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PERSONAL LAW II: CHRISTIAN, PARSI AND JEWISH LAW

You have studied in the last lesson that the personal law of Hindus and Muslims play an important role in our legal system. In this lesson, we will examine the personal law of Christians, Parsis, and Jews as incorporated in our legal system. As you might know, Christians are spread all over India and they are, in fact, the third largest religious community in India after Hindus and Muslims. If you go to Goa, Kerala, Tamil Nadu, Manipur, Meghalaya, Mizoram, and Nagaland, you would have the opportunity to interact with them without any difficulty as they are settled in these States in large numbers. Parsis are another religious community who mainly reside in Mumbai and nearby areas of Maharashtra. Their number is too small as their population is estimated at 70,000 only, all over India. Feroz Gandhi, the husband of late Prime Minister Indira Gandhi, Ratan Tata (the famous industrialist), and Sam Manekshaw (the famous officer of Armed Forces) are some of the well known names in the Parsi community. Jews are another religious group in India who follow their culture and traditions. They are mainly settled in Mumbai and nearby areas in Maharashtra and Gujarat. Prominent Jews in India have been David Sasson (there is Sassoon Library near Church Gate in Mumbai), and Ruth Praver Jhabwala (famous writer).



OBJECTIVES

After studying this lesson, you will be able to:

- explain the personal law of Christians, Parsis and Jews and its incorporation in our legal system;
- understand the importance of 'Customary Law' of Christians, Parsis, and Jews and how they have been accepted by our legal system;
- assess the salient features of legislations enacted for the Christians, Parsis, and Jews;
- appreciate the role of 'judicial precedents' in the making of Personal Law of Christians, Parsis, and Jews; and
- identify the Hybrid Legal System and its importance.



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4.1 ROLE OF CUSTOM IN CHRISTIAN, PARSI, AND JEWISH LAW

In this part of the lesson, we will try to understand the importance of Customary Rules in the lives and Legal System of these religious groups.

4.1.1. Role of Custom in Christian Law

‘Custom’ plays an important role in the lives and legal system of the Christians in India. In Malabar there is a Christian community commonly known as Malankara Jacobite Syrian Christians. That community traces its origins to 52 A.D. when St. Thomas, one of the disciples of Jesus Christ came to Malabar and established the church there. They are governed by the Hudaya canon and all their customary practices are codified in it. There are other varieties of Syrian Christians in Kerala and elsewhere in India. When the Portuguese established their rule in western parts of India (Goa, Daman, Diu) in the 16th century, they had been successful in establishing Roman Catholic Churches. They found that the Church Order and Customs of the Syrian Christians were not in tune with the Roman Catholic Church and so the customary practices on marriage and divorce, succession and inheritance followed by their churches were codified (The Code of Canon Law) and implemented. However, the Syrian Christians did not altogether stop practicing their own religious Customs and their Customs have been regulated by the Code of Canons of the Eastern (Oriental) Churches. During British rule, these canonic customary laws were practiced by the Christians all over the Churches in India and were modernized by the passing of two specific legislations, namely Indian Divorce Act of 1869 and Indian Christian Marriage Act of 1872. Christians did not recognize divorce in their customary practices and their marriages are regarded as sacramental. The Law of Christian divorce is codified by the name of 'The Divorce Act, 1869. This Act has been amended in 2001 whereby divorce by internal consent is allowed.

These canonic laws and practices were also applied by the Courts in India. Christians are bound to observe the form of marriage prescribed by the canon law in India. Only a person who has received Episcopal ordination can perform the marriage ceremony of Christians according to the customary practices in India. Under Canon 88 of the Roman Catholic Church, a person who has completed 21st years of age is a major. Canon 1607 provides that a man before completing his 16th year and a girl before completing her 14th year cannot contract a valid marriage. Canon 1934 enjoins that a pastor must seriously dissuade minor sons and daughters from contracting marriage without the knowledge of or against the reasonable wishes of their parents. The Courts in India have recognized these canonic practices. Furthermore, the courts have held that the prohibited degrees for the purpose of marriage were those which were

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prohibited by a customary law of the Church to which the parties belonged. Hence, if a marriage between a man and his cousin (maternal aunt's daughter) takes place, although it is prohibited, the Church can remove this impediment (Canon 1052). In *Lakshmi Sanyal v. Sachit kumar Dhar* (1972), the Supreme Court of India has accepted this position of Canon Law.

