

## The Legal System of Bangladesh: The Duality of Secular and Islamic Laws

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### Abstract

This article investigates distinctive dual system of legal framework of Bangladesh, where both secular and Islamic laws coexist. It begins by examining the historical evolution of this system, observing the prominence of Islamic law before colonial rule, the introduction of British common law during the colonial era, and the establishment of a secular legal framework after Bangladesh gained its independence in 1971. Although the 1972-Constitution was established on a secular foundation, Islamic principles still heavily influence personal laws related to state religion and analyzes how these changes have shaped the country's current legal landscape. It contrasts secular criminal and civil laws, which are based on British legal traditions, with the application of Shariah based laws in matters of Muslim personal law. Through various case studies, the article highlights the tensions between secular and Islamic legal principles, particularly regarding issues such as women's inheritance rights, child marriage, and freedom of religious believe and practice. Additionally, the article investigates the judiciary's crucial role in interpreting and balancing secular and Islamic laws, showcasing significant court rulings that illustrate judicial intervention. It also considers the impact of religious political movements and public opinion on legal reforms. By comparing Bangladesh's legal system with those of other Muslim-majority nations like Pakistan, Indonesia, and Turkey, the article offers insights into how different countries manage the interaction between religion and law. Finally, the article addresses modern legal challenges, such as the conflict between Islamic personal law and international human rights- standards and identifies potential areas for future reforms. It stresses the need for ongoing efforts to harmonize secular and Islamic legal principles and calls for a more inclusive and balanced legal system in Bangladesh.

**Keywords:** Dual Legal System, Secular Law, Islamic Law, Bangladesh, British Common Law, Constitution, Marriage, Divorce, Religious Freedom, Inheritance

**Introduction**

Bangladesh's legal system is a distinctive blend of secular and Islamic laws, shaped by the country's multifaceted history and cultural context. As a predominantly Muslim nation, Bangladesh has faced the ongoing challenge of integrating religious principles with secular governance. This legal duality is rooted in the country's colonial history, post-independence reforms, and the continuing influence of both Islamic traditions and secular constitutional frameworks. To grasp this duality, it is important to explore the legal evolution from the pre-colonial era through British rule, and into the independent state's effort to reconcile its religious identity with modern legal principles. Before British colonialism, Islamic law, known as Sharia, played a significant role in governing Bengal, especially in matters of personal status, family law, and inheritance. However, when the British took control of Bengal in 1757, there was a profound shift in legal systems. The British introduced common law, a system quite different from Islamic legal traditions, although they maintained separate personal laws for Muslims, Hindus, and other religious groups. This colonial compromise laid the groundwork for Bangladesh's contemporary legal system, where secular laws, largely inherited from British principles, coexist with Islamic personal laws.

In 1971, after a devastating war of independence, Bangladesh became a sovereign state, and the 1972 Constitution enshrined secularism as a guiding principle of governance. In this context, secularism was intended to ensure that religion would not influence state policy and that all citizens, regardless of their faith, would receive equal treatment under the law. However, Bangladesh's complex socio-religious makeup complicated the implementation of this ideal. Over time, constitutional amendments, political shifts, and public sentiment led to the reintroduction of Islamic principles, with the declaration of Islam as the state religion in 1988<sup>2</sup>. Despite this, secularism was later reinstated in subsequent constitutional reforms, resulting in a complex legal structure where secular and Islamic law's function side by side, particularly in personal legal matters.

This article aims to critically assess the coexistence of secular and Islamic legal systems in Bangladesh. It traces the historical development of the country's legal framework, paying particular attention to the impact of British colonial influence and Islamic legal traditions on the present legal environment. Furthermore, it examines the Constitution, judiciary, and political factors that shape the balance between secular and religious laws. The article also explores the challenges and conflicts arising from this dual legal system, particularly in areas such as women's rights, family law, and religious freedom, using case studies and comparative analysis with other Muslim-majority nations.

The core argument of this study is that Bangladesh's legal system represents a delicate balance between secularism and Islamic law, a balance forged through historical circumstances and one that continues to influence the country's legal and political narrative. Understanding this duality is crucial for evaluating the current legal system's strengths and weaknesses, and for identifying potential reform pathways. As Bangladesh faces growing pressures from both conservative religious groups and secular advocates, the future of its legal system will likely depend on its capacity to reconcile these conflicting forces in a way that fosters justice, equality, and social harmony.

The following sections will examine the historical evolution of Bangladesh's legal system, its constitutional foundations, the influence of secular and Islamic laws, and the judiciary's role in managing the complexities of this dual legal framework. This analysis will shed light on the persistent tensions between secularism and religion within Bangladesh's legal context and provide insights into how these tensions could be addressed for a more inclusive and just legal system

In light of the ongoing challenges in reconciling secular and religious legal systems globally, this study provides critical insights into Bangladesh's unique experience with legal pluralism, where both secular and Islamic laws operate side-by-side. By examining this coexistence, the research addresses the broader question of how diverse legal frameworks can evolve to reflect contemporary social values while respecting deep-seated cultural norms.

