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A Comprehensive View on Whether Personal Law is A "Law" Under Article 13 of the Constitution of India

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ABSTRACT

India is a country where we can find multiple cultures and custom in region of the country. All the ancient laws where of age old concepts and focussed mainly on gender disparity. The rights of the women where curtail by this age old concept even after the Independence of the country. The inclusion of the personal laws into the concept of definition of Law has now guaranteed the equal status of women and their personal liberty which where attributed to them as a citizen of our country. This paper mainly focus on the two problem 1. Whether Personal Laws is 'Law' or 'Law in force' or Custom having the 'force of Law' under Article 13 of the Constitution? And 2. Is Personal Laws a 'Law' within the definition under Article 13 of the Constitution and subject to Judicial Review?

Keywords: Article 13, Constitution of India, Gender, Judiciary, Personal Law, Religion

INTRODUCTION

India is a multicultural society and different groups in India have separate Personal Laws. Over centuries through invasions and migrations various religious groups like Islam, Parsi, Christians have made Indian their home.

In the late eighteenth century, the term 'personal laws'[1] was first introduced in the Presidencies of Calcutta, Bombay, and Madras. During this time, the pre-colonial, non-State arbitration forums were transformed into State-regulated adjudicative systems.[2] The transformation took place, firstly through the introduction of a legal structure based on English courts, which were adversarial in nature (Anglo-Saxon jurisprudence). Secondly, through the principles of substantive law, which were evolved and administered in these courts, (Anglo-Hindu and Anglo-Mohammedan laws).[3]

The British adopted a clear policy of Neutrality and granted autonomy to the 'natives' in respect of Personal Laws. They considered that religion was a sensitive issue and that interference in the religious matters would in turn threaten the existence of the British.

[1] The expression 'Personal Law' means the law which governs a person's family matters. The framers of Constitution of India meant by the word 'personal law' as "marriage and divorce; infants and minors; adoption; wills; intestacy and succession; joint family and partition". See Entry 5 Schedule VII, Constitution of India.

[2] Saldhana v. Saldhana, AIR 1930 Bom. 105.

[3] FLAVIA AGNES, Personal Laws The Oxford Handbook of the Indian Constitution, (Sujit et. al., eds., 2016, (Oct. 8, 2024, 8:01 PM). https://www.oxfordhandbooks.com/view/10. 1093/law/9780198704898.001.000 1/oxford hb-9780198704898-e-5.

It is a matter of common knowledge that partition of India occurred on the basis of religion and the consequence had been extremely violent. In the aftermath of partition of India in 1947 , the Constituent Assembly members were of the opinion that it will not be prudent to interfere with the existing system of Personal Laws apprehending that such interference may again agitate the sentiment of the members of the religious communities. However, even after extensive debates and discourse, separate Personal Laws were reserved for various communities.[4]

I. Evolution of Personal Laws in India

India has diverse multi-cultural and multi-religious societies. [5]Before the advent of the British rule, the personal laws for the Hindus, Muslims and the Jews prevailed in India. In the beginning years of their stay in India, the British officers implemented the policy of non-interference in relation to the personal laws of the people of India. The British government[6] supported Warren Hasting's policy of preserving the Hindu and Muslim law. It was supported by, Sir Michael Jones, the judge of the Supreme Court of Calcutta (1783-1794). India's colonial past is an evidence to the historical stories of personal laws in India. Muslim invasion of India began in 711 A.D., and their rule existed parallel with the British and the Hindu rulers until 1857.

Centuries of political transmutation and socio-economic disruption did not affect the Hindu and Muslim laws. During the six hundred years of Muslim rule, the state in India did not interfere much with the Hindu law. Further, in two hundred years of British dominion, the significant portion of Hindu and Muslim personal laws, enjoyed immunity from the State.[7] There were two diverse opinions in respect to the relationship between the State and the personal laws. One view held that there is a strict division between the State and the religion. The other view held that for the social reform and welfare of the community at large the State is empowered to override the personal laws through judicial intervention and proper legislations.[8]

In nineteenth century the British rulers changed the concept of neutrality towards the personal laws in to social transformations. The British Government passed the legislations relating to marriage, succession, inheritance and caste system.

