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PERSONAL LAWS VS. CONSTITUTIONAL RIGHTS: THE ROLE OF JUDICIAL PROCESS IN ADVANCING GENDER JUSTICE

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I. ABSTRACT

Indian courts face a difficult challenge: how to balance religious personal laws with the Constitution's promise of equality and justice for all citizens. This conflict is most visible in women's rights cases, where religious traditions often deny women equal treatment. Important cases like Mohd. Ahmed Khan v. Shah Bano Begum (1985), Danial Latifi v. Union of India (2001), Shayara Bano v. Union of India (2017), and ongoing cases like Sameena Begum v. Union of India on polygamy and nikah halala show how courts are trying to protect women's rights while respecting religious freedom. This research uses three methods. First, it studies laws and court judgments to see how judges have dealt with this problem. Second, it compares India with other countries like Islamic nations and the United Kingdom to learn how they handle similar issues. Third, it analyzes whether court decisions actually help women or go beyond what courts should do. The research also looks at the Kesavananda Bharati v. State of Kerala (1973) case, which says courts must protect the Constitution's basic principles. The paper argues that while court decisions have pushed for social change and helped women, real progress needs three things working together: courts protecting rights, Parliament making new laws, and society accepting these changes.

II. KEYWORDS

Personal Laws, Constitutional Rights, Gender Justice, Judicial Process, Basic Structure Doctrine, Triple Talaq, Shah Bano, Constitutional Morality

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III. INTRODUCTION

A. Background and Context

The Indian Constitution contains a fundamental contradiction at its very foundation.² On one hand, it guarantees fundamental rights to equality (Article 14), prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth (Article 15), and the right to life and personal liberty (Article 21).³ On the other hand, Article 25 promises freedom of conscience and the right to freely profess, practice, and propagate religion.⁴ This constitutional structure, while ensuring religious freedom, has created a difficult situation where personal laws governing marriage, divorce, inheritance, and succession often conflict with the constitutional promise of gender equality.⁵

For over seven decades, the Indian judiciary has dealt with this challenging problem, evolving from an institution that hesitated to intervene in matters of personal law to one that has become a proactive guardian of constitutional values.⁶ This evolution has not been smooth or without controversy. Landmark judgments have sparked legislative backlash, communal tensions, and fierce debates about the proper role of courts in a democratic society.⁷

B. Statement of the Problem

Women in India, particularly Muslim women, have historically faced discrimination under religiously ordained personal laws.⁸ Practices such as unilateral triple talaq (instant divorce), polygamy, denial of maintenance rights, and nikah halala have relegated women to a subordinate status despite constitutional guarantees of equality.⁹ The critical question emerges: How can the judiciary balance respect for

² Ronojoy Sen, *Articles of Faith: Religion, Secularism, and the Indian Supreme Court* 9 (Oxford University Press 2010).

³ INDIA CONST. arts. 14, 15, 21.

⁴ INDIA CONST. arts. 25.

⁵ Archana Parashar, "Gender Inequality and Religious Personal Laws in India," 14(2) *Brown J. World Aff.* 103, 108 (2008).

⁶ Upendra Baxi, *The Indian Supreme Court and Politics* 67 (Eastern Book Company 1980).

⁷ Asghar Ali Engineer, "Shah Bano Controversy," 21(5) *Econ. & Pol. Wkly.* 179 (1986).

⁸ Zoya Hasan, *Forging Identities: Gender, Communities and the State in India*, 45 (Westview Press 1994).

⁹ Neeru Agarwal, "Triple Talaq and Muslim Women's Rights in India: The Debate," 52(50) *Econ. & Pol. Wkly.* 24 (2017).

religious freedom with the imperative of gender justice? More specifically, how have different judges approached this balance, and how has judicial reasoning evolved over time?

C. Research Questions

- How has the Indian judiciary's approach to personal laws evolved from independence to the present?
- What distinct judicial philosophies have emerged in cases involving personal law and gender justice?
- How have individual judges contributed to shaping the discourse on constitutional morality versus religious practices?
- What lessons can India draw from comparative jurisdictions that have addressed similar conflicts?
- Can the Basic Structure Doctrine provide a framework for resolving tensions between personal laws and constitutional rights?

D. Objectives of the Study

- To trace the chronological evolution of judicial intervention in personal laws from 1950 to 2025
- To analyze the reasoning and constitutional philosophy of key judges who have shaped this jurisprudence
- To evaluate the effectiveness of judicial interventions in advancing gender justice
- To assess the interplay between judicial activism and legislative response
- To provide recommendations for sustainable reform

E. Research Methodology

This study employs a tripartite methodology:

- **Doctrinal Analysis:** Examination of constitutional provisions (Articles 14, 15, 21, 25, 44), statutory laws (Criminal Procedure Code, Muslim Personal

Law (Shariat) Application Act, 1937, and Muslim Women (Protection of Rights on Divorce) Act, 1986), and judicial precedents from the Supreme Court and High Courts.

