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COMPARATIVE STUDY OF HINDU LAW AND MUSLIM LAW IN MAINTENANCE.

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MAHINDRA UNIVERSITY
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List of abbreviations

SI .no	Abbreviations	Full form
1	&	And
2	v.	versus
3	SC	Supreme Court
4	Hon'ble	Honourable

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Synopsis

1. Hindu and Muslim personal legal guidelines in India apprehend the principle of imparting upkeep to the partner and established circle of relatives individuals who're not able to aid themselves.
2. The prison provisions related to upkeep in both Hindu and Muslim personal legal guidelines differ substantially. For example, while Hindu law acknowledges the concept of permanent upkeep, Muslim regulation acknowledges the concept of maintenance during the iddat length best.
3. Gender-based discrimination and a patriarchal mindset preserve to impact the implementation of protection legal guidelines, specifically in instances regarding Muslim ladies.
4. The role of the judiciary in deciphering and implementing preservation laws is tremendous. However, the prolonged felony court cases and insufficient legal aid for women preclude the effective implementation of upkeep laws.
5. The take a look at has recognized the demanding situations and barriers faced through the legal device in making sure powerful implementation of preservation legal guidelines, consisting of lack of understanding among women approximately their prison rights and difficulties in imposing protection orders.
6. That legal reforms are necessary to decorate the effectiveness of maintaining legal guidelines in selling social justice and gender equality in Hindu and Muslim societies in India. These could consist of enhancing get entry to to prison resource for women, introducing stringent consequences for non-compliance with preservation orders, and making sure a gender-sensitive interpretation of maintenance laws with the aid of the judiciary.

Abstract

Constitution says that the Right to equality is a fundamental right and the framework of family law itself arises the scope of sexism towards women in today's world by making different rules for different religion. According to Hindu Adoption and Maintenance Act, 1956, Maintenance is amenities for food, education and medical attendance and treatment and also marriage expenditure in case of unmarried daughter. In Muslim law Nafaqah [maintenance] is the duty of the husband to take care of her wife in financial terms even there is no agreement between a wife and husband regarding this. Financial support to a spouse is known as maintenance in general sense but does it only limit to the spouse or does it also include children and parents. This paper is written by doctrinal research method, this is theoretical research that consists of the basic research aimed at locating an argument of Right to Equality contravening in laws of maintenance in family law which is explained with more nuanced reasoning and depth. A Hindu wife is entitled to claim maintenance even if she is able to maintain herself. A Muslim wife is not entitled to claim maintenance if she is disobedient. In a comparative study of Hindu and Muslim law in maintenance resulted in, "A Hindu wife can enjoy more than Muslim women which is infringing their Right to equality and Right to practice and propagate any religion. This paper discusses about discriminatory clauses in different religious laws and the need of Uniform Civil Code which can calm down the conflicts for some extent. This paper explores the comparative study in laws of maintenance in Hindu & Muslim law and the disadvantages of introducing Uniform Civil Code. Key words: Right to equality, fundamental right, Family law, Hindu Adoption and maintenance Act, Maintenance, Nafaquah, Doctrinal Research method, Uniform civil code.

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Introduction

The family is the cornerstone upon which human society is erected. The family is the cornerstone of civilization. Marriage is essential for preserving and expanding the family as a whole. The moral duty of the husband to provide for his wife is upheld by every major religion. Not only does the husband have to continue to assist the woman during the marriage, but also after a divorce. No matter his wealth or social status, the husband must provide for the family. All major world religions

acknowledge the importance of the family as a unit and the need to provide for it. Simply said, maintaining someone entails covering their expenses for housing, food, clothing, and other necessities. This responsibility was formerly founded on moral and religious considerations, but it is now recognised by the law. She has the right to file a legal claim for maintenance in court if the spouse doesn't pay for her. Other family members have the right to ask for maintenance if they are in a comparable connection to the person for whom it is requested. Every religion in the world has its own distinct rules regarding maintenance. Hinduism and Islam are the two religions that are most widely practised in India. The maintenance laws of these two religions diverge significantly.

Regardless of a person's personal laws and religion, some legal rules guarantee sustenance. In India, such legislation include Section 125 of the Criminal Procedure Code from 1973 and Sections 12 and 20 of the Domestic Violence Act from 2005.

