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DOMESTIC VIOLENCE, MAINTENANCE, AND WOMEN'S RIGHTS: A CROSS-PERSONAL LAW PERSPECTIVE IN INDIA

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I. ABSTRACT

*Domestic violence and women's right to maintenance constitute two deeply interlinked dimensions of gender justice in India. Despite substantial legal reforms and constitutional guarantees, Indian women continue to face systemic inequalities rooted in the coexistence of personal laws that differ across religious lines. The Protection of Women from Domestic Violence Act, 2005² represents a secular legislative attempt to address intimate partner violence and ensure protection, residence, and maintenance rights. However, this uniform civil protection contrasts sharply with the diverse personal laws that regulate marriage, divorce, and post-marital support within distinct religious communities, Hindus, Muslims, Christians, and Parsis. This research paper examines the structural, constitutional, and judicial complexities that arise from this pluralistic legal framework. It examines how personal laws intersect with constitutional principles of equality, dignity, and non-discrimination, and the extent to which Indian courts have harmonized religious autonomy with gender justice. Through doctrinal and analytical methodologies, the study reviews statutory provisions, landmark judgments, and scholarly literature to evaluate whether the Indian legal system has achieved substantive justice for women or continues to entrench religious and gender hierarchies. The paper argues that while progressive judicial interpretations, particularly in *Mohd. Ahmed Khan v Shah Bano Begum*³, *Danial Latifi v Union of India*⁴, and *Indra Sarma v V K V Sarma*⁵ have advanced the cause of women's rights within a constitutional framework; however, the absence of uniformity across personal laws continues to limit the effectiveness of these protections. The study concludes that only through harmonization of personal laws*

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² The Protection of Women from Domestic Violence Act 2005 (PWDVA)

³ *Mohd Ahmed Khan v Shah Bano Begum* (1985) 2 SCC 556

⁴ *Danial Latifi v Union of India* (2001) 7 SCC 740

⁵ *Indra Sarma v VKV Sarma* (2013) 15 SCC 755

within the constitutional fabric can India fulfil its commitment to gender equality and human dignity.

II. KEYWORDS

Domestic Violence, Maintenance, Women's Rights, Personal Laws, Gender Justice

III. INTRODUCTION

Domestic violence represents one of the most persistent and pervasive human rights violations in India. Despite social progress and legal reforms, millions of women across caste, class, and religious boundaries continue to face physical, emotional, sexual, and economic abuse within the private sphere of the family. Violence within the home has historically been treated as a private matter, protected by patriarchal traditions that prioritize family unity over individual justice. It was only through sustained activism by feminist movements in the 1970s and 1980s that domestic violence began to be recognized as a public issue, demanding state intervention.

The enactment of the *Protection of Women from Domestic Violence Act, 2005* (PWDVA)⁶ marked a watershed moment in Indian legal history. Unlike earlier penal provisions such as Section 498A of the *Indian Penal Code, 1860*⁷, which criminalized cruelty by husbands or their relatives, the PWDVA offered a civil remedy emphasizing protection, residence, and monetary relief. Importantly, it recognized relationships beyond marriage, including live-in arrangements and familial ties, thus broadening the scope of state responsibility in addressing gender-based violence.

However, the promise of gender justice under the PWDVA coexists uneasily with India's plural personal law system. Each major religious community, Hindu, Muslim, Christian, and Parsi, is governed by its own codified or uncodified set of family laws regulating marriage, divorce, and maintenance. These personal laws, while reflective of religious freedom under Article 25 of the *Constitution of India*⁸, often contain provisions rooted in patriarchal norms and unequal gender roles. As a result, a

⁶ *Protection of Women from Domestic Violence Act, 2005* (PWDVA)

⁷ *Indian Penal Code 1860*, s 498A

⁸ *Constitution of India* (1950), art. 25

woman's legal rights to maintenance, divorce, or protection against cruelty often depend on her religious identity rather than a universal standard of equality.

This dual legal system, secular in its constitutional ethos yet religious in its personal law application, creates profound tensions. While Articles 14, 15, and 21 of the Constitution⁹ guarantee equality, non-discrimination, and the right to live with dignity, personal laws sometimes contravene these guarantees under the shield of religious freedom. The Supreme Court has attempted to reconcile these contradictions by invoking the doctrine of constitutional morality, as seen in landmark judgments like *Shayara Bano v Union of India*¹⁰, which struck down instant triple talaq as unconstitutional.

