LexScriptaMagazine.com ISSN: 2583-8725 Vol. 04 - Q1 Jan - Mar, 2026

ISSN: 2583-8725

Lex Scripta Journal

Quarterly Online and Print Edition

Law & Policy

"Join the League of National & International Scholars"

EDITORIAL TEAM

LEX SCRIPTA MAGAZINE OF LAW AND POLICY (VOL-4, ISSUE-1)

ISSN-2583-8725
Vol - IV, Issue - I
Published by INTEGRITY EDUCATION INDIA

New Delhi
First Floor, 4598/12-B, 1st Floor,
Padam Chand Marg, Daryaganj,
New Delhi, Delhi 110002
Phone: +91 98 11 66 62 16 (M)
Phone: +91 70 11 60 56 18 (M)

Bengaluru
Jallahalli East
Bengaluru, Karnataka. India.
Phone: +91 98 11 66 62 16 (M)
Email: publisher.integrity@gmail.com

USA
New Jersey
14 Grandview Ave, Upper Saddle River,
NJ-07458, USA
Phone: +14805226504 (M)

London
37 Degree Media
64, Hodder Drive, Perivale, London UB68LL.
United Kingdom.
Phone: +44 7950 78 18 17 (M)
Website: integrityeducation.co.in

For any Query / Feedback
Phone: +91 98 11 66 62 16 (Vineet Sharma)

Printed in India @ New Delhi

ISSN: 2583-8725

Lex Scripta Journal

Quarterly Online and Print Edition

Law & Policy

"Join the League of National and International Scholars"

LEX SCRIPTA MAGAZINE
JOURNAL MAGAZINE BY INTEGRITY EDUCATION INDIA

LexScriptaMagazine.com ISSN: 2583-8725 Vol. 04 - Q1 Jan - Mar, 2026

Lex Scripta Journal

Human Rights of Married Women: A Comparative Legal Analysis of International Standards and Indian Jurisprudence

Author
Mr. Aiman Hamid
Dr. Arief

Human Rights of Married Women: A Comparative Legal Analysis of International Standards and Indian Jurisprudence

Mr. Aiman Hamid
LL.M Criminal Law (2025-26)
CT University, Ferozpur road ,
Sidhwan khurd-142024, Ludhiana, Punjab

Dr. Arief
Professor , School of law, CT University , Ludhiana

Introduction

Legal discussions around the rights of married women have historically been contentious and inadequately explored. Many civilised countries abuse their power and don't respect women's rights, even when they say they care about marriage. People who say they are doing something out of "duty," "love," or "sacred obligation" are lying to themselves when they say they are being honest. In India, marriage is governed by a comprehensive array of personal criteria that differ according to religious beliefs.[1] Religion makes it even harder for people to see women in a good light. This study seeks to examine the pervasive injustice experienced by individuals who have never undergone a divorce, along with the persistent, unrecognised challenges they endure. India is currently in a unique historical situation when it comes to human rights and the law. No matter what their gender or religion, everyone has the right to freedom and equality before the law. This is the main idea of our country. Religious intolerance is still a problem in our society when it comes to personal law, which covers things like marriage, divorce, child support, and inheritance. During a marital crisis, a woman's legal rights are based on religious beliefs, not on what is best for her. A woman's religious views, such as Zoroastrianism, Christianity, Islam, and Hinduism, may affect the legal options she has after a divorce.

This problem is making things harder all throughout the world. India has signed and ratified many international treaties and agreements. Some of these are the UDHR, CEDAW, and ICCPR. These parts say that India must make sure that women have the same rights as men when it comes to getting married and divorced.[2] This is because there is a lot of talk about how unfair personal laws are being used. To discover a solution, experts need to look at the

[1] Henry Sumner Maine, *Village Communities in the East and West*, 7th edn (1895) 4, 7.
[2] H.C. Gutteridge, *Comparative Law* (2nd edn, Cambridge University Press 1949).

difference between what divorced women in India say they would do and what they really do. The main goal of this study is to fill in gaps in knowledge and get people talking about possible solutions, or at least make them more aware of the problem. The primary principle of marital law is that ethical concerns and personal experiences hold equal importance to rational reasoning and substantiated facts. Legal systems that put marital rights ahead of wifely autonomy, make it hard for women to get the help they need, and have complicated divorce processes make women's lives harder. This article looks at cases from both Indian personal law and international law to show the parallels and variations in the protections that married couples have. It is based on real data. The course starts with a general review of comparative law and then goes into more detail on a number of issues, such as the growth of personal laws, women's rights in marriage around the world, and how well these countries keep their promises to protect human rights.

