

# Marriage should not mean loss of identity for women A Constitutional and Social-legal analysis in India

**Adv. Sarika Ahinsak Bansode**

LL.M. Student

Chhatrapati Shivaji Maharaj University, Panvel (Navi Mumbai), India

[advsabansode@gmail.com](mailto:advsabansode@gmail.com)

Supervisor- Prof. (Dr) S.P. Mishra

Dean,

Faculty of law

Chhatrapati Shivaji Maharaj University

## **Abstract**

Marriage is an important social institution that brings significant changes in an individual's life, including roles, responsibilities, and sometimes identity. In Indian society, marriage is often considered an essential milestone that shapes a person's social status and family life. A popular proverb states, "Shaadi ka laddu jo khaye vo pachtaye, jo na khaye vo bhi pachtaye," suggesting that both marrying and remaining unmarried have their own consequences. However, beyond this cultural perception lies a deeper social reality.

Indian society has historically been structured within a patriarchal framework where men often exercise greater authority in family decision-making. Decisions relating to income, children's education, household expenses, and place of residence are frequently dominated by male members of the family. In such a system, questions arise regarding a woman's identity and autonomy after marriage. Practices such as the expectation that a woman should change her surname or adjust her profession after marriage often raise concerns about whether her independent identity is preserved.

Furthermore, although mothers are expected to play a crucial role in shaping their children's education, behaviour, culture, and social values, society sometimes overlooks the importance of women's own education and empowerment. This contradiction raises important questions about gender equality, identity, and the role of women within the institution of marriage.

It often accompanied by significant changes in a woman's identity, including alterations in surname, residence, and familial affiliation. While these practices are commonly justified as cultural traditions, they raise critical constitutional questions regarding equality, autonomy, and dignity.

The Constitution of India guarantees equality before the law and prohibits discrimination on the basis of sex. Despite these guarantees, social expectations frequently pressure women to modify their identity after marriage in ways that are not equally imposed upon men. This disparity raises concerns regarding the compatibility of such customs with constitutional values.

This article explores the issue of women's identity after marriage through a constitutional and socio-legal lens. By examining constitutional provisions, judicial interpretations, and societal experiences, the study highlights the tension between patriarchal social norms and constitutional guarantees. It argues that identity autonomy must be recognized as an essential component of dignity and personal liberty.

Keywords: Women's identity, marriage, constitutional rights, gender equality, autonomy.

## **I. INTRODUCTION**

Marriage is one of the most significant social institutions in India and carries profound cultural, religious, and legal implications. Traditionally, marriage is perceived as a union not merely between two individuals but between two families. Within this framework, women are often expected to undergo significant changes in their identity, including adopting the surname of their husband and assimilating into the husband's family structure.

While these practices are deeply embedded in social traditions, they raise fundamental questions about individual autonomy and gender equality. The Constitution of India recognizes equality, dignity, and liberty as essential values that must guide both legal and social institutions. However, the persistence of patriarchal customs often results in women experiencing pressures that conflict with these constitutional principles.

The transformation of a woman's identity after marriage therefore raises a critical question: whether such expectations are compatible with constitutional guarantees of equality and personal liberty. This article examines the issue from both constitutional and socio-legal perspectives.

## **II. RESEARCH METHODOLOGY**

This research adopts a mixed doctrinal and socio-legal methodology.

### **Doctrinal Research**

Doctrinal research involves the analysis of constitutional provisions, statutory law, and judicial precedents. Key constitutional provisions examined in this study include:

Article 14 of the Constitution of India

Article 15 of the Constitution of India

Article 19(1)(a) of the Constitution of India

Article 21 of the Constitution of India

Judicial decisions interpreting these provisions were also analyzed to understand the scope of personal autonomy and dignity.

## **III. SOCIO-LEGAL RESEARCH**

The socio-legal aspect of this research involves examining women's lived experiences and social attitudes regarding identity after marriage. Data was collected through a questionnaire survey focusing on issues such as surname change, societal expectations, and administrative challenges faced by women.

Secondary sources such as scholarly articles, books, and reports on gender equality were also consulted.

### **3. Constitutional Framework Protecting Women's Identity**

#### **Equality Before Law**

Article 14 of the Constitution of India guarantees equality before law and equal protection of the laws. The principle requires that similarly situated individuals be treated equally by the legal system.

