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# PRE - INDEPENDENCE EVOLUTION OF PERSONAL LAWS IN INDIA AND WAY FORWARD

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**Abstract**

This paper looks at how personal laws in India have changed over time. It digs into the role religion, old customs, colonial rule, and later reforms played in shaping the laws people follow today. It starts way back in ancient India, when religious texts like the Vedas and Smritis guided daily life and law felt almost sacred. Then, moving into the medieval era, things got more complicated—Islamic rulers brought Sharia principles, which merged with existing Hindu traditions. That mix set the stage for India's long history of legal pluralism. The paper also takes a close look at how British colonial rule changed things and pushed personal laws in new directions.

## Introduction

Personal Laws in India are an integral part of the legal system that regulates marriage, divorce, succession, guardianship and adoption. While the other streams of law have been legislated as a single body, the personal law remains pluralistic and operates through multiple statues derived from various religious doctrines and texts.

Personal laws in India have their origin in antiquity, when the law and religion were closely interwoven, and social behaviour was controlled by religious scriptures and norms. These norms then underwent historical changes and transition due to the introduction of the Islamic laws during the Medieval period and the tremendous restructuring that occurred in the colonial era by the British. Though ostensibly neutral to religion, the colonial state was nonetheless very influential in shaping personal laws in legal codification, judicial interpretation and targeted legislative change. This resulted in the recognition of separate religious groups in the law.

Post-independence, the Parliament tried to reconcile religious autonomy with the constitutional guarantees of equality and justice. Comprehensive reforms have been carried out in some personal laws (such as codification of Hindu laws in the 1950s), while others are still governed by traditional principles with few legislative and court interventions. This has led to an unconventional landscape of laws and scattered provisions– that is, that people facing the same injustice might have, in essence, different laws based on religion.

The development of personal laws in India is thus not only historical, but an ongoing and intricate legal and constitutional debate, wherein the struggle for tradition and modernity, for religion and secularism, for group rights and individual rights play out. The chapter therefore aims to explore the past of personal laws in India which has undergone evolution from past establishment as a religious norm to its current state as embodied in statute and judiciary, as well as to identify the issues that continue to influence the debate of reform and uniformity.

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### 3.1 Ancient Period: Religious Foundations of Personal Law

Indian concepts of personal law are already rooted in times immemorial since personal law was deeply embedded in the intertwining challenges of religion, morality and social order. While in modern words law occupies a secular and state imposed realm, the thinking of ancient India lacked these, and what was observably taken as law, religion and moral were all part of one another as laws that bound both individuals and societies, were derived from religious books, custom and scholar and sage's sayings.

The most important source of the law during this era were the Shruti (the Vedas) and the Smriti (commentaries of sages). The four Shruti books, the Rig Veda, Sama Veda, Atharva Veda and the Yajur Veda, established the basic set of rules of morals and philosophy of society. The Smritis, which included the Manusmriti, Yajnavalkya Smriti, Narada Smriti and many others, gave more explicit rules regarding different aspects of life such as family relations, inheritance, social duties and so on. These together, comprising what is considered the oldest form of personal law in India.

What was striking about this era was the fact that there was no central legal system to enforce and interpret the law, but the laws were enforced by community leaders, scholars and religious leaders. Thus, for the most part, the personal laws took their form of religion and custom and were enforced differently from one geographical area and one community to another, according to their different religions and customs.

Under another aspect, there was no systematic codification of personal laws in the modern sense, but a development of them, which could be influenced by commentaries and scholarly work over the years. Vedas revealed nothing at all about the distinction between civil law and criminal law or regulatory law and religious law; the Smritis, by contrast, sought for a little bit of distinction, in part to differentiate civil obligation from religious obligation. An example of such would be the 12 chapters of Manusmriti, in which the first eight chapters are concerned with civil and criminal law and last four with religion and morality. However, it was fundamentally a structure of dharma that included legal obligations, ethical obligations, and social obligations.

