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QUEST

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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

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MESSAGE
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DR. 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.

Patron-in-Chief
DR. 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 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 minds of the readers and its reflection spread around society.

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

Dr. Trishna Gurung

Principal-in-Charge,

Indian Institute of Legal Studies

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LONG ARTICLE



“DISOWNMENT AND DISINHERITANCE IN INDIA: EXAMINING THE LEGAL LIMITS OF EXCLUDING HEIRS FROM PROPERTY AND SUCCESSION RIGHTS”



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ABSTRACT

The practice of “disowning” a child through public declarations or newspaper notices is a response to family disputes in India, yet its social significance does not necessarily produce a legal consequence. A declaration of disownment does not, by itself, extinguish a proprietary interest or determine a person’s entitlement to succeed to property. The distinction between social disownment and legal disinheritance raises a question: to what extent can an individual exclude a child, spouse, or other heir from property?

This article examines the legal limits of such exclusion by analyzing the interaction between intestate succession, testamentary disposition, coparcenary rights, personal laws, statutory disqualifications, and maintenance claims. It focuses on the Hindu Succession Act, 1956, including the post-2005 framework governing coparcenary rights and the distinction between an interest in coparcenary property and the power to dispose of separately owned property by Will. The article further considers testamentary freedom in relation to self-acquired property, judicial scrutiny of disputed Wills, the one-third limitation under Muslim law, succession under the Indian Succession Act, 1925, and statutory protections that may survive testamentary exclusion.

The article argues that Indian law does not recognise “disownment” as an independent mechanism for extinguishing succession or proprietary rights. The ability to exclude an heir depends upon the nature of the property, the source of the heir’s legal interest, the applicable succession regime, the validity and scope of testamentary disposition, and specific statutory or personal-law restrictions. The article distinguishes social estrangement and public disownment from legally effective exclusion from property or succession.

KEYWORDS: *Disinheritance; Succession Law; Testamentary Freedom; Hindu Succession Act, 1956; Bedakhali Notice.*

1. INTRODUCTION

In India, the declaration that a child has been “disowned” commonly arises in family disputes involving alleged misconduct, disobedience, marriage against parental wishes, financial disagreements, or neglect of parents. Such declarations are sometimes publicized through newspaper notices, popularly described as bedakhali notices.¹ These notices may create an impression that the parent has legally severed the child’s connection with the family and its property. The legal question, however, is more precise: does a declaration of disownment, by itself, deprive a child of a legally recognise right to property?

The answer requires a distinction between three different concepts. Disownment is primarily a social or familial repudiation of a relationship; disinheritance concerns the exclusion of a person from succession; and the extinguishment of an existing proprietary interest concerns the loss of a right already vested in an individual. These concepts cannot be treated as interchangeable. Under the Hindu Succession Act, 1956, intestate succession is governed by statutory rules, while Section 6 regulates devolution of interests in coparcenary property² and Section 30 recognizes testamentary disposition.³ The Supreme Court’s decision in *Vineeta Sharma v. Rakesh Sharma* further confirmed that a daughter is a coparcener by birth with the same rights and liabilities as a son.⁴

The issue therefore lies at the intersection of property ownership, testamentary freedom, and succession rights. Although an owner may have substantial freedom to determine the destination of property capable of testamentary disposition, that freedom remains subject to the nature of the property, the applicable personal law, the validity of the testamentary instrument, and statutory rules governing succession and disqualification.⁵ This article adopts a doctrinal methodology, examining the relevant statutory provisions, personal-law rules, and Supreme Court jurisprudence to determine the circumstances in which an heir may legally be excluded from property. It argues that Indian law recognizes no general and independent legal power of “disownment”; the ability to exclude an heir depends upon the source and character of the heir’s interest and the legal regime governing succession.

¹ Ram Kumar Parashar v. Ankit Parashar, (2023) Civ. Suit No. 324/2022, slip op. at 2, 5, 8 (S.C.J. (N.E. Dist.), Karkardooma Courts, Delhi Apr. 10, 2023).

² Hindu Succession Act, 1956, § 6, No. 30, Acts of Parliament, 1956 (India).

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

⁴ *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1.

⁵ *Id.* at 9.

The article first distinguishes social disownment from legally effective disinheritance and examines its limited effect on succession. It then considers the distinction between self-acquired and coparcenary property under Hindu law, followed by the requirements and limits of testamentary freedom. The subsequent part examines the position under Muslim, Christian, and Parsi personal-law frameworks together with statutory grounds of disqualification. The final substantive part considers the relationship between property autonomy, maintenance obligations, and practical legal safeguards before the article concludes by identifying the legal limits of excluding heirs from property rights.

2. DISOWNMENT AND DISINHERITANCE: SEPARATING SOCIAL PRACTICE FROM LEGAL EFFECT

The legal discussion of disownment must begin by distinguishing a social declaration of estrangement from a legally effective exclusion from succession. In India, a parent may publicly declare that a child has been disowned, including through a newspaper notice popularly described as a *bedakhali* notice. Such a declaration may communicate the parent's intention to sever familial relations, but it does not, by itself, constitute an independent legal mechanism for extinguishing the child's inheritance rights. The decisive question is whether the applicable law permits the child's legal interest in the particular property to be excluded.

Disownment and disinheritance are therefore distinct concepts. Disownment is primarily social and familial, whereas disinheritance concerns the legal exclusion of a potential successor. The latter must operate through a legally recognised mechanism, such as the rules of intestate succession, a valid testamentary disposition, or a statutory disqualification. A public declaration cannot, by itself, override a proprietary interest that has already vested or substitute for the statutory scheme governing succession.

The position is particularly clear in cases of intestate succession, where the deceased leaves no valid Will. Under Section 8 of the Hindu Succession Act, 1956, the property of a Hindu male dying intestate devolves first upon the Class I heirs,⁶ while Section 9 provides that Class I heirs succeed simultaneously and exclude the other classes.⁷ The Schedule expressly includes the son and daughter of the intestate among the Class I heirs. Consequently, a parent's prior

⁶ Hindu Succession Act, 1956, § 8, No. 30, Acts of Parliament, 1956 (India).

⁷ Hindu Succession Act, 1956, § 9, No. 30, Acts of Parliament, 1956 (India).

declaration that a son or daughter has been “disowned” does not, without a legally recognised ground of exclusion, alter the statutory order of succession.

Nor should succession rights be conflated with maintenance obligations. Section 4 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 establishes a statutory framework for maintenance claims by eligible parents and senior citizens against specified children or relatives.⁸ Section 23 addresses a different situation: it applies where a senior citizen has transferred property by gift or otherwise subject to the condition that the transferee provide the transferor with “basic amenities and basic physical needs,” and the transferee thereafter refuses or fails to fulfil that condition.⁹ The Supreme Court in *Sudesh Chhikara v. Ramti Devi* emphasised that the statutory requirements of Section 23(1) must be satisfied before the Tribunal can declare such a transfer void.¹⁰ Similarly, *S. Vanitha v. Deputy Commissioner* distinguished the operation of Sections 23(1)¹¹ and 23(2)¹², recognising that the former concerns a conditional transfer by a senior citizen, while the latter protects an existing right to receive maintenance out of an estate.¹³ These provisions therefore illustrate that succession and maintenance operate in distinct legal spheres; neither is altered merely because a parent has socially declared a child to be disowned.

3. PROPERTY, SUCCESSION AND THE LIMITS OF EXCLUSION UNDER HINDU LAW

The legal possibility of excluding an heir cannot be determined merely by asking whether the deceased was the parent or whether the heir was a son or daughter. The first question is the nature of the property and the legal interest, if any, possessed by the alleged heir. This distinction is fundamental under Hindu law because the position concerning self-acquired or separate property differs materially from that concerning Mitakshara coparcenary property.

3.1 Nature of Property and the Source of the Heir’s Interest

In the case of self-acquired or separate property, the owner ordinarily possesses a substantially wider power of disposition. Such property does not, merely because the owner has children,

⁸ Maintenance and Welfare of Parents and Senior Citizens Act, § 4, Act No. 56, Act of Parliament, 2007, (India).

⁹ Maintenance and Welfare of Parents and Senior Citizens Act, § 23, Act No. 56, Act of Parliament, 2007, (India).

¹⁰ *Sudesh Chhikara v. Ramti Devi*, (2022) SCC OnLine SC 1684.

¹¹ Maintenance and Welfare of Parents and Senior Citizens Act, § 23(1), Act No. 56, Act of Parliament, 2007, (India).

¹² Maintenance and Welfare of Parents and Senior Citizens Act, § 23(2), Act No. 56, Act of Parliament, 2007, (India).

¹³ *S. Vanitha v. Deputy Commissioner*, (2021) 15 SCC 730.

automatically create a present coparcenary interest in those children. Where the owner dies intestate, however, the property devolves according to the applicable rules of succession. In *Arunachala Gounder (Dead) by LRs v. Ponnusamy*, the Supreme Court, in the context of a pre-1956 intestacy, considered the devolution of the self-acquired property of a Hindu male under the applicable customary law and recognised inheritance by a daughter rather than devolution by survivorship.¹⁴ Thus, “self-acquired” does not mean that children have no possible inheritance rights; rather, the nature and source of those rights must be distinguished from a birth-based coparcenary interest.

The position is substantially different in a Mitakshara coparcenary. Section 6 of the Hindu Succession Act, 1956, as substituted by the Hindu Succession (Amendment) Act, 2005, provides that the daughter of a coparcener becomes a coparcener by birth in the same manner as a son and possesses the same rights and liabilities in the coparcenary property. Where a person therefore possesses a legally recognised coparcenary interest, that interest cannot be extinguished merely by a unilateral declaration that the person has been “disowned.”

3.2 The 2005 Amendment and the Rights of Daughters

The 2005 amendment fundamentally altered the gendered structure of the *Mitakshara* coparcenary. In *Vineeta Sharma v. Rakesh Sharma*, the Supreme Court held that the substituted Section 6 confers coparcenary status upon a daughter by birth, whether born before or after the amendment, in the same manner as a son.¹⁵ The decision also resolved the conflict created by earlier authorities: it overruled *Prakash v. Phulavati*,¹⁶ and partly overruled *Danamma v. Amar*,¹⁷ to the extent that the latter was inconsistent with the governing principle. The Court further clarified that the father need not have been alive on September 9, 2005, for the daughter to acquire coparcenary status, subject to the statutory protection for dispositions, alienations, partitions, or testamentary dispositions completed before December 20, 2004.¹⁸

The Court also addressed the evidentiary significance of an alleged prior partition. In light of Section 6(5), a plea of oral partition cannot ordinarily be accepted on the basis of oral evidence alone; a registered partition deed or a decree of a court constitutes the recognised mode, although exceptional cases supported by public documents may be considered. This safeguard

¹⁴ *Arunachala Gounder (Dead) by LRs v. Ponnusamy*, (2022) 11 SCC 162.

¹⁵ *Id.* at 9.

¹⁶ *Prakash v. Phulavati*, (2016) 2 SCC 36.

¹⁷ *Danamma v. Amar*, (2018) 3 SCC 343.

¹⁸ *Id.* at 9.

is significant because an unsupported claim of prior partition cannot ordinarily be used to defeat a daughter's statutory coparcenary right.

The principle is directly relevant to disinheritance. A daughter who is a coparcener does not merely possess an expectation that her father may leave property to her upon his death; she possesses a legally recognised interest arising from coparcenary status. Familial estrangement, therefore, cannot by itself extinguish that interest.

3.3 The Limits of the “Ancestral Property Barrier”

It would nevertheless be inaccurate to state that a Hindu parent can never make a testamentary disposition affecting coparcenary property. Section 6(3) provides for the devolution of a deceased coparcener's interest by testamentary or intestate succession, while Section 30 recognises the testamentary disposition of an interest in *Mitakshara* coparcenary property.¹⁹ The legal limit therefore concerns the extent of the interest that the testator is legally capable of disposing of, rather than a blanket prohibition on testamentary disposition.

This distinction marks the precise boundary between what disinheritance can and cannot achieve under *Mitakshara* law. A parent cannot use the concept of “disownment” to appropriate or extinguish an independent coparcenary interest already belonging to another coparcener. At the same time, Section 30 permits a coparcener to bequeath his own undivided interest in coparcenary property by Will. Consequently, a father may, subject to the statutory framework, testamentarily dispose of the whole of his own undivided coparcenary interest, potentially leaving a son or daughter with only the share independently vested in that child as a coparcener. Indian succession law therefore places the emphasis not upon the parent's personal intention alone, but upon the nature of the property and the legal source and extent of the heir's interest.

