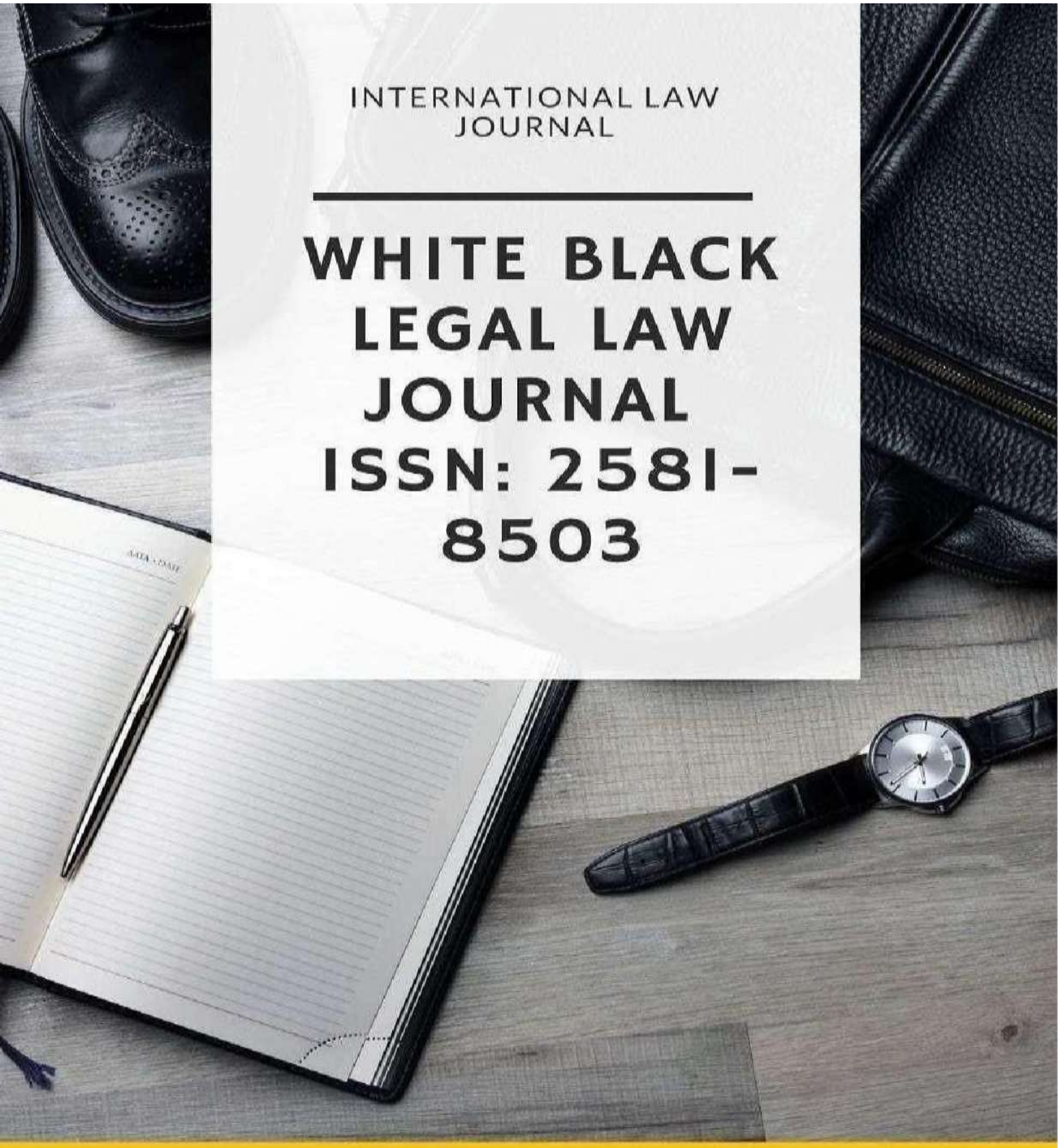

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FROM DHARMA TO SHARIA: HISTORICAL EVOLUTION OF RELIGIOUS PERSONAL LAWS IN INDIA

AUTHORED BY - MS. SAVITRI SUTHAR[1] & DR KAPTAN CHAND[2]

INTRODUCTION

The legal framework of postcolonial India is characterised by complications stemming from its diverse background, where religion, tradition, and statutory law converge to influence the lives of its populace. This interaction is most significant in personal laws—legal areas including marriage, divorce, inheritance, maintenance, and guardianship—governed by religious principles within a secular constitutional context. This study examines the historical development of Hindu and Muslim personal laws in India, emphasising the transfer of both legal systems from religious principles to codified statutes, influenced by colonial imposition, indigenous reform, and constitutional interpretation. The title, "From Dharma to Sharia," reflects the progression of two of India's most prominent religious legal systems as they traverse historical upheavals and contemporary reformative ambitions.

India's legal plurality is an administrative convenience and a manifestation of its intricate sociocultural tapestry, whereby religious identity is interwoven with legal rights. The persistence of personal laws rooted in religion—specifically Hindu and Muslim laws—highlights a paradox within the Indian constitutional framework. Article 44 of the Constitution advocates for the implementation of a Uniform Civil Code to enhance legal consistency and gender fairness, while Articles 25 to 28 concurrently safeguard religious freedom and autonomy. This dualism fosters continuous discussions over reform, secularism, and the limits of state interference. Personal laws, therefore, represent a conflict of conflicting values: tradition vs development, religious liberty versus constitutional equality, and patriarchal versus feminist. Comprehending the historical basis of these rules is essential for recognising the socio-legal conflicts that characterise their current significance.

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The beginnings of Hindu law may be traced to the Dharmaśāstra literature, a collection of works that integrates morality, ritual, and legal obligation. The Manusmriti, Yājñavalkya Smriti, and many other texts established the conceptual foundation of dharma, the universal order regulating individual behaviour and societal responsibilities. Dharma constituted a legal construct and a cosmological concept, dictating hierarchical relationships within familial and societal structures. Marriage was seen as a sacrament (sanskara) rather than a contract, and divorce was almost nonexistent within the classical framework. Likewise, succession and inheritance were strictly patriarchal, favouring male lineage and denying women equal property rights. Although doctrinally substantial, these principles were moderated by regional conventions and caste-based practices, which sometimes had more practical significance than scriptural mandates.

