between formal legal rules and community practices has often diluted these rights in practice. In some instances, women marrying outside the community have faced challenges in asserting their succession rights, reflecting the persistent influence of social exclusion over formal legal entitlements. Such practices undermine the fundamental principle that property rights are individual rights and not privileges contingent upon conformity with community expectations.⁴³

Parsi personal law thus brings into sharp focus the broader constitutional dilemma between religious autonomy and gender equality. While Articles 25 and 26 of the Constitution protect the rights of religious communities to manage their own affairs, these rights are not absolute and cannot be invoked to justify practices that violate fundamental rights, particularly the right to equality and non-discrimination. Indian courts have generally adopted a cautious approach in intervening in Parsi religious practices, mindful of the community's minority status and concerns about cultural preservation. Nevertheless, feminist scholars have consistently argued

⁴¹ The Constitution of India, arts. 14 and 15.

⁴² The Parsi Marriage and Divorce Act 1936.

⁴³ Flavia Agnes, *Law and Gender Inequality* (Oxford University Press 1999) 196.

that minority protection cannot become a shield for the perpetuation of gender discrimination, and that women's rights as individual citizens must take precedence over patriarchal conceptions of community identity.⁴⁴

The position of Parsi women therefore reflects a paradox. On the one hand, statutory law provides a relatively progressive and gender-neutral framework in matters of divorce and succession. On the other hand, community norms and exclusionary practices continue to restrict women's autonomy, particularly in relation to marriage choices and religious participation. This disjunction between law and social practice highlights a recurring theme in the reform of personal laws in India: formal legal equality does not automatically translate into substantive equality. For Parsi women, meaningful reform requires not only legal safeguards but also a transformation of community attitudes towards women's choices and rights.

In sum, the experience of Parsi women underscores the broader challenges of personal law reform in a plural society. It demonstrates that while respect for cultural diversity is an important constitutional value, it cannot be pursued at the cost of women's fundamental rights to equality, dignity and autonomy.

3. JUDICIAL RESPONSES AND CONSTITUTIONAL MORALITY

The Indian judiciary has played a pivotal role in mediating the conflict between personal laws and constitutional guarantees, particularly in relation to women's rights to equality and dignity. While early jurisprudence tended to insulate personal laws from constitutional scrutiny, the Supreme Court gradually adopted a rights-centred approach that treats discriminatory family law practices as subject to fundamental rights review. Two decisions, *Mohd. Ahmed Khan v Shah Bano Begum* and *Shayara Bano v Union of India*, stand out as watershed moments in this constitutional transformation, while cases such as *Mary Roy v State of Kerala* and *Githa Hariharan v Reserve Bank of India* illustrate the same trajectory in the domains of succession and guardianship.

In *Shah Bano*, the Supreme Court confronted the question whether a divorced Muslim woman could claim maintenance under Section 125 of the Criminal Procedure Code, a secular provision designed to prevent destitution. The Court held that a divorced Muslim woman is entitled to maintenance if she is unable to maintain herself, emphasising that personal law

⁴⁴ Archana Parashar, *Women and Family Law Reform in India* (Sage Publications 1992) 121.

cannot override a statutory remedy grounded in social justice.⁴⁵ More importantly, the Court linked maintenance to the constitutional guarantee of dignity under Article 21, thereby reframing a private law dispute as a matter of fundamental rights. Although the political backlash led to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, the Court in *Danial Latifi v Union of India* adopted a harmonising interpretation, holding that the husband must make a “reasonable and fair provision” for the future of the divorced wife, payable during the *iddat* period but covering her entire life.⁴⁶ Taken together, these decisions constitutionalised the concept of maintenance, transforming it from a narrow personal law obligation into a right informed by equality and dignity.

A similar rights-centred approach is evident in *Shayara Bano*, where the Supreme Court examined the constitutionality of *talaq-e-biddat* (instant triple talaq). By holding the practice arbitrary and violative of Article 14, the Court decisively rejected the claim that discriminatory personal law practices enjoy automatic protection under Article 25.⁴⁷ The judgment marked a clear affirmation of constitutional morality as the governing standard for evaluating personal law norms. In doing so, the Court signalled that religious freedom cannot be invoked to sustain practices that inflict manifest injustice on women. The subsequent legislative response in the form of the Muslim Women (Protection of Rights on Marriage) Act, 2019 further underscores the shift towards securing women’s marital security, even though the criminalisation aspect has generated debate.

The same constitutional impulse is visible beyond the context of Muslim personal law. In *Mary Roy*, the Supreme Court invalidated discriminatory succession rules applicable to Syrian Christians in Kerala by holding that the Indian Succession Act, 1925 applied uniformly, thereby conferring equal inheritance rights on Christian women.⁴⁸ The decision demonstrated that regional custom or colonial-era legislation cannot survive if it entrenches gender inequality. Likewise, in *Githa Hariharan*, the Court reinterpreted the Hindu Minority and Guardianship Act, 1956 to recognise the mother as a natural guardian even during the father’s lifetime, aligning guardianship law with Articles 14 and 15.⁴⁹ Here, the Court used interpretive techniques to reconcile statutory text with constitutional values, rather than striking the

⁴⁵ *Mohd Ahmed Khan v Shah Bano Begum* (1985) 2 SCC 556.

⁴⁶ *Danial Latifi v Union of India* (2001) 7 SCC 740.

⁴⁷ *Shayara Bano v Union of India* (2017) 9 SCC 1.

⁴⁸ *Mary Roy v State of Kerala* (1986) 2 SCC 209.