In the matters of succession and inheritance also, the Christians have followed their local customary practices for a long time. The rule of lineal primogeniture by which the eldest son of the deceased would succeed to his property is generally applicable. Wives of Christians were not given any share in the property of the deceased husband. On adoption, Christians of Punjab have been practicing adoption of children for a long time. There is also a Custom of Syrian Christians of Kerala for adoption of a son-in-law. Where there are no sons, the husband of the youngest daughter is taken in adoption.

Many Christians in India, however, adopt Hindu Customs and practices. For example, the Christians of Coorg and Pondicherry have been practicing Hindu customs. Many convertees also in Jharkhand, Orissa, and in the North East practice Hindu customary rules.



ACTIVITY 4.1.1

Christians reside in every part of India. In the area where you reside, you might have noticed some Churches, missionary schools. Go to some of these places and meet people professing Christianity and ask them about their customary practices. Make a list of their religious, social, and cultural customs and think how they have been preserving those customs and why has the society accepted it.

4.1.2. Role of Custom in Parsi Law

Custom Relating to Marriage–

Parsi immigrants came to India to escape religious persecution by the Arab conquerors of Persia. Immigrant Parsis adopted the customs of the place where they had first been given shelter. Parsis follow distinct rites of passage that start at birth and then the ceremony of 'navjote' is performed to initiate the child into the Zoroastrian religion. Their marriage ceremony takes place after sunset, and they follow their own customary rites of marriage according to their religious text 'Avesta'. Priests perform religious rites during marriage and 'Hathevaro' (right hand-fastening) of bride and bridegroom is done. Amidst chanting of prayers from their religious texts, the marriage is completed. Only when the priests ('dastoorji') certify the marriage, is the marriage completed. Parsi priests cannot perform religious rites if a Parsi boy marries a non-Parsi girl or vice-versa.



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Parsis believe in the Custom that a person can become a Parsi only by birth. Hence, if a person who is a Hindu, converts himself to Parsi, he would not be allowed to get any Parsi social and religious benefit. If a Parsi girl marries a non-Parsi boy, she will lose any rights in Parsi property and society. For example, J.R.D. Tata married a French Christian and she changed religion and was initiated into Zoroastrianism, but she was not allowed to claim any benefit of the Parsi society. However, the children born out of their marriage are allowed entry into the Parsi fold. The converted Parsis are not allowed entry into their religious precincts or participation in any religious ceremonies.

Custom Relating to Adoption–

Amongst Parsis, there is a well recognized ‘Custom’ of nominating a son or ‘Palak’ for adoption. There is no direct reference to this religious command in the existing Holy Avesta Scriptures, yet the Parsis practice it since ages. The ‘Palak’ adoption is not in the sense of a child being taken in a family with all the rights, social, religious or civil, of the adoptive father. It is not by way of conferring any right on the ‘adopted’ son, but it is the imposition of a duty on him – the duty of get performing the after-death ceremonies of the ‘adoptive’ father for the progress and onward journey of his Ruvan (soul) in the next world. Thus, we can see that Parsi adoption is altogether a different custom than others where the adoption confers all civil rights on the adopted son or daughter.

Custom on Succession–

In matters of succession, Parsis have followed different ‘Customs’ till the codification of law during British times in 1865. Parsi Panchayats (or, Parsi Anjuman) were given the jurisdiction to adjudicate on issues relating to marital discord, succession, domestic strife, and land issues etc. When there is no successor of the deceased, the property passes on to the Panchayat, which gives monetary benefit to the Parsis in times of need, such as extreme poverty whereby a person could be forced to beg or go for prostitution. These Panchayats are composed of leading and influential members of the Parsi community. These bodies are also responsible for taking care of ‘Towers of Silence’, which are the last resting place of the Parsis.

Parsis residing in mofussil areas, during British rule, were governed by their ‘Customary Law’ whereas those living in Presidency areas were governed by English law. For example, Parsi woman, in a mofussil area, had only a right to maintenance when her husband died. In Presidency town, however, a widow had an absolute right to a one-third share of her husband’s property. The daughter of the deceased, in Presidency areas, was treated at par with the son.

**Do you know**

The first Parsi settlement in India was in a village called “Sanjan” in Gujarat around the year 716 A.D. This place was then ruled by the Hindu chieftain, Jadi Rana. Rana gave permission to Parsis to settle down in his principality on four conditions: (a) that the Parsis would adopt the language of the country, (b) they would not bear arms, (c) their women would dress in Hindu fashion, (d) they would perform their marriage ceremonies after sunset in accordance with Hindu customs. They agreed to these conditions and settled there. However, they did not relinquish their own religion, i.e., Zoroastrianism and traditions, such as rites of passage.

