

INDIAN KNOWLEDGE SYSTEM (IKS) AND HINDU PERSONAL LAW: TRADITIONS, TRANSFORMATIONS, AND LEGAL REFORMS

Abstract

Indian Knowledge Systems (IKS), encompassing ancient traditions, customs, and philosophical principles, provide a framework for understanding Hindu personal law. Hindu jurisprudence is rooted by the principle of Dharma, which upholds justice, duty, and societal harmony, and has evolved from oral traditions and ancient texts into codified legal norms. Rather than being static, the Indian Knowledge System evolves continuously to balance tradition with contemporary societal needs while ensuring justice and social harmony remain central to Hindu law. India is a culturally diverse nation with distinct religions, such as 'Hindu, Islamic, Christian, and Parsi,' and the social aspects of people practicing different religions are governed by their respective personal laws. This chapter focuses primarily on the evolution, development, and transformation of Hindu personal law on different aspects of individual life governing '**marriage, divorce, maintenance, adoption, inheritance, and succession**' within framework of the Indian Knowledge System. It also explores different concepts under Hindu law through ancient practice, customary laws, codification, and contemporary legislative changes and their alignment with the principles of the Indian Knowledge System.

Keywords: Indian Knowledge System (IKS), Hindu Personal Law, Ancient Traditions, Legal Reform, Judicial Decisions.

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I. INTRODUCTION

1. Indian Knowledge System and Hindu Personal Law

The Indian Knowledge System is a systematic and structured process to transfer knowledge from one generation to another and has shaped various disciplines, including social justice, education, health, wealth, and law, through knowledge, scientific inquiry, and philosophical principles.¹ The Indian Knowledge System serves as a collective body of traditional wisdom enclosing philosophy, science, mathematics, medicine, culture, and other disciplines rooted in the Vedic literature, Vedas, and Upanishads as fundamental principles and continued to shape various aspects of individual life in modern times. India is a land of religious diversity, with people practicing different faiths, including Hindus, Buddhists, Jain, Christians, Muslims, Parsis, and Sikhs, and the Constitution of India ensures secularism that every religion is equal under the law. Most of the laws in India uniformly apply to all, irrespective of their faith, but specific personal aspects of an individual, like **‘marriage, divorce, maintenance, adoption, inheritance, and succession,’** are governed by their personal laws based on religious customs, traditions, and usage. Personal laws are often related to religion and applied to a person professing a particular religion. Supreme of India had defined personal law as “the law by which an individual is governed concerning essentials, validity, effect/nullity of marriage, or divorce, property rights, legitimacy or illegitimacy of a child, adoption or maintenance”.² Hindu personal laws apply to “any person who is a Hindu by religion including in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj, to any person who is a Buddhist, Jaina or Sikh by religion, to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion and includes those who converts or reconverts to Hinduism, regardless of their original religion”.³

The tradition of validation and practical application of the Indian Knowledge System has influenced Hindu personal law and Indian jurisprudence in other aspects. The ancient sages formulated Hindu law like Dharmasutras, Dharmashastras, Arthashastra of Kautilya, and other ancient texts through their scholarly observation of social norms and ethical principles and not by the political rulers because they were considered legal philosophers in ancient India.⁴ Indian knowledge system significantly influences Hindu personal law because most of its guiding principles are derived from ancient Hindu texts. Hindu personal law is firmly embedded in the principles of Dharma, Nyaya, and Satya, which are the core aspects of IKS and provide for philosophical and legal principles governing different aspects of individuals, including **marriage, maintenance, adoption, inheritance, and succession** for centuries.

The primary objective of integrating the Indian Knowledge System into the study of Hindu personal law is to understand how ancient legal traditions can contribute to solving contemporary legal and social challenges. Furthermore, the principles embedded in Hindu personal law align with the broader objectives of IKS, for instance, the Hindu legal principle of Stridhan (women’s property rights) reflects an early recognition of financial independence

¹ Kapil Kapoor and Avadhesh Kumar Singh, *Indian Knowledge Systems*. Indian Institute of Advanced Study, (2020).

² Pradeep Jain v. Union of India, AIR 1984 SC 1420, 1426

³ Section 2, The Hindu Marriage Act, 1955.

⁴ U C Sarkar, Hindu Law: Its character and evolution. *Journal of the Indian Law Institute*, 6, 213-235, (1964).

for women, an idea that remains relevant in contemporary legal issue on gender equity.⁵ Like Mannar, the Hindu joint family system in the schools of Mitakshara and Dayabhaga incorporates the values of collective welfare and economic sustainability, which are significant for the evolving legal landscape.⁶ India's legal system related to personal law underwent a notable change with the rise of British rule, which introduced a structured legal system by codifying certain aspects of personal laws while preserving some customary practices.⁷ While codifying Hindu personal law, the British lawmakers recognized the deeply embedded personal and religious nature of Hindu law and sustained personal laws based on religious identity. The Hindu Code Bill was introduced post-independence to integrate and remodel personal laws, is a landmark legislative reform that modernized Hindu law and signifies the adaptability of Indian Knowledge Systems by consolidating ancient traditions with contemporary principles. By integrating insights from IKS, this chapter analyses the traditional aspects of Hindu personal law, from Vedic principles to modern legal developments.

2. Limitations of the Study

The chapter aims to provide a broad overview of Hindu personal law through the Indian Knowledge System, and the study is limited in analyzing the historical, scriptural, legislative, and judicial interpretation of Hindu personal law, primarily focusing on marriage, divorce, maintenance, adoption, inheritance, and succession. The study largely depends on historical and ancient texts like Vedas, Smritis, Dharmashastra, Dharmasastra, and other texts, which are complex and lead to multiple interpretations. The study mainly centered around Hindu personal law, its evolution, and codification within the Indian Knowledge System and does not delve into the study of other religious personal laws and their comparisons. The study explores legislative enactments, reforms, and judicial interpretation of landmark cases but does not offer a comprehensive analysis; instead, it focuses on significant reforms and precedents in the evolution of Hindu law. Though the study combines the concept of Hindu law with the Indian Knowledge System, it does not profoundly focus on an interdisciplinary perspective; it remains focused on legal aspects by exploring other factors.

3. Methodology and the Scope of the Study

The study follows a combined method of doctrinal, historical, and analytical methodologies to examine the evolution, development, and transformation of Hindu personal laws through the framework of the IKS. It explores ancient texts like Vedas, Smritis, Dharmashastras, customs, legislative works, and judicial decisions to understand the development of Hindu law. It further examines the historical growth of personal law from ancient to contemporary reforms made in independent India. It adopts an analytical method to interpret the impact of the Indian knowledge System within Hindu personal law. The scope of the study is to cover the evolution, development, and transformation of personal law from ancient texts to codification, focusing on marriage and other marital rights, including divorce and other obligations, maintenance rights, adoption rights, and inheritance through the lens of the Indian Knowledge System.

⁵ Sir Gooroodass Banerjee, *The Hindu Law of Marriage and Stridhana*. Tagore Law Lectures, (1913).

⁶ Dr. P V Kane, *History of Dharmashastra* (Vol. 1-5). Bhandarkar Oriental Research Institute, (1946).

⁷ R P Choudhary, Evolution of Personal Laws in India. *Pramana Research Journal*, . (2018).

4. Objective of the study

- a. To comprehensively analyze Hindu personal law through the Indian Knowledge System framework.
- b. To understand the dynamic nature of the Indian Knowledge System within the evolving Hindu personal law
- c. To study the evolution of Hindu personal law from ancient to contemporary frameworks
- d. To study the effect of legal reforms and transformation of Hindu Personal Law on marriage, divorce, maintenance, adoption, inheritance, and succession
- e. To enhance the intersection between tradition, law, and contemporary legal reforms in Hindu Personal Law.

II. SOURCES OF HINDU LAW AND THEIR CONNECTION WITH IKS

Indian knowledge system serves as a foundation of the Hindu jurisprudence because most of its sources are rooted in the ideas of IKS, enclosing Vedas, Smritis, Commentaries, Digest, usages, customs, and philosophical principles. Dharma is the core principle of IKS that forms the foundation of Hindu law, guiding the personal aspects of individuals related to marriage, maintenance, adoption, inheritance, and succession. Hindu personal law originates from ancient texts and evolved through customary practices and modern legislature, reflecting a blend of divine nature, cultural traditions, and judicial interpretations. The sources of personal law are classified into ‘ancient and modern sources.’

