

# From Judicial Deference to Constitutional Scrutiny: Rethinking the Constitutional Status of Personal Laws in India

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## ABSTRACT

Personal laws in India have historically occupied a contested position within constitutional jurisprudence. Courts have often demonstrated judicial restraint when reviewing personal laws against the fundamental rights framework contained in Part III of the Constitution<sup>2</sup>. A significant manifestation of this restraint was seen in *Sandhya v. Union of India* (1997)<sup>3</sup>, where the Bombay High Court upheld Sections 11(i) and (ii) of the Hindu Adoptions and Maintenance Act, 1956 (HAMA)<sup>4</sup>, refusing to scrutinize them under Articles 14 and 21. The Court relied heavily on the precedent established in *Ahmedabad Women Action Group v. Union of India*<sup>5</sup>, which treated personal laws as outside the scope of Article 13. However, the constitutional landscape has evolved significantly since then. The Supreme Court's decision in *Shayara Bano v. Union of India* (2017)<sup>6</sup> marked a pivotal shift by subjecting certain personal law practices to constitutional scrutiny. This paper examines the doctrinal evolution from judicial deference to increasing constitutional intervention in personal laws. It critically evaluates whether the reasoning adopted in *Sandhya* remains sustainable in the post-*Shayara Bano* constitutional order and questions whether courts continue to selectively invoke "legislative policy" to avoid adjudicating sensitive religious matters.

**Keywords:** Personal Laws in India, Judicial Deference, Constitutional Scrutiny, Hindu Adoptions and Maintenance Act, Gender Justice.

## I. INTRODUCTION

The Indian Constitution establishes a framework for the protection of individual rights through Part III<sup>7</sup>, which guarantees fundamental rights such as equality, liberty, and protection against

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<sup>2</sup> INDIA CONST. pt. III.

<sup>3</sup> *Sandhya Kulkarni v. Union of India*, AIR 1998 Bom 228 (India).

<sup>4</sup> Hindu Adoptions and Maintenance Act, 1956, § 11(i)-(ii), No. 78, Acts of Parliament, 1956 (India).

<sup>5</sup> *Ahmedabad Women Action Grp. v. Union of India*, (1997) 3 SCC 573 (India).

<sup>6</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).

<sup>7</sup> INDIA CONST. pt. III.

discrimination. Central to this framework is Article 13<sup>8</sup>, which declares that any law inconsistent with fundamental rights shall be void to the extent of such inconsistency. Article 13 therefore acts as a constitutional safeguard ensuring that all laws conform to the principles of equality, justice, and liberty. However, the application of Article 13 to personal laws has long been contested. While the Constitution aspires to uphold universal rights, courts have often been reluctant to subject personal laws to constitutional scrutiny, creating tension between religious autonomy and fundamental rights.

In the Indian legal context, personal laws refer to legal rules derived from religious traditions governing matters such as marriage, divorce, adoption, inheritance, and maintenance. These laws are community-specific and rooted in religious customs. For example, Hindus are primarily governed by statutes such as the Hindu Marriage Act, 1955<sup>9</sup>, Hindu Succession Act, 1956<sup>10</sup>, and Hindu Adoptions and Maintenance Act, 1956<sup>11</sup>, while Muslims, Christians, and Parsis follow their respective personal law systems. Historically, courts avoided constitutional review of personal laws on the assumption that they were religious practices rather than statutory laws, placing them outside the scope of Article 13.

This judicial reluctance became evident in cases such as *Ahmedabad Women Action Group v. Union of India*<sup>12</sup>, where the Supreme Court held that issues relating to personal law reform fall within the domain of legislative policy rather than judicial determination. Similarly, in *Sandhya v. Union of India* (1997)<sup>13</sup>, the Bombay High Court refused to examine the constitutionality of Sections 11(i) and (ii) of the Hindu Adoptions and Maintenance Act<sup>14</sup>, emphasizing judicial deference to the legislature in matters involving religious norms. Such decisions effectively created a judicial shield protecting personal laws from constitutional scrutiny, even when allegations of discrimination were raised.

However, recent constitutional jurisprudence has increasingly emphasized constitutional morality, gender justice, and individual dignity. The Supreme Court's decision in *Shayara Bano*

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<sup>8</sup> INDIA CONST. art. 13.

