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Judicial Opinion on Whether Personal Law is a "Law" under Article 13 of the Constitution of India

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Abstract

India is a land of religious pluralism. Every religion has its own set of customs and rituals. Personal law may apply to either a group or an individual. It is applied based on the faith or the religion, which an individual chooses to practice and profess. In India, there have been migrations and invasions by varied foreign rulers, which have led to multiple set of personal laws. Some practices of these religions are discriminatory on the ground of gender. Contemporary India witnesses the upsurge of feminist legal responses on the concerns of gender inequality in religious laws. Beginning from the Constituent Assembly Debates to the formation of the Constitution of India and then the unclear varying judicial pronouncements in relation to the personal laws by the Indian judiciary have made the topic of personal laws dynamic. In this context, it is imperative to understand the concept of personal laws as it prevails today. This article looks into the location of personal laws within the structure of Article 13 of the Constitution of India.

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

I. Introduction

In the late eighteenth century, the term 'personal laws' 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. The transformation was taking 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

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law, which were evolved and administered in these courts, (Anglo-Hindu and Anglo-Mohammedan laws).[2]

II. Evolution of Personal Laws in India

India has diverse multi-cultural and multi-religious societies.[3] 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 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.[4] Centuries of political vicissitudes and socio-economic upheavals 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.[5] 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.[6]

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[2]FLAVIA AGNES, Personal Laws The Oxford Handbook of the Indian Constitution, (Sujit Choudhry et. al., eds., 2016, (Sept. 8, 2021, 8:01 PM). https://www.oxfordhandbooks.com/view/10.1093/law/9780198704898.001.0001/oxfordhb-9780198704898-e-5.

[3] T. MAHMOOD, FAMILY LAW REFORM IN THE MUSLIM WORLD, 167 (Bombay, N.M. Tripathi, 1972).

[4] *Ibid.*

[5] 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.

[6] SN JAIN, *Judicial System and Legal Remedies*, in JOSEPH MINATTUR ed., THE INDIAN LEGAL SYSTEM 134 (Oceana Publications, N.Y., 1978).

Non-interference policy of the British led to uninterrupted practice of personal laws in India. The Hindu and Muslim pattern of judicial administration continued for a reasonable period of time. As the British started consolidating their status in India, they altered the civil and criminal laws as per their design. However, the Hindus and the Muslims enjoyed complete sovereignty in their religious matters.[7] The British were well aware that the religion was a sensitive issue, interference with which could jeopardize their trade and political stability in India.[8] Furthermore, being Christians they were well accustomed to the boundaries of the State and the Church[9] and followed the doctrine of duality.[10]

B. The Neutrality of British towards the Hindu and Muslim law

The Mayor's courts were established at Calcutta, Bombay and Madras in 1726. These courts had no jurisdiction to decide upon the matters relating to the religion or castes for the Indian people. The Charter of 1753 excluded the Indians from the purview of the Mayor's courts. It directed that the Indians themselves should determine such disputes. The Mayor's court intervened only when both the parties to the dispute consented for the matter to be decided by the court.[11] In 1772, Warren Hastings, the first Governor General of India, laid down that in the "suits of marriage, inheritance, caste and other religious usages the law of Quran with respect to Muslims and those of the Shastras with respect to Hindus should be followed."[12] Sir Michael Jones, a judge of the Supreme Court of Calcutta (1783-1794), proposed to have complete digests of Hindu and Muslim laws, after the model of Justinian's inestimable pandects.[13] In 1792 and 1794, he published his translation of the Muslim law of Succession and Ordinances of Manu respectively.[14] With the aid of the translated script, the Englishmen could both explain and adjudge upon the personal laws.

