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*Historical Background of Personal Law*
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Historical Background of Personal Laws

Indian society is governed by Hindu, Muslim and British legal systems. The researcher has tried to analyse the evolution of these systems and has discussed the influence of the Britishers. More importantly codification of laws and enactment of some other laws as Kazi Act, 1881 throws light on the initiatives of colonial masters with regard to development of laws. It has been proved that as far as personal laws are concerned, Britishers left them untouched but decisions of the courts influenced them.

Present Indian society is the inheritor of three different and distinct legal systems – Hindu, Muslim and British. The personal laws of Hindus and Muslims find their source and authority in their religious ancient texts. Since ancient time religion regulated almost every aspect of human life both public and personal. Religion was the guiding force behind all laws including personal matters as well as crime, evidence, procedure, contract, trade and commerce. The area of applicability of laws has been reduced, and is only confined to such aspects of life as marriage, dissolution of marriage, maintenance, minority, guardianship, adoption, succession and inheritance. These personal laws were considered immutable and beyond the legislative jurisdiction. From a historical perspective, many areas of Hindu law and Muslim laws have remained unaffected by centuries of political
vicissitudes and socio-economic upheavals. Doubts have been expressed as to whether or not personal laws are protected under the religious freedom guaranteed by the Indian constitution.² In this chapter an attempt has been made to examine the historical background of the application of the personal laws in India and their immunity from the perview of state legislations. This chapter deals with the constitutional, legislative and judicial attitudes of the problem. The chapter is sub divided to cover three distinct periods of Indian history namely, Ancient, Medieval and British India.

A. Personal Laws in Ancient India

The basic principles of Hindu law are found in the 'Vedas' or revealed texts, which are reputed to have been divinely inspired. Tradition has it that God Brahma, the creator, and the first member of Hindu Trinity himself uttered the Vedic texts. They were regarded as infallible and as supreme to the early Hindus as were decay locks to the later Christians.

One can also discover in ancient India sacred works like the Puranas, the two great epics. The Ramayana and the Mahabharata and the Bhagvata Gita, the moral foundation upon which was built the Hindu law which has been in continuous application to this day.³ The Vedas, which are also called Shruti, what is heard is also revealed text. Like any other revealed texts, the Vedas contains many titles of positive law. They believed that
the Rishis or sages of immemorial antiquity heard it and transmitted it for next generation. There is another class of scripture known as the Smriti which means tradition or 'what is remembered'. Smritis are different from Shrutis as they are not a direct perception of the divine precepts but are an indirect perception founded on memory. These two sources are considered as fundamental source of Hindu Law.

In ancient society the Hindu sages were the leaders of the community and they were revered both for their holiness and their profound learning. The rules laid down by them formed the basis on which the society was organised. In addition to their religious duties they also served as a code of ethics and morality but also governed social matters, and matters relating to politics and government. But in the early writings of these sages no distinction was made between civil laws and religious and social laws. It is only the later treatises that dealt them separately. That is why it seems that in early societies law and religion were inter-twined and were often indistinguishable from each other. Sir H.S. Maine stated that:

"There is no system of recorded law from China to Peru, which when it first emerges into notice, is not seen to be entangled with religious ritual and observances." Freud claims that religion, morality and a social sense - the chief elements of what is
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highest in man – were original one and the same. In *Yajnavalkya Smriti* the subject is dealt with under three headings: Acharya, Vyavahara and Prayaschita. The second one is devoted to civil law and the first and the last of these relate to rules of religious observances and expiation.

‘*Manu Smriti*’ may also be put in the same category. *Manu* is regarded as the first law giver or exponent of the law. The code of Manu is divided into twelve chapters, eight of which state rules on various subjects of law both civil and criminal. Other chapters deal with religious sacraments and prescribe moral rules. In the third category fall other treatises like, *Narad Smriti* and *Brihaspati Smriti* etc. which in their entirety are devoted to the discussion of civil law and which are posterior to the *Manu Smriti*.