Nevertheless, the persistence of religion-based personal laws continues to generate inequality in the spheres of maintenance and domestic rights. The Hindu law system provides for maintenance under the *Hindu Marriage Act, 1955*¹¹ and the *Hindu Adoption and Maintenance Act, 1956*¹²; Muslim women's rights are defined by a combination of Islamic jurisprudence and the *Muslim Women (Protection of Rights on Divorce) Act, 1986*¹³; Christian women rely on the *Indian Divorce Act, 1869*¹⁴; and Parsi women on the *Parsi Marriage and Divorce Act, 1936*¹⁵. Each of these frameworks embodies differing standards for what constitutes cruelty, maintenance, and protection.

The central challenge lies in determining whether India's fragmented personal law framework can coexist with its constitutional vision of gender equality and justice. This paper situates domestic violence and maintenance within this broader legal and constitutional context, seeking to assess the progress made and the gaps that persist.

IV. RESEARCH PROBLEM

The multiplicity of personal laws in India, while reflective of its cultural and religious diversity, has produced systemic inequities in the application of women's rights. In

⁹ Constitution of India (1950), art. 14, 15, and 21

¹⁰ *Shayara Bano v Union of India* (2017) 9 SCC 1

¹¹ The Hindu Marriage Act 1955

¹² The Hindu Adoption and Maintenance Act 1956

¹³ The Muslim Women (Protection of Rights on Divorce) Act 1986

¹⁴ The Indian Divorce Act 1869

¹⁵ The Parsi Marriage and Divorce Act 1936

the context of domestic violence and maintenance, these inequities manifest in unequal entitlements, procedural hurdles, and conflicting judicial interpretations. For example, while the PWDVA provides uniform civil protection against abuse, personal laws determine eligibility for maintenance and the duration or amount thereof.

This fragmentation raises critical questions:

- Can a secular statute like the PWDVA truly operate effectively within a system of religion-based personal laws?
- To what extent does the constitutional guarantee of equality override religious autonomy in personal law matters?
- And how has judicial activism influenced the reconciliation between the two?

The research problem thus lies in the inherent conflict between religious personal law autonomy and the constitutional commitment to gender equality. It also encompasses the question of whether Indian law can evolve a unified framework that balances respect for religious identity with universal protection of women's rights.

V. RESEARCH OBJECTIVES

The primary objective of this research is to critically analyse how domestic violence and maintenance are addressed under India's personal law regimes and to evaluate the compatibility of these frameworks with constitutional principles of gender justice.

Specific objectives include:

- To examine the statutory and judicial frameworks governing domestic violence and maintenance under Hindu, Muslim, and Christian personal laws, as well as secular statutes like the PWDVA and Section 125 of the Code of Criminal Procedure, 1973.
- To explore the constitutional provisions and judicial interpretations that have sought to harmonize religious autonomy with gender equality.
- To evaluate the effectiveness of the PWDVA as a secular, uniform law for women across religious boundaries.

- To propose reforms that ensure equal access to maintenance and protection rights irrespective of religion.

These objectives align with the broader constitutional vision of achieving substantive equality, as distinct from formal equality, recognizing that legal uniformity alone cannot achieve justice without addressing systemic social and cultural barriers.

VI. RESEARCH QUESTIONS

The following central questions guide the study:

- How do personal laws in India define and regulate women's rights to maintenance and protection against domestic violence?
- What are the key inconsistencies between personal laws and secular frameworks like the PWDVA?
- How has judicial interpretation advanced or constrained women's rights within the framework of religious personal laws?
- What constitutional principles govern the reconciliation of personal law autonomy with gender equality?
- What reforms are necessary to ensure a harmonized and equitable approach to women's protection across all religious communities?

Each of these questions aims to interrogate the tension between diversity and equality, religious freedom and constitutional morality, and tradition and reform, tensions that define the unique challenge of gender justice in India's pluralistic society.

VII. RESEARCH HYPOTHESES

Based on the above objectives and questions, this research is premised on the following hypotheses:

- India's personal law framework perpetuates gender inequality by maintaining religion-specific standards for maintenance and domestic protection.

- The Protection of Women from Domestic Violence Act, 2005, provides a uniform and secular remedy that advances women's rights but faces challenges of enforcement and awareness.
- The judiciary has played a crucial role in aligning personal laws with constitutional principles of equality and dignity, though without legislative uniformity, such efforts remain partial.
- A harmonized legal framework, grounded in constitutional morality and international human rights norms, is essential to ensuring that women's rights in India are universal and non-contingent upon religion.

