CHAPTER 1

INDIAN PERSONAL LAW

Toward a Comparative Theoretical Perspective

In 1985, conservative Muslims in India resisted a decree by the Supreme Court to grant alimony to a Muslim woman. They considered it contrary to Islamic law, and thus to depart from an important way in which the Indian state recognized religious identity. Women's organizations and social reformers defended the judgment for upholding women's rights, constitutional law, and universalistic moral principles, and Hindu nationalists supported it for prioritizing Indian national integration over a Muslim insistence on difference. The involvement of various organizations in nationwide demonstrations and debates over this case, *Mohammad Ahmed Khan v. Shah Bano Begum*, commonly called the *Shah Bano* case, brought the distinct personal laws that govern India's major religious groups the greatest public attention they had received since the 1950s.[1] The dramatization of a sense of damage to the Muslim community pressed the woman to renounce her alimony and parliament to pass in 1986

the Muslim Women (Protection of Rights on Divorce) Act (MWPRDA), meant to overturn the judgment. Hindu nationalists and some modernists claimed that the Act accommodated a misogynistic tradition and undermined the prospects of social reform. However, this was not so.

The woman's lawyers demanded alimony based solely on particular interpretations of Islamic legal traditions, which were among the grounds of the court's judgment too. Muslims had not reacted much to earlier alimony decrees in favor of Muslim women, but many of them opposed this judgment because it cited claims that Islam was incompatible with women's dignity (albeit without supporting these claims), independently interpreted Islamic texts, declared that commonly applicable criminal laws could override Muslim law, and called for uniform family laws. The Muslim opponents of the judgment included some who favored or were at least open to the requirement of alimony, as well as the inclusion of other provisions favorable to women in Muslim law. Some reformers, including the leader of the woman's legal team, had reservations about the judgment, but supported it nevertheless because they favored the requirement of alimony, they did not wish their reservations to be used to hinder Muslim law reform, the case pitted a prosperous lawyer against a housewife in her late sixties to whom he had been married for four decades, and the alimony decreed accounted for a small share of the man's income. Although the MWPRDA was meant to relieve Muslim men of alimony obligations, the courts subsequently interpreted it according to reformist understandings of Islamic traditions and constitutional principles, to maintain Muslim women's alimony rights. This reflected the grounds on which the personal laws of the religious minorities were changed from the 1970s—the concerned group's statutes, traditions, practices, and initiatives, rather than commonly applicable laws alone. Some of these changes increased women's rights and led to convergence in certain features of India's major personal laws, even while these laws bore the influence of distinctive religious-legal traditions. This partly resolved the tension between the recognition of religious traditions in personal law and the reform of personal law, and weakened conservative resistance to social reform.

Why did many believe nevertheless that Muslim difference had undermined women's rights? Ruling elites had focused their efforts to promote the modern Indian family on the laws of the Hindu majority since indepen-

dence. They misunderstood Muslim demands to be governed by distinct personal laws as resistance to changes in these laws, and attempted no changes in the minority laws until the 1970s, although certain minority traditions and initiatives supported reform. These choices accompanied the growth of a public rhetoric that equated the Hindu, the Indian, and the secular-modern, and contrasted this triad with the Muslim, minority difference, and resistance to modernity. This discourse acquired force although the notions of Indian modernity that shaped Hindu law reform had mixed implications for gender relations, and although Muslim law gave women greater rights in certain respects than Hindu law even after Hindu law was reformed in the 1950s. It influenced how many people understood *Shah Bano*, but did not determine subsequent legal change and cultural mobilization. Rights organizations valued recognition more from the 1980s, and shifted their attention from uniform family laws to culturally grounded personal law reform, thus contributing to and reinforcing the pattern of legal change.