Within this scheme of ancient Indian law, the king did not have significant authority to interfere with the personal laws of the people. Infact, the law did not derive its sanction from any temporal power; the sanction was self contained. Both the king and his subjects were equally subject to the rule of law formulated and enunciated by the sages. He executed, but seldom, if ever, formulated law. ‘Law was the king, of the king.’ The king could not set the law aside. Indeed, the king was required to take a vow at his coronation that he would scrupulously respect the established laws and customs.
It is, however, submitted that it would be an over simplification to contend that the Hindus regarded the law as an integral part of their religion. Indeed, religion has its vital role to play in controlling and guiding the behavior of the people, yet local customs and approved usages had also acquired the force of law.¹⁰

B. Personal Laws in Medieval India

It is sometimes said that during the Muslim rule in India while “Muslim Scriptural” law was applied to the Muslim by the Qazis, there was "No similar assurance so far litigation concerning Hindus was concerned." It is also claimed that application of Hindu religious law to Hindus began in 1772 when Warren Hastings "made regulations for the administration of justice for the native population without discrimination between Hindus and Mahomedans."¹¹ But this is not the correct and authentic historical fact and this has been proved by most of the legal historians of India.

Muslim jurisprudence furnishes us with an example of complete union of law and religion. In 'Islam', says James Bryce, 'Law is religion and religion is law' being both content in the divine revelation. Similarly, J. Schacht stresses that ‘Islamic thought is the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself.’¹³
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The word Islam is derived from the Arabic root "SLM" which means, among other things, peace, purity, submission and obedience. In the religious sense the word Islam means submission to the will of God and obedience to his law. The connection between the original and religious meanings of word is strong and obvious. Only through submission to the WILL OF GOD and by obedience to HIS LAW, one can achieve true peace and enjoy lasting purity.\textsuperscript{14} Qur'an consists of very words of God revealed to the Prophet Mohammad. The Qur'an is in the form of addresses which were revealed by God on different occasions starting from the time when the Prophet (SAW) made his first call to the people to submit to the religion of God, and continuing till the Prophet (SAW) completed his task in the form of a society fully organised, well integrated and patterned with all the basic institutions.\textsuperscript{15}

Tradition has it that the Koran, was a transcript of a tablet preserved in the Heaven, upon which is written all that has happened and all that will happen. Islamic law from the very beginning had a well defined line of demarcation between

(i) Public law (\textit{Huquullah}) and

(ii) Private law (\textit{Huququl Ebad}).

Under this classification criminal law and public administration were placed in first category while marriage, family relations, successions, etc., were regarded as private law.
Whenever in history the Muslims found themselves in the ruling position in places having the mixed population, they applied the Islamic public law to all their subjects, but the Islamic private law was always applied, if at all, to all Muslims only. In matters falling in the domain of private law all Non-Muslims were left free, always and everywhere, to follow their own religious laws and customs and there was no compulsion on non-Muslims. From the very beginning this rule was adhered to as a matter of state policy (Siyasa Shariyah).

In actual practice, Muslim rulers did not exactly enforce in many places, the Islamic private law even for the Muslims – leave alone non-Muslims. This explains the continued prevalence of numerous local customs in the Muslim dominated lands like Morocco and Indonesia. Probably that is the reason that in India the British found many Muslim communities (convert from Hinduism) continuing with their indigenous customs and usages and decided not to make any change in this respect.17

In India the Muslim rulers applied only some aspects of Islamic public law – e.g. Criminal law which they indeed found not drastically different from this country's own classical law. But, they surely never interfered with the religious laws and customs of the Non-Muslims relating to marriage, family and succession, etc. – despite the fact that they were extremely different from Islamic laws. They did not prohibit even practices relating to Sati and Dev
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Dasi customs, despite their conflict with Islamic public law. How could they be expected to interfere with the other harmless institutions of Hindu religious law and customs? Eminent Arab travellers to Medieval period, have affirmed the undisturbed prevalence of Buddhist and Hindu religious laws under the Muslim rule.\(^{18}\) Hence, during Muslim rule all Non-Muslims were governed in matters of their personal laws by their own traditional and customary laws. 'Hindus', writes Grady,