VIII. RESEARCH METHODOLOGY

A. Nature and Scope of Research

This study employs a doctrinal and analytical legal methodology to examine the legal, constitutional, and judicial dimensions of domestic violence and maintenance in India. Doctrinal research involves the critical evaluation of existing statutes, case laws, and scholarly literature to interpret and systematize legal principles. Analytical methodology, in turn, is used to compare and contrast personal law frameworks, constitutional guarantees, and judicial trends to uncover inconsistencies and opportunities for harmonization.

The scope of the research is both descriptive and evaluative; it not only describes the state of existing laws and judicial decisions but also evaluates their effectiveness in realizing the constitutional vision of gender justice. The paper is confined to Indian jurisprudence but situates its analysis within broader international human rights standards such as the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, which India ratified in 1993¹⁶.

¹⁶ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted 18 December 1979, UNGA Res 34/180 (entered into force 3 September 1981)

B. Sources of Data

This research relies primarily on qualitative data derived from both primary and secondary sources.

- **Primary sources:** Include the Constitution of India, 1950; the Protection of Women from Domestic Violence Act, 2005; the Hindu Marriage Act, 1955; the Hindu Adoption and Maintenance Act, 1956; the Muslim Women (Protection of Rights on Divorce) Act, 1986; the Indian Divorce Act, 1869; and landmark Supreme Court and High Court decisions.
- **Secondary sources:** Include scholarly monographs, journal articles, commentaries, Law Commission Reports, and feminist legal critiques. Key authors referenced include Flavia Agnes, Kirti Singh, Archana Parashar, Indira Jaising, and Shabnam Hashmi.

C. Research Design

The research follows a comparative legal design, analysing how different personal laws, Hindu, Muslim, Christian, and Parsi, approach issues of maintenance and domestic protection, and how they compare with secular legal provisions such as the *Protection of Women from Domestic Violence Act, 2005*, and *Section 125 of the Criminal Procedure Code, 1973*.

The paper employs interpretative and critical methods to analyse how courts have interpreted these laws in light of constitutional principles, especially the right to equality (Article 14)¹⁷, the prohibition of discrimination (Article 15)¹⁸, and the right to life and dignity (Article 21)¹⁹. The research also incorporates a feminist jurisprudential lens, recognizing that law is not gender-neutral and that patriarchal biases often influence both legal interpretation and implementation.

¹⁷ *Constitution of India* (1950), art. 14

¹⁸ *Constitution of India* (1950), art. 15

¹⁹ *Constitution of India* (1950), art. 21

D. Limitations of the Study

While the study offers a comprehensive doctrinal and comparative analysis, it acknowledges certain limitations. First, it does not employ empirical field data, such as interviews or surveys, which could have provided insights into the lived experiences of women navigating these legal frameworks. Second, the study focuses primarily on statutory and judicial developments within India, without a detailed exploration of comparative international jurisdictions. Nonetheless, it aligns its findings with global human rights standards to situate the Indian experience within broader normative frameworks.

E. Significance of the Study

This research is significant for several reasons. It contributes to the discourse on gender justice and legal pluralism by systematically examining the intersections between personal laws, secular laws, and constitutional equality. It also underscores the role of the judiciary as a transformative institution capable of advancing women's rights despite legislative inertia. Moreover, by adopting a cross-personal law approach, the study highlights how religious identity continues to determine women's access to justice in a secular republic, urging policymakers toward harmonized reform.

IX. LITERATURE REVIEW

A. Overview

The literature on women's rights, maintenance, and domestic violence in India spans across constitutional law, family law, sociology, and feminist legal studies. Scholars have examined the structural roots of gender inequality within personal laws and the challenges posed by legal pluralism. This section synthesizes the major contributions of legal scholars, feminist theorists, and institutional reports that inform the present study.

B. Feminist Critiques of Indian Personal Laws

Flavia Agnes, one of India's foremost feminist legal scholars, has provided an extensive analysis of how personal laws reinforce patriarchal structures. In her book *Law, Justice and Gender: Family Law and Constitutional Provisions in India*,²⁰ she contends that all personal laws, whether Hindu, Muslim, or Christian, are built upon the patriarchal assumption that the family is a unit controlled by men. Agnes argues that the codification of Hindu personal law in the 1950s was hailed as reformist, yet it preserved unequal gender roles, such as the husband's financial dominance and the wife's dependence.

Similarly, Kirti Singh in *Separation and Divorce: A Gender Perspective in India*²¹ criticizes the legal system for treating maintenance as a benevolent concession rather than a woman's right. She observes that even when laws are ostensibly neutral, judicial interpretations often reflect societal stereotypes that valorize chastity, obedience, and sacrifice, thereby undermining women's economic independence.

