

Metamorphosis of Family Law: Navigating Cultural Shifts in the Indian Legal Environment

Harshaa S

2nd year B.A.;LL.B.(Hons.), Sastra Deemed University

Abstract

In an era marked by cultural diversity and evolving societal norms, family law faces the challenge of adapting to shifting paradigms.

As cultures and societies undergo rapid transformation, family law finds itself at a crossroads, compelled to adapt to the shifting dynamics of familial relationships and responsibilities.

This research article explores the intricate interplay between family law and cultural changes, shedding light on the dynamic nature of legal practice in the context of evolving societal values and norms. This research aims to deepen our comprehension of the ever-evolving intersection between family law and cultural changes.

Keywords: Family law evolution, Cultural shifts, Marriage, Divorce, Child Custody, Online Dispute Resolution and Reproductive technology

Introduction

Family law is the area of law that deals with personal relationships and family matters. It encompasses a wide range of issues, including marriage, divorce, adoption, child custody, spousal support, and property division, among others. The metamorphosis of family law is an ongoing process, shaped by a myriad of factors that extend beyond legal frameworks. As societies grapple with shifting perspectives on marriage, relationships, and familial dynamics, the legal apparatus governing these aspects must adapt to meet contemporary needs. In recent decades, globalization, technological advancements, and changing gender roles have introduced unprecedented complexities to familial structures. As a result, family law finds itself at the intersection of tradition and modernity, facing the challenge of harmonizing legal principles with the diverse cultural landscapes it serves. By illuminating the symbiotic relationship between cultural shifts and family law amendments, this research is going to explore the changes in the legal environment and how the societal changes have shaped the contours of family law.

Family Law Metamorphosis: A Symbiote of Cultural Changes

The evolution of family law often mirrors broader cultural shifts, adapting to changing societal norms and values. This symbiotic relationship reflects an ongoing metamorphosis where legal frameworks and cultural dynamics influence each other reciprocally. Here are some areas where sociocultural shifts have caused echoes in family law:

1. Cultural diversity and its impact on Marriage
2. Divorce Laws
3. Same sex marriage and LGBTQ+ rights

4. Child custody rights in globalised society
5. Digital culture and online dispute resolution
6. Evolution of reproductive technology and its influence on family law

1. Cultural diversity and its impact on Marriage

Marriage means the legal union of a man and woman as husband and wife or a legal accepted relationship between two people in which they have lived together, or the official ceremony that results.¹ The word marriage finds its root in the Latin literature. The Latin word for marriage is ‘maritaticum’ which translates into action of entering into wedlock, state or condition of being husband and wife, matrimony, wedlock, a union of a man and woman for life by marriage, a particular matrimonial union, marriage; dowry, to wed, marry, give in marriage and many other translations.² Marriage has been defined by various legislation in various ways. The definition of marriage under the Hindu Marriage Act, 1955, is primarily outlined in Section 5 of the Act³. This section provides the conditions that must be fulfilled for a Hindu marriage to be considered valid. It includes aspects such as eligibility, ceremonies, and other essential requirements for the lawful solemnization of a Hindu marriage. In Islamic law, marriage is considered a legal and social contract between a man and a woman, establishing their rights and obligations towards each other. It is a sacred institution encouraged in Islam for companionship, mutual support, and the continuation of the family lineage. The marriage contract, known as “Nikah,” involves the acceptance of both parties and the payment of a dowry by the groom to the bride. Islamic law outlines the conditions and principles for a valid marriage, emphasizing consent, compatibility, and adherence to moral and ethical values. These are two ways in which marriage is defined by two religions prevalent in India. But has it remained same throughout? The answer is No. In recent decades, the traditional perception of marriage as a sacrament has waned, making way for the ascendancy of the “personal concept of marriage.” Contemporary couples, particularly the younger generation, increasingly view matrimony not merely as a religious obligation but as a companionship venture. The sanctity once attached to marital unions has diminished, and the notion of unbreakable marital bonds has evolved, with divorce now socially and legally acceptable. This societal shift is evident in democratic nations such as modern India, where the transformative forces of industrialization have influenced various aspects of life, including the institution of marriage. Although not undergoing a revolutionary overhaul, marriage in contemporary India reflects the broader global trend towards a more individualized and flexible approach to this fundamental social institution. The institution of marriage has undergone evolution in structure and intent.

