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EXPLORING THE IMPACT OF PERSONAL LAWS ON SOCIETAL STRUCTURES AND INDIVIDUAL LIBERTIES IN INDIA

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Dr. Syed lqbal Ahmed

DECLARATION

I, Amritanshi Dawar hereby declare that the content written in this project report, titled **"Exploring the Impact of Personal Laws on Societal Structures and Individual Liberties in India**" complied to at **National Law University, Delhi** the result of my original effort under the direction of **Dr. Syed lqbal Ahmed**

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INTRODUCTION

Patriarchy, Law, and the Institutionalization on Gender Inequality

Patriarchy denotes the established male supremacy over women as an institutionalized social system within its framework.[1] This marked the control of resources, authority, and power in decision-making. Its roots dig deep into human history, evolving with the appropriation of land, wealth, and social institutions by men. Control in this regard has been ingrained in inheritance laws and the cultural and social hierarchies that came to privilege the authority of males and relegated women to subservient positions. These have meant denying women's contribution, especially at a domestic and community level, with leadership, strength, and independence associated by most with masculinity. These cultural changes conditioned systemic inequalities that have endured across centuries and continue to resonate within the political, economic, and social realms to the present day.[2]

The emergence and persistence of patriarchy are closely associated with ancient cultural and religious texts which codified gender roles and social hierarchies[3]. The Mahabharata is the oldest and most influential of India's epics. Truthfully, whether it is in the historical past or present times, patriarchal values are established in the ethos and frame of society. The storyline of the Mahabharata tables questions about authority, duty, and sex, resulting in a society wherein males exercise a moral claim over their family, property, and social roles. Female characters like Draupadi and Kunti exemplify the complex dynamics of gender relations;[4] while they do exercise influence, their agency is severely curtailed by their relationships to men and the prevailing patriarchal order.

The discourses of law and ethics as espoused in this epic under the Dharmashastra traditions have historically provided the basis for shaping personal laws regarding marriage, inheritance, and family duty, thus engendering patriarchal norms into the very legal and cultural fabric of Indian Society.

Patriarchy manifests in the form of intersecting structures that are overlapping and merge into the domestic and workplace level, into state institutions, and into cultural narratives. These rigid gender roles that have been created to confine men as the breadwinners and women as

[1] G A Sultana, 'Patriarchy and Women's Subordination: A Theoretical Analysis' (2010) Arts Faculty Journal 1
[2] Gerda Lerner, *The Creation of Patriarchy* (Oxford University Press 1986)
[3] P Olivelle, *Language, Texts, and Society: Explorations in Ancient Indian Culture and Religion* (Firenze University Press 2005)
[4] M Rajalakshmi, 'The Image of Women in Mahabharata as Reflected in Gandhari, Kunti and Draupadi' (PhD thesis, Department of Sanskrit, University of Calicut 2016)

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homemakers serve only to further the economic dependency of women and limit their ability to develop leadership capabilities and financial independence.

The expectations imposed upon society also obligate men to embrace the worldview of aggression and control, thus adding to their psychological burden and restricting the sphere of emotional expression. Norms are perpetuated from infancy through parenting practices, the education system, and media representations, which indirectly and subtly indoctrinate an individual into a predefined gender role. This indoctrination restricts personal freedom and evokes hostility toward those who drift from established heteronormative standards, notably the oft-victimized LGBTQIA+ communities marked by harassment and violence.

The institutionalization of patriarchy further commodifies women[5] via practices such as arranged marriages and the dowry system, while these standards of beauty and conduct wreak havoc on their mental well-being. The very ideals of beauty and success that further add to the widespread psychological pain are, in a sense, reinforced by social media and cultural narratives.

Even though patriarchy has been in existence, since times immemorial, it is not fixed and cannot be immortal. Patriarchy, as feminist intellectuals argue, is a socially constructed system, maintained by historical conditions. That conceptual understanding opens up possibilities of deconstructing oppressive structures and also bringing forward a better society Yet, the patrilineal above effects go on stifling individuality[6] clearly applying twist to uneven compensation as stern gender norms and all further power hierarchies get imbedded into social institutions.

In India, the law governing personal laws-marriage, inheritance, and divorce-inspires and nourishes patriarchal values. [7]Such laws enforce gender discrimination and restrict the freedoms of individuals, who are guaranteed equality and other fundamental rights under the Constitution. The relationship between personal laws and constitutional provisions is knotty, bringing alive several debates in legal history and subsequent judicial interventions against the background of an ongoing tussle between the need to respect cultural diversity and promote gender justice.

