

1 **Personal Law in Comparative Perspective: Foundations,** 2 **Variations, and Contemporary Challenges**

3 **Abstract**

4 There is no wonder that basic personal law ' covering all aspects of life from marriage and
5 family relationships to will really is the root of conflict within law systems around the world.
6 This research paper examines the conceptual underpinnings, historical evolution and
7 comparative frameworks of personal law. It also considers the relationship between religion
8 nationality domiciles on the one hand and state authority on the other. The second topic is:
9 legal pluralism, globalization and changing social norms. Lastly part III covers current
10 debates about reform and uniformity. Grounded in ancestry, comparison and social legal
11 research methods, paper aims to contribute to today's world in finding a solution for the
12 future of personal law.

13 **KEY WORDS:**Personal law, Family law, Matrimonial law, Inheritance law, Succession law,
14 Religious law, Legal pluralism, Uniform Civil Code, Domicile, Nationality, Customary law

15 **1. Introduction**

16 Personal law governs some of the most basic facts of human life—marriage, divorce, child
17 custody, adoption, inheritance, and succession. Personal law concerns are closely linked to
18 individual identity, spousal norms, and religious norms and beliefs, positioning personal law
19 in a space where private life and public regulation intersect. While public or criminal law
20 usually applies uniformly across a nation, personal law is often based on religion, nationality,
21 ethnicity, or domicile, and thus represents a pluralistic aspect of a society and a legacy of its
22 history.

23 These different systems raise important normative and practical questions. Where does the
24 power of the state begin and end with regard to what to do or not do when religion or custom
25 matters? Does it respect the principles of equality and non-discrimination when the legal
26 rules are not the same depending on the community of which we belong? While honoring
27 difference how should legal systems react to social change, migration and globalization?

28 These questions have come to the fore in plural societies such as India, Israel, Malaysia, and
29 Nigeria where legal pluralism has frequently been at odds with constitutional provisions that
30 guarantee both equality before the law and secularism. The interplay of group rights versus
31 individual freedoms, tradition versus modernity, and state sovereignty versus global human
32 rights standards illustrates the contradictions that characterize contemporary scenarios over
33 personal law.

34 In comparative perspective, we seek to lay the conceptual and jurisdictional background, but
35 then also assess more recent manifestations of personal law challenges. It starts with a
36 historical account of the personal law and the way colonial and post-colonial legal orders
37 institutionalized its plural nature. It compares the systems of law of various States which
38 attribute personal law by reasons of domicile, nationality or religion, and analyses the
39 implications of each approach for social cohesion and the certainty of law.

40 The Indian legal system, frequently referred to as a paradigmatic case in legal pluralism in
41 personal law, is one of the mainstays of this research. This presents fertile ground for analysis
42 of the more general tensions of pluralism and uniformity in a context that co-exists with
43 constitutional commitments to secularism and equality as in India that preserves the
44 coexistence of multiple religious personal laws.

45 The third, and final, part deals with current issues such as gender justice, the clash of local
46 and transnational laws, and whether international human rights norms can reform or even
47 harmonize personal laws. Using doctrinal, comparative, and socio-legal methodology, the
48 study provides an evidence-based comprehension of the operational and evolutionary manner
49 of personal law in a globally accelerating world.

50 The guiding research question is:

51 **How do systems of personal law negotiate the tension between the need to respect**
52 **cultural and religious pluralism, on the one hand, and the demands of equality, justice,**
53 **and the ultimately very secular project of constitutionalism on the other?**

54 **2. Literature Review**

55 The examination of personal law is situated in a distinct position that is embraced the most by
56 every legal scholar. This literature review presents major academic writing on personal law,

57 addressing its historical provenance, comparative differences, socio-legal challenges and
58 current global concerns.

