

Dharma as the Moral Foundation of Family Law in India: A Jurisprudential Study

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Abstract-- This paper investigates the jurisprudential evolution of *Dharma* from a moral-ethical ideal in classical Hindu philosophy into a foundational influence on Hindu family law, including marriage, inheritance, and kinship duties. It analyses how *Dharma* functioned historically as an internal moral compass rather than external enforceable law, and how colonial codification erroneously transformed *Dharma* into statutory legal doctrine. Drawing on interdisciplinary scholarship, including Bernard S. Jackson's theory of transformation "from *Dharma* to Law" and contemporary judicial interpretations, the study demonstrates how modern Indian family law incorporates constitutional morality, gender equality, and individual rights while maintaining *Dharma* as a cultural-ethical backdrop. The paper concludes that *Dharma* survives more as a moral principle rather than a legally enforceable doctrine and argues for a constructive reinterpretation of *Dharma* in harmony with modern justice and constitutional values.

I. INTRODUCTION

Family law in India is a complex legal domain that merges statute with custom, historical continuity with contemporary reform, and moral philosophy with constitutional principles. At its core lies *Dharma* — a notion deeply embedded in ancient Indian intellectual and cultural tradition. *Dharma* cannot be reduced to a single definition; it encompasses righteousness, moral duty, harmonious living, cosmic order, and social responsibility. In classical Hindu thought, family life was one of the primary realms in which *Dharma* manifested, shaping ideas of marriage, progeny, inheritance, kinship, and gender roles.

Unlike Western legal systems that evolved through explicit codification, Roman-influenced jurisprudence, and secular rationalism, early Indian legal practice was not founded upon statutory proclamations or parliamentary enactments. Rather, it evolved organically through Dharmic philosophy, guided by sages, transmitted orally and textually through *Dharmasutras* and *Dharmashastras*, and reinforced by social expectation rather than formal legal coercion. *Dharma* functioned as an internalized ethic, a moral compass shaping conduct through conscience and cultural consensus.

In this way, the family was governed not by courts or police power, but by duties, roles, obligations, and virtues collectively affirmed and ritually embedded.

Family law in India suggests more than legal regulation — it embodies philosophical foundations, cultural ethos, and moral worldviews. Central to this framework is *Dharma*, an ancient Indian concept implying duty, righteousness, and natural order. Historically, Hindu family norms evolved from *Dharmashastric* tradition, while contemporary family law is articulated through statutory enactments and constitutional jurisprudence.

Yet, a key question persists:

Is Dharma still a source of legal authority, or merely a moral-cultural legacy?

This paper argues that *Dharma* originally functioned as a normative ethical system, not an enactment of legal coercion, and that its modern legal relevance exists primarily as moral context rather than binding doctrine.

II. BACKGROUND OF THE STUDY

Following independence, India embarked upon an ambitious project of legislative reform in family law, embracing constitutional values of equality, dignity, and personal liberty. The Hindu Code Bills — including the Hindu Marriage Act and Hindu Succession Act — significantly restructured family relations, often in ways that departed from or contradicted classical Dharmic interpretations. The Indian judiciary, likewise, increasingly prioritized constitutional morality over religious or customary norms, especially in matters affecting women's rights and individual autonomy.

Despite these transformations, *Dharma* has never entirely disappeared from India's legal consciousness. It continues to function as a cultural substrate, a normative backdrop, and a moral language through which many still interpret familial duties and relationships. Yet, the extent to which *Dharma* informs, influences, or constrains contemporary family law remains contested.



This research seeks to examine the historical evolution and present relevance of Dharma within Indian family law, addressing critical questions of jurisprudence: Was Dharma ever “law” in the modern sense? Does it continue to possess normative or interpretive authority? Can it be reconciled with constitutional morality? And how should its role be understood in a pluralistic, rights-based legal system?

By tracing the conceptual journey of Dharma from moral duty to legal discourse — and by critically assessing its transformation across ancient, colonial, and postcolonial contexts — this paper situates Dharma not as a dead relic of Hindu antiquity but as a living, contested, and evolving component of India’s family law heritage.

