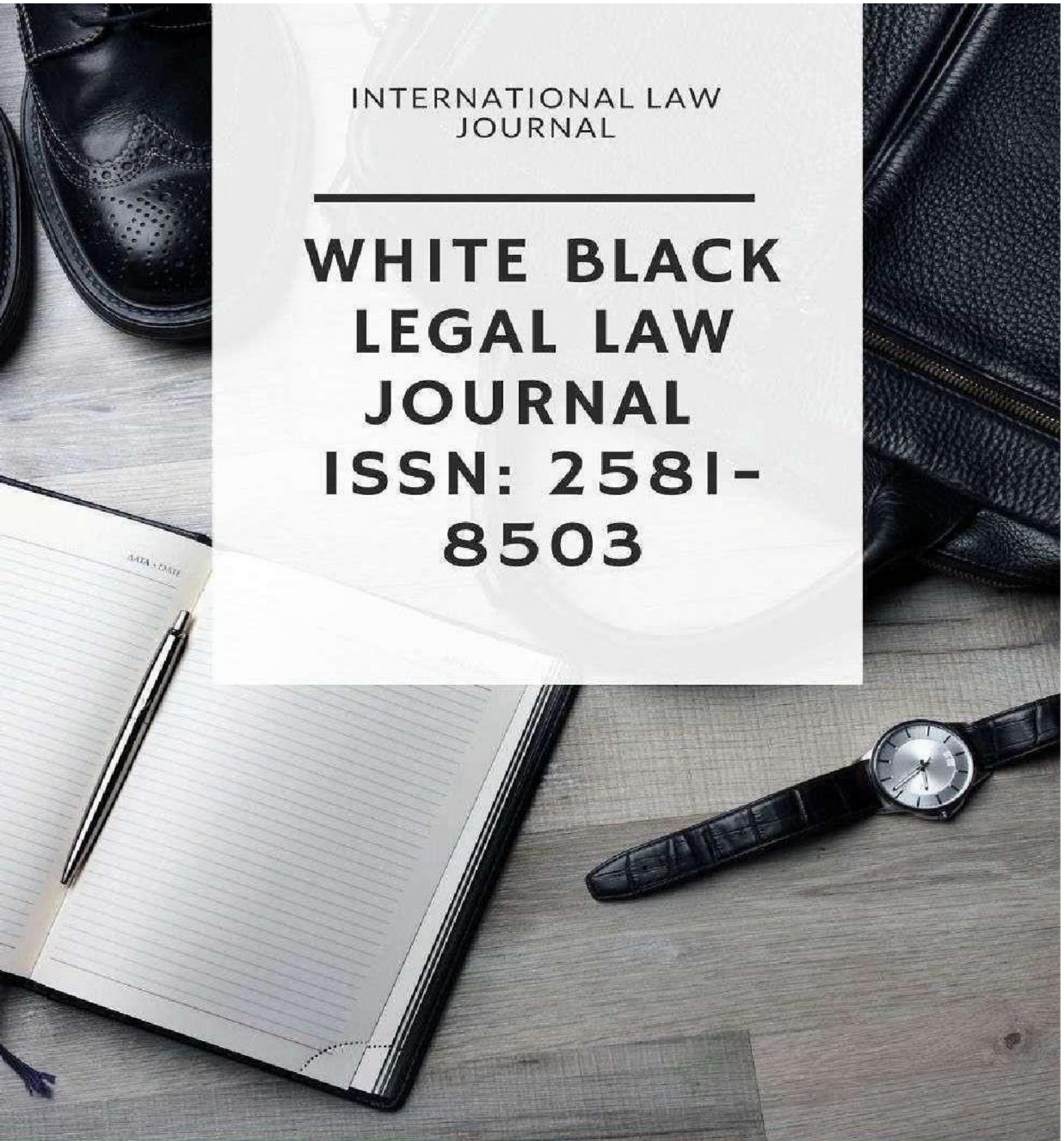




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CONTINUITY OF VEDIC LEGAL THOUGHT IN MODERN HINDU PERSONAL LAW

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Abstract

Vedas are the earliest sources of the Hindu Personal law and it lays down principles like Nyaya (Justice), yama (moral justice or restraints), niyam (positive duties or observance), Satya (truth). Later on, the ideas in the Vedas were expressed in Manusmriti and Yajnavalkya Smritis.

