

## Finding Rights in the Family: An Examination of Indian Personal Laws through the Lens of Human Rights

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### ABSTRACT

India has a legal plurality system, or personal law system, for family law. Personal laws govern marriage, divorce, inheritance, and adoption according to religious beliefs and conventions. Unfortunately, this legal system has failed to alleviate inequality and defend human rights. Even if they are codified, many Indian personal laws are seldom updated. Saturation occurs when attempts to alter personal laws to accommodate new issues caused by family system restructuring violate human rights and harm individuals. Legal system restructuring has challenged the old framework. Marriage, adoption, inheritance, maintenance, guardianship, and child custody have been challenged by social change. The spread of consumerist society has made matters worse. Indian family life has evolved owing to fast economic expansion, social change, and technological advancement. Family-related topics in urban and rural communities were simpler decades ago.

The authors aim to comprehend the trajectory and current status of personal laws in order to identify the impediments that personal laws pose to human rights.

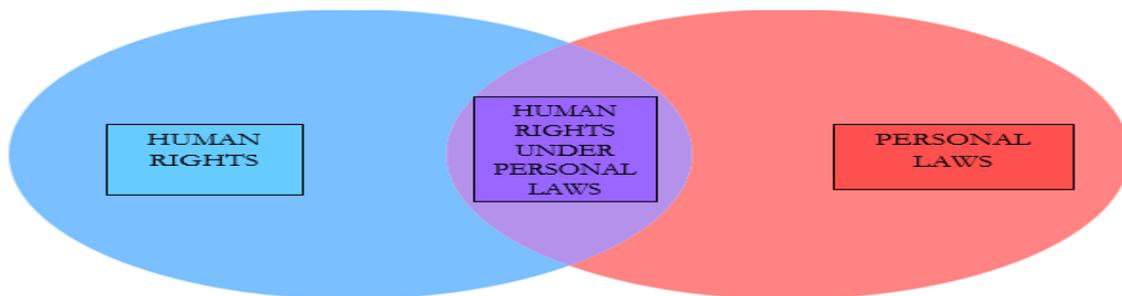


Figure 1

### I. INTRODUCTION

The family is society's fundamental kinship unit, providing a safe space for personal connections, limiting the number of children born, managing money, and exposing youngsters to healthy social interactions. Human communities start with family. It is one of the few constants in human life and exists everywhere. Family members are legally liable for each other's duties and follow the same regulations. Marriage, maintenance, child custody, restoration of conjugal rights, divorce, adoption, guardianship, and inheritance are legal principles that operate the family system. Understanding that Family Law seldom challenges the basic rights of a family member is crucial. Each person has essential human rights that no legal notion may violate. The paper analyses existing Personal Laws to answer these questions: In what manner do personal laws relate to human rights? Whether personal laws in India present a jeopardy to human rights? To what extent has the judiciary in India endeavoured to rectify these disparities through creative interpretation? The study uses primary and secondary sources, including legislation, Law Commission of India reports, precedents, books, references, and research papers, to investigate doctrine diagnostically and analytically.

### II. HUMAN RIGHTS

The inherent ability to engage in rational thinking is a characteristic shared by all members of the human species. Human beings possess certain inherent rights, commonly referred to as Human Rights, solely based on their status as members of the human species. It is an inherent impossibility for any individual to be deprived of their fundamental human rights or impeded from exercising them. These are commonly referred to as birth rights as they are inherent to each individual

upon their birth. All individuals, irrespective of their racial background, gender, sexual orientation, or geographical origin, possess an equitable array of inherent human rights from birth. There exists a plethora of terminologies to denote the concept we refer to as human rights. The notion of human rights is universally recognised as being of utmost importance, to the extent that some countries explicitly declare their inviolability and immunity from statutory limitations. One essential characteristic of human rights is their interconnectedness. The interdependence of rights is evident as they mutually reinforce one another. For instance, the exercise of rights such as freedom of speech, access to education, and provision of basic necessities significantly impacts an individual's engagement in the political system.

*Section 2 (d) of the Protection of Human Rights Act, 1993 defines "Human Rights as the rights relating to life, liberty, equality, and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants, and enforceable by Courts in India."*<sup>1</sup>

### III. THE SIGNIFICANCE OF HUMAN RIGHTS

The safeguarding of human rights facilitates the realisation of our complete development and the fulfilment of our spiritual, intellectual, creative, and emotional aspirations. The concept of human rights arose from the increasing realisation that all people deserve to be regarded with the dignity and protection commensurate with their inherent worth as human beings. In today's global order, human rights are widely recognised for the legal, moral, and political weight they carry. Human rights are legitimate because they involve carrying out the commitments and protections spelled out in international agreements. This is both moral and political in the broadest sense, as human rights are a value-based system designed to protect individual's inherent worth.

### IV. PERSONAL LAWS

Marriage, divorce, guardianship, adoption, and succession are all areas of civil law in India that are governed by religious principles<sup>2</sup>. Religion, belief, and cultural norms all play a role in determining which personal laws apply to a given individual or group<sup>3</sup>. At present, Hindus, Muslims, Christians, Sikhs and Parsis are governed by their set of personal laws in India<sup>4</sup>.

#### Hindu Law

Shruti, Smriti, and Sadachara are the three main Dharma texts. Dharmasutras and dharmashastras were drawn from Smriti, whereas the Vedas came from Shruti. Sadachara also affected morals.<sup>5</sup> Hindu Marriage and Family Law is based on Smritis and Nibandhas, including commentaries and digests.<sup>6</sup> The Vedas have been widely recognised by experts as the primary authoritative text for Hindu law, while the Smriti texts have been utilised as a foundation for comprehensive guidelines pertaining to the establishment of social relations.<sup>7</sup> The Anglo-Hindu legal system was influenced by Mitakshara and Dayabhaga. Marriage was commonly perceived as a sacramental institution that is oriented towards the objective of procreation. After the independence of India, the Hindu Marriage Act, 1955<sup>8</sup>, was introduced as a major social law. Hindu women gained equal divorce rights<sup>9</sup> with the Hindu Marriage Act, 1955.<sup>10</sup> It brought a contractual element to marriage while retaining its religious and ceremonial components.<sup>11</sup> The Act described "marriage

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<sup>1</sup> The Protection of Human Rights, 1993, § 2, cl. d, No. 10, Acts of Parliament, 1993 (India).

<sup>2</sup> LEKSHMI PARAMESWARAN, HISTORY OF PERSONAL LAWS IN INDIA 4 (India Policy Foundation 2020).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

<sup>9</sup> Hindu Marriage Act, 1955, § 13, No. 25, Acts of Parliament, 1955 (India). 1 FLAVIA AGNES, FAMILY LAWS AND CONSTITUTIONAL CLAIMS 25 (Oxford University Press 2011).

<sup>10</sup> LEKSHMI PARAMESWARAN, HISTORY OF PERSONAL LAWS IN INDIA 9 (India Law Foundation 2020).

<sup>11</sup> *Id.* at 10.

ceremonies”<sup>12</sup> and “capacity to marry”<sup>13</sup>. It was criticised for diluting Hindu law and adopting a Western family law structure. Feudal, agricultural, and patriarchal norms shaped property law. Mitakshara Law restricted property ownership to men by birthright. Manu, Gautama, Narada, and Yajnavalkya have all debated Stridhan and was incorporated as Section 14 in Hindu Succession Act, 1956.<sup>14</sup> To regulate the matters of adoption, guardianship, maintenance among Hindus – Hindu Adoption and Maintenance Act, 1956<sup>15</sup> and Hindu Minority and Guardianship Act, 1956<sup>16</sup> were enacted.<sup>17</sup>

#### Muslim Law

Islamic jurisprudence is commonly referred to as Fiqh. Quran, Sunna, Ijma, and Qiyas are the primary sources of Muslim Law.<sup>18</sup> It is contended that Quran cannot be construed as Law; it is the source of law.<sup>19</sup> Human intervention in the form of interpretation or case law, is therefore necessary for the proper functioning of any legal system. In India, the Muslim personal Law is applicable in personal matters due to Shariat Act, 1937.<sup>20</sup> Muslim Law recognises marriage as a civil contract that legitimises offspring. The Nikahnama legally records the marriage contract. Certain conditions for marriage are also guaranteed by Islamic law. Marriage dissolution can happen because of a court order<sup>21</sup>, an agreement between the parties, or the death of one of the partners. Wives must observe Iddat for four months after their husband's death before they can remarry. Current Indian law prohibits the practise of triple talaq.<sup>22</sup> Zehar, Mubaraa, Lian and Faskh are alternatives to marriage dissolution. The Muslim Divorce Law of 1939<sup>23</sup> was enacted with the objective of providing women with the legal entitlement to seek divorce. The Muslim women in India can file petition for maintenance after divorce under Muslim Women (Protection of Rights on Divorce) Act.<sup>24</sup> The right regarding property of a Muslim is regulated under Sharia Law in India.<sup>25</sup>

#### Christian Law

The laws that govern Christians in India are shaped by the British, French, and Portuguese.<sup>26</sup> Various Christian communities in India adhere to a variety of cultural norms.<sup>27</sup> Here are three of the most important ones:

- The Syro-Malabar Church, the Mar Thoma Church, the Syro-Malankara Church – examples of West Asian-rooted orthodox Christian churches;<sup>28</sup>
- The Latin rites of the Roman Catholic Church;<sup>29</sup>

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<sup>12</sup> Hindu Marriage Act, 1955, § 7, No. 25, Acts of Parliament, 1955 (India).

