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## **An Analytical Study of the Relationship between Hindu Law and Fundamental Rights under the Indian Constitution**

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### **Abstract**

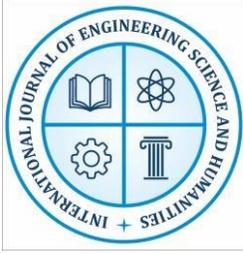
Hindu law, which is one of the oldest legal systems in the world, traditionally regulated different matters in the personal life, including marriage, inheritance, adoption among other things, among Hindu people in India. By the acceptance of the Indian Constitution in 1950, a novel constitutional structure founded on equality, liberty, justice and secularism came into the scene and thus this played a crucial role in the formulation and interpretation of personal laws. This paper analytically looks at the connection between the Hindu law and the Fundamental Rights ensured by the Constitution of India. The study examines how the old norms and practices under the Hindu law have been amended and statuted through the law like the Hindu Marriage Act 1955, the Hindu Succession Act 1956, the Hindu Adoption and Maintenance Act 1956 and the Hindu Minority and Guardianship Act 1956. The paper also examines the ways in which constitutional values especially Articles 14, 15, 19, 21 and 25 have influenced the meaning and development of Hindu personal law to ensure social justice and gender equality. The paper also identifies the judiciary in the balancing of personal law and that of the constitution through the review of legal cases and legislative changes. The research also provides that even though Hindu law still has its cultural and religious underpinning, it has been transformed significantly so as to conform to the constitutional vision of equality, dignity and protection of the human rights. This changing association indicates the dynamism of Indian legal practices in the balance between the autonomy and constitutional supremacy of religion.

### **Keywords**

Hindu Law, Fundamental Rights, Indian Constitution, Personal Law, Equality, Gender Justice, Judicial Interpretation, Hindu Code Bills, Constitutional Supremacy

### **Introduction**

One of the most ancient and powerful traditions of law in India is the Hindu law, which governs many aspects of personal lives of Hindu people including marriage, family relations, inheritance, guardianship and adoption. Classically the Hindu law was based on religious texts, customs, and social practices whose development is centuries old. Nevertheless, the legal system of the country changed considerably with the introduction of the Constitution of India in 1950. The Constitution observed a new regime of governance with the ideals of justice, equality, liberty and secularism and assured Fundamental Rights to every citizen. These, constitutional principles demanded that



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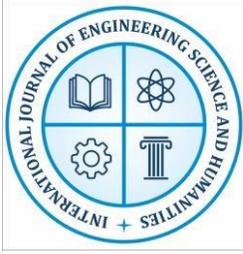
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any law such as individual laws should be reviewed according to the rights and freedoms that the Constitution guaranteed. Hindu law and Fundamental Right relation has thus emerged as a significant legal and constitutional issue of study. Although Hindu personal law espouses religious and cultural practices of Hindu society, the Constitution remains the ultimate law of land and no law in the land is supposed to abuse the fundamental rights of the individuals. Several legislative changes and judicial interpretations have over time tried to reconcile the Hindu personal law with the constitutional values. The Hindu law codified in statutes like Hindu marriage Act, 1955, the Hindu succession act, 1956 the Hindu adoption and maintenance Act, 1956 and Hindu minorities and guardianship act, 1956 was a significant move towards modernization of the traditional legal practices and ensuring equality especially in issues touching on the rights of women. It is against this backdrop that the current paper aims at analytically looking into the correlation between the Hindu law and the Fundamental Rights that are stipulated in the Indian Constitution. The research will seek to understand how the provisions of the constitution and those provisions pertaining to equality, freedom and protection of personal dignity have played a role in the shaping and understanding of Hindu personal law. Through the legislation reforms and judicial practices, the study tries to comprehend the way the Indian law has tried to find a balance between religious practices and the constitutional obligation of social justice and individual rights.

