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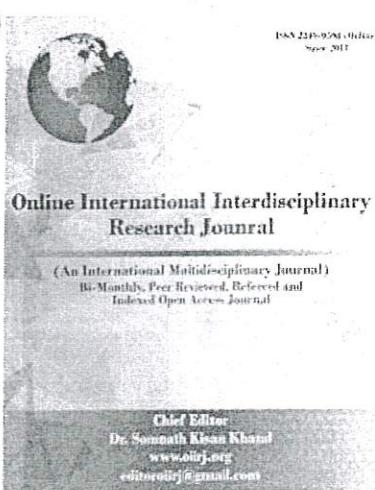
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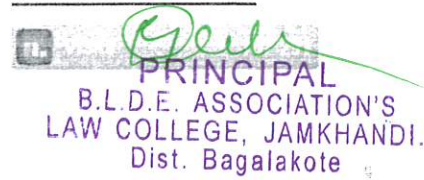
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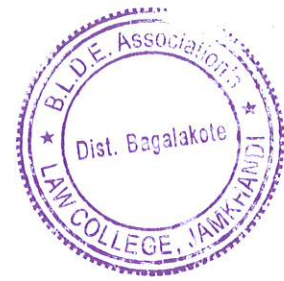
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An Analytical View on Restitution of Conjugal Rights under Hindu and Muslim Personal Laws

Raghuveer Kulkarni¹

¹ Author is a Research Scholar at Karnataka State Law University, Hubballi, Karnataka, India

Abstract

The Institution of Marriage evolved out of the gradual processes. Though it was initially based on the practices, it finally entered into the state of legal recognition through the personal laws. The Institution of Marriage is viewed from many different angles, for that is intimately connected with the crude customs of a locality. Generally speaking marriage is the act of marrying, which confers status on a union of man and woman for some legal purposes. The Institution of Marriage provides certain rights and liabilities to both Man and Woman. And one of them is the right to Maintenance.

However, the Maintenance Right available in India is not uniform. In India, matrimonial proceedings reflect the diversity of laws throughout the country relating to Maintenance. There are different standards in different personal laws with respect to eligibility to claim maintenance by the spouses. In rare branches of Personal Laws both the spouses are entitled to maintenance, but the majority have favored wives. The judicial approach to the Maintenance of the Spouses under Personal laws is more realistic, pragmatic and in conformity with the valuable goal of a welfare state. The role of the legislature, however, has not been encouraging and uniform. The Hindu woman is protected through certain legislations in which she can get a good matrimonial remedy. Whereas the Muslim woman is not supported by any such kind of laws. Hence the position of a Hindu woman is better than a Muslim woman with regard to the Maintenance Right.

KEYWORDS : Restitution of Conjugal rights, Maintenance, Constitution, Supreme Court, Marriage, Spouse, Husband, Wife

Introduction:

The remedy of restitution of conjugal rights was neither recognised by the *Dharmashastra* nor did the Muslim law made any provision for it. It came during the British ruling in India. It is remarkable that this was the only matrimonial remedy which was made available by the British rulers of India to all the Indian communities under the general law. In England, it came from the Jewish law. The Ecclesiastical courts enforced this remedy by excommunicating the guilty spouse. The statute of George III substituted excommunication with imprisonment.

Like any other anachronistic remedies, the restitution of conjugal rights dates back to feudal England, where marriage was primarily a property deal and the wife and the children were part of man's possessions as other chattels. Thus, the wife was treated like a cow, who if ran away from the master's shed could be brought back. At that time a decree could be executed by arresting the wife. It is remarkable that many other outdated common law actions were gradually abolished but they survived in matrimonial law and from English matrimonial law they were exported to the

¹ Author is a Research Scholar at Karnataka State Law University, Hubballi, Karnataka.



reasonable cause' has been substituted for 'without lawful ground'. The term 'reasonable excuse' or 'reasonable cause' has a well established meaning under the English law, the Hindu Marriage Act and the Special Marriage Act and it is submitted that there is no reason why the same meaning should not be ascribed or the same defences should not be available to the defendant under Muslim law. In addition to these defences, some more may be available under Muslim law. Thus, where a ground for divorce is available to the wife or where the marriage is void or irregular, the husband's petition for restitution of conjugal rights should not succeed. Although it is submitted that the husband has the right to resist the wife's suit for restitution of conjugal rights on the same grounds on which the wife can resist the husband's suit.

