



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Right of Indian Sikhs to be governed by their own Laws

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Received 18 July 2022; Accepted 16 August 2022; Published 18 August 2022

India is a diverse country with many religions. India's legal system is based on common law principles.¹ The Parliament of India has passed the following family laws, which apply to the religious communities listed in the enactments. Personal rules regulating Hindus and Muslims are the oldest aspect of the Indian legal system. The Hindu personal law includes Hindus, of course, but it also includes Buddhists, Jains, and Sikhs; it has evolved over time because of a constant codification process. Changes in society have resulted in changes in law, which reflect the changing social situations and strive to solve social issues using innovative techniques based on the experience of other nations' laws. However, for many decades now, the Sikhs have demanded the government a separate legal identity from the Hindus.

Keywords: *sikhs, diverse, religious communities, hindu personal laws.*

INTRODUCTION

India's vast population is both varied and religious. India is home to the majority of the world's Hindus, Jains, and Sikhs, as well as one of the world's largest Muslim populations, as well as millions of Christians and Buddhists.² India's population is made up of individuals of many

¹ Hemant More, 'Who is a Hindu?' (*The Fact Factor*, 26 September 2021) <<https://thefactfactor.com/tag/hindu/>> accessed 23 November 2021

² *Ibid*

religions and beliefs. Topics connected to family affairs, such as marriage, divorce, and succession, are governed by various sets of personal laws. The term "family laws" refers to a comprehensive collection of regulations that govern family concerns such as marriage, divorce, and inheritance. When one grants legal validity to the state of interpersonal interactions, some legally enforceable rights and obligations develop. The argument for having laws that influence the most intimate areas of our lives is to guarantee that individual rights are protected and that certain values that are vital to human dignity are upheld. Another rationale is that laws can operate as agents of social change, therefore increasing people's standing in society.

Sikhism dates to the late 15th century. It is deemed to be a religion and philosophy that began in the Punjab area of India. Individuals who follow Sikhism call themselves Sikhs. In India, Sikhs like Buddhists and Jains do not have any legal status of their own and are "Hindus" for all legal purposes. For example, the registration of the marriage of a Sikh couple is under the Hindu Marriage Act, 1955. Other minorities in India, like Christians and Muslims, have their own personal laws. Through this paper, the researcher seeks to analyze the legal status of the Sikh community in India. The paper will also discuss the key differences between Sikhism and Hinduism. The paper will look into the Anand Marriage Act, the Act which provides recognition to the rituals followed in a pure Sikh marriage ceremony. The researcher also seeks to provide an overview of family laws in India and analyze if a Uniform Civil Code will deem beneficial to the Indian society.

RESEARCH OBJECTIVES

1. To provide an overview of family laws in India.
2. To understand the position of Indian Sikhs under the Constitution of India.
3. To provide an account of the rights of the Sikh community to be governed by their own laws.
4. To understand the two religions- Sikhism from Hinduism.
5. To analyze the consequences of enforcing a Uniform Civil Code in India.

RESEARCH QUESTIONS

1. Who is a Hindu as per the Constitution of India?
2. Who is a Sikh? What is Sikhism?
3. Is it appropriate for Hindu law to cover Hindus, Jains, Buddhists as well as Sikhs?
4. What does the Anand Marriage Act mean for the Sikh community?
5. Would a Uniform Civil Code prove advantageous in India?

LITERATURE REVIEW

A literature review is an essential aspect of conducting research. It forms the backbone of the entire research paper. The researcher has referred to numerous books, articles, and journals to get a solid background and understanding of the topic. An article by *Anil Malhotra and Ranjit Malhotra* helped the researcher to understand the topic of family laws with respect to religion thoroughly in India. The paper is a thorough account of the same. The article titled "Who is a Hindu?" by *Hemant More*³ helped the researcher understand the legal status of Hindus in India. The author uses many case laws throughout the paper to explain the topic more deeply. An article authored by *William Hewat McLeod*⁴ provides in-depth information on Sikhism.