- **Comparative Method:** Analysis of how other jurisdictions, including Turkey, Tunisia, Pakistan, Egypt, and the United Kingdom, have reconciled religious law with gender equality, offering insights for India's context.
- **Analytical Framework:** Critical evaluation of judicial reasoning patterns, identification of distinct judicial philosophies (activist versus restrained), and assessment of the socio-legal impact of landmark decisions.

F. Scope And Limitations

This research focuses primarily on Muslim personal law as it has generated the most significant judicial discourse on gender justice in India. While Hindu, Christian, and Parsi personal laws also present gender justice concerns, Muslim personal law cases have been more frequently litigated and have produced more transformative judgments. The study covers major Supreme Court decisions from 1950 to 2025, with particular emphasis on the period from 1985 onwards, which witnessed heightened judicial engagement.

IV. CONSTITUTIONAL FRAMEWORK AND PERSONAL LAWS: THE FOUNDATIONAL CONFLICT

A. Constitutional Provisions: The Equality Mandate

The Indian Constitution provides robust guarantees for equality and dignity. Article 14 of the Indian Constitution lays down the guarantee of equality¹⁰ before the law and equal protection of the laws, forming a fundamental check against arbitrariness and discriminatory state action¹¹. It operates as a broad equality clause, ensuring that state measures do not single out individuals or groups for hostile or irrational treatment, and has been judicially recognised as embodying the core of the rule of law. Article

¹⁰ *E.P. Royappa v. State of Tamil Nadu*, AIR 1974 SC 555.

¹¹ M.P. JAIN, *Indian Constitutional Law* 823 (LexisNexis 8th ed. 2018).

15(1) builds on this guarantee by expressly forbidding the State from discriminating against any citizen on grounds such as religion, race, caste, sex, or place of birth, thereby acting as a specific constitutional safeguard against gender-based discrimination¹² and underpinning protective measures for women.

Article 14 emerged from the Constituent Assembly's attempt to weave liberty and equality into a single, coherent guarantee rather than create a narrow, standalone equality clause. In the Draft Constitution, what is now Article 14 was originally part of Draft Article 15, which promised that no person would be deprived of life or liberty except according to procedure established by law, and that no one would be denied equality before the law or equal protection of the laws. Alongside this, Draft Article 9—eventually split into present Articles 14 and 15—spelled out specific non-discrimination guarantees, showing that the framers wanted both a broad, structural principle of equality and detailed prohibitions against discrimination on particular grounds in everyday life.

Debates on Draft Article 9 reveal an intense effort to seal every possible route for exclusion from access to public spaces and state-linked benefits. Members sought to drop the qualifying phrase “in particular” and instead adopt a categorical statement that no citizen, on grounds only of religion, race, caste, sex, or any of them, would be subjected to any disability, liability, restriction, or condition, reflecting anxiety that an illustrative list of places like shops, restaurants, and hotels might allow discrimination to persist elsewhere.

Amendments were moved to add “place of birth” to the prohibited grounds, driven by fears that provinces and local bodies could practise covert discrimination under the guise of “local patriotism” against people from other regions. The proposal to replace “creed” with “religion,” and the insistence that “public place” be read broadly rather than as an exhaustive list, all reflected a shared determination that equality should operate across the entire spectrum of social, economic, and civic life, not merely in a few named venues.

¹² *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1

Several members argued for an even more transformative vision of equality, which, though not fully accepted in textual form, left a strong imprint on the ethos of Articles 14 and 15. K.T. Shah contended that any institution receiving public recognition, protection, or support – schools, hospitals, asylums, charitable homes – should not be reserved for particular sects or communities, because such denominational exclusivity undermined civic equality and “real democracy,” and risked entrenching sectarian and communal institutions under constitutional cover.

Mohammad Tahir urged that violations of the non-discrimination mandate be expressly made criminal offences, mindful of the entrenched oppression of Scheduled Castes and other marginalised groups, while speakers like S. Nagappa and Sardar Bhopinder Singh Man emphasised that true freedom required social and economic equality, and that access to places of worship and basic institutions must be open irrespective of caste, community, or descent.

Even when such ambitious amendments were negated, they shaped the final structure and purpose of Articles 14 and 15: to secure not only formal equality before the law, but also to dismantle structural hierarchies of caste, religion, sex, and birth, and to ensure that public institutions and spaces serve the citizenry at large rather than privileged enclaves – an interpretive legacy that continues to inform judicial debates on substantive equality today.