1. Ancient Sources

- a. **Shruti:** It is the most authoritative text in Hindu law, which means “what is heard,” and is considered eternal and immutable because it is revealed to ancient Rishis in a transcendental state. It consists of the Vedas - Rigveda, Yajurveda, Samaveda, and Atharvaveda, which form the foundation of Hindu thought, spirituality, and knowledge systems and Upanishads, which are philosophical commentaries on the Vedas, further elaborate on moral and social duties.⁸ In the Indian Knowledge System, shruti is regarded as the highest source of knowledge as it is the ultimate reference for Hindu dharma. Shruti represents the eternal, divine wisdom that forms the foundation of the Indian Knowledge System, and its influence extends beyond religion into philosophy, ethics, jurisprudence, and education.⁹
- b. **Smriti:** It is the most fundamental source of Hindu law, which means “what is remembered.” It serves as a recollection of Vedic principles that have been preserved and interpreted by sages over generations. Smritis are of human origin and provide practical guidance on Dharma, moral conduct, and legal principles. They function as commentaries explaining prescribed (Vidhi) and prohibited actions (Nishedha) while adapting them to societal needs. Smritis are regarded as authoritative because they are based on the Vedas and are composed by the enlightened sages and written in different styles like Gadya (prose), Padya (poetry), and Champu (a combination of both). Various aspects of human life, including duties based on social classification,

⁸ Tanmay Anil Subramaniam, An insight into the sources of Hindu Law. *Indian Journal of Integrated Research in Law*, II(III).

⁹ <https://dharmawiki.org/index.php/Shruti>.

governance, family relations, punishment for offenses, and legal procedures, have been explained under Smriti. ‘Manu Smriti, YajnavalkyaSmriti, NaradaSmriti, Parashara Smriti, and Brihaspati Smriti’ are prominent Smritis focusing on different aspects of law and social order.¹⁰ Most kings and states apply the procedural and substantive principles provided under Smriti to resolve disputes, adjudication, governance, and administration of justice to ensure social order, and it collectively forms the cornerstone of Hindu jurisprudence over centuries.

- c. Commentaries and Digests:** After the era of the Shrutis, Hindu personal laws are governed by commentaries (Tikas) and digests (Nibandhas) through their guiding principles from the 7th century to 1800 AD.¹¹ It played a crucial role in interpreting the provisions of Smritis and led to the need for systematic interpretation, giving rise to influential legal commentaries. For example, Manusmriti restricted some rights for women and Shudras, and texts like YajnavalkyaSmriti and Narada Smriti provided them with certain legal entitlements.¹² The development of Hindu law into different schools—primarily the Mitakshara and Dayabhaga schools—was driven by these commentarial traditions. Mitakshara, written by Vijnaneshwara, became the foundation of Hindu law across most of India, while Dayabhaga, authored by Jimutavahana, emerged as the leading authority in Bengal and Assam.¹³ In addition to Mitakshara and Dayabhaga, several other influential commentaries provided authoritative interpretations of Smritis and helped to shape the different schools of Hindu law. VirMitrodaya by MitraMisra mainly deals with laws related to inheritance and property rights¹⁴, Vachaspati Mishra by VivadChintamani focuses on resolving legal disputes, including property rights, inheritance, and other civil matters¹⁵, VyavaharaMayukha by Nilkantha is an essential text in the Mayukha tradition of Maharashtra and Gujarat.¹⁶
- d. Customary Practices:** In ancient India, customs (achara) were considered a primary source, and even manusmriti and other smritis acknowledged customs as binding factors because they evolved through continuous practice, ensuring harmony and social order. In **Deivanai Achi case** the High Court of Madras held that for “a custom to be legally binding, it must be practiced continuously, clear and specific, observed by the community, consistent and uniform, not contradict with public policy and should align with principles of justice, equity, and morality will attain legal recognition and enforceability”.¹⁷

¹⁰ Nivedita, Smritis – An Overview, (2016).

¹¹ Sources of Hindu Law, Gyansanchay, (2022). Retrieved March,14, 2025, from <https://gyansanchay.csjmu.ac.in/wp-content/uploads/2022/09/01-Sources-of-Hindu-Law-1.pdf>

¹² Supra note 8.

¹³ Sir Dinshaw Fraduji Mulla, *Principles of Hindu Law* (22nd ed.). LexisNexis, (2018).

¹⁴ Golapchandra Sarkar, *The Law of Inheritance As in the Viramitrodaya of Mitra Misra*, (2016).

¹⁵ Pritam Kumar Gupta, Norms of the property right for women: A comprehensive study of *Vivad-Chintamani. Research Journal of Humanities and Social Sciences*, (2018).

¹⁶ SS Das&Keerthika Singh, Self-Learning Material on Sources and Schools of Hindu Law, (2023).

¹⁷ Deivanai Achi and Anr. vs R.M. Al. Ct. Chidambaram Chettiar and others, AIR1954MAD657.

2. Modern Sources

The origin of Hindu law is deeply interconnected with the Indian Knowledge System, reflecting wisdom, customs, and philosophical principles, and even in modern codified Hindu law, the influence of IKS is evident in the recognition of customs, community practices, and judicial interpretations. The presence of the philosophy of IKS in personal law exhibits the significance of ancient knowledge systems that remain relevant in shaping contemporary legal structures. Hindu law has evolved through centuries and is the oldest legal system with modern thoughts and development. Some of the modern sources of Hindu law are:

- a. **Legislation:** During British rule, most Hindu traditions and customs were replaced by the British administration; however, Hindus were allowed to follow their traditional religious and personal beliefs concerning marriage, maintenance, adoption, and succession. The authoritative source of modern Hindu law is the codified laws legislated by the parliament. Most Hindu laws were codified in 1955 and 1956 to reform Hindu traditional laws with modern principles of justice, gender equality, and social reform. The codified “Hindu code consisted of
 - **The Hindu Marriage Act, 1955** (Governs conditions, ceremonies, and registration of marriage, divorce, and related rights, and also prohibited bigamy and child marriage)
 - **The Hindu Succession Act, 1956** (Regulates inheritance and property succession, grants equal property rights to daughters in ancestral property)
 - **The Hindu Minority and Guardianship Act, 1956** (Defines guardianship laws for minors and their rights and responsibilities) and
 - **The Hindu Adoptions and Maintenance Act, 1956** (Governs adoption and maintenance obligations and extends adoption rights to widows and unmarried women)”.
- b. **Judicial Decisions:** They provide authoritative interpretations of laws and customs to ensure consistency in their application. Judicial precedents play a transformative role in contemporary Hindu law. It interprets and applies legal doctrines to fill gaps in the existing rules and mandates that the decisions of the superior courts in similar cases must be observed by the lower courts to ensure justice. Privy Council in **Ramnada Case**¹⁸ held that “invalidated the general rule of the British Doctrine of Lapse, an estate without a direct heir would return to the government after the widow’s death and concluded council the claim of the adopted son over his inheritance was valid. Also, it held that the adoption of a son by a widow with the consent of sapindas but without prior authorization from her deceased husband is valid based on clear proof of custom will outweigh the written text of the law under Hindu law.”
- c. **Justice, Equity, and Good Conscience:** It is a fundamental ‘rule of law’ applied by the judiciary when no existing legislature or precedent governs a particular case, and the court relies on rationality and moral principles to ensure fair and reasonable decisions. It can be witnessed in the **Kenchava case**, where Privy Council ruled that a person convicted of murder cannot inherit from the person they killed because it violates ‘the principles of justice, equity, and good conscience.’ In addition, council

¹⁸ Collector of Madura v. Muthu Ramalinga Sethupathy, 1868, 12 MIA 397.

ruled that male heirs are preferred over female heirs in succession among collateral relatives.¹⁹

