

Origin of Parisian Laws and Regulations in India: “Fons et origo of Zoroastrianism”

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Abstract

The present article is elucidation of Parsi's and their personal laws to make it a less confused and more comprehensible study matter. The title “Fons et origo of Zoroastrianism” means the source or the origin of Zoroastrianism. Those who believed that there's only one Supreme God namely “Ahura Mazda” are known as Zoroastrians. The researcher has discussed the status of Parsis from its inception till date. This piece of work starts with a detailed study of their origin, simplifying their upbringing and tracing their movements and further stressing on the enactment & application of their laws in India. This piece of literature, emphasizing on the origin of the Zoroastrians further focuses on the legal provisions relating to Parsi marriages, divorce and maintenance as well. In Toto it's a compilation of the most needed information and majorly required provisos relating to Parsis.

Keyword: Parsi, Zoroastrian, Personal laws, Marriage, Divorce, Maintenance.

Introduction

“In all religions we hear of the seven planetary genii: The Hindu tells of seven Rishi, The Parsi of seven Ameskasentas, The Mohammedan of seven Archangels & The Christian religion has its seven spirits before the throne” *Max Hoindell*

As per my style of upbringing i.e a “typical Hindu”, I was always thought that “*God is one*” and “*All religions are path to the same God*” but as I grew to learn the upbringing of every religion, I find differences in origin source, style and words but the essence of a “common truth” remaining constant. Zoroastrianism being a uniquely different on drew my attention first the Parsi people who may also be addressed as the “Tajiks of Afghanistan”, or Tajikistan and Uzbekistan” or the “Tats of Eastern Caucasus (Republic of Azerbaijan)” were a major nomadic branch of the Iranian population that entered Iran during the 10th century B.C.

Varieties of terms were derived from the Greek word “Persis (e.g. Persia) to refer to such people who occupied the major portion of the Pars Province (or Fars), cultural capital of Iran The term “Persia” soon become an official name for all of Iran for many years.¹ Soon the western world became familiar to the term “Persian” to refer the Inhabitants of Iran.²

However, it is essential to know who a Parsi is? It is a fairly, well known that the Parsis came from Persian Province of ‘Pers’ or ‘Pars’ from which the word Parsi’, has been originally derived. The Parsis are said to follow “Zoroastrian” religion. The words “Zoroastrian” & “Parsi” are used interchangeably. Although their original faith does allow conversion amongst Parsis but Zoroastrian religion is a non-convertible religion. In India it was held that: “conversion to Zoroastrian religion is against usage and customs”. Thus Parsi means those Persons who are descendants of original Persian emigrants or Person whose father is or was a Parsi and mother an alien but admitted to Zoroastrian faith or Zoroastrians from Iran who are or have been residing in India.

Rise of Persian Empire:

However according to the “Black Obelisk of Shalmaneser III and Merriam Webster online dictionary, the first Persian empire was founded by Cyrus the great in 550 BC which was a small collection of semi nomadic tribes that raised sheep's, goats & chattel on the Iranian Plateau but by defeating the nearby kingdoms of Media, Lydia & Babylon & so on and bringing them under a single rule, he soon established the world's first super power uniting: Mesopotamian civilization, Egypt's Nile Valley Civilization and the Indus Valley Civilization”

known as Achaemenid Empire or Persian Empire.

The above-mentioned empire stretches from Europe's Balkan Peninsula (in parts of Bulgaria, Romania, Ukraine) to the Indus River Valley in Northeast India and South of Egypt.

The Persian people were highly talented. Their works include architecture, weaving, painting, calligraphy, metalworking, painting, sculpture, stone masonry, literature, music etc. Their art is considered to be one of the richest art heritages in world history. They were the people who developed the various means and routes of communication between Africa, Asia and Europe, and the world's first postal services as well.

The Persian Empire witnessed the dominance of Islamic religion after the Arab conquests and early Islamic conquests³. Thereafter Zoroastrianism prevailed as a religion in the first Persian empires under the beliefs of monotheistic faith of the founder of Zoroastrianism, Prophet Zoroaster (Zarathustra in ancient Persian). Parsis are followers of Zoroastrianism in India.

A group of these above-mentioned Zoroastrian emigrated from Persia to prevent themselves from the Islamic religious persecution by the Muslim majority after the early Muslim conquests.

The symbol of Zoroastrians was fire purity symbols for Persians were that of fire & water. They worshipped in "fire temples". Each temple had an altar with an eternal flame that burnt continuously or never extinguished. These were said to have come sweetly from "Ahura Mazda" (Zoroastrian God).