Nation and Family explores personal law as an important arena in which official nationalism, multiculturalism, secularism, and citizenship were formed and expressed in India since independence. It poses the following questions: Why were distinct personal laws retained after independence? Why were changes made only in Hindu law until the 1970s? Why did minority law reform begin from the 1970s? Why was personal-law reform in India modest, yet significant, when viewed in a comparative perspective? What explains the specific nature of the major legal changes? What effects did these reforms have on gender relations and individual liberties, and thus on the quality of democracy?

1. A COMPARATIVE PERSPECTIVE ON THE FORMATION OF PERSONAL LAW

The forces that shaped Indian personal law become clearer when they are placed in a comparative context. States recognize difference in many societies by applying distinct personal laws to specific cultural groups. While recognition is particularly important to represent culturally inflected interests in diverse societies, multicultural institutions and policies often provide unequal rights to citizens, and impede individual liberty, policy change, and cultural

exchange. If multiculturalism has such consequences, it could erode some of the foundations of democracy, or prevent democracy from realizing one of its major promises—the attainment of levels of equality in rights and life chances sufficient for citizens to be autonomous political actors. Many consider both the recognition of cultural specificity and the reduction of social inequality crucial to the stability and quality of democracy in most contexts. A major task of democratic governance in culturally diverse societies is the reconciliation of the goals of cultural accommodation and the promotion of social equality.[2]

The tensions between recognition, equality, and liberty are especially pronounced in the domain of personal law or family law. Personal-law systems govern practices like marriage, divorce, marital separation, alimony, property division on separation and divorce, adoption, guardianship, and inheritance. They support unequal rights for the genders in various ways because they are shaped according to understandings of group norms, and the norms of most groups that these systems govern give the genders unequal rights in family life, or at least did so when these legal systems took shape. Besides, policy makers particularly incorporated gender-unequal norms into group law during crucial phases of state formation when they did not prioritize gender equality, and conservative forces often successfully resisted efforts to change these laws thereafter, by presenting such changes as threats to group identity. Moreover, personal laws constrain individual autonomy, as they usually give individuals little choice about the laws that govern them, and accept dominant understandings of group norms.[3]

Many colonial states in Asia, Africa, the Middle East, the Americas, and the Pacific Islands recognized distinct family laws for various cultural groups, and most postcolonial rulers retained many features of colonial personal law. The formation of postcolonial family law in these societies aroused many related tensions: between national consolidation and cultural accommodation; between the pursuit of modernity and cultural authenticity, variously conceived; between recognition and individual liberty; and between the aims of promoting gender equality, recognized in many constitutions and transnational human rights discourse, and the gender-unequal rights recognized by the existing personal laws. Moreover, personal laws that applied to specific religious groups and drew upon religious norms required reconciliation with

the aims of the secularist states that recognized these laws to limit and change the public roles of religion. Liberal-democratic secularist states (and states that presented themselves as such) also had to reconcile the recognition of religion in personal law with their goals, actual or proclaimed, to promote religious freedom and to treat different religious groups similarly. Some of these tensions became associated with policy debates in Europe and Canada too, with the growth of demands that different personal laws govern some recent Muslim immigrant groups, and the emergence of community courts that resolved some disputes within these groups.[4]

Many of the cultural traditions that personal laws recognize are diverse and dynamic, and their implications for contemporary life are contested. This provides states considerable space to introduce culturally grounded personal-law reforms that reduce inequalities, promote liberties, and treat various religious groups similarly. Projects to build nations, maintain or change cultures, and form citizens influenced the forms in which contemporary states recognized traditions and the extent to which they appropriated the authority to regulate family and intimacy from lineages and religious elites. States retained much of colonial personal law, which upheld lineage authority in various ways in Lebanon, Syria, Algeria, and until recently, Morocco, where the social groups that valued the sources of these laws or had an interest in the types of family relations that these laws supported had considerable policy influence. In Turkey and Tunisia, ruling elites prioritized the promotion of their visions of modernity and the control of the state over religious, ethnic, and kin institutions, and changed personal law extensively soon after they came to power, although this reduced their support and generated much social conflict. They empowered the nuclear family and increased women's rights through the secularization of family law in Turkey and the reform of Islamic law in Tunisia. In Senegal, Libya, Egypt, Jordan, Iraq, Iran under the Pahlavis, Pakistan (until the 1970s), India, Sri Lanka, Bangladesh, Malaysia, Indonesia, and the Philippines, ruling elites were allied with modernist urban elites, as well as with traditionalist religious, ethnic, and kin leaders, and wished to maintain and broaden their support. Their vision of indigenously rooted forms of modernity and their inclination to accommodate traditionalist leaders led them to make modest changes in personal law based on group norms, changes that increased the autonomy of the nuclear family and women