Muslim personal law originated from Qur'anic directives, Hadiths (sayings of the Prophet), and fiqh (Islamic jurisprudence) formulated by many schools, including Hanafi, Shafi'i, Maliki, and Hanbali. The Hanafi school was predominant in India, especially among Sunni populations, providing significant latitude for interpretation and judgment. In contrast to Hindu law, marriage in Islam is seen as a civil contract (nikah) that may be terminated by divorce (talaq, khula, mubarat). Islamic inheritance law is fundamentally egalitarian, stipulating designated portions for successors, including women; nevertheless, actual application often deviates owing to cultural and patriarchal influences. Islamic law includes regulations about maintenance (nafaqah), guardianship (hizanat), and testamentary freedom (wasiyat), establishing a thorough framework for personal affairs. These aspects highlight a unique legal theory grounded in contract, rights, and divine mandate, often contrasted with the obligation-centred structure of Hindu law.

The colonial encounter significantly transformed both regimes. British administrators, in their effort to organise indigenous laws, codified Hindu and Muslim personal laws into Anglo-Hindu and Anglo-Mohammadan law. While aimed at safeguarding religious autonomy, this codification was interpreted through the prism of Western legal rationality, selectively analysing texts and disregarding customary practices that influenced actual experiences. Hindu law was analysed via a Brahmanical perspective, sidelining non-textual traditions and perpetuating patriarchal standards. The interpretation of Muslim law via English translations of ancient fiqh resulted in distortions and discrepancies in judicial application. In pursuit of consistency, the colonial courts favoured religious scriptures above actual practice, thereby

establishing a rigid interpretation of personal law that strayed from indigenous legal traditions. Post-independence India acquired this amalgamated inheritance. The architects of the Constitution had a significant challenge: reconciling the ideals of equality and social justice with the guarantee of religious freedom in a profoundly varied community. Although criminal and commercial laws were consolidated under a secular framework, personal laws continued to be bound by religious dictates. Implementing the Hindu Code Bills from 1955 to 1956 was pivotal, altering legislation related to Hindu marriage, succession, guardianship, and adoption via progressive measures. Nonetheless, analogous codification was not undertaken for Muslim personal law. The Muslim Personal Law (Shariat) Application Act of 1937 persists in regulating significant personal issues for Muslims, although increasing discussions over its conformity with constitutional principles.

Judicial rulings have significantly influenced the framework of personal law. The Supreme Court and other High Courts have interfered to maintain constitutional morality and gender equity, often extending the limits of religious liberty—cases like Mohd. Ahmed Khan v. Shah Bano Begum (1985), Sarla Mudgal v. Union of India (1995), and Shayara Bano v. Union of India (2017) illustrate the judiciary's endeavour to balance religious liberty with legal change, achieving varied levels of success and opposition. These rulings highlight the persistent conflict between individual and collective rights—a quandary that fuels the discourse on the Uniform Civil Code.

Academics and advocates have condemned personal laws for sustaining patriarchal practices and the inequitable treatment of women. Feminist legal literature underscores that both Hindu and Muslim personal laws, despite theological distinctions, have traditionally marginalised women within familial frameworks. The refusal of equitable inheritance, restricted divorce rights, and insufficient support provisions are prevalent issues across religious systems. Reformative initiatives often aim to harmonise religious principles with constitutional assurances of equality and non-discrimination. However, the journey towards change is hindered by opposition from conservative factions, identity politics, and apprehensions over majoritarianism, particularly about the Muslim minority.

This study seeks to elucidate these processes by examining the historical progression of Hindu and Muslim personal laws, assessing theological underpinnings, colonial alterations, and legal advancements post-independence. It assesses, within a comparative framework, the responses

of each system to evolving socio-political situations, judicial examination, and reformist demands. The paper examines theoretical discussions on legal pluralism, secularism, and multicultural citizenship, questioning the compatibility of religious personal laws with the normative goals of a liberal constitutional state.

This study recognises the distinctiveness of the Indian experience, whereby personal laws serve not just as legal tools but also as symbols of identity, autonomy, and resistance. It aims to enhance the larger dialogue on legal reform and constitutional principles, providing insights into how historical comprehension might influence modern policy and judicial decisions. The study aims to provide a fair and historically informed analysis of personal law regimes in India by elucidating the transition from Dharma to Sharia.

PRE-COLONIAL FOUNDATIONS

Hindu jurisprudence: Dharmaśāstra traditions

The Dharmaśāstra tradition is the basic corpus of Hindu jurisprudence, embodying a complex system of moral, legal, and social principles that regulated ancient Hindu civilisation. Dharmaśāstra jurisprudence, in contrast to contemporary legal systems based on legislative codes and institutional enforcement, derives its authority from a profound philosophical understanding of dharma, a complex phrase encompassing duty, law, righteousness, and cosmic order. Dharma was prescriptive and normative; it delineated the ideal behaviour for people according to their societal roles and aimed to sustain universal peace via the appropriate fulfilment of personal and communal responsibilities. Consequently, Hindu law was intrinsically contextual and hierarchical, customised according to the varna (caste), āśrama (life stage), and gender of each person.[3]

The Dharmaśāstras were a category of Sanskrit literature that formalised and elucidated the concepts of dharma. The Manusmṛti, Yājñavalkya Smṛti, Nārada Smṛti, and Vasiṣṭha Smṛti were among the most notable, each embodying distinct temporal and philosophical viewpoints on Hindu law. The Manusmṛti, ascribed to the legendary sage Manu, is perhaps the best recognised text, having been thoroughly examined throughout the colonial era and inaccurately portrayed as the only representation of Hindu legal philosophy. Dharmaśāstra literature developed over centuries via interpretation and adaptation, characterised by rival schools of

[3] Ludo Rocher, Studies in Hindu Law and Dharmaśāstra, Anthem Press, England.

thought and regional practices (ācāra) that often deviated from textual orthodoxy.