59 **2.1 Doctrinal Foundations and Historical Perspectives**

60 The early understanding of personal law was of a doctrinally and historically oriented subject.
61 It stressed the religious and customary bases of personal law, defining personal status
62 according to community membership rather than territoriality. In societies with rule by
63 religious authorities, as in Christian Europe under the canon law, or Islamic societies
64 governed by the Sharia family relations, inheritance and marriage were affairs of private law
65 administered by the community, not state, authorities.

66 In social contexts such as British India, personal laws were preserved and codified in order to
67 ensure local political stability. Some scholars, including Marc Galanter and Werner Menski,
68 have demonstrated how colonial bureaucrats re-interpreted Hindu and Muslim laws for the
69 purposes of code-making, freezing the meanings of these laws into rigid, state-administered
70 codes. This colonial heritage led to a system of legal pluralism and had an impact on the legal
71 systems of numerous post-colonial states, such as India, Nigeria and Malaysia.

72 **2.2 Comparative Legal Approaches**

73 In the comparative legal literature, the emphasis is laid on the jurisdiction that may decide
74 which personal law is applied to an individual. In common law jurisdictions such as the
75 United Kingdom and the United States, domicile is the most commonly used connecting
76 factor to a particular legal system. By contrast, civil law countries like France, Germany or
77 Italy frequently apply nationality as the criterion for personal law.

78 In a few countries, particularly in the Middle East, South Asia and parts of Africa, the
79 personal law being applied is religious or customary law, while in others it is codified law. In
80 such circumstances personal laws are actually made suit to particular community and are
81 enforced by community authority or the religious courts. It has been examined by scholars
82 how plural systems like that could create inconsistencies, jurisdictional battles, and
83 undermine the predictability of law.

84 Hybrid systems like Israel's and Lebanon's, as well as the one proposed in Malaysia, have
85 intersecting jurisdictions between civil and religious authorities, and pose intricate questions
86 on legal authority, social harmony and individual rights.

87 **2.3 Socio-Legal and Critical Perspectives**

88 Socio-legal studies in recent decades have increasingly subjected personal law to critique
89 from feminist lenses, minority rights and constitutional equality. Feminist legal scholars such
90 as Flavia Agnes and Indira Jaising have illustrated the way in which personal law often
91 serves to codify patriarchal norms and to disadvantage women in the areas of marriage,
92 divorce, custody and inheritance.

93 This literature contends that personal laws interpreted conservatively or based on religious
94 texts have marginalised women, sexual minorities and lower-caste groups. This is strongly
95 felt in the case of India, where personal laws of the community are criticised as being against
96 the principles of substantive equality from the point of view of the juridico-judicial-public
97 perspective themselves.

98 Socio-legal research has also illuminated the disjuncture between law "in books" and law "in
99 action." Many analyses demonstrate how individuals and families move in and out of
100 multiple legal systems formal, religious, customary, and informal depending upon what is
101 available, affordable, and socially demanded.

102 **2.4 Globalization, Migration, and Human Rights**

103 Recent studies have worked on how globalization, transnational migration, and the ascent of
104 international human rights norms have transformed personal law. The greater promiscuity of
105 people between the borders creates more disagreements in law, e.g. home, nationality, and
106 religion. The role of conflict of laws today is extremely important in terms of identification of
107 the personal law in disputes which are of a family and inheritable nature across borders,
108 stated private international law which is popularly now known as conflict of laws.

109 Meanwhile, global human rights accords, including the Convention on the Elimination of All
110 Forms of Discrimination Against Women (CEDAW), have been putting pressure on states to
111 amend personal laws that are discriminatory on either gender or religious ground. Some states
112 have reacted with progressive reforms, while others have rebuffed such calls, citing cultural

113 or religious sovereignty, and cultural relativism has been used as a shield against international
114 scrutiny.

115 The tensions between universal human rights and religious based legal systems have,
116 however, been considered by some scholars, among whom are An-Na'im and Coomaraswamy,
117 who seek reformist agendas that are grounded in rights yet also culture
118 sensitive.

