

Law as the product of tradition and culture

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Description of Module

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Subject Name	Law
Paper Name	Law and social transformation in India
Module Name /Title	Law as the product of tradition and culture
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Objective of the Law: The ultimate aim of the law is to change the society peacefully but traditions and culture create obstacle to it.

Tradition and Culture:

- 1.Tradition means:** a belief, principle or way of acting which people in a particular society or group have continued to follow for a **along time**.
- 2. Tradition means:** a long established custom or belief handed down from **generation to generation**.
- 3. Culture:** Culture means the **way of life** especially the general customs and beliefs of a particular group of people.

Law as the product of traditions and culture:

1 Tradition and culture are connected with religions. **Religion** is the origin of Law. Law as the product of Tradition.

Family Law and Tradition:

1 Laws are Limited: India is divided into five religious communities namely Hindus, Muslims, Christians, Parsis and Jews but laws are limited to matrimonial relations and remedy thereof, maintenance, succession, will, partitions, religious endowment, adoption, guardianship etc. Regarding making provisions the law of Quran with respect to Muslim and Law of Shastras with respect to Hindus shall be always attach.

2 Tradition of Sati system: Sati Was an ancient **Hindu custom**, according to which a wife sacrifices herself at the **pyre** of her husband. The origin of Sati is not definitely known but generally it has been saying God Shiva's wife, Sati. On finding that her husband was not invited by her father Daksha for some Yaga to which all other goddess are invited Sati created fire and sacrifices herself in front of the guests for her husband.

ii **Ban of Sati System:** All the Ancient **scripters** disagree with sati and say that one should not die before ones certain time. A pregnant woman was not allowed to commit sati. On 4th December 1829 the practice was formally banned in the Bengal Presidency by the Governor Lord William Bentinck by passing a regulation burning alive the widow of Hindus illegal and punishable under criminal court. But the ban was challenged in the privy council in London finally implemented in 1832.

Iii **Section 306:** Unfortunately abetment of sati could not find place to be a special offence under IPC but Judiciary has held that abetment of Sati is an offence of **abetment of suicide and** punishable under section 306 IPC. (Sati Mata Ki Jai).

3.Tradition of Polygamy:

i.**No Restriction:** Polygamy had existed in India and there was no restriction on the bigamy **except the Mohammend** law which prohibited not to marry more than four wives. In 1860 Under IPC bigamy was made a specific offence under section 494 and it was allowed by the customs.Section 60 of Indian Christian Marriage Act 1872 Prohibited of polygamy.

4.Tradition of Child Marriage:

1.**Meaning of Marriage:** During colonial time in India Child marriages were official marriage in childhood. At the time marriage spouse were not aware about the meaning of marriage.

2.In the year 1929 an Act was passed I;e Child marriage Restraint Act 1929 it restricted the child marriage but did not abolish it. Under this Act child means a person who if a male has not completed 21 years of age and if a female has not completed **eighteen years of age**. This law was introduced after all the religions prohibit the child marriage but still it has not abolished completely as per UNICEF 70% marriage take place below the statutory age for marriage.

5. Tradition of Adultery under common Law and in India:

1.Regarding the tradition and adultery we find some **darkness of Indian tradition** on the Indian criminal Laws.The makers of the IPC were totally aware of the traditions of India but Britisher they have not imposed Adultery is an offence.

2.According to the Tradition of India Adultery is an offence IPC makes Provisions U/S 497 of IPC but where in England adultery is not an offence.

6.Husband and wife are different Persons in India :

1.During colonial time married woman suffered serious irregularities a married woman could not sue for any tort committed by a third person unless her husband joined with her as plaintiff. She also could not be sued for a tort committed by her unless her husband was made a defendant.But Britisher did not recognize as single person. Husband and wife were always treated as different persons.

7.Traditional System of settlement of Disputes:

1.When any person was alleged to have committed any crime or immoral act,that person was brought the matter to the panchayat,where all persons of the village were sitting and decide

the case. So these were called Gram nyalaya system abolished and regular court were constituted.

8. Tortious Liability of the King and State:

1. Under English Law there is a fundamental principle that *the king cannot do wrong* this maxim means an action for personal wrong or any public affairs will not liable to give answer to the public. This doctrine would totally destroyed constitutional independence.