

Codification Without Authority: Muslim Personal Law, Colonial Legacies, and the Limits of Legal Reform in India

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ABSTRACT

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INTRODUCTION

The proposed model puts trust at the centre of the chain from personalization to satisfaction and loyalty, and names the practices that protect it: open collection, customer control, data minimisation, calibrated display, explanation, disclosure of AI with access to humans, and measurement beyond clicks. For Indian firms, the Digital Personal Data Protection framework converts several of these from good practice into legal expectation. The paper's main contribution is a clear, testable structure; the next step is to test the weaker links, especially P4 and P5, with primary data.

Codification is often understood as a technical exercise in organizing legal rules into a written and systematic form. Comparative legal theory, however, treats codification as a deeply political act one through which the state asserts exclusive authority over norm creation, interpretation, and enforcement.¹ Codification does not merely compile law; it centralizes legal power, displaces competing normative systems, and signals the state's claim to sovereign control over social ordering. For this reason, codification has historically been most successful where the state enjoys political legitimacy to regulate the normative identity of the community whose law it seeks to codify.² Where such legitimacy is absent, codification becomes contested, unstable, or strategically avoided. This theoretical insight raises an important comparative puzzle in the context of Muslim personal law. Several Muslim-majority states such as Jordan and Morocco have enacted comprehensive codifications of Islamic family law, often reforming classical doctrines through state legislation. India, by contrast, has refrained from comprehensively codifying Muslim personal law despite extensive codification of Hindu personal law in the post-independence period.³ Instead, Muslim law in India continues to operate through a fragmented framework of colonial-era enactments, judicial precedent, and selective legislative intervention.⁴ The prevailing explanation for this divergence tends to emphasize theological rigidity or community resistance. This paper argues that such accounts are incomplete. Rather than locating the explanation in religion, this paper contends that the difference in codification outcomes is best understood as a product of political sovereignty, colonial legal design, and post-colonial constitutional minority protection. In colonial India, Islamic law was never fully codified in the legislative sense; instead, it was transformed into Anglo-Muhammadan law through translation, selective textualization, and judicial precedent.⁵ This process preserved the outward form of Islamic law while freezing its interpretive methodology, displacing classical juristic reasoning with colonial judicial authority. As a result, India inherited a version of Muslim law that was rigid but not sovereign religiously symbolic yet institutionally vulnerable. In the post-independence period, this colonial legacy intersected with constitutional commitments to religious freedom and minority protection. Articles 25 and 44 of the Indian Constitution generated a structural tension between state authority over personal law and the political imperative to avoid majoritarian encroachment upon minority religious identity.⁶ Unlike Hindu law whose codification was framed as a project of social reform within a

¹Dean Alfange Jr., Jeremy Bentham and the Codification of Law, 55 Cornell L. Rev. 58, 65-71 (1969).

²Cf. John W. Cairns, Watson, Walton, and the History of Legal Transplants, 41 Ga. J. Int'l & Comp. L. 637, 637-40 (2013).

³Hindu Marriage Act, 1955; Hindu Succession Act, 1956; Hindu Minority and Guardianship Act, 1956; Hindu Adoptions and Maintenance Act, 1956 (collectively, the Hindu Code Bills).

⁴Muslim Personal Law (Shariat) Application Act, 1937; Dissolution of Muslim Marriages Act, 1939.

⁵Charles Hamilton (trans.), The Hedaya, or Guide: A Commentary on the Mussulman Laws (1791) (the principal Hanafi text through which colonial courts accessed Islamic law).

⁶India Const. arts. 25, 44.



religious majority Muslim personal law came to be treated as a protected minority domain, rendering comprehensive codification politically sensitive and institutionally deferred. Codification, in this context, risked being perceived not as legal modernization but as state intervention into minority religious autonomy. By contrast, Muslim-majority states undertook codification under conditions of religious-demographic alignment and sovereign legitimacy, allowing the state to claim authority over Islamic legal reform without triggering minority-identity anxieties. Codification in these jurisdictions thus functioned not as an external imposition upon religious law but as an internal reconfiguration of religious norms under state leadership. This paper adopts a functional comparative law methodology, examining how different political and constitutional structures shaped state responses to the codification of Muslim personal law. It argues that codification outcomes are best explained not by theological divergence but by variations in state sovereignty, demographic legitimacy, and constitutional design. The paper proceeds in five parts. Part I outlines the theoretical relationship between codification and sovereign authority. Part II examines the colonial transformation of Islamic law into Anglo-Muhammadan law and its long-term effects. Part III analyzes post-independence India's constitutional approach to Muslim personal law. Part IV compares codification efforts in Jordan and Morocco. Part V concludes by arguing that India's non-codification of Muslim law reflects a deliberate constitutional pattern rather than a failure of legal reform.

