

# MAJOR CHANGES IN FAMILY LAW OVER THE YEARS-CASE STUDY

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## INTRODUCTION

The focus of this topic is on the dynamics of the family. In Indian culture, the family and its traditions are highly valued. Family law is described as the "set of regulations that are in effect regarding family matters like marriage, succession, divorce, etc. They are some legally enforceable rights and obligations that arise when one gives legal validation to the status of interpersonal relationships," which is the system that India inherited. India, a secular country, is home to many different religious communities, each of which is governed by its own set of laws and customs. The majority of family-related legislation fall under one of five categories:

- a) Hindu law is the law that applies to all Hindus, Buddhists, Jains, and Sikhs.
- b) Islamic law
- c) Christian Law
- d) The Parsi Law
- e) Secular law: Regulatory relationships resulting from The Special Marriage Act

## FAMILY LAW DEVELOPMENT

Due to shifting dynamics, it is now necessary to adapt the legislation to meet social demands. It has shed insight on how dynamics are evolving as well as how legislation may best serve the greatest number of people. The Muslim laws, however, have not undergone any significant legislative revisions.

## HINDU WEDDINGS

Hindu Law has always considered marriage to be a ritual, even at its earliest phases. It is said to be a particular institution made up of several religious practises that strengthen family ties. It serves as the foundation of civilisation. In India, one of the earliest issues has been child marriage. Social standards, a lack of knowledge, concerns about the status quo of women, viewing women as only a financial burden, and other factors all play a role in this criminal conduct.

The Child Marriage Restraint Act, commonly known as the Sarda Act, was passed by the British government in 1929 as a response to child weddings. The minimum age for marriage was raised by this Act, from 14 for girls to 18 for males.

Although this law was passed, it wasn't followed or put into practise. The minimum age for girls to marry was raised from 16 to 18 years old as a result of *Sushila Gothala V. State of Rajasthan*<sup>1</sup>. After several decades, the law was once more revised in 2006 under the name of the Prohibition of Child Marriage Act, which punished both the parents and the priests who participated in such a practise.

In a PIL submitted to the Delhi High Court in 2019, the petitioner argued that this law was unconstitutional under Articles 14(8) and 21 of the Indian Constitution. As a result, a law was recently passed setting the marriage age for women at 21.

With the passage of the Hindu Marriage Act in 1955, polygamy was declared illegal and strict monogamy became the norm for all Hindus. The marriage is voidable if the consent was gained via deception or coercion, but this Act does not contain a clause saying that marriage without the permission of the parties is invalid. The issue is the same if one of the partners is mentally ill.

Together, sections 5, 11, and 12 show that consent is not a necessary element of Hindu marriage. Hindus consider

marriage to be a rite, a lifelong relationship that cannot be broken. A widow is permitted to remarry. The sacramental ritual is required. As a result, Hindu marriage might be viewed as a hybrid of a contractual and sacramental relationship.

### **PARSI, JEW AND CHRISTIAN MARRIAGES**

The Parsi marriage is also regarded as a legal agreement, but it must be solemnized via a ceremony called an Ashirwad. In the presence of two witnesses, it is solemnised by a Parsi priest. On the other hand, the Jewish marriage is seen as a contract as well and is referred to as Katuba. A religious ritual is required for approval.

Christian marriage is a legal contract that is solemnised by the Marriage Registrar and a Minister of Religion authorised under the Christian Marriage Act of 1872. The Special Marriage Act of 1954 defines marriage as a civil contract.

### **DIVORCE**

The Hindu Marriage Act, the Parsi Marriage and Divorce Act, and the Indian Divorce Act each grant both husband and wife the following reasons for divorce:

- (a) Adultery

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<sup>1</sup> *Sushila Gothala v. State of Rajasthan* AIR 1995 Raj 90.

- (b) Cruelty
- (c) Desertion
- (d) Conversion
- (e) Unsound mind
- (f) Death assumption and
- (g) Not adhering to the decision restoring conjugal rights

In contrast, a unilateral divorce is granted to a male in Islamic law without giving the wife any explanation. The woman may, however, apply for divorce under the Dissolution of Muslim Marriage Act, but she must provide evidence of her reasons.

A Hindu woman may file for divorce under the marital laws (Amendment) Act of 1976 on grounds other than those already listed, such as:

1. Remarrying by the husband,
2. If the husband committed rape, sodomy, or bestiality
3. The refusal of the spouses to resume cohabitation notwithstanding a court order requiring the maintenance of the wife and the choice of puberty.