## **Concept and Scope of Fundamental Rights in the Indian Constitution**

Fundamental Rights are the core of the Indian constitutional system and that they are meant to guard the fundamental liberty and self-respect of people in a democratic society. Articles 12 to 35 of Part III of the Constitution of India guarantee these rights, which guarantee necessary civil, political and legal freedoms to all citizens. The framers of the Constitution included these rights in their document to achieve equality under law, defense against discrimination, freedom of expression and belief and safeguarding of life, and individual liberty. Fundamental Rights as a notion is almost entirely inspired by the principles of democracy and international human rights and it is meant to restrain the abuse of the power of the state and empower the citizens to oppose unreasonable laws and measures. The Constitution specifically acknowledges some of the categories of Fundamental Rights such as the Right to Equality (Articles 14-18), Right to Freedom (Articles 19-22), Right against Exploitation (Articles 23-24), Right to Freedom of Religion (Articles 25-28) and the Right to Constitutional Remedies (Article 32). Article 14 is the assurance of the equality before the law and equal protection of the law, whereas Article 15 is the prohibition of the discrimination based on religion, race, caste, sex, or place of birth. Article 21 offers safeguard of life and individual liberty, and the judicial system has adopted the right broadly to safeguard a number of human rights, including dignity, privacy and livelihood. Article 25 guarantees right to freedom of conscience as well as freedom to profess, practice and spread religion, but in consideration of general order, morality and health. The Fundamental Rights



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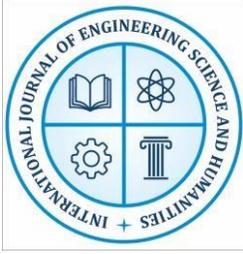
scope is wide since these rights do not only control the association between the state and individuals but also are used in interpreting different laws such as the Hindu law that concerns individual persons. Courts undertake this role through judicial review and interpretation of the constitution to see that all acts and procedures are in line with the principle of equality under the law, justice and individual liberty as guaranteed by the constitution. In such a way, Fundamental Rights are the basis of protecting the freedoms of individuals and uphold the rule of law in India.

## **Fundamental Rights**

1. **Article 13** – Laws inconsistent with Fundamental Rights are void
2. **Article 14** – Right to Equality
3. **Article 15** – Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
4. **Article 19** – Protection of certain freedoms
5. **Article 21** – Protection of life and personal liberty
6. **Article 25** – Freedom of conscience and free profession, practice and propagation of religion
7. **Article 26** – Freedom to manage religious affairs
8. **Article 32** – Right to Constitutional Remedies

## **Codification and Reform of Hindu Personal Law**

Codification and reform of Hindu personal law can be considered one of the most important changes in law in post-independent India. Historically, Hindu law was based on ancient religious works like Vedas, Smritis, Dharmashastras and other customs and traditions which changed over time among the Hindu society. The results of these sources frequently led to various interpretations and applications in the issues concerning marriage, inheritance, adoption, guardianship and relations within family. The modernisation and codification of Hindu personal law was required with the introduction of the Constitution of India in 1950 and with the creation of constitutional values like equality, justice and social reform, to eliminate ambiguities and to end discriminatory practices and especially those against women. This led to a successive enactment of major legislative acts by the Indian Parliament, simply referred to as the Hindu Code Bills. These are the Hindu marriage act of 1955 that governs marriage, divorce and other matrimonial rights of Hindus. The Hindu Succession Act, 1956 gave the rules that regulate the property rights and inheritance and the further amendments enhanced the property rights of the daughter by giving it the equal coparcenary rights. The Hindu Adoption and Maintenance Act, 1956 is a legal act that contains provisions of adoption and maintenance that is to be maintained in the family. In the same way, the Hindu Minority and Guardianship Act, 1956 provides the rights and the duties of the guardians in relation to the minors. The main aim of these legislative changes was to have a uniform legal system on the Hindus, whilst traditional practices are rationalized to meet with the contemporary constitutional philosophies of equality and fairness. Codification was one way to change the Hindu personal law that was a generally religious system



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into a legal system which was governed by statutory provisions and judicial interpretation. These reforms have been very instrumental to enhancing gender justice, legal clarity and social development in the Hindu society.