The Hindu Personal Law contains a deep reflection of the Vedic understanding of Dharma- which is a combination of moral, social and cosmic order. The Hindu laws have undergone transformation in various ways, but the core spirit remains deeply influenced by the Vedic foundations. Statutes like Hindu Succession Act, 1956; Hindu Adoption and Maintenance Act, 1956; Hindu Marriage Act, 1955 uphold the values of Vedas such as fairness, equality, duty, sanctity of relationships, moral responsibility etc.

The paper dives into the fact that the Hindu Laws are not departing from the Vedas, but continues the same traditions and practices. The continuation of the Vedic legal thought demonstrates how the valuable insights in the Vedas could be preserved in such a way that India could remain rooted and still be progressive at the same time.

Keywords: Dharma, Modern Personal Hindu Law, Codification, Vedas, Smritis

Introduction

Hindu Personal Law has been codified into the following legislations: Hindu Marriage Act, 1955; Hindu Adoption and Maintenance Act, 1956; Hindu Succession Act, 1956 and Hindu Minority and Guardianship Act, 1956. However, it is pertinent to note that the legislation has been derived from the ancient and modern sources. The roots of the Hindu Law touch down to Vedas.

The modern-day Hindu Law has been derived from two kinds of sources:

I) Ancient Sources: Shrutis; Smritis; Commentaries and Digests; Customs

II) Modern Sources: Legislation; Precedents and Customs

The word “Shrutis” has been derived from “shru” which means “what has been heard”. Shrutis refer to the words uttered by the deities to sages which are pure and sacred in nature. The utterances have been laid down in Vedas and the Upanishads. Due to absence of written material in that era, the same words were disseminated by the sages to their families and disciples who carried it forward. The four types of Vedas are: Rigveda, Yajurveda, Atharveda and Samveda. Rigveda consists for 1028 hymns written in 10 Mandalas (books). Yajurveda consists of the procedures laid down for the performance of yajnas (sacred rituals) to maintain balance and harmony in nature. Samvedas consists of chants and songs used during rituals. Atharvaveda contains knowledge on subjects like mathematics, medicine, caste, profession etc. The term “Smritis” mean “to remember”. The Smritis contain the teachings of Vedas learned and interpreted by the sages. The Smritis contain the moral, social and legal rules found in the Vedas. The Smritis are considered to be the second most important source of law after Shrutis as they contain the duties, laws, ethics and customs of the individuals in the society.¹ Smritis have been divided into two categories: Dharmashastras written in poetic forms between 200 BCE to 500 CE and Dharmasutras written in prose forms between 600 and 200 BCE.² Many people have written the Smritis, however the most prominent ones are written by Yajnavalkya such as Manusmriti, Atri, Vishnu, etc. The most important principles laid down in the Smritis are Aachar (morality), Vyavahara (to settle disputes between the subjects by the King or State) and Prayschit (penance for wrongdoings).³

Commentaries were written down to explain and simplify the Smritis which could be understood by the people in the society. It also helped in removing doubts and contradictions present in the text. Some important commentaries were written down like Mitakshara by Vijñeshawara and Dayabhaga by Jimutvihana.

Customs refer to long-established practices or traditions followed by the people which are binding in nature. “Customs are transcendent law”.⁴ Customs are very important source of Hindu Law. All customs do not gain legal recognition. As per Section 3(a) of the Hindu Marriage Act, 1955. A custom can be recognized as law only if it has all the essential elements such as antiquity, continuity, certainty, reasonableness, and conforms with the laws. The customs must not be against the public policy and morality. The written texts of law can be

¹ <https://ijirl.com/wp-content/uploads/2022/06/AN-INSIGHT-INTO-THE-SOURCES-OF-HINDU-LAW.pdf>

² <https://www.krayonnz.com/user/doubts/detail/62a2d56bf37dc6004b847446/differentiate-Between-Dharmasutras-and-Dharmashastras>