III. PROBLEM STATEMENT

While Dharma historically influenced Indian family norms, its transformation into positive law — especially under colonial judicial codification — and its reinterpretation within a constitutional legal framework have complicated its normative status. It remains unclear whether Dharma today holds any real jurisprudential authority in courts or merely retains cultural influence.

IV. RESEARCH OBJECTIVES

- 4.1 To define the conceptual essence of Dharma as moral order.
- 4.2 To trace how Dharma influenced classical family structures and duties.
- 4.3 To evaluate the colonial reinterpretation of Dharma as statutory law.
- 4.4 To examine judicial treatment of Dharma in modern case law.
- 4.5 To assess whether Dharma can coexist with constitutional morality and rights jurisprudence.

V. THEORETICAL FRAMEWORK

This study employs a multi-layered theoretical framework to understand Dharma’s shifting meaning in family law. First, **Natural Law Theory** is used to situate Dharma as a universal moral order, derived not from legislative enactment but from inherent principles of righteousness embedded in the cosmos and human conduct. Dharma, in this view, is akin to natural justice — guiding familial roles, duties, and obligations based on what is morally “right” rather than legally mandated.

In contrast, **Legal Positivism** explains the transformation of Dharma during colonial and post-colonial legal development, where law becomes valid not because it is moral, but because it is enacted by a recognized legal authority — the legislature or judiciary. This helps explain how British courts reified Dharmashastra into codified Anglo-Hindu law, and how Indian statutory family law now derives legitimacy from parliamentary enactment rather than religious doctrine.

Furthermore, **Constitutional Morality** is central in analyzing contemporary legal outcomes. This perspective holds that judicial decisions should uphold values of liberty, dignity, gender equality, and personal autonomy embedded in the Constitution rather than cultural or religious norms. Thus, when courts reinterpret marriage, inheritance, or guardianship rights, they increasingly appeal to constitutional ideals rather than Dharmic duty.

Finally, **Sociological Jurisprudence** provides insight into how law interacts with social practices, customs, and cultural attitudes. From this standpoint, Dharma functions as a living social norm shaping conduct and expectations even when it no longer defines legal rules. Together, these theories offer a comprehensive analytical lens: Dharma as moral ideal, Dharma as distorted legal authority, and Dharma as continuing cultural influence within a constitutional legal system.

5.1 Dharma and Custom

The relationship between Dharma and custom reveals that classical Indian legal order was never solely textual or scriptural, but rooted in lived social practice. Jackson emphasizes that Dharma operated as a moral compass rather than a legal mandate, becoming enforceable only when mediated through customary norms or state authority. He explains that *“it is through the instrumentality of custom and royal ordinance that dharma may become legally binding.”*

5.2 Jackson-DharmaLaw-1975

This highlights that Dharma itself did not possess coercive force, but gained normative power when communities internalized its principles as shared cultural expectations, or when rulers endorsed them as part of administrative justice. Thus, behaviors aligned with Dharma became socially obligatory through community enforcement — via approval, sanction, reputation, and social pressure — rather than through courts or codified statute.



When local custom diverged from textual Dharma, practice often prevailed over theory, showing that Dharma did not uniformly dictate social life; rather, it coexisted with diverse regional traditions. Therefore, Dharma's legal relevance must be understood as *indirect and negotiated* — activated when custom reflected its values — rather than as explicit legal command. This reinforces the argument that classical Indian family regulation functioned as a culturally embedded system of moral consensus rather than a statutory legal regime.

5.3 The Colonial Transformation

The arrival of British colonial rule marked a pivotal shift in the interpretation and application of Dharma within Indian legal practice. Confronted with the diversity of local customs and the absence of a uniform statutory legal system, British judges and administrators turned to Dharma Shashtra texts—particularly Manusmriti—as if they were comprehensive legal codes. Jackson notes that the colonial judiciary “*seized upon the famous dharmasastras ... and transformed them into statutes,*” thereby imposing a

5.4 Post-Independence Hindu Family Law

These reforms shifted from:

