



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

Patriarchy And The Making Of Colonial Law

V. Padmavathi.

Research Scholar

Department of History and Archaeology
Acharya Nagarjuna University, Guntur, AP

Abstract

This paper critically examines the role of Indian elite men, particularly Brahmin pandits, upper-caste judges, lawyers, and politicians, in the formation and implementation of Hindu Personal Law during British colonial rule in India. Challenging the conventional view that colonial law was solely an imperial imposition, the study argues that colonial legal regimes were co-produced through a strategic alliance between British administrators and indigenous patriarchal elites. Through the compilation of A Code of Gentoo Laws (1776), Brahmin pandits selectively interpreted Dharmashastra texts, transforming Brahmanical norms into state-enforced legal principles. These legal constructions systematically marginalized women, lower castes, and customary practices by reinforcing patriarchal control over marriage, sexuality, inheritance, and property rights. The article further explores the role of Indian male judges in sustaining gender inequality through judicial interpretations that privileged caste hierarchy, family honor, and male authority over women's autonomy and consent. Special attention is given to landmark legal developments such as the Queen Empress v. Hari Mohan Mythe case, restitution of conjugal rights, widow inheritance laws, and the abolition of the Devadasi system. Employing feminist and caste-based critiques, the study demonstrates how colonial law institutionalized both patriarchy and caste dominance through elite collaboration. It concludes that the legacies of these colonial legal structures continue to influence postcolonial legal systems and gender relations in contemporary India.

Keywords

Colonial Law; Hindu Personal Law; Gentoo Law; Brahmin Pandits; Patriarchy; Caste Hierarchy; Women's Rights; Colonial India; Feminist Legal History; Judicial Interpretation; Property Rights; Marriage Law; Devadasi System; Gender Inequality; Colonial Governance; Elite Collaboration; Legal Pluralism; Social Reform; Inheritance Law; Postcolonial Legal Legacy.

Introduction:

Hindu Personal Law in British India is often described as a colonial project. However, such a view obscures the central role played by Indian elite men particularly upper-caste male judges, lawyers, and pandits in shaping colonial legal regimes, especially those governing women. Far from being passive intermediaries, Indian male elites actively collaborated with colonial authorities in constructing “customary” and “personal” laws. These laws profoundly affected women’s rights, reinforcing patriarchal control over marriage, sexuality, inheritance, and domestic life. Therefore, the colonial law was not merely imperial but co-produced by colonial power and indigenous patriarchy. Further, the patriarchy itself was a collaboration between Indian elite men and colonial law.

Colonial Need for Indigenous Legal Knowledge

When the East India Company assumed judicial responsibility in Bengal after 1765, it faced a fundamental problem: They were not sure whether they had to follow the English Law or not. British officials lacked knowledge of Indian social norms, languages, and legal traditions. Warren Hastings’ judicial plan of 1772 resolved this dilemma by declaring that Indians would be governed according to their “own laws” Hindu law for Hindus and Islamic law for Muslims. Therefore, the company officials depended largely on Brahmin pandits, who were appointed as legal experts in Company courts, in the making of Hindu Law. The role of the pandits was to help translate Sanskrit texts, advise British judges on Hindu law, especially in matters of inheritance, marriage, caste, and religious duty.

Production of a Code of Gentoo Law:

The making of “Gentoo Law”, the initial form of Hindu Law, during the early British rule in India represents one of the most consequential moments in colonial legal history. Central to this process was the role of Brahmin pandits, whose interpretations of Sanskrit texts became the basis for what the British understood and enforced as Hindu law. Far from being a neutral recovery of indigenous tradition, Gentoo Law was a colonial construction deeply shaped by elite Brahmin male authority. The most significant outcome of pandit involvement was the compilation of A Code of Gentoo Laws (1776). Brahmin pandits selected passages from Sanskrit Dharmashastra texts particularly Manusmriti and other Brahmanical legal treatises which were then translated from Sanskrit into Persian and finally into English. This process involved multiple layers of mediation, but its intellectual authority rested firmly with the pandits. Several Brahmins such as Banerjee, Kripparama, Rama Gopala, Krishnaji, Viresvara, Krishnacandra, Gaurikanta, Kalisankara, Syamasundara, Krishnakshasa and Sitarma were involved in compiling. They decided: Which texts counted as authoritative; Which interpretations were legally valid; Which customs were ignored or delegitimised. The result was not a record of lived Hindu practices but a textual, Brahmanical version of law, elevated by colonial power into a binding legal system. Male judges selectively relied on Manusmriti, Mitakshara, and Dayabhaga texts to define Hindu law. They privileged the most conservative patriarchal interpretations and ignored plural local customs that allowed women more autonomy. The pandits involved in making Gentoo Law shaped the nature of colonial Hindu law which was the legal construction of privileged patriarchal control over women, Upper-caste dominance over lower castes, textual authority over customary practice. Women’s property rights, lower-caste marital customs, and non-Brahmanical traditions were either marginalised or erased.

