

FAMILY LAW IN INDIA: A CRITICAL STUDY

AUTHOR – IRA PAL* & MS. TANU AGARWAL**

* STUDENT AT AMITY LAW SCHOOL, AMITY UNIVERSITY, UTTAR PRADESH, LUCKNOW CAMPUS

** ASSISTANT PROFESSOR AT AMITY LAW SCHOOL, AMITY UNIVERSITY, UTTAR PRADESH, LUCKNOW CAMPUS

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ABSTRACT

The institution of family occupies a central place in the Indian social and legal framework. Family Law, which regulates matters such as marriage, divorce, maintenance, adoption, succession, guardianship, and surrogacy, plays a pivotal role in shaping relationships and individual rights within this unit. The Indian legal landscape is marked by legal pluralism, where personal laws governed by religious and customary practices coexist with secular legal principles laid down by the Constitution of India.

This research paper, titled “A Critical Study of Family Law in India: Judicial Trends, Gender Justice, and Emerging Issues”, aims to examine the evolution, development, and contemporary challenges of Family Law within the Indian context. The paper seeks to critically analyze how the principles of equality, gender justice, human dignity, and child welfare are reconciled with personal laws rooted in tradition and religion.

The study is motivated by the continuing debates around the codification of personal laws, gender bias in existing legal frameworks, the need for a Uniform Civil Code (UCC), and the lack of adequate legal recognition for new forms of family and relationships, such as live-in relationships and LGBTQ+ families. It also evaluates the impact of landmark judgments and recent legislative reforms, such as the Hindu Succession (Amendment) Act, 2005; the Muslim Women (Protection of Rights on Marriage) Act, 2019; the Surrogacy (Regulation) Act, 2021; and the Special Marriage Act, 1954.

Through its chapters, the research analyzes the feminist critique of personal laws and their impact on women’s rights in marriage, divorce, maintenance, and inheritance, and the application of the “best interest of the child” principle in guardianship and custody matters. It explores judicial recognition of live-in relationships and their legal implications, while also addressing the legal vacuum regarding LGBTQ+ family rights post-Navtej Singh Johar v. Union of India. The paper further considers the emerging legal framework on surrogacy and assisted reproductive technologies and assesses judicial activism in shaping a gender-just family law regime in India. It also draws comparative insights from reforms in family law in other jurisdictions.

Employing a doctrinal, analytical, and comparative methodology, this paper draws on judicial pronouncements, statutes, secondary literature, and international human rights instruments to provide a holistic understanding of Family Law. The study further examines the role of the Indian judiciary in interpreting personal laws in harmony with the constitutional guarantees of equality (Article 14), non-discrimination (Article 15), freedom of religion (Article 25), and the right to life and dignity (Article 21).

In conclusion, this research finds that while progressive trends are visible in judicial interpretations of family law, much work remains to harmonize personal laws with the Indian Constitution’s vision of

justice, equality, and secularism. The paper offers recommendations for legal reforms that can make Indian family law more inclusive, gender-sensitive, and responsive to the needs of modern society.

Keywords: women, child, maintenance, inheritance, child custody, and welfare, gender justice, and gender equality

CHAPTER 1: INTRODUCTION

Family law governs some of the most personal and intimate aspects of human life. In India, family law refers to that branch of legal regulation which governs marriage, divorce, maintenance, child custody, adoption, inheritance, and other family-related matters. It holds particular significance in India's multi-religious, multi-ethnic society, where personal laws are largely shaped by religious traditions and customary practices.

The Indian legal framework recognizes and accommodates this diversity through distinct personal laws for major religious communities: Hindu, Muslim, Christian, and Parsi. At the same time, the Special Marriage Act, 1954 offers a secular option for interfaith or non-religious marriages. However, this pluralistic structure also generates complexity, inconsistencies, and at times, discriminatory outcomes—particularly concerning gender justice and women's rights.

In this paper, we examine the historical evolution of family law in India, analyze the major legislations and judicial developments, and explore the contemporary challenges faced in this dynamic field.

Background and Context

The family has traditionally been regarded as the basic unit of Indian society, performing not only social but also legal and economic functions. The regulation of family relationships has historically fallen within the domain of personal law, which in India is governed largely by religious customs and traditions. Hindu, Muslim, Christian, Parsi, and secular laws such as the Special Marriage Act, 1954, together form a complex legal landscape.

