

EVOLUTION OF PERSONAL LAWS IN INDIA

Mr R.P. Choudhary, Dept. of Law

Dr. C.V. Raman University, Bilaspur

ABSTRACT

India being the country of cultures, has different cultural as well as personal laws which every citizen follows. Every citizen follow their respective personal laws which makes them into their own religion. This research paper will leads to know how different personal laws evolved.

Keywords: Personal Laws, Evolution.

INTRODUCTION

Personal laws evolved from the very tender age to till date. Initially there were personal laws in Ancient India like Vedas then those personal laws evolved from ancient India to medieval India then the personal laws extended to the British rule. These personal laws were diverse in nature and did not be able to be unified at any Cost .Attempts were being made for the informality by the state.

EVOLUTION OF PERSONAL LAWS

Personal Laws in Ancient India.

The basic principles of Hindu Law lie in the sacred works like the 'vedas' along with the two epics of the 'Puranas' along with 'Bhagwatgita', 'Ramayana' and 'Mahabharata' which are considered as the moral foundation of the Hindu Law and are continuous till today. In ancient society the Hindu sages were the leaders of the community and they were known both for their holiness and their profound learning. The rules laid down by them formed the basis on which the society was organised. But in the early writings of these sages made no distinction between the public and personal laws. It is only the later texts 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. '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 deals with the moral rules and religious sacraments.[1]

During the period of ancient India, King does not seem to interfere in the personal matters of people, rather he himself along with his people were equally subject to the rule of law given by the sages which contained the feature of self-sanction. The simple gist of this content is that Hindus regarded law as an integral part of their religion, also the religion controlled and guided the behaviour of the people, yet local customs and approved usages had also acquired the force of law."

A. Personal laws in medieval period

This was the time when India witnessed the rule of Mughals which brought in the laws related to Muslims. Muslim Law is traced by the holy '*Kuran*' which clearly demarcated between Public law (Huqullah) and private Law (Huququl Ebad). During the Muslim rule the public laws which were related to crimes, trade etc., were governed by the ruler and the private laws like marriage, succession, inheritance etc., and were left untouched to non-muslims. '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"

Thus it can be seen that from the very beginning the personal laws remained restricted to the usages and customs by their own respective religions. [2]

Personal Laws during the British Rule.

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. The Britishers like the Mughals did not interfere in the personal laws of the

country, they looked after the criminal matters mostly. Example of which is the Charter of George II in the year 1753 which governed only the Europeans with regards to personal matters and the Hindus and the Muslims were left free to dispose of their cases through their own customs and usages. The Charter of 1753 lays down the exemption of Indians from the jurisdiction of mayor courts, which later on developed to the judicial review of the matters brought before the court by the Indian themselves.

Thus the British let affairs of Indians with regard to marriage and inheritance are governed by their personal laws which were administered by a secular British judiciary rather than by religious administrators taken from the community to which a particular individual belonged. Till around the 1860s, the administration of personal laws of Hindus and Muslims occurred in the regular, British-run courts by Judges trained in common law who were assisted by “native law officers”, i.e. pundits and qazis, to advice on issues of Hindu and Muslim personal laws respectively.[3]

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.

CONCLUSION

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. Thereby it is safe for our country to unified them and make a uniform civil code that will prevail in whole country.

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