



Family law in India: Balancing tradition, gender and modernity

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Abstract

The importance of family law in India can come from its characteristics as a unique legal system that should be taken to address the resolution of conflicts emanating from various religions, national principles, and social trends. To be exact, it addresses the special problems posed in the legal sphere by the family law system. From periodical textual resources and the established forms of social practice for family laws, they appear to have transformed a great deal due to the colonial regulations, the incorporated policies, and the judicial practices alike. It is indeed the Indian family law and it is in this context that this paper reviews the developments in the laws pertaining to marriage and divorce, inheritance, adoption and guardianship from the earliest records of the Vedic texts up to the current times after independence. The study will look at these laws in the constitution of India and take into account concepts close to family law in regards to the Constitution of India such as affirmative action, equality, secularism and social justice. The study also investigates how those legislative changes and judges' precedents have been able to address gender concerns especially with respect to maintenance laws, inheritance, domestic violence, subordination, and personal development. Further issues are also explored which include UID, legal fragmentation, changes in machinery relations, mixed-faith marriages, options of live-in situations, ART and how LGBTI issues manifest in the field of family law, only serve to demonstrate how family law is and ought to be always changing. It is emphasized in this article's ending that not all has been done and some difficult issues have to be resolved before the principles of the family law can be in-line with the principles contained in the Constitution of India. In order to achieve this, there is a need for persuasive judicial interpretations through constant developments in the legislative structure and participative approach in the development of legal frameworks since in the end it is the people that the law is supposed to protect's justice that will prevail in the family law of India.

Keywords: Women's rights, family law, gender justice, Hindu Code Bills, marriage and divorce

Introduction

Family law is one of the more intersectional branches of law, as it plays a huge role in matters relating to family; for instance, marriage, divorce, maintenance, adoption, guardianship, inheritance and succession. The family law differs across nation due to historical experiences, religious beliefs in that nation, occupation of another nation, operating as a Hindu-majority with a clear rationale for secularism, and jurisprudence. Consistency would also require that the definition of family provides a structure of behaviour for the entire society and that the state and the judiciary guard against aspects that destroy the legal ideals of family. Polycentric federalism exists in India though there are countries that are still using monolithic principles. From the very beginnings, Indian family law was mainly oriented by faith and customary laws. Hindu law was particularly influenced by the norms laid out by the Dharmashastra schools whereas Muslim personal law governed family relations among Muslims^[1]. Colonial rule, however, helped to bring freedom in terms of every other aspect of personal lives that that the indigenous people practiced on the basis of religion, re the English law principles changed, But some of the religious customs practices, particularly women oriented ones such as 'Sati', child marriage, and denying a widow the right to remarry after her husband's death could be offered some extent of help, particularly when one refers to these issues being addressed successfully – or partially so – by orders of the society. However, post-independence, many of those concerns are extinguished as the basic principles in the

constitution of India provide for, equality, dignity, liberty and social justice facilitating the most extensive range of legal remedies in particular with the passage of the CMVR system and the attempts that appertained to the influence also on the female and child welfare after the enactment of Hindu code bill^[2, 3]. With the dawn of this time, there has been a shifting of the focus towards some new problems of the society including inter-religious marriages, live-in relationships, aided reproduction, social identity of the LGBTQ, '+' in the acronym and the Uniform Civil Code conflicts^[1, 4].

This article is focused around researching the subject of how exactly family law has grown over the span of time in India, and simultaneously, the particular focus is on personal law in the country vis-a-vis the constitution, judicial activism, gender, and cultural clashes with the Indian legal narratives and domestic laws and so on. The paper also provides a way forward in terms of family law in India that should conform to oppressive and baseless, masculine laws by introducing more social aspect the society at the time of the researched period.