In this general framework of Hindu law, developments in the inheritance and the family property law have occurred with the development of various schools of interpretation, most notably, the Mitakshara and Dayabhaga schools. The Mitakshara school came out of the commentary of Vijnaneshwara (12th-century Hindu lawyer) on Yajnavalkya Smriti was the predominant school in most parts of the Indian subcontinent. It brought in the idea of coparcenary where by birth a son got a right in ancestral property, which gives rise to joint ownership in the family. Under such ownership, the property was passed on by the rule of survivorship, and no definitions of particular shares were evident except for partition. In this system women were not considered as coparceners

The outlook and practice of the Dayabhaga school, propagated by Jimutavahana and largely practiced in Bengal, however, was different. It denied the concept of "right to birth" and asserted that the right to property comes after death of the father. Hence, there was no co-parcenary while the father's lifetime and the property went by succession instead of survivorship. Inheritance rights of women were also relatively better, under this system, than under the Mitakshara system.

This indicates that -- at the least -- in the ancient Hindu law itself, the personal laws were not uniform and were divergent region-wise, depending on interpretation and custom. These schools of law played a pivotal role in the future codification and evolution of the Hindu personal law in India.

So the ancient period gave a conceptual and structural basis to the personal laws in India and it became part of Hindu religion and customs. The personal law is still influenced by the

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religious practices` in India and reform is therefore a difficult and sensitive process.

### 3.2 Medieval Period: Islamic Influence on Personal Laws

It was regarded as an important period during which the existing Hindu legal concepts were blended during the incorporation and development of Islamic legal concepts, and hence a period of change in the overall personal laws in India. Islamic rule, both under Delhi Sultanate and the Mughal Empire, granted autonomy to non-Muslim communities in matters of personal lawand Muslim law had influence on governance, resulting in a legal pluralism in the Indian legal system.

The administration of justice during this period was carried out through institutions such as Qazi courts, where judges (Qazis) adjudicated disputes in accordance with Islamic law. At the core of Islamic jurisprudence was the concept of Sharia (Islamic law), which governs both public and private aspects of life. The primary sources of Sharia are the Quran which has been regarded as the supreme authority, and the Hadith, which comprised of the sayings and practices of the Prophet Muhammad. These are further supplemented by Ijma (consensus of scholars) and Qiyas (analogical reasoning), which enable the application of legal principles to new situations. Together, these sources provided a comprehensive framework regulating personal matters such as marriage (nikah), divorce (talaq), inheritance (faraid), maintenance, and guardianship.

Islamic law also introduced distinct legal concepts and institutions from Hindu law, for example Marriage under Islamic law was treated as a civil contract, unlike the Hindu customs which treated marriage as a sacred and religious sacrament. Islamic law also provided provisions relating to mehr (dower), rights of divorce, and clearly defined shares in inheritance for women unlike the Hindu law in which dissolving of a marriage through divorce was incomprehensible as it was a regarded as a sacred, spiritual, and indissoluble union

#### 3.2.1 Legal Pluralism Under Islamic Rule

The reign of Alauddin Khalji (1296–1316) marked a significant shift to legal pluralism as unlike previous rulers who sought legitimacy through religious conformity, Alauddin Khalji adopted a pragmatic approach by consciously distinguishing between religious law and the requirements of state administration.

In place of strict reliance on Shariat, Alauddin Khalji introduced Zawabit i.e. a body of secular, state-made laws and regulations which were based on the will and discretion of the Sultan and were concerned with ensuring efficient administration, economic stability, and control over the empire.

Zawabit primarily dealt with matters of public administration, including:

- Regulation of markets and prices
- Fixation of wages and control over trade practices
- Revenue and taxation policies
- Maintenance of law and order
- Military organization and discipline

One of the most notable aspects of Zawabit was the market control system, under which strict price regulations were imposed on essential commodities, and traders were closely monitored to prevent hoarding and black marketing. Similarly, land revenue policies were structured to ensure maximum extraction of resources for the state, often departing from traditional Islamic taxation principles of jizya.

This led to a reduction in the influence of religious authorities (Ulema – Scholars and judges of Islamic doctrine ) in governance and establishment of political authority which operated independently of religious law. Alauddin Khalji justified the introduction of Zawabit on the ground that the socio-political conditions of India required flexible and pragmatic rules, which religious law alone could not adequately provide.

