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LEGISLATIVE HISTORY OF PERSONAL LAWS IN INDIA WITH SPECIAL REFERENCE TO UCC

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Personal laws have traditionally been regarded to be beyond the purview of legislature because they are very much identified with religion or religious beliefs. The nature of personal laws is such that the legislature intentionally hesitates in interfering or parting with them. However, in different periods legislative enactments have been made in this area also. Some of these tend to modify and some endeavour to restore the personal laws.

The legislative history of personal laws in India can be arranged into three heads, namely-Hindu Law and the Legislature, Muslim Law and the Legislature and Christian and Parsi Laws and the Legislature. But before thata brief general discussion appears to be necessary.

Before independence, the legal system of India was comparatively full of chaos and confusion. Infect, different laws were applied by village, district and provincial courts. While in many matters of civil law, Hindus and Muslims were governed by their own laws, non-Hindus and non- Muslims were governed by another set up laws.[1]

Uniform civil Code of India is a term referring to the concept of an overarching Civil Law Code in India. A uniform civil code administers the same set of secular civil laws to govern all people irrespective of theirreligion, caste and tribe. This supersedes the right of citizens to be governed under different personal laws based on their religion or caste or tribe. Such codes are in place in most modern nations.

The common areas covered by a civil code include laws related to property right, marriage, divorce and adoption. The Muslim criminal law which was applied to Muslims and, to a very great extent to Hindus and other natives also, had become obsolete.[2] Although the British Parliament felt the need of suitable reform in Indian law.

As a result of the work of different Law Commissions a number of legislations were enacted which

[1] *U.C. Sarkar, Epoch in Hindu Legal History, pp. 348-50 (Hoshiarpur: Visheshvaranand VedicResearch Institute 1958).*
[2] *U.C. Sarkar, Epoch in Hindu Legal History, pp. 348 (Hoshiarpur: Visheshvaranand VedicResearch Institute 1958).*

affected the personal laws of two major communities viz., the Hindus and the Muslims. Some of these important legislations were : the Caste Removal Disabilities Act 1850, the Indian Penal Code 1860; the Criminal Procedure Code 1861, 1882 and 1888; The Civil Procedure Code 1859 and 1882; the Indian Contract Act 1872; the Transfer of Property Act 1882; the Indian Evidence Act 1872; the Indian Succession Act, 1865; the Child Marriage Restraint, Act 1828, etc.

The purpose of these legislative steps was to brings about uniformity and certainty, which is evident from Lord Macaulay's following words :

> "*We must know that respect must be paid to the feeling generated by differences of religion, of nation and caste. And much, I am persuaded, may be done to assimilate the different systems of law without wounding those feelings. But whether we assimilate those system or net, us ascertain them, let us digest them. We propose no rash innovation, we wish to give no shock to the prejudices of any part of our subjects. Our principles is simply this – uniformity where you can have it-diversity where you must have-but in all cases certainty*."[3]

This love of certainty and uniformity, which let to codification, had its impact on those spheres of law also which were, hitherto, governed by the respective personal law exclusively. The succeeding pages will give a brief account of this fact.

A. Hindu Law and the Legislature

During ancient times, the Hindu law had a flexibility and an inherent capacity to grow.[4] The methods generally used for the purpose of growth of law were the processes of interpretation and assimilation of customs. After the introduction of British pattern of justice in India, these traditional instrumentalities of the British pattern of justice in India these traditional instrumentalities of legal change of growth ceased to operate.[5] During this period, the growth of Hindi law was arrested and Hindu law came to be fossilized.[6] Under the circumstances, for the growth of Hindu law so that it could respond to the changing pattern of life, legislation was the only way out for the British administration.

The ancient Hindu legal system, based on *Shruti, Smritis,* Commentaries and Digests, was developed according to the economic condition, social environment and the state of civilization which were very different from those modern times. Some of the features of the traditional law are thus bound to be out of harmony with the contemporary social conditions and facts of life.[7] Need has, thus, been felt to modify the law in certain respect so as to adapt it to meet the modern exigencies and circumstances. But in undertaking this task, the British administrators functioned under a self- imposed discipline and limitation.

They modify the personal law in consonance with the modern as well as dynamic needs of the society because of the view that the personal laws were too much identified with religion.