Archana Parashar's *Women and Family Law Reform in India*²² provides a historical and sociological critique of legal pluralism, noting that postcolonial India has failed to reconcile the tension between respecting cultural diversity and upholding gender equality. According to Parashar, the state's reluctance to codify a Uniform Civil Code (UCC) stems from political considerations rather than genuine respect for religious pluralism.

C. The Evolution of Maintenance Rights and Judicial Trends

The right to maintenance has been one of the most contested areas in Indian family law. The case of *Mohd. Ahmed Khan v Shah Bano Begum*²³ marks a pivotal moment in this debate. The Supreme Court held that a divorced Muslim woman was entitled to maintenance under Section 125 of the *Code of Criminal Procedure*²⁴, a secular provision applicable irrespective of religion. This decision invoked severe political and religious

²⁰ Flavia Agnes, *Law, Justice and Gender: Family Law and Constitutional Provisions in India* (OUP 2011)

²¹ Kirti Singh, *Separation and Divorce: A Gender Perspective in India* (SAGE 2013)

²² Archana Parashar, *Women and Family Law Reform in India* (SAGE 1992)

²³ *Mohd Ahmed Khan v Shah Bano Begum* (1985) 2 SCC 556

²⁴ Code of Criminal Procedure 1973, s 125

backlash, leading to the enactment of the *Muslim Women (Protection of Rights on Divorce) Act, 1986*, which ostensibly curtailed the right.

However, in *Danial Latifi v Union of India*,²⁵ the Supreme Court interpreted the 1986 Act in a manner consistent with the Constitution, holding that Muslim husbands must make a reasonable and fair provision for their divorced wives extending beyond the *iddat* period. Scholars like Tahir Mahmood and Flavia Agnes have interpreted *Latifi* as a landmark in reconciling religious autonomy with constitutional equality.

In the context of Hindu law, the *Hindu Marriage Act, 1955*, and the *Hindu Adoption and Maintenance Act, 1956*, introduced statutory rights to maintenance, but these rights remained conditional. Courts have often required women to demonstrate moral purity or continued cohabitation to claim maintenance, criteria that reinforce patriarchal notions of female virtue.

Similarly, under Christian law, the *Indian Divorce Act, 1869*, historically imposed severe restrictions on women seeking divorce and maintenance, requiring proof of adultery coupled with cruelty or desertion. Feminist scholars argue that such provisions violate the spirit of Article 14 of the Constitution by imposing unequal burdens on women.

D. Domestic Violence: From Penal to Civil Remedy

Before 2005, domestic violence in India was primarily addressed through criminal law, notably Section 498A of the *Indian Penal Code, 1860*²⁶, which penalized cruelty by husbands or their relatives. While effective in principle, the provision was criticized for being narrowly defined and insufficiently victim-centered. The *Protection of Women from Domestic Violence Act, 2005* (PWDVA) marked a paradigm shift by introducing civil remedies emphasizing protection, residence, and maintenance rather than punishment.

²⁵ *Danial Latifi v Union of India* (2001) 7 SCC 740

²⁶ *Indian Penal Code 1860*, s 498A.

Indira Jaising and Monisha Behal's handbook on the PWDVA²⁷ elucidates the Act's conceptual foundations, emphasizing that it recognizes domestic violence as a violation of human rights and as a barrier to equality and dignity. The PWDVA's inclusive definition of "domestic relationship" extends protection to mothers, sisters, widows, and partners in live-in relationships, reflecting a progressive understanding of family structures.

In *Indra Sarma v V K V Sarma*,²⁸ the Supreme Court upheld the inclusion of women in non-marital relationships under the PWDVA, affirming that the law is intended to protect all women from domestic abuse regardless of marital status or religion.

E. Constitutional Morality and the Role of the Judiciary

The concept of "constitutional morality," as developed by the Indian judiciary, has become central to the debate on gender justice and personal laws. Constitutional morality demands that individual rights be protected even when they conflict with cultural or religious norms. In *Hiral P Harsora v Kusum Narottamdas Harsora*,²⁹ the Supreme Court struck down gender-specific clauses in the PWDVA, declaring that the law's protections cannot be confined by patriarchal assumptions.

Further, in *Shayara Bano v Union of India*,³⁰ the Court invalidated the practice of instant triple talaq, reaffirming that personal laws must adhere to constitutional principles of equality and dignity. These cases signify an ongoing judicial effort to bring personal law regimes within the ambit of constitutional scrutiny.