The control of resources-such as land, properties, and economic capital-has become a central

[5] V E Collins and D L Rothe, 'The Consumption of Patriarchy: Commodification to Facilitation and Reification' (2017) 20(2) Contemporary Justice Review 161.
[6] H S S Mote, 'Patriarchy and Power: The Fate of Women in Selected Novels by Iris Murdoch' (PhD thesis, Lamar University-Beaumont 1994).
[7] M O'Brien and S McIntyre, 'Patriarchal Hegemony and Legal Education' (1986) 2 Canadian Journal of Women and the Law

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mechanism through which patriarchal societies sustain male dominance through various societies and times. The legal system has for long practiced favouritism in inheritance and family laws, ensuring that wealth and property remain within male lineage.[8] This economic control fortifies women's financial dependence and constrains their autonomy and access to opportunities, patriarchy penetrates cultural and social institutions, working toward embedding the patriarchal design into the mundane fabric of everyday life, beyond any consideration of economics. The corresponding institutionalization is articulated through social practices like arranged marriages, dowry systems, and gendered divisions of labour, which commodify women and restrict their freedoms.[9]

Over the years, the law has historically landed credence to such patriarchal constraints. The Code of Hammurabi[10] (circa 1754 BCE), one of the oldest deciphered legal codes from ancient Mesopotamia, explicitly set forth laws establishing male dominance over property and family. The Code granted men wide-spread control over their wives, children, and property, while restricting women's rights. For instance, women could be treated like property in marriage contracts; inheritance laws favoured sons over daughters. This legal framework institutionalized male control over economic and familial resources and embedded gender hierarchies in the law itself.

On the contrary, Farsi (Persian) laws, particularly those influenced by Zoroastrian and later by Islamic traditions,[11] also institutionalized male domination but somewhat differently. Whereas in the Persian legal traditions, the patriarch is considered the head of the household, in charge of decisions regarding property and family affairs, under Islamic laws (Sharia), which largely influenced Farsi laws after the advent of Islam in Persia, women's inheritance rights were recognized, albeit in a restricted form- typically half the share of male heirs. Under Islamic law, marriage contracts and dowry (mahr) provisions economically secure the woman, but the system remains male-dominated.[12]

In their diverse traditions, both laws show how resources were operationalized and put in the hands of men, determining gender relations and social hierarchies. Such old legal codes

[8] P J Strand, 'Inheriting Inequality: Wealth, Race, and the Laws of Succession' (2010) 89 Oregon Law Review 453

[9] A Mezzadri, 'Class, Gender and the Sweatshop: On the Nexus Between Labour Commodification and Exploitation' in Jonathan Pattenden, Liam Campling, Satoshi Miyamura and Benjamin Selwyn (eds), *Class Dynamics of Development* (Routledge 2018) 133.

[10] C H W Johns, *The Code of Hammurabi* (E-Kitap Projesi & Cheapest Books 2024).

[11] A Aleem, N Fatima, S Akhtar, N Anwer, T A Awan and M Sarwar, 'Historical Study of the Ancient Iranian Civilization under Zoroastrianism and the Impact of Islam' (2023) 7(3) Journal of Positive School Psychology.

[12] J János, 'The Four Sources of Law in Zoroastrian and Islamic Jurisprudence' (2005) 12(3) *Islamic Law and Society* 291.

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inspired contemporary personal laws in many societies such as India, where religiously oriented personal laws still govern marriage-inheritance-family life[13]. These laws ensure the economic dependency of women on men and act to confer an active sanction with which to sustain male domination.

The term 'patriarchy' does not apply to a single, isolated entity; instead, it refers to an elaborate and highly structured social system that functions concurrently through different, inter-demarcating domains. These domains include the family, the workplace, state institutions, cultural narratives, and legal formulations. Together, they weave a media net, reinforcing male control and penetrating women's autonomy and equality.

The consequences of patriarchy extend beyond the family environment and penetrate the workplace quite considerably to inhibit women's access to paid employment[14], leadership roles, and economic opportunities.

Women work within a wage gap, a glass ceiling, and occupational segregation whereby a majority of women enter lower-paying or less prestigious jobs. Such structural barriers perpetuate economic discord and enforce the belief that men are the main economic providers, which serves further to entrench women's economic dependency.

Patriarchy rules over political as well as legal institutions with regard to women's underrepresentation in decision-making. This outweighing imbalance often translates itself into the manner in which laws and policies are formulated and implemented, which will thus bear the irreverence of being an inadequate discussion of or an active participant in gender inequity.

A case in point would be in the area of the personal laws of India, which govern marriage, inheritance, and divorce, based on religious and cultural traditions that often support patriarchal values. When this contentious constitutional status of these laws is coupled with a simultaneous attempt to achieve gender justice, it achieves maximal complexity.

[13] M D T R Wickramaratne, 'Gender as a Primary Equalizer in Plural Societies: A Theory of Cross-Ethnic Solidarity within Consociation' (2011) SSRN accessed 2 May 2025.