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[3] *XIX Hansard's Debates, 3rd Series, pp. 531-533.*
[4] *M.P. Jain, Outlines of Indian Legal History, p. 483. (4th ed. 1981).*
[5] *M.P. Jain, Outlines of Indian Legal History, p. 483. (4th ed. 1981).*
[6] *Gajendragadkar, 'The Hindu Code Bill', p. 53 Bom. L.R. (1951).*
[7] *M.P. Jain, Outlines of Indian Legal History, p. 484.*

(i) Pre-Independence Legislations

Taking a board view of the legislative changes effected in the area of Hindu law during the British period, the first and the foremost place may be accorded to the body of legislations which sought to improve the social status and legal position of the Hindu women. The prejudices of some of the Dharma Shastra writers, along with some degenerate customs which arose in the Hindu society in course of time, were responsible for making the social position of Hindu women rather weak and inequitable. They came of occupy an inferior position in the eyes of law. Thus needed to be corrected and, therefore, the legislature enacted a number of statutes designed to improve the lot of the opposite sex in the Hindu society. The custom of 'Sati' was abolished in 1829.[8] The Caste Removal Disabilities Act, 1850, had the effect of abrogating both the Hindu and Muslim laws of property in regard to apostates.[9]

The Hindu Widow Remarriage Act 1856, was the first important measure in this series. This Act permitted a Hindu widow to remarry. It was an enabling Act and was passed at the instance of Hindu Women's Rights to Property Act, 1937, which conferred on the Hindu Women better rights of property than they had possessed previously. The Act effects revolutionary changes in Hindu law, more particularly in Mitakshara School. It affects the law of the coparcenaries, partition and alienation. It also affects the topics of inheritance and adoption.[10]

The last statute in this series was the Hindu Married Women's Rights to Separate Residence and Maintenance Act, 1946. The Act enabled a Hindu married woman, without dissolving the marriage, to claim separate residence and maintenance from her husband under certain circumstances mentioned in the Act.[11] This Act has now been repealed by the Hindu Adoption and Maintenance Act, 1956 (Act 78 of 1956).[12]

Another set of statutes were enacted to eradicate some highly objectionable practices which had come to have legal and customary sanctions amongst the Hindus. The first step in this regard was the abolition of the inhuman practices of 'Sati'. To discourage the practice of child marriage, the Child Marriage Restraint Act was passed in 1929.

There are few other legislations passed by the British administration which effected remarkable changes in the old Hindu joint family law and the laws of inheritance. These Acts made considerable inroads on the principles of succession and inheritance previously regarded as binding by the old Hindu law.[13] The Hindu Inheritance (Removal of Disabilities) Act, 1928, laid down that no person, except one who had been lunatic or idiot from birth, would be excluded from inheritance by reason only of his disease, deformity, physical or mental defect. The Act applies only of Mitakshara school and not to Dayabhaga school. The Hindu Law of Inheritance (Amendment) Act of 1929 altered the order of the intestate succession under the

[8] *The difficulties faced by the British administrator in reaching and implementing this decision are described in K. Ballhatchet, Social Policy and Social Change in Western India, p.p. 275-91 & PP.298-305.*
[9] *D.K. Srivastava, Religious Freedom in India, p. 235 (Deep & Deep, New Delhi 1982,) p. 234.*
[10] *Mayne's Hindu Law and Usage, p. 59 (12th Ed. 1986) Rev. by A Kuppuswami.*
[11] *The Hindu Married Women's Rights to Separate Residence and Maintenance Act, 1946, Section 2.*
[12] *Mayne's Hindu Law and Usage, p. 57 (12th Ed. 1986) Rev. by A Kuppuswami.*
[13] *U.C. Sarkar, Epoch in Hindu Legal History, p. 372 (Hoshiarpur: Visheshvaranand Vedic ResearchInstitute 1958).*

Mitakshara law with a view to prefer certain near cognates to agnates. Thus son's daughter, daughter's daughter, sister and sister's son were declared to be entitled to succeed next after the paternal grand-father. This was the result of realization that the Sastric law needed to be altered in order to bring the rules of inheritance in congruence with the dictates of natural love and affection. The Hindu Gains of Learning Act, 1930, declared that all acquisitions of property made substantially by means of learning shall be 'the exclusive and separate property of the acquire'.[14] Before the passing of the Act, under the circumstances, such acquisitions could be regarded as 'joint and liable to partition.'[15]

The enactment of two other Acts,[16] dealt a severe blow to Hindu religion. Since time immemorial the institution of caste has been used to structure and perpetuate Hindu society. The Hindu Wills Act of 1870 for the first time conferred a power of testamentary disposition of Hindus. Wills were previously unknown to Hindu law.