TABLE 1.1 Nature of Change in Personal Law Soon After Independence/ Regime Change

	Extensive Modernist Reform	*Moderate Modernist Reform*	*Limited Change*
Countries	Turkey, Albania, Tunisia	Senegal, Libya, Egypt, Jordan, Iraq, Iran,[1] Pakistan,[2] India, Sri Lanka, Bangladesh, Malaysia, Indonesia, Thailand, Philippines	Morocco, Algeria, Lebanon, Syria, Malawi

[1] Iran under the Pahlavis, not since the Islamic revolution
[2] Pakistan until the 1970s

in certain respects and maintained the authority of patrilineages and men in other respects. (Table 1.1 indicates these patterns of development in personal law in various representative countries soon after decolonization or soon after a regime that distinguished itself from its predecessors by claiming to be modern assumed power). Moreover, further reforms were introduced in the Philippines, most of Indonesia, west peninsular Malaysia, Bangladesh, India, Egypt, and Morocco a generation or two after independence because ruling elites became more oriented to social reform, and reformist mobilization grew stronger. Starting in the 1970s the increased influence of conservative leaders over either national or state governments induced changes in personal law that reduced women's rights and constrained individual autonomy in Iran, Pakistan, Sudan, northern Nigeria, Afghanistan, east peninsular Malaysia, and Aceh, Indonesia.[5] (Table 1.2 captures the trends in several countries since the 1970s).

The different approaches taken to nation formation, the recognition of religion and cultural diversity, and the regulation of family life are part of the larger trend of the emergence of distinctive forms of modernity and reconstructed traditions across the world since the eighteenth century, in the course of state centralization, colonial and other transregional exchanges, and capitalist development. Scholars have noted the influence of differences in social structure and culture, and variations in cultural and political mobilization and state-society relations, on polity type,[6] the nature and level of industrialization,[7] patterns of secularization and change in religious practice and values,[8] the nature of nationalism and politicized ethnicity,[9] and the character of recently re-formed traditions.[10] This book extends these considerations of

TABLE 1.2 Effects of Changes in Personal Law Since the 1970s on Women's Rights and Individual Autonomy

	Significant Increase	*Moderate Increase*	*Limited Change*	*Significant Decrease*
Countries/Regions	Morocco	Philippines, Indonesia,[1] Malaysia,[2] Bangladesh, India, Sri Lanka, Jordan, Egypt, Senegal	Algeria, Lebanon, Syria, Malawi	Aceh (Indonesia), Malaysia,[3] Pakistan, Afghanistan,[4] Iran,[5] Sudan, Nigeria

[1] Most of Indonesia, but not Aceh over the past decade
[2] West peninsular Malaysia and nonpeninsular Malaysia (provinces of Sabah and Sarawak)
[3] East peninsular Malaysia (provinces of Kelantan and Terengganu)
[4] Especially under the rule of the Taliban, 1996–2001
[5] Especially soon after the Islamic revolution

alternative modernities to the analysis of patterns of recognition of religion, forms of secularism, and approaches to social reform and the regulation of family life.

