

VOLUME XII

ISSUE-II (APR-JUN 2026)



QUEST

A Quarterly Journal of the Students published
by the Indian Institute of Legal Studies

INDIAN INSTITUTE OF LEGAL STUDIES

UG & Post Graduate Advanced Research Studies in Law

Approved under Section 2(f) & 12B of the UGC Act, 1956

Accredited by NAAC

Affiliated to the University of North Bengal

Recognized by the Bar Council of India, New Delhi

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THE STUDENT JOURNAL

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MESSAGE

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SHRI JOYJIT CHOUDHURY

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In an era marked by profound global challenges and rapid technological transformation, the legal fraternity bears an unequivocal responsibility to ensure that the administration of justice remains accessible, and the majesty of the law inviolable. Our duty transcends mere cognizance of this shifting paradigm. It is incumbent upon us to shape its trajectory with sagacity, vision, and steadfast moral purpose.

The QUEST EDITORIAL BOARD remains steadfast in its mission to further legal scholarship and to affirm the principles of justice and integrity upon which our discipline rests. This journal serves as an enduring affirmation of the value of rigorous analysis, critical thought, and principled academic discourse.

It is with great pride and profound gratification that I observe the commendable progress of this publication, fostered by the academic community of the Indian Institute of Legal Studies, Siliguri.

I record my deep appreciation for all contributors whose diligent scholarship has rendered compelling ideas into works of intellectual distinction. Through this shared commitment, we sustain the venerable tradition of legal inquiry and continue to enrich jurisprudence with our collective wisdom and insight.

A handwritten signature in dark ink, appearing to read 'J. Choudhury', with a horizontal line drawn underneath it.

Patron-in-Chief
JOYJIT CHOUDHURY

MESSAGE

FROM PRINCIPAL'S DESK



I would like to convey my sincere thanks and congratulate the “Quest Editorial Board” and its contributors for their ethos and time. I believe that this edition will enrich the readers for enhancing their knowledge. In the journey of ‘Quest’ the tireless work of students, teachers and other contributors are appreciated. This edition will focus on the mind of the readers and its reflection spread around the society.

I would also like to thank the students and teachers who have shared their ideas, views, emotions, and expressions for fruitful completion of the journey of “Quest” (this edition), and I hope it will continue in future also. It also serves the purpose of Indian Institute of Legal Studies for which it is meant

A handwritten signature in black ink, reading "Trishna Gurung". The signature is written in a cursive style with a large, stylized 'T' and 'G'.

Dr. Trishna Gurung

Principal-in-Charge,

Indian Institute of Legal Studies

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LONG ARTICLE



REFORMING HETERONORMATIVE LAWS IN INDIA: RE-EXAMINING MARRIAGE, ADOPTION, AND GUARDIANSHIP LAWS IN THE CONTEXT OF SAME-SEX MARRIAGE



-Dipankar Das¹

ABSTRACT

India's personal laws governing marriage, adoption, and guardianship remain largely heteronormative, recognizing and regulating family

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relationships primarily through the framework of heterosexual unions. Marriage, procreation, adoption, and child custody are consequently structured around the relationship between a man and a woman, creating significant legal gaps for individuals and couples in same-sex relationships. Despite the recognition of the right to equality, dignity, privacy, and personal liberty under the Constitution, same-sex couples continue to face limitations in accessing legal recognition and entitlements that are available to heterosexual couples. This paper examines the legal challenges encountered by same-sex couples in India, particularly concerning marriage, adoption, guardianship, and related family rights. It analyses the existing statutory and judicial framework governing personal and family laws and evaluates the extent to which these laws accommodate the rights and interests of same-sex couples. The study further examines the constitutional principles of equality, non-discrimination, dignity, and individual autonomy in the context of same-sex relationships. It also considers the role and limitations of the judiciary in addressing the absence of legislative recognition for same-sex marriage and related rights. Finally, the paper proposes possible legal and policy reforms aimed at creating a more inclusive and equitable family-law framework. Such reforms would seek to ensure that legal rights and protections are not determined solely by sexual orientation or the gender composition of a relationship, thereby strengthening the constitutional commitment to equality and dignity for all individuals.

KEYWORDS: *Marriage, Adoption, Equality, Homosexual, Fundamental rights.*

1. INTRODUCTION:

HISTORICAL BACKGROUND

The Constitution of India promises the rights to equality, dignity, and life and personal liberty, but these rights are heavily regulated and decided by those in power who have never experienced discrimination. The issue of marriage equality remained marginalized within mainstream legal discourse, primarily due to societal conservatism, lack of political will, no representation of the community in mass media, and lack of awareness at the school-level primary socialization and education. According to the United Nations, it will take more than 300 years to remove all forms of discrimination among all humans.

In the late Twentieth century, the demand for equality rights significantly increased during the HIV/AIDS crisis, when medical facilities were not available to the vulnerable section of society due to discriminatory enforcement of section 377². Which lead to the widespread discrimination and exclusion of LGBT+ people from public spaces, and discouraging individuals from openly expressing their identities or seeking legal recognition of their relationships. One prominent activist group was the AIDS Bhedbhav Virodhi Andolan (ABVA), which highlighted how fear of prosecution under Sec. 377³ had stopped homosexual couples from reaching out to public hospitals, and disclosing

² Indian Penal Code, 1860, § 377, No. 45, Acts of Parliament, 1860 (India).

³ *Id.* at 15.

their medical conditions, or reporting any form of physical abuse to doctors. This violated their right to health. In 2009, in the case of *Naz Foundation v. Government of NCT of Delhi and Others*⁴ the Naz foundation filed a PIL before the Delhi High court challenging Sec. 377 of IPC, 1860. The High Court gave a historic verdict that Constitutional morality must always prevail over societal morality and that discrimination based on sexual orientation violates Article 14⁵ – Right to equality and Article 21⁶ – Protection of life and personal liberty. This judgement was praised internationally because it upheld International human rights principles, the Yogyakarta Principles. However, this judgement was later overturned by the Supreme Court in the case of *Suresh Kumar Koushal & Anr v. Naz Foundation & Ors*⁷. The court thought that LGBTQ individuals are a negligible minority, and adopted a formalistic approach that prioritized parliamentary sovereignty over substantive rights protection. That judgement was heavily criticized by civil societies.

Later, in the case of *National Legal Service Authority v. Union of India and Ors*⁸ (2014), the Supreme Court recognized Transgender as a ‘Third gender’ and recognized the rights to self-identification and directed the government to implement affirmative measures. The court reasoned that

⁴ Naz Foundation v. Government of NCT of Delhi, 160 (2009) DLT 277.

⁵ INDIA CONST. art. 14.

⁶ INDIA CONST. art. 21.

⁷ Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors., (2014) 1 SCC 1.

⁸ National Legal Services Authority v. Union of India & Ors., (2014) 5 SCC 438.

discrimination based on gender identity violated Article 14 and 15⁹, which prohibit discrimination “on the grounds of sex.” Subsequently, this judgment laid the foundation for the demand for more autonomy in matters of sexual orientation, absolutely disapproving the reasoning given in Koushal (2013).

Then, in the case of, the Supreme Court decriminalized consensual same-sex relations. The court reasoned that intimacy between consenting adults lies beyond legitimate state interests and that fundamental rights protect basic inherent individual rights of the human irrespective of what the majority of society perceives what is morally correct. As society evolves, the law also needs to evolve to serve justice, the law does not recognize same-sex relationships positively, which creates a gap in laws governing marriage, adoption, and inheritance. The Transgender Persons (Protection of Rights) Act, 2019¹⁰ aims at protecting the rights of transgender people, prohibits discrimination, and legally recognizes their gender identity. And talking about the Family laws, the judiciary has refrained itself from recognizing the same-sex marriage legally in the absence of any statute, because it is the duty of legislature to make laws not of judiciary. Hence, the onus onto the Parliament to make family laws.

⁹ INDIA CONST. art. 15.

¹⁰ Transgender Persons (Protection of Rights) Act, 2019, No. 40, Acts of Parliament, 2019 (India).

2. LAWS GOVERNING MARRIAGE IN INDIA

Marriage in India is governed by religious principles, personal laws done Secular Law. Hindu Marriage Act, 1955¹¹ applies to Hindus, Buddhists, Jains, and Sikhs. Requires a Bride (female) and Groom (male), explicitly approving a heterosexual nature. On the other hand, the Muslim Marriage is generally treated as a contract (Nikah) by some scholars, which accepts a union between male and female. The Indian Christian Marriage Act, 1872¹², governs Christian marriages, uses gender-specific terms (man and woman), and at last The Parsi Marriage and Divorce Act, 1936¹³, for Parsis is also Heteronormative in nature.

Now, talking about the secular provisions of the Special Marriage Act, 1954. It permits the marriage between two people of different religions (inter-religious), and civil marriages use the terms parties, which the courts interpreted as male and female.

The Personal laws, Family laws and the Special Marriage Act, 1954¹⁴ governing marriages in India are based on traditional and patriarchal values because of which the courts at present can't interpret it according to the needs and demands, because the intent of the legislators matters the most while interpretation of a statute, and it is very clear that in the

¹¹ Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

¹² Indian Christian Marriage Act, 1872, No. 15, Acts of Parliament, 1872 (India).

¹³ Parsi Marriage and Divorce Act, 1936, No. 3, Acts of Parliament, 1936 (India).

¹⁴ Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

period of 1950s the lawmakers in the parliament did not wanted to allow marriage between man and man or between women with a women, whether Special marriage or other family laws. So, the court cannot draw its own conclusion to serve justice, rather it is the obligation of the legislators to amend or enact new laws. Now this issue needs serious attention of the legislators because those who choose to cohabit in a same-sex marital relationship in India do not get benefits associated with marital status, including inheritance, joint property ownership, maintenance, tax benefits, medical decision-making authority, and adoption, which are denied to these people.¹⁵

3. LAWS GOVERNING ADOPTION IN INDIA

In India, adoption laws are governed by family laws, and there is no uniform civil code in India governing the adoption of all religions. The Hindu Adoption and Maintenance Act, 1956¹⁶ governs adoption among Hindus. In India, religions such as Muslims, Christians, Jews, and Parsis do not have their own personal laws governing adoption, because of which they cannot adopt a child and give that child their family name.

¹⁵ Nivedita Menon, Sexuality, Equality, and the Constitution, 56 ECON. & POL. WKLY. 12, 12–15 (2021).

¹⁶ Hindu Adoptions and Maintenance Act, 1956, No. 78, Acts of Parliament, 1956 (India).

However, they can act as guardians of that child under the Guardians and Wards Act, 1890.¹⁷

The Supreme Court in the case of *Supriyo v. Union of India*¹⁸, have refused to legalize same-sex marriage and left the issue to Parliament, which had a direct impact on the adoption rights of same-sex couples. Hence, legally, same-sex couples are not recognized as “married couples”; therefore, they cannot adopt together as a couple.

In India, the law permits an individual to adopt a child as a single parent. The sexual orientation of the parent is not taken into consideration and is not explicitly barred. The Supreme Court has clarified that any individual can adopt a child regardless of marital status. However, legally, only the person who adopts becomes the parent, and the other partner, if any, does not receive any legal parental rights. Same-sex couples in live-in relationships cannot adopt jointly because the law requires a legally recognized marriage for joint adoption. Live-in relationships, whether heterosexual or homosexual, are not treated as marriages under adoption laws.

What is practically happening in many cities in India is that one partner adopts as a single parent in the eyes of the law, and they then raise the child together socially. However, the second partner has no claim over the child, no guardianship rights, no inheritance rights, and no legal standing in case of separation.

¹⁷ Guardians and Wards Act, 1890, No. 8, Acts of Parliament, 1890 (India).

¹⁸ *Supriyo v. Union of India*, (2023) SCC OnLine SC 1348.