The acts passed were the Hindu Inheritance (Removal of Disabilities) Act, 1928; the Hindu Law of Inheritance (Amendment) Act, 1929; the Hindu Women's Rights to Property Act, 1937; the Hindu Widow Remarriage Act, 1856; the Arya Marriage Validation Act, 1937; the Hindu Wills Act, 1870; the Indian Majority Act, 1875; the Child Marriage Restraint Act, 1929.

[4] At the time of drafting of the Indian Constitution there was a huge debate in the Constituent Assembly with regard to implementation of UCC and the same was opposed by the members representing Muslim community. The community opposing UCC took the plea that Article 25 guarantees the fundamental right to freedom of religion and unifying their Personal Laws would violate their fundamental rights. The main emphasis of the debate was that all laws in India have been codified except the Personal Law and that the Personal Law should be codified at the earliest

[5] T. Mahmood, Family Law Reform in the Muslim world, 167 (bombay, n.m. tripathi, 1972).

[6] The Charter of 1726 issued to East India Company by King George I on September 24, 1726, established for the first time Mayor's courts in the three Presidency towns of Calcutta, Madras and Bombay. These courts derived their authority from the king, and could therefore, be designated as Royal Courts. Thereafter, the Supreme Court of judicature was established at Calcutta, Madras and Bombay in 1774. Subsequently by way of Indian High Courts Act, 1862, High Courts were established in Calcutta, Madras and Bombay. These High Courts so established became successors of the Supreme Court.

[7] D. K. Srivastava, Personal Laws And Religious Freedom, 18 J. INDIAN L. I., 551, 551 553, (October-December 1976), https://www.jstor.org/stable/43950450.

[8] https://www.jstor.org/stable/43950450. 6 SN JAIN, Judicial System and Legal Remedies

In Muslim Law the laws legislated were more of restoration of the beliefs of orthodox Muslims rather than reformation. The three statutes passed by the British were the Wakf Act, 1913, the Muslim Personal Law (Shariat) Application Act, 1937 and the Dissolution of Muslim Marriage Act, 1939.

To remove the vices of gender inequality from the personal law practices the British shifted from neutrality towards the Hindu and Muslim laws.[9] The Rau Committee was appointed in 1941 with the purpose of codifying the Hindu law. Throughout the process of codification, there was repercussion relating to the codification of divine law by a section of the Hindu society.20 Muslims considered the Hindu Code Bill as a precursor of a Muslim code.21 However, the committee presented its final report along with the Hindu Code Bill to the Cabinet. The bill was introduced in the Central Legislative Assembly in 1947. Concurrently, India got its independence from the two-century-old colonial rule.22 The Constituent Assembly assembled to make laws for the nation with full rigour.

In the Post-Independence Period:

In the late 1940s when the Constituent Assembly while engaged in drafting of the Indian Constitution they faced the dilemma of the issue of Personal Laws, whether to leave the personal matters of each religious group outside the purview of law making. Several members of the Constituent Assembly were of the view that there ought to be a Uniform Civil Code[10] without which they opined, there could be no comprehensive unity and integrity of the Nation. Most were of the view that it would be best for the Legislature to be given the task of reforming the Personal Laws and achieving the goal of a Common Civil Code.10

At the time of partition the scenario which India faced was too worst then colonial rule experience due to the reason of religious division and the urge for uniform civil code at that was diluted to have in goals yet to be achieved in the outcoming years, in the form of provision of DPSP . the Constituent Assembly members at that point of time were mainly concerned to protect the fundamental rights enshrined under Part III of the Constitution. These rights restraints the governmental actions that is likely to violate the fundamental rights which find a new place in our Constitution.