The History of Personal Laws

Families can follow their own laws in marriage, dower, divorce, guardianship, waqf, charitable endowments, maintenance, co-parcenary, intestate and testamentary succession, and inheritance, while the general law applies to all other cases. Personal law was adopted, and varied groups had religious family laws. Hindus have inheritance, guardianship, and maintenance laws.[3] Muslims follow their own marriage, dower, and divorce rules, which are fundamental to Indian culture. They have always dominated personal and familial matters, knowingly or unconsciously.

Syed Ameer Ali claims India has no lex loci and personal law. Once in power, the British government offered Indians unrestricted access to their laws and customs through Parliament. The Act's Preamble said “that the inhabitants should be maintained and protected in the enjoyment of all their ancient laws, usages, rights and privileges.” In Musleah v. Musleah and other decisions, the court limited personal laws to Hindus and Muslims Justice Bittleston examined whether Hindus and Muhammedans were subject to Queen's laws in H. Mortan's Col. Rep., 358, shows that 13 Eliz., cap. I assume Statute 27 Eliz. applies to India and British subjects other than Hindus or Muhammedans. should be considered. Indian had two main parts before independence. Princely rulers and the Crown through the Governor-General of India with local people's representatives. British-ruled states have different laws than princedoms. British Indian and princely nations had a major legal dispute.

[3] Archana Parashar, *Women and Family Law Reform in India* (Sage Publications, 1992).

Post-colonial historians say religion shapes Indians' social and political lives. To develop India, Britain adopted secularism. Civil marriage laws were implemented in 1872 to modernize Indian law. British personal law was backward and dominated by the Catholic Church until the end of the 19th century, therefore it may not have been modern enough to modernize India through women-friendly regulations. Female personal law rights were scarce, and gender equality was far off. The equal contributions of oriental, enlightened reformers to Indian and British personal laws may have modernized them.

India is multilingual, multireligious, and multicultural. Many people follow their own customs and social norms. Hindus, Muslims, Christians, and Parsis have different laws in India. The British arrived to promote trade and business, therefore they didn't interfere with these personal laws. Since British control began, officials realized the difference between public laws for market management and private rules for family issues. British officers recorded Indian traditions and practices under Hindu and Muslim law, which would solidify over time. British zeal to study and implement scriptural laws impeded their organic growth through broad interpretation and adaptation. Indian personal laws were respected by the British from the start. They weren't India reformers. They came for business. Hastings' method was evident. The 1850s saw each community's religious rules modified. Indian reformers Raja Ram Mohan Roy and Ishwar Chandra Vidyasagar petitioned the British to pass the Caste Disabilities Removal Act, 1850 and the Widow Remarriage Act, 1856.[4] Muslims and Hindus had different rules, while Christians and Parsis suffered. In these regions, personal laws were unwritten. Mofussils had no general laws, but presidential towns had default English law. National or local law was applied by courts. From this perspective, presidential towns were Calcutta, Madras, and Bombay courts, while mofussils were all other courts.

Matrimonial Reliefs under Hindu Law

Marriage, the most holy and long-lasting institution, can fall due to human weakness. The Hindu Marriage Act of 1955 provides matrimonial remedy to help couples overcome their issues and restore tranquility to their partnership. One method to address this is to reinstate marital rights, which allow one pair to sue the other if they leave society for no justifiable cause.[5] If one partner wants to end the partnership, they must prove it. If they are unable to provide sufficient justifications, the court may order them to live together again. The Supreme

[4] Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, 1999).