The customary belief of marriage is now frowned upon for the people believe it to be loss of privacy, socio-personal growth and independence. Women especially have become more career oriented which has dissuaded them from taking on the obligations linked to traditional marital roles. The financial autonomy of individuals in urban communities also facilitates the acceptance of Live-in relationships and other forms of marriages like intrinsic marriage, utilitarian marriage, open marriage, two step marriage/multi step marriage, temporary marriage, group marriage, consensual marriage, covenant marriage, commuter marriage, swinging and sexually open marriage⁴. Though the institution of marriage has undergone some changes, it still remains to be the nucleus for an Indian society.

¹ Cambridge University, Definition of term Marriage

² <https://dictionary.cambridge.org/dictionary/english/marriage>

³ The Hindu Marriage Act, 1955

⁴ <https://andjournal.in/2018/11/09/the-changing-scenario-of-marriage-in-india-a-sociological-analysis/>

2. Divorce Laws

Cultural shifts in India have brought notable changes to divorce laws, reshaping societal attitudes and legal frameworks regarding marital dissolution. Traditionally considered taboo, divorce is now viewed as a practical solution to irreconcilable differences, reflecting a departure from the historical stigma associated with it. The Hindu Marriage Act, the legislation governing divorce among Hindus, has witnessed evolved interpretations of grounds such as cruelty and desertion, broadening to include emotional and mental abuse, aligning with changing societal understandings. The empowerment of women, marked by increased education and economic independence, has played a pivotal role. Women now possess greater autonomy in seeking divorces, challenging conventional gender roles that previously constrained their choices within marriages. There's a visible rise in mutual consent divorces, highlighting a cultural shift towards more amicable marital dissolutions, indicative of a desire for less contentious separation processes. Evolving perceptions of marriage, particularly among younger generations, emphasize companionship and shared goals, shifting away from viewing marriage as an enduring commitment irrespective of personal fulfilment. This shift in perspective significantly influences attitudes towards divorce, making it more socially acceptable as an option for couples facing irreconcilable differences. Legal reforms have aimed to align divorce laws with contemporary values, seeking to streamline processes and make them more reflective of evolving societal norms. Globalization's influence, coupled with exposure to diverse cultures and access to support networks, has fostered a more open-minded approach towards divorce, contributing to an increasing acceptance and understanding of this aspect of marital relationships. Overall, these cultural transformations have prompted adjustments in Indian divorce laws, striving to reflect and accommodate the changing dynamics and attitudes within marital relationships, making the legal framework more adaptable and aligned with contemporary societal values surrounding marital dissolution.

3. Same sex marriage and LGBTQ+ rights

The historical journey of LGBTQ+ rights in India traces back to the colonial era with the introduction of Section 377 of the Indian Penal Code in 1860, criminalizing homosexual acts. This law persisted post-independence, leading to over a century of discrimination and prosecution against LGBTQ+ individuals. However, the drive for LGBTQ+ rights gained traction in the late 20th century. In the 1990s, the inaugural LGBTQ+ organization, AIDS Bhedbhav Virodhi Andolan (ABVA), emerged in Delhi, combatting discrimination and violence. In 2001, the Naz Foundation filed a pivotal public interest litigation (PIL) in the Delhi High Court, challenging Section 377's constitutionality. Despite staunch opposition from conservative factions and religious leaders, the LGBTQ+ community and their supporters persisted. In 2009, the Delhi High Court declared Section 377 unconstitutional, decriminalizing homosexuality. Nevertheless, the Supreme Court of India reversed this decision in 2013, reinstating Section 377. In a landmark ruling in 2018, a five-judge bench of the Supreme Court declared Section 377 unconstitutional once again, marking a significant triumph for LGBTQ+ rights in India.⁵ Despite these legal victories, the LGBTQ+ community continues to confront substantial hurdles. Widespread discrimination and violence persist, perpetuating stigma and exclusion in families, communities, and workplaces. Transgender individuals, specifically, encounter multiple forms of discrimination, encompassing limited access to education, employment, healthcare, and housing. Furthermore, the recognition of same-sex marriage remains elusive for LGBTQ+ couples in India. The absence of legal recognition deprives them of legal