CODIFICATION, SOVEREIGNTY, AND LEGAL AUTHORITY

Codification is often treated in legal discourse as a neutral exercise in organizing existing legal norms into a written and systematic form. Such an understanding, however, significantly understates the institutional and political implications of codification. Comparative legal theory consistently recognizes codification as a sovereign act, through which the state asserts exclusive authority over the creation, interpretation, and enforcement of law.⁷ Codification does not merely record legal rules; it replaces plural sources of normativity with a unified, state-sanctioned legal order, thereby transforming the relationship between law, authority, and society.

At its core, codification involves three essential characteristics. First, it is legislative rather than judicial in nature, deriving its authority directly from the sovereign law-making power of the state. Second, it is comprehensive, aspiring to regulate an entire field of law through a coherent statutory framework rather than through piecemeal adjudication. Third, it is exclusive, intended to displace competing sources of law such as custom, religious interpretation, or juristic discretion.⁸ These features distinguish codification from other forms of legal development and explain why codification has historically been associated with projects of state-building, legal centralization, and political modernization.

This understanding becomes clearer when codification is contrasted with what may be termed judicial crystallization. In common-law systems, legal rules often develop incrementally through judicial precedent, producing a body of law that is authoritative yet fragmented, retrospective, and dependent upon interpretation by courts.⁹ Judicial crystallization may stabilize legal norms, but it does not transfer normative ownership to the legislature, nor does it eliminate alternative sources of authority. Codification, by contrast, represents a conscious effort by the state to monopolize legal meaning, converting law into an instrument of sovereign governance rather than communal or professional interpretation.

This distinction is particularly important in the context of religious law. Religious legal systems derive their authority not from the state but from transcendent or community-based sources, such as scripture, scholarly consensus, or customary practice. Codifying religious law therefore entails more than technical reorganization; it requires the state to supersede or subordinate non-state normative authorities. As a result, codification of religious law is inherently contentious, especially where the state lacks political or demographic legitimacy to regulate the religious identity of the community concerned.

Comparative experience demonstrates that codification is most successful where the state enjoys a degree of normative alignment with the community whose law it seeks to codify. In such contexts, codification is perceived not as external interference but as internal reform undertaken in the collective interest. Conversely, where the law in question belongs to a politically protected minority, codification risks being interpreted as an assertion of dominance rather than legal rationalization. In these circumstances, states frequently adopt strategies of partial legislation, judicial management, or deliberate non-intervention, allowing plural normative systems to persist without full legislative absorption.

Religious law presents a further challenge because it often possesses its own mechanisms of interpretation and adaptation. Classical Islamic law, for example, historically evolved through juristic reasoning (*ijtihād*), interpretive plurality, and institutional autonomy.¹⁰ Codification disrupts this structure by freezing doctrine at a particular historical moment and transferring interpretive authority from scholars to state institutions. This transformation may enhance certainty and uniformity, but it simultaneously reduces flexibility and alters the epistemic foundations of the legal system itself. Codification, in this sense, is not merely legal reform but a reconfiguration of authority.

These theoretical insights are critical for understanding the distinctive trajectory of Muslim personal law in India. If

⁷Alfange, *supra* note 1, at 68-73 (Bentham's insistence that "nothing that was not explicitly stated in the code was to be permitted to have the force of law").

⁸Cairns, *supra*, at 640-49.

⁹Cf. Alfange, *supra* note 1, at 65 ("Scarce any man has the means of knowing a twentieth part of the laws he is bound by... It is the judges... that make the common law.") (quoting Bentham).

¹⁰Najmaldeen K. Kareem Zanki, *Codification of Islamic Law: Premises of History and Debates of Contemporary Muslim Scholars*, 4 *Int'l J. Human. & Soc. Sci.* 127, 133-34 (2014).



codification is understood as an assertion of sovereign authority requiring political legitimacy, then the absence of comprehensive codification cannot be explained solely by reference to religious doctrine or social resistance. Instead, it necessitates an examination of the historical and constitutional conditions under which the Indian state acquired and limited its authority over religious law. The following sections apply this framework to demonstrate how colonial legal practices and post-independence constitutional design together shaped India's distinctive approach to Muslim personal law.