**Notes****4.1.3. Role of ‘Custom’ in Jewish Law**

Jews are a small community in India who follow the religion of ‘Judaism’. The main sources of Jewish law are the provisions of the ‘Mosaic Code’, set forth in the ‘Pentateuch’, which existed in the earliest times of Judaism and which is repeated with some modifications in “Deuteronomy”. The Mosaic Code has a well-founded historical importance, and with subsequent adaptations to changed conditions of life, has affected the domestic life of the Jewish people all over the world. The later provisions of Jewish law are laid down in the “Talmud”, a work which contains the traditional laws of the Hebrews. The marital law laid down in the ‘Talmud’ is an interpretation and enlargement of the Mosaic Code. It is divided into the “Mishna” and the “Gemara”, the former of which contains the laws governing almost every action of the Hebrews, and the latter contains commentaries or expositions and discussions upon those laws. In the Middle Ages, statements of Jewish law were derived from the institutions of the ‘Rabbis’, but the principles of the old Rabbanical Code have been considerably modified in order that they may conform to the requirement of the laws of different countries in the world. The Rabbi himself is no longer a civil judge, but only a spiritual guide and preceptor of his congregation. In the Middle Ages, codes were compiled from the ‘Talmud’ for practical use, and the law was codified in the sixteenth century in a work styled “Schulchan Aruch” of which the third part, the ‘Eben Ha-Ezer’, contains the matrimonial laws of the Jewish people and has obtained a general authority on all questions of marriage and divorce.

Custom Relating to Marriage–

The Jewish customary practice on marriage is different from the Christians and English people. The Roman Catholic Church considers marriage as a sacrament and as such indissoluble. Under English law, marriage is looked upon as a contract. Jewish law regards marriage not only as a civil contract, but as a relation between two persons involving very sacred duties. In the Mosaic laws, no fixed forms of concluding marriage are mentioned, but there is a distinction between the betrothed woman and the married woman. The betrothed woman

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was called 'Arusha', and the married woman 'Nissua'. This practice was further evolved into certain legal formalities, and the act of marriage came to consist of two different parts, namely, the betrothment and the nuptials. A girl under the Jewish custom does not become betrothed unless the betrothal takes place with her consent. A girl who is a minor under the Hebrew law, that is to say, if she is below the age of thirteen years and a day, cannot betroth herself. The consent of the man is also necessary. The mere consent, however, of parties to marry each other is not sufficient to constitute a betrothal, because a certain act or formality is required by which the mutual consent is legally manifested. For this purpose, there are two special formalities. One of them is called 'Kaseph' (money), the other Sh'tar (written instrument). The betrothal by 'Kaseph' called 'Kaseph Kiddushim' consists in the man giving in the presence of two witnesses to the girl an amount of money or any other object of equal value, and at the same time saying in Hebrew, "Be thou consecrated to me", or "Be my wife", or "Be Mine" according to the laws of Moses and Israel. The witnesses must also be Jews.

The betrothment can only be dissolved through death or a formal bill of divorcement. Jewish customary law recognizes divorce. Four kinds of divorce were recognized by the old Rabbanical law: (a) divorce by mutual agreement, (b) divorce enforced upon the wife on the petition of the husband, (c) divorce enforced upon the husband on the petition of the wife, (d) divorce enforced by the Jewish court without the petition of either of the parties. A woman can ask for the bill of divorcement either after betrothal or marriage. The bill of divorcement has to be executed by the person who gives divorce to the person who has asked for it.

Custom Relating to Succession & Inheritance–

Similarly, the customary practices of the Jews in matters of succession and inheritance are regulated by the 'Pentateuch' (religious text mentioned before) and by the Conciliation Committees formed by the Jews in their settlements. When the law related to succession was codified during the British regime, and was named as Indian Succession Act, 1925, the Jews did not say anything upon its application upon them. When some of the Jews discovered that the new law was not in consonance with their customary practices based on "Pentateuch", they petitioned to the State Government which has the power to exempt any race, sect or tribe from the operation of the Act. The British Government conceded this demand, and the Jews were remitted to the 'Pentateuch'.

**Do you know**

The origins of Indian Jews remain uncertain, but according to some accounts they may have come as emissaries from the Court of King Solomon. When the kingdom of Judaea was annihilated by the Roman Emperor Vespasian in

the year 70 A.D., the Jews started migrating to almost all parts of the world. Jews in India can be broadly classified into three categories: (a) the *Cochin Jews*, who arrived in India around 2500 years ago and settled down in Kerala as traders, (b) *Bene Israel Jews*, who arrived in India around 2100 years ago and settled in the states of Maharashtra and Gujarat, (c) *Baghdadi Jews*, who arrived in the late 18th century from Iraq, Iran, and Afghanistan and settled in Mumbai and Kolkata. They established their own small communities and built places of meeting and prayers called ‘synagogues’, read the holy Bible, and observed Sabbath and circumcision. It is interesting to know that the Bene Israel community, which is the largest Jewish community in India, believes that their forefathers were shipwrecked on India’s shore while fleeing persecution during the second century B.C.