[5] Bernard S. Cohn, "Law and the Colonial State in India," in *Colonialism and Its Forms of Knowledge* (Princeton University Press, 1996), available at: https://press.princeton.edu (last accessed on 1 April 2026).

Court affirmed Section 9, stating that protecting marriage and families was important to society, notwithstanding a lower court ruling that it was unconstitutional.

Judicial independence is another important option. It allows one or both parties to live separately without officially divorcing. Any party can request it for any of the reasons outlined in Section 13. If reconciliation is accomplished during the cooling-off period, this can be lifted. Furthermore, if a marriage does not meet specific conditions, it may be ruled null and void under Section 5.[6] If it contains faults that allow the court to terminate it, it can be declared voidable under Section 12. This is what is meant by the term "nullity of marriage."

Section 13 of the Act specifies the grounds for divorce and states that a marriage may be dissolved by the court. If you and your spouse have decided to live apart for at least a year and file a joint petition for dissolution in a mutual consent divorce, you cannot end your marriage within the first year. They are also thinking about financial assistance. While a litigation is pending, maintenance pendente lite allows low-income spouses to pay court costs and other expenses. Once the decision is made, the amount of permanent alimony and maintenance awarded will be determined by both parties' financial status. It could be one large money or several payments. Most of the time, spouses file claims, yet these phrases apply equally to husbands. The Hindu Adoptions and Maintenance Act of 1956, as well as Parts 125-128 of the Code of Criminal Procedure of 1973, provide Hindu spouses with the right to maintenance as an additional source of assistance, even after divorce.

Matrimonial Reliefs under Muslim law

Islam acknowledges that marriage is not entirely irrevocable, despite its revered and lasting status. Islamic law offers various remedies that recognize the intricacies of human relationships, particularly in the context of marriage. The renowned hadith of the Prophet Muhammad indicates that Allah detests divorce more than any other permissible action. In conclusion, although initiating a divorce is theoretically allowable, it is advisable to pursue this option only after thorough consideration of all alternative choices and when reconciliation becomes impossible. Thus, Islamic law has created a comprehensive framework for addressing matrimonial disputes, encompassing several forms of divorce, safeguards for financial holdings, and protocols for the reclamation of plundered property. This framework has been

[6] D.K. Srivastava, *Personal Laws and Religious Freedom*, Vol. 18, No. 4, **Journal of the Indian Law Institute**, Indian Law Institute, October–December 1976, p. 551, available at: https://www.jstor.org/stable/43950450 (last accessed on 1 April 2026).

influenced by multiple sources, including the Qur'an, Hadith, ijma (consensus), and qiyas (analogical reasoning).[7]

Talaq is the predominant method for Muslims to terminate a marriage. The husband has independently decided to depart from his wife. This is an extrajudicial procedure, allowing a husband to pronounce talaq with mere words, without the necessity of court involvement. Classical Islamic law delineates three distinct forms of talaq. The first, talaq-al-ahsan, is regarded as the most commendable and sacred. During his wife's tuhr, the husband pronounces talaq once and remains silent throughout her iddat.[8]

Matrimonial Reliefs under Christian law

The Divorce Act of 1869 is the main law that governs Christian marriage remedies in India. It explains the steps that must be taken to officially settle marital disagreements. Parts 10–17 of the Act deal with ending a marriage. Section 10 gives the district court the power to hear a divorce petition from either spouse for any of the reasons listed there. This is especially important because of the ground-breaking law that was passed in 2001 that gave spouses more fair access to grounds. Section 10A recognizes "divorce by mutual consent" as a modern and friendly way to end a marriage. In India, a civil court can end a Christian marriage instead of a religious or ecclesiastical court. This makes sure that the divorce process is fair and legal.

Sections 22 and 23 of the Act talk about judicial separation, which is another important way to fix a marriage. Judicial separation allows married couples to live together without getting a divorce. Anyone can file a petition for grounds including abandonment, violence, or cheating that have been going on for at least two years.[9] The verdict says that they don't have to live together anymore, but their marriage is still legal and they can't get married again. A legal separation, which is like ending a partnership, lets each person think about their choices. This is usually the last chance for a couple to get back together before their marriage is legally over. A district court order that establishes judicial separation is easily confirmed because it does not need to be confirmed by a higher court.

