Balancing Tradition and Transformation: A Study of Indian Judiciary's Post-Colonial Responses to Reform Personal Laws to Ensure Gender Justice

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Abstract

This paper analyses the role of Indian judiciary in accommodating the clash between personal laws and the constitutional principles of gender equality.

In this paper, there is analysis by keeping gender justice within the constitutional framework and pressing on the importance of article 14, 15 16 and 21, which talk about equality, non-discrimination and dignity, further the paper also dives into how India's international obligations under many instruments/conventions is undermined due to personal laws, This further creates an obligation to the country in its commitment to gender equality at both national and International level. This paper also speaks about how many constitutional provisions serve as the foundation for Indian judiciary to intervene in cases were personal laws are discriminatory.

This paper delves into aspects of dynamic role played by the Indian judiciary through many of its judgements where the courts have intervened to challenge the discriminatory practices. This paper further speaks about the progressive interpretation of fundamental rights like how the scope of article 21 was expanded from right to live in dignity to gender Justice. The paper further speaks about the limitations of Indian judiciary where the courts have shown limitations, particularly in cases of sensitive cultural practises, where the approach of judiciary is questionable when challenged with deep social customs.

The paper talks about the need for legal awareness among women and an effective approach between judiciary and legislature so that achieving gender justice in India becomes a balance

between respecting cultural diversity and upholding constitutional principles with the Indian judiciary, playing an important role in collaborating this dynamic process.

Introduction

Gender justice is one of the paramount considerations in any society. In a country like India, where patriarchal norms are strongly deep rooted and is being reaffirmed through cultural and religious traditions. Though India has emerged as an independent nation in 1947 from the colonial administration, it has inherited its patriarchal structure developed by cultural and traditional practices. During the colonial time, there were some movements towards achieving the goal of gender justice against the socio-cultural practices of subjugation of females. The movements for the abolition of sati and child marriage and for encouraging widow remarriage, female education, etc., are some of the glaring examples. The oppressive regime based on the religious and cultural traditions during the colonial administration have significantly influenced the mind of the makers of the Constitution of India. Hence, they have emphasised gender justice as one of the solemn goals of the Constitution of India. Ensuring gender justice is one of the herculean tasks faced by the Indian government in independent India. This is because religious and cultural practices also receive due recognition under the Constitution, and hence, bridging a balance between gender equality and cultural and religious traditions poses legal and social challenges. Nevertheless, with the support of Articles 14, 15, and 16 of the Indian Constitution, the Indian Government and, mainly, the Indian judiciary have made significant progress in creating a legal framework for reforming and implementing gender equality in various spheres. This paper examines the role played by the Indian judiciary in reforming the personal laws to ensure gender justice in the country.

Gender Justice: The Legal Imperatives

Gender justice calls for ensuring fair and equitable treatment, equality in opportunity, equal access to resources for all individuals, and socio-economic and cultural empowerment irrespective of gender. The elimination of oppressive regimes and patriarchal structures created by socio-religious-cultural traditions in the country is the key to achieving gender justice. The legal duty to take different measures to promote gender justice in our

country stems from the aspirations and ideals of the Constitution of India and the provisions of various international human rights and other instruments.

A. The Constitutional Commitments

The Constitution of India expressly declares in its preamble that 'we the people of India solemnly resolve to constitute India to secure the equality of status and opportunity to all its citizens. Therefore, one of the fundamental goals of the founding document of independent India is upholding gender justice. The preamble is an unenforceable part of the Constitution; however, it acts as an aid for the interpretation of various provisions of the Constitution and the judiciary has given due recognition to the objectives emphasised in the preamble[1].