(ii) Post-Independence Legislations

Reform of Hindu law by the British was half-hearted and peripheral.[17] The changes effected by the legislations during British period were sporadic, piece-meal and unplanned, and were undertaken to meet to need here and a demand there without much of a system.[18] How, a change in law at one place, would affect the rest of the law was not minutely examined. This resulted in unforeseen difficulties. The Hindu law being an integrated mass, a change at one place had its inevitable repercussions at various other places. To avoid this confusion and complexity, the only way out was to introduce reform in all those places where reform was desired at once and in one piece so that an integrated and more co-ordinated body of law could emerge. There was, therefore, a strong demand for an over-all reform and codification of Hindu law.[19]

In 1941 the British-Indian Government appointed a committee under the chairmanship of Sir B.N. Rau to study the question. It was not without a tremendous amount of courage and under heavy criticism of not only 'traditionalists' and religious groups, but some of the well-meaning and intelligent lawyers also, that the Rau Committee suggested the enactment of Hindu Code.[20] It was not however, so easy to touch the sacred religious law of the Hindu, unwilling to accept the codified enactments and unprepared to give up the 'divine law' propounded by their great sages. Even President Rajendra Prasad was opposed to the enactment of the Hindu Code Bill.[21] The Central Government was, however, determined. The result was that the Hindu Code Bill came to be divided into different parts and passed one by one in the formof four different Act like Hindu Marriage Act,1956; Hindu Succession Act, 1956; Hindu Minority and Guardianship Act, 1956; and Hindu Adoption and Maintenance Act, 1956.

[14] *Sections 2(b) and 3 of the Act.*
[15] *U.C. Sarkar, Epoch in Hindu Legal History, p. 372 (Hoshiarpur: Visheshvaranand Vedic ResearchInstitute 1958).*
[16] *Act III of 1872 and Arya Marriage Validation Act of 1937.*
[17] *D.K. Srivastava, Religious Freedom in India, p. 246 (New Delhi c 1982)*
[18] *M.P. Jain, Outlines of Indian Legal History, pp. 489-90 (4th ed. 1981).*
[19] *R.P. Anand, 'Hindu Law in Historical Perspective' p. 32, (1966) II SCJ.*
[20] *R.P. Anand, 'Hindu Law in Historical Perspective' p. 33, (1966) II SCJ.*
[21] *Setalvad, cited by M. P. Jain, Supra n. 4, p. 490.*

Despite strong protests of the orthodox and conservatives,[22] these enactments struck down the old outmoded law and modified it and changed it according to the changed spirit of the time.[23]

Nevertheless, the present system has its roots in the past and derives its mains principles from the age-old '*dharma* law'.[24]

The effect of these four legislations has been that they have introduced considerable departure from the traditional Hindu law. For example, in the area of marriage, monogamy and divorce have been introduced. Both of these were unknown to the old Hindu law.

Such western concepts as judicial separation, cruelty, desertion, nullity of marriage have been introduced into the marriage law with the result that courts freely cite English cases to expound the meaning of these concepts and law has become Anglo-Hindu Law.[25]

These Acts govern a large section of Indian people as they apply to Jains, Sikhs, Budhists and Hindus of all denominations and castes. A distinction, however, has been maintained between Mitakshara and Dayabhaga schools by the Hindu Succession Act. The most complicated area of the Joint Hindu family, has been left untouched and for the present there is no move to codify this branch of law.

The Hindu Adoption and Maintenance Act, has also brought about some fundamental changes in the concept of adoption under Hindu Law. Previously, the concept of adoption was a purely religious one, but the present Act seeks to make it a non-religious affairs, to a large extent. Even the laws, relating to minority and guardianship, have been greatly modified by the Minority and Guardianship Act.

