

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 1

2024

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Divine Influence: Religion as a Foundation for Legal Systems

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ABSTRACT

This in-depth paper examines the complex interrelationship between religion and the law in the context of Indian law. An introduction to legal systems and the special relationship between laws and religious practices comes first. The study next explores the relationship between religion and law, specifically how moral obligations derived from religious convictions impact adherence to or disregard for legal requirements. A historical tour highlights India's dedication to religious tolerance by tracing the origins of legislation that is firmly ingrained in religious traditions. The story highlights the influence of the major religions on legal systems by examining the rise of Buddhism, Islam, Sikhism, Hinduism, and Christianity. The paper examines India's constitutional transition to secularism in more detail, emphasizing the fine line that separates secular legislation from private religious beliefs. It looks at the changing legal scene and the problems that conflict resulting from religious differences continues to pose. Most importantly, the research reveals the overlaps and conflicts between religion and jurisprudence.

Keywords: Religion, Jurisprudence, Indian Law, Secularism.

I. INTRODUCTION

Legal systems are made up of laws that are binding on all people and that are either approved nationally or internationally. People who live in a country are subject to the laws that govern that country; if they don't follow the laws, they will be penalized according to the laws of that country. However, religion is a collection of institutions, rituals, and ideas that a community or group of people adhere to. It is a matter of personal preference, yet in some nations—such as Afghanistan under Taliban rule—legal requirements exist to follow a specific religion's precepts. Religious laws and penalties for breaking them may differ, but in nations such as India, the law is supreme. One such instance is the position of Fatwas in India. India, like other non-Muslim countries and some Muslim countries, has no legal or constitutional footing when it comes to fatwas, which are Islamic decrees allegedly issued by learned experts under Islamic law.

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Investigating the role of religion as a source of law is especially crucial in self-declared secular nations like India, where conflicting laws frequently lead to disputes based on religious disagreements. This calls into doubt the legal system's secular nature. Furthermore, this is a factor that should be taken into account and investigated in countries where the laws are predominantly founded on religious convictions, such as the Islamic nations.

II. SYMBIOSIS UNVEILED: THE INTERPLAY BETWEEN RELIGION AND LAW

When people feel morally obligated by their religious convictions to uphold or refrain from breaking state-mandated regulations, religion and the legal system become entwined. Moral duties are founded on an individual's morality and are described as the duty to pursue what one believes is proper and act accordingly. Despite the desire for such a thing, There is no universal moral code that all people adhere to.

According to Galloway, religion is the belief that a person has a power bigger than themselves, which they use to try and satisfy their emotional needs and find stability in their lives. They express this belief via worship and service.²

Religion, which includes both particular ideas and a way of life within a particular society or nation, is fundamental to human existence. Despite the prevalent view that religion is a matter of personal preference and that the law is supreme, real-world experiences in India frequently demonstrate situations in which legal standards have been contested and, occasionally, modified because they contradict with particular religious convictions. The intricate nature of the relationship between religion and law is demonstrated by the many instances in which religious beliefs and legal norms have clashed. The convoluted link between religion and the law is best illustrated by the well-known Shah Bano Case³.

The main issue in the Shah Bano Case concerned whether Muslim personal rules might be covered by Section 125 of the Criminal Procedure Code (CrPC). According to this clause, a husband is required to support his wife financially both throughout their marriage and after their divorce if she is unable to do so. A five-judge Supreme Court bench led by Chief Justice Y V Chandrachud at the time invoked Section 125 of the CrPC in 1985 and ordered Khan, Bano's husband, to provide financial support to Bano.

However, this judgment sparked significant disagreement within the Muslim community, with many arguing that it contradicted their laws. In response to the dissent, in 1986, the Rajiv Gandhi government enacted the Muslim Women (Protection of Rights on Divorce) Act. This

² George Galloway, *The Philosophy of Religion* (1954)

³ Mohd. Ahmed Khan v. Shah Bano Begum and Others, 1985 AIR 945 (India).

legislation aimed to nullify the impact of the Shah Bano ruling, showcasing a tangible clash between legal norms and religious beliefs.⁴

The Shah Bano Case serves as a poignant example demonstrating the complexity of the relationship between religion and law in India, highlighting instances where legal standards have been challenged and altered due to conflicts with specific religious convictions.