4. TESTAMENTARY FREEDOM AND ITS LIMITS

The legal position changes considerably where the property is capable of testamentary disposition. Testamentary freedom permits a person, through a valid Will, to determine the devolution of property after death rather than leaving its distribution entirely to the rules of intestate succession. For Hindus, Section 30 of the Hindu Succession Act, 1956 recognises the power to dispose by Will of property capable of being so disposed of, while Sections 57²⁰ and 58²¹ of the Indian Succession Act, 1925 determine the application of its testamentary provisions

¹⁹ Hindu Succession Act, 1956, § 6(3), No. 30, Act of Parliament 1956, (India).

²⁰ Indian Succession Act, 1925, § 57, No. 39, Acts of Parliament, 1925 (India).

²¹ Indian Succession Act, 1925, § 58, No. 39, Acts of Parliament, 1925 (India).

to specified classes of persons and Wills. Thus, the existence of children or other natural heirs does not, by itself, create an absolute entitlement to the owner's separate property during the owner's lifetime.

The distinction between an expectation of inheritance and an existing proprietary right is therefore critical. A child may be a statutory heir if the parent dies intestate, but that does not necessarily mean that the child presently owns a share in the parent's separate property. Subject to the applicable personal law and the nature of the property, a testator may therefore choose one beneficiary over another or exclude a potential heir altogether. Testamentary freedom, however, is conditioned upon testamentary capacity and compliance with prescribed formalities. Section 59 of the Indian Succession Act requires the testator to be of sound mind and not a minor,²² while Section 63 prescribes the requirements for execution and attestation of an unprivileged Will.²³ Section 61 further renders a Will, or any part of it, void where its making has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator.²⁴

The exercise of testamentary freedom nevertheless remains subject to judicial scrutiny when the validity of a Will is challenged. In *H. Venkatachala Iyengar v. B.N. Thimmajamma*, the Supreme Court held that the propounder must establish due execution and the testator's sound and disposing state of mind; where suspicious circumstances surround the Will, the propounder bears the burden of satisfactorily removing the legitimate suspicion.²⁵ Such circumstances may include a doubtful signature, a feeble or impaired state of mind, the active participation of a beneficiary in procuring the Will, or an apparently unnatural disposition that raises a legitimate doubt concerning the testator's free agency.²⁶

Disinheritance of a natural heir does not, however, by itself invalidate a Will. In *Kavita Kanwar v. Pamela Mehta*, the Supreme Court recognised that the court's task is to determine whether the Will was genuinely executed by the testator with a free and sound disposing mind, rather than to assess whether the distribution was fair or equitable among the testator's children.²⁷

The exclusion of a natural heir may nevertheless assume significance when considered with other suspicious circumstances surrounding execution. Testamentary freedom in Indian law is therefore neither an unrestricted power to defeat every succession claim nor a requirement that

²² Indian Succession Act, 1925, § 59, No. 39, Acts of Parliament, 1925 (India).

²³ Indian Succession Act, 1925, § 63, No. 39, Acts of Parliament, 1925 (India).

²⁴ Indian Succession Act, 1925, § 61, No. 39, Acts of Parliament, 1925 (India).

²⁵ *H. Venkatachala Iyengar v. B.N. Thimmajamma*, AIR 1959 SC 443.

²⁶ *Jaswant Kaur v. Amrit Kaur*, (1977) 1 SCC 369.

²⁷ *Kavita Kanwar v. Pamela Mehta*, (2021) 11 SCC 209.

property be distributed equally among family members. Its limits lie in the testator's legal capacity, the nature of the property capable of disposition, and the validity of the instrument through which exclusion is attempted.

5. PERSONAL LAW, STATUTORY DISQUALIFICATIONS AND THE UNEVEN NATURE OF DISINHERITANCE

India does not have a single, uniform law governing the exclusion of heirs from property. The legal consequences of disinheritance depend substantially upon the succession regime applicable to the deceased. The contrast between Hindu, Muslim, Christian and Parsi succession demonstrates that testamentary freedom is shaped not merely by ownership of property but also by the personal law and statutory framework governing succession.

5.1 Muslim Law and the One-Third Limitation

Muslim succession does not recognise the Mitakshara concept of a coparcenary interest arising by birth. Succession opens upon the death of the deceased, and the estate devolves according to the applicable rules of Muslim personal law. The testamentary power of a Muslim is, however, traditionally restricted. A Muslim may generally make a wasiyat in respect of no more than one-third of the surplus estate remaining after payment of funeral expenses and debts. A bequest exceeding the legal third cannot ordinarily take effect without the consent of the heirs after the testator's death.²⁸

The rules concerning a bequest to an heir require an additional qualification. Under the Sunni, particularly Hanafi, position, a bequest to an heir is generally ineffective without the consent of the other heirs after the testator's death. The Shia position differs: a bequest to an heir within the permissible one-third may operate without such consent, while consent becomes relevant where the testamentary disposition exceeds the legal third.²⁹ The distinction is significant because the extent to which a Muslim can exclude or rearrange the interests of existing heirs is not uniform even within Muslim personal law.

A recent decision of the Jharkhand High Court illustrates the operation of these restrictions. In *Md. Akhtar v. Md. Mokhtar*, the court considered registered Wills executed by a Muslim testator in favour of one of his sons and discussed Articles 117 and 118 of the principles of Mahomedan law concerning bequests to heirs and the one-third limitation. The court ultimately treated the

²⁸ D.F. MULLA, PRINCIPLES OF MAHOMEDAN LAW 117–18 (23d ed. 2023).

²⁹ *Husaini Begam v. Muhammad Mehdi*, (1927) 49 All. 547.

Wills as not void *ab initio*, particularly in view of the surrounding circumstances and the absence of a timely challenge to them.³⁰ The decision therefore illustrates the importance of distinguishing between the substantive limits upon testamentary power and the legal consequences of failing to challenge a testamentary instrument.

5.2 Christian and Parsi Succession

The position under the Indian Succession Act, 1925 further demonstrates the uneven character of Indian succession law.³¹ Part V contains rules governing intestate succession, including separate provisions for intestates other than Parsis and special rules for Parsi intestates. Testamentary succession, however, is governed principally by Part VI, subject to its statutory exclusions and qualifications. Section 59 provides that every person of sound mind who is not a minor may dispose of property by Will. Unlike Muslim law, the Act does not impose a general one-third ceiling on testamentary dispositions comparable to the traditional Muslim rule. Consequently, where property is legally capable of testamentary disposition and the Will satisfies the applicable requirements, a testator governed by the Act has considerably wider scope to exclude a natural heir from testamentary succession.

This does not mean that every disinheritance under the Indian Succession Act is automatically valid. Testamentary capacity, the nature of the property, compliance with statutory requirements, and the validity of the Will remain relevant. The important distinction is that exclusion is principally tested through the law governing testamentary dispositions rather than through a general doctrine of forced heirship comparable to the Muslim one-third limitation.

5.3 Succession and the Special Marriage Act, 1954

The succession regime may also be affected by the legal circumstances of marriage. Section 21 of the Special Marriage Act, 1954 provides that succession to the property of a person whose marriage is solemnized under the Act,³² and to the property of the issue of such marriage, is regulated by the Indian Succession Act, 1925, subject to the statutory qualification contained in Section 21A.³³ Thus, a marriage solemnized under the Special Marriage Act can alter the succession framework otherwise applicable to the parties and may therefore affect the extent of testamentary freedom and inheritance rights. This is particularly relevant where succession is considered in the context of marriage across religious or familial boundaries. The provision consequently demonstrates that the applicable succession regime may depend not only upon

³⁰ Md. Akhtar v. Md. Mokhtar, (2025) S.A. No. 118 of 2019, 2025: JHHC:26898 (Jharkhand H.C. Sept. 4, 2025).

³¹ Indian Succession Act, 1925, No. 39, Acts of Parliament, 1925 (India).

³² Special Marriage Act, 1954, § 21, No. 43, Acts of Parliament, 1954 (India).

³³ Special Marriage Act, 1954, § 21A, No. 43, Acts of Parliament, 1954 (India).

personal identity but also upon the statutory circumstances in which the marriage was solemnized.

5.4 Statutory Disqualifications under Hindu Law

The Hindu Succession Act, 1956 illustrates a different model in which certain grounds of exclusion are expressly recognised by statute. Section 25 disqualifies a person who commits or abets the murder of the person whose property is in question from inheriting that property.³⁴ The provision reflects a statutory rule of succession based upon the principle that a person should not benefit from the death that occasions the succession.

Section 26 calls for closer reading. Conversion by a Hindu does not, by itself, disqualify the convert from inheriting property. The provision instead concerns children born to a Hindu after conversion and their descendants. Such descendants are disqualified from inheriting the property of their Hindu relatives unless they are Hindus when succession opens.³⁵ Section 27 further provides that where an heir is disqualified under the Act, the property devolves as though that person had died before the intestate.³⁶

Most importantly, Section 28 places a statutory limit upon the creation of additional grounds of disqualification. It provides that no person shall be disqualified from succeeding to property on any ground except those expressly recognised by the Act.³⁷ The provision is particularly significant in the context of disownment. Estrangement, parental displeasure, refusal to maintain contact, or a unilateral declaration of disownment does not, by itself, constitute an independent statutory ground for defeating succession under the Hindu Succession Act.

5.5 The Significance of Legal Disqualification

The statutory scheme therefore draws a clear distinction between personal repudiation and legal unworthiness. An individual may be excluded from succession where the governing law expressly recognises a ground of disqualification, but a private declaration cannot manufacture an equivalent legal disability. At the same time, statutory disqualification must be distinguished from testamentary exclusion: a person may remain an heir under intestate succession while receiving nothing under a valid Will concerning property that is legally capable of testamentary disposition.³⁸

³⁴ Hindu Succession Act, 1956, § 25, No. 30, Act of Parliament, 1956, (India).

³⁵ Hindu Succession Act, 1956, § 26, No. 30, Act of Parliament, 1956, (India).

³⁶ Hindu Succession Act, 1956, § 27, No. 30, Act of Parliament, 1956, (India).

³⁷ Hindu Succession Act, 1956, § 28, No. 30, Act of Parliament, 1956, (India).

³⁸ *Id.* at 9.

The practical significance is that the legal effect of “disowning” a child depends upon the property concerned, the applicable succession regime, and the legal instrument or rule relied upon. A declaration of familial repudiation is therefore not, by itself, a substitute for a legally recognised mode of altering proprietary or succession rights.

5.6 Lawful Mechanisms for Altering an Heir's Interest

The law does, however, recognise mechanisms through which proprietary or succession interests may be altered. First, a valid Will may govern property capable of testamentary disposition, subject to the personal law and statutory restrictions applicable to the testator. Secondly, where a person already possesses a proprietary interest, a release or relinquishment may, depending upon the nature of the interest and the property involved, operate to alter that person's rights; where registration is required by law, the necessary formalities must be satisfied.³⁹ Thirdly, family arrangements may settle competing claims among members of a family. The Supreme Court in *Kale v. Deputy Director of Consolidation* recognised the validity of bona fide family arrangements intended to resolve existing or possible disputes and emphasised that a genuine family arrangement may be upheld even though its object is to preserve family peace rather than to create a new title.⁴⁰ Finally, partition may alter the extent and character of existing proprietary interests by separating the interests of persons who previously held property jointly.

These mechanisms are fundamentally different from a unilateral declaration of disownment. They derive their legal effect from recognised rules governing testamentary disposition, proprietary transfer, settlement, or succession. The central distinction is therefore not between a parent who wishes to exclude a child and one who does not, but between a personal declaration that has no independent legal effect and a legally recognised act capable of altering rights in property.

6. CRITICAL ANALYSIS AND THE WAY FORWARD

The legal framework examined above reveals that the central difficulty is not simply whether Indian law permits or prohibits disinheritance. The more fundamental difficulty lies in the frequent conflation of disownment, ownership, succession, proprietary rights, and maintenance. Although these concepts commonly arise together in family disputes, they produce distinct legal consequences. A parent may sever familial relations with a child without

³⁹ Registration Act, 1908, § 17(1)(b), No. 16, Acts of Parliament, 1908 (India).

⁴⁰ *Kale v. Deputy Director of Consolidation*, (1976) 3 SCC 119.

thereby extinguishing the child's statutory position as an heir; conversely, a child may be a legal heir without possessing a present proprietary interest in the parent's separate property. Similarly, exclusion from testamentary succession does not necessarily extinguish an independent statutory claim to maintenance.

6.1 Property Autonomy Versus Family Protection

There is a legitimate basis for recognising testamentary autonomy. Subject to the applicable succession regime, an owner ordinarily has the power to determine the devolution of property that is legally capable of testamentary disposition. Unequal distribution may arise from legitimate circumstances, including estrangement, previous provision made for a particular heir, differing financial circumstances, or a desire to provide for another dependent. The law therefore need not equate testamentary justice with equal distribution.