Article 14 of Part III of the Indian Constitution guarantees all individuals the right to equality and equal protection of the law. It confirms a duty to the state to give equal treatment to all. In this context, no privilege or favour should be given to anyone based on gender. Article 14 also guarantees equal protection of law to all, regardless of gender. Non-discrimination is considered one of the essential facets of the right to equality. The right against non-discrimination is guaranteed under Article 15 of the Constitution of India. It states, 'The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them'. These provisions of the Constitution of India have laid a solid foundation for initiating various reforms to ensure gender justice. Therefore, the Indian judiciary has effectively used these articles in several cases to uphold gender justice[2]. Justice K. Ramaswamy in C. Masilamani Mudaliar & Ors v. Idol of Sri Swaminathaswami Thirukoil & Ors[3], highlighted that, 'The personal laws conferring inferior status on women is anathema to equality. Personal laws are derived not from the Constitution but from the religious scriptures. The laws thus derived must be consistent with the Constitution lest they become void

[1] Liav Orgad, The preamble in constitutional interpretation, I•CON (2010), Vol. 8 No. 4, 714–738
[2] Sri Sri Mahadev Jiew v. Dr B.B. Sen, AIR 1951 Cal 563
[2] Anjali Roy v. State of West Bengal AIR 1952 Cal 825
[2] Rani Raj Rajeshwari Devi v. State of Uttar Pradesh, AIR 1954 All 608
[2] Radha Charan Patnaik v. State of Orissa, AIR 1969 Ori 237 Orissa
[2] Uma Sinha v. State of Bihar, 1975 LAB IC 637
[3] AIR 1996 SC 1697

under Article 13(2)[4] if they violated fundamental rights'. Hence, every law, including customary and personal laws in force in India, must follow the constitutional vision of gender equality, and the judiciary is vested with the task of overseeing to ensure such laws are not perpetuating any injustice.

B. International Obligations

India is a signatory to several international human rights and other instruments. Most human rights treaties guarantee the right to equality and the right against discrimination as a fundamental human right. The Universal Declaration of Human Rights, 1948, in its Article 2, prohibits discrimination on the grounds of gender; Article 7 guarantees the right to equality for both genders; and Article 16 recognises equal rights in marriage. The International Convention on Civil and Political Rights, 1966, in Article 3, imposes an obligation to ensure equal rights to men and women. Article 26 guarantees the right against discrimination and equality before the law. **Further, the International Covenant on Economic, Social, and Cultural Rights, 1966, in its Article 2, guarantees the right against discrimination; and Article 3 confers equal rights to men and women. Most importantly, the** Convention **on the Elimination of All Forms of Discrimination Against Women, 1979, imposes several obligations to the states to ensure gender equality at the municipal level. Article 2 states that:**

> **States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:** (a) To embody the principle of the equality of men and women in their national level; (b) To adopt appropriate legislative and other measures; (c) To establish equal legal protection of the rights of women; (d) To refrain from engaging in any act or practice of discrimination against women; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

[4] It provides that, 'The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void'.

(g) To repeal all national penal provisions which constitute discrimination against women.

Further, Article 5 also imposes an obligation to eliminate social and cultural practices which are against gender equality. It provides that:

States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Other international instruments such as the Convention on the Elimination of All Forms of Racial Discrimination[5]; Convention on the Rights of the Child[6]; Convention on the Rights of Persons with Disabilities[7]; **ILO Equal Remuneration Convention, 1951; ILO Discrimination (Employment and Occupation) Convention, 1958; Beijing Declaration and Platform for Action (1995); and Sustainable Development Goals, 2015[8], etc. also obliges the state parties to ensure gender justice in their municipal legal systems. India's international and constitutional commitments have significantly influenced the country's judicial process in reforming personal laws to advance gender justice.**

Judicial Reforms: The Landmark Judicial Pronouncements

The protection of gender justice depends on personal law reforms since, in India, religious customs are frequently used to determine how to handle situations involving marriage, divorce, inheritance, and custody. Historically, a great deal of these laws has reinforced gender

[5] **Articles 1, 2, 4 & 5**
[6] **Article 2**
[7] **Articles 3, 4, 5 & 12**
[8] Goal 5

inequality by ingraining discriminatory patriarchal attitudes against women. To abolish practices that promote gender inequality, the legislature of independent India enacted significant changes to personal laws. The judiciary backed this legislative intervention and upheld the legislation. So also, the judiciary has invalidated several personal law provisions which perpetuate gender inequality in the country. Initially, the mandates as per Articles 14 and 15 were the driving force for such an active role of the judiciary, but subsequently, the judiciary has given expansive interpretation to Article 21 as well as referred to international human rights instruments to introduce reforms in personal laws.