B. Muslim Law and the Legislature

In the realm of Muslim personal law, the legislative activity appears to be extremely limited; and that too on the initiative or demand of the Muslim community. In both pre and post-Independence era, the attitude to the legislature towards the Muslim personal law was of 'non-interference'. The subsequent pages sketch the brief history of legislations in the area of Muslim law.

(i) Pre-Independence Era

The legislations concerning Muslim personal law promulgated in the India during British regime can be broadly arranged into three distinct categories,[26] viz;

a) Laws legating to recognition of Muslim personal law;

b) Law affecting substantive provisions of Muslim personal law;and

c) Law regulating procedural aspects of the institutionsgoverned by Muslim personal law.

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[22] *Nanda, 'Marriage and Divorce in India : Conflicting Law' 55 North Western University Law Review, p. 632 (1960) and literature quoted therein.*

[23] *R.P. Anand, 'Hindu Law in Historical Perspective' p. 33, (1966) II SCJ.*

[24] *Generally Derrett, 'The Codification of Personal Law in India : Hindu Law', 6 Indian year Book of International Affairs, p.p. 189-211 (1957).*

[25] *M.P. Jain, Outlines of Indian Legal History, p. 490 (4th ed. 1981).*

[26] *Tahir Mahmood, 'Legislation for the Muslims in British India' in 'An Indian Civil code and Islamic Law' p. 52 (1976, Tripathi; Bom.).*

This classification is based on the nature of the legislations sidestepping their chronological order of enactment. Here, only a glance through the enactment in their historical perspective is intended and not an analysis of their provisions.

a) Act Relating to Recognition of Muslims Law

During the six decades between 1827 and 1887, there were several Acts regulating the laws to be applied by local civil courts in numerous provinces, which recognized the supremacy of custom and usage over the rules of personal laws.[27] Due to this statutory recognition of custom and usage, certain sections of Muslims of India,[28] followed customary laws in matters relating to succession or inheritance which were contrary to the Islamic Jurisprudence. Religious leaders of Muslims all over the country felt that the situation called for express legislation superseding customs, conflicting with Islamic law.[29]

The Mopilla Muslims of South India were the first to make efforts for securing compulsory application of Islamic law. They succeeded in 1918 when the Mapilla Succession Act was passed in Madras. The Act provided that, notwithstanding any custom to the contrary, intestate property of a deceased Mapilla would devolve in the order of inheritance under "Muhammadan Law".[30] Ten years later the Mapilla Wills Act, 1928 was enacted to deal with the cases of testamentary succession among the Mapilla of South India.

Two years later, the Cutchi Memons also succeeded in their efforts by getting Cutchi Memons Act, 1920, enacted. This Act, however, made the application of "Muhammadan Law" of succession and inheritance optional. Unsatisfied with the provisions the Memons continued their efforts; and finally the Cutchi Memons Act, 1938 was enacted. The Act provided that all Cutchi Memons will be governed by "Muhammadan Law". The Act is now applicable in Tamil Nadu and Andhra Pradesh. Mysore and Kerala have, also, similar Acts enacted by local legislatures.[31]

The laws applicable to Mapillas and Cutchi Memons were confined to inheritance and succession. But in some other parts of the country, customs contrary to Islamic law were being followed by Muslims in relation to other matters also. Against such practices a movement began in the early thirties of the present century in the frontier province, leading to the enactment of an Act in 1935, by the provincial assembly. The Act provided that in all cases of marriage, divorce, succession and other family affairs Muslims would be governed compulsorily by "Muhammadan Law".

Inspired by this legislation, the Punjabi Muslims endeavoured to securea similar law having a country-wide application. They had been counseled in this regard by Maulana Ashraf Ali Thanavi, Maulvi Abdul Karim Gumathalvi and other luminaries of Jamiat-al-Ulema Hind. In 1935, one Hafiz Abdullah Layalpuri drafted a Bill for the purpose. When moved in the central legislature Mohammad Ali Jinnah proposed some significant amendments in itsprovisions. Eventually a law was enacted in 1937 under the title: The