The tripartite source theory is fundamental to Hindu jurisprudence, including śruti (revealed scriptures, namely the Vedas), smṛti (remembered tradition, including Dharmaśāstras), and ācāra (customary behaviours endorsed by virtuous individuals). This approach emphasised the flexibility and adaptability of Hindu law, allowing local norms to supersede scriptural directives if corroborated by society practice. The incorporation of sadācāra (conduct of the good) and ātmanastuṣṭi (individual conscience) as additional sources further highlighted the ethical foundation of Hindu legal thinking, setting it apart from positivist legal traditions. This ethical perspective positioned Hindu law as a regulatory instrument and a vehicle for spiritual development and societal unity.

The Dharmaśāstra writings comprehensively addressed legal matters like marriage, inheritance, property, succession, debt, crime, and punishment. Marriage was seen not as a contract but as a holy and indissoluble bond (sanskara), essential for fulfilling one's dharma. Divorce was almost absent in the classical paradigm, and remarriage—particularly for women—was significantly restricted. Inheritance laws followed the basis of primogeniture and male succession, excluding women from coparcenary rights until contemporary amendments were enacted. The Dharmaśāstras established detailed regulations for succession and division, although their patriarchal biases persisted, often legitimising societal inequalities under the guise of dharma.[4]

The administration of justice in Dharmaśāstra jurisprudence included royal courts (sabhas), communal councils (panchayats), and priesthood adjudication, prioritising oral evidence, oaths, ordeals, and the ethical integrity of judges. Sanctions varied from monetary penalties and banishment to social exclusion, often determined by the offender's caste and social standing. This established a stratified legal framework in which equal protection was subjugated to hierarchical principles. Nonetheless, the concept of fairness (nyaya) in Hindu law was not just legalistic; it was interwoven with the principle of preserving ṛta (cosmic order), making jurisprudence both a social science and a spiritual endeavour.[5]

Muslim jurisprudence: classical fiqh and schools of law

[4] Available at https://www.brhat.in/dhiti/codificationoflaw2 (Last Access on 15/07/2025).
[5] Available at https://www.britannica.com/topic/Dharma-shastra

Muslim jurisprudence, or fiqh, embodies the intricate legal heritage of Islam based on divine revelation and human interpretation. Originating from the Arabic root faqa-ha, signifying to grasp or comprehend, fiqh refers to the discipline of deriving legal rules from primary sources, namely the Quran and Sunnah. Sharīʿah denotes the divine way established by God, but fiqh represents its human interpretation, developed over centuries of intellectual endeavour to render Islamic law applicable and attuned to societal demands.[6]

Classical fiqh evolved during the foundational years of Islam, namely during the 8th and 10th century CE, when jurists began the systematisation of legal thinking and the formulation of jurisprudential principles (usūl al-fiqh). In the lack of specific directives in the Quran or Hadith, scholars used interpretative methodologies such as qiyās (analogical reasoning), ijmāʿ (consensus), and istihsān (juridical preference) to address legal enquiries. This process resulted in the emergence of several legal schools, or madhāhib, each influenced by regional, religious, and methodological factors. These schools were not inflexible sectarian divides but rather intellectual lineages that had distinct methodologies for understanding the divine law.[7]

The four principal Sunni schools of fiqh—Ḥanafī, Mālikī, Shāfiʿī, and Ḥanbalī—each provided distinct contributions to the legal discourse. The Ḥanafī school, established by Abū Ḥanīfa in Kufa, Iraq, is distinguished by its emphasis on rationality and analogical reasoning, ultimately becoming the official legal theory of several Muslim empires owing to its adaptability. Mālik ibn Anas, the founder of the Mālikī school, prioritised the customs of the people of Medina as a legal source, seeing local practice (ʿamal) as indicative of prophetic tradition. The Shāfiʿī school, founded by al-Shāfiʿī, was instrumental in codifying usūl al-fiqh and organising the hierarchy of legal sources. Finally, the Ḥanbalī school, known for its textual literalism and dependence on Hadith, developed a stringent methodology for legal derivation that subsequently impacted reformist and revivalist movements in Islam.

In the Shīʿa tradition, especially among Twelver Shīʿa, fiqh evolved with unique doctrinal foundations. The Jafarī school, associated with Imām Jaʿfar al-Ṣādiq, prioritises rational thought (ʿaql) in conjunction with the transmitted traditions from the Imāms, whom Shīʿa see as divinely inspired authority. In contrast to Sunni jurisprudence, Shīʿī fiqh assigns less

[6] Available at https://islamic-banking.com/islamic-jurisprudence-fiqh-2/ (Last Access on 15/07/2025).
[7] Available at https://www.drishtijudiciary.com/ttp-muslim-law/schools-muslim-law (Last Access on 15/07/2025).

significance to ijmāʿ and qiyās, prioritising independent reasoning and the authoritative pronouncements of the Imāms.

Classical Muslim jurisprudence was not uniform; it flourished via heterogeneity, discourse, and academic interaction. Judicial systems and legal scholars functioned under a fluid paradigm where diverse interpretations might coexist, and the determination of legal decisions often relied on regional circumstances, sovereign inclination, or societal standards. This variation was seen not as a deficiency but as evidence of Islam's flexibility and the jurists' dedication to justice and ethical reasoning.

The compilation of Islamic law throughout different empires and nations resulted in the elevation of some madhāhib while marginalising others. The intellectual legacy of classical fiqh is significant, providing a substantial repository of legal thought that continues to influence current discussions on reform, legal pluralism, and the alignment of Islamic law with contemporary human rights standards. Contemporary academics and jurists find that studying classical jurisprudence provides both historical understanding and a substantial basis for reinterpreting Islamic law in a globalised, multicultural context.[8]

Role of customary practices in personal law enforcement

In the complex framework of Indian personal law, customary practices have always served as a crucial source of normative authority, often coexisting with or surpassing textual doctrine. Before the official definition of Hindu and Muslim personal laws, community-specific customs—influenced by location, caste, clan, and religious interpretation—dictated the understanding and practice of marriage, inheritance, succession, divorce, and guardianship. These conventions embodied the practical reality of legal order in India, where law was drawn from scripture and socially endorsed behaviours transmitted over generations. The implementation of personal law, especially in rural and semi-urban areas, relied heavily on these conventions, resulting in a legal plurality that is both historical and functional.