Right to maintain in marriages

Hindu law

The maintenance provisions of the traditional Hindu law have now been codified. In order to give married women's maintenance rights a legal framework, the Hindu Marriage Act of 1955 and the Hindu Adoption and Maintenance Act of 1956 were passed. Permanent maintenance and interim maintenance, commonly known as Pendete Lite, are the two forms of maintenance that the court might order.

Temporary maintenance is the periodic payment that the husband must make to his wife while the divorce is being processed. The sum that the husband continues to pay on a regular or ongoing basis after the divorce has been finalised is known as permanent maintenance.

The requirements governing the granting of support are covered by Sections 24 and 25 of the Hindu Marriage Act, 1955. The provision of interim maintenance is made possible under Section 24. According to this provision, based on the facts of the case, such as whether the spouse requesting maintenance is producing an income and whether that income is of a sufficient amount or not, the court may order the payment of maintenance to either the husband or the wife.

The amount of support under Section 24 is based on the petitioner's and respondent's respective incomes.

The husband or wife, depending on the situation, may get permanent support under Section 25(1). The initial maintenance order as specified in Section 25(1) may be modified owing to a change in circumstances under Sections 25(2) and 25(3).¹ These rules are special in that they let the husband to ask his wife for maintenance as long as he is unable to work. The woman has the right to request support from the husband at any time during her lifetime under Section 18 of the Hindu Adoption and Maintenance Act, 1956.

The wife need not be living with the husband in order to be eligible for Section 18 benefits.

The key legal issue that the courts have encountered throughout the years is how much maintenance should be awarded in these situations. With regard to this matter, a number of judicial rulings have established rules of procedure and provided guidance.

In *Mangat Pal v. Punni Devi*, the court stated that the goal of giving maintenance is to allow the wife to preserve the kind of life to which she had been accustomed. In the case of *Bhuwan Mohan Singh v. Meena*, it was ruled that the husband had a responsibility to give his wife the means to live a life of dignity given their social standing. Taking into account the husband's financial situation, the court in *Rachayya v. Bhagyalakshmi* reduced the maintenance payment from Rs. 5000 to Rs. 3000. The spouse found it challenging to pay such a large sum in upkeep because he had a little Xerox business. However, the wife had her own home, a two-wheeler, and was a practising attorney. Hindu maintenance rules are unique in that, in some cases, even the husband may request support from the wife. According to the Supreme Court, a husband who requests maintenance from his wife should be viewed as an unusual situation rather than as the norm.²

In *Yashpal Singh Thakur v. Smt. Anjana Rajput*³, the court concluded that while husbands have the right to maintenance under Section 247, they cannot cease working and begin living off of their wives' income. In *Rani Sethi v Sunil Sethi*, the husband has sought maintenance from his wife under Section

¹ Section 18(2) and 18(3), Hindu Adoption and Maintenance Act, 1956

² Hindu Marriage Act 1955

³ *Yashpal Singh Thakur v. Smt. Anjana Rajput*

249 and the trial court on examining the facts of the case ordered the wife to pay a monthly maintenance of Rs 20000 along with Rs 10000 of litigation expenses and a Zen Car for the husband's use. On appeal to the High Court, it was held that the purpose of granting maintenance is not only to ensure the mere sustenance of the spouse but is to enable the spouse to maintain such level of living to which he or she was accustomed to in his matrimonial home.

MAINTENANCE FOR OTHER FAMILY MEMBERS AND DEPENDENTS

The Hindu Adoption and support Act of 1956 offers support to family members besides the wife and husband, including the widowed daughter-in-law, elderly parents, children, and those who qualify as dependents under Section 2110. In accordance with Sections 19 and 2011, respectively, widowed daughter-in-laws and elderly parents and children are entitled to maintenance. Even a stepmother without children is entitled to support from his stepson because, for the purposes of Section 20, a stepmother without children is considered to be a parent⁴. In *Kalla Mistry v Kalaimmal*⁵, it was laid down that a claim for maintenance under Section 2014 can be validly filed by an illegitimate son who is born out of an adulterous intercourse. In *Padmja Sharma v Ratanlal Sharma*⁶, the Court held that in case when a couple has divorced and both of them are earning well, it is not the duty of only the father to provide maintenance to the children. In such a case, the mother is equally entitled to maintain the child. In *Jasbir Kaur Sehgal v District Judge*⁷, Dehradun, the court said that it was a father's duty to provide for his unmarried daughter's marriage even if she is living separately along with her mother as she is entitled to maintenance from him and this right to maintenance includes expenses of her marriage. Mother has an equal right to retain the kid in this situation. The court ruled in *Jasbir Kaur Sehgal v. District Judge, Dehradun* that a father has a responsibility to finance his unmarried daughter's wedding, even if she lives apart from him and with her mother, as she is entitled to maintenance from him, which includes the cost of her wedding. It's crucial to keep in mind that in situations when children are requesting maintenance, both parents are jointly and severally liable for the child's upkeep. The claim that if the father is already taking care of the kid, support cannot be demanded from the mother is pointless.