119 **2.5 The Indian Context: Personal Law, Pluralism, and Reform**

120 India is a fertile ground for the study of personal law, because of its relatively pluralistic legal
121 system. Scholars have examined how India's personal laws Hindu, Muslim, Christian, Parsi
122 and tribal function within a constitutional order that promises religious freedom and legal
123 equality. The Indian discourse on UCC is voluminous, largely focusing on whether it is
124 possible to have legal uniformity without sacrificing religious and cultural autonomy.

125 The debates on secularism, minority rights and the judiciary in the area of personal law
126 reform have been carried forward by legal academics like Upendra Baxi, Rajeev Dhavan and
127 Tahir Mahmood. Feminists and human rights activists have also raised their concerns that the
128 UCC must not translate into imposition of majoritarian values, but into a shift towards a
129 gender-just, gender neutral legal regime, for all the citizens.

130 **2.6 Gaps in Existing Scholarship**

131 Despite the variety of research available, significant gaps remain:

- 132 ➤ There is little empirical study about how people fare within plural personal laws.
- 133 ➤ The implications of digital technology, online marriages/divorces and virtual
134 religious authority for personal law have not been adequately examined.
- 135 ➤ Sustained analysis on the personal law's role in the adaptation to LGBTQ rights,
136 climate migration, and statelessness is missing.
- 137 ➤ The dynamics of non-state actor involvement (for example traditional elders,
138 religious leaders) are under researched in informal dispute processing.

139 This paper attempts to fill some of these lacunae by combining doctrinal, comparative and
140 socio-legal methodologies to produce a more comprehensive understanding of the
141 development and problems of personal law.

142 There is also a substantial and cross disciplinary body of literature on personal law.
143 Routledge factors the development of personal law and its function in multiple legal systems,
144 and the relations between tradition and modernity.

145 The early literature centred on the doctrinal bases of personal law, comparing it with
146 territorial law and underlining its significance as a means of safeguarding that of 'the
147 community'. Subsequent contributions have explored the comparative aspect of delineation
148 by domicile, nationality, religion.

149 Recent studies have moved in the direction of critical and socio-legal approaches looking at
150 the impact of personal law on gender politics, minority rights and social justice. Moreover,
151 the advantages and disadvantages of legal pluralism, the difficulties of reform and the
152 possibility of a Uniform Civil Code have been a subject of debate among scholars in India.

153 Thus, even though there is a wealth of literature, there are still large holes, especially in
154 relation to the globalisation, migration and transnational legal processes for personal law.
155 This article brings together these lacunae through its combination of doctrinal, comparative
156 and socio-legal analysis.

157 **3. Methodology**

158 It employs a doctrinal and comparative methodology, complemented by socio-legal
159 perspectives. Primary materials are statutes, case law, and constitutional provisions in
160 selected jurisdictions. Secondary sources include scholarly articles, treatises and officers of
161 law reform commission reports.

- 162 • Doctrinal approach: The author studies legal rules and principles of personal law,
163 analyzing these as applied in various legal systems.
- 164 • Comparative study also points to discrepancies in the identification of personal law
165 and its usage through jurisdictions.

166 • These socio-legal approaches afford an understanding of the everyday life of persons
167 living under personal laws as well as the larger societal implications of legal
168 pluralism.

169 The research is also qualitative, based on critical analysis and synthesis of legal materials, not
170 empirical evidence.

171 **4. Historical Evolution of Personal Law**

172 **4.1 Origins and Early Development**

173 In earlier societies, law was basically identical with religion, ethics and custom. The state was
174 not involved in personal issues Church and (or) Tribe took care of marriage, divorce,
175 inheritance, and succession problems. Legal systems were already plural, with different
176 communities observing various norms according to religion, caste, or ethnicity.