The article not only covers the history of Sikhism in great detail but also elaborates on present-day Sikh practices. Another article titled "*Who are Sikhs? What is Sikhism?*" helped the researcher to understand the topic at hand better. The article provides brief information about what it means to be a person of Sikh origin and their way of life. The article by *Kashmir Singh*⁵ has enabled the researcher to understand the topic of personal laws in relation to Sikhism significantly. The article is remarkably detailed and very well-written. Articles published by *United by Dharma, divided by law*, and *Sikh Personal Law in Indian Constitution like*

³ *Ibid*

⁴ William Hewat McLeod, 'Sikhism' (*Britannica*, 10 April 2021) <<https://www.britannica.com/topic/sikhism>> accessed 23 November 2021

⁵ Kashmir Singh, 'Sikhs and Personal Law' (*Institute of Sikh Studies*) <http://sikhinstitute.org/sikh_p_1/ch_10.htm> accessed 24 November 2021

Muslim/Hindu/Christian Personal Laws have proved to be extremely resourceful to the researcher in understanding the status of the Sikhs in present-day India.

BRIEF ACCOUNT OF FAMILY LAWS IN INDIA

On November 26, 1949, the Indian Constitution was established, establishing India as a Union of States and a sovereign, socialist, secular, democratic republic. It is no secret that the Indian Constitution is one of the lengthiest of constitutions across the world. In India today, there are approximately 1.3 billion people living in twenty-eight states and seven union territories. Within India's 3.28 million square kilometers of territory, a significant population of heterogeneous civilizations professing and practising different religions and speaking diverse local dialects coexists in peace in one of the world's greatest democracies.

Although inter-religious marriage is not extensively practised, Indian citizens are typically tolerant of each other's beliefs and maintain a secular mindset. Intercommunal disputes have received little support from the broader public, and it is widely assumed that the reasons for religious conflicts are political rather than theological. In India, there are five major sets of family laws: Hindu law, which applies to all Hindus as well as Buddhists, Jains, and Sikhs; Muslim law, which applies to Muslims; Christian law, which applies to Christians; Parsi law, which applies to Parsis; and secular law, the Special Marriage Act. Religious writings are the source of religion-based legislation.

Parliamentary legislation has also changed these statutes from time to time. Due to massive post-independence legislation, Hindu law has been significantly transformed. Christian and Parsee laws have been amended more recently by legislation in the previous few decades. Muslim law has seen the least amount of change and hence preserves the majority of the text and interpretation from the period when its holy writings were created. There is no such term as "Hindu" in the Dharmasastra. It comes from a different country. The name 'Hindu' was coined by the Greeks, who referred to the Indus Valley Civilisation as "Indoi." It thereafter became a 'Hindu' religion. This country became known as 'Hindustan,' and the people who lived there were known as Hindus. Throughout history, the term 'Hindu' has been used to refer to both a

religion and a nation. The Hindu law has been amended over the ages and has existed for over 5000 years, governing the social and moral figures of Hindu life by following the many parts of Hindu cultural life. Hindu law is often regarded as the world's oldest and most extensive legal system. It has been there at every stage. Hindu law was formed by the people not to eliminate any crime or transgression from society but to ensure that people would adhere to it to achieve salvation. Originally, Hindu law was formed to meet the needs of the people. The idea was born out of concern for the people's well-being.

HINDUISM AND SIKHISM

In the *Ashima v Narendra*⁶ case, the Court stated that "so diverse are the ways of the Hindus that it is almost impossible to exactly define what Hinduism is. It is very aptly said that the Hindu religious system is encyclopedic in character and is a commonwealth of all faiths." We see that the Hindu law codifying legislation makes no attempt to describe who is a Hindu. Rather, the Sections identify the individuals to whom they apply. Thus, anyone to whom Hindu law applies will be considered Hindu in the eyes of the law, regardless of whether they follow any Hindu Law principles or not. Those who are born into or converted to Hindus, Jains, Sikhs, or Buddhist religions are all included in the term "Hindu."

In *Sastri Yagnapurushadji v Muldas Brudardas Vaishya*⁷ case, the Court stated that "Unlike other religions in the world, the Hindu religion does not claim any one prophet, it does not worship any one God, it does not subscribe to any one dogma, it does not believe in any one philosophic concept, it does not follow any one set of religious rites or performances, in fact, it does not appear to satisfy the narrow traditional features of any religion or creed. It may broadly be described as a way of life and nothing more."

