

CHANGES TO FAMILY LAW OVER THE PAST FEW YEARS: AN ANALYSIS

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ABSTRACT

The primary objective of a family, which is a unit of interdependent people bound together by marriage, birth, or adoption, is to create and preserve a common culture that supports the social, emotional, intellectual, and physical development of each of its members. Every family has disagreements and concerns relating to marriage, divorce, child custody, property, business, etc.; therefore, family laws have been developed to regulate and handle these issues based on their customs and traditions and govern their entire range of affairs. The author's goal in writing this article is to explore and analyse the significant developments in family law over the years that have had a significant impact on society. This article is divided into various majors and subheads classifying them into several laws namely the changes in Divorce Laws, Abortion Laws, Succession Laws, Maternity Benefit Laws, and Abortion and Adoption Laws.

Keywords: Family law, Changes, past few years.

INTRODUCTION

Family is a unity of interdependent people connected by marriage, birth, or adoption, whose major goal is to establish and uphold a shared culture that fosters the social, emotional, intellectual, and physical growth of each of its members. Family law is the law dealing with family issues and domestic relations connecting each member. In this article, the author aims to discuss and analyse the major changes to family law over the years which left major changes as well as an impact on society.

CHANGES IN DIVORCE LAWS

- **Abolition of 'Triple Talaq' –**

In Muslim law, there are three types of divorce – Talaq – e – Sunnat, Talaq – e – Biddat, and Talaq – e – Tafweez. While the other forms of Divorce remain legal. *Shayara Bano Vs.*

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Union of India 2017, the case led to the declaration of Triple Talaq (Talaq – e – Biddat, i.e. where Talaq is pronounced thrice by the husband and instant divorce is given without any chance of settlement) as unconstitutional by The Hon'ble Supreme Court of India. Also, the Parliament was tasked with drafting legislation on triple talaq, and its use was outlawed for a period of six months. In 2019, The Muslim Women Protection of Rights of Marriage Act was passed. Which further stated that: Instant Triple Talaq is a cognizable offence; Committing which can lead to up to 3 Years of imprisonment and a fine, it enabled the victim the right to seek allowance and custody of a minor child from the husband.

Male control over women was thought to be the meaning of triple talaq. It rejected the nation's Muslim female population's claim to self-determination and equal rights. This divorce process went against basic moral precepts like gender equality and secularism. One of the main conclusions to be drawn from the repeal of the Triple Talaq Bill and the adoption of the bill is that these steps were necessary to ensure social justice for Muslim women and to ensure that no Muslim ever encounters such prejudice or injustice in his life. Although major Muslim countries like Saudi Arabia, Pakistan, Indonesia, and Turkey have long since outlawed the practice, triple talaq has historically been seen as divisive around the world.

- **Adultery: Now Only a Ground of Divorce –**

Adultery is a term used to describe extramarital relations between a married person and a person who is not a spouse. Earlier according to *Section 497 of the Indian Penal Code & Section 198 of the Code of Criminal Procedure*, adultery was a felony. The husband had the exclusive authority to bring charges against the adulterous partner of his wife. However, a wife was not given the same opportunity to bring charges against the woman her husband had an affair with. It treated women as the husband's property because it was legal for a man to have sex with a woman after getting her husband's permission. Later, on September 27, 2018, In *Joseph Shine v. Union of India*, Sections 497 and 198(2) of the IPC were invalidated. a five-judge panel of the Supreme Court decriminalised legislation that had been in place for one hundred and eighty years declaring it violated Articles 21 and 14 because it was unconstitutional. Chief Justice, Dipak Misra¹ said that “*Adultery can be ground for civil issues including dissolution of marriage but it cannot be a criminal offence.*”

¹Times of India – Facebook post –<https://m.facebook.com/TimesofIndia/posts/supreme-court-strikes-down-adultery-as-an-offence-who-said-whattake-a-look-http://10156920529097139/?wtsid=rdr_0f3fKzOOoWgzNIfR4>

In my opinion, A married man or woman will frequently have an illicit affair just because they are unhappy with their current union. Marriage is a family institution and a branch of the family, hence adultery would uproot the family. Decriminalizing adultery is a step in the right direction towards a more progressive society since it gets rid of the law that diminished women's worth and was authoritative. It was a deviation that called into question the sanctity of marriage, which is regarded as a hallowed institution in society. In addition, it is immoral and unethical. But the major question that arises is one of the major reasons why adultery was decriminalised was because it is crucially difficult to prove adultery. So how will adultery be proven even while considering it as a ground for divorce?

- **Leprosy: No More a Ground of Divorce –**

Leprosy is a severe infectious chronic disease that can cause severe damage to the skin, nerves, and other body organs. Until recently, Leprosy had no known treatment thus, The Divorce Act of 1869, allowed for divorce on the basis of leprosy in order to protect people. The parliament recently passed the budget session, which provides guidance for the treatment and rehabilitation of those affected by leprosy and ensures that they are discriminated against and their family members are removed, in response to the Supreme Court ruling from September 2019. However, since the disease can now be cured, the stigma associated with victims has been eradicated thanks to the changes that have been made. This led to The Personal Laws Amendment Act of 2019 which further included: The Divorce Act of 1869, The Dissolution of Muslim Marriages Act of 1939, The Special Marriage Act of 1954, The Hindu Marriage Act, of 1955, and The Hindu Adoptions & Maintenance Act of 1956.

