

Lecture-26



Development of personal laws

Personal Laws and Legislation

Personal law is defined as a law that applies to a certain class or group of people or a particular person, based on the religions, faith, and culture. In India, everyone belongs to different caste, religion and have their own faith and belief. Their belief is decided by the sets of laws. And these laws are made by considering different customs followed by that religion. Indians are following these laws since the colonial period. In this chapter, we will learn about the personal laws of Hindu and Muslims.

Hindu Personal Laws

Hindus personal laws can be found in:

The 'Shruti' which contains all the four Vedas, namely Rig Veda, Sama Veda, Yajurveda, and Atharva Veda.

- The 'Smritis' which are handed down teachings and sayings of Rishis and holy men of Hindu religion and the commentaries written by many historic authors about the 'Smritis'. There are three types of Smritis, namely: Codes of Manu, Yajnavalkya, and Narada.

Personal Laws and customs as recognised by the statutory law regulate the Hindus. These are applicable to legal issues related to matters of inheritance, succession, marriage, adoption, co-parenting, the partition of family property, obligations of sons to pay their father's debts, guardianship, maintenance and religious and charitable donations.

Sources of Muslim Personal Law

The Holy Quran

- The sayings and teachings of Prophet Mohammed carefully preserved in tradition and passed down generation to generation by holy men.
- Ijma, the agreement of Muslim scholars, companions, and disciple of Prophet Mohammed on matters of religion.
- Kiyas, an analysis made using Quran, sayings of Prophet Mohammed, and Ijma when any individual one of them is not applicable to a particular case.
- Digests and commentaries on Muslim law, written by ancient Muslim scholars. The most famous include Hedaya (composed in the 12th century) and Fatawa Alamgiri, compiled under the instructions of Mughal emperor Aurangzeb Alamgiri.

Personal laws and customs govern the Muslims. It applies to all matters relating to inheritance, wills, succession, legacies, marriage, dowry, divorce, gifts, wakfs, guardianship and pre-emption.

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) (iii) Legislation on matters falling within the purview of Hindu law and Muslim law, and
- (iv) (iv) Interference with Hindu law and Muslim law through judicial interpretation.

The following legislation were passed during the British period which changed many of the provisions of the existing personal laws of Hindus and Mohammedans-

(1)The Cast Disabilities Removal Act, 1850- This Act abolished the principle of the Hindu and Mohammedan laws according to which on conversion from his religion a man had to forfeit his all rights in the property.

(2)The Native Convert Marriage Dissolution Act, 1866- As its name shows, it related to matrimonial relations according to which the matrimonial obligations were to continue even after conversion from one's religion unless the marriage was dissolved under this Act.

(3)The Hindu Widows Re-marriage Act,1856- The Act allowed remarriage of the widows under certain circumstances.

(4)Act III OF 1872, Act XXX Of 1923 and the Arya Marriage Validation Act, 1937- All these Act,1937- All these Acts in effect provided for intercaste and inter-religion marriages and a Hindu would not deemed to have renounced his religion merely because he married a Mohammedan or a Christian lady.

(5)Laws of Wills- The system of Wills unknown to Hindu law was introduced into it by Act v 1881 and the Indian Succession Act of 1925.

(6)The Majority Act, 1875 and the Guardian and Wards Act, 1890- The first Act fixed the age of majority at 18 except in case of marriage,divorce and adoption and the provisions of the later Act were made applicable to a Hindu, if his guardian was appointed by the court.

(7)The Hindu Inheritance (Removal of Disabilities) Act, 1928, the Hindu Law of Inheritance Act, 1928 and the Hindu Women's Right to Property Act, 1937- The first of these Acts abolished the disability for which a Hindu was excluded from inheritance or a share at the time of partition. The second Act changed the order of inheritance and succession among Hindus and the third created a life interest of a widow in the property of her husband after his death. This right had never been recognized in the Hindus law before passage of this Act.

(8)Child Marriage Restraint Act, 1929- The original Act and as amended in 1938 specified the minimum age of marriage for a child although the original Hindu law did not make any such provision and particularly, in case of girls it preferred early marriages.

(9)Hindu Gains of Learning Act, 1930- According to the old Hindu law if a man had acquired some special Knowledge joint family property then his earning by that Knowledge became the part of the joint family property. But this Act abolished that rule and establishes that all such property belongs to the person, who earns it, as his self-acquisitions.

(10) The Waqfs Act,1913, The Shariyat Act of 1937 and the Dissolution of Muslim Marriage Act, 1939- All these three Acts exclusively relate to Muslim law. The first Act was in conformity to the rule of Muslim law and only changed a decision wrongly given by the Privy Council, in which it had held that Waqf for family was void. The Shariyat Act put the Khojas, Memons and Vohras under the Muslim law in all matters and the last Act gave the Muslim wife the right of judicial separation from her husband which was uncertain in Muslim Law.

(11) Other Legislations- The various codes and laws which have been discussed in the previous Chapter relating to codification also indirectly changed all the provisions of Hindu and Mohammedanlaw at least to the extent they were contrary to them and thus created a law of the land in place of personal laws of the paeties.