The inclusion of gender-specific rights under Article 21 of the Constitution of India is considered an important milestone in ensuring gender justice in the country. Article 21 of the Constitution guarantees the right to life and personal liberty to all. Although gender equality is not explicitly mentioned in Article 21, the Supreme Court of India has interpreted it widely and developed gender justice jurisprudence.

The Hon'ble Bombay High Court in Arati Durgaram Gavandi v. Managing Director, Tata Metaliks Limited[9], emphasised that:

> The right to gender equality is intrinsic to the right to life under Article 21 of the Constitution. The right to life comprehends the right to live with dignity. An affront to or the invasion of gender is destructive of the right of every woman to live with dignity. Article 15 of the Constitution which contains a prohibition inter alia against discrimination by the State on the ground of sex is an emanation of that right. The provisions of the Constitution recognize gender equality as a fundamental right. Gender equality in all its dimensions is a basic human right which is recognized by and embodied in the provisions of the Constitution. The broad sweep of the human right to gender equality traverses every facet of the position of a woman in society. The right comprehends the preservation of the dignity of women. At a basic level, gender equality postulates protection of women against all those practices which invade upon the dignity of being[10].

[9] MANU/MH/0936/2008
[10] MANU/MH/0936/2008

The Indian Constitution's protection of the right to practise one's religion may potentially conflict with the principles of gender equity. Sometimes, patriarchal standards that support gender inequality are justified in the name of religious freedom. But as the court has made clear in several decisions, a religious activity is only protected under Article 25 if it meets the criteria of an essential religious practice, which is a practice that is necessary for the religion to exist. Religious practices that violate gender equality are typically not seen as fundamental. Therefore, the right to religion guaranteed under Article 25 does not pose a significant threat while introducing measures in personal laws for ensuring gender justice. This overriding nature of gender equality was highlighted in the case of Aaqil Jamil and Others v. State of U.P. and Another[11]. The Hon'ble Court observed that, 'Fundamental rights (Articles 14, 15, 16, 21 and 22) have got overriding effect over Articles 25 and 26 and Personal Law; either it is Hindu or Muslim or any religion. No person can be persecuted, tortured, humiliated or dishonoured in the garb of Personal Law. Nothing can be done which may affect dignity and quality of life of man or woman under the garb of Personal Law'. Further the Court continued, 'Concept of equality enshrined in Article 14, concept of non-discrimination on the ground of sex etc. enshrined in Article 15(2) and the concept of right to life and personal liberty which includes the right to live with dignity as enshrined in Article 21 read with preamble of the Constitution, are the foundation and the basic features of the Constitution. Breach of any of these, by any law or practice, shall render such law or practice to be unconstitutional. Whether it is collective right of citizens or individual right, both are protected by philosophy and ethos of the Constitution. In the garb of Personal Law, citizens cannot be deprived constitutional protection. The equality clause is not merely the equality before the law but embodies the concept of real and substantive equality which strikes at the inequalities arising on account of vast social and economic differentiation'.

The post-colonial legal developments in India have been significantly influenced by various judicial pronouncements which aimed to guarantee gender equality. With these changes, gender discrimination will no longer be tolerated in personal laws about several matters. The case of Narasu Appa Mali v. State of Bombay[12], is one of the initial judicial pronouncements in the post-colonial rule in India, which supported a legislative reform to ensure gender justice. In

[11] 2017 SCC OnLine All 1325
[12] AIR 1952 Bom. 84.

this case, the constitutionality of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, was contested on the ground that it violated Articles 14 and 15. On behalf of those found guilty of bigamy in these trials, it was argued that the legislation that exclusively applied to Hindus and excluded Muslims is unconstitutional. However, considering the social scenario then existing, the Court observed that the state could legislate on any specific topic and that it did not violate Article 14 to solely include Hindus and make polygamy an offence for Hindu men without delving into the legality of the legislation.