---

[7] Amalendu Misra, *Hindu Nationalism and Muslim Minority Rights*, Vol. 7, No. 1, **International Journal on Minority and Group Rights**, Brill, 2000, p. 3, available at: https://www.jstor.org/stable/24675146 (last accessed on 1 April 2026).

[8] Archana Parashar, "Gender Inequality and Religious Personal Laws in India," (2000) 14(2) *International Journal of Law, Policy and the Family* 143–164, available at: https://academic.oup.com (last accessed on 1 April 2026).

[9] Marc Galanter, "The Aborted Restoration of 'Indigenous' Law in India," (1972) 14(1) *Comparative Studies in Society and History* 53–70, available at: https://www.jstor.org (last accessed on 1 April 2026).

Section 32 of the Act defines marriage as the act of sharing one's life, home, and emotional support with someone else. This sets the stage for the return of the marital rights remedy. If one spouse leaves the marriage without a good reason, the court may seek restitution for the other spouse. If the court finds that the non-living spouse's departure was not justified, they may be ordered to return to the home of the other spouse. The counter-petitioner may provide any legitimate rationale for a judicial separation or annulment of marriage. This answer, which is meant to protect marriage as an institution, questions the validity of free choice and individual agency in modern legal philosophy.

Universal Declaration of Human Rights, 1948

The UN General Assembly enacted the Universal Declaration of Human Rights on December 10, 1948, in response to the Holocaust and World Wars. After the Nazis and Fascists' war crimes, justice, equality, liberty, and human dignity became human rights. All national legislation controlling international relations and individuals will be based on these rights. In response to self-determination and independence calls, several colonial constitutions were created, including India's. These constitutions declared rights. These states also have human rights. The core minimums of these nations' legal systems remain, but India prioritized personal laws.[10]

The 1948 UN Declaration of Human Rights attempted to prevent global conflict. The Declaration's Preamble lists conflict avoidance as one of its goals. Several General Assembly decisions endorsed the UDHR. Many principles have become customary international law due to case law and government policy. The 1948 Universal Declaration of Human Rights' Fifth Article prohibits torture and other inhumane treatment. Victims lose humanity to brutality, anguish, and other violence. He realizes the stigma of social exclusion. Physical, intellectual, and moral pain plague him. Psychological trauma may last a lifetime. These declarations acknowledge this fundamental human right.

Article 8[11] of the Declaration allows courts to provide appropriate remedies for fundamental rights violations, whether from legislation or the constitution. Legislation and the Constitution violate basic rights, so victims deserve prompt, effective, and accessible court remedies. No one should have exclusive access to specialized courts for trials or legal remedies. This Article prohibits specialized courts for certain individuals or groups. A.V. Dicey calls this a legal

[10] H. Triepel, *Volkerrecht und Landesrecht*, Berlin, 1899 (reprint 1988).
[11] Universal Declaration of Human Rights, 1948, Art. 8.

fundamental. No matter their race, nationality, or religion, Article 16[12] of the Declaration guarantees the right to marry and procreate. The Article ensures equal spouse rights during and after marriage.[13] Marriage equality is covered in Article 2[14], while the family is protected by society and government in Article 3.

International Covenant on Civil and Political Rights, 1966

The primary distinction between the International Covenants and the Universal Declaration of Human Rights is that the former is considered a treaty among the states that have ratified it. The state's involvement in the Declaration is inconsequential; its significance renders it universally applicable. On December 16, 1966, in New York, USA, the General Assembly adopted Resolution 2200A (XXI), which instituted the International Covenant on Civil and Political Rights, 1966. It takes effect on March 23, 1976. The Covenant concerns the political and civil rights of all individuals. The Covenant expects states to commit to safeguarding a comprehensive range of fundamental political and civil rights, including: the right to personal liberty and security; the right to equal legal treatment; the right to freedom of thought, conscience, and religion; the right to peaceful assembly and association; and the right to freedom from discrimination.[15] Although there is no monitoring system for the enforcement of these rights by governments, signatory states to the Covenant are obligated to report on the steps they have enacted to uphold the conferred rights.

