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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Mrs.S.Kalpana

Assistant professor of Law

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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EVOLUTION OF FAMILY LAWS IN INDIA

AUTHORED BY - SANA SIDDIUI

ABSTRACT

The historical background of family laws in India is like a rich tapestry woven with threads of culture, religion, and colonial influences. Back in the day, family matters were mainly governed by personal laws rooted in religious customs and community traditions. For example, Hindu family laws drew guidance from ancient texts like the Manusmriti¹ and the Dharmashastra², shaping rules on marriage, inheritance, and the roles of women in families. Similarly, in the Muslim community, family laws were based on Islamic principles interpreted by religious scholars, covering areas such as marriage, divorce, and inheritance.

During colonial times, British rulers introduced laws like the Hindu Marriage Act³ and the Muslim Personal Law (Shariat)⁴ Application Act to regulate personal matters across religious communities. These laws aimed to bring standardization and order but often reflected colonial biases and didn't fully address inequalities within families.

Key Words: Family Law, History, Hindu Marriage Act, Muslim Personal Law etc.

HISTORICAL PERSPECTIVES

During ancient times in India, family life was deeply influenced by both religious beliefs and the changing norms of society. In those periods, which spanned several centuries, people followed traditions and religious teachings that often emphasized the importance of family and societal roles. While men usually held positions of authority, there were also stories and teachings that showed respect for women and their contributions within families.

For instance, in texts like the Rigveda, which is one of the oldest scriptures of Hinduism, there were passages praising the roles of women as mothers, wives, and daughters. These texts didn't just focus on men's roles but also highlighted the significance of women's nurturing qualities and their impact on maintaining harmony within households. This suggests that even though society was generally patriarchal, there were acknowledgments of women's importance beyond

¹ The Manusmriti, also known as the Manavadharmasāstra or the Laws of Manu, is an ancient Sanskrit text that is part of the Hindu Dharmashastra literary tradition.

² Dharmashastra is a Sanskrit term that can mean "Righteousness Science" or "a genre of Sanskrit texts".

³ An act to amend and codify the law relating to marriage among Hindus.

⁴ This law deals with marriage, succession, inheritance and charities among Muslims.

traditional gender roles.

As time passed, there were new religious and philosophical movements like Buddhism and Jainism that brought different ideas about equality and non-violence. These movements challenged existing social hierarchies and offered alternative perspectives on gender relations. While these ideas didn't always lead to immediate changes, they did spark conversations about fairness and equality in society.

Overall, those ancient periods were a time of diverse beliefs and evolving attitudes toward family life and gender roles. While there were certainly challenges and inequalities, there were also glimpses of respect for women's contributions within families. These early discussions and teachings laid the groundwork for ongoing conversations about gender equality and women's rights in Indian society.

PERIOD OF SOCIAL TRANSFORMATION

The periods before and after India's independence saw significant changes in society and laws, especially concerning families and gender roles. Before independence, society was heavily patriarchal, with strict roles for men and women. However, as the independence movement gained momentum, there was a rise in movements advocating for women's rights and gender equality.

One notable movement during this time was led by activists like Raja Ram Mohan Roy and Ishwar Chandra Vidyasagar⁵. They fought for issues like widow remarriage, ending child marriage, and promoting education for women, challenging old customs that favored men. Their efforts laid the groundwork for changes in laws to address gender inequalities.

Mohini Jain v. State of Karnataka 1992 AIR 1858, 1992 SCR, 658, 1992 SCC, 666, JT 1992, 292, and 1992 SCALE⁶: A significant court case during this period was "***Mohini Jain v. State of Karnataka***". In this case, Mohini Jain challenged the practice of charging high fees for education, which particularly affected women from less privileged backgrounds. The Supreme Court ruled that denying education based on inability to pay violated constitutional rights. This case highlighted the importance of education for all, regardless of gender or financial status.

After independence, the Indian Constitution guaranteed equality⁷ for all citizens, regardless of

⁵ Raja Ram Mohan Roy and Ishwar Chandra Vidyasagar: Social Reforms like widow remarriage, ending child marriage, and promoting education for women

⁶ Mohini Jain v. State of Karnataka: Mohini Jain challenged the practice of charging high fees for education

⁷ The Indian Constitution guarantees equality for all citizens, regardless of gender, through the Right to Equality. This fundamental right ensures that all people are treated equally by the law, regardless of caste, gender, religion, language, or any other identity.

gender. Legal reforms, like the Hindu Succession Act of 1956⁸, granted women equal rights to inherit property, challenging traditional norms. Grassroots organizations also emerged, advocating for women's rights and providing support to those in need.

Another significant development was the Child Marriage Restraint Act of 1929⁹, known as the Sarda Act. This law aimed to prevent child marriages, which often deprived girls of education and autonomy. Despite facing opposition, it marked progress towards a more equal society.