177 In medieval Europe, canon law of the Catholic Church governed marriage and family law,
178 defining marriage as a sacrament and addressing matters of legitimacy, annulment, and
179 inheritance, codifying procedures for certain aspects and imposing some de facto jurisdiction
180 especially regarding sacramental issues. There were parallel systems in Islamic countries,
181 where Sharia (coming from the Quran, Hadith, and juristic interpretations) was the main legal
182 system for followers of Islam, especially in matters of personal status. Similarly among Jews,
183 Halakha governed much of personal and family life, through rabbinical courts.

184 Likewise, familiar and theological law sourced from texts like the Manusmriti [in the Hindu
185 context] have played a pivotal role within Asian societies like that of China, Japan and India,
186 and they may as well have been upheld in socio-hierarchical bodies such as village councils
187 and caste-based panchayats.

188 Historically, it thus based on religion or family and on a community that defines its own
189 identity, so personal law was based on the religion, family and community class etc.

190 **4.2 The Rise of the Nation-State and Legal Codification**

191 With time, the 18th and 19th century advent of modern state brought about major changes in
192 the legal systems. The Enlightenment concept of universal law, legal equality for individuals,

193 and state sovereignty culminated in attempts to codify and unify legal rules. Driven by
194 Enlightenment thinking and influenced by opposition to social inequities present in
195 multifaceted regimes in the Middle Ages and early Modern periods, civil codes like the
196 Napoleonic Code (1804) and the German Civil Code (BGB, 1900) attempted to erase
197 pluralism in law and replace it with a singular territorial law that applied to every citizen
198 alike.

199 Even so, personal law used to not be subject to the uniformity rule. In large part due to his
200 influence, family and inheritance law were often made an exception to this rule in many civil
201 law countries, constituting a separate legal category that remained dictated by a subject's
202 nationality, and thus strictly limited the impact of civil law on religious and customary
203 practices, at least for minorities and colonial subjects.

204 The common law doctrine of conflict of laws (i.e., private international law) emerged in
205 tandem with the development of professional responsibilities in order to address personal
206 affairs with a cross-border or multi-national component, often by taking the domicile or
207 habitual residence of the individual involved as the connecting factor.

208 Clearly, then, despite a dominant trend towards the unification and codification of public law,
209 personal law has preserved a pluralistic and identity-affected nature in areas which are
210 conceptually more sensitive in nature such as family, culture, and religion.

211 **4.3 Colonialism and the Institutionalization of Legal Pluralism**

212 The evolution of personal law took a decisive turn in the colonial period. European colonies
213 led primarily by Britain and France had different approaches to legislating law over those
214 they ruled. But one feature that was rarely missing was the retention, and sometimes the
215 formalization, of personal laws based on religion or ethnicity.

216 In British India, for example, the colonial government institutionalised the segregation of
217 personal laws for Hindus, Muslims, Parsis and Christians. Legal pluralism was
218 institutionalised through texts such as the Shariat Act (1937) and codifications such as the
219 Hindu Marriage Act (1955) and the Indian Christian Marriage Act (1872). The British courts
220 interpreted texts of the religions with local scholars in assistance but them, conformed a law
221 codes replacing religious texts, rigidly turned flexible customs into table entitled codes.

222 This has a political and administrative rationale behind it. Colonial authorities feared that
223 meddling in personal and religious affairs would elicit resistance and allowed these spheres to
224 be governed by community-based legal systems. The non-interventionist policy further
225 deepened community-specific legal identities, which carried over, in many instances even
226 post-independence.

227 In French colonies, civil law was also distinguished from personal or customary law in the
228 same way applicable to French citizens and indigenous populations, particularly in North and
229 West Africa. This dualistic nature of the colonial law system paved way for the dualistic
230 nature of legislation where customary law exists side by side with a civil law in several post-
231 colonial states.

232 **4.4 Post-Colonial Continuities and Legal Reform**

233 Most of the new States had to deal with the problem of legal unification after decolonization.
234 In fact, several nations including Turkey under Atatürk have replaced religious personal laws
235 for civil codes, while others have maintained pluralistic systems. Thus, while customary
236 practices were important in informing norms, the preservation or reform of personal law often
237 hinged on political compromise, religious sensitivity and identity politics.