[14] Kabeer, N. (2021). Gender equality, inclusive growth, and labour markets. In *Women's economic empowerment* (pp. 13-48). Routledge.

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CHAPTER I

The area of personal laws can be described as being highly patriarchal in nature in India. Such laws regulate matters considered personal-an area of law having marriage, divorce, inheritance, or adoption-based mainly on religion, such as Hindu, Muslim, Christian, and so on.[15] In simplistic terms, laws related to personal matters are culture-based and religion-based, and these are also said to foster patriarchal values. The Constitution of India recognizes such personal laws, thus giving the power to the religious communities to regulate their own personal affairs. But this recognition complicates matters enormously, especially from the point of view of Part III of the Constitution, which guarantees grand rights, like immovable fundamental rights, including those of equality and non-discrimination.

The Indian Constitution, adopted in 1950, enshrines a comprehensive set of fundamental rights aimed at ensuring equality, liberty, and justice for all citizens. Among these, Part III of the Constitution guarantees protections as these rights conferee upon its citizens:

Article 14 Equality before the law and equal protection of laws

Article 15 Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth

Article 21 Right to life and personal liberty

The provisions jointly create a constitutional pledge to gender equality and non-discrimination. However, personal laws-those legal structures governing marriage, divorce and inheritance, and family relations from the vantage points of religious or cultural traditions-are standing right in the face of these constitutional guarantees and have given rise to innumerable dilemmas, both socially and legally.[16] The right of religious communities to manage their own personal affairs is guaranteed by the Constitution Articles 25 to Article 28 thus, safeguarding cultural and religious freedoms; however this has in turn resulted in an ambiguous status of personal laws,[17] especially with respect to their relationship or compatibility with fundamental rights.

The pluralistic nature of personal laws stands recorder to India's glorious variety of religious faiths. The Hindu, Muslim, Christian, Parsi, and other communities-all have their own sets of personal laws derived in ancient custom and religious doctrine. Such laws concern very personal matters and are often tinted with patriarchal prejudices that restrict women's rights

[15] Parashar, A. (2008). Gender inequality and religious personal laws in India. *The Brown Journal of World Affairs*, *14*(2), 103-112.

[16] Y Laor, 'Cultural Uniformity and Religion' (2013) 3(3) *Religion, Brain & Behavior* 233.

[17] M Galanter, J Krishnan and G Larson, 'Personal Law Systems and Religious Conflict' in Gerald J Larson (ed), *Religion and Personal Law in Secular India: A Call for Judgment* (Indiana University Press 2001) 270.

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and autonomy, State of Bombay v. Narasu Appa Mali (1952)[18], was instrumental in shaping this legal regime. The Court held that a personal law cannot be considered law under Article 13 of the Constitution and therefore is not subject to constitutional challenge concerning fundamental rights. With this, the Court let personal laws run outside constitutional guarantees and maintain their existence permanently.

Although the judiciary showed this initial deference, it has intervened increasingly into personal laws when they clash with fundamental rights. A turning point came in the Supreme Court in Shayara Bano v. Union of India (2017)[19] where the practice of triple talaq (instant divorce in Muslim personal law) was declared unconstitutional.

The Supreme Court made it clear that personal laws, like any other law, can be tested against the touchstone of fundamental rights, and that judicial review could also be exercised for striking down discriminatory practices that certain laws violate fundamental rights.

The ongoing tussle with the Uniform Civil Code (UCC) represents the juxtaposition of the cultural diversity that sustains and the quest for gender justice. Article 44 of the Directive Principles of State Policy urges that the state should hold it as its duty in the future to secure a UCC for all citizens of India, [20]which would replace the personal laws with one set of secular laws common to all persons without regard to religion, Law, in this sense, is both shaped by and a shaper of social change-while it must reflect prevailing social realities, it can also create preconditions for transformation by challenging entrenched practices and setting new standards Proponents argue that UCC would create uniformity in laws, eliminate gender discrimination inherent in personal laws, and foster national integration. Conversely, the critics argue that UCC impinges upon their religious freedom and cultural identity; they fear it could impose a majoritarian or homogenizing legal regime that disrespects minority rights. Political and social opposition to the UCC is still considerable and manifests the complex existing relationships between religion, identity, and gender justice in India's pluralistic society.

The relationship between personal laws and constitutional provisions in India is a fragile yet often contentious balance,[21] The Constitution endorses equality, non-discrimination, and personal laws grounded in religious customs that have historically operated with an inordinate amount of freedom, sometimes at the expense of women's rights and gender justice.