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[27] *The Madras Civil Court Act, 1873, S-16and the corresponding provisions enacted for other provinces.*
[28] *For example Maplla Muslims of South India and Cutchi Memons were governed by their old customary law of succession and inheritance.*
[29] *Tahir Mahmood, 'Legislation for the Muslims in British India' in 'An Indian Civil code and Islamic Law' p. 53 (1976, Tripathi; Bom.).*
[30] *Section 3 of the Act.*
[31] *The Mysore Cutchi Memons Act, 1943; Cochin Cutchi Memons Act 1106F; Tranvancore CutchiMemons Act, 1117F.*

Muslim Personal Law (Shariat) Application Act. The Act almost abolished the legal authority of custom among the Muslims of British India[32] for reasons best stated in the Statement of Objects and Reasons:

> "*For several years it has been the cherished desire of the Muslims of India that the Customary Law should in no case take the place of the Muslim Personal Law. The matter has been repeatedly agitated in the press as well as on the platform. The Jamiat-ul-Ulema-i-Hindu, the greatest Muslim religious body has supported the demand and invited the attention of all concerned to the urgent necessity of introducing a measure to this effect. Customary Law is a misnomer in as much as it has not any sound basis to stand upon and is very much liable to frequent changes and cannot be expected to attain at any time in future the certainty and definiteness which must be the characteristic of all laws. The status of the Muslim women under the so-called Customary Law is simply disgraceful. As the Muslim Women Organisations have condemned the Customary Law, as it adversely affected their rights, they demand that the Muslim Personal law (Shariat) should be made applicable to them. The introduction of the Muslim personal Law will automatically raise them to the position which they are naturally entitled. In addition to this, the present measure, if enacted, would have very salutary effect on society, because it would ensure certainty and definiteness in the mutual rights and obligations of the public. Muslim Personal Law (Shariat) exists in the form of a veritable code and is too well known to admit of any doubt or to entail any great labour in the shape of research, which is the chief feature of customary Law*."[33]

The Shariat Act, 1937, came into operation on 7th October, 1937, and is applicable throughout India. It applies to every Muslim of whatever sect or school. One provision of the Act lists those matters which among Indian Muslims, shall invariably be governed by the Muslim personal law.[34]

There are- (i) marriage, (ii) dissolution of marriage in any form, (iii) guardianship, (iv) dower, (v) maintenance, (vi) gifts, (vii) trusts, (viii) waqf and (ix) intestate succession (excepting that concerning agricultural lands).[35]

Another provision mentions those matters in regard to which the application of Muslim personal law would depend on the option of an individual; once exercised the option being binding also on the maker's minor children and their descendants.

These matter are: (i) adoption, (ii) wills and (iii) legacies.[36] Under the Shariat Bills as drafted by Abdullah Layalpuri, application of Muslim personal law to adoption, will and legacies, too, was to be obligatory. The present provision relating to these was enacted on the basis of Jinnah's amendments,

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[32] *S. Khalid Rashid, Muslim Law, p. 34 (3rd ed. 1996).*
[33] *Gazette of India, 1935, pt. V. 136.*
[34] *Sec-2 of the Act.*
[35] *Succession of agricultural lands, being a provincial subject under the Government of India Act, 1935, fell outside the jurisdiction of the central legislature which passed this Act.*
[36] *Section 3 of the Act.*

which he had moved in support of the objections raised against the Bill by certain sections of Muslims.[37]

In 1942 Muhammad Ahmed Kazimi had moved a new Bill seeking changes in the Shariat Act in a way which would undo Jinnah's amendments and restore the original draft of the law; but it could not muster the necessary support in the legislature because of the apathetic attitude of the Muslim League.[38]

Some of the legislations application to all Indian citizens had some provisions which would normally affect certain areas of Muslim personal law. To exempt Muslim legal institutions from the application of such laws, protective provisions were specifically included in them. For example – Sections 2 and 129 of the Transfer of Property Act, 1882, section 1 of the Indian Trusts Act and relevant provisions of the Indian Succession Act, 1925.

b) Acts Affecting the Substantive Provisions of Muslim Law

The Oudh Laws Act of 1876 was the first legislative step in British India, which affected a substantive provision of Muslim personal law. That was an Act of regional extension now applicable in ten districts of Uttar Pradesh which constituted the erstwhile Oudh State. Sec. 5 of the Act empowers the courts to make a reduction in the amount of dower, payable under a marriage contract, in accordance with the husband's means and wife's status, at the time of payment. In 1920 an identical power was conferred on the courts in the State of Jammu and Kashmir under the J&K State Muslim Dower Act, 1920.