Complementing these provisions, Article 21 has been progressively interpreted by the Supreme Court to protect not merely physical existence but the right to live with dignity, which includes a range of facets of personal liberty, autonomy, and human development, making it a dynamic repository of substantive rights.¹³ Further, Article 44, placed among the Directive Principles of State Policy, exhorts the State to work towards securing a uniform civil code for all citizens throughout India; although non-justiciable, it expresses a constitutional vision of eventual uniformity in personal laws, to be pursued consistently with the guarantees of equality, non-discrimination, and dignity embedded in the fundamental rights framework.¹⁴

¹³ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746.

¹⁴ B.R. AMBEDKAR, 7 CONSTITUENT ASSEMBLY DEBATES 540-547 (Nov. 23, 1948).

B. Religious Freedom: Article 25 and its Limits

Article 25 secures an individual's freedom of conscience and the right to profess, practice, and propagate religion, but explicitly subjects this freedom to considerations of public order, morality, and health¹⁵. At the same time, clause (2) of Article 25 authorises the State to enact laws that regulate or curtail economic, financial, political, or other secular activities linked to religious practice, and to introduce measures aimed at social welfare and reform¹⁶. This creates an inherent constitutional tension: religious freedom is protected as a fundamental right, yet the constitutional framework also mandates the pursuit of equality, including gender justice, and vests the State with power to intervene in and transform religiously grounded practices where necessary to advance social reform and substantive equality.¹⁷

C. Personal Laws in India: Historical Evolution

Personal laws in India are religion-based legal regimes that regulate family-related matters such as marriage, divorce, inheritance, and succession, and are applied to individuals according to their religious affiliation¹⁸. These systems trace their roots to the colonial era, when British authorities asserted control over criminal and commercial law.¹⁹, broadly followed a policy of non-interference in religious and family affairs by recognising and codifying distinct Hindu and Muslim personal laws and permitting religious communities considerable autonomy in these domains²⁰. After Independence, the newly formed Indian state retained this plural framework, but undertook major statutory reform and codification of Hindu personal law through the Hindu Code Bills of 1955–56, whereas Muslim personal law largely continued to operate in uncoded form, primarily through classical Islamic jurisprudence as applied by courts and the Muslim Personal Law (Shariat) Application Act, 1937.²¹

¹⁵ INDIA CONST. art. 25(1).

¹⁶ INDIA CONST. art. 25(2).

¹⁷ SEN, *supra* note 1, at 102.

¹⁸ M.C. SETALVAD, *The Common Law in India* 42 (1960).

¹⁹ RASHMI PATHAK, *The Personal Law of Muslims in India and Abroad* 56 (2007).

²⁰ TAHIR MAHMOOD, *Muslim Personal Law: Role of State in the Indian Subcontinent* 78 (2d ed. 1983).

²¹ *Id.* at 112.

D. The Constituent Assembly Debates: Article 44 and Its Compromise

During the framing of the Constitution, the issue of a Uniform Civil Code generated heated debate.²² Muslim members opposed it as interference with religious freedom, while proponents argued it was essential for national integration and gender justice.²³ The compromise was to place UCC as a Directive Principle, an aspiration rather than a mandate, allowing gradual social evolution rather than immediate legislative action. This compromise set the stage for the judiciary to become the arena where conflicts between personal laws and constitutional rights would be adjudicated.²⁴

V. EVOLUTION OF JUDICIAL PHILOSOPHY: FROM DEFERENCE TO ENGAGEMENT (1950-1984)

A. The Early Phase: Judicial Reluctance and Non-Intervention

State of Bombay v. Narasu Appa Mali (1952) - Bombay High Court²⁵. It is an early and influential decision of the Bombay High Court that exemplified strong judicial deference to personal laws. In upholding the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, the court took the view that uncodified personal laws, being rooted in religion and custom rather than in state-made legislation, did not fall within the expression “law” or “law in force” for the purposes of Article 13, and therefore could not be struck down for inconsistency with fundamental rights.

Justice Gajendragadkar’s reasoning turned on a distinction between statutory norms on the one hand and customary or religious practices on the other, treating the latter as lying outside the constitutional definition of “law in force,” which effectively insulated large swathes of personal law from equality-based scrutiny and allowed potentially discriminatory practices to persist as a matter of religious autonomy. The broader impact of the ruling was to erect a jurisprudential barrier to constitutional challenges against personal laws; for several decades thereafter, courts were reluctant to test personal law norms against the guarantees of equality and non-discrimination,

²² AMBEDKAR, *supra* note 14, at 540-547.

²³ AUSTIN GRANVILLE, *The Indian Constitution: Cornerstone of a Nation* 77-80 (1966).

²⁴ SEN, *supra* note 1, at 125.

²⁵ *State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84 (India)

tending instead to characterise them as aspects of religious freedom rather than as sites of possible rights violations.

