

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 6

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Empowering Women: Delving into Legal Rights and Obstacles in Family Law

RAGURAMAN R.¹

ABSTRACT

This research paper is about the complex environment of legal rights for women under family law and, to provide a complete assessment of their rights, issues, and potential areas for their reform. The research combines a detailed evaluation of current laws, case studies, and socio-legal analysis to offer insight into women's challenges in diverse family law circumstances. The study begins by looking at the historical framework of family law, focusing on how cultural norms and legal traditions have traditionally disadvantaged women in past. It investigates historic legislative changes and international treaties aimed at redressing gender inequalities, such as the Convention on the Elimination of All Forms of Discrimination Against Women. Following that, the article focuses on particular topics of family law, such as marriage and divorce. Analysing marriage and divorce laws and their consequences for women's rights and economic independence. This section examines dowry, forced marriage, and the consequences of no-fault divorce laws. Custody of a child, Looking at the issues that influence child custody choices and how they affect women's responsibilities as carers and financial providers. Property and Alimony Rights Considering the growth of alimony and property distribution rules, as well as its impact on women's financial stability after divorce. My main view in this Research Paper is to Show how Women's Rights Under Family Law Evolved and How the Past Played An Impact on Their Legal Rights such as Consent in Marriage, Alimony Rights, Parental and Custodial Rights, Divorce Laws and their Impact and Mainly Property Rights.

Keywords: *Marriage Consent, Alimony Rights, Custodial Rights, Divorce Laws, Family Law, Personal Laws.*

I. INTRODUCTION

Family law is a large area of law that governs the intricate and intimate relationships within families. It deals with topics such as marriage, divorce, child custody, spousal support, and property division. In recent years, there has been an increasing realization of the need to empower women within the family law framework as they often face unique legal rights and obstacles that can significantly affect their lives and that of their children. Women's

¹ Author is a student at SASTRA Deemed University, India.

empowerment in family law is crucial not just for the individuals involved, but also for society as a whole. Family law, as a reflection of societal norms and beliefs, has the potential to both perpetuate and combat gender inequalities. This research study aims to explore deeply the legal rights and challenges that women encounter in the family law system, with a particular emphasis on how the legal system can be utilized to empower them. Women have historically faced various forms of bias and disadvantage within family matters. Gender norms and unequal power dynamics have often left women vulnerable within the family unit. However, legal changes, changing societal attitudes, and evolving gender norms have paved the way for greater gender equality in family law. This study intends to provide a comprehensive analysis of the legal procedures and reforms implemented to empower women, as well as the remaining issues and obstacles that prevent their full realization. To achieve this, the paper will examine fundamental aspects of family law, such as divorce, child custody, domestic violence, and property rights, from a gender-sensitive perspective. It will also investigate significant legal decisions, legislative measures, and international treaties that promote gender equality within the family. This research study seeks to shed light on the progress made so far and the work that still needs to be done to empower women within the family law system by breaking down the legal complexities and societal implications.

II. HISTORICAL PERSPECTIVE: THE EVOLUTION OF WOMEN'S LEGAL RIGHTS IN FAMILY LAW

The main thing that we need to be aware of before entering into the process of empowering women's rights is we need to know their historical perspective of it. how women's rights were there in the past, how they started to change after modernisation began and how their future will be.

(A) Early Traditions and Patriarchy

In the early days, in the past society was patriarchal where significance was given to men over family matters. Men were considered to be the head of the family and still now the same is being followed. Most of the time women's decision is not accepted by men in the family. There began Inequality in decision-making matters within the family. Women's legal rights within the family were limited as their roles were primarily defined by the traditions that we are still adopting from our ancestors. For example, in the olden days, Marriage was seen as a property arrangement as women were considered as property of their father or husband. Their rights were subordinate to those of male family members. And they had lacked their Inheritance rights as they had limited rights where the wealth was passed from father to son only. This further became

a reason for gender disparities. In terms of Divorce, Women were not able to get a divorce because the consent of males was seen as important, thus it also affected their divorce rights leading to societal stigma.

