
POST INDEPENDENCE EVOLUTION OF PERSONAL LAWS & WAY FORWARD

Aryendra Singh, Amity Law School, Noida

ABSTRACT

The post-independence evolution of personal laws in India reflects the constitutional challenge of reconciling religious diversity with the aspiration of legal uniformity embodied in Article 44 of the Constitution, which envisages the establishment of a Uniform Civil Code (UCC). Following independence, Parliament adopted a calibrated approach towards reforming personal laws by balancing constitutional principles of equality, justice, and social reform with India's pluralistic social structure. While Hindu personal laws underwent extensive codification and modernization through the enactment of the Hindu Marriage Act, 1955, Hindu Succession Act, 1956, Hindu Minority and Guardianship Act, 1956, and Hindu Adoptions and Maintenance Act, 1956, Muslim personal laws largely remained uncoded, with reforms taking place through selective legislative interventions and judicial pronouncements.

This paper critically examines the legislative and doctrinal transformation of personal laws in post-independence India, focusing particularly on developments in Hindu and Muslim personal law regimes. It analyzes how the codification of Hindu laws introduced progressive reforms concerning monogamy, divorce, succession, guardianship, women's proprietary rights, maintenance, and child welfare, thereby replacing fragmented customary practices with a more uniform statutory framework aligned with constitutional values. Simultaneously, the paper explores the continued operation of uncoded Muslim personal laws governing marriage, divorce, maintenance, and inheritance, highlighting the contractual nature of Muslim marriage, the operation of talaq, iddat, and mehr, as well as the gendered implications of differential personal law frameworks.

Introduction

With the adoption of the Constitution in 1950, the Indian Parliament was confronted with the complex task of regulating religious personal laws while striving towards the constitutional aspiration to achieve a UCC under Article 44.

The Indian Parliament thus undertook a balanced approach between legal pluralism and progressive reform i.e. while the Parliament comprehensively codified, reformed, and modernized Hindu Personal laws by introducing changes in laws governing marriage, succession, guardianship, and maintenance, with the intention of improving the legal status of women and eliminating discriminatory customary practices, it however adopted a more cautious and selective approach towards personal laws of other religious communities, particularly the Muslim community with the aim to gradually reform Islamic law and move towards uniformity in personal rights.

Thus, while retaining a pluralistic framework based on religion, Parliament enacted several statutes to regulate marriage, divorce, succession, guardianship, and maintenance. These statutes have been examined below:

Codification of Hindu Personal Laws (1955–1956)

In 1941, the British government appointed the B. N. Rau Committee to examine and reform Hindu law. The recommendations of the committee led to the drafting of the Hindu Code Bill - a comprehensive codified law which introduced reforms such as mandatory monogamy, recognition of Divorce and equal property rights for women.

The parliament under the leadership of Dr. B.R. Ambedkar, then then Law Minister introduced the draft Hindu Code Bill. However, the bill faced intense opposition from conservative MP such as Shyama Prasad Mookerjee as well Dr. Rajendra Prasad and Naziruddin Ahmad (a member of the Muslim League) who viewed it as interference with religious practices. Thus, due to lack of consensus the original Hindu Code Bill was broken into separate enactments and were passed by the Parliament gradually over the years. The Hindu Code Bill was broken into the following enactments:

- **Hindu Marriage Act, 1955**

- **Hindu Succession Act, 1956**
- **Hindu Minority and Guardianship Act, 1956**
- **Hindu Adoptions and Maintenance Act, 1956**

These enactments were progressive in both substance and structure as they replaced diverse and discriminatory customary practices within the diverse Hindu Communities into a uniform statutory framework.

The Hindu Marriage Act, 1955

The Hindu Marriage Act, 1955 introduced radical and far-reaching reforms in Hindu matrimonial law by transforming the institution of marriage from a purely sacramental and indissoluble union into a legally regulated relationship governed by rights, duties, and remedies. One of its most significant contributions was the abolition of polygamy through Section 5(i) which made monogamy a mandatory condition for a valid marriage, thereby departing from earlier practices that permitted men to be polygamous.

