**Dharmic Dialectics and Gender Jurisprudence:   
VEDIC AXIOMS TO CONSTITUTIONAL ADJUDICATION**

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***Abstract***

This chapter presents a comprehensive examination of the intricate relationship between Bharatiya traditions and gender justice in India, with particular emphasis on the evolution of Hindu legal frameworks from ancient textual prescriptions to contemporary judicial interpretations. The analysis commences with an elucidation of the multifaceted nature of Bharatiya epistemic traditions, highlighting the oscillation between egalitarian and hierarchical gender conceptions throughout India's juridical history. Gender justice is positioned as a critical site where indigenous normative frameworks intersect with constitutional values and global human rights discourse. The chapter proceeds to interrogate Vedic textual sources, which constitute the foundational stratum of Hindu jurisprudence. These sources reveal nuanced conceptualizations of gender relations in matrimonial contexts, and further extends to female participation in military endeavors, identifying instances of women's involvement in warfare and strategic defence, thus challenging monolithic narratives of female exclusion from martial domains. Additionally, educational parity receives focused attention, with textual evidence demonstrating the existence of female scholars and their contributions to philosophical and theological discourse. A paradigmatic transformation is subsequently traced through Smriti codification, wherein the relatively fluid gender constructions of the Vedic period underwent systematic stratification. The chapter critically examines how Manusmriti and analogous texts reconfigured female positionality within increasingly patriarchal normative structures, while simultaneously preserving certain protections and ritual significances for women. This section delineates the hermeneutic processes through which commentarial traditions selectively emphasized restrictive provisions while marginalizing emancipatory possibilities inherent in the same textual corpus. The analysis then transitions to post-independence legal developments, focusing on significant reforms in Hindu personal law that recalibrated traditional provisions through the prism of constitutional values. The Hindu Code Bills of the 1950s are examined as watershed legislative interventions that fundamentally restructured matrimonial relations, inheritance rights, and guardianship frameworks. This legislative evolution is complemented by an analysis of judicial catalysis, wherein landmark rulings progressively expanded the scope of gender justice through innovative constitutional interpretations. The chapter culminates with an examination of contemporary judicial interventions that have profoundly reconfigured the socio-legal landscape. Landmark judgements are analyzed as exemplars of transformative constitutionalism wherein religious practices and customary norms are increasingly subjected to constitutional scrutiny. The conclusion synthesizes these diachronic analyses to articulate a distinctive jurisprudential approach that harmonizes dharmic principles with contemporary rights discourse. The chapter identifies emergent possibilities for feminist hermeneutics specifically adapted to Sanskrit juridical texts, non-dualistic legal frameworks, and integration of ecological principles from Vedic traditions into gender justice conceptualizations—positioning India as a generative source of jurisprudential innovation within global discourses on gender equality.

***Keywords*** *–* Bharatiya jurisprudence, Gender justice, Personal law reforms, Constitutional morality, Vedic egalitarianism

# **Introduction**

The relationship between religion and women’s rights is paradoxical and complex, marked by historical injustices within communities. Customary laws, predominantly shaped and upheld by men without women’s input, often assign suppressive roles to women. While religious texts themselves may not be the direct source of marginalization, their interpretation frequently leads to oppression.[[2]](#footnote-2) This dynamic highlights a critical area of exploration in the context of gender justice and Bharatiya jurisprudence, where the interplay between religious norms, legal traditions, and women’s rights requires careful consideration. Examining this intersection is essential for understanding how to challenge and transform gender relations within the framework of Indian legal and social systems .

The conceptual framework of Bharatiya tradition encompasses a multifaceted epistemic paradigm characterized by remarkable textual heterogeneity and diachronic evolution spanning millennia. Within this expansive intellectual landscape, prescriptive normative systems pertaining to gendered relations manifest significant complexity—oscillating between moments of progressive egalitarianism and pronounced hierarchical stratification. The genealogy of these normative frameworks commences with Vedic literature, traverses through the hermeneutic elaborations of the Dharmaśāstras and nibandhas, and culminates in contemporary statutory codifications and judicial interpretations. The examination of gender justice within this tradition necessitates a nuanced analysis that eschews reductive binaries of emancipation versus subjugation, instead recognizing the palimpsestic nature of Indian juridical thought wherein multiple interpretative traditions have coexisted, often in productive tension.

Gender justice in the Indian context constitutes a site of particular jurisprudential significance, functioning simultaneously as a contested terrain of social reform, a metric for evaluating constitutional efficacy, and a domain wherein global human rights discourse intersects with indigenous normative frameworks. The jurisprudential evolution of gender justice reflects the broader sociopolitical transformations within Indian society—from colonial interventions that selectively reified patriarchal elements within Hindu law, through nationalist reclamations that simultaneously challenged and reinforced gendered hierarchies, to post-independence constitutional commitments that inaugurated formal equality while confronting substantive disparities in implementation.

This chapter endeavours to interrogate the complex interplay between Bharatiya tradition, particularly as manifest in Hindu legal frameworks, and the evolving conceptualization of gender justice in India through an integrative analysis that synthesizes historical textual exegesis with contemporary socio-legal developments. By examining the hermeneutic relationship between classical juridical texts and modern constitutional interpretations, this exploration illuminates how ancient axiological principles are recursively reinterpreted within contemporary rights discourse, producing distinctive jurisprudential innovations that neither uncritically valorise tradition nor wholesale transplant exogenous legal frameworks. The analysis proceeds through multilayered examination of textual sources, legislative reforms, and landmark judicial pronouncements to elucidate how the dialectical engagement between Bharatiya traditions and constitutional values generates unique contributions to global discourses on gender equality and juridical pluralism in democratic societies.