Indian Family Law, therefore, represents a unique amalgamation of codified statutes, uncodified customary laws, and judicial

interpretations. Since independence, Indian courts have played a pivotal role in modernizing family law and in interpreting personal laws through the lens of constitutional values such as equality, dignity, and secularism.

Yet, family law in India continues to reflect tensions between tradition and modernity. Gender inequality, discrimination against marginalized communities, lack of clarity in emerging family forms (such as live-in relationships and LGBTQ+ families), and inconsistencies in judicial approaches remain key challenges. This research is contextualized within this ongoing dynamic of reform and resistance in the sphere of family law.

Research Problem

The core problem addressed in this research is the persistence of gender bias and inequality within the framework of Indian personal laws and the slow pace of reform in achieving constitutional compliance.

Despite progressive judicial decisions, family law often remains influenced by patriarchal norms, religious orthodoxy, and outdated customs. The legal rights of women, children, LGBTQ+ persons, and non-traditional families are inconsistently protected across personal law regimes. Furthermore, there is an absence of a harmonized legal approach that ensures equality and justice for all citizens regardless of religion or identity.

This research problem requires a critical evaluation of how far Indian family law has evolved in line with constitutional values, and what reforms are necessary to make the system more inclusive, equitable, and just.

Objectives of the Study

- To analyze the evolution of family law in India and its interaction with

constitutional values of equality and justice.

- To examine the feminist critique of personal laws and their impact on the rights of women in marriage, divorce, maintenance, inheritance, and guardianship.
- To study judicial trends in recognizing child rights, including the “best interest of the child” principle in custody and guardianship matters.
- To explore the legal recognition of emerging forms of family – including live-in relationships, LGBTQ+ partnerships, and families formed through assisted reproductive technologies.
- To assess the role of the judiciary in harmonizing personal laws with the constitutional mandate under Articles 14, 15, 21, and 25.
- To evaluate comparative trends in family law reforms globally and their relevance to the Indian context.
- To provide recommendations for progressive reform of Indian family law in order to promote gender justice, equality, and social inclusion.

Research Methodology

The present study adopts a doctrinal and analytical research methodology. The primary mode of research is based on:

Primary Sources: Statutes and legal enactments including Hindu, Muslim, Christian, Parsi personal laws, the Special Marriage Act, 1954, the Hindu Succession (Amendment) Act, 2005, the Muslim Women (Protection of Rights on Marriage) Act, 2019, the Protection of Women from Domestic Violence Act, 2005, the Surrogacy (Regulation) Act, 2021, and constitutional provisions. Landmark judicial pronouncements by the Supreme Court and High Courts of India are analyzed as primary materials.

Secondary Sources: Academic books, journal articles, reports of the Law Commission of India,

international human rights instruments (such as the UN Convention on the Rights of the Child), and commentaries on family law and constitutional law.

The research is qualitative in nature, employing critical and comparative legal analysis. It seeks to contextualize judicial trends within the broader socio-legal developments in India and to draw lessons from international best practices in family law reform.

The study is conducted with an interdisciplinary approach, drawing upon insights from constitutional law, gender studies, human rights, and sociology

CHAPTER 2: HISTORICAL EVOLUTION AND SOURCES OF FAMILY LAW

The origins of Indian family law can be traced back to religious texts and customary practices. Under Hindu law, ancient texts such as Manusmriti and the Dharmashastra governed familial relationships⁸⁰⁵. Islamic family law was derived from the Quran, Hadith, and subsequent commentaries⁸⁰⁶.

During the colonial period, British administrators largely refrained from interfering in personal laws, choosing instead to codify certain aspects – for instance, through the Hindu Widows’ Remarriage Act, 1856 and the Indian Christian Marriage Act, 1872⁸⁰⁷.

In independent India, family law for Hindus underwent comprehensive reform through the passage of the Hindu Code Bills in the 1950s, most notably the Hindu Marriage Act, 1955, Hindu Succession Act, 1956, and Hindu Adoptions and Maintenance Act, 1956.⁸⁰⁸

In contrast, Muslim personal law remains mostly uncodified, with key principles derived from religious sources. The secular Criminal Procedure Code (CrPC), however, provides a

⁸⁰⁵ Mulla, Principles of Hindu Law, p. 10

⁸⁰⁶ Tahir Mahmood, Muslim Law in India and Abroad, p. 7

⁸⁰⁷ Indian Christian Marriage Act, 1872

⁸⁰⁸ Hindu Code Bills (1950s)

universal right to maintenance under Section 125, applicable irrespective of religion⁸⁰⁹.