Historically Evolution of Family Law in India

The family law evolution in India began at the Vedic and post-Vedic periods, where most legal requirements on all family matters obtained their basis from religion, tradition, and social norms. The Dharmashastras mainly Manusmriti, Yajnavalkya Smriti, and Narada Smriti among other texts have been a source of Hindu family laws. These texts contained within them the rules of marriage, inheritance,

adoption, guardianship, as well as Hebaitation, maintenance, etc. The religious as well as sacramental nature of many aspects including the divorce made it difficult to dissolve marriages in the traditional Hindu society on the grounds of divorce. Women possess few rights to property and, if at all, restricted to their stridhan (personal property) whereas state laws on inheritance are largely partriarchal. While two main courts of Hindu law developed during this time within the Mitakshara and Dayabhaga schools, regarding historical family law, these schools considered each other on the issue of coparcenary and succession. Earlier family law, as a result, tightly bonded religious precepts, a ethical system, and sexually exclusive custom permitting such forms of conduct in India, paving a framework for personal laws in India to come through ^[2, 4].

1. Colonial Period

At the commencement of British East India Company colonization, there was little concern to alter the religious laws of India, as such India remained a multi-religious state where each religious group governed family law under its respective religious laws such Muslims and Hindus. At the same time, in the 19th century, the struggle of the then great social reformers like Raja Ram Mohan Roy, cancelled the customary injustices that were gender based like the one that pertained to the women. Among the statutes included the Bengal Sati Regulation, 1829, criminalizing further practice of Sati, the Hindu Widows' Remarriage Act, 1856, giving legal right to a Hindu widow to remarry, the Special

Marriage Act, 1872, that allowed parties to marry without the customary rituals and rites of religion, the Guardians and Wards Act, 1890, and the Child Marriage Restraint Act, 1929, that attempted to reduce prevalence of the practice of minors' marriages ^[1, 2].

2. Post-Independence Reforms

After gaining independence, Indian law underwent significant change as it enshrined the values of equality, secularism and social justice particularly in articles 14, 15, 21 as well as the Directive Principles of State Policy, the most radical among them being the Hindu Code Bills that were enacted between 1955 and 1956. These comprised the Hindu Marriage Act of 1955, Hindu Succession Act of 1956, Hindu Minority and guardianship Act of 1956 and Hindu Adoptions and Maintenance Act of 1956. These broad based new laws dealt with monogamy, divorce, judicial separation, adoption right and men's inheritance rights were made better than before. The Muslim Women (Protection of Rights on Marriage) Act, 2019, which abrogated instant triple talaq, and heightened women's rights laws unlike unidentified liberal beliefs prevailed. Today, there are still of debates on the modern uniforms to be changed in the civil code, the consideration for other families that are different in structure, and the recognition of LGBTQ+ who have family rights, due to the nature of the Indian family law development with the Indian society and Constitution ^[1, 5].