"...enjoyed under the Mussalman government, a complete indulgence with regard to the rites and ceremonies of their religion as well with respect to various privileges and immunities in matters of properties — and in all other temporal concerns the Mussalman law gave the rule of decision excepting where both parties were Hindus, in which case the point was referred to the judgement of the Pundits or Hindu lawyers.\(^{19}\)

Similarly U.C. Sarkar states that the Islamic civil court did not govern the Hindus in matters of inheritance, marriage and other analogous matters.\(^{20}\) Islamic law applied to Non-Muslims only where they were directly or indirectly involved with Muslims. Thus, disputes between Hindus and Muslims sometimes taken before a Muslim Kadi (or Kazi, religious judge under the Shariah). Another appropriate illustration is to be found in
criminal law where Islamic principles applied to Muslims and Non-Muslims alike. In the words of Tahir Mahmood:

"The Muslim rulers of India enforced the public law of Islam as the law of the land. But in the areas of private law they applied Islamic law only to the Muslims. The law of Islam as a personal law thus emerged in India as one of the various personal laws, along with those of the Hindus, Buddhist, Jains, Sikhs... which were fully protected by the Muslim rulers." Hindu religious law and customs were indeed placed by the Muslim rulers of India at par with the Muslim Personal Law.

It is an indisputable historical fact that Hindu law in fact reached the heights of scholarly development during the Muslim rule in the country. "Before what is commonly called Muslim rule in the country, all law was derived from what is now known as Hindu religion and its injunctions and precepts as found in the Srutis and Smritis including the Holy Vedas, Dharmashastras, and Dharmasutras. Legal treatise like the Manusmriti, Yagyavalkya Smriti and Kautilya's Arthashastra, were legal codes of their respective times based on Vedic and Dharmic foundations. The law given by these ancient Indian codes is now called Hindu law. Development of this law did not stop after the advent of Islam in India. Muslim rulers of the country did not interfere with

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it and left the process wholly free from state intervention. Vijyaneswhara's *Mitakshara* (11th century) and Jimutavahan's *Dayabhaga* (12th century) both were produced after the advent of Islam and were accepted and acted upon as veritable codes of Hindu law - (the latter in eastern India and the former in the rest of the country) - during the reign of the succeeding Muslim rulers. Devanna's *Smriti Chandrika*, the *Dravida* code of Hindu law, was also produced in South India towards the end of 12th century A.D. In North India Vachaspati Mishra's *Vivada Chintamani* and Mitramishra's *Viramitrodaya* appeared in the 15th and 17th centuries respectively the latter during the Mughal rule. At the peak of Mughal authority in the country Western India witnessed emergence of Nikhanata's *Vyavharmayukha* (17th century). All these work were legal codes of their ages based on Hindu religious sources however taking into account the exigencies of the time. These work eventually gave birth to the four sub schools of *Mitakshara* - (Madras, Mithila, Banaras, Bombay) schools. This massive development of Hindu law during the so called 'Muslim rule' in India confirm the historical fact of an absolute non-interference by the state at that time in the juristic evolution of indigenous law."23 To confirm this attitude of exemption of personal law from the perview of state is reflected in the writings of Prof. M.P. Jain a well known legal historian of our time when he says about Mughal judicial systems in following words:

"Not much litigations came before the Kazis because
of the existence of village panchayats, and also because civil causes among the Hindus were decided by their own elders or Brahmins. The practice of the Mughal government seems to have been to leave the Hindus free to decide their cases as best as they could.24

Thus it is crystal clear that the Muslim ruler never interfered in the personal laws of Non-Muslims.