III. PRINCIPLES OF IKS IN CODIFICATION OF HINDU PERSONAL LAWS

The King or political sovereign did not create ancient Hindu law; it was considered a divine origin composed by the sages and philosophers, though they did not have any political authority but had the social authority to command with the greatest respect. It is not in the form of legislative enactments but like scriptural texts written with a supreme realization. Ancient texts like Vedas, **Dharmasutras, the Dharsastras, and the Arthasastra of Kautilya** were the thoughts of sages, and later, it was elaborated by renowned scholars through commentaries and digest. The king's primary function is to rule the country by adopting these principles to resolve disputes. King is subject to the 'rule of law' and is not entitled to legislate any law for himself. It is evident that Hindu laws in the early stages were primarily dependent on custom and usage, and later, these conventions and practices followed by the sages were codified as sacred texts by some renowned sages. The Ancient Hindu law was based on the principles of religion, morality, usage, and customs, and from this, we can understand the early rules of Hindu law and its mutual relation with other factors comprehensively covering all aspects of human life. The originality of the Hindu law and practice was heavily distressed by the Muslim and British rulers with their civilization. However, Hindu laws remained hard to save their original principles and practices by accommodating some of the alien cultures that shaped the subsequent Hindu society as it is today. The Muslim invasion also suppressed the growth and ceased the prominence and recognition of Hindu society, but it remained static during Muslim rule and became dynamic and influenced during the British period with their legislative codification, western civilizations, and the education system.

Warren Hastings, first governor-general of Bengal, implemented significant reforms to administration, judicial, and economic aspects and also proposed that the personal elements of individuals should be ruled by their specific personal laws. 'Hindu and Muslim law officers' were appointed to aid British judges in governing and interpreting personal laws effectively; in later years, it was abolished by passing the Act (XI) of 1864. Furthermore, for effective administration, the Britishers had codified more general or common laws uniform to both Hindus and Muslims, like 'the Indian Penal Code, Civil Procedure Code, Transfer of Property, and other significant laws' as far as possible by reserving some special legislations related to 'marriage, maintenance, adoption, succession, and others' to be governed by Hindu and Muslim personal laws.²⁰ However, the legislators made necessary changes in the personal laws that didn't fit with the needs of society, like '**The Hindu Widow's Remarriage Act of 1856**', which granted rights for the widows to remarriage; '**Act III of 1872, the new civil marriage**' law introduced by Henry Sumner Maine, also known as '**the Special Marriage Act**', granted the right to inter-caste or inter-religious marriages; '**The Hindu Inheritance (Removal of Disabilities) Act, 1928**' abolished a provision which barred certain persons with a condition like disease, deformity, physical or mental illness from inheritance; '**The Hindu Gains of Learning Act of 1930**' ruled that if a member of the HJF gained any property based on his skill or learning is considered as self-earned property, not as coparceners property; '**The Hindu Women's Right to Property Act of 1937**' was legislated to give property rights

¹⁹ Kenchava Sanyellappa Hosmani vs Girimalappa Channappa Somasagar, 1924, 26 BOMLR 779.

²⁰ U.C. Sanker, *Hindu Law: Its characters and evolution*, Journal of the Indian Law Institute, 1964.

to Hindu widows on their deceased husband's property for a better life. Later, in 1939, an attempt was made to extend the inheritance rights to the daughter under this act, but it was filed.

In 1941, a committee composed of 'Justice B.N.Rau, Dwarka Nath Mitter, J R Gharpure, and Rajratna Vasudeo Vinayak Joshi' was established to examine **The Hindu Women's Right to Property Act** and suggest an amendment.²¹ The committee suggested some significant changes in personal law as a whole, focusing on other aspects of Hindu personal law while addressing its unique features and the needs of society. The committee suggested a **new Hindu code** and submitted its '**two draft bills for the law of succession and marriage in 1942.**' In same year, the Government of India published two bills in the gazette and referred them to a joint committee for further improvements. A recommendation was adopted by passing a resolution in the Council of State in 1943, and the Government reconstructed '**the Hindu Law Committee** in 1944 by replacing R V V Joshi with T. R. Venkatarama Sastri' by retaining other committee members. The committee further redrafted the Bills by including **Intestate and Succession, Marriage and Divorce, Minority, Guardianship, and Adoption**, covering all aspects of Hindu Personal Law and circulated drafts to the people's representatives and common public for their comments and suggestions and also invited written comments by writing to the Secretary to the Committee at Fort St. George, Madras. The Members of the Committee travelled all around India to receive suggestions on the draft Bills and submitted final draft of Hindu Code in 1947 after three years. Then, the Bill was presented before the Constituent Assembly and forwarded it to the select committee for further study in 1948. A small committee consisting of Dr. B. R. Ambedkar as chairman and K Y Bhandarkar, G. R. Rajagopal, and S. V Gupte was constituted to examine the bill, and the committee submitted the revised bill by making some substantial changes to the select committee. The select committee, in its seventh sitting, reviewed the original draft and the amended draft of Hindu Code, then the Assembly adopted the amended draft Bill with some changes and presented it to the House on August 12, 1948, for further approval, but the bill does not come into consideration for many reasons till February 5, 1951. Later, the general election was held in 1952, the provisional parliament was abolished, and regular parliament was constituted, which led to lapse of '**Hindu Code Bill**'.

Following this, in the first instalment, '**the Hindu Marriage and Divorce Bill of 1952**', then '**the Special Marriage Bill of 1952**' was introduced in Rajya Sabha after many suggestions, joint committee recommendations, and the Prime Minister's suggested to rename the bill into the **Hindu Marriage Bill**. The Parliament passed the Special Marriage Bill in October 1954, and by changing the '**Hindu Marriage and Divorce Bill**', it was also passed by the Parliament in May 1955. During the second instalment, the draft bill related to **The Hindu succession Bill** was passed in Raja Shaba after many sittings, discussions, and recommendations, the bill got large support and passed in Rajyashaba and Lokshaba with the president's assent and came force on June 17, 1956. In the third instalment, a draft bill related to the '**Hindu Minority and Guardianship Bill of 1953**' was presented in Rajya Sabha in 1954 and passed by the parliament with the assent of the president it came into effect on August 25, 1956. Later, The '**Hindu Adoptions and Maintenance Bill of 1956**,' was passed by the Rajyashaba and Lok Shaba with president's assent, it came into effect on December 21, 1956. The codification of Hindu law has brought a significant change in Hindu law with a unique blend of modern principles with ancient traditions by keeping the essence of IKS. For

²¹ G.R.Rajagopal, *The story of the Hindu Code*. Journal of the Indian Law Institute, 1975.

example, based on IKS, Hindu marriage was considered a sacrament, not merely a contract, and the codified Hindu law recognized some rituals like *saptapati*, *kanyadaan*, and other rituals as customary ceremonies for performing the marriage²². The Mitakshara doctrine of the coparcenary and the concept of *stridhana* is recognized under the Hindu Succession Act, adoption was observed as a sacred duty under IKS is also acknowledged under the Hindu code to secure the continuity of family lineage and spiritual obligations.

IV. TKS WITHIN THE CONCEPT OF MARRIAGE & DIVORCE

1. Marriage as a Sacrament Institution in Ancient Hindu Law

Hindus believe that “marriages are arranged in heaven and performed on earth with cultural and religious ceremonies by practicing Vedic mantras and rituals to attain moksha.” Marriage is an exclusive relationship with the primary purpose of the procreation of children to guarantee survivorship, perform religious and social obligations, and have a lifelong partner for spiritual and emotional support. Ancient texts like ‘*Veda, Kautilya, Manu, Yajnavalkya, and other texts*’ had evolved guidelines to perform marriage to maintain social and religious order. Based on religious texts, ‘there are four stages of man’s life *Brahmachary* (celibacy), *Grhastha* (family life), *Vanaprastha* (partial receding from mundane life) and *Samnyasa* (asceticism)’.²³ Hindus strictly follow *Brahmacharya* to control *artha* and *kama* and practice self-control before marriage to regulate their moral and spiritual discipline. In the ancient period, marriage was considered a sacrament and indissoluble because it was performed based on divine rituals and religious ceremonies²⁴. Hindu marriage is seen as a **sacrament**, divine and it is centered around complex religious ceremonies and rituals to represent the permanence and holy nature of the marriage. Some of the significant religious customs practiced during the marriage are²⁵, **sagai a pre-wedding ritual** that marks an official agreement for marriage between the individuals in the presence of their family relatives; **kanyandanis** a ritual practiced during the wedding in which the bride's father gives her daughter to the groom which makes a transition of a bride from daughter to wife; **saptapadi** is an integral part of Hindu marriage which means seven steps around the divine fire, which symbolizes the commitment of the newly wedded couple to live together forever. Hindu marriage not only unites two individuals, but it also unites two families with family honor and social norms, and thus, marriage becomes indissoluble, divine, and eternal union.

