

# RECONCILING LEGAL PLURALISM: INDIGENOUS KNOWLEDGE SYSTEMS AND FAMILY LAW IN INDIA

## Abstract

Family Law in India has let on to being a legal landscape that combines both the authorized and customary and the Interplay of Indigenous Knowledge Systems (IKS) and Family Law in India is quite complicated. Although Indian family law is stunningly pluralistic, making reference to both Hindu, Muslim, Christian and secular laws and provisions and to customary norms, embedded IKS norms of familial relations perse continue to govern familial relations mainly in tribal and rural communities. However, to the extent that such customary norms are recognized within the formal legal system, they are inconsistent in the extent to which they are recognized, subject to judicial interpretation and constitutional scrutiny. This research analyzes the legal status of IKS within Indian family law with special reference to marriage, divorce, inheritance and adoption. It delves into jurisprudential discourse about the legitimacy of customary practices in the context of constitutional guarantee of equality and non-discrimination given gender justice. The ambivalence of the judiciary towards legal pluralism is evident in its, at times, upholding and at other times subordinating to statutory law, indigenous customs. The research also examines the problems that arise from the tension between the requirement of legal uniformity imposed upon them by the state and the fact of the lived reality of the indigenous communities. It contends that in reconciling IKS with formal legal structures, a rather nuanced, community driven approach is essential, outside of which culture is wiped out. This research calls for policy reforms that take into consideration the changes in the nature of indigenous legal traditions in order to be compatible with constitutional mandates, without removing their role in regulation of what is traditionally the norm within the family. However, this analysis points toward the realization that a balanced legal framework with regard to diversity cannot foreclose from the protection of human rights.

**Keywords:** Indigenous Knowledge Systems, Family Law, Customary Law, Legal Pluralism, Tribal Law, Marriage Practices, Divorce Law, Inheritance Rights

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## I. INTRODUCTION

The law of personal and family law has, generally, evolved within a complex interdependent codified statute and indigenous custom relationship. It is particularly conspicuous in India, where the legal land is soaked by diverse cultural traditions, the venerable customary practices, and the religious doctrines. One of the most significant characteristics of Indian family law jurisprudence is its strong and clear sense of pluralism, which is the product not only of religious autonomy, but also of customary law, despite the codification by the state implemented to enforce the same. IKS, which comprises the local communities lived experiences, oral traditions and normative frameworks are part and parcel of the socio-legal order and especially with respect to matters marriage, divorce, inheritance, and guardianship. Despite the attempt of statutory enactments at formalizing and regulating the field of family law through codification, customary practices have remained powerful and at the same time open to serious question, as regards the “legitimacy”, their “adaptable” or “valid”.<sup>1</sup>

Indian family laws have had a pluralistic structure and trace their origins to their colonial past and post-independence legal developments. Familial and matrimonial affairs have been governed historically by the so-called Hindu, Muslim, Christian and Parsi religious personal laws which have founded their authority from sacred texts and customary traditions. Yet indigenous customs, particularly in the tribal and rural community, have always worked in parallel to these codified legal systems. The sense of duality that such tension inherent in this dualism brings emphasizes the point how the autonomy of customary law was always subject to state imposed legal uniformity, and these need to be studied critically under the domain of legitimacy and evolution of indigenous legal traditions in the Indian modern constitutional framework.<sup>2</sup> Statutory laws have been therewith imposed over upon pre-existing customary norms in contested, spaces of legal authority, where customary practices have continued, sometimes implicitly recognized by the judiciary and sometimes in direct conflict with codified statutes. Their legal discussion of indigenous customs remains an inchoate one in which much is contested, a conversation to have among cultural specificity and constitutional demand of equality and justice.