(B) Legal Reforms and Milestones

As time passed, societies began to recognize the need for legal reforms and began to address gender inequalities in family law. So the society itself started to realise the need for equality and to protect their rights many reforms emerged which led to improving women's rights.

Women's Rights Movements in the Nineteenth Century: The nineteenth-century women's rights movements in the United States and Europe created the framework for legislative improvements. Women's suffrage and property rights were battled for by activists such as Susan Anthony and Elizabeth Cady Stanton.

Married Women's Property Acts: During the nineteenth century, many countries, notably the United States and the United Kingdom, enacted the Married Women's Property Acts. This legislation granted married women the right to possess and govern property separate from their husbands.

Divorce Reform: Divorce laws began to evolve in the twentieth century, with some jurisdictions implementing "no-fault" divorce, making it simpler for women to seek divorce without having to prove blame on the side of their husbands. With regards to India, Getting a Divorce is a difficult task as it involves many processes.

Child Custody changes: In the mid-twentieth century, legal changes began to recognise that mothers should not be automatically awarded custody of their children. Custody rulings began to prioritise the child's best interests. Because of this, the inequality which also inflicted between men and women was stabilised. The child's rights are also being protected.

(C) Contemporary Trends

Marriage Equality: Many nations have implemented legislation supporting gender equality in marriage, such as shared financial responsibility and decision-making authority.

Domestic abuse Laws: Many nations have built legal systems to combat domestic abuse and protect victims.

Rights to Same-Sex Marriage: Recognition of same-sex marriage has grown, allowing couples regardless of gender similar legal rights.

Reproductive Rights: In many nations, the battle over reproductive rights, including access to contraception and abortion, is still ongoing and women are the sufferers of those.

Digital Rights and Privacy: Current topics in family law include digital rights and privacy concerns, such as the exchange of personal information in divorce procedures.

III. MARRIAGE AND DIVORCE RIGHTS

Marriage and divorce rights in India are controlled by a mix of religious-based personal rules and general civil laws that apply to all residents regardless of faith. Marriage and divorce laws in India reflect the country's diversity, which includes a wide range of religions and cultural practices.

(A) Marriage Rights and Consent

In India, the legal age for marriage is 18 for females and 21 for males irrespective of their religion. Child marriage is prohibited strictly in India.

Now let's speak about consent where the question arises for women's empowerment.

In the olden days, women's consent for marriage was not considered much by their families. It will be like the consent of the family not being consent of the woman who going to marry. Her choice in selecting their partner is being restricted by the family itself. Thus the question of consent arose as it inflicted their Equality rights and their privacy as per Article 21 of the Indian Constitution.

As the days passed the present generation started to know and realise their rights had been affected by these stigmas and family pressure on them, they now wanted empowerment about consent for marriage. It's their choice to select a partner as they are going to live their life further by forming a family.

As Westernization also affected India, women started to adopt modern concepts of marriage such as relationships, staying single and LGBTQ+.

So the need for empowerment raised and we can see how's the country and world going. The definition of consent in marriage should be strongly of showing equality not focusing on family. It should be the consent of the partners who going to marry and not the family's consent.

In India, arranged marriages are more prevalent where parents choose a spouse for their child, where consent is sometimes not asked by their parents and their child to see their parents happy give consent to get married to the partner of their parent's choice and thus in future leading to divorce. This is like a forced marriage not being Consent one, where the partners find suitability between them.

So after some modernization effect, the growth of love marriages arose, where individual

chooses their partners without their parents' interference. But my main in this paper about marriage consent is "there should be free and full consent between the partners who are going to marry each other and not the parent's interest and their compulsion on their children, especially girl child". In today's world, we cannot see the free and full consent of women about marriage because of the impact of cultural gender standards which often leave women in the disadvantaged position of being coerced into marriage without their consent, as is frequently the case with young girls marrying older men.