2. The Concept of Divorce in Ancient Hindu Jurisprudence

Vedas are the primary sources of Hindu law, with divine nature declares that marriage is the union of two individuals, which is indissoluble once the religious practice of *saptapadi* is completed. Marriage is a social structure that forms the foundation for many legal rights and obligations. Many ancient texts like *smritis* and commentaries provided detailed guidelines on these aspects. Marriage is regarded as *samskara* or sacred in Hindu law, and contrarily, divorce is a contentious subject, which is prohibited under ancient Hindu law. Based on the *Manu*, it is clear that the concept of divorce doesn’t exist in Hindu personal law. It says that “a spouse can’t be separated from others either by deal or deserting, showing that the

²² Section 7, The Hindu Marriage Act, 1955.

²³ Hari Singh Gour, *The Hindu Code*, (1974).

²⁴ Nilakshi Sengupta, *Evolution of Hindu Marriage* (1965).

²⁵ Harsimran Kaur Bedi, *The concept of marriage under Hindu law and its changing dimensions*, (2022).

conjugal relationship between the spouses cannot be cut off in any situation.”²⁶ In the olden days, women were allowed for a second marriage only on specific grounds, like “when her husband was lost, dead, secluded from the world, impotent, or humiliated, as per Narada Smriti, though the concept of divorce was not in practice.” In ancient Hindu practice, there were many situations in which women may have been separated, but rights were given to their husbands only. In ancient India, marriage was governed by **Dharma**, and it symbolized the eternal bond between husband and wife and their union, duties and obligations were codified in various ancient texts, and desertion of the spouse was presumed as a breach of Dharma.

3. Influence of IKS in the Codification of ‘The Hindu Marriage and Divorce Act, 1955’

During the **British period**, Hindu personal laws were largely governed by traditional texts like Manusmriti, Mitakshara, and Dayabaga. The British courts started to interpret the texts, resulting in patriarchal rulings, and by the end of the 19th century, reformers like Rajaram Mohan Roy and others began to advocate for changes in Hindu marriage laws focusing on widow remarriage and polygamy. During the colonial period, many changes were made to advance the status of women by abolishing ‘the sati system and child marriage and encouraging widow remarriage, female education, and women's employment.’²⁷ Due to modernization and the evolution of the concepts of liberty, individualism, and economic development, the status of women was improved under British rule. Later, the personal aspects of Hindus were administered through a combination of traditional Hindu texts and English legal principles. As a result of this, the sacrament nature of Hindu marriage underwent some change and became a combination of contract together with sacrament with the continuous influence of some religious ceremonies as essential elements to solemnize Hindu Marriage

After independence, there was a strong push to reform and codify Hindu personal law to provide greater social justice and gender equality. With this effort, the parliament codified the ‘Hindu Code Bill’, which was introduced to standardize and modernize various aspects of Hindu law. However, the bill faced opposition from conservative sections of society, and strong support was extended from the progressive leaders. Despite the intense struggle between the two views, the ‘**Hindu Marriage Act was passed in 1955**,’ which marks a significant legislative step in regulating the matrimonial affairs among Hindus in India. Codifying marks the evolution of traditional practices and reforms with modern legal principles. The key provision under the Act is Section 5, which enumerates the solemnization of marriage between two Hindus and outlines the conditions for valid marriage, including age, monogamy, and the absence of prohibited relationships.²⁸ **Sarla Mudgal**²⁹, in this case, the court held that a Hindu man converted to another religion solely to remarry is invalid under the Hindu Marriage Act, and the second marriage is considered void. The Supreme Court further clarified the conversion-related issues in detail in **Lily Thomas's case**³⁰ and held that the conversion, particularly with an intention to remarry, was void. Section 7 of the Act states that Hindu marriage should be performed by following certain ceremonies and

²⁶ Aparajit S Rawat and Dr. Haider Ali, *Analysis of ground of divorce under the Hindu marriage act*, IJAR, (2023).

²⁷ Thomas P, *Indian Women Through the Ages*, (1964).

²⁸ Section 5, the Hindu Marriage Act, 1955.

²⁹ Smt. Sarla Mudgal & Ors vs Union of India & Ors, AIR 1995 SC 1531.

³⁰ Lily Thomas & Ors. vs Union of India & Ors, 2000(2)ALD(CRI)686.

rituals based on the interests of the parties by following Saptapadi, and then the marriage becomes complete and binding.³¹ This provision shows the influence of IKS on contemporary codified Hindu law. Sections 11 and 12 of the Act provide grounds for void and voidable marriages, respectively. Marriage laws have been evolving continuously to give marriage legal status in the form of contracts by including emerging concepts like registration, divorce, maintenance, and other aspects by retaining some customary practices.

However, the modern codified 'Hindu Marriage Act of 1955' provides for **divorce under section 13** by listing the grounds on which either spouse may apply for divorce. The theories on which these grounds were adopted under the act were based on fault, breakdown, consent, and customary divorce. The Act recognized divorce as a legal remedy under certain conditions for the dissolution of marriage, which ends all the mutual obligations between husband and wife by putting an end to marriage. Some of the grounds provided under the act are adultery, cruelty, desertion, conversion, mental/physical disorder, communicable disease, renunciation, and other conditions upon which either party can make an application for divorce.³² It also provides special grounds for a wife to avail divorce from her husband³³. The Act also provides for judicial separation, which does not end the marriage immediately but gives time for reconciliation.³⁴ Though it ends all bonds between them, however the concept of maintenance continues with conditions under sections 24 and 25 of the Act, and the same has been discussed in detail under maintenance. In a **landmark case**,³⁵ the Madras High Court held that 'a single act of adultery is adequate grounds for divorce or judicial separation.' In **Joseph Shine case**,³⁶ "the Supreme Court held that adultery is not a crime and repealed Section 497 of the Indian Penal Code, 1860, and states that it has been noticed that two people may separate if one of them cheats, but attaching crime to infidelity is taking things too far. Adultery is a private problem, and how a couple handles it is a matter of extreme privacy and has been left to the couple's discretion. They have the option to proceed with the divorce if they." In the case of **Suresh Babu**³⁷, the Kerala High Court had ruled "that the Hindu Marriage Act, 1955 does not grant any rights to a Hindu spouse who converted to another religion. He or she, on the other hand, exposes himself or herself to a divorce suit by the other spouse based on such conversion. The spouse who is still a Hindu has the right to seek dissolution of the marriage with the partner who has converted to another."

4. Principle of IKS in Restitution of Conjugal Rights

In ancient personal law, marital disputes between spouses were often solved by the elderly members of the family to restore the marriage, and the withdrawal of a spouse from the marital home without sufficient reason was not accepted. This concept of family intervention and cultural practice has been incorporated under Section 9³⁸ of the Act to restore the marital

³¹ Section 7, the Hindu Marriage Act, 1955.

³² Section 13(1), the Hindu Marriage Act, 1955.

³³ Section 13(2), the Hindu Marriage Act, 1955.

³⁴ Section 10, the Hindu Marriage Act, 1955.

³⁵ Subbarama Reddiar vs Saraswathi Amma, AIR 1967 MADRAS 85.

³⁶ Joseph Shine vs Union of India, AIR 2018 SC 4898.

³⁷ Suresh Babu vs Leela, 2006(3)KLT891.

