

Marriage, Divorce, and Gender Justice: A Comparative Study of Personal Laws in India and Western Legal Systems

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Abstract

This study will contrast the Comparison in Personal Laws of India with the family law systems of Western nations for the purpose of investigation the ideas of Marriage, Divorce, and Gender Justice. India is operated under different sets of laws operating together. In the area of family laws, India is influenced by faith-based laws like Hindu laws, Muslim laws, and Christian laws. In the Western countries, the Civil Law system is homogenous for all citizens regardless of their creed. Considerable variations arise in the protection and execution of rights as a outcome of this core disparity, especially when it comes to equal rights for all genders. This study will carefully scrutinize key facets such as the Institution of marriage, grounds for divorce, maintenance, and spousal rights under multiple legal frameworks. This study will thoroughly assess a number of legal topics, including marriage, grounds for divorce, maintenance, and spousal rights under various Legal Systems. This study will additionally clarify how some of the laws in India is biased against women in terms of matrimony under the influence of belief system. Western legal systems, in contrast, place a gives particular importance to gender impartiality, parity before the Legal structure, and human subject. The study will seek to explore the current discourse on the Uniform Civil Code in Indian context in relation to gender justice and diversity of cultures. In embracing a analogous strategy to doctrinal research methodology, the paper seeks to gauge the positive and drawbacks of both systems. It will be inferred in this study that though India has a multifaceted system that exhibits its cultural diversity, there is an imperative expectation for justice and equality. It will be inferred that in order for real gender equity in domestic laws to be attained, a integrated approach prerequisites to be made by merging unvarying doctrines and heritage.

1. Introduction

The United Nations' Universal Declaration of Human Rights says in Article 1 that All humans beings are born free and equal in dignity and rights.¹ Despite this omnipresent validation that every individual is same, the lived real-world situations of people often deviate profoundly. Every human being shares the same organic characteristics as in red blood, similar physical configurations, and the capacity for emotions and ties. But social notions like religion, culture, and traditions have a big outcome on people's lives, especially when it comes to matrimonial relations & dissolution. These disparities often direct to unfair treatment, especially when it comes to status & responsibilities for men & women. So, even though equality is a simple idea, how it is used in different Legal systems is varied, which raises

¹ Universal Declaration of Human Rights, 1948, Art. 1

important matters about Gender fairness. Marriage & divorce are not solely particular situations but are governed by Legal regimes that mirror societal virtues. In India, Family Laws are chiefly creed-based, defining different communities are overseen by distinct Personal Laws. This Research Paper intends to deliver out a corresponding investigation of the matters related to marital Union, breaking of marriage, and equality of genders in link to Plural Personal Law System of Hindus, Muslims, & Christians in India. It will also engage in comparison these Legal frameworks and their practical application in Western systems, namely the United Kingdom & the United States. In line with Hindu Marriage Act of 1955, the marriage is overseen by the Hindu Law in such a way that requisites of a valid marriage are stipulated in section 5 on the other hand section 7 includes Solemnities in marriage. It also enables for breaking of marital ties under section 13 for a numerous reasons. This is to be a balance between cultural values and any current legal requirements. In contrast, a Muslim Marriage is not necessarily religious, but is rather contractual nature. It is subject to Islamic law and Laws such as “Dissolution of Muslim Marriage Act, 1939” allows Muslim women to seek divorce for specific reasons. In general, Christian weddings in India are registered under the Indian Christian Marriage Act, 1872, Section 4 & 5 which lists the authorised persons to conduct marriage and the procedure for obtaining a valid marriage license. In addition, the Indian Divorce Act, 1869 gives a full and comprehensive legal system that specifies the causes & process for divorce among Christians. Meanwhile, the Laws that apply to family affairs in western countries, specifically the United Kingdom & United States have a more secular outlook and a more standardized set of procedural devices. In the U.K. marriage & divorce laws are governed by Acts like the Marriage Act, 1949” & the divorce Dissolution and Separation Act, 2020”. Marriage & divorce laws in the USA are primarily State laws, with a focus on equality, free consent & autonomy of individuals.. Additionally, the concept of no-fault divorce has gained widespread acknowledgement. This Research paper undertakes to examine whether Personal Law regimes in India, which are rooted in religion, uphold Gender Parity in contrast to secular Legal Systems in Western Nations. It also aims to evaluate whether India’s system of legal pluralism contributes equality, and examining how far modifications in the Law are required.