The IKS are the accumulated wisdom, customs, norms of life and values inherent in the practices, traditions and conventions developed and sustained by the native communities through many generations. They regulate as much of communal life as dispute resolution, kinship structures, inheritance practices, and familial obligations. Whereas statutory laws are codified and centralized within the purview of state power, indigenous legal traditions are decentralized, dynamic, and flexible compared not only to socio-economic realities, and at best with such reliability as found in ‘common law.’ The basis of legal adjudication in pre-colonial India was the customary norms and village councils (panchayats), caste tribunals, and religious leaders were arbiters of disputes. There were, in fact, these customary legal structures which were in themselves self-contained, they could adjudicate matters by established precedent, oral traditions and the consensus of the community. The British colonial administration aimed to standardize the legal by trying to codify Hindu and Muslim personal laws, in the process partially marginalizing the customary law. Statutory

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<sup>1</sup> Findlay, A. (2021). Indigenous knowledge. *Nature Climate Change*, 11(7), 559. <https://doi.org/10.1038/s41558-021-01093-8>.

<sup>2</sup> Odora-Hoppers, C. A. (2015). *Indigenous knowledge systems*. Oxford University Press. <https://doi.org/10.1093/med/9780198703327.003.0015>.

frameworks like the Indian Succession Act, 1925 & Special Marriage Act, 1954 were introduced in order to introduce uniformity in laws regarding family matters, but as was not entirely successful in replacing indigenous customs, especially for matters pertaining to family where traditional customs are very strong still prevails in tribal and rural areas.<sup>3</sup>

However, the legal influence of indigenous customs is considerable, in its entirety, and in particular in areas covered under the Fifth and Sixth Schedules of the Indian Constitution that accord special protection to tribal communities. These provisions correspond to the autonomy of tribal populations in matters of personal law and consider the tribal populations as separate from the codified religious laws. But legal pluralism has occurred in terms of the coexistence of indigenous customs and formal legal structures that have contributed to statutory enactments and customary norms sometimes intersecting, sometimes diverging, and even sometimes conflicting. Judicial pronouncements which have adopted customary practices as long as they do not contravene constitutional morality, gender justice and equity principles vouch for the resilience of indigenous legal traditions. In numerous instances, the Supreme Court of India has upheld the validity of some customary laws at the same time delimiting practices which, in its eyes, are regressive or incompatible with constitutional values.

Thus, under Indian law, the family law has been deeply grounded in pluralistic tradition in which statutory enactments coexist with religious and customary laws indicating the deep rootedness of jurisprudence within this area of Indian law. Under personal law matters, the Hindu Marriage Act, 1955, Muslim Personal Law (Shariat) Application Act, 1937, Indian Christian Marriage Act 1872 & Parsi Marriage and Divorce Act, 1936 collectively governs marriage, divorce, maintenance and inheritance.<sup>4</sup> Although many of these codified frameworks include a tradition of customary components, these thus maintain historical continuity of the indigenous traditions. The Special Marriage Act, 1954, offers a secular alternative, enabling interfaith and civil marriages outside the purview of religious personal laws. However, the rule of customary law is more obvious in tribal communities and non-dominant caste groups where unwritten legal traditions continue to rule the affairs of family and matrimony. At times, such customs have been deemed to have been of such authority as to be recognized by judicial interpretations, so long as the test of antiquity, continuity, and reasonableness is satisfied. For example, the Hindu Succession Act, 1956, while non-codifying inheritance rights permits the adulation of dogmatics where principal, establishing that the legal system is magnanimous towards indigenous norms.

The history of Indian family law narrative shows a pattern of back and forth of recognition and exclusion of customary practices by the state. The structure of the pre-colonial laws was largely determined by the substance of customary jurisprudence and Hindu law derived from the Dharmaśāstra texts and interpreted in the light of the tradition of the region. Qazis administered Islamic law under Sharia framework for solving disputes by way of religious doctrines and customary principles.<sup>5</sup> Unlike some states where religious and communal though minority legal traditions established at least through Christian and Parsi laws, these

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<sup>3</sup> Mitra, B. B. (1997). *The Indian Succession Act*. Eastern Law House.

<sup>4</sup> *Inheritance Laws In India: Rights, Succession & Legal Framework*. (n.d.). RealtyNXT. <https://realtynxt.com/blogs/2025-02-12/legal-heirs-property-rights-in-india-a-guide-to-inheritance-laws>.