238 The framers of Indian Constitution retained his existing personal laws in their judgement but
239 inserted an Article 44 which stated that the state shall endeavour to secure for the citizens a
240 Uniform Civil Code throughout the territory of India. This compromise was based on the fear
241 of religious minorities particularly Muslims being marginalized by sudden legal uniformity,
242 which would alter, perhaps destabilize, the national unity. Consequently, India maintained
243 several distinct personal law systems alongside a secular constitutional framework a
244 reticulated arrangement that is still contested and debated.

245 In Middle Eastern and African nations, however, the relationship between religious authority
246 and state law differed. While a few maintained Sharia courts for Muslims alongside civil
247 courts, others reinterpreted the principles of Islam in order to fit into the framework of
248 modern-day state law.

249 Thus, reforms in personal law have entered unevenly. Gender equality and codification (or at
250 least legal clarity) have made dramatic strides towards monumental change in some countries

251 but in others, personal laws have changed but little in their patriarchal form, often protected
252 and justified by religious or cultural exceptionalism.

253 **5. Comparative Frameworks: Domicile, Nationality, and Religion**

254 **5.1. Domicile as a Connecting Factor**

255 In common law countries such as the UK and USA, personal law is normally determined by
256 domicile the place where a person has their permanent home, or where they intend to live
257 indefinitely. It seeks to emphasise a person by reference to a legal order over the State as the
258 main legal entity, or citizen, where citizenship is not enough.

259 **5.2. Nationality as a Connecting Factor**

260 In contrast, countries with a civil law system like France, Germany, and Italy tend to house
261 laws in nationality when it comes to personal law. This embodies a perception that personal
262 status is an incident of membership and should be governed by the law of the land of origin.

263 **5.3. Religion and Custom**

264 In large swathes of countries notably in South Asia, the Middle East, and some parts of
265 Africa you have an extensive system of so-called personal law, with cases decided according
266 to religion or custom. For instance, in India different personal laws exist for hindus, muslims,
267 christians, parsi and several other communities. Such laws deal with the marriage, divorce,
268 adoption and inheritance, and mostly stem from a religious text or custom.

269 **5.4. Mixed and Hybrid Approaches**

270 Other jurisdictions operate hybrid systems that include aspects of domicile, nationality, and
271 religious law. To illustrate, Israel has religious courts (e.g. Jewish, Muslim and Christian),
272 responsible for personal status issues for their respective communities, while civil law has
273 scope elsewhere.

274 **6. Personal Law in India: Pluralism and Reform**

275 **6.1. The Structure of Indian Personal Law**

276 India is one of the most well-known illustrations of legal pluralism in personal law. There are
277 several personal law systems in force in India:

- 278 ➤ Hindu Law (Hindu Marriage Act, Hindu Succession Act etc.)
- 279 ➤ Muslim Law (Shariat Act, Dissolution of Muslim Marriages Act etc.
- 280 ➤ Christian Law (Indian Christian Marriage Act, Indian Divorce Act)
- 281 ➤ Parsi Law (Parsi Marriage and Divorce)
- 282 ➤ Special Marriage Act (an option for an alternative, secular marriage)

283 This pluralism dates from the colonial service and was reflected in the post-
284 independence constitutions of the region.

285 **6.2. Constitutional Framework and Judicial Interpretation**

286 Articles 25 and 14 of the Indian Constitution enshrine freedom of religion and equality before
287 the law respectively. But personal laws fall outside the purview of law under Article 13, and
288 so there is a tension between religious freedom and equality.

289 Indian Supreme Court has had to wrestle with these tensions in the past in highlight cases
290 such as Shah Bano (1985), where it upheld the right of the Muslim woman to alimony under
291 the secular law and thus setting off a national debate on the reform of personal law.

