

Historical Development Of Personal Laws In India: Establishment Of A Uniform Civil Code

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Abstract:-

This paper will provide a logical overview of the history of the development of personal law in India and resultant challenges that would influence the debate on the proposed Uniform Civil Code. The Indian legal system which was developed during the ancient pre-Islamic times and evolved to medieval Islamic rulers and the British colonial period has become more and more diversified. The codification of religion-community-specific laws that continued at different times has had a decisive impact on further legal reforms and has become the axis of the present debate on the Uniform Civil Code as a normative framework envisaged in Article 44 of the Indian Constitution.

Keyword:- Fundamental, Colonial, Multifaceted, Mediaeval.

1. Introduction:

The legal order in India is highly pluralistic in structure where various regimes of personal law govern families based on religion, sect and custom simultaneously. The modern constitution of this system represents the intertwining of law, religious beliefs, and social stratification, as well as the colonialism aspect of India. It is in this context that the suggestion of a Uniform Civil Code, which is supposed to take the country towards equality and secularism, has to be interpreted.

2. Foundations of Personal Laws in India: Ancient and Pre-Islamic Era

2.1 Summary

At ancient and pre-Islamic stages, Indian civilization was in the framework of a legally framed plane the boundaries of which were outlined by religion. There was nothing like codification of law rather it was in unison with religious texts, Panchayats and local customs and the social gradation through the Varna system. It was the turn of Hindu jurisprudence which made dominating influence especially on marriage, inheritance, and family responsibility.

2.2 Legal Sources in Ancient India

Principal Sources Explanation

- Vedas which are the basic source of authority on dharma are referred to as Shruti.
- The Smriti contains a scripture like Manusmriti and Yājñavalkya Smriti which outline modern day code of conduct and responsibility towards the society.
- The term Ācāra means a set of practices accepted by the community and recognized as generic law-creators, and Ātmatuṣṭi means an individual satisfaction that should be the last resort in case other sources are limited.

2.3 Characteristics of Law and Legal Pluralism.

In ancient India, law was rooted in religious beliefs and social hierarchy, with norms differing by caste, gender, and life stage. Women's property rights depended on marital and social status, reflecting deep inequality. During the colonial period, caste-based laws governed marriage and inheritance among Brahmins, Kshatriyas, Vaishyas, and Shudras, reinforcing patriarchal control. With no central legal authority, justice relied on local customs and religious institutions. Similarly,

Japan's legal pluralism incorporated multiple coexisting legal norms, often perpetuating socio-economic inequality and hindering legal uniformity.

2.4 Matrimonial and Familial Jurisprudence

Marriage in ancient India was viewed as a sacrament or complete a lifelong goal, spiritual connection and legally binding. Divorce was rated very rare and socially unacceptable, above all for women.

In some Hindu communal arrangements, polygyny, that is marital union of a man to many women, was used, in some common ways of supporting the strategic alliances and the related descent laws, which was normally undertaken by the Kshatriyas caste or warrior caste during the medieval times.

2.5 Significance of Dharmaśāstra Literature

The works of Dharmashastra, the Smṛiti category specifically, formed the baseline body in the formulation of the ancient Hindu landscape of personal regulations. These texts served as ethical and legal requirements at the same time, and they defined duty, societal demand, family and the system of justice.

Prominent Smṛiti texts encompass:

- Manusmṛiti
- Yājñavalkya Smṛiti
- Narada Smṛiti
- Parāśara Smṛiti

The Brahmins deciphered these writings to cast the outline of religious and legal practices which reaffirmed the social hierarchy of caste and sex in Hindu society. (Lingat the Classical Law of India).

2.6 Judicial Framework

In classical Indian society, legal institutions were deeply embedded in social and religious hierarchies. The king served as the supreme judicial authority, responsible for enforcing dharma and ensuring justice with the counsel of advisors. According to the Dharmashastra, Brahmins were regarded as the primary interpreters of law, advising the king on legal and moral matters. At the local level, Panchayats (village councils) acted as courts, resolving community disputes through customary norms and collective deliberation.

2.7 Inconsistency in Legislation

Historical accounts of ancient and pre-modern India reveal the absence of a unified legal system, as laws were deeply intertwined with religion, local customs, caste, and regional practices. Multiple legal systems coexisted, each tailored to specific communities, regions, and social hierarchies.

1. Legal Norms Based on Caste

In Hindu caste system, set legal obligations and rights were assigned to the Varna's:-

- There were certain benefits that Brahmins gained such as a new penal regime as well as property rights.
- The Kshatriyas caste, like the Brahmin caste, performed warfare and leadership in ancient India, guided by prescriptive ideologies for proper behavior and administration.
- People who were representatives of the Vaishyas and Shudras classes were subject to more severe rules.