<sup>5</sup> *Understanding Muslim Inheritance Law in India*. (n.d.). LawCrust Global Consulting Company. <https://lawcrust.com/muslim-inheritance-law-in-india/#:~:text=A%20Muslim%20can%20bequeath%20up,follow%20the%20established%20inheritance%20laws.&text=Sharers:%20These%20heirs%20are%20entitled,and%20daughter%20of%20a%20son>.

traditions developed within religious and communal frameworks that accommodated localized customs. Religion played an important role in Shri Raghunandan Rao's decision and served to legally define and enforce his duties as a trader due to the existence of these traditional legal structures, which were subsequently disrupted by the British colonial administration through codification, securing some parts of Hindu and Muslim law and ignoring others that did not fit into the British legal rationality. Anglo raise difference started from the colonial rule and marked departure from the indigenous adjudicatory autonomy which resulted in systematic erosion of customary legal authority.

After attaining independence, reforms aimed at keeping alive the doctrine of personal law pluralism and at the same time demanded modernization of the legal framework. Article 44 of DPSP enshrines the constitutional vision of a UCC, which is the state's aspiration towards legal uniformity in family law. But the issue of a UCC has remained contentious, all bedeviled by religious and indigenous communities who do not want to lose grip of their own special legal traditions.<sup>6</sup> The UCC proponents maintain that a standardized legal framework would ensure gender justice, social equality and legal certainty and would get rid of discriminatory practices embodied in personal laws. On the other hand, proponents argue that preserving cultural and legal pluralism is important to retain given the fact that certain normative frameworks of tribal and indigenous groups do not correspond to state rigid codification.

## **FRAMEWORK OF INDIGENOUS KNOWLEDGE SYSTEMS (IKS)**

IKS are a huge and complicated body of knowledge, traditions, customs and practices that have been developed over the years by indigenous and local communities. These communities are deeply entwined in the public consciousness of their cultural, social and spiritual fabric and this body of knowledge is an unwritten legal rubric guiding many things in the communities. Unlike statutory legal frameworks based in codification and textual authority, IKS generally works in an oral means through a process of transmission, memory, and consensus of the community. The knowledge systems that feature in this literature are quite highly contextual specific, varying from one ethnic, tribal and regional group to another with their own norms governing social conduct, familial relationships, property rights, dispute resolution mechanisms, and systems of governance. However, the non-codified nature of IKS does not lessen its legal authority within the communities that adhere to it as it continues to regulate behavior and enforce obligations through informal means of adjudication such as elder councils, village assemblies and other such informal bodies.

The Indian legal framework is of customary law, which is an important source of law, in addition to statutory enactments and religious personal laws. Customary laws have been recognized by the Indian judiciary for a long time, particularly when it comes to tribal communities, where traditional norms govern the things about which personal and communal importance is at stake. Nevertheless, the legal recognition of IKS is not absolute, as customary laws have to be subjected to judicial scrutiny before they are considered legally binding. Customs are assessed by courts as the validity of customs depends on long standing practice, reasonableness, certainty and non-contravention of public policy, morality and constitutional principles. That process is so that while the customs of indigenous

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<sup>6</sup> Chaudhry, S. (2011). Effectiveness of Directive Principles of State Policy. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.1758849>.

communities are respected and have legal standing, it is not carried out in a way that violates the very important fundamental rights enshrined in the Indian Constitution.

Family law or customary domestic law is also a particularly significant domain in IKS dominated by it on how it governs in marriage, divorce, inheritance, and guardianship, for instance. A lot of these aspects are regulated by traditional practices rather than the slightest statutory provisions, because of which a lot of customary authorities have a lot of influence over codified law. For example, marriages solemnized by many tribal and indigenous communities in India through rituals which do not have an official standing under the provisions of the Hindu Marriage Act, 1955 or the Special Marriage Act, 1954.<sup>7</sup> In fact, Indian courts have at different points in time, given validity to such marriages if they are generally accepted within the community and follow the fundamentals of the marriage. Similar to this, customary law has regularly departed from statutory provisions, especially concerning women's rights regarding inheritance and property rights. Some tribal customs restrict women's access to ancestral property, challenging codified laws like Hindu Succession Act, 1956, which gives equal right of inheritance to women, irrespective of gender. Such disputes had been resolved by the judiciary for balancing imperatives of preserving indigenous customs from constitutional demands in gender equality and social justice.