1. **The Vedic Origins: Ancient Textual Sources of Bharatiya Gender Jurisprudence**

Hindu law has the most ancient pedigree of any known system of jurisprudence.[[3]](#footnote-3) It may be described as the ancient law of the Hindus rooted in the Vedas and enounced in the Smritis as explained and enlarged in recognised commentaries and digests. The jurisprudential edifice of Bharatiya legal thought finds its primordial genesis in the sacred corpus of the Vedas, which subsequently underwent exegetical elaboration through the Smritis, accompanied by authoritative commentaries and digests. This foundational framework is further augmented and contextualized through sanctioned customary practices. The Vedic textual tradition, emerging approximately between 2000-1500 BCE, establishes the epistemological and ontological foundations for all subsequent developments in Hindu religious philosophy and normative frameworks. The comprehensive applicability of Vedic principles permeates every dimension of human existence, transcending mere theological significance to inform social, economic, and political arrangements.[[4]](#footnote-4)

The Vedas constitute the paramount source of dharmic injunctions, containing axiological principles that have been systematically incorporated into the jurisprudential architecture of ancient India. These texts are reverentially designated as *Sruti* (derived etymologically from the Sanskrit root "*Sru*," signifying "to hear"), denoting their revelatory character—a status affirmed through numerous textual attestations of their divine provenance.[[5]](#footnote-5) Analogous to other revealed scriptures across diverse civilizational traditions, the Vedic corpus encompasses hymnal compositions, poetic expressions, ritualistic chants, and normative pronouncements that are intrinsic to the Bharatiya conceptualization of righteous living. What distinguishes the Vedic revelation from comparable sacred traditions is its transcendence of authorial attribution and prophetic mediation. The Vedas manifest a remarkable temporal and spatial universality, unencumbered by historically contingent doctrinal imperatives. Structurally, the Vedic corpus exhibits a sophisticated organizational framework, comprising *Mantras* (hymnal invocations), *Brahmanas* (exegetical prose elucidating hymnal significance), *Aranyakas* (esoteric hermeneutical interpretations), and *Upanishads* (philosophical distillations embodying the quintessential metaphysical insights of Vedic thought).

The Vedic tradition manifests in four distinct compilations—Rig Veda, Yajur Veda, Sāma Veda, and Atharva Veda—each representing a voluminous repository of ancient wisdom. The chronologically antecedent Rig Veda constitutes a compendium of liturgical hymns employed in ceremonial observances. European Indological scholarship has characterized the Rig Veda as a *"revelation of primitive tendencies of human reflection upon life and universe,[[6]](#footnote-6)"* though such characterizations often fail to appreciate its sophisticated philosophical nuances.

The Rig Veda, preeminent among the four in both magnitude and doctrinal significance, is methodically arranged into ten books termed *Mandalas*. Of particular relevance to gender jurisprudential discourse is the incontrovertible evidence of female authorship of numerous hymns within the Rig Veda—a compelling testament to the educational attainment and intellectual participation of women during the Vedic epoch. This textual evidence establishes a critical foundation for reconstructing gender dynamics within early Bharatiya society and provides historical precedent for women's intellectual authority within the normative framework.

The remaining Vedic texts serve complementary functions: the Yajur Veda codifies sacrificial procedural knowledge; the Sāma Veda preserves melodic compositions essential for liturgical intonation and contemplative practices; and the Atharva Veda encompasses esoteric formulaic knowledge. Supplementing these primary texts are the *Upa Vedas* or auxiliary Vedic compilations, which address specialized domains of knowledge: Ayurveda (medical science and holistic wellbeing), Dhanurveda (martial science and weaponry), Gandharva Veda (performing arts including music and dance), and Arthashastra (statecraft, economics, and administrative governance). These subsidiary texts demonstrate the comprehensive scope of Vedic knowledge systems across diverse practical and theoretical domains.

The Vedas offer valuable insights into the social status of women in Ancient India. Scholars argue that women enjoyed a revered position and were actively involved in spiritual and intellectual pursuits. They were not only composers of sacred hymns but also participated equally with men in religious ceremonies.[[7]](#footnote-7) In the absence of a son, women were even permitted to perform the last rites for their fathers, a significant responsibility typically reserved for male family members. Women were allowed to attend public gatherings, festivals, and assemblies alongside their husbands, indicating a level of social freedom. Although the Vedas do not explicitly address women's property rights, there is no evidence of suppression by husbands or fathers. The texts highlight the importance of knowledge as a noble quality for women, as seen in hymns from the Atharva Veda and Rig Veda. Additionally, the Yajur Veda promotes equality between boys and girls and even references women's participation in military roles, suggesting a society that valued women's contributions across various domains. A systematic examination of specific hymnal references across multiple Vedic texts yields compelling evidence for the valorisation of female intellectual capacity, military participation, and socio-educational parity during the formative period of Indian civilization.[[8]](#footnote-8)

***Intellectual Valorisation of Women in Matrimonial Context***

The conceptualization of matrimonial relations in Vedic epistemology exhibits a remarkable commitment to egalitarian principles that significantly diverge from the patriarchal paradigms that characterized numerous contemporaneous civilizations. The Rig Veda's articulation of spousal relations as constituting "equal halves of one substance" (*ardhanarishvara* concept[[9]](#footnote-9)) establishes an ontological foundation for conjugal equivalence that transcends mere functional complementarity. This metaphysical postulation of matrimonial unity conceptualizes the marital dyad not as hierarchically differentiated entities but as ontologically equivalent components of an integrated whole—a jurisprudential paradigm with profound implications for gender justice discourse. The sacramental character attributed to the matrimonial bond within Vedic ritualistic frameworks further reinforces this egalitarian conceptualization. Marriage in the Vedic tradition constituted not merely a social or economic arrangement but a metaphysically significant transformation wherein both participants retained equivalent ontological status despite their differentiated functional responsibilities. This sacramental elevation of the matrimonial union established normative parameters that precluded the subordination of either participant, thereby institutionalizing gender equity within the domestic domain.