<sup>13</sup> Hindu Marriage Act, 1955, § 5, No. 25, Acts of Parliament, 1955 (India).

<sup>14</sup> *Id.* at 10. Hindu Succession Act, 1956, § 14, No. 30, Acts of Parliament, 1956 (India).

<sup>15</sup> Hindu Adoption and Maintenance Act, 1956, No. 78, Acts of Parliament, 1956 (India).

<sup>16</sup> Hindu Minority and Guardianship Act, 1956, No. 32, Acts of Parliament, 1956 (India).

<sup>17</sup> *Id.* at 10.

<sup>18</sup> LEKSHMI PARAMESWARAN, HISTORY OF PERSONAL LAWS IN INDIA 5 (India Policy Foundation 2020).

<sup>19</sup> *Id.* at 18.

<sup>20</sup> LEKSHMI PARAMESWARAN, HISTORY OF PERSONAL LAWS IN INDIA 7 (India Policy Foundation 2020).

The Muslim Personal Law (Shariat) Application Act, 1937, No. 26, Acts of Parliament, 1937 (India).

<sup>21</sup> *Id.* at 10. The Dissolution of Muslim Marriage Act, 1939, No. 8, Acts of Parliament, 1939 (India).

<sup>22</sup> The Muslim Women (Protection of Rights on Marriage) Act, 2019, No. 20, Acts of Parliament, 2019 (India). LEKSHMI PARAMESWARAN, HISTORY OF PERSONAL LAWS IN INDIA 10 (India Policy Foundation 2020).

<sup>23</sup> *Id.* at 21. LEKSHMI PARAMESWARAN, HISTORY OF PERSONAL LAWS IN INDIA 11 (India Policy Foundation 2020).

<sup>24</sup> *Id.* at 22. The Muslim Women (Protection of Rights on Divorce) Act, 1986, No. 25, Acts of Parliament, 1986 (India).

<sup>25</sup> S.K. Shireen, *Muslim Law of Inheritance*, E-COURT DISTRICT COURT SRIKAKULUM, June 2018, <https://districts.ecourts.gov.in/sites/default/files/muslim%20law%20of%20inheritance.pdf>. LEKSHMI PARAMESHWARAN, HISTORY OF PERSONAL LAWS IN INDIA 12 (India Policy Foundation 2020).

<sup>26</sup> Nandini Chatterjee, *Religious Change, Social Conflict and Legal Competition: The Emergence of Christian Personal Law in Colonial India*, 44, MODERN ASIAN STUDIES 1147, 1147-1195 (2010).

<sup>27</sup> 1 FLAVIA AGNES, FAMILY LAWS AND CONSTITUTIONAL CLAIMS (Oxford University Press 2011).

<sup>28</sup> *Id.* at 27. Smita M. Patil, *Personal Laws*, E-GyanKosh (March 31, 2017), <https://egyankosh.ac.in/handle/123456789/5549>.

<sup>29</sup> *Id.* at 27. *Id.* at 28.

- The third group consists of Protestant-inspired reformist churches. The Church of North India (CNI) and the Church of South India (CSI) have accepted them.<sup>30</sup>

As Christianity spread across Europe, the Church became increasingly influential in the realm of matrimony. Marriage was elevated to the rank of a sacred union due to the influence of the Church. In the twelfth century, the Roman Catholic Church allegedly started regulating weddings. Roman and Jewish marriage law form the basis for canon law, also known as Church Law of marriage. The solemnization of a marriage was viewed as incomplete without the blessing of the church and the associated public ceremony.<sup>31</sup> *Marriage is regarded as a sacred institution by the Church due to the belief that the union of husband and wife is divinely ordained, resulting in their unity as a single entity.*<sup>32</sup> Christian denominations in India existed within a cultural hybrid of European and indigenous worldviews. It is argued that post-conversion Christians did not abandon their caste ideologies. The matters in regard to marriage and divorce among Christians are regulated under Indian Christian Marriage Act, 1872<sup>33</sup> and Indian Divorce Act, 1869<sup>34</sup>. The Indian Succession Act<sup>35</sup> governs the property rights of a Christian in India.<sup>36</sup>

#### Parsi Law

The community has its genesis in Iran. In AD 636, Omar, the caliph of the Arabs, conquered Persia.<sup>37</sup> Yezdezind, the king of the Parsis, fled the collapse of his empire and settled in Daman's southernmost region.<sup>38</sup> Yezdezind made a deal with the king to develop the region. The king gave refuge to them under some conditions,<sup>39</sup>

- Parsis should accept the vernacular language and they will render their holy text into vernacular language;<sup>40</sup>
- The Parsi women will adopt local attire - saree;<sup>41</sup>
- The marriage will be solemnised in the evening; and<sup>42</sup>
- To retreat from the activities related to the arms.<sup>43</sup>

The local king gave the Parsi community permission to construct the Navsari fire temples in the area around Diu. Shensoy (or Shuhursaes) and Kudmis are the two main sects under Parsi Community.<sup>44</sup> During British rule in India, English civil law was applied to Parsis.<sup>45</sup> The marriage and bigamy customs of Parsi communities, however, continue to be uniquely their own.<sup>46</sup> The Parsis were especially concerned with preserving their tenets that differed from British law, were:

- Distribution of shares in case of intestacy; and
- Independent control over property by married women excluding converters.

On continuous demand of Parsis on separate legislations, a Parsi Law Commission was set up which issued a report in 1865, and as a result of which, two bills were introduced in 1864:

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<sup>30</sup> *Id.* at 27. *Id.* at 28.

<sup>31</sup> *Id.* at 28.

<sup>32</sup> *Id.* at 28.

<sup>33</sup> The Indian Christian Marriage Act, 1872, No. 15, Acts of Parliament, 1872 (India). *Id.* at 10.

<sup>34</sup> The Divorce Act, 1869, No. 4, Acts of Parliament, 1869 (India). LEKSHMI PARAMESWARAN, HISTORY OF PERSONAL LAWS IN INDIA 10 (2020).

<sup>35</sup> The Indian Succession Act, 1925, No. 39, Acts of Parliament, 1925 (India).

<sup>36</sup> *Id.* at 23.

<sup>37</sup> Dharmendra Chauhan, *A Short History of Zoroastrian Migration to India*, MEDIUM (July 5, 2023), <https://medium.com/@blindNelephant/a-short-history-of-zoroastrian-migration-to-india-4ec19ca29951>.

<sup>38</sup> *Id.* at 36.

<sup>39</sup> *Id.* at 36.

<sup>40</sup> *Id.* at 36.

<sup>41</sup> *Id.* at 36.

<sup>42</sup> *Id.* at 36.

<sup>43</sup> *Id.* at 36.

<sup>44</sup> NATIONAL INSTITUTE OF OPEN SCHOOLING, <https://www.nios.ac.in/> (July 10, 2023).

<sup>45</sup> *Id.* at 43.