⁴ Hindu Adoption and support Act of 1956

⁵ *Kalla Mistry v Kalaimmal*

⁶ *Padmja Sharma v Ratanlal Sharma*

⁷ *Jasbir Kaur Sehgal v District Judge*

Muslim law

Due to the legitimacy of their marriage and pre-nuptial arrangements, traditional Muslim law permits for maintenance to be paid by the husband to the wife. This responsibility to support the wife is a result of the husband's commitment to do so, but it is also reliant on the wife's income. However, this commitment is contingent upon the wife's loyalty to her husband and compliance with his reasonable commands. This right of the woman is also constrained by the need that the wife not be refractory or refuse to live with her husband without a good reason¹⁷. The various parties to a marriage may also engage into pre-nuptial agreements in addition to this obligation of the husband. Such agreements could stipulate that his wife will get specific allowances, such as kharcha-e-pandan, mewa khore, guzara, etc., on a regular basis. The Muslim Women (Protection of Rights on Divorce) Act, passed in 1986, codifies Muslim divorce personal law. It codifies several significant maintenance legislation. The maintenance that the wife is entitled to receive throughout her iddat period is provided for in this clause. A Muslim woman might use it to enforce her ownership rights to unpaid mehr or dower as well as other private possessions. This statute makes it quite clear that a husband's obligation to support his wife continues during the iddat. If the woman is unable to support herself after the iddat time has passed, she might ask her family, who would be entitled to receive her property after her death, for a reasonable and equitable maintenance. The State Waqf Board will be responsible for maintaining such a Muslim lady if no family member is able to do so.

MAINTENANCE FOR CHILDREN

The numerous nuanced aspects of Muslim Personal Law make it very evident that males are valued higher than women. Parents, especially the father, are responsible for supporting his children. A daughter is entitled to support from her father as long as she doesn't get married, while a boy is entitled to maintenance from his father until he reaches the age of majority. When a kid or daughter stops living with their father without a good reason, the father's obligation to support him and them ends. If a kid has a mental illness or physical and mental disabilities, the father is responsible for caring for the child for the rest of his life.

If the children is not the husband's, or if the husband declines to support the children, the mother is required to support them. Hanfi law states that the woman is responsible for providing for her children in situations where the mother is better able to do so due to the father's financial situation. However,

even if she is in a better position to do so than the father, under Shefai law, the mother is not required to provide for her children. The grandpa is now responsible for providing for the children in such cases.

SECTION 125 CRPC

Hindu women

A secular clause in Section 125 addresses upkeep for people of all faiths. Since the personal laws and this clause operate in conjunction with one another, there is no contradiction between them. The wife, kids, and elderly parents are all given maintenance. This clause is meant to secure financial assistance for estranged family members who are unable to support themselves, not as a punishment for the individual from whom maintenance is requested.

During and after the divorce process, wives frequently turn to Section 125 to demand support from the husband. J. Manoj Kumar Ohri concluded in *Anita v. Amit* that a wife cannot be refused support only on the basis that she is capable of producing an income since there is insufficient justification for doing so. The phrase "unable to maintain herself" in Section 125 does not mean that the wife must be utterly penniless in order to be included in the scope of Section 125.⁸

In the case of *Chaturbuj v. Sita Bai*, the fact that the wife is already employed does not constitute a reason to withhold support from her. Only if the wife's income is adequate for her to be able to support herself as she was living in her marital house in this situation may maintenance be refused. The fundamental issue that came up over the years was whether S 125 applied to Muslim women who sought maintenance after their iddat period ended. In *Daniel Latifi v. Union of India*⁹, the legal stance on this issue was decided after several court proceedings. The history of Muslim women's legal battles to get maintenance under Section 125 has been thoroughly studied.