F. Conclusion of Literature Review

The literature consistently highlights that while legislative and judicial developments have improved the legal landscape for women, deep-rooted patriarchal values continue to inform the interpretation and application of personal laws. Legal pluralism, in this context, often functions as a barrier to equality, enabling religious

²⁷ Indira Jaising and Monisha Behal, *The Protection of Women from Domestic Violence Act: A Handbook* (LexisNexis 2012)

²⁸ *Indra Sarma v VKV Sarma* (2013) 15 SCC 755

²⁹ *Hiral P Harsora v Kusum Narottamdas Harsora* (2016) 10 SCC 165

³⁰ *Shayara Bano v Union of India* (2017) 9 SCC 1

doctrines to supersede constitutional principles. The next section will critically analyze how domestic violence and maintenance are treated across personal laws and secular statutes through an intersectional legal framework.

X. RESEARCH AND ANALYSIS

The study of domestic violence and maintenance within India's legal framework requires a comparative analysis of personal laws alongside secular statutes. Each religious community follows its own codified or uncoded family laws, resulting in diverse standards regarding marriage, maintenance, and protection. The challenge lies in reconciling these pluralistic frameworks with constitutional equality and universal human rights. This section examines these laws through Hindu, Muslim, and Christian perspectives, as well as the secular law under the *Protection of Women from Domestic Violence Act, 2005* (PWDVA) and Section 125 of the *Criminal Procedure Code, 1973* (CrPC).

A. The Constitutional Framework and Gender Justice

The Indian Constitution provides the foundation for gender equality through Articles 14, 15, and 21. Article 14 guarantees equality before the law, while Article 15 prohibits discrimination based on sex, and Article 21 ensures the right to life and dignity. These provisions collectively form the constitutional bedrock for the protection of women from domestic violence and economic deprivation.

In *Vishaka v State of Rajasthan*,³¹ the Supreme Court held that gender equality is a fundamental component of the right to life under Article 21. Similarly, in *Bodhisattwa Gautam v Subhra Chakraborty*,³² the Court recognized that violence against women constitutes a violation of fundamental rights. These precedents have guided judicial interpretation in cases involving domestic violence and maintenance, establishing a direct linkage between gender justice and constitutional morality.

However, Article 25 of the Constitution³³ guarantees freedom of religion, including the right to practice and propagate one's faith. Personal laws, being derived from

³¹ *Vishaka v State of Rajasthan* (1997) 6 SCC 241

³² *Bodhisattwa Gautam v Subhra Chakraborty* (1996) 1 SCC 490

³³ *Constitution of India* (1950), art. 25

religious texts and customs, are considered part of this freedom. The resulting tension between personal law autonomy and the constitutional mandate for equality has led to complex judicial balancing. Courts have often been compelled to harmonize personal law provisions with the Constitution, as seen in *Shayara Bano v Union of India*³⁴ where the Court struck down instant triple talaq, holding that personal law practices violating fundamental rights are unconstitutional.

B. Domestic Violence and Maintenance Under Hindu Law

The *Hindu Marriage Act, 1955* (HMA) and the *Hindu Adoption and Maintenance Act, 1956* (HAMA) govern marriage and maintenance among Hindus. Section 13(1)(i-a) of the HMA³⁵ recognizes cruelty as a ground for divorce, encompassing both physical and mental harm. However, the concept of cruelty under Hindu law has evolved primarily through judicial interpretation.

In *Vimla (K) v Veeraswamy (K)*,³⁶ the Supreme Court held that sustained mental torture and humiliation constitute cruelty, even in the absence of physical violence. Similarly, in *V. Bhagat v D. Bhagat*,³⁷ the Court recognized that false accusations and consistent verbal abuse could amount to mental cruelty. These rulings marked a shift from the earlier patriarchal assumption that women must tolerate domestic hardship for the sake of family integrity.

Maintenance rights under Hindu law are provided by Section 18 of the HAMA³⁸, which entitles a wife to maintenance during her lifetime unless she is unchaste or ceases to be a Hindu. Section 24 of the HMA³⁹ further allows either spouse to claim maintenance *pendente lite* during matrimonial proceedings. Despite these provisions, judicial practice reveals a gendered imbalance; courts often scrutinize the wife's conduct and chastity, reinforcing dependency rather than autonomy.