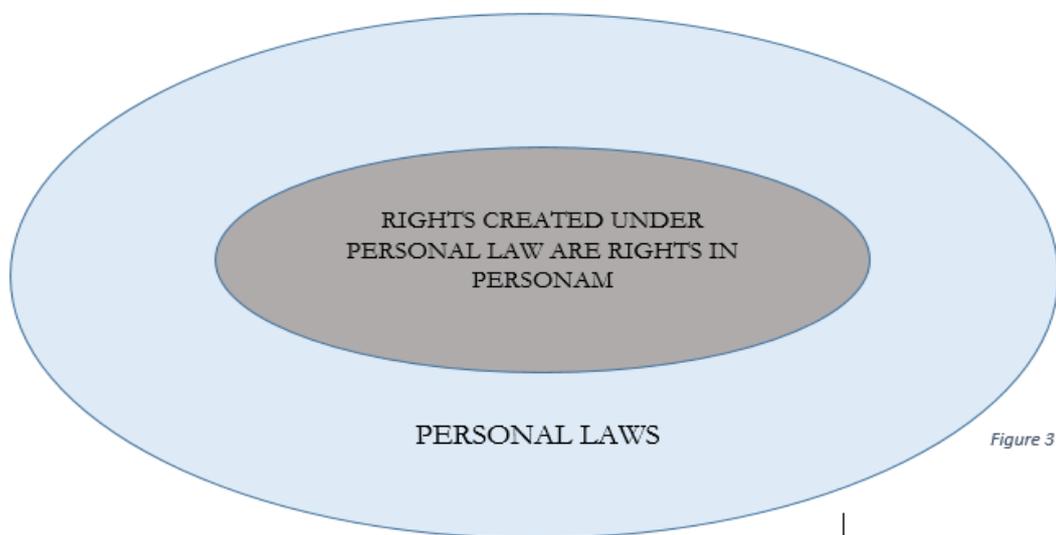
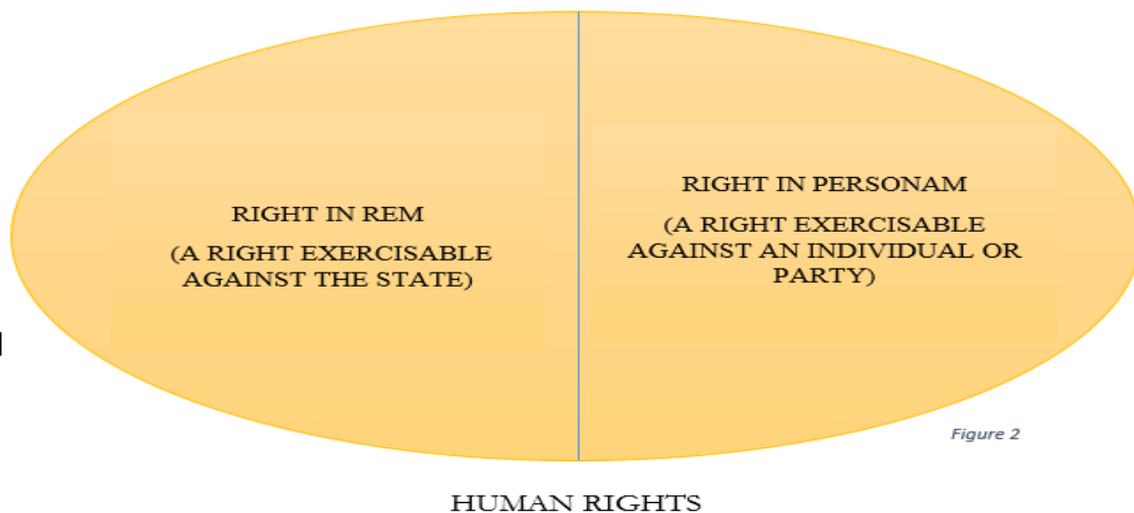
<sup>46</sup> *Id.* at 43.

- Parsee Marriage and Divorce Bill; and
- The Parsee Succession and Inheritance Bill.

The Parsi Marriage and Divorce Act<sup>47</sup> enacted in 1936 is significant because it is the first codified matrimonial law in India. The Parsi Succession is governed under the Indian Succession Act, 1925.<sup>48</sup>

#### V. RELATION BETWEEN HUMAN RIGHTS AND PERSONAL LAWS

The relationship between Human Rights and Personal Laws can be explained through the following illustrated Venn diagrams -



<sup>47</sup> The Parsi Marriage and Divorce Act, 1936, No. 3, Acts of Parliament, 1936 (India).

<sup>48</sup> *Id.* at 34.

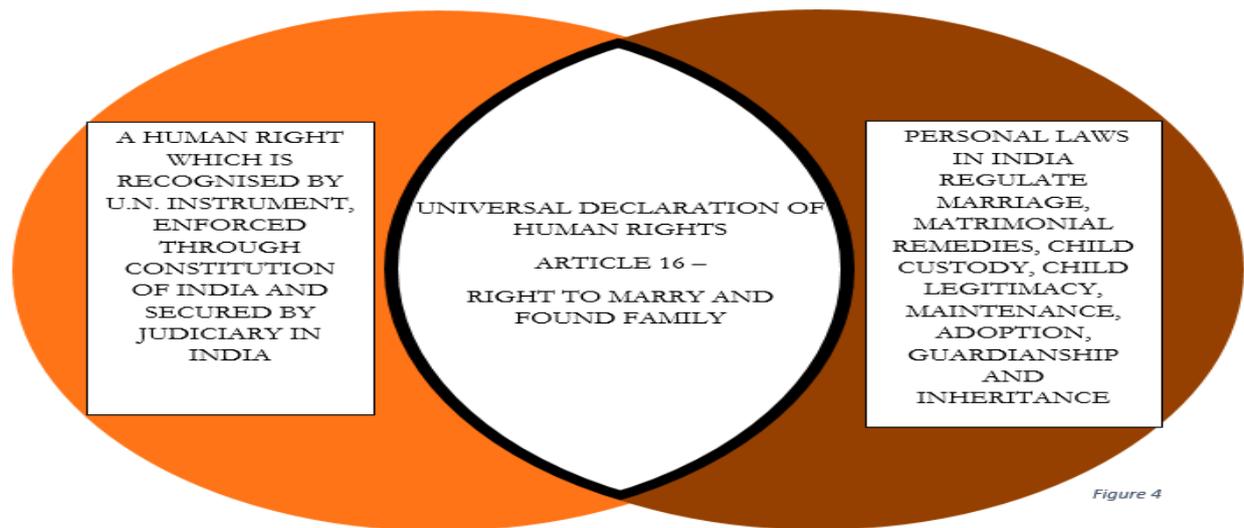


Figure 4

## VI. THE IMPLICATIONS OF PERSONAL LAWS ON HUMAN RIGHTS: AN EXAMINATION OF CHALLENGES

This paper aims to analyse the challenges posed by Personal Laws to Human Rights. The major challenges analysed are as following –

- Registration of marriage

While the current wave of reforms has been largely successful, problems like child marriage, polygamy, and violence against women and girls persist despite the existence of laws that outlaw and punish them. Because there is no official documentation of their marriage, many women are denied the legal protections afforded to wives.<sup>49</sup> There have also been reported cases of marriage fraud recently.<sup>50</sup> The importance of maintaining documentation of births, deaths, and marriages has been recognised by the United Nations.<sup>51</sup> In certain nations, marriage registration is not required. But the majority of nations are aware that such registration is necessary. In the 205<sup>th</sup> Report of Law Commission of India “Proposal to Amend the Prohibition of Child Marriage Act, 2006 and Other Allied Laws”<sup>52</sup> It is suggested that the Central Government make marriage registration mandatory for all communities, including Hindus, Muslims, Christians, etc., within a set time frame. In its 211<sup>th</sup> Report, Commission proposed the enactment of a “Marriage and Divorce Registration

<sup>49</sup> National Human Rights Commission, *2021 Women Right’s in India: An Analytical study of the United Nations Convention on the Elimination of All Forms of Discrimination against Women & The Indian Constitution, Legislations, Scheme, Policies and Judgments*, NATIONAL HUMAN RIGHTS COMMISSION OF INDIA (2021), [https://nhrc.nic.in/sites/default/files/Women%E2%80%99s%20Rights%20in%20India%20complete\\_compressed.pdf](https://nhrc.nic.in/sites/default/files/Women%E2%80%99s%20Rights%20in%20India%20complete_compressed.pdf).

<sup>50</sup> United Nations Office on Drugs and Crimes, *2020 Interlinkages between Trafficking in Persons and Marriage*, UNITED NATIONS (2020), [https://www.unodc.org/documents/human-trafficking/2020/UNODC\\_Interlinkages\\_Trafficking\\_in\\_Persons\\_and\\_Marriage.pdf](https://www.unodc.org/documents/human-trafficking/2020/UNODC_Interlinkages_Trafficking_in_Persons_and_Marriage.pdf).