There is some ancient authority for the view that the court may order a husband to be attentive to his wife and where he has more wives than one, to be just and equitable to all of them. It is submitted that whether courts will do so in modern India is doubtful, since courts have no means to enforce such orders. In *Jani Vs. M.D. Khan*,²⁶ a full bench of the Jammu and Kashmir High Court took the view that, "a husband was living as *Khana damad* and the wife refused to cohabit with him in her father's house, for no fault of his, the husband's suit for restitution of conjugal rights will be decreed".

Conclusion:

Like any other outdated remedy, the restitution of conjugal rights dates back to the feudal England, where the marriage was primarily a property deal and the wife and the children were part of man's possessions as other chattels. The remedy finds its origin from the Ecclesiastical Courts of England. Before 1813, the sanction of such a decree was excommunication. Later on, Six years imprisonment was substituted by the English Parliament. Hence a decree could be executed by arresting the wife. It is remarkable that, many other anachronistic common law actions were gradually abolished but they survived in English matrimonial law. The decree could no longer be executed by the arrest of the respondent but it could be by the attachment of the property.

However, afterwards this mode of execution of the decree was also abolished. The non-compliance of the decree amounted to constructive desertion, thus becoming a ground for divorce. The modern English law has fortified wife's position by making adequate financial provisions for her. The British Law Commission in its report submitted on 9th July 1969 recommended for abolition of this remedy. This has resulted in Section 20 of the Matrimonial Proceedings and Property Act, 1970, which has abolished the right to claim Restitution of Conjugal Rights from the English Courts.

It is submitted that, in modern matrimonial law, the remedy of restitution has no place. It has been abolished in most countries including England and there seems to be no reason why India should retain it in the personal law of any Indian community. Hence in India also, this matrimonial remedy has to be abolished.

²⁶ 1970 J&K 154 (FB).