Practices that had been locally negotiated and flexible were transformed into rigid legal rules enforced by colonial courts. Although the term “Gentoo Law” was formally articulated in the 1770s, its Brahmanical foundations continued to shape colonial jurisprudence well into the nineteenth century, including the 1870s. Although the term “Gentoo Law” fell out of use by the early nineteenth century, the Brahmanical legal framework created by pandits did not disappear. By the 1870s, British judges relied heavily on precedents and principles that originated in these earlier compilations.

The case of *Queen Empress v. Hari Mohan Mythe* (1891) stands as a crucial moment in the legal history of colonial India, revealing how male judges actively reinforced patriarchal authority through law. Often cited as a catalyst for the Age of Consent Act, 1891, the case exposes the deep-seated assumptions of colonial jurisprudence regarding marriage, consent, and women’s bodily autonomy. Colonial criminal law, codified through the Indian Penal Code (1860), claimed neutrality and rationality. However, its provisions on sexual violence were deeply gendered. Section 375 IPC defined rape while explicitly exempting sexual intercourse by a husband with his wife, provided she was above ten years of age. This legal exception rested on two patriarchal assumptions: Marriage constituted permanent consent and wives were sexual subordinates rather than autonomous subjects. Hari Mohan Mythe was accused of forcibly having sexual intercourse with his eleven-year-old wife, resulting in severe injuries that led to her death. The prosecution charged him with rape and causing grievous hurt. The court was confronted with a moral and legal dilemma: whether the law could recognise sexual violence within marriage, particularly against a minor girl. Finally, the court acquitted the accused of rape, holding that: Sexual intercourse within marriage did not amount to rape under Section 375 IPC; The wife, being above the statutory age, was legally capable of marital intercourse; the husband could be punished only for physical injury, not sexual violence.

This reasoning demonstrates how male judges elevated marital status above consent, age, and bodily integrity. The girl’s suffering was translated into a technical question of injury, not violation. The judgment treated marriage as an irrevocable contract of sexual access. By doing so, the court erased the possibility of female refusal or consent, particularly devastating in the case of child brides. Further, the minimum age for sexual intercourse was set at 10 years old in 1860, and it was raised to 12 in 1891. These acts of the British were meant to show how they are reforming the Indian savages but as seen through other legislation, the British approach to women's issues in other areas was reactionary. The way they handled matters such as the restoration of conjugal rights, prostitution, and female suffrage showed their attitudes discriminatory and how their actions were not progressive. For example, The Restitution of Conjugal Rights Act of 1869 allowed a husband to file a petition in court to force his wife to return home and live with him, even if she had left due to domestic violence or other issues. The British government's support of this act reflected patriarchal values that denied women the right to choose their own marital relationships. This demonstrates how the law was a tool to both oppress and liberate women.

Indian Male Judges, and Women: A Feminist–Caste Critique

From the late eighteenth century onwards, the British increasingly relied on Indian male judges, pleaders, and legal experts to administer law. While ultimate authority rested with colonial courts, Indian men predominantly upper-caste Hindus and elite Muslims served as: subordinate judges (munsifs, sadar amin); legal interpreters of “custom”; advisors on religious and social norms; authors of legal commentaries and precedents. This judicial class was shaped by English legal education, which privileged property rights, hierarchy, and textual authority. Therefore, instead of dismantling patriarchy, these judges often recast traditional gender hierarchies in the language of modern law. Colonial courts treated women not as autonomous legal subjects but as dependents embedded within family and caste structures. Indian male judges played a key role in sustaining this framework. The Judicial interpretations upheld the Early marriage and Male guardianship over women as a “custom.” Even when colonial reforms addressed extreme practices (such as sati or child marriage), Indian male judges often resisted deeper transformations, arguing that reform would violate “tradition.” In cases of rape, abduction, or elopement, courts routinely: Privileged male testimony, Questioned women’s character and caste. They treated consent as irrelevant if family honor was perceived to be damaged. Upper-caste male judges frequently framed women’s suffering through moral suspicion, particularly targeting lower-caste women as sexually “available” or unreliable witnesses.