2. Contours of Marriage under different Personal Laws

2.1 Marriage Under Hindu Law

Marriage under Hindu Law is a consecrated companionship and not a mutual covenant. Marriage, in primitive Hindu legal framework, is a “Sanskara” or a divine ordinance that holds together a man and woman not only for this life beyond one lifetime. Traditional Hindu texts describe marriage as a holy union meant for the performance of religious duties, procreation and preservation of family lineage. The Hindu Marriage Act, 1955 governs Hindu marriages in India and codifies the legal principles relating to marriage among Hindus.²

According to Section 5 of the Hindu Marriage Act, certain essential conditions must be fulfilled for a valid marriage. These include monogamy, soundness of mind of both parties, attainment of legal age and absence of prohibited relationships unless permitted by custom. The Act also recognizes customary rites and ceremonies as essential for solemnization of marriage. Section 7 specifically recognizes “Saptapadi” or the taking of seven steps around the sacred fire as one of the most important ceremonies in Hindu marriages.³

² The Hindu Marriage Act, 1955, Act No. 25 of 1955

³ Id., s. 7

Traditional Hindu marriage is deeply rooted in rituals such as Kanyadaan, Homa and Saptapadi. These ceremonies symbolize the spiritual and social union of the bride and groom. Hindu law historically viewed marriage as indissoluble, but modern legislation introduced provisions relating to divorce, judicial separation and maintenance. The Hindu Marriage Act transformed Hindu marriage from a purely Sacramental Institution into a legal institution with enforceable rights and obligations.

Judicial interpretation has further strengthened women's rights within Hindu marriage and inheritance. In *Vineeta Sharma v. Rakesh Sharma* (2020), the Supreme Court recognized equal coparcenary rights of daughters in ancestral property.⁴ Similarly, in *Githa Hariharan v. Reserve Bank of India* (1999), the Court recognized the role of mothers as natural guardians, thereby promoting gender equality within Hindu Family Law⁵. Hindu marriage today reflects a combination of ancient religious values and modern constitutional principles of equality and dignity.

2.2 Marriage under Muslim Law

Under Muslim Law, marriage or "Nikah" is considered primarily a civil contract though it also possesses religious significance. Unlike Hindu marriage, Muslim marriage is not treated as a sacrament. The purpose of marriage in Islam is to legalize sexual relations, regulate family life and ensure legitimacy of children. Muslim marriage derives its principles from the Quran, Hadith, Ijma and Qiyas.

For a valid Nikah, there must be a proposal by one party and acceptance by the other in the presence of witnesses. Competence of the parties, consent, and payment of Mehr or dower are necessary conditions. Mehr is the sum of money which is payable by the husband to the wife as a sign of respect and security. The Muslim law recognizes marriage as a contract without any religious ceremonies.

The Muslim marriage can be divided into three categories: valid, void, or irregular depending on whether all legal conditions have been fulfilled or not. According to the Sunnite Law, either two males or one male and two females should witness the marriage contract. Marriage among prohibited degrees of relationship is void. Muslim personal law traditionally allowed polygamy for Muslim men, permitting up to four wives under certain conditions.

Divorce under Muslim law has historically been easier for men than for women. Practices such as Talaq-ul-Sunnat and Talaq-e-Biddat existed under classical Islamic law. However, the practice of instant triple talaq faced severe criticism for violating gender justice and constitutional morality. The Muslim Women (Protection of Rights on Marriage) Act, 2019 declared instant triple talaq void and illegal and imposed criminal liability upon husbands pronouncing such talaq⁶. The Act further provides protection to Muslim women through subsistence allowance and custody rights for minor children.

The most significant court decision in this area has been in the case of *Shayara Bano v. Union of India* (2017) in which the Supreme Court held the practice of triple talaq to be unconstitutional⁷. Another important decision in this regard has been made in the case of *Mohd. Ahmed Khan v. Shah Bano Begum* (1985), wherein the Supreme Court affirmed that a Muslim divorcee was entitled to maintenance under Section 125 of CrPC⁸. Such decisions clearly indicate the progressive trend of Muslim personal law toward gender justice and constitutionalism.

2.3 Christian Marital Jurisprudence

Christian matrimonial relations in India are legally administered through the Indian Christian Marriage

⁴ *Vineeta Sharma v. Rakesh Sharma*, AIR 2020 SC 3717

⁵ *Githa Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228

⁶ The Muslim Women (Protection of Rights on Marriage) Act, 2019, s. 3

⁷ *Shayara Bano v. Union of India*, (2017) 9 SCC 1

⁸ *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 9

Act, 1872⁹. The Act deals with the solemnization and registration of marriages of Christians. A marriage among Christians is considered both a religious sacrament and a legal contract made by mutual consent between the individuals involved.