B. Incremental Shift: Recognition of Women's Rights

Fuzlunbi v. K. Khader Vali (1980)²⁶. It marked a significant moment in the Supreme Court's engagement with Muslim personal law, particularly on the question of maintenance rights of Muslim women. In this case, the Court construed the maintenance provisions in a manner that protected the divorced Muslim woman's entitlement, signalling a move away from a narrow, formal reading of personal law and towards an approach that foregrounded her economic security and dignity. Justice V.R. Krishna Iyer stressed that courts, when interpreting personal law, must adopt constructions that further women's rights rather than diminish them, treating maintenance as a social justice obligation rather than a purely technical religious question. As a result, the decision came to be seen as an early indication that the Supreme Court was prepared to read personal law provisions through a constitutional prism promoting gender justice and equality without yet directly invalidating the underlying personal law norms themselves.

C. The Tensions Build: Section 125 CRPC as Tool

Bai Tahira v. Ali Hussain Fissalli Chothia (1979)²⁷. It marked a crucial affirmation that the secular maintenance provisions in Section 125 of the Criminal Procedure Code apply uniformly to all citizens, irrespective of their personal law. In this decision, the Supreme Court, speaking through Justice V.R. Krishna Iyer, treated Section 125 as a social-justice-oriented, religion-neutral remedy, making clear that a divorced Muslim woman could claim post-divorce maintenance despite her husband's reliance on personal law and payment of mehar or iddat dues. Justice Krishna Iyer underscored that secular statutory obligations for maintenance must prevail where they conflict with personal law claims, and that personal law rules need to be interpreted in harmony with the Constitution's guarantees of equality, dignity, and social justice rather than used to defeat them. From this reasoning emerged a progressive judicial

²⁶ *Fuzlunbi v. K. Khader Vali*, AIR 1980 SC 1730 (India).

²⁷ *Bai Tahira v. Ali Hussain Fissalli Chothia*, AIR 1979 SC 362 (India)

philosophy asserting that personal laws should be read consistently with constitutional values, that constitutional mandates must override in cases of irreconcilable conflict, and that courts bear a special responsibility to shield vulnerable groups, particularly women, from destitution and discrimination, even though this approach remained on the margins until the watershed Shah Bano ruling gave it fuller doctrinal force.²⁸

VI. THE SHAH BANO WATERSHED: JUDICIAL AWAKENING AND POLITICAL BACKLASH (1985-1989)

Mohd. Ahmed Khan v. Shah Bano Begum (1985)²⁹ The Shah Bano case vividly captures the shift in judicial thinking on personal laws and the far-reaching political repercussions of judicial intervention in this field. Shah Bano, a 62-year-old Muslim woman divorced by her husband, claimed maintenance under Section 125 of the Criminal Procedure Code, while her husband argued that payment of mehr and support during the iddat period exhausted his obligations under Muslim personal law. The Supreme Court, speaking through Chief Justice Y.V. Chandrachud for a five-judge bench, rejected this defence and held that Section 125 is a secular, religion-neutral remedy aimed at preventing destitution, thereby entitling Shah Bano to maintenance beyond the iddat period. In doing so, the Court drew on Islamic sources to show that continued support for a divorced wife is compatible with Quranic principles, asserted that constitutional guarantees of equality and dignity take precedence over conflicting personal law rules, and used the occasion to lament the non-implementation of Article 44 while calling for a uniform civil code in the interests of national integration.

Justice Chandrachud's reasoning reflected a humanist, activist judicial philosophy that placed human dignity above rigid adherence to religious doctrine, interpreted religious texts in a progressive and egalitarian manner, and assigned the Court an active role in protecting vulnerable groups and promoting social reform. The judgment, however, triggered intense opposition from sections of the Muslim

²⁸ FLAVIA AGNES, *Law and Gender Inequality: The Politics of Women's Rights in India* 112 (1999).

²⁹ *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945 (India).

community, with religious leaders portraying it as unwarranted interference with Muslim personal law and as a threat to religious freedom, leading to widespread protests across the country. In response, the Rajiv Gandhi government, despite enjoying a large parliamentary majority, chose to appease the critics by enacting the Muslim Women (Protection of Rights on Divorce) Act, 1986, which curtailed a husband's statutory liability by formally limiting maintenance to the iddat period and shifting longer-term support to relatives or the Waqf Board, thereby effectively nullifying the core holding of Shah Bano.

The constitutional validity of the 1986 Act was later challenged in *Danial Latifi v. Union of India*, prompting the Supreme Court to adopt a more nuanced interpretive strategy. A five-judge bench led by Justice Rajendra Babu upheld the statute but held that the obligation to make a "reasonable and fair provision and maintenance" under the Act required the husband, within the iddat period, to secure the divorced woman's future, covering her needs for life or until remarriage. By reading the Act in harmony with Articles 14, 15, and 21 rather than striking it down, the Court preserved the substance of Shah Bano's protection while avoiding direct confrontation with Parliament, demonstrating an evolved, pragmatic constitutionalism that relies on creative interpretation to align legislation with fundamental rights.