Testamentary autonomy, however, depends upon the existence of a genuine and legally valid testamentary intention. The Supreme Court has consistently required the propounder of a Will to establish its due execution and testamentary capacity and, where suspicious circumstances exist, to satisfy the court that the Will represents the free intention of the testator.⁴¹ The concern is consequently not unequal distribution as such, but whether the instrument was produced through a legally valid exercise of testamentary choice.

The position becomes more complex where inheritance intersects with maintenance. Sections 20⁴² and 22 of the Hindu Adoptions and Maintenance Act, 1956 recognise maintenance rights in defined circumstances. Most significantly, Section 22 provides that where a dependant of a deceased Hindu receives no share in the estate by testamentary or intestate succession, the dependant may, subject to the Act, claim maintenance from persons who take the estate, with liability proportionate to the value of the estate received.⁴³ Thus, exclusion from inheritance and extinction of maintenance rights are not necessarily equivalent consequences. A Will may determine who receives the estate, but it cannot, where the statutory conditions of Section 22 are satisfied, simply eliminate an independent maintenance claim recognised by law.

6.2 The Real Legal Problem

The principal difficulty, therefore, is the legal ambiguity surrounding the expression “disownment.” In ordinary usage, a declaration that a child has been disowned may be understood as terminating the child's legal relationship with the parent. Indian succession law

⁴¹ Kavita Kanwar v. Pamela Mehta, (2021) 11 SCC 209.

⁴² Hindu Adoptions and Maintenance Act, 1956, § 20, No. 78, Acts of Parliament, 1956 (India).

⁴³ Hindu Adoptions and Maintenance Act, 1956, § 22, No. 78, Acts of Parliament, 1956 (India).

does not give such a declaration that automatic effect. Whether a person has a present proprietary interest, an intestate succession right, a testamentary entitlement, or a maintenance claim must be determined separately under the governing law.

The distinction is particularly important because the same family dispute may involve different categories of property and different legal mechanisms. A child's interest in coparcenary property cannot simply be equated with an expectation of inheriting a parent's separate property. Likewise, a statutory maintenance entitlement cannot be treated as identical to an inheritance right. The legal consequence of exclusion must therefore be examined through the specific source of the right rather than through the social expression of “disownment.”

6.3 The Way Forward

The appropriate direction for reform is greater legal clarity and procedural protection, rather than the immediate creation of a uniform system of forced heirship. Indian succession law already contains different models of testamentary freedom, statutory disqualification, maintenance protection, and proprietary entitlement. Reform should therefore address the points at which misunderstanding and disputes most frequently arise.

First, published disownment notices should be accompanied by a standard legal disclaimer stating that publication of such a notice does not, by itself, extinguish proprietary rights, alter statutory succession, or create a statutory disqualification from inheritance. Such a requirement could be considered through an appropriate regulatory or legislative mechanism. The purpose would not be to prevent families from publicly recording their estrangement, but to prevent a public notice from being mistaken for a legally operative instrument.

Second, the law should encourage greater formalisation and evidentiary reliability in the execution of Wills. The Registration Act, 1908,⁴⁴ permits registration of Wills, while preserving the distinction between registration and substantive validity.⁴⁵ A possible reform would be to examine whether a registered Will that substantially excludes natural heirs should receive a defined evidentiary advantage, subject to rebuttal, rather than treating registration as conclusive proof of validity. Such a measure would require careful legislative design because registration by itself does not establish testamentary capacity, absence of undue influence, or compliance with every requirement governing a valid Will.

Third, where an elderly or particularly vulnerable testator executes a Will that substantially departs from the expected pattern of succession, the law could consider permitting or

⁴⁴ Registration Act, 1908, No. 16, Acts of Parliament, 1908 (India).

⁴⁵ Registration Act, 1908, § 18(e), No. 16, Acts of Parliament, 1908 (India).

encouraging contemporaneous audio-visual documentation of execution and attestation. Such documentation would not replace the statutory requirements for a Will. Instead, it could provide additional evidence concerning the identity of the testator, voluntariness, capacity, and the circumstances surrounding execution. This would be particularly useful where the Will is subsequently challenged on grounds of coercion, undue influence, or suspicious circumstances. Fourth, reform should strengthen the distinction between inheritance and family support. Section 22 of the Hindu Adoptions and Maintenance Act already demonstrates that the law can preserve a maintenance claim even where a dependent does not receive the estate by succession.⁴⁶ Rather than introducing an unrestricted forced-heirship regime, Parliament could examine whether comparable minimum protections are required in other succession contexts for genuinely dependent family members. Any such reform would need to define the class of protected dependent's, the circumstances giving rise to relief, and the extent to which testamentary freedom may be limited.

Finally, reform should build upon existing legal scholarship concerning succession and family property. The Law Commission of India's work has recognised the continuing importance of family arrangements and the need to clarify their relationship with succession and partition. Its 208th Report specifically examined the treatment of oral partition and family arrangements under Section 6 of the Hindu Succession Act, while the 174th Report addressed broader reforms concerning women's property rights under Hindu law.⁴⁷ The Commission's 2018 Consultation Paper on Reform of Family Law similarly demonstrates the broader need to examine family-law rules across personal and secular frameworks rather than treating individual succession provisions in isolation.⁴⁸

The way forward, therefore, lies not in converting disownment into a legally recognised status, but in ensuring that the legal consequences of estrangement are accurately separated from those of succession, ownership, testamentary disposition, and maintenance. Clearer public information, stronger evidentiary safeguards for vulnerable testators, and carefully defined statutory protections for genuine dependants can reduce disputes while preserving the lawful autonomy of property owners.

⁴⁶ *Id.* at 19.

⁴⁷ LAW COMM'N OF INDIA, *PROPERTY RIGHTS OF WOMEN: PROPOSED REFORMS UNDER THE HINDU LAW*, REP. NO. 174 (2000), https://lawcommissionofindia.nic.in/report_fifteenth/.

⁴⁸ LAW COMM'N OF INDIA, *CONSULTATION PAPER ON REFORM OF FAMILY LAW* (2018), <https://lawcommissionofindia.nic.in/2018071896/>.

7. CONCLUSION

The legal position examined in this article demonstrates that “disownment” is not an independent legal mechanism capable of erasing an heir from India's succession framework. A parent's public declaration of severing relations, including through a newspaper notice, does not by itself determine succession or extinguish proprietary rights. The legal effect of excluding a family member depends instead upon the nature of the property, the applicable personal or statutory succession regime, the existence and validity of a testamentary disposition, and any expressly recognised ground of disqualification.

Indian law nevertheless recognises substantial testamentary autonomy, particularly in relation to property that is exclusively owned and legally capable of testamentary disposition. That autonomy is not unlimited. It cannot, by itself, extinguish an existing proprietary interest such as a legally recognised coparcenary interest, override mandatory succession rules, or necessarily defeat an independent statutory claim to maintenance. The distinction between inheritance and maintenance is particularly important because exclusion from an estate does not invariably extinguish every legal claim that a dependant may have against it.

The central legal inquiry, therefore, is not merely whether a parent has “disowned” a child. It is what legal right the child possesses, how that right arose, what property is involved, and whether the person seeking to exclude the child possesses the legal power to affect that right. Indian law consequently distinguishes social estrangement from legally effective disinheritance and treats the latter as dependent upon recognised rules of succession, property, testamentary disposition, or statutory disqualification.

This analysis is primarily concerned with general principles of succession, testamentary disposition, disqualification, and maintenance. It does not undertake a detailed examination of agricultural land, tenancy interests, or State-specific land and tenancy laws, which may prescribe special rules affecting the devolution or transfer of agricultural holdings. The conclusions should therefore not be understood as applying uniformly to every category of land or succession dispute across India.

“BODILY AUTONOMY VS. RELIGIOUS FREEDOM: A CONSTITUTIONAL ANALYSIS OF THE FEMALE GENITAL MUTILATION DEBATE”



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ABSTRACT

This article engages with the complicated constitutional knot in India around the practice of Female Genital Mutilation/Cutting (FGM/C) or khafz among the Dawoodi Bohra community. The fundamental rights to life, dignity and bodily integrity under Article 21 are in contradiction with the rights to religious freedom and denominational management under Articles 25 and 26. The non-therapeutic alteration of highly innervated female genitalia results in serious physical and psychological damage, despite advocates often referring to the practice as a harmless symbolic nick, like male circumcision. But present medical science and neuroanatomy dispute the resemblance.

As FGM/C is invariably done on kids who do not consent, the state has a legal duty to intervene under parens patriae principle. The analysis also criticizes the traditional approach of the Supreme Court to Essential Religious Practices (ERP), which demands that secular judges decide on religious issues and even help to defend harmful practices if they are seen to be dictated by scripture. This article contends that to counter this susceptibility, gender equity must be made a priority and the concept of “Constitutional Morality” must replace patriarchal cultural relativism. The report ends with a recommendation that India should pass specific anti-FGM legislation based on reference hearings and international human rights frameworks, in the context of the May 2026 Sabarimala Asserting that the sovereignty of the physical body is the ultimate basis of all constitutional rights.

KEYWORDS: *Female Genital Mutilation, Bodily Autonomy, Constitutional Morality, Essential Religious Practices, Dawoodi Bohra.*

1. THE CORE CONSTITUTIONAL CONFLICT

It is a universally acknowledged truth, though perhaps whispered only in the politest and insulated of drawing rooms, that the civilized veneer of society often serves to mask the most ruthless enforcement of tradition. We pride ourselves on the elegance of our constitutional frameworks, yet politely turn a blind eye to the profound suffering required to maintain the social order. But behind those polite doors, tradition sometimes has teeth. Imagine, for a moment, the quiet, creeping terror of being a six- or seven-year-old girl. You are in your own home, surrounded by the family that is supposed to protect you from the monsters of the world, only to realize the adults you trust most are holding you down to inflict a sudden, bloody, and irreversible trauma upon your most intimate anatomy.¹

Yet, to look at the perpetrators of this act is to witness a profound human tragedy. They do not wield the blade out of sheer malice, but out of a heavy, inescapable devotion to the cosmic order of their world. Within the Dawoodi Bohra community—a socio-economically prominent sub-sect of Shia Muslims—this coming-of-age ceremony, known as khatna or khafz, binds generations together in an obligatory cycle of spiritual purification and patriarchal control.² They injure their children because they believe the survival of their faith demands it.

This brings us to a fascinating, highly volatile tipping point in modern jurisprudence. How does a secular democracy solve a problem where the mechanics of faith require the mechanics of mutilation? The Indian legal system has built an extraordinary, fiercely contested frontier right at the intersection of two competing constitutional promises. On one side, we have the fundamental right to life, dignity, and bodily autonomy guaranteed under Article 21.³ On the other, the right to freely profess and manage religious affairs under Articles 25⁴ and 26.⁵ Catalyzed by the 2017 Sunita Tiwari PIL and subsequently clubbed with the massive Sabarimala review petitions, this debate forces a judicial reckoning with the limits of cultural relativism.⁶ Following marathon hearings that concluded before a nine-judge Constitution Bench in May 2026, the resolution of this conflict carries immense implications for gender

¹ SAHIYO, KHATNA, KHAFZ OR FEMALE GENITAL CUTTING (Sahiyo 2025).

² RUCHI KUMAR, IN INDIA'S BOHRA COMMUNITY, A BATTLE OVER GENITAL MUTILATION, UNDARK (Mar. 10, 2021), <https://undark.org/2021/03/10/india-battle-over-female-genital-mutilation/> (last visited Sept. 10, 2026).

³ INDIA CONST. art. 21.

⁴ INDIA CONST. art. 25.

⁵ INDIA CONST. art. 26.

⁶ Sunita Tiwari v. Union of India, Writ Petition (Crl.) No. 286 of 2017.

justice, child rights, and the defining boundaries of a pluralistic society.⁷ You cannot have it both ways. A country cannot promise to protect the physical bodies of its citizens while simultaneously allowing religious groups to permanently cut the genitals of little girls. The Supreme Court has to decide what matters more: a child's right to be safe from harm, or a community's right to practice its traditions.⁸

2. MEDICAL REALITIES VS. RELIGIOUS DEFENSE

It is a peculiar habit of polite society to cloak the most profound physical traumas in the gentlest of euphemisms. When defenders of the practice—prominently represented by community groups such as the Dawoodi Bohra Women's Association for Religious Freedom—speak of *khafz*, they do not speak of mutilation.⁹ Rather, they present it as a benign, symbolic "nick," a mere tidying up of the prepuce that serves as a harmless, feminine equivalent to male circumcision.¹⁰ It is an elegant defense, perfectly designed to neutralize the uncomfortable, glaring language of human rights and reposition the act simply as a protected religious observance.