⁵ Navtej Singh Johar v. Union of India, [2018 INSC 790](#)

and societal advantages, heightening the risk of discrimination and violence. In *Supriyo a.k.a Supriya Chakraborty & Abhay Dang v. Union of India*⁶, A five-judge bench of the Supreme Court that was headed by Chief Justice of India DY Chandrachud, unanimously ruled against legalising same sex marriage. This shows that in spite of changes in the legal system, there is still a long way to go.

4. Child custody rights in globalised society

Divorce refers to termination of marriage. Once the marriage between the parents is annulled, question arises on who must take care of the children as they have no path to follow. Custody on general sense refers to the legal right and responsibility to care for a child, including making decisions about their well-being and upbringing. In ancient times, custody rights were held by the state through the concept of “*Parens Patriae*,” a Latin term meaning ‘parent of the country.’ This doctrine granted the state the authority to protect individuals considered legally incapable of acting on their own behalf. From the 18th Century onwards, the evolution of political rights and the pursuit of equality transformed the socio-economic landscape, leading to a new era of women’s empowerment. This shift is evident today, where mothers are entrusted with the responsibility of child custody and guardianship. In Hindu law, the Hindu Minority and Guardianship Act of 1956 does not explicitly define the term “custody,” but it stipulates that when a child is below the age of five, the mother is granted custody⁷. According to Muslim law, after marriage dissolution, the mother retains custody of an infant child. Different schools of Muslim law, such as the Hanafi and IthnaAshari, have varying rules for child custody, emphasizing the mother’s role until specific age milestones. Child custody cases witnessed a transition from parental rights to a focus on the “well-being of the child.” Article 18(1) of the United Nations Convention on the Rights of the Child emphasizes that the primary consideration will be the “best interests of the child.”⁸ Several essential factors must be taken into account when assessing the well-being of a child. These include “the wishes of the parents; the wishes of the child; the interactions of the child with the parents, siblings and other relevant individuals; the mental and physical health of all relevant individuals.”⁹ The judiciary had tried to safeguard the welfare of the child in the following cases : *Ahmad Shaikh v. Mumtaz*¹⁰ and *Rosy Jacob v. Jacob Charmakkal*.¹¹ In the former the court upheld the “welfare of the child” principle and granted custody to the mother and in the latter “Absolute rights of the parents over the destinies and lives of the children has, in the modern changed conditions, yield to the consideration of their welfare as human beings.”

5. Digital culture and online dispute resolution

Digital culture in India has experienced significant growth, particularly in the realm of online interactions, social media engagement, e-commerce, and digital communication platforms. With the increasing digitization of various aspects of life, including governance, commerce, education, and entertainment, the country has witnessed a burgeoning digital culture that has transformed the way people interact and resolve

⁶ <https://indiankanoon.org/doc/129202312/>

⁷ The Hindu Minority and Guardianship Act, 1956, Section 6(a).

⁸ The United Nations Convention on the Rights of the Child, 1989, Article 18(1).

⁹ DANIEL J. HYNAN, CHILD CUSTODY EVALUATION: A NEW THEORETICAL APPLICATIONS AND RESEARCH ACCOUNT 8 (Charles C. Thomas publisher Ltd., 2014).

¹⁰ AIR 1999 Bom 25.