Hence, the law does not explicitly ban homosexuals from adopting; however, the structure of the law indirectly excludes same-sex couples. This creates a violation of the constitutional promise under Articles 14 and 21 for those stable same-sex families that are not recognized under Indian law, which often leads to brain drain, that is, the emigration of skilled and educated individuals to countries offering better legal and social protections. The Supreme Court, in *Navtej Singh Johar v. Union of India*¹⁹, decriminalized homosexuality but did not grant full civil rights and left it to Parliament to consider. It has been observed among urban Indians, especially highly educated professionals, academics, and students, that they often migrate to jurisdictions like Canada, the United States, and the United Kingdom because these countries provide legal recognition of same-sex marriages, joint adoption rights, and anti-discrimination protection in employment and housing. Migration is not merely economic; it is rights-based migration. Hence, brain drain becomes a rational response.

4. LAWS GOVERNING GUARDIANSHIP

INDIA

The guardianship laws in India are even more restrictive and formalistic than adoption laws, especially when read alongside the non-recognition

¹⁹ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

of same-sex relationships. Guardianship is governed by a mix of personal laws and secular laws. The Guardians and Wards Act, 1890, a secular law applicable to all communities, deals with the appointment of guardians by courts and the welfare of the minor as the paramount consideration.

The Hindu Minority and Guardianship Act, 1956²⁰ applies to Hindus, Buddhists, Jains, and Sikhs. It recognizes the father as the natural guardian and the mother as secondary, though later judicial interpretations have balanced this. Other personal laws, such as Muslim law, recognize guardianship but not full adoption. Christians and Parsis are governed mainly through the Guardians and Wards Act, 1890.

Now, the question arises: who can be a guardian? Under Indian law: a natural guardian (parents), a testamentary guardian (appointed through a will), and a court-appointed guardian under the Guardians and Wards Act, 1890.

The laws in India permit any person to be a guardian of an individual and do not expressly prohibit a person from being a guardian based on sexual orientation. A homosexual individual can be appointed as a guardian by a court of law, can be a natural guardian in the case of biological parents, and can be a guardian of an adopted child if they adopt as a single parent. However, joint guardianship as a same-couple is not recognized under Indian law. The law only permits or recognizes parents linked to

²⁰ Hindu Minority and Guardianship Act, 1956, No. 32, Acts of Parliament, 1956 (India).

marriage or biology or as a single guardian.

So, in many major cities in India, it has been observed that one partner adopts a child as a single parent, and he or she becomes the sole legal parent or guardian by law. While the other partner is not recognized as a guardian, and has no custody or rights over the child, no decision-making authority, and no automatic inheritance link is created by that act of adoption. Even if they both raise the child together, the law sees one as a legitimate parent and the other as a legal stranger.

Can courts appoint both as guardians? As per law, it is not possible to recognize both of them as joint guardians because of the absence of laws. Under the Guardians and Wards Act, courts have wide discretion, but in practice, courts have never appointed two adults in a same-sex relationship as joint guardians. This is because there are no legal recognition of their relationship and no statutory framework for dual non-marital guardians. Thus, it remains a legal grey area with very weak enforcement. This further creates a serious issue when a child is raised by a same-sex couple. Where only one parent is legally recognized, making the relationship legally vulnerable in cases of the death of the legal parent, separation of partners, or medical emergencies. This directly affects child welfare and the stability of the family structure.

5. AMENDMENTS IN MARRIAGE, ADOPTION AND GUARDIANSHIP LAWS

To secure the right to life and personal liberty of the people who choose to cohabit in a same-sex relationship, Amendments in the present laws are necessary. These changes should aim to eliminate discrimination, provide clear guidelines, and protect the best interests of the child.

5.1. PROPOSED AMENDMENT IN HINDU MARRIAGE ACT, 1955

In order to allow same-sex marriage under the Hindu Marriage Act, 1955 (hereafter referred to as HMA), the legislators need to amend the statute systematically, through clause-by-clause amendments to remove all its heteronormative and discriminatory structure and to make it gender-neutral. The Act explicitly mentions the terms “Bride” and “Bridegroom” and “Husband” and “Wife.” These terms specifically accept male-female union, thereby excluding same-sex couples. Given below are some of the suggestive words:

CURRENT TERMS	GENDER- NEUTRAL ALTERNATIVE	COMMENTS
Husband / Groom	Spouse	Most widely accepted in modern

		legislation.
Wife / Bride	Spouse	Simple and inclusive.
Husband and wife	The spouses, parties to the marriage	Preferred when referring to both parties together.
Husband or wife	Either of the spouse	Clear and concise.

Section 3²¹ – The Definitions section needs new definitions to be incorporated, such as “Spouse” – a party to a marriage. This ensures consistency throughout the Act.

The validity of Hindu marriage is defined by Section 5, so this is the most crucial amendment.

Section 5²² – Conditions for a Hindu Marriage uses gender-specific categories, so it must be replaced by “two persons” or “spouses,” like this: “A marriage may be solemnized between any two Hindus if neither party has a spouse living...”

The ceremonies for a Hindu Marriage are defined under Section 7²³ – Ceremonies for a Hindu Marriage refers to traditional ceremonies, which clarify that marriage rituals like “Saptapadi” must apply regardless of the gender composition of the couple. The word Saptapadi translates from Sanskrit as “seven steps,” one of the most sacred and legally binding rites

²¹ Hindu Marriage Act, 1955, § 3, No. 25, Acts of Parliament, 1955 (India).

²² Hindu Marriage Act, 1955, § 5, No. 25, Acts of Parliament, 1955 (India).

²³ Hindu Marriage Act, 1955, § 7, No. 25, Acts of Parliament, 1955 (India).

in a Hindu marriage.

The void and voidable marriages are classified under as follows:

1. Section 13²⁴– Which provides grounds for Divorce uses the terms “husband and wife” and must be amended and replaced by “either spouse.” This ensures equal access to divorce remedies for same-sex couples.
2. Sections 24²⁵ and 25²⁶ – The provisions regarding Maintenance are by default based on the assumption that the wife is dependent, so amendments are needed to make maintenance gender-neutral by replacing “wife” with “spouse” and allowing either partner to claim maintenance based on financial dependence.
3. Section 26²⁷– This section currently empowers the court to pass orders with respect to the custody, maintenance, and education of minor children during and after matrimonial proceedings. The law must recognize same-sex parents as legal guardians. And it must recognize children born and raised out of adoption, surrogacy, and assisted reproduction, which are common routes of parenthood for many same-sex couples.

Consequential amendments are very necessary. Even if the Hindu Marriage Act, 1955 is amended, other laws must also be aligned: adoption laws (Juvenile Justice Act, CARA Guidelines), guardianship

²⁴ Hindu Marriage Act, 1955, § 13, No. 25, Acts of Parliament, 1955 (India).

²⁵ Hindu Marriage Act, 1955, § 24, No. 25, Acts of Parliament, 1955 (India).

²⁶ Hindu Marriage Act, 1955, § 25, No. 25, Acts of Parliament, 1955 (India).

²⁷ Hindu Marriage Act, 1955, § 26, No. 25, Acts of Parliament, 1955 (India).

laws, succession laws, and surrogacy regulations must also align with these amendments. Otherwise, the marriage will remain incomplete and ineffective.

Amend the Central Adoption Regulations, 2017²⁸. The adoption laws should explicitly recognize same-sex partners as potential adoptive parents. By doing so, ambiguity will be eliminated and a clear legal basis for same-sex couples to adopt will be established. It is important to update the eligibility criteria for adoptive parents to prevent discrimination against same-sex partners.

Finally, any language in the regulations that could be viewed as discriminatory towards LGBT couples should be removed to ensure fairness. In inheritance laws, the term “marriage” is typically understood to refer only to heterosexual unions. Therefore, it is crucial to ensure that the language used is entirely gender-neutral to avoid discrimination against transgender individuals or those who have undergone gender reassignment procedures.

5.2. AMEND THE HINDU ADOPTION AND MAINTENANCE ACT, 1956

The Hindu Adoption and Maintenance Act, 1956 (hereafter referred to as HAMA) governs the adoption and maintenance among the Hindu

²⁸ Central Adoption Resource Authority, Adoption Regulations, 2017, Gazette of India (2017) (India).

community. It excludes same-sex couples from joint adoption.

According to Section 7²⁹ – Capacity of a Male Hindu to Adopt, currently a male (husband) can adopt a child with the consent of his wife. Therefore, this provision needs to be made gender-neutral and inclusive of same-sex spouses.

Section 8³⁰ –Explains the capacity of a Female Hindu to adopt under certain conditions(unmarried/divorced/widowed). However, this provision does not allow two women to adopt jointly. An amendment that replaces “husband and wife” with “spouses” will enable joint adoption by same-sex couples. Recognition of dual parenthood is very crucial and can be achieved by inserting a section of words such as:

“Where a child is adopted by spouses, both shall be deemed to be the legal parents of the child with equal rights and responsibilities.”

This type of gender-neutral structure would recognize both same-sex partners as legal parents.

5.3. AMENDMENTS REQUIRED IN GUARDIANSHIP LAWS

Similarly, the law governing guardianship requires substantial reform.

²⁹ Hindu Adoptions and Maintenance Act, 1956, § 7, No. 78, Acts of Parliament, 1956 (India).

³⁰ Hindu Adoptions and Maintenance Act, 1956, § 8, No. 78, Acts of Parliament, 1956 (India).

The HMGA, particularly Section 6³¹, which designates the father as the natural guardian and the mother as secondary guardian, reflects the prevailing patriarchy, gender hierarchy and heteronormativity in society. This provision must be restructured to recognize both the “parents” as natural guardians with equal rights, irrespective of their gender, thereby accommodating same-sex parental units.

The welfare of the child must always be the paramount consideration. Without these changes, children raised by same-sex couples continue to exist in a precarious legal position, where only one parent is recognized in law, thereby affecting issues of custody, inheritance, and the decision-making process within the family.

6. CAN ARTICLE 142 OF THE CONSTITUTION BE INVOKED TO PROVIDE COMPLETE JUSTICE?

In India, the Parliament makes laws, the Executive implements them, and the judiciary interprets them. So, one might ask why the Judiciary having enormous amount of power vested in it. By virtue of Article. 142³² does not allow or recognizing the Marriage between people belonging of

³¹ Hindu Minority and Guardianship Act, 1956, § 6, No. 32, Acts of Parliament, 1956 (India).

³² INDIA CONST. art. 142.

same-sex. Because one might argue that under Article 142 of the Constitution, the Supreme Court can pass any decree or order necessary for doing “complete justice” in any case before it:

This power is used to:

- i. Fill gaps in the absence of law.
- ii. Do justice where strict application of existing law would cause injustice.
- iii. Frame temporary guidelines until Parliament enacts a law. (for example, the guidelines against workplace sexual harassment).
- iv. Grant equitable relief in exceptional cases.

So why is the apex court of the country not invoking that Article?

Because of two main reasons –

- i. Separation of Power
- ii. Absence of any specific statute.

The Supreme Court has repeatedly held that an Article of the Constitution cannot be used to override or rewrite any legislation. It must supplement the law and should not replace the law and the legislative function of the Parliament. The majority of the constitutional bench declined to invoke this article because of the reason that Same-sex marriage would require altering the present legal framework governing marriage, adoption, succession, maintenance, and related rights across many different statutes. Such steps would amount to creating a totally different regime of law, which is the duty of the parliament. i.e., the legislator’s domain held *Supriyo Supriya Chakraborty vs Union of India*

on 17 October, 2023. Hence, separation of power is one of the crucial aspects.³³

The laws of the 1950s were drafted on the assumption that marriage is a union between a man and Women. So, it is very natural that the Supreme Court, while interpreting the meaning of the term ‘parties’ mentioned in the Special Marriage Act,1954, has explained that the intent of the legislator matters the most, while understanding the scope and objective or power of any particular section. So, the court cannot draw out its own conclusions and meaning where the actual framers of the law never intended to accept same-sex marriage in the first place. Therefore, in the absence of law, the judges cannot make laws.