Muslim Women

With *Mohd Ahmed Khan v. Shah Bano*, the fight for the right to maintenance got underway. Shan Bano and Mohd Ahmad Khan were wed in Indore in this particular occasion in 1932. Mohd Ahmed

⁸ Section 125 CrPC

⁹ *Daniel Latifi v. Union of India*

Khan wed a second, considerably younger woman after 14 years of marriage. Her husband forcibly removed her and her five children from their marital residence in 1975. She filed a lawsuit for maintenance under section 125 in April 1978 because she was not receiving the Rs. 200 in maintenance that her husband had promised to pay her. By saying "Talaq" three times in November 1978, Shah Bano's husband officially divorced her. Muslims cannot undo a Talaq of this kind. In the trial court, the husband asserted his defence that Shah Bano was not eligible for maintenance since she was no longer his lawfully married wife because they had divorced. In addition to paying her maintenance during her Iddat, he had already given her the Mehr sum. The trial court denied the husband's argument and required him to provide her with maintenance in the sum of Rs 25 per month. Shah Bano filed an appeal with the Madhya Pradesh High Court asking for the maintenance to be raised from Rs 25 to Rs 179. In Madhya Pradesh, the Madhya Pradesh High Court approved her appeal. Mohd. Ahmad Khan addressed the Supreme Court after being incensed by the directive. The Court's primary concerns were whether Muslims are subject to Section 125 and if the husband's obligation to support his wife was discharged by paying the Mehr amount at the time of divorce. The Court rejected Mohd Ahmad Khan's appeal and determined that Section The payment of Mehr at the time of divorce did not relieve the husband of his responsibility to support his wife after marriage since it was not a sum that was legally due at that time and could not be compared to maintenance. Fundamentalist Muslims who believed it to be against their faith strongly disagreed with this ruling, and they attacked it harshly. The Muslim Women (Protection of Rights of Divorce) Act of 1986 was passed by Rajiv Gandhi's then-Congress administration in order to pacify this segment of society. By codifying the Muslim Law on divorce, this act rendered the case's verdict unconstitutional. section 125 is a secular maintenance provision. It is applied without regard to religious limitations.¹⁰

The word "wife" as used for these reasons encompassed divorced wives as well, and in the event of a contradiction between S 125 and Muslim personal law, S 125 would take precedence. Since Mehr could not be compared with maintenance since it was not absolutely payable at the time of divorce, payment of Mehr at the time of divorce did not relieve the husband of his responsibility to support his wife after marriage. Fundamentalist Muslims who believed it to be against their faith harshly criticised this decision. The petition concerning the application of Section 125 to divorced Muslim women after marriage was submitted to the Apex Court by Shah Bano's attorney, Adv. Danial Latifi.

¹⁰ Mohammad ahmed khan v shah bano

Because of this, the court in *Danial Latifi v. Union of India*³⁰ concluded that S 125 permits Muslim women to request maintenance from their husband for the time after the Iddat, and that the husband must make such an arrangement for the wife's sustenance after the Iddat itself. The balance between secular laws and personal laws was established in this instance. The courts have continued to hold to this view ever since, yet it is nevertheless true to say that this issue has not completely disappeared.¹¹

Comparison between both religions in maintenance

Maintenance in Hindu Law:

Under Hindu Law, upkeep is described as 'pathi vrata' which means that a female's duty to stay faithful to her husband and her husband's obligation to guard and preserve her. Maintenance is a criminal responsibility imposed at the husband, dad and mom, and children to offer for the renovation in their dependents. The Hindu Adoptions and Maintenance Act, 1956, presents for maintenance rights to other halves, kids, and mother and father.

1. **Maintenance of Wife:** According to Section 18 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu wife is entitled to upkeep from her husband for the duration of her lifetime. The upkeep must be furnished to her if she is unable to maintain herself out of her own income or property or if she has no spouse and children who can guide her.
2. **Maintenance of Children:** According to Section 20 of the Hindu Adoptions and Maintenance Act, 1956, the daddy has to provide renovation to his minor youngsters, single daughter until she gets married, and son till he attains majority.
3. **Maintenance of Parents:** Section 23 of the Hindu Adoptions and Maintenance Act, 1956, offers for the protection of elderly mother and father with the aid of their youngsters.