One of the most enduring legacies of colonial law was the systematic denial of women’s property rights, reinforced by Indian male judges. A statement of P. C. Tyagaraja, a judge in Chittoor district, declared that “the very principle of the joint family is against giving equal rights to females”. Hindu law interpretations restricted women to limited estates (stridhan or life interest); Widows were denied full ownership and daughters were subordinated to sons in inheritance. The judges relied on selective readings of Dharmashastra texts, privileging patriarchal interpretations that ensured male lineage control over land and wealth. Therefore, the legal discourse emerged was not “ancient tradition” but a modern legal codification of patriarchy, shaped by elite male interests.

Marriage law functioned as a **caste-regulating institution**. Upper-caste norms were universalised; Inter-caste unions were criminalised as abduction or seduction; Women who chose partners were returned to families against their will. Courts **prioritised family honour and caste purity** over women’s consent. Marriage thus protected caste hierarchy through control over women’s sexuality.

One of the most significant judicial doctrines that diluted women’s property rights was the **Hindu widow’s limited estate**. Through a series of Privy Council judgments, courts held that a widow did not inherit property absolutely but only held a life interest. She could not freely alienate property except in cases of “legal necessity,” and upon her death, the property reverted to her husband’s male heirs. This doctrine effectively reduced widows to custodians of property for male lineage. Judges justified this position by invoking tradition and the need to preserve joint family property, ignoring evidence of women’s economic participation. Feminist scholars argue that this was not an ancient norm but a **modern judicial construction** that institutionalised women’s economic dependence.

The early twentieth century legislations, dominated by the Indian politicians, prohibited devadasis from gaining the monetary benefits they previously had access to. The inam grants they held awarded the women a semblance of political agency, in the form of voting power. They practiced matrilineal rights, with the ability to pass down property to the girl children they were allowed to adopt for the purpose of undergoing training to become devadasis. This system was put under pressure by the colonial administration criminalizing the procurement of underage girls for the purpose of prostitution. Divesting the female descendants was also done through the establishment of the prerequisite that reverted ownership of land away from devadasis after their lifetime. The outlawing of provision of sexual services led to a dearth in access to patrons, pushing the women into poverty due to not being able to sustain themselves off of their artistic capabilities alone. This led to them reclassifying themselves as prostitutes who had no rights or protection.

One of the reformers most central to this cause of abolition is Muthulakshmi Reddy, a legislator who proposed a bill to end the dedication of women as devadasis in the Madras Legislative council in 1929. She emphasised how this system is plight upon innocent young girls, being trained into the “art of this evil trade”. She linked this issue rooted in Southern India to a national level, calling for the educated intellectuals of the nation to pluck up moral courage to stand against immorality. Reddy critiqued the inefficiency of the colonial attempts to avert prostitution which only increased police brutality faced by minority communities. She encouraged women to give up their life of vice and turn to virtue, become “faithful wives and model mothers”. The devadasi system is strengthened by the Hindu society considering promiscuity to be part of these women’s caste duty. Reddy recommends investing in the safe houses for the rescued women, so they can be taken care of in case of displacement. By abolishing this exploitative system of dedication, she hoped to reinforce “the moral tone” of society. The undercurrent of patriarchal ideology which is present in Reddy’s resolution cannot be ignored, as it reiterates the need for devadasis to renounce their ‘promiscuous’ past in order to become reformed women. It follows the nationalist movement’s path of dichotomizing two distinct types of women- the ideal Hindu wife in need of protection and the non-monogamous prostitute who shall receive none.