In accordance with the provisions of the Act, marriage may be solemnized either by any minister, clergyperson, or marriage registrar through the process of law. Notification of marriage is usually necessary before solemnization takes place. Marriages should normally be solemnized in front of witnesses in accordance with the traditions and rituals of the Church involved. Registration of marriage is another significant element of Christian law.

Christian marriages encourage monogamy and consider marriages to be permanent bonds based on mutual love and respect. Historically, divorce laws under Christian personal law were unequal and discriminatory against women. However, amendments and judicial reforms have improved the legal position of women in Christian marriages. The Indian Divorce Act was amended to provide equal grounds of divorce for both husbands and wives.

Christian marriage ceremonies often take place in churches and include exchange of vows, declaration by the priest and blessing of the couple. Consent of parties remains the foundation of Christian marriage. Marriage among prohibited degrees is not permitted.

Courts in India have interpreted Christian personal law in light of constitutional guarantees of equality and dignity. Modern Christian marriage law therefore balances religious traditions with principles of social justice and individual rights.

2.4 Marriage in UK and USA

Marriage in the United Kingdom and the United States is primarily treated as a civil institution governed by statutory law rather than religious doctrine. While religious rituals abound, there can be no validity without abidance to laws governing registration, consent, and competency of the parties involved. In the United Kingdom, marriage law is principally determined by the Marriage Act, 1949. There are two ways to marry, namely through civil rituals or religious rites performed at registered places of worship. The parties' consent, their legal age, and the absence of any impediments are prerequisites to a valid marriage. Same-sex marriages are now legalized through the Marriage (Same Sex Couples) Act, 2013.

Likewise, in the United States, marriage laws vary from state to state but typically include a marriage license, legal age, and willingness on the part of the two persons getting married. Marriage is considered a civil contract that establishes certain duties and privileges between husband and wife. American courts have taken into account issues of equality and freedom in marriage. In *Obergefell v. Hodges* (2015), the United States Supreme Court recognized same sex marriage as a constitutional right under the Fourteenth Amendment¹⁰.

Contrary to Indian personal laws that are religion-based, the laws regarding marriage in the United Kingdom and the USA have a secular base and apply equally to all citizens without any distinction of religions. Laws related to divorce, maintenance of spouses, child custody and property inheritance are enacted through legislation and case laws. The systems follow liberal constitutional principles, and emphasize personal autonomy, equality and liberty of individuals.

The above discussion brings out the diversity in the institution of marriage among different legal systems depending upon culture, religion and other socio-economic factors. Marriage among Hindus and Christians has sacramentality at their core, while Islam perceives marriage to be an act of contract. The

⁹ The Indian Christian Marriage Act, 1872, Act No. 15 of 1872

¹⁰ *Obergefell v. Hodges*, 576 U.S. 644 (2015)

western systems of law such as those prevailing in the UK and USA view marriage essentially as a civil act involving freedom and equality.

3. Understanding Divorce through Different Personal Laws

3.1 Divorce under Hindu Law

Under ancient Hindu law, marriage was considered a sacred and indissoluble union and therefore the concept of divorce was traditionally absent. However, with the enactment of the Hindu Marriage Act, 1955, divorce became legally recognized among Hindus. The Act introduced modern legal remedies while balancing traditional Hindu values with constitutional principles of justice and equality¹¹.

Section 13 of the Hindu Marriage Act provides various grounds for divorce. These include adultery, cruelty, desertion for a continuous period of two years, conversion to another religion, mental disorder, communicable venereal disease, renunciation of the world and presumption of death¹². The Act also recognizes divorce by mutual consent under Section 13B, where both spouses agree that the marriage has irretrievably broken down.

The Act further provides remedies such as judicial separation under Section 10 and restitution of conjugal rights under Section 9. The law also ensures the protection of women by incorporating clauses related to maintenance, permanent alimony, and child custody. The Hindu law of divorce represents the shift from sacramentalism to the individualism and dignity of the person.

There have been various judgments regarding the meaning and understanding of cruelty and mental harassment in marriage cases. It is necessary for courts to understand that marriage should not be considered just a matter of legal obligation if there is no trust left between them. Thus, Hindu divorce law today aims to balance family stability with personal liberty and gender justice.

3.2 Divorce under Muslim Law

Under Muslim law, divorce is recognized as a legal right though it is considered undesirable from a moral and religious perspective. Islamic law provides different modes of dissolution of marriage for both husband and wife. Divorce may take place through Talaq by the husband, Khula by mutual agreement initiated by the wife, Mubarat by mutual release or through judicial dissolution¹³.