The Dissolution of Muslim Marriage Act, 1939, happens to be the most important legislation in British India, having regard to the source and method of legislation. The genesis of this Act is to be found in a book, *Al Hilat al-Najiza*, compiled by Maulana Ashraf Ali Thanvi in 1351. A.H. in the background of this book there was cases of apostasy by Muslim women, reported from certain parts of the country, in order to get their marriage dissolved.

There is no provision in the classical Hanafi law, which applies to a majority of Muslims in India, to enable a married Muslim women to obtain a decree from the court dissolving her marriage, in case the husband neglects to maintain her, makes her life miserable, and under certain other such circumstances.[39] Since the Hanafi jurists clearly laid down that if Hanafi law causes hardship, it is permissible to apply to provision of the Maliki, Shafii or Hanbali law. Acting on this principle, the Ulema have issued Fatawa to the effect that in certain cases, a married Hanafi Muslim woman may obtain from court a decree dissolving her marriage.[40]

In this perspective a Bill, approved by Jamiat-al-Ulema Hind, was moved in the central legislature by Muhammad Ahmed Kazimi. With certain changes the Bill took the shape of the Dissolution of Muslim Marriage Act, 1939. The Ulema were, however, not satisfied with the Act when passed, mainly because of the deletion from the Bill the clause which assured that only a Muslim judge could dissolve a marriage

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[37] Muslims Zamindars in some parts of India used to nominate one of their sons or other relatives or an adopted son as the successor who would inherit the whole property to the exclusion of all heirs. Such arrangement would be impossible if Islamic law were to apply.

[38] Tahir Mahmood, 'Legislation for the Muslims in British India' in 'An Indian Civil code and Islamic Law' p. 58 (1976, Tripathi; Bom.).

[39] S. Khalid Rashid, Muslim Law, p. 37 (3rd ed. 1996).

[40] S. Khalid Rashid, Muslim Law, p. 37 (3rd ed. 1996).

under the newly enacted law. Demands of amendment in the Act to this effect have not met, as yet. This Act empowers the court to dissolve a marriage at the wife's request on the grounds enumerated under Section 2. The Act also provides that renunciation of Islam by a Muslim wife would not 'ipso facto' dissolve her marriage, except when a women converted to Islam ceases to be Muslims by reverting to her former religion.[41]

Another significant legislation in British India on Muslim personal law is a Mussalman Wakf Validating Act, 1913. This Act was passed to undo the Privy Council's judgment in *Abul Fata vs. Russomoy Dhur Chowdhury*,[42] which invalidated the family waqf (or waqf-alal-auld) an institution recognized since long under the traditionally established Islamic law of waqfs. The Privy Council held that such waqf were created merely to give a 'colour of piety' to arrangement made for 'aggrandizement of families'. This decision led to forceful opposition by different sections of Muslims. Allama Shibi Nomani and Syed Amir Ali demanded statutory restoration of the traditional law.

In this historical background the Act of 1913 was enacted; and it was given retrospective effect by a supplementary Act enforced in 1930.

c) Acts Regulating Procedural Aspects of Muslim Law

This category of laws covers the maximum number of legislations relating to Muslim personal law. In the foregone pages those laws were discussed which either sought to recognize and enforce the actual Muslim law or affected the substantive provisions of Muslim Law. In the instant discussion those legislations are the subject-matter, which only regulated the procedural aspect of the institutions of Muslim law-

- **Pre-Independence Era**

The Bengal Muhammadan Marriages and Divorces Registration Act, 1876, now applicable in West Bengal, Orissa and Bihar[43], and the Assam Moslem Marriage and Divorce Registration Act, 1935, were enacted to provide to the local Muslims, the facility of registering their marriages and various forms of divorce, with state officials. These Acts are of a regulatory nature and do not affect any provision of Muslim matrimonial law. Registration of marriages and divorces under these Acts are discretionary and not obligatory.

