



ISSN Print: 2394-7500
ISSN Online: 2394-5869
Impact Factor: 5.2
IJAR 2016; 2(7): 326-328
www.allresearchjournal.com
Received: 27-05-2016
Accepted: 28-06-2016

Dr. PRL Rajavankatesan
Assistant Professor (Senior),
VIT School of Law, VIT
University, Chennai Campus,
Tamil Nadu - 600127, India.

Dr. E Prema
Assistant Professor (Senior),
VIT School of Law, VIT
University, Chennai Campus,
Tamil Nadu - 600127, India.

Legal recognition of Muslim personal laws in India

Dr. PRL Rajavankatesan and Dr. E Prema

Abstract

In India different religions like Hindu, Muslim, Christian and Parsi etc. are governed by their own personal law. Every religion follows their own personal laws in the family matters pertaining to marriage, adoption, succession and so on. India being a democratic country, people are permitted to profess and to propagate their own religion belief and faith. In case, if there is any discrimination for the enforcement of their rights, they have a matter of right to go to the court and enforce the same. In this article, the legal recognition of Muslim personal law and recent issues for the enforcement of their valuable minority rights has been analyzed elaborately.

Keywords: Muslim, India, Marriage, Uniform Civil Code, Supreme Court

Introduction

Muslims, like the Hindus, used the opportunities provided by the Government of India Act, 1935 to modify some aspects of their religious personal laws. The Muslim Personal Law (Shariat) Application Act, 1937 is by far the most important legislation in the closing years of the British rule in India. The Act almost abolished the legal authority of customs among the Muslims of British India. Present Indian society is the inheritor of three different and distinct legal systems - Hindu, Muslim and British. The personal laws of Hindus and Muslims find their source and authority in their religious ancient texts. The personal laws of Hindus and Muslims find their source and authority in their religious ancient texts. Since ancient time religion regulated almost every aspect of human life both public and personal. 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 has been reduced, and is only confined to such aspects of life as marriage, dissolution of marriage, maintenance, minority, guardianship, adoption, succession and inheritance. These personal laws were considered immutable and beyond the legislative jurisdiction. Before Islam was introduced as a religion to Arabia, a tribal social structure prevailed there. The tribe as a whole determined what was law and the rules were unwritten. These laws modified with time, as and when society felt the need for change. By the seventh century, the Muslim community got established in Medina and soon started spreading to the surrounding regions. With the establishment of Islam, the will of God, as transmitted in the Quran as the revelations of Muhammad, came to supersede every tribal custom. These writings in the Quran along with unwritten customs, also known as the Shariat are what govern Islamic society. Additionally, the Shariat is also based on the Hadith (actions and words of the Prophet as recorded by his companions). Originally, they were very broad and general solutions to practical problems in society. 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 other laws were also enforced. It is Muslim jurisprudence which furnishes examples of complete union of law and religion. "In Islam", says James Bryce, "Law is Religion and Religion is Law, because both have the same source and equal authority being both contained in the same divine revelation." Islam claims its jurisdiction over every aspect of a Muslim's life.

Correspondence

Dr. PRL Rajavankatesan
Assistant Professor (Senior),
VIT School of Law, VIT
University, Chennai Campus,
Tamil Nadu - 600127, India.

Warren Hastings enacted certain schemes for the first time in 1772. Provisions were made that in all suits regarding inheritance, marriage, caste and other religious usage and institution, the laws of the Koran and Shastras were to be applied, in respect of the Muslims and Hindus respectively. Warren Hasting's policy of preserving Hindu and Muslim law was supported by the British as a whole.

Legal Sanction of Muslim Personal Laws

Muslim law or Islamic law was one of the major important legal systems of the medieval world. It had structured a new idea or new political, social and cultural ideas. In India, the Islamic laws also played very significant role in structuring the Indian administrative system, social, political and cultural. The Mughals played a very significant role in the judiciary system in India. They brought new changes in judiciary system and gave a great impact on judiciary system in India. Constitutionally, India is a secular country and has no State religion. In the background of the provisions of the Constitution and the light shed by judicial precedent we may say that religion is a matter of faith. It is a matter of belief and doctrine. It concerns the conscience, i.e., the spirit of man. It must be capable of expression in word and deed, such as worship or ritual. Even though, the provision of divorce was recognized in all religions, Islam is perhaps the first religion in the world which has expressly recognized the dissolution of marriage by way of divorce. Muslim spouse can still seek restitution of conjugal rights by a civil suit. A Muslim husband and wife can separate from each other as any other spouses by a separation agreement under the general law of contract. Before passing of the Dissolution of Muslim Marriage Act 1939, a Muslim wife had no right to seek divorce except on the ground of false charge of adultery by the husband (lian), Insanity or impotency of husband. But the Dissolution of Muslim Marriage Act, 1939 now lays down several other grounds on the basis of any one of which, a Muslim wife may get her marriage dissolved by an order of the court. Islam provides a modern concept of divorce by mutual consent. The issue of the applicability of the Muslim Personal Law in India and the skewed impact it has on gender relations within the Muslim community has once again raised itself with Kashipur's Shayara Bano challenging the validity of "triple talaq". Last time this issue of protection of women in Islamic legal norms had gained public prominence was in 1985 when the Shah Bano case had raised concerns. The "Muslim Personal Law" is based upon the Shariat. Roughly, the Shariat can be explained as the provisions in the Quran as well as the teachings and practices of Prophet Mohammad. However, the origin, evolution and the applicability of the Shariat is far more twisted than that. Article 14 of the Indian Constitution grants "equal protection of law" to all its citizens.