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INTEXT QUESTIONS 4.1

1. What are the Customs of Christians in India?
2. Why did the Parsis adopt the local Customs of India?
3. What are the Matrimonial Customs of the Jews in India?

Fill in the Blanks

1. play an important role in the lives and legal system of Christians. (Customs/Law/Conventions)
2. Many Christians in India adopt customs and practices. (Hindu/Parsi/Jews)
3. Among Parsis, there is a well recognized custom of maintaining a son or “palak” for (Adoption/Marriage/Divorce)

4.2 ROLE OF LEGISLATION AND JUDICIAL PRECEDENTS IN CHRISTIAN, PARSI, AND JEWISH LAW

In this Section of the lesson, we will discuss the role of legislation and judicial precedents in Christian, Parsi and Jewish law. As you might now be aware, legislations have played a major role in codifying the customary practices and new rules related to any area in one place. Similarly, the courts of superior jurisdiction have been given the authority to lay down judicial precedents in any case where the legislation is unable to provide solutions and customary practices have not been given recognition in the legislation. First of all, we would analyze the role of legislation and judicial precedents in Christian law.

4.2.1 Role of Legislation and Judicial Precedents in Christian Law**Legislation on Marriage–**

Specific legislation relating to personal matters was codified during British rule in India. The term ‘Indian Christian’ is defined in the Christian Marriage Act, as a person professing the Christian religion and it includes Christian descendants of native Indians converted to Christianity, as well as ordinary converts. Baptism by itself does not amount to conversion. A convert has not only to be baptized, but also to profess Christianity according to Christian traditions. There are many special laws relating to Christians. The Indian Christian Marriage Act was codified in the year of 1872. This Act has consolidated and amended the laws relating to the solemnization of the marriages of persons professing the Christian religion in India. This Act has now been extended to Kanyakumari district and the Schencuttah taluk of the Tirunelveli-Kattabomman district of TamilNadu in 1995. The law on Christian divorce is codified by the name of The Divorce Act, 1869. This Act has been amended in 2001 whereby divorce by mutual consent is allowed.

Legislation on Adoption–

There is no specific legislation enabling or regulating adoption among Christians in India. Persons who wish to adopt a minor child usually approach the Court under the provisions of the Courts and Wards Act, 1890, to obtain an order of guardianship for the minor child. Orders under that, however, would not apply once the child becomes a major, thereby disentitling the child from the benefits enjoyed by an adopted son or daughter. This position has now been changed after the enactment of “Juvenile Justice (Care and Protection of Children) Act, 2000, read with the Guidelines and Rules issued by various State Governments under which now the Christians can also adopt children.

Legislation on Succession–

So far as matters relating to succession are concerned, they are governed by the Indian Succession Act, 1925. This law governs intestate and testamentary succession of immovable property of Christians and Parsis. By virtue of the provisions of the Goa, Daman and Diu (Administration) Act, 1962, the Portuguese Civil Code is applicable in Goa. In Pondicherry, the French Civil Code still survives as per the provisions of the *Treaty of Cession, 1956*. Further, the Garos of Meghalaya are also not subject to this Succession Act. They follow their customary matrilineal system of inheritance.

Judicial Precedents–

The ‘judicial precedents’ relating to Christians are also very important to understand. In one decided case on marriage, the Madras High Court held that the consent of the father of a minor girl is mandatory to marry her. When the consent was not obtained from the father and the boy committed a fraud by

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changing the year of birth of the girl to avoid taking the consent of her father, it was held not to be legal (*Rosalyn Mary v. Ravi Gnanaselvam*). In another decided case, the same court held that when no priest officiated the marriage ceremonies and the marriage did not take place in a church, the marriage would not be a marriage in the eyes of the Court even though documents were executed few weeks prior to the alleged marriage to provide for the dowry (*S. Selvaraj v. Martha Peter*).

