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RESEARCH ARTICLE

PERSONAL LAW IN COMPARATIVE PERSPECTIVE: FOUNDATIONS, VARIATIONS, AND CONTEMPORARY CHALLENGES

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Abstract

There is no wonder that basic personal law ' covering all aspects of life from marriage and family relationships to will really is the root of conflict within law systems around the world. This research paper examines the conceptual underpinnings, historical evolution and comparative frameworks of personal law. It also considers the relationship between religion nationality domiciles on the one hand and state authority on the other. The second topic is: legal pluralism, globalization and changing social norms. Lastly part III covers current debates about reform and uniformity. Grounded in ancestry, comparison and social legal research methods, paper aims to contribute to today's world in finding a solution for the future of personal law.

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Introduction:-

Personal law governs some of the most basic facts of human life—marriage, divorce, child custody, adoption, inheritance, and succession. Personal law concerns are closely linked to individual identity, spousal norms, and religious norms and beliefs, positioning personal law in a space where private life and public regulation intersect. While public or criminal law usually applies uniformly across a nation, personal law is often based on religion, nationality, ethnicity, or domicile, and thus represents a pluralistic aspect of a society and a legacy of its history. These different systems raise important normative and practical questions. Where does the power of the state begin and end with regard to what to do or not do when religion or custom matters? Does it respect the principles of equality and non-discrimination when the legal rules are not the same depending on the community of which we belong? While honoring difference how should legal systems react to social change, migration and globalization? These questions have come to the fore in plural societies such as India, Israel, Malaysia, and Nigeria where legal pluralism has frequently been at odds with constitutional provisions that guarantee both equality before the law and secularism. The interplay of group rights versus individual freedoms, tradition versus modernity, and state sovereignty versus global human rights standards illustrates the contradictions that characterize contemporary scenarios over personal law. In comparative perspective, we seek to lay the conceptual and jurisdictional background, but then also assess more recent manifestations of personal law challenges. It starts with a historical account of the personal law and the way colonial and post-colonial legal orders institutionalized its plural nature. It compares the systems of law of various States which attribute personal law by reasons of domicile, nationality or religion, and analyses the implications of each approach for social cohesion and the certainty of law. The Indian legal

system, frequently referred to as a paradigmatic case in legal pluralism in personal law, is one of the mainstays of this research. This presents fertile ground for analysis of the more general tensions of pluralism and uniformity in a context that co-exists with constitutional commitments to secularism and equality as in India that preserves the coexistence of multiple religious personal laws. The third, and final, part deals with current issues such as gender justice, the clash of local and transnational laws, and whether international human rights norms can reform or even harmonize personal laws. Using doctrinal, comparative, and socio-legal methodology, the study provides an evidence-based comprehension of the operational and evolutionary manner of personal law in a globally accelerating world.

The guiding research question is:

How do systems of personal law negotiate the tension between the need to respect cultural and religious pluralism, on the one hand, and the demands of equality, justice, and the ultimately very secular project of constitutionalism on the other?

Literature Review:-

The examination of personal law is situated in a distinct position that is embraced the most by every legal scholar. This literature review presents major academic writing on personal law, addressing its historical provenance, comparative differences, socio-legal challenges and current global concerns.

Doctrinal Foundations and Historical Perspectives:-

The early understanding of personal law was of a doctrinally and historically oriented subject. It stressed the religious and customary bases of personal law, defining personal status according to community membership rather than territoriality. In societies with rule by religious authorities, as in Christian Europe under the canon law, or Islamic societies governed by the Sharia family relations, inheritance and marriage were affairs of private law administered by the community, not state, authorities. In social contexts such as British India, personal laws were preserved and codified in order to ensure local political stability. Some scholars, including Marc Galanter and Werner Menski, have demonstrated how colonial bureaucrats re-interpreted Hindu and Muslim laws for the purposes of code-making, freezing the meanings of these laws into rigid, state-administered codes. This colonial heritage led to a system of legal pluralism and had an impact on the legal systems of numerous post-colonial states, such as India, Nigeria and Malaysia.