Taken together, the jurisprudence from Shah Bano to *Danial Latifi* reveals a trajectory from direct judicial challenge to discriminatory personal law rules, through a period of political backlash and legislative override, to a mature phase in which the Court uses constitutional values to reinterpret both personal law and legislation in favour of gender-just outcomes. Earlier voices like Justice Krishna Iyer had already advocated reading personal laws through a constitutional lens, Justice Chandrachud's Shah Bano opinion exemplified bold rights-based activism, and Justice Rajendra Babu's approach in *Danial Latifi* showcased institutional prudence and interpretive sophistication aimed at securing women's rights while maintaining judicial legitimacy.

VII. THE TRIPLE TALAQ REVOLUTION: CONSTITUTIONAL MORALITY ASCENDANT (2017)

The 2017 decision in *Shayara Bano v. Union of India*³⁰ marked a decisive turn in the constitutional regulation of personal laws, using the idiom of constitutional morality to confront the deeply discriminatory practice of instant triple talaq. Shayara Bano, divorced through talaq-e-biddat after years of marriage, challenged the validity of triple talaq, polygamy, and nikah halala, forcing the Supreme Court to squarely address whether Muslim personal law could be tested against fundamental rights. By a 3:2 majority, the Court invalidated instant triple talaq, but the three opinions revealed sharply contrasting interpretive philosophies about religion, rights, and institutional role.

Justice Kurian Joseph agreed that triple talaq was unconstitutional, but grounded his reasoning in Islamic theology rather than direct constitutional review. He held that talaq-e-biddat was not an essential part of Islam, emphasized that the Quran envisages a structured process of reconciliation and waiting periods, and concluded that instant, irrevocable divorce offends the spirit of justice and fairness inherent in Islamic teachings. This method sought to achieve gender-just reform from within the religious tradition, respecting religious sentiment while insisting that true Islamic principles cannot legitimise arbitrary harm to women, though it inevitably placed secular judges in the controversial role of authoritative interpreters of scripture.

Justice R.F. Nariman, joined by Justice U.U. Lalit, adopted a forthrightly constitutional route, treating triple talaq as “manifestly arbitrary” because it conferred unilateral, unreviewable power on the husband to dissolve the marriage without rational procedure. On this basis, he held the practice violative of Article 14 and therefore void, and further reasoned that Article 25 could not shield a practice that so plainly breached constitutional guarantees of equality and dignity. Crucially, his opinion rejected the Narasu Appa Mali view that personal laws lie outside Article 13, asserting instead that personal law norms are subject to fundamental rights scrutiny, a move

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

with transformative implications for challenging discriminatory rules across all religious communities.

Chief Justice J.S. Khehar, with Justice S. Abdul Nazeer concurring, dissented and urged judicial restraint, treating triple talaq as part of a long-standing personal law tradition deserving protection under Article 25. He proposed not to invalidate the practice outright, but to injunct its use for six months to give Parliament time to legislate, arguing that sensitive religious reform should emerge from democratic deliberation rather than judicial fiat. This approach prioritised institutional legitimacy and respect for community autonomy, but drew criticism for effectively prolonging a discriminatory practice and for underestimating the structural barriers that prevent “minorities within minorities,” such as Muslim women, from securing protection through majoritarian politics.

Taken together, the three opinions showcased competing constitutional visions: internal religious reform that derives equality from scripture, robust constitutional supremacy that directly invalidates unjust practices, and democratic deference that prefers legislative change even at the cost of immediate relief. In the aftermath, Parliament enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, declaring all forms of instant triple talaq spoken, written, or electronic void and illegal, criminalising its pronouncement with up to three years’ imprisonment, and providing for subsistence allowance and custody rights for affected women. Unlike the backlash to Shah Bano, this legislative response broadly reinforced the Court’s rights-based stance and reflected growing public support, especially from Muslim women’s groups, for aligning personal laws with the constitutional guarantees of equality, dignity, and non-discrimination.

VIII. CONTEMPORARY CHALLENGES: POLYGAMY, NIKAH HALALA, AND ONGOING JUDICIAL DISCOURSE

Contemporary litigation around polygamy and nikah halala builds directly on the momentum of the triple talaq decision, pushing the Supreme Court to confront other entrenched practices in Muslim personal law. Petitions led by women such as Sameena Begum challenge these practices as violating Articles 14, 15, and 21 by

undermining women's dignity, equality, and security, and point out that many Muslim-majority jurisdictions have already restricted or abolished polygamy.³¹ The counter-position invokes Quranic permissibility, Article 25 protection of religious freedom, and the claim that any reform in this sensitive domain should come from Parliament rather than from courts; as of now, a reconstituted Constitution Bench has been tasked with hearing these challenges, and the matter remains pending.