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[7] M. P. JAIN, OUTLINES OF INDIAN LEGAL HISTORY, 697, (Lexis Nexis, 2011).
[8] J. M. SHELAT, SECULARISM- PRINCIPLES AND APPLICATION, 75 (N. M. Tripathi 1972).
[9] DONALD EUGENE SMITH, INDIA AS A SECULAR STATE 275 (Princeton University Press 1963).
[10] *Ibid.*
[11] SRIVASTAVA, *supra* note 5, at 575.
[12] JAIN, *supra* note 7 at 90.
[13] *Id.* at 705.
[14] *Ibid.*

C. Reformation and Restructuring of Personal Laws by the British Rulers

In the beginning of the nineteenth century, the state of affairs in India was uneven. There was a need for synchronized laws in relation to the governance of people in matters of personal laws and civic life. The British thought it would be prudent to codify the laws in order to achieve certainty and uniformity.[15] They decided which practices would have the effect of social force and which practices would come under the umbrella of law. Every practice had to pass a three-step litmus test of 'clarity, certainty and definitiveness' in order to continue as a norm for the natives. This mandate by the Privy Council was greek to the Hindus and Muslims. Their traditions and custom were "not of a nature to bear the strict criteria imposed by British lawyers."[16] The law officers, i.e.: the Shastris and Maulvis, were responsible for translating and interpreting the religious texts relating to the personal law.[17] The decisions were made based on collective mode of science and logic, different from the local practices. The natives were subjected to the western conception of Hindu jurisprudence. The creation of an all India legislature and the appointment of a Law Member as well as a Law Commission by the Charter Act of 1833 influenced the codification of the laws in India. The second reason, which influenced the codification, was Sir Jeremy Bentham's suggestion to codify the laws in India.[18] Sir Donald Eugene stated that India had become the testing ground for the Benthamite principle of codification.[19]

D. Shift from Neutrality to Legislation

The nineteenth century witnessed a shift of the British rulers from neutrality towards the personal laws in order to bring about social transformations. This had dual effect on the Hindus. The learned sections of the people of the Hindu society

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[15] JAIN, *Supra* note 7 at 600.
[16]Marc Glanter, *The Displacement of Traditional Law in Modern India,* XXIV J. of SOC. SCIENCE*S* 65, 68-70 (1968), https://doi.org/10.1111/j.1540-4560.1968.tb02316.x
[17]Gautam Bhatia, *Personal Laws and the Constitution: Why the Tripal Talaq Bench should Overrule State of Bombay v. Narasu Appa Mali*, Indian Constitutional Law and Philosophy (May 8th , 2017) https://indconlawphil.wordpress.com/2017/05/08/personal-laws-and-the-constitution-why-the-tripal-talaq-bench-should-overrule-state-of-bombay-vs-narasu-appa-mali/
[18] Terry DiFilippo, *Jeremy Bentham's Codification Proposals and Some Remarks on Their Place in History*, 22 BUFF. L. REV. 239 (1972), https://digitalcommons.law.buffalo.edu/buffalolawreview/vol22/iss1/13.
[19] EUGENE, *supra* note 9, at 275.

supported these reformations whereas the fanatic Hindus were not appeased about such changes and considered them as an intervention upon their religious sentiments. 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. As far as Muslim Law is concerned 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. 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.

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

Article 13 of the Indian Constitution explains that any law in contradiction with the Part III of the Constitution of India shall be declared unconstitutional. Any law legislated by the Central or the State legislatures contrary to the letter and spirit of the Constitution is struck down as void. All the pre and post laws have to clear the litmus test in order to be effective in the land. Article 372 of the Constitution of India talks about the operative effectivity of any law existing

[20] U. C. SARKAR, EPOCHS IN HINDU LEGAL HISTORY, 350 (Vishveshvaranand Vedic Research Institute 1958).
[21] SRIVASTAVA, *supra* note 5, at 580.
[22] See Indian Independence Act, 1947.

immediately before the enactment of the Constitution of India.[23]. According to Salmond, "the law is the body of principles recognized and applied by the state in the administration of justice". An analogy can be derived between the Salmond's definition of law and personal laws as 'laws in force'. In *Kripal Bhagat v. State of Bihar*[24] 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,*[25] 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."[26]

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. 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.