⁶ *Ashima v Narendra* AIR 6 Cal W N. 1016.

⁷ *Sastri Yagnapurushadji v Muldas Brudardas Vaishya* (1966), AIR 111

As per the law, a person can be treated as a Hindu if-

- Both parents are Hindu by religion. In some instances, if the father is a Hindu and the child is raised Hindu.⁸ In case the child is illegitimate if both parents are Hindu or at least the mother is Hindu, and the child is brought up Hindu.⁹
- Is either a Buddhist, Jain, or Sikh.
- Is not of any other religion.

Sikhism is both religion as well as an idea that originated in the late 15th century in India's Punjab region. The group's members refer to themselves as Sikhs. "Gurmat" (Punjabi: "the Way of the Guru") is the name given to the Sikh faith. Sikhism was founded by Guru Nanak (1469–1539) and guided by a succession of nine additional Gurus, according to Sikh belief.

Hindus and Sikhs are adherents of two faiths that emerged on the Indian subcontinent: Hinduism and Sikhism. Hinduism dates back more than 30 centuries, although it wasn't firmly defined until roughly 800–200 BC, whereas Sikhism only dates back five centuries. Sikhs are Hindus who do not follow Hinduism. According to Shri Guru Nanak Devji, the first Guru. There is only one God. All kinds of Hindu devotion, as well as class differences, are abolished in Sikhism. Sikhism's tenets are inherently theistic. God is one, omnipresent, almighty, and omniscient; everyone should worship just one God, rather than a plethora of gods and goddesses, and make a living by his or her own labour and talent.

The Sikh faith is monotheistic, believing in one almighty Creator who is genderless, absolute, all-powerful, and eternal. Life, according to Sikhism, is a unique chance to uncover and develop the divinity inside each of us. Sikh ideology is based on human rights and fairness, and Sikh history is littered with stories of Sikh Gurus and their followers making enormous sacrifices for the sake of religious freedom and justice. As per the *Bhagwan Kour v J.C. Bose*¹⁰ case and the

⁸ *C. W. T. v R. Sridharan* (1976), H LR 600 (SC)

⁹ *Vijaya Kumari v K. Devibalan* AIR 2003, Ker 363

¹⁰ *BhagwanKour v J.C. Bose* (1926) 7 Lah 275 (Udasis)

*Sugan Chand v Parkash Chand*¹¹ case, the Court held that "in the absence of special custom among Sikhs, they are governed by Hindu law."

SHOULD HINDU LAW GOVERN THE SIKHS?

Religion is the very substance of society, as it is beyond just a set of beliefs; it is a way of being, as followers of a particular religion engage in an explicit type of livelihood. With this moral obligation to adhere to customs and traditions, religion intersects the way into the jurisdiction of law, where one is compelled to obey or not break the rules set by the state (i.e. any country). As a result, it is clear that law and religion are intertwined because prior to the notion of state or democracy, people were obligated to observe religious responsibilities and could claim rights derived from faith. As a result, religion sustained law and order in ancient cultures all across the world.

Religious tolerance is established in both law and tradition in India, which is a country of religious variety. Throughout India's history, religion has played a significant role in the country's culture. The great majority of Indians identify with a religion. According to the Indian census, Hinduism is practised by 80.5 percent of the population. Islam is the second most popular religion, with 13.4% of the people following it. Christianity is the third most popular religion, with 2.3 percent of the population. Sikhism is India's fourth biggest religion, with 1.9 percent of the population. Apart from the presence and formation of native faiths, assimilation and social integration of religions introduced to the region by traders, travelers, immigrants, and even invaders and conquerors has resulted in the current diversity of religious belief systems in India.

Religious tolerance is practised at the highest levels of governance in India. The Indian Constitution defines the country to be a secular republic, which means it must protect people's ability to freely worship and spread any religion or creed (with reasonable restrictions for the sake of morality, law, and order, etc.). The right to freedom of religion is also declared a basic right in India's Constitution. The majority of religious groups are still controlled by their own

¹¹ *Sugan Chand v Parkash Chand* (1967), SC 506

set of personal laws. Hindus, Muslims, Christians, Zoroastrians, and Jews all have personal laws. Beginning with Act III of 1872, Brahmoism is the only Indian religion that is exclusively protected by the secular ("civil") legislation of India. All Buddhists, Jains, and Sikhs are considered Hindus in legal terms and are subject to Hindu personal law.