CHAPTER 3: MARRIAGE AND DIVORCE UNDER INDIAN FAMILY LAW

Marriage forms the cornerstone of family law. Its legal character differs across religions—viewed as a sacrament under Hindu law, and as a civil contract under Muslim, Christian, and secular law⁸¹⁰.

Under the Hindu Marriage Act, 1955, marriage can be dissolved on grounds including cruelty, adultery, desertion, mental disorder, or conversion to another religion⁸¹¹. Similarly, the Special Marriage Act, 1954, provides a secular framework for divorce applicable to all Indian citizens, regardless of religious background⁸¹².

Muslim personal law permits divorce through mechanisms such as talaq (by the husband) and khula (initiated by the wife). However, judicial intervention has sought to regulate and limit arbitrary triple talaq practices. The Supreme Court, in *Shayara Bano v. Union of India*, declared instant triple talaq unconstitutional⁸¹³.

Christian family law, codified under the Divorce Act, 1869, allows for divorce on traditional grounds such as adultery and cruelty.

CHAPTER 4: MAINTENANCE AND ECONOMIC RIGHTS

A critical aspect of family law concerns maintenance—the financial support provided to a spouse, child, or parent following separation or divorce. Section 125 of the CrPC is a secular provision that empowers a court to grant maintenance to any person unable to maintain themselves⁸¹⁴.

This principle was famously applied in the landmark case of *Mohd. Ahmed Khan v. Shah Bano Begum*⁸¹⁵. The Supreme Court held that

Muslim women were entitled to maintenance under Section 125, regardless of personal law restrictions. The judgment sparked political controversy but reinforced the idea that maintenance is a human right transcending religious boundaries.

Similarly, Hindu wives can claim maintenance under both the Hindu Marriage Act, 1955 and the Hindu Adoptions and Maintenance Act, 1956. The Special Marriage Act also provides a secular mechanism for granting spousal support.

CHAPTER 5: CHILD CUSTODY AND ADOPTION

Child custody disputes are resolved on the guiding principle of the welfare of the child, which overrides parental rights. Courts consider factors such as the age of the child, emotional attachment, financial stability, and the ability of each parent to provide a nurturing environment.

In *Githa Hariharan v. Reserve Bank of India*⁸¹⁶, the Supreme Court recognized a mother's equal right to guardianship under Hindu law, thereby promoting gender-neutral interpretations in custody matters.

While adoption is legally recognized for Hindus under the Hindu Adoptions and Maintenance Act, 1956, members of other religious communities must seek guardianship under the Guardians and Wards Act, 1890⁸¹⁷. This creates inequality, as non-Hindu communities do not have equal access to full adoption rights.

The Debate for Uniform Civil Code

Article 44 of the Indian Constitution directs the state to endeavor toward a Uniform Civil Code (UCC) for all citizens. A UCC would unify and standardize family law across religions, ensuring equality before the law and protecting gender justice⁸¹⁸.

Judicial pronouncements have consistently endorsed the desirability of a UCC. In *Sarla Mudgal v. Union of India*⁸¹⁹, the Supreme Court

⁸⁰⁹ Section 125 CrPC

⁸¹⁰ Hindu Marriage Act, 1955

⁸¹¹ Ibid.

⁸¹² The Special Marriage Act, 1954

⁸¹³ *Shayara Bano v. Union of India*, AIR 2017 SC 460

⁸¹⁴ Section 125 CrPC

⁸¹⁵ *Shah Bano Case*, AIR 1985 SC 945

⁸¹⁶ *Githa Hariharan v. RBI*, (1999) 2 SCC 228

⁸¹⁷ Guardians and Wards Act, 1890

⁸¹⁸ Article 44, Constitution of India

⁸¹⁹ *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531

criticized the government's inertia in implementing Article 44. The Court observed that religious pluralism should not be used to justify gender inequality or discrimination in personal law.