(B) Divorce laws and their impact

In India, Grounds of Divorce can be seen under various divorce laws depending upon the religion to which a person belongs. For Hindus, The Hindu Marriage Act, 1955, governs divorce laws which include cruelty, desertion, adultery, and conversion to another religion which all come under Section 13 of that act. Whereas for Muslims and Christians divorce laws are covered under The Muslim Women (Protection of Rights on Marriage) Act, 2019 and The Indian Christian Marriage Act of, 1872 respectively.

With regards to Divorce, because of lack of consent in marriage or lack of understanding between the partners, the situation leads to divorce. Nowadays, the irrevocable breakdown of marriages is there, where the concept has not been mentioned under the Hindu Marriage Act. It is a situation where the couple cannot live together as man and wife due to some reasons. They should prove to the court that they both cannot reasonably live together again. Examples of evidence that the court will consider as proof of irreversible breakdown:

- For a time, the pair did not live together as husband and wife.
- Because one spouse has sexual relations with someone else, the other feels it hard to continue living together as husband and wife.
- One of the partners is in prison after being labelled a "habitual criminal." (This indicates he or she continues to conduct crimes and was sentenced to 10-15 years in jail as a result.)
- One partner abandoned the other.
- One spouse mistreats the other; for example, the husband continues to attack his wife.
- One of the partners is an alcoholic or a drug user.

Based on these reasons the court might issue a divorce. The question of this arose in a decision made by the court in the case *Jayachandra v. Aneel Kaur*, After deliberating on the facts, the Court found as follows: "When the respondent prioritises her profession over her husband's

freedom, it points unmistakably to disharmony, diffusion, and disintegration of marital unity, from which the Court can deduce irretrievable breakdown of marriage."

This concept sometimes leads women to a disadvantaged situation where the man leaves the woman by using this concept thus leading to divorce.

The next thing which mainly the Indian courts have is the lengthy legal process in divorce proceedings as it involves various legal formalities and court appearances. Because of this, the parties involved in the proceeding might lead to emotional and financial stress. It mainly affects the women mentally and financially because it's the nature of the gender and they all are affected by social stigmas in the society. "Divorced women face several inappropriate job offers, hurtful gossip, and difficulties in starting a new relationship. Men, on the other hand, have it easier when it comes to establishing a family. Following a divorce, women are typically apprehensive about going out in public. They lack the emotional and psychological support they require to sustain and build their new life." So such presence of social stigma make women feel demotivated and thus they are unable to empower themselves.

IV. ALIMONY AND PROPERTY RIGHTS

Alimony is the amount of money paid in the form of maintenance from one spouse to another after divorce. "During a lawful separation, the woman can seek support for herself and her children under Section 125 of the Indian Penal Code. There are two kinds of these: Interim support: This must be provided by the husband from the moment the application for support is filed in court until the date the petition is dismissed to assist the wife financially throughout the legal processes. Permanent Maintenance: This is provided by the spouse as a final settlement under Section 25 of the Hindu Adoption and Maintenance Act 1956, either as a lump payment or a monthly amount established by the court, for her lifetime".

In these ways, the spouse can get alimony from their partners after divorce and they are empowered to get those if they are not allowed to get it then the law plays a vital role in protecting their rights.

Though these rights are there in reality, most women are not getting their respective alimony. So if anyone is affected by those rights then Section 125 of Cr. P.C comes into force.

Property rights, for women, in divorce cases vary based on specific personnel laws governing the parties. For instance under the Hindu Marriage Act both the spouses have equal rights to their joint property. After the Hindu Succession Act, of 1956 was amended in 2005, it granted daughters in HUF to have equal rights in property.

And Now present day, if a husband and wife purchase property jointly, then after divorce the maintenance or the share of the property will be 50% to the wife as alimony.

But my view with regard to empowerment is that women need to get access to the husband's property rights and even the husband's ancestral property rights as after marriage she becomes part of him and she should have access to those rights too.

It is known that if she had a child then her husband's rights go to the child, not to her. This needs to be changed in order to make women get their rights and thus empower them to live with support and maintenance for their future living after divorce or after her husband's demise.