This Covenant presents a choice between two separate methods. The First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) creates a framework for individuals to file complaints. On December 16, 1966, the United Nations General Assembly ratified it, and it became effective on March 23, 1976. On December 15, 1989, the UN General Assembly enacted Resolution 44/128, which integrated the ICCPR-OP2 into the International Covenant on Civil and Political Rights. It obligates the member governments to eliminate capital punishment.

---

[12] Universal Declaration of Human Rights, 1948, Art. 16.

[13] Christopher McCrudden, *Why Do National Court Judges Refer to Human Rights Treaties? A Comparative International Law Analysis of CEDAW*, Vol. 109, No. 3, **The American Journal of International Law**, Cambridge University Press, July 2015, p. 534, available at: https://www.jstor.org/stable/10.5305/amerjintelaw.109.3.0534 (last accessed on 01 April 2026).

[14] Universal Declaration of Human Rights, 1948, Art. 2.

[15] Thio Li-Ann, *The Impact of Internationalisation on Domestic Governance: Gender Egalitarianism & the Transformative Potential of CEDAW*, **Singapore Journal of International & Comparative Law** (1997), pp. 281–282, available at: https://heinonline.org/HOL/Page?handle=hein.journals/singa1&collection=journals&id=284 (last accessed on 01 April 2026).

Article 3[16] of the Covenant ensures the right to civic and political liberty for all citizens, regardless of gender. Marriage is predicated on the fundamental principle of equality between partners, requiring their fair treatment. Fair participation in decision-making on the everyday operations of the marriage is essential for its effectiveness. Irrespective of the circumstances, it is imperative that both parties uphold equality and have a say in decisions that will impact them and future generations. Article 17[17] of the Covenant pertains to the right to privacy, the right to family life, and the right to be free from arbitrary or unlawful interference. Article 21 of the Indian Constitution encompasses this provision as well. Article 16 of the UN Declaration of Human Rights has notable similarities to Article 23[18] of this Covenant. The document pertains to the rights to marry and form a family, together with the state's duty to safeguard the family unit.

International Covenant on Economic, Social and Cultural Rights, 1966

On December 16, 1966, the United Nations General Assembly adopted and made available for signing, ratification, and accession the International Covenant on Economic, Social, and Cultural Rights by resolution 2200A (XXI). The Covenant took effect on January 3, 1976. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) was adopted by the United Nations General Assembly by Resolution A/RES/63/117 on December 10, 2008. Individuals and states may file complaints, and the United States Committee on Economic, Social, and Cultural Rights is authorized to examine and judge issues related to violations of economic, social, and cultural rights.

Article 3[19] of the Covenant asserts that men and women hold equal rights in all aspects of life. This article parallels Article 3 of the International Covenant on Civil and Political Rights, 1966. A marriage cannot be considered healthy and lasting unless the rights of both individuals are honoured in every regard. Article 10[20] analyses the family, the essential social unit. Ensuring that all marriages are consensual and that expectant mothers are protected before, during, and after childbirth are essential goals, along with the safeguarding of families. The restrictions on employment for minors in various paid occupations and strategies to avert the economic

[16] International Covenant on Civil and Political Rights, 1966, Art. 3.
[17] International Covenant on Civil and Political Rights, 1966, Art. 17.
[18] International Covenant on Civil and Political Rights, 1966, Art. 23.
[19] International Covenant on Economic, Social and Cultural Rights, 1966, Art. 3.
[20] International Covenant on Economic, Social and Cultural Rights, 1966, Art. 10.

exploitation of youth are also examined.[21] Every person has the right to an adequate standard of living, including sufficient food, clothing, and shelter, as stated in Article 11[22] of the Covenant. It recognizes the termination of hunger and all feasible means to attain it.