[18] The State Of Bombay vs Narasu Appa Mali on 24 July, 1951 AIR1952BOM84
[19] **S**hayara Bano vs Union Of India And Ors. Ministry Of Women (2017) 179 ALLINDCAS 104 (SC)
[20] N Kasliwal and R Gandhi, 'Hurdles in the Implementing of UCC in India' (2022) 4(3) Indian Journal of Law & Legal Research 1.
[21] A Johar, 'Dynamic Framework: India's Constitutional Governance, Separation of powers, and Judicial Activism' (2023) 3(2) Indian Journal of Integrated Research in Law 1.

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In recent landmark cases, judicial activism has begun to challenge this status quo; thus, personal laws are gradually coming to be more aligned with constitutional values. But the general challenge remains: how to reconcile the protection of cultural and religious diversity with the constitutional mandate for equality and justice, especially for women. The continuing debate on the personal laws and the Uniform Civil Code is one of the burning issues at the intersection of gender equality, religious freedom, and social reform, shaping the future fabric of India's law and society.

CHAPTER II

Most of these personal laws predate the so-called Indian system and can be traced back to the first organized pattern under the Mughal Empire, which marked the fruitful era of legal pluralism. Under the Mughal Empire, the religious communities were self-governing in marriage, inheritance, and family life according to their customs and religious beliefs. Sharia was the governing law for Muslims,[22] while the Hindus were on customary practices[23] supplemented by scripture as their central guiding principle, commonly interpreted and administered by local priests or community elders. This decentralized approach provides cultural autonomy, but counter-changes to long-grained patriarchal norms based on religion and custom would be rendered difficult. The rights of women in respect of marriage, divorce, or inheritance are usually subordinate to the rights of men in such matters, showing that they are part of the same vast patriarchal structure.

The Personal laws in India grew up as the component of the larger social reform and contestation against what has been traditional hegemony.[24] Much of Mughal and colonial traditions relegated religious customs into matters of marriage, inheritance and family as one enters the post-colonial period. However, there is coming an increased trend toward constitutional commitment to equality and dignity of women today. This finds its manifestation in increasing legislative interventions purportedly against "deeply imbedded gnawing gender-based injustices."

The Commission of Sati (Prevention) Act, 1987,[25] contained landmark provisions meant to intervene against these practices. Since the terrible sati of Roop Kanwar in Rajasthan was

[22] T Johnson and M A Sergie, 'Islam: Governing Under Sharia' (Council on Foreign Relations 2014) 25.
[23] P Osei-Tutu, L K Brobbey and F K Agyei, 'Customary Authorities and Decentralized Natural Resource Management: A Review' (2021) 125 Geoforum 185
[24] A Bailin, 'From Traditional to Institutionalized Hegemony' (2001)
[25] N Ahmad, 'Dying for the Dead: A Socio-Legal Examination of Sati in India' (2008) 9 Asia-Pacific Journal on Human Rights & Law 1.

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sensationalized by the media, it was an act indicative of an unmistakable state response to the survival and even glorification of the practice of sati-the burning alive of widows, irrespective of the question of consent. Here, the focus is not just on human rights violations involving the consummation of the act of sati. It also takes into account the exaltation of the act by any means-whether in rites and ceremonies, in the formation of temples, or in the creating of trusts in the name of the woman upon whom sati was performed. The Act enables district magistrates to prevent future incidents and in the removal of all structures set up to glorify sati, as well as the seizure of associated property, thus indicating a thoroughgoing approach towards prevention and deterrence.

Thus, according to the preamble of the Act, sati has been characterized as "in actual senses revolting to the feelings of human nature and is nowhere enjoined by any one of the religions of India as an imperative duty."[26] The very tone of the language indicates that it could not import any form of religious or cultural justification by the state in opposition to such harmful practices following colonial laws. The Act broadly states that its provisions will prevail over any customs or personal laws to the contrary[27]. This is thus a clear assertion of constitutional values over customary practices.

The arrival of British colonial rule brought a watershed into the evolution of personal law since the Conquest. The British sought to formalize and keep together regional system and to give the people some practices within their social systems, without actually bringing as much as possible into public legal bounds their personal affairs. The codification of personal laws for the different communities of faith was the outcome of legal dualism[28] in favor of the introduction of public law.

While it has not been free from unintended consequences, such a codification brought with it the force of statutory law[29] in the case of newsreels, thus making more difficult the dismantling of certain patriarchal norms that went hand in hand with religious and customary practices. The effects of gendered inheritance and marital rights, being exploited mostly against women, were codified in the Hindu Succession Act and the Application of the Shariat Act, with the colonial state unwilling to interfere with religious customs, thus legitimizing many forms of

[26] Cox, J. (2002). *Imperial fault lines: Christianity and colonial power in India, 1818-1940*. Stanford University Press.
[27] A Perreau-Saussine and J B Murphy (eds), *The Nature of Customary Law: Legal, Historical and Philosophical Perspectives* (Cambridge University Press 2007).
[28] Hendley, K. (2022). Legal dualism as a framework for analyzing the role of law under authoritarianism. *Annual Review of Law and Social Science*, *18*(1), 211-226.
[29] C Varga, *Codification as a Socio-historical Phenomenon* (2nd reprint edn, Szent István Társulat 2011).