C. Personal Laws in British India

The criminal law was the only law during the Muslim rule, which was largely common to Hindus and Muslims with the exception of the application of oaths and ordeals. The Muslim rule came to an end with the disintegration of Mughal Empire. Towards its end the Empire has already weakened to such an extent that the Governors of different provinces had virtually usurped the whole power and became independent functionaries. It is at this juncture that the Britishers came to India as innocent traders, as they were, ultimately turned out to be the mercenaries and became the forerunners of British rule in India.25

The emergence of the British empire in India stands out as unique event in the history of the world. Unlike many other empires, the huge edifice of this empire was created by merely a company which was organized in England for furthering the British commercial interests in overseas countries.

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During the British Raj in India as a matter of colonial policy, it was politically expedient for the British not to interfere with existing personal law in so far as they related to family and inheritance rights alone. Because the main object of the East India Company, namely trade, commerce and exploitation on the natural resources of the country, their primary motive was with law relating to trade and commerce.

When the British established their hegemony over India (1757), they more or less continued the Muslim pattern of judicial administration. But in the course of time, as they consolidated their position, they completely changed the criminal law and introduced their own system to deal with various matters of civil law. Legislative immunity was granted to certain specified areas of Hindu and Muslim laws which, they considered, were deeply interwoven with religion. During this period the Britishers in India followed the policy of non-interference with the religious susceptibilities of their subjects. They thought that anything could not be wiser than to assure by legislative Act, the Hindus and Muslims of India that the private laws, which they reversely hold sacred and a violation of which they would have thought the most grievous oppression, would not be superseded by a new system of which they must have considered as imposed on them a spirit of vigour and intolerance. Their attitudes towards Hindu and Muslim laws also appear to reflect the original Christian doctrine of two distinct spheres of life, the temporal and the spiritual; the
first being under the control of the state and the second under the control of the Church.

The earliest trace of the acceptance of this policy is found in the Charter of George II, granted in 1753. The Charter of 1753 was principally of the Europeans, and the Hindus and Muslims having their own special customs were left free to dispose off their cases themselves lest difficulty may arise by their custom being broken. The Charter Act of 1753 expressly exempted the Indians from the jurisdictions of Mayor's court and directed that such suits and disputes should be determined by the Indians themselves, unless both parties submitted themselves to the jurisdiction of the court. Warren Hastings throughout his tenure of his office adhered very tenaciously for the policy of applying the personal laws to the Hindus and Muslims. Hastings Rule reserving 'the laws of Koran' to the Muslims and the laws of 'Shastra' to the Hindus was rephrased in the Cornwallis Code of 1793. Thus the rule 'to each religious community to its own personal law' was, thus, firmly established in the country when the British came here in the 17th century. Most certainly it was not a gift from Warren Hastings, who arrived here over 150 years later as Governor of the Calcutta Presidency under the Rule of the Overseas usurpers from the Britain. When in his Judicial Plan of 1772, Warrent Hastings provided for the application of 'law of the Koran' with respect to the Mohammadans and those of the 'Shastra' with regard to the Gentoos (Sec. 23). He was simply
guaranteeing continuation in force of the legal position regarding Hindu, Muslim laws well established in the country since the beginning of the Muslim rule. By no dint of imagination he can be said to have introduced any new rule. What he did was to guarantee that the legacy of the Muslim rule under which Hindu law was to apply the Hindus and Muslim law to the Muslims would not be changed. And this guarantee, notably, the British governor gave only to serve the political interest of his masters – not by way of gift to the natives.  

The British policy towards Hindu and Muslim laws during the period of their dominion over India may be discussed under the following heads, viz.:

(i) Legislation indicating their neutrality towards Hindu law and Muslim law;

(ii) Legislation aimed at maintaining law, and order, good government, and introducing social reform and applying them to all communities alike;

(iii) Legislation on matters falling within the purview of Hindu law and Muslim law, and

(iv) Interference with Hindu law and Muslim law through judicial interpretation.  