<sup>9</sup> Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

<sup>10</sup> Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956 (India).

<sup>11</sup> Hindu Adoptions and Maintenance Act, 1956, No. 78, Acts of Parliament, 1956 (India).

<sup>12</sup> *Ahmedabad Women Action Grp. v. Union of India*, (1997) 3 SCC 573 (India).

<sup>13</sup> *Sandhya Kulkarni v. Union of India*, AIR 1998 Bom 228 (India).

<sup>14</sup> Hindu Adoptions and Maintenance Act, 1956, § 11(i)-(ii), No. 78, Acts of Parliament, 1956 (India).

v. Union of India (2017)<sup>15</sup>, which invalidated the practice of instant triple talaq, challenged the assumption that personal law practices are immune from fundamental rights review.

Against this backdrop, this paper examines the central question: Has the judicial shield protecting personal laws from constitutional scrutiny under Part III become obsolete? By tracing the shift from judicial deference to constitutional intervention, the paper evaluates whether earlier reasoning, such as that adopted in *Sandhya*, remains viable in contemporary constitutional jurisprudence. This inquiry is significant because the relationship between personal laws and fundamental rights lies at the heart of broader debates on gender equality, secularism, and social justice in India.

## II. CONSTITUTIONAL FRAMEWORK AND JUDICIAL APPROACH TO PERSONAL LAWS

The Indian Constitution establishes a framework to ensure that all laws conform to the guarantees of fundamental rights. At the center of this framework is Article 13<sup>16</sup>, which upholds the supremacy of the Constitution. Article 13(1)<sup>17</sup> declares that all laws in force before the commencement of the Constitution are void to the extent that they are inconsistent with the fundamental rights in Part III. Article 13(2)<sup>18</sup> further prohibits the State from enacting any law that abridges or takes away fundamental rights, and any such law becomes void to the extent of its inconsistency. Thus, Article 13 acts as an important safeguard against arbitrary or discriminatory legislation.

Part III of the Constitution, which contains the Fundamental Rights, forms the normative foundation of the constitutional order. Among these rights, Articles 14<sup>19</sup>, 15<sup>20</sup>, and 21<sup>21</sup> are particularly significant in assessing the constitutional validity of personal laws. Article 14 guarantees equality before the law and equal protection of the laws, ensuring that state action is fair and non-arbitrary. Article 15 reinforces this principle by prohibiting discrimination on grounds such as religion, race, caste, sex, or place of birth, making it especially relevant to

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<sup>15</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).

<sup>16</sup> INDIA CONST. art. 13

<sup>17</sup> INDIA CONST. art. 13, cl. 1.

<sup>18</sup> INDIA CONST. art. 13, cl. 2.

<sup>19</sup> INDIA CONST. art. 14.

<sup>20</sup> INDIA CONST. art. 15

<sup>21</sup> INDIA CONST. art. 21.

personal laws that have been criticized for gender inequality. Article 21 guarantees the right to life and personal liberty and has been interpreted broadly to include dignity, privacy, and personal autonomy. Together, these provisions establish a constitutional framework that seeks to uphold equality, liberty, and dignity for all individuals.

Despite the broad language of these constitutional guarantees, Indian courts have historically been hesitant to subject personal laws to scrutiny under Part III. This reluctance stems from the perception that personal laws are rooted in religious traditions and therefore deserve a degree of judicial deference. One of the earliest and most influential precedents on this issue was the decision in *State of Bombay v. Narasu Appa Mali*<sup>22</sup>(1951). In this case, the Bombay High Court held that personal laws do not fall within the definition of “law” under Article 13. The court reasoned that the Constitution distinguished between statutory laws enacted by the legislature and religiously derived personal laws that evolved through custom and tradition. Consequently, personal laws were considered immune from fundamental rights review.

This interpretation significantly shaped subsequent judicial decisions. Courts repeatedly relied on the reasoning in *Narasu Appa Mal*<sup>23</sup> to avoid adjudicating challenges to discriminatory provisions within personal laws. A similar approach was adopted by the Supreme Court in *Ahmedabad Women Action Group v. Union of India* (1997)<sup>24</sup>. In this case, public interest litigants challenged several discriminatory provisions in Muslim personal law relating to marriage, divorce, and inheritance. The Supreme Court declined to examine the merits of the challenge and held that the matter involved complex issues of religious policy that were better addressed by the legislature. By doing so, the Court reinforced the idea that reform of personal laws should occur through legislative processes rather than judicial intervention.