292 **6.3. Debates on Uniform Civil Code**

293 Article 44 of the Indian Constitution states that "The State shall endeavor to secure for
294 citizens a Uniform Civil Code throughout the territory of India." Supporters claim that UCC
295 is necessary to ensure gender equality and national integration and opponents argue that it
296 will erode religious freedom and minority rights.

297 Discussion has raged for decades, but comprehensive reform has been elusive, because of the
298 deep social, political and religious sensitivities in play.

299 **6.4. Gender Justice and Personal Law**

300 Personal laws in India have faced criticism for continuing to create inequalities between the
301 sexes, including issues related to divorce, maintenance and inheritance. Women's rights

302 organizations have lobbied for change, and the courts have sometimes stepped in to reject
303 discriminatory language. But the progress has been uneven and contested.

304 **7. Globalization and Cross-Border Challenges**

305 **7.1. Migration and Transnational Families**

306 Globalization has resulted in greater mobility and the development of transnational families,
307 adding to the complexity of the personal law system. Disputes occur if persons with different
308 home addresses, national origins or faiths are embroiled in personal status cases.

309 **7.2. Private International Law**

310 Private international law (conflict of laws) offers solutions to the questions raised, but the two
311 systems of domicile and nationality co-exist, resulting in forum shopping, lack of clarity and
312 inequitable results.

313 **7.3. International Human Rights Norms**

314 International human rights instruments, like the Convention on the Elimination of All Forms
315 of Discrimination Against Women (CEDAW), have pushed states to review personal laws
316 that discriminate by sex or religion. Yet the implementation is still inconsistent, and cultural
317 relativism is still being used as an excuse for pluralism.

318 **8. Contemporary Debates and the Quest for Uniformity**

319 **8.1. Legal Pluralism vs. Uniformity**

320 The presence of several systems of personal law in one state also complicates the issue of
321 legal pluralism and 51 uniformity. Pluralists say that it recognises cultural and religious
322 diversity, while critics complain that it systematises inequality and undermines national
323 solidarity.

324 **8.2. Gender Equality and Social Justice**

325 The most devastating criticism of personal law systems relates to their consequences for
326 gender equality. Personal laws in most countries retain elements of patriarchy, curtailing

327 women's rights in marriage, divorce and inheritance. Reformists want personal laws to be
328 brought in line with constitutional and international assurances of equality.

329 **8.3. Reform Initiatives**

330 Reform efforts have taken various forms, including:

- 331 ➤ The codification of personal laws for the codification and modernization of their
332 contents.
- 333 ➤ Judicial activism to read personal laws in consonance with constitutional principles.
- 334 ➤ Legislation to institute uniform or secular alternatives, such as in India with the
335 Special Marriage Act.

336 However, resistance from religious and community figures, and political and other
337 considerations, have often got in the way of progress.

338 **8.4. The Role of the Judiciary**

339 It is in this interstice between personal law, constitutional rights, and social transformation
340 that courts come to the fore. Typically, challenges to these norms have been resolved through
341 the court system, with court rulings bringing favourable decisions from the perspective of
342 gender justice and secularism even while being criticized for judicial overreach.

343 **9. Conclusion**

344 Personal law occupies an unusual and contested place in the jurisdictional universe, on the
345 cusp of tradition, identity and modernity. Its resilience in plural societies highlights the
346 difficulties of reconciling respect for diversity with the demands of equality and justice.

347 With the increasing diversification and interaction in a society the pressures for reform and
348 standardization of personal law will continue to grow. The way forward is a subtle one,
349 involving respect for cultural and religious identities, on the one hand, and upholding some
350 baseline rights and norms of social justice, on the other.

351 Further studies could look into globalization, the role of international human rights norms,
352 and the everyday life of personal law subjects. In the end, the object should be to build a

353 system of law that is broad enough and equitable enough to suit the complex demands of
354 pluralist societies.

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