PONDICHERRY : BABEL OF PERSONAL LAWS[1]

BEFORE THE French extended their sovereignty to the territory of Pondicherry, the population there consisted mainly of Hindus and Muslims. They were governed by their own personal laws, quite similar to the corresponding laws in the neighbouring territories. There were also a good number of Christians who were new converts from Hinduism. Apart from allegiance to their new faith and observance of their new religious rites, they had not changed their ways of life and customs. They still observed the caste system and followed the laws and customs of their castes, that is to say, the Hindu law and usages.[2]

Even after the territory of Pondicherry fell under the sovereignty of France, no fundamental change was brought about. When the French Civil Code was extended to Pondicherry in 1819, it was provided that the population of Indian origin, whether Hindus, Muslims or Christians, would continue to be governed by the laws and customs of their respective religions. This was reiterated by the French Constitution of 1946, as well as by the French Constitution of 1958 which provided that French nationals, if they were not subject to the common law of the country namely, the French personal law as embodied in the Civil Code would continue to be governed by their own personal law. However, when Hindu law—instead of being administered by the head of the caste or the *panchayat*—came to be handled by the French jurists, it unconsciously underwent some changes. The Hindu law in India, as everyone knows, got more and more unified and systematized under the influence of the Privy Council: similarly Hindu law in Pondicherry underwent a parallel systematization. French jurists were very eager to know and apply the Hindu law to Hindus; but as there was no clear record of what was the Hindu law applicable at that time they had necessarily to come to their own conclusions in respect of several points. They studied the texts but had to choose whenever there were contradictions. They followed the decisions of English judges who had a much larger burden to administer Hindu law to the whole of the country; but on some points they disagreed with their English counterparts, as the solutions adopted by the English judges appeared to them contrary to the customs prevailing in Pondicherry and also as some of the solutions based on the English jurisprudence conflicted with the French legal principles. The French jurists realizing that in Hindu law local customs were as, if not more, important as the prescriptions of texts, attempted to have a record of the

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1. For further information on the legal system applicable in pondicheery see S.C. Jain, French Legal System in Pondicherry 12 *J.I.L.I.* 573-608 (1970). The article includes a select bibliography on the subject—*Ed.*

2. See also Herchenroder, Study of the Law Applicable to Native Christians in the French Dependencies in India 18 *J. Comp. Leg. and International Law* 186 (1936)—*Ed.*

customs. In 1827, the French government constituted a Consultative Committee on Indian Jurisprudence,[3] consisting of heads of all the leading castes. The jurists consulted this committee whenever they had to solve a problem, and the opinions of this committee played a leading role in the elaboration of the system of Hindu law as it was applied in that part of the country.[4]

This system of Hindu law differed on many points from the Hindu law as administered by the British Indian courts: for example, in a coparcenary, the children did not have any interest in the coparcenary property during the life-time of their father: as a corollary to this principle the father did not have full right of disposal even of his self-acquired property when he had sons. Similarly, a mother could not dispose of the entirety of her properties if she had daughters: children could renounce the estate of their father and thus escape liability in respect of debts : illegitimate children had no right in the estate of their father in any cast, *etc.*

As far as Christians were concerned, even under the French regime, they were not subject to the French Civil Code nor to a special law as in the rest of India. They continued to be governed by the laws of their original castes, that is to say, the Hindu law. There was a fundamental difference between Pondicherry and the rest of India in this respect. The British regime, considering that Hindu law was part of Hindu religion, decided that Christians should be governed by a different law inspired by the canon law. The French, on the contrary, felt that the Christians remained deeply attached to their customs and that the French Civil Code could not be made applicable to them and thought it better to allow Hindu converts to be governed by Hindu law. However, in matters of marriage and divorce and allied matters, the Christians were subject to the French Civil Code.

The Muslims continued under the French regime to be governed by their own law and there was no serious problem about it, as it remained more or less similar to the Muslim law as administered in the rest of the country.

In addition to the Hindu and Muslim laws, another law came to occupy the field with the advent of the French regime, *i.e.*, the French personal law as embodied in the Civil Code. It was applied first to the persons of French origin who had migrated to Pondicherry. Subsequently, the French Government made it possible for French-Indians, whether they were Hindus, Muslims or Christians, to renounce their personal status and espouse the French personal law.[5] Many Indians took advantage of this offer because such renunciation was necessary if they wanted to have full political rights and also to be appointed to in metropolitan cadres or in the French army, where attractive posts awaited them. So at the end of the French regime there were three systems of personal law in Pondicherry : the French law,

3. Under a local ordinance dated 30 October, 1827——*Ed.*
4. See J.D.M. Derrett, *Religion Law and the States in India* 282 (1968)—*Ed.*
5. *Supra* note 1 at 600-601.

the Muslim law and the Hindu law as it got crystallized in the hands of French jurists.