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discrimination against women, such as the omission of daughters from coparcenary property in Hindu law and lesser inheritance shares for women under Muslim law. Overall, if legal arguments and reform agitations did exist during this time, the primary patriarchal structure went unchanged.

Post-independence in 1947, India adopted a constitution sought to balance respect for cultural and religious diversities with a commitment to equality and justice. These Constituent Assembly members recognized the right of religious communities to dictate their own affairs in matters of personal law (Articles 25-28), while they ensured that equality, non-discrimination, and individual liberty are enshrined in Part III (Fundamental Rights).

The Indian Constitution, while engaging in the task of securing social and economic justice for all its citizens and promoting equality and liberty, includes a very intelligent framework of fundamental rights that incorporates Part III. Article 13 is the very basis that says any "law" inconsistent with or in derogation of these fundamental rights shall be void to the extent of such inconsistency.[30].

Article 13(3)(a) defines the term "law" in a comprehensive way by including any ordinance, order, bye-law, rule, regulation, notification, custom, or usage having the force of law in the territory of India. However, the status of personal laws that govern marriage, divorce, inheritance, and matters in the family on the basis of religion, under Article 13, have created much ambiguity and controversy over the years.

These laws in India are more based on religion and culture; therefore, keeping them protects India's pluralistic structure[31]. The interaction between them and the constitutional guarantees of equality, non-discrimination, and personal liberty is fraught with tensions. The very essence of this legal ambiguity lies in the question: Are personal laws "laws" under Article 13(3)(a) so as to be subject to constitutional test? The links between the present-day relevance-challenges to the continuing applicability of the Narasu Appa Mali precedent are very much related to the efforts of the union government to harmonize personal laws with constitutional values.

The direct application of the Narasu Appa Mali decision, made in 1951, contended personal laws as "not being a law" within the scope of Article 13(3)(a) of the Constitution, which keeps them out of the direct constitutional purview for infringement of fundamental rights-witnessing difference in judicial approaches: Statute law and Customs are undone against fundamental

[30] P Kumari, 'An Analysis of Article 13 of the Indian Constitution and Personal Laws' (2022) 4(2) Indian Journal of Law & Legal Research 1.

[31] R Pradhan and K Visweswaran, 'Ethnicity, Caste and a Pluralist Society' in Kamala Visweswaran (ed), *Perspectives on Modern South Asia: A Reader in Culture, History, and Representation* (Wiley-Blackwell 2011) 100.

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rights, but personal laws are generally rendered free, as they emanate from religious and cultural traditions.

This theory is often scrutinized for being obsolete and out of tune with the Constitution, which strives to ensure that all citizens would be equal and have dignity, irrespective of their gender or religion. Consequently, it has added confusion to the law which has brought hurdles in the path of reform in personal laws especially on marriage, divorce, and inheritance-areas where patriarchalism is most solidly entrenched and women's autonomous exercise is constantly curtailed. Occasionally, courts resort to an "approach for non-interference" leading to different, at times contradictory, judgments on similar queries concerning different communities.

This scenario has progressed, and even so, the issue is still begs the question: Do personal laws, which govern marriage, inheritance, and family matters based on religious customs, qualify as "law" under Article 13 and thus subject to constitutional scrutiny? Subsequent to that, into even greater horizons where the Supreme Court has derided the Narasu Appa Mali judgment, such as in Sabarimala temple entry case[32], where the Court held that customs and practices-even if ancient and religious-cannot violate constitutional morality or the basic structure of the Constitution that the entry of women to Sabarimala is unconstitutional because it violates the fundamental rights that grant equality and dignity to an individual from one another. The case reinforced the fact that religious practices must also meet the requirements of dignity and equality, making the Court show readiness to sacrifice personal rights for traditional rights as long as it was conscious of all-encompassing, generalized cultural structures. Simultaneously, it underlaid the still-persistent tussle between the religious autonomy and the constitutional values,[33] which is regularly recurring in the Indian legal scenario.

Legal scholars and activists have gradually condemned the doctrine at Narasu Appa Mali as totally archaic and therefore completely contradictory to the progressive spirit of the Indian Constitution[34]. The aim of composing such a Constitution was to create a society in which equal rights and protections under the law would be available to everyone, irrespective of their gender, caste, or religion. By continuing to insulate personal laws from constitutional scrutiny, the very purpose for which this system was formed can now only be achieved in part while further lock-stepping toward entrenched forms of systemic discrimination particularly against women and the marginalized.