The most unique feature of Zoroastrian religion being the "sky burial" of the dead. The dead were exposed to the local vultures by putting them on flat, circular topped towers called "dakhmas" or the towers of silence. Their corpses had to follow this procedure until the bones were picked clean & bleached and further collected and placed in ossuaries (lime pits).

In the present time Zoroastrians bury their dead under concrete slabs in Iran because of the declaration that "Dakhmas" are illegal in Iran since 1970s. The last "dakhma" in operation is located near Mumbai, India. The 19th century novel by the German philosopher Friedrich Nietzsche named "Thus spoke Zarathustra" made the Zoroastrian founder famous amongst the Europeans. In the mentioned novel Nietzsche follows

Zarathustra in his travels.

In a similar way Zoroastrianism became known to the western culture through the works of the famous British musician Freddie Mercury who was a Parsi descent and even his funeral was performed by an Zoroastrian priest in London.

Even the American novelist George R.R. Martin creator of the fantasy series "A Song of Ice and Fire" played a vital role in spreading the concept of Zoroastrianism. Since this novel was later adapted into HBO series "Game of Thrones", developed the legend of "Azor Ahai" from Zoroastrianism, where Azor Ahai was a warrior demigod who defeated darkness with the help of a fire God "R'hllor". Here "R'hllor" s' concept is said to be derived from the Zoroastrian fire God "Ahura Mazda".

After the doom of the invasion of Greece by Xerxes I IN 480 B.C the Persian Empire entered a period of decline due to the depletion of the funds of the empire leading to a heavier taxation amongst the Persian subjects.

Finally, the Achaemenid dynasty was captured by the invading armies of Alexander the Great.

Subsequently the rulers tried to restore the Persian empire to its original boundaries but could not succeed to regain the boundaries, that it had achieved under Cyrus the Great.

Thus, the Indian Parsis belong to the Zoroastrian faith, whose foundation is the belief in one God and on the basic tenets of good thoughts, good words and good deeds. The Indian Zoroastrians enjoy a non-proselytizing faith.

In Sir Denshaw M. Patel V. Sir Jamsetji Jiji Bhai⁴ it was stated that it is against the usage and customs of the Parsis of India. (i.e. conversion to the Zoroastrian religion)

Hindu ruler at the time of immigration of Parsis to India had a condition imposed on them that "they would adopt Hindu customs of marriage."⁵ However later Parsis were greatly influenced by the customs which were followed by Hindus.

Application of Parsi Laws

In modern times Parsi laws apply to:

Ø Persons who have descended from the original Persian emigrants, who are or were born of Zoroastrian parents and profess Zoroastrian faith.

Ø Persons whose father is or was a Parsi and whose mother an alien but has been admitted to Zoroastrian faith

Ø Zoroastrians those who are from Iran but who are either temporarily or permanently residing in India.⁶

Five conditions laid down by the Indian ruler for Parsis were: -

Ø “They should adopt the local language.

Ø They should translate their holy texts into the local language.

Ø Their women should wear saree and not their attire.

Ø They should follow the local rites of marriage.

Ø They should surrender their arms.”
(cabinetmaker 1991: 2-3)

Thus, on agreeing to the above five conditions the king allowed them to build their fire temples.

During the rule of East India Company in India, the British charters explicitly saved the customs and usages of Hindus and Muslims in civil matters as they were deemed religious, unlike the Parsis, Jews, Americans etc.

In exercise of the discretionary powers granted to the Judges, on the English principles of Justice, Equity & Good conscience, the residuary communities of Jews, Parsis etc. were operated under these English Laws. Later the English Common laws were applied to the Parsis and their proper descendants subject to certain exceptions relating to marriage and bigamy. In Sec. 50 & 56 of the Indian Succession Act, 1925 there are special rules for Parsi Intestacy. Parsis are also governed by the Parsi Marriage and Divorce Act of 1936.

There's no legal adoption been followed to amongst the Parsis and therefore if a Parsi couple adopts a child, such child won't be able to enjoy the automatic rights of inheritance.

Being one of the most progressive communities Parsis have always been into such conflicts between liberal & orthodox viewpoints.

However, In my opinion the old traditions and cultures should be preserved since India is a country of rich heritage but some sensitization efforts should be made to reform the current personal laws and creating new codified laws in order to preserve such small communities like Parsis, Christians etc. and their rich cultural heritage as well.

Marriage Under Parsi Law:

Marriages under Parsis are being governed under “THE PARSI MARRIAGE AND DIVORCE ACT, 1936 (ACT 3 OF 1936) (23rd April, 1936)” in India.