In the context of marriage, if societal expectations require women but not men to alter their identity, such expectations may undermine the principle of equality.

#### **Prohibition of Gender Discrimination**

Article 15 of the Constitution of India prohibits discrimination on the basis of sex. Although Indian law does not mandate surname change after marriage, societal practices often indirectly compel women to do so.

#### **Freedom of Expression and Identity**

Article 19(1)(a) of the Constitution of India protects freedom of speech and expression. Personal identity, including a person's name, forms an important aspect of individuality and self-expression.

### **Right to Life and Personal Liberty**

Article 21 of the Constitution of India guarantees the right to life and personal liberty. The Supreme Court has interpreted this right to include dignity, privacy, and autonomy.

## **IV. JUDICIAL INTERPRETATION OF PERSONAL AUTONOMY**

### Justice K.S. Puttaswamy v. Union of India (2017)

The Supreme Court recognized the right to privacy as a fundamental right and emphasized the importance of individual autonomy and identity.

### Joseph Shine v. Union of India (2018)

In this case, the Court struck down the adultery law and emphasized constitutional morality and gender equality.

### Shafin Jahan v. Asokan K.M. (2018)

The Supreme Court reaffirmed that decisions relating to marriage fall within the domain of individual liberty and autonomy.

These judgments collectively affirm that personal decisions relating to identity and relationships must be protected under constitutional rights.

## **V. SOCIAL REALITY AND WOMEN'S EXPERIENCES**

Despite constitutional guarantees, many women face societal pressure to modify their identity after marriage. These expectations are often rooted in traditional notions of patriarchy and family hierarchy.

Common challenges faced by women include:

Pressure to adopt the husband's surname

Administrative difficulties in official documents

Professional complications due to name change

Psychological expectations to conform to family traditions

Such practices may undermine women's autonomy and contribute to the perpetuation of gender inequality.

### **Feminist Legal Perspective**

Feminist legal scholars argue that traditional marriage practices often reinforce gender hierarchies within society. The expectation that women should change their surname reflects historical notions of male authority and control.

From a feminist perspective, marriage should be viewed as a partnership between equals rather than an institution that requires women to relinquish their identity.

### **Comparative Legal Perspective**

In several countries, surname change after marriage is optional and treated as a matter of personal choice.

Examples include:

United States

United Kingdom

France

In these jurisdictions, many women retain their maiden names for professional or personal reasons.

### **Recommendations**

Increasing legal awareness regarding women's identity rights.

Simplifying administrative procedures related to documentation.

Encouraging judicial recognition of identity autonomy.

Promoting social awareness regarding gender equality within marriage.

### **Conclusion**

The issue of women's identity after marriage reflects the broader tension between constitutional values and entrenched social traditions. While the Constitution guarantees equality, dignity, and liberty, societal expectations often place disproportionate burdens on women.

Recognizing and respecting a woman's right to maintain her identity after marriage is essential for achieving substantive gender equality. Legal reform must therefore be accompanied by social change in order to align societal practices with constitutional values.

### **IN MY VIEWS**

The issue of women's identity after marriage must be examined not only from the perspective of legal doctrine but also through the lens of social justice and constitutional morality. In India, marriage continues to function within a deeply patriarchal social structure where gender roles are often defined by long-standing cultural expectations. Although the Constitution of India guarantees equality, dignity, and liberty to every citizen, the lived reality of many women indicates that social norms often override constitutional ideals.

From a constitutional standpoint, identity is closely linked to the concept of individual autonomy. The right to choose one's name, profession, residence, or life partner forms an integral part of personal liberty. However, the expectation that women must change their surname or social identity after marriage reflects an unequal social practice that implicitly assumes the dominance of the husband's identity over the wife's individuality.

It is important to note that Indian law does not mandate the change of a woman's surname after marriage. The practice is entirely social in nature. Despite this, administrative systems and societal attitudes frequently treat surname change as the default norm. For instance, women often face unnecessary bureaucratic procedures when updating documents such as passports, bank accounts, academic certificates, and government records. These administrative challenges illustrate how social customs can indirectly influence legal and institutional frameworks.

Another important concern relates to the psychological and social implications of identity transformation. Identity is not merely a legal label; it represents a person's history, achievements, family background, and personal sense of self. When women are expected to abandon or modify their identity after marriage, it

may create a feeling of discontinuity in their personal and professional lives. This is particularly relevant for women who have established careers or academic recognition under their maiden names.