III. TRACING THE THREADS: A HISTORICAL ODYSSEY OF INDIAN LAWS ROOTED IN RELIGION

India, a secular nation as demonstrated by the preamble to its constitution, strongly supports religious tolerance ingrained in both legal and social standards. The intricate web of ancient social and religious customs has a big impact on how cases are decided now. In addition to the seven holidays recognized by the legal system, festivals are still observed. These holidays include Christmas, Ganesh Chaturthi, Buddha Jayanti, Mahavir Jayanti, Ram Navami, Janmashtami, and Eid-e-Milad-un-Nabi. The custom of religious processions on public streets endures these days, despite the difficulties in upholding public safety and law and order. Notwithstanding court decisions, these customs frequently allow for behavior that could be considered nuisances or even crimes in accordance with criminal laws, highlighting the defense of processions' freedom to follow their religious beliefs.⁵

The most recent disaggregated statistics from the 2011 national census that are currently available show that 79.8% of people identify as Hindu, 14.2% as Muslim, 2.3% as Christian, and 1.7% as Sikh. ⁶Since the fundamental principles of so many religions differ greatly, it becomes difficult for every citizen to embrace and appreciate each of them. These differences have given rise to well-known cases of violent religious disputes in India and around the world. As such, it becomes imperative to address the backdrop and historical context of laws driven by religious considerations in India.

(A) India's shift to secularism

This portion of the essay will examine how numerous religions were introduced to India and show how the country developed into a secular state that values and encourages peaceful coexistence amongst believers in diverse faiths.

Indian culture has been greatly influenced by religion throughout its history, as evidenced by

⁴ DH Web Desk, "Rs 20/month alimony: How 1985 Shah Bano Case paved way for UCC debate", Deccan Herald (June 29, 2023)

⁵ Justice Sunil Ambwani, "Religion and Jurisprudence," SAMVADA: A Forum for Understanding Religion, Sri Udasin Karshni Ashram, Ramanreti (Gokul), Mathura, Sep. 6-8, 2013.

⁶*Census of India 2011, Population Enumeration Data* (2011).

the fact that a sizable portion of its people follow one or more religious systems. Hinduism, which has been viewed as the oldest religion in the world, has origins that go back about 5,000 years to the prehistoric era. It is a polytheistic religion with a wide variety of gods, rituals, and beliefs. The Vedas, the Upanishads, and the Bhagavad Gita are important Hindu texts.

The three human life aims theory emerged from the evolution of Hinduism.

1. Dharma, which stands for following the law to preserve stability and order.
2. Artha, which highlights the duty of governors to ensure the prosperity and well-being of their constituents.
3. Kama, which includes human sensual pleasure and love. The founding principles of ancient Indian law were contained in the religious treatises known as "arhashastra" and "dharmastra."⁷

The Sharmana Religions—Buddhism and Jainism among them—arose after Hinduism gained prominence. In the mid-Ganga valley, during the fifth and fourth centuries BCE, Buddhism propagated by Buddha and the Jaina system articulated by Mahavira, the twenty-fourth and final Tirthankara, garnered widespread enthusiasm. This reception was particularly notable among diverse segments of society, including traders, peasants, urban artisans, and new agriculturists. The appeal of these emerging religious philosophies lay in their recognition of the economic value of cattle, the growing influence of money, and other elements shaping the evolving economic landscape.

During this period, the established Brahmanical religiosities rooted in a rural milieu experienced a decline in appeal. This waning interest was attributed to their resistance to embracing the new material factors that had prominently emerged in society. The advent of Buddhism and the Jaina system, being non-brahmanical in nature, played a pivotal role in transforming numerous deities characterized by a penchant for violence into non-violent divinities. Additionally, some adherents of these ancient deities chose to embrace these new religions. It is noteworthy that, despite these transformations, the ancient gods and goddesses were not entirely eradicated but rather underwent significant changes in their worship and societal roles.⁸

The 24th Jain Tirthankara, Mahavira, stressed five vows, notably asteya (non-stealing) and ahimsa (non-violence) (599–527 BC, though potentially 549–477 BC). Shortly before Magadha

⁷ Erwin Akhverdiev & Alexander Ponomarev, *Religion as Factor in Formation of Law: Current Trends*, SHS Web of Conferences 50, 01024 (2018).