³ https://ijrar.com/upload_issue/ijrar_issue_20543978.pdf

⁴ Manusmriti, Chapter 1, Verse 108

outweighed by the customs if they are proven in the court of law.⁵

Vedic Insights in Hindu Marriage

Vedas, Kautilya's, Marriage was considered to be a sacrament under the Hindu Vedas. It was an indissoluble union which was performed by some rituals and ceremonies that lasted for seven lifetimes. Hindus believe that marriages are destined in heaven and are solemnized on earth with cultural and religious ceremonies by chanting the Vedic Mantras and following rituals to attain Moksha. Marriage is considered to be the most intimate association, with the main aim of procreation of children to continue the lineage for emotional and spiritual support that also guarantees survivorship. The four Vedas contain the rituals, duties and spiritual significance of marriage in details.

The Vedas describes the purpose of Marriage:

- Religious Duties (Dharma)- to continue the lineage of the family.
- Procreation of Children (Praja)- to ensure the continuity of Gotra and have children.
- Companionship (Sahadharma)- Husband and wife are considered to be equal partners for life
- Spiritual Growth (Moksha)- Husband and wife support each other in moral, religious and spiritual growth.

Some rituals such as Kanyadan, wherein a daughter is given to the groom by her father; Saptpadi, where the parties take 7 pheras around the sacred fire and Mangalsutra/ Sindoor are put on the wife after the ceremonies are over, still find a place in the modern-day Hindu marriages. As per Section 7 of the Hindu Marriage Act, 1955, a marriage is considered to be a valid one only if it has been performed by proper customs, rites and ceremonies. Also, if Saptpadi is followed as a custom in a family, then a marriage can be solemnized only after the completion of the seven pheras. The Hindu Marriage will have no legal validity if these customs are not followed.

The ancient texts suggest that the marriage is an indissoluble union and it could not come to an end. Manusmriti strictly prohibited separation between husband and wife after marriage. Manu said:

“Let mutual fidelity continue till death; this may be considered the highest dharma for husband and wife.” (*Manusmriti*, 9:101)

Though the Vedas did not recognize the concept of divorce explicitly, but we can see a glimpse

⁵ Collector of Madura v. Moottoo Ramalinga (1868)

of the same in Narada Smriti, Parashara Smriti and Yajnavalkya Smriti. In these later Smritis and commentaries, a Hindu women could choose to remarry in certain cases like impotency of the husband or he becomes an Ascetic, if the husband goes to abroad and does not return, or if he neglects the wife, if the husband is missing for a long period of time, if he expelled from his caste and if the husband is dead. Due to various social reforms, divorce was introduced in the modern Hindu Law and the grounds of divorce have been laid down under Section 13 of the Hindu Marriage Act, 1955.

The concept of Restitution of Conjugal Rights codified under Section 9 of the Hindu Marriage Act, 1955 is also deeply rooted in the Dharmas, customs, and religious norms which is connected with Indian Knowledge System. The concept of Restitution of Conjugal Rights states that if the spouse has withdrawn from the society of the other spouse, then a petition can be filed in the Court to provide remedy to the aggrieved person to make the other party perform marital obligations.

Vedic insights in providing maintenance to wife and children

The concept of maintenance can be traced in the Vedas and Dharmic philosophy. A duty has been cast upon the husband and father to maintain his wife and children as per the Vedas, Smritis and Dharmashastras. Rigveda and Atharveda holds the family as the nucleus of the society. In Manusmriti⁶, it has been mentioned that it is the duty of the husband to maintain and support his wife, and also to maintain his children till they are independent. The husband cannot abandon the wife or discontinue to maintain her even if she is guilty of any matrimonial offence. Yajnavalkya Smriti also states that it is the duty of the husband or father to maintain his aged parents, chaste wife and minor children.

The Hindu Adoption and Maintenance Act, 1956 lays down the provisions for the maintenance of wife and children. Section 18 lays down certain conditions under which a husband is bound to maintain the wife even if she is living separately such as cruelty by husband; another wife living; conversion of the husband to another religion; desertion; keeping a concubine; and any other justified reason for the wife living separately. Section 24 and 25 of the The Hindu Marriage Act, 1955 also lays down provisions for maintenance of wife during the pendency of the proceedings

and after the case has been disposed of. Section 20 of the HAMA, 1956 also states that a father is bound to maintain his legitimate or illegitimate children till the time the child is a minor.