Furthermore, many successive governments have opposed the idea of legally recognizing same-sex marriage, arguing that such practices are against norms of the present Indian society, or they don’t consider this a matter of public policy debate, which shows their lack of political will.

7. CONCLUSION

This debate on acceptance of same-sex marriage in India shows the balance between Fundamental rights and constitutional distribution of powers. While the Supreme Court possesses the power by virtue of Article 142 of the Constitution of India. But the court is of the opinion

³³ *Id.* at 21

that such power cannot be exercised in a manner that effectively rewrites or creates legislations. Since legal recognition of same-sex marriage would require the complete new set of laws or extensive amendments to multiple family laws and personal laws. The court has viewed this issue as one that falls within the legislative competence of the Parliament.

At the same time, the Constitution guarantees equality, dignity, and personal liberty to all individuals of the society. The absence of laws is a matter of ongoing constitutional debate. Whether such recognition ultimately comes through judicial interpretation or from legislative reforms, or a combination of both, will depend on the future of the evolution of constitutional jurisprudence, political will, and societal acceptance. Until then, the responsibility for comprehensively reforming India's marriage laws largely rests with Parliament.

SHORT ARTICLE

IN TOTO OR PARTIALIS: WOMEN'S PROPERTY RIGHTS



- Sakshi Modi¹

ABSTRACT

Since time immemorial, every society or civilisation that has existed around the globe has had one thing that has remained uncivilised during these periods: inattentive or rather inexistent women's rights. Women have always lived in a patriarchal society where they have been either subdued or treated as an inferior gender. Women have lived in an orthodox environment because of their sex. A joint and undivided family is a structure of Hindu society where only those members inherit property

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who offer pinda to their ancestors. In conclusion, only the male members of the family could offer the pinda; hence, they succeeded in inheriting the property as coparceners. Absolute property rights were not provided to a daughter, a married woman, or a widow. After the formulation of the Constitution of India in 1950, it laid down the foundation for gender justice. The Hindu Succession Act, 1956, was enacted to amend and codify the laws relating to intestate succession among Hindus. In 2005, an amendment was made in the Hindu Succession Act, 1956, which by birth gave equal coparcenary rights and liabilities to daughters as sons. The amendment is said to have removed all the discrimination based on gender in inheritance in Hindu law. Did the 2005 amendment in actual practice change a woman's situation in the context of property rights? Is a woman coparcener treated like a male coparcener? The response to these questions differs, taking into consideration the societal norms, lack of awareness among women about their property rights, Hindu schools of ideology followed in different parts of India and hassles faced in partition. The researcher aims to put forth an elaborate picture of women's property rights and loopholes still in existence for a married and an unmarried daughter, a mother, and a widow.

KEYWORDS: *Inheritance, Coparcener, Married Daughter, Unmarried Daughter, Widow.*

1. INTRODUCTION

The introductory sentence of the Hindu Succession Act, 1956¹ starts as “An act to amend and codify the law relating to intestate succession among Hindus”. This Act governs Hindus, Buddhists, Jains, and Sikhs by religion. When succession takes place in a Hindu Undivided Family (HUF), generally it is not done by executing a will because testamentary succession² is still a very futuristic concept. Before the amendment in the year 2005, intestate succession³ was done among the male members of the family, and a daughter or a female member had no such claim in the property. Though there was the Hindu Women’s Right to Property Act, 1937,⁴ which gave legal rights in terms of inheritance and succession to a woman only if they were survivors of a male Hindu. In simple words, only a few women, because of their relationship with the male Hindu, received property rights in certain circumstances. Hence, women lacked an original claim as a male in an ancestral property. It was in the case of *Vineeta Sharma v. Rakesh Sharma*,⁵ that the Supreme Court said that daughters will have equal coparcenary rights as sons. In reality, a daughter does not receive any share in a joint family property; she just

¹ Hindu Succession Act, 1956, § 1, No. 30, Acts of Parliament, 1956 (India).

² Hindu Succession Act, 1956, § 2, No. 30, Acts of Parliament, 1956 (India).

³ Hindu Succession Act, 1956, § 14, No. 30, Acts of Parliament, 1956 (India).

⁴ Hindu Women’s Rights to Property Act, 1937, No. 18, Acts of Parliament, 1937 (India).

⁵ *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1, 58–59.

remains a coparcener for namesake. A woman, after getting married, has no ask in her maternal side's property, and her property rights in her husband's family are still not clear or rather are vague. A woman's only property is the one she receives at the time of marriage, i.e. Stidham.⁶ Just because a woman does not own any tangible or intangible property, this generally leaves her in a vulnerable situation. A woman bears all the horrors in her marriage which she could have avoided if she had financial backing or assets of her own to rely upon.

1.1. EVOLUTION OF THE PROBLEM

Women in India are still fighting for gender equality and social justice. Since time immemorial, a woman has been traditionally dependent on her father, brother, husband, or any other male person. The various religious texts like the Manu smriti gave limited property rights to women. Moreover, women did hold some property through inheritance, dowry and other cultural practices; these practices varied from region to region. It was during the colonial period that reform movements gave some spotlight to women in society. The great pioneers like Raja Ram Mohan Roy and Jyotirao Phule fought for the abolition of sati pratha and women's educational and other rights. Later, the Hindu Succession Act,

⁶ Hindu Succession Act, 1956, § 14(1), No. 30, Acts of Parliament, 1956 (India).

1956⁷ codified the law relating to inheritance and succession among Hindus. The amendment gave equal property rights to women. Now, even after the judiciary's action, societal attitudes and cultural practices become an important reason for not extending women their property rights wholeheartedly.

Despite the constitutional guarantee of equality under Articles 14⁸ and 15⁹ of the Constitution of India, women continued to experience discrimination in matters of inheritance and succession for several decades after independence. The Hindu Succession Act, 1956¹⁰, was a significant step towards codifying inheritance laws, but it did not grant daughters equal coparcenary rights in joint family property. This legal inequality remained a subject of criticism as it reinforced the traditional preference for male heirs and limited women's economic independence. The Hindu Succession (Amendment) Act, 2005,¹¹ sought to remove this disparity by recognizing daughters as coparceners by birth with the same rights and liabilities as sons.

Although the legal framework has undergone progressive reforms, the practical realization of women's property rights remains limited.

⁷ Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956 (India).

⁸ INDIA CONST. art. 14.

⁹ INDIA CONST. art. 15.

¹⁰ *Id.* at 36.

¹¹ The Hindu Succession (Amendment) Act, 2005, No. 39, Acts of Parliament, 2005 (India).

Landmark judicial decisions have clarified and strengthened the rights of daughters, widows, and mothers, yet the implementation of these rights continues to face resistance due to deeply rooted patriarchal traditions, lack of legal awareness, and social pressure. As a result, a considerable gap persists between the legal rights guaranteed to women and their actual enjoyment of those rights, making the issue of women's property rights an ongoing legal and social concern in India.

1.2 STATEMENT OF THE PROBLEM

Women in India, including mothers, unmarried daughters, married daughters, and widows, continue to face significant challenges in acquiring property rights due to social, economic, and legal barriers. Deep-rooted patriarchal attitudes often view men as the rightful heirs, while daughters are considered temporary members of their parental families because of marriage. Women also struggle with a lack of social recognition and an independent identity, which weakens their ability to assert their rights. Economic dependence on fathers or husbands, fear of social ostracism, and concerns about financial insecurity further discourage them from claiming their legal share. Although laws have been amended to promote equality, weak enforcement, inadequate implementation, gender bias within institutions, and limited awareness of legal rights, particularly among rural and less literate women, continue to

prevent effective access to property rights.

1.3 OBJECTIVES OF THE STUDY

The objective of the paper is to evaluate the Hindu Succession Act, 1956. By doing so, the legal loopholes will be brought forth, which automatically become a hindrance because of which women are still not able to claim their property rights. To explain the property rights of a widow, mother, married and unmarried daughter in case of intestate succession in simple terms. The researcher aims to present various social and cultural reasons, scenarios and circumstances that surround women's right to property. Also, to state reasons as to why giving women their property rights are essential. The paper will discuss factors and will provide recommendations and suggestions.

1.4 HYPOTHESIS

The society strongly adheres to patriarchal norms, which prevents women from getting what they should in terms of equality between the genders. This directly negates the idea of giving women their property rights and a woman's willingness to ask for her share in the property. And if she cannot ask for it from the people she lives with, it is difficult for her to pursue a legal path. Educating women increases the likelihood of claiming their property rights. Their dependency on their male

counterparts for financial support is another factor that leads to women asserting their property rights.

1.5 SIGNIFICANCE OF THE STUDY

The significance is to examine legal, social, economic, and cultural barriers to women's property rights contributing to gender inequality. Identifying all the legal ambiguities and recommends legal reforms that can strengthen women's property rights. By finding out how much a woman is dependent financially on her male counterparts, the financial resources that are needed to provide legal aid and educational opportunities to such women can be provided.

1.6 RESEARCH QUESTIONS

- i. What significant changes have happened in women's property rights post-independence?
- ii. How much did women benefit from the 2005 amendment of the Hindu Succession Act, 1956?
- iii. Is the judiciary successful in legally enforcing property rights of women governed by the Hindu Succession Act, 1956?
- iv. What are the experiences of women who have claimed property rights in India under the Hindu Succession Act, 1956?

1.7. METHODS OF RESEARCH

This research employs the doctrinal method of research to offer an analysis of women's property rights under the Hindu Succession Act, 1956. For the same, this researcher will make use of primary resources such as domestic legislation, rules, and guidelines. Further, the researcher shall also make use of data that belong to secondary sources such as journals, periodicals, articles, and conference papers are to be referred. This research also employs the use of secondary sources such as books, working papers, discussion papers and briefs to understand the topic at hand.

1.8. SCOPE AND LIMITATION

The researcher aims to present a clear picture of property rights given to women by the legislation and the ones she gets in actual practice. The title of the paper gives a certain idea about the comparative analysis. The researcher has restricted the study to the above-stated topic and does not delve into any other legislation and aspect of women's property rights except four categories of women governed by the Hindu Succession Act, 1956.

2. LEGAL FRAMEWORK UNDER HINDU SUCCESSION ACT, 1956

There was a time when succession took place based on survivorship, meaning whoever survived owned the property. This has now been done away with after the commencement of Section 6(3)¹² of the Hindu Succession Act of 2005. The two main schools of Hindu law are the Mitakshara School and the Dayabhaga School. Both these schools have their own set of rules and ideologies, and they are spread in different parts of India. Like the Mitakshara school exists in Maharashtra, Madras, Banaras, etc. This school followed the principle of propinquity¹³ in case of inheritance. The principle adopted by the Mitakshara school is purely secular in nature, as sons and daughters would succeed the property of either of their parents. The Dayabhaga school is a Bengal school of doctrines, and it based its law of inheritance on the principle of religious efficacy or spiritual benefit. This means that whoever offered Pinda to the deceased inherited the property. Since a daughter or woman in the family could not offer a Pinda, they never inherited the property.

2.1 RULE OF INTESTATE SUCCESSION:

The heirs in case of intestate succession spread into different generations

¹² Hindu Succession (Amendment) Act, § 3, No. 39, Acts of Parliament, 2005 (India).

¹³ Hindu Succession Act, 1956, § 6(1), No. 30, Acts of Parliament, 1956 (India).

which have been divided into groups and named as descendants, ascendants, collaterals, agnates, and cognates¹⁴. The Act provides a Schedule which divides heirs into class I, class II, agnates, and cognates. Section 8¹⁵ of the Act lays down rules in case of a male Hindu dying intestate. Firstly, upon the heirs specified in class I. Secondly, upon the heirs of class II. Thirdly, upon the agnates and lastly, upon the cognates, in the schedule.

Class I: Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a predeceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son 1 [son of a predeceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son].

Class II: I. Father. II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister. III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's son, (4) daughter's daughter. IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's

¹⁴ Hindu Succession Act, 1956, § 3(1)(c), No. 30, Acts of Parliament, 1956 (India).