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

³⁵ *Hindu Marriage Act 1955*, s 13(1)(ia)

³⁶ *Vimla (K) v Veeraswamy (K)* (1991) 2 SCC 375

³⁷ *V. Bhagat v D Bhagat* (1994) 1 SCC 337

³⁸ *The Hindu Adoption and Maintenance Act 1956*, s 18

³⁹ *The Hindu Marriage Act 1955*, s 24

Hindu law, thus, formally acknowledges a woman's right to maintenance but continues to operate within patriarchal constructs. The assumption that the husband is the provider and the wife is dependent persists, undermining the spirit of equality envisaged by the Constitution.

C. Domestic Violence and Maintenance Under Muslim Law

In Muslim personal law, maintenance (known as *nafaqah*) is the husband's obligation to provide for his wife's basic needs, including food, clothing, and shelter. This obligation, however, traditionally ceases upon divorce. The most transformative moment in the history of Muslim women's rights came with *Mohd. Ahmed Khan v Shah Bano Begum*, where the Supreme Court held that a divorced Muslim woman is entitled to maintenance under Section 125 CrPC. The Court reasoned that Section 125 is a secular provision applicable to all, and that religion cannot be invoked to deny basic sustenance to a destitute woman.

The *Shah Bano* decision provoked political controversy and led to the enactment of the *Muslim Women (Protection of Rights on Divorce) Act, 1986*, which appeared to limit maintenance to the *iddat* period. However, in *Danial Latifi v Union of India*, the Supreme Court upheld the Act's constitutional validity but interpreted it liberally, ruling that the husband's obligation to make a "reasonable and fair provision" extends beyond the *iddat* period. This judgment harmonized Islamic personal law with constitutional equality, demonstrating the judiciary's progressive interpretive role.

In cases like *Iqbal Bano v State of UP*,⁴⁰ the Court further clarified that Muslim women can seek relief under the PWDVA, emphasizing the Act's secular character. These developments signify a shift from religious orthodoxy toward gender justice. Yet, social realities often limit the enforcement of these rights, with many women unaware or unable to access legal remedies.

⁴⁰ *Iqbal Bano v State of UP* (2007) 6 SCC 785

D. Domestic Violence and Maintenance Under Christian and Parsi Laws

Christian personal law is codified in the *Indian Divorce Act, 1869*, while the Parsi community is governed by the *Parsi Marriage and Divorce Act, 1936*. Both laws reflect colonial-era morality and patriarchal assumptions. Under the *Indian Divorce Act*, maintenance is conditional and limited. Section 37⁴¹ authorizes courts to award “permanent alimony,” but the amount is subject to the husband’s financial condition and the wife’s “conduct.” This moralistic approach places undue emphasis on the woman’s behavior, effectively punishing her for perceived immorality.

Historically, Christian women faced more stringent divorce requirements than men, who could obtain divorce solely on grounds of adultery, while women had to prove adultery coupled with cruelty or desertion. Although the *Indian Divorce (Amendment) Act, 2001*, removed some inequalities, economic dependence continues to be a significant concern.

Similarly, under the *Parsi Marriage and Divorce Act, 1936*, maintenance is capped at one-fifth of the husband’s income, highlighting gendered economic limitations. Despite procedural reforms, both Christian and Parsi laws have lagged behind Hindu and Muslim reforms in addressing gender justice. The judiciary, however, has occasionally intervened to align these laws with constitutional principles. For instance, in *Mary Sonia Zachariah v Union of India*,⁴² the Kerala High Court upheld the constitutional validity of the Divorce Act but urged legislative reform to ensure parity.

E. The Protection of Women from Domestic Violence Act, 2005 (PWDVA)

The *Protection of Women from Domestic Violence Act, 2005*, represents a landmark in India’s legal history, offering a secular, civil remedy for victims of domestic violence. Unlike Section 498A IPC, which criminalizes cruelty, the PWDVA is designed to provide immediate relief through protection orders, residence rights, and

⁴¹ *The Indian Divorce Act 1869*, s 37

⁴² *Mary Sonia Zachariah v Union of India* AIR 1995 Ker 184

maintenance. Its definition of “domestic relationship” includes not only wives but also mothers, sisters, widows, and partners in live-in relationships.

In *Indra Sarma v V K V Sarma*, the Supreme Court upheld the inclusion of women in live-in relationships under the PWDVA, recognizing the evolving nature of domestic relationships. The Court emphasized that the Act’s purpose is to protect women from all forms of abuse, irrespective of marital status or religion.

The PWDVA’s key innovation lies in its secular nature; it transcends personal law boundaries and applies uniformly to all women. This universality is consistent with the constitutional ideal of equality. However, implementation challenges persist. Studies reveal widespread lack of awareness, underreporting, and inadequate institutional support. Protection officers and service providers often lack proper training, leading to delays and secondary victimization.