Nikah halala, which requires a divorced woman to marry and consummate a second marriage before she can return to her first husband, has attracted particularly sharp criticism for facilitating coercive and degrading arrangements that can amount to sexual exploitation. Pending cases are expected to test this practice against multiple strands of emerging doctrine: Justice Nariman's "manifest arbitrariness" standard under Article 14, Quran-based arguments that the practice lacks scriptural basis, and robust Article 21 jurisprudence on bodily integrity and dignity, any of which could render nikah halala unconstitutional if the Court finds the practice incompatible with constitutional morality.

The broader discourse is heavily influenced by Justice D.Y. Chandrachud's articulation of constitutional morality in decisions like *Navtej Singh Johar* and *Joseph Shine*, where he stressed that constitutional commitments to dignity and equality cannot be subordinated to prevailing social or religious morality and condemned legal regimes that treat women as the property of their husbands.³² His reasoning suggests that personal law norms cannot claim immunity merely because of religious or customary pedigree, and that gender justice operates as a non-negotiable constitutional baseline that must shape the interpretation and validity of all family-law frameworks, including religious ones.

At the same time, judgments such as Justice Indu Malhotra's dissent in the *Sabarimala* entry case show that a significant strand of judicial thought continues to advocate restraint and deference in religious matters. Her approach emphasises that courts

³¹ Anubhav Khastagir, *Polygamy – A Practice Violating Key Fundamental Rights Enshrined in the Constitution of India*, INT'L J. LEGAL L. & RES. (2021)

³² Keshav Patel, *Pre-Planned Nikah Halala and the Indian Constitution*, 6 INT'L J. POL. & SOC. SCI. 1 (2024)

should avoid recasting what are claimed to be essential religious practices unless they are plainly oppressive or strike at the constitutional core, and that not every inequality within a faith tradition necessarily amounts to unconstitutional discrimination. The coexistence of these competing visions, assertive constitutional morality on the one hand and cautious respect for religious autonomy on the other, ensures that forthcoming decisions on polygamy, nikah halala, and related practices will remain contested sites for defining the proper relationship between personal laws and the Indian Constitution.

IX. COMPARATIVE PERSPECTIVES: LEARNING FROM OTHER JURISDICTIONS

Experiences from other jurisdictions show that Islamic family law has been reshaped in diverse ways, offering instructive models and cautions for India. In Turkey, sweeping Kemalist reforms in 1926 replaced Sharia-based family law with a secular civil code adapted from Switzerland, introducing compulsory civil marriage, banning polygamy, and establishing formal equality between men and women before the law; this demonstrates that radical legal secularisation is possible, though it arose from a unitary, strongly centralised political project quite unlike India's plural structure.

Tunisia's 1956 Code of Personal Status similarly abolished Sharia courts, outlawed polygamy and unilateral repudiation, and required judicial divorce, while more recent reforms have expanded women's rights in inheritance and family relations, illustrating that far-reaching gender-egalitarian change can be pursued within an avowedly Islamic framework when backed by sustained political leadership.³³ By contrast, Pakistan has followed a more incremental path: the Constitution affirms Islam as the state religion, but the 1961 Muslim Family Laws Ordinance subjects polygamy to administrative permission and lays down procedural safeguards in divorce, showing that even formally Islamic republics can legislate to curb abuse in family law without abandoning religious foundations.

³³ Samridhi Sikha Das, *Nikah Halala: A Legalized Sin*, PEN ACCLAIMS (2019)

In many Arab states, including Egypt, religious institutions like Al-Azhar University play a prominent consultative role in family-law reform, with measures such as laws allowing women to seek khula divorce framed as both Islamically legitimate and consistent with contemporary understandings of justice; this underlines how partnerships with theological authorities can lend legitimacy to change and soften social resistance. Outside the Muslim-majority context, the United Kingdom provides a different lesson: Sharia councils operate as voluntary advisory or mediation bodies for matters like religious divorce, but numerous official reviews have reiterated that they have no statutory authority, their decisions are not binding in civil law, and any outcome that conflicts with domestic equality or human-rights norms is legally ineffective, even as critics point out that women who lack awareness of their civil rights may still experience pressure or disadvantage in these informal fora.

Taken together, these comparative experiences suggest that durable family-law reform tends to rest on four pillars of particular relevance to India: robust legislative action rather than purely judicial experimentation, meaningful engagement with religious scholars and institutions to frame reforms as normatively legitimate, clear affirmation of the supremacy of civil and constitutional rights whenever religious norms conflict with gender equality, and a strategy of phased, incremental change that progressively narrows discriminatory practices while building social consensus and public awareness.

X. THE BASIC STRUCTURE, DOCTRINE, AND PERSONAL LAWS

Kesavananda Bharati v. State of Kerala (1973)³⁴ Established that while Parliament has wide power to amend the Constitution, it cannot alter its “basic structure,” a term that encompasses core features such as the supremacy of the Constitution, the rule of law, judicial review, separation of powers, federalism, secularism, and the protection of fundamental rights, including individual dignity and equality of status and opportunity. This doctrine functions as a constitutional safeguard against

³⁴ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225

amendments that would dismantle the foundational values of the constitutional order, and it has since been repeatedly affirmed as binding on all state institutions.

