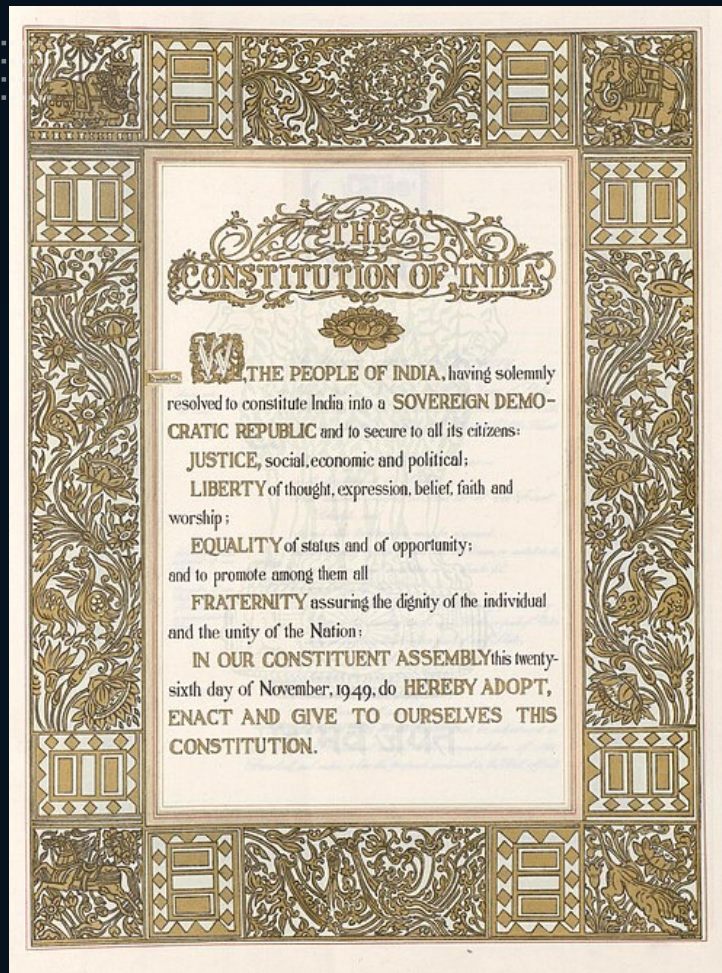


CONSTITUTION AND PERSONAL LAW IN INDIA

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In India, personal law does not differ from State to State

- In India, personal law does not differ from State to State.
- Though the members of a religion may be settled, domiciled or residing in any part of the country, they will be governed by the same law.
- Hindus, the majority community, have their separate family laws, so have the Muslims, the biggest minority community.
- Smaller minorities, like Christians, Parsis and Jews, whose number is insignificant, are subject to their own separate family laws.

In India, personal law does not differ from State to State

- Hindus and Muslims have all along claimed that their law is of divine origin. No such claim is made by other communities.
- The Modern Hindu law, by judicial interpretation and legislative modification, has undergone so much change that any claim of divinity for it can hardly be sustained.
- Muslim law, as administered in modern India, has also undergone similar changes.

India, a Secular State

- The Preamble of the Indian Constitution states that India is a: *“Sovereign, Socialist, Secular, Democratic and Republic.”*
- It follows that the state does not officially favor or adopt any religion.
- In India, the State does not have an official religion and guarantees freedom of religion while retaining the authority to regulate religious practices when necessary for social reform.
- The Supreme Court of India has repeatedly held that secularism is part of the **basic structure** of the Constitution, meaning it cannot be removed even by constitutional amendment.

Constitutional provisions

- The Constitution contains several provisions that support secularism, including Articles 14, 15, 25, 26, 27, and 28, which ensure **equality before the law, prohibit discrimination, and protect the freedom to profess, practice, and propagate**

Article 25. Freedom of conscience and free profession, practice and propagation of religion

Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which maybe associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Provision of the Constitution

Explanation

Article 14 – Equality before law

Article 14 of the Constitution guarantees equality before the law.