Traditionally, Muslim husbands possessed unilateral power to pronounce Talaq. However, modern legal reforms in India have significantly restricted arbitrary divorce practices. The Muslim Women (Protection of Rights on Marriage) Act, 2019¹⁴ declared instant triple talaq or Talaq-e-Biddat void and illegal. The Act also provides punishment for pronouncing instant talaq and grants Muslim women rights relating to subsistence allowance and custody of minor children¹⁵.

The Dissolution of Muslim Marriages Act¹⁶, 1939 strengthened the rights of Muslim women by providing statutory grounds for obtaining divorce through courts. Section 2 of the Act allows a Muslim woman to seek dissolution of marriage on grounds such as disappearance of husband for four years, failure to provide maintenance for two years, imprisonment of husband for seven years, cruelty, insanity,

¹¹ Aastha Mishra, From Tradition to Reform: A Comparative Study of Personal Laws in India, 6 IJFMR 1, 2-4 (2024)

¹² The Hindu Marriage Act, 1955, s. 13

¹³ Aastha Mishra, *supra* note 2, at 1-5

¹⁴ The Muslim Women (Protection of Rights on Marriage) Act, 2019, s. 3

¹⁵ *Id.*, s. 5-6.

¹⁶ The Dissolution of Muslim Marriages Act, 1939

impotence and desertion¹⁷. The Act also recognizes cruelty in broad terms including physical abuse, immoral conduct and unequal treatment among wives.

A landmark judgment relating to Muslim divorce law is *Shayara Bano v. Union of India* (2017), where the Supreme Court declared instant triple talaq unconstitutional. Another significant case is *Mohd. Ahmed Khan v. Shah Bano Begum*, where the Supreme Court recognized the right of a divorced Muslim woman to seek maintenance under Section 125 of the Criminal Procedure Code. These reforms and judicial interpretations demonstrate a growing emphasis on constitutional morality, gender equality and protection of women's rights within Muslim personal law.

3.3 Divorce under Christian Law

Divorce among Christians in India is governed by the Divorce Act, 1869¹⁸, which was enacted to regulate matrimonial disputes among persons professing the Christian religion. Initially, the law was highly unequal as it imposed stricter conditions upon women seeking divorce. However, amendments made in 2001 significantly modernized the law and established equality between husbands and wives¹⁹. Section 10 of the Divorce Act provides grounds for dissolution of marriage. These include adultery, conversion to another religion, incurable unsoundness of mind, venereal disease, desertion for two years, cruelty and failure to comply with a decree of restitution of conjugal rights²⁰. Section 10A further introduced divorce by mutual consent where parties living separately for at least two years may jointly seek dissolution of marriage²¹.

The Act also recognizes judicial separation under Sections 22 and 23 on grounds such as adultery, cruelty and desertion²². Provisions relating to alimony, custody of children and maintenance are contained in Sections 36 to 44²³. These provisions ensure financial and social protection for spouses and children after divorce.

Christian divorce law treats marriage as both a sacramental and legal institution. For this reason, the law usually recommends reconciliation before divorces can be issued. However, contemporary juristic interpretations understand that compelling individuals to stay in unhappy marriages goes against the notion of human dignity and freedom. As a result, contemporary Christian divorce laws in India have moved away from the strict colonial norms to a fairer system.

3.4 Divorce in UK and USA

In the case of the United Kingdom and the United States, divorce is mainly governed by civil law and not by personal religious laws. In this regard, marriage is regarded as a contract between two people and thus, the breakup of the marriage is controlled by uniform civil laws that apply to everyone regardless of their religious affiliation.

In the United Kingdom, divorce law is primarily regulated by the Matrimonial Causes Act, 1973 along with reforms introduced through the Divorce, Dissolution and Separation Act, 2020²⁴. Previously, divorce was always based on the grounds of adultery, unreasonable behaviour, desertion or separation. But the modern reforms enacted incorporated the idea of “no fault divorce,” which meant that the parties

¹⁷ Id., s. 2

¹⁸ The Divorce Act, 1869 The Divorce Act, 1869

¹⁹ Aastha Mishra, *supra* note 2, at 1-4

²⁰ The Divorce Act, 1869, s. 10.

²¹ Id., s. 10A

²² Id., s. 22-23

²³ Id., s. 36-44

²⁴ Matrimonial Causes Act, 1973 (UK); Divorce, Dissolution and Separation Act, 2020 (UK)

were no longer required to prove that marriage had broken down due to the fault of one of the parties. The legislation now provides that a marriage may be dissolved on the basis that it has irretrievably broken down. This helps to minimize conflict and contributes to a better separation. In the UK, divorce involves applying for a divorce and issuing conditional and final orders. Courts also rule on problems of custody and maintenance of children, division of matrimonial property. Children's welfare is the paramount consideration in custody proceedings.