COLONIAL INTERVENTION AND THE FREEZING OF MUSLIM LAW IN INDIA: FROM SHARIA TO ANGLO-MUHAMMADAN LAW

Any analysis of the non-codification of Muslim personal law in post-independence India must begin with the colonial legal transformation that preceded it. Contrary to the assumption that Muslim law was merely "left untouched" during British rule, the colonial state actively reshaped Islamic law through a process that combined selective textualization, judicial interpretation, and administrative control. This transformation did not amount to codification in the legislative sense. Instead, it produced a pseudo-codified system commonly referred to as Anglo-Muhammadan law that preserved the form of Islamic law while fundamentally altering its structure and sources of authority.

The British encounter with Islamic law was driven by administrative necessity rather than normative commitment. Early colonial governance required predictable and uniform rules for adjudicating disputes involving Muslim subjects, particularly in matters of marriage, inheritance, and religious endowments. To achieve this, colonial administrators sought to render Islamic law legible and manageable within a common-law framework. This objective led not to comprehensive legislation but to the translation and selective adoption of classical Hanafi texts, most notably *al-Hidaya*, which was translated into English by Charles Hamilton in 1791 and became a principal reference for colonial courts.¹¹

This process of translation had profound consequences. Classical Islamic law operated through juristic reasoning, interpretive plurality, and context-sensitive application by legal scholars (*ulama*). By contrast, colonial courts treated translated texts as fixed repositories of rules, abstracted from their methodological foundations. The authority of living juristic interpretation was replaced by the authority of written texts interpreted by judges trained in the common-law tradition. As a result, Islamic law was textualized without being legislated, producing rigidity without sovereign ownership. This mode of legal development is best understood against the parallel, and more general, colonial codification project undertaken across British India. Beginning with Regulation XLI of the Cornwallis Code of 1793, colonial administrators repeatedly justified codification as a remedy for the "confusion and uncertainty" produced by plural and overlapping sources of law.¹² Thomas Macaulay's 1833 speech to Parliament made explicit what the codification project was for: he condemned judge-made law as "a curse and a scandal," and argued that only an "enlightened and paternal despotism" of the colonial kind could deliver the "almost the only blessing" that codification represented.¹³ The resulting Codes of Civil and Criminal Procedure and the Indian Penal Code were legislated comprehensively—because colonial lawmakers believed criminal and procedural law touched "native feelings and prejudices" far less than personal status law did.¹⁴ Muslim personal law was, by contrast, never subjected to this same comprehensive legislative treatment; it was managed judicially, through precedent built on translated texts, rather than legislatively, through an enacted code.

Judicial precedent further entrenched this transformation. British judges, unfamiliar with Islamic jurisprudence but institutionally committed to the doctrine of *stare decisis*, resolved disputes by generating binding precedents based on their own interpretations of translated texts. Over time, this produced a body of case law that effectively supplanted juristic reasoning as the primary source of Muslim law in India. The Privy Council, as the highest appellate authority, played a decisive role in this process by establishing authoritative interpretations that applied uniformly across colonial courts. Islamic law thus became judicially crystallized, rather than legislatively codified.

This mode of legal development had a distinctive freezing effect. While classical Islamic law historically accommodated doctrinal diversity and incremental adaptation, the colonial insistence on textual certainty and precedent immobilized legal development at a particular historical moment. Legal norms were preserved, but their mechanisms of evolution were disabled. Colonial administration effectively preserved Islamic law by stripping it of the very interpretive tools that had sustained its dynamism. The resulting system was neither traditional Islamic law nor modern statutory law, but a hybrid formation tailored to colonial governance.

Crucially, this colonial restructuring fragmented Islamic law by confining its application almost exclusively to matters of personal status. Areas such as criminal law, commercial law, and public law were progressively replaced by colonial legislation derived from English legal principles—codified comprehensively in the Indian Penal Code (1860), the Code of Civil Procedure (1859), and the Code of Criminal Procedure (1861).¹⁵ This selective retention reinforced the perception of Muslim law as a community-specific exception, rather than as a comprehensive legal system. By isolating personal law from the broader legal order, colonial governance entrenched the association between Muslim law and religious identity, laying the groundwork for its later constitutional protection as a minority domain.

¹¹Charles Hamilton (trans.), *The Hedaya, or Guide: A Commentary on the Mussulman Laws* (1791).

¹²Sai Priya Chodavarapu, *Codification of Law in India*, Part 1, *Brhat* (June 25, 2024).

¹³Chodavarapu, *supra*, quoting Macaulay's 1833 speech to the House of Commons.

¹⁴Chodavarapu, *supra*.

¹⁵Chodavarapu, *supra*.