Section 5 (Conditions for a Hindu Marriage) also strengthened the legal framework of marriage by prescribing essential conditions for a valid marriage such as mental capacity to consent as well as fixing the marriageable age at 21 for men and 18 for women thus abolishing child marriage.

Additionally, by recognizing remedies such as restitution of conjugal rights under Section 9 and judicial separation under Section 10, the Act provided structured legal recourse in situations of marital discord. While restitution of conjugal rights aimed at preserving the institution of marriage by compelling cohabitation, judicial separation allowed spouses to live apart without dissolving the marriage, thereby offering an intermediate remedy that balanced preservation with individual relief.

A fundamental transformation brought about by the Act was the recognition of divorce under Sections 13(divorce) and 13B(divorce by mutual consent), which marked a decisive break from the traditional Hindu view of marriage as an indissoluble sacrament (*sanskara*). Section 13 introduced specific fault-based grounds for divorce, including adultery, cruelty, desertion for a continuous period of two years, conversion to another religion, and mental disorder, thereby

acknowledging that certain circumstances could justify the dissolution of marriage. This recognition signified a shift towards individual autonomy and personal dignity, allowing parties to exit oppressive or unworkable marital relationships. Further, the introduction of Section 13B providing for divorce by mutual consent reflected a progressive and modern outlook by recognizing that marriage is sustained by the free will of both parties and that its continuation should not be enforced where such consent has ceased to exist.

Moreover, the Act incorporated provisions aimed at protecting the rights and interests of women, such as maintenance pendente lite under Section 24 which ensured that during the pendency of divorce proceedings a woman with insufficient income is not placed at a disadvantage.

Furthermore, Section 25 of the act empowered the court to grant permanent alimony and maintenance either as a lump sum or as periodic payments to woman after dissolution of marriage, thereby ensuring long-term financial stability and preventing destitution.

Equally significant is Section 26 which empowered the court to pass interim as well as final orders regarding the custody and upbringing of children at any stage of proceedings i.e. divorce, judicial separation, or nullity of marriage. The underlying principle governing the exercise of this power is the “welfare of the child”.

Thus, the Hindu Marriage Act, 1955 represents a departure from rigid patriarchal and religious norms, establishing a framework that balances the sanctity of marriage with the principles of equality, justice, and individual rights and is in alignment with constitutional values. The act has led to the promotion equality and dignity within the marital relationship and the provisions have introduced a degree of uniformity and legal certainty, replacing diverse customary practices with codified standards. However the act vide section 2 clarified that its only applicable to Hindu, Buddhist, Jains or Sikhs

The Hindu Succession Act, 1956

The Hindu Succession Act, 1956 restructured property rights of the Hindu community by codifying intestate succession and improving the proprietary status of women, particularly through Sections 14 and 15, with Section 14 conferring absolute ownership over property possessed by a female Hindu, thus dismantling the limited estate doctrine.

Under the limited estate doctrine a Hindu female i.e. mostly widows did not receive absolute ownership over inherited property. Under this doctrine the female had restricted powers of alienation as she only had she had life interest over the property i.e. she only had the right to possess, use, and derive income from the property for the duration her lifetime and with her death the property would revert back to the original owner's heirs i.e. her husband's children upon her death; this progressive trajectory was further strengthened by The Hindu Succession (Amendment) Act, 2005 which brought a major reform by amending Section 6 of the Hindu Succession Act, 1956, granting daughters equal coparcenary rights in a Hindu joint family. Prior to this amendment Daughters had no birthright in ancestral property and could not Demand partition or Act as *karta* (manager) in the joint Hindu family.

section 10 provides the rules for intestate succession among the heirs in class 1 of the schedule i.e. the shares will be equally divided among the spouse, the children, and the children of the predeceased children, the mother (the father is classified as class 2 heir)

The Hindu Minority and Guardianship Act, 1956 the Hindu Minority and Guardianship Act, 1956 codified principles of guardianship by defining natural guardians under Section 6 and emphasizing the welfare of the minor as the paramount consideration under Section 13, thereby moving away from rigid patriarchal norms.

