



Family and it's Changing Patterns

Singh Pranay Arvind

Abstract:

The concept of family has evolved significantly over time, driven by changes in social, economic, and legal contexts. Traditionally, Indian families were patrilineal and joint, with strict roles and practices rooted in customs and religion. However, modern influences such as globalization, urbanization, and legal reforms have transformed family structures and dynamics.

Key shifts include the recognition of LGBTQ rights, changes in marriage and divorce laws, and the empowerment of women through legal protections and opportunities for economic participation. Technological advancements and increased individualism have also reshaped family patterns, leading to the rise of nuclear families and altering intergenerational relationships.

Legal cases like *Shayara Bano v. Union of India*, which abolished Triple Talaq, and *Navtej Singh Johar v. Union of India*, which decriminalized consensual homosexual acts, highlight the judiciary's role in redefining family norms. Other landmark cases, such as *Vineeta Sharma v. Rakesh Sharma*, have ensured equal inheritance rights for daughters, further challenging traditional patriarchal structures.

Overall, the ongoing evolution of family patterns reflects broader societal changes and underscores the need for continuous adaptation and legal reform to address contemporary challenges and aspirations.

INTRODUCTION

Everything changes as we proceed further into our future, whether be it regarding technology, politics, agriculture, or about our "Traditions and Practice" too. The changing convention in our Family traditions and practice is strenuous and something that is changed and needs to be changes, took and will take time, but one thing is for sure that 'it changes'. In India, modifying and amending its' customs, practice and tradition takes a lot of time but in the end, it changes but somewhat fragments of the past remains and to overcome that our 'legal system' helps us, for e.g., Regarding LGBTQ, people too nowadays are stereotypical about it but our legal system has provided them with rights, Transgender Persons (Protection of Rights) Act, 2019.

The very point of changing its' pattern is because of peoples' mindset of today's' generation and upcoming tomorrow's' generation. In Family there's evolution of philosophy and perspective, a father may believe in marriage and procreation, but his child may not. This change and there are many more things that have changed, and we've come so far.

A family in the olden times may have defined, as people who are corelated by blood, ancestors, and through marriage, but now seeing these changing times 'A Family' also includes a person which have been adopted and accepted and ending up creating a new family with them. Before a marriage was being between a man and a woman but now there is marriage between two men and two women. There is no proper take and definition for 'Family' in law because of its' broad perspective.

Before, Men were the only decision maker and sole earner of the family, but now women have acquired their lost rights in the family and now being treated as equal even though they may not earn but their decision and say in the family matters are of significant nature. Today women play a vital role and have an important stage in world and in their family too., they earn for themselves and their families.

The change in the Family pattern is also impacted by globalization and urbanization transforming the change in gender roles and reshaping the family hierarchical structure and conventional norms that have been followed by generations. Theres' economic impact on family converting one to many earners in the family in the small age. And in short regarding the legal take, we can see its' implementation in a very visible way like for example, inheritance for female in family, getting divorced and regarding child custody. Before, the father was the one to handle the child and its need but now, the parent who is financially stable and can take all kind of care of their child is given custody. In past, the consent was not so important in marriage and in sexual intercourse and regarding childbirth, but times have changed and consent in of utter importance regarding everything and about having a child too, not being

sexually active and sex without consent is also one of the factors for getting divorce. The change was and is necessary to go through we can below how and why?

HISTORY

Patrilineal background is the concrete structure of Indian household, being together as one family, staying under one roof, which helps with kinship groupings. Joint family is the tradition of Indians; mutually eating, working, worshipping and cooperating with each other in one way or the other. This tradition is what keeps people together and makes us human more and teaches us to care about one another. This helped the family mentally, emotionally, physically and economically too. Children learned about their lineage and traditions by their grandparents and elders. This helped the bonding of the family to be sustained and stay for a longer time and this system has given a lot of importance in India.

The medieval period saw the arrival of various dynasties, including the Mughals and Sultanates. These rulers brought their own cultural practices and influences to the Indian subcontinent, impacting family dynamics and social norms. The purdah system being introduced, which required women to be secluded from the public eye, gained prominence among certain communities. This affected family interactions and women's roles within the household.