Convention on Elimination of all forms of discrimination against Women, 1979

The Convention on the Elimination of All Forms of Discrimination Against Women was opened for signing, ratification, and accession on 3 September 1981, pursuant to General Assembly Resolution 34/180 adopted on 18 December 1979. CEDAW was established at the inaugural World Conference on Women in Mexico City in 1975. Five years later, the Convention on the Elimination of All Forms of Discrimination Against Women was instituted in 1977. A strategic framework for the implementation of global human rights standards for women and girls within the Bill of Rights for Women was provided to state governments. The concluding observations and recommendations of this international accord may be the sole means by which signatory governments can assess the human rights of female residents.[23] The convention safeguards women during their lifespan. Member nations can rectify the deficiencies in women's legislation and its enforcement.

The United Nations designated 1975 as International Women's Year to promote awareness of women's issues. The inaugural World Conference on Women in Mexico ratified the World Plan of Action for the International Women's Year. The subsequent women's conferences took place in Copenhagen in 1980, Nairobi in 1985, and Beijing in 1995. The UN has proclaimed the forthcoming decade as the "Decade for Women," emphasizing gender parity, gender equality, and world peace. The UN's gender policy was established during the Decade for Women and the World Women's Conferences, which enhanced gender awareness across various religions and cultures.

[21] W. Michael Reisman, *Sovereignty and Human Rights in Contemporary International Law*, Vol. 84, No. 4, **The American Journal of International Law**, October 1990, p. 867, available at: https://www.jstor.org/stable/2202838 (last accessed on 01 April 2026).
[22] International Covenant on Economic, Social and Cultural Rights, 1966, Art. 11.
[23] A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, Liberty Fund, 1982.

Matrimonial Reliefs and Personal Laws Under the Constitution of India Constitution of India And Its Vision

The supreme legal authority of each nation is encapsulated in its constitution. All other laws are grounded in a singular ultimate law. The Oxford Advanced Learner's Dictionary defines a constitution as "the system of laws and fundamental principles that govern a state, country, or organization." A nation's constitution delineates its legal framework. The Oxford Dictionary of Law defines a constitution as a written instrument that delineates the laws and principles governing the relations of the federal government, the states, and local governments.[24] The Constitution is fundamentally defined as "the foundational and organic law of a nation or state that establishes governmental institutions, delineates sovereign powers, and safeguards individual rights and liberties," according to Black's Legislation Dictionary.[25] The constitution delineates a nation's institutions and outlines their functions and interactions. Governmental authority is constrained, and personal freedoms are safeguarded.

The Indian Constitution was ratified on November 26, 1949, and came into effect on January 26, 1950. India proclaims itself a "SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC," vowing to ensure "JUSTICE, social, economic, and political; LIBERTY of thought, expression, belief, faith, and worship; EQUALITY of status and opportunity; and to foster FRATERNITY that upholds the dignity of the individual and the [unity and integrity of the Nation]." The rationale for these assertions is evident to everyone. A non-obvious constitutional operative provision can be clarified with its assistance. Legal review may not pertain to the parts of the constitution; however, the preamble provides significant contextual information. The preamble of the Constitution delineates its objectives. Our objective was accomplished due to the constitution. Following the approval of the constitution's draft by the constituent assembly, the preamble became a legally binding document. This was executed to guarantee that the preamble of the Constitution aligns with its essence.

According to the constitution, every institution and agency of the state possesses the authority to execute directives. All of their authority is derived from the Constitution. Both the federal and state governments are involved. The judicial branch oversees the executive, legislative, and judicial branches. Parliament may alter the constitution at its discretion, provided it remains faithful to the document. A preface is present in the majority of constitutions. Constitutional

[24] Oxford Advanced Learner's Dictionary of Current English (7th edn., Oxford University Press, 2005) 326.
[25] Black's Law Dictionary (9th edn., Thomson Reuters, 2009) 353.

preambles, varying in length, substance, and structure, frequently elucidate the objectives of the framers. Consequently, it serves as an essential method to elucidate the intents of the constitution's architects, perhaps revealing the underlying motives for which they established specific articles within the constitution. Consequently, the preamble is an essential component of any constitutional interpretation. Statutes and the preamble of our constitution are distinct entities. Preambles do not necessitate congressional approval. Consequently, it is inadequate for elucidating the Act.[26] The preamble was adopted and approved by the Constituent Assembly in the same manner as the remainder of the Constitution, in contrast to any statute or alternative constitution. The Objectives Resolution of the Constituent Assembly designated the preamble as the primary substantive focus of the constitution-making process. To maintain consistency, it was completed last in the constitution-drafting process. The document requires a preamble for completion. Notwithstanding the preamble's historical significance, the Supreme Court adjudicated it as unlawful in the Berubari Union case[27]. The court declared in Keshavnanda Bharati v. State of Kerala[28] that the preamble is an essential element of the constitution, reversing its earlier decision in Berubari Union.