Modern Hindu Law, also known as Hindu Personal Law, has its origins in Anglo-Hindu Law, which was formed in colonial India in 1772 under the then Governor General, Warren Hastings. Hindu Law is founded on the teachings of the Shrutis (Vedas), Smritis (Puranas and Itihasa or Epics), and Achara (the community norms and standards of a particular social group).

With the passage of four "Hindu Code Bills," namely the-

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

The Indian government completed what the British had begun: the complete codification of Hindu personal laws (1956). In personal affairs, Indian laws are personal rather than territorial. Personal (family) concerns are not covered by any national or regional legislation. Personal law varies from one municipality to the next. India is correctly described as a country with a plethora of personal laws. Personal law refers to the set of laws that apply to a person or item because of his or her affiliation with a certain religion. Personal law indicates that a person's law follows him wherever he goes. Personal law is used in contrast to *lex-loci*, which refers to a law that applies to everyone in a certain area, region, or state.

From the outset, the Hindu community has been a major source of Sikh recruits. In their social and cultural concerns, these Guru's disciples (Sikhs) have maintained all their previous norms and traditions. As a result, it was only logical that Hindu Law continued to apply to them. "Sikhism has no corpus of civil law of divine origin," said Sirdar Kapur Singh, a great Sikh

scholar, and philosopher.¹² As a result, there is nothing comparable to the divinely inspired Sikh Personal Law.

It is essential to note that Article 25 Clause 1, allows everyone the freedom to freely profess, practise, and spread religion. Clause 2 specifies that the term "Hindus" includes those who practise the Sikh, Jain, or Buddhist religions. This definition, including Sikhs under the Hindu religion, creates an inescapable misunderstanding about the unique identities Sikhs possess, which negates the goal of Article 25. This can be viewed as some sort of "discrimination" against Sikhs and other religions who are referred to as Hindus should be ended. This can only be achieved by providing Sikhs with a separate legal standing, i.e., by recognizing Sikhism as a separate religion from Hinduism.

SIKHS ARE DIFFERENT FROM HINDUS

Sikhism and Hinduism differ on several parameters such as their origin, status of women in the religion, and scriptures among many things. It is also noteworthy, that there is no classification of 'deities' in Sikhism, unlike Hinduism. More importantly, Sikhism lacks a 'clergy' system. The Sri Guru Granth Sahib is the scripture followed by Sikhs, they do not follow the Hindu Scripture of Sutri and Smriti. Sikhism does not follow the teachings of caste, idolatry, or rituals performed by priests which are some of the primary beliefs of a Hindu. The form of worship in Hinduism and Sikhism differs vastly; a Hindu's worship is in the means of a priest performing rituals in Hindus, wherein the priest is a Hindu male. Whereas any Sikh who holds the knowledge of the Sikh rituals can perform them. Hindu women are always taught to depend upon their male members of the family, in Sikhism, there is absolute equality in the family. Most importantly, anybody can become a Sikh, irrespective of their upbringing. In Hinduism, there is a rigid caste system and one born into a specific caste cannot change it through any means during the course of their lifetime.

¹² Kashmir Singh (n 5)

Many aspects of Sikhism differ from Hinduism; Sikhism rejects several teachings in the Hindu religion. Therefore, Hindu law should not govern Hindus and Sikhs alike. There should be a separate personal law solely for those who follow Sikhism.

THE ANAND MARRIAGE ACT AND THE SIKH COMMUNITY

It's unusual for a religious community's marriages to be recorded under the laws of another religion. Sikhs in India have had to do precisely that for decades, a situation that community leaders see as a fundamental injustice. In 1909, the Anand Marriage Act was established, legalizing "the customary Sikh marriage ritual known as Anand Karaj." Following independence, however, Sikh weddings were brought under the Hindu Marriage Act, which obliged Sikhs to register their marriages as Hindus, despite the fact that they were recognized as a different faith. The Delhi government has finally granted the Sikhs' 109-year-old petition. Sikhs were forced to register their weddings under the Hindu Marriage Act, 1955, for more than a century since the Anand Marriage Act (for Sikhs), passed during the British rule of 1909, had not been implemented. Many members of the Sikh community, particularly those who had gone abroad, were extremely distressed by this, as their weddings were listed as "Hindu" despite the fact that they identified as Sikh. Matrimonial rights are just one part of the various elements of personal laws. Nevertheless, the enforcement of the Anand Marriage Act is a beginning to the assertion of Sikh identities and the potential opportunity to be recognized as a separate religion.