[32] Indian Young Lawyers Association & Ors vs. The State of Kerala & Ors. AIRONLINE 2018 SC 243

[33] R Arneson and I Shapiro, 'Democratic Autonomy and Religious Freedom' in Ian Shapiro and Russell Hardin (eds), *Political Order* (Nomos XXXVIII, New York University Press 1996) 365.

[34] P I Bhat, 'Progressive Interpretation of the Constitution: Ideology, Application and Efficacy' (2021) 3 CMR University Journal of Contemporary Legal Affairs 30.

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The evolving social context in India provides further pressures on the tension between competing ideas of gender justice, individual autonomy[35], and uniform application of rights. The constitutional protection of personal laws has weakened any attempts to ensure that these laws evolve according to the demands of modernity and international human rights standards. Ramifications of the proposed Uniform Civil Code reform, whether by court or legislature, invite resistance and backlash from religious and cultural groups who see reform as a direct assault on their identity and autonomy. Therefore, it is not simply a legal challenge but genuinely social and political, to be handled in the most sensitive manner in a pluralistic nation such as India.[36]

Consequently, this sets off a chain of precedential consequences. It has most frequently been cited in those cases to justify the insulation of personal laws from constitutional challenge, especially when these laws come into conflict with the idea of equality and non-discrimination. Thus, many gender-discriminatory practices related to inheritance and marital relationship patterns persisted in being protected as religious freedom and culture autonomy. In fact, the recent application of the Narasu Appa Mali precedent is now pinching the judicial approach with inconsistencies, making it highly difficult to even think of reforming personal laws in terms of constitutional values[37]. The critics thus argue that it belongs to a bygone era and is wholly incompatible with the present scenario.

A fresh wave of judicial interventions, kicked off with the Shayara Bano v. Union of India (2017) case, blurred the line between acceptable customary practices and flagrant violations of the Constitution. Gender justice upheld in this case found its way into the courts, for the aberration created by State of Bombay v. Narasu Appa Mali could not be furthered anymore. This brought gender justice-a right that may not be sacrificed on the altar of religious freedom-into focus and developed so as to challenge discriminatory practices in other personal laws; it has thus indicated an inclination to scrutinizing a personal law with the Constitution, particularly where fundamental rights are violated.

This legal uncertainty reflects a broader socio-legal context marked by tensions between cultural preservation and the pursuit of gender justice. Personal laws, by virtue of their religious and cultural origins, often reinforce patriarchal norms and perpetuate cycles of inequality,

[35] N Legate and R M Ryan, 'Individual Autonomy' in Alex C Michalos (ed), *Encyclopedia of Quality of Life and Well-Being Research* (Springer International Publishing 2024) 3505.
[36] C Young, *The Politics of Cultural Pluralism* (University of Wisconsin Press 1979).
[37] T Y Khabrieva, 'Constitutional Reforms in the Modern World' (2016) 86 *Herald of the Russian Academy of Sciences*

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particularly for women in matters of family law.[38] Although growing judicial intervention, particularly by the Supreme Court, has recently questioned the validity of some of these laws, meaningfully injuring women, the curve appears to be beginning to reverse.

In Shayara Bano v. Union of India (2017), the Supreme Court struck down the practice of instant triple talaq, holding it unconstitutional and violative of fundamental rights under Articles 14 (equality), 15 (non-discrimination), and 21 (right to life and personal liberty). The Court reasoned that since the practice was codified under the Shariat Act, 1937, it was subject to constitutional scrutiny-a significant departure from the Narasu Appa Mali shield. The judgment not only extinguished an inhuman practice affecting the lives of countless Muslim women but also provided the basis for attacking other discriminatory practises sustained by personal laws.

The ambivalent status of personal laws under Article 13 is much more than a technical legal issue; it reveals deeper societal tensions between cultural preservation and the pursuit of gender justice. Personal laws, by their very religious and cultural origins, perpetrate patriarchal standards and deny women autonomy, especially with regard to the issues of marriage, divorce, and inheritance. These have also alarming practical ramifications.

The above-mentioned case, Joseph Shine v. Union of India (2018) is perhaps the most important judgment in India in striking down the section 497 of the Indian Penal Code which reflected an intrinsically unequal treatment of men and women with respect to each of them under the law, making adultery a crime. "A law which has been drawn on stereotypical grounds with respect to gender is not constitutionally purport[39]" clearly marks the strong learn that a married woman is not the property of her husband. With this ruling, the Court transferred itself to a public domain with much progressive outlook, ready to appraise laws upholding patriarchal norms and gender inequality. Thus, the evolution believed that the top court had matured into revisiting its perception of laws sustaining the so-called paternalistic order.