The Bombay High Court’s decision in *Sandhya v. Union of India* (1997) further illustrates this tradition of judicial restraint. The case involved a constitutional challenge to Sections 11(i) and (ii) of the Hindu Adoptions and Maintenance Act, 1956 (HAMA)<sup>25</sup>. These provisions impose certain conditions on adoption, including restrictions relating to the gender of the adoptive parent and the existence of biological children. The petitioner argued that these provisions were

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<sup>22</sup> *State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84 (India).

<sup>23</sup> *id*

<sup>24</sup> *Ahmedabad Women Action Grp. v. Union of India*, (1997) 3 SCC 573 (India).

<sup>25</sup> Hindu Adoptions and Maintenance Act, 1956, § 11(i)-(ii), No. 78, Acts of Parliament, 1956 (India).

discriminatory and violated the constitutional guarantees of equality and personal liberty under Articles 14 and 21.

However, the Bombay High Court declined to engage with these substantive constitutional arguments. Instead of analyzing whether the provisions were consistent with the principles of equality and autonomy, the Court relied on the precedent established in *Ahmedabad Women Action Group*<sup>26</sup>. It held that matters concerning personal laws involve questions of legislative policy, which fall primarily within the domain of Parliament. According to the Court, the judiciary should refrain from interfering in such matters unless the legislature itself chooses to enact reforms.

The Court further reasoned that personal laws, even when codified through statutes such as HAMA, retain their character as religiously rooted legal norms. On this basis, it concluded that personal laws fall outside the scope of Article 13 and therefore cannot be challenged for violating fundamental rights. This reasoning allowed the Court to avoid addressing the substantive constitutional issues raised by the petitioner.

The judicial deference demonstrated in *Sandhya*<sup>27</sup> reflects a broader pattern within Indian constitutional jurisprudence. Courts have often justified their reluctance to review personal laws by emphasizing the importance of respecting religious autonomy and maintaining social harmony in a pluralistic society. Since personal laws are closely linked to religious identity and cultural traditions, judicial intervention in this area has been perceived as potentially disruptive. However, this approach has been widely criticized for undermining the transformative vision of the Constitution. By treating personal laws as immune from constitutional scrutiny, courts risk allowing discriminatory practices to persist in the name of tradition. Critics argue that such judicial restraint effectively weakens the guarantees of equality and dignity contained in Part III. Moreover, the distinction between statutory law and personal law becomes increasingly difficult to justify when many personal laws, such as those governing Hindus, have already been codified by Parliament.

The rationale of judicial deference therefore raises important constitutional questions. While respect for religious freedom is an important value, it must be balanced against the

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<sup>26</sup> *Ahmedabad Women Action Grp. v. Union of India*, (1997) 3 SCC 573 (India).

<sup>27</sup> *Sandhya Kulkarni v. Union of India*, AIR 1998 Bom 228 (India)

Constitution's commitment to equality and justice. The challenge lies in determining whether courts should continue to defer to legislative reform in matters of personal law or whether they should actively ensure that all legal norms conform to the fundamental rights framework. As constitutional jurisprudence evolves, this tension between judicial restraint and constitutional enforcement remains at the center of debates surrounding personal law reform in India.

### III. THE JUDICIAL SHIFT: SHAYARA BANO V. UNION OF INDIA (2017)<sup>28</sup> AND ITS IMPACT

A significant transformation in the constitutional discourse surrounding personal laws occurred with the Supreme Court's landmark decision in *Shayara Bano v. Union of India* (2017)<sup>29</sup>. For decades, Indian courts had largely refrained from subjecting personal law practices to rigorous scrutiny under the framework of fundamental rights. The judgment in *Shayara Bano*<sup>30</sup> marked an important shift in this approach by questioning the long-standing assumption that personal laws are immune from constitutional review. The case brought into sharp focus the tension between religious autonomy and the constitutional commitment to equality, dignity, and individual liberty.

#### Facts and Constitutional Issues

The case originated from a petition filed by Shayara Bano, a Muslim woman who challenged the validity of the practice of talaq-e-biddat, commonly referred to as instant triple talaq. Under this practice, a Muslim husband could unilaterally divorce his wife by pronouncing the word "talaq" three times in one sitting, resulting in the immediate dissolution of marriage. Shayara Bano argued that this practice was arbitrary, discriminatory, and violative of fundamental rights guaranteed under the Constitution.