<sup>51</sup> Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, November 7, 1962. U.N. OFFICE OF HIGH COMMISSIONER OF HUMAN RIGHTS, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-consent-marriage-minimum-age-marriage-and> (July 10, 2023). Haishan Fu and Steve Macfeely, *Civil Registrations and vital statistics: it’s important, it’s matter of life and death*, World Bank –Blog (July 9, 2023), <https://blogs.worldbank.org/opendata/civil-registrations-and-vital-statistics-its-not-just-important-its-matter-life-and-death>.

<sup>52</sup> Law Commission of India, *2008 Proposal to Amend The Prohibition of Child Marriage Act, 2006 and allied Laws*, LAW COMMISSION OF INDIA 205 (2008), <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081072-1.pdf>.

Act” applicable nationwide and to all Indian citizens.<sup>53</sup> The 270th Report of the Law Commission suggests a modification to the Registration of Births and Deaths Act of 1969, advocating for the inclusion of marriage registration as a mandatory provision.<sup>54</sup> The aim of compulsory registration is eliminate practices like child marriage, forced marriages, human trafficking and to achieve gender neutrality and women empowerment.<sup>55</sup> India is a signatory to the CEDAW.<sup>56</sup> It has been noted that *while India acknowledges the importance of compulsory registration of marriages in principle, it deems it impractical to implement in a country as vast as India, given its diverse customs, religions, and levels of literacy. India has expressed reservations regarding the clause that mandates the compulsory registration of marriages.*<sup>57</sup>

- Age of Marriage

The Universal Declaration on Human Rights provides that male and female who have reached *the age of majority* are entitled to exercise their right to marry and establish a family, without any form of discrimination based on race, nationality, or religion.<sup>58</sup> Individuals possess the inherent entitlement to equitable rights pertaining to marriage, encompassing the period of matrimony as well as its termination.<sup>59</sup> The act of marriage must only be undertaken when both parties involved provide their voluntary and complete agreement.<sup>60</sup> Certain traditional marriage and family practises have been identified as conflicting with the principles outlined in the U.N. Charter<sup>61</sup> and the Declaration of Human Rights<sup>62</sup>. In response to these concerns, the United Nations established the Convention on Consent to Marriage, Minimum Age for Marriage, and Marriage Registration in 1962.<sup>63</sup> The permissible age to marry in India is currently 18 years of age for females and 21 years of age for males.<sup>64</sup> However, the minimum age of marriage may vary from country to country. The age of consent varies by religion and legal system, with Hindu, Secular, and Parsi laws setting the minimum age at 18 for girls and 21 for boys<sup>65</sup>, Christian law setting the minimum age at 21<sup>66</sup>, and Muslim law setting the age of puberty as the point of consent (15 years).<sup>67</sup> We aim to eliminate child marriage and achieve gender parity in marriageable age by 2022, building on the success of the Prevention of Child Marriage Law (2006)<sup>68</sup> in reducing the prevalence of underage marriage in India and paving the way for improvements in women's and girls' physical, mental, and reproductive

<sup>53</sup> Law Commission of India, 2008 *Laws on Registration of Marriage and Divorce – A Proposal for Consolidation and Reform*, LAW COMMISSION OF INDIA 211 (2008), <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081072-1.pdf>.

<sup>54</sup> Law Commission of India, 2017 *Compulsory Registration of Marriage*, LAW COMMISSION OF INDIA 270 (2017), <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081640-1.pdf>.

<sup>55</sup> *Id.* at 50.

<sup>56</sup> Convention on the Elimination of All Kinds of Discrimination against Women, December 18, 1979. U.N. OFFICE OF HIGH COMMISSIONER OF HUMAN RIGHTS, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women> (July 11, 2023).

<sup>57</sup> *Id.* at 53.

<sup>58</sup> Universal Declaration of Human Rights, art. 16, December 10, 1948. U.N. OFFICE OF HIGH COMMISSIONER OF HUMAN RIGHTS, <https://www.ohchr.org/en/press-releases/2018/11/universal-declaration-human-rights-70-30-articles-30-articles-article-16> (July 11, 2023).

<sup>59</sup> *Id.* at 55.

<sup>60</sup> *Id.* at 55.

<sup>61</sup> United Nations Charter, June 26, 1945. UNITED NATIONS, <https://www.un.org/en/about-us/un-charter> (July 11, 2023).

<sup>62</sup> United Declaration of Human Rights, December 10, 1948. <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (July 11, 2023).

<sup>63</sup> *Id.* at 48.

<sup>64</sup> Prohibition of Child Marriage Act, 2006, § 2, cl. a, No. 6, Acts of Parliament, 2006 (India).

<sup>65</sup> Hindu Marriage Act, 1955, § 5, cl. iii, No. 25, Acts of Parliament, 1955 (India). Special Marriage Act, 1954, § 4, cl. c, No. 43, Acts of Parliament, 1954 (India). The Parsi Marriage and Divorce Act, 1936, § 3, cl. c, No. 3, Acts of Parliament, 1936 (India).

<sup>66</sup> The Indian Christian Marriage Act, 1872, No. 15, Acts of Parliament, 1872 (India).

<sup>67</sup> ISHITA PANDEY ET. AL., *Child Marriage in India*, in *SEX LAW AND POLITICS OF AGE 257-282* (Cambridge University Press 2020).

<sup>68</sup> Prohibition of Child Marriage Act, 2006, No. 6, Acts of Parliament, 2006 (India).

health.<sup>69</sup> The Prohibition of Child Marriage (Amendment) Bill, 2021<sup>70</sup>, was introduced by the Ministry of Women and Child Development. Also there is no uniform age of marriage under personal laws which creates a great hindrance in tacking child marriages in India.<sup>71</sup>

- Adoption, Guardianship and Child Custody

The absence of a uniform applicable legal framework for adoption and guardianship that does not exhibit discriminatory tendencies towards individuals based on their religious affiliations is evident. The absence of adoption laws pertaining to individuals practising the Muslim, Christian, and Parsi faiths constitutes a violation of their human right to found a family.<sup>72</sup> Moreover, our nation falls short in ensuring a secure future for children who are either abandoned, orphaned, or displaced.<sup>73</sup> The Guardians & Wards Act, 1890<sup>74</sup> grants individuals the legal authority to assume the role of foster parents for a child which can be exercised by Muslim, Christian and Parsi. In the realm of Hindu law, adoptive parents are duly acknowledged as the legal custodians of an adopted son.<sup>75</sup> However, it is important to note that Islamic, Christian, and Parsi laws do not extend the same recognition to adoptive parents.<sup>76</sup> According to Hindu law, an adopted child possesses the legal entitlement to inherit property.<sup>77</sup> However, this right is not extended to adopted children by a Muslim, Parsi and Christian parent.<sup>78</sup> According to Section 6 of the Hindu Guardianship Law<sup>79</sup>, the natural guardian is determined to be the child's father, and in father's absence or demise, the child's mother assumes this role. In its 257th report, the Law Commission of India proposed certain amendments to the current statutory provisions in order to incorporate the possibility of shared or joint custody.<sup>80</sup> The principle of “welfare of the child” holds significant prominence within the domestic legal framework, and a similar legal standard can be observed within the realm of international human rights law.<sup>81</sup> India has formally endorsed and ratified the U.N. CRC<sup>82</sup>, thereby accepting the obligation to safeguard and uphold the rights enshrined in the Convention within its territorial jurisdiction. The 218th Report of the Commission<sup>83</sup> has made a recommendation regarding the necessity of India's accession to the Hague Convention on the Civil Aspects of International Child Abduction (1980)<sup>84</sup>. In accordance with this convention, the Court has the authority to decline the

<sup>69</sup> Law Commission of India, *2008 Proposal to Amend The Prohibition of Child Marriage Act, 2006 and allied Laws*, LAW COMMISSION OF INDIA 205 (2008), <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081072-1.pdf>.

<sup>70</sup> PRS LEGISLATIVE RESEARCH, <https://prsindia.org/billtrack/the-prohibition-of-child-marriage-amendment-bill-2021> (July 11, 2023).

<sup>71</sup> *Id.* at 70.