The merger of Pondicherry with the rest of India did not substantially affect this legal set-up. For those who continued to remain French nationals there was no change in the personal status; also for the majority of the population who accepted Indian nationality no change took place. As in the rest of India, the Hindus followed their law, the Muslims continued to be governed by the Islamic personal law; and even Christians continued to be governed by the old Hindu law, as the Christian Marriage Act, 1872 and the Indian Succession Act, 1925 were not extended to Pondicherry. The Indian Government, in conformity with the treaty of cession, allowed those who were governed by the French personal law, that is to say the *renoncants*, and also those who became Indian nationals to continue to be governed by the French personal law.

The Indian Acts extended to Pondicherry do not apply to such Hindus as remained French nationals and new French statutes can also not be applied to the *renoncants* who became Indian citizens. To this fact one has to add that a good number of Hindus and Christians from the rest of India have migrated to Pondicherry after the merger and those persons would not be governed by the law as it applies to Hindus and Christians of Pondicherrian origin. The result is that we have now several sub-divisions in the main systems of law as recorded at the end of the French regime.

In so far as Hindu law is concerned, we have now in Pondicherry four variants. The type 'A' of Hindu law consists of the Indian statuts in respect of Hindu law and Hindu customs as prevailing in the rest of India. This type of law is applicable to Hindus who have migrated from the rest of India. The type 'B' of Hindu law consists of Indian statutes in respect of Hindu law extended to Pondicherry and special Hindu customs prevalent in Pondicherry. This catagory is applicable to Hindus of Pondicherrian origin. The type 'C' of Hindu law consists solely of the local Hindu customs. These are adhered to by the Hindus who have remained French nationals. The type 'D' of Hindu law consists of the customs of Pondicherry except in matters of marriage and divorce. Under this type we have two sub-divisions : Indian Christians who, in respect of their marriage, are governed at their choice, either by the French Civil Code or by the Indian Special Marriage Act, and the Indian Christians who are French nationals and who are exclusively governed by the French Civil Code.

Similarly, as far as French law is concerned, for the *renoncants* who adopted Indian nationality, the law applicable is the French Civil Code, as it stood at the time of the transfer. All subsequent amendments which took place in France cannot be applied to those persons who ceased to be French nationals according to the principle that an enactment of a country applies only to its own nationals. But those *renoncants* who have retained French nationality have to be considered on *par* with Frenchmen of French origin. Whether they reside in India or in France or anywhere else in the world

their personal law follows them as it stands modified from time to time. So we thave two types of the French law to be administered in Pondicherry.

As regards the Muslim law, there is not much complication. There is only one system which is the same as in the neighbouring areas and which would apply irrespective of their nationality. This is so because the portion of that law brought under statute is very meagre.

If one adds to the list the law applicable to Christians who migrated from other parts of India, we have as many as ten systems of law—four types of Hindus law, two types of French presonal law, the Muslim law and the Christian law—in addition to several other foreign systems of law applicable to foreigners of various countries who are found in Pondicherry.

This multiplicity of personal laws, sometimes very near to each other, make the task of the lawyers very arduous and delicate. One has to be very careful in handling a case involving rules of personal law. Complications would be limited if at least persons subject to each system of law constituted an endogamic unit but unfortunately that is not the case. Nationality, and renunciation of personal status never constituted barriers in matters of marriage. The consideration for that purpose remains to be the caste. One can find in the same caste, and sometimes under the same roof, persons subject to different personal laws. For example, in a certain caste one can find Hindus coming from outside, Hindus of Pondicherrian origin, Hindus who are French nationals, French *renoncants* and Indian *renoncants*, *i.e.*, five categories and ten possible combinations in matters of marriage. Marriages between persons governed by different personal laws is a matter of daily occurrence. Nobody pays attention to the fact that each time there is a conflict between two laws in respect of several matters governing the formation of marriage, the matrimonial regime, rights and obligations of spouses, divorce, rights and obligations as between parents and children, *etc.* Parties do not think of minimizing the complications by deciding, whenever possible, at the time of the marriage what would be the law to which they want to subject all those matters. It is due mainly to the fact that they are unaware of the personal law which is applicable to them. In fact, personal law is the law which everyone is deemed to know well, whether he belongs to a rudimentary society or a more differentiated society having written law. It takes root in the beliefs and traditions of the group to which one belongs. It is for this purpose that personal law is considered intangible, even in a case of conquest or annexation of territory. But when it is allowed to survive for a very long time, even after an individual has changed his religion or nationality, the result is awkward. For example, when a person, who was originally a Hindu and has become a Christian, is still governed by the Hindu law. It appears that there is a clear divorce between his personal law and his personal aspirations, with the result that the principle

of intangibility of personal status now turns against its own purpose. But, waiting for the situation to settle, either under an Act of the legislature or through changes in personal status by the persons concerned to the extent possible, the lawyer has to find his way in this jungle of laws.

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