These changes, both legal and social, reflect a growing awareness of gender equality and the need for fair treatment of all individuals within families and society. They represent steps towards a more inclusive and just society for future generations.

LEGAL CHANGES IN FAMILY LAW IN INDIA AFTER INDEPENDENCE

After India gained independence, there were significant changes in the laws related to families and gender equality. One key law passed during this time was the Hindu Succession Act of 1956. This law was important because it gave women the same rights as men to inherit property from their families. Before this law, only sons had the right to inherit property, leaving daughters at a disadvantage. But with the Hindu Succession Act, daughters were given equal rights, which helped empower women financially and promote fairness within families.

Danamma v. Amar¹⁰

In this case, the Supreme Court ruled that daughters have the same rights as sons to inherit ancestral property, regardless of when they were born. This decision reinforced the idea of fairness and equality in property inheritance, ensuring that daughters were not treated differently from sons.

Another important law passed after independence was the Muslim Women (Protection of Rights on Divorce) Act of 1986¹¹. This law aimed to protect the rights of Muslim women who were divorced by ensuring they received maintenance and had rights to property. Before this law, divorced Muslim women often faced financial difficulties and lacked legal support. But the act provided them with the means to claim maintenance from their former husbands and secure their share of property, promoting fairness and justice within Muslim personal law.

⁸ An act of the Indian Parliament that codifies, secularizes, and amends the law relating to intestate or unwilled succession among Hindus, Sikhs, Jains, and Buddhists.

⁹ The Child Marriage Restraint Act of 1929, also known as the Sharda Act, is an Indian law that prohibits child marriage.

¹⁰ The Supreme Court ruled that daughters have the same rights as sons to inherit ancestral property, regardless of when they were born.

¹¹ The Muslim Women (Protection of Rights on Divorce) Act of 1986 was passed by the Indian Parliament to protect the rights of Muslim women who have been divorced from their husbands.

Additionally, the Dissolution of Muslim Marriages Act of 1939¹² was significant for giving Muslim women the right to seek divorce on grounds such as cruelty or desertion by their husbands. This was a departure from traditional Islamic law, which usually favored men in marital disputes. The act recognized women's autonomy and provided them with legal recourse to end unhappy marriages.

Overall, these legal changes reflect India's commitment to promoting gender equality and empowering women within families. By enacting laws like the Hindu Succession Act and the Muslim Women (Protection of Rights on Divorce) Act, India has taken important steps towards creating a fairer and more inclusive society for all its citizens.

IMPACT OF HISTORICAL CHANGES ON WOMEN'S RIGHTS WITHIN THE FAMILY STRUCTURE

The historical changes in family laws in India have profoundly influenced women's rights within familial structures. Traditionally, Indian society was deeply patriarchal, relegating women to subordinate roles. However, over time, the evolution of family laws has gradually acknowledged and enhanced women's rights and autonomy within families.

A significant impact of these changes is seen in matters of marriage and inheritance. Previously, women had little say in marital decisions, and inheritance laws favored male heirs. Yet, legal reforms like the Hindu Succession Act of 1956 marked a turning point by granting women equal rights to inherit ancestral property. This empowered women economically and allowed them to assert their autonomy in making life choices.

Shah Bano v. Mohammed Ahmed Khan, AIR 1985 SC 945¹³: In the Shah Bano case, a Muslim woman named Shah Bano sought financial support from her husband, Mohammed Ahmed Khan, after he divorced her using the controversial practice of triple talaq. She approached the Supreme Court of India, seeking maintenance under Section 125 of the Code of Criminal Procedure¹⁴, which provides for the financial support of wives, children, and parents who are unable to sustain themselves.

The primary legal question at the heart of the case was whether Muslim women have the right to claim maintenance under Section 125 of the Code of Criminal Procedure, irrespective of the personal laws governing their religious community.

Judgment: The Supreme Court ruled in favor of Shah Bano, affirming that Muslim women are

¹² An act to consolidate and clarify the provisions of Muslim Law relating to suits for dissolution of marriage by women married under Muslim Law.

¹³ Shah Bano v. Mohammed Ahmed Khan, AIR 1985 SC 945.

¹⁴ Code of Criminal Procedure, 1973, s. 125.

indeed entitled to maintenance under Section 125 of the Code of The court emphasized the significance of upholding gender justice and equality, asserting that the provisions of Section 125 apply universally to all citizens, irrespective of their religious beliefs. The judgment highlighted the imperative to safeguard the rights of Muslim women and ensure their financial stability following divorce.

The ruling in the Shah Bano case triggered widespread debate and controversy, igniting discussions about the rights of Muslim women within the family structure. Consequently, the Indian Parliament passed the Muslim Women (Protection of Rights on Divorce) Act in 1986¹⁵, which provided for a limited duration of maintenance for divorced Muslim women. However, this legislation faced criticism for potentially diluting the rights of Muslim women and perpetuating gender disparities within Muslim personal law.