¹⁵ Hindu Succession Act, 1956, § 8, No. 30, Acts of Parliament, 1956 (India).

daughter. V. Father's father; father's mother. VI. Father's widow; brother's widow. VII.

Father's brother; father's sister. VIII. Mother's father; mother's mother. IX. Mother's brother; mother's sister. Sections 9¹⁶, 10¹⁷, 11¹⁸ & 12¹⁹ of the Hindu Succession Act, 1956 refer to succession among heirs mentioned in the schedule and among agnates and cognates.

3. INHERITANCE RIGHTS OF FOUR CATEGORIES OF WOMEN

Section 6²⁰ of the Hindu Succession Act, 1956 clearly provides daughters with coparcenary rights, liabilities and equal allotment of the share in ancestral property as sons. Also, a daughter is mentioned under class I heirs after sons in the Schedule. Before the codification of the law of succession, inheritance and amendment of 2005, daughters, be they married or unmarried, had no ask or claim in the ancestral property or property of their parents. And now, it has been made clear that a daughter whose father was alive at the time of the Amendment, i.e., 09/09/2005,

¹⁶ Hindu Succession Act, 1956, § 9, No. 30, Acts of Parliament, 1956 (India).

¹⁷ Hindu Succession Act, 1956, § 10, No. 30, Acts of Parliament, 1956 (India).

¹⁸ Hindu Succession Act, 1956, § 11, No. 30, Acts of Parliament, 1956 (India).

¹⁹ Hindu Succession Act, 1956, § 12, No. 30, Acts of Parliament, 1956 (India).

²⁰ Hindu Succession Act, 1956, § 6, No. 30, Acts of Parliament, 1956 (India).

would become a coparcener. A daughter, whether married or unmarried, has this right. The Supreme Court said that the Amendment has retrospective effect according to Vineeta Sharma's case ²¹, overruling the judgement that was passed in the case *Prakash & Ors. v. Phulawati & Ors*²². A two-judge bench held that the two daughters would get a share in the property, even though their father had passed away before the Amendment Act, 2005.²³ Section 15 of the Act lays down general rules of succession in the case of female Hindus wherein it has been explicitly mentioned that the property of the female Hindu dying intestate will first devolve upon the sons and daughters. A married daughter is no more a member of HUF but remains a coparcener. On her death, her share shall devolve upon her legal heirs in case of intestate succession.

3.1 PROPERTY RIGHTS OF A MOTHER AND A WIDOW:

A mother has been mentioned in the schedule under class I heirs. She has equal coparcenary rights in the ancestral property as her sons and daughters of the deceased Hindu. According to Rule 2 under Section 10 of the Act, the property of the intestate should devolve upon the surviving

²¹ *Id.* at 36.

²² *Prakash v. Phulavati*, (2016) 2 SCC 36.

²³ *Danamma @ Suman Surpur v. Amar*, (2018) 3 SCC 343.

sons, daughters, and the mother, and each shall take one share. In case of a female Hindu dying intestate, the property gets passed to her mother and father if her sons, daughters, husband, or their heirs are absent. The Supreme Court recognized a mother's claim to her deceased husband's ancestral property, affirming her rights in joint family property.²⁴ Also, the Supreme Court recognized the legal status of mothers as heirs, emphasizing that they have a rightful claim to their deceased children's properties.²⁵

The schedule under Section 8 of the Act gives preference to a widow along with the sons and daughters. A widow has been given coparcenary rights if she is the widow under Rule 1 in Section 10. If we make a comparative analysis between a mother's property rights and a widow's property rights, it is clear from the reading of the Hindu Succession Act, 1956 that a widow has more chances of getting a share in the ancestral property and her husband's self-acquired property than a mother. A mother can inherit property from her deceased children and spouse. Simply, a mother's claim is stronger as a widow or on the death of any of her children, be it biological or adopted.

Their Lordships of the Supreme Court clearly laid down that a widow inheriting property of her husband on his death would become the

²⁴ *Sunder v. State of Maharashtra*, (2007) 3 SCC 290.

²⁵ *K.K. Verma v. State of Uttar Pradesh*, (2004) 1 SCC 127.

absolute owner and subsequent remarriage would not divest her of property in view of Sections 24 and 14 of the Hindu Succession Act, 1956. It is also observed that the Hindu Succession Act, 1956 overrides the provisions of the Hindu Widow's Remarriage Act, 1856.²⁶

4. ROLE OF JUDICIARY

The vital role of the judiciary in any nation is to interpret the laws. The various High Courts and the Supreme Court, from time to time through judgements has interpreted the laws. The same has been done in the case of the Hindu Succession Act, 1956, while granting women their property rights. Courts have protected women's rights against patriarchal norms and social pressures. Courts should opt for a more purposive interpretation, which means that courts should interpret laws based on their purpose and intent, and in the case of the Hindu Succession Act, 1956, it is about promoting and supporting gender equality.

Moreover, courts by harmoniously interpreting can help in reconciling with the conflicting provisions to protect women's property rights, considering the Act's overall scheme and objectives, analyzing provisions considering constitutional principles and balancing individual rights with family and social interests. By doing this, courts can ensure

²⁶ Cherotte Sugathan (D) by LRs. v. Cherotte Bharathi, (2008) 2 SCC 610.

the Hindu Succession Act 1956 promotes not only women's property rights but also social justice and gender equality.

Another one is dynamic interpretation by which courts can adapt laws according to changing social and economic conditions. This can be done by focusing on the Act's goals and objectives rather than its literal meaning. For example, by using dynamic interpretation in interpreting Section 15²⁷ of the Act, the courts can ensure women's equal inheritance rights, reflecting contemporary social values. The purpose behind applying this type of interpretation is keeping the Act relevant and effective. All these types of different yet correlated techniques of interpretation will enhance women's property rights, reflect changing societal values, help in promoting gender equality and ensure social justice above all. Hence, the judiciary does utilize these techniques while functioning as an interpreter of laws.

4.1. PROTECTION OF WOMEN'S RIGHTS:

The judiciary played a significant role in protecting and promoting women's rights under the Hindu Succession Act, 1956. Not only by recognizing women's absolute property rights but also by granting daughters equal coparcenary rights. Moreover, by protecting women's inheritance rights by ensuring they get their share in ancestral property.

²⁷ Hindu Succession Act, 1956, § 15, No. 30, Acts of Parliament, 1956 (India).

The court upholds women's rights in wills and testaments²⁸ and by preventing fraudulent dispositions²⁹ in case of testamentary disposition/succession. The court in today's time opts for a more gender-sensitive approach. Despite all this, a bigger change is yet due. More efficient dispute resolution mechanisms should be employed, which is taking a step forward in protecting women's property rights.

4.2. JUDICIAL PRECEDENTS:

Pre-2005 amendment: The Supreme Court in *Madhu Kishwar v. State of Bihar*³⁰, held that Hindu women's rights to ancestral property are limited, sparking debates on gender equality. In the case of *Smt. Sarojini Amma v. Smt. Rajamma*³¹, the court clarified the concept of "limited owner" under Hindu law, emphasizing women's restricted rights.

Post-2005 amendment: In the case of *Ganga Bai v. Vijay Kumar*³², the court protected women's rights in ancestral property. Some other cases are *Neelam v. Prahlad*³³, where the court ensured women's inheritance rights.

²⁸ Rukmini Ammal v. Narayanasami, AIR 1969 SC 1007.

²⁹ Kamla Devi v. Lajja Ram, (2012) 2 RLW 1697.

³⁰ Madhu Kishwar v. State of Bihar, (1996) 5 SCC 125.

³¹ Smt. Sarojini Amma v. Smt. Rajamma, (1999) 2 SCC 384.

³² Ganga Bai v. Vijay Kumar & Ors., (1974) 2 SCC 393.

³³ Neelam v. Prahlad, AIR 2014 SC 2234.

5. CHALLENGES

Despite all the positive efforts made, there are some troublesome challenges that are creating an invisible yet strong barrier in the way of women claiming their long-due property rights. These challenges can be of various sorts, like social, economic, legal, rural-specific, cultural, psychological, and governmental. And each of these challenges comprises specific and different challenges which can be interrelated. Some of the social challenges include patriarchal mindset: deep-rooted gender biases and stereotypes, family pressure: resistance from male family members and relatives, social norms: traditional expectations and cultural practices, lack of awareness: limited knowledge about legal rights and stigma: fear of social ostracism and reputational damage.

The legal challenges comprise the complexity of laws, overlapping and conflicting laws, lack of implementation: ineffective enforcement of laws, limited access to justice, restrictive access to courts and legal aid, biased judgments, i.e. gender-biased judgments and interpretations, lengthy legal processes, time-consuming and costly legal battles. Some of the rural-specific challenges are limited access to information, restricted access to legal information, limited access to education, limited access to economic opportunities, restricted access to employment, limited social support and networks and infrastructure barriers like limited access to courts and legal services.

The other challenges, like psychological challenges, give rise to fear of rejection: fear of rejection by family and community, lack of confidence, limited self-confidence and self-esteem, emotional trauma: emotional trauma from harassment and abuse, anxiety, and stress, anxiety and stress from legal battles, self-doubt and uncertainty about property rights. The government and policy challenges are ineffective policies and laws, ineffective implementation of laws, limited resources for legal aid and support, corruption, and bribery in legal and administrative systems and bureaucratic delays in processing and resolving cases.

The economic challenges are financial dependence, limited access to economic resources, limited access to education, restricting economic opportunities, employment barriers, limited job opportunities and gender-based discrimination; property valuation, undervaluation of women's contributions to family property, maintenance, and support, and limited access to maintenance and support. Some of the cultural challenges are traditional practices like restrictions on women's property rights, customary laws, contradictory customary laws and practices, community pressure, resistance from community leaders and members, language barriers, limited access to legal information and services and education and awareness, i.e. limited awareness about property rights.

6. CONCLUSION AND SUGGESTIONS

The Hindu Succession Act, 1956 has undergone several amendments to empower women with property rights. But, just giving equal rights will not solve the deep-rooted issues. Proper implementation through judicial channels and addressing emerging issues can help promote and impart to women their well-deserved property rights. The changes and amendments and judicial precedents made by the judiciary from time to time are only setting the background, but it is we who, by giving women in our family their property rights and making it a common practice, can bring a bigger change.

Till then, women's property rights are just a critical area of ongoing social and legal change. To convert this ongoing change into a well-established new normal, women need to be educated and made aware of their property rights in their ancestral property, and they should be motivated to raise their voices and take legal action if necessary.

6.1. SUGGESTIONS:

To deal with the deep-rooted challenges, educating and ensuring women's property rights, certain suggestions can be adopted, which are:

- 1. NATIONAL AWARENESS CAMPAIGNS:** The government-organized awareness programs and campaigns, along with the help of NGOs, especially at the grassroots level, for not only

women but the population residing in rural areas. To tell them the importance and need of sharing ancestral property with women of their home. Also, addressing the concept of dowry to be replaced by giving women a share in the property, which will be a security in case of unforeseen situations.

2. **FREE LEGAL AID:** Extending legal aid services with the help of legal clinics for women who lack resources and knowledge and want to take the help of arbitration or pursue judicial action to claim their share in the property
3. **MONITORING MECHANISMS:** The setting up of these mechanisms will track and follow the implementation and effectiveness of the amendment and rights given to women in case of property rights and investigate what else can be done to increase its efficacy.
4. **RULES & REGULATIONS:** The Ministry of Women and Child Development develops policies, rules, and regulations with the help of the State Women's Commission and looks after their implementation in every state. They can alter the rules and regulations according to the needs of every state as practices vary from region to region.
5. **ECONOMIC EMPOWERMENT:** Women, if given more access to credit and the market, will feel more empowered, and they

will take a forward step and acquire assets for themselves since they are both emotionally and financially dependent on males.