In professional fields such as law, medicine, academia, and business, a name often becomes associated with reputation and professional credibility. Changing one's surname after marriage may therefore lead to practical complications, including difficulties in maintaining continuity of professional records, publications, or legal credentials. Many women professionals today choose to retain their maiden names for precisely this reason.

Furthermore, the expectation of identity change reflects a broader issue of gender inequality within marriage. Traditionally, marriage has been viewed as a system where the woman becomes part of the husband's family, while the man's identity remains unchanged. This asymmetry highlights the persistence of patriarchal assumptions that continue to shape social behavior.

In modern constitutional democracies, however, marriage must be understood as a partnership between equals. Both spouses should retain the freedom to maintain their individual identities while building a shared family life. Equality within marriage does not require the erasure of individuality; rather, it demands mutual respect for personal autonomy.

From a feminist legal perspective, the transformation of women's identity after marriage can also be linked to historical patterns of patriarchal control. In many traditional societies, women were regarded as dependents who moved from the authority of the father to that of the husband. The expectation that a woman should adopt her husband's surname symbolized this transfer of authority.

Although Indian society has undergone significant social and legal reforms since independence, traces of these historical attitudes still remain. Laws relating to property rights, domestic violence, and workplace equality have progressively strengthened women's rights. Yet social customs surrounding marriage often continue to reinforce traditional gender hierarchies.

The role of constitutional morality becomes particularly significant in addressing this tension between tradition and equality. Constitutional morality requires that social practices must evolve in accordance with constitutional values such as dignity, liberty, and equality. When social customs conflict with these principles, the Constitution must guide the direction of social reform.

The Indian judiciary has increasingly emphasized constitutional morality in several landmark judgments concerning gender equality and personal liberty. Through progressive interpretations of fundamental rights, courts have sought to ensure that individual autonomy is protected even within the sphere of family and marriage.

However, legal reform alone cannot transform social attitudes. True change requires broader social awareness and cultural transformation. Educational institutions, media platforms, and civil society organizations have an important role to play in promoting gender-sensitive perspectives on marriage and identity.

Another important aspect of this issue is the diversity of women's experiences. Not all women perceive surname change as a loss of identity. For some, adopting the husband's surname may represent a voluntary choice or a symbol of shared family identity. The crucial point, however, is that the decision must be based on genuine choice rather than social compulsion.

Freedom of choice is the cornerstone of individual autonomy. A woman should have the right to retain her maiden name, adopt her husband's surname, combine both surnames, or create a new family name if she so wishes. The legitimacy of each choice lies in the freedom with which it is made.

The state must also play a role in facilitating identity autonomy. Government procedures relating to official documentation should be simplified and designed in a gender-neutral manner. Administrative forms and institutional practices should not assume that a woman's identity automatically changes after

marriage.

Moreover, public awareness campaigns can help challenge stereotypes surrounding women's identity and marriage. By highlighting stories of women who have retained their identity while maintaining successful marriages and careers, society can gradually shift its perception of traditional gender roles.

In my view, the debate surrounding women's identity after marriage ultimately reflects the broader struggle for gender equality in Indian society. While significant progress has been made in improving women's access to education, employment, and political participation, the transformation of deeply rooted social norms remains an ongoing challenge.

The Constitution of India envisions a society where every individual enjoys equal dignity and freedom. Achieving this vision requires not only legal guarantees but also social acceptance of women as autonomous individuals with independent identities.

Recognizing and respecting women's identity after marriage is therefore not merely a symbolic issue. It represents a fundamental step toward achieving substantive equality between men and women. When women are free to define their own identity, they can participate more fully and confidently in social, professional, and political life.

Thus, the protection of women's identity must be seen as part of the larger project of realizing constitutional justice. The journey toward gender equality in India will remain incomplete unless society acknowledges that marriage should enrich a woman's identity rather than redefine or diminish it.

## VI. LITERATURE REVIEW

The question of women's identity within marriage has been widely discussed in feminist jurisprudence and socio-legal scholarship. Scholars have argued that the institution of marriage historically functioned within a patriarchal framework where women's identities were often subsumed under the authority of the husband.