Under traditional Hindu law, guardianship was strongly patriarchal, with the father being the sole and absolute natural guardian, and the mother occupying a subordinate position, often recognized only in the father's absence. Section 6 of the Act, while still naming the father as the primary natural guardian, formally recognized the mother as a natural guardian, thereby granting her a statutory status rather than treating her role as merely residual or customary.

This recognition marked an important step toward legal acknowledgment of the mother's independent role in the upbringing and management of the child's person and property.

More significantly, Section 13 introduced a fundamental doctrinal shift by declaring that the welfare of the minor to be of paramount consideration in the appointment or declaration of any guardian. This provision effectively limited the otherwise preferential position of the father, as his right was no longer absolute but subject to the child's welfare. Courts were thus empowered to override traditional hierarchies if the welfare of the child so demands, including preferring the mother or even a third party as guardian.

Muslim Personal Laws

Unlike Hindu law, which was extensively codified, Muslim law remains largely uncoded, with the courts relying on classical Islamic texts and principles, particularly those of the Hanafi school, along with statutory interventions for decisions.

Marriage (Nikah) under Muslim law is conceptualized as a civil contract, not a sacrament and for a valid marriage, there must be offer (ijab) given by the bride's father/guardian (Wali), or their authorized representative (Vakil) and acceptance (qubul) to be given by the groom in the same sitting with the consent of both parties being free and not obtained through coercion. Moreover, under Sunni law, the presence of witnesses is also required.

Furthermore, under the Muslim law, the legal age to marry is upon the attainment of puberty presumed to be at the age of 15 along with soundness of mind.

A distinctive feature in this marriage is the concept of mehr (dower), which is a mandatory financial gift to be given by the groom to the bride. Mehr functions as a form of security and symbol of respect.

Furthermore in Islamic law, tuhr and iddat are important concepts, especially in the context of marriage and divorce :

Tuhr (Period of Purity)

Tuhr refers to the period between two menstrual cycles, i.e., the time when a woman is not menstruating.

Iddat (Waiting Period)

Iddat is the mandatory waiting period a woman must observe after divorce or the death of her husband before she can remarry. Its duration depends on the situation:

- After divorce: Generally three menstrual cycles (or three lunar months if menstruation is not applicable).
- After death of husband: Four months and ten days.

- If pregnant: Until the delivery of the child.

The objectives of *iddat* are:

- To ascertain pregnancy and ensure legitimacy of any child.
- To provide a period for reconciliation (in certain types of divorce).
- To maintain social and legal clarity regarding lineage and marital status.

Divorce under Muslim law

The contractual nature of Muslim marriage has led to an imbalance of power, particularly against women as Islamic Law provides for multiple modes of divorce, both extra-judicial (without court intervention) and judicial (through courts) in favour of the husband whereas the wife could only obtain a negotiated separation.

Traditionally, a Muslim husband possessed the unilateral right to dissolve the marriage through talaq (repudiation). This could be exercised without assigning any reason and took different forms which are:

1. The 1st form of divorce is Talaq-e-ahsan which is considered the most proper and approved form. In this form of divorce a single pronouncement of talaq is made during a period of purity (*tuhr*), followed by abstinence during the *iddat* period. This is done to ensure clarity and restraint, as divorce cannot be pronounced during menstruation and it provides a cooling-off period, allowing the husband to reconsider the decision with scope for reconciliation.
2. The 2nd form of divorce is Talaq-e-hasan. In this form, the husband pronounces talaq once during a tuhr. After this first pronouncement, no cohabitation takes place, and the parties wait until the next tuhr. If the husband still intends to proceed, he makes a second pronouncement in the next tuhr. The same process is repeated, and a third pronouncement is made in the third successive tuhr. The time between each tuhr serves a cooling-off period providing the husband the opportunity to reconsider and revoke the divorce.
3. The 3rd form of divorce is talaq-e-biddat (instant triple talaq). This form of divorce

provides that three pronouncements of talaq in one sitting will result in immediate and irrevocable divorce. This form was widely criticized as arbitrary and unjust, particularly for women, and has now been declared void and made a punishable offence under the Muslim Women (Protection of Rights on Marriage) Act, 2019.