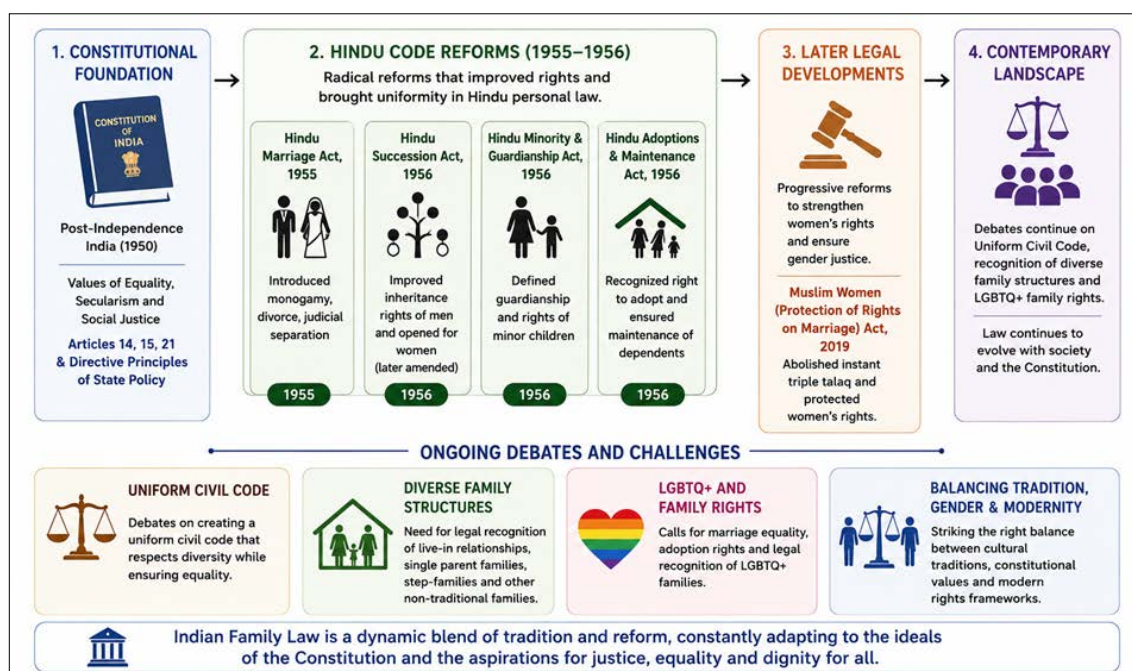


Fig 1: Historical Evolution of Indian Family Law

Constitutional Framework and Personal Laws

While this might be the case, in practical terms, there are more significant causes of changes that happen in the country's laws. This process is a primary means of legislation known as the disequilibrium between range of regulations and what is put in force ^[6]. The Constitution mandates equality (Articles 14 and 15) and guarantees protection to discriminated religion, race, caste, sex or place of birth among other issues; discrimination Act, Articles 21 has been expansively interpreted particularly that it includes

dignity, privacy and personal respect. On the contrary, Articles 25 and 26 help to guarantee fundamental human rights, and in particular freedom of religion and the right to freely practice and manage religious affairs in accordance with their beliefs ^[7].

It bears noting that in India, personal laws are used primarily in relation to the law of marriage, inheritance and succession, the Hindu Marriage Act 1955, Hindu Succession Act, 1956, Hindu Minority and Guardianship Act, 1956, and Hindu Adoptions and Maintenance Act, 1956 applies to

Hindus. The Islamic law of inheritance as well as the Muslim Personal Law (Shariat) Application Act, 1937 are applied to Muslims and to Christians and Parsis, the Indian Christian Marriage Act, 1872, the Indian Divorce Act, 1869 and the Parsi Marriage and Divorce Act, 1936 are laws used respectively. Article 44 of the 1949 Indian Constitution embodies the social reform the country needs such as helps in preventing nuptial excesses or abuses. However, the text has made it easier for aspirants to understand who have not read up the judgments or socio-economic implications of the Chunk of Feminist Jurisprudence ^[1, 3, 8].

In Mohd. Ahmed Khan v. Shah Bano Begum (1985), the Hon'ble Supreme Court upheld the rights of a Muslim woman who was divorced and entitled to maintenance under section 125 of the Criminal Procedure Code bringing out the focus on the principles of equality and social justice as entrenched in the Constitution. It is observed that in the case of Triple Talaq, the Shayara Bano v. Union of India (2017) judgment against the Amid 'Instant' Triple Talaq or Talaq-e-Biddat gave rise to the codification of the Muslim Women (Protection of Rights on Marriage) Act, 2019. However, the Court has also used its powers while ensuring that gender-sensitive interpretations are made while such private rights and the constitutional understanding of personal laws issue then the courts bring in certain limitations in matters of parental rights; however, this is not the preferred way ^[1, 8].

Family Law through the Lens of Gender Justice

In India, various amendments in the family laws give an impression of gender equality basically in the family institutions reflecting the spirit of dignity, equality and non-

discrimination of the Constitution. In contrast, the worldwide concern for women's rights has been noticed to be transformed into a positive effect as it has led to the transformation of family law through legal enactments and judicial activism to make legalization of women and vulnerable members of the family ^[9, 10]. The legal principle of equality before law in Articles 14, 15 and 21 of the Constitution outlaws discrimination on the basis of gender and assures right to right to life with dignity. These provisions of the Constitution enable the courts to interpret the personal laws more in line with equality and human rights and less under the constraints of religious sanctions or customs. Most women have been certainly empowered by key legal reforms ^[9].

This has been further reinforced by the process of judicial interpretation. In the case of Vineeta Sharma v. Rakesh Sharma (2020), the Supreme Court confirmed the right of a daughter to have a claim in coparcenary regardless of the fact that the father was already deceased when the 2005 amendment took effect. In a similar vein, Joseph Shine v. Union of India (2018), though mostly dealing with the issues of adultery, helped protect the fundamental rights by debunking any erroneous feminist theories that suggested that women were nothing more than the chattels of their spouses ^[11]. Major constitutional provisions, legislative enactments, significant judicial interventions and pressing issues surrounding gender justice in the Indian family laws are formulated in Table 1. This in mind, satisfactory conditions of women protection do not persist. The protection of girls from underage marriage is unevenly implemented in different family law systems.

