



Personal Laws of Hindus and Muslims

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Abstract: In a personal law system, separate sets of laws may be applied to different people within the same country on the basis of their ethnicity or religion. One distinctive feature of Indian law is the personal law. In India, there are many different personal laws because of the country's diverse population. People's conceptions of their own pasts and origins are shaped by the stories told about their culture, behaviour, beliefs, and values through the personal laws. Such cultural norms are protected by law in India. In this paper, we will examine the profound effect that the British colonial rule had on the development of India's personal law systems, as well as how those systems have evolved over the centuries as a result of the migration and invasion of various religious groups, with a special focus on Hindus and Muslims. Next, we'll compare and contrast the protections afforded to women in the two faiths. This article discussed the challenges and opportunities presented by enacting reforms emphasising the concept of a universal civil code, which aims to standardise the application of law across all religions in a secular state like India.

Keywords: *Hindu and Muslims Personal laws, Manu smriti, Quran, Marriage, Maintenance, Colonial system, Uniform civil code, Fundamental rights and Directive principles of state policy.*

1. Introduction

Simply explained, personal laws are a set of rules that are designed to accommodate the customs and values of a specific community. Personal laws in India are inspired by religion and govern a wide range of civil concerns, including marriage and divorce, guardianship, adoption, and succession. To this day, Hindus, Muslims, Christians, Sikhs, and Parsis all live by their own moral standards in contemporary India. They outline expectations regarding how relatives of the same kinship should treat one another. Laws regarding marriage, divorce, alimony, inheritance and succession, guardianship, and child custody have evolved over time to codify social norms. Non-public law's relevance is typically made clear by the context in which it is implemented, the people involved, and the nature of their relationship to one another. In order to keep people inside city bounds and reduce crime, modern society depends significantly on personal norms. There are still

some uncharted territories where no clear legal framework has been formed in some communities. The current political atmosphere prevents revision of certain of the country's personal laws.

2.Evolution of personal laws.

Personal Laws were evolved since time immemorial. They were originated from Quran and Vedas for Muslims and Hindus respectively. These laws have undergone drastic changes from Vedas to Medieval India to British era. These personal laws are different according to its own religion with differences in culture, beliefs and customs. However the Britishers tried to mix both these religions which caused informality among the two communities.

3.Hindu law in ancient era.

The sacred texts of Hinduism—the Vedas, the two epics of the Puranas, the Bhagavad Gita, the Ramayana, and the Mahabharata—form the ethical basis for Hindu law and remain relevant to this day. Hindu sages were revered in ancient times because of their holy example and their extensive knowledge. Society was structured according to the norms they established. Yet, these early writers did not differentiate between public and private law. Only later literature made a clear distinction between the two. Because of this, it appears that in ancient societies, law and religion were inextricably intertwined and often confused with one another. One might also classify "Manu Smriti" with these works. When it comes to laying down the law, Manu is considered to be the first proponent. There are a total of twelve chapters in Manu's code, but eight of them include the actual laws for diverse civil and criminal law topics. The moral laws and rituals are the topic of another. It appears that in ancient India the king did not meddle in his subjects' private lives; rather, he and his subjects were bound by the self-sanctioning legal code handed down by the wise men. The gist of this passage is that Hindus consider law to be intrinsic to their religion, that religion regulates and directs the conduct of its adherents, and that local conventions and recognised usages have been given the status of law.

4. Muslim laws in Medieval era

During this time, Muslim-related laws were introduced to India by the Mughal emperors. The distinction between public law (Huqullah) and private law (Shari'ah) in Islamic law can be traced back to the holy Quran (Huququl Ebad). Public laws such as crimes, trade, etc. were administered by the king during Muslim hegemony, whereas private rules such as marriage, succession, inheritance, etc. were left unmodified to non-Muslims. For example, Grady notes that "Hindus" "...enjoyed under the Musalman administration, a complete affectation with regard to the rituals and observances of their religious practice as well as honour to various advantages and immunity in matters of properties - and in all other temporal concerns the Musalman law gave the rule of decision except in which both party leaders were Hindus, for which case the point was referred to the judgement of the Pundits or Hindu lawyers." This demonstrates that personal laws have always been constrained by the religious norms of the individual's faith.