In Hindu law, while the Dharmaśāstras established prescriptive standards, they did not entirely supplant the authority of ācāra—localised customary practices recognised by the virtuous

[8] Available at https://scholarship.shu.edu/cgi/viewcontent.cgi?article=2446&context=student_scholarship (Last Access on 15/07/2025).

people of the society. The ancient source view of Hindu law acknowledged ācāra in conjunction with śruti and smṛti, conferring validity upon it provided it did not contradict superior principles. This allowed significant freedom in implementing personal rules, with traditions like matrilineal inheritance in Kerala and customary divorce among tribal Hindus superseding Brahmanical orthodoxy. Despite the constraints of a tight patriarchy, practices concerning dowry, widow remarriage, and joint family property exhibited considerable variation within groups, indicating that textual law often served as a normative ideal rather than a strictly enforced rule.[9]

Muslim personal law, influenced by Qur'anic injunctions and Hadiths, has also applied customary practices. While fiqh jurists emphasised divine sources, the instrument of ʿurf (custom) was acknowledged as an ancillary method for deriving legal principles, especially in contexts where primary texts were obscure. In Indian Islam, this was evident in the continuation of traditions such as meher (dower) bargaining, property transfer via oral agreements, and non-canonical divorce methods that deviated from orthodox procedures but were sanctioned by community approval. The Shariat Application Act of 1937 aimed to re-establish the supremacy of Islamic jurisprudence by superseding customary laws; yet, in reality, courts continued to confront and address customary aberrations, particularly among regional Muslim communities where tribal norms intermingled with religious regulations.

The British colonial initiative significantly transformed the function of tradition in personal law enforcement. In pursuit of administrative consistency, colonial courts codified Hindu and Muslim personal laws into Anglo-Hindu and Anglo-Mohammadan legal systems. Nevertheless, in this process, they prioritised literary traditions—especially those formalised in Sanskrit and Arabic—over adaptable traditional practices. Custom was permissible alone if it satisfied judicial criteria of antiquity, continuity, and reasonableness, as established in decisions such as Collector of Madura v. Mootoo Ramalinga Sethupathi (1868). The legal scepticism about custom diminished its power and marginalised certain communal traditions, especially those of non-Brahmanical, tribal, and pastoral communities.

Nevertheless, custom remains a robust element within India's personal law framework. Judicial

[9] Sk Ehtesham Uddin Ahmad, CUSTOMARY PRACTICES AND MUSLIM PERSONAL LAW IN COLONIAL INDIA, Proceedings of the Indian History Congress, Vol. 78 (2017), pp. 643-651.

rulings, especially in familial conflicts, persist in embodying traditional interpretations, although without formal codification. High courts have acknowledged traditional weddings, divorce rites, and inheritance systems, especially where the spouses are affiliated with certain castes or areas. Tribal groups recognised as Scheduled Tribes function under customary law, sometimes excluded from conventional legislation. Likewise, customary panchayats have significant authority over the implementation of personal law, despite its legality being disputed in constitutional discussions.[10]

The enduring nature of custom prompts enquiries on gender fairness and constitutional alignment. Some traditions provide communities with legal sovereignty and cultural identity, whereas others sustain patriarchal systems, deny women equal rights, and entrench regressive attitudes. The Indian legal system faces the difficulty of reconciling customary plurality with the demands of constitutional morality, particularly with Article 14 (equality), Article 15 (non-discrimination), and Article 21 (right to life with dignity).

COLONIAL CODIFICATION AND LEGAL DUALISM[11]

The colonial interaction with India's law systems prompted significant upheavals that reshaped indigenous jurisprudence, especially among Hindu and Muslim legal traditions. British initiatives, particularly from the late 18th to the early 20th century, were administrative changes and a fundamental transformation in India's comprehension, interpretation, and law enforcement. In the British conception, legislation must be reasonable, codified, and uniform. India's decentralised, pluralistic, and often customary personal law systems sharply contradict this concept. Thus, the codification of Hindu and Muslim laws arose not as efforts to preserve but as colonial reinterpretations of indigenous law, influenced by orientalist study and utilitarian governance objectives.

The basis of colonial legal interaction with personal laws originates from Warren Hastings' judicial reforms in the 1770s, notably the 1772 plan, which required that conflicts between Hindus and Muslims be resolved according to their respective religious laws. This seemingly courteous approach to indigenous legal sovereignty resulted in the appointment of pandits and maulvis—authorities in Hindu and Islamic law—to aid British judges in interpreting religious

[10] Available at https://lawbhoomi.com/customary-law-in-india/ (Last Access on 15/07/2025).
[11] Arthur PHILLIPS, Some aspects of legal dualism in British Colonial Territories, Vol. 3, No. 2 (1953), pp. 189-197.

scriptures. Nonetheless, these interpretations were often contradictory, selectively derived, and shaped by the British inclination for literary precision. The intricate, traditional, and regionally observed Hindu and Muslim law elements were often overlooked in favour of biblical absolutism.

The British began translations and collections of Hindu and Muslim law writings to provide accessible references. The Code of Gentoo Laws (1776), translated by Nathaniel Brassey Halhed, and Sir William Jones's translation of Manusmṛti emerged as foundational texts in Anglo-Hindu legal interpretation, despite their representation of Brahmanical orthodoxy and neglect of non-Brahmanical or regional jurisprudence. Likewise, Islamic legal works, like Fatawa-i-Alamgiri and commentary by experts such as Baillie, were translated and incorporated into Anglo-Mohammadan law. These translations were markedly selective and often misinterpreted the function of fiqh, constraining the dynamic jurisprudence of Islamic law into inflexible, rule-based frameworks.