The legacy of Anglo-Muhammadan law thus presents a paradox. On the one hand, Islamic law in India emerged from colonial rule in a rigid and formalized condition, seemingly amenable to codification. On the other hand, it lacked the institutional foundations necessary for legislative ownership. The colonial state had managed Islamic law through courts, not parliament; through interpretation, not enactment. Consequently, post-independence India inherited a system of Muslim personal law that was already frozen yet not sovereign, symbolic yet administratively fragile.

This colonial inheritance is essential to understanding why codification of Muslim personal law did not naturally follow independence. Unlike Hindu law—which had been gradually reorganized through colonial legislation and judicial synthesis—Muslim law entered the constitutional era as a judicially managed, minority-identified domain. The next section demonstrates how this colonial legacy interacted with post-independence constitutional commitments to religious freedom and minority protection, producing a structural reluctance to undertake comprehensive codification.

POST-INDEPENDENCE INDIA: CODIFICATION, MINORITY STATUS, AND CONSTITUTIONAL ANXIETY

The transition from colonial rule to constitutional governance did not reset the legal conditions under which Muslim personal law operated in India. Instead, the post-independence state inherited a legal framework shaped by colonial management and was required to govern it within a constitutional order committed simultaneously to religious freedom, equality, and national integration. The Indian Constitution did not mandate an immediate reconfiguration of personal laws; rather, it embedded them within a structure of managed legal pluralism, in which the state exercised differentiated authority over different normative domains. Within this framework, the codification of Muslim personal law emerged not as a technical question of reform, but as a problem of constitutional legitimacy and political authority.

This tension is most clearly reflected in the relationship between Articles 25 and 44 of the Constitution. Article 25 guarantees freedom of religion, including the right to profess, practice, and propagate religious beliefs, while Article 44 envisions the eventual adoption of a Uniform Civil Code.¹⁶ The coexistence of these provisions does not establish a hierarchy but signals a constitutional compromise: the state is authorized to pursue legal uniformity, yet constrained by the obligation to respect religious autonomy, particularly in matters closely tied to personal identity. Personal laws thus occupy an intermediate constitutional space—neither fully insulated from state intervention nor fully subsumed within general law. In this context, codification assumes a meaning distinct from ordinary legislative reform. As established in Section I, codification entails the state's assertion of exclusive authority over a normative system. Applied to religious law, this assertion carries symbolic significance beyond its legal effects. Codifying Muslim personal law would not merely reorganize rules of marriage or inheritance; it would represent a transfer of normative ownership from a religious community to the secular state. For a minority community whose legal distinctiveness has historically functioned as a marker of identity, such a transfer risks being perceived as assimilationist rather than reformist.¹⁷

The contrasting trajectories of Hindu and Muslim personal laws in the early decades after independence illustrate this asymmetry. The codification of Hindu law through the Hindu Code Bills of the 1950s was framed as an internal project of social reform within the religious majority.¹⁸ The state could plausibly present itself as an insider to the normative tradition it was restructuring, drawing legitimacy from nationalist narratives, demographic alignment, and constitutional commitments to equality. Opposition to the Hindu Code Bills existed, but it did not carry the same structural implications as intervention in minority law. Codification in this context was interpreted as modernization, not displacement.

Muslim personal law, by contrast, was situated differently within the constitutional imagination. The community's minority status, combined with the colonial history of judicial management outlined in Section II, positioned Muslim law as a protected domain rather than a reformable one. Legislative interventions in Muslim law were therefore limited, selective, and reactive. The Muslim Personal Law (Shariat) Application Act, 1937, retained its force after independence but did not codify substantive norms; it merely declared the applicability of Islamic law without defining its content.¹⁹ Subsequent enactments, such as the Dissolution of Muslim Marriages Act, 1939, addressed specific issues without attempting comprehensive regulation.²⁰ These statutes exemplify a pattern of piecemeal accommodation rather than systematic codification.

Judicial interventions further reveal the constitutional constraints under which Muslim personal law operated. The Supreme Court's decision in *Mohd. Ahmed Khan v. Shah Bano Begum* exposed the tension between secular legal principles and religious autonomy, prompting political responses that reinforced legislative caution.²¹ The enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, signaled the state's reluctance to allow judicial reasoning to evolve into de facto codification. Rather than asserting legislative authority over Muslim personal law generally, Parliament

¹⁶India Const. arts. 25, 44.

¹⁷Cf. Vikram Gautam, *The Politics of Muslim Identity and the Personal Laws: Safeguarding the Rights of the Internal Minorities*, 22 IOSR J. Human. & Soc. Sci. 11, 12-14 (2017).