As discussed above the British rule from its inception followed a policy of non-interference in the religious matters of
the Hindus and Muslims. The Charter Act of 1753 exempted the Indians from the jurisdiction of the Mayor's courts and directed that all disputes should be determined by the Indian themselves, unless both parties submitted themselves to the jurisdiction of the court. In 1772 Warren Hastings exempted the Muslims and Hindus and it was directed that the matters relating to Muslims and Hindus will be determined according to Koran and Shastra. The rule, requiring the application of Hindu laws to Hindus and the Muslim laws to Muslims was later extended to His Majesty's Court of Judicature, i.e. The Supreme Court of Judicature at Calcutta, Madras and Bombay, when these were established in 1773.  

To the list laid down by Warren Hastings, succession was added in 1781 by the Act of Settlement. In 1793 Lord Carnwallis rephrased the Warren Hasting's rule of 1774. In this way Hasting's policy of preserving Hindu and Muslim law was generally supported by the British. Similar provision was also enacted by an Act of 1797 and by the Government of India Act, 1915. The 1797 provision was passed for the guidance of courts in Madras and Bombay and 1915 provisions for the guidance of the High Courts at Calcutta, Madras and Bombay.

Although the British did not directly interfere in the personal laws of Hindus and Muslims, their judicial mechanism, however, considerably influence the growth of these laws. The plan of 1772 place the administration of justice in the hands of English judges. Although this change was inoffensive, but it tended to mould
traditional concepts. The English judges used to consult Pandits and Maulvis in matters relating to personal laws of Hindus and Muslims, but nonetheless he was a foreigner with a foreign background. He could only make his judgement conform to what he thought was the law; his principal task was to search out a legal solution. Needless to say, the role of judges in the pre-British system was primarily to put an end to dispute brought before them, but when the administration of justice fell into the hands of British, the doctrine of precedent or stare decisis was introduced.

Thus, the law which hitherto had potentially existed in scriptural work and treatises now came to be fixed in the case law of these new courts. Before the advent of the British judicial system, the Hindu law was developed by commentaries and digests written by Hindu jurist. It is they who interpreted the scriptural law. But with the growth of case law this source began to dry up.31

In Muslim law certain misleading decisions were given by the English judges. The classic example of this is the judgement of the Privy Council in Abul Fatah Vs Rassomoydhar Chaudhry32 which was contrary to the principles of Islamic law relating to family waqfs. Thus decision led to enactment of the Mussalman Waqfs Validing Act in 1913 with a view to restoring the status quo.

Another way to introduce English notions in Hindu and Muslim, personal laws by using the so called formula of "justice,
equity and good conscience”. This maxim has enjoyed a continued existence and has been repeatedly laid down in a number of laws passed by the British. Infact, in the course of time justice, equity and good conscience came to mean English law as far as applicable to the Indian situation.

D. Codification of Laws in British India

During the British rule in India, except towards its close, no attempt was made to codify the personal laws. As had been noted above, the British felt hesitant to interfere with the customs and religious-cum-legal principles applicable to the Hindus and Muslims. The first Law Commission had, however expressed a desire to prepare their code for the personal laws but, thereafter, it became an accepted tenet of British policy not to interfere with these systems, to leave them severely alone and to modify them only to the extent there was demand for the same backed by a strong public opinion. The Second Law Commission gave vent to this policy and the same was repeated by the fourth Law Commission.

In persuance of section 353 of the Charter Act of 1833, the first Law Commission was appointed in 1834 and Lord Macaulay was appointed as its Chairman. The first task set before the commission, under the instructions from the Government of India, was to prepare a draft penal code for India. The commission
prepared the required draft and submitted it to the Government on October 14, 1837, before Macaulay's departure from India.