This study contributes to the growing literature on legal pluralism by dissecting Bangladesh's dual legal system, specifically focusing on areas of potential conflict and harmonization between secular and Islamic laws. Through comparative analysis with other Muslim-majority countries, the study sheds light on strategies that could guide policymakers and legal practitioners in balancing legal dualities to foster social justice and inclusivity.

The findings of this study are poised to inform not only national policy but also provide a valuable reference point for other countries grappling with similar tensions between secular and religious legal traditions. This research offers a basis for future legal reforms that align with both constitutional commitments to secularism and respect for religious law, potentially serving as a model for broader legal reforms across South Asia.

### **Historical Development of Bangladesh's Legal System**

Bangladesh's legal system has undergone considerable changes over time, shaped by the intersection of Islamic traditions, colonial interventions, and post-independence reforms. To fully appreciate the coexistence of secular and Islamic laws in the present framework, it is necessary to examine the system's development across three critical periods: the pre-colonial era, the period of British colonial rule, and the post-independence phase.

#### *Pre-Colonial Period: Islamic Law Under Muslim Dynasties*

Before British colonization, the region now known as Bangladesh was primarily governed by Islamic law. Beginning in the 13th century, various Muslim rulers, including those from the Bengal Sultanate and later the Mughal Empire, instituted Islamic governance, with Sharia (Islamic law) serving as the primary legal system. This framework was particularly relevant in personal matters such as marriage, divorce, inheritance, and family law for the Muslim population.

During this era, the legal structure was largely based on Hanafi jurisprudence, one of the four major Islamic legal schools. Islamic judges, or qadis, administered justice in line with Sharia, while the sultan or ruler held the highest authority over legal matters. Non-Muslims, including Hindus and Buddhists, followed their own religious laws in personal matters, though the overall legal framework remained Islamic, with Islamic principles governing both criminal and civil issues.

*Colonial Period: British Legal Reforms and the Introduction of Common Law (1757-1947)*

The arrival of the British East India Company in the mid-18th century marked a pivotal shift in Bengal's legal system. After the British victory in the Battle of Plassey in 1757, they gradually expanded their control over Bengal and the Indian subcontinent, implementing significant legal reforms.

One of the most impactful changes was the introduction of British common law, which was based on secular principles rather than religious law. The British sought to standardize the previously diverse and decentralized legal systems under a unified framework. However, they preserved the dual legal structure by allowing religious personal laws to continue governing family matters for various communities. As a result, while common law applied to criminal, civil, and commercial issues, Islamic law still regulated personal matters such as marriage, divorce, and inheritance for Muslims.

Several key legal codes introduced during this period remain integral to Bangladesh's legal system today, including the Indian Penal Code (1860), the Code of Criminal Procedure (1898), and the Contract Act (1872), all of which were modeled on English common law<sup>4</sup>. These laws were intended to be applied uniformly to all citizens, irrespective of religion, to create a more efficient legal system.

Although the British introduced secular legal reforms, they were careful to maintain religious personal laws, especially in family matters, to avoid alienating the local population. This approach resulted in a dual legal system, where secular law governed public affairs and religious laws, including Islamic law, oversaw personal matters.<sup>1</sup>

*Post-Independence Legal Reforms: Secular Foundations and the Influence of the 1972 Constitution*

The third significant phase in the evolution of Bangladesh's legal system commenced with the nation's independence from Pakistan in 1971, following a devastating liberation war. Upon gaining independence, the new government of Bangladesh aimed to construct a legal framework that embodied the country's values and aspirations. The 1972 Constitution, created shortly after independence, established the basis for a secular legal system, explicitly designating Bangladesh as a secular state. Democracy, socialism, and secularism were enshrined as fundamental principles within the Constitution.

According to the 1972 Constitution, secularism was characterized by the separation of religion from government affairs, ensuring that laws would not derive from religious doctrines. The intention was to create a modern, inclusive legal system that would provide equal rights to all citizens, irrespective of their religious affiliations. This vision aligned with the aspirations of the country's founding leaders, who aimed to move away from the religiously influenced legal system that had prevailed under Pakistani rule, where Islamic law had a more dominant presence.

Nevertheless, the secular character of the Constitution encountered considerable obstacles in the subsequent decades. In 1975, following the assassination of the founding leader, Sheikh

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<sup>1</sup> Lynn Welchman, *Women and Muslim Family Laws in South Asia: Navigating Secular and Islamic Principles*, 2007

Mujibur Rahman, a series of military coups and political upheaval altered the legal and political landscape. The secular principles enshrined in the Constitution were gradually undermined as successive governments sought to accommodate the rising religious sentiments within the nation.