V. PARENTAL AND CUSTODIAL RIGHTS

In simple terms, Custodial Rights in India, both the parents have legal rights to the child. For the mother, she has the right to raise and care for the child and is entitled with right to visitations whereas the father had the equal rights except right to visitation.

Now, we can discuss more about the conceptual side of parental and custodial rights and its key aspects.

Some major features of parental and custodial rights include inequities in custody and guardianship, child support and maintenance, and shared parenting programmes.

Disparities in custody and guardianship relate to variances in the legal rights and duties of parents or guardians in the care and raising of a child. These discrepancies may occur as a result of a variety of causes, including legal judgements, the best interests of the kid, and the parents' circumstances.

Types of Custody:

1. Physical Custody:

When physical custody is granted to a parent, it means that the youngster will be under that parent's care, with periodic interaction and visitation with the other parent. The goal of such a custody award is to provide the child with a better life in a safe and meaningful environment while also ensuring that the youngster does not miss out on the affection of the other parent during his or her formative years.

2. Joint Custody:

Although Indian courts consider that it is desirable for the welfare of a minor, joint custody of a kid does not imply that both parents must live together because of the child. Joint custody indicates that both parents will take turns caring for the child while the child is in their

possession. The rotation of the child among the parents can be a few days, a week, or even a month. This benefits the child since, on the one hand, the youngster receives the attention of both parents, and on the other side, parents get to be involved in their child's life.

3. *Legal Custody:*

Legal custody of a kid does not always imply that the youngster will live with the parents or vice versa. It essentially implies that the parents have legal custody of their child and can make all decisions regarding schooling, medical treatment, and so on. In most circumstances, legal custody is granted to both parents jointly, but in cases where the divorce is ugly and the parents do not agree with each other, the court provides legal custody to one parent.

Under Hindu Marriage Act of 1955, Section 26 explains that, It concerns with the upkeep, care, and education of the child, and custody of the child is only granted if both parents practise Hinduism. Under this statute, the court can issue orders, judgements, revisions, and so on regarding child maintenance at any time and dispose of the pending decision within 60 days after the date of serving of notice.

Under Muslim Law, According to it, only the mother has the right to seek child custody under the Right of Hizanat until she is judged not guilty of any misconduct. Under Muslim law, custody of a child remains with the mother until the child reaches the age of 7 years for a boy and the age of puberty or majority for a girl. Because the father is regarded as the natural guardian, custody of the kid remains with the father until the boy reaches the age of seven and the female reaches the age of majority or puberty.

So under this issue of child custody, the women are sometimes not given custody of the child because of their mental and physical stability and financial too.

Though in cases of child custody child's wish is focused on and it is a paramount consideration, sometimes the court without looking at the child's wish to live with the mother will give the custody to the father because to see the paramount consideration rule, where the court will see the welfare of the child for its future living. Thus, the dissolution of marital relationships including children has legal, social, and emotional ramifications, causing issues in children's living arrangements and frequently necessitating protracted court fights between parents. Child custody and maintenance or support is a crucial issue for gender equality and women's rights. Women may have legal and practical disadvantages in custody and maintenance decision-making. Furthermore, the collapse of marital relationships increases mothers' financial uncertainty.

With regards to child maintenance, Child support and maintenance refer to financial assistance

offered by one parent to the other for the child's care and well-being. The following are some key points:

Child Support Guidelines: Many countries establish guidelines for calculating child support based on factors such as both parents' income, the number of children, and the kid's special requirements.

Child support orders are legally binding, and there are measures in place to ensure compliance. Wage garnishment, property liens, and legal ramifications for nonpayment are all possibilities.

Modification: Child support orders can be adjusted if either parent's financial circumstances have changed significantly.