In another decided case on divorce, the Supreme Court noted that the Divorce Act, 1869 confers jurisdiction on District Courts and High Courts in matrimonial matters. Unless the Act recognizes the jurisdiction, authority or power of Ecclesiastical Tribunal (sometimes called as Church Court), any order or decree passed by such Ecclesiastical Tribunal cannot be binding on the Courts which have been recognized under the Act to exercise power in respect of granting divorce and adjudicating in respect of matrimonial matters (*Molly Joseph v. George Sebastian*). On the question of whether slapping a wife by her husband amounts to cruelty, the Court has decided that merely slapping his wife after marriage does not amount to cruelty and this would not be a ground of divorce (*Agnel Valentine D'Souza v. Blanche Agnela Piedade*).



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4.2.2. Legislation on the Parsi Law and its Judicial Review

Legislation on Marriage & Divorce–

The Indian Parliament has regulated Parsi marriages and divorces by enacting special laws for them entitled ‘The Parsi Marriage and Divorce Act, 1936’ which has been amended to some extent in 1988. This Act defines a Parsi as a person who is Parsi Zoroastrian. However, you might wonder about a situation when a Parsi boy marries a non-Parsi girl, what would be the religion of their children? Similarly, if a Parsi girl marries a non-Parsi boy, what would be the religion of their children? These questions are not answered by the Act. To know the answer, we would have to look at judicial precedents. In a case decided by the Bombay High Court, the Court observed that the children of a Parsi father and a non-Parsi mother are Parsi provided they are admitted to the Parsi religion and profess the Zoroastrian faith. The children of a Parsi mother and non-Parsi father, however, would not be Parsi (*Sir Dinshaw Maneckji v. Sir Jamshedji*).

According to this Act, Parsi marriage can be invalid if any of the three acts have been committed: (a) when the contracting parties are related to each other in any degrees of consanguinity or affinity (for example, a man shall not marry his sister’s son’s wife, and a woman shall not marry her sister’s daughter’s husband); (b) when the marriage is not solemnized according to Parsi form of ceremony called “Ashirvad” by the priest in the presence of two Parsi witnesses other than the priest himself; or (c) when the contracting parties are not adults, i.e., the male has not completed 21 years of age, and the female has not completed 18 years

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of age. You might again think about a situation when a minor Parsi boy marries a Parsi girl and a child is born, would that child be illegitimate? The answer is given by this Act and it says that the child would be called legitimate.

Procedures to be followed for solemnisation of Marriage–

The marriage contracted under this Act shall, immediately on the solemnization thereof, be certified by the officiating priest. The certificate shall be signed by the said priest, the contracting parties and two witnesses present at the marriage. The priest shall thereupon send such certificate together with a prescribed fee to be paid by the husband to the Registrar of the place at which such marriage is solemnized. Any priest knowingly and willfully solemnizing any marriage contrary to these conditions shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Ten grounds for divorce are also provided in this Act. Those are:

- (a) non-consummation of marriage;
- (b) unsound mind;
- (c) bride was pregnant at the time of marriage;
- (d) commission of adultery, rape, or unnatural offence;
- (e) cruelty;
- (f) infection by venereal disease or causing grievous hurt to each other;
- (g) imprisonment of seven years;
- (h) desertion for two years;
- (i) separation from each other and no marital intercourse; and
- (j) conversion to any other religion. One more ground has been added in the year of 1988, i.e., divorce by mutual consent. If the contracting parties are living separately for a period of one year or more, and they have not been able to live together, and they have mutually agreed that the marriage should be dissolved, such divorce may be granted by the court.

Jurisdiction of the Courts–

Separate Courts are also constituted for the adjudication of Parsi matrimonial disputes. In each of the Presidency towns of Mumbai, Chennai, and Kolkata, Parsi Chief Matrimonial Courts are established in the High Courts of these cities. These Chief Matrimonial Courts are aided by five Parsi delegates who are residents of the city and are willing to express their opinion in Parsi matrimonial disputes. These delegates are appointed by the State government. Similarly, a Parsi Matrimonial Court can also be constituted at a place other than Presidency town, and those Courts are called Parsi District Matrimonial Courts.

Law on Adoption–

The legislature has not passed any special legislation to deal with Parsi adoption, except Parsi Intestate Succession Act, 1865, wherein it did not recognize an adopted son as a Parsi heir. Therefore, Parsi couples wishing to adopt a child could not have done so except for religious purposes. The Court has accepted the customary practice of adoption, i.e., Palak for religious purposes (*Jehangir Dadabhoy v. Kaikhushru Kavasha*). However, Parsi couples wishing to adopt a child may do so under a new legislation, named ‘The Juvenile Justice (Care and Protection of Children) Act, 2000’.

Law on Succession–

Matters relating to Parsi succession are provided for in the Indian Succession Act, 1925. Before this Act was passed, there was Parsi Intestate Succession Act, 1865 which dealt with this issue. Now, Indian Succession Act has a separate Chapter III which deals with Parsi intestate succession. Intestate Succession means a succession where the deceased did not make any will before death.

