

EVOLUTION OF HINDU AND MUSLIM MARRIAGE LAWS IN INDIA

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ABSTRACT

Personal laws are laws that are generally relevant to one single religion and laws that regulate that faith. These laws are the rules from which these faiths also obtained their grundnorm (Basis), and the law on these has developed and evolved. They may be customs or laws that have been observed for a long time. These commandments have been observed by the populace for a very long time and are common among followers of their faith. These laws were created with varied societal views and feelings in mind. This paper covers all the aspects of the development of Hindu and Muslim Marriage law from scratch, their key provisions, the improvements carried out in the rules, landmark judgments related to cases, and recent development regarding rules and customs for better understanding of readers. The evolution of Hindu and Muslim marriage laws in India has been shaped by a complex interplay of religious, cultural, and historical factors. Historically, Hindu and Muslim communities had their own separate laws governing marriage and divorce, which were based on their respective religious texts and customs. However, when British colonial dominance began in India, a number of laws were introduced that aimed to codify and standardize marriage and divorce practices across different communities. In recent years, there has been ongoing debate and discussion about the need for further reform of Hindu and Muslim marriage laws in India, with a focus on issues such as gender equality and the rights of women.

CONTRIBUTORY FACTORS IN EVOLUTION:

The main factors that shaped the evolution of Hindu and Muslim marriage laws in India include:

1. **Religious beliefs:** Hindu and Muslim marriage laws were based on the religious texts and teachings of the respective religions, and therefore religious beliefs played a significant role in shaping the laws.
2. **Cultural practices:** The traditional practices and customs of the Hindu and Muslim communities had a significant impact on the development of the laws.

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3. **British colonial influence:** The British introduced their own laws and legal systems in India, which had a lasting impact on the development of the laws in the country. They also introduced the concept of codified laws, which played a crucial role in the formation of the HMA Act, of 1955¹ and the Shariat Act, of 1937².
4. **Social and economic changes:** Changes in the social and economic conditions of society, such as increasing education and employment opportunities for women, have influenced the evolution of the laws over time.
5. **Changing societal norms and values:** The laws have undergone changes and amendments over the years, reflecting the changing perspectives and needs of society, such as the need for gender equality and the protection of women's rights.

KEY PROVISIONS:

The HMA Act, of 1955³ and the Shariat Application Act, of 1937⁴ were two key laws that regulated marriage, divorce, and inheritance for Hindus and Muslims in India respectively.

The key provisions of the HMA Act, of 1955 include:

1. Establishing the legal framework for marriage, divorce, and inheritance for Hindus, Buddhists, Jains, and Sikhs.
2. Making the legal age of marriage for men 18 and women 14 years old.
3. Recognizing monogamy as the legal norm for marriage.
4. Providing grounds for divorce, including cruelty, desertion, and adultery.
5. Providing for the rights and responsibilities of married couples, including maintenance and property rights.
6. Providing for the legal rights of women, including the right to seek divorce and the right to inherit property.

The key provisions of the Muslim Personal Law (Shariat) Application Act of 1937 include:

1. Recognizing the application of Islamic law in matters of marriage, divorce, and inheritance for Muslims in India.
2. Providing for the rights and responsibilities of married couples, including maintenance and property rights.

¹ Hindu Marriage Act, 1955

² Muslim Personal Application Act, 1937

³ Hindu Marriage Act, 1955

⁴ Muslim Personal Application Act, 1937

3. Ensuring that women have access to their legal rights, such as the ability to get a divorce and inherit property.
4. The practice of triple talaq (talaq-e-bidder), which permitted Muslim men to engage in polygamy and divorce, was later overturned by the Indian Supreme Court in 2017.

It's worth mentioning that both laws have undergone several changes and amendments over the years to align with changing perspectives and needs of society, such as the need for gender equality and the protection of women's rights.

IMPROVEMENT:

Hindu and Muslim marriage laws in India have undergone significant changes and evolution over The evolution of Hindu and Muslim marriage laws in India has been shaped by a complex interplay of religious, cultural, and historical factors. Historically, Hindu and Muslim communities had their own separate laws governing marriage and divorce, which were based on their respective religious texts and customs.

Hindu marriage laws, for example, have their origins in ancient texts such as the Manusmriti and the Dharmasastras. These texts laid out rules and regulations governing marriage and divorce and were considered authoritative by Hindu scholars and jurists.