PROPERTY INHERITANCE RIGHTS OVER TIME

Every country in the world, including India, has seen a rise in the fight for gender equality. The Indian judiciary has even shown signs of this desire for empowerment, and a number of reforms have been made to put women's rights on an equal footing with men's rights. Therefore, a woman's power to object to the property being considered her parental or marital property must be retained exclusively in her hands; no other person should be able to assert ownership of such property. The 2005 Hindu Succession Amendment Act was passed to repeal the 1956 Hindu Succession Act's gender-discriminatory provisions. The timeline of Property Inheritance Rights are:

1956 – Ancestral Property to be Inherited by Survivorship Rule only. Males up to three generations were considered as Coparceners. Women were denied to be recognised as Coparceners.

2005 –The survivorship rule was abrogated. Daughters were recognized as Coparceners since birth with equal rights and liabilities. Inheritance / Succession on basis of Testamentary or intestate Succession.

Case laws appealing the application of Section 6 (1) of The Hindu Succession Amendment Act, 2005 & different Judgements delivered by The Hon'ble Supreme Court Over the years :

PRAKASH V. PHULAVATI, 2016² – Only if the death of the coparcener is after the enactment of the amendment Act i.e. 9 of September 2005, the provisions of the act will be applicable.

DANAMMA V. AMAR, 2018³- Father died still power was given to the daughter to inherit the property applying Section 6 (1) of the Hindu Succession Act, 2005.

VINEETA SHARMA V. RAKESH SHARMA, 2020⁴ - Judgement: Women were entitled to coparcenary rights since birth, hence father's death will not affect their coparcenary rights.

ARUNACHALA GOUNDER (DEAD) V. PONNUSWAMY, 2022⁵ -

The Supreme Court was asked to decide whether, prior to the implementation of the Hindu Succession Act, a Hindu male's self-acquired property would pass to his daughter following the intestate death of her father by inheritance or by survivorship to the father's brother's son. The Court stated that the daughter of a Hindu family without a will would be entitled to inherit self-acquired & other properties of the father over preference to other collaterals. If issueless Hindu females die intestate the property will go back – Husband's property – to husband's heirs, Father's property – to Father's heirs.

Undoubtedly it took decades to establish the rights of a woman in the context of property just like various other matters. But as the popular saying says it's better late than never.

²Prakash v. Phulavati [AIR 2016] 2 SCC 36

³ Danamma v. Amar [AIR 2018] 3 SCC 343

⁴ Vineeta Sharma v. Rakesh Sharma [2020] AIR 3717 SC

⁵ Arunachala Gounder (Dead) V. Ponnuswamy [2022 SC 71]

Increase in Maternity Benefits –

The Maternity Benefits Act was passed in 1961 to help women continue to work while dealing with the obligations and difficulties that accompany pregnancy. Prior to the passage of this act, women did not, or rather, were not allowed to foray into the professional space. The primary reason for making maternity benefits available is to help new mothers adjust to their new role, to protect the health of new mothers and to ensure the well-being of the child. Given that women now make up a preponderant portion of the workforce, maternity leave in India has undergone revision.

In 1961 Maternity Benefits were :

- Leave duration–Six weeks before the delivery.
- Job Protection – Can't be fired on grounds of absence during pregnancy.
- Remuneration–Average daily salary must be paid every day.
- Financial Benefit - the power to exercise the option of receiving a medical bonus from her employer was given.

In 2017, some changes were made to the 1961's Act and some more benefits were added :

- Crèche Facility –Mandatory requirement for every business with 50 or more employees to have a crèche facility.
- Facilitating Work from Home – Depending on the nature of work and leave availed.
- Paid Maternity Leave was Increased – From 12 to 26 weeks.
- 12 weeks leave period - provided for adoption.

Earlier, numerous uncertainties and conundrums have caused many female employees to be underpaid relative to their worth. Some female employees even resigned from their employment since their precarious health prevented them from working during their pregnancies. Maternity Leave is strongly backed by the government. Now that all the key advantages are available, a woman can make an informed choice about her pregnancy and maternity leave. Being pregnant is a natural process, and it won't affect a woman's intelligence or ability to work. Maternity benefits should be properly studied and implemented in all organisations with full government assistance because we are a developing country that supports education for girls. Pregnant women would gain from this

rule by keeping their careers and enjoying calm family time during the happiest time of their lives.

1. Child Protection & Welfare:

CHANGES IN PROHIBITION OF CHILD MARRIAGE: A TIMELINE

1978 - LEGAL AGE OF MARRIAGE CHANGED

- From 14 years to 18 years for Girls
- From 18 years to 21 years for boys

2006 - PROHIBITION OF CHILD MARRIAGE ACT

- Enacted to introduce reforms
- Increased Punishment for offenders

2021 – PROHIBITION OF CHILD MARRIAGE (AMENDMENT) BILL

- Proposed to increase the Legal Marriage age
- From 18 years to 21 years for Girls.
- To promote equality & empower women.