In India, child custody is determined by personal laws and the Guardians and Wards Act of 1890. The most important thing is to provide child custody in order to pursue welfare, and then other personal law norms and rituals can be set aside if necessary. Preference is given to the parents and the kid, but the final decision on child custody is made by the court and after the custody decision with regards to maintenance, In circumstances where parents are unable to pay for their children, the Code of Criminal Procedure, 1973 (CrPC) allows for child maintenance. A magistrate may order the father or mother of a minor child to pay maintenance to the kid on a monthly or lump-sum basis under Section 125 CrPC.

VI. CONCLUSION

Finally, the research study has presented a thorough examination of the critical topic of empowering women in the field of family law. An in-depth examination of legal rights and constraints revealed that, while great progress has been made in recognising and protecting women's rights, persistent hurdles remain that impede their full empowerment. To remedy existing imbalances, a diverse strategy is required due to the intricate interplay of cultural, social, and legal issues. Legal frameworks have a critical role in moulding women's experiences in family matters, but there is an urgent need for ongoing reform and adaptation to modern societal values. The study emphasised the necessity of raising awareness and educating women about their legal rights, allowing them to navigate the complicated environment of family law. Furthermore, identifying and removing systemic barriers, such as gender bias and discriminatory practices, is critical for developing an equitable legal environment.

Gender Equality must be promoted more in cases of Divorce and Marriage consent.

This research promotes continuing dialogue and activism in order to develop a more inclusive and just judicial system, ultimately contributing to the larger social objective of gender equality.

Empowering women in family law is a key step towards creating a society in which all individuals, regardless of gender, can live *free from discrimination* and enjoy equal rights within the familial framework.

This research promotes continuing dialogue and activism in order to *develop a more inclusive and just judicial system*, ultimately contributing to the larger social objective of gender equality. Empowering women in family law is a key step towards creating a society in which all individuals, regardless of gender, can live free from discrimination and enjoy equal rights within the familial framework.

VII. REFERENCES

- Rumani Saikia Phukan, Rising Trend of Divorce in India: Is Women Empowerment the Cause? <https://www.mapsofindia.com/my-india/society/rising-trend-of-divorce-in-india-women-empowerment-a-major-cause>
- The Hindu Marriage Act, 1955, <https://www.indiacode.nic.in/handle/123456789/1560?locale=en>
- THE CONSTITUTION OF INDIA
- Dr. Prashant Prabhakar Deshpande, Empowering women through increasing the age of marriage (Part 2), <https://timesofindia.indiatimes.com/blogs/truth-lies-and-politics/empowering-women-through-increasing-the-age-of-marriage-part-2/>
- Law requires free and full consent of parties to a marriage, <https://www.data4impactproject.org/prh/gender/women-and-girls-status-and-empowerment/law-requires-free-and-full-consent-of-parties-to-a-marriage/>
- The Indian Christian Marriage Act, 1872
- Irretrievable Breakdown of Marriage, https://www.legalserviceindia.com/articles/break_mar.htm#:~:text=Irretrievable%20Breakdown%20of%20Marriage,chance%20of%20getting%20back%20together.
- Divorce – struggles, challenges and social stigma women face, <https://uluchay.org/divorce-struggles-challenges-and-social-stigma-women-face/>.
- Be it alimony or property, women should not let go of these money rights, https://economictimes.indiatimes.com/wealth/legal/will/be-it-alimony-or-property-women-should-not-let-go-of-these-money-rights/articleshow/98405321.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst <https://economictimes.indiatimes.com/wealth/legal/will/be-it-alimony-or-property-women-should-not-let-go-of-these-money-rights/articleshow/98405321.cms>
- Alimony in Divorce: Right Of Women, <https://www.freelaw.in/legalarticles/Alimony-in-Divorce:-Right-Of-Women.>
- Property Rights of A Woman If Her Husband Dies Or They're Divorced, <https://www.news18.com/business/property-rights-of-a-woman-if-her-husband-dies-or-theyre-divorced-8540769.html>

- Vidhikarya, Child Custody Laws In India, <https://www.legalserviceindia.com/legal/article-710-child-custody-laws-in-india.html>
- Section 26 in The Hindu Marriage Act, 1955