The Bengal Protection of Muhammadan Pilgrims Act, 1896, was enacted in order to regulate licensing of Muslims functioning in the province. Later in 1932, when the government at the centre took over the control of Haj affairs, the central legislature passed the Post Haj Committees Act establishing a network of Haj Committees stationed at all major ports of India. After Independence it was replaced by the Haj Committee Act, 1959, which provides for the centralized Haj administration.[44]

With the breakdown of the Mughal administrative and judicial machineries in India, there arose the need

[41] *Section 4 of the Act.*
[42] *(1894)22 I.A. 76.*
[43] *In Orissa this Act has been re-enacted as the Orissa Muhammadan Marriages and Divorces Registration Act, 1949.*
[44] *The Haj Committee Act, 1959 (No. 51 of 1959).*

for legislation regulating the management of waqf properties involving exorbitant wealth.[45] In the beginning the administrative control was imposed on managers of waqfs under certain local laws of general application e.g., the Bengal Code of 1810 and the Madras Code of 1817.[46] The Musslman Wakf Act, 1923 was the first enactment which specifically and exclusively dealt with the administration of Muslim waqfs. This Act has the approve of Jaimat-al-Ulema Hind.

Likewise, the Bengal Wakf Act, 1934; the U.P. Muslim Wakf Act, 1936[47] and the Bihar Wakfs act, 1947, were enacted by provincial legislatures. All these Acts were enacted by provincial legislatures to provide for better governance or administration of the waqf properties, without effecting any change in the substantive Muslim law relating to waqf.

- ***Post- Independence Era***

During the framing of the Constitution an effort was made by the Muslim members of the Constituent Assembly to crave out a guarantee in the provision dealing with the fundamental right to religious freedom (Article 25) to the effect the personal laws of any community would not be altered.[48] However, the final form of the words incorporated in Article 25(1) and (2) did not create any exception in favour of any community. Constitution of India, nevertheless, recognizes, 'the personal laws' by vesting the legislative power in the Parliament and the State legislation on "all matters in respect of whichthe parties in judicial proceedings were, immediately before thecommencement of this Constitution, subject to their personal laws, including, inter alia matters like 'marriage and divorce' infants and minors' adoption; will, intestacy and succession; joint family and partition'.[49]

But the most problematic and controversial provision of the Indian Constitution with regard to personal laws, is Article 44 which requires the state to 'endeavour to secure for the citizens a uniform civil code throughout the territory of India'. Inspite of being only a 'directive and thus legally un-enforceable, this Article has provoked serious debates both on the judicial platform and elsewhere.

Keeping the constitutional provisions aside, the legislative response to 'personal laws', particularly the Muslim personal law in the Independent- India, has not undergone any significant change from the British-India. The only significant legislation, after Independence, in the era of substantive Muslim personal law is the Muslim Women (Protection of Rights of Divorce) Act, 1986.

This Act was enacted to do away with the controversy created by the Supreme Court's judgment in *Shah Bano case*,[50] relating to maintenance of divorced Muslim women. This judgment was contrary to the provisions of Islamic Shariat. As a reaction to the judgement the entire Muslim community, except few so-called progressive Muslims, organized protest for weeks throughout the country for the protection of Shariat.[51]

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[45] *S. Khalid Rashid, Muslim Law, p. 63 (3rd ed. 1996).*
[46] *S. Khalid Rashid, Muslim Law, p. 63 (3rd ed. 1996).*
[47] *Now replaced by U.P. Muslim Wakf Act, 1960.*
[48] *S. Khalid Rashid, Muslim Law, pp.37-38 (3rd ed. 1996).*
[49] *Item 5, List III, Schedule VII of the Constitution of India.*
[50] *Mohd. Ahmad Khan v. Shah Bano, AIR 1985 SC 945.*
[51] *Dr. Saleem Akhtar, Shah Bano Judgment in Islamic Perspective, p. 341 (1st ed., 1994 Kitab BhavanNew Delhi.)*

The All India Muslim Personal Law Board, drew the attention of the then Government towards the flaws in the judgment and demanded for the restoration of the Islamic law regarding maintenance of divorced Muslim women. This and other political developments, led to the introduction of Muslim Women's Bill in the Lok Sabha during the last week of February, 1986.[52] The Bill ultimately took the shape of the present Act.

Like British India, in Independent India also, laws regulating the procedural aspect of the institutions under Muslim personal law have been enacted by both Union and State legislatures. Most of these enactments are concerned with the 'Waqfs'. These are procedural in nature and do not affect the substantive provisions of Muslim law.