Maintenance

Traditionally, under classical Muslim law, a husband's duty to maintain his divorced wife was limited to the *iddat* period. After the expiry of *iddat*, the wife was expected to support herself or rely on her relatives. This position, though rooted in traditional jurisprudence, often resulted in economic hardship for divorced women, especially where they had no independent means of livelihood.

This rigid position began to change in India through judicial intervention, most notably in the case *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556. In this case, the Supreme Court held that a divorced Muslim woman could claim maintenance under Section 125 of the CrPC, 1973 while emphasizing that preventing destitution is a matter of public policy and cannot be restricted by personal law. This judgment was widely regarded as progressive but also triggered significant political and religious controversy.

Under pressure from his Muslim Supporters, Rajiv Gandhi led government enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986 which diluted the protection granted under

Section 125 CrPC by limiting the husband's liability to the *iddat* period. This was done through section 3 of the act which provided the husband to pay a reasonable maintenance to the women within the *iddat* period, thus leading to the interpretation that a woman could not claim longterm maintenance beyond *iddat* again.

Inheritance Laws

Inheritance under Muslim law is a systematic branch of law derived from Quranic injunctions, which lay down specific rules for distribution of property. Unlike many other legal systems where succession may depend heavily on wills or discretion, Islamic law follows a fixed-share system, meaning that certain heirs are entitled to pre-determined portions of the deceased's estate. This ensures certainty and reduces disputes, as the shares are not arbitrarily decided but are legally mandated. Furthermore, no inherent right by birth is created in the property of a

father by the birth of a son under Islamic law.

Before any distribution takes place, the estate of the deceased is first used to satisfy certain prior obligations such as funeral expenses, repayment of debts, and execution of any valid will (wasiyat). However, an important limitation exists in relation to execution of will i.e. a Muslim can only will away up to one-third of their property, and even this cannot prejudice the rights of legal heirs unless they consent.

Once these obligations are fulfilled, the remaining estate is distributed among heirs, who are divided into Sharers and Residuaries.

The first category of sharers, are 12 in number and are entitled to fixed portions as prescribed in the Quran and are as follows:

- The widow is entitled to one-eighth of the estate where the deceased has children, and one-fourth where there are no children. Her right to inherit is absolute and she cannot be excluded.
- The widower is entitled to one-fourth of the estate when the deceased leaves behind children, and one-half in the absence of children. Similar to the widow, he cannot be excluded from inheritance.
- A daughter, when alone, is entitled to one-half of the estate; where there are two or more daughters, they collectively receive two-thirds. However, in the presence of a son, she does not take a fixed share but becomes a residuary, sharing the estate with him. A daughter is never excluded from inheritance.
- A son's daughter is entitled to one-half if she is the sole heir of that category, and two-thirds collectively if more than one. Her share may be reduced to one-fourth where there is a single daughter, and further to one-eighth in the presence of a nearer son's daughter. In the presence of a son's son of equal degree, she becomes a residuary. However, she may be excluded in certain circumstances.
- A full sister receives one-half when she is alone and two-thirds collectively when there are two or more. In the presence of a full brother, she becomes a residuary. Her right may also be subject to exclusion in specific situations.

