

Redefining Indian Family Law: Contemporary Issues and Solution

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Abstract—Indicators suggest the Indian family law system has evolved to meet the needs of its growing and changing populace. With regards to inequalities in the Indian family law system, including gender inequalities, and custody disputes, this paper advocates for the formation of a unified, secular family law system of India. This system should aim to protect the rights of women and children. Moreover, this paper explores the necessity of combining progressive and feminist legal theories with a focus on culturally-sensitive practices. The paper considers the role of mediation and other alternative dispute resolution (ADR) mechanisms in family disputes. The focus of the paper is on promoting amicable solutions to family disputes.

Index Terms—Family law, child custody, gender inequality, marriage laws, domestic violence, maintenance.

I. INTRODUCTION

State laws govern family matters, and even though laws in the same state may appear similar, there can be variations based on a number of factors including religion. In an effort to safeguard members of a family, a number of laws have been enacted. However, the changing social scenario and especially the evolving roles of men and women have not been factored in while updating family laws, and thus, continue to be archaic and irrelevant.

Though the Indian Constitution declared equality of all citizens and outlawed any kind of discriminatory practices, state laws still permit discrimination based on religion. Patriarchal attitudes and practices lead to unprecedented inequalities, especially for women. The break-up of joint families has raised the need for a revision in the legal structure to define the rights and responsibilities of family members vis-à-vis each other.

Women's and children's legal rights remain inadequate and unenforceable. Current family laws do little to

protect women and children. The aim of this research is to evaluate family laws in India to address the legal inequalities suffered by women and children and formulate contemporary family laws to protect them.

There are a number of legal and judicial barriers to protecting women's and children's rights in India. Modern and responsive family laws can make a major improvement to the status of women and children.

(1) Gender Inequality

The current family laws do not accommodate several types of families. Some of the gaps in Indian family laws include protection of children in live-in relationships, rights of children born out of wedlock, and intestate succession of illegitimate children. In several families, owing to the refusal of the family members to accept or practice monogamy, uncertainty prevails in matters of law and justice in respect of marriage, divorce, property and inheritance.

(2) Child Custody

In child custody matters, mothers are often given preferential treatment. As a result, many fathers are also victims of an unfair child custody process and are denied access to their children.

(3) Inter-caste Marriages

Persons who violate the social customs and marry outside their caste are generally socially boycotted. These persons may be physically and mentally harassed by the members of the society. The Prevention of Atrocities Act, 1989 does not provide any protection to such persons. Even though a large number of judgments have been delivered by the superior courts in favour of persons who transgressed these social customs and social norms, the prejudice persists.

(4) Divorce and Maintenance

Persons who obtain a divorce are entitled to claim maintenance. There is a growing trend in the amendment of divorce-related laws. The process for grant of divorce is simplified. It is a well-known fact that women suffer more in the arena of divorce.

(5) DOMESTIC VIOLENCE

Women are subjected to varied forms of violence including sexual violence and honor crimes and are often socially boycotted for reporting it. Victims are forced into silence due to threats to their life and/or the life of their family members, inadequate protection by the state, and a host of other complex reasons.

(6) LIBERALIZATION AND GLOBALIZATION

Due to globalization and accompanying processes of economic liberalization, members of the family have relocated to different parts of the country and sometimes of the world. Children no longer stay with their parents and extended family members. Family members have very little direct interaction with each other due to occupation and recreation. The use of information and communication technologies has deepened family relationships. However, in the long run, these relationships result in emotional and psychological detachment.

II. CASE STUDY

The case studies illustrate various provisions of the Indian Family Law and examine the issues relating to marriage, divorce, inheritance, child custody and ownership of property.

(1). Shayara Bano vs. Union of India (2017) 3 SCC 802

The Supreme Court of India held that the practice of 'Triple Talaq' (divorce) was unconstitutional and violated the rights of women. The court further observed that it was the duty of the state to frame appropriate laws for the protection of women's rights in the matter of divorce.

(2). Navtej Singh Johar vs. Union of India and Others (2018) 10 SCC 1

The Supreme Court of India decriminalized consensual homosexual acts and lifted the legal restriction on homosexual relations.

(3). Ramesh Kumar vs State of Haryana (2003) 7 SCC 325

It was held that child custody should be given to the parent who is able to take care of the child's emotional needs and other interests of the child.

(4). Sakshi vs Union of India (2004) 5 SCC 518

The Court stated that in order to protect children from all types of sexual abuse and exploitation, amendments have to be made in the relevant personal laws.

(5). Nandlal vs State of Haryana (2012) 5 SCC 535

It was held that court while deciding matters regarding children's maintenance should consider children's interest.

(6). Mohd. Ahmed khan v. Shah Bano Begum, AIR 1985 SC945

Prior to 1985, section 125 of the Criminal Procedure Code, 1973 only applied to non-Muslims. In Bhasin vs. Union of India (1985) 3 SCC 691, the Supreme Court of India held that from that date onwards, that provision would apply to all citizens of India including members of the Muslim Community.

Henceforth, Divorced Muslim Women would be entitled to receive Maintenance from their former Husband.

III. SUGGESTION AND RECOMMENDATION

(1). Law Reforms

As Family Laws of India are enacted by State Legislatures, their amendment and modifications are limited. To bridge the existing gaps, it is essential to incorporate innovative and proactive suggestions, especially in those areas where Reforms in the Family Laws have not kept pace with the changes in the present social realities.

(2). Awareness and Education

Awareness and Education constitute the core of every social movement. Awareness generates understanding that the legal framework of the land provides the means for the protection of the rights of the people. Education, on the other hand, prepares the people for the assertion of their rights.

Persons trained in the law and its related profession are able to interpret the legal system and value the need for social order.

(3) Strengthening enforcement Mechanisms

Strengthening enforcement mechanisms is aimed at improving the means by which the state implements its legal and policy obligation. Civil society is called upon to play an active role to meet the state's legal obligations. ICTs can be employed to raise public awareness and to sensitize them on legal issues.

(4) Mediation and ADR

Mediation and other Alternative Dispute Resolution (ADR) mechanisms provide the means for an amicable settlement of disputes. These approaches have several advantages, and especially in developing countries where the resources of the justice system are extremely constrained, mediation and other ADR mechanisms help to relieve the pressure and case backlogs of formal judicial systems.

(5) Research and Data

The government has implemented a program aimed at generating data on various legal and social issues. The data is arranged to be amenable to research and analysis. The identification of legal voids prompts the formulation of laws to address the voids.

IV. CONCLUSION

Indian family laws cover different stages of a family's life. They include different personal laws of various social communities in India. These laws cover different kinds of physical and bodily injuries inflicted upon members of a family. In order to prevent members of a family, especially women and children, from various physical and bodily injuries, these laws provide various kinds of orders and reliefs.

Various social reforms and amendments in different family laws, as well as various landmark judgments of the courts, have brought about a lot of changes, especially in the position and status of women and children in family laws. Most of the changes have been in the direction of recognizing, establishing and upholding the principles of equality in family laws, for instance, equality of women and children in family laws.

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