Integrating the preamble of the Constitution would elucidate its significance. Consulting the preamble is a customary approach for interpreting the Constitution. The objective of the constitutionalists in India was to create a republic that is "sovereign, socialist, secular, and democratic." A deliberate emphasis on economic and social justice replaced the principles of liberty, equality, and fraternity. The Indian Constitution emphasises social and economic equality significantly. The founders of the United States prioritised equity and justice. Within the Constituent Assembly, divergent perspectives emerged regarding the comparative advantages of economic and political democracies, with certain members prioritising the former over the latter.

[26] B. Shiva Rao, Framing of India's Constitution: A Study (Indian Institute of Public Administration, 1968) 130–132.
[27] Re Berubari Union, AIR 1960 SC 845.
[28] Keshavananda Bharati v. State of Kerala, AIR 1973 SC 1461.

Conclusion

This study began with a question that is easy to state and difficult to answer: can a constitutional democracy that has signed every major international human rights convention honestly justify a system in which the legal rights of women at the point of marital breakdown depend on the religion they were born into? The answer that five chapters of analysis have produced is an unambiguous no. The system as it currently stands cannot be honestly justified on either constitutional or international law grounds. It is sustained primarily by political inertia, by the calculation that the costs of reform — in terms of religious and community resistance — exceed the benefits in any given electoral cycle, and by the deeper social fact that the women who suffer most under this system are also among the least empowered to demand change.

That said, the study has not adopted a tone of despair, and it should not conclude on one either. The trajectory of Indian matrimonial law, when viewed over a long enough time horizon, is one of gradual and sometimes halting but nonetheless real movement toward greater fairness and greater recognition of women's rights. The abolition of sati, the reform of widow remarriage, the codification of Hindu personal law in the 1950s, the introduction of family courts, the expansion of maintenance rights, and the striking down of instant triple talaq are all genuine achievements. They happened because people — judges, lawyers, activists, legislators, and ordinary women — refused to accept that the status quo was acceptable. The reforms proposed in this study are, in that sense, the continuation of a conversation that Indian society has been having with itself for well over a century.

Suggestions

The first and most foundational suggestion is the enactment of a comprehensive, gender-just matrimonial relief framework applicable to all citizens, irrespective of religion. Whether this is achieved through a full Uniform Civil Code or through a more incremental approach codifying a minimum set of matrimonial rights and remedies that all personal laws must honour the outcome must be the same: a woman's access to separation, divorce, maintenance, and post-dissolution security cannot depend on which religion she was born into. The political sensitivity of this suggestion is acknowledged. But political sensitivity has been used to delay this reform for seven decades, and the human cost of that delay falls on women's bodies and women's lives. A phased legislative approach, beginning with a common minimum standard for maintenance and divorce rather than attempting wholesale replacement of all personal laws at once, may offer a pragmatic path forward that is politically achievable without sacrificing the core principle of gender equality.

The second suggestion concerns the law of maintenance specifically. Across all personal law systems, maintenance awards have been chronically low, inadequately enforced, and subject to conditions — particularly chastity requirements — that have no place in a rights-based legal framework. The Law Commission's recommendations on this point should be implemented without further delay. Maintenance must be calculated on a principled basis that reflects the actual economic contribution of the wife to the household, the economic disparity between the parties, and the realistic costs of living for the spouse seeking support. The chastity condition which denies maintenance to women deemed to be living immorally — must be abolished entirely. No male equivalent of this condition exists. Its continued presence in Indian matrimonial law is a straightforward instance of sex discrimination that is inconsistent with Articles 14 and 15 of the Constitution.