Academic literature reveals that cast-specific laws create justice inequity and social stratification.

Marginal caste groups lack access to legal requisites, making their rights meaningless. Courts treat these groups differently, leading to unequal application of the law and institutionalization of caste stratifications.

2. Legal Gender Inequality

Legislation also exhibited considerable variation according to gender:

- Males had superior rights to inheritance, marriage and civic participatory.
 - Conventionally girls and women were left without independent property rights and confined in a limited area of both domestic and legal power.
3. Geographical and Sectarian Variations
- Legal laws have also been regional practices and sect doctrines.
 - Dharmasastra or customary law was differently interpreted by various regions of India.
 - In South India some adoption of matrilineal patterns of inheritance occurred in contrast to largely patrilineal patterns which typify the North.
4. Variations Based on Community and Custom
- Most of the religious bodies and communities always have unique cultural practices.
 - Tribal law, local Panchayats decision and religious decrees were legally binding.
 - It is generally the case that the normative system of traditional societies is marked by co-presence of formal statutory norms in relation to a wide repertoire of unwritten and orally transmitted legal rules. This kind of arrangement complicates the process of attaining uniformity of application and good enforcement.

5. Effects on the Uniform Civil Code

Indian society's legal plurality, influenced by social, religious, and cultural practices, complicates the development of a uniform civil code, requiring a secular set of laws applicable to all citizens regardless of caste, religion, or location.

3. Mediaeval Era and Islamic Governance: Evolution of Personal Legislation

3.1 Summary

The Islamic jurisprudence was introduced in India during the medieval times as part and parcel of the legal system. Although Sharia was institutionalized among the Muslims in the Delhi Sultanate and the Mughal Empire, the Hindus were allowed to exercise their religious practices.

3.2 Legal Sources in Islamic Governance

Islamic Reference Explanation:

- The Quran plays a main role in the Islamic legal tradition as a foundation of the juristic reasoning.
- Hadith is the name given to the set of traditions explaining what the Prophet Muhammad said. It is an obligatory source to both Sunnis and Shiites. The first surviving collection was by Ahmad ibn Hanbal (d. 241/855) and another more canonical collection is that by Ibn Mājah (d. 273/886).
- Ijma: Consensus among legal scholars.
- Qiyas is an analytical method that identifies similarities between phenomena and conclusions about relationships. It is often used by religious scholars to compare texts and identify common theological issues and narrative interventions.
- In the Islamic period, the Hanafi School of Sharia became the predominant system of laws, covering the whole Indian continent.

3.3 Implementation of Sharia Law

During medieval India, Muslims followed Sharia law for personal matters such as marriage, divorce, inheritance, and waqf, administered by Qazis under Islamic principles derived from the Quran, Hadith, and other classical sources. These doctrines differed markedly from Hindu legal systems, with Sharia functioning as a localized jurisdiction alongside other personal laws in India.

3.4 Legal Dualism and Religious Autonomy

During the medieval period, the Indian legal order was highly dualist, with Muslims embracing Sharia and Hindus using Dharmasastra. This legal pluralism allowed for religious freedom in civil administration, but communal law codes became entrenched, hindering the adoption of a uniform civil code in Abidjan.

3.5 Judicial Framework during Islamic Governance

Under the rule of Muslims in India, the law was organized according to a well-defined structure:-

- The state institutionally appointed Qazis or Islamic judges to resolve conflicts within the metropolitan context based on Islamic law (Shari).
- In rural settings, the village councils, popularly known as Panchayats, have been allowed to exercise a considerable influence on the governance of local issues hence upholding the acceptable cultural practices.
- The Mughal Emperor Aurangzeb made it decreed that Islamic jurisprudence be codified in the form of the Fatawa-i-Alamgiri or encyclopedic coverage of the Hanafi school, which later become the binding text of Qazis.
- The two judicial system imported to India has strengthened the religious jurisdiction over law and has entrenched the established tradition of legal pluralism in the country.