4.2.3. Role of Legislation and Judicial Precedents in Jewish Law**Law on Marriage and its Judicial Review–**

There is no specific legislation for the marriages amongst the Jews in India, so the role of legislation has absolutely no significance. Unlike in the case of Christians, Parsis and Hindus, as also in the case of Muslim women, there is also no statute providing for any matrimonial relief, such as divorce and alimony. However, judicial precedents have helped Jewish law to evolve in India for a long time. In this section, we will give full focus on the role of judicial precedents in shaping Jewish law in India.

The Bombay High Court judgments have played a major role in developing Jewish law in India. For example, this Court has established the rule that the nature and incidence of a Jewish marriage and the matrimonial relief to which a Jewish husband or wife would be entitled, must be ascertained from their personal law (*Mozelle Robin Solomon v. Lt. Col. R.J. Solomon*). Matrimonial disputes, such as seeking divorce can also be settled by the Courts. The law to be applied in such cases is the Jewish law with such adaptations to the circumstances of the case as justice may require. In the event of any dispute, the custom of the Jewish community will be considered before any ruling on the matter may be pronounced (*Rachel Benjamin v. Benjamin Solomon Benjamin*).

Recognizing one of the Jewish customs, the Bombay High Court held that where a Jewish girl (Baghdadi Jew) went through betrothal ceremony, called Kaseph Kiddushim (it is one of the two steps of marriage, the other step being “Chuppah”), the girl may be entitled to get the betrothal cancelled if the



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conditions of betrothal have not been fulfilled by the boy or the groom. Betrothal ceremony amongst Jews confers some of the rights and obligations of the married state. When the betrothal becomes void on non-fulfillment of its conditions, there is no need to execute a bill of divorcement to nullify the effect of the Kaseph Kiddushim ceremony (*David Sassoon Ezekiel v. Najia Noori Reuben*). The girl can marry another Jewish boy without getting a bill of divorcement from the earlier boy with whom she was betrothed.

In an interesting case of divorce, a Jewish husband filed a petition in the Mumbai High Court seeking divorce on two grounds: (a) obstinate refusal of conjugal rights during one whole year (b) insulting the father-in-law in the presence of the husband and insulting the husband himself. Since there was some uncertainty about the exact law applicable on the question of divorce claimed by the husband, the Court referred to Jewish customary practice in England and the U.S.A. as mentioned in a book written by Rev, M. Mielziner on the Jewish Law of Marriage and Divorce in ancient and modern times. In modern times, these grounds of divorce are called (a) desertion (b) cruelty. In this case, the Court found that the wife had not obstinately refused to cohabit as before and after the time in which cohabitation was not alleged, it was found that they had cohabited with each other. On the second ground also, the Court held that the wife had not insulted her father-in-law, rather she wanted to assert her views. When a wife speaks up in front of her father-in-law and husband, it does not amount to cruelty (*Bension Joseph Hayeema v. Sharon Bension Hayeema*).

Law on 'Will'–

The Court has also examined the Jewish law on 'will' by which a person can transfer his property according to his own wishes to others. It was held that the subject matter of a gift or a 'will' must be definite, existing, and in possession. No uncertain or future property can validly form the subject of a gift or a 'will'. For example, a share of a share in a partnership property is indefinite. Delivery of the document containing the 'will' to the donee is essential in order to complete the transaction. A 'will' must be read or the contents thereof explained to the donee or the legatee or some of his agent. If any of these essential requirements is not complied with or observed, the 'will' cannot be enforced by the court (*Menahem Mesha v. Moses Bunin Menahem Messa*).



ACTIVITY 4.2

1. Make a small collection of Statutes or Acts relating to Christians, Parsis, and Jews.
2. Visit the websites of different High Courts of India and try to find out some of the judgments on matrimonial issues of the Christians, Parsis, and Jews.



INTEXT QUESTIONS 4.2

1. What are the main legislations enacted by the Indian Parliament regulating the Personal Law of Christians and Jews?
2. Discuss the importance of enacting legislation related to Parsi Law.
3. How have the ‘Judicial Precedents’ helped to evolve the Personal Law of Parsis and Jews in India?
4. Do you think that the legislations and ‘Judicial Precedents’ have important role in a Legal System and why?