Despite these judicial efforts, the UCC remains politically contentious. Critics argue that forced uniformity may violate cultural and religious freedoms, while supporters contend that gender equality and constitutional values should take precedence.

Judicial Activism in Family Law

Indian courts have played a proactive role in transforming family law through progressive judgments. In *Danial Latifi v. Union of India*⁸²⁰, the Court upheld Muslim women's right to maintenance beyond the iddat period, emphasizing the principle of human dignity.

Similarly, in *Joseph Shine v. Union of India*⁸²¹, the Court struck down Section 497 of the IPC, which criminalized adultery, recognizing it as a violation of personal autonomy and gender equality. These decisions reflect an evolving judicial approach that harmonizes personal law with constitutional rights.

CHALLENGES AND FUTURE PROSPECTS

Despite judicial progress, several challenges persist in Indian family law. The existence of separate personal laws leads to inconsistency, unequal treatment, and legal uncertainty. Women continue to face gender discrimination in areas such as inheritance, guardianship, and divorce proceedings.

There is also a need to modernize and codify Muslim family law to ensure consistency with constitutional principles. Furthermore, greater awareness and legal literacy are essential so that individuals understand their rights within family law frameworks.

CHAPTER 6: GENDER JUSTICE AND FEMINIST CRITIQUE OF INDIAN FAMILY LAW

Despite progressive reforms in post-independence India, significant gender biases continue to persist in the structure and application of family law. Historically, Indian personal laws were shaped within patriarchal religious and customary frameworks that privileged male authority in the family sphere. As a result, women's roles in marriage, guardianship, inheritance, and divorce remained legally subordinate.

The Hindu Succession (Amendment) Act, 2005, which granted daughters equal coparcenary rights in ancestral property, represents an important legislative advance⁸²². However, studies show that in practice, many women are still discouraged – socially and through family pressure – from claiming these rights. The unequal burden of domestic responsibilities and cultural norms continue to marginalize women economically.

In Muslim personal law, the unilateral power of talaq (divorce) originally vested with the husband created glaring gender asymmetry. This was addressed in the landmark judgment of *Shayara Bano v. Union of India*⁸²³, where the Supreme Court declared instant triple talaq unconstitutional. Yet, deeper systemic reforms are needed to ensure that Muslim women's rights in marriage and divorce are fully consistent with the principles of gender justice enshrined in the Constitution.

Feminist legal scholars like Flavia Agnes argue that personal laws still construct women as legal dependents, often limiting their autonomy in decisions about children, property, and divorce⁸²⁴. The courts have increasingly read personal laws through the lens of Articles 14, 15, and 21 of the Indian Constitution⁸²⁵, but the tension between religious freedom (Article 25)

⁸²⁰ *Danial Latifi v. Union of India*, AIR 2001 SC 3958
⁸²¹ *Joseph Shine v. Union of India*, (2019) 3 SCC 39

⁸²² Hindu Succession (Amendment) Act, 2005.

⁸²³ *Shayara Bano v. Union of India*, AIR 2017 SC 460.

⁸²⁴ Flavia Agnes, *Family Law: Volume I*, Oxford University Press, 2011, p. 35.

⁸²⁵ Articles 14, 15, and 21, Constitution of India.

and gender equality remains a central challenge.

A more harmonized legal framework, built upon constitutional values rather than religious orthodoxy, is critical for securing substantive gender equality in family law⁸²⁶. The debate around the Uniform Civil Code reflects this tension and the urgent need for a progressive, inclusive rethinking of personal laws.

CHAPTER 7: CHILD RIGHTS AND THE “BEST INTEREST” PRINCIPLE

The principle of “best interest of the child” is now a cornerstone of Indian family law. Over the past three decades, Indian courts have moved away from traditional notions of parental authority, emphasizing that the child’s welfare must be paramount in all custody, guardianship, and adoption cases.

This evolution has been influenced by India’s ratification of the UN Convention on the Rights of the Child (CRC), 1989⁸²⁷, which commits states to ensure that “in all actions concerning children, the best interests of the child shall be a primary consideration.” Courts have adopted this standard in domestic jurisprudence.

In *Githa Hariharan v. Reserve Bank of India*⁸²⁸, the Supreme Court overturned the presumption that fathers are the sole natural guardians under Hindu law. It ruled that mothers have equal guardianship rights, aligning domestic law with gender-equal parenting principles. In *Roxann Sharma v. Arun Sharma*⁸²⁹, the Court reiterated that decisions about custody must center the emotional, educational, and developmental needs of the child – even where such decisions depart from religious or customary norms.