India, with its complex and cross-cutting variations along the lines of religion, language, and caste, is the preeminent instance of the use of multicultural policies to maintain democracy and represent culturally inflected interests. It therefore offers a fine locus to consider the engagement of policy makers and political and cultural mobilizers with concerns of nation formation and recognition. The major forms of cultural accommodation are federalism, the formation of states largely along the lines of language use, the use of a range of official languages by the national government and the state governments, the introduction and later expansion of preferential policies in education and government employment largely based on membership in particular castes or tribes, the provision of political representation and special civil rights protections to the lower castes (called "scheduled castes" since 1936) and tribal groups (called "scheduled tribes"), the restriction of land rights to the members of certain tribal groups in the regions of their prolonged habitation, and the recognition of different personal laws governing the larger religious groups and many tribal groups. The book's examination of the formation of postcolonial Indian personal law engages the literatures on nationhood and recognition, postcolonial cultural politics, secularism and contemporary religion, and legal institutions, social identities, and gendered citizenship. The book explores the influence of discourses about the nation and its religious

and other cultural groups and traditions, along with certain aspects of state-society relations on personal law, multiculturalism, and secularism in postcolonial India, in new ways.

The formation of personal law and certain features of nationalist and cultural mobilization under colonial rule set the stage for the construction of official nationalism, secularism, multiculturalism, and personal law in postcolonial India. The rest of the chapter outlines major features of these colonial experiences, as a background to the discussion of postcolonial personal law in the later chapters.

II. OVERVIEW OF EXPERIENCE IN COLONIAL INDIA

The colonial state recognized religious norms as the main basis of personal law in India. Certain religious norms were incorporated into the common-law framework in which the rest of the legal system operated, after being vetted according to the variously applied standard of compatibility with "justice, equity and good conscience." Of the laws governing the major religious groups, Hindu law and Muslim law were based on common law-influenced interpretations of prior religious and religious-jurisprudential traditions and some aspects of British law, both English and Scottish, while the main statutes of Christian law, passed in the 1860s and 1870s, drew largely from British legislation of the nineteenth century. Hindu and Muslim personal law were sometimes called Anglo-Hindu and Anglo-Muhammadan law, to capture the ways in which they amalgamated British and Hindu or Islamic legal traditions. Distinct personal laws were also applied to Parsis and Jews, both of which were small communities in British India. The census estimates Hindus, Muslims, Christians, and Sikhs to account for 80.5 percent, 13.4 percent, 2.3 percent, and 1.9 percent respectively of India's population currently, and Parsis and Jews for less than 0.1 percent of the population each. The population shares of the Hindus and the Muslims were 69.5 percent and 24.3 percent respectively in colonial India.[11] The book focuses on the three major personal-law systems of India, the Hindu, the Muslim, and the Christian. Bodies of customary law were applied to various tribal groups, and to the majority of residents of certain regions, particularly in the Punjab and the North-West Frontier Province in northwestern colonial India. Personal laws were pre-

sented as based largely on authoritative religious texts and the understandings of various religious scholars, Indologists, and Orientalists, while customary laws were said to be based primarily on the customs of various groups, gleaned primarily by anthropologists. Moreover, the state courts recognized certain customs specific to sect, language group, region, caste, and tribe as bases on which litigants might depart from the rules of their religious group's personal law if they could demonstrate that these customs were undisputed and long lasting.

State courts considered personal-law cases, but administrators also provided space for various community courts to consider such disputes without necessarily accepting their verdicts or implementing them. Various social groups pressed their concerns in the state courts as well as in community courts, and certain new religious institutions and caste associations developed new community courts.