But there is a fatal flaw in this neatly tailored narrative. It collides entirely with modern neuroanatomy. To understand the true nature of what is being excised, we must look not to theological texts, but to synchrotron particle accelerators and 3D mapping technology.¹¹ For centuries, the anatomical reality of female genitalia was shrouded in a kind of willful medical ignorance. But recent scientific advancements have revealed a biological masterpiece. The clitoris is an extraordinarily complex organ pulsing with over 10,000 sensory nerve fibers—making it significantly more densely innervated than the male anatomy. Fed by the posterior

⁷ GURSIMRAN KAUR BAKSHI, SABARIMALA REFERENCE: SUPREME COURT 9-JUDGE BENCH RESERVES VERDICT AFTER 16 DAYS HEARING, LIVE LAW (May 14, 2026), <https://www.livelaw.in/top-stories/supreme-court-sabarimala-reference-verdict-reserved-534228> (last visited Sept. 10, 2026).

⁸ QUEST FOR WOMEN'S RIGHT TO BODILY INTEGRITY: REFLECTIONS ON RECENT JUDICIAL INROADS IN INDIA, ECON. & POL. WKLY., <https://www.epw.in/engage/article/quest-womens-right-bodily-integrity-judicial-inroads> (last visited Sept. 10, 2026).

⁹ THE PROSECUTION OF DAWOODI BOHRA WOMEN: SOME REASONABLE DOUBTS, KNOWLEDGE UCHICAGO, <https://knowledge.uchicago.edu/record/5065/files/Prosecution-of-Dawoodi-Bohra-women-some-reasonable-doubts.pdf> (last visited Sept. 10, 2026).

¹⁰ LAKSHMI ANANTNARAYAN ET AL., THE CLITORAL HOOD A CONTESTED SITE, FGM/C RSCH. INITIATIVE (2018), https://www.fgmcri.org/media/uploads/Academic%20Papers/anantnarayan_india_2018.pdf (last visited Sept. 10, 2026).

¹¹ SCIENTISTS JUST MADE THE MOST COMPLETE MAP OF THE CLITORIS'S SENSORY NERVE NETWORK. HERE'S WHAT THEY FOUND, SMITHSONIAN MAG., <https://www.smithsonianmag.com/smart-news/scientists-just-made-the-most-complete-map-of-the-clitoris-sensory-nerve-network-heres-what-found-180988463/> (last visited Sept. 10, 2026).

labial nerve and the dorsal nerve, it is a highly sensitive network directly responsible for female sexual arousal and function.

Thus, the World Health Organization takes a rather less romantic view of the "symbolic nick." The WHO unequivocally defines the practice as a severe violation of the human rights of girls and women, constituting an extreme form of discrimination.¹² While religious defenders insist the standard practice is merely a Type 1a procedure (the removal of the clitoral hood), survivor testimonies and global medical examinations frequently reveal a far grimmer reality: Type 1b, the excision of the clitoris itself.

The consequences of slicing into this highly sensitive neural network are neither symbolic nor fleeting. The immediate physiological risks include hemorrhage, systemic infection, and the kind of extreme pain that induces bodily shock.¹³ In the long term, a child subjected to this procedure faces a lifetime shadowed by dyspareunia (painful sexual intercourse), obstetric complications, and profound sexual dysfunction caused by the severing of critical nerve pathways.

The trauma also leaves devastating psychological scars, frequently manifesting in adulthood as post-traumatic stress disorder, chronic anxiety, and a deep sense of betrayal by the family members who orchestrated the cutting.¹⁴ The illusion of the "harmless prick" is finally, thoroughly shattered by the emerging field of clitoral reconstructive surgery. Clinical studies using Semmes-Weinstein monofilament tests have proven that survivors suffer severe, measurable sensory deficits that require complex surgical intervention to repair.¹⁵ During the 2026 Supreme Court hearings, the judges looked at these medical facts and made a clear choice.¹⁶ They agreed that you cannot compare this to male circumcision. Cutting or scraping skin away from an organ that has 10,000 nerve endings is not a small thing. It is not just a symbol. It is the mutilation of a vital body part. It permanently damages a woman's reproductive

¹² WORLD HEALTH ORG., FEMALE GENITAL MUTILATION FACT SHEET, <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> (last visited Sept. 10, 2026).

¹³ WORLD HEALTH ORG., HEALTH RISKS OF FEMALE GENITAL MUTILATION, [https://www.who.int/teams/sexual-and-reproductive-health-and-research-\(srh\)/areas-of-work/female-genital-mutilation/health-risks-of-female-genital-mutilation](https://www.who.int/teams/sexual-and-reproductive-health-and-research-(srh)/areas-of-work/female-genital-mutilation/health-risks-of-female-genital-mutilation) (last visited Sept. 10, 2026).

¹⁴ EINSTEIN LAB, FROM BODY TO BRAIN: CONSIDERING THE NEUROBIOLOGICAL EFFECTS OF FEMALE GENITAL CUTTING, <https://einsteinlab.ca/wp-content/uploads/2016/04/From-body-to-brain-the-effects-of-FGC.pdf> (last visited Sept. 10, 2026).

¹⁵ PUBMED CENT., SENSITIVITY AFTER CLITORAL RECONSTRUCTION IN PATIENTS WITH FEMALE GENITAL MUTILATION, <https://pmc.ncbi.nlm.nih.gov/articles/PMC11177814/> (last visited Sept. 10, 2026).

¹⁶ SUPREME COURT OBSERVER, SABARIMALA REFERENCE | DAY 13: RELIGIOUS AUTHORITY CANNOT EXTEND TO BODILY AUTONOMY, RESPONDENTS CONTEND (2026), <https://www.scobserver.in/reports/sabarimala-reference-day-13/> (last visited Sept. 10, 2026).

health and takes away her physical choices. The science is clear, the pain is real, and the damage lasts a lifetime.

3. LEGAL FRAMEWORKS AND VULNERABLE POPULATIONS

To understand the persistence of human suffering, one must first recognize a tragic truth: men and women rarely inflict pain upon their own children out of sheer malice. They do so out of a profound, terrifying devotion to the order of their world. The Dawoodi Bohra community, governed by the Fatimid School of Muslim law, exists as a tightly knit, highly organized social structure overseen by a central spiritual leader, the Syedna.¹⁷ For the adherents of this faith, the practice of khafz is woven into a vast, Abrahamic theological tapestry. It is viewed as a gender-inclusive covenant of circumcision, where trimming "excess parts of the body"—such as the foreskin, uncut hair, and uncut fingernails—is believed to restore the human body to its original, God-made natural form. For many women within the denomination, submitting to this procedure is not seen as an act of subjugation, but as taharat—a deeply meaningful act of purification that secures their spiritual standing and connects them to the divine will.¹⁸

But there is a puzzle here. If the practice is purely a matter of spiritual restoration, why is it so hyper-focused on the precise origin point of female pleasure? When we look closely at the behavioural mechanisms of the community, a parallel, darker justification emerges. Empirical surveys and qualitative research confirm that the practice is, fundamentally, a mechanism of patriarchal social control.¹⁹ The underlying goal cited by practicing families is the perceived need to moderate, regulate, or curb female sexual desire.²⁰

There is a specific phrase used within the community's vernacular that acts as a linguistic key to this entire phenomenon. The clitoral hood is sometimes referred to as haraam ni boti, which translates to the "sinful lump of flesh". By deploying this language, the culture inherently

¹⁷APOORVA N.R., UNVEILING THE LEGITIMACY OF FEMALE GENITAL MUTILATION IN INDIAN DAWOODI BOHRA COMMUNITY: AN ANALYSIS OF CONSTITUTIONAL FRAMEWORK, INT'L J. L. RSCH. & ACAD., <https://www.ijlra.com/details/unveiling-the-legitimacy-of-female-genital-mutilation-in-indian-dawoodi-bohra-community-an-analysis-of-constitutional-framework-by-apoorva-n-r> (last visited Sept. 10, 2026).

¹⁸FGM/C RSCH. INITIATIVE, UNDERSTANDING FGC IN THE DAWOODI BOHRA COMMUNITY: AN EXPLORATORY SURVEY (2018), https://www.fgmcri.org/media/uploads/Continent%20Research%20and%20Resources/Asia/sahiyo-study_final_12.28.18.pdf (last visited Sept. 10, 2026).

¹⁹FEMALE GENITAL MUTILATION: AN EXAMINATION OF ITS IMPACT ON WOMEN'S RIGHTS AND EMPOWERMENT, INDIAN L. INST., <http://www.ili.ac.in/pdf/18sum24.pdf>.

²⁰Female Genital Mutilation (FGM) Frequently Asked Questions, U.N. POPULATION FUND, <https://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions>.

pathologizes female anatomy. It frames female sexuality not as a natural biological function, but as an inherently dangerous, chaotic force that requires surgical subjugation to ensure chastity before marriage and fidelity within it.

Why, then, do mothers continue to perpetuate this trauma upon their six- and seven-year-old daughters? The answer lies in the terrifying power of the group over the individual. The practice of FGM/C acts as a rigid socio-cultural boundary, and the punishment for crossing that boundary is absolute. Families comply because the alternative is *baraat*—social boycott and excommunication.²¹ This is not merely a polite shunning; it is the total annihilation of a family's social ecosystem. Excommunication entails the severing of all familial and economic ties. It bars individuals from entering community mosques, bans them from religious gatherings, and even denies them burial in community graveyards.²²

During the 2026 Supreme Court hearings, Senior Advocate Raju Ramachandran powerfully conceptualized this exact dynamic, describing excommunication as a form of "civil death". And this is the tipping point where the religious defense collapses. When the penalty for protecting a child's bodily autonomy is the complete destruction of a family's social and spiritual existence, the element of consent is entirely vitiated by systemic coercion.

You cannot call a practice voluntary when a gun is pointed at your head. When a group tells a mother that if she does not cut her daughter, she will lose her family, her friends, her business, and her place in the world, that is not a free religious choice. It is bullying, plain and simple. The community forces obedience through fear, making it impossible for anyone to safely say no.

4. THE 2026 SUPREME COURT RECKONING

The human body is essentially a house, and you are supposed to be the only one holding the keys. That is the fundamental promise of being a person. But there is a quiet, deeply unsettling kind of domestic horror in being a six- or seven-year-old child. At that age, you don't own the house yet. You rely entirely on the adults around you to keep the doors locked and the monsters out. What happens, then, when the adults you trust most are the ones who hold you down to permanently, surgically alter your anatomy against your will?

²¹*Sabarimala Reference Day 13 Can Faith Justify Civil Death and Genital Cutting of Children SC Bench Examines Religions Reach Over the Body*, LAWSTREET J. (2026), <https://lawstreet.co/judiciary/sabarimala-reference-day-13-can-faith-justify-civil-death-and-genital-cutting-of-children-sc-bench-examines-religions-reach-over-the-body>.

How does a modern democracy deal with this extremely intimate brand of terror? It builds a fortress out of paper and ink. In India, the cornerstone of that fortress is Article 21 of the Constitution, which mandates that no person shall be deprived of their life or personal liberty except according to the procedure established by law.

But here is the fascinating thing about Article 21: for decades, the Supreme Court of India has been quietly, systematically expanding what the word "life" actually means. Through case like *Kharak Singh v. State of Uttar Pradesh*, the Court established a brilliant legal concept.²³ They ruled that the right to life extends far beyond mere animal existence to encompass the right to live with human dignity, the right to privacy, and the absolute right to bodily integrity.

Puttaswamy articulated something profound: privacy isn't just about keeping secrets. It is about decisional autonomy. It is the sovereign freedom to make choices regarding your own body, family, and procreation without some external authority kicking down your door.²⁴ We saw this framework successfully deployed in *Navtej Singh Johar v. Union of India*, which decriminalized consensual same-sex relations by declaring that your bodily autonomy cannot be crushed by majoritarian dictates or popular morality.²⁵ We see it in cases expanding the Medical Termination of Pregnancy Act, where the Court has consistently ruled that a woman's right to choose is an essential facet of her personal liberty.²⁶

When you apply this robust, highly evolved legal machinery to the practice of FGM/C, the constitutional violation glows neon red. During the preliminary hearings in 2018, Justice D.Y. Chandrachud asked a question that cuts straight to the bone: "Why should the bodily integrity of a woman be subject to some external authority? One's genitals are extremely private affairs".²⁷

The non-therapeutic surgical alteration of a female child represents an egregious breach of physical sovereignty. It permanently modifies her body, diminishes her capacity for sexual pleasure, and extinguishes her agency before she even understands what those words mean.

This brings us to the most critical legal mechanism of all. Because this procedure is universally performed on minors who possess neither the legal capacity nor the cognitive maturity to provide informed consent, a specific legal trigger is tripped. When parents or communities

²³ *Kharak Singh v. State of Uttar Pradesh*, 1964 SCR (1) 332.

²⁴ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

²⁵ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

²⁶ *Supreme Court of India Judgement on Abortion as a Fundamental Right: Breaking New Ground*, PUBMED CENT., <https://pmc.ncbi.nlm.nih.gov/articles/PMC10321178/>.