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Furthermore Muslim communities such as Khojas and Cutchi Memons who were mercantile community originating from the Kutch region and converted from Hinduism due to Islamic Missionaries still followed Hindu customary laws in matters like inheritance, succession, and family relations retaining many of their pre-existing social and legal practices.

Similarly, the Moplah Muslims in Kerala followed the matrilineal Marumakkathayam system under which descent and inheritance were traced through the female line, and property was held jointly within the matrilineal family (tarwad). This stood in stark contrast to Islamic law, which is predominantly patrilineal and provides for individual shares in inheritance.

The persistence of these practices gave rise to greater demands for uniformity in application of Muslim law amongst the Muslims in the early 20th century, which ultimately resulted in legislative action, under the Muslim Personal Law (Shariat) Application Act, 1937.

Different legal cultures co-existed in the medieval period, notably when groups of people were intermingled, there was some overlap and influence. Hindu and Islamic norms were readily joined with the customary norms of the local Hindu community frequently overriding formal Islamic norms. It means that during this time personal laws weren't strictly adhered to, and could be flexible to adjusting to the realities of social life.

### 3.3 Evolution of Personal Laws under British Rule in India

The British colonial era was the most important in the development of personal laws in India because it introduced a more formal, codified, and judicially enforced set of laws which replaced the more custom-driven and fluid set of laws that existed before. Initially, the British's policy of non-interference in religious matters but over time the British administrative and judicial intervention introduced rigidity and structure to previously non-existant personal laws.

#### 3.3.1. Policy of Non-Interference and Early Framework

Initially the British East India Company (EI Company) tried to prevent the natives from resisting by being politically neutral.

This is reflected in Charter of 1753 issued by King George II to the East India Company, wherein it re-established Mayor Courts in Calcutta and placed them under Company's Governor and Councils control and further restricted the court from trying civil cases between Indians unless both parties submitted to its jurisdiction.

The judicial plan when introduced in 1772 by Warren Hastings (then-Gov. of Bengal) marked a more concrete formulation. Under this plan, the territory of Bihar, Orissa and Bengal were divided into multiple districts and in each district a English Servant of the Company was appointed as collector responsible for the collection of land revenue. In addition, it created a parallel 2-tier system of courts consisting of:

1. **Mofussil Diwani Adalat (District Civil Courts)**
2. **Mofussil Faujdari Adalat (District Criminal Courts)**
3. **Sadar Diwani Adalat (Highest Civil Appellate Court)**
4. **Sadar Nizamat Adalat (Highest Criminal Court)**

The district courts were established in each district in which the collector for land revenue also served as the judge with the authority to adjudicate civil and criminal disputes regarding inheritance, caste, contracts. As the collector did not understand the religious laws, Qazis and Pundits were appointed to help him. Similarly, the 2 appellate courts located at Calcutta had the Chief Kazi, Chief Mufti and High Priest of Hindu temples to assist him.

Under this plan, the common man began to rely on British established courts for justice and the faith in the system was maintained by its approach of non-interference with religious laws of the land i.e. the Hindu law (Shastras) were

applied to Hindus and Islamic law was applied to Muslims

This position was reaffirmed in subsequent enactments such as the Cornwallis Code of 1793, though which Lord Cornwallis separated the revenue collection and judicial functions i.e. he stripped District Collectors of their judicial powers and appointed European Judge to head the judiciary. The European judges decided civil cases involving matters like inheritance, marriage, and religious practices on the basis of traditional community laws, using pandits for Hindu law and qazis/muftis for Islamic law while the criminal cases were dealt on the basis of modified Muslim law applied uniformly to all communities

The British courts further recognized custom as a valid source of law due to the continuation of practices where converted Muslim communities, such as the Khojas and Cutchi Memons, continued following their ancestral Hindu customary laws as well as matrilineal systems like Marumakkathayam continued being observed by the Moplah Muslims in Kerala

However, this apparent non-interference was, in reality, the beginning of state involvement in personal law, as the British courts with their western legal reasoning became the authoritative forums for interpreting and applying these laws. Over time judges began to interpret religious texts themselves, often through translations of selective religious texts and commentaries. The courts further introduced the doctrine of precedent, under which judicial decisions became binding in future cases. This had far-reaching consequences as

- Personal laws were frozen into rigid rules through case law
- The role of custom and local variation diminished
- Religious scholars lost their authority to courts

Another important principle applied by courts was "justice, equity and good conscience", which allowed judges to decide cases based on fairness where personal laws were unclear. However, this principle often interpreted through their Western notions of justice, leading to further transformation of indigenous laws.