Similarly, divorce laws in the United States vary from state to state, but most states recognize both fault based and no fault divorce. Common grounds include adultery, cruelty, abandonment and irreconcilable differences. The concept of no fault divorce became popular in order to reduce lengthy litigation and emotional hostility between spouses. California was the first American state to introduce no fault divorce in 1969, which later influenced reforms across the country.

In the USA, courts deal extensively with matters relating to property division, alimony and child custody. Different states follow either community property rules or equitable distribution principles while dividing marital assets. Courts generally encourage mediation and settlement in family disputes in order to reduce adversarial proceedings.

Western legal systems strongly emphasize gender equality and equal rights of spouses during divorce proceedings. Same sex couples are also granted equal divorce rights after legalization of same sex marriage in both the UK and USA. Thus, divorce law in these countries reflects modern democratic values focusing upon autonomy, equality, privacy and protection of individual rights rather than religious doctrine.

4. Spousal Rights and Gender Justice under Personal Laws

4.1 Spousal Rights under Hindu Law

Under Hindu law, marriage establishes mutual rights and duties between husband and wife. Traditionally, Hindu personal law reflected a patriarchal social structure in which women were often placed in a dependent position within the family. Ancient Hindu texts emphasized the authority of male members and limited the independent legal status of women²⁵. However, after independence, major reforms were introduced through statutes such as the Hindu Marriage Act, 1955 and the Hindu Succession Act, 1956 in order to improve the legal and social position of women²⁶.

The Hindu Marriage Act provides rights relating to maintenance, restitution of conjugal rights, judicial separation and divorce. Provisions relating to permanent alimony and financial support aim to protect spouses during and after matrimonial disputes²⁷. The Hindu Succession (Amendment) Act, 2005 further strengthened women's rights by granting daughters equal coparcenary rights in ancestral property²⁸. In *Vineeta Sharma v. Rakesh Sharma*, the Supreme Court affirmed equal inheritance rights of daughters in ancestral property and emphasized gender equality within Hindu family law²⁹.

Despite these reforms, problems like dowry harassment, domestic violence, emotional abuse, and misuse of matrimonial laws still remain serious concerns³⁰. The Supreme Court, in *Rajesh Sharma v. State of*

²⁵ Mishra, *supra* note 1, at 2-4

²⁶ The Hindu Marriage Act, 1955; The Hindu Succession Act, 1956

²⁷ The Hindu Marriage Act, 1955, s. 9, 10, 24 & 25

²⁸ The Hindu Succession (Amendment) Act, 2005

²⁹ *Vineeta Sharma v. Rakesh Sharma*, AIR 2020 SC 3717

³⁰ Kowseeka V., *Personal Law under Gender Justice*, 8 Indian J. L. & Legal Research 4303, 4304-4306 (2025)

Uttar Pradesh, observed the increasing misuse of Section 498A IPC in marital conflicts³¹. However, the legislation on dowry and domestic violence remains essential in safeguarding women from violence and maltreatment in marriage. The public debate on suicides supposedly resulting from domestic abuse and long-lasting family conflicts has underlined the significance of mental health as well as equal protection of the couple³². Thus, gender justice under Hindu law today seeks not only to protect women from discrimination but also to ensure fairness, dignity and emotional security for both spouses³³.

4.2 Spousal Rights under Muslim Law

Under Muslim law, marriage or Nikah is treated as a civil contract that creates reciprocal rights and obligations between spouses³⁴. A Muslim wife is entitled to rights relating to maintenance, residence, inheritance and Mehr, which acts as financial security for the wife³⁵. Muslim personal law recognizes responsibilities upon both spouses and attempts to regulate family relations within a religious framework.

However, Muslim personal law has often been criticized for practices perceived as discriminatory against women, particularly in matters relating to divorce and inheritance³⁶. The question of gender justice assumed great importance following controversies surrounding instant triple talaq. The decision in *Shayara Bano v. Union of India* ruled that instant triple talaq was unconstitutional and arbitrary, as such practices violated the constitutional principle of equality and dignity. In the case of *Mohd. Ahmed Khan v. Shah Bano Begum*, the Court held that the wife had a right to receive maintenance under Section 125 of the Criminal Procedure Code, 1973.

On the other hand, the question of gender justice within the framework of Islamic law highlights the necessity of being fair to the wife and husband in situations of domestic violence, emotional harassment, and maintenance issues. The principle of equality and dignity enshrined in the Constitution has been emphasized by the courts³⁷. Hence, Muslim personal law in India today illustrates the continuing balance between religious independence and constitutional safeguards for individuals.