<sup>72</sup> Amit Kolekar, *In India adoption is not permitted in the personal laws of Muslim & Christians*, MINT (July 11, 2023), <https://www.livemint.com/Money/dZ2fuQV87fyGOP2HWueamK/In-India-adoption-is-not-permitted-in-the-personal-laws-of.html>. ASHA BAJPAI, *CHILD RIGHTS IN INDIA: LAW, POLICIES AND PRACTICE* 33-39 (Oxford University Press 2009). *Id.* at 58.

<sup>73</sup> Abraham Thomas, *Covid Orphaned 1700 children another 7400 lost one parent, Supreme Court told*, HINDUSTAN TIMES (June 1, 2021), <https://www.hindustantimes.com/india-news/covid-orphaned-1-700-children-another-7-400-lost-one-parent-supreme-court-told-101622476669678.html>.

<sup>74</sup> The Guardians and Wards Act, 1890, No. 8, Acts of Parliament, 1890 (India).

<sup>75</sup> The Hindu Adoption and Maintenance Act, 1956, § 12, No. 78, Acts of Parliament, 1956 (India).

<sup>76</sup> *Id.* at 72.

<sup>77</sup> *Id.* at 75.

<sup>78</sup> Piyush Srivastava, *Darul Uloom Deoband says adopted Muslim kids can't inherit*, INDIA TODAY (Feb. 21, 2014), <https://www.indiatoday.in/india/story/darul-uloom-deoband-says-adopted-muslim-kids-cant-inherit-181997-2014-02-20>. Christo Sabu, *Adoption in India under Hindu, Muslim and Christian Law*, 3 NATIONAL JOURNAL FOR INNOVATIVE RESEARCH AND IDEAS (NJIRI) 30, 30-39 (2023).

<sup>79</sup> Hindu Minority and Guardianship Act, 1956, § 6, No. 32, Acts of Parliament, 1956 (India).

<sup>80</sup> Law Commission of India, *2015 Reforms in Guardianship and Custody Laws in India*, LAW COMMISSION OF INDIA 257 (2015), <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081656.pdf>.

<sup>81</sup> *Id.* at 80.

<sup>82</sup> Convention on the Rights of the Child, November 20, 1989. U.N. OFFICE OF HIGH COMMISSIONER OF HUMAN RIGHTS, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (July 11, 2023).

<sup>83</sup> Law Commission of India, *2009 Need to accede to The Hague Convention on the Civil Aspects of International Child Abduction* (1980), LAW COMMISSION OF INDIA 218 (2009), <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081042.pdf>.

<sup>84</sup> The Hague Convention on the Civil Aspects of International Child Abduction, October 25, 1980. HCCH, <https://assets.hcch.net/docs/e86d9f72-dc8d-46f3-b3bf-e102911c8532.pdf> (July 11, 2023).

issuance of an order for the return of the child if such an action would run counter to the safeguarding of human rights and fundamental freedoms.<sup>85</sup> For example, a woman experiences domestic violence and subsequently flees her “habitual residence” with her child. It is important to note that while the violence may not be directed towards the child, it can still have significant repercussions on the child's well-being. In such instances, the Court has the authority to decline the repatriation of a child if there are concerns regarding the potential infringement of human rights.<sup>86</sup>

- Gender Exclusion

Personal Laws regulates personal institutions like marriage, divorce, maintenance, guardianship and defines domestic relationship between the spouses.<sup>87</sup> But like any other law, Personal Laws in India recognises only two genders – Male and Female and therefore creates gender exclusivity prohibiting homosexual couples. This leads major setback to the LGBT community in exercising human rights.<sup>88</sup> In April 2022, M.P. Supriya Sule, presented a private member's bill aimed at legalising same-sex marriages and ensuring equitable rights for LGBTQIA+ couples comparable to those enjoyed by heterosexual couples.<sup>89</sup> It is noteworthy that the proposed bill aims to introduce modifications to the secular law, specifically the Special Marriage Act, rather than the Hindu law.<sup>90</sup>

- Irretrievable Breakdown of Marriage

According to this theory, the court may exercise authority to grant a divorce based on irreparable breakdown if it determines, following a thorough examination of the facts that the parties' marriage is beyond repair.<sup>91</sup> In order to grant a divorce, the Court is required to ascertain, through an examination of the evidence presented, that the marriage has irreparably deteriorated, regardless of whether or not the parties agree to it. This concept is not recognised as a legal stand for dissolution of marriage under any personal law in India. However, the Commission has issued its 217th Report, which elaborates the necessity of recognising this theory as a valid ground for divorce.<sup>92</sup> The Apex Court has the authority under A/142 of the Indian Constitution<sup>93</sup>, to utilise its jurisdiction. To streamline the process of granting a divorce, it is necessary to establish an irreparable collapse of the marriage as a legal provision, as specified in Section 13 (B)<sup>94</sup>. It is imperative to comprehend that the invocation of A/142<sup>95</sup> is justified due to the absence of any other applicable provision. It can be argued that it is ethically questionable to compel a couple to persist in a marriage that has effectively deteriorated, as this can have detrimental effects on the well-being of both the children involved and potentially infringe upon their fundamental human rights, specifically the right to life and personal liberty.

- Restitution of Conjugal Rights

This remedy recognised under Personal Laws that is awarded to the party whose rights have been violated as a result of the other spouse's unreasonable withdrawal from their company.<sup>96</sup>

In India, basic human rights under Constitution of India are known as fundamental rights guaranteed to citizens and accordingly are labelled as inalienable.<sup>97</sup> The unwilling spouse's right to privacy<sup>98</sup>, autonomy<sup>99</sup>, and dignity<sup>100</sup> are all violated by remedies like Restitution of Conjugal Rights, which amount to forcing the spouse to cohabit in the marriage.

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<sup>85</sup> *Id.* at 83.

<sup>86</sup> *Id.* at 83.

<sup>87</sup> *Id.* at 2.

<sup>88</sup> Akshat Agarwal, D. Sanyal & N. Mukherjee, *Queering the Law: Making Indian Laws LGBT+ inclusive – FAMILY, VIDHI – CENTRE FOR LEGAL POLICY* (July 31, 2019), <https://vidhilegalpolicy.in/research/queering-the-law-making-indias-laws-lgbt-inclusive/>.

<sup>89</sup> Akanksha Saxena, *Progressive Leap! NCP MP Supriya Sule Introduces Bill to Legalise Same-Sex Marriage*, THE LOGICAL INDIAN (April 3, 2022), <https://thelogicalindian.com/lgbtq/supriya-sule-same-sex-marriage-34820>.

<sup>90</sup> *Id.* at 89.

<sup>91</sup> Law Commission of India, *2009 Irretrievable Breakdown of Marriage – Another Ground for Divorce*, LAW COMMISSION OF INDIA 217 (2009), <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081084-2.pdf>.

<sup>92</sup> *Id.* at 91.

<sup>93</sup> INDIA CONSTI. art. 142.

<sup>94</sup> Hindu Marriage Act, 1955, § 13B, No. 25, Acts of Parliament, 1955 (India).

<sup>95</sup> *Id.* at 93.

<sup>96</sup> Hindu Marriage Act, 1955, § 9, No. 25, Acts of Parliament, 1955 (India).

<sup>97</sup> INDIA CONSTI. art. 13-32.

<sup>98</sup> INDIA CONSTI. art. 21. Justice K.S. Puttaswamy & Another v. Union of Indian & Others (2017) 10 SCC 1.

<sup>99</sup> *Id.* at 98.

<sup>100</sup> *Id.* at 98.