HOME, AWAY FROM HOME: THE LEGAL JOURNEY OF TIBETAN REFUGEES IN INDIA



- Tenzin Thinlay Bhutia¹

ABSTRACT

The legal status of Tibetan refugees in India exists because the country shows humanitarian support while its laws create unclear situations about refugee protection. The Indian government has provided basic protection to Tibetan refugees who fled their homeland during 1959 but they continue to hold the legal status of foreign nationals because India lacks a formal system to recognize refugees. The research investigates how

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Tibetans survive through their document-based system which includes Registration Certificate and Identity Certificate and Green Book that represent their existence between life and death in their homeland. The study performs an in-depth evaluation of judicial interventions which have led to the expansion of constitutional protections through Articles 14 and 21 and established citizenship rights for Tibetans who were born in India between 1950 and 1987. The government continues to block official recognition which forces citizens to choose between keeping their cultural heritage or obtaining legal status. The research shows how this community faces economic discrimination while its members have restricted ownership rights and they experience continuous exposure to various social problems. The article demonstrates that India provides shelter to Tibetans but fails to achieve complete legal acknowledgment which forces them to exist in an endless state of uncertainty about their identity and legal status and community acceptance.

KEYWORDS: *Tibetan Refugees, Citizenship, Foreigner, Central Tibetan Administration (CTA), Ministry of External Affairs (MEA).*

1. INTRODUCTION: THE BIRTH OF TIBETAN EXILE IN INDIA

Home is not just where you live. It is the land you walk on and the law that knows who you are. For people who have to leave their country, a "Home, Away from Home" is a thing to dream about. This is a place that gives you a bed but it does not really want to know your name.

To really understand how hard it is for people with the law you have to forget about law books. You have to think about the nights in the Himalayas in the spring of 1959. After Chinese forces used a lot of power in Lhasa because of the March 10 uprising the 14th Dalai Lama had to leave his home in Tibet. The 14th Dalai Lama had to leave his home in Tibet because of this.

80,000 Ordinary Tibetan people followed the Dalai Lama. These people were monks, farmers, mothers and children. They left behind their homes, their animals and the places where their ancestors were buried. They walked for weeks through snow and ice. They were in danger of getting very cold being hungry and getting shot. The Tibetan people just wanted to find a place where they could breathe easily and pray without hiding.

India was very kind to the people. India opened its doors to help the people. The Prime Minister of India Jawaharlal Nehru cared a lot about the

people and wanted to help them. On May 18 1959 he wrote a letter to the leaders of India saying "The 14th Dalai Lama is in our country. So are more, than twelve thousand Tibetan refugees... We have been very busy making sure these Tibetan refugees have what they need." The Prime Minister of India Jawaharlal Nehru did a lot to help the refugees very quickly.

In 1960 he asked the state of Mysore, which's now Karnataka to give them 3,000 acres of forest land at Bylakuppe. By 1961 the first Tibetan exile settlement was set up. It was called Lugsung Samdupling. The refugees-built monasteries and created a new life in these safe places. His Holiness the 14th Dalai Lama said something important later on "Tibetans are refugees in their own country but they have freedom in India.". As time passed and the feeling of being safe started to fade away the Tibetans realized that they had a big problem. They were no longer in prison. They did not have all the rights that Indian citizens have. This is because India never agreed to the 1951 United Nations Refugee Convention so the word "refugee" is not even in law. To the legal system a Tibetan is just a "foreigner" according to the Foreigners Act of 1946² even if they were born in India. Tibetan refugees are, like guests who can be asked to leave at any moment they are always waiting for something to happen.

² Foreigners Act, 1946, No. 31, Acts of Parliament, 1946 (India).

2. PROVING EXISTENCE THROUGH PAPERS

For a Tibetan living in India, life is really tough when it comes to papers. If no country says you are theirs, how do you prove you exist? It all comes down to three booklets for Tibetans in India. If you lose them, you are basically gone from the system.

The first one is the Blue Book, which is also called the Registration Certificate.³ This document has your fingerprints and a photo. It is issued under the Registration of Foreigners Act, 1939 and the Registration of Foreigners Rules, 1992. The Blue Book is like a lifeline that keeps Tibetans from getting arrested for staying in India without proper documents under the Foreigners Act, 1946. You have to keep renewing it. If it is not renewed on time, a Tibetan refugee may face legal consequences under the laws governing foreigners in India.

Then there is the Yellow Book, which is also called the Identity Certificate. Since Tibetans cannot get passports like people, the Indian government gives them this Yellow Book under some rules from 1967 so they can travel to other countries. When you go to the airport with a Yellow Book, it can be really frightening. The people at the border often look at you suspiciously. Might even detain you and ask you a lot of questions. This happens to a lot of Tibetans who just want to travel like everyone else.

³ Registration of Foreigners Act, 1939, No. 16, Acts of Parliament, 1939 (India).

The last booklet is the Green Book, which is given by the Central Tibetan Administration in a place called Dharamshala.⁴ They started giving out these books on August 1 1972. They are used to keep track of a special tax that Tibetans pay to their own government in exile. The Green Book is like a symbol of how Tibetans care about their country and their cause. The sad thing about the Green Book is that even though it shows that Tibetans love their country, no court in India or any other country in the world thinks it is a real legal document. the Green Book, the Blue Book and the Yellow Book are all important for Tibetans to live in India. The Green Book and the Blue Book and the Yellow Book are what Tibetans need to survive in India.

⁴ CENTRAL TIBETAN ADMINISTRATION, GREEN BOOK (Department of Finance, CTA).



Fig. 1-Photograph depicting the three primary identity documents for Tibetans in India⁵

3. PROTECTED, BUT NEVER ACCEPTED

The Indian Parliament has not passed a law for refugees, which has left the Tibetan people in a very risky situation. They are now at the mercy of politicians and their changing attitudes. The only help they have had is from the court system, which has acted like a single protector trying to keep a group without a country from disappearing completely.

In a step to stay safe legally the Supreme Court of India made a big change to the Constitution. The court said that basic human rights are not just for people who're citizens. The rights in Article 14⁶ (treatment) and

⁵ Photographs provided by the Author for illustrative purposes (on file with author).

⁶ INDIA CONST. art. 14.

Article 21⁷ (the right to life and freedom) apply to anyone who is on Indian soil no matter what their passport says.

The important moment in this legal protection came in a major case on January 9 1996 called *National Human Rights Commission v. State of Arunachal Pradesh*.⁸ In an important decision the Supreme Court said that the government must protect the life and freedom of every person in India. This brought the idea of not sending people to a place where they might be hurt into Indian law. It created a legal protection that stops India from sending Tibetans back to China where they could be tortured or killed. A shield is not the same, as a home. Even though Article 21 stops the government from sending them the Foreigners Act still lets the state control their movements watch what they do and stop them from building a better life. They have the right to live but not the right to live well.

⁷ INDIA CONST. art. 21.

⁸ *National Human Rights Commission v. State of Arunachal Pradesh*, (1996) 1 SCC 742.

4. BORN HERE, STILL AN OUTSIDER

The most agonising legal battle is fought by the youth born in India. They speak fluent Hindi, love Indian culture, and have never seen the snows of Tibet, yet the government treats them as aliens. However, hidden within the ink of the Citizenship Act, 1955, lay a secret weapon: Section 3(1)(a). The law states with absolute clarity that any person born in India between January 26, 1950, and July 1, 1987, is an Indian citizen by birth, regardless of who their parents are.⁹

For decades, the Ministry of External Affairs (MEA) fiercely suppressed this right. They denied passports to eligible Tibetans under Section 6(2)(a)¹⁰ of the Passports Act, 1967, aggressively arguing that by holding a Blue RC and calling themselves “Tibetan refugees,” these youths had legally surrendered their Indian citizenship.

Unwilling to live in the shadows, the youth took the government to court. The first major blow to the state's defence came on December 22, 2010. In the landmark case of *Namgyal Dolkar v. Government of India*, the Delhi High Court delivered a stunning victory. The judge firmly ruled that Dolkar's birth in India in 1986 made her a citizen automatically by law. Holding a refugee Identity Certificate did not magically erase her statutory birthright.¹¹

⁹ Citizenship Act, 1955, § 3(1)(a), No. 57, Acts of Parliament, 1955 (India).

¹⁰ Passports Act, 1967, § 6(2)(a), No. 15, Acts of Parliament, 1967 (India).

¹¹ *Namgyal Dolkar v. Gov't of India*, 2010 SCC Online Del 4548.

Despite this, the government dug its heels in. But the tide slowly began to turn. On January 25, 2014, the Indian Nursing Council finally issued a circular allowing Tibetans born in this magic window to officially register and practice as nurses. Shortly after, on February 7, 2014, the Election Commission of India formally directed all states to enroll these eligible Tibetans onto the national voter lists.¹² Then, on September 22, 2016, in the *Phuntsok Wangyal* case, the Delhi High Court severely reprimanded the government, declaring that eligible Tibetans do not need to “apply” for citizenship they are already citizens the moment they take their first breath.¹³

The suspense of this legal war reached a fever pitch just recently. On February 2, 2026, the Delhi High Court heard the heartbreaking case of *Yangchen Drakmargyapon v. Union of India*.¹⁴ A 59-year-old Tibetan woman, born in Dharamshala on May 15, 1966, had relocated to Switzerland in 1997. When her Swiss travel documents expired on July 1, 2014, she was left totally stateless, stranded, and terrified. The Indian government cruelly denied her a passport, using a 1950 foreigner registration rule to claim she was still an alien.

¹² TIBETAN LEGAL ASSOCIATION, <https://tibetanlegalassociation.org/en/legal-overview-of-the-status-of-tibetans-in-india/> (last visited Mar. 18, 2026).

¹³ *Phuntsok Wangyal v. Ministry of External Affairs*, 2016 SCC OnLine Del 5354.

¹⁴ *Yangchen Drakmargyapon v. Union of India*, 2026 DHC 831.

In a devastating takedown of the government's arguments, Justice Sachin Datta ruled that statutory citizenship by birth is an unbreakable, absolute right. The judge explicitly noted that writing “Tibetan national” on a bureaucratic form does not legally terminate citizenship under Sections 8 or 9 of the Citizenship Act, 1955. The court rescued her from the brink of oblivion, ordering the immediate issuance of her Indian passport.

5. WHEN THE STATE SAYS “NO”.

Beaten in the courtrooms, the executive branch retaliated with a chilling bureaucratic maneuver. To bypass the judges, the Ministry of External Affairs (MEA) issued a set of harsh, conditional directives in 2017, which were formalized strictly in September 2018, for any Tibetan seeking their rightful Indian passport.¹⁵

The government demanded that to get a passport, a Tibetan must legally surrender their RC and IC to the Foreigners Regional Registration Office (FRRO). But the cruelty went much deeper: the applicant must officially vacate their designated Tibetan refugee settlement and irrevocably forfeit all welfare benefits, housing subsidies, and communal ties provided by the Central Tibetan Administration (CTA).

¹⁵ IMMIGRATION AND REFUGEE BOARD OF CANADA, <https://www.irb-cisr.gc.ca/en/country-information/rir/Pages/index.aspx?doc=457835> (last visited Mar. 18, 2026).

It is an agonizing, suspenseful ultimatum. To secure the legal dignity and safety of an Indian passport, a young Tibetan must willingly sever physical and economic ties with the community that kept their family alive. The law holds a knife to their heritage, forcing them to choose between their legal future in India and the legacy of their ancestors.

6. SURVIVING IN THE SHADOWS

For those born after the July 1, 1987 cut-off, or those who refuse to abandon their settlements, the economic reality is terrifying. Under the Foreign Exchange Management Act (FEMA), 1999,¹⁶ and specifically under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, foreign nationals are absolutely prohibited from purchasing agricultural land, farmhouses, or plantation properties in India. To buy even a small commercial shop, they need special permission from the Reserve Bank of India (RBI) permission that is almost never granted to a refugee. Without property, they have no collateral. Without collateral, banks refuse them loans. They are legally barred from holding secure government jobs. Brilliant, highly educated Tibetan youths find themselves staring down a dead-end street.