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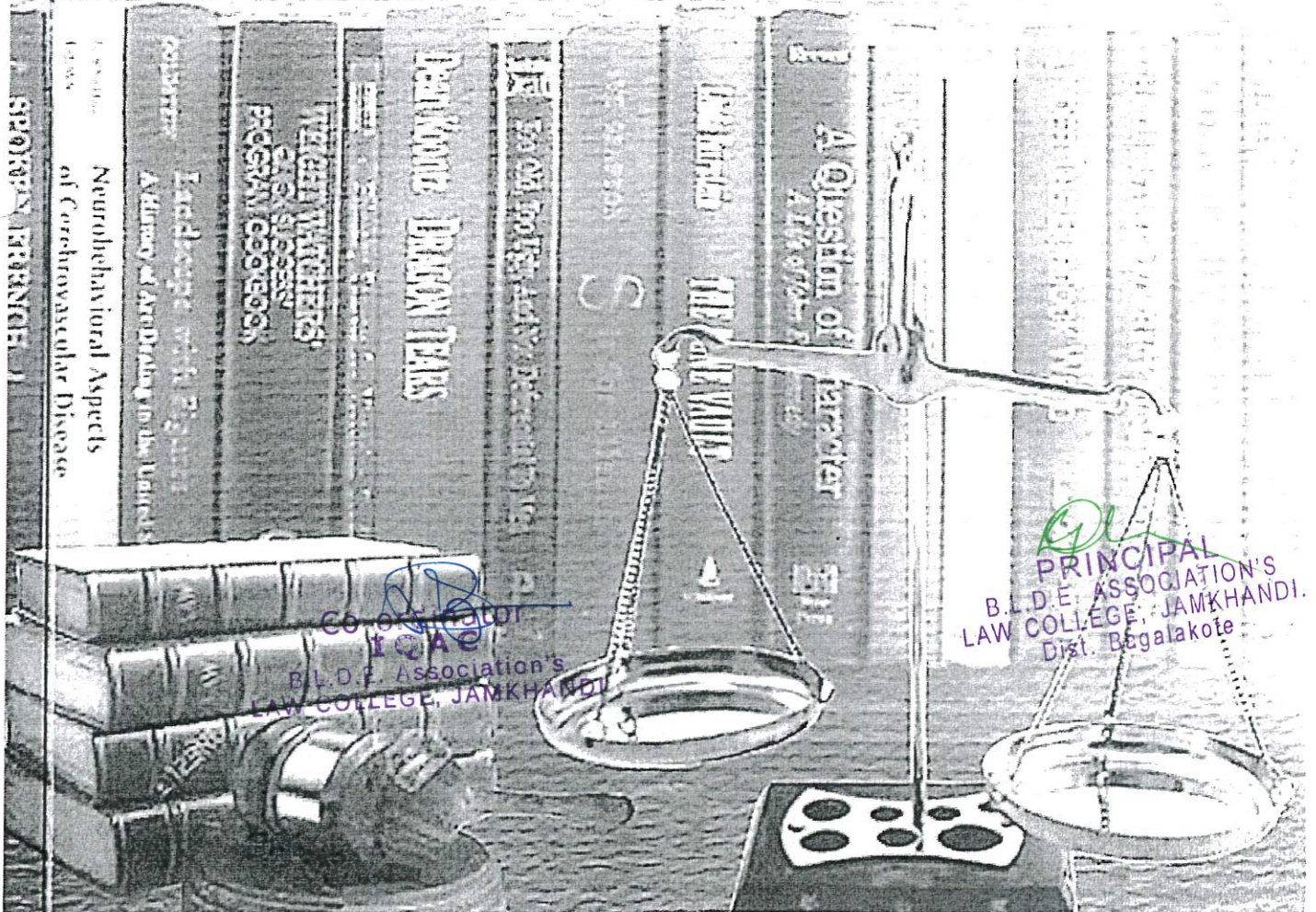
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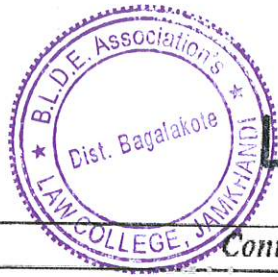
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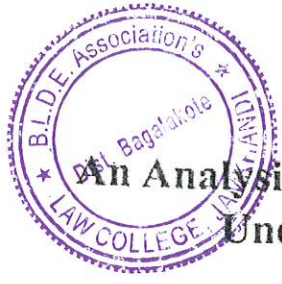
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An Analysis of Reception of Personal Laws Under Indian Legal System

Mr. Raghuvveer Kulkarni¹

Introduction

The personal laws are also referred as family laws. Family law is such a law concerning either with the formation or dissolution of the family relationships and that of governing the rights and obligations, both personal and proprietary, of members of the family, that flow from these relationships. By controlling the institutions of marriage, adoption, guardianship and property rights of members, it determines the very course of human life. It moulds the intra-familial sensitive bonds. Since love, harmony and affection are the foundations of family life, finding perfect solutions to the family problems in the legal instrument is a difficult task. State cannot always compel the parents to love their child, or a child its parents, or a husband to love his wife, or a wife her husband.² To the thickest of sentiments and emotions, traditions and strong mindsets, it can penetrate only minimally. But it can remedy exploitations or injustices in intra-familial relations. In spite of being law of imperfect obligations, family law's significance in keeping the family structure intact and family relationships fair, is great from the perspective of social utility.³

Personal laws serve two purposes. Firstly, these laws seek to control and regulate social relations in the private sphere of the family. Secondly, the Personal law is applicable to people principally on the grounds of their religion. Hence the law is specific to and separate for particular religious communities such as Hindu, Muslim, Christian, and Parsi. Personal laws controls and directs marriage, divorce, maintenance, guardianship of children, adoption, succession and inheritance and also it concerns women intimately. At present in India, the personal laws of all the communities kept the position of women as subordinate to and dependent on male kin. As for as all the personal laws are concerned, the male person becomes the head of the family.

Indian society is governed by Hindu, Muslim, and British legal systems. Especially, the present personal laws in India have been codified during the British ruling. However, it has been proved that as far as personal laws are concerned, British rulers left them untouched, whereas decisions of the courts influenced them.

¹ Author is a Research Scholar at Karnataka State Law University, Hubballi, Karnataka.