Article 14 guarantees that all individuals are equal before the law, irrespective of religion. The Supreme Court emphasized that equality is a basic feature of the Constitution.

Article 15 – Prohibition of discrimination

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Article 15 prohibits the state from discriminating on grounds of religion, race, caste, sex, or place of birth. For Instance, the Supreme Court upheld the principle of equality while discussing reservations in employment.

Provisions of the Constitution

Explanation

Article 25 – Freedom of religion

All persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion, subject to public order, morality and health.

Article 25 guarantees freedom of conscience and the right to freely profess, practice, and propagate religion, subject to public order, morality, and health. For e.g. the Supreme Court reaffirmed the constitutional limits on religious freedom to maintain secularism.

Article 26 – Freedom to manage religious affairs

Every religious denomination has the right to manage its own affairs in matters of religion, establish and maintain institutions for religious and charitable purposes, and manage its property, subject to public order, morality, and health.

Article 26 provides every religious denomination the right to manage its own religious affairs, including establishing institutions and administering property. For instance, the Supreme Court emphasized the right to manage religious practices in schools.



PROVISIONS OF THE CONSTITUTION

Article 27 – No tax for promotion of any religion

No person shall be compelled to pay any tax, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.


EXPLANATION

Article 27 prohibits the state from levying taxes for the promotion or maintenance of any religion. For instance, the Supreme Court discussed state neutrality in religious matters.

Article 28 – Freedom from religious instruction in state-funded institutions

No religious instruction shall be provided in any educational institution wholly maintained out of State funds. Nothing in this article shall prevent religious instruction in an institution which is administered by the State but has been established under any endowment or trust requiring religious instruction.

Protects individuals in state-funded educational institutions from being compelled to receive religious instruction. For e.g. the Supreme Court held that students could not be forced to sing religious songs in schools.



Personal law

- **Personal laws** primarily govern marriage, divorce, adoption, maintenance, succession, inheritance, and guardianship. Personal law refers to Hindu Law and Muslim Law. In academic curricula, Hindu Law is referred to as Family Law I, while Muslim Law is called Family Law II.
 - Despite being a secular state, India allows different religious communities to follow their own personal laws in family matters: Hindu law for Hindus, Muslim law for Muslims, and other personal laws for Christians, Parsis, etc.
 - This scheme was developed during the British colonial rule, when it was decided to apply different personal laws.
- =>**Criminal law** and the **majority of civil laws** are uniform for all citizens.

Religion in India is a matter of personal conscience, while the state can intervene to prevent practices that violate public order, morality, or fundamental rights, maintaining the essence of Indian secularism.



Application of Hindu Law in India

Hindu law applies not only to Hindus but also to Buddhists, Jains, Sikhs and unless they prove otherwise. India modernized Hindu law through several statutes known as the Hindu Code Bills:

- Hindu Marriage Act, 1955
- Hindu Succession Act, 1956
- Hindu Minority and Guardianship Act, 1956
- Hindu Adoptions and Maintenance Act, 1956

These Acts were enacted by the Indian Parliament to reform and codify Hindu personal law.

Under traditional Hindu law, women's rights, especially those to the inheritance of property were belittled.

Application of Hindu Law in India

(a) Marriage

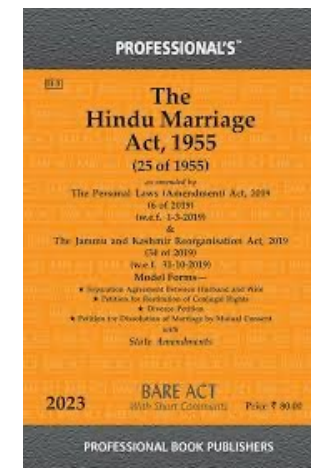
(b) Inheritance

(c) Adoption



(a) Marriage

- Before these reforms, practices such as polygamy were permitted under certain customs. However, the new legal framework established monogamy as mandatory under the Hindu Marriage Act 1955.
- Previously, divorce was largely governed by customary practices, but the Act introduced legal grounds and procedures for divorce, making it a formally regulated legal process.