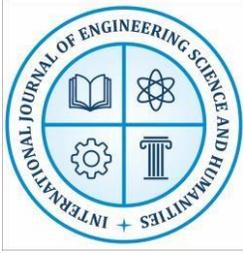
## **Major Hindu Personal Laws**

- **Hindu Marriage Act, 1955**
- **Hindu Succession Act, 1956** (2005 Amendment giving daughters equal coparcenary rights)
- **Hindu Adoption and Maintenance Act, 1956**
- **Hindu Minority and Guardianship Act, 1956**
- **Traditional Sources of Hindu Law**

The conventional sources of Hindu law were based on the religious texts of ancient nature, traditions and established social practices that influenced the life of Hindus over centuries. During the early days, the Hindu law was largely based on the religious texts that were the oldest, which are the Vedas, and formed the basis of Hindu philosophy and morals. The other notable source is Smritis, such as Manusmriti, Yajnavalkya Smriti and Narada Smriti, in which the detailed rules and guidelines on the social behavior were laid out, as well as the family relationships, inheritance and other legal issues. Moreover, Dharmashastras were instrumental in the development of Hindu law by understanding religious responsibilities and social requirements in the society. Besides these written materials, traditions and practices that were followed in communities also became significant in Hindu law. Courts tended to accept these traditions when they were old, precise and logical. The interpretation and usage of Hindu law was also affected over time by both the judicial rulings and observations by scholar. Even though the contemporary Hindu law has been predominantly codified by means of enacting laws by legislations, it is these traditional sources that provided the historical and philosophical base towards the construction of the Hindu personal law in India.

- **Need for Codification of Hindu Law**

The Hindu law had to be codified so that it could bring order, consistency and social redemption of the traditional system of personal law. Hindu law prior to the independence period was founded on religious texts, commentaries and customary practices, which were all founded on Vedas, Smritis and Dharmashastras. These sources tended to bring about an interpretation and practice in different areas and societies thus making things uncertain and inconsistent in legal issues involving marriage, inheritance, adoption and guardianship. It was necessary to revamp and modernize Hindu personal law in 1950 with the establishment of the Fundamental Rights under Articles 14 and 15 of the Constitution of India that ensured equality and non discrimination. To solve these problems, the Indian Parliament embarked on codification in a process consisting of a number of acts of parliament also referred to as the Hindu Code Bills. Through these reforms, significant pieces of legislation were passed such as the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Adoption and Maintenance Act, 1956 and the Hindu Minority



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and Guardianship Act, 1956. These laws were aimed at creating a specific and consistent legal provision of Hindus as well as achieving social justice and gender equality, in particular, enhancing the legal status and rights of women in marriage, inheritance and family relations. Before these reforms, the traditional customs and male practices dictated most of the elements of Hindu personal law placing women at the subordinate end of the family setup. Women were not given much rights in property and inheritance as well as decision making in the family and even given fewer rights in issues concerning marriage and divorce. The Hindu marriage act of 1955 brought in significant reforms as it offered legal provisions to regulate marriage and offered the opportunity of divorce, judicial separation and maintenance which serves the interests and dignity of both husband and wife. Likewise, the Hindu Succession Act of 1956 was designed to introduce equity in the inheritance of property by giving women more rights in family property and the Hindu Succession (Amendment ) Act of 2005 was yet another move towards the same by giving daughters the status of equal coparceners in the joint family property. The Hindu Adoption and Maintenance Act of 1956 provided the legal guidelines on adoption, as well as maintenance of dependents (wives, children and old age parents). Also, Hindu Minority and Guardianship Act, 1956 stipulated out the legal obligations and rights of the guardians of minors. In such legislative actions, the state aimed at doing away with any discrimination and ensuring equality in the family set up and harmonizing the Hindu personal law with the constitutional principles of justice, dignity and gender equality as assured in the constitution India.

In this way, codification of Hindu law played a significance role in harmonizing the old personal laws with new constitutional values of equality, dignity and justice in the Indian society.