Muslim women's maintenance after divorce has generated much discussion in both social and legal arenas. Muslim women have historically been at a disadvantage when it comes to post-divorce maintenance because of personal regulations derived from religious principles. Compared to the safeguards provided to women under other personal law systems, this has sparked concerns about gender unfairness and inequality. Though initially the judiciary was not ready to interfere with the plight of divorced Muslim women, there was a shift in this approach from the case of Bai Tahira v. Ali Hussain Fissalli Chothia and Others[13]. In this case, the Hon'ble Supreme Court dealt with the question of whether the liability to pay maintenance had ceased on account of Mehar's payment. The Court observed that:

> The payment of illusory amounts by way of customary or personal law requirement will be considered in the reduction of maintenance rate but cannot annihilate that rate unless it is a reasonable substitute'…. 'The proposition, therefore, is that no husband can claim under Section 127(3)(b) of Criminal Procedure Code, absolution from this obligation under Section 125 of the Code, towards a divorced wife except on proof of payment of a sum stipulated by customary or personal law whose quantum is more or less sufficient to do duty for maintenance allowance.

Subsequently in Fuzlunbi v. K. Khader Vali[14], the Court held that, 'The true position is that, if the divorced wife is able to maintain herself, the husband's liability to provide maintenance for her ceases with the expiration of the period of iddat but if she is unable to maintain herself after the period of iddat, she is entitled to take recourse to Section 125 of the Code'. Finally, in the Hon'ble Supreme Court of India rendered a historic decision in Mohd. Ahmed Khan v. Shah

[13] AIR 1979 SC 362
[14] (1980) 4 SCC 125

Bano Begum[15], regarding Muslim women's post-divorce support rights. The fundamental question dealt with by the Court was whether Muslim personal law rules, which restricted post-divorce maintenance to the iddat period (approximately three months), should take precedence over secular Cr.P.C. regulations regarding a Muslim woman's right to maintenance following a divorce. The Court observed that, 'there is no conflict between the provisions of Section 125 and those of the Muslim Personal Law on the question of the Muslim husband's obligation to provide maintenance for a divorced wife who is unable to maintain herself'. Through this pronouncement, the Court declared that the right to maintenance as guaranteed under Section 125 of Cr PC is available to Muslim women also, irrespective of the iddat period-related rule is there in Muslim personal law.

The judicial observations in this case have led to enacting the Muslim Women (Protection of Rights on Divorce) Act, 1986, to dilute the protection guaranteed in this case. Hence, the legislation's legality was challenged in the Danial Latifi & Anr. v. Union of India.[16] The Act, in its Section 3, confers liability to the husbands only for three months (iddat period) on divorce. The responsibility is shifted to the relatives and after to the Waqf Board. While declaring the Act is constitutional, the Court observed that the Act's definition of 'reasonable and fair provision' could not be limited to the three-month iddat period. The Court decided that the husband's obligation to support his wife's future financial requirements during the iddat period constitutes his responsibility. According to this view, the husband was required to make arrangements or make a lump sum payment during the iddat period to cover the divorced woman's requirements after that time and ensure that her long-term maintenance and financial stability were met. The significance of this case lies in its attempt to maintain constitutional provisions about gender justice and equality while striking a balance between the rights of Muslim women who have divorced and the precepts of Islamic law. Cases like Shamima Farooqui v. Shahid Khan[17]; Arshiya Rizvi v. State of U.P.[18]; and Shakila Khatun v. State of U.P.[19] etc., reiterated the position established in the Daniel Latif.

[15] AIR 1985 SC 945
[16] AIR 2001 SC 3958
[17] 2015 SCC OnLine SC 288
[18] 2022 SCC OnLine All 318
[19] 2023 SCC OnLine All 75

Further in Shabana Bano v. Imran Khan[20], the Court dealt with the question, 'whether a Muslim divorced wife would be entitled to maintenance from her divorced husband under Section 125 of the Cr.P.C. and, if yes, then through which forum?'. The Court held that, the divorced husband is liable to pay maintenance to his divorced wife, and 'a Family Court established under the Family Act shall exclusively have jurisdiction to adjudicate upon the applications filed under Section 125 of Cr.P.C.'