(b) Inheritance

- Daughters were not entitled to inherit ancestral property under traditional Hindu law.
- However, the Hindu Succession (Amendment) Act 2005 granted daughters **equal rights** as sons in ancestral property.
- This right applies particularly where the property is ancestral property inherited by the father from his father or other ancestors.

Hindu Succession
Amendment Act
2005

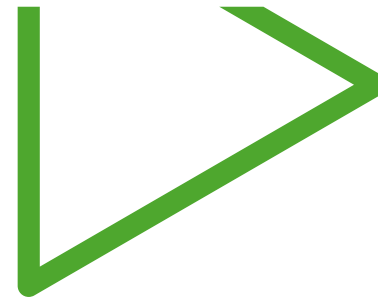
Vineet Sarma vs
Rakesh Sarma ors
Case 2020



The image features a black silhouette of a balance scale. The left pan contains a purple male symbol (♂) and the right pan contains a purple female symbol (♀). In the top right corner, there is a small blue shield-shaped logo with the letters 'L A E R' and a yellow banner below it.

(c) Adoption

- Adoption is now legally recognized and regulated under statutory law through the Hindu Adoptions and Maintenance Act 1956, which establishes legal procedures and rights related to adoption.





WIDOW BURNING IN INDIA.

Abolition of the Sati system

- Widows were burned either voluntarily, by coercion, on their husbands' funeral pyres.
- It was abolished on December 4, 1829, by Lord William Bentinck, Governor General of India (**Regulation XVII, A. D. 1829 of the Bengal Code**).
- **First petition submitted by Hindus of Bihar, Bengal, Orissa**
- ‘Under the sanction of immemorial usage as well as precept, Hindoo widows perform, of their own accord and pleasure, and for the benefit of their Husbands' souls and for their own, the sacrifice of self - immolation called Suttee which is not merely a sacred duty but a high privilege to her who sincerely believes in the doctrines of her religion and we humbly submit that any interference with a persuasion of so high and self - annihilating nature is not only an unjust and intolerant dictation into matters of conscience, but is likely wholly to fail in procuring the end proposed’.

The Privy Council

“...on what ground can strangers to our faith, even though rulers, assume the right to determine that the option which our Holy Religion... expressly gives [to perform sati], shall exist no longer, and what right can they have to choose for us?...

Of what value to us are the opinions, of what authority are the glosses and expositions of strangers to our Faith and feelings?

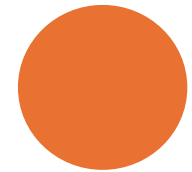
Our belief and our practice is that of countless generations of Forefathers and even if our Customs or our practice were not in precise agreement with the letter of our sacred writers (which however we do not admit) still we humbly urge that we ought not to be questioned or dictated to in such matters by any Human power, and especially by Rulers of a religion, Faith, and system of moral and manners..., so essentially and entirely different from our own, that it is impossible for them to understand our feelings or even comprehend our Sacred Books.” National Archives, Privy Council Registers: PC2/213, fol. 409

The Privy Council

- The crux of the appeal, therefore, was about the rights and limits of the state in legislating in matters of religious belief and practice.
- The Privy Council rejected a petition by 800 orthodox Hindus against the ban in 1832.
- The petitioners claimed that the practice was nowhere enjoined in Hindu law as an imperative duty and that, indeed, a life of austerity was more particularly enjoined to the widow.
- The Company asserted, no incompatibility between a regard for the religious opinions of Hindus and “the suppression of practices repugnant to the first principles of civil society, and... natural reason.”
- However, the PC concluded that the ban on sati was justified by a universal notion of justice and humanity. The ban was upheld.