¹⁶ Foreign Exchange Management Act, 1999, No. 42, Acts of Parliament, 1999 (India).

Desperation forces many into the shadows. To open a simple cafe, they must illegally “rent” trade licenses in the names of Indian citizens. This thrusts them into a terrifying underworld where they are constantly vulnerable to extortion, blackmail, and overnight eviction, with absolutely no right to seek justice in a civil court.

Attempting to ease this suffering, the Ministry of Home Affairs introduced the Tibetan Rehabilitation Policy in 2014.¹⁷ It directed state governments to sign formal 20-year land leases with the Central Tibetan Relief Committee (CTRC) to prevent sudden evictions, and urged states to provide basic infrastructure and access to schemes like the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) and the Targeted Public Distribution System (TPDS). Recently, the Indian government extended funding for this policy through 2025-2026, granting an exact sum of ₹40 crore (released as ₹8 crore per annum) to maintain the settlements.¹⁸ Yet, the legal implementation across states remains horribly inconsistent. It is, at its core, a comfortable cage—managing their poverty rather than granting them the legal right to generate independent wealth.

¹⁷ Ministry of Home Affairs, The Tibetan Rehabilitation Policy, 2014, Gov't of India (2014).

¹⁸ TIBETAN REVIEW, <https://www.tibetanreview.net/> (last visited Mar. 18, 2026).

7. BLOOD ON THE SNOW: THE SPECIAL FRONTIER FORCE (SFF)

The most gut-wrenching legal paradox of the Tibetan exile exists in the freezing, oxygen-starved peaks of India's borderlands. Here operates the Special Frontier Force (SFF) an elite, highly classified commando unit of the Indian military apparatus. Raised on November 14, 1962 (deliberately chosen to coincide with Prime Minister Nehru's birthday) by Intelligence Bureau chief B.N. Mullik, Biju Patnaik, and Major General Sujjan Singh Uban, the force affectionately known as Establishment 22 or the Vikas Battalion is comprised primarily of fierce Tibetan refugees. For decades, these stateless ghosts fought India's bloodiest wars in total secrecy. They bled heavily during Operation Eagle in the 1971 Bangladesh Liberation War, where 56 Tibetan soldiers laid down their lives in the Chittagong Hill Tracts.¹⁹ They secured the freezing heights of the Siachen Glacier during Operation Meghdoot in 1984, and scaled impossible icy cliffs during Operation Vijay in the 1999 Kargil War.

The sheer tragedy of their existence burst into the public eye in August 2020, during Operation Snow Leopard amid a highly volatile military standoff with China at Pangong Tso in Eastern Ladakh. On August 30,

¹⁹ OpIndia, Unearthing the Hidden World of India's Dreaded Secret: Special Frontier Force, OPINDIA [(Sept. 2020)], <https://www.opindia.com/2020/09/unearthing-the-hidden-world-of-indias-dreaded-secret-special-frontier-force/>.

2020, a 53-year-old Tibetan SFF commando, Company Leader Nyima Tenzin, stepped on a vintage 1962 landmine. He was blown apart, sacrificing his life to protect the Indian border.²⁰

His funeral in Leh on September 7, 2020, was a scene of unimaginable heartbreak. His coffin was draped in the Indian Tricolour alongside the Tibetan Snow Lion flag. Mourners held a placard that shattered the hearts of everyone watching: “He lived for the love of Tibet and died for the love of India.” Nyima Tenzin left behind a grieving wife, an elderly mother, and four children. He died defending the borders of a nation that, in the cold text of its laws, refused to recognize him as its own citizen. The men of the SFF lay down their lives for Indian soil, dreaming that their bullets fired at the Chinese military might somehow echo back to a free Tibet. They bleed for a country that legally brands them as aliens.

²⁰ INDIA TODAY, <https://www.indiatoday.in/india/story/indian-army-tibetan-braveheart-lac-ladmine-blast-laid-to-rest-1719365-2020-09-07> (last visited Mar. 18, 2026).



Photograph of Special Frontier Force (SFF) personnel stationed at the Siachen Glacier, holding the national flag of India alongside the Tibetan Snow Lion flag.

8. INTENTIONAL STATELESSNESS: THE FADING PULSE

As oppressive as the host country's laws are, the Tibetan legal limbo is deepened by a haunting choice made from within. Sociologists call it “intentional statelessness.” For the Central Tibetan Administration (CTA), preserving their refugee status is the very oxygen of their political survival. If all Tibetans take Indian passports and vanish into the massive Indian population, who will be left to legally fight for Tibet?

While the Central Tibetan Administration (CTA) officially calls applying for citizenship an “individual choice,” the internal pressure is suffocating. Surrendering the Blue RC is viewed in whispered conversations as an act of treason. Tenzin Tsundue, a famous Tibetan activist, bluntly stated that

taking Indian citizenship “dilutes the struggle for a free Tibet because it naturally sets in complacency in the life of people and the urgency is lost in the process.”

This excruciating tension is destroying the community from the inside out. The youth are torn between their fierce, inherited patriotism and the terrifying lack of a legal future in India. The result is a massive, silent exodus. While the 2009 Tibetan Demographic Survey recorded a population of 110,095 across the settlements, official data from the Ministry of Home Affairs confirms the population crashed to exactly 72,312 by December 2020.²¹

The educational backbone of the community is also crumbling. Enrolment in the Tibetan Children's Villages (TCV) dropped drastically from 25,700 students in the year 2000 to just 15,700 in 2023. In 2024, due to extreme border lockdowns by China, the Upper Dharamshala TCV school admitted zero new students from Tibet.²² Desperate for a legal identity, young Tibetans are fleeing to the United States and Canada, leaving the Indian settlements to slowly fade into quiet, aging ghost towns.

²¹ PHAYUL, <https://www.phayul.com/2022/08/10/47418/> (last visited Mar. 18, 2026).

²² COUNTERVIEW, <https://counterview.net/2025/11/shrinking-settlements-fading-schools.html> (last visited Mar. 18, 2026).

9. CONCLUSION: STILL SEARCHING FOR HOME

India has long been a refuge for Tibetans fleeing their homeland. Back in 1959, when the world largely turned its back on them, India opened its doors. But sixty-five years later, safety hasn't translated into belonging. For many, life here is defined by uncertainty the rules keep changing, and there's no clear path forward.

Tenzin Tsundue, an activist who knows this tension well, put it plainly: “We live in India, but our hearts are in Tibet.”²³ He describes that strange middle ground of being neither fully here nor there. As a child, he dreamed of returning to Tibet, but now he sees his home right where he is—fighting for his people. That's the reality for a community that has lived in India for generations but still lacks legal standing. They've helped protect India, even in the Special Frontier Force, yet they're still treated like outsiders.

Now, younger Tibetans face a tough choice. Do they cling to their identity and remain without full rights, or take an Indian passport and risk losing their culture? It's a heavy burden. Courts have offered some protection, but legal wins don't feel like having a home.

If India truly wants to support these communities, it needs to change its

²³ TIMES OF INDIA, <https://timesofindia.indiatimes.com/home/sunday-times/deep-focus/tibet-a-room-for-hope/articleshow/7583866.cms> (last visited Mar. 18, 2026).

laws. Give them stability, and they can keep their culture alive while feeling secure. Until then, thousands will keep waiting to be seen not as refugees, but as neighbours. They don't want to be guests forever; they just want to belong.

THE RIGHT TO BE FORGOTTEN: AN EMERGING AND CONTESTED FACET OF ARTICLE 21



- Sneha Suzanna Pradhan¹

ABSTRACT

This paper will discuss RTBF (Right to be Forgotten) as an emerging fundamental right in India, which Article 21 provides a constitutional basis for. Since it is increasingly difficult for individuals to control and delete digital footprints, which could potentially diminish the value of human dignity beyond doubt, the paper will attempt to demonstrate a need for a strong constitutional remedy. To that end, it will demonstrate

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the gradual transition from the A.K. Gopalan vision, which was based on a narrow interpretation of rights, to a more progressive and humane understanding inspired by the Maneka Gandhi and Francis Coralie Mullin cases. It will then describe how Justice K.S. Puttaswamy ruled on the issue, establishing informational privacy as a fundamental right. By examining the shift from foundational privacy rulings like Puttaswamy to divergent High Court decisions, the study investigates the ongoing tension between individual dignity, informational autonomy, and the public right to information in an increasingly digital society. The research will also present and analyze different High Court's opinions in similar cases, which had to weigh the individual's right to privacy against the government's interest in ensuring open justice and freedom of speech.

Furthermore, the research evaluates recent judgments from various Indian High Courts concerning RTBF. It critically examines how the judiciary navigates complex constitutional tensions specifically balancing an individual's right to privacy and personal reputation against competing public interests. Ultimately, this paper highlights the growing urgency for a cohesive legislative framework to harmonize these competing rights in the digital age.

KEYWORDS: *right to be forgotten, Article 21, right to privacy, DPDP Act, freedom of speech.*

1. INTRODUCTION: THE PERMANENCE OF MEMORY IN THE DIGITAL AGE

The digital age, with its promise of boundless information and connectivity, has bequeathed a peculiar and profound challenge to the human condition: the permanence of memory. The axiom that “the internet never forgets” is not merely a colloquialism; it is a technical reality that poses a direct challenge to the capacity for personal evolution, redemption, and the very essence of human dignity. Every misstep, accusation, or piece of irrelevant personal data, once committed to the digital ether, can persist indefinitely, creating a “digital scar” that perpetually stigmatizes an individual. This reality necessitates a robust constitutional response, one that can shield the individual from the tyranny of a permanent and unforgiving digital record. It is in this context that the Right to be Forgotten (RTBF) has emerged as a critical legal and philosophical battleground. The RTBF, a principle that enables individuals to request the removal of certain links and information about their past from internet search results, is not a mere technological convenience but an increasingly vital constitutional imperative.

This essay argues that while the Right to be Forgotten is a logical and necessary emanation of the Right to Dignity and Privacy under an

expanded Article 21 of the Constitution of India², its application remains a contested terrain. It is caught in a complex interplay between the assertion of individual autonomy, the uncertainty of a nascent jurisprudence, the limitations of a new statutory framework, and the sacrosanct public right to information. The demand for such a right in India is not a simple imitation of a European legal trend but is symptomatic of a deeper constitutional maturation. It signifies that the Indian citizenry's understanding of "liberty" has evolved from foundational protections against physical detention to sophisticated claims of informational and reputational autonomy in the digital sphere. This evolution fundamentally alters the power dynamic between the individual and the "public record," which is no longer a static archive but a dynamic, globally accessible, and commercially exploited entity. This essay will trace the jurisprudential journey that makes this right conceivable, from the expansive interpretation of Article 21 to the landmark privacy judgment, before analyzing its fractured application in Indian courts, its partial codification, and the enduring conflict with the freedom of speech and information.

² INDIA CONST. art. 21.

2. FROM LITERAL INTERPRETATION TO SUBSTANTIVE DUE PROCESS: THE EVOLUTION OF ARTICLE 21

Initially, the scope of Article 21, which states that “No person shall be deprived of his life or personal liberty except according to the procedure established by law,” was interpreted in a starkly literal and restrictive manner. In the seminal case of *A.K. Gopalan v. State of Madras*³, the Supreme Court held that the phrase “procedure established by law” meant only a procedure enacted by a competent legislature, regardless of whether it was fair, just, or reasonable. This judgment established a regime where fundamental rights were viewed as existing in separate, watertight compartments; a law affecting personal liberty under Article 21 did not need to satisfy the requirements of reasonableness under Article 19⁴. This formalistic approach severely limited the protective ambit of the right, offering little solace against legislative overreach. The doctrinal landscape was irrevocably altered by the post-Emergency verdict in *Maneka Gandhi v. Union of India*⁵. This landmark judgment shattered the restrictive interpretation of A.K. Gopalan⁶ and infused

³ A.K. Gopalan v. State of Madras, AIR 1950 SC 27.