Some such enactments are – The Waqf Act, 1954; The Durgha Khawaja Sahib Act, 1955, The Durgah Khawaja Sahib (Emergency Provision) Act, 1950; The Durgha Khawaja Sahib (Amendment) Act, 1964; The Public Waqfs (Extension of Limitation) Amendment Act, 1959; The U.P. Muslim Waqf Act, 1960; The U.P. Muslim Waqf (Amendment) Act, 1964; The Waqf (Amendment) Act, 1969; The Waqf (Maharashtra Amendment) Act, 1965; The Madras Waqf (Supplementary) Act, 1961; The Waqf Act, 1995.

The discussion so far clearly brings out the policy of the government in Independent India has been that of non-interference towards Muslims personal law. The legislative activity in this area favour of it. This is so becauseMuslims consider their 'personal law' to be sacred one and they identify it with their religion. Hence they regard it 'immutable'.

C. Christian and Parsi Laws and the Legislature

India, being a meeting ground of all the major religions of the world, has a multiplicity of family laws.[53] Thus like Hindu and Muslims, Christians, Parsis and Jews are also governed by their personal laws in their familymatters. The Christians have their Christian Marriage Act, 1872, the Indian Divorce Act, 1869 and the Indian Succession Act, 1925.

These Acts deal with the laws of marriage, divorce and succession for the Christians. The lawsrelating to marriage and divorce, being very old, do not fulfil the requirement of the Christian community in modern times. Keeping this fact in view a Bill, to amend and codify this law, entitled 'the Christian Marriage and Matrimonial Causes Bill', was pending before the Parliament in 1962. When that Parliament was dissolved that Bill lapsed.[54]

As far as Parsi community is concerned efforts were made, as early as 1835, by the members of the Parsi community to have laws suitable to their social requirements, but these early efforts proved abortive. Ultimately, in 1855 the 'Parsi Law Association' was established for the purpose of drafting special Bills for laws applicable to Parsi community relating, inter alia, to the law of marriage and divorce. The Act that was passed as a result of this, was the Parsi Marriage and Divorce Act, 1865.

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[52] *Dr. Saleem Akhtar, Shah Bano Judgment in Islamic Perspective, p. 341 (1st ed., 1994 Kitab BhavanNew Delhi.).*
[53] *M.P.Jain, 'Matromonial Law in India', p. 71, 4 J.I.L.I. (1962).*
[54] *Kumud Desai, Indian Law of Marriage and Divorce, p. 191 (4th ed., 1981).*

This Parsi Marriage and Divorce Act, 1865, was based on the Matrimonial Causes Act, 1857, of England and its principal effect was to make Parsi marriage monogamous. Since then the circumstances altered. Moreover the Parsi Marriage and Divorce Act, 1865, was itself defective in many respects. Adultery by itself or adultery coupled with some other offence, were the only grounds for divorce under that Act. On no other ground could marriage be dissolved under it.

Again a section of the Act empowered only the wife to ask for judicial separation on the ground of cruelty, or because her husband brought a prostitute in his house; the husband had no remedy by way of seeking judicial separation. To remedy these defects the present Act, i.e. the Parsi Marriage and Divorce Act, 1936, was enacted. In addition to this Act, the Parsi have their own separate law of inheritance contained in the Indian Succession Act, 1925, which is somewhat different from the rest of the Succession Act.[55]

There is also the Special Marriage Act, 1954, which is a secular code of marriage law of a general nature under which any two Indians irrespective of their religion may marry. A couple married under this law comes to be governed by the Indian Succession Act, 1925.[56]

Conclusion

It is evident from the foregone discussion that in the British period most of the legislative ventures in the realm of personal laws were sporadic and pieces-meal, and were undertaken to meet a need here and a demand there. They were careful not to injure the religious susceptibilities of the Indians.

They, however, passed corrective and reformative legislations, mostly in response to strong public opinion in favour of those changes. After independence, the Indian legislature took some significant steps of codification of Hindu law. Since the opinion of the Muslim masses is not in favour of the codification of Muslim law, very few steps have been taken in this direction.

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[55] *M.P. Jain, Outlines of Indian Legal History, p. 491. (4th ed. 1981).*
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