On December 20, 2021, a new bill amending the law regarding child marriage was introduced in the Lok Sabha. This bill's main goal is to increase India's legal marriage age for women from 18 to 21. Given that the legal marriage age in India for men is 21, the basis for this revision is the execution of the constitutional duty for gender equality. By retaining the legal age of marriage at 21 for both male and female citizens, this law promotes the values of the fundamental right to equality. This will increase women's access to education and employment possibilities by giving them more time to pursue these common pursuits after marriage when a high proportion of women are denied such privileges. Another bill addressed empowering women by raising their nutritional status and reducing maternal mortality. Maternal mortality alone was estimated by the National Library of Medicine to be 23,800 deaths in 2020. Rural areas accounted for 63% of fatalities. In addition, a study by Ann Blanc provided evidence that women over the age of 18 are demonstrably healthier and better fed, which naturally lowers the likelihood of maternal death.

However, the truth is women from privileged backgrounds who support this are more likely to gain from expanded educational and employment chances. However, due to a lack of knowledge about their rights and insufficient family or legal support, women from low castes or rural areas would rarely be able to take advantage of this benefit. In order to effect significant change, awareness efforts are required, particularly in rural areas. Therefore, rather than using such laws to encourage true women's empowerment, the emphasis should be placed on stricter enforcement of the law since structural reforms within the political system and society are required.

INDIA'S ADOPTION LAWS

Indian adoption practices date back thousands of years. The laws' adoption-related sections are mostly the same; however, the goals of the various statutes vary. The goal lies in between the humane motivation of assisting and raising the poor and abandoned children and the human desire for a child to take care of them in old age or to be their heir after death. While the Guardians and Wards Act of 1890 applies to foreign citizens, NRIs, and Indian nationals such as Muslims, Parsis, Christians, or Jews, The Hindu Adoption and Maintenance Act of 1956 deals with the adoption of child laws for Hindus, Sikhs, Jains, and Buddhists. The Juvenile Justice (Care and Protection) Amendment Act of 2006 for children adopted in violation of the law. Although personal laws of many religions do not contain any regulations involving adoption, the nation lacks comprehensive adoption legislation. The HAMA reflects gender biases, however, some gender biases have been lessened, as in starting female Hindus do not have the right to adopt, and a married female still does not have the right to adopt if her husband is capable and healthy. Thus it is obvious that this is discrimination based on gender. The Uniform Civil Code provides the obvious road and answers for a child's welfare when it comes to adoption. Article 44 of the Indian Constitution establishes the uniform civil code, whose goal is to create a body of legislation that is applicable to all Indian citizens, regardless of their religious affiliation. The welfare of the child is of the utmost importance when discussing adoption; therefore, to substantiate the argument for the need for a uniform civil code, we must discuss the benefits that it brings when it comes to the children in adoption. But eventually, it is not practical to immediately apply a uniform civil code in all aspects as it would result in backslashes.

INDIA'S ABORTION LAWS

The phrase "abortion" refers to ending a pregnancy through a variety of techniques, such as surgery or medication, before the foetus can live on its own. Abortion procedures were made lawful in India in 1971. Since then, the Medical Termination of Pregnancy Act has allowed women to terminate their pregnancies. It is a really brave move to legalise abortion in a nation like India whose culture is predominately built on conservative and traditional beliefs. We observe significant changes in the law relating to the issue from the introduction of the MTP Act in 1971 to the MTP Amendment in 2021, however, they are slow and gradual. The MTP Act has only undergone two amendments in the last 50 years, so it is unable to adapt to the changing needs of society. Medical technology is developing quickly, and in order to guarantee equity, it must keep up with societal changes. The Supreme Court ruled on September 29, 2022, allowing any woman, regardless of marital status, to end their pregnancy before 24 weeks. The artificial division between married and single women cannot be upheld, according to Justice DY Chandrachud. For women to exercise these rights freely, they must have autonomy. Unmarried women seeking abortions have long been subject to discrimination under the MTP Act. This decision ensures women's equality and goes far beyond traditional notions of premarital pregnancy as a societal shame. Since it acknowledges unmarried women's rights, many people support the decision. It represents a glimmer of hope for an improved attitude towards abortion. It is imperative to raise awareness of the issue and break the stigma and taboo around abortion. India could advance and become a better environment for women to live and survive with a true shift in perspective and a subsequent effort to amend some laws on humanitarian grounds.

CONCLUSION

Throughout the course of recent years, a great deal of changes has been carried out in family laws and by examining them it can be reasoned that the most unmistakable reason for these progressions is to advance fairness and equality of men and women. Women have been treated with the respect they deserved for a long time. However, just like a coin has two sides, every law change has advantages and disadvantages, but the overall effect is unquestionably positive.