⁸ Krishna Mohan Shrimali, *The Formation of Religious Identities in India*, *Social Scientist*, May–June 2017, Vol. 45, No. 5/6, pp. 3-27.

rose to prominence, Gautama Buddha, the founder of Buddhism, was born into the Shakya clan (546–324 BCE). Buddhism's core teachings include the "Noble Eightfold Path," which consists of eight prerequisites for living a good life:

1. Right view
2. Right resolve
3. Right Speech
4. Right conduct
5. Right livelihood
6. Right effort
7. Right mindfulness
8. Right contemplation (Samadhi).

Buddhism promotes several moral precepts, including refraining from damaging, injuring, lying, using profane language, and ending life.⁹

(B) Advent of Islam

The advent of Arab traders and traders in the 7th century marked the beginning of the spread of Islam in India, which gained momentum with the successive conquests carried out by Muslim monarchs. The Mughal Empire, which Babur started in 1526, further cemented Islamic authority in Northern India. The Delhi Sultanate, founded in 1206, formalized Islamic rule in that region. Islamic law, or sharia, progressively permeated Indian society, impacting social institutions and governance. Indo-Islamic law is the result of the legal system's fusion of Islamic and regional norms during the Mughal era. The syncretic religion known as Din-i Ilahi was founded by Emperor Akbar to unite many religious traditions. Regional forces such as the Deccan Sultanates and the advent of the Mysore Sultanate shaped Islamic governance in different parts of India during the demise of the Mughal Empire. Hindu and Islamic legal systems coexisted alongside codified Islamic law throughout the British colonial era.

As of the seventh century CE, the socio-economic and political landscape of India witnessed a notable impact due to the increasing influence of Arabs, Turks, and Iranians. This period marked a significant era of interactions with Islam, as these external forces played a substantial role in shaping India's cultural and political dynamics. Concurrently, India became a haven for the

⁹ Erwin Akhverdiev & Alexander Ponomarev, *Religion as Factor in Formation of Law: Current Trends*, SHS Web of Conferences 50, 01024 (2018).

Zoroastrians, who migrated from contemporary Iran. Settling in Sanjan, Gujarat, this community came to be recognized as Parsis, contributing to the rich tapestry of India's diverse cultural heritage.¹⁰

(C) Emergence of Sikhism

Sikhism, an Indian religion founded by Guru Nanak in 1469–1539, incorporates aspects of Islam and Hinduism. It began as a means of resolving conflicts between preexisting religious doctrines and relieving society of the widespread superstitions and practises associated with religion. Interestingly, the Guru Granth Sahib does not primarily base Sikhism on the recognition of Sufi and Bhakti saints.

(D) Introduction of Christianity

The historical presence of Christians in India dates back to ancient times, with legend attributing the arrival of St. Thomas in modern-day Kerala during the first century CE. Kerala, a region with a rich history, engaged in interactions with various cultures, welcoming Arab traders on the Malabar coast centuries before Vasco da Gama's arrival in the late fifteenth century. These encounters undoubtedly influenced religious identities, with the dynamics shaped not only by material interests and trade but also by political considerations. The mutual understanding forged between Indic and non-Indic religions can be seen as a result of both economic and political factors influencing the religious landscape.¹¹

Although Christianity has existed in India since the first century, Protestant missionaries and European colonization helped it become more well-known.¹²

In enforcing their control, British colonial rulers used Shariah Law for Muslims and the Manusmriti, among other Hindu scriptures, for Hindus. To regulate various societies, the British developed laws based on religious values.

These quotes emphasize the fact that every religion has its own set of precepts and tenets, which serve as the foundation for laws that all citizens, regardless of their faith, are expected to uphold.

¹⁰ Krishna Mohan Shrimali, *The Formation of Religious Identities in India*, Social Scientist, May–June 2017, Vol. 45, No. 5/6, pp. 3-27.

¹¹ Krishna Mohan Shrimali, *The Formation of Religious Identities in India*, Social Scientist, May–June 2017, Vol. 45, No. 5/6, pp. 3-27.

¹² Varshitha Kongara, *The Impact of Religion on the Legal System*, Indian Journal of Law and Legal Research, Vol. 5 Issue 2, pp. 1-7 (2023).

IV. UNRAVELLING THE CURRENT: INDIA'S DYNAMIC LEGAL LANDSCAPE BASED ON RELIGION

The Indian Constitution, which incorporates the core ideas of secularism into its numerous provisions, is the cornerstone of Indian law. This constitution incorporates a combination of religious and secular clauses that clarify the limits of secularism that the State is obliged to maintain while also acknowledging the freedom of people and communities to follow their respective religions in modern-day India.