²⁷ *Sabarimala Reference | Day 16: Supreme Court Reserves Judgement*, SUPREME COURT OBSERVER (May 14, 2026), <https://www.scobserver.in/reports/sabarimala-reference-day-16/>.

inflict physical abuse or fundamentally compromise a child's safety, the State is legally obligated to step in under the doctrine of *parens patriae*—the parent of the nation.²⁸

Indian jurisprudence has consistently recognized that while parents have wide latitude in how they raise their children, that authority is not absolute. The non-consensual mutilation of a minor's genitalia cannot be shielded by claims of parental rights or cultural preservation.²⁹ The child's independent right to keep her body intact under Article 21 eclipses the community's desire to enact its rituals upon her flesh. If the State fails to intervene, it is quite literally abandoning the most vulnerable kids in the neighbourhood to the dark. Your body belongs to you. It does not belong to your parents, your religious leaders, or your community. The Constitution says that no one is allowed to cut or alter your body without your consent. Because a six-year-old child cannot consent to being cut, the government has a mandatory duty to step in and act as her protector, because a child's safety is always more important than a community's tradition.

5. INTERNATIONAL CONTEXT AND THE PATH FORWARD

It is quite remarkable how a State might weave a magnificent, sweeping tapestry of constitutional rights, yet leave gaping holes in the actual fabric of its penal code through which the most vulnerable citizens inevitably fall. The structural problem in India is glaring: there is no bespoke, standalone legislation expressly criminalizing Female Genital Mutilation. The Union Government insists that existing penal statutes—such as the grievous hurt provisions under the *Bharatiya Nyaya Sanhita* (formerly the IPC) and the POCSO Act—are sufficiently broad to prosecute the practice.³⁰ But when we look at the data, the system's failure is absolute. Prosecutions are virtually non-existent.³¹ Why? Because a generic assault law is completely useless against a secretive, tightly-knit community network where the victims are children entirely dependent on the adults orchestrating the abuse.

²⁸ What's in a Name? Judicial Overreach of the *Parens Patriae* Jurisdiction, OXFORD L. BLOGS (Jan. 2024), <https://blogs.law.ox.ac.uk/family-and-medical-law/blog-post/2024/01/whats-name-judicial-overreach-parens-patriae-jurisdiction>.

²⁹ Best Interest of Child, JUD. ACAD. JHARKHAND (July 2025), <https://jajharkhand.in/wp-content/uploads/2025/07/best-interest-of-child.pdf>.

³⁰ FGM/C RSCH. INITIATIVE, THE LAW AND FGC INDIA (Nov. 2024), [https://www.fgmcri.org/media/uploads/Country%20Research%20and%20Resources/India/india_law_report_v1_\(november_2024\).pdf](https://www.fgmcri.org/media/uploads/Country%20Research%20and%20Resources/India/india_law_report_v1_(november_2024).pdf) (last visited Sept. 10, 2026).

³¹ BEYOND CRIMINALIZATION: FEMALE GENITAL MUTILATION, PROTECTION OF BODILY AUTONOMY AND SUBSTANTIVE JUSTICE, INT'L J. FOR MULTIDISCIPLINARY RSCH., <https://www.ijfmr.com/papers/2026/2/76167.pdf> (last visited Sept. 10, 2026).

If we look at the United States, we see a fascinating parallel regarding the friction between law and reality. In the landmark *United States v. Nagarwala* case, a federal judge dismissed FGM charges against a Detroit physician, ruling that Congress had exceeded its authority under the Commerce Clause.³² The judicial system bypassed the human rights horror entirely on a technicality of federalism. The US response was a rapid, bipartisan pivot to enact the Stop FGM Act of 2020, which explicitly closed those loopholes, fortified criminal penalties, and legally obliterated any defense based on custom or religion. Similarly, the UK High Court in *Re B and G* drew a definitive line, ruling that while society might tolerate male circumcision, FGM is a gross abuse intrinsically linked to the control of female sexuality, and can never be protected under the guise of "reasonable parenting".

The moral arc of the international community is clear. Under binding treaties like the UN Convention on the Rights of the Child (UNCRC) and CEDAW, a State possesses an affirmative, sacred duty to eradicate traditional practices that prejudice the health of children, regardless of the cultural pedigree of the pain.

If India relies merely on generic, toothless legal interpretations, the nightmare simply continues in the shadows. The State essentially allows the boogeyman to operate with legal impunity, hiding in the dark corners of religious freedom while inflicting terror on the small and defenseless. To actually stop the bleeding, India must enact specific, comprehensive legislation that aligns with WHO anatomical classifications, outlaws cross-border "vacation cutting," and actively cultivates progressive, community-led dialogue to dismantle the socio-cultural stigma from the inside out.³³ General assault laws do not stop secret community traditions. Until India writes a specific law that explicitly says "cutting female genitals is a crime," and pairs that law with real community education and medical support, girls will continue to be hurt. A civilized republic cannot allow the mutilation of a child's body to be the required price of admission into a religion.

³² *United States v. Nagarwala*, 350 F. Supp. 3d 613 (E.D. Mich. 2018).

³³ WORLD BANK, COMPENDIUM OF INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS ON FEMALE GENITAL MUTILATION (2025), <https://thedocs.worldbank.org/en/doc/83b1f09e48c77b9ffd7c23fc9c3ae90-0260012025/original/Compendium-FGM.pdf> (last visited Sept. 10, 2026).



SHORT ARTICLE



“ENVIRONMENTAL IMPACT OF THE TEXTILE INDUSTRY IN INDIA: A LEGAL ANALYSIS”



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ABSTRACT

The textile industry has some major contributions in economic development and providing employment, but the rapid growth of the industry has also created many serious environmental concerns. This proliferating demand for inexpensive and quickly produced clothing, particularly through a model known as fast-fashion model, has increased the use of water, chemicals, energy and other resources during the production of these clothes. Also, the textile production and disposal can cause water pollution, air pollution, chemical waste, textile waste and microplastic pollution. All of these concerns put forward an important legal question regarding the adequacy of the existing Indian legal framework in protecting the environment from the damages caused by the textile industries. The Indian Constitution provides a foundation for environmental protection through various provisions such as Articles 14, 21, 48A and 51A(g). Various statutes further regulate these areas, including the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986. However, these laws have their implementations across different areas/fields and do not provide a single comprehensive framework which specifically addresses the environmental and labour challenges of the textile and fast-fashion industry. This article examines various aspects of environmental protection from India's textile industry wastes. It even discusses relevant constitutional provisions, environmental laws and many more important judicial decisions. It also highlights issues such as pollution, textile waste, poor working conditions and regulatory gaps. Finally, it suggests stronger enforcement and sustainable production to balance industrial growth along with environmental welfare.

KEYWORDS: *Textile Industry, Fast Fashion, Environmental Protection, Textile Waste, Pollution, Sustainable Development, Indian Legal Framework.*

1. INTRODUCTION

The vast industry of textile plays a crucial role in the Indian economy by providing employment and meeting the clothing needs of a large population¹. Due to the growth and the craze of online shopping, social media and fast-fashion trends, the demand for inexpensive and quickly produced clothing has shown significant increase. Fast fashion avails the consumers with new designs at affordable prices, but its rapid production and consumption by the large population also creates many environmental concerns.² Large-scale textile production may involve extensive use of water, dyes, chemicals and energy, while the disposal of unwanted clothing contributes to the growing problem of textile waste.³ All these factors of production can therefore raise questions about if the actual cost of production is being transferred to the environment. Because of all these concerns the textile industry provides us with various scopes of legal studies.

In India, protection of the environment is backed by various constitutional provisions as well as various statutes. Article 21,⁴ has been interpreted by the Supreme Court to include the right to a clean and healthy environment,⁵ while Article 48A directs the State to protect and improve the environment,⁶ likewise Article 51A(g) places a corresponding fundamental duty on citizens to protect the natural environment.⁷ However, the existence of these provisions raises an important question: whether the existing legal framework is sufficient to point out and address the specific environmental problems associated with the modern textile and fast-fashion industry. The issue becomes more complex because textile production involves multiple manufacturers, suppliers and contractors, making accountability for environmental damage difficult to determine. This article therefore identifies and examines the legal protection on behalf of the environment from the Indian textile industry and identifies the major flaws and challenges in the existing legal framework.

¹ MINISTRY OF TEXTILES, GOV'T OF INDIA, *ANNUAL REPORT 2023–24*, at 1–3 (2024), <https://texmin.nic.in/>.

² UNITED NATIONS ENV'T PROGRAMME, *THE ENVIRONMENTAL COSTS OF FAST FASHION*, UNEP (Nov. 24, 2022), <https://www.unep.org/>.

³ UNITED NATIONS ENV'T PROGRAMME, *SUSTAINABILITY AND CIRCULARITY IN THE TEXTILE VALUE CHAIN: GLOBAL STOCKTAKING* (2020), <https://wedocs.unep.org/handle/20.500.11822/34184>.

⁴ INDIA CONST. art. 21.

⁵ *Virender Gaur v. State of Haryana*, (1995) 2 SCC 577.

⁶ INDIA CONST. art. 48A.

⁷ INDIA CONST. art. 51 A(g).

2.CONSTITUTIONAL FRAMEWORK FOR ENVIRONMENTAL PROTECTION

The Constitution of India also provides various foundations for the protection of the environment from industrial pollution. There are no separate provisions dealing specifically with the textile industry, but several provisions are relevant to the environmental problems caused by textile industries. Article 21 guarantees the right to life and personal liberty. The Supreme Court has interpreted this right to include the right to live in a clean and healthy environment.⁸ This is important in context with the textile industry because untreated industrial waste, polluted water and harmful emissions can affect the health and life of people living and working around production units.⁹

In *Subhash Kumar v. State of Bihar*, the Supreme Court held that the right to life under Article 21 includes the right to enjoy pollution-free water and air. The Court recognised and insisted that environmental pollution can directly affect the quality of life and health of individuals. This principle is relevant to the textile industry, where untreated wastewater, chemical discharge and other industrial pollutants may contaminate water and affect the surrounding environment.¹⁰ Article 48A directs the State to protect and improve the environment and safeguard forests and wildlife. Article 51A(g) also places a duty on every citizen to protect and improve the natural environment. Together, these provisions show that environmental protection is not only a matter of government policy but also a constitutional concern.

3. ENVIRONMENTAL IMPACT OF THE TEXTILE INDUSTRY

The textile industry uses large amounts of water, energy, dyes and chemicals during different stages of production. Activities such as dyeing, printing, washing and finishing can generate wastewater and other forms of industrial waste. If this waste is not properly treated before disposal, it can affect rivers, soil and surrounding communities. Therefore, environmental protection is an important legal concern for textile industries.

3.1. Water Pollution

Water is heavily used in textile processing, particularly during dyeing and finishing. The wastewater produced during these processes may contain dyes, chemicals and other pollutants.

⁸ *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598.

⁹ *Id.* at 35.

¹⁰ *Id.* at 36.

Discharging untreated or inadequately treated effluents into water bodies can cause serious environmental damage.

The Water (Prevention and Control of Pollution) Act, 1974 provides a legal framework for preventing and controlling water pollution. Section 24 prohibits the use of streams or wells for the disposal of polluting matter in a manner prohibited by the Act.¹¹ Sections 25,¹² and 26¹³ also regulate the discharge of sewage or trade effluents into streams, wells or land. These provisions are particularly relevant to textile processing units because of the wastewater generated during manufacturing.

3.2. Air Pollution

Textile manufacturing can also contribute to air pollution through industrial emissions, fuel consumption and transportation. The Air (Prevention and Control of Pollution) Act, 1981 provides measures for the prevention, control and abatement of air pollution. Textile industries are therefore required to comply with applicable standards and regulatory requirements concerning emissions.¹⁴

3.3. Textile Waste and Microplastics

Another major concern is the increasing amount of textile waste generated when unwanted or damaged clothes are discarded. Synthetic materials such as polyester and nylon are also associated with concerns about microplastic release, particularly during washing. These small plastic particles can enter wastewater and eventually reach aquatic ecosystems.¹⁵ The Environment (Protection) Act, 1986,¹⁶ provides the broader legal framework for environmental protection and empowers the Central Government to take measures for controlling pollution and protecting environmental quality. Waste-management rules made under the environmental framework are also relevant when considering the disposal and management of textile-related waste.

3.4. Chemical Pollution

Dyes and other chemicals are used in different stages of textile production. Improper handling, storage or disposal of these substances may create risks to workers as well as the surrounding environment. Section 7 of the Environment (Protection) Act, 1986, prohibits the discharge or

¹¹ Water (Prevention and Control of Pollution) Act, 1974, § 24, No. 6, Acts of Parliament, 1974 (India).

¹² Water (Prevention and Control of Pollution) Act, 1974, § 25, No. 6, Acts of Parliament, 1974 (India).