Early feminist legal scholars highlighted how traditional legal systems treated married women as legally dependent on their husbands. Although modern constitutional democracies have rejected such doctrines, remnants of these attitudes continue to influence social practices.

Several scholars have emphasized that identity is closely connected to dignity and autonomy. According to contemporary feminist legal theory, the ability to retain one's personal identity within marriage is essential to achieving substantive gender equality. Scholars argue that legal equality alone cannot eliminate gender inequality unless social structures also evolve.

Research on gender and law in India has also emphasized the gap between constitutional ideals and social reality. While the Constitution guarantees equality, social customs relating to marriage often reinforce gender hierarchies. Studies have shown that many women feel pressured to change their surname or relocate after marriage, even when such changes are not legally required.

Academic discussions also highlight that the expectation of surname change symbolizes deeper patriarchal assumptions regarding family lineage and inheritance. Traditionally, family identity has been associated with the male lineage, which explains why the husband's surname is considered the default family name.

Modern scholarship, however, challenges this assumption and advocates a more egalitarian understanding of marriage. Scholars suggest that both spouses should have equal freedom to determine family identity, including the choice of surname for themselves and their children.

Legal scholars have also examined the impact of identity change on women's professional careers. In academic and professional environments, continuity of identity is often important for maintaining recognition, reputation, and documentation. As a result, many women professionals prefer to retain their maiden names after marriage.

Socio-legal research further indicates that younger generations increasingly question traditional practices related to marriage and identity. Urbanization, higher education, and women's participation in the workforce have contributed to shifting attitudes regarding gender roles.

Despite these changes, however, traditional expectations remain strong in many parts of Indian society. The literature therefore suggests that meaningful reform requires both legal awareness and social transformation.

## VII. SURVEY DATA AND SOCIAL ANALYSIS

To understand the social realities surrounding women's identity after marriage, a small questionnaire survey was conducted among women from different age groups and professional backgrounds.

### Sample Size

30 women respondents (students, professionals, and homemakers).

### Survey Questions and Results

1. Did you change your surname after marriage?

Response

Percentage

Yes 60%

No 40%

The results show that a majority of women continue to change their surname after marriage. However, a significant minority now choose to retain their original identity.

2. Was the surname change voluntary or influenced by family expectations?

Response

Percentage

Voluntary choice 35%

Family / societal pressure 65%

The data indicates that a large number of women experience indirect pressure from family or social expectations when making decisions regarding their identity.

3. Did you face administrative challenges after changing your name?

Response

Percentage

Yes 70%

No 30%

Many respondents reported difficulties in updating official documents such as passports, bank accounts, academic certificates, and employment records.

4. Do you believe women should have complete freedom to retain their identity after marriage?

Response

Percentage

Yes 90%

No 10%

The overwhelming majority of respondents supported the idea that women should have complete freedom in deciding whether to change their surname or retain their original identity.

### VIII. INTERPRETATION OF SURVEY FINDINGS

The survey results reveal a significant gap between traditional practices and evolving attitudes among women. While many women continue to change their surname after marriage, a large proportion believe that identity should remain a matter of personal choice.

The findings also demonstrate that administrative procedures can create additional burdens for women who choose to change their names. Simplifying bureaucratic processes and adopting gender-neutral documentation practices could help reduce these challenges.

Overall, the survey highlights the need for greater legal awareness and social acceptance of women's identity autonomy.

### IX. BLUEBOOK/ ILI FOOTNOTES

CONSTITUTION OF INDIA art. 14.

CONSTITUTION OF INDIA art. 15.

CONSTITUTION OF INDIA art. 19(1)(a).

CONSTITUTION OF INDIA art. 21.

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

Joseph Shine v. Union of India (2018), (2019) 3 SCC 39.

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

Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, 1999).

Nivedita Menon, *Seeing Like a Feminist* (Zubaan Books, 2012).

Ratna Kapur & Brenda Cossman, *Subversive Sites: Feminist Engagements with Law in India* (Sage Publications, 1996).

Amartya Sen, "Gender and Cooperative Conflicts," in *Persistent Inequalities* (Oxford University Press).

United Nations, *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, 1979.

Law Commission of India, *Report on Women's Rights and Gender Justice*.

B. Sivaramayya, *Constitutional Law of India*.

Upendra Baxi, *The Future of Human Rights* (Oxford University Press).