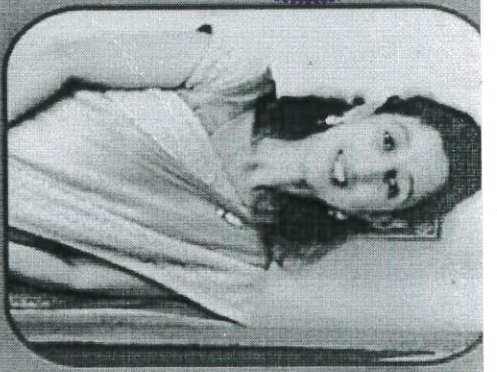
² Prof. P. IshwaraBhat, *Law And Social Transformation In India* (Eastern Book Company: Lucknow, 1st ed., 2009) at p.701.

³ Ibid.

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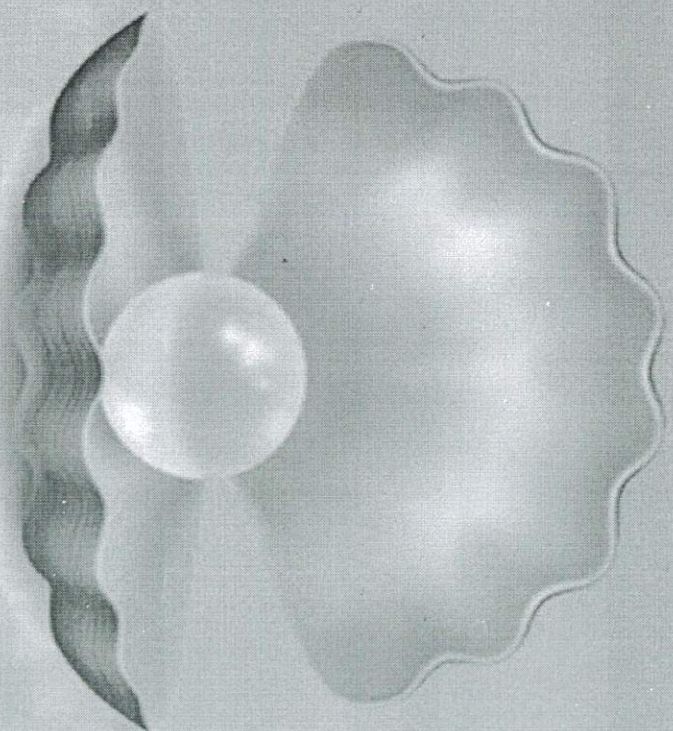




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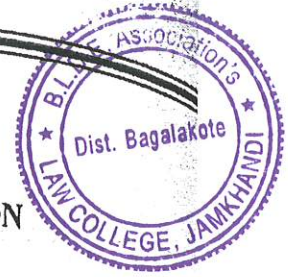
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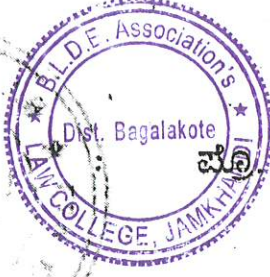
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AN ANALYTICAL VIEW OF THE POSITION OF PERSONAL LAWS UNDER INDIAN CONSTITUTION

*Raghuveer Kulkarni**

I. Introduction

In India the Constitutional Law is regarded as the highest law of the land. It is not only sets out the frame-work and the principal functions of the organs of the Government of a State, but it lays down the fundamental principles on the touchstone of which the legality and the constitutionality of other laws are determined in the prevailing socio-economic and political trends.

The contemporary Indian society is the successor of three different legal systems such as, Hindu, Muslim and British. The Hindu and Muslim personal laws have their source and authority in their religious ancient texts. Since ancient time, religion regulated almost all aspects of human life whether it is public or personal. Religion was the guiding force behind the laws including the personal matters as well as crime, contract, trade and commerce etc.

Now the area of applicability of personal laws has been reduced and confined only to the Institution of Marriage, Dissolution of Marriage, Maintenance, Guardianship, Adoption, Succession and Inheritance. These personal laws were considered as permanent, unchangeable and beyond the jurisdiction of the legislature. In this article the relationship between the 'Constitution of India' and the 'Personal Laws' is highlighted.