A. Religious Mobilization and Colonial Personal Law

New forms of religious mobilization emerged in response to certain features of the colonial context: the exposure, particularly of Western-educated elites, to post-Enlightenment ideas; the formation of European understandings of Indian religious traditions, primarily with reference to certain major texts; the presentation of British cultures and practices as civilized and superior; the dissemination of liberal European and Christian missionary criticisms of various features of local religions and cultures; a decline in the influence of non-Christian religious norms and religious elites over governance; the classification of the population into enumerated religious groups in censuses; and the state's tendency to allocate resources and make policy partly based on religious identity. These changes encouraged the mobilization of religious communities across wide territories, efforts to reform religious practices to meet certain standards of colonial modernity, initiatives to purify religious practice to conform more closely to particular interpretations of religious norms and texts, and attempts to gain official recognition for certain reformed / revived religious norms.[12]

Different South Asian words were translated as "reform" and "revival," and served as flags for initiatives that had varying implications for social inequality and the relationships between religious groups. Some mobilizers interpreted

religious traditions or sought to change them to support the reduction of certain social inequalities—for instance, by urging greater education among women, the remarriage of widows, less authoritarian relations between spouses, and interaction on more equal terms between differently ranked castes. Others upheld the privileges of the upper castes and other groups of higher status, and restrictions on the rights of female kin and children. Efforts to reduce inequalities were more often presented as innovative among Hindus, and as a return to the egalitarian features of the religion's founding texts and practices among Muslims. Religious mobilization enabled cultural exchange across religious boundaries in some respects, but policed these boundaries with greater vigilance in others.

Religious mobilization sometimes addressed personal law and the criminal laws pertaining to family life. It did so much more among Muslims than among Hindus, as traditions of religious law were better formed before British rule, and the authority of religious elites depended far more on their expertise in religious law, among Muslims. The *ulama* (Islamic religious scholars / religious elites) initially opposed the restriction of the scope of Islamic law to personal life, but shifted from the late nineteenth century to a defense of Muslim personal law as it operated in the state courts. They accommodated themselves thus to the rule of colonial law, and linked Muslim personal law to the recognition of Muslim religious identity. The adoption of such a posture by the guardians of the faith encouraged others to equate Muslim personal law with *shari'a*, the moral norms indicated in the Qur'an and the practices of the early Islamic community, which are the primary sources of Islamic jurisprudence. However, *qazis* (Islamic religious judges) continued to mediate family disputes.[13] Moreover, the major religious institutions that emerged from the mid-nineteenth century, especially the Darul Uloom Deoband (DUD), built new institutionalized religious court systems and urged their followers to seek these courts rather than the state courts, particularly when they were disappointed with certain interpretations of Muslim law in the state courts. Muslim reformers educated mainly in secular institutions also contested certain ways in which the colonial courts interpreted Muslim law.

The common-law convention of following precedent became an important part of personal-law adjudication in the state courts, especially after the courts ended the regular consultation of Hindu and Muslim religious schol-

ars in the 1860s. This reduced flexibility in adjudication and marginalized certain processes through which religious norms and approaches to adjudication had changed before colonial rule. It particularly limited the role in official Muslim law of *fiqh* (a form of jurisprudence as well as substantive rules developed on the basis of ongoing dialogue among Islamic jurists to construe the implications of authoritative texts for new social predicaments and new kinds of disputes) and *ijtihad* (innovative methods of legal interpretation that were used more often than orthodox Sunni religious scholars claimed). However, many Muslims revived such deliberative processes through which intellectuals tried to arrive at consensus. Some Muslims educated in secular institutions revived *ijtihad* as a way to wrest the authority to interpret the meaning of Islam for contemporary life from the *ulama*, and to arrive at norms conducive to greater economic success in the colonial and postcolonial contexts. Many *ulama* also continued their engagement in *fiqh* to orient Muslims in a context of growing secularization, state consolidation, and interreligious competition; to deduce ways to resolve disputes in religious courts; and to suggest approaches to Muslim personal law in the state courts. This gave classical forms of Islamic legal reasoning a continued and somewhat autonomous existence despite their incorporation into colonial law.