### TRIPLE TALAQ

The only faith that acknowledged divorce as a means of ending a marriage was Islam. It is called Talaq, which translates to

"release" in Arabic. The elimination of Triple Talaq, also known as Talaq-e-biddat, was the most contentious issue in recent years. The term is described as "liberation from the relationship of marriage, ultimately or right away, when the guy ends his marriage by only using the word "talaq" three times." The Act recognised this practise as legitimate.<sup>2</sup>

However, triple talaq was deemed to be unlawful as a result of the significant ruling in Shayara Bano v. UOI & ors<sup>3</sup>, which prompted the adoption of the Muslim Women (Protection of Rights on Marriage) Bill, 2019. This measure was intended to shield Muslim women from immediate divorce just by saying those words. Its infringement carries a maximum sentence of three years in jail. The Bill also includes provisions for child custody and support.

### SEPARATION BASED ON ADULTERY

The word "*adultery*," which has French roots, means "*to corrupt*." In the last 158 years, adultery has been viewed as a crime, however, section 497 of the IPC was deleted in 2018 and decriminalized

<sup>2</sup> The Muslim Personal Law (Shariat) Application Act of 1937.

<sup>3</sup> Shayara Bano v. Union of India (2017) 9 SCC 1.

adultery.<sup>4</sup> However, it is not a crime as defined by Sections 13(1) and 10 of the Hindu Marriage Act of 1955 and might still be a reason for breakup or legal separation.

## MAINTENANCE

Hindu Marriage Act Section 24 regulates rules relating to the award of support and legal costs to either partner, whereas Section 25 regulates provisions with a connected dispute, i.e., the payment of ongoing alimony and maintenance. The same rules apply in both Parsi and Christian law. While Muslim women can choose between the Muslim Women Act of 1986 and Section 125 of the C.R.P.C., if they choose to abide by personal laws, they are entitled to maintenance from their spouse up until the Iddat period or the time of childbirth, whichever comes first, and for the remainder of the time from their parents, relatives, or the wakf board if the man is unable to support himself.

The support of the spouse, children, and elderly parents is covered under Sections 125–128 of the 1973 Code of Criminal Procedure. Social justice is the section's goal, and it is covered under Article 15 of the Constitution (3). The purpose of

Section 125 of the Criminal Procedure Code, which regulates maintenance payments to a divorced Muslim woman and her ability to escape poverty, has been explained by the Supreme Court.<sup>5</sup>

## INHERITANCE

The Hindu Succession Act, passed in 1956, was seen as the first step toward establishing that inheritance laws are the same for all Hindus and to address issues about gender imbalance in inheritance. The Act's Section 14 eliminated a woman's restriction on acquiring and holding property as the only owner and changed limited estate into absolute ownership. In the case of *V. Tulasamma & Ors. v. V. Sesha Reddi*, where a clear difference was made by the court admitting women's right to property and all of her prior rights were to be retained as is, the Apex court defined the breadth and spectrum of sections 14(1) and (2) of the Act<sup>6</sup>. The Hindu Succession (Amendment) Act of 2005 required that the daughter be considered as a son, which entirely altered the Mitakshara school of thought's philosophy. She was born with the ability to share a coparcenary.

## CONCLUSION

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<sup>4</sup> *Joseph Shine v. Union of India*, 2018 SC 1676.

<sup>5</sup> *Mohd. Ahmed Khan v. Shah Bano Begum*, 1985 (3) SCR 844.

<sup>6</sup> *V. Tulasamma & Ors v. Sesha Reddi (Dead)* 1977 AIR 1944.

Indian society is still working to eradicate all biases and adapt to contemporary styles. Traditional standards are altering as a result of shifting dynamics, and as a result, family-related legal requirements have also evolved. By granting equal rights to all genders, this primarily aims to promote equality and eradicate discrimination. Even if additional rules have been imposed, they remain insufficient to address the growing concerns. There are still persons in society who view women as their servants, and because of a lack of education, many women are unaware of their basic rights. The law should be amended to include a

clause that would end all forms of discrimination.

Despite several legal protections and gender equity remedies, restrictive societal attitudes and systems still exist. This shows that existing rules need to be drastically changed if they are to have an effect on people's thoughts. The judiciary has undoubtedly improved, worked to limit prejudice, and supported the importance of Indian women in society. By raising awareness, educating people, offering legal assistance, and setting up grassroots camps, the gaps may be addressed.