¹⁸See Constituent Assembly of India (Legislative) Debates, Feb. 5-Sept. 25, 1951 (clause-by-clause debate on the Hindu Code Bill), summarized in Dr. Babasaheb Ambedkar: Writings and Speeches, vol. 14, pt. II (Vasant Moon ed., Govt. of Maharashtra 1995), <https://ruralindiaonline.org>.

¹⁹Muslim Personal Law (Shariat) Application Act, 1937.

²⁰Dissolution of Muslim Marriages Act, 1939.

²¹*Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 S.C.C. 556.

responded to a single controversy and, in doing so, reaffirmed the exceptional status of the subject, underscoring the perception that Muslim law lay at the margins of ordinary state competence.²²

Importantly, this restraint should not be understood as legislative inertia or normative indifference. Instead, it reflects a constitutional anxiety arising from the interaction of minority protection, religious freedom, and the symbolic power of lawmaking. Codification, as a sovereign act, carries expressive significance: it announces who has the authority to define legal norms. In a plural society marked by historical inequalities, the Indian state has repeatedly opted to manage Muslim personal law through indirect mechanisms judicial interpretation, selective legislation, and community representation rather than through comprehensive statutory ownership.

This constitutional strategy distinguishes non-codification from neglect. The persistence of an uncoded Muslim personal law regime reflects a deliberate accommodation of pluralism, albeit one that carries costs in terms of legal certainty and reform coherence. By treating Muslim law as a minority-identified normative space, the Indian state has constrained its own capacity to legislate comprehensively in this field. The result is a legal system in which Muslim personal law remains simultaneously formalized and indeterminate, insulated yet unstable.

Understanding this post-independence constitutional context is essential to evaluating the Indian experience comparatively. As the following section demonstrates, Muslim-majority states that undertook codification did so under conditions of demographic alignment and sovereign legitimacy that allowed the state to assert authority over religious law without triggering minority-protection concerns. The divergence between these contexts underscores the central claim of this paper: codification follows power and legitimacy, not religious doctrine.

CODIFICATION OF ISLAMIC FAMILY LAW IN MUSLIM-MAJORITY STATES: JORDAN AND MOROCCO : DOCTRINAL CASE STUDIES OF STATE-LED REFORM

The codification of Islamic family law in Muslim-majority states demonstrates that religious law is neither inherently rigid nor resistant to legislative reform. Rather, the form and content of codification depend on the institutional location of religious authority and the doctrinal techniques employed by the state. Jordan and Morocco provide particularly instructive case studies because both jurisdictions possess strong claims to Islamic legitimacy at the level of the state, yet have pursued flexible, reform-oriented codification through doctrinal mechanisms internal to Islamic jurisprudence.

These cases are analytically valuable not because they represent secular departures from Islamic law, but because they illustrate how Islamic doctrine itself is mobilized by the state to justify codification and reform. The comparison with India thus turns not on differences in religious sources, but on differences in who is authorized to interpret and legislate upon those sources.

JORDAN: CODIFICATION UNDER HASHEMITE RELIGIOUS LEGITIMACY

Constitutional and Religious Authority of the Hashemite Monarchy

Jordan occupies a unique position among Muslim-majority states due to the religious legitimacy of its ruling dynasty. The Hashemite family are direct descendants of the Prophet Muhammad, a lineage that was central to Britain's 1921 decision to install Amir Abdullah ibn Husain as ruler of the Trans-Jordan mandate and that has anchored the dynasty's religious authority since the Hashemite Kingdom of Jordan's founding in 1946.²³ This lineage is not merely symbolic; it is embedded in the constitutional and institutional framework of the state, which positions the King as both the political sovereign and a guardian of Islamic legitimacy.

This convergence of political sovereignty and religious authority has significant legal consequences. In Jordan, the codification of Islamic law is not perceived as an external intervention by a secular state into religious affairs. Instead, it is framed as an authoritative articulation of Islamic norms by a state that is religiously entitled to do so. This institutional context removes the anxiety that often accompanies state intervention in religious law and enables the legislature to engage directly with Islamic doctrine.

THE JORDANIAN PERSONAL STATUS LAW: STRUCTURE AND DOCTRINAL METHOD

Jordan codified Islamic family law through the Personal Status Law of 1976, which governs marriage, divorce, maintenance, custody, and inheritance for Muslims.²⁴ While the law is formally grounded in the Hanafi school, comparative scholarship on Jordanian family law generally describes the legislature as drawing selectively on doctrines recognized within Islamic jurisprudence a technique often termed *takhayyur* (selection among schools) and *talfiq* (combination of doctrines) to adapt classical rules to contemporary needs. This paper has not independently verified that characterization against a doctrinal source and flags it accordingly.