Other areas where IKS and statutory law conflict are further outlined through the domain of guardianship and adoption. Second, guardianship and adoption of children as practiced by indigenous communities are often kinship based and do not adhere to the legal requirements laid down in the Juvenile Justice (Care and Protection of Children) Act, 2015. Customary adoptions have repeatedly been the subject of determinations by courts of whether they are legally enforceable, and courts have required evidence of consistent and long-standing practice for the customary adoptions to be given legal validity. The conditional legal recognition of IKS within the formal legal system, however, exposes the necessity of proving customary practices through judicially acceptable evidence, which indicates the conditional nature of the recognition provided to IKS within the formal legal system.

The judicial approach to indigenous knowledge and customary law has evolved through a series of judgments that have sought to reconcile traditional norms with constitutional principles. In *Madhu Kishwar v. State of Bihar*,<sup>8</sup> the court confronted the issue of tribal inheritance laws that denied women equal rights to ancestral property. While acknowledging the historical significance of customary law in tribal governance, the Court unequivocally held that such customs could not override constitutional guarantees of gender equality. The ruling underscored the principle that while indigenous customs enjoy legal recognition, they must conform to constitutional morality and fundamental rights. Similarly, in *Laxmibai Chandaragi B v. State of Karnataka*,<sup>9</sup> the court reaffirmed that personal autonomy in matters of marriage is constitutionally protected under Article 21, thereby overriding traditional objections rooted in IKS. This case reinforced the jurisprudential stance that while customary law remains a valid source of legal norms, it cannot infringe upon fundamental constitutional freedoms.

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<sup>7</sup> Davis, M. (2008). Indigenous Knowledge: Beyond Protection, Towards Dialogue. *The Australian Journal of Indigenous Education*, 37(S1), 25–33. <https://doi.org/10.1375/s132601110000034x>.

<sup>8</sup> AIR 1996 SUPREME COURT 1864.

<sup>9</sup> AIR ONLINE 2021 SC 85.

The judiciary has also recognized the legitimacy of indigenous dispute resolution mechanisms, provided they adhere to established legal principles. In *Mst. Subba v. Chaturbhuj Das*,<sup>10</sup> the court ruled in favor of a customary divorce practice prevalent among tribal communities, holding that such practices could be upheld if they were reasonable, certain, and not repugnant to public policy. Similarly, in *Maya Devi v. State of Chhattisgarh*,<sup>11</sup> the court examined customary adoption practices within tribal communities, ruling that while unwritten, such customs could be legally enforceable if proven to be long-standing and widely recognized. Another significant case, *Rathnamma v. Sujathamma*,<sup>12</sup> addressed matrilineal inheritance customs among a specific tribal group, with the court upholding the customary practice on the grounds that tribal laws retain primacy unless expressly superseded by statutory law.

## II. JUDICIAL APPROACH TO IKS IN FAMILY LAW

The Indian judiciary has been frequently asked by virtue of the fact that it is a complex interplay between IKS & codified framework of family law, to determine the validity and enforceability of customary practices. In this judicial engagement, an evolving approach toward consolidating constitutional principles, statutory mandates, and the very entrenched custom of different communities has been taken. The attitude of the judiciary about the validity of customary law, the weight to be given to fundamental rights and the legal intent of family law statutes are part of the legal landscape shaped in this area. It is true that they regard the customs of indigenous peoples as important, but the courts have always scrutinized them through the windows of constitutional morality, public policy and judicial reasonableness. As a result of this, a jurisprudential discourse embedded in cultural preservation & value application of the constitutional values of equality, justice and individual autonomies has hovered.