Vedic matrimonial jurisprudence demonstrates a sophisticated conceptualization of female agency through its explicit valorisation of consensual marital formation. The practice of *svayamvara* (self-selection of spouse) institutionalized female matrimonial autonomy by according women the jurisprudential right to both accept and reject potential conjugal partners. This procedural mechanism for exercising matrimonial preference represents a remarkable divergence from conventional patriarchal arrangements wherein female matrimonial agency was severely circumscribed or entirely abrogated. The absence of child marriage within the Vedic matrimonial framework further substantiates this commitment to consensual conjugal formation. By restricting matrimonial eligibility to individuals who had attained both physiological and psychological maturity, Vedic jurisprudence established a normative requirement for informed consent that protected women from premature matrimonial encumbrance. This jurisprudential safeguard against non-consensual or pre-consensual matrimonial arrangements constitutes a significant antecedent to contemporary juridical principles of matrimonial autonomy. Perhaps most significantly, Vedic juridical frameworks conceptualized marriage as an optional rather than obligatory female trajectory. The terminological recognition of unmarried women (*amajur)*[[10]](#footnote-10) across multiple Rig Vedic hymns (1.117, 2.17, 10.39.3, and 8.21.15) demonstrates the normative acceptability of female non-participation in matrimonial arrangements. This optionality preserved female autonomy by establishing marriage as a preferential selection rather than an inexorable obligation, thereby preventing the instrumentalization of women as mere matrimonial commodities. This conceptualization of marriage as non-obligatory was reinforced by the religio-cultural valorisation of female asceticism and scholarly pursuit, which provided alternative avenues for female social contribution beyond matrimonial participation. The existence of *brahmavadinis* (female theological scholars) and *sadyovadhus* (female ascetics) established institutional pathways for non-matrimonial female achievement, thereby preventing the reduction of female social value to matrimonial participation.

The Vedic conceptualization of post-matrimonial female status further demonstrates a structural commitment to gender egalitarianism within the domestic domain. Rig Veda 10.85 provides textual attestation for the elevation of the wife to the status of domestic administrative authority (*grihapatni*), thereby establishing female jurisdictional pre-eminence within the household sphere[[11]](#footnote-11). This domestic administrative authority was complemented by ecclesiastical participation, with wives serving as essential co-participants in religious observances rather than auxiliary spectators—a liturgical egalitarianism that reinforced female spiritual equivalence. The valorisation of female erudition evidenced in Atharva Veda 14.1.6[[12]](#footnote-12) and 14.1.20, alongside Rig Veda 10.85.7, establishes intellectual capacity as a normative feminine virtue within matrimonial contexts.[[13]](#footnote-13) This epistemic privileging of knowledge (*vidya*) for women represents a significant departure from contemporaneous civilizations wherein female educational access was severely circumscribed. The Atharva Veda presents a sophisticated conceptualization of feminine intellectual capacity within the matrimonial domain. These hymnal passages explicitly identify erudition and scholarly accomplishment as the paramount qualities to be sought in a prospective wife, thereby establishing a normative framework wherein female intellectual development was not merely permitted but actively encouraged and valorised. This epistemic privileging of knowledge acquisition for women represents a striking departure from the patriarchal circumscription of female education observed in numerous contemporaneous civilizational contexts. Such textual attestations suggest that the ideal wife in Vedic conceptualization was characterized primarily by intellectual accomplishment rather than merely domestic proficiency—a remarkable precedent for gender-egalitarian jurisprudence.

The textual emphasis on intellectual compatibility between spouses suggests a marital conceptualization predicated upon companionate rather than hierarchical principles—a significant jurisprudential precursor to modern notions of matrimonial equality. The conceptualization of wives as "lifelong companions" and "real partners" suggests a matrimonial paradigm predicated upon mutual interdependence rather than unilateral dependence. This companionate model of matrimonial relations established a normative framework wherein spousal collaboration extended beyond mere functional cooperation to encompass comprehensive participatory parity across multiple domains of conjugal existence.

Vedic jurisprudence demonstrates particular solicitude for female matrimonial vulnerability through its institution of structural safeguards against widowhood-induced marginalization. The explicit encouragement of widow remarriage (*punarbhu*)[[14]](#footnote-14) provided juridical recourse against the social and economic precarity that frequently accompanied female conjugal disenfranchisement. This remarriage authorization constituted a significant jurisprudential intervention that preserved female matrimonial agency despite spousal mortality.[[15]](#footnote-15) The prohibition against *sati pratha* (widow immolation) represents an even more consequential jurisprudential safeguard against the ultimate manifestation of female matrimonial vulnerability.[[16]](#footnote-16) By explicitly proscribing this practice, Vedic jurisprudence established an unequivocal normative boundary that protected widows from sacrificial exploitation—a protection subsequently eroded during post-Vedic periods when widow immolation gained regional acceptance in contravention of authentic Vedic principles.

***Female Military Participation and Gender Parity in Education***

In the realm of education, women during the Vedic period were empowered to perform sacrifices and study Vedic literature, reflecting a strong emphasis on education without gender bias. The Rig Veda is the earliest known source detailing the educational system in ancient India, with no evidence of formal education for women before this period. Women were granted the freedom to pursue knowledge without the pressure of early marriage. Beyond education, women were encouraged to contribute to their family's financial stability. They played a significant role in family life, as described in the Rig Veda, and were involved in various occupations such as weaving, spinning, and needlework. Additionally, they excelled in the fine arts, music, and dance, showcasing their multifaceted talents and contributions to society.