The petitioner contended that the practice violated Article 14<sup>31</sup>, which guarantees equality before the law, and Article 15<sup>32</sup>, which prohibits discrimination on the basis of sex. Additionally, it was argued that the practice undermined the dignity and personal autonomy of Muslim women, thereby infringing Article 21<sup>33</sup>, which protects the right to life and personal

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<sup>28</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).

<sup>29</sup> id

<sup>30</sup> id

<sup>31</sup> INDIA CONST. art. 14.

<sup>32</sup> INDIA CONST. art. 15.

<sup>33</sup> INDIA CONST. art. 21.

liberty. The petition also raised the question of whether instant triple talaq constituted an essential religious practice protected under Article 25<sup>34</sup>, which guarantees freedom of religion. Given the constitutional significance of these issues, the Supreme Court constituted a five-judge Constitution Bench to examine the validity of the practice. The central question before the Court was whether the practice of instant triple talaq, as part of Muslim personal law, could be subjected to constitutional scrutiny and invalidated if found inconsistent with fundamental rights.

### **The Supreme Court's Reasoning**

The Supreme Court delivered a split verdict, with a majority of three judges declaring the practice of instant triple talaq unconstitutional. Although the judges differed in their reasoning, the overall outcome represented a clear departure from earlier judicial reluctance to intervene in matters governed by personal law.

One of the key strands of reasoning in the judgment was the application of Article 14's prohibition against arbitrariness. Justice Rohinton Nariman, writing for the majority in one of the opinions, held that instant triple talaq was manifestly arbitrary because it allowed a husband to dissolve a marriage unilaterally and without any attempt at reconciliation or justification. The absence of procedural safeguards and the one-sided nature of the practice made it inconsistent with the principle of equality.

The Court further observed that such a practice was not essential to Islamic faith and therefore could not claim absolute protection under Article 25. By examining the historical and theological foundations of the practice, the Court concluded that instant triple talaq had been widely criticized even within Islamic jurisprudence and was not considered an integral part of the religion.

Another significant aspect of the judgment was the recognition that practices derived from personal laws cannot automatically claim immunity from constitutional scrutiny. While earlier cases had treated personal laws as distinct from statutory law, the reasoning in *Shayara Bano*<sup>35</sup> suggested that when such practices affect fundamental rights, courts cannot remain passive observers.

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<sup>34</sup> INDIA CONST. art. 25.

<sup>35</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).

### **Challenging the Immunity of Personal Laws**

The decision in *Shayara Bano* challenged the long-standing doctrinal position that personal laws fall outside the scope of Part III of the Constitution. Earlier judicial decisions, particularly *Narasu Appa Mali* and *Ahmedabad Women Action Group v. Union of India*<sup>36</sup>, had emphasized that personal laws are matters of legislative policy and therefore beyond the reach of constitutional review.

However, the Supreme Court in *Shayara Bano*<sup>37</sup> demonstrated a willingness to depart from this rigid interpretation. By invalidating a personal law practice on grounds of arbitrariness and gender discrimination, the Court implicitly recognized that personal law norms must be evaluated against constitutional standards.

This shift reflects a broader transformation in Indian constitutional jurisprudence, where the focus has increasingly moved toward protecting individual dignity and substantive equality. The decision signaled that religiously sanctioned practices cannot be shielded from scrutiny when they conflict with fundamental rights.

### **Balancing Religious Freedom and Fundamental Rights**

A central challenge before the Court in *Shayara Bano* was balancing the right to religious freedom under Article 25 with the guarantees of equality and dignity contained in Part III. Article 25 protects the freedom to practice and profess religion, but it is not an absolute right. The Constitution explicitly states that religious freedom is subject to public order, morality, health, and other provisions of Part III.

The Court therefore had to determine whether instant triple talaq constituted an essential religious practice deserving constitutional protection. The majority concluded that the practice was not essential to Islam and therefore could be invalidated without infringing religious freedom.

This reasoning allowed the Court to reconcile the competing constitutional values at stake. By distinguishing between essential religious practices and discriminatory social practices, the

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<sup>36</sup> *Ahmedabad Women Action Grp. v. Union of India*, (1997) 3 SCC 573 (India).