## **Interaction between Hindu Law and Fundamental Rights**

The Negotiation between Hindu law and Fundamental Rights in the Indian Constitution is an indication of how to reconcile the traditional personal laws with the new principles of the constitution. The historical development of Hindu law was based on religious texts that were used to regulate different parts of marriage, adoption and guardianship, and inheritance. But with the adoption of the Constitution in 1950, the laws in India were all supposed to be aligned to the constitutional framework especially in relation to Part III of the Constitution (Articles 12-35) which guaranteed the Fundamental Rights. These rights lay stress on equality, freedom, dignity and protection against discrimination. Consequently, a number of rules of Hindu personal law were remodeled and recalculated in order to make sure that they do not infringe upon constitutional assurances. An example of this is Article 14 whereby equality before law and equal protection of laws are guaranteed, and Article 15 whereby no one shall be discriminated against on the ground of religion, race, caste, sex or place of birth. These verses contributed greatly to the reforms of Hindu law especially on issues of women rights both in marriage and inheritance. Meanwhile, in the same Article 25 of the Constitution of India the freedom of religion is provided and it gives an individual the right to profess, practice and spread the religion freely. This



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provision is a recognition of the relevance of religious beliefs and traditions in life and in people and communities. Religion has a major influence in context of personal laws since most of the family matters like marriage, inheritance, adoption and guardianship are historically associated with religious traditions and practices. Article 25 thus safeguards the entitlement to practice their religious traditions as well as the right to practice some elements of their traditions that may be considered as personal law. But this is not an unconditional freedom but is limited by the laws of the land, morality and health as stated explicitly in the Constitution. In addition, the state has also the power to make laws touching on social welfare and reform even though the same may touch on religious activities. It implies that although as citizens one is at liberty to practice his or her religion, these practices cannot infringe upon the basic rights of other people nor infringe upon the constitutional principles of equality and dignity. The legislative reforms and judiciary interpretations in the issues of Hindu personal law have been mostly trying to strike a balance between religious freedom and constitutional provisions. Consequentially, Article 25 is significant in ensuring that it is not a conflict between religious traditions and the constitutional obligation to social justice and equality. Thus, the connection between Hindu law and Fundamental Rights needs a delicate work between upholding religious traditions and constitutional notions of equality and justice. Legislative reforms including the Hindu Code Bills and judicial interpretation of Hindu personal law by the courts have been made in an attempt to make sure that Hindu personal law develops in line with the constitutional mandate and that the cultural and religious difference is given due respect. The interaction demonstrates the dynamic quality of the Indian law, as personal laws are constantly being changed in the larger context of the constitutional supremacy and the rights of individuals.

## Important Judicial Decisions

### 1. State of Bombay v. Narasu Appa Mali (1952)

Court determined that personal laws are not directly encompassed in the meaning of law in Article 13, but could be reformed by law.

### 2. Mary Roy v. State of Kerala (1986)

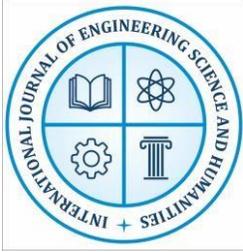
Supreme Court provided equal right of Christian women to inheritance and realized equality principles which impacted on personal law discussions.

### 3. Shayara Bano v. Union of India (2017)

In spite of the fact that the case is connected with Muslim law, the verdict also stressed that individual laws should not conflict with the constitutional norms of equality and dignity.

### 4. Vineeta Sharma v. Rakesh Sharma (2020)

The Hindu Succession (Amendment) Act, 2005 was interpreted by the Supreme Court and it concluded that daughters possess equal coparcenary rights to Hindu joint family property.



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## 5. Sarla Mudgal v. Union of India (1995)

The Court talked about the clash between individual laws and constitutional values and emphasized the necessity of regularity and change.

## 6. Danamma v. Amar (2018)

7. The Supreme Court accepted the right of daughters as coparceners in joint family property which strengthened the gender equality principle under Hindu Succession Act.

## 8. Githa Hariharan v. Reserve Bank of India (1999)

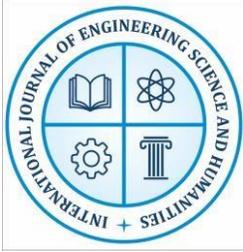
The Supreme Court understood Hindu Minority and Guardianship Act, 1956 and gave the ruling that under some condition the same can also be applied to the mother who may be considered as a natural guardian despite the father being alive thus enhancing gender equality in guardianship.