The recognition and enforceability of customary family law in India have largely depended on the judicial tests of antiquity, continuity, and reasonableness. These principles, as evolved through judicial precedents, serve as critical determinants in assessing whether an indigenous norm qualifies for legal recognition. The courts have played an instrumental role in either validating or negating customary family law practices based on these parameters. In the realm of marriage and divorce, the judiciary has consistently ruled that any marriage, to be legally valid, must either conform to statutory personal laws or be recognized as a long-standing and reasonable customary practice. In *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav*,<sup>13</sup> the court unequivocally held that a marriage not solemnized under statutory law or recognized customary law would be invalid, thereby restricting the scope of indigenous traditions that fail to meet codified requirements. Conversely, in *Shah Bano Begum v. Mohammed Ahmed Khan*,<sup>14</sup> the court recognized the legitimacy of customary maintenance rights of Muslim women, emphasizing that while customs may persist, they must not contravene constitutional principles of fairness and justice. Similarly, in *Laxmibai v. Bhagwanthrao*,<sup>15</sup> the court acknowledged and upheld the validity of a tribal marriage custom,

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<sup>10</sup> SLP(C) No. 13427/2018.

<sup>11</sup> CRIMINAL APPEAL No. - 2147 of 2004.

<sup>12</sup> AIR 2020 SUPREME COURT 541.

<sup>13</sup> AIR 1988 SUPREME COURT 644.

<sup>14</sup> AIR 1985 SC 945.

<sup>15</sup> CIVIL APPEAL NO. 2058 OF 2003.

ruling that indigenous communities should not be subjected to rigid codified norms where established and recognized customs exist. These decisions illustrate the judiciary's nuanced approach, which neither blindly accepts nor outrightly rejects customary practices but instead evaluates them against the broader constitutional framework.

Inheritance and succession laws within indigenous communities have also been a focal point of judicial deliberation, particularly in cases where such customs have been alleged to be discriminatory. In *Madhu Kishwar v. State of Bihar*,<sup>16</sup> the court confronted the conflict between tribal inheritance customs and gender equality under the Constitution. The case, which involved the Chotanagpur Tenancy Act, denied inheritance rights to tribal women, thereby perpetuating gender-based discrimination. While the Court refrained from striking down the customary law entirely, it strongly criticized its discriminatory nature and called for legislative intervention to address such inequities. In *JupudyPardha Sarathy v. Pentapati Rama Krishna*,<sup>17</sup> the court reaffirmed that customary inheritance practices in tribal communities should not be interfered with unless they contravene public policy or constitutional values. This reflects a consistent judicial approach of intervening only when customary norms infringe upon fundamental rights, while simultaneously respecting the unique cultural identities of indigenous groups.

In matters concerning adoption and guardianship, the judiciary has maintained that customary adoption practices must be supported by long-standing community traditions rather than being based on individual convenience. In *Bhim Singh v. Kan Singh*,<sup>18</sup> the court reiterated that customary adoption must be established through evidence of consistent and recognized practice within the community. However, in *Shabnam Hashmi v. Union of India*,<sup>19</sup> the court moved towards a more inclusive legal framework, affirming the right of individuals to adopt irrespective of religious or customary restrictions under the Juvenile Justice (Care and Protection of Children) Act, 2000. This judgment underscored the primacy of statutory law in ensuring the best interests of the child, thereby diminishing the overriding authority of customary adoption practices that may not align with contemporary legal standards.

The Indian Constitution embodies a delicate balance between the right to cultural autonomy and the fundamental right to equality, often leading to legal conflicts between Article 14 (Right to Equality) and Article 29(1) (Protection of Cultural Rights of Minorities). The judiciary has frequently relied on Article 13(1), which renders customs inconsistent with fundamental rights void, to strike down discriminatory customary practices. This is particularly evident in cases concerning the inheritance rights of tribal women, where patriarchal customs have been invalidated for violating Articles 14 and 15. However, judicial intervention in personal laws has been a contested issue, as seen in *State of Bombay v. Narasu Appa Mali*,<sup>20</sup> where the court held that personal laws do not constitute "laws" within the meaning of Article 13(1), thereby restricting judicial review of customary practices unless they are expressly challenged under fundamental rights. This judicial hesitancy has often created a legal vacuum, requiring legislative action to address discriminatory customary norms.