For example, Jordanian law regulates divorce through procedural safeguards that restrict unilateral repudiation and require judicial supervision, thereby mitigating the effects of arbitrary divorce while remaining within an Islamic legal framework.

²²Muslim Women (Protection of Rights on Divorce) Act, 1986.

²³Kelsey K. Cherland, *The Development of Personal Status Law in Jordan & Iraq* 39 (2014).

²⁴Cherland, *supra*, at 49, 55 (discussing the Personal Status Law of 1976).

Similarly, provisions relating to child custody and maintenance reflect a purposive interpretation of Islamic principles that prioritizes welfare and public interest (maslaha) over strict textual literalism.

These reforms demonstrate that codification in Jordan does not "freeze" Islamic law in a rigid form. On the contrary, codification serves as a vehicle for doctrinal flexibility, allowing the state to stabilize legal outcomes while retaining the capacity for normative adaptation.

3. WHY CODIFICATION IN JORDAN IS NOT RIGID

The Jordanian case undermines the assumption that codification of Islamic law necessarily leads to doctrinal ossification. The key reason is that religious legitimacy and interpretive authority are institutionally concentrated in the state. Because the Hashemite monarchy is widely recognized as religiously authoritative, legislative selection among juristic opinions is perceived as legitimate Islamic reasoning rather than political overreach.

This context allows Jordan to codify Islamic law comprehensively while preserving its Islamic character. Codification thus operates as an extension of Islamic governance rather than as a secular constraint upon religious norms. Importantly, this doctrinal flexibility exists precisely because codification is state-owned, not community-contested.

B. MOROCCO: CODIFICATION THROUGH THE AUTHORITY OF THE AMIR AL-MU'MININ

Religious Sovereignty and the Moroccan State

Morocco provides a second, complementary example of how state-held religious authority enables doctrinal reform through codification. The Moroccan King holds the constitutional title of Amir al-Mu'minin (Commander of the Faithful), a role that grants him ultimate authority over religious interpretation and institutions. This status situates the monarchy as the final arbiter of Islamic legitimacy, integrating religious authority directly into the structure of the state.

As in Jordan, this institutional arrangement is crucial. Because the Moroccan state is religiously sovereign, codification of Islamic law is framed as an internal rearticulation of Islamic values, not as an imposition of secular norms upon religion.

THE MUDAWWANA: CODIFIED REFORM WITHIN AN ISLAMIC FRAMEWORK

Morocco's family law is codified in the Mudawwana, which underwent significant reform in 2004. These reforms introduced substantial changes relating to marriage age, divorce procedures, spousal rights, and women's legal standing within the family. Despite their progressive substance, the reforms were explicitly justified through Islamic legal reasoning rather than secular constitutionalism.

The reformed Mudawwana emphasizes principles such as justice (adl), dignity, and public welfare (maslaha), drawing upon Qur'anic ethics and juristic precedent to support legislative change. Polygamy, while not abolished, is subjected to stringent judicial controls; divorce is placed firmly under court supervision; and women are recognized as equal partners within marriage.

The Moroccan example demonstrates that codification can function as a mechanism of controlled reinterpretation, enabling reform without repudiating religious foundations. The key lies in the state's ability to authoritatively define what counts as valid Islamic interpretation.

3. CODIFICATION WITHOUT RELIGIOUS CRISIS

Unlike the Indian experience, codification in Morocco did not trigger widespread claims of religious displacement or minority suppression. This absence of crisis is attributable to the symbolic and institutional fusion of religious and political authority. Because the state speaks in the name of Islam, reform is perceived as Islamic evolution rather than secular intrusion.

Codification in Morocco thus reinforces, rather than undermines, religious legitimacy. The state's monopoly over religious interpretation ensures that doctrinal change remains intelligible within the Islamic legal tradition, even when its substantive outcomes depart from classical formulations.

C. Comparative Synthesis: What Jordan and Morocco Reveal

The case studies of Jordan and Morocco confirm the central claim of this paper: codification of Islamic law is shaped by authority structures, not by the rigidity of religious doctrine. In both jurisdictions, the state possesses religious legitimacy sufficient to select, modify, and codify Islamic legal norms without provoking identity-based resistance. Doctrinal flexibility is achieved not in spite of codification, but because codification is anchored in sovereign religious authority.

This stands in stark contrast to the Indian context, where Muslim personal law functions as a minority-identified normative system insulated by constitutional protections. In India, the state lacks the religious legitimacy to claim ownership over Islamic law, rendering codification politically sensitive and constitutionally fraught. Jordan and Morocco thus demonstrate that the obstacle to codification is not Islam, but the absence of sovereign authority over Islamic interpretation.