In the case where, wife is ordered to cohabit against her will violates her right to bodily integrity<sup>101</sup> and right to sexual autonomy.<sup>102</sup>

- Conversion

There is a strict rule in personal laws that a person who converts to another religion can never inherit anything from their relations. As a result of conversion, his/her right to inherit ends.<sup>103</sup> Under Section 24 of Hindu Adoption and Maintenance Act, a person who has converted into other religion cannot exercise his/her right under this Act.<sup>104</sup> The conversion of a spouse to another religion results in the forfeiture of pre-existing maintenance rights under all the personal laws.<sup>105</sup> Therefore, conversion from one's religion to other religion hinders a person to exercise right to property, right to adopt, and right to maintenance. In many cases, conversion of religion is also used as a method for escaping from liabilities created through marriage; where conversion of the husband to another religion without divorcing first wife intending to escape from liabilities and charge of bigamy resulted into gross violation of human rights of the spouse and the children of the couple.<sup>106</sup>

- Inheritance

The Hindu joint family concept encompassed both male and female members of the family, exhibiting a broader scope. The property possessed by a family of this nature, commonly known as the coparcenary property, was exclusively restricted to male individuals within the joint family. Women were granted limited rights, including maintenance, residence in the property, and marriage expenses, if applicable.<sup>107</sup> The persisting disparity in the legal system of pre-independence India was also evident in the subsequent implementation of the Hindu Succession Act, which aimed to appease traditionalists who were opposed to the elimination of the unequal Hindu coparcenary system and the extension of equal inheritance rights to Hindu women.<sup>108</sup> Nevertheless, it is important to note that daughters, widows, and mothers were duly recognised as legitimate beneficiaries in the event of intestate succession pertaining to the individual property of a Hindu male.<sup>109</sup> There exist distinct criteria for the allocation of the benefits associated with individuals who identify as male and female under Parsi Inheritance Law. The proportion of inheritance allocated to the son in relation to his father's estate is twice that of the daughter. The widow receives an equal share of her son's inheritance, similar to any other beneficiary.<sup>110</sup> According to the principles of Sharia Law, there exists a disparity in the division of inheritance among male and female offspring within the estate of a Muslim individual. In matters of inheritance, it is stipulated that a Muslim woman is entitled to receive only half of the share allocated to her male counterpart, specifically her brother, in

<sup>101</sup> Independent Thought v. Union of India (2017) 10 SCC 800.

<sup>102</sup> Joseph Shrine v. Union of India (2019) 3 SCC 39.

<sup>103</sup> Hindu Succession Act, 1956, § 26, No. No. 30, Acts of Parliament, 1956 (India). REST THE CASE, <https://restthecase.com/knowledge-bank/impact-of-property-rights-after-religion-conversion-in-india#:~:text=Section%2026%20of%20the%20act,qualified%20to%20inherit%20the%20property>. (April 11, 2023). Tahir Mahmood, *Repeal of archaic laws doesn't affect reform*, THE TRIBUNE (July 22, 2023), <https://www.tribuneindia.com/news/comment/repeal-of-archaic-laws-doesnt-affect-reform-148141>.

<sup>104</sup> Hindu Adoption and Maintenance Act, 1956, § 24, No. 78, Acts of Parliament, 1956 (India).

<sup>105</sup> Dr. Kiran Gardner, *Critical review of changing trend relating to maintenance under personal laws in India*, 1 GLS LAW JOURNAL 18, 18-30 (2019). LAW COMMISSION OF INDIA, <https://archive.pib.gov.in/documents/rlink/2018/aug/p201883101.pdf> (July 12, 2023).

<sup>106</sup> Sarla Mudgal v. Union of India & Others AIR 1995 SC 1531. LAW COMMISSION OF INDIA, <https://archive.pib.gov.in/documents/rlink/2018/aug/p201883101.pdf> (July 12, 2023).

<sup>107</sup> Law Commission of India, *2000 Property Rights of Women: Proposed Reforms under the Hindu Law*, LAW COMMISSION OF INDIA 174 (2000), <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022082470.pdf>. Law Commission of India, *2008 Proposal to amend the Hindu Succession Act, 1956 as amended by Act 39 of 2005*, LAW COMMISSION OF INDIA 204 (2008), <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081043-1.pdf>.

<sup>108</sup> *Id.* at 107.

<sup>109</sup> Hindu Succession Act, 1956, § 8-13, No. 30, Acts of Parliament, 1956 (India).

<sup>110</sup> Sona Khan, *Inheritance of Indian Women: A Perspective*, 27 MARGINALISED 139, 139-154 2000, <https://www.jstor.org/stable/23005497>. Law Commission of India, 1985 *The Indian Succession Act 1925*, LAW COMMISSION OF INDIA 110 (1985), <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080890-2.pdf>.

relation to the inherited property.<sup>111</sup> As per the Travancore Christian Succession Act, enacted by the princely state of Travancore, the distribution of the intestate's estate is stipulated to be equally among the sons, with no explicit provision made for daughters.<sup>112</sup> The Cochin Christian Succession Act, which was enacted by the former state of Cochin, stipulated that a female individual is eligible to inherit property on the condition that she has not received a dowry. According to the conditions, the deceased's property will be inherited by his or her descendants, with both male and female children having an equal opportunity to acquire the property.<sup>113</sup>

## VII. JUDICIAL INITIATIVES TO RESOLVE THE CHALLENGES THAT PERSONAL LAWS POSE TO HUMAN RIGHTS

This paper examines the initiatives taken by the judiciary to address the obstacles that personal laws pose to the protection and promotion of human rights -

- Age of Marriage

*National Commission for Protection of Child Rights (NCPCR) v. Javed and Others (2022)*<sup>114</sup>

The Supreme Court made an observation and declaration regarding the judgement rendered by the Court in *Javed v. State of Haryana and Others*<sup>115</sup>. In this case, the High Court concluded that a Muslim girl who is 15 years old has the capacity to enter into a legally binding marriage in accordance with personal law. Nevertheless, the Supreme Court underscored that this specific ruling should not be regarded as a precedent in subsequent legal proceedings. The interim order was issued by the Court in response to a S.L.P that was filed by the Commission for the Protection of Child Rights. The petition challenges the judgment of *Javed v. State of Haryana*<sup>116</sup> on the basis that it contradicts the provisions of the POCSO Act<sup>117</sup>, which sets the age of sexual consent at 18 years.

- Registration of Marriage

*Seema v. Ashwani Kumar (2006)*<sup>118</sup>

In this specific instance, the Supreme Court has issued a directive to the Government in the states and Centre, mandating the registration of marriages between individuals who are citizens of India and belong to different religious denominations. This requirement applies to the respective States where these marriages are solemnised. The Court also instructed that the Central Government will present the comprehensive legislation in this regard to the Court for examination.

- Adoption

*Shabnam Hasmi v. Union of India & Others (2014)*<sup>119</sup>

The Supreme Court of India delivered a major judgement asserting that prospective parents may adopt children regardless of their religious background. The Court said that “personal beliefs and faiths, while they must be respected, cannot dictate the operation of an enabling statute's provisions.” The Court ruled that the priority for an individual to adopt a child in accordance with the provisions of the JJ Act<sup>120</sup> would supersede all personal laws. Nevertheless, the Court ruled that personal laws shall retain authority over individuals who voluntarily subject themselves to them. The Court further determined that the act of adoption is a decision that falls within the realm of individual autonomy. Prospective

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<sup>111</sup> Dr. Chandralekha V, *Women's Property Right and Gender Gaps under Personal Laws: A Comparative Analysis*, 8 JOURNAL OF EMERGING TECHNOLOGIES AND INNOVATIVE RESEARCH, 40, 40-47 (2021), <https://www.jetir.org/papers/JETIR2111306.pdf>.

<sup>112</sup> Sindhu Thulaseedharan, *Christian Women and Property Rights in Kerala – Gender Equality in Practice*, CENTRE FOR DEVELOPMENT STUDIES – KERALA RESEARCH PROGRAMME ON LOCAL LEVEL DEVELOPMENT (December 12, 2004), <http://www.cds.ac.in/krpcds/report/sindhu.pdf>.

<sup>113</sup> *Id.* at 112.

<sup>114</sup> *National Commission for Protection of Child Rights v. Javed & Others SLP (Crl) No. 10032 of 2022.*

<sup>115</sup> *Javed v. State of Haryana & Others CRWP 7426-2022(O&M).*

<sup>116</sup> *Id.* at 115.

<sup>117</sup> *The Protection of Children From Sexual Offences, 2012, No. 32, Acts of Parliament, 2012 (India).*

<sup>118</sup> *Seema v. Ashwani Kumar AIR 2006 SC 1158. UNITED NATIONS POPULATION FUND, [https://india.unfpa.org/sites/default/files/pub-pdf/unfpa\\_note\\_-\\_registration\\_of\\_marriages\\_formatted2.pdf](https://india.unfpa.org/sites/default/files/pub-pdf/unfpa_note_-_registration_of_marriages_formatted2.pdf) (July 12, 2023).*

<sup>119</sup> *Shabnam Hasmi v. Union of India AIR 2014 SC 1281.*

<sup>120</sup> *Juvenile Justice (Care and Protection of Children) Act, 2015, § 56-73, No. 2, Acts of Parliament, 2015*

parents, irrespective of their religious affiliations, are granted the opportunity to avail themselves of the provisions outlined in the JJ Act<sup>121</sup>, which is a secular legal framework, in order to pursue the adoption of children.