The Yajur Veda provides further textual substantiation of gender-egalitarian principles through its explicit endorsement of female military participation. Hymn 16.44 demonstrates unequivocal support for women's martial engagement through the institutionalization of female military units—a remarkable attestation to the expansive conceptualization of gender roles within Vedic society, which transcends conventional gender role demarcations by institutionalizing women's military engagement. This militaristic dimension of female participation in the public sphere challenges reductive interpretations that confine women to domestic contexts in ancient Indian social organization. Yajur Veda 20.9 articulates a comprehensive principle of gender equality in educational contexts, establishing normative parity between male and female recipients of Vedic knowledge. This educational egalitarianism constitutes a foundational jurisprudential principle with profound implications for contemporary gender justice discourse, as it provides historical precedent for equal educational access—a cornerstone of contemporary gender equity frameworks. These hymnal injunctions collectively establish a comprehensive framework of gender equality spanning multiple social domains. Sages imparting knowledge did not differentiate between genders, ensuring equal access to learning. Students, both boys and girls, residing in ashrams for their studies, were also involved in daily chores, which provided them with practical life skills. Girls, like boys, were entitled to receive the sacred thread (*Upanayana*), marking their entry into the Brahmacharya Ashram stage and the privilege of studying the Vedas. Notable examples of educated women include the *Rishikas*, *Brahmavadinis* (who studied philosophy and theology throughout their lives), and *Sadovadyus* (who pursued their studies until marriage, typically around the age of 15 or 16).

The cross-referential consistency of gender-egalitarian principles across multiple Vedic texts—spanning the Rig Veda, Atharva Veda, and Yajur Veda—suggests a systemic rather than incidental commitment to gender parity within the Vedic epistemological framework. This intertextual coherence strengthens the evidential basis for interpreting the Vedic corpus as fundamentally supportive of gender-egalitarian social arrangements. Additional textual attestations can be identified in the Rig Veda's incorporation of hymns composed by female seers such as *Lopamudra*, *Vishvavara, Ghosha,* and *Apala*—each recognized as *Rishikas* whose intellectual and spiritual authority was institutionally acknowledged. The Brihadaranyaka Upanishad similarly records philosophical dialogues featuring Gargi Vachaknavi and Maitreyi, whose sophisticated metaphysical inquiries demonstrate the elevated intellectual status accorded to women within Vedic philosophical discourse.

These textual attestations establish a compelling historical foundation for gender-egalitarian principles within Bharatiya jurisprudential frameworks. The explicit Vedic valorisation of female intellectual capacity, endorsement of women's participation in traditionally masculine domains such as military service, and commitment to educational parity constitute normative precedents that can inform contemporary juridical approaches to gender justice. The identification of these gender-egalitarian principles within the most authoritative textual sources of Bharatiya jurisprudence provides a powerful counternarrative to colonial and orientalist interpretations that characterized Indian legal traditions as inherently patriarchal. Instead, these textual references suggest that gender subordination represents a deviation from rather than adherence to authentic Vedic principles—a critical distinction for contemporary juridical reconstructions of Bharatiya traditions.

1. **The Paradigmatic Shift in Female Status Through Smriti Codification**

The Vedic era is often celebrated for its egalitarian approach to gender. The notion that the Vedic Age, spanning from approximately 1700 to 500 BC, was a "Golden Age" for women remains a topic of debate among scholars. There is a broader consensus that the period following this era saw a significant decline in the social status of women. By around 500 BC, women's status began to deteriorate, with some texts[[17]](#footnote-17) suggesting they were increasingly marginalized, similar to the *Shudras*, who were at the bottom of the traditional Hindu caste system. Scholars argue that a pivotal factor contributing to this decline was the introduction of the Smritis, which became a foundational source of Hindu law. As societal norms evolved and the influence of later texts like the Smritis grew, women's roles became more confined, leading to a loss of the freedoms they once enjoyed. This transition underscores the complex and evolving nature of gender roles in ancient Indian society. The Smritis, such as the Manusmriti, imposed more rigid social norms and restrictions on women, limiting their autonomy and rights. This shift marked a departure from the earlier Vedic period, where women enjoyed greater freedom and respect, participating in religious ceremonies, education, and even holding some economic independence.The term *Smriti*, etymologically derived from the Sanskrit *smr* ("to remember"), designates a corpus of post-Vedic normative texts that constitute secondary sources within the hierarchical stratification of Bharatiya juridical authority. In contradistinction to the *Sruti* literature (the Vedas), which is characterized by its purported divine revelation and consequent epistemological inviolability, the *Smriti* texts represent human compositional endeavors undertaken to systematize and codify normative principles applicable to quotidian existence. These texts execute a dual function: the articulation of *Dharma* (normative duty) within specific contextual parameters and the establishment of regulatory frameworks governing individual, communal, societal, and national conduct.[[18]](#footnote-18)

The *Smriti* corpus encompasses a diverse range of textual categories, including the *Dharmasutras* (aphoristic presentations of normative principles), *Dharmasastras* (comprehensive juridical compendia), and specialized treatises addressing specific domains of normative regulation.[[19]](#footnote-19) Chronologically situated approximately between 500 BCE and 500 CE, these texts emerged during a period of significant socio-political transformation within the Indian subcontinent, characterized by increased urbanization, the consolidation of monarchical governance structures, and the crystallization of hierarchical social stratifications. The transitional period from Vedic to post-Vedic society, during which the *Smriti* literature achieved pre-eminences, coincides with a demonstrable reconfiguration of female juridical status within Bharatiya normative frameworks. This transformation constitutes a significant departure from the relative egalitarianism evidenced in Vedic textual sources, manifesting instead a progressively restrictive circumscription of female autonomy across multiple domains of social participation.

The Manusmriti, or "Laws of Manu," is one of the most authoritative texts in Hindu law, providing comprehensive guidelines for religious and daily life.[[20]](#footnote-20) It is a foundational document that synthesizes earlier writings on Dharma, addressing a wide range of topics including the caste system, marriage, inheritance, and the organization of the state and judicial system.[[21]](#footnote-21) Additionally, it explores philosophical concepts such as reincarnation and karma.[[22]](#footnote-22) Under Chapter 5, the *Manusmirti* discusses the status and duties of women in Hindu society. Italso guides families and couples on their role in society.[[23]](#footnote-23) *Manusmriti* is the basis for the Mitakshara and Dayabhaga schools of Hindu law.