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[23] INDIA CONST. art. 372.
[24] Kripal Bhagat v. State of Bihar, 1970 SCR (3) 233.
[25] Assan Rawther v. Ammu Umma, (1971) KLT 684.
[26] *Ibid*.

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

The discussion in the prestigious courtrooms over the issues of personal laws being 'Laws in force' under Article 13 dates back to the year of 1952.[27] 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, 15 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. 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 Clause 1 of Article 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[28] 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."[29]

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 17[30] and 25(2)[31] 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

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[27]State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84.
[28] Davis v. Beason, 133 U. S. 333 (1890).
[29] *Ibid.*
[30] INDIA CONST. art. 17.
[31] INDIA CONST. art. 25, cl.2.

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[32] *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[33] 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 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[34] 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[35], 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[36] 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[37], 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

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[32] U.O. I v. B.C. Nawn and Ors. 1972 84 ITR 526 Cal.
[33] S*upra* note 27.
[34] Indian Young Lawyers Association v. The State of Kerala, 2018 SCC OnLine SC 1690.
[35] P. Kasilingam v. PSG College of Technology, 1981 AIR 789.
[36] Bharat Cooperative Bank (Mumbai) v. The Union, (2007) Insc 318.
[37] *Supra* note 34.

provisions.[38] Chief Justice Harilal Kanai in A.K. Gopalan v. State of Madras[39] 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.

IV. Judicial Pronouncements

The Constitution of India does not specifically states an elaborate definition of personal laws. It is under article 246[40] read with List III, Entry 5[41] 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'. Post Narasu's judgment the Indian Supreme Court[42] and the High Courts in a series of cases delivered their judgments taking the judgment delivered in Narasu as an advisory stare decisi. For stance the Allahabad High Court[43], Madras High Court[44] and the Kerela High Court[45] adhered to the Narasu's judgment religiously stating that personal laws are not impressionable to the Part III of the Constitution. On the flipside, there were judgments where the personal laws were tested on the yardstick of the

[38] As said by Chief Justice Chandrachud in the Special Courts Bill Case, AIR 1979 SC 478.
[39] Harilal Kanai in A.K. Gopalan v. State of Madras, AIR 1950 SC 27.
[40] INDIA CONST. art. 246.
[41] 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.
[42] Krishna Singh v. Mathura Ahir, AIR 1980 SC 707.
[43] Ram Prasad v. State of Uttar Pradesh, AIR 1957 ALL 411.
[44] Srinivas Aiyar v. Saraswati Ammal, AIR 1952 MAD 193.
[45] P.E. Mathew v. Union of India, AIR 1999 KER 345.

fundamental rights and the judges asked for the reconsideration of the judgment of Narasu stating that interpreting Article 13 in regards to the personal laws have been a misnomer. It was judicial cherry picking which was adopted.[46] Precisely, in cases concerning personal laws, the courts have adopted a policy approach, rather than a legalistic approach.[47] Whenever the personal laws were 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*[48] 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.[49] 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.[50]

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

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[46]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 (May. 8, 2021). https://indconlawphil.wordpress.com/tag/narasu-appa-mali/.
[47] M.P. JAIN, INDIAN CONSTITUTIONAL LAW 920 (LexisNexis 2010).
[48] Maharshi Avdhesh v. Union of India, 1994 Supp (1) SCC 713.
[49] Ahmedabad Women Action Group & Ors. v. Union of India, 1997 3 SCC 573.
[50] *Supra* note 34.

maintenance under Section 125 of Cr. P.C., 1973.[51] The judgment termed the section as secular and defined its essence as prophylactic in nature cutting across the barriers of religion.[52] The Supreme Court applying the Heydon's rule[53] 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.[54]

In Anil Kumar Mahasi case[55] 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 case[56] 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.[57] In the year 2003[58] 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.[59] 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.[60] However, the question on Personal Laws coming under the purview of Article 13 as 'Laws' or 'Laws in