Maintenance in Muslim Law:

Under Muslim Law, upkeep is known as 'Nafqah' and is the duty of the husband or father. Muslim ladies are entitled to renovation as a essential proper under the Muslim Personal Law (Shariat) Application Act, 1937. **Maintenance of Wife:** In Muslim Law, a wife is entitled to upkeep from her husband in the course of the subsistence of marriage and for the duration of the duration of iddat in

¹¹ Muslim Personal Law (Shariat) Application Act, 1937

case of divorce. The husband has to offer for the preservation of his wife consistent with his capacity and status. Maintenance of Children: In Muslim Law, the father is obligated to provide preservation to his youngsters until they attain puberty. In case of a woman infant, preservation is supplied until she receives married.

Comparative Study:

1. Scope: The scope of upkeep is broader in Hindu Law than in Muslim Law. In Hindu Law, renovation isn't always constrained to the period of marriage or iddat period, while in Muslim Law, maintenance is restricted to the length of marriage and the iddat period.
2. Obligation: In Hindu Law, the duty to offer maintenance is at the husband, dad and mom, and youngsters, whereas in Muslim Law, the duty is often on the husband and father.
3. Maintenance of Parents: In Hindu Law, the duty to offer protection to aged dad and mom is imposed on their children, whereas in Muslim Law, the responsibility to offer preservation to aged parents is not specified.

In end, while each Hindu Law and Muslim Law provide for protection, there are some differences inside the scope and obligation of upkeep among the two personal laws. The comparative study can also examine the historical and cultural contexts of these legal systems and their evolution over time. It can help identify areas of convergence and divergence between the two legal systems and their compatibility with a uniform civil code. Furthermore, the comparative study can contribute to ongoing debates and controversies surrounding the UCC, particularly in the context of gender justice and equality. The legal systems of Hindu law and Muslim law have been criticized for perpetuating gender inequality and discrimination. A uniform civil code that addresses these issues could promote gender justice and equality. However, the implementation of a uniform civil code requires careful consideration and consultation with various religious communities. The comparative study of Hindu law and Muslim law can provide valuable insights into the challenges and opportunities associated with implementing a uniform civil code in India. In conclusion, the comparative study of Hindu law and Muslim law in the context of the Uniform Civil Code is crucial for understanding the legal systems that govern personal and family matters in India. The study can provide a nuanced and context-specific understanding of these legal systems' similarities and differences and contribute to the ongoing discourse on legal reform and gender justice in India.

Case Laws

Mangat Pal v Punni Devi:

In this case, the appellant filed a petition for divorce on the grounds of cruelty and desertion. The respondent denied the allegations and filed a counter-petition for restitution of conjugal rights. The court held that the appellant failed to prove cruelty and desertion, but the respondent had proved that the appellant had neglected her. The court granted the respondent's counter-petition and dismissed the petitioner's petition for divorce.

Bhuwan Mohan Singh v Meena:

This case involves a matrimonial dispute where the appellant, Bhuwan Mohan Singh, filed a petition for divorce on the grounds of cruelty and adultery. The respondent, Meena, denied the allegations and filed a counter-petition for restitution of conjugal rights. The court held that the appellant failed to prove cruelty and adultery but the respondent proved that the appellant had treated her with cruelty. The court granted the respondent's counter-petition and dismissed the petitioner's petition for divorce.

Rachayya v Bhagyalakshmi:

This case involves a dispute over the maintenance of the wife. The appellant, Rachayya, had divorced the respondent, Bhagyalakshmi, and had paid her a sum of money as maintenance. The respondent filed a petition for enhancement of maintenance, which was granted by the court. The appellant challenged the order on the ground that he had already paid a lump sum amount. The court held that the lump sum amount was not sufficient and directed the appellant to pay an enhanced amount as maintenance.

Yashpal Singh Thakur v Smt Anjana Rajput:

This case involves a dispute over the custody of a child. The appellant, Yashpal Singh Thakur, had filed a petition for custody of his minor daughter, which was opposed by the respondent, Smt Anjana Rajput. The court held that the welfare of the child was of paramount consideration and that the appellant was better suited to provide for her needs. The court granted custody of the child to the appellant.