Court sought to preserve the autonomy of religious communities while ensuring that fundamental rights remain paramount.

The judgment thus represents an attempt to harmonize constitutional morality with religious pluralism. It reflects the idea that while the Constitution respects religious diversity, it does not permit practices that undermine basic principles of equality and dignity.

### **Implications for Future Judicial Review of Personal Laws**

The impact of *Shayara Bano*<sup>38</sup> extends far beyond the immediate issue of triple talaq. The judgment has important implications for the broader debate on the constitutional status of personal laws in India.

First, the decision signals a growing willingness of courts to subject personal law practices to constitutional scrutiny. While the judgment did not explicitly overrule earlier precedents such as *Narasu Appa Mali*<sup>39</sup>, it significantly weakened the doctrinal basis for treating personal laws as immune from fundamental rights review.

Second, the case strengthens the role of constitutional morality as a guiding principle in judicial interpretation. Courts may increasingly rely on constitutional values such as equality, dignity, and non-discrimination when evaluating traditional practices.

Third, the judgment may encourage future challenges to discriminatory provisions within other personal law frameworks. Practices relating to inheritance, guardianship, marriage, and adoption could potentially be examined through the lens of fundamental rights.

Finally, the decision reflects an evolving understanding of the Constitution as a transformative document designed to challenge social hierarchies and promote justice. The willingness of the judiciary to intervene in areas previously considered sensitive or controversial indicates a shift toward a more proactive role in safeguarding individual rights.

In this context, the reasoning adopted in *Shayara Bano* raises important questions about the continued validity of earlier judicial decisions that avoided constitutional scrutiny of personal

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<sup>38</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).

<sup>39</sup> *State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84 (India).

laws. As courts increasingly emphasize equality and dignity, the traditional judicial shield protecting personal laws may no longer remain sustainable within India's evolving constitutional framework.

#### IV. CRITICAL ANALYSIS: ARE JUDICIAL SHIELDS STILL TENABLE?

The evolution of constitutional jurisprudence concerning personal laws in India reveals a significant shift from judicial restraint to a more assertive enforcement of fundamental rights. A comparison between the Bombay High Court's approach in *Sandhya v. Union of India* (1997)<sup>40</sup> and the Supreme Court's stance in *Shayara Bano v. Union of India* (2017)<sup>41</sup> illustrates this transformation. While the earlier judgment reflected a cautious and deferential approach toward personal laws, the later decision demonstrated a growing willingness of courts to examine religious practices through the lens of constitutional principles.

In *Sandhya v. Union of India*<sup>42</sup>, the Bombay High Court avoided addressing the substantive constitutional challenges raised under Articles 14 and 21. Instead of engaging with the equality implications of the provisions under challenge, the Court relied heavily on precedents such as *Ahmedabad Women Action Group v. Union of India*<sup>43</sup>. It concluded that matters concerning personal law reform fall primarily within the domain of legislative policy. This reasoning allowed the Court to sidestep the question of whether the provisions of the Hindu Adoptions and Maintenance Act (HAMA)<sup>44</sup> were compatible with the guarantees of equality and liberty enshrined in the Constitution. The decision therefore exemplified the broader judicial tendency to defer to the legislature in matters perceived as sensitive or religious in nature.

In contrast, the Supreme Court's judgment in *Shayara Bano v. Union of India*<sup>45</sup> signaled a clear departure from this deferential stance. By invalidating the practice of instant triple talaq on grounds of arbitrariness and gender discrimination, the Court affirmed that religious practices cannot remain immune from constitutional scrutiny when they infringe fundamental rights. Although the judgment did not explicitly overturn earlier precedents regarding the constitutional status of personal laws, it nonetheless weakened the doctrinal basis for treating

<sup>40</sup> *Sandhya Kulkarni v. Union of India*, AIR 1998 Bom 228 (India).

<sup>41</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).

<sup>42</sup> *Sandhya Kulkarni v. Union of India*, AIR 1998 Bom 228 (India).

<sup>43</sup> *Ahmedabad Women Action Grp. v. Union of India*, (1997) 3 SCC 573 (India).

<sup>44</sup> Hindu Adoptions and Maintenance Act, 1956, § 11(i)-(ii), No. 78, Acts of Parliament, 1956 (India).