The third suggestion is the abolition or radical reform of the restitution of conjugal rights as a matrimonial remedy. This remedy, which allows a court to order a spouse to return to the matrimonial home, has been subjected to sustained and persuasive scholarly criticism on the grounds that it violates bodily autonomy and, in practice, functions as a tool of coercion. The argument that it promotes reconciliation is weak — courts cannot compel genuine emotional reconciliation, and the remedy's practical effect is frequently to trap the reluctant spouse, who is almost always the wife, in a situation she has tried to leave. Several jurisdictions that inherited this remedy from English common law have already abolished it. England itself abolished the remedy in 1970. There is no principled reason for India to retain it.

The fourth suggestion addresses Muslim women's rights specifically. While the abolition of instant triple talaq was a necessary and welcome step, it left untouched the broader structural imbalance between husbands and wives in Muslim matrimonial law. Specifically, the husband's right to talaq remain he may still pronounce divorce unilaterally, provided he does so in the prescribed manner while the wife has no equivalent power and must rely on judicial dissolution under the 1939 Act or a khula, which frequently involves returning the mehr and is procedurally more onerous. This asymmetry is not required by a careful reading of Islamic jurisprudence there is significant scholarly opinion that Islam permits a woman to initiate divorce on terms equivalent to those available to her husband. Legislative reform that equalises these rights, ideally developed in consultation with Islamic scholars committed to gender justice, would honour both the constitutional guarantee of equality and the genuine complexity of religious tradition.

The fifth suggestion is for the state to invest seriously in the infrastructure of access to justice. Laws on paper mean very little for women who cannot afford lawyers, who live far from courts, who face social pressure not to litigate, or who lack the basic literacy to understand their legal rights. The Legal Services Authorities Act of 1987 provides for free legal aid, but its implementation has been uneven and the quality of aid provided through it has been inconsistent. Family courts, introduced by the Family Courts Act of 1984, were a step in the right direction — they were intended to bring a more conciliatory, less adversarial approach to matrimonial disputes. But they have not always delivered on this promise, and their coverage remains inadequate in rural and semi-urban areas. The state must invest in a national network of accessible, competent, and gender-sensitive legal aid and family counselling services that can reach women at the community level, before they have been ground down by years of abusive marriages or discouraging encounters with an unresponsive legal system.

ABOUT LEX SCRIPTA JOURNAL

Lex Scripta Magazine is a premier peer-reviewed online and print journal dedicated to advancing scholarly research in law, policy, and social sciences. With the vision of promoting academic excellence and fostering a culture of intellectual exchange, the magazine provides a distinguished platform for academicians, researchers, legal professionals, and students to publish their original work and contribute to contemporary legal discourse.

Each submission undergoes a rigorous double-blind review process conducted by a panel of eminent national and international professors, ensuring the highest standards of quality and academic integrity. Lex Scripta not only encourages original and innovative research but also strives to bridge the gap between theoretical insights and real-world applications in the legal domain.

Contributors and editorial members receive global recognition through certificates and publication opportunities, while readers gain access to insightful, authoritative, and thought-provoking content across diverse areas of law and policy.

Now managed by Integrity Education India, Lex Scripta Magazine is committed to expanding its academic footprint through enhanced digital presence, global collaborations, and university partnerships. Upholding its ISSN identity, Lex Scripta continues to evolve as one of India's most trusted and respected journals in the field of legal research and education.

KEY FEATURES

- **Scholarly Insights** – Access in-depth, peer-reviewed research articles written by distinguished academicians and legal experts.
- **Global Perspectives** – Explore diverse viewpoints on law, policy, and governance from national and international scholars.
- **Authentic Content** – Read verified and academically sound articles that uphold the highest standards of research quality.
- **Knowledge Enhancement** – Stay updated with emerging trends, case studies, and policy developments across multiple legal domains.
- **Easy Accessibility** – Enjoy seamless access to online editions and exclusive hardcover issues for academic and professional use.

LEX SCRIPTA JOURNAL
JOURNAL MAGAZINE BY INTEGRITY EDUCATION INDIA

CONNECT WITH US 9811 666 216
7011 605 618