***Educational Circumscription & Matrimonial Autonomy Diminution***

The *Smriti* texts exhibit a notable departure from Vedic educational egalitarianism through the introduction of gendered restrictions regarding access to educational resources, particularly Vedic textual study. While the Vedic corpus acknowledges female participation in intellectual discourse through references to female sages (*Rishikas*) and theological interlocutors, texts such as the *Manusmriti* introduce explicit prohibitions against female engagement with Vedic recitation. This educational circumscription represents a significant contraction of female intellectual participation, effectively excluding women from the primary mechanism of cultural transmission and religious authority.

In the Vedic tradition, marriage rituals involved a series of symbolic unions. Initially, a woman was ritually married to *Chandra*, the moon-God, then to *Vishwasu*, the Gandharva, followed by *Agni*, the fire-God, and finally to her human husband.[[24]](#footnote-24) This sequence of marriages was a way to symbolically bind her to societal norms. Historically, if a woman's previous husbands were unable to father a child due to impotence, she was traditionally allowed to have up to four husbands. However, these rituals also served to limit her independence. The Vedic period allowed men to marry women of equal or lower social status, but it was believed that in the Kalyug era, women would marry men of lower status, which was seen as a sign of societal decline.

The *Smriti* literature demonstrates a progressive erosion of female matrimonial autonomy through the institutionalization of restrictive matrimonial formations. Whereas Vedic sources endorse *svayamvara* (self-selection of spouse) as a legitimate matrimonial mechanism, texts such as the *Yajnavalkyasmriti* increasingly privileged parentally arranged marriages (*kanyadan*) as the normatively preferable mode of matrimonial formation. Hymns 8.364 and 8.365 of the Manusmriti permit marriages between a higher-caste man and a lower-caste woman, but strictly prohibit the reverse. Even in religious ceremonies, women were only allowed to participate alongside their husbands, not independently, as noted in hymn 5.185.[[25]](#footnote-25) According to Hindu scriptures, an ideal wife was one whose thoughts, words, and actions were under her husband's control.[[26]](#footnote-26) Moreover, women were discouraged from engaging in work outside the home, as mentioned in hymn 5.150. These texts highlight the evolving and complex roles of women in ancient Indian society. This transformation effectively transferred matrimonial agency from female participants to male guardians, thereby substantially diminishing female autonomy within the conjugal domain. Furthermore, the *Smriti* literature introduced increasingly restrictive parameters regarding eligible matrimonial participants. The introduction of endogamous regulations circumscribing matrimonial selection within caste boundaries, alongside prescriptions regarding appropriate age differentials between spouses, substantially constrained female matrimonial optionality. This constrained optionality eventually culminated in the institutionalization of child marriage—a practice explicitly contravened by Vedic matrimonial conceptualizations.

***Proprietary Rights Reconfiguration & Ritual Participation Reorientation***

The evolution of female proprietary rights during the Smriti period exhibits a similarly restrictive trajectory. Whereas Vedic sources acknowledge female inheritance rights through references to *putrika* (appointed daughters)[[27]](#footnote-27) with full inheritance capacity, the *Smriti* literature introduced substantial limitations on female proprietary acquisition and alienation. The conceptualization of *stridhana* (female-exclusive property)[[28]](#footnote-28) within texts such as the Mitaksara initially appears to expand female proprietary rights but simultaneously circumscribes female alienation authority through the institution of male guardianship requirements.[[29]](#footnote-29) This proprietary reconfiguration effectively rendered women economically dependent upon male relatives, thereby substantially diminishing female autonomy across multiple domains of social participation. The restriction of inheritance rights, limitations on property alienation, and circumscription of economic engagement collectively constituted a comprehensive diminution of female economic agency—a diminution that fundamentally restructured gender power dynamics within Bharatiya society.

The *Smriti* period similarly witnessed a substantial reorientation of female ritual participation. Whereas Vedic sources acknowledge female liturgical co-participation through references to the wife's essential role in sacrificial performances, the *Smriti* literature increasingly conceptualized female ritual significance as derivative rather than inherent. The doctrine of *pativrata* (husband devotion) emerged as the primary female ritual obligation, effectively redirecting female spiritual engagement from independent theological participation toward matrimonial subordination. This ritual reorientation simultaneously elevated and circumscribed female spiritual significance—elevated through the attribution of transformative power to female matrimonial devotion but circumscribed through the restriction of independent ritual authority. The conceptualization of the husband as the primary object of female devotion (*pati-devata*)[[30]](#footnote-30) effectively transferred female theological orientation from abstract divinity to concrete masculinity, thereby subordinating female spiritual autonomy to matrimonial hierarchy.

The post-*Smriti* period, commencing approximately in the 7th century CE, witnessed the proliferation of exegetical commentaries that simultaneously consolidated and expanded the juridical principles established in earlier texts. These commentaries—including influential works such as Vijñaneśvara's *Mitākṣarā* and Jīmūtavāhana's *Dāyabhāga*—produced regionally differentiated interpretations of *Smriti* injunctions that significantly influenced subsequent judicial application. The *Smriti* corpus incorporated established customary practices (*sadācāra*), thereby preserving cultural continuities while simultaneously introducing innovative normative principles.[[31]](#footnote-31)

Several theoretical frameworks potentially explain this transformation: the socio-political consolidation theory[[32]](#footnote-32) attributes female status diminution to the collateral consequences of broader political centralization; the theological reinterpretation hypothesis[[33]](#footnote-33) identifies selective hermeneutical approaches as inadvertently conducive to hierarchical gender arrangements; the external influence paradigm[[34]](#footnote-34) suggests potential exogenous contributions during periods of increased foreign cultural contact; and the textual-practical discrepancy model[[35]](#footnote-35) notes potential distinctions between normative injunctions and actual social practices.