II. Personal laws and the legislative powers

Article 372 of the Indian Constitution is the most important which deals with regards to the legislative powers on the matters relating to personal laws. Article 372 provides for the 'continuance of the existing laws and their adaption'.

It states that:

- (1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395, but subject to the other provisions of the Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until arrested or repealed or amended by a competent Legislature or other competent authority.

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every enclave of personal law. The intention of the Constitutional Law makers in enacting Article 44 was to orient the state action towards attaining social justice in the familial relations. As the national social justice in its broader contours has the same accentuation and insistence, ultimately social justice in each and every sphere will lead to attain the Uniform Civil Code or a situation nearer to it.

The disappointing factor in this area is the total neglect of the goal by the legislature. In the area of reforming Muslim Personal Law, no sincere effort is made by the State to adopt the Nehru laid two pronged approach of implementing the law and educating the public opinion in favour of it simultaneously. On the other hand, the Muslim Women (Protection of Rights on) Divorce Act, 1986 has shown the retrograde policy of preferring archaic notions to the secular idea of social justice. It is true that in matter of social morality, the power of the law to bring social changes is limited. But if the legislator positively obstructs the desirable social change it is the betrayal of the confidence reposed in him to strive for social justice.

It is notable from the discussion so far that, in spite of the best efforts from the Muslim members, the majority of the members of the Constituent Assembly were unwilling to provide a constitutional protection to the personal laws of the different communities for all the time to come. Instead they introduced Article 44, which envisages a 'Uniform Civil Code'. The Constitutional law, however, adopts the policy of continuity and changes under Article 372 as far as personal laws are concerned. As regards the conformity of personal laws with part III of the Constitution, the judicial attitude shows that this part does not touch upon the personal laws.



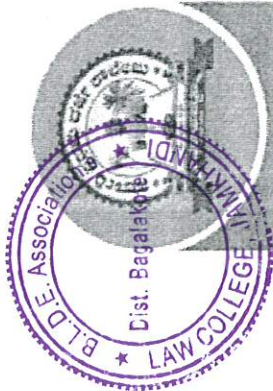

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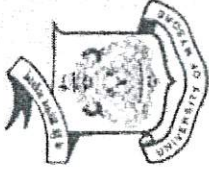
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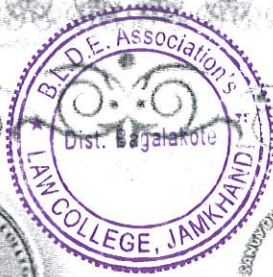
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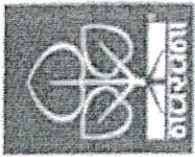


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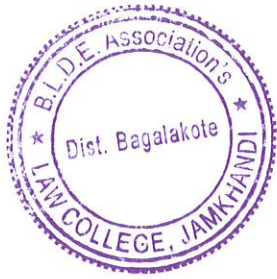
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WOMAN AS COPARCERNOR IN HINDU LAW

Prof Sukhadev Ghasti

Karnatak University's
Sir Siddappa Kambli Law College, Dharwad

Introduction

The Hon'ble High Court of Delhi, in its milestone decision articulated in the matter of Mrs Sujata Sharma v Shri Manu Gupta and Ors [CS (OS) 2011/2006], has held that the oldest lady individual from a Mitakshara Hindu Undivided Family (HUF) can be its "Karta/Manager". The decision went ahead a suit recorded by the oldest daughter of a HUF in North Delhi.

This decision is essential as it takes the Hindu Succession (Amendment) Act, 2005 which changed Section 6 of the Hindu Succession Act, 1956 (HSA) to its obvious end result.

Development of thought

Preceding Hindu Succession (Amendment) Act, 2005, as indicated by Section 6 of the HSA, in a HUF, the offer in the coparcenary property of a Hindu male biting the dust intestate used to regress upon his sons (otherwise called coparceners) just and not upon his daughters. On 9 September 2005, Section 6 of the HSA was corrected by the Hindu Succession (Amendment) Act, 2005 which expelled this segregation by giving equivalent rights to daughters in the Hindu Mitakshara coparcenary property as that to a son. In accordance with the said correction, a daughter of a coparcener (i.e., her father) will, by birth, (i) become a coparcener in a similar way as a son, (ii) be qualified for the coparcenary property in a similar way as a son, (iii) be liable to similar liabilities in regard of the coparcenary property as that of a son, and (iv) be dependable to release the obligations of her father, grandfather or incredible granddad shrunk by them after the initiation of the Hindu Succession (Amendment) Act, 2005, in a similar way as a son.