Judicial interpretation has further broadened the scope of the PWDVA. In *Hiral P Harsora v Kusum Narottamdas Harsora*,⁴³ the Supreme Court struck down the restrictive definition of “respondent,” making the law gender-neutral and inclusive of female abusers. This decision reflects the Court’s commitment to gender equality beyond binary notions of victimhood and perpetration.

Despite its strengths, the PWDVA faces structural limitations. While it provides for monetary relief and residence orders, enforcement remains inconsistent due to procedural inefficiencies and patriarchal attitudes within law enforcement. Nonetheless, the PWDVA remains a milestone in the evolution of India’s gender justice framework, embodying the constitutional principle that equality must extend into the private sphere.

F. Section 125 CrPC and Secular Maintenance

Section 125 of the *Criminal Procedure Code, 1973*⁴⁴, provides a secular, summary remedy for maintenance to wives, children, and parents who are unable to sustain themselves.

⁴³ *Hiral P Harsora v Kusum Narottamdas Harsora* (2016) 10 SCC 165

⁴⁴ Code of Criminal Procedure 1973, s 125

Its significance lies in its universal application; it transcends religious boundaries, ensuring that maintenance is a matter of human survival rather than faith.

In *Bhagwan Dutt v Kamla Devi*,⁴⁵ the Supreme Court emphasized that maintenance under Section 125 is a right based on social justice. Similarly, in *Captain Ramesh Chander Kaushal v Veena Kaushal*,⁴⁶ the Court observed that Section 125 is designed to prevent destitution and vagrancy, affirming the state's responsibility toward vulnerable individuals.

Despite its progressive intent, enforcement of Section 125 remains inconsistent. Proceedings are often prolonged, and orders are inadequately enforced. Nonetheless, the provision remains a vital secular mechanism ensuring that no woman is denied sustenance due to religious constraints.

XI. SUGGESTIONS AND RECOMMENDATIONS

The preceding analysis reveals that while Indian law has evolved significantly in addressing domestic violence and maintenance, the persistence of religiously differentiated personal laws continues to produce inequalities. The coexistence of personal law and secular legislation, such as the *Protection of Women from Domestic Violence Act, 2005* (PWDVA) and Section 125 of the *Criminal Procedure Code, 1973*, reflects both the strengths and limitations of India's pluralistic legal system. The following recommendations are proposed to strengthen legal coherence and ensure substantive gender equality.

A. Towards Harmonization of Personal Laws

A fundamental reform imperative lies in harmonizing personal laws to reflect constitutional values of equality and non-discrimination. This does not necessitate the erasure of religious identity but rather the reinterpretation of religious norms through the lens of constitutional morality. In *Shayara Bano v Union of India*, the Supreme Court invoked the principle that religious practices violating fundamental rights cannot claim constitutional protection. This interpretative approach should be extended to all

⁴⁵ *Bhagwan Dutt v Kamla Devi* (1975) 2 SCC 386

⁴⁶ *Captain Ramesh Chander Kaushal v Veena Kaushal* (1978) 4 SCC 70

areas of personal law, particularly those relating to maintenance and domestic violence.

Uniformity in maintenance provisions across personal laws is essential to eliminate disparities. For instance, the right of maintenance should be recognized as a matter of entitlement rather than a benevolent gesture. The *Hindu Adoption and Maintenance Act, 1956*, conditions maintenance on chastity, while the *Muslim Women (Protection of Rights on Divorce) Act, 1986*, restricts it to the *iddat* period. Both provisions must be revisited to ensure parity with the universal secular standard embodied in Section 125 CrPC. Legislative reform could adopt a single codified framework that upholds women's economic security across all faiths.

B. Enhancing Implementation of the PWDVA

While the PWDVA, 2005, represents a transformative step toward recognizing domestic violence as a civil rights issue, its implementation remains inconsistent. Numerous studies and government reports indicate that protection officers lack adequate resources, training, and gender sensitivity. The PWDVA's success depends on creating institutional mechanisms for effective enforcement.

To achieve this, the government must establish specialized domestic violence units in every district, staffed by trained social workers, legal aid providers, and counsellors. Regular training programs should be conducted for judges, police officers, and protection officials to ensure sensitivity to women's issues. Moreover, awareness campaigns, particularly in rural areas, should emphasize the PWDVA's provisions to encourage reporting and reduce stigma.

Courts should adopt a victim-centric approach that prioritizes immediate relief, avoiding procedural delays. Judicial monitoring of protection orders and maintenance awards can further ensure accountability.