- Guardianship

*Jijabai Vithalrao Gajre v. Pathankhan (1970)*<sup>122</sup>

The present case deliberated upon the principle of “the best interest of the child”, wherein the mother was deemed the natural guardian of the daughter due to the father's consistent neglect in fulfilling his parental obligations towards her since her birth.

*Gita Hariharan v. RBI (1992)*<sup>123</sup>

The matter concerning natural guardianship and gender discrimination was brought up in relation to Section 6 (a) of the Guardianship Act<sup>124</sup>. In this context, the term “after” has been interpreted in a broad manner, leading to the conclusion that it holds no particular significance within the section. This interpretation is based on the principle that, in cases involving custody and guardianship, the court adheres to the doctrine of the child's best interests. The interpretation of the term “after” as referring to the period following the father's lifetime would be deemed unconstitutional due to its infringement upon the constitutional principle of gender equality. The judiciary creative interpret Section 6(a)<sup>125</sup> in order to harmonise it with the rights and interests pertaining to a mother.

*Sakshi Bhattacharya v. Union of India (2019)*<sup>126</sup>

Without a doubt, the judiciary, in consideration of the child's best interests, has eased the requirements for granting the mother the status of natural guardian. Nevertheless, the status of a natural guardian will only be granted to a mother if the conditions specified in the Gita Hariharan case<sup>127</sup> are satisfied. From a constitutional standpoint, it is anticipated that the Supreme Court, in its capacity as the protector of fundamental rights, will likely deem Section 6(a)<sup>128</sup> unconstitutional in response to the PIL initiated.

- Gender Exclusion

*Arun Kumar vs. The Inspector General for Registration (2019)*<sup>129</sup>

As per the ruling of the Court, a marriage between a male and a transgender woman, adhering to the Hindu faith, is deemed a legally recognised union referring with S/5 of the Hindu Marriage Act, 1955<sup>130</sup>. Furthermore, the Registrar of Marriages is obligated to officially register such marriages. The term ‘bride’<sup>131</sup> was expanded by the Court to include transgender women. According to the Court, while maintaining this stance, it asserted that it is not pioneering any novel legal principles. The statement is simply expressing a self-evident fact. In certain instances, the ability to perceive the evident requires not only the faculty of visual perception but also the presence of affection and compassion within one's emotional core.

*Supriyo v. Union of India (2022)*<sup>132</sup>

The case is a bunch of fifteen petitions filed - Supriyo Chakraborty and Another v. Union of India<sup>133</sup>, Zainab J Patel v. U.O.I<sup>134</sup>, Utkarsh Saxena v. U.O.I<sup>135</sup>, Vaibhav Jain v. U.O.I<sup>136</sup>, Udit Sood v. Union of India<sup>137</sup>, Sameer Samudra and

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<sup>121</sup> *Id.* at 120.

<sup>122</sup> *Jijabai Vitharao Gajre v. Pathankhan & Ors.* 1970 (2) SCC 717.

<sup>123</sup> *Gita Hariharan v. Reserve Bank of India* AIR 1999 2 SCC 228.

<sup>124</sup> Hindu Minority and Guardianship Act, 1956, § 6, cl. a, No. 32, Acts of Parliament, 1956 (India).

<sup>125</sup> *Id.* at 123.

<sup>126</sup> *Sakshi Bhattacharya v. Union of India* WP (Civil) No. 1290 of 2019.

<sup>127</sup> *Id.* at 123.

<sup>128</sup> *Id.* at 124.

<sup>129</sup> *Arun Kumar v. The Inspector General for Registration* W.P. (MD) NO. 4125 OF 2019 & W.M.P (MD) NO. 3220 OF 2019

<sup>130</sup> *Id.* at 13.

<sup>131</sup> *Id.* at 13.

<sup>132</sup> *Supriyo @ Supriya Chakraborty & Anr. v. Union of India* W.P. (C) No. 1011/2022.

<sup>133</sup> *Id.* at 132.

<sup>134</sup> *Zainab J Patel v. Union of India* W.P(C) 13535 of 2021.

<sup>135</sup> *Utkarsh Saxena v. Union of India* W.P(c) 1142 of 2022.

<sup>136</sup> *Vaibhav Jain v. Union of India* W.P(c) 7657 of 2020.

<sup>137</sup> *Udit Sood v. Union of India* W.P(C) 2574 of 2021.

Another v. Union of India<sup>138</sup>, Parth Pheroze Mehrohtra and Another v. Union of India<sup>139</sup>, Nitin Karani and Another v. Union of India<sup>140</sup>, Nikesh PP and Another v. Union of India<sup>141</sup>, Nibedita Dutta and Another v. Union of India<sup>142</sup>, Melissa Ferrier v. Union of India<sup>143</sup>, Dr. Kavita Arora and Another v. Union of India and Another<sup>144</sup>, Joydeep Sengupta vs Union of India<sup>145</sup>, Aditi Anand v. Union of India<sup>146</sup>, Abhijit Iyer Mitra vs U.O.I<sup>147</sup>. The petitioners have prayed the acknowledgment of same-sex marriages through various personal laws including legislative acts, namely the Special Marriage Act of 1954<sup>148</sup>, the Foreign Marriage Act of 1969<sup>149</sup>. Additionally, they have advocated for these acts to be amended to ensure gender neutrality.

- Irretrievable Breakdown of Marriage

*Savitri Pandey v. Prem Chandra Pandey (2002)*<sup>150</sup>

The Supreme Court reaffirmed the necessity of including irreversible marriage failure as a separate ground for divorce. The Court ruled in favour of the argument that dissolution of the marriage is in the best interest of justice, drawing support from the various precedents.

*Naveen Kohli v. Neelu Kohli (2006)*<sup>151</sup>

The Supreme Court directed the Government to incorporate “irretrievable breakdown of marriage” as legitimate provision for dissolution of marriage under the Hindu Marriage Act, 1955<sup>152</sup>.

*Shilpa Sailesh v. Varun Sreenivasan (2023)*<sup>153</sup>

This ruling on irretrievable breakdown as a basis for divorce is of the utmost importance.

In this case, the Supreme Court ruled that a unilateral divorce might be granted if the court was convinced that the marriage had become “totally unworkable, emotionally dead, and beyond salvation, and dissolution was the only way forward.” In such a case, the court will deviate from the Fault Theory of Divorce. The Court laid down certain factors to be considered prior to awarding a divorce under A/142 of the Constitution<sup>154</sup>. This includes the length of time the couple cohabited, the nature of the allegations, attempts at reconciliation, the length of time the couple was separated (anything longer than six years was deemed to qualify by the court), attempts to reach a settlement through court intervention or mediation, and court orders. Although this is not a rigid formula, it does provide much-needed guidelines for the exercise of judicial discretion. Before granting a divorce under Article 142<sup>155</sup>, the court must also guarantee adequate alimony for the wife and dependent children. The judgment definitively clarified the Supreme Court's authority under Article 142<sup>156</sup> to dissolve a marriage that has irretrievably broken down. In addition, it provides a distinct path for parties whose cases have languished for years on the court's docket. Also gives subordinate court judges the confidence to make empirical determinations regarding whether a marriage has irretrievably broken down, without having to fear about judicial overreach.

- Restitution of Conjugal Rights

*T. Sareetha v. T. Venkata Subbaiah (1986)*<sup>157</sup>

<sup>138</sup> Sameer Samudra and Another v. Union of India W.P(C) 1105 of 2022.

<sup>139</sup> Parth Pheroze Mehrohtra & Another v. Union of India W.P(C) 1020 of 2022.

<sup>140</sup> Nitin Karani & Another v. Union of India W.P(C) 1150 of 2022.

<sup>141</sup> Nikesh PP & Another v. Union of India W.P(C) 2186 of 2022.

<sup>142</sup> Nibedita Dutta & Another v. Union of India W.P(C) 13528 of 2021.

<sup>143</sup> Melissa Ferrier v. Union of India W.P (C) 13206 of 2021.

<sup>144</sup> Dr. Kavita Arora & Another v. Union of India & Another W.P(C) 6792 of 2020.

<sup>145</sup> Joydeep Sengupta v. Union of India W.P(C) 6150 of 2021.