CHAPTER III

More than a legal or a structural political arrangement, patriarchy in India is an extremely integrated internal socio-cultural system of shaping every aspect of individual and collective life; it survives through socialization and institutional practices with a network of layers

[38] Z Mir-Hosseini, 'Moral Contestations and Patriarchal Ethics: Women Challenging the Justice of Muslim Family Laws' in Robert W Hefner (ed), *Shari'a Law and Modern Muslim Ethics* (Indiana University Press 2016) 65.
[39] R Cook and S Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (University of Pennsylvania Press 2011).

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perpetuating the dominance of males and subordination of females for generations.

From early childhood, an individual is socialized into rigid, predefined gender roles wherein the boy is assigned the roles of a provider, protector, or authority while the girl is ascribed roles of caregiver, homemaker, and dependent. This socialization occurs through family upbringing, educational curricula, religious teachings, narratives in media, etc., which reiterate the conventional conception of masculinity and femininity. Boys are inculcated to be assertive, competitive, and emotionally restrictive as girls are trained to be nurturing, compliant, and home-oriented.

The social customs of arranged marriages, dowry, and inheritance serve to continue to entrench this gender role by favouring men for lineage and authority. Thus, in arranged marriages, the focus is usually on women being good wives and mothers, thus Illing their own aspirations for the sake of family expectations. The dowry system treats marriage as an economic transaction, thereby reinforcing the valuation of women in comparison to men. Inheritance systems hitherto have favoured male heirs with the result that the property and wealth stay within male lines for the continuous economic dependency of women.

Ambivalent sexism-both hostile and benevolent toward women-microscopically governs marriage and family in India.[40] Hostile sexism manifests discrimination quite overtly as restrictions on women's mobility, as well as control over their sexuality, and exclusion from decision-making. For example, it may lead to benevolent sexism, which takes the form of protective or idealizing attitudes because they are still two methods of Women's dependence and subordination within society-open to the notion that "women are to be cherished, but only within the home." These attitudes are very much integrated with social practices, media narratives, and even legal frameworks that subtly legitimize such gender inequalities and make them stronger against change.

The parallel reign of patriarchal norms, breadwinner-homemaker dynamics, and ambivalent sexism is deemed largely responsible for women's autonomy and decision-making power within marriage and family structures being curtailed. Research shows women's household decision-making remains limited, with autonomy strongly influenced by education and employment status. Women in the families are not permitted to raise their opinions on matters ranging from financial planning to reproductive choices, further reducing their confidence, independence, and self-esteem. While some signs of improvement exist-such advances being particularly felt among more educated and employable classes-women in the Indian context

[40] P Glick and S T Fiske, 'Ambivalent Sexism' in Mark P Zanna (ed), *Advances in Experimental Social Psychology*, vol 33 (Academic Press 2001) 115.

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remain very much absent from significant participation in family decision-making processes. Their behaviour only serves to keep a large number of women dependent upon the family and keeps alive different manifestations of inequality.

The "Golden Triangle" of Rights and the Challenge of Personal Laws in India

Individual liberties in India are, primarily, safeguarded in the Constitution, particularly under Articles 14, 19 and 21. These rights are sometimes referred to as the 'Golden Triangle' of rights.[41] Article 21 states that no person shall be deprived of his life or personal liberty except by the procedure established by law, for the broad protection of freedoms which include not only physical liberty but also privacy, dignity, and autonomy.

Over the years, the Supreme Court has expanded the interpretation of "personal liberty" to cover many rights which are very much an essence of life. For instance, in Kharak Singh v. State of U.P. (1964),[42] The personal liberty is thus curtailed by the unwarranted interference of the State in private life, the whole aspect being judicially reviewed in Maneka Gandhi v. Union of India..[43] The ruling recognized the necessity for all laws that infringe liberty to satisfy the criteria of fairness and reasonableness as per Articles 14 and 19; in short, these rights were interdependent and mutually reinforcing.[44]

The right to privacy, now recognized as a fundamental right after the landmark Justice K.S. Puttaswamy v. Union of India (2017)[45] The judgment further strengthens individual liberties by protecting personal information and autonomy from arbitrary state action;

however, the equation between individual liberties vis-a-vis personal laws in India remains complex and contested. Personal laws govern family aspects such as marriage, divorce, and inheritance, and these laws are entirely based on religious and cultural traditions.

Thus, there is a possibility that some personal laws may conflict with the broader guarantees of liberty, equality, and non-discrimination' that the Constitution offers, especially for women and other marginalized sections of society. While on the other hand, coexistence of the Constitution with this immense cultural and religious diversity in India is a fact. Articles 29 and 30 specifically guarantee the rights of minorities to preserve their distinct language, script, and culture, and to establish and administer educational institutions of their choice; these

[41] A Chakraborty, 'The Golden Triangle of the Indian Constitution' (2021) 2 Jus Corpus Law Journal 1068.
[42] Kharak Singh vs The State Of U. P. & Others on 18 December, 1962 AIR 1963 SUPREME COURT 1295
[43] Maneka Gandhi vs Union Of India on 25 January, 1978 1978 SCR (2) 621
[44] Kumar, N. (2022). Equality before Law and Equal Protection of Laws under the Constitution of India. *Issue 3 Indian JL & Legal Rsch.*, *4*, 1.
[45] Justice K.S.Puttaswamy(Retd) vs Union Of India on 26 September, 2019 (1) SCC 1, (2018) 12 SCALE 1

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provisions are intended to ensure that the pluralistic fabric of India is preserved and that minority groups are not assimilated or marginalized by the majority culture.