3.6 Summary of Documented cases in Islamic Governance

Category of Case	No. of Documented Instances	Percentage (%)	Primary Source
Dower (Mahr) & Dowry Disputes	2	25	Fatawa Collections / Qazi Records
Maintenance & Divorce	2	25	Fatawa-i-Firoz Shahi, Fatawa-i-Jahangiri
Inheritance & Custody	2	25	Fatwa-i-Alamgiri Precursor Records
Marriage Regulations & Reforms	1	12.5	Khalji Farman
Codification & Juristic Influence	1	12.5	Fatawa-i-Alamgiri (Aurangzeb)
Total	8	100	—

3.6 Societal and Gender Implications

In the mediaeval era:

- During the classical form of Islamic justice, men held a significant advantage in matrimonial affairs, with the right to terminate marriage and practice polygamy. Women, however, had more limited rights to maintenance and inheritance, often due to social conditions, resulting in their practice being severely limited.
- The Hindu legal system systematically discriminated against women, with unclear inheritance rights, minimal remarrying opportunities, and a reinforcing patriarchal environment, leading to a long-term reformist agenda on the Uniform Civil Code.

3.7 Influences on Subsequent Legal Developments

Retention of separate legal systems of varied religious groups has been a normative characteristic of Islamic rule:-

- Creation of separate legal personalities based on religious coalition has lead to a system that renders Hindus and Muslim to be governed by their own laws.
- During British rule, colonial India experienced increased legal plurality, leading to heterogeneous legal orders and modern fragmentation, complicating and politicizing the pursuit of a Uniform Civil Code in post-independence India.
- Modern system of personal law in India is distinguished by the pattern of legal dualism which has a long history, and the roots of which can be clearly traced to the division of legal fields that took place in the past.

4. British Colonial Era (1772–1947): Legal Pluralism and the Origins of the Uniform Civil Code

4.1 Overview

The British government formed a non-interference government in the religion issues due to which they issued universal laws instead of following the laws that were made according to various communities. The British system therefore, created a legal dualism doctrine.

4.2 Warren Hastings' Judicial Scheme (1772)

The Judicial Plan of 1772, which was a comprehensive scheme proposed by Warren Hastings, the Governor-General of Bengal under the East India Company, was to govern administration of justice across the British eastern possessions of the day. It was a landmark project that was significant with regard to a fully-grown legal framework in India under the colonial rule.

1. Acknowledgement of Religious Personal Laws

The approach that Hastings took by simply bringing the personal laws that were community-specific to the civil affairs forms a significant item. This reformous practice concentrated on five areas namely, marriage, inheritance, family and religion.

The Hindu Personal Law was formulated to govern the Hindus under Dharmasastra the ancient body of Hindu legal and theological thought.

- Shariat is a Muslim Personal Law that specifies certain rules to be followed by the Muslims according to the rules of Islamic jurisprudence.

2. Function of Religious Authorities:

To make sure that the interpretation of the religious statutes is correct, Hindu Pandits were officially designated to explain Dharmaśāstra when it comes to issues that affect the Hindus.

- Islamic experts known as Muslim Maulvis were normally bestowed with the responsibility of the interpretation of Shariat concerning intracommunal issues.

The legal formularization of colonialism served as a tool of institutionally mediating diverse legal texts into the colonial legal system by integrating religious texts into the colonial law.

3. Implementation of a Dual System

The plan formed the basis through which bifurcated judicial system would be established:-

Islamic criminal laws once governed all social groups, but successive British administrations codified and secularized these doctrines. However, civil and family matters remained rooted in religious traditions, preserving multiple, often conflicting, personal law systems.

4. Prolonged Consequences

The 1772 Plan is the prototype of the codification of personal laws in India because family relations are determined by religious allegiance and this idea is folded into the contemporary legal sphere.

Legal dualism in India gained greater strength after Hindu Succession Act, 1956 (HSA) was enacted and blocked later attempts to enforce Uniform Civil Code in India. In rendering legal status to religious practices, the HSA accentuated the religious-legal nexus a bond that has continued to dominate the later history of legal studies in India.

4.3 Codification of General Legislation and Exclusion of Personal Statutes

The East India Company in India aimed to create a unified body of law to govern administrative and judicial affairs, excluding family, religion, and custom legislation. This was done to prevent sociopolitical interference and preserve the independence of religious institutions, based on pragmatic and ideological principles.

1. Significant Legal Codifications

The British superimposed a general layer of regulations that were imposed on all the people in its territories regardless of their religious orientation or geographical location. These comprised the:-

- Indian Penal Code (IPC), 1860
- The Indian Contract Act of 1872
- Civil Procedure Code (CPC), 1908

Codification organizes statutes into a single source, offering clear guidance in civil and criminal law. It was essential to the British government, ensuring transparency, uniformity, and predictability in legal administration.