Social Institution of Family has changed its structure and function on how the family operates and its importance by focusing on the things like what is important for their family members like nowadays if the child doesn't want to marry, it's on the child decision whether that child wants to get married or not.

Before, the age of marriage was less and most men got married before 20 and women before 18 but now this is not the case, after the valid age they can get married whenever the person wants to. The marriage was significantly between the same caste and religion and the marriages were arranged between the families. The family was mostly patriarchy, elder men being the head of the family, before the gender roles were well defined and women only dealt with household and child rearing.

Yes, before people lived as joint family and now too but not like before but there were many other things which came with that like jealousy between family members, greed, etc and the women being only treated as household chores, small girls getting married to older men, Sati practice, and many other practices which were done at that time is now nearly abolished and treated as illegal.

During the colonial period, being influenced by western began to change the dynamics of Indian Family, British introduced their policies with legal framework which resulted in change in institution of marriage, rights of property and inheritance. The Sati Practice was also abolished by the British. This period somewhat and somewhere helped structure the Indian Family and helped erasing the evil practices like Child marriage, Female infanticide and child marriage, untouchability, caste discrimination and brought new changes like female education introduced by Jyotirao Phule and Savitribai Phule.

Before there were not any acts or rights written relating to marriage, family business, inheritance, cruelty, etc but now, women have their own rights against cruelty, their right on family property. Everything relating to family business and how it operates has its own 'act'. Before divorce was impossible but it's not now, same thing is with remarriage, the widow getting remarried was a quiet difficult thing to happen but in 1856, Hindu Remarriage Act was passed and got legalised on 16th July 1856 and enacted on 26th July 1956.

MODERN TAKE

The impact of various things led to the evolution of the structure in Family and how it operates, it was done by Urbanization, Globalization, reforms brought during Independence, seeing that how the British Family Ideology operates and somewhat adapting to it by mixture of Indian Ideology. Modernization fully reshaped the Families' outer structure, but the tradition and custom didn't fully vanish, it only impacted on the things which were orthodox, and which must be changed throughout generations.

The major changes done was the, changed hierarchy of Family, women were given their own rights and voice to speak in society equal to men. Women started increasing in the workplace, challenging traditional roles and contributing to dual-income household.

The system of Joint Family is decreasing due to the modernization, economically its hard to support the whole family and now being the 'money' very hard to achieve, they can only support their family alone, as inflation being the main evil. Due to this, nuclear families started emerging, with being the Parent and their children only in the family, Grandparents being left alone on their own house, or being transferred to Old Age Home. This change is mostly seen in cities alone as it is hard financially to support everyone and let alone live in the city. This idea of nuclear family is a Western ideal and its education started affecting marriage, love and individual aspirations. The 21st century brought increased globalization and exposure to diverse cultures, leading to further shifts in family patterns. Modern communication technologies have facilitated cross-border connections and influenced family dynamics. Rising Individualism brought changing aspirations and values, coupled with economic opportunities, have contributed to a growing emphasis on individualism and personal choice within families. Aging Population and Elderly Care started increasing life expectancy, issues related to elderly care, retirement, and inheritance are becoming more prominent, prompting discussions about intergenerational relationships and responsibilities. Economic growth and rising brought increased incomes contributed to evolving family aspirations and priorities. Individuals pursued education, careers, and personal goals, often leading to delayed marriages and smaller family sizes.

As women gained more autonomy and education, marriage patterns evolved. Love marriages became more common, and family planning and reproductive rights gained importance.

In short, we can say that modernization of today's brought some major changes which can be seen as both positively and negatively but what is change without consequences, changes that we can now see is far better than before but not worse in some point. In Indian Family structure can see both, our history, tradition, customs, values, etc with the add on of urbanization, globalization and thus evolving to modernization. This changes also helped us in bringing legal reforms which helped women to seek and gain their voice and rights, the inheritance has its own act, divorce being introduced, remarriage of widow now not being seen as different.