- A consanguine sister is entitled to one-half when alone and two-thirds collectively when more than one. Her share may be reduced to one-sixth in the presence of a full sibling, and she becomes a residuary when accompanied by a consanguine brother. She may also be excluded under certain conditions.
- A uterine sister is entitled to one-sixth when she is the sole heir of that category, and one-third collectively if there are two or more. Her right is, however, subject to exclusion in certain cases.
- A uterine brother is similarly entitled to one-sixth when alone and one-third collectively when more than one, subject to conditions of exclusion.
- The mother is entitled to one-sixth of the estate and cannot be excluded. Her share increases to one-third in the absence of children or grandchildren through a son, and also in situations where there are no multiple siblings. However, where a spouse of the deceased exists, she is entitled to one-third of the remainder after the spouse's share has been deducted.
- The father is entitled to one-sixth and cannot be excluded. In the absence of a child or son's child, he assumes the position of a residuary and takes the remaining estate after the sharers have received their portions.
- Paternal grandmother is entitled to one-sixth, though her entitlement is subject to certain exceptions under which she may be excluded.
- paternal grandfather is also entitled to one-sixth, but may be excluded in specific circumstances. In the absence of a child or son's child, he becomes a residuary heir.

After allocating these fixed shares, if any property remains, it passes to residuaries, i.e. typically male agnatic relatives such as sons or brothers, who inherit the residue. If there are neither sharers nor residuaries, the property may devolve upon distant kindred, who are more remote relatives.

Muslim Women (Protection of Rights on Marriage) Act, 2019

The foundation of the Act lies in the landmark judgment of *Shayara Bano v. Union of India*,

(2017) 9 SCC 1, wherein a Constitution Bench of the Supreme Court, by a 3:2 majority, declared instant triple talaq unconstitutional and void. The Court held that the practice was arbitrary and violated fundamental rights, particularly equality and dignity.

Following this decision, to fill up the legislative void, the Government of India undertook steps to provide the statutory framework and thus Muslim Women (Protection of Rights on Marriage) Act, 2019 was passed in the parliament. The act vide section criminalized instant triple talaq(talaq-e-biddat).

This law thus demonstrated selective legislative intervention of Parliament rather than full codification of Muslim personal laws.

Conclusion

The post-independence evolution of personal laws in India demonstrates the State's continued attempt to balance religious pluralism with constitutional ideals of equality, justice, and social reform. While Parliament undertook extensive codification and modernization of Hindu personal laws through legislative enactments relating to marriage, succession, guardianship, and maintenance, reforms in Muslim personal laws have largely remained selective and issue specific, shaped through judicial intervention and limited statutory enactments. This differential approach reflects the cautious legislative strategy adopted in a diverse society where personal laws are deeply intertwined with religious identity and community autonomy.

The study reveals that although significant progress has been made in improving the legal status of women and curbing discriminatory practices within personal law systems, substantial disparities continue to persist across religious communities in matters relating to marriage, divorce, maintenance, succession, and guardianship. Judicial interventions in cases such as *Mohd. Ahmed Khan v. Shah Bano Begum*, *Sarla Mudgal v. Union of India*, and *Shayara Bano v. Union of India* have repeatedly emphasized the primacy of constitutional values over discriminatory practices and highlighted the need for legal uniformity in personal matters.

However, the judiciary's role remains inherently reactive and confined to case-specific adjudication, whereas comprehensive reform lies within the legislative domain.

In this backdrop, the constitutional vision embodied under Article 44 assumes renewed significance. The continued existence of divergent personal laws often leads to unequal

treatment of similarly situated individuals based solely on religion, thereby creating tensions with the constitutional guarantees of equality, dignity, and non-discrimination. Therefore, a Uniform Civil Code emerges as a potential way forward to harmonize personal laws and establish a common civil framework governing marriage, divorce, succession, guardianship, and maintenance irrespective of religious affiliation. A carefully drafted and comprehensive UCC, enacted through sweeping parliamentary legislation, may help eliminate legal inconsistencies, strengthen gender justice, and promote national integration by ensuring equal civil rights for all citizens. However, such reform must be undertaken with due regard to India's socio-cultural diversity and constitutional morality so as to ensure that uniformity does not result in the erasure of legitimate cultural practices but instead facilitates substantive equality and legal certainty within a democratic framework.