But not everyone condemned these sacred women. Organizations consisting of devadasis, like the Madras Presidency Devadasi Association, organized anti-abolition campaigns, appealing against Reddy’s legislation. They argued that colonial standards were used to judge a native custom and that eradication of dedication would not necessarily eliminate prostitution. Anxiety existed over how the passing of such legislation would impact the identity and rights of these women. The approval of the Madras Council bill and the eventual passing of TNDA after independence shows how the voices of these women were continuously sidelined. The Act illegalises both consensual and forced dedication, and criminalizes women who perform art at religious institutions, deeming them prostitutes. By punishing women who voluntarily participate in this system, the government takes away autonomy from them, perpetuating a vicious cycle of marginalization.

Conclusion: Colonial Power and Elite Collaboration

The making of Gentoo Law was a collaborative enterprise. While British officials exercised ultimate

authority, Brahmin pandits shaped the substance of law. This alliance benefited both parties: The British gained legitimacy and administrative convenience, Brahmin elites gained state-backed authority over social norms. Gentoo Law therefore represents not simply colonial domination but the co-production of law by colonial rulers and indigenous elites.

The involvement of Brahmin pandits in the making of the Hindu Law was central to the formation of colonial law. Through selective textual interpretation, pandits transformed Brahmanical norms into state-enforced law, marginalising women, lower castes, and customary practices. Although produced in the 1770s, this legal structure continued to shape Indian law well into the 1870s and beyond. Understanding this process reveals how colonial law institutionalised caste and patriarchy through elite collaboration, leaving a legacy that persists in postcolonial legal systems. Indian male judges under colonial rule were not merely instruments of empire; they were active agents in the legal construction of gender inequality. By interpreting custom, religion, and morality through patriarchal lenses, they helped institutionalize laws that subordinated women and reinforced caste hierarchies. While Indian male judges and elite politicians sometimes supported limited reforms such as widow remarriage or age-of-consent laws their approach was deeply conservative: Reforms were framed as protecting family order, not women's autonomy. Women were imagined as dependents needing regulation. Feminist voices were marginalized or ignored. Even progressive legislation was interpreted narrowly in courts, ensuring that patriarchal control remained intact.

References

- 1) Cohn, Bernard S. "Law and the Colonial State in India." In *History and Power in the Study of Law: New Directions in Legal Anthropology*, 131–152. New York: Routledge, 2018.
- 2) Nair, Janaki. "The Devadasi, Dharma and the State." *Economic and Political Weekly* 29, no. 50 (1994): 3157–3167.
- 3) Wald, Erica. "Defining Prostitution and Redefining Women's Roles: The Colonial State and Society in Early Nineteenth-Century India." *History Compass* 7, no. 6 (2009): 1470–1483.
- 4) Sharafi, Mitra. "The Semi-Autonomous Judge in Colonial India: Chivalric Imperialism Meets Anglo-Islamic Dower and Divorce Law." *The Indian Economic & Social History Review* 46, no. 1 (2009): 57–81.
- 5) Government of Madras. Order No. 174 [Law (General)], 19 January 1935. Cited in Mytheli Sreenivas, "Conjugality and Capital: Gender, Families, and Property under Colonial Law in India." *The Journal of Asian Studies* 63, no. 4 (2004): 937–960.
- 6) Kannabiran. "Judiciary, Social Reform and Debate on Religious Prostitution in Colonial India."
- 7) Halhed, Nathaniel Brassey. *A code of Gentoo laws or, Ordinations of the Pundits*. From A Persian Translation, made from the Original, 1774. P. 6.
- 8) Colobrooke, H.T., *Two treatises on the Hindu law of inheritance*. Cambridge University Press, New Delhi, 2013. Chandra, Sudhir. *Enslaved daughters: colonialism, law and women's rights*. Oxford University Press, 2008.
- 9) Chandra, Sudhir. *Enslaved daughters: colonialism, law and women's rights*. Oxford University Press, 2008. Johansen Hurwitt, Sundari. "Good Queen, Bad Queen: Gender, Devotion, and Mythmaking in Women's Histories." *Religions* 14, no. 8 (2023): 954.
- 10) Kasturi, Malavika. "Law and Crime in India: British Policy and the Female Infanticide Act of 1870 1." *Indian Journal of Gender Studies* 1, no. 2 (1994): 169-193.

- 11) Johansen Hurwitt, Sundari. "Good Queen, Bad Queen: Gender, Devotion, and Mythmaking in Women's Histories." *Religions* 14, no. 8 (2023): 954.