### Role of Judiciary in Harmonizing Hindu Law with Fundamental Rights

The Indian judiciary has been significant in balancing the Hindu law with the Fundamental Rights to be provided by the Constitution. The judiciary, in terms of Article 13 and Article 32 of the constitution of India, has the authority of judicial review i.e., reviewing whether a law or even a practice is violating the Fundamental Rights guaranteed in Part III of the constitution (Articles 12-35). Given that Hindu personal law regulates key elements of family relations including marriage, hereditary, adoption and guardianship, the judiciary has often applied such laws to the prevailing constitutional values like equality, liberty and dignity. As an example, Article 14 provides equality before the law, and protection of the law is equal, whereas Article 15 establishes prohibition of discrimination based on religion, caste, sex, or place of birth. Likewise, Article 21 guards the right to life and personal liberty and Article 25 safeguards the freedom of conscience and the right to freely profess, practice and spread religion, in accordance with the public order and morality and health. The courts have through the judicial interpretation of the laws of Hindu personal laws taken care that these constitutional provisions are applied in a common manner in applying the law. The judicial bodies have also construed the statutory laws regarding the Hindu personal matters like the Hindu marriage act of 1955, the Hindu succession act of 1956, the Hindu adoption and maintenance act of 1956 and the Hindu minority and guardianship act of 1956 through the prism of the basic rights. The courts have stressed in a number of occasions that customs or practices of the law which are against the constitutional principle of equality and justice cannot be maintained. Meanwhile, the judiciary body has also tried to balance between the protection of religious tradition and constitutional supremacy. The judiciary has therefore played a critical role in making sure that the Hindu law is transformed to fit into the constitutional vision of social justice, gender equality and protection of individual rights.

### • Judicial Review under the Constitution

The judicial review is the most significant judicial power as stipulated by the Constitution of India. It can be described as the power of the courts to consider the constitutionality of the laws, actions of the executive and those of the administrative bodies and assure that they do not



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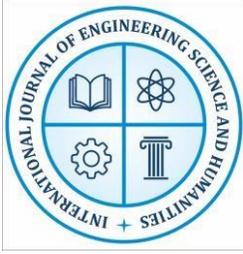
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contradict the stipulations of the Constitution. The idea of the judicial review is primarily based on Article 13 of the Constitution, according to which any law that contradicts or violates the Fundamental Rights shall be considered void. Article 32 further gives the Supreme Court the power to interpret Fundamental Rights by passing writs which may include habeas corpus, mandamus, prohibition, certiorari and quo warranto and Article 226 gives such powers to the High Courts. The judiciary undertakes the role of the guardian of the Constitution and ensures that the rights and freedoms of the people are not violated arbitrarily by the state through the force of judicial review. At the Hindu personal law, judicial review allows courts to investigate whether statutory rules or customary habits are in line with the constitutional rules like equality, liberty and justice. In the process of ensuring constitutional supremacy, in case any personal practice of the law is discovered to be in contravention of Fundamental Rights, the relevant courts can invalidate or interpolate the provisions to keep the constitution supreme. Therefore, judicial review is important to be able to reconcile individual laws with the Fundamental Rights established by the Constitution of India as well as to make sure that every law functions in the context of the constitutional values.

- **Interpretation of Statutory Hindu Laws**

Statutory interpretation of Hindu laws also has a significant role in the application of Hindu personal laws that conform to the constitutional principles of equality, justice and individual rights. Following the independence era, the legislation codified various features of the Hindu personal law including the Hindu marriage act, 1955, Hindu succession act, 1956, Hindu adoption and maintenance act, 1956 and Hindu minority and guardianship act, 1956. These laws were introduced to go against the previous system, which was mostly based on religious scriptures and traditions. The interpretation of these laws however usually needs interpretation by a court of law in an attempt to determine the meaning and scope of the laws in particular situations. The courts give meaning to these statutory provisions by looking at the intentions of the legislation along with the wider constitutional values represented by the Fundamental Rights in Part III of the Constitution especially Articles 14, 15 and 21. By so doing, the judicial branch of power maintains the enforcement of the statutory Hindu laws in accordance with the provisions of equality, nondiscrimination and safeguarding of the personal dignity as assured by the Constitution. Article 14 ensures equality in the sight of the law and equal protection of the law, therefore the legal stipulations must be treated in a fair and reasonable way devoid of arbitrariness and distinctions. Article 15 goes a notch higher to enforce this principle by forbidding any discrimination based on religion, race, caste, sex or place of birth thus influencing the courts to interpret the personal laws in a manner that supports gender justice and eliminates discriminatory laws against women. Article 21, which safeguards the right to life and personal liberty has been narrowed down by the Supreme Court to encompass the right to live with dignity, personal autonomy and protection of individual rights in family relations. When interpreting the statutory