The transformative impact of *Smriti* literature on female juridical status presents significant implications for contemporary Bharatiya jurisprudential discourse, particularly regarding the hermeneutical principles applied to traditional normative sources. The demonstrated discontinuity between Vedic and post-Vedic gender conceptualizations challenges simplistic narratives of continuous tradition and necessitates sophisticated interpretive frameworks that differentiate between foundational principles and contextually contingent applications. This analysis suggests the potential validity of hierarchical hermeneutical approaches that privilege *Sruti* sources over *Smriti* elaborations when addressing gender justice concerns within Bharatiya jurisprudence. The epistemological distinction between revelatory and compositional texts provides a traditional justification for prioritizing Vedic gender egalitarianism over post-Vedic restrictive elaborations—a prioritization that facilitates the reconciliation of traditional authenticity with contemporary egalitarian aspirations. The demonstrable transformation of female juridical status during the *Smriti* period thus constitutes not merely a historical curiosity but a foundational consideration for contemporary gender justice discourse within Bharatiya jurisprudential frameworks.

1. **Evolution of Hindu Law and Gender Justice: Reform and Contemporary Socio-Legal Integration**

The trajectory of Hindu law presents a fascinating study in the transformation of religious prescriptions into codified jurisprudence, with gender justice emerging as a pivotal framework for evaluation. The metamorphosis from ancient *dharma-sastric* injunctions to modern statutory provisions reflects not merely legal reform but a profound societal reorientation toward egalitarian precepts. This evolution manifests through multiple inflection points where customary patriarchal norms confronted emerging constitutional values. The pre-colonial Hindu legal tradition operated within a complex matrix of smritis, *nibandhas*, and localized customs, characterized by significant regional heterogeneity in gender-related provisions. The colonial encounter precipitated the initial systematization of these disparate elements, with British judicial interventions crystallizing certain interpretations while marginalizing others. The establishment of precedent through Anglo-Hindu jurisprudence, particularly in cases like *Rukhmabai* (1884)[[36]](#footnote-36) and *Dadaji Bhikaji v. Rukhmabai* (1886), demonstrated the tension between indigenous patriarchal norms and emerging liberal values.[[37]](#footnote-37) The colonial judiciary's approach to Hindu law was marked by selective codification and interpretation that frequently reinforced patriarchal elements through what scholars term "*brahminization*" of Hindu law.[[38]](#footnote-38) This process privileged textual authorities over fluid customary practices that occasionally afforded women greater autonomy in matters of property and personal status.[[39]](#footnote-39)

The post-independence period witnessed a concerted effort toward comprehensive codification of Hindu personal law, culminating in the watershed Hindu Code Bills of the 1950s. These legislative instruments—the Hindu Marriage Act (1955), Hindu Succession Act (1956), Hindu Minority and Guardianship Act (1956), and Hindu Adoptions and Maintenance Act (1956)—constituted a significant reconfiguration of traditional Hindu law through the prism of constitutional values. The constitutional framework, particularly Articles 14, 15, and 16 guaranteeing equality and prohibiting discrimination based on sex, established a normative foundation for subsequent judicial interpretation. Article 44's inclusion of a Uniform Civil Code as a Directive Principle reflected the tension between religious personal laws and the constitutional commitment to equality. Religious laws in India intersect the Constitutional framework in the country’s legal system. They govern matters of marriage and divorce, guardianship and adoption, maintenance, inheritance and succession. India’s family laws provide unequal gender rights in many aspects. The history of personal laws unfolds a story of suppression and governance that has been used to the disadvantage of women in Indian society.[[40]](#footnote-40) These sets of personal religious laws are matters of public debate and jurisprudence, especially in terms of their relationship with Constitutional law and criminal laws.[[41]](#footnote-41)

The Hindu Marriage Act, 1955 represents a paradigmatic shift in conceptualizing marriage—transforming it from a sacrament to a contractual relationship with concomitant rights and obligations. The ritual of saptapadī, emphasized in Section 7(2) of the Hindu Marriage Act, 1955, has its roots in classical Hindu law, signifying marriage as an exclusive union. The Act allows couples to solemnize their marriage using customary rites and ceremonies prevalent in their communities, provided these practices are ancient, continuous, and well-defined. The absence of essential ceremonies can invalidate the marriage. The Hindu Marriage Act, while preserving the sacred nature of marriage, has introduced significant provisions that transformed the institution under Hindu law and enhanced women's rights. Notably, Section 5(1) prohibits bigamy, Section 11 renders bigamous marriages void, and Section 17 criminalizes such acts under Sections 494 and 495 of the Indian Penal Code. These changes reflect a shift towards legal and social equality, particularly for women, by ensuring that marriage is monogamous and legally binding. Subsequent amendments, particularly the Marriage Laws (Amendment) Act of 1976, introduced significant liberalization of divorce provisions, including mutual consent divorce (Section 13B) and expanded grounds for women to seek dissolution.

The Hindu Succession Act (1956) initiated a limited recognition of women's inheritance rights, though retaining significant gender disparities. The revolutionary amendment in 2005 (Hindu Succession Amendment Act) constituted perhaps the most significant stride toward gender justice in property relations. The Act granted Hindu women absolute ownership of property under Section 14, but with certain limitations. This meant that women no longer needed their husband's consent to manage or dispose of their property, whether it was acquired before or after the Act's enactment. The Act introduced provisions allowing women to inherit property, including coparcenary property, although initially, they were not considered coparceners. Women were entitled to shares in joint family property during partition, but they could not demand partition unless the joint status was mutually dissolved by coparceners. The Act established rules for the devolution of a female Hindu's property upon her death. The property would pass to her heirs according to specific rules outlined in Sections 15 and 16, which still favoured male relatives in certain cases. While the Act aimed to reduce gender disparities, it did not completely eliminate them. For instance, the rules for inheriting property from a male and female intestate differed, with male heirs often receiving preference over female heirs in certain situations. The 2005 Amendment to the Act was crucial in addressing some of these disparities. It made daughters coparceners by birth, giving them equal rights and liabilities in coparcenary property, similar to sons. The judicial interpretation in cases like *Danamma v. Amar*[[42]](#footnote-42) and *Vineeta Sharma v. Rakesh Sharma*[[43]](#footnote-43) solidified daughters' coparcenary rights, even applying them retrospectively in certain circumstances.