The Shariat Application Act in India protects the application of Islamic laws in personal legal relationships, but the Act does not define the laws. It clearly states that in matters of personal disputes, the State shall not interfere and a religious authority would pass a declaration based on his interpretations of the Quran and the Hadith. Given this background of the matter it is difficult to have it undergo changes since it raises the question, to what extent should the State (which is supposed to be secular) interfere with the personal affairs of the civilians.

Conclusion and Suggestions

In many countries, including the United States, people are governed by different laws in different States, based on region

or religion. In Las Vegas, a divorce can be purchased at a price almost instantly in chapels. Is that progressive? There are countries where living together without marriage is legally recognised, with rights ensuing to partners. Does that comport with Indian morality? The belief that uniformity of family laws, even if primitive or promiscuous, is necessarily productive of national integrity is a lie. A great code guaranteeing equal human rights is desirable. Nationalism is a paramount value and that is higher than personal laws with plural variations. However, when we regard the rights of the child and empowerment of women, when we consider the importance of secular justice in family relations, there is a good case for changes in the personal laws. And this applies to the Hindu Code, the Christian law and the Muslim Shariat. From the above discussions, it can be said that despite the humpty numbers of legislations in India are enacted for the protection of rights of the minorities and rights also ensured under the Constitution of India, still there are many ways in which minorities are facing difficulties. One more recent issue is that the draft report on the new national policy on education submitted by a panel headed by T.S.R. Subramanian wants reservation for disadvantaged children to be extended to unaided minority schools. The Supreme Court, in April, 2012, held that the provision did not extend to institutions set by minorities, which are defined as religious and linguistic minorities in India. While the Right of Children to Free and Compulsory Education Act, 2009, mandates that even private, unaided schools shall provide admission to children from disadvantaged groups and weaker sections in admission to Class-1 to the extent of at least 25 per cent of the admissions done, private, unaided minority institutions are exempt from this requirement. It is pertinent to note here that there are issues with regard to minorities which need to be solved but there should be level playing field to ensure that rights of the minorities has not been deprived at the cost of larger public interest.

References

1. DK Srivastava. Religious Freedom in India, 1982, 213.
2. Tahir mahmood. Legislation for Muslims in British India in An Indian Civil Code and Islamic Law, 1976, 63.
3. Asaf AA Fyzee. Outlines of Mohammedan law, 1964, 1-2.
4. Tahir Mohammood. An Indian Civil Code and Islamic Law, 1976, 53.
5. Chandra, Satish. Medieval India, from Sultanate to the Mughals, Part-! (1206-1526), Har Anand Publications Pvt. Ltd., New Delhi, 1997, Second Edition, 2000, 277.
6. Husain Wahed BL. Administration of Justice during the Muslim rule in India with a History of the origin of the Islamic Legal Institutions, 2nd edn., (idarah-i-adabiyat-i-Delhi,1934; (1):03-106.
7. SP Mittal v Union of India AIR 1983 SC 1.
8. Ibrahim Abdel Hamid. Dissolution of Marriage, Islamic Quarterly, 1956; 3:166-75:215-223.
9. Syed Khalid Rashid. Muslim law, 4th edn., (Eastern Book Co, Lucknow, 2004, 98.
10. Dr. Paras Diwan. Muslim Law in Modern India, 9th edn., Allahabad Law Agency, Faridabad, 2005, 98.
11. Dr. RK Sinha. Muslim Law, 5th edn., Central Law Agency, Allahabad, 2003, 81.
12. <http://indianexpress.com/article/research/shariat-muslim-personal-law-sharia-history-shayara-bano-shah-bano-triple-talaq-personal-laws-religious-laws-uniform-civil-code-2784081>.

13. <http://www.thehindu.com/2003/09/06/stories/2003090600831000.htm>
14. <http://www.thehindu.com/news/national/extend-quota-for-poor-students-in-minority-schools-says-panel/article8746403.ece>.