³⁸ Section 9, the Hindu Marriage Act, 1955, Restitution of conjugal right- 'When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.'

obligation and their bonds. **Restitution of conjugal rights** is a legal remedy to restore marital obligation when one spouse inappropriately moves out of his matrimonial house. It is a customary practice heavily influenced by ancient Hindu traditions, which have evolved and codified under the modern Hindu marriage law. In a landmark case, the validity of Section 9 of the Act was challenged, and the court ruled 'that forcing a spouse to cohabit against their will violated Articles 14, 19, and 20 of the Constitution of India because it violates personal liberty and dignity.'³⁹ Later, high courts and the Supreme Court upheld the validity of Section 9 of the Act, that the provision preserves the institution of marriage from unreasonable breakdown⁴⁰, and it aimed at reconciliation rather than coercion.'⁴¹ The concept of **Restitution of Conjugal Rights in the codified modern Hindu law** was deeply embedded in the principles of **Dharma, customs, and religious norms** connecting its roots with the IKS.

V. INTER-CONNECTION OF ADOPTION AND MAINTENANCE IN IKS

A. Ancient concept of Adoption and Maintenance in IKS

Adoption and maintenance are indispensable concepts under the Indian Knowledge System based on Dharma, social, and religious obligation. The concept of adoption was recognized only under the Hindu personal law from ancient times, but **only sons were adopted**, restricting daughters under the uncoded Hindu law, and it is purely in religious aspects. No other personal laws, such as those of Muslims, Christians, or Parsi, had recognized the adoption. The doctrine of adoption was widely recognized under Hindu law as being used to perform certain religious obligations and secure perpetual succession. During the Vedic period, adoption was considered a sacrament with the object of performing funeral rites and preserving one's lineage. The concept of adoption can be seen from the Vedic period, and ancient texts like '**DattakaMimamsa, Dattaka Chandrika, Manu, Yagnavalkya, Gautama, Kautilya**, and other texts' define the principle of adoption.⁴² Adoption is more religious, and it is essential to perform **Datta Homam** to sanctify the process of adoption. Datta Homam is a spiritual ritual that involves the offering of ghee and other sacred substances to holy fire to symbolize the surrender of the child by the biological parents to the adoptive parents in the presence of Lord Dattatreya, a deity representing the divine trinity of Brahma, Vishnu, and Shiva.⁴³ Simultaneously, **the concept of maintenance** has been profoundly connected to the Indian Knowledge system since ancient times and based on ancient Hindu texts like **Manusmriti, YajnavalkyaSmriti, and Narada Smriti**, it is the religious and moral duty of the man to take care of his wife, minor children, aged parents, and other dependents. It is the moral and social obligation of the man to maintain their dependents, and it generally includes providing food, shelter, and money, which is fair and reasonable. Over time, these customary obligations have developed into legal principles.

³⁹ T. Sareetha vs T. Venkata Subbaiah, AIR1983AP356.

⁴⁰ Harvinder Kaur vs Harmander Singh Choudhry, AIR1984DELHI66.

⁴¹ Smt. Saroj Rani vs Sudarshan Kumar Chadha, AIR, 1984 SCR (1) 303.

⁴² Siya Shruti, *Adoption laws in India: Reviews and recommendation needed*, SSRN, (2012).

⁴³ Datta Homam in Hindu Adoption, 2024, Assessed at <https://lawbhoomi.com/datta-homam-in-hindu-adoption/> on 25.03.2025.

B. IKS and Modern Laws of Hindu Adoption and Maintenance

The Hindu Adoption and Maintenance Bill, 1956, was introduced in Rajya Sabha on August 23, 1956, and referred to the joint committee for further recommendations. The Bill recognized the adoption rights for women for the first time and provided certain other conditions for adoption. The maintenance provisions were mainly codified under this act, giving maintenance to wives, daughters-in-law, aged parents, minor children, and other dependents. Both houses of Parliament passed the Bill, which came into force on December 21, 1956, with the president's assent by retaining some customary principles.

1. Adoption Under Modern Codified Hindu Law

All the essential legal principles of adoption among Hindus are regulated by **the Adoption and Maintenance Act of 1956**, and for a valid adoption, certain conditions defined under section 6⁴⁴ of the act need to be strictly followed; if not, the adoption will be considered void. Apart from these conditions, certain other conditions must also be adhered to make the adoption valid, including:

- The adoptive parents must be Hindu, have a sound mind, have completed 18 years of age, and can adopt a son or daughter with the spouse's consent if they are married.⁴⁵
- “If a son is being adopted, the adoptive parents must not have a Hindu son, son’s son, or son’s son’s son, and if a daughter is being adopted, the adoptive parents must not have a Hindu daughter or son’s daughter.
- If a male adopts a daughter, he must be at least twenty-one years older than the person to be adopted, and if a female adopts a son, she must be at least twenty-one years older than the person to be adopted.
- If a child is adopted once, the same child cannot be adopted by others. The process of adoption requires the transfer of a child from its birth family to its adoptive family. The performance of dattahomam is not essential for the validity of an adoption.”⁴⁶

It was ruled that for a valid adoption, “not only the person adopting should be capable of lawfully taking in adoption, but the person giving must be capable of lawfully giving in adoption and the person adopted must be capable of being lawfully taken in adoption.”⁴⁷ All these three conditions must be satisfied, and it is not sufficient that only one of them be satisfied.”⁴⁸ **The doctrine of relation back** plays a significant role in the adoption process. As per the black’s law dictionary, “the doctrine is defined as a principle that an act done today is considered to have been done at an earlier time.” It means an act done by a person in the present can be linked with the previous acts. Where this doctrine grants the adopted child to inherit the property of the adopted parents retrospectively, but in modern law, the rights of the adopted child in the adoptive family are limited.⁴⁹ The property rights of the adoptive

⁴⁴ Section 6, the Hindu Adoption and Maintenance Act, 1956: “Requisites of a valid adoption- No adoption shall be valid unless: (i) the person adopting has the capacity, and also the right, to take in adoption; (ii) the person giving in adoption has the capacity to do so; (iii) the person adopted is capable of being taken in adoption; and (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.”

⁴⁵ Section 7 and 8, the Hindu Adoption and Maintenance Act, 1956

⁴⁶ Section 11, the Hindu Adoption and Maintenance Act, 1956

⁴⁷ Section 6, The Hindu Adoption and Maintenance Act, 1956.

⁴⁸ Smt. Prafulla Bala Mukherjee vs Satish Chandra Mukherjee And Ors, AIR1998CAL86.

⁴⁹ Section 12, the Hindu Adoption and Maintenance Act, 1956

family are from the date of adoption, which highlights a significant departure from the old Hindu law. In **Vasant and Anr. vs Dattu and Ors**⁵⁰, the Supreme Court clarified “the operation of the doctrine concerning the proprietary rights of an adopted child. The Court held that Proviso (c) to Section 12 does not prevent the adopted child from claiming his or her share in the adoptive family, but it does prevent the child from divesting any person of property vested before the adoption”. The same has been held in the **Sawan Ram v. Kalawanti**⁵¹ in which the Supreme Court held that an adoption by a female Hindu would benefit not only herself but also her deceased husband. The Court held that the adopted child is deemed a member of the deceased husband's family from the date of adoption and acquires the same inheritance rights as a natural son. It clarified that the adopted child loses all rights in the biological family and gains equivalent rights in the adoptive family, including property rights. Earlier, only sons were adopted because they were allowed to do specific religious performances, but the modern codified law on adoption had approved the adoption of both sons and daughters with certain conditions to be followed.⁵²

2. Maintenance under Modern Codified Hindu Laws

Maintenance generally refers to financial support given by one to another due to some family relationships or legal obligation. Under Hindu law, maintenance is provided under the Hindu Marriage Act of 1955, the Hindu Adoption and Maintenance Act of 1956, and The Code of Criminal Procedure (CrPC), 1973. According to Section 3(b)⁵³ Maintenance includes provision for food, clothing, residence, education, and medical expenses, and in the case of an unmarried daughter, it also consists of the reasonable expenses of a marriage. Two types of maintenance, namely, interim and permanent maintenance, were granted under **the Hindu Marriage Act of 1955**. Section 24 provides interim maintenance during the pendency of the proceedings. The wife or the husband can apply to the court if they don't have any independent sufficient income to support the expenses of the proceedings, and the court may grant maintenance if it is reasonable. It is provided that the application for interim maintenance shall be disposed of within sixty days.⁵⁴ In the **Anu Kaul case**, the appellant-wife filed an interim maintenance under Section 24 of the Hindu Marriage Act, 1955, in the lower court, which was granted. The husband refused to pay the maintenance and filed an appeal before the Supreme Court, stating her working conditions and earnings. However, the Court directed the husband to pay ₹ 5,000 per month towards their daughter's maintenance during the pendency of the appeal, prioritizing the child's welfare.⁵⁵ It also grants permanent maintenance under Section 25 after the disposal of the proceedings, which entitles the wife or husband to receive a gross or monthly sum until the lifetime or the applicant remains remarried.⁵⁶

⁵⁰ AIR 1987 SC 398.