⁴ INDIA CONST. art. 19.

⁵ Maneka Gandhi v. Union of India, AIR 1978 SC 597.

⁶ *Id.* at 79.

Article 21 with a new, substantive life. The Court held that the “procedure established by law” could not be arbitrary, whimsical, or fanciful; it must be “just, fair, and reasonable.” This effectively, though not explicitly, imported the principles of procedural due process into the Indian constitutional framework.

Crucially, Maneka Gandhi established the interconnectedness of fundamental rights, creating what is now famously known as the “golden triangle” of Articles 14⁷, 19, and 21. The Court ruled that any law depriving a person of their personal liberty must not only pass the test of Article 21 but must also satisfy the requirements of reasonableness under Article 19 and non-arbitrariness under Article 14. This paradigm shift was more than a mere change in legal interpretation; it was a fundamental reorientation of judicial philosophy, likely catalyzed by the stark demonstration of unchecked state power during the Emergency. The Court repositioned itself as an active architect of constitutional values, laying the groundwork for all subsequent expansions of Article 21, without which the RTBF would be constitutionally unimaginable.

⁷ INDIA CONST. art. 14.

3. HUMAN DIGNITY AS THE PHILOSOPHICAL BRIDGE

Building upon the foundation of Maneka Gandhi, the Supreme Court in *Francis Coralie Mullin v. Administrator*,⁸ Union Territory of Delhi gave profound meaning to the word ‘life’ in Article 21. Justice P.N. Bhagwati articulated that the right to life transcends “mere animal existence.” It is not confined to the protection against physical injury or death but encompasses the “right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms.”

This articulation of “dignity” serves as the crucial philosophical bridge connecting the right to life with the right to be forgotten. A life with dignity is not merely about survival in the present but also about the potential for growth and self-expression in the future. A life perpetually defined and constrained by a past mistake, an old accusation, or irrelevant personal data that is endlessly accessible online, is a direct affront to this judicially constructed concept of a dignified existence. Such a permanent digital footprint can severely hamper one's ability to find employment, form social relationships, and move forward, constituting a continuous

⁸ *Francis Coralie Mullin v. Administrator*, Union Territory of Delhi, (1981) 1 SCC 608.

and ongoing violation of dignity. The Right to be Forgotten, therefore, is not about erasing history, but about enabling an individual to live a dignified life in the present and future, free from the disproportionate and perpetual consequences of the past. It is the logical application of the Francis Coralie principle of dignity to the unique challenges of the information age.

4. PUTTASWAMY AND THE BIRTH OF INFORMATIONAL PRIVACY

While the expansive interpretation of dignity under Article 21 provided the philosophical soil for the RTBF, it was the unanimous affirmation of the Right to Privacy in *Justice K.S. Puttaswamy v. Union of India*⁹ that provided its direct constitutional anchor. This nine-judge bench decision transformed the discourse from abstract notions of dignity to the concrete right of an individual to exercise control over their personal information, thereby heralding an era of informational autonomy.

The Court, in a historic and resounding verdict, declared that the Right to Privacy is a fundamental right, protected as an intrinsic part of the Right to Life and Personal Liberty under Article 21 and as a part of the

⁹ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

freedoms guaranteed by Part III of the Constitution. This judgment definitively overruled earlier contrary decisions in *M.P. Sharma v. Satish Chandra*¹⁰ and *Kharak Singh v. State of U.P.*¹¹, which had failed to recognize privacy as a constitutionally protected right. The Court's reasoning represented a crucial philosophical shift, framing privacy not as a common-law tort or a right granted by the State, but as an inalienable natural right that inheres in every individual by virtue of being human. This elevation is critical, as it means the State does not grant privacy but is constitutionally obligated to protect it, shifting the burden of proof to any entity that seeks to justify the continued public availability of an individual's data.

5. JUDICIAL ACTIVISM VS. INSTITUTIONAL RESTRAINT: HIGH COURT DIVERGENCES

The Court recognized privacy as a multi-faceted right, encompassing bodily integrity, decisional autonomy, and, most importantly for the RTBF, informational privacy. This facet was defined as the right of an individual to exercise control over their personal data and to be able to control their own life and existence on the internet. The judgment

¹⁰ *M.P. Sharma v. Satish Chandra*, AIR 1954 SC 300.

¹¹ *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295.

explicitly paved the way for the RTBF. Justice S.K. Kaul, in his influential concurring opinion, directly addressed the issue, stating that an individual's right to control their personal data must "encompass his right to control his existence on the Internet." He further observed that individuals should be able to seek the removal of information that is "no longer necessary, relevant, or is incorrect and serves no legitimate interest."

This opinion did more than just mention the RTBF; it provided the precise legal vocabulary and analytical framework that lower courts would subsequently use to adjudicate these novel claims. Justice Kaul's formulation balancing individual control against public interest and the continued relevance of the data became the *de facto* common law test for the RTBF in India, giving High Courts the constitutional confidence and the analytical tools to grant relief even in the absence of a specific statute. Furthermore, the Puttaswamy judgment established a stringent three-pronged test for any permissible infringement of privacy: any restriction must:

- i. be prescribed by law,
- ii. serve a legitimate state aim, and
- iii. be proportionate to the objective it seeks to achieve.

This test of legality, necessity, and proportionality now stands as the constitutional bulwark against which any denial of a request to be forgotten must be measured.

In the wake of the Puttaswamy judgment, Indian High Courts have become the primary arenas for testing the contours of the Right to be Forgotten. However, without a clear legislative framework, the application of this broad constitutional principle has been inconsistent, resulting in a fractured and evolving jurisprudence. The core tension revolves around balancing the individual's newly affirmed right to privacy against the long-standing principles of open justice and the public's right to information, particularly in cases involving judicial records.

The contradictory judgments are not merely a result of differing legal interpretations but are also influenced by the specific factual matrix of each case and the institutional role perception of the respective courts, oscillating between judicial activism and restraint. The initial judicial engagement with the RTBF revealed a sharp divergence of opinion. The Gujarat High Court, in *Dharamraj Bhanushankar Dave v. State of Gujarat*¹², took a formalistic approach, dismissing a plea to remove an online judgment of acquittal. The court held that its publication did not violate Article 21 and that no existing law granted such a right. In stark contrast, the Karnataka High Court in *Sri Vasunathan v. The Registrar General*¹³ adopted a more protectionist and context-sensitive stance. It

¹² *Dharamraj Bhanushankar Dave v. State of Gujarat*, 2017 SCC OnLine Guj 2493.

¹³ *Sri Vasunathan v. The Registrar General*, High Court of Karnataka, 2017 SCC OnLine Kar 424.

recognized the RTBF as an emerging trend and ordered the masking of a petitioner's daughter's name in a sensitive case to protect her reputation and modesty, thereby prioritizing individual's dignity over absolute transparency.

The Delhi High Court has been particularly proactive, often granting relief based on a pragmatic, harm-based analysis. In *Jorawar Singh Mundy v. Union of India*¹⁴, the court ordered the de-indexing of a judgment concerning an American citizen of Indian origin who had been acquitted but found that the judgment's continued online visibility was harming his career prospects. The court explicitly weighed the petitioner's right to privacy and dignity against the public's right to information and found the former to be more compelling in the specific circumstances of the case.

This activist approach, however, stands in conflict with the more institutionally cautious views of other High Courts. The Madras High Court in *Karthick Theodore v. Registrar General*¹⁵ and the Kerala High Court in *Vysakh K.G. v. Union of India*¹⁶ emphasized the principle of open justice and the sanctity of public records. They held that the RTBF could not be invoked to alter or remove judicial pronouncements from

¹⁴ *Jorawar Singh Mundy v. Union of India & Ors.*, 2021 SCC OnLine Del 2306.

¹⁵ *Karthick Theodore v. Registrar General*, Madras High Court, 2021 SCC OnLine Mad 2755.

¹⁶ *Vysakh K.G. v. Union of India*, 2022 SCC OnLine Ker 7337.

the public domain, viewing such an act as an infringement on legislative power.

Recognizing the urgent need for clarity, the Supreme Court has intervened. It stayed the Madras High Court's order in the *Karthick Theodre case (now titled Indian Kanoon Software Development Private Limited v. Karthick Theodre)*¹⁷ and has undertaken to definitively settle the law. The bench, led by the Chief Justice of India, expressed concern about mandating the takedown of a publicly accessible document and signaled a preference for exploring remedies like “redaction of information” or “masking of names.”

This intervention suggests a potential shift from a purely rights-based, judicially-driven evolution of the RTBF towards a more structured, rule-based framework. The Court’s distinction between “erasure” and “redaction” is significant. While erasure implies a complete removal that challenges the integrity of the public record, redaction or masking offers a middle path. This approach could preserve the principle of open justice by keeping the text of the judgment publicly available while simultaneously accommodating the individual's right to privacy by anonymizing their identity. This search for a proportionate remedy that balances the competing interests is a classic judicial endeavor and will

¹⁷ *Indian Kanoon Software Development Private Limited v. Karthick Theodre*, SLP(C) No. 15311/2024 (Supreme Court, July 24, 2024).

likely form the cornerstone of the final “settled law” on this contentious issue.

Critics, particularly advocates for free expression and the press, argue that an unbridled RTBF could function as a tool for censorship. Forcing search engines, online publishers, or legal databases to remove or de-link truthful information, they contend, could violate free press rulings and constitute an impermissible form of compelled speech. This right is seen as being in direct conflict with the public's right to know, which is essential for holding public figures accountable and for maintaining a complete historical record.

6. THE COLLISION BETWEEN THE RIGHT TO BE FORGOTTEN AND FREEDOM OF INFORMATION

This tension is further complicated by the statutory Right to Information Act, 2005 (RTI Act),¹⁸ which was enacted to promote transparency in governance. The RTBF and the RTI Act work towards a similar goal of safeguarding citizens against state overreach, but they employ diametrically opposite methods: one through concealment and the other

¹⁸ Right to Information Act, 2005, No. 22, Acts of Parliament, 2005 (India).

through disclosure. The recent amendment to the RTI Act via the DPDP Act,¹⁹ which introduces a near-blanket exemption for the disclosure of “personal information,” has only intensified this conflict, potentially weakening the transparency regime in the name of privacy.

7. THE PUBLIC INTEREST OVERRIDE AND THE PROPORTIONALITY TEST

It is universally acknowledged, both in Indian judicial pronouncements and in international frameworks like the GDPR, that the RTBF is not an absolute right. It must yield to the larger public interest. The right may be limited when the information in question is necessary for exercising the right of freedom of expression, for compliance with a legal obligation, for archiving purposes in the public interest, for scientific or historical research, or for the establishment and defense of legal claims.

The central challenge lies in defining the contours of “public interest” and determining when it should override an individual's claim to be forgotten.²⁰ Does the public have a legitimate interest in accessing the

¹⁹ Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023 (India).

²⁰ Priya Gupta & Dr. Abhay Chand Mall Visen, Right to Be Forgotten with Special Reference to Indian Women: A Legal Study, *International Journal of Humanities and Social Science Invention (IJHSSI)* (accessed Mar. 31, 2026, [10:00 PM]), <https://www.ijhssi.org/papers/vol13%2812%29/13121320.pdf>.

decade-old acquittal record of a private citizen? Or does that interest fade over time, outweighed by the harm caused to the individual's dignity and ability to reintegrate into society? The answer to these questions cannot be a blanket “yes” or “no”. It requires a delicate balancing exercise, as demonstrated by the Delhi High Court in *Jorawar Singh Mundy*, where the court weighed the specific harm to the petitioner against the minimal public interest in the continued accessibility of the information. This points towards the necessity of applying the proportionality test, as laid down in *Puttaswamy*, to adjudicate each claim. This would involve assessing whether the continued availability of the information serves a legitimate aim and whether the restriction on the individual's privacy is a proportionate means of achieving that aim. The debate is currently hyper-focused on the binary choice of “takedown” versus “no takedown.” However, the path forward may lie in exploring less drastic but equally effective remedies. Solutions such as de-indexing from search engines (as ordered in *Mundy*), which reduces accessibility without deleting the source, or the Supreme Court's preferred approach of redaction and masking, offer a middle ground. These methods re-contextualize information rather than erasing it, potentially offering a more sophisticated way to balance the competing rights to privacy and information.