Fill in the Blanks

1. The Indian Christian Marriage Act was codified in the year
(1872/1876/1878)
2. The Law on Christian Divorce is codified by the name of ‘The Divorce Act’,
..... . (1872/1869/1995)

Write True/False

3. The Indian Succession Act, 1925 governs Intestate and Testamentary Succession of immovable property of Christian and Parsis. (True/False)
4. The ‘Judicial Precedents’ have helped to evolve the personal law of Parsis and Jews in India. (True/False)

4.3. HYBRID LEGAL SYSTEM

The traditional concept of a ‘Hybrid Legal System’ is one in which more than one legal system co-exist. In other words, if a legal system is called a ‘Hybrid Legal System’, it would have common law system as well as civil law system or socialist legal system, customary legal system or religious system. Systems around the world certainly present diverse mixes – of religious law, indigenous custom, merchant law, canonical law, Roman law and judge made law (precedents). For example, the legal systems of the countries of Seychelles, South Africa, Louisiana (in the U.S.), Philippines, Greece, Quebec in Canada, Puerto Rico, Scotland and India follow ‘Hybrid Legal System’ as they have more than one main legal system in their overall legal system. International legal system can also be termed as ‘Hybrid Legal System’ as you would find common law as well as civil law principles in it. We can appreciate that in places like Asia, Africa, and other Islamic countries, powerful elements of customary law still remain and are in evidence in varying degrees. Sometimes, you may also find a term ‘Mixed Legal System’, which is also used to denote ‘Hybrid Legal System’ only.

You might wonder what amount of ratio would be required to make a legal system hybrid one, as the term ‘hybrid’ denotes mixing up of two or more



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different species or genetic material. In law also, you can apply this, but the actual quantity cannot be prescribed with absolute detail. For example, take the States of Texas, California, and Louisiana in the United States. Texas and California have ‘some’ civil law in their legal systems, whereas in Louisiana, the amount of civil law is ‘more’. In India, if you observe closely you would find that we follow mainly common law because we have the system of judicial precedents and public writs. But is it not also a fact that we have several commissions of Inquiry, administrative tribunals (traits of civil law), customary law, personal law of Hindus, Muslims, Jews, Parsis, and socialist law in Directive Principles of State Policy given in our Constitution?

At the genesis of the ‘Hybrid Legal System’ are the claims of a culture to preserve its own language, religion, historical experience and, not least, its laws and customs. Native legal system is hoped to be preserved with the adoption of this approach, in doing which the political superior has an important role to play. He may consider the costs and benefits of this approach. Whosoever wins in this political show of strength between a group which is willing to protect its native legal system and an other which is trying to maintain status quo, would influence the making of the hybrid system. For example, the French Canadians of Quebec did not allow the common law to prevail over this State of Canada and therefore even within Canada, you would find civil law system. India, Pakistan, Bangladesh have inherited a common law legacy from their colonial regimes. However, the developments in India, such as the establishment of Gram Nyayalayas (a native legal system now recognized by law), ‘Lok Adalat’ (native practice being followed in Gujarat for a long time, and which is now recognized by law), administrative tribunals, Matrimonial Courts for different religions etc. have established the effectiveness and acceptance of native and civil law systems.



INTEXT QUESTIONS 4.3

1. What are the salient features of a Hybrid Legal System?
2. Name some of the countries which follow ‘Hybrid Legal System’.
3. Do you think that International Legal System and the legal system of the European Union follow ‘Hybrid Legal System’? Give two reasons.

Write True/False.

4. India, Pakistan and Bangladesh have inherited a Common Law legacy from their colonial regime. (True/False)
5. The ‘Hybrid Legal System’ is one in which more than one Legal System Co-exist. (True/False)
6. The term ‘Mixed Legal System’ is also used to denote ‘Hybrid Legal System’. (True/False)



WHAT YOU HAVE LEARNT

- Customary rules have been observed by Christians, Parsis and Jews in India for a very long time. Many of those rules are incorporated in the legislations passed by the Union/State legislature or given recognition by the Courts.
- Jews in India are governed by their own Customary Rules as there is no legislation for them in matters of family and matrimonial relations. However, the judiciary has recognized many of their Customary Rules contained in their religion and moral texts.
- Some of the examples of legislations relating to Personal laws of Christians and Parsis are :
 - (a) The Indian Christian Marriage Act, 1872;
 - (b) Indian Succession Act, 1925;
 - (c) The Parsi Marriage and Divorce Act, 1936; and
 - (d) Indian Divorce Act, 1869
- ‘Hybrid Legal System’ comprises of a blend of more than one Legal Systems. In the present day, no Legal System of the world is composed of only one type of legal system and in this regard, India is no exception.