⁵¹ AIR 1967 SC 1761

⁵² Section 10, The Hindu Adoption and Maintenance Act, 1956: “No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely: (i) he or she is a Hindu (ii) he or she has not already been adopted (iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption (iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.”

⁵³ Section 3(b), The Hindu Adoption and Maintenance Act, 1956.

⁵⁴ Section 24, The Hindu Marriage Act, 1955.

⁵⁵ Anu Kaul vs Rajeev Kaul, AIR 2009 SC 121

⁵⁶ Section 25, The Hindu Marriage Act, 1955.

However, the detailed provisions related to maintenance were provided under **the Hindu Adoption and Maintenance Act of 1956**. It provides maintenance to wife, widowed daughter-in-law, parents, Children (legitimate or illegitimate), and other dependents. It grants maintenance rights to a Hindu wife from her husband during marriage and even after separation or divorce when she is not able to maintain herself during her lifetime until she remains unmarried, but it ceases when she converts to another religion.⁵⁷ A widowed daughter-in-law is recognized to claim maintenance from her father-in-law only when she cannot maintain her through her own earnings or property. However, this obligation cannot be enforceable when the father-in-law has insufficient means to provide maintenance and also ceases when she gets remarried.⁵⁸ It provides an obligation to the Hindu to maintain their minor children, including illegitimate children, and also to protect aged or infirm parents, including childless stepmothers.⁵⁹ In '**Jasbir Kaur Sehgal v. District Judge, Dehradun**, the court held that an unmarried daughter is authorized to claim maintenance under The Hindu Adoptions and Maintenance Act, 1956, and the father is required to maintain her unmarried daughters, even if they are living separately with their mother.⁶⁰ The Act also provides that the heirs of the deceased are bound to maintain the dependents from the inherited property from the deceased⁶¹, as included under section 21.⁶²

In addition to this, **Section 125 to 128 of the CrPC, 1973** also provides maintenance to wives, children (legitimate or illegitimate minor children including unmarried major daughters), and parents who could not maintain themselves, and it applies to all irrespective of their personal law. If any person has sufficient means but fails to maintain his wife, children, and parents, they can apply to the magistrate to claim for maintenance, and the magistrate, based on such proofs, may order for monthly allowance and such other orders which are necessary.⁶³ In a case⁶⁴, Rohtash Singh applied for divorce because his wife left her matrimonial house without sufficient reason, citing desertion. During the divorce proceedings, his wife filed for **maintenance** under **Section 125 CrPC**, which the family court granted, and the same has been held in the appeal by the High Court. Later, he appealed before the Supreme Court, which also affirmed that **desertion is not a valid defence** to deny maintenance and held that even if a wife is divorced on the grounds of desertion, she is entitled to claim maintenance under **Section 125 CrPC**. The Court further held that a divorced woman is entitled to maintenance if she is **unable to support herself** or remains **unmarried**, her former husband is legally obligated to provide her financial support.

⁵⁷ Section 18, The Hindu Adoption and Maintenance Act, 1956.

⁵⁸ Section 19, The Hindu Adoption and Maintenance Act, 1956.

⁵⁹ Section 20, The Hindu Adoption and Maintenance Act, 1956.

⁶⁰ Smt. Jasbir Kaur Sehgal vs The District Judge Dehradun & Ors, AIR 1997 SC 3397.

⁶¹ Section 22, The Hindu Adoption and Maintenance Act, 1956.

⁶² Dependents include 'the father and mother, the widow (unless she remarries), and the son or male descendants (including grandsons and great-grandsons) as long as they are minors and unable to obtain maintenance from their parents' or grandparents' estate. It also includes unmarried daughters and their female descendants (granddaughters and great-granddaughters) so long as they remain unmarried and are unable to obtain maintenance from their parents' or grandparents' estate. Additionally, widowed daughters can claim maintenance if they cannot support themselves through their deceased husband's estate, their children, or their father-in-law's estate. Widows of sons or grandsons of the deceased are also entitled to maintenance unless they remarry, provided they cannot obtain support from their husband's estate, their children, or their father-in-law's estate. Illegitimate minor sons and unmarried illegitimate daughters are also recognized as dependants'.

⁶³ Section 125, The Code of Criminal Procedure, 1973.

⁶⁴ Rohtash Singh Vs. Ramendri and Ors, AIR 2000 3 SCC 180.

With regard to the quantum of maintenance, the court has the discretion to determine it based on the specific nature of the cases, considering the principle of fair, just, and reasonable. The court can determine the quantum of maintenance by considering various factors like standard of living, earnings of the parties, property, financial requirements, and number of dependents, as well as age, health, and liabilities of parties.⁶⁵ In '**Alphonsa Joseph v. Anand Joseph**', the High Court of Kerala held that a wife cannot be denied maintenance solely because she is qualified and capable of earning. The court emphasized that the husband's duty to provide financial support does not cease merely because the wife is educated or employable. The Court clarified that even if the wife has educational qualifications or the potential to earn, it does not automatically disqualify her from claiming maintenance, especially if she is not employed or is unable to maintain herself. The ruling reinforces the protective intent of Section 125 CrPC, ensuring that a wife is not left financially vulnerable, regardless of her qualifications or earning potential.⁶⁶ The Supreme Court, in a landmark judgment, acknowledges the concept of a **Live-in relationship and conditions to claim maintenance**. It laid some conditions to determine the relationship in the nature of marriage, "the couple must hold themselves out to society as akin to spouses and must be of legal age to marry, they must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time, the parties must have lived together in a 'shared household' as defined in Section 2(s) of the Domestic Violence Act, 2005."⁶⁷ The transformation of adoption and maintenance from religious to legal obligation reflects the importance of maintenance and its influence in contemporary legal jurisprudence.

VI. INFLUENCE OF IKS ON HINDU INHERITANCE AND SUCCESSION

1. IKS Within Inheritance And Succession in Ancient Period

In the **Vedic period**, there was no concept of individual property. Lands were owned by the king or the village council and distributed to the people for cultivation and cattle-rearing, promoting settled life. Movable property like cows and cattle were considered more valuable than immovable property. Property rights were not absolute, and they later became more centralized, with conditions to pay land revenue to the King. The property was given significant importance in the socio-economic aspects, and ancient texts like the Manusmriti and the Dharmashastras governed the concept of property like inheritance, division, and liabilities. Male descendants inherited the property of the Hindu Joint Family over the daughter to preserve the lineage and continuity based on the 'principle of putrasantana'. Later, the Mitakshara school, followed in several parts of India, gives vested property rights to males in ancestral property from birth by following a coparcenary system based on survivorship. Under the Mitakshara school, the concept of a coparcener, which means a person born in a HUF becomes a joint heir to the ancestral property, has a significant influence. It is not created by the acts of parties, and it is limited only to male members who descended from the same male ancestors within three generations.⁶⁸ It is based on the fact that only men were considered the heirs of ancestral property because they were only allowed to perform funeral rites, and females were not considered as coparceners. Most often,

⁶⁵ Section 23, The Hindu Adoption and Maintenance Act, 1956.

⁶⁶ Kerala HC, OP(Crl.) No. 274 of 2018.

⁶⁷ D. Velusamy v. D. Patchaiammal, AIR 2011 SC 479.