Furthermore, the courts have emphasized that custody disputes should not be driven by the adversarial claims of parents but must be guided by neutral assessments of the child’s welfare. These developments represent a

progressive shift toward child-centric family law, in line with modern international standards.

CHAPTER 8: JUDICIAL RECOGNITION OF LIVE-IN RELATIONSHIPS

An important development in contemporary Indian family law is the gradual legal recognition of live-in relationships. While such relationships were once stigmatized, the Indian judiciary has increasingly acknowledged the changing social reality of consensual cohabitation outside marriage – particularly in urban India.

The Supreme Court, in *Indra Sarma v. V.K.V. Sarma*⁸³⁰, ruled that a woman in a long-term live-in relationship could seek remedies under the Protection of Women from Domestic Violence Act, 2005. The Court held that such a relationship, if “in the nature of marriage,” must receive legal protection against domestic violence and abandonment⁸³¹.

Similarly, in *D. Velusamy v. D. Patchaiammal*⁸³², the Court outlined criteria to determine whether a live-in relationship merits legal recognition – such as the duration of the relationship, a shared household, and public perception of the couple as spouses. These rulings have established a flexible approach, ensuring that women are not left legally vulnerable merely because their relationship is not formally solemnized under personal laws.

By balancing evolving social norms with constitutional guarantees of dignity and equality, the judiciary is helping to modernize Indian family law. The legal recognition of live-in relationships protects women’s rights and reflects the principle that personal choice in family life should not be penalized.

EMERGING ISSUES: LGBTQ+ FAMILY RIGHTS

The decriminalization of same-sex relations in *Navtej Singh Johar v. Union of India*⁸³³ marked a watershed moment in Indian constitutional law.

⁸²⁶ Tahir Mahmood, *Personal Laws in Crisis*, Universal Law Publishing, 2012.

⁸²⁷ Convention on the Rights of the Child, 1989.

⁸²⁸ *Githa Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228.

⁸²⁹ *Roxann Sharma v. Arun Sharma*, (2015) 8 SCC 318.

⁸³⁰ *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755.

⁸³¹ Shobha Aggarwal, “Live-in Relationships and Legal Dilemmas,” *Journal of Indian Law & Society*, Vol. 6, 2015.

⁸³² *D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469.

⁸³³ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

The Court affirmed that LGBTQ+ individuals are entitled to dignity, equality, and privacy – rights that had been long denied. However, despite this landmark ruling, Indian family law still does not recognize same-sex marriages, nor does it permit same-sex couples to adopt or access assisted reproductive technologies.

Legal scholars have pointed out that this exclusion creates a new form of inequality, as LGBTQ+ individuals remain second-class citizens in the domain of family law⁸³⁴. Without legal recognition of their family relationships, they face discrimination in matters such as inheritance, maintenance, custody, hospital visitation, and taxation⁸³⁵.

Globally, many democracies have moved toward full legal recognition of same-sex families. India must follow this path by ensuring that LGBTQ+ persons can marry, adopt, and form families with equal dignity under law. Several petitions on same-sex marriage are currently pending before the courts, signaling the next frontier in Indian family law reform.

Surrogacy and Assisted Reproductive Technologies

Surrogacy presents another evolving frontier in Indian family law. The Surrogacy (Regulation) Act, 2021⁸³⁶ now provides a legal framework for altruistic surrogacy while banning commercial surrogacy. The Act aims to prevent exploitation of poor women but has been criticized for excluding many potential parents – including single individuals, LGBTQ+ persons, and foreigners.

Such exclusions raise important constitutional questions under Article 21, which guarantees the right to life and personal liberty, including the right to form a family. Legal scholars argue that the current restrictions in the Surrogacy Act

may not withstand judicial scrutiny if challenged⁸³⁷.

As assisted reproductive technologies (ART) become more common, Indian family law must evolve to protect the rights of all parties involved – intended parents, surrogate mothers, and children born through ART. Comprehensive, rights-based legislation is required to ensure fairness, transparency, and dignity for all.