Duty → Rights

Hierarchy → Equality

Custom → Statute

After independence, India undertook a transformative restructuring of family law through the Hindu Code Bills (1955–1956), marking a decisive break from colonial Anglo-Hindu legal interpretations and even from classical Dharmashastric norms. The goal was not merely legal uniformity but social reform aligned with constitutional values of equality, dignity, and personal liberty. The **Hindu Marriage Act (1955)** reconceptualized marriage from a purely sacramental union rooted in Dharma into a legal contract permitting divorce and mutual consent. The **Hindu Succession Act (1956)** advanced gender justice by progressively recognizing women's property rights, culminating in later amendments and judicial rulings granting daughters equal coparcenary rights. Similarly, the **Hindu Adoption and Maintenance Act (1956)** secularized personal relationships, making adoption accessible beyond ritual lineage requirements.

positivist model of law onto what had historically been a flexible socio-moral system.

This led to the formation of “Anglo-Hindu law,” a hybrid legal construct that attributed statutory authority to religious texts which were never intended to operate as binding legal commands. The colonial process effectively froze Dharma into rigid textual prescriptions, privileging Brahmanical elite interpretations while ignoring regional customary practices and the fluid adaptability of Dharma in lived family contexts. This transformation also entrenched patriarchal structures by codifying prescriptive gender roles and inheritance norms as legal standards. Consequently, what had been a dynamic ethical system became a legally enforceable framework, not through indigenous evolution but through an external legal lens imposed by British jurisprudence. The colonial reinterpretation thus represents not merely administrative convenience, but a fundamental distortion of Dharma's original nature as moral guidance rather than statutory command.

These legislative reforms signify a paradigmatic shift from a duty-based familial arrangement grounded in Dharma to a rights-based legal order grounded in the Constitution. Dharma, once the moral foundation of family relationships, became largely symbolic within the legal framework, while constitutional morality — with its emphasis on individual choice, gender equality, and human dignity — emerged as the dominant normative force. Thus, post-independence law reflects a conscious movement toward democratizing family relations, correcting historical patriarchal inequities, and redefining personal law in a secular, egalitarian direction.

5.5 Modern Judicial Reasoning

In contemporary India, the judiciary has increasingly relied on constitutional values rather than Dharmashastric principles when interpreting family law.

Courts explicitly foreground equality, individual dignity, and gender justice rather than traditional familial duty or scriptural morality. In **Danamma vs. Amar (2018)**, the Supreme Court reaffirmed daughters as equal coparceners in ancestral property, rejecting patriarchal precedents derived from traditional Dharma-based lineage norms. In **Joseph Shine vs. Union of India (2018)**, the Court decriminalized adultery, emphasizing female autonomy and recognizing women as equal legal subjects rather than dependents within male-led marital structures, thereby overriding patriarchal moral codes historically justified through Dharma. Similarly, in **Shayara Bano vs. Union of India (2017)**, the abolition of instant triple talaq rested on the principles of dignity, equality, and constitutional morality, setting aside religious and customary defenses of the practice. Across these cases, judicial reasoning consistently privileges Article 14 (equality), Article 15 (non-discrimination), and Article 21 (right to life and dignity), demonstrating a legal philosophy that centers individual rights over familial duty. This jurisprudential shift embodies a fundamental movement: **from Dharma-led relational obligations to Constitution-led personal freedoms**, signaling a transformation of family law from a moral order rooted in tradition to a rights-based framework grounded in constitutional justice.

VI. CONCLUSION & SUGGESTIONS

Dharma historically served as the ethical foundation for family life in India, shaping marital obligations, kinship responsibilities, and inheritance practices through internalized moral duty rather than external legal compulsion. Its influence permeated social consciousness and everyday practice, even while lacking formal juridical enforcement. The colonial conversion of Dharma into statute fundamentally altered its nature, freezing a fluid moral tradition into rigid legal doctrine and giving rise to Anglo-Hindu law — a distortion rather than a continuation of indigenous jurisprudence. Post-independence reform and the enactment of modern family law, however, realigned the legal framework with constitutional morality, placing emphasis on equality, dignity, and the protection of individual rights.