Subject to concerns of public order, morality, and health, Article 25 of the Constitution ^{emphasizes} that every person has an equal claim to freedom of conscience and the right to publicly profess, practice, and promote religion. Furthermore, Article 26 ¹³ declares that every religious sect is free to conduct its internal religious matters.

Even while India is unquestionably a secular nation, it is important to remember that every religion is subject to its own set of laws & to respect its secularism in India some of these laws are to be recognized and respected by all citizens regardless of their religion. While some of these laws—like the Hindu Marriage Act—are codified, others are not. Regarding personal laws, the safeguard provided by Article 25 of the Constitution has successfully avoided legal conflicts concerning rights based on customs and traditions.

The legal systems of Rome and England are not older than Hindu law, which is regarded as one of the oldest systems of jurisprudence. Even though Hindu Law has several schools, it all comes from the same source.

V. HARMONY AND TENSION: EXPLORING THE DYNAMIC INTERPLAY BETWEEN RELIGION AND JURISPRUDENCE

It is often acknowledged that there is an intricate connection between religion and religious beliefs and jurisprudence, the branch of law study that offers a thorough understanding of legal systems, reasoning, and principles. Reason, conscience, and customs—fundamental tenets shared by all religions—have a significant influence on the formation of laws and the legal system, especially when it comes to issues of religious law. The complex interrelationships between religion, morality, and jurisprudence in the secular state of India make it difficult to make clear distinctions between them. As the cornerstone of Indian law, the Constitution guarantees respect for and tolerance of other religious views, subject to public health, morals,

¹³ *Constitution of India*, art. 26.

and order considerations.¹⁴

The close relation between Jurisprudence and Religion can also be established through various judgements passed by the Apex Court of India over the years for instance the criminalisation of instant triple talaq where after a lengthy proceeding to check the reasoning and sense behind the instant triple talaq. The court stressed that Triple Talaq could be invalidated since it violates the rights of Muslim women and is not a fundamental component of Islamic religious practice. The court came to the realization that instant triple talaq was never mentioned in Islamic Law. Still, it merely came into practice due to the reason of Convenience for the men when men used to go on long wars and could not fulfill the requirement of a 3-month time period that is usually required in Triple Talaq (which is still in practice and lawful) they could instantly set-aside their marriage.¹⁵

Furthermore, a recent ruling by the Supreme Court prohibited the use of firecrackers on Diwali, ruling that they are not sacred to the religion.¹⁶ Similar to this, non-essential aspects of religion have been declared to include things like prohibiting animal sacrifices in the name of customs and traditions, managing temples, electing members of the Gurudwara Property Committee, granting religious trust boards the authority to alter trust budgets, directing trustees, limiting the use of photography of women for electoral purposes, and controlling prayer rituals with the use of voice amplifiers or drums. These limitations, which are justified by the need to preserve morality, public order, and health, have been affirmed by the court on multiple occasions.¹⁷

The emergence of legal cases involving inter-religious disputes prompts a critical inquiry into the potential efficacy of implementing a Uniform Civil Code (UCC) as a viable solution. This leads to a fundamental question: can the adoption of a UCC serve as a means to alleviate the judicial burden associated with adjudicating cases that necessitate consideration of the religious sentiments of the involved parties?

VI. EXPLORING THE ROLE OF A UNIFORM CIVIL CODE (UCC) IN ADDRESSING INTER-RELIGIOUS DISPUTES

In India, while Criminal Law applies uniformly to all citizens irrespective of their religious

¹⁴ Justice Sunil Ambwani, "Religion and Jurisprudence," SAMVADA: A Forum for Understanding Religion, Sri Udasin Karshni Ashram, Ramanreti (Gokul), Mathura, Sep. 6-8, 2013.

¹⁵ Shayara Bano v. UOI, (2017) 9 SCC 1.

¹⁶ Dr. P.G. Najpandey v. State of Madhya Pradesh, 2023 SCC OnLine NGT 387.