⁶⁸ Prof. (Dr.) Ranbir Singh Dr. Vijender Kumar and Dr. K. Vidyullatha Reddy, *Coparcenary rights of women in Andhra Pradesh*. NALASR University.

ancestral property is observed as joint family property and male family members inherit the property after the ancestor's death. Whereas Mitakshara School restricted an absolute right of women on ancestral property and granted rights over the property received from their father or husband as gifts with limitations.⁶⁹ Mitakshara school follows four ways to inherit the ancestor property based on birth, adoption, will, and survival, and also through coparceners. Contrary to that, the **Dayabhaga school**, prevalent in Bengal and some parts of Assam, follows a most reformistic approach to inheritance, allowing sons and daughters to have equal rights in ancestral property. In Dayabhaga school, 'son does not acquire an interest in the ancestral property by birth, which arises after the father's death and, the concept of a coparcener is defined in a strict sense that the son has no right to ancestral property by birth, and it arises only after the father's death.' As long as the father is alive, there is no coparcenary relation between him and his male heir, and it arises only after his death, leaving two or more male heirs. Women were entitled to share in ancestral property under the Dayabhaga law through the doctrine of representation.⁷⁰

2. The Essence of IKS in the Codification of the Hindu Succession Act, 1956:

Inheritance and succession under the Indian Knowledge System reflect a blend of custom, philosophical, and legal principles rooted in Dharma. Ancient texts like Manusmriti, Yajnavalkya Smriti, and Narada Smriti provide the basic principle of inheritance, and two major schools of Hindu law based on the commentaries prevailing across India have provided different modes of inheritance over centuries. Inheritance and succession were subjected to huge legislative reforms during the British era, and the Hindu Code Bill, 1948, was introduced by the select committee suggesting equal share to the daughters. However, the new draft bill relating to inheritance and intestate succession was introduced in Rajya Shaba on December 22, 1954, marking a remarkable discussion in the house based on the Rau Committee's report, which suggested only half share to the daughter. As a result, the members recommended a better status for women with regard to share in the intestate property and joint family property because, under Mitakshara school, only sons were given the right to joint family property as a reason of birth and coparcenary rights and adopting same principle could do injustice to the property rights of daughters. A sub-committee was constituted to discuss abolishing or retaining the principle of Mitakshara coparcenary because most parts of India follow this system. After discussion and recommendations, the committee suggested that it is hard to take away the concept of Mitakshara coparcenary but agreed to modify and introduce changes to the system to incorporate the law that would apply uniformly to all Hindus and recommended the daughter to be entitled to inherit equally with the son, and after long debates in Rajya Shaba and Lok Shaba the Bill was passed and received President's assent and came to force on June 17, 1956. Following this, the inheritance and succession of property among Hindus in India are governed by **'the Hindu Succession Act of 1956,'** which codified and formalized the rules of inheritance and succession, which were earlier regulated by ancient texts, customs, and judicial decisions. The Act has the essence of **traditional Hindu jurisprudence**, balancing ancient inheritance rules with modern notions of gender justice and equality. Some of the integration of traditions followed in IKS with the modern reformed Act is the principle of the coparcenary, and the Hindu Joint

⁶⁹ Dr. Partha Priya Das, Dr. Moni Deepa Das, and Dr. Pompi Das Sengupta, *A Comparative Analysis of Dayabhaga and Mitakshara Systems in the Context of Women's Property Rights*, African Journal of Biomedical Research, 2024.

⁷⁰ Ibid 69.

Family system was recognized under the Hindu Succession Act of 1956, which acknowledged only male descendants as coparceners; later, **The Amendment Act of 2005** extended the coparceners rights to daughters. Under Hindu traditions, the inheritance was based on the sapinda relationship, which was adopted under Class I and Class II of the Act.

3. IKS and Property Rights of Women: From Vedic to Coparcenary Rights

According to **Vedic principles**, property rights were extended to ‘unmarried daughters and married daughters without brothers, but married daughters with brothers were restricted.’⁷¹ Women had equal status with men in the Vedic period and actively participated in religious rituals such as yajnas (sacrificial ceremonies) and offering funeral oblations (pindas) to their ancestors. Since property rights were historically linked to one's role in providing spiritual offerings, women were recognized as rightful heirs to ancestral property, and their inheritance rights were proportionate to their participation in these sacred rites, reflecting their integral role in both religious and family traditions.⁷² **Later Vedic period**, it became a social norm that women could inherit only when a family was without male heirs, leading to the decline in women's status in society, considering various factors like perceived physical weakness, societal beliefs, and incapacity to perform religious rites. This shift was reinforced by authoritative figures like Baudhayana, a revered sage and the founder of one of the Yajurveda schools, who explicitly excluded Hindu women from inheriting property, basing his argument on a Sruti text that claimed women were “destitute of strength and of a portion.”⁷³ This led to the decline of women's right to inheritance, and over time, it influenced legal and social structures, diminishing women's role in economic and spiritual domains. During the **Middle Ages**, certain legislators, such as Gautama, Apastamba, and Sankha, included women—widows, daughters, and mothers—as heirs in inheritance lists as other male relatives, spiritual brothers, teachers, and priests took precedence, and in practice women rarely inherited property. During the **Smriti period**, **Yajnavalkya, Brihaspati, Narada, and Manu** acknowledged inheritance rights to women with restrictions on not to mortgage, sell, or gift without male authority. While Brihaspati permits widows to control movable property but not immovable assets, Katyayana further limited the widow's rights to only hold her husband's share without disposing it. Thus, the Smriti period formally gave rights to women as heirs, but their inheritance was conditional, limited, and subject to societal norms. Following the **Smriti period**, the inheritance rights of women were governed by **commentaries** based on Smriti texts. The **Mitakshara and Dayabhaga** schools recognized the ‘**widow, daughter, mother, paternal grandmother, and paternal great-grandmother**’ as heirs but differed in their approach to female inheritance. The **Mitakshara school** did not explicitly reference **Vedic exclusions of women from inheritance**, while the **Dayabhaga school** acknowledged female heirs under **specific Smriti texts** but upheld Baudhayana's doctrine of **general female incompetence to inherit**.⁷⁴ The Benaras and Madras sub-schools of Mitakshara strictly followed the Vedic restrictions on women's inheritance except when they were specifically granted, whereas the Bombay and Mithila sub-schools of Mitakshara

⁷¹ Vasu Aggarwal, *Relinquishing a minor's share in devolved property: A case comment on M. Arumugam v. Ammaniammal*, NALSAR Student Law Review, (2021).

⁷² Sindhu Thulaseedharan, *Personal Law and Property Rights of Hindu Woman in India - The Need for Codification*. Kathmandu School of law review, 6, (2018).

⁷³ Prakash Chand Jain, *Women's Property Rights under Traditional Hindu Law and The Hindu Succession Act, 1956: Some Observations*, The Indian Law Institute.

⁷⁴ Ibid 75

recognized the inheritance rights of women, including stepmothers, daughters-in-law, and illegitimate daughters.

‘**Stridhana**’ is derived from the Sanskrit words *Stri* and *Dhana*, which means woman property.’ A woman exclusively owns it under Hindu law, including movable and immovable properties gifted by her father, husband, or relatives, and also includes her own earnings. Women have absolute control over the stridhana property; unlike other properties, women can freely use it without their husband's consent. In ‘1937, the Hindu Women’s Right to Property Act’ was enacted to extend certain property rights to widows to inherit their deceased husband’s property for their maintenance with limitations.⁷⁵ The word stridhana has often been misinterpreted as dowry, which has been prohibited under the Dowry Prohibition Act, 1961. Dowry means “any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage; or by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dowry or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.”⁷⁶ Stridhana differs from dowry in several aspects. It is given voluntarily to the women and not by demand, given to them during/ after marriage, not to the groom’s family, and women have absolute rights to their stridhana property.⁷⁷ **Hindu Joint Family (HJF)** is a unique feature in Hindu Jurisprudence, which is composed of all persons lineal descended from a common ancestor, including their wives and unmarried daughters, but does not include married daughters because ‘she becomes a member of her husband’s family and loses her coparcenary rights in ancestor property.’⁷⁸ Coparcenary means joint ownership in a Hindu Joint Family property. It is an integral part of the Mitakshara School. Only male members by birth in HJF could acquire coparcenary rights to inherit the ancestral property like male members of an HJF, ‘his son, son’s son, and son’s son’s son’ were considered to have coparcenary rights.⁷⁹