Both secularized Muslim intellectuals and the *ulama* piloted some changes in Muslim personal law. The former were primarily involved in the passage of the Mussulman Wakf Validating Act (MWVA) of 1913, which approved bequests to family members (parents sometimes used bequests to give property to their daughters rather than to extended kin). Both groups participated in passing the Muslim Personal Law (Shariat) Application Act (the Shariat Act) in 1937, which made Islamic law rather than local custom the basis of the regulation of Muslim personal life, and the Dissolution of Muslim Marriages Act (DMMA) of 1939, which increased women's divorce rights. These agents passed the Shariat Act to limit the legal relevance of regional custom, which they tended to consider un-Islamic—perhaps Hindu—as well as to consolidate Muslims as a political and cultural community by applying the same laws to them in many respects. But landholding elites ensured the continued application of custom to the inheritance of agricultural land because they wanted patrilineages to retain control over such land rather than cede control to individual kin, especially women. The concern that the limited divorce

rights of the majority of Indian Muslim women, who followed the Hanafi school of Islamic law, would lead some of them to resort to apostasy as a means to access divorce led some major *ulama* to draw from the Maliki school of Islamic law, followed in parts of north Africa, to enable Muslim women to divorce their husbands if they were found to have abrogated their spousal obligations, for instance through adultery, desertion, or cruelty.[14]

Mobilization regarding Hindu law was based less on prior traditions of jurisprudence and more on new forms of dialogue between religious normativities, customs specific to region and caste, and post-Enlightenment ideas. Colonial bureaucrats considered the *shastras* (classical Hindu texts of the first millennium BCE and the first millennium CE) the bases of classical Hindu law, much as the Qur'an and the *hadith* (reputable narratives of the early Islamic community) were sources of classical Islamic law. However, the *shastras* had mainly provided moral guidelines and suggestions for dispute resolution by community institutions rather than rules to govern regulation by states and religious institutions, differing in this respect from Islamic law and Christian canon. Colonial Hindu personal law was based largely on certain important commentaries on these *shastras* from the end of the first millennium and the beginning of the second millennium CE, as well as precedents in the colonial courts, as reflected in the texts of Hindu law compiled by British Orientalists, colonial administrators, and lawyers and judges.[15]

Hindu traditions were open to diverse forms of *achara* (normative practice).[16] This made it easier to credibly present customs specific to region and caste clusters as part of a pan-Indian Hindu tradition. Certain customary practices that predated colonial rule or emerged in the colonial period were the bases of demands regarding the content of Hindu law. Colonial Hindu law recognized some precolonial customs, while transforming them by giving them the fixity of precedent.[17] The central place of Hindus in predominant colonial and nationalist constructions of India also suggested links between particular group customs and Indian national culture. These factors made it easier for cultural mobilizers to attempt the consolidation of the Hindu community around the customs of certain groups, as the Hindu nationalists did around the customs of their core support groups, the upper and upper-middle castes of northern and western India. Community courts run by vil-

lage and caste associations resolved disputes with reference to changing local norms. They presented their approaches as either based in Hindu traditions or meant to enable the progress of their communities in changing social contexts. However, Hindu religious elites and religious institutions did not attend to the maintenance of classical forms of religious education and reasoning as much their Muslim counterparts did.

Religious figures, caste and other community mobilizers, and modernist intellectuals conceived projects of Hindu reform and spirituality based on amalgamating precolonial Indian mentalities and post-Enlightenment Western outlooks in various ways. Such forms of reasoning were used to urge, variously, the homogenization of Hindu law as well as the maintenance of customary exceptions to these laws, and to both maintain hereditary inequalities in rights and status and to reduce some of these inequalities. They influenced changes in Hindu law, such as the extension to widows of lifetime shares ("limited estate") in their deceased husbands' property through the Hindu Widows Right to Property Act of 1937. These changes were more limited in scope than those introduced in Muslim law in the 1930s. Two Hindu Law Committees considered more extensive changes in Hindu law in the 1940s.[18]

Muslim elites voiced demands to retain a distinct personal-law system most strongly, but this was also the preference of most mobilized members of the other religious groups. This included many Sikhs who wanted the customary law of Punjab, where the group was concentrated, to govern their family lives after independence as it had in the colonial period, as well as various Hindus who preferred different versions of colonial Hindu law. Some Muslim religious elites also wanted religious law to once again regulate commerce and crime, but did not press this claim, as they realized it was not feasible.