Table 1: Gender Justice and Judicial Developments in Indian Family Law ^[8, 11]

Aspect	Traditional Position	Recent Reforms and Judicial Developments
Constitutional Principles	Personal laws often reflected patriarchal social norms with limited recognition of women's rights.	Articles 14, 15, and 21 have guided courts in boosting equality, dignity, and non-discrimination in family law.
Inheritance Rights	Daughters were generally excluded from coparcenary rights under the Mitakshara system.	The Hindu Succession (Amendment) Act, 2005 granted daughters equal coparcenary rights, reaffirmed in Vineeta Sharma v. Rakesh Sharma (2020).
Judicial Activism	Courts traditionally adopted a conservative approach, emphasizing religious customs and personal laws.	The Supreme Court increasingly applies constitutional morality and gender equality while interpreting family law.
Contemporary Challenges	Gender inequality persisted in property rights, caregiving responsibilities, and personal law provisions.	Ongoing debates concern marital property rights, reproductive autonomy, Uniform Civil Code, LGBTQ+ family rights, and recognition of diverse family structures.

Gender Justice and Judicial Developments

In the area of family law, Mohammad Ahmed Khan v. Shah Bano Begum (1985) has always been one of the most prominent. It is where the Supreme Court enforced the right to maintenance of a Muslim woman weaved up in matrimonial relations but divorced, stipulated by the sections of the Code of Criminal Procedure, without paying regard to the personal law operating outside the said statutory provisions. The Court articulated the principle of social justice and gender equality and suggested the desirability of a Uniform Civil Code ^[1]. The petitioners – Muslim Women's Qazi Nazrul Islam shall contended that 'X' practice of instant Triple Talaq is violative of right to equality of muslim women.' takes as rare an abnormal request for any civilized country that a husband can express his displeasure to a modern society the case was filled in 2016 but no ruling has been made from 2016 up to this point in time, 2017 and will be settled at a later date. Of particular interest the Court reiterated as to what it had stated and

underlined in Hajira Khatoun and Sakina Bano case that practices, concepts and mindset unsupported by modern ideas will not be given recognition when they violate constitutional provisions ^[1, 6].

The Court also directed that the trial of these consolidated suits filed on selections of forty questions of law would be on the First Causes of the longest suit filed on section 73 alone for a duration of thirty days. The Court discouraged the contention that consolidation since of sections 74-90, now tried on First Causes of ten consolidated suits within certain sections would enhance justice, or that all research or any inquiry outside 1st Causes would be impossible. RTWF pointed out that the High Court could not stay its operation and make it conducive for intelligent furtherance of the litigation, while noting that the Civil Procedure Code lacked such section. The most recent decision of the Supreme Court of India in the case of Vineeta Sharma v. Rakesh Sharma dated 2020 says that a daughter is a coparcener who by birth has the same rights as that of a son

under Section 6 of the Hindu Succession (Amendment) Act, 2005 over the joint family property, thereby inter alia jettisoning the iniquity of discrimination on grounds of gender in matters of inheritance^[10, 12].

Contemporary Challenges: Tradition versus Modernity

Contemporary family law in India shows an ongoing attempt, to keep traditional religious values in step with constitutional ideas about equality, dignity, and individual liberty. Even though personal laws still take care of marriage, divorce, maintenance, succession, guardianship, and adoption within various religious groups, the pace of socio economic shifts, urbanization, globalization, and changing family patterns has pushed people to ask for faster legal reforms. These reforms are meant to match constitutional values, not just reflect older practices. The main difficulty is to hold on to India cultural and religious variety, while also guaranteeing the same protection of fundamental rights, especially for women, children, and other at risk groups^[13, 14].

Changing family structures have also widened the realm of family law. The emergence of nuclear families, inter faith and inter caste marriages, live in arrangements, single parent households, assisted reproductive technologies, and a growing acceptance of LGBTQ+ rights have brought fresh legal obstacles. Indian family law will largely rely on aligning personal laws with constitutional morality, but still allowing cultural variety to remain intact^[15].