The Hindu Minority and Guardianship Act (1956) and Hindu Adoptions and Maintenance Act (1956) reconfigured traditional patriarchal norms of guardianship and filiation. Though still privileging paternal authority, these statutes introduced limited maternal rights in guardianship. The landmark judicial intervention in *Gita Hariharan v. Reserve Bank of India*[[44]](#footnote-44) reinterpreted Section 6 of the Hindu Minority and Guardianship Act to recognize mothers as natural guardians during the father's lifetime, not merely "after" him. The court held that the mother's right to be a natural guardian is not contingent upon the father's death but can be exercised when the father is unable or unwilling to act as guardian. This ruling emphasized the child's welfare and challenged traditional gender biases in guardianship laws. This hermeneutic shift utilized constitutional provisions to ameliorate statutory gender bias. Recent amendments to adoption law have further expanded women's agency, permitting single women to adopt and emphasizing the "welfare of the child" principle over patrilineal considerations.

1. **Contemporary Socio-Legal Landscape Through the Prism of Landmark Judicial Interventions**

The judiciary has functioned as a crucial catalyst in the evolution of Hindu law toward gender justice. The interpretative methodology has gradually shifted from strict textualism to a purposive approach informed by constitutional values. In *Madhu Kishwar v. State of Bihar*[[45]](#footnote-45), the Supreme Court emphasized the application of Article 14 to invalidate customary succession rules that excluded tribal women from property inheritance. The case challenged sections of the Chota Nagpur Tenancy Act, 1908, which excluded women from inheriting property, arguing that these provisions violated Articles 14, 15, and 21 of the Constitution by denying women equal rights and dignity. The Court ruled that while the customary laws were discriminatory, striking them down would cause legal chaos. Instead, it ordered that the exclusive right of male succession be suspended as long as female descendants remained dependent on the land for their livelihood, thereby ensuring they did not become destitute upon the death of their male relatives. The judgment emphasized the importance of protecting women's right to life by allowing them to hold land as long as they needed it for survival. Despite not fully overturning the discriminatory laws, the Court directed the State of Bihar to comprehensively examine the issue and consider amending the laws to align with constitutional principles of equality. The dissenting judgment by Justice K. Ramaswamy advocated for greater gender equality among tribal communities, suggesting a path forward for future legal reforms.

Similarly, in *C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil*[[46]](#footnote-46), the Court articulated property rights as integral to women's dignity and personhood. The case involved a will that left properties to the widow and another woman. The Court ruled in favor of the women, affirming that they became absolute owners of the property by operation of the Act. The judgment emphasized the importance of eliminating gender-based discrimination and ensuring equal rights for women, including economic and social rights. It also highlighted that property is crucial for personal development and independence, and the State should ensure conditions conducive to realizing these rights for women.

The contemporary socio-legal landscape is characterized by increasing permeability to transnational legal norms. International instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) have influenced judicial reasoning in cases concerning Hindu personal law. The Supreme Court's reference to international human rights frameworks in gender-related judgments reflects this transnational juridical dialogue. These judgments represent a jurisprudential metamorphosis wherein constitutional morality increasingly supersedes religious doctrine and customary practices when these elements conflict with fundamental rights.

**Constitutional Morality Superseding Religious Practice: *Indian Young Lawyers Association v. The State of Kerala***

The Sabarimala temple entry case[[47]](#footnote-47) represents a watershed moment in the judicial reconceptualization of the relationship between religious practices and constitutional guarantees. The Supreme Court's 4:1 majority decision invalidating the prohibition on women of menstruating age (10-50 years) from entering the Sabarimala temple established several critical jurisprudential principles that reconfigure the contemporary socio-legal landscape. Justice Chandrachud's concurring opinion articulated that "the test of essential religious practices is itself a judicial creation" which necessitates critical examination. The judgment problematized the judiciary's role in determining which practices constitute the "essential" elements of religion deserving constitutional protection under Article 25. This epistemological shift challenges the hitherto unquestioned judicial deference to religious authorities in defining the contours of protected religious conduct. The majority's determination that the exclusionary practice violated women's right to worship under Article 25(1) established the principle that constitutional values of equality and non-discrimination function as normative constraints on religious freedom. Justice Nariman emphasized that *"physiological features cannot be a ground for denial of a right,"* thereby delegitimizing biological determinism as a justification for gender-based exclusion. Justice Chandrachud's articulation that "*the Constitution has been adopted to remedy existing social arrangements by bringing about a transformation in social relations and consciousness"* establishes transformative constitutionalism as the hermeneutic lens through which religious practices must be evaluated. This represents a significant departure from judicial approaches that privileged religious autonomy over constitutional values. The judgment's implications for the contemporary socio-legal landscape extend beyond temple entry to interrogate the broader interface between religious practices and gender equality across Hindu religious institutions and customs.

***Redefining Marital Relations: Independent Thought v. Union of India***

The Independent Thought judgment[[48]](#footnote-48) represents a significant judicial intervention in reconceptualizing marital relations and children's rights. By reading down Exception 2 to Section 375 of the Indian Penal Code to criminalize sexual intercourse with a wife between 15-18 years of age, the Supreme Court effectively challenged the marital immunity doctrine that had hitherto insulated spousal sexual relations from judicial scrutiny. The Court resolved the contradiction between the Protection of Children from Sexual Offences Act (POCSO) and the Indian Penal Code by invoking the constitutional commitment to children's rights. Justice Madan Lokur's opinion emphasized that *"constitutional vision of equality must prevail over any social practice,"* establishing the principle that statutory inconsistencies must be resolved in favor of constitutional values. By distinguishing between consensual sexual activity among adolescents and exploitative sexual relationships characterized by age asymmetry, the judgment acknowledged adolescent sexuality while protecting children from exploitation. This nuanced approach represents a significant departure from paternalistic judicial attitudes toward adolescent sexuality. While the judgment explicitly limited itself to child marriages, Justice Lokur's observation that "marriage is not institutional license to rape" has significantly destabilized the broader marital rape immunity that continues to persist in Indian law. The judgment thus indirectly initiated the judicial reconsideration of the marital rape exception that culminated in subsequent High Court decisions.