In each community, women have been placed at an inferior status and they are victims of male superiority. In order to ensure equal status to women in various religions, the Indian Constitution in Article 44 directs the State to give effect to a Uniform Civil Code. However, the State has not taken any step for adopting a Uniform Civil Code. In the absence of a legislative action, the judiciary has pointed out the urgent need for such a Uniform Civil Code. In Sarala Mudgal v. Union of India[21], a division bench of the Supreme Court consisting of Kuldip Singh and R.M. Sahai, JJ strongly advocated the introduction of a Uniform Civil Code in India. In this case the Supreme Court held that conversion of a Hindu male to Islam only for the purpose of contracting second marriage is in fact bigamy and circumvents Section 494 of Indian Penal Code. Such marriages have been declared as bigamous and void by the court. The court after referring to various precedents on the point, categorically held that till uniform civil code is achieved for all the Indian Citizens, there would be an inducement to a Hindu husband who wants to enter in to second marriage while the first marriage is subsisting to become a Muslim. Here the Court was pointing out the injustice done to the first wife, legally wedded[22]. Earlier, Justice O. Channappa Reddy in Ms. Jordan Diengdeh v. S.S. Chopra[23] also remarked the same in the following words, 'It is thus seen that the law relating to judicial separation, divorce and nullity of marriage is far, far from uniform. Surely the time has now come for a complete reform of the law of marriage and makes a uniform law applicable to all people irrespective of religion or caste. It appears to be necessary to introduce irretrievable break down of marriage and mutual consent as grounds of divorce in all cases'.

[20] (2010) 1 SCC 666
[21] AIR 1995 SC 1531
[22] Rout, Chintamani. (2013). Uniform Civil Code and Gender Justice: An Analysis Under Customary Law. International Journal of Research in Humanities, Arts and Literature. Vol. 1, Issue 5, pp. 29-34.
[23] AIR 1985 SC 935

Property is an essential resource for self-actualization, independence, and the realization of women's equality and dignity. In the seminal decision of Mary Roy v. State of Kerala[24], the Supreme Court upheld equal property rights for Christian women, therefore advancing gender equality. Under the Travancore Syrian Christian Succession Act of 1916 and the Cochin Succession Act of 1921, which granted women only a minor percentage of family property, Mary Roy challenged the discriminatory practices of the Syrian Christian community. Gender equality took a major stride forward when the Indian Succession Act, 1925 was upheld by the Court, which overruled these acts.

The Hindu Succession Act, 1956's Section 14(1) was deemed lawful by the court in Pratap Singh v. Union of India[25], concluding that the equality clause of the Constitution was not breached. Section 14(1) abolishes the limited ownership status of female Hindus and provides them full ownership of any property acquired before or after the Act's commencement. The Court stressed that the goal of this clause was to enhance the previously limited property rights of Hindu women. It dismissed Hindu men's complaints, pointing out that Section 14(1) was a special provision safeguarded by Article 15(3) of the Constitution, which was passed with women's interests in mind. The court decided in Pratibha Rani v. Suraj Kumar[26] that the woman's 'Stridhan' is her sole property and cannot be taken by her family or spouse.
The Bombay High Court considered the constitutionality of sections of the Hindu Succession Act, 1956 that give the father's family precedence over the mother's relatives in circumstances of intestate succession in Mamta Dinesh Vakil v. Bansi S. Wadhwa[27]. The Hindu Succession Act's Sections 8 and 15, which specify the laws of succession for Hindu men and women who pass away intestate (without a will), were specifically at issue in this case. Sections that gave preference to paternal relatives over maternal ones were ruled by the Court to be discriminatory and to be in violation of Article 14 of the Constitution's fundamental right to equality. The Court determined that there was no justification for these gender-based disparities, especially in the current environment where women are increasingly acknowledged as equal partners in the home and in society.