¹¹ AIR 1973 SC 2090

disputes. The Indian government's push for technological solutions in dispute resolution, seen through initiatives like Digital India and the integration of technology in the judiciary via platforms like eCourts, has spurred the acceptance of ODR. E-commerce's rapid growth has made resolving consumer disputes crucial, leading many platforms to incorporate ODR for effective conflict resolution. Additionally, digital platforms for arbitration and mediation have gained popularity due to their convenience, cost-effectiveness, and wider reach. India's increasing mobile and internet access has made ODR more inclusive, reaching even remote areas. The legal system's recognition and facilitation of ODR, as per the Information Technology Act, 2000, have laid the foundation for its adoption.

6. Evolution of reproductive technology and its influence on family law

The evolution of reproductive technology has brought significant changes to family law in India. With the rise of methods such as in-vitro fertilization (IVF), surrogacy, and assisted reproductive technologies (ART), the legal landscape concerning family structures, parental rights, and inheritance laws has undergone transformation. The enactment of the Surrogacy (Regulation) Act in 2021 reflects a significant shift in regulating surrogacy practices. This law prohibits commercial surrogacy, allowing only altruistic surrogacy for Indian citizens. It establishes eligibility criteria for intended parents and aims to protect the rights of both surrogate mothers and children born through surrogacy. One of the primary legal challenges arising from reproductive technologies revolves around the determination of parental rights and responsibilities. Issues emerge regarding the legal recognition of parenthood in cases involving gamete donation, surrogacy, or assisted reproduction. The law is continuously adapting to address these complexities and define the rights and obligations of individuals involved in these processes. Moreover, inheritance and succession laws have come under scrutiny due to the use of reproductive technologies. There is a need to reassess legal frameworks to ensure the inheritance rights of children conceived through these methods, securing their rights to property and succession. To regulate the ethical and operational aspects of reproductive technologies, there is a growing demand for comprehensive guidelines and regulations governing ART clinics. This includes ensuring patient safety, ethical practices, and protecting the interests of donors, recipients, and children conceived through these techniques. The legal recognition of parenthood for same-sex couples utilizing reproductive technologies is another area that necessitates attention within family law. The ongoing debate revolves around the rights and responsibilities of both partners concerning parenthood, adoption, custody, and other related aspects. In essence, the impact of reproductive technologies on family law in India is multifaceted. It requires continual legal adaptation to address complexities surrounding parental rights, inheritance, ethical practices in ART, and the recognition of parenthood, ensuring the protection and rights of all parties involved in these evolving family structures.

Conclusion

The evolution of family law in India reflects the dynamic interplay between changing societal norms, cultural shifts, and technological advancements. As traditional perceptions about marriage, parenthood, and relationships transform, the legal framework governing these areas adapts to accommodate modern complexities. Marriage, once considered a sacred institution, has seen a shift towards more individualized preferences, affecting divorce laws and the recognition of diverse forms of partnerships, including LGBTQ+ rights. Child custody laws have shifted focus from parental rights to prioritizing the well-being of the child, aligning with global conventions. Moreover, the digital revolution has introduced new

avenues for dispute resolution through online platforms, necessitating adjustments in legal practices. Additionally, the emergence of reproductive technologies has raised complex legal issues concerning parental rights and inheritance. In essence, family law in India continues to evolve to address these changing societal dynamics, striving to maintain fairness, justice, and inclusivity within modern family structures.

Bibliography

1. Hindu Marriage Act, 1955– https://ddashboard.legislative.gov.in/sites/default/files/A1955-25_1.pdf
2. The Hindu Minority and Guardianship Act, 1956- <https://www.advocatekhaj.com/library/bareacts/hinduminority/index.php?Title=Hindu%20Minority%20and%20Guardianship%20Act,%201956>
3. Evolution of Child Custody Laws from ‘Parens Patriae’ to the ‘Welfare of the Child’ - Alisha Pradhan IJLJ – Vol. 11 No. 1 (Part II) Article No 11 <http://ir.nbu.ac.in/handle/123456789/3998>
4. The United Nations Convention on the Rights of the Child, 1989- <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>
5. Reference for cases- <https://indiankanoon.org>
6. <https://andjournal.in/2018/11/09/the-changing-scenario-of-marriage-in-india-a-sociological-analysis>