UNIFORM CIVIL CODE IN INDIA - BANE OR BOON

The Uniform Civil Code (UCC) is based on the idea of "one country, one code that applies to all faith groups." Part 4, Article 44 of the Indian Constitution specifically mentions the term "Uniform Civil Code." The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India." according to Article 44.

Some advantages of implementing the UCC include -

- **Promote unity in India** - India is a country that is home to a diverse range of religions, cultures, and rituals. A single civil code will assist India in becoming more integrated

than it has been since independence. It will aid in the unification of all Indians, regardless of caste, religion, or tribe, under a single national civic code of behaviour.

- **Massive reduction in the existence of vote banks** - A UCC will aid in the reduction of vote bank politics, which most political parties engage in throughout each election.
- **Bridge loopholes in personal laws** - By establishing personal laws, we have created a parallel legal system based on beliefs that date back thousands of years. That would change if there were a single civil code.

On the other hand, there are certain challenges at the same time cannot be ignored. These include -

- Given the broad diversity of interests and feelings that must be accounted for, the work of developing a set of laws that would govern all communities is a daunting and time-consuming one.
- Due to the issue's intricacy and sensitivity, there is a lack of political will.
- The politics of the UCC discussion is since different faith communities have distinct personal laws.

According to the Constitution, the Right to Freedom of Religion (Article 25) is a fundamental right. As a Directive Principle, the Constitution proposes a Uniform Civil Code for the nation. However, because Directive Principles are unenforceable under the Constitution, this has not yet been applied. In the *Pannalal Bansilal v State of Andhra Pradesh*¹³ case, the esteemed SC specified that enacting a Uniform Civil Code all at once might be harmful to the country's unity and that only a gradual progressive reform should be implemented. The SC denied a petition seeking a writ of mandamus against the government to create a single civil code in the *Maharishi Avadesh v Union of India*¹⁴ case, putting the burden of implementation on the legislature.

¹³ *Pannalal Bansilal v State of Andhra Pradesh* (1996), AIR 1023

¹⁴ *Maharishi Avadesh v Union of India* (1994), SCC, Supl. (1) 713

CONCLUSION

India has a unique mix of Hindu, Muslim, Christian, and Parsi personal laws codified. There is no one family-related legislation for all citizens in a single statutory unit that is applicable to all religious faiths that co-exist in the Indian subcontinent. Sikhs are not Hindus, yet we are forcefully placed under Hindu Personal Law under the Indian Constitution. Sikhism is a separate religion, and we want it to be recognized in the Indian Constitution, which has been rejected since India's establishment. The Sikhs have a legitimate issue that they are subjected to Hindu law despite the fact that they are not Hindus. Such erroneous labeling is undoubtedly damaging to the Sikh mind. It is wrong for a state that claims to be secular to force a minority population to adopt a title that damages their independence and uniqueness. It also infringes on religious liberty.

The Indian government should modify the names of these four Acts so that Sikhs are not forced to reject them in their entirety. Sikhism is now a worldwide religion with adherents from all corners of the globe. Any new body of law, such as Sikh Personal Law, may not be accepted or recognized by the law of the nation in which they reside. If a distinct Sikh Code is adopted and intended to be enforced on all Sikhs, it may stifle Sikhism's growth and spread. A majority of people agree that a Uniform Civil Code is indisputably looked-for and would complement significantly the growth and development of Indian nationhood. Differences of opinion exist over the time and method in which it should be implemented. Rather than utilizing it as an emotional issue to achieve electoral benefit, political and intellectual leaders should work to reach an agreement. The issue is not one of minority protection or even national unity; rather, it is one of treating each human being with dignity, something that personal laws have failed to achieve thus far.