Comparative Legal Approaches:-

In the comparative legal literature, the emphasis is laid on the jurisdiction that may decide which personal law is applied to an individual. In common law jurisdictions such as the United Kingdom and the United States, domicile is the most commonly used connecting factor to a particular legal system. By contrast, civil law countries like France, Germany or Italy frequently apply nationality as the criterion for personal law. In a few countries, particularly in the Middle East, South Asia and parts of Africa, the personal law being applied is religious or customary law, while in others it is codified law. In such circumstances personal laws are actually made suit to particular community and are enforced by community authority or the religious courts. It has been examined by scholars how plural systems like that could create inconsistencies, jurisdictional battles, and undermine the predictability of law. Hybrid systems like Israel's and Lebanon's, as well as the one proposed in Malaysia, have intersecting jurisdictions between civil and religious authorities, and pose intricate questions on legal authority, social harmony and individual rights.

Socio-Legal and Critical Perspectives:-

Socio-legal studies in recent decades have increasingly subjected personal law to critique from feminist lenses, minority rights and constitutional equality. Feminist legal scholars such as Flavia Agnes and Indira Jaising have illustrated the way in which personal law often serves to codify patriarchal norms and to disadvantage women in the areas of marriage, divorce, custody and inheritance. This literature contends that personal laws interpreted conservatively or based on religious texts have marginalised women, sexual minorities and lower-caste groups. This is strongly felt in the case of India, where personal laws of the community are criticised as being against the principles of substantive equality from the point of view of the juridico-judicial-public perspective themselves. Socio-legal research has also illuminated the disjuncture between law "in books" and law "in action." Many analyses demonstrate how individuals and families move in and out of multiple legal systems formal, religious, customary, and informal depending upon what is available, affordable, and socially demanded.

Globalization, Migration, and Human Rights:-

Recent studies have worked on how globalization, transnational migration, and the ascent of international human rights norms have transformed personal law. The greater promiscuity of people between the borders creates more disagreements in law, e.g. home, nationality, and religion. The role of conflict of laws today is extremely important in terms of identification of the personal law in disputes which are of a family and inheritable nature across borders, stated private international law which is popularly now known as conflict of laws. Meanwhile, global human rights accords, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), have been putting pressure on states to amend personal laws that are discriminatory on either gender or religious ground. Some states have reacted with progressive reforms, while others have rebuffed such calls, citing cultural or religious sovereignty, and cultural relativism has been used as a shield against international scrutiny. The tensions between universal human rights and religious based legal systems have, however, been considered by some scholars, among whom are An-Na'im and Coomaraswamy, who seek reformist agendas that are grounded in rights yet also culture sensitive.

The Indian Context: Personal Law, Pluralism, and Reform:-

India is a fertile ground for the study of personal law, because of its relatively pluralistic legal system. Scholars have examined how India's personal laws Hindu, Muslim, Christian, Parsi and tribal function within a constitutional order that promises religious freedom and legal equality. The Indian discourse on UCC is voluminous, largely focusing on whether it is possible to have legal uniformity without sacrificing religious and cultural autonomy. The debates on secularism, minority rights and the judiciary in the area of personal law reform have been carried forward by legal academics like Upendra Baxi, Rajeev Dhavan and Tahir Mahmood. Feminists and human rights activists have also raised their concerns that the UCC must not translate into imposition of majoritarian values, but into a shift towards a gender-just, gender neutral legal regime, for all the citizens.

Gaps in Existing Scholarship:-

Despite the variety of research available, significant gaps remain:

- There is little empirical study about how people fare within plural personal laws.
- The implications of digital technology, online marriages/divorces and virtual religious authority for personal law have not been adequately examined.
- Sustained analysis on the personal law's role in the adaptation to LGBTQ rights, climate migration, and statelessness is missing.
- The dynamics of non-state actor involvement (for example traditional elders, religious leaders) are under researched in informal dispute processing.