<sup>45</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).

them as beyond judicial review. The decision emphasized that constitutional values such as equality, dignity, and non-discrimination must prevail over discriminatory social practices, even when those practices are justified on religious grounds.

This shift raises important questions regarding the continued validity of restrictive provisions such as Sections 11(i) and (ii) of the Hindu Adoptions and Maintenance Act, 1956. These provisions impose conditions on adoption that have been criticized for reflecting traditional patriarchal assumptions about family structures and gender roles. When evaluated against modern constitutional standards, particularly the expanded interpretation of Article 14 and Article 21, such restrictions may face significant challenges. Contemporary equality jurisprudence recognizes not only formal equality but also substantive equality, which seeks to dismantle structural forms of discrimination. Furthermore, the Supreme Court's recognition of personal autonomy and dignity as integral components of Article 21 suggests that decisions relating to family life, including adoption, fall within the sphere of individual liberty.

Despite this evolving constitutional framework, courts sometimes continue to rely on the notion of "legislative policy" as a justification for avoiding adjudication in personal law disputes. This approach reflects a concern that judicial intervention in religiously sensitive matters could provoke social and political controversy. By framing personal law reform as primarily a legislative responsibility, courts seek to maintain institutional restraint and respect for democratic processes.

However, the reliance on legislative policy as a shield against judicial scrutiny raises several concerns. The Constitution entrusts the judiciary with the responsibility of safeguarding fundamental rights. When courts decline to examine discriminatory practices on the ground that reform should come from the legislature, they risk undermining this constitutional mandate. Legislative reform in matters of personal law has historically been slow and politically contentious, often leaving affected individuals without effective remedies.

Indian constitutional jurisprudence provides several examples of both judicial deference and judicial intervention in matters involving personal laws and social practices. In cases such as *Ahmedabad Women Action Group*, the Supreme Court declined to engage with constitutional challenges relating to religious practices, emphasizing the need for legislative reform. On the

other hand, decisions such as *Shayara Bano*, *Joseph Shine v. Union of India*<sup>46</sup>, and the Sabarimala case (*Indian Young Lawyers Association v. State of Kerala*)<sup>47</sup> demonstrate a more proactive judicial approach. In these cases, the Court emphasized constitutional morality and struck down practices or laws that perpetuated discrimination or violated individual dignity.

This selective pattern of intervention raises an important question: does judicial reluctance in certain cases undermine the supremacy of the Constitution? The Constitution establishes fundamental rights as the highest normative standards within the legal system. If certain categories of law are effectively shielded from constitutional scrutiny, the universality of these rights may be compromised. Critics argue that allowing discriminatory personal law practices to persist in the name of religious autonomy weakens the transformative potential of the Constitution.

At the same time, it is important to recognize the complex socio-political context in which courts operate. India is a deeply pluralistic society characterized by diverse religious traditions and cultural practices. Judicial intervention in matters of personal law may be perceived by some communities as interference with religious freedom and cultural identity. Courts must therefore navigate a delicate balance between protecting fundamental rights and respecting religious diversity.

The challenge for the judiciary lies in developing a principled framework that respects religious pluralism while ensuring that constitutional guarantees of equality and dignity are not compromised. As constitutional jurisprudence continues to evolve, the traditional judicial shield protecting personal laws appears increasingly difficult to justify. The growing emphasis on constitutional morality suggests that personal law provisions, like all other legal norms, must ultimately conform to the values embedded in the Constitution.

## V. BROADER IMPLICATIONS AND COMPARATIVE PERSPECTIVES

The debate surrounding judicial intervention in personal laws has broader implications for constitutional governance in India. At its core, the issue raises fundamental questions about the relationship between religion, law, and constitutional authority. Whether courts choose to defer

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<sup>46</sup> *Joseph Shine v. Union of India*, (2019) 3 SCC 39 (India).

<sup>47</sup> *Indian Young Lawyers Ass'n v. State of Kerala*, (2019) 11 SCC 1 (India).

to legislative reform or actively scrutinize personal laws significantly influences the protection of individual rights and the realization of constitutional values.

Judicial deference to personal laws may preserve social harmony in the short term, but it risks perpetuating discriminatory practices that conflict with constitutional guarantees. Conversely, judicial intervention may accelerate the process of reform by ensuring that all legal norms are consistent with principles of equality and dignity. The challenge lies in balancing respect for religious autonomy with the Constitution's commitment to justice and non-discrimination.