Meanwhile the Britishers had penetrated into Muffassils and the absence of *lex loci* posed many problems there. There was no *lex loci* or territorial law for persons other than Hindus and Muslims in the Muffassils. While within the presidency towns, a *lex loci* prevailed in the absence of personal or other special law. In different reports submitted by the commission from 1866 to 1869, many legislative enactments were made, such as the native Converts Marriage Dissolution Act, 1866, Indian Divorce Act, 1869. Other legislations that came into existence in the era of third Law Commission were the Hindu Wills Act, 1870; Special Marriage Act, 1872; The Indian Evidence Act 1872; The Christian Marriage Act 1872, which has now been amended by the Child Marriage Restraint (Amendment) Act, of 1978. A study of the legislative activities of the period of 1862 to 1872 points out that on the one hand the Third Law Commission was busy in making its contribution to the codification of the Indian law, on the other hand, Sir H.S Maine and Sir James F. Stephen, both respectively as the law members of the Government played a vital role in the shaping of the codification of the laws in various spheres. Some of the more legislations this time were the Married Women's Property Act 1874; The Indian Majority Act 1875, The Bengal Mahammedan Marriages and Divorces Registration Act 1876. The
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First legislative measure relating to any substantive provision of Muslim Personal Law was enacted in British India was Avadh Laws Act of 1876. This was an Act of regional covering ten districts of Uttar Pradesh which constituted the erstwhile Oudh state.

On the suggestion of Sir Syed Ahmad Khan, the government thought it expedient to make a law empowering itself to appoint Kazis in any area if demanded by a sizeable number of local Muslims. Hence the Kazis Act 1881 was enacted. Other important legislation which need to be mentioned in this context are the Transfer of Property Act 1882; The Guardians and Wards Act 1890; The Bengal Protection of Mohammadan's Pilgrim Act 1896.

Although, the new statutes applied alike to all people irrespective of their religious affiliations, the effect of some of the provisions was to limit the Hindu and Muslim laws in their own spheres of application and to introduce in English common law.

The Caste Removal Disabilities Act ... abrogated the Hindu and Muslim laws of property in regard to apostates. Many laws were passed introducing reforms in the old Hindu law. In most cases, the innovating Acts had the support of Hindu community, but conservative and orthodox Hindus weaved these innovations as encroaching upon their religious practices. The Hindu Widow Remarriage Act 1856, permitted a Hindu widow to remarry.
Legislation enabling a widow's remarriage was contrary to Shastric prohibition. Although in ancient India widow remarriages were permitted in special cases and were commonly resorted to amongst certain classes in certain areas, they came to be opposed by the majority of Hindus on religious grounds. The Hindu Wills Act of 1870 for the first time conferred a power of testamantory disposition on Hindus; which were previously unknown to Hindu law. The Indian Majority Act 1875 fixed 18 as the age of majority the Act applied to Hindus in all matters except marriage, divorce and adoption. Many other Acts such as the Hindu Inheritance (Removal of Disabilities) Act 1928; The Hindu Law of Inheritance (Amendment) Act 1929; Child Marriage Act of 1929; Hindu Women's Right to Property 1937 etc. were enacted.

In the field of Muslim law very little legislative activity is found. Most statutes were enacted to restore the orthodox Muslim doctrines. The four central statutes were passed during the British India. The Mussalman Waqf Validating Act, 1913; The Muslim Personal Law (Shariat) Application Act of 1937; The Insurance Act of 1938 and The Dissolution of Muslim Marriage Act 1939.

The Mussalman Waqf Validating Act of 1913 was passed to undo the effect of the judgement given by Privy Council in Abul Fata Case. The Muslim Personal Law (Shariat) Application Act, 1937 was passed to fulfill the desire of Muslim community to replace customary laws which was causing hardship to Muslim women, till that time, governed by Hindu Customary law. The
Insurance Act of 1938 was passed in order to solve certain difficulties regarding the assignment of insurance policies in regard to Muslims. The Dissolution of Muslim Marriage Act, 1939 gave Muslim women certain rights to get their marriages dissolved by the court.

In the light of the above discussion, it is submitted that there were several factors which were responsible for the shift of British policy of neutrality towards Hindu and Muslim law, i.e. their desire to remove anachronistic practices from religion, improve the lot of women, achieve uniformity and certainty in the law, overwhelming support by religious leaders for their legislative innovations and later participation of Indian in law making process.