The alteration does not have a review impact, and if a coparcenary property has been parceled or discarded before 20 December 2004, the above correction will not influence such property, and a daughter can't guarantee any directly over such property.

Subtleties of the Judgment and Analysis

The issue which was to be chosen for this situation was whether the offended party, being the principal conceived among the current coparceners of the HUF, would by uprightness of her introduction to the world, be qualified for be its Karta.



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THE SOCIAL JUSTICE ISSUE AND HUMAN TRAFFICKING CRIMINOLOGY

Prof Sukhadev Ghasti

Karnatak University's

Sir Siddappa Kambli Law College, Dharwad

A social equity issue that is a worldwide issue is human dealing. Human dealing is a wide spread issue that is influencing numerous underdeveloped nations and creating nations. Human dealing has turned into a global concern. One nation specifically that is influenced by this issue is Thailand.

Human dealing is the exchange for lady and youngsters which is like servitude. The lady and kids can be tricked into human dealing and can be compelled to work for low wages and constrained into prostitution. Human dealing of lady and kids began during the Vietnam War (Women's International Network News, 2003). Starting in the 1980's Thai ladies started moving to European nations to get associated with the stimulation business which quickly changed into the dealing of lady for sexual abuse (Women's International Network News, 2003). Ladies and young ladies were being dealt all over Europe for prostitution and for the mail request lady of the hour business. Lady and youngsters dealt into Thailand were from Burma, Cambodia, South China, and Laos (Women's International Network News, 2000). During the 1990's around 400,000 lady and youngsters were being dealt all through Thailand (Women's International Network News, 2003).

Thailand's most realized all inclusive issue is prostitution. Thailand's Public Health Department appraises that there are around 75,000 whores in Thailand (Women's International Network News, 94). Most of ladies engaged with prostitution originate from poor country regions. These ladies have practically no financial open doors in their home towns and go to filling in as whores in urban zones as a method for satisfying commitments and improving the way of life for themselves and their families (Women's International Network News, 94). Dominant part of northern Thai young ladies go to prostitution since they feel that they have to compensate their folks for bringing forth them and giving them what they have so far in their lives.

The religion that most Thai natives practice is Buddhism. The Buddhist conviction framework in northern Thailand is a piece of the explanation behind the endorsement of prostitution. "Thai Buddhists accept that every individual's spirit possesses numerous physical bodies after some time, with the nature of every life impacted by the spirit's store of legitimacy" (Bower, 2005). "Prostitution performed out of the need to help one's family develops merit, notwithstanding the idea of the activity itself" (Bower, 2005). In Thailand the main conceived little girl normally remains at home to help her folks in the home. The second conceived little girl is customarily the



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CONSUMER AND ASTROLOGY

Prof Sukhadev Ghasti

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Is vastushastra is extremely a science? The advanced man feels timid to acknowledge that vastu is right. We can not approach a subject of study and perception with a shut personality. In the meantime we can not simply trust it.

Some of the time without conscious exertion we will be 'pulled' in to it and we will undoubtedly make a conclusion either in support of it.

I will say that probably some time back I had no confidence in vastu. I thought about this as joke and all of the individuals who talk about vastu appeared to me to be entertaining, inquisitive animals on earth.

Be that as it may, as I said I will undoubtedly make a supposition either in support of it because of conditions. To make the entire story short I would give you my encounters or rather experiences with vastu.

I experienced a book skilled to me by a celebrated vastu advisor in Hyderabad. I experienced the book with no reality and thought about every single one of the depictions as misrepresented jokes.

Also, I went to my companion's home as regular and after that I watched. This one specific companion of mine is without offspring. What's more, he would not make them accord to the restorative science. In the vastu book it was referenced that individuals living in a house with its whole free space (around the house up to its compound divider) towards just south-west, west and south and there no space on to north-east, east and north at that point individuals living in such houses won't have kids. In any event in the house I was watching, the vastu rule, appeared to be right.