LEGAL TAKE

It took our Legal System many reforms and introduction of many acts and rules to come where we are today for the protection of Family and its members. Legal reforms have aimed to enhance women rights within families. Equal rights in ancestral property, challenging male-centric inheritance practices are brought with the help of Hindu Succession Act and followed by with its amendments. Practices like dowry was highly practiced before and now too but comparatively low than before but its illegal to take dowry or even participate in it and its protection is given by Dowry Prohibition Act.

Marriage and Divorce Laws: The legal framework has evolved to accommodate changing marriage patterns. The Special Marriage Act allows individuals from different religions or castes to marry and register their marriage regardless of their backgrounds. Divorce laws have been revised to consider the irretrievable breakdown of marriage and to provide a legal framework for separation and dissolution of marriages.

Child Rights and Custody: Legal considerations have shifted from solely focusing on parental rights to prioritizing the best interests of the child. The Juvenile Justice Act and amendments to other laws reflect this change, aiming to protect the rights and welfare of children.

Elderly Care and Maintenance: The Maintenance and Welfare of Parents and Senior Citizens Act addresses the care and maintenance of elderly parents and seeks to protect their rights, ensuring they are not neglected or mistreated.

Adoption and Guardianship Laws: Adoption laws have been modernized to streamline adoption processes, align with international standards, and prioritize the best interests of the child. Legal frameworks for guardianship address issues related to child custody and the appointment of guardians in cases of separation or divorce.

Surrogacy and Assisted Reproductive Technologies (ART): The legal system is working to regulate surrogacy arrangements through the Surrogacy (Regulation) Bill, taking into account changing family compositions and technological advancements.

Family Dispute Resolution Mechanisms: The legal system has encouraged alternative dispute resolution mechanisms such as mediation and arbitration to resolve family disputes in a less adversarial manner.

Privacy and Technology: The legal framework is evolving to address privacy concerns arising from technological advancements and their impact on family interactions and relationships.

Social Awareness and Activism: Legal cases and judgments related to family matters have often sparked public discourse and social awareness, leading to broader conversations about gender roles, family rights, and societal expectations.

CHANGING PATTERNS

As we can see, the transformation and evolution our that Family structure has gone through is massive and extraordinary, these changes are not we can see normally and cannot occur normally. The changes that we've seen and are seeing is achieved by many sacrifices and devotion. The evolution takes time to occur, but it eventually does evolve, its part of the nature. Society, Family, Technology, Economics, etc and its evolution did evolve and till now its evolving and will evolve further. The very concept of changing its to evolve and adapt to new set of ideology and mindset, the very meaning to change is to take a step further and grow.

The concept, tradition, customs, ritual, ideology, mindset, its theories and many more things which come under the word of 'Family' has gone through significant change and till now its going through.

The changing patterns we can see through following cases:

SHAYARA BANO V/S UNION OF INDIA

In Shayara Bano¹ case, as we know, have and had listen that in Muslim, the divorce can be done easily by saying the word 'Talaq' three times and the divorce is done, this practice was very evil and destroyed the lives of many women due to this. If the word spoken

¹ Shayara Bano vs. Union of India [(2017) 9 SCC 1]

three times, emotionally or in any manner where the man is not fully capable of understanding the situation, then too the divorce is done.

This case challenged the validity of Triple Talaq and to decide this must be continue or not because this instant way of getting divorce under Muslim Law was evil. So, our Supreme Court of India gave verdict that this practice is unconstitutional and must not be followed anymore, as this practice was against the rights of women and to protect it and to promote gender equality this will be abolished.

As we can see in this case, how our legal system took a big step to prevent injustice against women and abolished the system, tradition which was followed through years and this change was necessary and it did the change the pattern of the Family in a very positive way and it gave a fruitful result.

NAVTEJ SINGH JOHAR V/S UNION OF INDIA

In Navtej Singh Johar², As we've talked before that the Family evolved in many ways, one of the very steps was accepting the LGBTQ ideology, it was criticized enormously before and now it is too but comparatively less, people are now accepting this ideology.