Further it is clear that the origin of personal laws lies with different religions. In ancient India there was not much distinction between personal law and public law. Religion played a very important role in regulating the affairs of the people. During Muslim rule in India which lasted about 700 years the state did not interfere in the personal laws of the other communities i.e. Hindu, Christians. The Muslim personal law enjoyed complete immunity during this period. During the 150 years of British domination the position was almost similar to that of Medieval period and the personal laws of Muslims and Hindus were to a large extent immune from state legislation. Whatever changes were introduced in Hindu law they were introduced to rectify some
apparent injustice to certain sections of Hindu society. Whether they be untouchables, widows or minor children. Similarly, the Acts which were passed exclusively for Muslims were enacted mostly on the demands of the Muslim community either to rectify misinterpreted judgement or to restore the correct Islamic position in place of customary law applicable in many Muslim communities who had converted from Hinduism. More or less the Britishers were hesitant to introduce their ideas in the personal laws of Hindus and Muslims. They thought that interference with the existing system of law might be resented by the Indians as an interference in their religion based laws. The Britishers were very careful not to injure the religious susceptibilities of the Indians. However, when they consolidated their position in India they gradually introduced their system nevertheless left the personal laws of Hindus and Muslims to perpetuate.

Summary

Three different legal systems having their origin in Hindu’s and Muslim’s religion and British system have influenced today’s Indian society. Basic principles of Hindu law were drawn from vedas and Puranas. Epics like Ramayana, Mahabharata and Bhagwat Gita were moral fountainhead. Manu is accepted as first law giver and Manu Smiriti as first law book. In ancient India the king usually did not interfere in personal laws of people. Local customs and traditions were part of legal system.
During Muslim rule, Muslims were governed by their own laws whereas Hindus were left to practice their customs, traditions and laws. Although Muslims were usually bound by Qur'an and Islamic law, in practice Muslim rulers did not strictly enforce Islamic law.

During the British rule, the colonial masters did not interfere into the personal laws of citizen i.e. Hindus and Muslims. In the beginning, their basic aim was to trade from India and exploit its natural resources. They continued judicial system enforced by Muslim rulers. After consolidating their rule, they gradually changed criminal law and injected their own system in civil laws.

An attempt was made codify the personal laws by Britishers during their last years. Although, First Law Commission was appointed in 1834 but some legislative enactments could be made around 1860s such as Marriage Dissolution Act, 1866 and Indian Divorce Act 1869. For Muslims, on the suggestion of Sir Syed Ahmad Khan, Britishers enacted Kazis Act 1881 for appointing Kazis. Several others laws were also enforced.

The whole history of personal laws proves that they were influenced by change of time to some extents and Britishers introduced their system gradually but left personal laws untouched.
References


2. See Articles 25 & 26 of the Constitution of India.

3. *Supra note* 1 at 213.


7. *Id.* at 19.

8. See also *Satpata Brahman*, xiv. 4-2-56; Mulla, 3.


16. For the reforms introduced in the recent years in the great majority of countries that make up the Muslim world, see Anderson J.R.D., *Law Reform in the Muslim World* (University of London, 1976).

18. Ibid.
19. Supra note 6 at 231.
20. Id. at 209.
28. Supra note 17 at 45.
29. Supra note 1 at 228.
31. Supra note 1 at 231.
32. (1894) 22. I, A, 76.
34. Supra note 25 at 488.
35. Ibid.
36. Sections 53 of the Act of 1833 recited that it was expedient that such laws as might be applicable in common to all classes of the inhabitants of the territories, due regard being had to be given to the rights, feelings and peculiar usages of the people should be enacted and provided for the appointment of a Law Commission in India.
37. During Maine's tenure nearly 211 Acts were passed.

38. On the same pattern in 1976, the courts in order in the state of Jammu & Kashmir under the Jammu & Kashmir Dower Act 1920, were conferred with the power 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.


41. Supra note 1 at 234.

42. See Sarkar, Epochs, 369.


44. Abul Fata Vs Rassomoydhar Chowdhary (1894), 22 Indian appeals 76, 86-7.
Chapter - 3

Uniform Civil Code and The Constitution of India