This evolution does not render Dharma obsolete; instead it invites a reinterpretation of Dharma as a philosophical resource rather than a prescriptive legal source. The enduring ethical values of Dharma — such as harmony, mutual respect, and moral responsibility — may continue to inform social attitudes and guide interpersonal conduct within families, but without superseding statutory rights or constitutional protections.

Ultimately, the future of family law in India lies not in rejecting Dharma outright, but in harmonizing its ethical insights with contemporary legal principles, ensuring a system that respects cultural heritage while affirming the primacy of personal liberty, gender justice, and human dignity.

6.1 Dharma should be invoked only as ethical context, not legal authority.

Courts and lawmakers should treat Dharma as a cultural and moral reference that informs social values rather than as a determinative legal source. This prevents religious doctrine from overshadowing statutory rights and ensures legal interpretations remain grounded in constitutional principles rather than scriptural mandates.

6.2 Courts and scholars should distinguish moral tradition from legal norm.

Judicial reasoning and academic analysis must be careful to differentiate between Dharma as a societal ideal and law as a state-enforced rule. Maintaining this analytical distinction will prevent the conflation of spiritual duty with legal obligation, thereby encouraging clearer jurisprudence.

6.3 Family law reforms should continue to prioritize dignity and equality.

Legislative and judicial developments should remain committed to eliminating discrimination in personal law, particularly in terms of gender, caste, and marital autonomy. Ensuring that family law continues to reflect Articles 14, 15, and 21 strengthens India's constitutional promise of equal and dignified personhood.

6.4 Future research should explore Dharma's psychological and sociological influence on family behaviour, not merely legal interpretation.

Further academic study should investigate how Dharma continues to shape family expectations, social roles, and interpersonal morality even when it is no longer a legal directive. This broader approach acknowledges Dharma's enduring cultural presence and its role in shaping lived relational ethics in Indian society.

REFERENCES

- [1] Jackson, B. S. (1975). *From Dharma to Law: Historical and Hermeneutic Reflections on the Indian Tradition*.
- [2] Kane, P. V. (1930–1962). *History of Dharmasastra* (Vols. 1–5). Bhandarkar Oriental Research Institute.
- [3] Lingat, R. (1973). *The Classical Law of India*. University of California Press.
- [4] Derrett, J. D. M. (1968). *Religion, Law and the State in India*. Faber and Faber.



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- [5] Menski, W. (2003). *Hindu Law: Beyond Tradition and Modernity*. Oxford University Press.
- [6] Galanter, M. (1989). *Law and Society in Modern India*. Oxford University Press.
- [7] Davis, D. R. (2010). *The Spirit of Hindu Law*. Cambridge University Press.
- [8] Olivelle, P. (2004). *Manu's Code of Law: A Critical Edition and Translation of the Manusmriti*. Oxford University Press.
- [9] Rocher, L. (1984). *Hindu Conceptions of Law*. University of Chicago Press.
- [10] Sharma, A. (2005). *Hindu Ethics: Purity, Abortion, and Euthanasia*. SUNY Press.
- [11] Pathak, P. (2014). Hindu family law in contemporary India. *International Journal of Legal Research*, 2(4), 112–126.
- [12] Kapur, R. (2005). *Erotic Justice: Law and the New Politics of Postcolonialism*. Routledge.
- [13] Anderson, M. R. (1993). India's Other Legal System: Colonial Law in India. *Modern Asian Studies*, 22(4), 765–815.
- [14] Chandrachud, A. (2014). *The Informal Constitution: Unwritten Criteria in Selecting Judges for the Supreme Court of India*. Oxford University Press.
- [15] Bhatia, G. (2017). *The Transformative Constitution: A Radical Biography in Nine Acts*. HarperCollins India.
- [16] Fuller, L. (1964). *The Morality of Law*. Yale University Press.
- [17] Rawls, J. (1971). *A Theory of Justice*. Harvard University Press.
- [18] Radhakrishnan, S. (1927). *The Hindu View of Life*. George Allen & Unwin.
- [19] Sen, A. (2009). *The Idea of Justice*. Belknap Press.
- [20] Austin, J. (1832). *The Province of Jurisprudence Determined*. John Murray.