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[51] Mohd. Ahmad Khan v. Shah Bano Begum & Ors. (1985) 2 SCC 556.
[52] *Ibid.*
[53] Heydon's Case, (1584) 76 ER 637.
[54] *Supra* note 51 ¶ 9 and 10.
[55] Anil Kumar Mahasi v. Union of India, 1994 5 SCC 704.
[56] Danial Latifi & Anr v. Union of India, (2001) 7 SCC 740.
[57] EXPRESS WEB DESK, *What is Shah Bano case,* The Indian Express (Aug. 23, 2017, 14:05 PM), https://indianexpress.com/article/what-is/what-is-shah-bano-case-4809632/.
[58] John Vallamattom v. Union of India, 2003 6 SCC 611.
[59] Shayara Bano v. Union of India And Ors, (2017) 9 SCC 1.
[60] 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.

Force' remained unanswered. The socio-politico factors in India also add towards the progressive and regressive patterns in the personal laws of India. Amongst these patterns, most of them juxtapose antagonistic equality status to the women of our country.

On 29th September, 2018 the historic judgment of Sabrimala[61] 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[62] 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.

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[61] S*upra* note 34.

[62] 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.

[63] Krishnadas Rajagopal, *Sabarimala verdict, 'Ghost of Narasu' is finally exorcised*, The Hindu (Sept. 29, 2018, 9:15 PM). https://www.thehindu.com/news/national/justice-chandrachud-ends-the-unchallenged-reign-of-a-bombay-hc-verdict/article25074175.ece.

[64] *Ibid.*

[65] The Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Shri Shirur Mutt, AIR 1954 SC 282.

The Supreme Court in the Sabrimala case[66] overruled the Narasu Appa Mali[67] 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. 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.[68] The judgement upheld the sanguine angle of the Constitution in upholding the dignity, equality and liberty of the individual.

In the case of National Textile Workers Union v. P.R. Ramakrishnan[69], Justice PN Bhagwati stated, "We cannot allow the dead hand of the past to stifle the growth of the living present. Law cannot stand still; it must change with the changing social concepts and values."[70] The Supreme Court's verdict has gone ahead in scrutinizing the veracity of such claims and set standards thereby ameliorating the gender-biased discrimination.

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.[71] 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.'[72] 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 clamor. Yet, there are many pathways to unfold in doing

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[66] *Supra* note 34.
[67] *Supra* note 27.
[68]Ayesha Jamal, *Sabarimala Verdict: A Watershed Moment in the History of Affirmative Action* (Oct. 30, 2020).
https://www.theleaflet.in/sabarimala-verdict-a-watershed-moment-in-the-history-of-affirmative-action/#
[69] National Textile Workers Union v. P.R. Ramakrishnan, 1983 SCR (3) 12.
[70] *Ibid.*
[71] *Supra* note 61 ¶ 395.
[72]*Ibid.*

complete justice to all the injustices against women, which were and are committed every day in the name of theocratic customs and practices.

V. 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 today's growth and betterment. It is imperative that they meet the vision of ensuring dignity, liberty and equality enshrined in the Constitution.[73] The objective of the Constitution is to protect the people from the oppression by the society in the form of patriarchy and communalism.[74]

It is also true that some of the embryonic practices of the personal laws were gender biased from the infancy but have been carrying on during the primitive days due to the painful silence of the women. Personal laws are of ancient origin and it is plausible that they do not conform to the neo approach to some of the fundamental rights or the modern set up of the society. Therefore, there must be ex abundanti cautela while applying the age-old traditions conforming them to the dynamism of the present need of the society. 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.

[73] RAJAGOPAL, *Supra* Note 63.

[74] Deeksha Sharma ET. AL, *Article 13: A Bête Noire in the Indian Constitution? (*Apr. 30, 2020, 10:30 AM). *https://www.jurist.org/commentary/2020/04/sharma-behl-indian-constitution-article-13/.*

The Sabarimala judgment succoured the doctrine of social inclusivity by archly 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.