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<sup>16</sup> AIR 1996 SUPREME COURT 1864.

<sup>17</sup> 2015 AIR SCW 6258.

<sup>18</sup> 1980 SCR (2) 628.

<sup>19</sup> AIR 2014 SUPREME COURT 1281.

<sup>20</sup> AIR 1952 BOMBAY 84.

The tension between constitutional guarantees and indigenous autonomy is further complicated by the provisions of the Fifth and Sixth Schedules of the Constitution, which grant tribal communities a degree of self-governance in personal and customary matters. However, courts have been called upon to determine whether customs protected under these schedules can be challenged on grounds of fundamental rights violations. The judiciary has generally upheld that constitutional morality must take precedence over regressive customs, as reaffirmed in *Madhu Kishwar v. State of Bihar*.<sup>21</sup> This judicial inclination underscores a broader commitment to ensuring that cultural traditions do not perpetuate systemic discrimination or infringe upon the basic human rights of individuals.

The role of customary Panchayats and indigenous dispute resolution forums in adjudicating family law disputes in rural and tribal communities presents another dimension of this legal discourse. These traditional bodies, deriving their legitimacy from communal consensus and long-standing customs, continue to function as parallel mechanisms for resolving disputes concerning marriage, divorce, succession, and inheritance. Gram Panchayats and Nyaya Panchayats in various states, as well as tribal courts such as the Khasi Dorbars in Meghalaya & Gond Panchayats in Madhya Pradesh, exercise significant influence over family law matters. While these customary forums offer accessible and culturally relevant dispute resolution, their decisions often come into conflict with formal legal principles, particularly in cases involving gender justice and individual rights. Courts have recognized the utility of such forums, provided their rulings align with constitutional values and statutory law. However, in cases where these bodies exceed their jurisdiction or impose unconstitutional practices, judicial intervention has been unequivocal. In *Lata Singh v. State of U.P.*,<sup>22</sup> the court condemned extra-legal actions by Khap Panchayats that sought to interfere with personal choices, particularly in inter-caste marriages, declaring such actions unconstitutional. Similarly, in the *State of Rajasthan v. Vishnu*,<sup>23</sup> the judiciary reaffirmed that customary courts must operate within legal constraints, ensuring that their rulings do not infringe upon fundamental rights.

### III. CHALLENGES AND CONFLICTS IN INTEGRATING IKS WITH FAMILY LAW

The problem of reconciling IKS to Indian family law is in the first instance deeply complex from a legal perspective, because codified statutory frameworks have to be combined with the tacit decentralized pluralism of customary legal traditions which is created by an inherently at odds plurality of family norms and obligations. The statutory enactments like Hindu Marriage Act, 1955, Indian Succession Act, 1925 and Special Marriage Act, 1954 encapsulate Indian family law which is essentially intended to create uniformity, certainty and procedural formalism. These legislative instruments operate within structure which prefers written documentation, predetermines procedural requirements and universal legal principles that can apply to a wide range of social groups. But much codification does not take into consideration, or inadequately accounts for, the indigenous legal traditions that are not codified in the formal state structures, which depend on oral transmission, collective consensus as well as kinship-based obligation. The indigenous legal systems are based on historical continuity and the lived realities of tribal communities that operate through

<sup>21</sup> AIR 1996 SUPREME COURT 1864.

<sup>22</sup> 2006 AIR SCW 3499.