Comparative constitutional experience offers useful insights into how other jurisdictions have approached similar issues. In several democratic societies, religious or customary laws have been subjected to constitutional scrutiny when they conflict with fundamental rights. For instance, courts in South Africa have examined customary law practices through the lens of constitutional equality, striking down traditions that discriminate against women<sup>48</sup>. Similarly, constitutional courts in countries such as Canada and the United States have held that religious practices cannot override basic constitutional protections<sup>49</sup>.

These examples demonstrate that constitutional democracies often adopt an approach in which religious freedom is respected but remains subject to overarching constitutional principles. The Indian constitutional framework, with its emphasis on equality, dignity, and secularism, is well suited to a similar approach. Rather than treating personal laws as entirely immune from constitutional review, courts can evaluate specific practices to determine whether they violate fundamental rights.

Moving forward, the harmonization of personal laws with constitutional values may require a combination of judicial engagement and legislative reform. While courts play a crucial role in protecting fundamental rights, the legislature possesses the institutional capacity to undertake comprehensive reforms that address complex social realities. Meaningful reform of personal laws may therefore require collaboration between judicial interpretation and legislative action. Ultimately, the goal should be to ensure that personal laws evolve in a manner consistent with the constitutional commitment to equality and social justice. By aligning religiously derived

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<sup>48</sup> *Bhe v. Magistrate, Khayelitsha* 2005 (1) SA 580 (CC) (S. Afr.).

<sup>49</sup> *Reynolds v. United States*, 98 U.S. 145 (1878).

legal norms with fundamental rights, the legal system can promote both respect for cultural diversity and the protection of individual dignity.

## VI. CONCLUSION

The constitutional relationship between personal laws and fundamental rights has long been a contested issue in Indian jurisprudence. For many decades, courts adopted a cautious approach, often refraining from subjecting personal laws to scrutiny under Part III<sup>50</sup> of the Constitution. Decisions such as *Ahmedabad Women Action Group v. Union of India*<sup>51</sup> and *Sandhya v. Union of India*<sup>52</sup> reflected a strong preference for judicial deference, emphasizing that reform of personal laws should be undertaken by the legislature rather than the judiciary.

However, the constitutional landscape has undergone a significant transformation in recent years. The Supreme Court's decision in *Shayara Bano v. Union of India*<sup>53</sup> marked an important turning point by invalidating the practice of instant triple talaq and affirming that discriminatory practices cannot be justified merely on the basis of religious tradition. The judgment signaled a growing willingness to subject personal law practices to constitutional scrutiny when they conflict with fundamental rights.

This shift suggests that the long-standing judicial shield protecting personal laws from constitutional review is gradually weakening. As the judiciary increasingly emphasizes principles such as constitutional morality, gender equality, and individual dignity, the traditional distinction between personal law and other forms of law becomes increasingly difficult to sustain. Provisions that perpetuate discrimination or undermine personal autonomy are unlikely to withstand modern constitutional scrutiny.

At the same time, the challenge of reconciling religious autonomy with constitutional guarantees remains complex. Courts must carefully navigate the sensitive terrain of religious pluralism while ensuring that fundamental rights remain the guiding principles of the legal system. A principled constitutional approach requires recognizing that respect for religious diversity cannot come at the expense of equality and justice.

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<sup>50</sup> INDIA CONST. pt. III.

<sup>51</sup> *Ahmedabad Women Action Grp. v. Union of India*, (1997) 3 SCC 573 (India).

<sup>52</sup> *Sandhya Kulkarni v. Union of India*, AIR 1998 Bom 228 (India).

<sup>53</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).

Future developments in this area will likely depend on the continued interaction between judicial interpretation and legislative reform. While courts play a crucial role in safeguarding constitutional rights, comprehensive reform of personal laws may also require proactive legislative initiatives. Further research may focus on developing frameworks that balance cultural autonomy with the transformative vision of the Constitution.

Ultimately, the evolution of constitutional jurisprudence indicates that personal laws cannot remain permanently insulated from fundamental rights review. As India continues to advance its commitment to equality and social justice, ensuring that all legal norms conform to constitutional principles will remain an essential task for both the judiciary and the legislature.