This resulted in establishing two separate legal systems: Anglo-Hindu and Anglo-Mohammadan. These systems established personal law for Hindus and Muslims respectively, not by extensive legislative measures, but rather via incremental court rulings, scholarly treatises, and selective textual interpretation. Hindu law was primarily understood via writings such as the Mitākṣarā and Dāyabhāga, which comment on inheritance. In contrast, Muslim law was principally shaped by the Hanafi school, largely overlooking the multiplicity of madhāhib and actual practices. Significantly, the codification via common law processes replaced conventional conflict settlement methods, including panchayats and qāzī courts, thereby altering legal power and jurisdiction.

Traditional traditions, formerly fundamental to Hindu and Muslim jurisprudence, were marginalised by British judges who prioritised precedent, uniformity, and textual authority. Under colonial law, custom was recognised only if it satisfied the criteria of antiquity, continuity, and non-repugnancy, as established in judgements such as Mootoo Ramalinga Sethupathi v. Collector of Madura. This established a legal hierarchy in which colonial judges interpreted biblical texts, supplanted other legal traditions rooted in caste, region, and community-specific customs. Legal pluralism was distorted by a colonial perspective, favouring textual orthodoxy above customary law.

The codification of Hindu law concluded with incremental legislative initiatives. The Hindu Widows' Remarriage Act of 1856, the Hindu Inheritance (Removal of Disabilities) Act of 1928, and the Hindu Women's Right to Property Act of 1937 were reactions to social reform initiatives and legal uncertainties. These regulations enhanced women's rights, while they remained under a limited legal framework still anchored in Brahmanical patriarchy. Muslim personal law saw little legislative codification throughout the colonial period. The Muslim Personal Law (Shariat) Application Act of 1937 is a notable exception, affirming the superiority of Islamic law over customary practices and establishing the foundation for its post-independence development.

Consequently, British involvement and codification resulted in a hybrid legal system that integrated colonial common law methodologies with selectively interpreted religious principles. This Anglo-native synthesis reinterpreted personal rules, institutionalised their religious nature, and established the groundwork for India's enduring postcolonial legal duality. This codification process was not value-neutral; it included orientalist prejudices, entrenched patriarchal hierarchies, and limited the potential for indigenous legal change. It converted dynamic and diverse legal cultures into state-controlled, text-centric systems, establishing a foundation for persistent discussions on uniformity, reform, and constitutional alignment.

Establishment of Anglo-Hindu and Anglo-Mohammadan law

The formation of Anglo-Hindu and Anglo-Mohammadan law was pivotal in developing Indian legal history, indicating a colonial reconfiguration of native legal systems. These hybrid frameworks arose when the British East India Company progressively acquired judicial power over Indian colonies, requiring the formalisation of legal processes to fit the subcontinent's religious and cultural diversity. Although purportedly intended to preserve indigenous legal autonomy, these Anglo-religious legal systems were filtered via the interpretative framework of British legal rationalism, textual essentialism, and administrative efficiency. Thus, the Anglo-Hindu and Anglo-Mohammadan laws did not accurately maintain indigenous jurisprudence; instead, they selectively codified and standardised it, often in a manner inconsistent with its historical plurality and social context.[12]

[12] Available at https://www.biliabd.org/wp-content/uploads/2021/08/Shahnaz-Huda.pdf (Last Access on 16/07/2025).

The foundation for these codified personal law systems was established in the late 18th century, notably via Warren Hastings' 1772 Judicial Plan, which mandated that matters between Hindus and Muslims be adjudicated according to their respective laws. This action was allegedly driven by a policy of non-interference in religious affairs; yet, it necessitated the translation and simplification of intricate religious law into forms comprehensible to British judges. Hindu law necessitated dependence on Sanskrit works, including the Manusmṛti, Mitākṣarā, and Dāyabhāga, as interpreted by Brahmanical scholarship and colonial legal comments. In Muslim law, ancient fiqh books of the Hanafi school, including Fatawa-i-Alamgiri and Baillie's digests, were the foundation of legal reasoning, although the presence of many schools and regional traditions.

The British integrated personal laws into official judicial institutions, such as the Sadr Diwani Adalat and subsequent High Courts, converting these Islamic principles into enforceable common law. Anglo-Hindu law developed via judicial precedent, whereby Hindu practices and textual ideas were interpreted through the lens of British common law principles, including fairness, rationality, and universality. This resulted in the dominance of biblical law—frequently construed inflexibly—over adaptable customary norms. The diversity of Hindu law, which traditionally included regional and caste distinctions, was reduced to an idealised Brahmanical structure favouring Sanskritic orthodoxy. For instance, inheritance rules were codified via interpretations of Mitākṣarā and Dāyabhāga, varying by area, resulting in a divergent implementation in northern and eastern India, respectively.

Likewise, Anglo-Mohammadan law established a textual and philosophical framework for Islamic jurisprudence, focused on the Hanafi school. Judges often used translated summaries and treatises, such as Baillie's Digest of Mohammedan Law, which sought to simplify intricate jurisprudence into definitive standards. In contrast to classical fiqh, which permitted interpretative flexibility and accommodated variation via ijtihād and ʿurf (custom), Anglo-Mohammadan law converted Islamic personal law into a stringent, rule-based framework. The function of community adjudicators, such as qāzīs, was diminished, and the actual practices of Indian Muslims were relegated to selected interpretations of jurisprudence that often overlooked local customs and theological subtleties.[13]

[13] Available at https://www.biliabd.org/wp-content/uploads/2021/08/Shahnaz-Huda.pdf (Last Access on 16/07/2025).

These Anglo-religious legal systems were established by judicial legislation and interpretative precedent instead of legislative codification. Case law significantly influenced the development of marriage, divorce, inheritance, and maintenance doctrines. Nonetheless, dependence on textual sources and British legal philosophy resulted in distortions. The legal restriction of polygamy in some settings, the misinterpretation of talaq processes, and the disregard for women's inheritance rights often stemmed from inadequate or biased interpretations of Islamic law. Likewise, Hindu women's rights were limited by the codified system, especially on succession and property, notwithstanding the progression of regional and customary legal systems.