4.3 Christian Matrimonial Rights

The Indian Christian Marriage Act of 1872 and Divorce Act of 1869 are the main laws that regulate the Christian Personal Law in India. The marriage among Christians is considered a sacramental as well as a civil act founded on faith, friendship, and fidelity. Both spouses have legal rights regarding maintenance, divorce, judicial separation, and custody of children.

Historically, Christian personal law imposed unequal burdens upon women in matrimonial matters, particularly in relation to divorce. However, later amendments established greater equality between husbands and wives and introduced more balanced matrimonial remedies. Provisions relating to alimony and maintenance also provide financial protection to spouses after separation or divorce.

In *Ammini E.J. v. Union of India*, constitutional validity of certain discriminatory provisions under Christian divorce law was challenged, leading to demands for reforms ensuring equal treatment for women³⁸. Courts and lawmakers increasingly recognize that marriage should not become a source of

³¹ *Rajesh Sharma v. State of Uttar Pradesh*, (2017) 8 SCC 746

³² *Kowseeka V.*, supra note 6, at 4305-4306

³³ *Kowseeka V.*, supra note 6, at 4304-4306

³⁴ Tahir Mahmood, *Family Law in India* 45 (2d ed. 2002)

³⁵ Tahir Mahmood, supra note 8, at 45

³⁶ Aastha Mishra, supra note 1, at 2-4

³⁷ Vrinda Narain, *Muslim Women's Equality in India: Applying a Human Rights Framework*, 35 Hum. Rts. Q. 91, 91-115 (2013)

³⁸ *Ammini E.J. v. Union of India*, AIR 1995 Ker 252

psychological suffering or exploitation for either spouse. Discussions relating to mental health, toxic relationships and emotional well-being have therefore become important aspects of gender justice within Christian matrimonial law. Consequently, Christian personal law has gradually evolved from rigid colonial principles towards a more rights-based and equality-oriented framework.

4.4 Spousal Rights and Gender Justice in UK and USA

In the United Kingdom and the United States, family laws are primarily secular and based upon constitutional principles of equality, liberty and individual autonomy³⁹. Marriage creates equal legal rights and obligations between spouses regardless of religion or gender. Western legal systems strongly emphasize personal freedom, financial equality and protection against abuse within matrimonial relationships.

The development of family law in these countries transformed marriage from a traditionally patriarchal institution into a partnership based upon equality and mutual respect⁴⁰. The judiciary is increasingly recognizing rights concerning marriage, divorce, alimony, and child custody as constitutional rights and issues of dignity. This was exemplified by the United States Supreme Court's ruling that same-sex marriage is indeed a constitutional right and extends equal matrimonial protections to everyone in the landmark case of *Obergefell v. Hodges*.

On the other hand, there is also an increasing concern in the West about domestic violence, coercive control, emotional abuse, and psychological problems caused by marital discord. Several public incidents and studies in the UK and USA have highlighted the harmful psychological effects of toxic relationships and prolonged matrimonial disputes on both spouses. Legal systems in these countries increasingly focus upon counseling, mental health support, restraining orders and equitable matrimonial remedies in order to protect the dignity, safety and well-being of individuals within family relationships. Thus, although personal laws in India are influenced by religious traditions and Western family laws are largely secular, both legal systems increasingly recognize that spousal rights must be interpreted in light of gender justice, equality, mental well-being and human dignity⁴¹.

5. Constitutional Perspective and Judicial Approach towards Personal Laws

The relationship between personal laws and constitutional principles has remained one of the most debated issues within the Indian legal system. India adopts a diverse legal structure under which various religious groups are governed by separate personal laws concerning matrimonial and family matters⁴². Although personal laws are intended to protect religious and cultural distinctiveness, they are often viewed as reinforcing patriarchal and discriminatory norms.

Article 14 of the Indian Constitution ensures equality before law while Articles 15 and 21 ensure non-discrimination on grounds of sex and right to life and personal liberty respectively⁴³. However, Articles 25 and 26 also ensure freedom of religion and permit communities to handle their religious matters as well. It is this very paradox that causes a conflict when there is a clash between individual customs and constitutional principles.

Indian courts have increasingly emphasized that personal laws cannot violate fundamental rights. Judicial decisions over the years demonstrate a gradual movement towards constitutional morality and

³⁹ David D. Meyer, *The Constitutionalization of Family Law*, 42 Fam. L.Q. 529, 529-531 (2008)

⁴⁰ David D. Meyer, *supra* note 15, at 529-531

⁴¹ Kowseeka V., *supra* note 6, at 4304-4306; David D. Meyer, *supra* note 15, at 529-531

⁴² D.D. Basu, *Commentary on the Constitution of India* (26th ed. 2021)

⁴³ Constitution of India, arts. 14, 15 & 21

protection of women's rights. In *Danial Latifi v. Union of India*, the Supreme Court interpreted the Muslim Women (Protection of Rights on Divorce) Act, 1986 in a manner that protected the financial rights of divorced Muslim women and upheld the principle of reasonable and fair provision⁴⁴.