Additionally, the Shah Bano case drew attention to the issue of domestic violence experienced by women within familial settings. It underscored the urgent need for legal frameworks to protect women from domestic abuse and ensure their safety and well-being within the family unit. Subsequent legislative reforms, such as the enactment of the Protection of Women from Domestic Violence Act in 2005¹⁶, aimed to address this issue by granting women access to legal remedies such as protection orders, residence orders, and financial assistance in cases of domestic violence. These legislative measures have played a pivotal role in addressing the prevalence of domestic violence and offering support to women facing abusive situations within their families.

Smt. Sarla Mudgal, President, Kalyani v. Union of India, (1995) 3 SCC 635¹⁷: In the case of Smt. Sarla Mudgal, President, Kalyani v. Union of India (1995), the matter centered on the troubling practice of bigamy among Hindu men who converted to Islam to pursue a second marriage while still legally bound to their first wives. The petitioners argued that this conduct not only violated the fundamental principles of Hindu law but also constituted acts of deceit and adultery.

The main legal issue at hand was whether Hindu men could circumvent the monogamy principle enshrined in Hindu law by converting to Islam and contracting additional marriages without officially terminating their existing marital bonds.

The Supreme Court ruled decisively that the conversion of a Hindu husband to Islam solely for the purpose of entering into another marriage without dissolving his prior union amounted to fraudulent behavior and contravened Hindu legal norms. It firmly stated that such conversions

¹⁵ Muslim Women (Protection of Rights on Divorce) Act, 1986, s. 3.

¹⁶ Protection of Women from Domestic Violence Act, 2005.

¹⁷ Smt. Sarla Mudgal, President, Kalyani v. Union of India, (1995) 3 SCC 635.

undertaken for the purpose of practicing bigamy were not recognized under Indian law and were deemed contrary to public policy.

The judgment emphasized the imperative of preserving the integrity of personal laws and preventing individuals from exploiting legal gaps to engage in deceitful practices.

The impact of the Smt. Sarla Mudgal case was significant, as it shed light on the prevalence of fraudulent conversions and bigamy among Hindu men. It underscored the urgent need for legal safeguards to safeguard the sanctity of marriage and uphold the monogamous principles inherent in Hindu law. Additionally, the case brought attention to the complexities surrounding interfaith marriages and the challenges of harmonizing conflicting personal laws in India.

Subsequent legal reforms, including the introduction of special marriage laws facilitating interfaith unions and the codification of uniform civil laws, have aimed to address these issues. These reforms strive to foster equality, justice, and social harmony within India's diverse societal framework.

Moreover, historical changes in family laws have addressed domestic violence. Previously normalized, laws like the Protection of Women from Domestic Violence Act of 2005 now provide legal avenues for women to seek protection and support against abusive partners or family members, thereby challenging the prevalence of domestic violence.

Additionally, women's empowerment in decision-making, education, and employment has been facilitated by legal reforms. Legislative measures promoting gender equality have challenged traditional stereotypes and fostered acceptance of women's roles as equal partners in familial responsibilities.

Furthermore, these legal reforms have catalyzed societal movements advocating for gender equality. Grassroots organizations and civil society initiatives have emerged to address gender disparities and empower women within familial and societal contexts.

Despite progress, challenges persist due to entrenched patriarchal attitudes and implementation gaps in legal provisions. Yet, the journey towards gender equality within familial structures continues, driven by ongoing societal discourse and advocacy efforts.

CONCLUSION

"Historical Evolution of Family Laws in India," delves into the transformative journey of family laws and their impact on gender relations throughout India's history. It navigates through significant periods of social and legal change, examining the evolving dynamics of familial structures and women's rights within them.

The exploration of Vedic and Post-Vedic developments sheds light on the intricate tapestry of religious texts and societal norms that shaped early family laws. Despite entrenched patriarchal values, glimpses of gender inclusivity emerge, hinting at the potential for evolving perspectives. The period of social transformation, both pre- and post-independence, witnessed landmark movements for women's rights, challenging traditional norms and advocating for legal reforms. The enactment of pivotal legislation, such as the Hindu Succession Act of 1956, marked a pivotal shift towards gender equality within familial structures, granting women equal inheritance rights. However, these legal reforms were not without controversy and challenges. The Shah Bano case stands as a stark reminder of the complex interplay between religious personal laws and constitutional rights, highlighting the tensions between tradition and modernity in India's legal landscape.

Moreover, while legislative strides have been made to address issues like domestic violence, implementation gaps and cultural barriers continue to hinder the full realization of gender equality within familial structures.

In conclusion, the historical evolution of family laws in India reflects a complex interplay of tradition, legal reform, and societal change. While significant strides have been made towards gender equality, challenges persist, necessitating ongoing dialogue, advocacy, and reform to ensure the rights and dignity of all individuals within the family unit.

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