5. Personal laws during British era.

As a matter of colonial system during the British Raj in India, the British refrained from changing the country's existing personal law where it concerned family and inherited rights. Because trade and business were important to the East India Company's mission, as was the exploit of the country's natural resources, commercial law was a central objective. The British, like the Mughals, were not interested in the country's domestic laws but rather dealt with criminal concerns. "The Charter of George II from 1753", for instance, only applied to Europeans in terms of domestic problems; as a result, non-Europeans like Hindus and Muslims were allowed to resolve disputes according to their own traditions and practises. The Indians' immunity from the authority of mayor courts was established in the "Charter of 1753", and this later evolved into judicial scrutiny of cases brought before the court by Indians themselves. That is why the British secularised the administration of personal rules governing marriage and inheritance for Indians, rather than having religious officials appointed from the society to which a guy belonged. Until around the 1860s, British-run courts were where Hindu and Muslim personal laws were administered. These courts were presided over by common-law trained judges who were helped by "native law officers," or pundits and qazis, who could provide instruction on problems of Hindu and Muslim personal law. During their final years in power, the Brits tried to codify the personal laws. When the First Law Commission was established in 1834, it was not until the 1860s that major legal reforms like the Marriage Dissolution Act of 1866 and the Indian Divorce Act of 1869 were passed. As suggested by Sir Syed Ahmad Khan, the British government passed the Kazis Act 1881 to appoint Kazis for Muslims. More than one law was strictly enforced.

6. Hindu Law and the Status of Women.

Along with the Vedas, Smritis, Shrutis, etc., Dharamshastra was an essential Hindu legal text. Women were still not given equal status when "Hindu law" was formally codified in 1995. The following are some common forms of discrimination that persist today:

- **Right to adopt a child:** Married Hindu women were not allowed to adopt a child without their husband's permission. During her marriage, the deceased mother of "Malti Ray Chowdhury v. Sudhindranath Majumdar" adopted a daughter. The infant was handed over and adopted in front of the spouse of the decedent, but the adoption was later declared invalid by the court. The court ruled that only the husband has the legal right to adopt throughout a marriage.
- **Equal access to the home for women:** In Hindu tradition, the home of a male intestate cannot be divided between female heirs until the male heirs have done so. Allowed residents are daughters who are either unmarried, widowed, or abandoned. Daughters of widows who remarry lose their right to live in the family home. In "Hira Dei vs. Bodhi Sahu and Ors.," Hira Devi sued for the right to remain in her home after her second marriage was annulled. This law further entrenches traditional gender roles.

- **Inheritance rules for unmarried men and women:** Inheriting coparcenary properties from fathers and grandfathers perpetuates gender inequity. Different rules apply to male and female intestacies under the Hindu Succession Act. They did not have any children, thus their estate went to her father's relatives. If a woman does not produce any children, her husband or father-in-law would be the rightful successor. Self-acquired property, gifts, and property from a valid will go to a female intestate's children and husband first. Without her children or husband, the inheritance goes to her husband's parents and siblings.
- **Changes with due time:** Equal rights for daughters were established by the “Hindu Succession (Amendment) Act of 2005”. Liabilities and handicaps in coparcenary property are shared between the daughter and the son. The Court ruled in the case of “Krishan Gupta et al. v. Rajinder Nath & Co. HUF & Ors.” that a daughter who loses her father at intestacy becomes a coparcener and is entitled to an inheritance equal to that of any boys. The amendment advances the cause of gender parity in the law.
- **Widows' property rights:** Although a husband is able to bequeath his assets to whoever he wishes in his will, a surviving spouse is entitled to inherit his property. If a widow cannot support herself through her parents, children, or estate, the law dictates that her husband's heirs do so. This was established in the case of “Vimalben Ajitbhai Patel v. Vatslabeen Ashokbhai Patel and Ors.”