¹³ Water (Prevention and Control of Pollution) Act, 1974, § 26, No. 6, Acts of Parliament, 1974 (India).

¹⁴ Air (Prevention and Control of Pollution) Act, 1981, No. 14, Acts of Parliament, 1981 (India).

¹⁵ UNITED NATIONS ENV'T PROGRAMME, *SUSTAINABILITY AND CIRCULARITY IN THE TEXTILE VALUE CHAIN: GLOBAL STOCKTAKING* (2020), <https://wedocs.unep.org/handle/20.500.11822/34184>.

¹⁶ Environment (Protection) Act, 1986, No. 29, Acts of Parliament, 1986 (India).

emission of environmental pollutants beyond prescribed standards,¹⁷ while Section 8 deals with safeguards relating to hazardous substances.¹⁸ Thus, environmental laws place responsibilities on industries to control pollution and manage harmful substances. However, effective implementation and monitoring remain important for ensuring that these legal protections work in practice.

3.5. Waste Management Regulations

Textile production also creates solid and other forms of waste. Depending on the nature of the waste, the Solid Waste Management Rules, 2016, Plastic Waste Management Rules, 2016, and Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 may become relevant.

In *Vellore Citizens' Welfare Forum v. Union of India*, the Supreme Court dealt with pollution caused by industrial effluents and recognised the importance of protecting the environment from industrial activities. The Court recognised the precautionary principle and the polluter-pays principle as essential principles of Indian environmental law. The case is relevant to the textile industry because textile manufacturing may involve the use of dyes, chemicals, large quantities of water and other resources, which can result in water, soil and other forms of pollution if not properly managed. Therefore, the principles laid down in this case provide an important judicial basis for regulating the environmental impact of textile industries.¹⁹

4. THE INDIAN LEGAL FRAMEWORK GOVERNING FAST FASHION

In India fast fashion is not governed just by a single law. There are several environmental laws that apply to different stages of textile production and consumption. The Water (Prevention and Control of Pollution) Act, 1974,²⁰ regulates water pollution, with Sections 24, 25 and 26 regarding the discharge of pollutants and trade effluents. The Air (Prevention and Control of Pollution) Act, 1981 deals with regulated air flow, while the Environment (Protection) Act, 1986 provides a broader legal framework for environmental protection with different-different laws and regulations. There are waste-management rules that also apply to solid, plastic and hazardous waste, but they do not specifically address fast-fashion overproduction and clothing

¹⁷ Environment (Protection) Act, 1986, § 7, No. 29, Acts of Parliament, 1986 (India).

¹⁸ Environment (Protection) Act, 1986, § 8, No. 29, Acts of Parliament, 1986 (India).

¹⁹ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647.

²⁰ Water (Prevention and Control of Pollution) Act, 1974, No. 6, Acts of Parliament, 1974 (India).

waste. Labour protection is provided through laws such as the Code on Wages, 2019²¹ and the Occupational Safety, Health and Working Conditions Code, 2020.²²

5. LEGAL ENFORCEMENT, SUSTAINABLE DEVELOPMENT AND REGULATORY MECHANISMS

Having environmental laws alone is not enough to control pollution caused by the textile industry. These laws need to be properly implemented and monitored so that textile industries follow the required environmental standards. The Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs) play an important role in this process. They monitor industrial pollution, enforce environmental standards and can take action against industries that do not comply with environmental requirements. Textile industries may also be required to obtain Consent to Establish and Consent to Operate from the concerned State Pollution Control Board, depending on the applicable legal requirements. These permissions help the authorities check whether industries have suitable arrangements to control pollution before and during their operations. Effluent Treatment Plants (ETPs) are also important for textile industries. They help treat wastewater generated during processes such as dyeing and finishing before it is discharged. Proper functioning and regular monitoring of these treatment systems can help prevent untreated wastewater from entering rivers, lakes and other water sources.²³

5.1. Sustainable Development

The principle of sustainable development means that economic and industrial development should take place without causing unnecessary damage to the environment or compromising the needs of future generations. This principle is important for the textile industry because textile production uses large amounts of water, energy and other natural resources.²⁴ Sustainable textile production therefore requires industries to reduce their use of water and energy, minimise waste and adopt cleaner production methods. It also encourages the use of safer chemicals and environmentally responsible production practices. The aim is to allow industrial growth while also protecting the environment.²⁵

²¹ Code on Wages, 2019, No. 29, Acts of Parliament, 2019 (India).

²² Occupational Safety, Health and Working Conditions Code, 2020, No. 37, Acts of Parliament, 2020 (India).

²³ Central Pollution Control Board, *Environmental Standards for Textile Industry*, <https://cpcb.nic.in/> (India).

²⁴ *Id.* at 38.

²⁵ *Id.* at 37.

5.2. Principles of Environmental Protection

The precautionary principle means that preventive steps should be taken when an industrial activity may cause serious environmental harm, even if there is not complete scientific certainty about the extent of the harm. In the textile industry, this principle encourages industries to identify and control possible pollution risks before they cause serious environmental damage.

The polluter-pays principle means that an industry responsible for causing pollution should bear the cost of preventing and dealing with the environmental damage caused by its activities. This principle is relevant to textile industries that generate wastewater, chemical waste and other forms of pollution.²⁶ Therefore, effective environmental protection in the textile industry requires not only laws but also proper implementation, regular monitoring, sustainable production practices and responsibility for environmental damage.

6. LEGAL GAPS IN THE REGULATION OF FAST FASHION

In India, fast fashion is not governed by a single comprehensive law. Existing environmental laws regulate particular issues such as industrial pollution, waste management and the handling of hazardous substances, but they do not specifically regulate the fast-fashion business model as a whole. One major gap is the absence of specific regulation dealing with overproduction and overconsumption of clothing. The rapid production and short use of garments can contribute to increasing textile waste, resource consumption and environmental pollution. Existing laws mainly address pollution and waste after they are generated rather than directly regulating the environmental impact of the entire fast-fashion cycle. There is also limited specific regulation addressing textile waste after consumer use, the environmental impact of synthetic clothing and the release of microfibres during washing. Similarly, there is no comprehensive legal requirement specifically designed for fashion companies to promote longer product life, repair, reuse or recycling of clothing.

Therefore, although existing environmental laws provide important protection, the Indian legal framework does not specifically address fast fashion as a distinct environmental issue. This indicates a need for a more coordinated approach focusing on sustainable production, reduction of textile waste, resource efficiency, recycling and responsible consumption.

²⁶ *Id.* at 39.

7. REGULATORY GAPS AND CHALLENGES

In India, several laws and regulations deal with different environmental issues related to the textile industry. However, there is no specific law that comprehensively regulates the environmental impact of fast fashion as a whole. Existing environmental laws mainly address particular issues such as pollution, waste management and the handling of hazardous substances. One of the major concerns is textile waste. The fast-fashion model encourages frequent production and consumption of clothing, which can increase the number of discarded textiles. Existing regulations do not completely address issues such as overproduction, short product life cycles, clothing disposal, reuse and recycling.²⁷ Another challenge is supply-chain accountability. Fast-fashion products may pass through several stages involving manufacturers, suppliers, contractors, retailers and other intermediaries. This can make it difficult to identify responsibility for environmental damage occurring at different stages of production and distribution.²⁸ Another important challenge is the effective implementation of existing environmental laws. Even where legal requirements exist, proper monitoring, inspection and compliance are necessary to ensure that industries follow them. Lack of transparency in production and waste-management practices can also make environmental monitoring more difficult. Therefore, the major challenge is not only the absence of a comprehensive framework specifically addressing fast fashion, but also the effective implementation of existing environmental laws. Stronger monitoring, greater transparency, clear allocation of environmental responsibility and better systems for textile waste management are necessary to reduce the environmental impact of fast fashion.

8. SUGGESTIONS

Stronger implementation of existing environmental laws, along with the development of clearer regulations addressing fast fashion, is necessary to reduce its environmental impact. Textile industries should be regularly monitored to ensure compliance with pollution-control and waste-management requirements.²⁹ There should be greater transparency and accountability throughout the textile supply chain. Industries should maintain proper records of water use, chemical use, waste generation and disposal. Clear responsibility should also be established for

²⁷ *Id.* at 37.

²⁸ United Nations Env't Programme, Sustainability And Circularity In The Textile Value Chain: A Global Roadmap (2023), <https://www.unep.org/>.

²⁹ Ministry Of Environment, Forest & Climate Change, Annual Report 2023–24 (2024), <https://www.moef.gov.in/uploads/2023/05/Annual-Report-English-2023-24.pdf> (last visited Sept. 10, 2026).

environmental damage occurring at different stages of production and distribution. The principles of Reduction, Reuse, Recycling and Remediation should be encouraged in the textile sector. Industries should reduce unnecessary production and resource consumption, promote the reuse of materials and improve systems for collecting and recycling discarded textiles. Sustainable production should also be promoted through the use of cleaner technologies, efficient water and energy use, safer chemicals and environmentally responsible manufacturing practices. Fast-fashion businesses should be encouraged to consider the environmental impact of their products throughout their life cycle. Consumer awareness is equally important. Consumers should be encouraged to buy clothes only when genuinely needed, use existing clothes for longer periods, choose reusable and durable products, and consider thrifting, reuse and recycling instead of frequent disposal and replacement.

Finally, effective enforcement of environmental laws, better monitoring, sustainable production and public awareness can together help reduce the environmental impact of fast fashion and promote a more sustainable textile industry.

9. CONCLUSION

The fast fashion model has made clothing cheaper easier to find and more reachable for shoppers. Yet fashions quick production and quick use have also sparked serious environmental problems, such as water pollution, chemical pollution, air pollution rising textile waste and the spread of microplastics.

Indian environmental laws give a base for tackling many types of industrial pollution and waste management. However, these laws do not specifically control fashion as a whole system nor do they fully solve problems such as overproduction, short life cycles of garments, disposal of clothing and recycling. Therefore, it is necessary to enforce existing laws well to tighten monitoring to improve textile waste management and to increase transparency across the entire supply chain. The ideas of development, caution and polluter pay can also help lessen the environmental impact of the textile industry.

Ultimately tackling the impact of fast fashion needs responsible production and responsible consumption. Promoting use of garments, reuse, recycling, thrifting and cutting back on excess buying along, with tighter environmental rules can help shift the textile industry toward a more sustainable development model.



BLOG



“A VOICE THAT CANNOT BE SILENCED: STUDENT PROTESTS AND CONSTITUTIONAL FREEDOM”



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ABSTRACT

India is a democratic country where the voice of its citizens plays an important role in shaping society and holding authorities accountable. Students, as an important part of the democratic community, have historically used protests, demonstrations, slogans, and collective movements to express their concerns and demand change. The Constitution of India protects the freedom of speech and expression under Article 19(1)(a) and the right to assemble peacefully under Article 19(1)(b). These constitutional freedoms provide students with a platform to express dissent, but they are subject to reasonable restrictions under the law. Student protests are not merely expressions of disagreement; they can also represent the concerns, aspirations, and demands of an entire generation. From educational issues to wider social and political concerns, student movements have often contributed to public debate and social change. However, questions arise when student activism comes into conflict with institutional discipline, public order, security, or the rights of others. This creates a delicate balance between protecting the right to dissent and maintaining lawful order. At the heart of this discussion lies the question of whether a student's voice can truly be protected in a democracy when that voice challenges authority. The article explores the constitutional protection available to student protesters, the limitations placed on their freedom, and the distinction between peaceful dissent and unlawful conduct.

KEYWORDS: *Student Protests, Freedom of Speech and Expression, Right to Dissent, Reasonable Restrictions.*

1. INTRODUCTION

“When students raise their voices, should they be treated as a threat or as citizens exercising democracy?”

Students are not only learners; they are also citizens of a democratic country. A university or college is a place where young people learn to think, question, debate and form independent opinions. Therefore, when students come together to raise concerns, express disagreement or demand justice, their actions should not automatically be viewed as indiscipline. Peaceful student protests can be an important form of democratic participation.

Across India, students have raised their voices on issues relating to education, examinations, recruitment, fees, discrimination, administrative decisions and wider social concerns. Sometimes these protests are uncomfortable for authorities, but democracy cannot be based only on comfortable opinions. The ability to question authority is one of the most important features of a democratic society.

2. CONSTITUTIONAL PROTECTION AND STUDENT VOICES

The Constitution of India provides citizens with the right to freedom of speech and expression under Article 19(1)(a).¹ Article 19(1)(b)² also guarantees the right to assemble peacefully and without arms. Although there is no separate constitutional provision called the “right of students to protest,” students enjoy these fundamental rights as citizens. A peaceful march, demonstration, placard, speech, slogan or public discussion can therefore form part of constitutionally protected expression.