Furthermore, the colonial courts established criteria to authenticate custom, requiring it to be "ancient, certain, reasonable, and continuous," rejecting several changing or community-oriented norms. This legal test, established in significant instances such as Mootoo Ramalinga Sethupathi v. Collector of Madura, prioritised textual orthodoxy and judicial discretion above tradition, diminishing the diverse nature of personal law.

THE LEGISLATIVE EVOLUTION OF PERSONAL LAW IN INDIA

The legislative evolution of personal law in India saw substantial changes in the twentieth century, resulting in pivotal interventions that redefined family jurisprudence and religious legal independence. Two significant milestones in this context are the Hindu Code Bills, adopted after independence between 1955 and 1956, and the Muslim Personal Law (Shariat) Application Act of 1937. This pre-independence regulation reaffirmed Islamic law over customary practices. These legislations formalised religious personal laws and established the framework for constitutional discussions on legal pluralism, gender justice, and secular government in contemporary India.

The Muslim Personal Law (Shariat) Application Act of 1937 was enacted in the late colonial period to address the increasing apprehensions of Indian Muslims with the prioritisation of traditional practices, sometimes at odds with Islamic tenets, in court proceedings. During that period, many Muslim communities, notably in North India, were regulated by local norms about inheritance, succession, and marriage, which often deviated from Islamic principles and were especially detrimental to women. The 1937 Act was an affirmation of Islamic jurisprudential integrity, requiring the application of Muslim personal law—derived

specifically from the Qur'an and Sunnah—to issues such as marriage, divorce, maintenance, guardianship, and inheritance.[14]

The Shariat Act was crucial for several reasons. Initially, it established a comprehensive preference for religious orthodoxy above local customs, strengthening the power of fiqh-based regulations, particularly within the prevailing Hanafi school. Secondly, it established religious identity as the foundation for legal rights, reinforcing the communal nature of personal rules within the legal system of British India. Third, it established the foundation for post-independence Muslim personal law doctrine, since the Act remains unrevoked and continues to regulate essential facets of family law for Indian Muslims today. The Act significantly empowered the community's internal legal discourse; however, it also included conservative notions that would subsequently undergo constitutional examination, especially regarding female rights and conformity.

The Hindu Code Bills signify a post-independence initiative to reform and modernise Hindu personal law via state-driven codification and legislative implementation. Initially led by Dr. B.R. Ambedkar and the Law Ministry, these measures aimed to consolidate and systematise the personal laws governing Hindus, which inclusively included Buddhists, Jains, and Sikhs. The proposed Hindu Code aimed to unify marriage, divorce, succession, guardianship, and adoption laws, embodying values of gender equality, legal clarity, and national cohesion.[15]

The original comprehensive Hindu Code Bill was ultimately divided and enacted piecemeal as four principal acts due to political and ideological opposition from orthodox Hindu factions and conservative legislators.

The Hindu Marriage Act of 1955 established legal frameworks for divorce, inter-caste marriage, and restoration of conjugal rights, moving away from the rigorous ceremonial nature of traditional Hindu marriage.

[14] Dr. Atal Kumar, LEGISLATIVE HISTORY OF PERSONAL LAWS IN INDIA WITH SPECIAL REFERENCE TO UCC, IJNRD.
[15] Mr R.P. Choudhary, EVOLUTION OF PERSONAL LAWS IN INDIA, Pramana Research Journal. Volume 8, Issue 4, 2018.

1. The Hindu Succession Act of 1956 reformed inheritance law and conferred more property rights to women, while coparcenary powers remained exclusively male until further modifications.
2. The Hindu Minority and Guardianship Act of 1956 codified regulations about guardianship and child custody while reinforcing paternal authority in numerous aspects. - The Hindu Adoptions and Maintenance Act of 1956 liberalised adoption regulations and instituted legal responsibilities for maintenance within familial relationships.

This legislation represented a significant departure from religious orthodoxy and incorporated legislative rationalisation into Hindu personal law. They epitomised Nehruvian secularism, whereby contemporary legal change was crucial for social advancement. However, this reforming impetus did not include Muslim personal law due to political sensitivities, concerns of minority marginalisation, and the communal repercussions of Partition. The disparity between Hindu and Muslim personal law reform persists in influencing discussions over the Uniform Civil Code, legal equality, and secularism in India.

The 1937 Shariat Act and the 1955–56 Hindu Code Bills highlight the Indian state's dual function as a protector of religious liberty and a facilitator of legal modernisation. They illustrate the conflicts between identity and equality, tradition and change, and heterogeneity and uniformity that characterise the current debate on personal law jurisprudence inside the Indian Constitution.

COMPARATIVE ANALYSIS OF KEY DOCTRINAL THEMES

Aspect	**Hindu Law**	**Muslim Law**
Marriage and Divorce	- Treated as a *sacrament*, not a contract - Governed by the Hindu Marriage Act, 1955 - Conditions include monogamy, age, and mental capacity - Divorce permitted on specific grounds: cruelty, desertion,	- Considered a *civil contract* with religious significance - Governed by Islamic law and the 1937 Shariat Act - Requires *offer and acceptance*, *mahr* (dower), and witnesses - Multiple forms of divorce: *talaq*, *khula*, *mubarat*, *faskh*