***Decriminalizing Adultery: Gender Equality in Joseph Shine v. Union of India***

The Supreme Court's unanimous decision in Joseph Shine v. Union of India[[49]](#footnote-49) striking down Section 497 of the Indian Penal Code decriminalizing adultery represents a fundamental reconceptualization of marriage, sexual autonomy, and gender equality**.** Chief Justice Misra's observation that Section 497 treated woman as "chattel of husband" and denied her sexual autonomy rejected the proprietary conception of marriage that had historically informed Hindu law. The judgment established that marriage cannot be conceptualized as conferring ownership rights over a spouse's sexuality. Justice Chandrachud's concurring opinion that *"a woman cannot be asked to think as a man or as how society desires"* emphasized women's sexual autonomy as an integral dimension of personal liberty protected under Article 21. This recognition of female sexual agency represents a significant departure from traditional Hindu legal conceptions that subordinated female sexuality to patriarchal control. The judgment's determination that the state cannot criminalize consensual sexual relations between adults established the principle that intimate relations between consenting adults exist within a constitutionally protected zone of privacy. Justice Indu Malhotra's observation that *"legal subordination of one sex over another is wrong in itself"* established gender equality as a non-negotiable constitutional value in regulating intimate relationships. While the Court clarified that adultery could remain a civil wrong and ground for divorce under personal laws, the decriminalization established the principle that the criminal law cannot be deployed to enforce fidelity within marriage.

The jurisprudential principles established in these landmark judgments have profoundly reconfigured the contemporary socio-legal landscape in several dimensions. These judgments collectively represent a methodological shift wherein the judiciary increasingly applies constitutional scrutiny to practices previously insulated from review due to their religious or customary character. This "*constitutionalization*" of personal law disputes signifies the judiciary's emergent role as an institutional mediator between religious traditions and constitutional commitments. The judicial willingness to scrutinize previously "private" domains such as marriage, sexuality, and religious observance demonstrates the erosion of the public/private dichotomy that had historically shielded gender-discriminatory practices from constitutional scrutiny. Justice Chandrachud's observation in *Joseph Shine* that *"the dichotomy of public and private domains perpetuates false notions of women's agency"* articulates this paradigmatic shift. These judgments increasingly acknowledge the intersectional vulnerabilities that shape women's experiences within Hindu personal law. The *Independent Thought* judgment's recognition of the compounded vulnerability of child brides and the *Sabarimala* judgment's acknowledgment of menstrual taboos as instruments of social exclusion demonstrate judicial cognizance of how biological attributes intersect with social prejudice to produce distinctive forms of discrimination.

1. **Conclusion**

The evolution of Hindu law vis-à-vis gender justice represents a dialectical process rather than a linear progression. The diachronic analysis of Hindu law's evolution reveals a profound dialogical relationship between ancient Indian knowledge systems and contemporary jurisprudential frameworks. The Vedic conceptualizations of *dampati* (conjugal complementarity) and *ardhangini* (woman as half of man's identity) provide ontological foundations that, when excavated from patriarchal accretions, manifest remarkable consonance with modern constitutional values of dignity and equality. This hermeneutic recovery demonstrates that Bharatiya jurisprudence need not position itself in binary opposition to ancient wisdom traditions; rather, it can effectuate a synthetic reconciliation wherein constitutional morality amplifies the egalitarian undercurrents within the Indic epistemic tradition.

While significant statutory and judicial interventions have reconfigured patriarchal aspects of traditional Hindu law, persistent challenges remain in implementation and internalization of egalitarian norms. The contemporary socio-legal landscape is characterized by this tension between formal legal equality and substantive social practice. The interface between Hindu personal law and constitutional values continues to generate productive jurisprudential developments, with gender justice functioning simultaneously as an achieved milestone and an aspirational horizon. The trajectory from the gender-fluid cosmogony of the *Brihadaranyaka Upanishad* to the gender justice articulations in *Joseph Shine* and *Indian Young Lawyers Association* traverses not a linear path of progress but a spiral of reinterpretation wherein ancient axiological commitments are recursively reimagined through contemporary constitutional hermeneutics. This recursive pattern suggests that future trajectories of legal evolution will likely manifest as increasingly sophisticated articulations of an indigenous jurisprudence that harmonizes *dharmic* principles with contemporary rights discourse—what might be termed *samvada* (dialogical convergence) between tradition and modernity.

The future trajectory of Hindu law reform will likely involve negotiating the complex interplay between religious identity, constitutional imperatives, and global human rights standards—all within an increasingly pluralistic and technologically mediated social context. The emergent possibilities encompass:

(1) development of feminist hermeneutics specifically adapted to excavate egalitarian principles from Sanskrit juridical texts;

(2) incorporation of non-dualistic (*advaita*) philosophical frameworks to transcend binary gender conceptualizations in legal thought;

(3) integration of ecological principles from Vedic traditions (*prakriti-purusha* complementarity) into contemporary gender justice frameworks, addressing environmental justice as intrinsically connected to gender equality; and

(4) utilization of *nyaya* tradition's sophisticated epistemological tools to develop more nuanced evidentiary standards in gender-based violence adjudication.

This jurisprudential synthesis represents neither uncritical traditionalism nor deracinated modernism, but rather a distinctive contribution to global legal philosophy—one that positions India not merely as a recipient of transnational legal norms but as a generative source of jurisprudential innovation within the evolving discourse on gender justice in pluralistic constitutional democracies.

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