The Constitutional scheme uses Article 13 to define law and provide safeguard against any violation of fundamental rights. Hence it makes the fundamental rights justiciable. It guarantees the judiciary as guardian, protector and the interpreter of the fundamental rights.

Is Personal Laws 'Laws' under Article 13 of the Constitution of India?

Article 13[11] of the Constitution of India serves as a safeguard for fundamental rights by ensuring that any laws inconsistent with or derogatory to these rights are declared void. It applies to both pre-constitutional and post-constitutional laws, stating that any existing law before the Constitution's commencement, if found inconsistent with fundamental rights, shall be void to the extent of the inconsistency. It also prohibits the State from making new laws that infringe upon fundamental rights.

The legality of pre-and post-Constitution laws shall be subject to compliance with the criteria as laid down in Article 13. As a necessary corollary it would mean that any Personal Laws if challenged and is found

[9] Shruti Kejriwal, Judicial Opinion on Whether Personal Law Is a 'Law under Article 13 of the Constitution of India, 14 INDIAN J.L. & JUST. 421 (September 2024).

[10] Article 44: directing the state "to endeavour to secure for the citizens a uniform civil code throughout the territory of India;

[11] Article 13(1): All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

discriminatory should have been struck down. Since the Personal Laws did not exist as 'Law'[12] as is understood as being formally legislated law, personal laws were placed beyond the ambit of constitutional scrutiny. In other words the Personal Laws were not brought within the definition of 'Law' as provided under Article 13.[13]They were not even considered as Custom[14]. Thus the main problem concerning Personal Laws is that if it is excluded from the definition of 'Law' under Article 13 then the 'status' of Personal Laws remains ambiguous. The implication of this ambiguity is that the Constitutional principles cannot be invoked to scrutinise the Personal Laws irrespective of their discriminatory content.Article 372[15] of the Constitution of India talks about the operative effectivity of any law existing immediately before the enactment of the Constitution of India.

In Kripal Bhagat v. State of Bihar[16] the Apex Court observed that the aim of the law is to give legal effect to the sections of an act in its entirety. Thus, any rules, though it may not be statutory, has the force of law till the time it is enforced by the Court

In the case Assan Rawther v. Ammu Umma,[17] Justice Krishna Iyer stated that, "Personal law so called is law by virtue of the sanction of the sovereign behind it and is, for the very reason, enforceable through Court. Not Manu or Muhammad but the Monarch for the time makes Personal law enforceable. Since, it is the state's legislative authority that is the basis of personal law, there is no reason why it cannot be subjected to the Constitution, just like other actions of the state. "

It may be well stated that a Statute empowers the applicability of the personal laws and gives them the legal effect. Section 2 of the Shariat Act, 1937 states that in all the questions of personal laws the governing law will be the Muslim Personal Laws. Thus, it gives a legal effect to the personal laws and fulfils the condition laid down under Article 13 of the Constitution of India. Personal laws include both the codified and the uncodified laws. To the extent that personal laws include codified laws they are "laws" under Articles 13 and 372.[18] Irrespective of the fact that they are pre or post the Constitution, they continue to be in force. The change of the sovereign does not affect the laws passed by the previous sovereign. They continue as laws unless repealed or treated as void under Article 13 of the Constitution.

Irrespective of such provisions however, the courts have been very cautious while adjudicating the constitutionality of the personal laws. The courts so far have adopted a very contradictory approach starting from Narasu Appa Mali's[19] case where the Hon'ble Bombay High Court had held that "the personal laws are not 'laws' under Article 13(3)(a) of the Indian Constitution". Although, the Narasu judgment was delivered by one of the High Courts in the country prior to the enactment of post-

[12] Article 13(3)(a): 'Law' includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law

[13] The Constitution of India. art. 13.

[14] Paras Diwan, Modern Hindu Law 46 (Allahabad Law Agency 2009).

[15] Article 372 provides that all laws in force in India before the commencement of the Constitution shall continue in force until altered or repealed or amended by a competent legislature or other competent authority.