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laws like the Hindu marriage Act 1955, the Hindu Succession act 1956, the Hindu adoption and maintenance act 1956, and the Hindu minority and guardianship act 1956, the courts tend to make use of these constitutional principles so that the law can develop accordingly with a change in social reality. This strategy enables the courts to reconcile the old forces of personal laws with the new constitutional values, hence making the provisions of the law to maintain justice, equity and equality in present-day Indian society.

The courts are given the role of ensuring that the provisions of the Hindu personal law as interpreted by the courts are used to bring about fairness, gender equality and social justice. The judiciary in most instances has broadened the application of these statutes in order to eliminate discriminatory acts and to uphold the rights of people, particularly the women and children. Thus, the statutory interpretation of Hindu laws by the courts assists in modernizing the traditional law so that it can fit in the current constitutional norms and the Hindu personal law remains alive up to date with the ideals of the Indian Constitution.

- **Promotion of Gender Equality through Judicial Decisions**

The Indian judiciary has actually contributed to the establishment of gender equality in the country by interpreting the law and the constitution. Gender equality is a core constitutional principle as evidenced by Article 14 of the Constitution which states equality before the law and Article 15 which states that no one should be discriminated against under the guise of sex. Under Hindu personal law, there were a lot of traditional practices that historically placed women in an underprivileged state especially on issues pertaining to inheritance, property rights, marriage and guardianship. The courts have made an effort to eliminate such inequalities through gradual judicial rulings that have seen women enjoy equal legal protection and opportunities. In one case, the Supreme Court interpretation of the Hindu Succession (Amendment) Act, 2005 in the case Vineeta Sharma v. Rakesh Sharma (2020) identified that the rights to property of Hindu joint family property became stronger as daughters have equal coparcenary rights. In the same vein, the court has used the Hindu marriage law which is the Hindu marriage act, 1955, to safeguard the rights and dignity of women in matters of matrimony. Such interventions in courts indicate the commitment by the courts to enforce constitutional equality, dignity and social justice. The judiciary has played an important role in enhancing gender equality and safeguarding the rights of women concerning the Hindu law through the interpretation of personal laws against the backdrop of Fundamental Rights.

### **Conclusion**

Analytical study of the relation between the Hindu law and the Fundamental Rights under the Indian constitution indicates that the formulation of personal laws in India has been greatly affected by constitutional values. Before independence, Hindu law was mostly founded on religious scriptures, traditions and social norms most of which were hierarchical and patriarchal to the traditional society. But with the adoption of the Constitution, a new legal system on the



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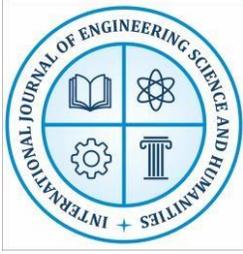
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principles of equality, justice, and securing individual liberties, emerged. This constitutional structure required major changes in the Hindu personal law to make sure that the traditional practices did not infringe the principles of the fundamental rights. The enacting of the personal laws into codified form through several legislations in 1950s was a significant step in the modernization of Hindu law. These reforms solved the problems concerning marriage, inheritance, guardianship and adoption and encouraged social justice and equality between men and women. The interpretation of the law by the judiciary has also been significant in making sure that Hindu law is interpreted in a way that does not contradict the principles of the constitution. Courts have reiterated that although freedom of religion is supported in the Constitution, it cannot be used to antagonize the fundamental rights of people supported by the fundamental rights. In general, the engagement of Hindu law with the constitutional system demonstrates the positive change in the Indian personal laws. The Constitution serves as the highest law governing the interpretation and change of the personal laws, as this way both makes sure that they develop according to democratic principles and human rights. Hence, the Hindu law and fundamental rights relationship is a continuous process of legal and social reformulation to bring the cultural practices into balance with the constitutional obligation of equality, dignity and justice.

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