This paper attempts to fill some of these lacunae by combining doctrinal, comparative and socio-legal methodologies to produce a more comprehensive understanding of the development and problems of personal law. There is also a substantial and cross disciplinary body of literature on personal law. Routledge factors the development of personal law and its function in multiple legal systems, and the relations between tradition and modernity. The early literature centred on the doctrinal bases of personal law, comparing it with territorial law and underlining its significance as a means of safeguarding that of 'the community'. Subsequent contributions have explored the comparative aspect of delineation by domicile, nationality, religion. Recent studies have moved in the direction of critical and socio-legal approaches looking at the impact of personal law on gender politics, minority rights and social justice. Moreover, the advantages and disadvantages of legal pluralism, the difficulties of reform and the possibility of a Uniform Civil Code have been a subject of debate among scholars in India. Thus, even though there is a wealth of literature, there are still large holes, especially in relation to the globalisation, migration and transnational legal processes for personal law. This article brings together these lacunae through its combination of doctrinal, comparative and socio-legal analysis.

Methodology:-

It employs a doctrinal and comparative methodology, complemented by socio-legal perspectives. Primary materials are statutes, case law, and constitutional provisions in selected jurisdictions. Secondary sources include scholarly articles, treatises and officers of law reform commission reports.

- Doctrinal approach: The author studies legal rules and principles of personal law, analyzing these as applied in various legal systems.
- Comparative study also points to discrepancies in the identification of personal law and its usage through jurisdictions.

- These socio-legal approaches afford an understanding of the everyday life of persons living under personal laws as well as the larger societal implications of legal pluralism.

The research is also qualitative, based on critical analysis and synthesis of legal materials, not empirical evidence.

Historical Evolution of Personal Law:-

Origins and Early Development:-

In earlier societies, law was basically identical with religion, ethics and custom. The state was not involved in personal issues Church and (or) Tribe took care of marriage, divorce, inheritance, and succession problems. Legal systems were already plural, with different communities observing various norms according to religion, caste, or ethnicity. In medieval Europe, canon law of the Catholic Church governed marriage and family law, defining marriage as a sacrament and addressing matters of legitimacy, annulment, and inheritance, codifying procedures for certain aspects and imposing some de facto jurisdiction especially regarding sacramental issues. There were parallel systems in Islamic countries, where Sharia (coming from the Quran, Hadith, and juristic interpretations) was the main legal system for followers of Islam, especially in matters of personal status. Similarly among Jews, Halakha governed much of personal and family life, through rabbinical courts. Likewise, familiar and theological law sourced from texts like the Manusmriti [in the Hindu context] have played a pivotal role within Asian societies like that of China, Japan and India, and they may as well have been upheld in socio-hierarchical bodies such as village councils and caste-based panchayats. Historically, it thus based on religion or family and on a community that defines its own identity, so personal law was based on the religion, family and community class etc.

The Rise of the Nation-State and Legal Codification:-

With time, the 18th and 19th century advent of modern state brought about major changes in the legal systems. The Enlightenment concept of universal law, legal equality for individuals, and state sovereignty culminated in attempts to codify and unify legal rules. Driven by Enlightenment thinking and influenced by opposition to social inequities present in multifaceted regimes in the Middle Ages and early Modern periods, civil codes like the Napoleonic Code (1804) and the German Civil Code (BGB, 1900) attempted to erase pluralism in law and replace it with a singular territorial law that applied to every citizen alike. Even so, personal law used to not be subject to the uniformity rule. In large part due to his influence, family and inheritance law were often made an exception to this rule in many civil law countries, constituting a separate legal category that remained dictated by a subject's nationality, and thus strictly limited the impact of civil law on religious and customary practices, at least for minorities and colonial subjects. The common law doctrine of conflict of laws (i.e., private international law) emerged in tandem with the development of professional responsibilities in order to address personal affairs with a cross-border or multi-national component, often by taking the domicile or habitual residence of the individual involved as the connecting factor. Clearly, then, despite a dominant trend towards the unification and codification of public law, personal law has preserved a pluralistic and identity-affected nature in areas which are conceptually more sensitive in nature such as family, culture, and religion.