[16] Kripal Bhagat v. State of Bihar, 1970 SCR (3) 233.

[17] Assan Rawther v. Ammu Umma, (1971) KLT 684.

[18] Article 372: "All the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority". Further, according to Explanation 1 of Article 372, the expression 'laws in force' means: "...a law passed or made by a legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas."

[19] State of Bombay v. Narasu Appa Mali AIR 1952 Bom

independence Hindu personal law reforms, its reasoning had a huge impact on the personal law jurisprudence in the High Court's as well as the Supreme Court in the post-reform era.[20]

Is Personal Laws 'Laws in Force' under Article 13 of the Constitution of India

The discussion in the prestigious court-rooms over the issues of personal laws being 'Laws in force' under Article 13 dates back to the year of 1952.[21]It was the first of its kind.

The concern raised in the Narasu's case was regarding the validity of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946. The pivotal question in Narasu's case was related to the validity of the Bombay Prevention of Bigamous Hindu Marriages Act, 1946. The issues raised was whether the Act is in contravention of the Articles 14[22], Art 15[23] and 25 of the Indian Constitution. There was a discrimination between a Hindu and a Muslim male in respect of their right to engage in polygamy. [24]Article 25 of the Constitution was argued, on the ground that the Act infringed the right of the Hindus to practice polygamy, which formed the part of the Hindu custom. The right to profess, practice and propagate one's religion guaranteed under Article 25(1)[25] is subject to the restrictions. The State has the authority to legislate regulatory or restrictive laws, which may be associated with religious practice. Justice Chagla in the judgment of the said case drew a meticulous distinction between 'religious faith and belief and 'religious practices'.

In an interesting case of Davis v. Beason[26] Justice Field stated, "Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices." While referring to the question whether personal laws 'are' or 'are not' 'laws' or 'laws in force' as per Article 13(3)(b) of the Constitution of India Justice Chagla made a reference to the literal interpretation to the S. 112 of the Government of India Act, 1915. Further, he stated that special and separate mention of Article 1730 and 25(2)[27] shows the clear intent of the framers of the constitution that they have dealt with the personal laws in specific cases and have otherwise kept it aloof. Justice Ganjendra Gadkar in his concurring judgment stated that personal laws do not belong to the 'laws in force' mentioned under article 13(3)(b).

He observed that the explicit forbiddance of the practice of untouchability under article 17 would have been invalid as a sine quo non to article 13(1). It may be said, that he overstretched the application of the dangerous master[28] *expression unios exclusion alterius* which as per his understanding lead to the exclusion of personal law from the purview of article 13. Both the judges in the Narasu's Case held that the Courts could not invalidate the personal laws if they are opposing to the fundamental rights. The reason stated for this argument was that personal laws were not 'laws in force' under the definition of Article 13

[20] National policy on personal law material available at: shodhganga.inflibnet.ac.in/bitstream/10603/74298/10/10_chapter%204.pdf (last visited on September 01, 2024).
[21] State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84.
[22] Article 14: containing the broad equality rights;
[23] Article 15: directing the state not to discriminate against any citizen on the ground only of religion, race, caste, sex or place of birth or any of them; without prejudice to its power of making special provisions for women and children and for socially and educationally backward classes (including scheduled castes and tribes)
[24] Article 25(1): guaranteeing the right freely to profess, practise and propagate religion;
[25] Ibid
[26] Davis v. Beason, 133 U. S. 333 (1890).
[27] Article 25(2): explaining that the right to freedom of religion shall not affect the state's power to regulate or restrict "secular activity associated with religious practice" and to provide for social welfare and reform;
[28] U.O. I v. B.C. Nawn and Ors. 1972 84 ITR 526 Cal.

of the Constitution of India. Therefore, both the judges held the personal laws immune from any type of constitutional challenge

Justice Chandrachud in the Sabrimala Case [29]stated that the judges in the Narasu's case had missed the broad scope ascribed to the term 'laws in force'. Instead, it would have been wise to assign an inclusive definition to the term 'laws in force'. Therefore, any practice having the force of law in the territory of India is interpreted within 'laws in force'.