The jurisprudential journey of the Right to be Forgotten in India is a testament to the dynamism of its Constitution. From a distant European

concept, it has evolved into a tangible, albeit contested, facet of the Right to Life and Personal Liberty under Article 21. The expansive interpretation of 'life' to include 'dignity' in cases like *Maneka Gandhi* and *Francis Coralie Mullin* provided the fertile philosophical soil. The landmark *Puttaswamy* judgment planted the definitive constitutional seed, recognizing informational privacy as a fundamental right and giving individuals a claim to control their digital existence. In the ensuing period, the High Courts have tended to this nascent right's chaotic growth, producing a patchwork of conflicting rulings, while the DPDP Act represents the first legislative attempt at structured cultivation.

8. CONCLUSION: BALANCING ACCOUNTABILITY AND REDEMPTION IN THE DIGITAL ERA

It is now clear that the RTBF is an undeniable emanation of Article 21's guarantee of a dignified life in the digital age. However, its future cannot lie in the present state of judicial inconsistency and legislative ambiguity. An absolute right to be forgotten is neither feasible nor desirable, as it would threaten the foundations of free speech and open justice. Conversely, the complete absence of such a right would condemn individuals to a state of digital purgatory, forever shackled to their past.

The path forward lies in the development of a nuanced and proportionate framework, guided by the three-pronged test laid down in Puttaswamy. The adjudication of RTBF claims must evolve into a case-by-case balancing exercise that considers a spectrum of factors: the nature and sensitivity of the information, the public or private status of the individual, the passage of time, and the purpose of the information's continued availability. The crucial distinction must be made between information that serves a legitimate public interest such as accountability, historical record, or public safety and that which merely serves public curiosity. The ultimate constitutional challenge for India is not to choose between remembering and forgetting, but to cultivate a digital society that allows for both accountability and redemption. A well-calibrated Right to be Forgotten, as a facet of Article 21, is not a tool to rewrite history, but a necessary instrument to ensure that every individual has the right to write their own future, free from the indelible ink of a digital past.



BLOG



PRESERVATION OF RAJBANSHI LANGUAGE IN MODERN ERA



- Nayan Chandra Roy¹

ABSTRACT

The abstract highlights a dual approach to preserving the Rajbanshi language, which faces decline due to sociopolitical marginalization, the dominance of major regional languages, limited institutional support, and globalization. It emphasizes that preservation efforts can effectively combine the community's rich traditional culture with contemporary initiatives. Key strategies involve the systematic documentation of folk traditions such as "Bhwaoiya" songs, "Kushan Gaan" plays, ritual songs, folk narratives, and other traditional performances to create

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educational materials and permanent linguistic archives. Such documentation can preserve the language's vocabulary, expressions, cultural practices, history, and collective identity for future generations. At the same time, modern writers, poets, translators, and cultural activists are contributing to the development of contemporary Rajbanshi literature through poetry, fiction, translations, and other written works. The study also emphasizes the importance of incorporating Rajbanshi language and cultural materials into local school curricula, community workshops, and educational programmes to encourage younger generations to learn and use the language. Furthermore, traditional narratives and artistic forms can be adapted into contemporary media, including digital content, short films, theatre productions, and other creative platforms, making the language more accessible and relevant to young audiences. The conclusion stresses the necessity of bridging traditional cultural practices with modern education, literature, technology, and media. A balanced and community-based approach can help maintain Rajbanshi as a living and dynamic language, strengthen cultural identity, and ensure its continued relevance and survival in the modern era. Active participation of younger generations, researchers, and cultural organizations, and greater reorganization through public initiatives can further strengthen these efforts.

KEYWORDS: *Rajbanshi Language, Modern Writers, Traditional,*

Culture, Preservation.

In 1927 research report, "Linguistic Survey of India," by *George Abraham Grierson*² detailed his findings on the language spoken in the Rangpur district and areas to the north and east of the Brahmaputra River. He concluded that this form of speech, commonly known as "*Rajbanshi*" after the local tribe or "*Rangpuri*" after the district, was a "separate dialect" with distinct points of difference, though undoubtedly part of the eastern branch of languages to which Bengali belongs. He also identified a sub-dialect called "*Bahe*" in the Darjeeling Terai influenced by Northern Bengali. While Grierson considered it a dialect of the main Bengali language, other scholars presented different views: Provat Ranjan Sarkar referred to it as "Rangpuri Bangla," and Upendranath Barman, supported by scholars like Hodson, controverted this by claiming it was a pure Aryan language. Ultimately, as summarized by Dr. Charu Chandra Sanyal³, the consensus remains that the Rajbanshis speak a local dialect that is often significantly different from standard Bengali. The Rajbanshi language is spoken most widely in North Bengal, particularly in the districts of Cooch Behar, Jalpaiguri, and Darjeeling (Terai). It is also spoken in parts of Assam, Bihar, Nepal, and Bangladesh, but India's North Bengal region has the highest

² George Abraham Grierson, *Linguistic Survey of India*, Vol. I, pt. I: Introductory (Government of India Central Publication Branch 1927).

³ Charu Chandra Sanyal, *The Rajbansis of North Bengal* 50 (Asiatic Soc'y 1965).

concentration of speakers.

The Rajbanshi language is facing decline in the modern era primarily due to the sociopolitical marginalization, and the major dominance of major regional languages like (Bengali and Assamese), major lack of institutional support (especially in education), and the effects of globalization and associated cultural hegemony. Due to globalization, the Rajbanshi community has experienced cultural dominance from mainstream and global cultures. Traditional practices- such as dress, food habits, religious rituals, and especially indigenous Rajbanshi Language- have lost the significance. The growing influence of English as a global language and the spread of culture have gradually diminished the use and popularity of Rajbanshi language over time.

Today, the tradition is undergoing a revival through modern written works, championed by the first modern and realist poet Panchanan Barma, known for his protest poem "Dangdhari Mao,"⁴. The Rajbanshi people's cultural and linguistic documentation relies on several key resources, starting with the foundational ethnographic work, Charu Chandra Sanyal's 1965 book *The Rajbangsi's of North Bengal* is crucial reading for scholarly conversations about language standardization. Conflicting ideologies were evident among the local elites, and Sanyal's

⁴ Gunajeet Mazumdar, *Topophrenia and Indigenous Belonging: Spatial Memory in Rajbanshi Poetry*, 14(2) RUPKATHA J. ON INTERDISC. STUD. HUM. (2022).

work influenced and shaped their perception of their "preferred" varieties. The Rajbanshi community is introduced from a historical, sociological, and anthropological point of view in Sanyal's 1965 book, which is still regarded as a key source of information about the group. The work offered comprehensive details about the community's material culture, customs and rituals, interpersonal connections, convictions and behaviors, etc. Certain Rajbanshi vocabularies have been introduced along with the description of the traditional huts. While the explanations have been provided in English, the pertinent terms have been mentioned in both Roman and Bangla scripts.

Koch Rajbongshi: Tracing the Roots of an Ancient Indian Community discusses current preservation initiatives while delving into the full historical and cultural background. Additionally, Debojit Saha's ⁵ translation of important texts, like the Srimad Bhagavad Gita, into Rajbanshi shows contemporary attempts to advance the language. And novelist Kamaleswar Sarkar, who ensure the Kamatapuri language continues to evolve, thrive, and assert the community's cultural identity through contemporary fiction and poetry.

It is evident that while many other forms of Rajbanshi were disregarded, a few varieties were selected to be projected as representative forms of Rajbanshi. At this point, it is also possible to take into account the fact

⁵ Debojit Saha, *Rajbanshi Bhasat Sreemadbhagavad Gita* (Purbayon Publication 2023).

that the Rajbanshi community's local cultural elites began to gain prominence in the 1960s with bilingual Rajbanshi-Bangla journals like Uttarbanga, as well as in the 1970s and 1980s with exclusively Rajbanshi journals like Pohati and later in the 1990s with another Rajbanshi journal called Ujani.

Rajbanshi traditional culture's rich tapestry offers a crucial significance foundation for the language's preservation and survival. Specific avenues for action are provided by the thorough explanations of artistic forms such as "Bhwaoiia"⁶ songs which show the subtleties of the everyday life and "Kushan Gaan,"⁷ which is based on the ancient stories of Ramayana and Mahabharata. This preservation is necessary through documentation by recording and transcribing the stories, lyrics, and performance instructions (involving the Gidal, Dohari, and Chhokris), a permanent archive for the language's expression, vocabulary, and the usage can be established. The socio, economic, and cultural themes that are present in these songs can be incorporated into the community workshop, and local school curriculum, giving the young generations an impressive opportunity learn the native tongue. This information can serve as the basis of educational initiatives.

⁶ Sambaru Chandra Mohanta, Bhawaiya, BANGLAPEDIA, <https://en.banglapedia.org/index.php/Bhawaiya> (last visited Aug. 10, 2026).

⁷Kushan, DARICHA FOUNDATION, https://www.daricha.org/sub_genre.aspx?ID=131&Name=Kushan (last visited Aug. 10, 2026).

Finally, innovation is necessary to close the generational divide. The language should be presented in a way that is interesting and pertinent to a modern audience by incorporating the central narratives and social commentary of traditional Alkap and Monai Yatra dramas into contemporary formats, such as digital content, short films, or dynamic theatre productions. This will guarantee the language's survival and continued use in the face of changing cultural trends.

Instead of typical "mantras," the Rajbanshi people use specific songs, prayers, and sometimes "magical charming" or incantations within their traditional practices such as Hudum Deo Puja⁸ During this woman-only ritual to invoke the rain god, the participants sing specific songs in the Rajbanshi language. An example of a chant-like song used is: "*Hudum Deo hudum Deo Ek cholka pani dao Chuay achi nai pani Chuay chute barabani Kala myagh dhola myagh Sodor vai Ekjhak pani dao Gao dhuibar chai.*" (Translation: O God, give us a drop of water, the land is dry. Come dark clouds, come white clouds, give us rain to wash our bodies.

Healing Practices traditionally, folk healing for ailments (including possession by spirits like *Mashan*⁹) involved "exorcist's incantations"

⁸ Mandira Ray & Jaysagar Wary, Hudum Puja: A Religious Festival of the Koch Rajbongshis, 14(4) J. MYTHIC SOC'Y 51, 51–52 (2022).

⁹ Sukumar Sen, The Folk-Literature of Bengal 112–13 (Firma K.L. Mukhopadhyay 1960).

and the use of natural herbs and minerals, demonstrating a belief in the power of spoken words or chants in a ritual context.

While in Agricultural and Life Ceremonies: Prayers and specific customs accompanying agricultural activities (like the *Roagara puja* or *Gotsu Puna* before planting paddy) and life events such as marriage and death ceremonies (*Shraddha*). Specially In marriage ceremonies the traditional song is sung by women.

In conclusion the preservation of Rajbanshi language requires more consideration and proactive approach that bridges its deep historical roots with the demands of the modern world. Despite the language as a distinct dialect by the historical linguistic surveys like Grierson's and facing severe decline due to globalization and the dominance of mainstream languages, the Rajbanshi language possesses a rich cultural foundation essential for its survival.

The key to preservation lies in leveraging existing cultural assets—from "Bhwaoiya" songs to traditional plays and ritual chants—through systematic documentation and integration into education. Contemporary efforts by writers, translators, and activists demonstrate that a modern literary tradition is already emerging. By adapting these traditional narratives into modern formats that appeal to younger generations, the community can ensure the language remains a dynamic, living form of expression, rather than a historical artifact, thereby asserting its unique cultural identity for the future.