Parsis or the Zoroastrians are generally opposed to inter-caste marriages and most practice endogamy (marrying within their own community or like groups namely, Yazidis, Druze, Mandaeans etc.)

A Parsi most likely marries a fellow Parsi because they believe being an ethno religious group, so that one can only become a Parsi if one is born out of such a marriage.

The requisites for a valid Parsi marriage are:

“(1) No marriage shall be valid if:

(a) the contracting parties are related to each other in any of the degrees of consanguinity or affinity set forth in Schedule 1; or

(b) such marriage is not solemnized according to the Parsi form of ceremony called ‘Ashirvad’ by a priest in the presence of two Parsi witnesses other than such priest; or

(c) in the case of any Parsi (whether such Parsi has changed his or her religion or domicile or not) who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.

(2) Notwithstanding that a marriage is invalid under any of the provisions of sub-section (1), any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate.”

In cases where the father is a Parsi but the mother is not a Parsi, in those cases the child will be accepted in the religion only if the father applies for the child to be admitted into the religion through proper ceremony and steps as prescribed in their laws and customs.

Chinnappa Reddy, J. in *Jorden Diengdeh v. S.S. Chopra*⁷ observed: “that the law relating to judicial separation, divorce and nullity of marriage is far from being uniform. Surely time has now come for a complete reform of the law of marriage and to make it a uniform law applicable to all the people irrespective of religion caste and creed.”

Divorce Under Parsi Law:

Under the Parsi Marriage And Divorce Act 1936 the grounds of divorce has been stated under section 32 as follows: “Any married person may sue for divorce on any one or more of the following grounds, namely:-

(a) that the marriage has not been consummated within one year after its solemnization owing to the willful refusal of the defendant to consummate it;

(b) that the defendant at the time of the marriage was of unsound mind and has been habitually so up to the date of the suit:

Provided that divorce shall not be granted on this ground, unless the plaintiff (1) was ignorant of the fact at the time of the marriage, and (2) has filed the suit within three years form the date of the marriage;

¹²(bb) that the defendant has been incurably of unsound mind for a -period of two years or upwards immediately preceding the filing of the suit or has been suffering continuously or intermittently from mental disorder of such kind and to such an extent that the plaintiff cannot reasonably be expected to live with the defendant.”

Under section 32A the proviso relating to “Non-resumption of cohabitation or restitution of conjugal rights within one year in pursuance of a decree to be ground for divorce” have been stated as:

“(1) either parties can sue for divorce under these following grounds:

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which

they were parties.

(2) No decree for divorce shall be granted to the plaintiff if he has failed or neglected to comply with any order for maintenance passed against him under section 40 of this Act or under section 488 of the Code of Criminal Procedure 1898 or section 125 of the Code of Criminal Procedure 1973.”

Under Section 32B of Parsi Marriage and Divorce Act 1936 the proviso for Divorce by mutual consent have been stated as:

“(1) Subject to the provisions of this Act, a suit for divorce may be filed by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Parsi Marriage and Divorce (Amendment) Act. 1988, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved:

Provided that no suit under this sub-section shall be filed unless at the date of the filing of the suit one year has lapsed since the date of the marriage.

(2) The Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act and the averments in the plaint are true and that the consent of either party to the suit was not obtained by force or fraud, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.”

Claim For Maintenance By Parsis:

Parsis can claim from their partners for maintenance through criminal/civil proceedings or if interested they can even pursue for both the procedures simultaneously. However, the religion matters in case of Civil Proceedings but not in case of the criminal proceedings. In cases where the husband refuses to pay maintenance the wife can inform about the same to the court as it would be treated as contempt of court. Such husband can be sentenced to imprisonment and may be detained unless he pays.

Under the Parsi Marriage And Divorce Act 1936 both alimony pendente and permanent alimony has been recognized.

The Bombay High Court in *Hirabai Bharucha v. Pirojshah Bharucha*⁸ where, a writ entitled to maintenance under section 40 of the Parsi Marriage and Divorce Act 1936, gave up her right in terms of an agreement.

Conclusion

The urge for migration of the Parsis was not driven by chance but its due to their individual determination to work hard and do the best possible for their Parsi group and family in light of the changing conditions that have occurred in India both socially and economically in the last few decades. Zoroastrianism might ultimately be accepted as the group which has abundant contribution to the society at large not specifically their group but others as well who were in need of spiritual dimension to enhance their personal lives.

Ethical Clearance: Not required, as the research article is based on origin of Parsi Laws and its legal provisions. The research is doctrinally undertaken.

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