In P. Kasilingam v. PSG College of Technology[30], J. Agarwal, described the word 'includes' to incorporate the points which are understood in the sense to include generic meaning as well as the extended meaning of the clause. Justice Jain agreed on the judgment delivered in the Kasilingam's case. He held that the word 'include' further adds to the meaning. The defined term has a specific meaning but its size is extended accentuating further significance, which may or may not include its general meaning.

In the Sabrimala case, Justice DY Chandrachud explicitly stated that the judgment given in the Narasu Appa Mali Case was based on flawed reasoning. Constitution is dynamic and was drafted with the intent that it can change as per the changing times of the Indian society. The framers of the elephantine constitution wanted to put forth detailed provisions regarding every aspect of governance of the state. In doing so, it is palpable that there may be overlapping provisions.

Chief Justice Harilal Kanai in A.K. Gopalan v. State of Madras [31]observed that same affects would have been given to all the pre and post constitutional laws contrary to the part III of the Indian constitution even in the absence of Article 13 (1) or 13 (2) as it were after the incorporation of the same. The narrow judgment delivered by J. Chagla and J. Gajendragadkar left a deep wreck to the gender discriminatory aspects of personal laws which were not ameliorated (until 2018), as the personal laws according to their judgment, do not qualify the test of 'laws' or 'laws in force' under Article 13 of the Indian Constitution. The tapered approach given in the case of Narasu laid down. impediments on the dynamism and transformative vision of the constitution.

Judicial Pronouncements

The Constitution of India does not specifically states an elaborate definition of personal laws. It is under article 246[32] read with List III, Entry 541[33] of the seventh schedule of the Indian Constitution that empowers the Parliament and the State legislatures to legislate laws with matters relating to the specific aspects of personal laws such as 'marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition'.

It was judicial cherry picking which was adopted.[34] Precisely, in cases concerning personal laws, the courts have adopted a policy approach, rather than a legalistic approach.[35] Whenever the personal laws were

[29] Indian Young Lawyers Association v. The State of Kerala, 2018 SCC OnLine SC 1690.
[30] P. Kasilingam v. PSG College of Technology, 1981 AIR 789.
[31] Harilal Kanai in A.K. Gopalan v. State of Madras, AIR 1950 SC 27.
[32] Article 246 [read with List III, Entry 5, in the Seventh Schedule]: empowering Parliament and state legislatures to make laws in the areas which since the pre-Constitution days fall in the domain of personal laws; and
[33] Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.
[34] GAUTAM BHATIA, Personal Laws and the Constitution: Why the Triple Talaq Bench should Overrule State of Bombay v. Narasu Appa Mali, Indian Constitutional Law and Philosophy (SEP 2,2024). https://indconlawphil.wordpress.com/tag/narasu-appa-mali/
[35] M.P. JAIN, INDIAN CONSTITUTIONAL LAW 920 (LexisNexis 2010).

challenged either on want of modern approach or on incompatibility with fundamental rights the courts have by or large adopted an equivocal attitude.

A. Cases where it was held 'Personal Laws are Immune from Judicial Scrutiny'

The apex court in the case of Maharshi Avdhesh v. Union of India[36] dismissed the petition for seeking the declaration of Muslim Women (Protection of rights on Divorce) Act, 1986 as void on the grounds of being in violation of Articles 14 and 15 of the Indian Constitution. The Supreme Court held that codified and uncodified both the types of personal laws cannot be tested on the constitutionality of the personal laws. Again, in the year 1997, the Court did not interfere on the biasedness done to the women through the religious laws. [37]The Court stated it to be the domain of legislative action. However, the remark made by Justice R. Nariman in the Triple Talaq Case is worth taking cognizance. He did not deem it relevant to decide upon validity of the Narasu Judgment in the Triple Talaq case, however he had urged upon the necessity to revisit the judgment of Narasu in an appropriate case in future.