I must be straightforward to concede that I didn't have sufficient energy or tendency to watch these kinds of houses all over and to enquire the proprietors in the event that they were issueless.

Second perception:

In the event that inside the house it is overwhelming on the agneyam side (south-east) either on the grounds that the development itself was substantial or in light of the fact that overwhelming products were kept that side,



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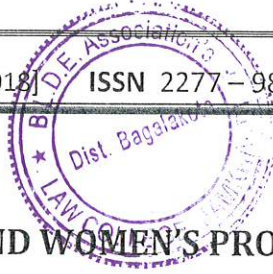
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CONCEPT OF STRIDHAN AND WOMEN'S PROPERTY

Prof Sukhadev Ghasti

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1 Which means of Stridhan: - As the world indicates, Stridhan contains two words Stri+Dhan. In this manner it implies Dhan of the 'Stri' for example ladies' property. The term 'Stridhana,' first happens in the Smritis and actually implies lady's property however different sages utilize the word in various faculties. Some broaden the extent of the word, others attempt to confine it, similar to a content of Manu states that a wife, a son and a balm can have no property and that the riches which they gain is obtained for him to whom they have a place. As indicated by Manu's pundits, this did not imply that they couldn't claim property, however they couldn't discard their property as per their own desires. This view additionally gets support from Gautama who explicitly concedes the privilege of a lady to hold separate property and accommodates its progression. Apastamba likewise hold a similar view and referenced that the portion of the wife comprises of the decorations and the riches, which she may have gotten from her relations.

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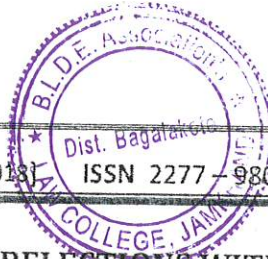
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DOMESTIC VIOLENCE FEW RELECTIONS WITH DECISIONS

Prof Sukhadev Ghasti

Karnatak University's

Sir Siddappa Kambli Law College, Dharwad

Domestic Violence has been a deep rooted societal concern and ladies at home have been tormented and tormented by her very own relatives since days of yore. Be that as it may, an uncommon enactment tending to the issue was defined by the Parliament just in the year 2005.

The Protection of Women From Domestic Violence Act, 2005 (hereinafter alluded to as the Domestic Violence Act) drafted for ladies strengthening and for assurance of ladies against demonstrations of brutality in India came into power in the year 2005. The extent of this bit of enactment has been clarified in plenty of decisions by the High Courts and the Supreme Court in India.

For this situation, the Supreme Court with reference to meaning of shared household under Section 2(s) of the Domestic Violence Act expressed that the meaning of 'shared household' in Section 2(s) of the Act isn't in all respects joyfully worded, and has all the earmarks of being the aftereffect of awkward drafting requires to be translated in a reasonable way.

The Court held that under Section 17(1) of the Act wife is just qualified for case a privilege to living arrangement in a mutual household, and a 'common household' would just mean the house having a place with or taken on lease by the husband, or the house which has a place with the joint group of which the husband is a part. For the situation, the property being referred to neither had a place with the husband nor was it taken on lease by him nor was it a joint family property of which the husband was a part. It was the selective property of mother of husband and not a mutual household.

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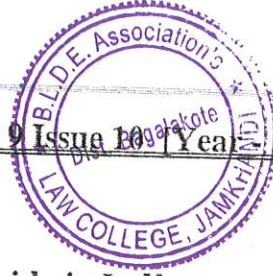
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Female Foeticide and Infanticide in India An Analysis of Crimes against Girl Children

Prof Sukhadev Ghasti
Karnatak University's
Sir Siddappa Kambli Law College, Dharwad

Theoretical

Sex specific premature births and increment in the quantity of female child murder cases have become a huge social wonder in a few pieces of India. It rises above all stations, class and networks and even the North South polarity.

The young lady kids become focus of assault even before they are conceived. Various researchers have seen that the most recent advances in current medicinal sciences – the tests like Amniocentesis and Ultra-sonography which were initially intended for identification of inborn variations from the norm of the baby, are being abused for knowing the sex of the hatchling with the expectation of prematurely ending it on the off chance that it happens to be that of a female. The most exceedingly awful circumstance is the point at which these premature births are done well past the protected time of 12 weeks jeopardizing the ladies' life. This paper hypothetically investigations the greatness of the frequency of female foeticide and child murder in India.