⁶ Chapter IX, Verses 3–11

Vedic Insights in Adoption of Child

Adoption was recognized in the Hindu Laws from a very long time. Under the ancient Hindu Law, only sons could be adopted and daughters could not be adopted. In Vedas, it was considered that every family must have a son to continue the lineage in the family and performing the spiritual rites and ceremonies. It was considered that a son is needed to perform the pinda-daan, funeral pyre, and helping the soul of deceased ancestors in reaching heaven. There is a mention of adopted

sons in the Manusmriti⁷ where 12 types of sons (biological and non-biological) have been mentioned. As per Yajnavalkya Smriti⁸, a son can be adopted if a couple does not have a natural born son. It also mentions the rules of datta (giving) and homan (taking) of the adopted son with

chants and ceremonies. As per Narada Smriti and Vishnu Smriti, once the adoption is completed, it is considered to be final and binding. The child ceases to be a part of the original family and he now becomes a part of the adoptive family. Under the Hindu Adoption and Maintenance Act, 1956 the adaptation of these Smritis can be seen. Under Section 6, the Hindus can adopt a child (son or daughter). Section 11 of the Act provides the conditions for valid adoption. It states that Dattahoman is not an essential ceremony. However, till date, the ceremony for giving and taking is followed in the Hindu families. Section 12 states that an adopted child severs his ties from the natural family and he/she ceases to be a part of the natural family. The child is transferred in the adoptive family, however, the ties with natural family will still affect the following:

- (i) The adopted child cannot marry anyone in the natural family.
- (ii) If the adopted child has a property vested in his/her name, the same continues to be vested in the child's name after adoption, and if any obligations are attached to the same, the same shall continue.
- (iii) An adopted child cannot take away property rights that has been already vested in others name.

Vedic Insights in Property distribution

Property held great importance in the socio-economic structure of ancient Hindu society. Texts such as the *Manusmriti* and the *Dharmashastras* laid down detailed rules regarding inheritance,

⁷ Manu Smriti (IX: 168–172)

⁸ II.45–47

partition, and liabilities. The male descendants of a Hindu joint family were traditionally given preference in succession over daughters, in order to preserve the family lineage and continuity, a concept rooted in the principle of *Putrasantana* (the continuation of the male line through sons).⁹

The Mitakshara school of Hindu Law is applicable in all parts of India except Assam and West Bengal. The school has given vested rights in the ancestral property to a son by following coparcenary system based on survivorship. Under the Mitakshara School, the son inherits the right to property the moment he is born. The Mitakshara school gives limited rights to women in property. In Dayabhaga School, the sons do not get the right in the property by birth, but they acquire an interest in the property only after the death of the father. Women were entitled to share in ancestral property under the Dayabhaga law through the doctrine of representation.¹⁰ The Rigveda refers to property in the form of land, cattle and wealth. As per the Vedas, the ownership of the property lies with the male members of the family. The family (*Kula* or *Gotra*) was the central unit, and property ensured continuity of lineage and sustenance of dependents. The eldest male member of the family acts as the Karta (head) of the family and he takes all important decisions related to property, marriage of the members, management of joint business, maintenance of the members etc. The eldest son leads the family; however, the other sons also receive a share. As per Manusmriti, the eldest son inherits the preference share in the property (additional share) and other sons receive a fair share in the property¹¹. The wife did not have a right to inherit the property, but she had the right to maintenance and Stridhan. Yajnavalkya Smriti¹² redefined the rules related to women in property distribution. It laid down the concept of Stridhan in a more organized way wherein the women were the sole owners of their property received during the time of the marriage. It was considered to be her absolute property and was considered to be independent from the husband. The rules related to partition and inheritance were also mentioned with respect to the widows, daughters and sons in detail. The modern Hindu Succession Act, 1956 also reflect upon the principles given in the Vedas. Section 8-10 of the Act deals with the rules related to succession in the case of males. If a Hindu

male dies intestate, the property shall devolve upon Class I heirs, Class II heirs, Agnates and