However, these rights are subject to reasonable restrictions under Articles 19(2)³ and 19(3)⁴. The existence of restrictions does not mean that the right disappears. Rather, restrictions must have a lawful basis and must satisfy constitutional requirements. Student protests can bring attention to problems that may otherwise remain unheard. Students are directly affected by decisions concerning examinations, recruitment, academic policies, fees and educational opportunities. When such decisions affect their careers and future, they should have a meaningful opportunity to express their concerns.

¹ INDIA CONST. art. 19, § 1, cl. a.

² INDIA CONST. art. 19, § 1, cl. b.

³ INDIA CONST. art. 19, § 2.

⁴ INDIA CONST. art. 19, § 3.

A peaceful protest can encourage public discussion and compel authorities to respond to genuine grievances. It can also teach students the practical meaning of democracy. A student who learns to question responsibly is not necessarily an undisciplined student; that student may be learning how democracy works.

3. THE RIGHT TO DISSENT

Dissent is an essential part of democracy. If citizens can only express opinions that are approved by those in authority, freedom of speech loses its real meaning.

Students may disagree with their university administration, examination authorities or government policies. They may criticise decisions and demand explanations. Such criticism should not automatically be treated as an attack on the institution or the State.

The Supreme Court has recognised the importance of peaceful protest in democratic society. In *Mazdoor Kisan Shakti Sangathan v. Union of India*,⁵ the Court recognised that citizens have a fundamental right to freedom of speech and peaceful assembly under Articles 19(1)(a) and 19(1)(b) of the Constitution. At the same time, the court also stated that this right must be balanced with public order and the rights of other citizens. Therefore, peaceful dissent should not be treated as disloyalty merely because it questions or challenges the actions of those in authority. The Supreme Court has also made it clear that the State must exercise restraint while dealing with peaceful assemblies. In the Ramlila Maidan Incident, in re,⁶ the Court examined the use of force to disperse a large gathering and stressed that restrictions on the freedom of speech and peaceful assembly must be reasonable and not excessive. Similarly, in *Amit Sahni v. Commissioner of Police*,⁷ the Court recognised the right to peaceful protest but held that protests cannot be conducted in a manner that indefinitely occupies public roads or causes serious inconvenience to other citizens. These decisions show that the right to protest is protected, but it must be exercised peacefully and with due regard for public order and the rights of others.

4. FREEDOM OF SPEECH IS NOT ABSOLUTE

At the same time, student rights are not unlimited. Article 19(2) permits reasonable restrictions on freedom of speech and expression on grounds such as public order, security of the State,

⁵ *Mazdoor Kisan Shakti Sangathan v. Union of India*, (2018) 17 SCC 324.

⁶ *Ramlila Maidan Incident, In re*, (2012) 5 SCC 1.

⁷ *Amit Sahni v. Commissioner of Police*, (2020) 10 SCC 439.

sovereignty and integrity of India, decency or morality, contempt of court, defamation and incitement to an offence.

Similarly, Article 19(3) permits reasonable restrictions on the right to peaceful assembly.⁸ Therefore, students cannot claim constitutional protection for violence, threats or other criminal acts merely by describing them as protest. The important point is that a restriction must regulate unlawful conduct, not unnecessarily silence lawful expression.

5. PEACEFUL PROTEST AND UNLAWFUL CONDUCT MUST BE DISTINGUISHED

There is a clear difference between peacefully raising a slogan and attacking someone, between holding a placard and destroying property, and between marching peacefully and using violence. When a protest remains peaceful, the constitutional value of expression deserves protection. If individual protesters commit violence or other offences, responsibility should be determined according to their individual conduct. It would be unfair to treat every student present at a protest as violent merely because some individuals may have acted unlawfully. Peaceful students should not become victims of collective punishment.

6. THE JANTAR MANTAR STUDENT PROTEST

The recent Jantar Mantar protest in Delhi in July 2026 brought important constitutional questions concerning the right to protest, public order, and the use of police force into focus. The protest involved students, NEET aspirants and other supporters who raised concerns regarding alleged irregularities in the NEET-UG examination and demanded accountability from the authorities. On 20 July 2026, a march towards Parliament led to clashes between protesters and police. Reports stated that police used tear gas and lathi-charge to disperse the crowd. At the same time, police and other reports alleged that some protesters threw stones and that police personnel were injured during the confrontation.⁹ Therefore, the events remain a matter of competing accounts, and the incident should not be presented only from the protesters' perspective.

⁸ INDIA CONST. art. 19, § 3.

⁹ SWAPNIL JOGLEKAR, A DAY AFTER TEAR GAS, HOPE AND DEFIANCE KEEP NEET PROTEST ALIVE AT JANTAR MANTAR, THE INDIAN EXPRESS (July 22, 2026), <https://indianexpress.com/article/cities/delhi/not-everyone-at-jantar-mantar-is-a-protester-but-they-have-common-demand-10798274/> (last visited Sept. 10, 2026).

The incident also developed beyond the original examination-related concerns and acquired a wider political dimension, with demands for accountability and criticism of the government's handling of the issue. The Delhi High Court subsequently sought responses from the Centre and Delhi Police in petitions alleging excessive use of force and directed that relevant CCTV footage, videography and other records be preserved.¹⁰ These developments show why the Jantar Mantar incident is relevant to the constitutional discussion on peaceful assembly, public order and the limits on the use of force.

The reports also raised concerns about the presence of some people in civilian clothes who were seen beating protesters.¹¹ Human Rights Watch reported that it verified a video showing three men in civilian clothes carrying plastic batons, with at least one of them appearing to beat protesters along with police personnel. However, it was not clear whether all such people were police officers, as some police personnel were also reportedly in civilian clothes. Therefore, this part of the incident also requires careful investigation.

7. THE JHARKHAND STUDENT PROTEST

The student protests in Jharkhand provided another important example. Students and job aspirants have raised concerns regarding alleged irregularities and lack of transparency in recruitment examinations conducted by the JPSC and JSSC.¹² For students preparing for competitive examinations, such allegations are extremely serious. Years of preparation, time, money and hopes can depend upon the fairness and transparency of a recruitment examination. Therefore, when students come together to demand an investigation or accountability, their concerns deserve serious consideration. A government does not have to accept every demand made by protesters. However, it should provide students with an opportunity to present their grievances and receive a reasoned response.

¹⁰ SHEKHAR SINGH, DELHI HC SEEKS CENTRE, POLICE RESPONSE ON PLEAS ALLEGING EXCESSIVE FORCE AGAINST STUDENTS DURING CJP'S PARLIAMENT MARCH, THE TRIBUNE (July 22, 2026), <https://www.tribuneindia.com/news/delhi/delhi-hc-seeks-centre-police-response-on-pleas-alleging-excessive-force-during-parliament-march/> (last visited Sept. 10, 2026).

¹¹ HUMAN RIGHTS WATCH, INDIA: EXCESSIVE FORCE USED AGAINST STUDENT PROTESTERS (July 23, 2026), <https://www.hrw.org/news/2026/07/23/india-excessive-force-used-against-student-protesters> (last visited Sept. 10, 2026).

¹² PRESS TRUST OF INDIA, STUDENTS CONTINUE PROTESTS IN RANCHI OVER ALLEGED JPSC, JSSC EXAM IRREGULARITIES, DEMAND CBI PROBE, HINDUSTAN TIMES (Aug. 3, 2026), <https://www.hindustantimes.com/education/news/students-continue-protests-in-ranchi-over-alleged-jpsc-jssc-exam-irregularities-demand-cbi-probe-101785732597882-amp.html> (last visited Sept. 10, 2026).

8. WHAT THESE INCIDENTS TELL US ABOUT STUDENT RIGHTS?

The Jantar Mantar and Jharkhand incidents demonstrate that constitutional rights are not merely theoretical concepts found in textbooks. They exist in real situations where ordinary people disagree with those in authority.

These incidents also show why the right to peaceful protest must be protected. If students believe that speaking will automatically result in punishment or force, they may become afraid to express legitimate grievances. At the same time, students must understand that constitutional protection does not extend to violence or criminal conduct. The correct approach is peaceful protest with lawful regulation and proportionate response.

9. CONCLUSION

Student protests are an important part of democracy, especially when students raise their voices against government decisions or actions that they believe are unfair. Students have the constitutional right to freedom of speech and peaceful assembly, subject to reasonable restrictions under the law. The protests at Jantar Mantar and in Jharkhand show how students can use these rights to question the government and demand answers. Students should protest peacefully and responsibly. Violence, threats and destruction of property cannot be justified as part of a peaceful protest. At the same time, the government should not treat every peaceful protest simply as a disturbance. When students raise serious concerns, the authorities should give them an opportunity to present their grievances and should respond through proper legal and administrative processes.

A democratic government is accountable to the people, and peaceful protest is one way in which citizens can question those in power. Therefore, the right to protest should be balanced with the need to maintain public order. At the same time, authorities should ensure that lawful and peaceful criticism is dealt with fairly and according to the law. This balance is important for protecting democratic rights, accountability and public trust.

-A Voice Cannot Be Silenced



CASE NOTE



“SUPRIYO v. UNION OF INDIA RECOGNISING SAME - SEX MARRIAGE: RIGHTS, REMEDIES, AND THE LIMITS OF JUDICIAL POWERS.”



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ABSTRACT

This commentary examines Supriyo @ Supriya Chakraborty v. Union of India, in which a five-judge Constitution Bench of the Supreme Court considered whether same-sex couples have a right to marry.' 'Homosexual marriage' is dated and clinical. The commentary argues that how court lacked the power to do more justice to the case in this article there will be the explanation of why same sex marriage should be legally recognised and what measures the legislature and the judiciary need to take for same sex marriage. This commentary evaluates the court's reasoning and argues that same-sex marriage should be recognised by the courts and laws of India , with the material before the court, or the findings in Navtej Singh Johar v. Union of India, decriminalized consensual same-sex marriage between adults but it did not grant legal recognition to same-sex marriage because of social prejudice and stigma , as the generation is changing and society had always been dynamic people need to change their mindset and become broader thinkers in order to stop discriminations on the particular group of people, as a citizen of India each and every person has the right to freedom of speech & expression, right to equality and right against exploitation described in Part- III of the constitution under article- 14, 19(1)(a) , 23 & 24 and acceptance is the biggest key to a developed and peaceful society.

KEYWORDS - Same Sex Marriage, LGBTQ+ Rights, Special Marriage Act 1954, Article 21, Civil Union, Social Prejudice and Stigma.

1. INTRODUCTION

In India after the case of *Navtej Singh Johar v. Union of India*,¹ which read down Section 377 IPC² the same sex relations are legalized and it is decriminalized after the long struggle phase of LGBTQ communities and Legal recognition of transgender persons (as a 'third gender') came earlier through *NALSA v. Union of India*,³. It did not majorly dealt with the same sex marriage or homosexual marriage but in the case of *Supriyo v. Union of India*⁴ it was stated that the same-sex couple can cohabit and they can be in a relationship but supreme court does not clearly stated that relations between the queer community Will be termed as valid or legal relation and also stated that although they does not have any right to marry but they can have the access to create their Bank account and can live together and as like before it will not be recognised as criminal relation or it Will consider as a decriminalized relation under eyes of the law but all five Judges expressly declined to recognise same-sex marriage and a fundamental right or to read it into the Special Marriage Act, leaving this question to Parliament, , The batch comprised 20 connected writ petitions by 52 petitioners, including same-sex couples, transgender persons and activists, not only same sex people. their main demands were to recognise a same-sex marriage as legal and should be registered and also, they were demanding the rights of establishing their own family in India. The respondent was the Union of India. They were against the concept of recognising same sex marriages and registering it legally under the Special Marriage Act, 1954.

Case title: Supriyo @ Supriya Chakraborty & Anr. v. Union of India Ors., W.P.(C) No. 1011 of 2022.

Citation: 2023 INSC 920

Court: Supreme Court of India (Five- Judge Constitution Bench)

Date of judgement: 17th October 2023

Bench: Dr. D Y Chandrachud, CJI; S.K. Kaul, S. Ravindra Bhat, Hima Kohli and P S. Narasimha.

The five-judge bench gave unanimous decision that the same-sex marriage cannot be granted as a legal act and also stated that marriage is a statutory right and not a fundamental constitutional right.

Majority: Justice Ravindra Bhat, Justice Hima Kohli, Justice Pamidighantam Sri Narasimha.

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

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

³ NALSA v. Union of India, (2014) 5 SCC 438.

⁴ Supriyo @ Supriya Chakraborty v. Union of India, (2023) 9 S.C.C. 1 (India).

Parties that were involved.

Petitioners: 20 connected writ petitions were filed with 52 petitioners from LGBTQ, Supriyo @ Supriya Chakraborty, individuals and couples of LGBTQ+ were the petitioners.

Respondents: Union of India, NCPCR and The Government of 5 States (Gujarat, State of Assam, Rajasthan, Madhya Pradesh and Andhra Pradesh) were the respondents.