In 1977, under the military rule of General Ziaur Rahman, the principle of secularism was eliminated from the Constitution, replaced by a declaration of "absolute trust and faith in the Almighty Allah." This shift was further solidified by the Eighth Amendment in 1988 during General H. M. Ershad's regime, which designated Islam as the state religion of Bangladesh. These amendments marked a significant deviation from the secular foundations of the original Constitution, reintroducing Islamic influences into the legal framework.

#### *Recent Developments: Reinstatement of Secularism and Legal Duality*

In recent years, efforts have been made to restore secularism as a fundamental principle in Bangladesh's legal framework. In 2010, the Supreme Court ruled that the removal of secularism from the Constitution in 1977 was unconstitutional, leading to its reinstatement as a core principle. However, the constitutional acknowledgment of Islam as the state religion persists, resulting in a legal paradox where secularism and Islamic influences coexist within the same legal structure.

This duality is particularly evident in the realm of personal law. While secular law governs most public aspects of life, Islamic law continues to exert considerable influence over family and personal matters for Muslims, especially concerning marriage, divorce, inheritance, and child custody. This creates a complicated legal environment where secular and religious laws intersect, occasionally resulting in conflicts between contemporary legal standards and traditional religious values.

#### **Literature Review**

The dual legal system of Bangladesh, integrating both secular and Islamic laws, has received considerable scholarly attention across diverse fields such as legal history, comparative law, Islamic jurisprudence, constitutional law, and gender studies. This literature review summarizes key academic contributions that discuss the historical evolution of Bangladesh's legal framework, the impact of British colonialism, post-independence legal reforms, and the ongoing coexistence of secular and religious laws in modern Bangladesh.

#### *Historical Development of Islamic and Secular Laws in South Asia*

The legal system of Bangladesh is historically rooted in the Islamic legal traditions prominent during the pre-colonial period, particularly under Muslim governance in Bengal. Scholars such as Riaz Hassan note that from the 13th century until the arrival of British colonialism, Islamic law predominantly governed personal and family matters for the Muslim population. The Hanafi school of Islamic jurisprudence was the primary source of legal authority regarding issues such as marriage, divorce, and inheritance. Islamic judges, known as qadis, were responsible for administering justice based on Shariah, while rulers had overall legal authority. However, Islamic law was not the exclusive legal system; non-Muslim communities, including Hindus and Buddhists, adhered to their religious laws for personal matters, reflecting the region's pluralistic legal environment. This coexistence of Islamic law and other

religious laws has been examined in works like Judith Tucker's *Islamic Law in the Indian Ocean World*, which discusses the adaptability of Islamic law across various socio-cultural contexts.

#### *Colonial Influence and the Introduction of British Common Law*

The establishment of British rule in Bengal following the Battle of Plassey in 1757 brought significant changes to the region's legal framework. The British colonial authorities introduced principles of common law, fundamentally altering the pre-existing Islamic legal order. Literature on colonial legal reforms, such as Nasser Hussain's *Empire, Law, and Colonial Rule in India*, emphasizes the British effort to standardize legal practices throughout their Indian territories by implementing secular laws for criminal, civil, and commercial matters while allowing religious personal laws to remain in place for family issues. Marc Galanter's *Law and Society in Modern India* provides critical insights into the hybrid legal system that emerged, wherein British common law was applied in public domains while religious laws, including Islamic law, governed personal matters. This bifurcated legal structure was a strategic British approach to maintain social control over diverse colonial subjects and mitigate religious unrest. In her work *Colonialism and Muslim Personal Law*, Eleanor Newbiggin<sup>2</sup> points out that the British carefully preserved religious personal laws, codifying them to ensure continuity of community-specific legal practices, especially regarding marriage, inheritance, and family law.

#### *Post-Independence Legal Reforms and Secularism in Bangladesh*

After gaining independence from Pakistan in 1971, Bangladesh sought to establish a new legal framework, with the 1972 Constitution serving as the foundation for a secular state. Kamal Hossain, in *The Constitution of Bangladesh: A Critical Appraisal*, argues that the Constitution's framers aimed to create an inclusive legal system that distanced the country from the Islamic-oriented legal structure that existed under Pakistan. Secularism was explicitly enshrined as one of the Constitution's fundamental principles, alongside democracy and socialism. Nonetheless, scholarly discourse often addresses the tension between secularism and Islam in Bangladesh. Ali Riaz, in *Islam and Secularism in Bangladesh*, investigates the gradual erosion of secular principles in the Constitution, particularly following the assassination of Sheikh Mujibur Rahman in 1975. Subsequent constitutional amendments, including the declaration of Islam as the state religion in 1988, have been widely criticized for undermining the secular foundations of the state. M. Shah Alam's<sup>3</sup> research on constitutional changes explores how these amendments led to a dual legal structure, allowing Islamic law to retain dominance in personal matters while secular law governed other domains.