	adultery, etc. - Judicial separation and restitution of conjugal rights recognised	- Triple talaq (instant) declared unconstitutional in 2017 (*Shayara Bano*)
Inheritance and Succession	- Governed by the Hindu Succession Act, 1956 (amended in 2005) - Coparcenary rights extended to daughters (post-2005 amendment) - Equal inheritance rights for sons and daughters - Governed by principles of succession: Class I & II heirs - Testamentary freedom under the Indian Succession Act, 1925	- Governed by Islamic *fiqh* (primarily Hanafi school in India) - Fixed shares specified for heirs in the Qur'an - Sons receive double the share of daughters (justified on financial obligations) - Testamentary freedom limited to one-third of the property - Women have inheritance rights, but they are often undermined in practice
Guardianship and Adoption	- Governed by the Hindu Minority and Guardianship Act, 1956 - Father is the natural guardian; mother recognised for the minor's welfare - Legal adoption allowed under the Hindu Adoptions and Maintenance Act, 1956 - Women can adopt and be recognised as adoptive mothers	- Guardianship governed by *hizanat* (custody) and *wilayat* (guardianship) - Mother usually has custody of minor children up to a certain age - Father often retains legal guardianship - No formal adoption concept in Islamic law; the child is treated as a ward - Adoption rights restricted under Muslim law; governed by the *Kafala* system in some interpretations
Gender Implications and Rights of Women	- Reforms through the Hindu Code Bills have enhanced gender parity - Daughters now have equal inheritance rights - Women can initiate divorce - Maintenance rights through Section 125 CrPC and HAMA	- Qur'anic provisions grant women rights in marriage, inheritance, and divorce - However, socio-cultural practices often limit enforcement - Women can seek divorce (*khula*) and claim *mahr* and maintenance

	- Patriarchal structures remain in practice despite legal parity	- Gender disparity in inheritance remains doctrinally embedded - Judicial activism (e.g., *Shah Bano*, *Shayara Bano*) highlights progressive trends

CONTEMPORARY CHALLENGES AND SOCIO-LEGAL REFORM

The adjudication of personal laws in India exemplifies a complex interaction of normative pluralism, constitutional principles, and developing jurisprudential theories. India's distinctive legal framework, characterised by the coexistence of religion-based personal rules and secular civil and criminal legislation, inevitably leads to disputes. The Hindu and Muslim personal law systems exhibit doctrinal differences in substantive substance and philosophical underpinnings. Post-1955, Hindu law is mostly derived from legislative enactments shaped by historic Dharmaśāstra traditions, whilst Muslim personal law generally remains uncodified and regulated by classical fiqh, particularly under the Hanafi school. Consequently, judicial interpretation serves as a forum for discussion, whereby courts are tasked with enforcing the law and reconciling historical legacies with modern constitutional principles.

A primary cause of conflict stems from the fundamentally divergent notions of marriage, divorce, and inheritance between the two systems. Hindu law regards marriage as a sacrament—originally indissoluble—with divorce established only via contemporary legislative reform. Islamic law regards marriage as a contract, hence including many methods of dissolution, including talaq, khula, and mubarat. The doctrinal disparities provide interpretative difficulties in adjudicating interfaith weddings or evaluating the legitimacy of a divorce started under personal law. The court system must address these disparities while guaranteeing that results do not infringe upon basic rights as stipulated in Part III of the Constitution, including Article 14 (right to equality) and Article 21 (right to live with dignity). Significant instances like ***Shayara Bano v. Union of India (2017),***[16] which deemed talaq-e-biddat unconstitutional due to its arbitrary nature, illustrate this constitutional reconfiguration of personal law.[17]

[16] AIR 2017 SUPREME COURT 4609.

[17] Available at https://vulj.vupune.ac.in/archives6/3.Constitutional%20Challenges%20to%20Personal%20Laws.pdf (Last Access on 16/07/2025).

Conflicts can arise in the realm of gender justice. Historically, both Hindu and Muslim personal laws have marginalised women's rights, especially around inheritance and maintenance. Although changes like the Hindu Succession (Amendment) Act, 2005 have established equality by conferring equal coparcenary rights to daughters, Muslim women continue to inherit half the share of their male counterparts, by Qur'anic distributions. Judicial bodies have grappled with aligning these doctrinal requirements with constitutional tenets of non-discrimination, sometimes using secular legislation such as Section 125 of the CrPC to provide support for Muslim women, as shown in Mohd. Ahmed Khan v. Shah Bano Begum (1985). Nevertheless, these court interventions often incite community reaction, eliciting apprehensions over judicial overreach and the fragile equilibrium between reform and religious autonomy.

Notwithstanding these difficulties, convergences have arisen that signify a developing legal culture. Judicial bodies have progressively construed personal law through the lens of constitutional morality while honouring religious autonomy. The ratification of the Special Marriage Act, 1954, establishes a secular framework for interfaith marriages, circumventing personal laws and ensuring standard rights. Likewise, civil welfare statutes, such as the Protection of Women from Domestic Violence Act, 2005, have been enforced without regard to religious affiliation, guaranteeing that persons are not denied legal recourse just because of discrepancies in personal law.

Furthermore, judicial innovation has facilitated harmonisation. The court has often interpreted personal law through a progressive lens, acknowledging women's rights to residence, maintenance, and dignity beyond legislative limitations. The acknowledgement of cohabitation under certain circumstances, or the broad interpretation of maintenance under HAMA and CrPC, illustrates the judiciary's efforts to reconcile legal results with changing societal norms. These initiatives indicate a progressive shift towards a comprehensive constitutional jurisprudence that prioritises equality and justice above strict doctrinal conformity.[18]

The adjudication of personal laws in India is a dynamic and dialogic process that continually negotiates multiplicity and uniformity, tradition and reform, identity and universality. Conflicts are inherent in the structure of legal diversity, whereas confluences arise from judicial

[18] Available at https://www.czasopisma.uni.lodz.pl/Iuridica/article/download/9816/9572 (Last Access on 16/07/2025).

innovation, legislative action, and civil society engagement. The next task is to enhance these sites of convergence while preserving the cultural and religious freedoms inherent in plurality, ensuring that personal law serves as an identity marker and a realm of dignified justice within India's constitutional framework.

Role of civil society and women's rights movements

In the realm of personal law reform in India, civil society and women's rights groups have become significant agents of revolutionary change, often collaborating with judicial activism and legislative campaigning. Although constitutional provisions like equality before the law (Article 14), the prohibition of discrimination (Article 15), and the right to life and dignity (Article 21) provide normative assurances, it is civil society—particularly feminist collectives, legal aid organisations, academia, and grassroots movements—that has actualised these principles into tangible experiences. These players confront the stagnation of religious dogma, patriarchal legal systems, and governmental indifference by advocating for accountability, inclusion, and meaningful gender justice within India's personal law frameworks.