Thus, the establishment of courts led to the development of Anglo-Hindu Law and Anglo-Mohammedan Law in which personal laws lost much of their earlier flexibility and became increasingly standardized and precedent-driven.

### 3.3.2 Gradual Codification of Hindu Laws

Over time with the increasing control over India, the British Government began to codify and apply uniform criminal law, procedural law. This codification began under the Charter Act of 1833, which appointed Lord Thomas Babington Macaulay as the Chairman of the first Law Commission. The law commission prepared the draft Indian Penal Code which was based on then English criminal law as well as Napoleonic Code. The draft was revised by Barnes Peacock (first chief justice of the Calcutta High Court) and came into operation on 1st January 1862.

Separately, Indian Evidence Act, 1872 which was drafted by Sir James Fitzjames Stephen was also enacted, thus applying a uniform criminal law to the masses.

The British Government further developed an interventionist approach in practices which were seen as inhumane or contrary to principles of justice and morality and thus riding on the waves of social reform movements the British Government began codification of personal laws of Hindus relating to marriage.

The shift is evident by the passing of The Bengal Sati Regulation, 1829 by Lord William Bentinck (the then Governor-General of Bengal) who used the reform movement led by Raja Ram Mohan Roy, along with Christian missionaries which had vehemently opposed the practice of Sati and had advocated that Sati had no true sanction in authoritative Hindu scriptures and was instead a social evil perpetuated through custom and coercion.

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Furthermore, the British riding on the social reform movement led Ishwar Chandra Vidyasagar which had advocated for widow remarriage arguing that there were no Hindu Scriptures that have expressly prohibited remarriage and enforced lifelong celibacy on widows, passed the Hindu Widow Remarriage Act, 1856. The act vide section 1 legalised remarriage of Hindu widows and vide section 4 empowered a childless widow being capable to inherit her deceased husbands estate. However the act vide Section 2 rendered a widow who chose to remarry to have lost all claims to her deceased husband's estate, including any right to maintenance and section 3 rendered a remarried widow to have lost automatic custody of her minor children from the first marriage.

In 1889, the British used the death of Phulmoni Dasi, an 11-year-old girl who died due to forced sexual intercourse with her husband. Her death had led to a widespread social movement requesting suitable legislation to prevent child marriages. The movement was used by the British to enact the Age of Consent Act, 1891 which prohibited sexual intercourse with both married or unmarried girls below the age of 12.

Later on the Joshi Committee (1925), headed by Sir Moropant Vishvanath Joshi (a barrister) was appointed by the British Government to investigate and report on the age of consent for sexual intercourse. This led to the enactment of Child Marriage Restraint Act, 1929 which prescribed the minimum age for marriage i.e. 14 years for girls and 18 years for boys

Furthermore to uplift the status of women, the British enacted the Hindu Women's Right to Property Act, 1937 which vide Section 3 provided that upon the death of a Hindu male intestate, his widow would be entitled to the same percentage of share in his separate property as the percentage of his son.

### 3.3.3 Non Interference with Muslim Laws

In the sphere of Muslim personal law, the British did not attempt major reformation, rather with the support of Islamic organizations such as Jamiat Ulema-e-Hind the British Government enacted the Muslim Personal Law (Shariat) Application Act, 1937 which provided uniform application of Shariat across India. This was done due to prevalence of local customs in matter of succession, inheritance, marriage among the converted muslim communities such as the Khojas and Cutchi Memons, of Gujrat and Moplah Muslims in Kerala who followed their ancestral Hindu customs. This forced these converted communities to abandon their ancestral Hindu Customs.

Thus the British Codified Islamic law leading for its preservation and prevalence in traditional Form.