Applied conceptually to personal laws, one line of argument maintains that if secularism, equality, and dignity form part of the Constitution's basic structure, then any legal regime, whether framed as "personal law" or otherwise, that gravely undermines these principles should be open to invalidation, notwithstanding claims of protection under Article 25. Advocates of this view suggest that allowing gender-discriminatory personal laws to persist would, in effect, erode the basic structural commitment to equality of status and opportunity, especially for women as "minorities within minorities." The contrary position, however, stresses that the basic structure doctrine doctrinally governs constitutional amendments made under Article 368, not ordinary legislation or religious practices, and Supreme Court decisions have repeatedly clarified that ordinary laws cannot be struck down for violating the basic structure as such, but only for infringing specific constitutional provisions like fundamental rights.

Even with this limitation, the doctrine shapes the judiciary's sense of obligation in personal-law disputes by underscoring that courts are guardians of core values such as secularism, substantive equality, and the dignity of the individual. In this perspective, when personal laws or their interpretation lead to systemic gender discrimination or deny basic dignity, courts are not engaged in free-floating "activism" but in fulfilling a constitutional duty to prevent regression from these foundational commitments, to give robust effect to Articles 14, 15, and 21, and to protect vulnerable groups, including women within religious minorities, from norms that are inconsistent with the Constitution's identity.

XI. CRITICAL ANALYSIS: JUDICIAL ACTIVISM, OVERREACH, AND THE PATH FORWARD

Judicial intervention in personal law has clear strengths, especially for protecting those whom electoral politics tends to overlook. Courts function as counter-majoritarian institutions capable of safeguarding "minorities within minorities," including women in patriarchal communities, and have repeatedly

advanced gender justice where legislatures hesitated or moved slowly. Landmark decisions on maintenance, triple talaq, and workplace harassment show how creative constitutional interpretation can both plug legislative gaps and catalyse broader public debate, even when immediate political backlash, as in Shah Bano, temporarily blunts legal gains but leaves a lasting imprint on social and legal discourse.³⁵

At the same time, aggressive judicial action raises recurring concerns about democratic legitimacy, implementation capacity, and institutional competence. Critics argue that unelected judges risk overreach when they reorder deeply rooted social norms without broad consultation, potentially provoking backlash that undermines both reform and judicial authority, and note that complex religious or sociological questions may exceed judicial expertise, making missteps more likely. Uneven or selective intervention perceived focus on Muslim personal law over parallel inequities in other communities can foster a sense of bias and alienation, reinforcing narratives of cultural intrusion rather than inclusive constitutionalism.

These tensions play out in the classic activism–restraint debate. Pro-intervention judges and scholars emphasise that constitutional rights, particularly gender equality and dignity, are non-negotiable and that delay effectively denies justice to those trapped in discriminatory regimes, making strong judicial review an ethical duty. Advocates of restraint stress that durable change requires democratic participation, that legislatures are better equipped to craft detailed regulatory schemes, and that excessive judicial law-making can erode the separation of powers and weaken public trust. A widely endorsed “middle path” seeks dialogic solutions, where courts interpret rights robustly, issue guidelines or interim directions, and set constitutional benchmarks that press legislatures and communities toward reform without attempting to single-handedly redesign entire personal-law systems.

Experience with triple talaq illustrates how gender-just outcomes are strongest when three forces align: judicial creativity, legislative action, and social-movement pressure. The Supreme Court’s invalidation of instant triple talaq framed the issue in

³⁵ Sohaira Siddiqui, *The Muslim Women (Protection of Rights on Marriage) Act and the Politics of Personal Law Reform in India*, J. ISLAMIC L. (2023),

constitutional terms, Parliament's 2019 law supplied enforceable sanctions and procedural clarity, and sustained advocacy by Muslim women's groups-built community-level legitimacy and awareness, together producing a more durable transformation than any one actor could have achieved alone. This "triadic" model suggests that future reforms of discriminatory personal-law practices will be most effective when courts act as constitutional catalysts rather than solitary engines of social engineering, working in tandem with legislatures and civil society to embed gender justice in both law and lived reality.

XII. CONCLUSION AND RECOMMENDATIONS

The trajectory of Indian jurisprudence on personal laws reflects a marked shift from judicial deference to robust rights-based review, mirroring the broader maturation of constitutionalism in India. In the early post-Constitution decades, exemplified by *Narasu Appa Mali*, courts largely treated personal laws as insulated domains, wary of intruding into religiously grounded norms and reluctant to test them against fundamental rights. Over time, however, landmark decisions such as *Shah Bano*, *Danial Latifi*, and *Shayara Bano* signalled successive phases of awakening, backlash, interpretive innovation, and, most recently, the ascendancy of constitutional morality, with equality, dignity, and secularism increasingly asserted as non-negotiable limits on discriminatory personal-law practices.