Similarly, In *Joseph Shine v. Union of India*, the Supreme Court struck down the offence of adultery under Section 497 of the Indian Penal Code and observed that a woman cannot be treated as the property of her husband⁴⁵. The judgment strongly emphasized dignity, autonomy and equality within marital relationships.

The judiciary has also played an important role in protecting women against domestic violence and cruelty. In *Hiral P. Harsora v. Kusum Narottamdas Harsora*, the Supreme Court expanded the scope of protection available under the Protection of Women from Domestic Violence Act, 2005 and reinforced the idea that women must receive effective legal protection against abuse within the household⁴⁶.

The issue of personal laws and constitutionalism also brings up the question of judicial activism and religious autonomy. Some critics state that undue judicial involvement could be a threat to religious freedom and community identity. Its supporters see the need to outlaw discriminatory customs and traditions in the interest of constitutional values.

Constitutional Morality is a legal doctrine that has gained prominence within recent times in issues related to family law. Equality, dignity, and individual autonomy have time and again been stated to be the basis of constitutional governance. Therefore, the constitutional doctrine in relation to personal laws in India is indicative of the efforts made to balance religious liberty with human rights.

6. Uniform Civil Code and the Debate on Gender Justice

The Uniform Civil Code is perchance one of the most debatable and policy-wise dainty topics in India. Article 44 of the Indian Constitution states that the state should strive to ensure a Uniform Civil Code for all citizens of India⁴⁷. The main objective of Uniform Civil Code is to bring uniformity in civil laws that regulate marriage, divorce, maintenance, adoption, succession etc. instead of law based on religion.

Proponents of the Uniform Civil Code believe that the uniform civil laws will eliminate inequality and discrimination, particularly against women. They felt that a uniform legal system will provide equality of rights and bring national integration. In feminist studies and reform, personal laws which are rooted in patriarchal traditions are seen to hinder women from enjoying equality among family relations.

The discussion on the UCC began following the decision in *Sarla Mudgal v. Union of India*, wherein the Supreme Court condemned the abuse of religion by way of conversion to marry another wife and stressed the necessity of a common civil code⁴⁸. The court stated that the existence of contradictory personal laws results in injustices and doubtful meanings in marriage-related cases.

A landmark judgement came in the case of *John Vallamattom v. Union of India*, wherein the Supreme Court of India invalidated discriminatory clauses applicable to Christians in the Indian Succession Act⁴⁹. The judgment gave impetus to debates on the need for the reform of the discriminatory personal laws. Opponents of the Uniform Civil Code, however, say that India is a multicultural and multi religious society and that legal pluralism is important for the identity and traditions of various communities. A

⁴⁴ *Danial Latifi v. Union of India*, (2001) 7 SCC 740

⁴⁵ *Joseph Shine v. Union of India*, (2019) 3 SCC 39

⁴⁶ *Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016) 10 SCC 165

⁴⁷ Constitution of India, art. 44.

⁴⁸ *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635

⁴⁹ *John Vallamattom v. Union of India*, (2003) 6 SCC 611

shared code raises concerns about religious freedom and cultural autonomy as provided for in the Constitution, and a common code would raise concerns among many religious groups.

The challenge is hence to reconcile constitution and cultural diversity. There are several scholars who believe that rather than implementing a uniform code, it is more feasible and viable to reform gradually the personal laws. Gender justice can be enhanced by reforms to ensure women's equal access to and enjoyment of rights, including protection from discrimination, domestic violence and inequitable inheritance, without impacting on religious diversity.

In summary, the issue of a Uniform Civil Code reflects the struggle for modernity against traditional practices in family laws in India. However, as unity aims to create equality and consistency in law, the Indian social environment should remain sensitive about its pluralistic nature. Hence, the future of personal law reforms in India will depend on the balance between constitutionality and individuality.

7. Obstacles to Gender Justice under Personal Laws

Nevertheless the significant changes brought about by the law and all the way through judicial social action, there still remain some barrier that hinder the accomplishment of gender impartiality within personal laws in India. These take account of male-centric viewpoint, social traditions, and unawareness of the rights of spouses.

Gender inequity in families is one of the biggest troubles that must be tackled. Women are often made vulnerable to stereotyping when it comes to issues such as birthright, maintenance, custody, and decision-making in marital dealings. Due to social constraints and economic contingent reliance, women find it difficult to put into effect their rights.