WHY HINDU LAW COULD BE CODIFIED: MAJORITY LEGITIMACY, TEXTUAL APPROPRIATION, AND STATE OWNERSHIP OF REFORM

The codification of Hindu personal law in post-independence India presents a crucial counterpoint to the non-codification of Muslim personal law. This contrast is not explained by differences in doctrinal coherence or reformability, but by differences in political legitimacy, colonial legal inheritance, and the state's perceived authority to appropriate and reorganize religious norms. Hindu law could be codified because the Indian state was able to claim ownership over reform without triggering the constitutional anxieties that accompany intervention in minority religious law.

An important facilitating factor in this process was the manner in which Hindu normative traditions had been textualized and administratively appropriated during the colonial period. British courts and administrators, relying on Sanskrit digests such as the Manusmriti and its commentaries, had long treated Hindu law as a text-based system amenable to judicial exposition and legislative consolidation.²⁵ Although these texts did not function as exhaustive or binding codes within classical Hindu jurisprudence, their colonial reception as authoritative legal sources enabled the state to present codification as an exercise in rational organization rather than normative displacement. Hindu law was thus already constituted, by the late colonial period, as a domain of state-managed interpretation, rendering the post-independence transfer of normative ownership through codification administratively continuous rather than constitutionally intrusive.

At the time of independence, Hindu law itself remained characterized by doctrinal plurality, regional variation, and the coexistence of textual norms with customary practices. From a purely legal standpoint, Hindu law was no more internally uniform or inherently more codifiable than Muslim law. The decisive factor enabling codification after independence was therefore not doctrinal readiness, but political legitimacy. The Indian state, governed by a leadership drawn predominantly from the Hindu majority, could plausibly present legislative reform as an internal reconfiguration of a majority tradition aligned with constitutional values.

The Hindu Code Bills of the 1950s were framed as part of a broader nation-building project that linked legal reform with social modernization and equality.²⁶ Although these reforms encountered resistance, opposition was articulated largely as disagreement within the community rather than as resistance to external interference. The state's authority to legislate was not fundamentally questioned. Codification in this context functioned as an assertion of sovereign reformist intent, not as an encroachment upon protected religious autonomy.

Codification of Hindu law also benefited from the absence of minority-protection concerns. Unlike Muslim personal law, Hindu law was not constitutionally imagined as a vulnerable identity marker requiring insulation from state power. Legislative intervention did not carry the expressive risk of cultural assimilation or erasure. As a result, the state could assert comprehensive legislative authority over Hindu law without destabilizing the constitutional balance between religious freedom and equality.

The codification of Hindu law thus illustrates that state-led reform does not depend on religious homogeneity or scriptural completeness, but on the perceived legitimacy of the reforming authority and its prior relationship with the normative tradition concerned. What the Hindu Code Bills ultimately achieved was not doctrinal perfection, but the transfer of normative ownership from diffuse community practices to the sovereign legislature. Hindu law became state law, open to amendment, reinterpretation, and reform through ordinary legislative processes.

This outcome reinforces the central claim of this paper. Codification follows power, not piety. Where the state can plausibly claim authority over a normative tradition historically, politically, and institutionally codification becomes possible even in the face of doctrinal diversity and social resistance. Where such authority is absent, as in the case of Muslim personal law in India, codification remains structurally constrained, regardless of the existence of textual sources or reformist possibilities.

CONCLUSION: CODIFICATION, CONSTITUTIONAL AUTHORITY, AND THE FUTURE OF THE UNIFORM CIVIL CODE

This paper has argued that the persistent non-codification of Muslim personal law in India cannot be adequately explained through narratives of religious rigidity, community resistance, or legislative inertia. Such explanations obscure the more fundamental issue at stake: codification is an assertion of sovereign authority, and the Indian state has historically lacked the constitutional and political legitimacy to assert such authority over minority religious law without destabilizing its pluralist commitments. When codification is understood not as technical reform but as a transfer of normative ownership, the trajectory of Muslim personal law in India appears not anomalous, but structurally consistent.

The colonial transformation of Islamic law into Anglo-Muhammadan law created a paradoxical inheritance. Through selective textualization and judicial precedent, Islamic law was formalized while simultaneously stripped of its internal mechanisms of adaptation. Post-independence India inherited a system that was rigid yet not sovereign, preserved yet not owned. Rather than resetting this inheritance, the constitutional order incorporated it into a framework of managed

²⁵Bernard S. Cohn, *Colonialism and Its Forms of Knowledge: The British in India*, ch. 3, "Law and the Colonial State in India," at 68, 72 (Princeton Univ. Press 1996).