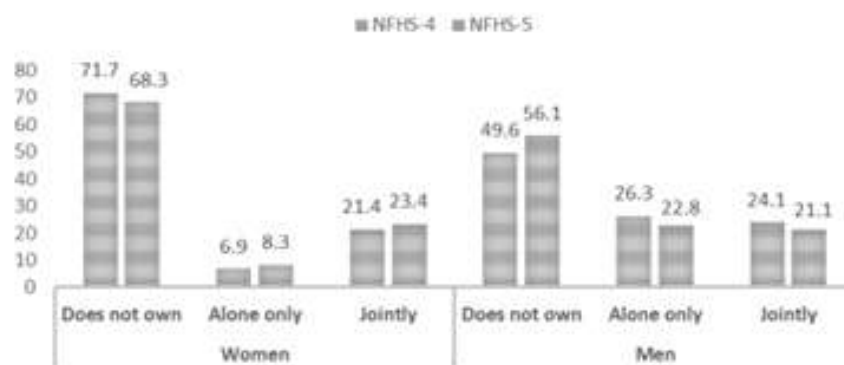


Figure 1: Trends in ownership of land by women and men in India

⁷⁵ *The Hindu Women’s Right to Property Act, 1937.*

⁷⁶ Section 2, Dowry Prohibition Act, 1961.

⁷⁷ Naureen Hera and Asif Pasha Arief Batcha, *Stridhan: The Misunderstood Concept of Women's Property*, (2023).

⁷⁸ *Surjit Lal Chhabda v. CIT*, 1976 3 SCC 142

⁷⁹ *State of Maharashtra v. Narayan Rao*, 1985 2 SCC 321.

The graph depicts trends in land ownership by women and men in India, comparing 'data from NFHS-4 (2015-16) and NFHS-5 (2019-21).' For women, the percentage of those without land ownership decreased from 71.7% in NFHS-4 to 68.3% in NFHS-5. Individual ownership increased from 6.9% to 8.3%, and joint ownership rose from 21.4% to 23.4%, indicating a positive shift towards greater female land ownership. In contrast, for men, the percentage without land ownership increased from 49.6% to 56.1%, whereas individual ownership declined from 26.3% to 22.8%, and joint ownership decreased from 24.1% to 21.1%, reflecting a decline in male land ownership. Overall, the data reveals a gradual improvement in women's land ownership, both individually and jointly. In contrast, men's ownership, particularly sole ownership, has declined, suggesting a potential move towards greater gender parity in landholding.

Later, The '**Hindu Succession Act, 1956**' brought significant changes by redefining the property rights of women. It abolished the concept that women could not inherit joint family property by granting absolute ownership over inherited property, but daughters were still excluded from the concept of coparcenary rights. Later, that Act was amended in 2005 by granting equal coparcenary rights to daughters, making them joint owners of ancestral property, and allowed daughters to demand partition in joint family property with retrospective effect. The history of Hindu inheritance laws witnessed a gradual move from patriarchal norms to gender-inclusive reforms in modern times.

VII. CONCLUSION: THE FUTURE OF IKS WITHIN HINDU PERSONAL LAW

The **Uniform Civil Code (UCC)** is a legal framework provided under Article 44 to replace personal laws based on religion with common civil law for all governing matters such as marriage, divorce, maintenance, adoption, inheritance, and succession.⁸⁰ At present, personal laws based on Hindu, Muslim, Christian, and Parsi result in a multiplicity of legal proceedings. So, the primary objective of legislating UCC is to promote uniformity and equality with respect to the cultural heritage, traditions, and culture of diverse groups in India. India's **cultural and religious diversity** makes the application of a **uniform code complex** and lies in harmonizing tradition with modernity and fostering legal justice, equality, and cultural integrity, ensuring that legal uniformity does not take away the diversity of India. The codification of unified personal laws for all must be connected to the history and culture of the particular religion and must aim to bring unity with constitutional spirit, social theories, and cultural experience with respect to pluralistic Indian society.⁸¹

Hindu Personal Law, which regulates marriage, divorce, maintenance, adoption, and inheritance, has developed over centuries by composing the principles of the Indian Knowledge Systems like ancient legal texts, customs, and philosophical principles of Dharma, Nyaya, and justice. The codification of Hindu law has modified customary practices and introduced unified legal principles common to all Hindus by retaining some unique traditions and cultures. The growing influence of globalization, gender equality, and individual autonomy (LGBTQ+ rights) calls for changes in the existing Hindu personal laws, demanding the interpretation of IKS to align with constitutional and modern principles. Ancient texts like Manusmriti and Naradasmriti recognized the existence of third-gender and

⁸⁰ Article 44, Constitution of India, 1950.

⁸¹ Chanchal Kumar Singh & Mritunjay Kumar, *The uniform civil code debate in India: Conceptual Predicaments, Historical Legitimacy, and Challenges to Pluralism*, Shimla Law Review, 2022.

same-sex relationships, but the Hindu personal laws did not explicitly acknowledge the rights of LGBTQ+ rights related to ‘marriage, divorce, maintenance, adoption, and inheritance.’ A legal reform is needed to accommodate the LGBTQ+ with the Hindu personal law frameworks to promote inclusivity and non-discrimination. Society evolves based on the needs of people and we need to accept the emerging aspects of Hindu Law and its drastic changes related to marriage, divorce, maintenance, adoption, and succession. In modern times, the lack of performance of various religious or traditional practices has changed the basic nature of Hindu law due to Western education and the modernization of a civilized society, giving priority to individual rights. In the **Navtej Singh Johar case**,⁸² a writ petition was filed in the Supreme Court in 2016 “to recognize the right to sexuality, sexual autonomy, and choice of a sexual partner to be part of the right guaranteed under Article 21 of the Constitution of India and to declare Section 377 of Indian Penal Code, 1860 which penalized Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, as unconstitutional because it infringes Articles 14, 15, and 21 of the Constitution”. The Supreme Court, with the majority, held that Section 377 is unconstitutional as it violates the right to privacy and dignity granted under Article 21, relying on Justice K.S. Puttaswamy case,⁸³ and held the right to choose a partner for sexual relationships is entirely a matter of personal choice which cannot be restricted.

The origin and the growth of Hindu law were deeply interconnected with the Indian Knowledge System (IKS), reflecting a dynamic legal framework that has adapted to changing societal norms while preserving its philosophical principles. As enshrined in Vedic texts, Smritis, and later commentaries, the principles of Dharma laid the foundational norms governing marriage, divorce, maintenance, adoption, inheritance, and succession. Over a period of time, these traditional practices were codified as modern legal frameworks with necessary changes. In Ancient Hindu law, **marriage** was considered as eternal, sacrament, and indissoluble union by religious rites. However, the codified Hindu Marriage Act of 1955 introduced the concept of **divorce** and recognized marriage as a social contract, and included provisions for the dissolution of marriage based on fault and consent theory. This marks essential changes in the nature of marriage, reflecting the integration of modern legal principles into Hindu personal law. Under Hindu law, **Maintenance** was governed by Dharma and it laid a duty on the husband to maintain his wife and dependents. ‘The Hindu Adoptions and Maintenance Act of 1956’ granted this as a statutory right extending maintenance to wife, widow, children, aged parents, and dependents. **Adoption** was purely religious in nature during ancient times, and only sons were adopted to perform certain religious rites. With the ‘Hindu Adoptions and Maintenance Act of 1956,’ adoption became a legal right, and it extended that both male and female can adopt either a son or daughter, and emphasis on the welfare of the child reflecting a shift from the religious objectives. **Inheritance and succession** in the ancient period were regulated by religious texts and schools, which provided only limited inheritance rights to women and granted absolute rights to men. This has been modified under ‘the Hindu Succession Act of 1956’ by granting equal rights to women. The codified modern Hindu personal laws balance the traditional and contemporary values of justice and equality and this shows the influence of philosophical and ethical principles of IKS within codified Hindu personal law.

⁸² Navtej Singh Johar & Others vs. Union of India and Others, 2018 1 SCC 751.

⁸³ Justice K.S. Puttaswamy v. Union of India, AIR 2017 SC 4161.

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