¹⁷ M.P. Gopalakrishnan Nair & Ors. v. State of Kerala & Ors., (2005) 11 SCC 45; Shri Jagannath Puri Management Committee v. Chintamani Khuntia, (1997) 8 SCC 422; Pannalal Bansilal Pitti & Ors. v. State of U.P. & Anr., (1996) 2 SCC 498; Bhurinath v. State of J & K, (1997) 2 SCC 745; Sri Adi Visheshwara of Kashi v. State of U.P. & Ors., (1997) 4 SCC 606; N. Adithyan v. Travancore Devaswom Board & Ors., (2002) 8 SCC 106; Guruvayoor Devaswom Management Committee v. C.K. Rajan, (2003) 7 SCC 546.

affiliations, the realm of personal laws governing matters such as succession, inheritance, marriage, divorce, custody of children, guardianship, and alimony remains distinct for each religious community. The concept of a Uniform Civil Code (UCC), enshrined in Article 44 of the Constitution of India under the Directive Principles of State Policy, was envisioned to supersede individual religious community-specific regulations rooted in scripture and customs. The UCC seeks to establish a single body of laws to govern every citizen, prompting a crucial question: Can the enforcement of a UCC reconcile with the diverse religious practices, and does it align with India's commitment to secularism? This proposition raises a subsequent inquiry into whether an unjustifiable practice can be sanctioned under the guise of religious observance? However, the history of India showcases instances where certain practices deemed unjustifiable were abolished, including Sati, child marriages, and the legal prohibition of Triple Talaq.

In an interview with THE HINDU, Mr. Hameed Chennamangaloor emphasized that the objective of the UCC is not to impose uniformity in religious faith but to codify family laws for all communities.¹⁸ Furthermore, in the famous Shah Bano case¹⁹ in 1985, Chief Justice Y V Chandrachud lamented the non-implementation of Article 44²⁰, asserting that a common civil code would foster national integration by eliminating conflicting legal ideologies. CJI Chandrachud highlighted the necessity of initiating reforms, recognizing the challenges of bringing individuals from diverse faiths onto a common legal platform.

Certainly, the framing and implementation of the Uniform Civil Code (UCC) should adhere to a secular approach, devoid of favoritism towards any particular religious group. Such an impartial execution of the UCC holds the potential to foster justice and impartiality. However, a critical challenge arises in its implementation, often met with resistance that may escalate into social unrest and, at times, lead to riots. To preclude such consequences, the state must employ media channels as a means to address concerns comprehensively, thereby dispelling the apprehensions that contribute to the perceived unwelcoming nature of the UCC.

Prior to its implementation, a proactive strategy should involve establishing a designated time-period during which citizens from diverse religious backgrounds can contribute their suggestions and feedback on the drafted code. This participatory approach ensures a democratic and inclusive process. The state must diligently evaluate these suggestions, addressing reasonable concerns raised by citizens and incorporating pertinent recommendations. While this

¹⁸ Biju Govind, "India needs Uniform Civil Code, but it should be a secular code that does not favour any group", *The Hindu* (July 14, 2023)

¹⁹ Mohd. Ahmed Khan v. Shah Bano Begum and Others, 1985 AIR 945.

²⁰ *Constitution of India*, art. 44.

comprehensive procedure may be time-consuming, it stands as a necessary measure to prevent violence and other disruptive activities. Moreover, it serves as a cornerstone for promoting the principles of secularism within the legal framework.

VII. CONCLUSION

Law and religion both seek to define or mould how people think and behave in both public and private spheres. The idea that religion and religious beliefs have a close association with jurisprudence—the term used to describe the study and philosophy of law that provides a deeper understanding of laws, legal reasoning, and legal systems—cannot be disagreed with. The fundamental principles of all religions—reason, conscience, and conventions—have a significant role in the creation of laws and the legal system when it comes to matters of religious law.

Law and religion will always clash, and it will show out in many forms. In order to resolve these problems, one must uphold secular rules without making any concessions to alternative conduct. The Indian Constitution upholds the importance of secular law for the establishment of a legal and political framework necessary for societal harmony and human progress. The problem is settling disputes between people who identify as religious and those who do not; this puts the principles of a secular democracy in jeopardy. It becomes clear that tolerance—which includes ethical, political, and legal aspects—is the key to promoting inclusive secularism and avoiding placing an excessive burden on the legal system.

Setting strict limits between religion and the law or proposing rules governing their interaction is not a good idea. It is best to prevent the reciprocal contamination of religion and law. It is imperative that secular laws should strive to be broadly applicable, meaning that they should be the law for all. Religion is a way of life for culturally defined communities, and as such, it should be permitted to be practiced as long as it stays within the parameters of morality, public health, and order. Secular law needs to be equipped to face obstacles, guaranteeing that it stays impartial towards any religious community or individual, and constantly ready to counteract discrimination based on religion.