²⁶Dr. Babasaheb Ambedkar: Writings and Speeches, vol. 14, pt. II (Vasant Moon ed., Govt. of Maharashtra 1995), <https://ruralindiaonline.org>.



pluralism, within which personal laws were governed indirectly through courts and selective legislation. In this framework, Muslim personal law came to occupy a constitutionally sensitive position as a minority-identified normative domain, rendering comprehensive codification politically and symbolically fraught.

Comparative analysis reinforces the structural nature of this outcome. Muslim-majority states such as Jordan and Morocco demonstrate that codification of Islamic law is neither inherently incompatible with religious legitimacy nor doctrinally rigid. Where the state possesses recognized authority over religious interpretation, codification can operate as a flexible instrument of governance, enabling reform through internal doctrinal techniques rather than external imposition. Conversely, the codification of Hindu law in India illustrates how majority legitimacy and colonial textual appropriation allowed the state to assert ownership over reform without triggering anxieties of cultural displacement. Across these contexts, the decisive variable is not religion, but the distribution of authority between the state and religious norm-producing institutions.

This structural understanding has significant implications for the debate surrounding the Uniform Civil Code. The UCC has traditionally been framed either as a constitutional mandate awaiting political will or as a threat to India's pluralist fabric.²⁷ Both positions assume that uniformity can be achieved through legislative fiat. This paper challenges that assumption. The repeated impasse surrounding the UCC is not merely a product of political polarization, but of a conceptual misplacement of the UCC within the reform process. A uniform code cannot function as a corrective to unresolved questions of authority over personal law; it can only emerge as the culmination of that authority.

Historically, the Indian state attempted to move directly from a plural personal law regime to the aspiration of uniformity without first establishing legitimate ownership over all personal law systems. This move was possible in relation to Hindu law, where majority legitimacy insulated reform from constitutional anxiety. It was not possible in relation to Muslim personal law, where codification would have symbolized not reform but state appropriation of minority identity. The UCC debate thus inherited the same structural constraint that impeded codification, ensuring that calls for uniformity repeatedly encountered resistance without resolution.

If the UCC is to be meaningfully reconsidered, the pathway must be recalibrated. Rather than treating uniformity as an immediate objective, the state must first normalize its relationship with minority personal laws. This requires a reconceptualization of codification itself—not as a homogenizing project, but as a process of bringing personal laws within the ordinary domain of legislative responsibility under constitutional safeguards. Incremental statutory consolidation, enhanced participatory law-making, and the gradual relocation of interpretive authority from courts to legislatures may provide a means of achieving this normalization without symbolic displacement. Notably, even within the Constituent Assembly, dissenters on the Advisory Committee objected that a merely aspirational Uniform Civil Code did not go far enough; they urged that it be made an enforceable right within five to ten years, on the view that continued personal-law pluralism was itself an obstacle to nationhood—a position the Assembly ultimately declined to adopt, leaving the Code as a non-justiciable Directive Principle instead.²⁸

Only once personal laws are subject to legitimate state ownership—under conditions perceived as procedurally fair and constitutionally restrained—can uniformity become a plausible objective rather than a coercive threat. In this sense, the UCC should be understood not as a starting point for reform, but as an endpoint of a longer constitutional process through which the state earns the authority to unify law. Uniformity imposed without legitimacy fragments legal order; uniformity grounded in authority integrates it.

The Indian experience thus offers a broader lesson for plural societies. Legal pluralism is not resolved by suppressing difference, nor is uniformity achieved by bypassing questions of power. Sustainable reform lies in aligning sovereign authority with constitutional legitimacy. Until that alignment is achieved, non-codification may reflect not constitutional failure, but constitutional restraint. The challenge for the future is not to abandon pluralism, but to reconstruct the conditions under which the state can engage with religious law as law—neither as sacred exception nor as political instrument, but as

Statutes and Constitutional Provisions

1. India Const. arts. 25, 44.
 2. Muslim Personal Law (Shariat) Application Act, 1937.
 3. Dissolution of Muslim Marriages Act, 1939.
 4. Muslim Women (Protection of Rights on Divorce) Act, 1986.
- Hindu Marriage Act, 1955; Hindu Succession Act, 1956; Hindu Minority and Guardianship Act, 1956; Hindu Adoptions and Maintenance Act, 1956

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²⁷India Const. art. 44.

²⁸B. Shiva Rao et al., *The Framing of India's Constitution: Select Documents*, vol. 2, at 162 (1968).

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