⁹ <https://iipseries.org/assets/docupload/rs12025E8151CB1C2FF838.pdf>

¹⁰ Dr. Partha Priya Das, Dr. Moni Deepa Das, and Dr. Pompei Das Sengupta, A Comparative Analysis of Dayabhaga and Mitakshara Systems in the Context of Women's Property Rights, African Journal of Biomedical Research, 2024

¹¹ Chapter IX, Verses 104–118

¹² Chapter II, Verses 114–136

Cognates. It has emphasized the equal distribution of the property amongst the sons. Section 14 of the Act deals with the ownership rights of the women. The word “stridhan” is derived from the

Sanskrit words- “Stri” and “Dhan”, meaning woman’s property. The concept of Stridhan has been enshrined in the Act. A woman who receives any movable or immovable property from her relatives or any person in the form of cash, jewelry, valuables or other assets as a bride during the time of marriage will be considered to be her Stridhan. She is the absolute owner of this kind of property and no male will have any right, whatsoever in it. She has the right to dispose of this property as per her wishes. The concept of joint ownership (Kula Dharma) has been recognized under the Hindu Undivided Family and coparcenary system.

Vedic Insights in the concept of Guardianship

In the concept of Dharma, the concept of guardianship (Palakatva) is given. The moral and spiritual duty of elders and parents to protect, nurture and guide children is rooted in the Vedic concept of Dharma. Children were regarded as “putra” (savior of ancestors) and “daiva sampatti” (divine wealth), and their care was a sacred obligation. The text of Manusmriti¹³ states that is the

duty of the father to maintain the children and educate them until they are capable of supporting themselves. It emphasizes that a father who does not perform this duty commits Adharma. The Yajnavalkya Smriti recognizes the role of the mother as a guardian in the absence of father. It mentions that in the absence of the father, the mother will become the guardian of the child. Narada Smriti lays down that the property of the minor will be for the benefit of the child.

The Hindu Minority and Guardianship Act, 1956 enshrines the principles laid down in the earlier texts. Section 6 of the Act states that fathers are the natural guardians of the child, and after father,

the mother will act as the guardian of the child. Section 13 of the Act lays down that welfare of the child is of paramount consideration. It is required that the guardian must not act for personal benefit. A guardian has to act as a trustee of the property of the child, and not as owner of the property.

¹³ (IX: 3–11, IX: 232–235)

Conclusion

The evolution of Hindu Personal Law from its Vedic foundations to the modern statutes reveals a continuity of legal and moral philosophy. Vedic vision of law was not just a set of enforceable commands, but it was a set of comprehensive moral order (Dharma) which consists of ethical, spiritual and social duties that maintain harmony and peace in the life of the individuals. The modern laws on marriage, maintenance, guardianship, inheritance and adoption still resonate with the ideals mentioned in the Dharma.

The modern Hindu law contains the principles of equality and justice within the constitutional framework, but still upholds the principles laid down in Vedas, Smritis and Dharamshastras. The relationship between husband and wife. Children and society has been dealt in the ancient texts in a very comprehensive way, and it still finds a place in the modern statutes.

In the Hindu Marriage Act, 1955, though the concept of marriage has been put close to that of a contract, yet, it retains the sacramental aspect of the marriage that echoes the Vedic notion of Samskara. Though marriage has become a dissoluble union in the texts of the statutes, but on the contrary, Family Courts Act, 1984 has lays emphasis on encouraging reconciliation in matters of marriage so that the essence of the marriage can be protected. The courts must enquire into the facts in detail when a divorce petition is filed in the courts, and if possible, reconciliation between must be the primary aim of the courts. Similarly, under the Hindu Minority and Guardianship Act, 1956 and Hindu Adoption and Maintenance Act, 1956 the ancient concept of putra dharma i.e. continuity of lineage and duty of care has been enshrined. With some advancements in the law, where now equitable treatment has been given to the mother as the guardian and to adopt a child, the ancient principles have still been upheld. The Hindu Succession Act, 1956 has reformed the rules of inheritance and rights of women as an absolute owner of the property which encompasses the Vedic principles of fairness and balance within the family unit.

The modern Personal Law is a living embodiment of Vedic legal thought reformulated through the prism of constitutionality morality and social justice.

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