The Hindu Marriage Act of 1955, for example, was passed to provide a uniform set of laws governing marriage and divorce for Hindus, Buddhists, Jains, and Sikhs. This law established the legal minimum age for marriage, introduced the concept of monogamy, and established a process for divorce.

However, during the British colonial period, several laws were introduced that aimed to standardize and regulate Muslim marriage and divorce practices. The Shariat Act 1937, for example, recognized the authority of Islamic law in matters of marriage, divorce, and inheritance among Muslims in India.

In recent years, there has been ongoing debate and discussion about the need for further reform of Hindu and Muslim marriage laws in India, with a focus on issues such as gender equality and the rights of women. Some argue that the current laws are outdated and do not adequately protect the rights of women and girls, particularly in areas such as divorce and inheritance. Others argue that any changes to the laws should be made in consultation with religious leaders

and scholars, in order to ensure that they are in line with traditional religious beliefs and practices.

Overall, a number of religious, cultural, and historical elements have influenced the development of Hindu and Muslim marriage laws in India, making it a complex and continuous process. While the laws have undergone significant changes and revisions over time, there is ongoing debate and discussion about the need for further reform to better protect the rights of women and girls.

LANDMARK CASES:

There have been several landmark cases that have shaped the evolution of Hindu and Muslim marriage laws in India. Some of the most notable ones include:

1. **Shah Bano case (1985)**⁵ - In this case, Shah Bano, a Muslim lady, sought support under the Indian Muslim Personal Law after her husband filed for divorce. She was granted maintenance following her divorce, according to a judgment by the Supreme Court of India. The Muslim Women (Protection of Rights on Divorce) Act, which places restrictions on the amount of maintenance that Muslim women may request, was ultimately passed as a result of widespread Muslim organization demonstrations against the decision.
2. **Danial Latifi v. Union of India (2001)**⁶ - In this instance, a Muslim woman named Danial Latifi was divorced by her husband via the triple talaq procedure. The Supreme Court of India ruled that instant triple talaq violated Muslim women's fundamental rights and was therefore illegal.
3. **Joseph Shine v. Union of India (2018)**⁷ - In this case, the constitutionality of Section 497 of the Indian Penal Code, which made adultery a crime, was contested. The provision was overturned by the Supreme Court of India because it was unfair to women and violated their right to equality.
4. These cases and the judgments passed on them have helped in shaping the evolution of Hindu and Muslim marriage laws and in giving more rights to women under these laws.

⁵ AIR 1985 SC 945

⁶ (2001) 7 SCC 740

⁷ 2018 SC 1676

TIMELINE

1. In 2020, the Indian government proposed a new bill called ⁸ which was passed by the Indian parliament in 2021. This bill aimed to criminalize the practice of instant triple talaq among Muslims.
2. The Indian government introduced a measure in 2019 to make it illegal for Muslims to perform instant triple talaq, also known as "talaq-e-biddat." The practice of quick triple talaq is now a criminal violation in India thanks to a bill that was approved by the Indian Parliament and signed into law in 2019.
3. In 2018,⁹ was introduced in the Indian Parliament, which sought to criminalize the practice of instant triple talaq among Muslims. The bill was passed by the Indian Parliament and became law in 2019.
4. In the case of Shayara Bano v. Union of India¹⁰, the Supreme Court of India declared instant triple talaq to be unlawful and to violate the rights of Muslim women.
5. To evaluate the Indian Muslim personal laws and make recommendations for their reform and harmonization, the Indian government established the Law Commission of India in 2016.
6. In 2015, the Hindu Succession Act, of 2005 came into effect which granted equal rights to property as sons.

CONCLUSION

In conclusion, the evolution of Hindu and Muslim marriage laws in India has been shaped by a combination of cultural, religious, and political factors. The British colonial influence had a significant impact on the development of these laws, and the introduction of personal laws for different communities during the colonial period laid the foundation for the current legal framework. Over time, the laws have undergone changes and reforms, particularly in response to the changing social and economic realities of the country. Some of the landmark cases that have shaped the evolution of these laws include the Shah Bano case, Danial Latifi v. Union of India, and Joseph Shine v. Union of India. These cases have helped in giving more rights to women under these laws and have helped in the evolution of marriage laws in India.

⁸ The Muslim Women (Protection of Rights on Marriage) Bill

⁹ The Muslim Women (Protection of Rights on Marriage) Bill

¹⁰ (2017) 9 SCC 1

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