2. Intentional Omission of Personal Laws

The British did not codify personal laws in India but enacted general laws like the Indian Penal Code and Criminal Procedure Code, applying uniformly across social and religious groups to integrate local differences into a coherent governance system:-

- Matrimony and dissolution of marriage
- Heritage and succession
- Adoption, guardianship, and familial issues

Rather than adopting a standard civil code, the contemporary Indian government allows heterogeneous faith groups to use the settled personal laws:-

- Hindu law, derived from Dharmaśāstra and traditional customs
- Islamic law, derived from Sharia and Islamic jurisprudence

Later on further, the community of Parsi, the Christian and the Jews of India were governed under their own personal laws.

3. Rationale for Exclusion:

Why the British do not make any personal law has been explained by some reasons:-

The first of these was that the Indian society was not organized on territorial lines but on religious lines so making application of universal territorial laws impossible.

Second, the apparatus of the British administration did not have the institutional capability of governing and deciding on the spread of a various number of religious laws.

Third, codification of current personal laws involved some translation of legal traditions into administrative language and the British were not willing to perform this task. All these combined factors contributed to the decision of not enforcing a uniform personal legal regime.

Segregating communities through separate laws and policies reinforced identities and served British interests by hindering the formation of a unified national identity in the subcontinent.

4. Prolonged Implications

- Institutionalized Legal Pluralism: Colonial legacy resulted in a fragmented legal system where standardized criminal and civil laws coupled alongside religion-based personal laws.
- Obstruction to Uniform Civil Code: At independence, India inherited a dual legal system of religious personal laws alongside a general civil code. Efforts to implement a Uniform Civil Code faced resistance, as religious rights and practices are deeply rooted traditions.
- Disparity and Variability: The difference in personal laws has throughout history created gender inequality by allowing different rights to be applied on different people basing on different social groups such as whether they are entitled to inherit, to divorce, to maintenance etc.

4.4 Establishment of Distinct Hindu and Muslim Personal Laws

With British rule came the legal system that codified a particular law for every religious community:

Hindu Personal Law: Hindu law, based on Smriti texts like the *Manusmriti* and *Yājñavalkya Smṛti*, was also shaped by local traditions. During British rule, courts relied on Hindu Pandits to interpret these texts in cases of marriage, inheritance, and adoption.

Islamic Personal Law: Islamic criminal law once governed all social groups, but British rule gradually codified and secularized these doctrines. Civil and family matters, however, remained tied to religious traditions, maintaining multiple and often conflicting personal law systems.

A dual system set the framework for legal pluralism in contemporary India, making personal law reform a complex and tricky affair.

4.5 The Advent of Civil Marriage: The Special Marriage Act of 1872

Special marriage Act of 1872 became a landmark colonial legislation by bringing in the concept of civil marriages to India in a secular institution and effectively disengaging marriage institution with religious authorities.

The Act had a couple of key features including:-

- In a secular legal system, interfaith marriage is permitted through civil laws that allow couples to marry without religious rituals, accommodating those who wish to formalize their union outside traditional religious frameworks.
- The Lippke doctrine, as upheld by the Constitutional Court, prevents the State from recognizing religion as an independent legal authority, requiring all parties to set aside religious claims in legal matters. Consequently, the doctrine applies mainly to secular or non-religious contexts.

The Marriage Dissolution Act of 1869 had limited acceptance due to its religious renunciation requirement and was replaced by the Special Marriage Act of 1954, which upheld secular values by removing this requirement.

4.6 Legislative Reforms in the Colonial Era

Legal Objective:-

- **Hindu Widows' Remarriage Act, 1856:** The Hindu Widows' Remarriage Act of 1856 legalized widow remarriage in British India, overturning earlier prohibitions. It marked a progressive step by allowing Hindu women to remarry without losing inheritance or property rights.
- **Child Marriage Restraint Act, 1929:** The Child Marriage Restraint Act of 1929, enacted by the colonial regime, set a minimum marriage age. It has influenced modern child marriage laws and shaped related policy debates and research.
- **The Muslim Personal Law (Shariat) Act of 1937:** The Sharia law whose existence was recognized in 1937 was made part of the legal framework governing Muslims when the Muslim Personal Law (Shariat) Act was passed in the same year.

4.7 Indian Nationalist and Reform Movements

Raja Ram Mohan Roy and Dr B.R. Ambedkar make up iconic characters in the fight against gender equity and the modernization of personal law. The main contributions that they make are listed below.

1. Raja Ram Mohan Roy, a reformer and crusader, fought against sati and established Brahmo Samaj, promoting monogamy in marriages, a key agenda of modern social justice movements.
2. B.R. Ambedkar's *Book of Laws* sought to reform Hindu law by systematizing personal laws and addressing caste- and gender-based oppression, particularly in marriage. His reforms promoted women's equality in marriage, inheritance, and education, challenging oppressive legal practices.