CHAPTER 9: CONCLUSION

Conclusion and Policy Recommendations

The study of family law in India reveals a complex intersection of personal beliefs, religious customs, statutory law, and constitutional mandates. Despite numerous reforms and progressive judicial interventions, Indian family law continues to be marked by inherent contradictions and tensions between tradition and modern constitutional values. The pluralistic nature of India's personal law system allows religious communities to govern family matters according to their personal laws, but this pluralism has also contributed to inconsistencies in achieving equality, particularly for women and marginalized groups.

Over the decades, the Indian judiciary has played an active role in interpreting personal laws through the lens of gender justice, human dignity, and child welfare. Landmark judgments have recognized the importance of the “best interest of the child,” expanded women's rights in marriage and divorce, and acknowledged emerging family structures such as live-in relationships. The decriminalization of same-sex relations has laid the foundation for future recognition of LGBTQ+ families, although much remains to be done.

Simultaneously, several gaps persist. Gender biases remain entrenched in many aspects of personal law, despite statutory reforms such as the Hindu Succession (Amendment) Act, 2005.

⁸³⁴ Danish Sheikh, “Queer Rights and Indian Family Law,” NUJS Law Review, Vol. 11, Issue 2 (2018).

⁸³⁵ Ibid.

⁸³⁶ The Surrogacy (Regulation) Act, 2021.

⁸³⁷ Vrinda Bhandari, “Surrogacy and the Right to Family Life,” Economic & Political Weekly, Vol. 57, No. 6, 2022.

The lack of uniformity across religious personal laws leads to unequal protection of rights, creating a fragmented legal landscape. The continuing exclusion of LGBTQ+ persons and single individuals from family law protections, including marriage, adoption, and surrogacy, reflects a failure to recognize the diverse realities of Indian society today.

The debate over the Uniform Civil Code underscores the need for a balanced approach that protects individual rights while respecting cultural diversity. However, piecemeal judicial reforms alone cannot achieve this goal. A comprehensive legislative review, guided by constitutional principles and international human rights standards, is essential for building an inclusive and equitable family law framework for India's future.

Recommendations

Codification of Personal Laws Based on Constitutional Values: All personal laws should be comprehensively reviewed and codified to bring them in harmony with the constitutional guarantees of equality, non-discrimination, dignity, and justice. Customary and religious practices that perpetuate gender inequality should be reformed through legislative action.

Progressive Implementation of the Uniform Civil Code: A model UCC, developed through inclusive dialogue with all communities, should be gradually introduced to ensure uniform standards in marriage, divorce, maintenance, guardianship, adoption, and succession. The UCC should reflect India's pluralist ethos while protecting individual rights.

Recognition of LGBTQ+ Families: Legislative reforms should ensure that same-sex couples are granted equal rights in marriage, adoption, maintenance, and inheritance. The absence of legal recognition for LGBTQ+ families violates the principles established in *Navtej Singh Johar v. Union of India* and must be addressed urgently.

Reform of Surrogacy and ART Laws: The Surrogacy (Regulation) Act, 2021, and ART laws

should be amended to include single individuals, LGBTQ+ persons, and foreign nationals in a regulated and rights-based framework, ensuring that reproductive autonomy is respected in accordance with constitutional values.

Strengthening Child Rights in Family Law: The principle of "best interest of the child" should be codified across all personal laws governing guardianship, custody, and adoption. The rights of children born through surrogacy and ART should be fully protected.

Gender Justice in Inheritance and Property Rights: Further measures are needed to ensure that women are able to access their legal rights under the Hindu Succession (Amendment) Act, 2005, and equivalent rights under other personal law systems. Enforcement mechanisms and legal awareness must be strengthened.

Judicial Training and Sensitization: Continuous judicial training on gender justice, child rights, and constitutional values should be promoted to ensure consistent and progressive interpretation of family law by all levels of the judiciary.

Comparative Learning from Global Trends: Indian family law reform should be informed by comparative best practices from other pluralistic democracies that have successfully balanced cultural diversity with individual rights, such as South Africa and Canada.

In conclusion, the modernization of Indian family law must be guided by the twin goals of protecting cultural diversity while ensuring that the fundamental rights of all citizens – irrespective of gender, religion, caste, or sexual orientation – are respected. A dynamic, inclusive, and constitutionally sound family law regime is vital for realizing the vision of equality and justice enshrined in the Indian Constitution.

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