



# **Personal laws in India Actually Harm Rather Than Preserve Religious Freedom**

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## **Introduction**

There are various personal law in our society related to marriage, divorce , inheritance , property in India and society act according to their personal law, because when the issue of marriage, divorce raises among society in Hindu as well as Muslims, they act according to their personal law in the society rather than act according to Legislation of the country. In one of the leading news paper, the General secretary of Muslim personal law board said that “ We will boycott this questionnaire of Uniform civil code, no Muslim will respond to it, because it is misleading and deceitful. The uniform civil code is divisive and will lead to social unrest” India has different set of personal law for each religion and demand for overhauling these code from last three decade. Our constitution accept that “All religion have different customs and tradition”

All religion have their different personal law and they act according to it in Hindus as well as Muslims. The different personal law necessary because they act according to their religious doctrine because they help in keeping peace, order and harmony to their community. Art 44 brings all religion in the country under one legislation, but all religion has their personal issue according to their personal law and they act according to it. They don't care about what the legislation will said. So it is rightly said that personal law in India actually harm rather than preserve religious freedom. All communities have their different trends and customs about their marriages, divorce , inheritance, property in the country but in spite of this it is the duty of every citizen of any religion to give the respect to the law of the country, because Art 44 of the constitution of India bring all religion in the country under one legislation.

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Art. 44 of the Indian Constitution establish the legal uniformity in India. The aim being that the state shall endeavor to secure the citizens a Uniform Civil Code through the territory of India. The constitution of India provides that UCC direct to secure for the citizens a Uniform Civil Code through the territory of India. It can be applicable to all citizens of India irrespective of their caste, creed, religion, color and place of birth which indeed remains source of controversy since its very inception. Last year the Apex court of India has registered PIL titled as “Muslim Woman quest for Equality” on the gender discrimination under Muslim personal law. To test the validity of triple talaq, the court has sought opinion of various section of the society including government.

### **Issue of Constitutional Validity of Personal Law**

1. Art. 25 of Indian Constitution seek to preserve the freedom to practice and propagate any religion in India.
2. The Constitution guarantees freedom to religious practices but personal laws should be conformity with the Constitution.
3. If any practice of personal law goes against the concept of equality and dignity which are fundamental rights, then there is need of careful evaluation.
4. Practices of personal law must be tested on touchstone of Constitution. If these violate the Constitutional principles then such practices must be declared as null and void.

### **Concept of Triple Talaq**

Currently the practices like triple talaq, polygamy practice in Muslim community are under adjudication to test its constitutional validity. All India Muslim law board has argued that personal law of religion should be beyond the scope of judicial review and they are not subject to the Constitution. But such arguments are abhorrent and reflect the patriarchal nations established in conservative section of the society. Practices like Triple Talaq, polygamy have adverse impact on the right of woman to live with dignity.

The Constitution of India provides both Fundamental Rights and religious freedom to all the citizens. But the broad principle enshrined in the Constitution should not be violated in the name of religious personal laws. The personal laws should in compliance with Constitution, else it must be declared as illegal. Triple Talaq and Polygamy practices are outright violation of the Constitution; these practices are adversely impact on dignity of woman life. Hence such practices must be declared as illegal.

## **Personal Laws and Hindus in India**

Hindu law is considered to be one of the most ancient system of law known to the world. Hindu law is applicable to the personal laws and family matters of Hindus such as marriage, divorce, maintenance, adoption, minority and guardianship.

### **Source of Hindu Law**

Custom or Usage is very important source of Hindu Law. section 3 (o) of HMA 1955 defines this expression as “Custom or Usage is a rule which has been continuously and uniformly observed for a long time among the Hindus in any local area, tribe, community, group of family. The rule should be certain and it should not be unreasonable, should not be opposed to the public policy and has not been discontinued by the family.