The historical involvement of civil society in personal law reform originates from the nationalist and social reform movements of the 19th and early 20th century. Organisations like the Brahmo Samaj and Arya Samaj, despite their foundations in Hindu revivalism, advocated against traditions such as child marriage and sati, and established the foundation for changes such as the Hindu Widows' Remarriage Act (1856). Prominent figures such as Begum Rokeya and the subsequent All India Muslim Ladies Conference emphasised the need for education, legal rights, and change within the society for Muslim women. Post-independence feminist mobilisation, however, acquired more radical and organised impetus, especially during and after the Shah Bano case in 1985.[19]

The Shah Bano ruling, in which the Supreme Court awarded maintenance to a divorced Muslim lady under Section 125 of the CrPC, incited both reformist acclaim and sectarian opposition. It stimulated increased civil society lobbying for consistency in gender rights across faiths. Feminist organisations, including the All India Democratic Women's Association (AIDWA), Lawyers Collective, and the Forum Against Oppression of Women, were instrumental in advocating for Shah Bano's rights, challenging the subsequent passage of the Muslim Women

[19] Available at https://www.osce.org/files/f/documents/1/5/532199_0.pdf (Last access on 16/07/2025).

(Protection of Rights on Divorce) Act, 1986, and highlighting the constraints of religious autonomy concerning fundamental rights.

Throughout the decades, civil society has persistently advocated for change in both Hindu and Muslim personal laws. The battle for equal coparcenary rights for Hindu women resulted in the significant Hindu Succession (Amendment) Act, 2005. This triumph was mostly influenced by persistent campaigning, scholarly research, and interaction with legislators. Likewise, for Muslim women, the struggle against instant triple talaq—supported by entities like the Bharatiya Muslim Mahila Andolan (BMMA)—culminated in the Supreme Court's ruling in Shayara Bano v. Union of India (2017) and the ensuing legislative prohibition via the Muslim Women (Protection of Rights on Marriage) Act, 2019. These events demonstrate how civic society navigates the intersection of religious belief and constitutional fairness.

Civil society functions not just as an opposing force but also encourages conversation within communities, pushes for context-sensitive change, and promotes legal literacy at the grassroots level. Legal clinics, gender justice initiatives, public interest litigations, and media mobilisation constitute this ecosystem. Women's rights groups have progressively transcended litigation to engage with intersectional issues, including caste, class, region, and sexual orientation within personal law discourses. The discussion on the Uniform Civil Code (UCC) elicits both endorsement and opposition among feminist groups, illustrating the intricate interplay between legal uniformity and cultural liberty.

Nonetheless, challenges persist. The political exploitation of personal law reform, opposition from religious organisations, and the predominance of elite perspectives in civil society sometimes undermine the democratising potential of these initiatives. Notwithstanding these obstacles, the function of civil society is essential, not just in promoting change but in evolving personal law from a fixed religious directive to a dynamic arena of constitutional interaction. Their endurance guarantees that personal law adjudication transcends legalistic boundaries, evolving by social requirements, rights discourses, and the experiences of marginalised groups.[20]

[20] Available at https://www.osce.org/files/f/documents/1/5/532199_0.pdf (Last access on 16/07/2025).

CONCLUSION

The transition from Dharma to Sharia—from historical textual traditions to modern personal law systems—illustrates the complex stratification of India's legal awareness. This study has delineated the historical, doctrinal, and institutional developments that have influenced Hindu and Muslim personal laws, revealing their theological foundations and the socio-political mechanisms that have led to their codification, reinterpretation, and contestation. The Anglo-Hindu and Anglo-Mohammadan legal frameworks established by colonial officials substantially transformed the epistemology of Indian jurisprudence, constraining diverse and adaptable norms into inflexible, court-enforced doctrines. These codifications, while seemingly maintaining religious liberty, also reinforced patriarchal and textual absolutism, marginalising custom, communal discourse, and interpretative variation.

Following independence, India's legal system adopted a dual legacy—maintaining personal law autonomy within a framework of secular constitutionalism, while pursuing reformative measures via selective codification. The Hindu Code Bills were a substantial state-driven modernisation initiative, including gender-sensitive measures and legal consistency. In contrast, the Muslim Personal Law (Shariat) Application Act of 1937 upheld Islamic doctrine, delegating substantive changes to intra-community dialogue and judicial action. This imbalance has resulted in disparate outcomes for gender justice, legal clarity, and community trust.

This research's comparative investigation of key doctrinal areas—marriage and divorce, inheritance and succession, guardianship and adoption, and gender rights—has uncovered significant disputes and emerging convergences. Discrepancies endure in procedural standards, interpretative paradigms, and constitutional coherence. Confluences arise when civil legislation, judicial reasoning, and civil society activism have shifted personal law towards a more rights-oriented framework. The court has been instrumental in reconciling religious orthodoxy with constitutional morality, shown by major cases such as Shah Bano, Sarla Mudgal, and Shayara Bano, which scrutinised the equilibrium between communal sovereignty and human dignity.

The involvement of civil society and women's rights groups has been equally crucial, since they have elevated marginalised voices, contested patriarchal legal norms, and advocated

democratising personal law jurisprudence. Their initiatives guarantee that legal change transcends judicial disputes and legislative measures, including grassroots education, legal literacy, and intersectional feminist analysis.

This study confirms that personal law adjudication in India transcends mere dispute resolution; it involves negotiating identity, equity, and the parameters of pluralism within a constitutional democracy. It emphasises the need to adapt personal law systems that respect cultural diversity while upholding basic rights. In a time when legal modernity is increasingly assessed by inclusion and gender equality, India's diverse personal law system must undergo internal reform and engage in dialogic adaptation.

The path forward does not include sudden elimination or uniformity, but gradual reform, rooted in constitutional principles, considerate of religious beliefs, and attuned to socioeconomic conditions. Reconciling Dharma and Sharia requires not the rejection of the past, but its meticulous reinvention for a fair and equitable future.