This case highlights the intimacy and consensual sex between homosexuals which is criminalized under sec.377 of IPC. The issue was whether this section was to be decriminalized just because of the 7 to 8 percent of population which were homosexuals and decriminalizing it means to change the very structure of Family which may affect its system, marriage and social culture and will ruin the economical, political and social heritage of the Country.

But our Supreme Court emphasized that Sec.377 of IPC violate Art. 14, 15, 19 and 21 thus this section will be declared unconstitutional.

We can see through this case that to change the pattern of Family, the SC struck down 158 years old law that made carnal intercourse against the law of nature and seen as criminal offence. For the betterment and as homosexuals are our part of society too this step was necessary and was a big leap into the future.

JOSEPH SHINE V/S UNION OF INDIA

This case Joseph Shine³ is about whether the woman where being treated as object by man under the section of 497 of IPC were adultery is criminalized and the man involved is punished severely as imprisonment up to 5 years or fine or both. Saying was that when a man knowingly gets intimate with a woman who is married, such sexual activity between them is Adultery. But the constitutional validity of this section was challenged first time by Joseph Shine.

The story goes like this, Joseph Shine, a hotelier, a close friend of Joseph committed suicide as he was falsely accused of rape by one of his female co-worker. This case was argued on the grounds that a relationship between a man and woman is their personal grounds, and the law has no right to meddle into their affairs.

The verdict was given with the favour on the side of Joseph by declaring the 158-year-old, known as Victorian Morality Law, as unconstitutional. Even though Adultery is now legal, but it is seen as immoral and unethical in the eyes of society.

To me, this change is somewhat bad, as our culture do not promote adultery and believe in pure relationship and if this relationship by chance don't work, our legal system gives the chance to divorce. The adultery is now in Civil Wrong and the only remedy that is available is 'Divorce'.

SUCHITA SRIVASTAVA V/S CHANDIGARH ADMINISTRATION

Is minor consent necessary, where that person is not mentally capable or is considered to be a mentally retarded person? This Suchita Srivastava⁴ case talks about this matter and enlightens us on this topic.

The story revolves around a woman who is an orphan in a government run welfare institution in Chandigarh, where she has a mental capacity of a 9-year-old child. This woman was raped and eventually got pregnant while living in that institution when the staffs discovered about this, she was already at 9 weeks gestation. After the discovery, the Respondent who is the Chandigarh Administration, filed a criminal case under Sections 376 and 120B of the Indian Penal Code. and constituted a medical board to examine the mental health of the woman. The medical board put forth that the woman had an mental disability which affected her intellect and was

² AIR 2018 SC 4321

³ (2019) 3 SCC 39, AIR 2018 SC 4898

⁴ (2009) 9 SCC 1

suffering from 'mild mental retardation'. Another Respondent-constituted medical board opined that the woman's pregnancy should be terminated. The opposite party thus filed an petition along with High Court of Punjab and Haryana about the termination of the pregnancy of the woman.

But the woman didn't want to terminate her pregnancy and at the time of appeal she was already 19 weeks pregnant. The High Court wanted to take the decision of the termination of pregnancy on his hands because the woman was not mentally strong to carry out the duties of a mother but the court stated that the 'best interests' test and determined that the High Court's decision granting the termination was not in the Appellant's best interest as a forced pregnancy would not benefit her and would be a high risk since she was in its 19th week and will create a mental agony on her, As the court noticed, as the appellant mental state was between 'mild to moderate' and may be able to perform maternal duties outside the institution with some help and accordingly, the Court issued a stay on the High Courts' Judgement and effectively denying the termination.

Gita Hariharan V/S Reserve Bank of India

This Gita Hariharan⁵ case talks about the guardianship of a child and question that, is mother a guardian of a child after the demise of the father? Whether the mother has the equal right as the father. As stated in the sec.6 of the Hindu Minority and Guardianship Act, 1956 a natural guardian of a boy or an unmarried girl is the father and after him the mother, which instantly nil the status of women as guardians. Hence, violating the principle of equality which has been established in the constitution.