7. Women in Muslim Law.

Peace and submission are important to the Islamic faith. The Quran is the central religious text for Muslims. Although the Quran does include precepts of law, its moral teachings take precedence. The Quran and other writings form the basis for sharia. As a result, they took those precious proclamations and made them into Shariah law. Shariah is antithetical to the central tenet of patriarchal civilization, which treats women as though they were myrmidons.

- **Age for marriage:** There is no minimum age requirement for marriage in Islam. Puberty is a key factor in determining when people can legally get married. As stated by Justice J.B. Padiwalla in “Yunus bhai Usman bhai Shaikh v. State of Gujarat”, the court rules that a girl's biological traits, not her age, are the deciding factor in a marriage.
- **Witnesses at the time of marriage:** In Sunni Islam, a marriage proposal and acceptance must be witnessed by at least two adult male witnesses, or by one male and two female witnesses. The Supreme Court ruled in the case Abdullah v. Beepathu that a woman's value is equivalent to that of a man's half a century ago.
- **The aim of marriage:** Marriage is more likely to occur between men. Marriages are meant to provide happiness and security to their members, prevent debauchery and rape, and have offspring. The idea that women are nothing more than objects to be used at men's whims and pleasure is pervasive.

- **Right of consent of marriage:** The choice of a husband or the ability to control one's own life are not areas in which a woman is afforded any autonomy. As women are regarded as less desirable than men, she cannot even express a preference for a potential spouse. Whatever her parents decide for her is the most important thing in the world.
- **Mahr:** Marriage in Islam is considered a legal contract. Traditionally, the bride's family gives the groom's family mahr (a wedding gift) but the inverse is not true. Clearly, there is a gender gap in this setting.
- **Polygamy:** The Islamic faith is deeply divided over the practise of polygamy In Islam, a man is permitted to have up to four wives but a woman is limited to only one. According to Indian law (Section 494), the children from her second marriage would be considered illegitimate, and she would be subject to criminal prosecution. Section 494 addresses the situation where one spouse remarries after the death of the other: "Remarrying within the lifetime of the spouse who died." Whoever marries another person while remaining legally married to another person while the other spouse is alive shall be liable to imprisonment of any sort for a time which may extend to seven years and shall also be liable to fine.
- **Maintenance:** After the 'Iddat' period, a Muslim husband has no obligation to support his ex-wife financially. During the iddat period following a divorce, a former wife's sole legal entitlements are to her Mehr and maintenance. A court ruled in the case of "Khurshid Khan v. Husnabanu Mahimood Shaikh" that a divorced wife is entitled to mehr and that it is in accordance with regulations for the duration of the iddat period settlement. A widow has no legal claim on her husband's estate and is thus not entitled to any financial support from his relatives. To remarry one's ex-husband, "she must first marry another guy, have sexual intercourse with him, and then he must divorce her."
- **Inheritance rights for women:** In both traditions, men are given a larger portion of the pie than women do. Sons inherit twice as much as daughters when both receive an inheritance. When there is a child, the husband receives 1/2 of the shared property and the wife 1/8, whereas when there is no child, the numbers are reversed, with the husband receiving 1/2 and the wife 1/8.

8.Important Reforms in Personal Laws.

India repeatedly attempted to address gender inequality in personal laws. Even insufficiently, every faith has made little but significant improvements to promote justice and equality. Notwithstanding society's condemnation, the 1856 Hindu Widows Remarriage Act legalised widows' remarriage. The Act let a woman inherit from her new spouse and eliminated her claim to her late husband's riches. Indian wives can divorce their husbands without their consent. Marriage became a legal contract. 1929 prioritised social reform. The Child Marriage Restriction Act made both men and women 18 before marrying. Muslim weddings required parental or guardian consent after protests. Muslim women and divorcees have privileges under the 1939 Dissolution of Muslim Marriages Act. The 1954 Special Marriage Act legalised interfaith marriages, enabling a Unified Civil Code. Hindu marriage laws were established in 1955. This law addressed Hindu