The Supreme Court has emphasized time and again that these two sets of rights - individual liberties and cultural/religious ones - do not exist in mutual exclusion, rather they must harmonize with each other. For example, the Court has said that state regulation or restriction on other practices manifestly discriminatory to others or violative of public order does not mean that the same state should not respect the essential and integral aspects of religious and cultural practices, as evidenced by cases where the judiciary upheld the right of minorities to set up their own schools or maintain their language while said rights could not be taken in derogation of structure fundamentals of equality and non-discrimination.

Moreover, the Constitution and the courts have recognized that cultural and religious rights are not absolute. The state has the power-and the responsibility-to intervene when practices violate fundamental rights or the dignity of individuals.[46] Legislation and court rulings against these practices, such as untouchability, child marriage, and triple talaq, reflect this desire for a balanced respect for tradition and the constraints of justice and equality.

India's ongoing discussions gain several helpful insights from a comparative study of other pluralistic legal systems. In Canada, law has always recognized indigenous traditions interspersed with common law. However, the Canadian Charter of Rights and Freedoms imposes a hierarchy, where above all, fundamental rights would overrule customary or religious practices. Canadian courts take a "cultural rights with limits" approach, whatever may be the practice, yet safeguarding elementary rights. The coming into consideration of arbitration for religious matters remains in the area of judicial review, subject to the Charter provisions and values.

Another interesting case would, of course, be South Africa. The post-apartheid constitution explicitly recognizes both customary law and religious personal laws. Section 15 of the Constitution protects religious freedom[47], and section 9 guarantees equality. The Constitutional Court has repeatedly stated that customary law must be developed in accordance with constitutional values, while legislative measures have been enacted-in particular, the Recognition of Customary Marriages Act-to ensure gender equality in traditional marriage practices.

The millet system in Israel allows for the existence of many religious courts, which some

[46] J T Johnson, 'Humanitarian Intervention, the Responsibility to Protect, and Sovereignty: Historical and Moral Reflections' (2014) 23 Mich St Int'l L Rev

[47] L du Plessis, 'Freedom of or Freedom from Religion: An Overview of Issues Pertinent to the Constitutional Protection of Religious Rights and Freedom in the New South Africa' (2001) BYU L Rev 439.

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communities may use to regulate and govern marriage and divorce exclusively. In principle, women's rights, especially in matters of divorce, have continually suffered when examined in the light of the Israeli-Jewish legal system. The Supreme Court in Israel has intervened numerous times in Favor of human rights challenges posed by religious authorities, creating a tension akin to that which has arisen in India concerning the relationship between religious autonomy and constitutionally guaranteed rights.

CONCLUSION

The evolution of personal laws in India is a reflection upon the continuing fight of the nation in bringing together the rich array of its own cultural mosaic and the universal desires for justice and equality. As symbols of the community identity and cultural autonomy, these laws have traditionally resisted all forms of legal homogenization. But at times this very resistance has been maintained at a serious cost-on the one hand perpetuating patriarchal structures and on the other sustaining those exclusionary norms that have denied countless men and in particular countless women the full measure of their rights and dignity.

And thus, what unfolds is a paradox that defines the heart of the inequalities within India's legal pluralism: the same frameworks that allegedly protect diversity can also reproduce injustices. The evolving role of the judiciary-no longer a passive observer but a truly active agent of social transformation-marks the beginning of a new chapter in this narrative. Courts interrogate the justice of tradition and dare even the most sacrosanct customs within constitutional standards, nudging personal laws toward a future in which they no longer serve as relics of a dead past but rather as living instruments moving in the direction of progress.

Neither is the path forward uncomplicated nor is it a simple forward. Every reform movement faces the twin forces of hope and resistance: hope among those who promise to become emancipated by change, and resistance in those who fear that identity might erode. The challenge, then, is not merely legal but profoundly ethical and political-how to honor pluralities in India's past while forging an un-equalizable future for sanguinary traditions. It is about personal laws and the country, as a nation that is in an eternal tussle between memory and modernity, a country that is always negotiating between collective and individual. Indeed, the mark of a true democracy for India may lie in that very transforming of the cherished into the vehicles for justice, so that cultural autonomy and individual freedom do not become antagonists in the continuous fight for a just society.

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