Viewed in phases, this evolution reveals a clear institutional learning curve. Phase I (1950–1984) was marked by deference and non-intervention, as courts treated uncodified personal law as lying outside Article 13 and thus beyond rights-based scrutiny. Phase II (1985–2000) saw a bold but politically costly intervention in *Shah Bano*, where the Court's assertion of secular maintenance norms over religious objections was swiftly curtailed by legislative override, exposing the limits of confrontational judicial activism.

Phase III (2001–2016) produced more sophisticated strategies, typified by *Danial Latifi*, in which the Court preserved constitutionality by creatively reading statutes in harmony with Articles 14, 15, and 21, achieving substantive reform without directly invalidating Parliament's response. Phase IV (2017–present), inaugurated by *Shayara*

Bano, has entrenched the language of constitutional morality and manifest arbitrariness, openly subjecting personal-law practices like triple talaq to equality-based review and signalling a readiness to treat even non-statutory personal norms as answerable to fundamental rights.

Crucially, the coexistence of contrasting judicial philosophies has enriched, rather than weakened, this trajectory. Justice Kurian Joseph's method of internal religious reform grounds gender-just outcomes in scriptural interpretation; Justice Nariman's constitutional supremacy approach subjects personal laws directly to Articles 14 and 21; and Chief Justice Khehar's insistence on legislative primacy and community consultation reflects a concern for democratic legitimacy and institutional restraint.

Similarly, Justice D.Y. Chandrachud's expansive vision of constitutional morality and gender justice contrasts with Justice Indu Malhotra's caution in interfering with religious practices claimed as essential. Together, these voices create a deliberative ecosystem in which majority and dissenting opinions offer multiple conceptual tools ranging from arbitrariness doctrine to essential-practice analysis and dialogic remedies that future benches can adapt, while dissents serve as reminders of institutional limits and the need for humility in remaking social norms through adjudication.

Going forward, the judiciary's task is to sustain rights-based jurisprudence without losing sensitivity to India's religious diversity and the risk of community alienation. Courts can deepen comparative engagement with reforms in other jurisdictions, articulate clear guidelines for lower courts on applying constitutional norms to personal-law disputes, and deploy interim orders or structured directions that press legislatures toward action rather than treating judicial rulings as the sole engine of transformation.

Simultaneously, scrutiny must extend across all personal-law systems, Hindu, Muslim, Christian, Parsi, tribal, and customary, so that the project of gender justice is not perceived as targeting a single community but as a universal constitutional imperative. For their part, legislatures should convert progressive judicial interpretations into comprehensive, enforceable statutory schemes, ideally moving

toward greater uniformity in core areas like marriage, divorce, guardianship, and maintenance, whether through a carefully designed Uniform Civil Code, an optional secular code, or systematic internal reform of each personal-law regime. Civil society and women's movements remain indispensable in building grassroots support, advancing religiously grounded reinterpretations of equality, and monitoring the implementation of both judicial decisions and legislative enactments.

The continuing debate over the Uniform Civil Code epitomises the tension between formal uniformity and pluralistic accommodation. While a comprehensive UCC could, in theory, guarantee identical civil rights across communities, it also risks being experienced as a majoritarian imposition if pursued without deep consultation and consensus. An optional UCC or piecemeal reform model, by contrast, may better respect group autonomy but demands sustained legislative and judicial vigilance to ensure that incremental changes cumulatively deliver substantive equality. Within this contested terrain, the judiciary's constitutional mandate is not to prescribe a particular institutional design but to insist that any existing or future framework, whether plural or uniform, conforms to the guarantees of equality, dignity, and freedom embedded in the basic structure and Part III. As Justice D.Y. Chandrachud's writings on constitutional morality underscore, courts must be prepared to lead when popular sentiment lags, especially where gender justice and the protection of "minorities within minorities" are at stake, while also recognising that enduring transformation depends on alignment among judicial creativity, legislative will, and social acceptance.

In this light, unresolved issues such as polygamy, *nikah halala*, unequal inheritance rules, and discriminatory practices across all religious communities represent the next frontier of constitutional engagement. The experience from *Narasu Appa Mali* to *Shayara Bano* shows that Indian courts have progressively moved from hands-off deference to a more confident, though still contested, assertion of constitutional supremacy over personal laws.

The challenge now is to consolidate this progress through principled, even-handed adjudication that both protects vulnerable individuals in concrete cases and nudges

the broader legal order toward the constitutional vision of equal citizenship. The judiciary cannot, and should not, act alone, but its evolving jurisprudence will continue to shape the parameters within which Parliament, state legislatures, religious authorities, and civil society negotiate the future of personal laws in a constitutional democracy committed to gender-just transformation.

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