Watchwords: Foeticide; Infanticide; Ultra-sonography; sex specific fetus removal; violations against young lady kids

Female Foeticide

Occurrence and Magnitude

Sex particular premature births cases have turned into a huge social marvel in a few pieces of India. It rises above all stations, class and networks and even the North South division. The young lady kids become focus of assault even before they are conceived. Diaz, (1988) states that in an outstanding Abortion Center in Mumbai, in the wake of undertaking the sex assurance tests, out of the 15,914 premature births performed during 1984-85 just about 100 percent were those of young lady embryos. Essentially, a study report of ladies' inside in Mumbai found that out of 8,000 embryos prematurely ended in six city emergency clinics 7,999 babies were of young ladies (Gangrade, 1988: 63-70). It is accounted for that around 4,000 female infants are prematurely ended in Tamil Nadu (southern India) consistently. Sex assurance tests are broadly depended on even in the remotest rustic zones. Since most conveyances in provincial territories happen at home there is no record of the definite



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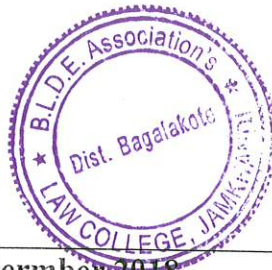
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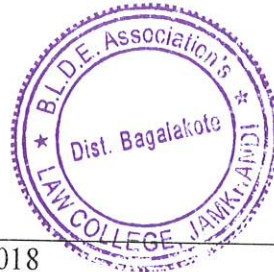
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WOMAN AS COPARCERNOR IN HINDU LAW

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Introduction

The Hon'ble High Court of Delhi, in its milestone decision articulated in the matter of Mrs Sujata Sharma v Shri Manu Gupta and Ors [CS (OS) 2011/2006], has held that the oldest lady individual from a Mitakshara Hindu Undivided Family (HUF) can be its "Karta/Manager". The decision went ahead a suit recorded by the oldest daughter of a HUF in North Delhi.

This decision is essential as it takes the Hindu Succession (Amendment) Act, 2005 which changed Section 6 of the Hindu Succession Act, 1956 (HSA) to its obvious end result.

Development of thought

Preceding Hindu Succession (Amendment) Act, 2005, as indicated by Section 6 of the HSA, in a HUF, the offer in the coparcenary property of a Hindu male biting the dust intestate used to regress upon his sons (otherwise called coparceners) just and not upon his daughters. On 9 September 2005, Section 6 of the HSA was corrected by the Hindu Succession (Amendment) Act, 2005 which expelled this segregation by giving equivalent rights to daughters in the Hindu Mitakshara coparcenary property as that to a son. In accordance with the said correction, a daughter of a coparcener (i.e., her father) will, by birth, (i) become a coparcener in a similar way as a son, (ii) be qualified for the coparcenary property in a similar way as a son, (iii) be liable to similar liabilities in regard of the coparcenary property as that of a son, and (iv) be dependable to release the obligations of her father, grandfather or incredible granddad shrunk by them after the initiation of the Hindu Succession (Amendment) Act, 2005, in a similar way as a son.

The alteration does not have a review impact, and if a coparcenary property has been parceled or discarded before 20 December 2004, the above correction will not influence such property, and a daughter can't guarantee any directly over such property.

Subtleties of the Judgment and Analysis

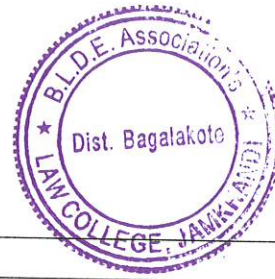
The issue which was to be chosen for this situation was whether the offended party, being the principal conceived among the current coparceners of the HUF, would by uprightness of her introduction to the world, be qualified for be its Karta.

The HUF being referred to is known as D. R. Gupta and Sons, HUF, whose Karta was Mr D.R. Gupta. He had 5 (five) sons in particular (i) Mr Kishan Mohan Gupta, (ii) Mr Mohinder Nath


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CONCEPT OF STRIDHAN AND WOMEN'S PROPERTY

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