[24] AIR 1986 SC 1011
[25] AIR 1985 SC 1695
[26] AIR 1985 SC 628
[27] MANU/MH/1869/2012

In the 2020 case of Vineeta Sharma v. Rakesh Sharma[28], the Supreme Court upheld daughters' equal coparcenary rights in ancestral property as granted by the Hindu Succession (Amendment) Act, 2005. The Court made it clear that daughters, regardless of whether their father was still living at the time the amendment took effect, enjoy the same rights as sons.
The Supreme Court of India rendered a historic decision in the Shayara Bano v. Union of India[29] case, also referred to as the Triple Talaq case, declaring the practice of instant triple talaq (talaq-e-biddat) to be unconstitutional. The Supreme Court held that instant triple talaq is unconstitutional and arbitrary because it infringes on Muslim women's fundamental rights guaranteed under 14 & 15 and is not protected under Article 25, which upholds the right to freedom of religion.

The Hon'ble Supreme considering the operation of different personal laws in contrary to the constitutional vision of gender equality observed in the case of G. Sekar vs. Geetha & Ors.[30], that, 'in terms of Articles 14 and 15 of the Constitution of India, the female heirs, subject to the statutory rule operating in that field, are required to be treated equally to the male heirs. This Court further observed that, gender equality is recognized by the world community in general in the human rights regime'. In Pragati Varghese v. Cyril George Varghese[31], a full Bench of the Bombay High Court has struck down Section 10 of the Indian Divorce Act, 1926 under which a Christian wife had to prove adultery along with cruelty or desertion while seeking a divorce on the ground that it violates the fundamental right of a Christian woman to live with human dignity under Article 21 of the Constitution.

In Ms. Gita Hariharan & Another v. Reserve Bank of India and Another[32], the Section 6(a) of the Hindu Minority and Guardianship Act, 1956, which designated the father as a minor's 'natural guardian' and designated the mother as guardian solely in the event of the father's death, was discussed. It was highlighted that this clause is against the fundamental right to equality guaranteed by Article 14 of the Indian Constitution. The Court observed that, the word 'after' in Section 6(a) should not be used literally to indicate solely after the father's passing.

[28] (2020) 9 SCC 1
[29] AIR 2017 SC 4609
[30] (2009) 6 SCC 99
[31] AIR 1997 Bom.349
[32] AIR 1999 SC 1149

In its place, the court ruled that in the event that the father is unable, unwilling, or absent from his role as guardian, the mother may assume the role of a natural guardian.

The Supreme Court discussed whether marriages involving Muslim girls were included by the Prohibition of Child Marriage Act, 2006 in the case of M. Mohamed Abbas v. The Chief Secretary[33]. The case dealt with the legality of Muslim females under the age of eighteen being married, a practice that existed in some parts of India and is being claimed as protected under Articles 25 and 29. The Court held that the Prohibition of Child Marriage Act, 2006 does not violate the religious rights protected by Articles 25 (Right to Freedom of Religion) and 29 (Protection of Interests of Minorities) of the Indian Constitution and that it applies to all people, including Muslim girls.

The prohibition of entry into Sabarimala Temple on the ground of age of females was held unconstitutional in the case of Indian Young Lawyers Association v. State of Kerala[34]. In this case Rule 3(b) of the Kerala Hindu Places of Worship (Authorisation of Entry) Act, 1965 (KHPW Act), was challenged as unconstitutional as it prohibits women of menstruating age, i.e. between 10-50 years, from entering the Sabarimala Temple. Though it is argued that this prohibition follows Article 25 of the Constitution of India, the Court has given primacy to gender equality. An analysis of all these judicial pronouncements shows that judicial intervention in personal laws is essential to guaranteeing gender equality since they tackle gender disparities originating from customary and religious customs. These reforms upend patriarchal traditions, empower women, and safeguard their rights to marriage, inheritance, and maintenance by interpreting laws in light of fundamental values like equality and non-discrimination.

Critical Appraisal of the Judicial Role

By striking a balance between religious customs and constitutional rights, the judiciary has been instrumental in advancing gender justice and reforming personal laws in India. Even though the courts have eliminated several discriminatory practices, sometimes the judiciary

[33] AIR 2015 Mad 237
[34] **(2019) 11 SCC 1**

fails or finds it difficult to ensure complete reforms due to varying interpretations and opposition from conservative groups. For example, several of the Chotanagpur Tenancy Act, 1908 clauses were contested as unfair to women in the case of Madhu Kishwar v. State of Bihar[35]. The Court took a narrow view and held that 'under the circumstances, it is not desirable to declare the customs of tribal inhabitants as offending Articles 14, 15 and 21 of the Constitution and each case must be examined when full facts are placed before the court,' keeping the door open for such a challenge even though it declined to declare tribal customs as mass violations of fundamental rights.