biases. Religious law made separation and divorce possible. The 1976 Marriage Law Reform Act expanded Hindu divorce grounds, redefined abandonment, and permitted young females to divorce. The 1956 Hindu Succession, Minority, Guardianship, and Adoptions and Maintenance Acts addressed the other issue. After “the Shah Bano case, the 1985 Muslim Women (Protection of Rights on Divorce) Act” allowed Muslim women to receive alimony for 90 days after divorce. “The 2005 Hindu Succession (Amendment) Act” allowed Hindu, Sikh, Jain, and Buddhist women equal inheritance rights. The “Muslim Women (Protection of Rights on Marriage) Act of 2019” criminalised triple talaq in India, punishable by three years in prison and a fine. 2017 saw the Supreme Court ban triple talaq. Subsidize spouses.

9. Concept of Uniform Civil Code.

Indian lawmakers are considering enacting a "Uniform Civil Code" to codify personal rules for all residents equally regardless of factors like religion, gender, or sexual orientation. At the present time, religious texts serve as the basis for the personal laws of many communities. One of the controversial promises of India's ruling Bharatiya Janata Party is to implement a standard civil code across the country. It's a hotly contested topic on all sides of the political spectrum in India, as secularists on the right and religious conservatives on the left defend sharia and traditional religious practises. Marriage, divorce, inheritance, adoption, and maintenance all fall under the ambit of personal law, as opposed to public law.

10. Why reforms such as UCC is still debatable?

UCC is that it interferes with people's ability to exercise their religion of choice in accordance with their own personal laws, which is guaranteed by the First Amendment. Article 25 guarantees the autonomy of all religious communities. They are guaranteed protection for their unique culture under Article 29.

The Indian Constituent Assembly's Fundamental Rights Committee also decided against including a UCC as a basic human right. Tribal organisations like the Rashtriya Adivasi Ekta Parishad have raised similar concerns about the threat of a UCC to their cultural and religious practises, and in 2016, they petitioned the Supreme Court to hear their case. When it comes to private matters like marriage, land ownership, and the like, the customary laws in place within Nagaland's tribal lands take precedence over the laws of the United States of America.

Furthermore, it is stated that the dictum of "one nation, one law" cannot be applied to the different personal laws of different communities if codified civil and criminal laws like the CrPC and IPC do not adhere to this principle. The governments of West Bengal and Tamil Nadu, for instance, revised the federal Indian Evidence Act of 1872. Keep in mind that the criminal law minimum drinking age varies by state.

11. Conclusion.

Hindu law has always prioritized individual justice. Early Hinduism linked religion and law. Devout people allowed religious leaders to say anything. Hindu sages ruled the community based on the Vedas. This component is consistent among Hindu personal law opinions. Early Smriti Dharma sutras suggest that civil laws and religion and social values were addressed alike. Law was uniform. Nonetheless, Muslim personal laws peaked. India's legal system changed. Hinduism declined in the eleventh and twelfth centuries. Indian law changed when foreign invaders deposed Hindu monarchs. It devastated Hindu civilization and set the framework for Western conquerors' religious personal rules. Invaders violated Hindu law. Hinduism preserved Hindu law. British courts were Muslim-dominated. They thought religious interference would hurt Hindu-Muslim relations and political stability since they didn't want to offend Indians. According to the research, they aimed to develop universal principles for everyone, regardless of creed, without interfering with Hindu and Muslim personal laws. They correctly concluded that common laws-maintained India's integrity. To build national unity and overcome orthodoxy-based scepticism, India's murky legal system needed codification. The British accepted multiple legal systems without offending religion. Brits created several Law Commissions to ensure religiously neutral laws. They aimed to limit Hindu and Muslim legislation where nationalism didn't conflict. British reforms used Hindu and Muslim personal rules to develop and manage society. British laws covered marriage, succession, property transfer, inheritance, and more. The Constituent Assembly promoted an unified civil code. Although most Assembly members supported it, Despite widespread opposition, the Sub-Committee on Fundamental Rights ultimately decided to incorporate a uniform civil code in the Directive Principles of State Policy.

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