Colonialism and the Institutionalization of Legal Pluralism:-

The evolution of personal law took a decisive turn in the colonial period. European colonies led primarily by Britain and France had different approaches to legislating law over those they ruled. But one feature that was rarely missing was the retention, and sometimes the formalization, of personal laws based on religion or ethnicity. In British India, for example, the colonial government institutionalised the segregation of personal laws for Hindus, Muslims, Parsis and Christians. Legal pluralism was institutionalised through texts such as the Shariat Act (1937) and codifications such as the Hindu Marriage Act (1955) and the Indian Christian Marriage Act (1872). The British courts interpreted texts of the religions with local scholars in assistance but them, conformed a law codes replacing religious texts, rigidly turned flexible customs into table entitled codes. This has a political and administrative rationale behind it. Colonial authorities feared that meddling in personal and religious affairs would elicit resistance and allowed these spheres to be governed by community-based legal systems. The non-interventionist policy further deepened community-specific legal identities, which carried over, in many instances even post-independence. In French colonies, civil law was also distinguished from personal or customary law in the same way applicable to French citizens and indigenous populations, particularly in North and West Africa. This dualistic nature of the colonial law system paved way for the dualistic nature of legislation where customary law exists side by side with a civil law in several post-colonial states.

Post-Colonial Continuities and Legal Reform:-

Most of the new States had to deal with the problem of legal unification after decolonization. In fact, several nations including Turkey under Atatürk have replaced religious personal laws for civil codes, while others have maintained pluralistic systems. Thus, while customary practices were important in informing norms, the preservation or reform of personal law often hinged on political compromise, religious sensitivity and identity politics. The framers of Indian Constitution retained his existing personal laws in their judgement but inserted an Article 44 which stated that the state shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India. This compromise was based on the fear of religious minorities particularly Muslims being marginalized by sudden legal uniformity, which would alter, perhaps destabilize, the national unity. Consequently, India maintained several distinct personal law systems alongside a secular constitutional framework a reticulated arrangement that is still contested and debated. In Middle Eastern and African nations, however, the relationship between religious authority and state law differed. While a few maintained Sharia courts for Muslims alongside civil courts, others reinterpreted the principles of Islam in order to fit into the framework of modern-day state law. Thus, reforms in personal law have entered unevenly. Gender equality and codification (or at least legal clarity) have made dramatic strides towards monumental change in some countries but in others, personal laws have changed but little in their patriarchal form, often protected and justified by religious or cultural exceptionalism.

Comparative Frameworks: Domicile, Nationality, and Religion:-

Domicile as a Connecting Factor:-

In common law countries such as the UK and USA, personal law is normally determined by domicile the place where a person has their permanent home, or where they intend to live indefinitely. It seeks to emphasise a person by reference to a legal order over the State as the main legal entity, or citizen, where citizenship is not enough.

Nationality as a Connecting Factor:-

In contrast, countries with a civil law system like France, Germany, and Italy tend to house laws in nationality when it comes to personal law. This embodies a perception that personal status is an incident of membership and should be governed by the law of the land of origin.

Religion and Custom:-

In large swathes of countries notably in South Asia, the Middle East, and some parts of Africa you have an extensive system of so-called personal law, with cases decided according to religion or custom. For instance, in India different personal laws exist for hindus, muslims, christians, parsi and several other communities. Such laws deal with the marriage, divorce, adoption and inheritance, and mostly stem from a religious text or custom.

Mixed and Hybrid Approaches:-

Other jurisdictions operate hybrid systems that include aspects of domicile, nationality, and religious law. To illustrate, Israel has religious courts (e.g. Jewish, Muslim and Christian), responsible for personal status issues for their respective communities, while civil law has scope elsewhere.

Personal Law in India: Pluralism and Reform:-

The Structure of Indian Personal Law:-

India is one of the most well-known illustrations of legal pluralism in personal law.