## **Personal Laws and Muslims in India**

Muslims, like Hindus, used the opportunities provided by the Government of India Act, 1935 to modify some aspects of their religious personal laws. The personal laws of Hindus and Muslims find their source and authority in their religious ancient texts. Since ancient time, 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 reduced and is only confined to such aspect of life as Marriage, Dissolution of marriage, maintenance, guardianship, succession and inheritance.

Before Islam was introduced as religion to Arabia, a tribal social structure was prevented there. The tribe as a whole determined what was law and rules were unwritten. These laws were modified with time as and when society felt the need for change. There are four different schools of Muslim law each of which interpret in different way and consist of various rules and regulation for muslim community world over. The four school of muslim law (Hanafi, Maliki, Shafi, Hanabil) developed in four different countries. Country with muslim population have each adopted their Islamic law based upon these school depending on their specific situation. According modern Islamic notion status has responded to the need of modernity by embracing the Shariat in way of suting their social and political needs.

The S C recently asked the Government to file a copy of the report of a committee that in inquiring in to personal laws relating to marriage, divorce, custody. Unsurprisingly the Uniform Civil Code debate has been received. the All Indian Muslim Personal Law Board continued existence of muslim personal law as a symbol of distinct Indian identity and an area of law with divine sanction, therefore beyond the preview of temporal government. It uses the constitutional guarantee of the “Right freely to profess, practice and propagate religion”.

In India the status of woman is not so high as that of a man, the situation of muslim woman is comparatively worse. However there has been clear distinction between the right of a man and woman in Quran, Purda, the provision for distribution of property, marriage laws, legalizing polygamy etc. prior to the laws, that are substantial discriminatory against woman.

In India, the legal status of muslim woman in the society is controversial an debatable. It is a complex issue of religious freedom, minority rights. Personal law which is based on religious law has been altered by the state authority and precedent set by the judiciary in governing family relation. The All India Muslim Law Board constituted in 2005 for the protection of muslim personal law in India focusing on major issue of woman like marriage, divorce and other legal right. Under muslim law, marriage is like a contract. In this way, the concept of loyalty is limited. The cruelty provision in the personal law is a tendered as a glasses and husband is the right man who can be kind to his wife. It is based on offer and acceptance between man and woman.

After the muslim woman (Protection of Right and Divorce) Act 1986, protect the rights of divorcee muslim woman and support her living. This is the land mark legislation brought out by Parliament in 1986. In Sha Bano Case, the Apex Court said that if a muslim divorced woman is unable to maintain herself after she get divorce, she can claim maintenance from her former husband and the same can be claimed under Section 125 of Code of Criminal Procedure. There are no doubt striking resemblance between the Shah Bano Case and Shayra Bano Case in 2016. The social outcome of Shayra Bano Case could be different from Shah Bano Case. Both the case pertained to muslim woman. Both the muslim had moved the court to seek gender justice. In both case these woman were asking for court intervening against provisions of muslim personal law that discriminate against woman.

## **Conclusion**

According to Article 44 of Indian Constitution, there must be established legal uniformity in India. The Aim of Constitution to provide that the State shall endeavor to secure the citizen Uniform Civil

Code throughout the territory of India. But the family life of Indian is rightly or wrongly guided by their respective religion and customary relief. Religion more or less survive only through the ceremonies and customs and force upon its members. The debate on Uniform Civil Code must be widened beyond for wives and Triple Talaq, if we look at the honour killing and khap panchayat decision, everyone want to enforce their religious and customary relief on their member and community. India is a country millions of customs and sages. Everyone beliefs that his or her custom is the best. No one wants to consider about the law, legislation prevails in India. There are many laws in the country like Hindu Marriage Act, 1955., Hindu Succession Act 1956, Hindu Adoption and Maintenance Act 1956, are applicable to all. Hindus including Sikh, Jain, Budhiths, Lingayada, Arya Samaj, but we find in-spite of Constitution want legal Uniformity in country but no fruitful result has been came out. It is a debatable issue from very beginning when Constitution was made and to preset scenario. I hope some reforms has been made out as regarding to personal law of Hindu as well as Muslim in the Country.