B. Cases where it was held 'Personal Laws Need to Conform to Part III of the Indian Constitution'

The Supreme Court in the enumerated cases, have tested the personal laws on the gauge of the constitutional provisions. In the year 1985, the Apex Court of India gave a ray of hope to the Muslim women by making them eligible to obtain maintenance under Section 125 of Cr. P.C., 1973.[38] The judgment termed the section as secular and defined its essence as prophylactic in nature cutting across the barriers of religion. The Supreme Court applying the Heydon's rule[39] interpreted 'wife' under Clause b of Explanation to section 125(1) as including the Muslim women also. It established that the section 125 overrides the personal law in case of conflict between the two.

In Anil Kumar Mahasi case[40] the Supreme Court expressed its favour in regards to the additional grounds given to the women under the Indian Divorce Act, 1869. It stated that due to the nature of vulnerability of women, they required special protection and it shall be permissible. Next, in the year 2001, in Danial Latifi's case56 the constitutional validity of the Muslim Women (Protection on Divorce) Act, 1986 was challenged. The Court recognized the claim of the women for equal and dignified treatment, particularly in cases of marriage.[41] In the year 2003[42] the Supreme Court struck down a pre constitutional law, Section 118 of the Indian Succession Act, 1925 applicable to the Christians and Parsis as unconstitutional.

On 11th of May, 2017 was an opportunity, a missed one, to untie the shackles of the judgment delivered in the year 1951.[43] The Supreme Court commenced to hear the arguments on the petition concerning, inter alia, the constitutional validity of the Muslim divorce process generally known as the 'Triple Talaq'. The majority in the Triple Talaq case held that the instant, unilateral and irrevocable divorce by way of triple talaq is not an essential religious practice rather it is against the basic tenets of the teachings of Quran and violates the Shariat Act, 1937. It was held to be bad in both, theology and law.[44]However, the question on Personal Laws coming under the purview of Article 13 as 'Laws' or 'Laws in Force' remained unanswered.

[36] Maharshi Avdhesh v. Union of India, 1994 Supp (1) SCC 713.
[37] Ahmedabad Women Action Group & Ors. v. Union of India, 1997 3 SCC 573.
[38] Mohd. Ahmad Khan v. Shah Bano Begum & Ors. (1985) 2 SCC 556.
[39] Heydon's Case, (1584) 76 ER 637.
[40] Anil Kumar Mahasi v. Union of India, 1994 5 SCC 704.
[41] Danial Latifi & Anr v. Union of India, (2001) 7 SCC 740.
[42] John Vallamattom v. Union of India, 2003 6 SCC 611
[43] Shayara Bano v. Union of India And Ors, (2017) 9 SCC 1.
[44] Reiterating the view held in Shamim Ara v. State of U.P., (2002) 7 SCC 518 and holding the case as the law applicable in India.

The socio-politico factors in India also add towards the progressive and regressive patterns in the personal laws of India.

On 2018 the historic judgment of Sabrimala was delivered. The issues raised were whether Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 was unconstitutional. Next, whether the age-old custom of not allowing the Hindu women aged between 10 to 50 (menstruating group) years of age to visit the Sabrimala temple and worship deity Ayyappa was in violation of their fundamental rights. The judgment struck out the rule as violating the fundamental rights and held it as unconstitutional. The ratio of 4:1[45] delivered the judgment. Chief Justice Dipak Mishra held that the superstitions, dogmas and exclusionary practices are separate and distinguished from the core of the religion.63 Justice Chandrachud held, "Immunising customs and usages, like the prohibition of women in Sabarimala, takes away the primacy of the Constitution. "64 There is a distinction between superstitious part and an integral part of the religion. The test is to scrutinize if the removal of that part in question leads to the significant change in the religion. Only, then can it be termed as the integral or an essential part of the religion or else it is simply superfluous in nature. 65 It stated that it is the fundamental right of the Hindu female devotees to enter the temple, worship the deity and offer prayers