The Indian Divorce Act of 1869's Sections 7 and 10 were challenged in another case, Reynold Rajamani and Anr v Union of India47, because they did not allow for divorce by mutual consent, in contrast to other personal laws that did, and that this was a violation of Article 14 of the Constitution. In this case, the Supreme Court declined to examine whether personal laws violate basic rights, stating that the government, not the courts, should enact the legislation.
Another judgment which revealed the limitation of the judiciary to interfere in matters of personal laws is the decision given in Ahmadabad Women Action Group & Ors. v. Union of India[36]. In this case different organizations had challenged through various Petitions a number of gender discriminatory aspects of personal laws - both codified and uncodified across religions. The Court, relying on the earlier decisions[37] held that the matters pertained to legislative action and the Court could not interfere. It is to be noted that no reasons were given as to why personal laws could not be susceptible to Part III of the Constitution[38]. So also, in Lily Thomas v. Union of India[39], while dealing with the validity of the second marriage contracted by a Hindu husband after his conversion to Islam, the Supreme Court clarified that the court had not issued any directions for the codification of a common civil code and that the judges constituting different Benches had only expressed their views in the facts and circumstances of those case. It appears that the apex Court in India, which showed great judicial

[35] (1996) 5 SCC 125
[36] (1997) 3 SCC 573.
[37] For example, Maharshi Avdhesh v. Union of India, 1994 SCC, Supl. (1) 713; Reynold Rajamani v. Union of India (1982) 2 SCC 474; Pannalal Pitti v. State of A.P. (1996) 2 SCC 498; etc.
[38] Pillai, Aneesh V. (2012). Dichotomy between Constitutional Morality and Public Morality: Judicial Stand in India. Paper presented at the Two-Day National Seminar on Judiciary, Ethics and Justice Delivery in India, organised by National Law University, Odisha.
[39] (2000) 6 SCC 224 (259).

activism initially with regard to the Uniform Civil Code, has taken a backward step with this clarification[40]. Thus, it can be seen that, in a country like India with multiple religions and different cultures, the task of ensuring gender justice by reforming the personal laws is a herculean task.

Conclusion

Judicial reforms of personal laws in India have been pivotal in addressing gender injustices, especially in matters of marriage, divorce, inheritance, and maintenance. The Indian judiciary has played a transformative role by balancing constitutional values of equality and non-discrimination with religious and cultural practices that often reinforce patriarchal norms. Through landmark rulings, the courts have progressively challenged discriminatory practices, such as in Shah Bano, Danial Latifi, and Sabarimala, while also calling for broader legislative reforms, like the need for a Uniform Civil Code. Despite these efforts, challenges persist due to resistance from conservative groups and the complexities of religious customs in a diverse society. Judicial activism has been crucial in shaping the discourse around personal law reform, yet its scope is limited when facing deeply entrenched traditions and inconsistent interpretations. In this regard the following recommendations are proposed:

1. Codification of Personal Laws: Personal laws across all religions should be codified to ensure uniformity and consistency in addressing gender inequality.
2. Introduction of Uniform Civil Code: A Uniform Civil Code could provide a unified legal framework ensuring gender justice, as envisaged in Article 44 of the Constitution.
3. Judicial Consistency: Courts should maintain consistent interpretations of personal laws in light of constitutional mandates on gender equality.
4. Increased Legal Awareness: Greater awareness programs for women about their legal rights within religious and personal law frameworks are essential to empowering them.
5. Legislative Backing: Parliament should enact comprehensive reforms in personal laws to ensure gender justice, reducing the judiciary's burden in striking down discriminatory practices.

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[40] Reddy, G. B. (2010). *Women and the Law*, Gogia Law Agency: Hyderabad (7th Edition). p.145