However, The Dissolution of Muslim Marriages Act, 1939 enacted by the British Government serves an exception to Islamic law preservation as it sought to address the difficulties faced by Muslim women who had limited avenues to obtain a judicial divorce under prevailing interpretations of Islamic law in India. Hanafi law school which is the predominant Islamic law school followed in India, provides a husband an unilateral right in the form triple talaq to divorce their wives whereas wife's ability to dissolve the marriage was severely restricted i.e. the wife could only obtain a negotiated separation.

Thus the demand for reform emerged from within the Muslim community, particularly from scholars and reformers who pointed out that other schools of Islamic law, such as the Maliki school, provided broader grounds for judicial divorce. Thus the British passed The Dissolution of Muslim Marriages Act, 1939 which vide Section 2 laid down specific grounds on which a Muslim wife could obtain a decree of divorce from a court. The grounds such as

- the husband's disappearance for four years
- failure to provide maintenance for two years
- imprisonment for seven years or more,
- impotence, insanity or serious illness, cruelty

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the British government also introduced the Special Marriage Act, 1872 as a secular alternative to religious personal laws by providing for inter-religious and inter-caste marriages. However, the Act imposed a significant limitation vide section 2 i.e. individuals marrying under it were required to renounce their respective religions. This was later amended in 1922 which allowed inter-caste and inter-religious marriages without the individuals renouncing their faith. Thus this legislation laid the foundation for a uniform, civil form of marriage outside the ambit of personal laws.

Thus, the British Governments approach to categorize personal laws along religious lines led to reinforcing distinctions between communities that had previously been more fluid and led to the creation of communal consciousness and division in Indian Politics.

The British also enacted The Indian Succession Act, 1925 to consolidate and codify succession laws for non-Hindus and such as Christians, Parsis, and others that were not governed by traditional personal laws.

The act divided succession into intestate and testamentary succession. Part V of the act governs intestate succession and provides a clear hierarchy of distribution of property. Provisions such as Section 33 are under this part of the act.

Section 33 of The Indian Succession Act provides that the surviving spouse would get one-third (1/3) of the estate and that the remaining two-thirds (2/3) would be distributed among the lineal descendants. Whereas if there are no lineal descendants the spouse would get one-half (1/2) of the estate and the remaining half would go to the kindred (such as parents, siblings). The section further provides that if there are no lineal descendants and kindred, the entire estate would belong to the surviving spouse.

Part VI of The Indian Succession Act provides us with the structure for testamentary succession with section 59 recognizing the right of a person to dispose of his property by will and section 63 providing the formal requirements for the valid execution of a will. The requirements are:

- The testator (person making the will) must sign or affix his mark on the will.
- The will must be attested by at least two witnesses with Each witness must have seen the testator sign or affix his mark,

The Act has remained in force since independence and has been used as a significant statute in respect of succession, not only by Christians, but also by Parsis (with some amendments) and persons who marry under the secular law, such as Special Marriage Act, 1954.

There were other major reforms in the Act, including testamentary freedom, and instructions for the legal execution of wills and clarity in estate administration, but religious diversity was respected and the Act was limited in application to specific communities.

**Concluding Remark**

The historical evolution of personal laws in India demonstrates that the present legal framework is not the product of a single coherent system, but rather the result of centuries of religious traditions, customary practices, political authority, and colonial intervention. From the ancient Hindu conception of dharma, to the introduction of Islamic jurisprudence during the medieval period, and finally to the formal codification and institutionalization undertaken by the British, personal laws evolved in response to changing social and political realities. While these laws were originally flexible and community-oriented, colonial administration transformed them into rigid, religion-based legal categories through judicial interpretation and legislative codification.

In this context, the idea of a Uniform Civil Code emerges as a significant constitutional objective aimed at ensuring equality, legal uniformity, and secular governance in personal matters. A carefully structured and comprehensive Uniform Civil Code, enacted through parliamentary legislation, has the potential to harmonize

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personal laws by establishing a common set of civil rights and obligations for all citizens irrespective of religion, while simultaneously promoting constitutional morality, national integration, and substantive justice.