<sup>23</sup> S.B. Criminal Miscellaneous Bail Application No. 2085/2023.



unwritten customs with the evolution from time to time in accordance with the social and cultural exigencies of their practitioners. Hence, when these customary norms collide with codified law, a major discord appears and that creates legal uncertainty and makes the adjudication a tough choice.<sup>24</sup>

It is in the regulation of marriage and divorce that IKS and statutory family law have particularly divergent interests. Many of the tribal communities follow the marriage practices which are not in line with the statutory requirements such as registration, monogamy and prescribed age limits. Marriages among these communities are customarily solemnized according to traditional rituals which do not require written documentation and hence pose a formidable legal hurdle when the need arises to recognize the status of a marriage under the law of that state. Such unions lose legal protection of succession, maintenance and dissolution of marriage, as the statutory framework routinely invalidates or fails to recognize them because of its preference for documentation and formal adherence to procedural requirements. In addition, there are several tribal customs that permit polygamous or informal marital arrangements that do not fit within the framework of laws such as Hindu Marriage Act, 1955, & Special Marriage Act, 1954. There have been such conflicts, which have necessitated judicial intervention, and courts have been frequently asked to decide the validity of a customary marriage vis-à-vis statutory mandates. These adjudications have fluctuated between terms of indigenous customs and imposing the principle of legal uniformity in an effort to unabated an ongoing jurisprudential ambiguity concerning the position of indigenous marital traditions.

The question is further complicated by the question of judicial recognition of customary law. Indian jurisprudence recognizes the validity of customary law in limited circumstances, however, the conditions for such recognition are inconsistent and will depend on the discretion of the judiciary. The legal doctrine that a custom must be “ancient, reasonable, and continuous” to attain legitimacy, as established in *Ayyangar v. Lakshmiammal*,<sup>25</sup> has been applied with varying degrees of stringency, leading to an unpredictable judicial approach. Furthermore, Article 13 of the Indian Constitution adds additional complication to the constitutional framework by rendering void of any law, including customary practices, which violates fundamental rights. In particular this has come up when customary laws continue to perpetuate discriminatory norms that impinge on principles of gender equality and human dignity. Judicial intervention in various instances has been required in order to uphold the constitutional mandate to strike down customs that violate Articles 14 and 15 (guaranteeing equality and non-discrimination), at the expense of indigenous legal autonomy. The example of a conflict between constitutional supremacy and the continuous presence of indigenous legal traditions constitutes the very essence of the legal pluralism in the Indian context.

Gender justice is one of the most salient grounds of contention between IKS and codified family law relating to inheritance, succession and matrimonial rights. In many indigenous and tribal communities, customarily drawn laws are extremely patriarchal that revolve on kinship-based system which favors male lineage and prevents women’s access to property or decision-making authority. Specifically, the conflict within inheritance of property is illustrated by the fact that many Scheduled Tribe communities follow patrilineal inheritance

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<sup>24</sup> Gumbo, M. T., & Williams, P. J. (Eds.). (2023). *Indigenous Technology Knowledge Systems*. Springer Nature Singapore. <https://doi.org/10.1007/978-981-99-1396-1>.

<sup>25</sup> AIR 1958 SC 130.

systems whereby daughters are not allowed and if they are, only a nominal share of ancestral property is given. On the other hand, the Hindu Succession (Amendment) Act, 2005, the statutory reforms made the daughters of Hindu undivided family (HUF) equal coparcener and offered parity in ancestral inheritance. Judicial pronouncements, such as *Madhu Kishwar v. State of Bihar*,<sup>26</sup> have attempted to mediate these conflicts by affirming women's rights under constitutional equality principles. While such progressive rulings, however, the enforcement of these rights inside of indigenous communities remains fraught with socio cultural resistance as they have been at the mercy of the command of customary practices which still hold sway in matters of familial as well as of property relations.

Gender inequalities, however, contravene constitutional guarantees of equality through marriage and divorce norms within indigenous legal traditions, which are strengthened by marriage and divorce within the legal traditions. Unilateral divorce through many customary practices is allowed by men and restrict women in their exercise of marital enforcement, thereby giving men more power than women in their matrimonial rights. Moreover, dowry like practices, although banned under the Dowry Prohibition Act, 1961, continue in some of the indigenous traditions under other nomenclature and continue to perpetuate economic subjugation within marital arrangements.<sup>27</sup> The tension by which this balancing act must be conducted is one that respects indigenous cultural autonomy, while at the same time upholding constitutional imperative of non-discrimination and of gender justice. Though courts may occasionally invalidate customs that infringe women's rights, such interventions often anger within indigenous communities who see these rulings as external attacks on their cultural sovereignty. Therefore, it demonstrates the wider issues in the project of melding indigenous legal traditions into a rights-based framework without expunging of a degree of cultural specificity.