Future Directions and Policy Recommendations

The prospects of family law in India rightfully consider all aspects of the Constitution, which is the guiding document of the country. The Constitution promotes equality, dignity, secularism, and social justice while still protecting cultural and religious differences. In order to attain justice and equality, it is necessary to focus on legal reforms that seek to remove outright discriminating provisions other than elements of personal laws that exist within these laws that inhibits the implementation of all family related laws under the constitution. Furthermore according to the Law Commission of India (2018), uniformity is after all not a goal in itself. What is important is to improve Women Development Index and to protect women from the violence that is still rampant in India even in the 21st century. When adopted, principles of equality in divorce and separation during family process will usher in justice in presiding over such cases. The rights that will be promoted and asserted in these laws and any decisions to be based on them will be guided by the principal of voluntary promotion and respect for rights. A rights-based approach that harmonizes personal laws with constitutional morality can foster both legal certainty and social inclusion^[16, 17].

There are many changes that need to be made to the current legislation in order to adapt it to new social structures and the current state of society. The existing legal frameworks should specifically consider issues relating to cohabiting relationships, mixed-religions as well as mixed- castes marriages, assisted reproductive technology, gestational surrogacy, digital family wealth and a host of other care responsibilities. Equally important, they should incorporate strategies to enhance the rights of women, the children, old age persons or persons with disability by providing easy methods of resolving disputes and providing effective enforcement of maintenance orders and child custody

orders, regulations among other essential aspects for the improvement of law^[18].

It is expected that the role of case law in the development of the family law will be still significant in the nearest future. Nevertheless, elaboration of Family Law Code, which is a long expected, rather expected, primarily presupposes legislative work and the collection and analysis of empirical data. Encroachment of tire mills on the bottlenecks should be resolved by including cross-sector reforms based on recommendations of well-meaning organizations, pressure groups, instances of legal pedagogy, and the outcries of the people. The alternative is to include legal structures that will preserve cultural plurality, rather than modernize at the expense of traditional practices. This attitude calls for the establishment of fair and balanced family laws for the sake of everyone's rights. Such as adding safeguards to cover the family environment in the course of its change that will protect the interest of justice, and public security, equality and dignity of the people of India^[18, 19].

Conclusion

Over the years, family law in India has not been static but it has developed in respect of religious cultures, people's behaviour, statutory norms, and creative innovators such as legal reformers, activists and judges. The journey has been one of progressing from custom to law; this law being written and codified since independence in consonance with the existing society's culture, tradition and practices. The Indian Constitution which has adopted equality, dignity, secularism and socialism – these basic essentials of the constitution have enabled the legal institutions an obligation to adjust the legal system through dynamic interpretations by the courts of all the old personal laws associated with family law.

Great advances have been made in terms of gender equity largely due to forceful legislative action and important judicial pronouncements allowing more rights to women, mainly in the areas of property and possessions, estate, children's issues, and domestic violence. However, as every system in the law is dualistic at the very least two conflict system, the problem remains partly because of many kinds of legal systems which exist in a society, very much because of different provisions in the personal laws and subsequent gender discrimination, because new family models are reducing in acceptability slowly because of alternative families, because surrogacy has now become a very possible way of having children in general, and more so, due to the Uniform Civil Code that has sparked huge contentious debate regarding its adoption or non-adoption.

The tendency of family law in India has its roots in the bureaucratization of it, as the wind of modernity could not blow it in any direction. This conservative interpretation of family law has prevailed mostly in Muslim and less so in Christian family laws. This legal framework is outdated and advocates primary importance of religion over the interests of the family and its members. In addition to it, the same applies to some of the provisions of the General Part of the Civil Code. All of the above impedes the development of the family law system as a branch of the law which regulates issue of marriages, pregnancies, adoptions, inheritances and other Golden Age, ISIS and other levels as well as normal social and administrative relations (as outlined in the section "Historical Background of Family Law" above) and justice. That perspective is entirely

outdated as it essentially negates development. This approach allows for the recognition of customs that ought to be eliminated, the retention of norms and principles which should have evolved into more progressive standards, and does not make space for the creation of new norms.

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