The Supreme Court in the Sabrimala case overruled the Narasu Appa Mali case and conceded the metamorphic character of the Constitution. It is a 'living document' and demands progressive interpretation and reformative approach. It is a barefaced and flagrant judgment. The Supreme Court adopted an interventionist perspective by upholding equality and freedom of right to religion of worship for all the individuals. Right to religion under the Constitution provides for the freedom of practice and propagation of religion suiting to one's religion.[46] The same set of articles also provide for the State to regulate these practices to bring about any reformation. Under Article 25(2)(b) the State may even throw open Hindu temples for the all classes of people to worship. The judgement upheld the sanguine angle of the Constitution in upholding the dignity, equality and liberty of the individual.[47]

Personal laws deeply impact the milieu of an individual and affects one's civil status. Therefore, any associated feature of a religious nature neither can be veiled nor be granted constitutional immunity.[48] The Constitution acknowledges every individual as the basic unit of itself and demands us to see all legal system from the 'prism of individual dignity.'[49] The majority judges in Post Sabrimala's judgment the big picture of personal laws under Article 13 of the Indian Constitution stands crystal clear. The long awaited rectification materialized after a lot of confusion. Yet, there are many pathways to unfold in doing complete justice to all the injustices against women, which were and are committed every day in the name of theocratic customs and practices.

Conclusion

The underlying basis of all personal laws, regardless of religion is, 'Men and Women are not equal'. There exists a discrimination for marriage, inheritance and guardianship of children. In such a scenario, it is an impediment to hold onto the age-old beliefs and traditions of the personal laws, which are a hindrance to

[45] Chief Justice Dipak Misra, Justice Ajay Manikrao Khanwilkar, Justice Rohinton Nariman, Justice D.Y. Chandrachud gave the majority decision and Justice Indu Malhotra gave the dissenting judgment.
[46] Krishnadas Rajagopal, Sabarimala verdict, 'Ghost of Narasu' is finally exorcised, The Hindu
[47] The Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Shri Shirur Mutt, AIR 1954 SC 282
[48] Ibid.
[49] Ibid.

today's growth and betterment. It is imperative that they meet the vision of ensuring dignity, liberty and equality enshrined in the Constitution. The objective of the Constitution is to protect the people from the oppression by the society in the form of patriarchy and communalism. It is to be noted that silence bearing nature of women for prolonged period of time has made them vulnerable to social stigma which is against their rights guaranteed by the constitution.

Personal laws in general falls under the category of old age laws as law is dynamic in nature it should be of adoptability and acceptability of women's right being protected properly in today's modern era. The laws, which are patriarchal and discriminatory against a women, whether it is related to marriage, divorce or even maintenance must be brought under the perusal of the Part III of the constitution. The exclusion of personal laws from the judicial scrutiny was inappropriate. The judiciary has a significant role to play. Reformation can happen only when we have more of the people who believe in the women sensitive personal laws. For instance, polygamy in the Hindus was penalised when the majority of the Hindu population believed polygamy to be against the right to equality and supported the pro-women move. The Sabrimala judgment is a step forward taken towards removing the fetters of gender discrimination. The Supreme Court went ahead and decided upon the 'essential practice' of the religion

The Sabarimala judgment succoured the doctrine of social inclusivity by interpreting into the meaning of 'life and liberty' under Article 21 of the Constitution of India. The judgment has opened the gates to raise voices against the patriarchal personal laws, which exist despite being in violation of the fundamental rights. The legal approach projected through the Sabrimala pronouncement has reconsidered the status of the upright affinity between the State and its subjects. In today's India of 21st Century, what seems more important is to talk about gender just laws and equity rather than to follow the age-old gender biased philosophies of Hindu scriptures or Quran.