Gita Hariharan and his husband were going through divorce, and during this Gita filed an application requesting the Reserve Bank of India for a 9% relief bond in favor of her son with a proclamation, that being the mother she would act as a natural guardian and supervise all the investments but the application was returned on grounds that present the application signed by the father of the minor son and additionally furnish the certificate of guardianship by a competent authority in her favour.

During the trial regarding the guardianship of the child, the question raised here was that whether the word 'after' in Sec. 6 applied here was interpreted as that the mother was treated as secondary which contravenes Article 15 of the constitution and constrains the right of guardianship from the women.

The verdict given here was that the interpretation of the said section doesn't mean that mother is secondary to guardianship, but it interprets as, in 'absence of the father'; when the father is incompetent to take of the child then after the guardianship is given to the mother.

Vineeta Sharma V/S Rakesh Sharma

This Vineeta Sharma⁶ case highlights on the very important matter relating to the equal and coparcenary rights of women in their ancestral property, this case revolves around the matter relating to the Hindu Succession Act which got amended on 9/9/2005, which states that the daughters have the equal right in ancestral property from birth the same as son do.

Because of this amendment, the main problem arose that whether the father was needed to be alive on the date 09/09/2005 and after, for the daughter to administer her right or not. In simple words, if father died before the amendment and the ancestral property was distributed but after the amendment can the daughter revoke her right on her ancestral property?

The question was answered in 2 different cases which gave 2 different verdict which contradicted each other and confused the people that which has to be followed but the 3rd case which is Vineeta Sharma v/s Rakesh Sharma; let us see what the verdict in these three cases was:

The first case is Prakash vs Phulavati⁷, where the bench consisted of 2 Judges; Justice Anil Dave and Justice A.K Anil Goyal, the verdict was, that the father needed to be alive on the date 09/09/2005 when the amendment got enforced and subsequently the daughters can claim the benefit under the 2005 Act.

Again, this question was put forth down in the Danamma vs Amar Singh⁸ and now too the bench consisted of 2 Judges; Justice A.K Sikri and Justice Ashok Bhushan they gave the verdict that contradicted the previous judgement was, the father may have died before the date, yet daughter will get the equal share and the right will be protected.

But, from these both case the people got confused but the question got clear in Vineeta Shamra vs Rakesh Sharma, whereas of in this case, the bench consisted of three Judges; Justice Arun Mishra Justice S. Abdul Nazeer Justice M.R Shah, the verdict was of same as before but in a very clear and easy way in which the water got clearer, the verdict was, the bench agreed with the Danamma Case and but disagreed with the Prakash Case and highlighted that the Father need not to be alive on the date of enforcement of the amendment

⁵ AIR 1999 2 SCC 228

⁶ (2020) 9 SCC 1

⁷ (2016) 2 SCC 36

⁸ (2018) 3 Scc 343

and if died and the property got divided then after the amendment the daughter can enforce her right and claim her right to ancestral property.

CONCLUSION

AS we can see here that to change the pattern and to change here means to get it to evolve with new adaptive ideology by learning and analyse what was wrong with the previous ideology and why it is needed to change.

The undergoing changes shows us that the change is necessary and inevitable and without it, the society won't progress further. The change as we see of now is the mixture of tradition, modernity, cultural values, and individual ideologies. Every era has affected the evolution in both positive and in a negative way, some of the changes is now nowhere to be seen, but some are as of now are still followed and the reason is, their good impact in society.

The pattern that we follow now it's because of today's, globalisation, urbanization and modernization, these way of change in society doesn't only affect the monetary part of society but also the ideologies and the mindset of the individuals, the ideology to change doesn't come naturally it comes by observing the society and learning what is right and wrong, what must be followed and what not.

The major change as we see today is the equality that is brought to the women, the respect and equality which was to be given in the past, we cannot say the women didn't get anything in the past. They were respected and treated well before the Mughals and British and other invaded our Country. Yes, in the past all things were not perfect but today too is not well-defined as we speak but we can say that we are moving further into the future by creating and adapting to the new ideologies and learning from the past mistakes.