There are several personal law systems in force in India:

- Hindu Law (Hindu Marriage Act, Hindu Succession Act etc.)
- Muslim Law (Shariat Act, Dissolution of Muslim Marriages Act etc.)
- Christian Law (Indian Christian Marriage Act, Indian Divorce Act)
- Parsi Law (Parsi Marriage and Divorce)
- Special Marriage Act (an option for an alternative, secular marriage)

This pluralism dates from the colonial service and was reflected in the post-independence constitutions of the region.

Constitutional Framework and Judicial Interpretation:-

Articles 25 and 14 of the Indian Constitution enshrine freedom of religion and equality before the law respectively. But personal laws fall outside the purview of law under Article 13, and so there is a tension between religious freedom and equality. Indian Supreme Court has had to wrestle with these tensions in the past in highlight cases such

as Shah Bano (1985), where it upheld the right of the Muslim woman to alimony under the secular law and thus setting off a national debate on the reform of personal law.

Debates on Uniform Civil Code:-

Article 44 of the Indian Constitution states that "The State shall endeavor to secure for citizens a Uniform Civil Code throughout the territory of India." Supporters claim that UCC is necessary to ensure gender equality and national integration and opponents argue that it will erode religious freedom and minority rights. Discussion has raged for decades, but comprehensive reform has been elusive, because of the deep social, political and religious sensitivities in play.

Gender Justice and Personal Law:-

Personal laws in India have faced criticism for continuing to create inequalities between the sexes, including issues related to divorce, maintenance and inheritance. Women's rights organizations have lobbied for change, and the courts have sometimes stepped in to reject discriminatory language. But the progress has been uneven and contested.

Globalization and Cross-Border Challenges:-

Migration and Transnational Families:-

Globalization has resulted in greater mobility and the development of transnational families, adding to the complexity of the personal law system. Disputes occur if persons with different home addresses, national origins or faiths are embroiled in personal status cases.

Private International Law:-

Private international law (conflict of laws) offers solutions to the questions raised, but the two systems of domicile and nationality co-exist, resulting in forum shopping, lack of clarity and inequitable results.

International Human Rights Norms:-

International human rights instruments, like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), have pushed states to review personal laws that discriminate by sex or religion. Yet the implementation is still inconsistent, and cultural relativism is still being used as an excuse for pluralism.

Contemporary Debates and the Quest for Uniformity:-

Legal Pluralism vs. Uniformity:-

The presence of several systems of personal law in one state also complicates the issue of legal pluralism and 51 uniformity. Pluralists say that it recognises cultural and religious diversity, while critics complain that it systematises inequality and undermines national solidarity.

Gender Equality and Social Justice:-

The most devastating criticism of personal law systems relates to their consequences for gender equality. Personal laws in most countries retain elements of patriarchy, curtailing women's rights in marriage, divorce and inheritance. Reformists want personal laws to be brought in line with constitutional and international assurances of equality.

Reform Initiatives:-

Reform efforts have taken various forms, including:

- The codification of personal laws for the codification and modernization of their contents.
- Judicial activism to read personal laws in consonance with constitutional principles.
- Legislation to institute uniform or secular alternatives, such as in India with the Special Marriage Act.

However, resistance from religious and community figures, and political and other considerations, have often got in the way of progress.

The Role of the Judiciary:-

It is in this interstice between personal law, constitutional rights, and social transformation that courts come to the fore. Typically, challenges to these norms have been resolved through the court system, with court rulings bringing favourable decisions from the perspective of gender justice and secularism even while being criticized for judicial overreach.

Conclusion:-

Personal law occupies an unusual and contested place in the jurisdictional universe, on the cusp of tradition, identity and modernity. Its resilience in plural societies highlights the difficulties of reconciling respect for diversity with the demands of equality and justice. With the increasing diversification and interaction in a society the pressures for reform and standardization of personal law will continue to grow. The way forward is a subtle one, involving respect for cultural and religious identities, on the one hand, and upholding some baseline rights and norms of social justice, on the other. Further studies could look into globalization, the role of international human rights norms, and the everyday life of personal law subjects. In the end, the object should be to build a system of law that is broad enough and equitable enough to suit the complex demands of pluralist societies.

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