2. FACTS OF THE CASE

20 connected writ petitions were filed from the year 2020-2023 with 52 petitioners from LGBTQ, Supriyo @ Supriya Chakraborty, individuals and couples of LGBTQ+ and DCPCR were the petitioners. The petitioners invoked Article 14, 15, 19(1)(a), 21 and 25 of the constitution, i.e., right to equality, right to non-discrimination, freedom of speech and expression, right to life and personal liberty, etc.

Also seeking relief of interpretive remedies and statutory entitlements. The petitioners wanted the legal rights of recognition of queer genders and their rights of employment, insurance, surrogacy, right of availing bank facilities etc. The petitioners challenged the Constitutional validity of secular and personal marriage statutes; they also challenged to change gender neutralize restrictive terms like husband and wife into spouse.

They said that restricting same-sex couple's marriage will create discrimination between two groups heterosexual couples and homosexual couples, the exclusion treats similarly situated couples differently without an intelligible differentia (Article 14)⁵ and discriminates on the ground of sexual orientation (Article 15),⁶ and the rights of marriage should be legally granted to queer groups.

The petitioners' point was that choice of partner is part of autonomy, dignity and expression protected by Articles 19(1)(a)⁷ and 21⁸. Support it with authority, e.g. *Shafin Jahan v. Asokan K.M.*, (2018)⁹ and *Shakti Vahini v. Union of India*, (2018)¹⁰, and rewrite: 'The petitioners argued that the exclusion violates the freedom to choose a partner, which is part of autonomy and

⁵ INDIA CONST. art. 14.

⁶ INDIA CONST. art. 15.

⁷ INDIA CONST. art. 19, § 1, cl. a.

⁸ INDIA CONST. art. 21.

⁹ *Shafin Jahan v. Asokan K.M.*, (2018) 16 SCC 368.

¹⁰ *Shakti Vahini v. Union of India*, (2018) 7 SCC 192.

dignity, they also demanded to let them make their own family status and family groups which are legally recognised by the state.

The petitioners' challenge was that the Act's gendered language (male/female, bride/bridegroom) and its notice-and-objection provisions exclude or burden same-sex couples. and their fundamental rights of right to equality, right to life, privacy and dignity is being violated.

Nine petitions (eight from the Delhi High Court, one from the Kerala High Court) were transferred to the Supreme Court; with those already pending there they made up the batch of 20, in relation to this topic of same sex marriage and By clubbing 20 pending petitions from different High court, supreme court took this matter in their hands also issued some beneficial guidelines for queer groups but declined to legalise same sex marriage in India in the year 2023 unanimous verdict by the 5 judges bench of the supreme court of India.

3. ISSUES RAISED

- i. Whether the right to marry is a fundamental right that is provided in the Indian constitution to all citizens regardless of their sexual orientation?
- ii. Whether the special marriage act is unconstitutional because it only allows men and women to marry?
- iii. Whether queer couples do not have the right to share rights like adoption, surrogacy, creation of bank account etc., as like heterosexual couples or they are getting denied?
- iv. Whether the supreme court has the power to change the laws or rules relating to marriage or only legislative assemblies enjoy this right?

4. ARGUMENT OF THE PARTIES

The petitioners side argued that the rights of queer persons have been violated as written in the Indian constitution Fundamental rights under article 14, 15, 19(1)(a), 21 are being broadly violated by the state. Which are right to equality, right against discrimination, freedom of speech and expression right to personal liberty and dignity, they also argued on a point that the court should read gendered expressions (husband / wife, male / female) in a gender-neutral way or to strike down exclusionary language. regarding the marital status as wife and husband and instead of recognising them as wife and husband couples should be called spouses because according to them the wife and husband terms somehow become the discriminatory term for

queer groups as they cannot fit within these terms. So, in order to generalize the terms of couple the terms should change into spouse. To strengthen their arguments, the petitioners relied on *K.S. Puttaswamy (Retd.) v. Union of India, (2017)*¹¹; supports privacy, dignity and autonomy, including sexual orientation and *Navtej Singh Johar v. Union of India, (2018)*¹²; supports decriminalization of same-sex cohabitation and consensual sexual conduct. The LGBTQ community also fought for their several rights such as the right of inheritance, adoption, medical decisions, insurance etc. The queer groups argued that the system needs to include the LGBTQ community or all genders under the term of “person” written in the special marriage act.

The Respondents i.e., Union of India argued that Right to marry is not a fundamental right and it cannot be extended as a fundamental right, The Union's case was richer than this: legitimate State interest and legislative policy; Navtej decriminalized same-sex conduct but did not confer a right to marry; Article 21 rights are subject to procedure established by law; and only Parliament can decide. also marriage between men and women is a majority belief on the basis of cultural, social and historical tradition and consistent legislative policy hence they stated that marriage laws in India does not include same sex couples marriage and said that it is a matter of parliamentary issue hey need to make laws on this matter and the supreme court or all other courts does have such power, 'The Union submitted that marriage is a matter for Parliament and that courts cannot create or alter marriage laws. To make laws on this matter it has to be passed by the parliament of the country. The supreme court also issued certain guidelines for LGBTQ community in respect of their recognition of fundamental rights and also solved other banks related issues of queer couples.

5. JUDGEMENT OF THE SUPREME COURT

The judgement given by the five-Judges bench of supreme court of India in the year 2023 and the names of the Judges are Dr. D Y Chandrachud (Chief Justice of India), Justice Sanjay Kishan Kaul, Justice Ravindra Bhat, Justice Hima Kohli , Justice Pamidighantam Sri Narasimha the judges held that there is no fundamental right to marry as a fundamental right of the citizen unanimously , the (5-0)bench gave the judgement stating that the marriage of the same sex couples will be not included or recognised in the special marriage act.

¹¹ K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

¹² *Id.* at 54.

The 3:2 split concerned civil unions and adoption, but no queer groups or LGBTQ community should be deprived of fundamental rights, each person irrespective of their gender should enjoyed all the fundamental rights as like all the citizen of the country.

The judges also stated that seized gender can marry to a transgender and heterosexuality should be maintained. The Chief Justice's opinion directed the Union, States and Union Territories to (among other things) ensure non-discrimination in access to goods and services, sensitize the public, set up helplines and safe houses, and ensure intersex children are not forced into surgeries; the Court also recorded the Solicitor General's assurance on the committee. and for giving them utmost, protection, respect, care and making the society nondiscriminatory.

The guidelines include Ration cards, joint bank accounts, pension and insurance nomination and similar matters were identified for the Cabinet Secretary-led committee to examine (in the Chief Justice's list); they were not benefits already granted by the Court., pension, ration card, insurance, joint bank account of the queer couples etc. The judges also directed that the queer couples or individuals should get access to all the services and must not be neglected in the society.

6. REASONING OF THE COURT

Marriage is not a fundamental right: The ratio decidendi behind this was that India is governed by secular statutes such as Special Marriage Act, 1954;¹³ and Foreign Marriage Act, 1969.¹⁴ The constitution does not expressly guarantee them the right to marry. The supreme court stated that the legislature has power to make such laws on each topic. It was said that it is a social and historical matter and hence the court cannot work as a legislature and the legislative body should make separate laws on such marriages.

On non-discrimination: 'All five judges agreed that queer persons must not be discriminated against in accessing goods and services. Also, the Chief Justice and Kaul J. went further and held that denying the benefits of union has a discriminatory impact violating Article 15; the majority did not accept that. They should not be discriminated for availing any services and goods provided by the government and they should enjoy all the fundamental rights and facilities that are provided to its citizens in this case, after the Navtej Singh Johar's case the queer groups included under the definition of citizens of India. The queer groups are equally liable for getting all the benefits of Bank facilities, insurance, inheritance etc.

¹³ Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

¹⁴ Foreign Marriage Act, 1969, No. 33, Acts of Parliament, 1969 (India).

Separation of powers: The judges of the supreme court said that recognising same sex couples marriage is the power or duty of legislative not the power of judiciary they both are separated and judiciary cannot make new laws on marriage as the court does not have the authority to do so if in case society wants to add, include or change anything under the definition of marriage the legislative will make such laws in order to deal with such situations.

Civil unions: By 3:2 the Court held there is no fundamental right to a civil union. The Chief Justice and Kaul J. (in the minority) would have recognised the freedom to enter into unions and the State's duty to address the resulting discrimination, but even they held that creating the legal framework is for Parliament, as queer couples have the right to choose their partners and form a relationship it is the duty of the legislature to make laws on civil unions in order to stop the discrimination and provide them equal rights.

On adoption rights: The CARA (Central Adoption Resource Authority) does not have any such rules of binding the queer peoples to adopt a child and it was stated that the if any such circumstances occur as a matter of safety concern and welfare of the child is breached than they may be restricted not based on gender but for the utmost safety of the child. The identity of the parents is not concerned but the care and safety of the child is the concerned matter of the authority.

7. CRITICAL ANALYSIS

The judgment that is given by the supreme court that marriage is not a fundamental right is unsatisfactory. Marriage is a very important subject in a person's life; it should be added as a fundamental right. The strongest support is *Shafin Jahan v. Asokan K.M.* (choice of partner is part of Article 21)¹⁵ and *Puttaswamy* (dignity, autonomy, privacy),¹⁶ plus the argument that dignity requires recognition, not mere tolerance. A person's half of the life journey is dependent upon a person whom they are marrying, every person should have a right to marry irrespective of their gender identity, sex, or sexual orientation (the grounds read into Article 15 in Navtej). The Judgements of the supreme court are very contradictory about right to equality, at very first supreme court says that each person is equal and the guidelines for queer rights were introduced in which it says that only a person who is a transgender can marry to a seize gender is a type of contradictory statement that on one side they are giving the rights of trans gender persons while on the other side they are neglecting other sector of the LGBTQ+ community.

¹⁵ *Id.* at 54.

¹⁶ *Id.* at 57.

According to the judgement of the supreme court given in this case that a transgender can marry to the seized gender is a very vague guideline. When we look deeply, we can understand that it is somehow indirectly pointing that if a person who is willing to marry to their same sex had to change their gender for legally registering their marriage and is a disturbing move done by the judges of the supreme court.

As society is dynamic and changing day by day the judges need to give the judgement according to the changing environment and should not believe in previous factors of the society. The Court held that it could not itself give this relief and left the matter to the legislature. Critics say deference abdicates the court's duty under article 32 to enforce fundamental rights (the counter majoritarian role).¹⁷ According to the constitutional provisions given to the supreme court in Article 142 (complete justice)¹⁸ and Article 32 (remedies for fundamental rights), supreme court can provide a complete justice to the pending case which is a unique topic and also, they can issue guidelines which are not properly or explicitly written in the constitution of India. *Vishaka v. State of Rajasthan*,¹⁹ and *NALSA*²⁰ are examples of the Court issuing directions to fill legislative gaps. *Supriyo vs. Union of India* case was different because during that time there were complex statutes intertwined in a personal law but they did not do full justice to the case of *Supriyo v. Union of India*, as the court stated that the constitution does not grant full right to marry but the general right to cohabit or choose their partner. But after All this judgement The Court did not decide or direct that a separate civil marriage law should be made. The majority left the question to Parliament; the minority recognised the freedom to form unions but likewise said the legal framework is for the legislature. What the Court did was record the Solicitor General's assurance of a committee, but till now from 2024 no such provisions or laws had been made by the Parliament. The motion supports that Parliament and the State legislature should act promptly for making a separate civil marriage law for queer groups as early as possible, before any new case comes into existence related to this topic The law should provide eligibility, registration without the notice, spousal rights in succession, maintenance and insurance to the queer groups.

¹⁷ INDIA CONST. art. 32.

¹⁸ INDIA CONST. art. 142.

¹⁹ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241

²⁰ *NALSA v. Union of India*, (2014) 5 S.C.C. 438 (India).

8. CONCLUSION

In conclusion, judicial deference versus judicial activism have pros and cons of it, there should be a balance maintained for balancing judicial protection of rights against legislative competence by the queer groups and the judiciary, executive and legislative assemblies for decreasing conflicts in the society, as the role of judiciary is to protect people's right to privacy, right to equality and dignity and legislative make laws for the benefits of the people and in order to stop discrimination in the society there is a need to make laws for them which are beneficial for their existence and right to life and liberty which is the right of every citizen of India irrespective of their caste, gender, race, religion etc. should be equally enjoyed by them. No person should misapply the laws which are made for people's benefit and the legislature should also look into the matters of those peoples whose matters are being overlooked, lastly awareness campaigns should be organized by the government and the sensitization of police, judiciary and officials, implementation of the committee's recommendation; healthcare and workplace protection of the states and society in order to make people of the society think with a broader mindset and do rational thinking on the basis of gender equality and their rights. These measures can help in making the society more peaceful and a more inclusive and harmonious society environment.