#### IV. CONCLUSION AND THE WAY FORWARD

India's IKS and Family Law is a complex junction of law where a contextual driven approach is necessary. The Indian legal framework has traditionally accepted certain customary practices but the fast-growing emphasis on codified law has time and again placed the formal legal structures in conflict with indigenous traditions. There is a pendulum swing of judicial deference and intervention when it comes to customary family law, which depends on whether the practice is in line with constitutional principles, such as gender justice, equality, and non-discrimination. Yet, the predominance of statutory laws tends to erode the culture of the indigenous people and the concerns about legal homogenization at the expense of cultural diversity. This, thus, presents the challenge of maintaining both in respecting the rich plurality of indigenous legal traditions and also not maintaining the situation of customs that are perpetuated in the violation of basic rights and other forms of discrimination, social hierarchies.

Going forward, a model of a robust legal pluralism has to be developed wherein the indigenous legal traditions are formally recognized and harmonized with the broader constitutional framework. Legislative intervention is necessary, which codifies and validates customary laws in such a manner as to take account of their cultural origins and exigencies of

<sup>26</sup> AIR 1996 SC 1864.

<sup>27</sup> Kanaujia Sukula, S. (2006). Developing indigenous knowledge databases in India. *The Electronic Library*, 24(1), 83–93. <https://doi.org/10.1108/02640470610649263>.

justice and fairness. Furthermore, community-based mechanisms of dispute resolution such as panchayats and customary courts should be institutionalized within the legal framework as the platform that promotes quick and cost-effective legal redress within the community. But the price that should not be paid is our fundamental rights and that is why there should be clear legal safeguards against discriminatory or regressive customs. In addition, a participatory legal reform process involving tribal and indigenous communities, legal scholars and policymakers is essential to the evolution of indigenous jurisprudence so that it is consistent with the standards of contemporary human rights.

## REFERENCES

- [1] Chaudhry, S. (2011). Effectiveness of Directive Principles of State Policy. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.1758849>.
- [2] Davis, M. (2008). Indigenous Knowledge: Beyond Protection, Towards Dialogue. *The Australian Journal of Indigenous Education*, 37(S1), 25–33. <https://doi.org/10.1375/s132601110000034x>.
- [3] Findlay, A. (2021). Indigenous knowledge. *Nature Climate Change*, 11(7), 559. <https://doi.org/10.1038/s41558-021-01093-8>.
- [4] Gumbo, M. T., & Williams, P. J. (Eds.). (2023). *Indigenous Technology Knowledge Systems*. Springer Nature Singapore. <https://doi.org/10.1007/978-981-99-1396-1>.
- [5] *Inheritance Laws In India: Rights, Succession & Legal Framework*. (n.d.). RealtyNXT. <https://realtynxt.com/blogs/2025-02-12/legal-heirs-property-rights-in-india-a-guide-to-inheritance-laws>.
- [6] Kanaujia Sukula, S. (2006). Developing indigenous knowledge databases in India. *The Electronic Library*, 24(1), 83–93. <https://doi.org/10.1108/02640470610649263>.
- [7] Mitra, B. B. (1997). *The Indian Succession Act*. Eastern Law House.
- [8] Odora-Hoppers, C. A. (2015). *Indigenous knowledge systems*. Oxford University Press. <https://doi.org/10.1093/med/9780198703327.003.0015>.
- [9] S.B. Criminal Miscellaneous Bail Application No. 2085/2023.
- [10] *Understanding Muslim Inheritance Law in India*. (n.d.). LawCrust Global Consulting Company. <https://lawcrust.com/muslim-inheritance-law-in-india/#:~:text=A%20Muslim%20can%20bequeath%20up, follow%20the%20established%20inheritance%20laws.&text=Sharers:%20These%20heirs%20are%20entitled,and%20daughter%20of%20a%20son>.