Notes



TERMINAL QUESTIONS

1. Discuss the role of ‘Custom’ in the Personal Law of Christians, Parsis and Jews. Do you think that the Custom does not play any role in their lives ?
2. Describe some of the salient features of the legislation on Personal Law for Christians and Parsis.
3. How is a ‘Hybrid Legal System’ different from other Legal Systems of the world ?
4. Assess the role of the Courts to recognize Customary Rules of Christians, Parsis and Jews..
5. Match the legislation and Customs in column ‘A’ with corresponding application in column ‘B’

A	B
(a) Indian Succession Act, 1925	Parsi
(b) Ashirvad Ceremony	Jews
(c) Kaseph Kiddushim	Christians
(d) Indian Divorce Act, 1869	Christians and Parsis



Notes

Project

Survey your District Town and identify 3-5 people belonging to Christians, Parsi and Jewish communities. Do not bother if you do not find any Parsis and Jewish persons in your District Town. But you will definitely find some Christian people. Try to know from them the customary rules which they have been following for a long time and have been recognized by the legislature or the courts.

Sl. No	Name of the Person	Customary rules followed by them	Rules recognized by legislature/judiciary
1			
2			
3			
4			
5			



ANSWER TO INTEXT QUESTIONS

4.1

1. Customs of the Christians in India are :
 - (a) minors cannot marry;
 - (b) parties to a marriage must be knowing the consequences of marriage within prohibited degrees of relationship;
 - (c) rule of linear primogeniture; and
 - (d) adopting son-in-law by Kerala’s Syrian Christians
2. Parsis adopted the local Customs of India because :
 - (a) they were allowed to stay in India, at the time of their first arrival, on the condition that they would follow India’s local custom of the place they were allowed to settle; and
 - (b) they were not temporary settlers, but they had been a victim of religious persecution in their home land. So they adopted local custom due to long settlement and gave respect to the local customs.
3. The Matrimonial Customs of the Jews in India are :
 - (a) marriage is regarded as a civil contract as well as a sacred commitment to perform some duties;

- (b) a betrothed and married woman are two distinct phases and each one has a different meaning;
- (c) four kinds of divorce are practiced; and
- (d) mere consent of parties to marry is not enough, some legal formalities are necessary to be observed, such as 'Kaseph Kiddushim'

1. Customs
2. Hindu
3. Adoption

4.2

1. The main legislations enacted by the Indian Parliament regulating the Personal Law of Christians and Jews are :
 - (a) The Indian Christian Marriage Act, 1872;
 - (b) The Divorce Act, 1869;
 - (c) Juvenile Justice (Care and Protection of Children) Act, 2000;
 - (d) The Indian Succession Act, 1925;
 - (e) The Parsis Marriage and Divorce Act, 1936; and
 - (f) The Parsis Intestate Succession Act, 1865
2. After examining the legislation enacted for the Parsis on their personal law, it can be deduced that (a) the legislation has classified the vague customary rules of Parsis (b) all the rules have been codified at one place and now it is easy to locate the law (c) the legislation is authoritative and it is binding on all Parsis (d) if any Parsi would not follow any provisions of the legislation, they can be penalized.
3. The 'Judicial Precedents' have evolved the personal law of Parsis and Jews in India in the following ways :
 - (a) the judiciary has recognized that the children of a Parsi mother and non-Parsi father would not be Parsi;
 - (b) customary practice of adoption of Parsis is accepted by the court;
 - (c) gift of property by Jews has been recognized in the form of 'will'; and
 - (d) where the betrothal becomes void on non-fulfillment of its conditions, there is no need to execute a bill of divorcement to nullify the effect of the 'Kaseph Kiddushim'.



Notes



Notes

4. Yes, I think that the legislation and 'Judicial Precedents' have an important role in a legal system because : (a) if legislation would not have been there, the courts would face difficulty in applying the rules (b) it would become difficult for the common person to prove a customary rule in the courts of law (c) judicial precedents make law for the future in the like cases

Fill in the Blanks

1. 1872
2. 1869
3. True
4. True

4.3

1. The salient features of a 'Hybrid Legal System' are :
 - (a) co-existence of more than one legal system;
 - (b) ratio of the mixture of different legal system can not be pre-determined; and
 - (c) it preserves the native legal system
2. Countries which follow hybrid legal system are :
 - (a) Seychelles;
 - (b) South Africa;
 - (c) Philippines;
 - (d) Greece; and
 - (e) India
3. Yes, I think that International Legal System and the Legal System of the European Union follow 'Hybrid Legal System' because :
 - (a) more than one type of legal system are found in it; and
 - (b) these two systems are composed of various peoples, and cultures, so their traditional legal systems have also been given due place and recognition by it.
4. True
5. True
6. True