⁴⁹ *Githa Hariharan v Reserve Bank of India* (1999) 2 SCC 228.

provision down.

Read together, these decisions reveal a consistent judicial method:

(i) identify the concrete harm to women's dignity and equality,

(ii) test the impugned personal law norm against Articles 14, 15 and 21, and

(iii) either reinterpret the law or invalidate the practice to bring it into conformity with constitutional standards.

This approach does not deny the importance of cultural and religious pluralism; rather, it places individual rights at the centre of the constitutional order. Critics argue that such intervention risks judicial overreach into the domain of religious autonomy, but supporters contend that constitutional courts have a duty to protect vulnerable groups from systemic injustice embedded in private law regimes.

In sum, the judicial response to conflicts between personal laws and gender justice reflects a gradual but decisive shift from deference to tradition towards transformative constitutionalism. *Shah Bano* and *Shayara Bano* serve as anchor points in this journey, while *Mary Roy* and *Githa Hariharan* confirm that the same constitutional logic operates across communities. The result is not the abolition of legal pluralism, but its re-orientation around the non-negotiable values of equality, dignity and non-discrimination.

4. CONCLUSION AND WAY FORWARD

Women's rights under personal laws lie at the heart of India's constitutional promise of equality and social justice. The family, long treated as a private domain insulated from constitutional scrutiny, has increasingly become a site of legal and constitutional transformation. This attempt to study has shown that while significant progress has been made, particularly through judicial intervention, the journey towards substantive gender equality remains unfinished. The analysis across Hindu, Muslim, Christian and Parsi personal laws reveals a consistent pattern: while legislative reforms and judicial interventions have significantly improved women's formal legal status, substantive equality remains uneven and incomplete.

First, the historical and doctrinal review demonstrates that personal laws originated

within patriarchal social structures that prioritised lineage, community identity and male authority over individual rights. Colonial codification often froze these hierarchies into rigid legal rules, and post-Independence reforms have had to operate against this entrenched legacy.

Second, community-wise analysis shows **asymmetrical progress**. Hindu law has witnessed substantial legislative reform, particularly in marriage, maintenance, guardianship and succession, with the 2005 amendment to the Hindu Succession Act marking a transformative shift towards economic equality. Muslim personal law, by contrast, has evolved primarily through judicial interpretation rather than comprehensive codification, with landmark decisions such as *Shah Bano*, *Danial Latifi* and *Shayara Bano* playing a central role in securing women's rights. Christian and Parsi personal laws, shaped by colonial legislation and community norms, continue to reflect tensions between formal legal equality and social practice, as illustrated by cases like *Mary Roy* and the continuing debates on community-based exclusions.

Third, the constitutional analysis confirms a **decisive shift in judicial approach**. While early jurisprudence insulated personal laws from fundamental rights scrutiny, contemporary decisions increasingly subject personal law norms to the standards of Articles 14, 15 and 21, guided by the doctrine of constitutional morality. The judiciary has thus emerged as a crucial agent of social transformation, re-orienting family law around the non-negotiable values of equality, dignity and non-discrimination.

The trajectory of personal law reform in India thus reflects an ongoing constitutional struggle between the preservation of cultural autonomy and the realisation of substantive gender equality. While the judiciary has played a transformative role in advancing women's rights, structural inequalities continue to persist within the personal law framework. The continued existence of such disparities underscores the need for sustained and principled reform guided by constitutional values. Ultimately, a legal system committed to justice cannot permit gender inequality to survive within the private sphere under the guise of tradition or religion. The realisation of constitutional morality requires that women be recognised as equal citizens not only in public life, but also within the intimate domain of the family.

In light of these findings, the following suggestions are offered:

1. **Incremental but Consistent Reform:** Comprehensive and abrupt overhauls of personal laws may not always be socially or politically feasible. However, sustained, incremental reforms, whether legislative or judicial, should continue to align personal laws with constitutional guarantees of equality and dignity.
2. **Strengthening Judicial Sensitivity:** Courts should maintain and deepen their commitment to transformative constitutionalism, particularly in cases involving women's rights in the family. Interpretive techniques that harmonise personal law with fundamental rights have proven effective and should be consistently applied.
3. **Legislative Clarification in Uncodified Areas:** In areas where women's rights remain uncertain due to lack of codification, especially in Muslim personal law, carefully framed legislation, developed through inclusive consultation, could provide greater clarity and security without undermining cultural diversity.
4. **Improving Access to Justice:** Legal rights are meaningful only if they are accessible. Procedural simplification, legal aid, and awareness programmes are essential to ensure that women can effectively assert their rights under personal laws.
5. **Revisiting the Uniform Civil Code Debate:** Rather than viewing the Uniform Civil Code as a tool of homogenisation, it should be re-imagined as a long-term project of **harmonising family law around core constitutional values**, with adequate safeguards for cultural and religious diversity.

The evolving jurisprudence in cases such as *Shah Bano*, *Mary Roy*, *Githa Hariharan* and *Shayara Bano* reflects a broader constitutional commitment to ensuring that tradition cannot trump dignity, and community norms cannot override equality. This constitutional trajectory makes it increasingly clear that gender injustice cannot be permitted to persist within the private sphere of family relations. Ultimately, the pursuit of gender justice in personal laws is not merely a matter of legal reform; it is a test of the Constitution's transformative vision itself. A legal system that aspires to be just, inclusive and democratic must ensure that **women are equal not only in the public sphere, but also within the most intimate structures of social life.**