<sup>146</sup> Aditi Anand v. Union of India W.P(C) No. 141 of 2021.

<sup>147</sup> Abhijit Iyer Mitra v. Union of India W.P (C) 6371 of 2020.

<sup>148</sup> Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

<sup>149</sup> Foreign Marriage Act, 1969, No. 33, Acts of Parliament, 1969 (India).

<sup>150</sup> Savitri Pandey v. Prem Chandra Pandey AIR 2002 SC 591, (2002) 2 SCC 73.

<sup>151</sup> Naveen Kohli v. Neetu Kohli AIR 2006 SC 1675.

<sup>152</sup> *Id.* at 8.

<sup>153</sup> Shilpa Sailesh v. Varun Sreenivasan T.P. (C) No. 1118/2014.

<sup>154</sup> *Id.* at 93.

<sup>155</sup> *Id.* at 93.

<sup>156</sup> *Id.* at 93.

<sup>157</sup> T. Sareetha v. T. Venkata Subbaiah AIR 1983 AP 356.

The High Court expressed the opinion that granting the remedy to the husband in this particular case would result in the court approving “humiliating sexual” actions and forced pregnancy. Based on this premise, the Court determined that the S/9 of Hindu Marriage Act<sup>158</sup> infringes upon the constitutionally protected rights to privacy and dignity in India. This progressive ruling that acknowledged the bodily autonomy and sexual independence of women in Hindu marriages was overturned later.

*Ojaswa Pathak vs. Union of India (2019)*<sup>159</sup>

The petitioners have raised concerns regarding the constitutional validity of the remedy. It has been contended that the remedy infringes upon the constitutionally protected rights to life, equality, and non-discrimination. The case is currently under consideration by the Court. It is contended that the Restitution of Conjugal Rights can be characterised as a draconian provision that originated in a period when women were regarded as property. The gender-neutral nature of the remedy is widely acknowledged; however, due to India's patriarchal societal structure, husbands tend to be dominant. The petitioners assert that the Restitution of Conjugal Rights violates the right to privacy, which includes the rights to bodily integrity and personal autonomy.

- Conversion

*Vilayat v. Sunila (1983)*<sup>160</sup>

In this case, the court issued a significant ruling. The Court rendered a decision affirming the ongoing applicability of the Hindu Marriage Act<sup>161</sup> to an individual who, at the time of marriage, identified as a Hindu but later underwent a conversion to Islam. In addition, it was determined that such a person would still be eligible to file for divorce under the Act, with the exception of using their own conversion as the basis for divorce.

*Balchand Jairamdas Lalwant v. Nazneen Khalid Qureshi (2018)*<sup>162</sup>

The Bombay High Court, in the present case, deliberated upon the matter of whether a Hindu individual who has converted to Islam is ineligible to inherit the property of their father who has passed away without leaving a will. The Court held that when making determinations regarding inheritance, it is necessary to consider the religious affiliation of an individual at the time of their birth. Consequently, in the event of intestacy, a Hindu individual who has converted to another religion is eligible to receive their father's property.

- Inheritance

*Mary Roy v. State of Kerala (1986)*<sup>163</sup>

The decision made by the Supreme Court in this particular case was a pivotal moment in history for Christians in India. As a consequence of this precedent-setting ruling, the Travancore Christian Succession Act was struck down by the Supreme Court, and as a result, the provisions of the Indian Succession Act of 1925<sup>164</sup> were applied to all Christians. As a direct consequence of this change in the law, daughters and sons within the Christian community were given equal rights to their inherited property. It is essential to bear in mind that, according to the requirements of the law, a Christian daughter does not have a birthright to the family property. However, it is crucial to acknowledge that she does acquire certain rights in the event of her parents passing away without a valid will.

*Danamma Suman Surpur & Another vs. Amar & Others (2018)*<sup>165</sup>

According to the ruling of the Supreme Court, the portion of the deceased father's estate, which passed away in 2001, would be inherited by his two daughters, granting them the right to partake in the distribution of the property. This ruling acknowledges the underlying purpose and essence of the 2005 amendment<sup>166</sup>, which aimed to establish equality in the legal entitlements of both daughters and sons.

*Vineeta Sharma v. Rakesh Sharma (2020)*<sup>167</sup>

<sup>158</sup> *Id.* at 96.

<sup>159</sup> *Ojaswa Pathak v. Union of India W.P(C) 250/2019.*

<sup>160</sup> *Vilayat Raj @ Vilayat Khan v. Sunila AIR 1983 Delhi 351.*

<sup>161</sup> *Id.* at 8.

<sup>162</sup> *Balchand Jairamdas Lalwant v. Nazneen Khalid Qureshi AIR 2018 Bom 103.*

<sup>163</sup> *Mary Roy v. State of Kerala & Ors. (1986) AIR 1011.*

<sup>164</sup> *Id.* at 35.

<sup>165</sup> *Danamma Suman Surpur & Another v. Amar & Others (2018) 3 SCC 343.*

<sup>166</sup> *Hindu Succession Act, 1956, § 6, No. 30, Acts of Parliament, 1956 (India).*

<sup>167</sup> *Vineeta Sharma v. Rakesh Sharma (2020) 9 SCC 1.*

According to the ruling of the Supreme Court, it has been established that a woman or daughter is entitled to the same legal inheritance rights as a son. This includes the equal right to inherit ancestral property, regardless of whether the father was deceased before the amendment in 2005<sup>168</sup>.

*Arunchala Gounder v. Ponnusamy (2022)*<sup>169</sup>

The Supreme Court ruled that in cases where a Hindu male dies intestate, meaning without leaving a will, his self-acquired property would be inherited rather than succeeded. Moreover, the Court ruled that the aforementioned property shall be bequeathed to the daughter, in conjunction with the coparcenary property acquired through partition. The Court noted that in the event of a woman's intestate death, any ancestral property inherited from her father would be transferred to the heirs of her father. Likewise, any property inherited from her husband's family would be transferred to her husband's heir.

*Bushara Ali v. Union of India & Ors. (2023)*<sup>170</sup>

A Muslim female petitioner has initiated legal proceedings in the Supreme Court, contesting the provisions outlined in the Muslim Law. The basis of the challenge is the alleged discriminatory treatment of male and female Muslim intestate successors under these acts.<sup>171</sup> The petition is currently under consideration by the esteemed court.

## VIII. CONCLUSION

This study has conducted an analytical doctrinal research to investigate the current state of human rights within personal laws. The initial section of the paper expounded upon the conceptualization of Human Rights. The subsequent section of the study elucidates the significance of Human Rights. The third section of this study has centred its attention on the examination of personal laws in India, encompassing their historical origins, evolutionary trajectory, and current extent of application. The fourth section elucidated the correlation between Human Rights and Personal Laws. The fifth part of this research looked at the impact that personal laws have on human rights and the following difficulties that these laws provide for the defence of human rights. The implementation of access to justice and the function of the Courts in the protection and advancement of human rights in India were both topics that were investigated in the sixth portion of the paper. According to the findings of the research, it is incontestable to claim that, throughout the course of history, personal laws have, in fact, been altered in order to bring them into conformity with the changing expectations of society. Ratification of a large number of international agreements and conventions is India's way of demonstrating its dedication to the cause of human rights. As a direct consequence of this, all the organs of the state have made deliberate efforts to legislate, put into effect, and interpret changes that concern to personal laws. The Indian judiciary has been instrumental in preserving and expanding human rights throughout the course of the country's history. Nonetheless, it is still necessary to resolve specific loopholes in order to put a stop to the violation of human rights. The proposal of a Uniform Civil Code (UCC)<sup>172</sup> that seeks to develop a standardised family law that is applicable to all religious groups has the ability to address instances of human rights violation within personal laws. This might be accomplished via the standardisation of family law. The basic purpose of family laws is to ensure the continuity of familial links and to defend the legal rights of those who are engaged in the activities of marriage and family.

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<sup>168</sup> *Id.* at 166.

<sup>169</sup> *Arunachala Gounder v. Ponnusamy (2022)* 11 SCC 520.

<sup>170</sup> *Bushara Ali v. Union of India*

<sup>171</sup> Muslim Personal Law (Shariat) Application Act, 1937, No.26, Acts of Parliament, 1937 (India). Muslim Personal Law (Shariat) Application (Kerala amendment) Act, 1963, No.42, Acts of Kerala State Legislature, 1963 (India).

<sup>172</sup> INDIA CONST. art. 44.