Familial aggression and dowry persecution continue to stay put widespread social issues despite harsh legal requirements⁵⁰. The example of cases relating to cruelty, psychological torture, and wedded harassment discloses that legal reforms solely will not be enough without social changes. In *Arnesh Kumar v. State of Bihar*, the Supreme Court was hesitant about the misuse of Anti-Dowry laws and frazzled the prerequisite of judicious use of nuptial laws⁵¹.

Additionally, with an raise in cases of psychological abuse and suicides allied with marriage conflict, there have been powerful public pondering about gender-neutral legal guard for family laws. It is vital to be acquainted with that marital troubles are not considered merely personal disputes but concern linking psychological well-being and human decorum.

Yet an additional issue is that of child marriages and robust marriage traditions which unmoving persist in some sectors of society even though being condemned by the Law. The Hindu Marriage Act, 1955 defines the criteria regarding age and consent for marriage⁵². Consent and sanity have been stated to be crucial factors for any valid marriage by the judiciary.

The conventional character of religion and non-acceptance of any reform has become an extra hesitant block in the quest for gender sameness in personal law systems. Any reform that seek to transform bigoted practices are usually strongly fought against on the ground of religion and culture.

On the supplementary side, worldwide expansion, education, and legitimate realization are helping to shape society's outlook. As more and more women take part in education, work, and political beliefs, there is a growing firmness on impartiality between the sexes in the family context. Consequently, courts

⁵⁰ Kowseeka V., Personal Law under Gender Justice, 8 Indian J. L. & Legal Research 4303 (2025)

⁵¹ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

⁵² The Hindu Marriage Act, 1955; Dr. S.R. Myeni, Hindu Law 179-183 (2d ed.)

and legislators are being put under gigantic pressure to build up personal laws consistent with constitutional ideals of equality, dignity, and justice.

8. Conclusion

The Scenery of Indian personal laws makes it very diverse from extra laws, for personal laws pact not lone with matters that be appropriate to a person's contiguous relatives but as well as with holy and cultural issues. The laws in the midst of Hindus, Muslims, and Christians have their differences with respect to olden times and put into practice; yet, the conversion that has taken rest in these laws is frequent to every single one.

Marriage according to various personal laws reflects the varied perception of familial relations in India. According to Hindu personal law, marriage is generally considered a sacrament and divine alliance that serves the purpose of performing religious functions and perpetuating family lineage⁵³. In contrast, Muslim law considers marriage to be a contractual union intended for lawful sexual relations and legitimate procreation⁵⁴. In Christian law, marriage embodies spiritual sanctity along with contractual obligations and is solemnized in the Church⁵⁵.

Marital rights and gender fair dealing have turn into very central issues in the conversation of personal law. The reforms with reference to maintenance, bequest, divorce, and domestic violence have greatly helped the position of women from a legal point of view. Decisions by the judiciary in cases like Danial Latifi, Joseph Shine, and Hiral P. Harsora greatly contributed towards this development.

On the other pass, the survival of personal laws has fascinated a lot of denigration on grounds that it supports patriarchal structure and inequality in marital relations. Problems such as dowry harassment, domestic violence, psychological torture, early marriages, and abuse of matrimonial laws illustrate the complexity of gender issues in modern times⁵⁶.

The apprehension between constitutional equality and protection of religious diversity is also on put on view in a question over the Uniform Civil Code. Some people think a uniform code is essential to the principle of equal rights, while others consider legal pluralism to be essential to maintain ethnic independence. Consequently, any pursuit for the reform of personal laws should be balanced and should at the same time take into account the freedom of religion and religious faith even as as well confirming that essential rights and individual poise are emphasized.

In summing up, the refinement of personal laws in India is part of an overall clash between legacy and contemporary values protected by the Constitution. Personal laws are not only about retaining practices or achieving coherence; denominational laws in the future have to be about ensuring parity in treatment, respect, fairness, and justice to everyone, irrespective of moral-religious influence or sexual identity.

⁵³ Dr. S.R. Myeni, Hindu Law 142-145 (2d ed.)

⁵⁴ Tahir Mahmood, Family Law in India (2d ed. 2002); Dr. S.R. Myeni, Hindu Law 152-153 (2d ed.)

⁵⁵ The Indian Christian Marriage Act, 1872; Dr. S.R. Myeni, Hindu Law 154 (2d ed.)

⁵⁶ Kowseeka V., supra note 12; Aastha Mishra, From Tradition to Reform: A Comparative Study of Personal Laws in India, 6 IJFMR 1 (2024)