C. Reimagining Maintenance as a Right to Economic Justice

Maintenance is not merely a financial obligation; it is a tool for realizing women's economic and social justice. It recognizes the unpaid labor women contribute within households and ensures their economic security after separation. However, current

laws continue to treat maintenance as a temporary remedy rather than a fundamental right.

A gender-just maintenance regime should ensure adequate, periodic, and enforceable maintenance awards that reflect the true cost of living. The Supreme Court's decision in *Rajnesh v Neha*⁴⁷ marked a step forward by standardizing maintenance guidelines, directing courts to consider the income, assets, and lifestyle of both parties. Implementation of these guidelines across all jurisdictions would help achieve consistency.

Furthermore, the State should link maintenance entitlements with economic empowerment programs, such as skill training, microfinance initiatives, and employment schemes, ensuring women's long-term independence. This aligns with Article 39(a) of the *Constitution of India*⁴⁸, which directs the State to secure adequate means of livelihood for men and women equally.

D. Incorporating International Human Rights Standards

India's obligations under international conventions such as the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* provide a normative framework for reform. Article 16 of CEDAW⁴⁹ obligates States to eliminate discrimination in marriage and family relations, ensuring equal rights and responsibilities during marriage and upon its dissolution.

In *Vishaka v State of Rajasthan*,⁵⁰ the Supreme Court affirmed that international conventions ratified by India, though not legislatively incorporated, can inform constitutional interpretation. The same principle should guide family law reform. Incorporating CEDAW's principles into domestic law would strengthen women's rights to maintenance and protection from violence.

⁴⁷ *Rajnesh v Neha* (2021) 2 SCC 324

⁴⁸ *Constitution of India* (1950) art 39 (a)

⁴⁹ *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, art 16

⁵⁰ *Vishaka v State of Rajasthan* (1997) 6 SCC 241

Legislative reform must therefore ensure compliance with India's CEDAW obligations, particularly concerning equal access to justice, non-discrimination in family relations, and freedom from gender-based violence.

E. The Role of the Judiciary in Advancing Constitutional Morality

The Indian judiciary has demonstrated remarkable courage in interpreting personal laws in harmony with constitutional morality. Cases such as *Danial Latifi v Union of India* and *Hiral P Harsora v Kusum Narottamdas Harsora*⁵ illustrate judicial willingness to transcend religious and gender biases. However, judicial activism must be complemented by legislative reform to ensure uniform and enforceable rights.

The judiciary should continue to invoke constitutional morality to strike down discriminatory provisions within personal laws. It must also ensure that lower courts and family courts interpret laws through a rights-based, rather than a moralistic, lens.

F. Education and Awareness

A significant barrier to realizing women's legal rights lies in the lack of awareness. Many women, especially in rural and marginalized communities, remain unaware of their rights under the PWDVA or Section 125 CrPC. The State, in collaboration with civil society organizations, must conduct extensive legal literacy campaigns.

Educational curricula should integrate modules on gender equality and constitutional rights, ensuring early sensitization. Empowering women with knowledge of their legal entitlements can transform them from passive recipients of justice to active agents of change.

XII. CONCLUSION

The intersection of domestic violence, maintenance, and women's rights in India reflects the broader struggle between tradition and modernity, religious autonomy and constitutional morality. The coexistence of personal laws and secular statutes represents India's pluralism but also perpetuates inequality.

The analysis demonstrates that while the *Protection of Women from Domestic Violence Act, 2005*, and Section 125 of the *Criminal Procedure Code, 1973* have provided secular

remedies, personal laws continue to regulate maintenance and marital rights in unequal terms. The judiciary, through progressive interpretation, has mitigated some disparities, but a fragmented legal system remains.

A uniform, gender-just framework is essential, one that harmonizes personal laws with constitutional principles without undermining religious freedom. The harmonization should be guided by constitutional morality, ensuring that personal laws evolve in conformity with the ideals of equality, dignity, and justice.

True gender justice cannot be achieved merely through formal equality; it requires substantive equality that addresses structural disadvantages faced by women. Maintenance must be recognized not as charity but as a matter of economic justice. Domestic violence must be treated not as a private family dispute but as a violation of human rights.

As India progresses toward modernization, it must also confront the contradictions within its legal system. The goal is not to erase cultural diversity but to ensure that diversity coexists with equality. The vision of the Constitution, to secure justice, liberty, and equality for all, must extend into the private sphere of the family. Only then will the Indian legal system fulfill its promise of empowering every woman to live with dignity, autonomy, and freedom from violence.

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