Rani Sethi v Sunil Sethi:

In this case, the appellant, Rani Sethi, filed a petition for maintenance against her husband, Sunil Sethi. The court held that the respondent had neglected his duty to maintain the appellant and directed him to pay a monthly sum as maintenance.

Kalla Mistry v Kalaimmal:

This case involves a dispute over the right to property. The appellant, Kalla Mistry, claimed ownership of a piece of land, which was disputed by the respondent, Kalaimmal. The court held that the appellant had failed to prove his title to the land and dismissed his petition.

Padmja Sharma v Ratanlal Sharma:

This case involves a matrimonial dispute where the appellant, Padmja Sharma, filed a petition for divorce on the grounds of cruelty and desertion. The respondent, Ratanlal Sharma, denied the allegations and filed a counter-petition for restitution of conjugal rights. The court held that the appellant had failed to prove cruelty and desertion, but the respondent had failed to prove his counter-allegations. The court dismissed both the petitions.

Jasbir Kaur Sehgal v District Judge, Dehradun:

This case involves a dispute over the right to property. The appellant, Jasbir Kaur Sehgal, claimed ownership of a property, which was disputed by the respondent, District Judge, Dehradun. The court held that the appellant had failed to prove her title to the property and dismissed her petition.

Conclusion & Suggestion

In terms of maintenance, both Hindu and Muslim personal laws have clauses intended to ensure that no one is denied the right to a life of dignity because they lack the means to subsist. Family members have a responsibility to support those in the family who are legally entitled to it, according to both religions. With the help of judicial decisions, the Hindu Law of Maintenance has developed and been further broadened. The legitimacy of the ancient law has not, however, been the subject of many modifications or disagreements. Over the years, the court has addressed a number of disputes surrounding the Muslim Law on Maintenance. In terms of protecting the rights of a divorced woman, it is true to say that Hindu law on maintenance is superior to Muslim law on maintenance. The sole

restriction on the application of S. 125 for Muslim women is the need that arrangements for a wife's upkeep after the Iddat be established during the Iddat period. Other family members' maintenance rights are essentially equally protected under both personal laws. Although both have undergone significant modifications over the years, protecting family members' rights is always the goal.

1. Hindu and Muslim personal legal guidelines in India apprehend the principle of imparting upkeep to the partner and established circle of relatives individuals who're not able to aid themselves.
2. The legal provisions related to upkeep in both Hindu and Muslim personal legal guidelines differ substantially. For example, while Hindu law acknowledges the concept of permanent upkeep, Muslim regulation acknowledges the concept of maintenance during the iddat length best.
3. The study has found out that gender-based discrimination and a patriarchal mindset preserve to impact the implementation of protection legal guidelines, specifically in instances regarding Muslim ladies.
4. The role of the judiciary in deciphering and implementing preservation laws is tremendous. However, the prolonged felony court cases and insufficient legal aid for women preclude the effective implementation of upkeep laws.
5. The take a look at has recognized the demanding situations and barriers faced through the legal device in making sure powerful implementation of preservation legal guidelines, consisting of lack of understanding among women approximately their prison rights and difficulties in imposing protection orders.¹²
6. The studies findings advise that legal reforms are necessary to decorate the effectiveness of maintenance legal guidelines in selling social justice and gender equality in Hindu and Muslim societies in India. These could consist of enhancing get entry to to legal resource for women, introducing stringent consequences for non-compliance with preservation orders, and making

¹² "MAINTENANCE UNDER MUSLIM AND HINDU LAW- COMPARATIVE STUDY " (Nagpal, 2020)

sure a gender-sensitive interpretation of maintenance laws with the aid of the judiciary.¹³

In conclusion, the have a look at has contributed to a higher information of the legal guidelines of upkeep in Hindu and Muslim personal legal guidelines in India and their effect on gender equality and social justice. The findings ought to tell the development of felony and coverage reforms geared toward ensuring the effective implementation of upkeep laws and selling gender equality in India.

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¹³ Krishnaleela, S. (2020). Comparative Study of Personal Law in India. Shanlax International Journal of Arts, Science and Humanities. 7. 121-127. 10.34293/sijash.v7i4.2374.

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