APPLICATION OF MUSLIM LAW IN INDIA

- Muslim personal law in India is primarily based on the principles of Islamic Sharia, although its application is recognized through statutory legislation.
- The **Muslim Personal Law (Shariat) Application Act 1937** provides that Muslims in India are governed by Islamic law in matters relating to marriage, divorce, maintenance, inheritance, and waqf (charitable endowments).



Muslim Personal Law (Shariat) Application Act 1937: Application of Personal Law to Muslims

« Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat) ».

APPLICATION OF MUSLIM LAW IN INDIA

- (a) Marriage (Nikah)
- (b) Divorce
- (c) Inheritance



(a) Marriage (Nikah)

Marriage is treated as a civil contract between the parties and includes the provision of mehr (dower), which is an amount payable by the husband to the wife as part of the marriage agreement.

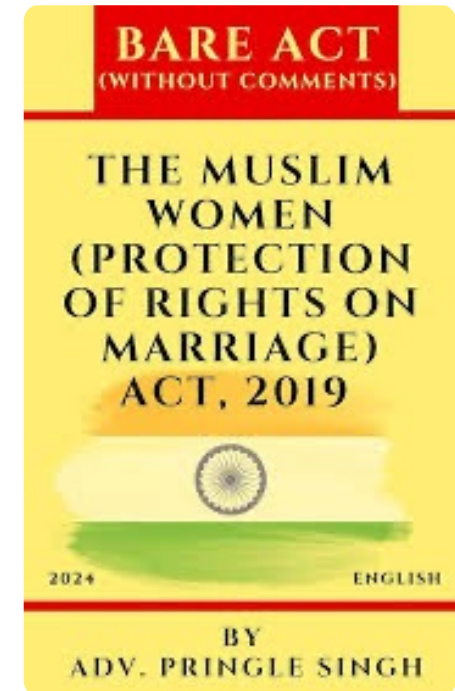
(b) Divorce

Muslim law recognizes several forms of divorce, including

- talaq,
- khula,
- and mubarat.

However, triple talaq (instant talaq) was declared unconstitutional by the Supreme Court of India in *Shayara Bano v Union of India* (2017).

Subsequently, triple talaq was criminalized pursuant to the Muslim Women (Protection of Rights on Marriage) Act 2019.



(c) Inheritance

- Inheritance under Muslim law is based on Quranic principles, which prescribe fixed shares for heirs.
- For example, female heirs such as daughters or sisters are entitled to specified shares, though generally smaller than those of male heirs.
- Therefore, Unlike Hindu law, which has been extensively codified through parliamentary legislation, Muslim personal law in India remains **largely uncodified** and is primarily derived from religious jurisprudence and traditional Islamic legal principles.

UNIFORM CIVIL CODE (UCC)

- One of the major constitutional debates in India concerns the Uniform Civil Code (UCC). The concept of UCC is provided under Article 44 of the Constitution of India 1950, which forms part of the Directive Principles of State Policy.
- Article 44 reads as follows: ***“the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”***
- Constitution of India 1950, art 44.
- A UCC would replace the existing religion-based personal laws with a single common set of civil laws applicable to all citizens in matters relating to family law, such as marriage, divorce, inheritance, adoption, and maintenance.

UNIFORM CIVIL CODE (UCC)

Arguments in favour of the UCC include:

- Promoting equality before the law
- Advancing gender justice
- Strengthening national integration

Arguments against the UCC include:

- Concerns regarding protection of religious freedom
- Potential impact on minority rights
- Preservation of cultural and religious diversity

CONCLUSION

- India's constitutional system combines secular governance with religious legal pluralism. While the UNION remains neutral toward religion, the permits communities to follow their own personal laws in family matters.
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- Hindu law has been largely codified and reformed, whereas Muslim law remains primarily based on religious jurisprudence (e.g. Muslim in India still practice polygamy) with but a few statutory regulation. The continuing debate over the Uniform Civil Code reflects the tension between religious freedom and legal uniformity in India's secular framework.