Ideas of administrative efficiency, legal rationality, public order, health and morality, individual liberty, the revitalization / reform of religious and other cultural traditions, and the protection or occasionally the empowerment of weaker groups also motivated bureaucrats and legal elites to consider changes in family law. The initiatives of cultural mobilizers, legal elites, and bureaucrats led to other family-law reforms in the colonial period; the most important of these set and then increased the minimum marriage age and

the age of consent, and enabled the remarriage of Hindu widows. Moreover, they set the stage for postcolonial debates regarding family law.[19]

B. Indian Nationalism and Legal Reform

The Indian nationalists who became politically dominant after the First World War varied in their understanding of the nation, their inclination to recognize cultural difference, and the relative emphasis they placed on the revaluation of indigenous traditions and the transformation of these traditions to meet colonial standards of modernity; they engaged to different extents with particular social and religious currents. Despite these differences, the majority of them agreed about certain features of social reform. They aimed for culturally grounded reforms in social practice and personal law that would promote post-Enlightenment ideals such as social equality and individual liberty in certain ways, but did not propose to systematically vet personal law with reference to these ends. Virtually none of them wished to follow the Turkish example of rapid secularization of certain areas of public life, attacks on religious institutions and symbols, and the importation of Western institutions and legal systems in their entirety, although they shared a commitment to build a secular state with Turkish republican leaders.

Jawaharlal Nehru, who became the most influential modernist nationalist by the 1940s, favored the formation of a centralized state that would foster economic development along the lines followed by industrialized societies during the interwar period, the establishment of parliamentary democracy, the adoption of official multiculturalism and secularism, and the judicious promotion of social equality through measures such as land reform, the provision of preferential policies for the lower castes, the promotion of women's education and employment, and the enhancement of lower-caste access to public spaces such as places of worship. He considered these the appropriate ways to revive the earlier national glory associated with kingdoms led by Hindus, Muslims, Buddhists, and Jains, and to promote interreligious cooperation. While valuing syncretic cultures, Nehru wished to recognize certain distinctive features of group culture. Modernists like him wished to change the personal laws, and initially Hindu law, to promote equality and liberty, but largely based on the relevant group's legal and normative traditions as they saw them.[20]

The more conservative traditionalist Indian nationalists, such as Bal Gangadhar Tilak and Madan Mohan Malaviya, viewed the nation as an aggregate of distinct cultural groups with largely static cultural traditions. They resisted efforts to promote caste mobility and reform the personal laws to give women greater rights and extend individuals greater liberties, and were wary of syncretic practices. Such conservatives opposed an increase in the age of consent from ten to twelve in the 1890s, an increase in the minimum age of marriage for women from twelve to fifteen in the 1920s, and efforts to increase Hindu daughters' inheritance rights and give both Hindu men and women divorce rights in the 1950s. Both their celebration of certain Hindu festivals as Indian nationalist rituals and their efforts to maintain social boundaries enabled them to build alliances with Hindu nationalists, who connected Indian national revival to Hindu political and cultural supremacy, valued the cultures of the upper and upper-middle Hindu castes of northern and western India, and wished to assimilate other groups into many of these groups' practices.[21] This alliance led the opposition to Hindu law reform in the 1940s and 1950s. While the Hindu nationalists voiced a preference for a Uniform Civil Code (UCC) even then, they focused on preventing most proposed reforms in Hindu law or preventing the application of these reforms to their support groups.