During the Indian freedom movement, controversy led to the avoidance of a uniform civil code to preserve national unity and avoid communal sensitivities. Despite not passing a single civil code, support for reform increased.

4.8 Implications of British Policy

The British colonial strategy intentionally linked personal laws to religious identity, resulting in various enduring effects:

- It introduced distinct legal orders for the different communities and thus entrenched divisions amongst these communities.
- The existing codes of the Safavid Iran enforced the patriarchal standards and, therefore, limited the rights of the married woman to inheritance, rights, and divorce.

After India's independence, governments attempted a Uniform Civil Code, but were rejected by religious groups and political members due to the institutionalization of religious-limited legal jurisdiction.

4.9 Summary of Documented cases During British colonial Era

Sr. No.	Case (year) & court	Legal issue	Short holding / outcome	Significance for legal pluralism / UCC origins (why cited)
1	Tagore v. Tagore (1872), Calcutta / reported decisions later considered by Privy Council	Testamentary gifts / whether unborn persons can take under Hindu law	Privy-Court/Calcutta reporting produced rulings that shaped how testamentary dispositions and "gifts to the unborn" were treated; the decision prompted statutory and doctrinal reactions.	British courts reinterpreted Hindu customs to form "Anglo-Hindu" law, rather than simply applying English law, creating a patchwork of case law for future reforms.
2	Abul Fata Mahomed Ishak v. Russomoy Dhur Chowdhry (Privy Council, Dec. 15, 1894)	Validity of a wakf (Islamic endowment) and whether family settlements could be treated as wakf	The Judicial Committee's reasoning significantly constrained certain perpetual family settlements claimed as wakf — judges mixed Muhammadan legal concepts with English reasoning when assessing validity.	The Privy Council played a significant role in shaping Islamic law in colonial courts, resulting in the "Anglo-Muhammadan" jurisprudence, a hybrid personal-law system.
3	Meer Mahomed Israil Khan v. Sashti (Shastri) Churn Ghose (I.L.R. 19 Cal. 412 - late 19th c.)	Validity of wakf / family settlement questions	Calcutta High Court decisions in this line recognized that some family-oriented perpetual settlements could be valid under Mahomedan law as construed by local courts.	The text highlights the contrasting High Court views in Bombay, Calcutta, and Madras, and how these judicial approaches led to legal pluralism in British India.
4	Bikani Mia v. Shuk Lal Poddar (Calcutta High Court, 1892)	Attachment of property claimed to be wakf: whether such a wakf could protect property from creditors	The Full Bench reviewed Calcutta and Privy Council precedents, ruling on limits of private family wakfs, reflecting judicial efforts to balance local Muslim practices with colonial procedural and creditor rules.	Highlights tensions between traditional Islamic endowment practices and colonial courts' commitments to creditor rights and uniform procedures — another example of hybridization.
5	Hindu transfers, gifts, succession (mid-1800s - early 1900s)	Testamentary succession, gift, and customary Hindu rules (Mitakshara / Dayabhaga differences)	Colonial judges relied on pandit reports, Sanskrit translations, and English methods; overall, courts created an "Anglo-Hindu" jurisprudence which sometimes diverged from pre-colonial practice.	The British technique involved identifying a religious source, translating it, and adapting it to a centralized court system, resulting in regionally-varying personal-law rules.
6	Indian Succession Act (1925); Dissolution of Muslim Marriages Act (1939);	Codification of certain succession/divorce/wills matters applicable unevenly across communities	The 1925 Indian Succession Act provided a uniform statutory framework for many communities (Hindus, Jains, Sikhs, Buddhists) but largely preserved Muslim personal law; the 1939 Act clarified grounds for Muslim wives' suits.	The historical antecedents of the UCC debate are directly related to the legislative layering of colonial/state statutes, which standardized some civil matters while leaving others to community rules.

5. CONCLUSION:

Indian personal laws provide a very lengthy chronological pathway, which dates back to the ancient past to colonial times. They have been conditioned in the formation by a variety of religious, customary, and imperial forces. The main aspect of the controversy revolving around legal plurality in modern scholastic and popular discourse is plurality and, with references to the latter, the existing gendered biases and discrimination of other disenfranchised groups of the population. Article 44 of the Constitution provides that a uniform civil code, referred to as the UCC, is not only an express constitutional aspiration, but it is meant to correct past wrongs to create harmony and gender equality in civil law. Yet, in spite of that, the well entrenched tradition of legal dualism continues to represent a potent obstacle to the tangible fulfillment of that dream.

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