Mohandas ("Mahatma") Gandhi was the most influential among the less conservative traditionalists. He considered precolonial India a collection of static and autarkic villages, wished to revive such a nonindustrial nation, and imagined a national tradition in which castes were interdependent occupational groups of equal status and landlords used land to benefit the entire village. To promote this vision, he organized improvements in the social conditions of the lower castes, tried to reduce untouchability practices in some villages, and supported initiatives to end child marriage and to give the lower castes access to temples.[22] Along with pluralist modernists like Nehru, he valued syncretism while wishing to recognize difference, and took the reform of Hindu society to be the main basis for making the Indian citizen. Moreover, most Indian nationalists, whether traditionalist or modernist, did not engage closely with mobilization among the religious minorities and were unfamiliar with the religious discourses in which these efforts were largely conceived, and so took the norms valued by the more influential minority leaders to represent the cultures of these groups.

The less conservative traditionalists and modernists were predominant in the leadership of the Indian National Congress (Congress Party) of the 1940s, and included the party's two most popular leaders, Gandhi and Nehru. These informal factions thus had greater influence over early postcolonial policy, especially the initial proposals about personal law. However, conservative traditionalists and Hindu nationalists also accounted for a significant section of the political elite and the first two postcolonial parliaments, and so had a voice in policy making. As the movement to form Pakistan as a separate country for the Muslims of British India grew, certain major Congress Party leaders came to an agreement to continue the recognition of a distinct Muslim law with some Muslim religious elites that preferred to remain a part of India. Their focus on reforming Hindu society and their distance from non-Hindu cultural mobilization made them inclined to reform Hindu law, and to take minority accommodation to require the retention of the minority personal laws in their existing form. This was the case although various Muslim leaders had initiated more changes in Muslim law than had been made in Hindu law in the last colonial decades, and were open to further changes if the majority of Muslim political representatives favored them.

III. ORGANIZATION OF THE STUDY

Chapter 2 develops the major arguments of the study by comparing Indian experiences with trends in various other developing societies in which personal laws specific to religious groups, sects, or ethnic groups that were based partly on religious and other cultural norms were recognized in the early twentieth century. It argues that the discourses of community that influence policy makers and popular mobilization interact with certain aspects of the relations between state and society and that these two factors influence approaches to cultural accommodation and personal law. This argument is developed through a critical exploration of the literature on family law and legal change, state formation, nationalism and cultural politics, secularism and public religion, and multiculturalism, with reference to the aforementioned experiences. Chapter 3 examines the formation of the Indian state's approach to personal law in the first postcolonial decade, the reasons for the focus on changing Hindu law, and the specific changes introduced in Hindu law in

the 1950s. It highlights the introduction of rights to divorce—largely based on spousal fault and granted after a period of judicial separation, to indicate the forms of family life that state elites valued—and the compromise over inheritance rights, which indicated the intention to empower women while partly accommodating conservatives who wished to maintain patrilineal authority over property. Chapter 4 explores the changes that judges and legislators made in Hindu law since the 1960s, especially the increase in divorce rights—based on mutual consent or spousal fault without an intervening phase of judicial separation—and the extension of greater rights to daughters over family property. Chapter 5 discusses the experiences pertaining to the laws governing India's two largest religious minorities, the Muslims and the Christians. It highlights the reasons why policy makers did not change these laws soon after independence although support for personal-law reform was comparable among Muslims and Hindus. Moreover, it investigates the changes in cultural and legal mobilization, litigation patterns, and policy makers' knowledge and values that contributed to reforms in the minority laws since the 1970s—notably the extension of alimony rights and restriction of unilateral male repudiation among Muslims, and an increase in divorce rights and the equalization of divorce rights for men and women among Christians. This chapter also identifies certain ways in which policy elites' majoritarian nationalist visions and limited knowledge of minority traditions and initiatives restricted the accommodation of culturally grounded demands for minority law reform. The Conclusion summarizes the major findings and indicates the likely directions of change in India's personal laws over the next decade or two. It highlights certain lessons that may be drawn from the study about how multiculturalism and secularism may be revised in India and some other developing countries, and the forms of cultural discourse and political mobilization that would enable such policy changes.