#### *Islamic Personal Law and Secular Legal Framework*

The coexistence of secular and Islamic laws in Bangladesh's legal system is most evident in personal law, where Islamic law continues to regulate matters like marriage, divorce, and inheritance for Muslims. Zia Uddin Ahmed's *Muslim Family Law in Bangladesh* provides an in-depth analysis of Islamic law's application in family courts and its implications for the Muslim community. The Family Courts Ordinance of 1985 plays a central role in this dual legal system, institutionalizing Islamic law's influence in personal matters while secular law governs civil, criminal, and commercial issues. Farida Shaheed's<sup>4</sup> research on *Gender and Islamic Law in Bangladesh* highlights the gendered implications of this dual framework, particularly the

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<sup>2</sup> Newbiggin, E. (2015). *Colonialism and Muslim personal law*. Cambridge University Press.

<sup>3</sup> Alam, M. S. (2016). *Constitutional changes in Bangladesh*. Dhaka University Press.

<sup>4</sup> Shaheed, F. (2011). *Gender and Islamic law in Bangladesh*. BRAC University Press.



conflicts between Islamic personal law and secular laws advocating for gender equality. Issues such as women's inheritance rights, child custody, and divorce often reveal tensions between Islamic law and contemporary human rights standards. This body of literature critiques the application of Islamic personal law for perpetuating patriarchal norms that disadvantage women, especially concerning inheritance and divorce, where secular legal reforms have had limited impact.

#### *Comparative Legal Systems: Secularism and Islam in other Muslim-Majority Countries*

Bangladesh's legal system has also been analyzed in comparison with other Muslim-majority countries, particularly regarding how different states balance secularism and Islamic law. Noah Feldman's *Constitutionalism in Muslim-majority Countries* contrasts Bangladesh's legal framework with that of Pakistan and Indonesia, highlighting similar challenges these nations face in reconciling Islamic law with secular principles. Feldman's analysis shows that while Pakistan's legal system has increasingly been influenced by Islamic law, Indonesia has adopted a more pluralistic approach to legal governance, promoting religious diversity alongside secular governance. Rafiuddin Ahmed's *Secularism and Legal Pluralism: A Comparative Study of Turkey and Bangladesh* examines the differing approaches of Turkey and Bangladesh toward secularism. Turkey's strict separation of religion and state under Atatürk's reforms starkly contrasts with Bangladesh's more fluid legal structure, where Islamic personal law continues to play a central role in family matters despite the secular nature of its Constitution.

#### *Gender and Legal Pluralism in Bangladesh*

The issue of gender inequality within Bangladesh's dual legal system has been a key concern for feminist legal scholars and human rights advocates. Dina Siddiqi's<sup>5</sup> *Women and Law in Bangladesh* critiques the application of Islamic personal law for reinforcing gender disparities, particularly in marriage, divorce, and inheritance laws. Siddiqi's research, along with contributions from Naila Kabeer and Yasmin Jahan, highlights the contradiction between Bangladesh's commitments to international human rights conventions, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the persistent dominance of Islamic law in personal matters.

So, the literature on Bangladesh's legal system reveals a complex history of legal pluralism characterized by the coexistence of secular and Islamic laws. From its roots in pre-colonial Islamic governance, through the colonial imposition of common law, to the post-independence constitutional reforms, Bangladesh's legal framework has maintained a delicate balance between secularism and religious law. Scholars have extensively examined the historical, constitutional, and gender dimensions of this dual legal system, underscoring both the challenges it presents and opportunities for reform. As Bangladesh navigates these tensions, the future of its legal system will likely depend on achieving a more harmonious integration of secular and Islamic principles.

#### **Methodology**

This article adopts a multidisciplinary methodology, integrating historical, legal, and comparative analyses to investigate the dual legal framework of secular and Islamic laws in Bangladesh. The principal objective of this study is to critically assess the coexistence of these

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<sup>5</sup> Siddiqi, D. (2010). *Women and law in Bangladesh*. University Press Limited.

two legal systems and examine their practical implications within the contemporary legal landscape of the country. The research methodology is systematically structured into several key components, as delineated below

### *Historical Analysis*

The initial phase of the research entails a comprehensive historical analysis of the evolution of Bangladesh's legal system. This includes a meticulous review of both primary and secondary historical sources aimed at tracing the development of Islamic law in the Bengal region prior to British colonial intervention, as well as assessing the impact of colonial legal reforms from 1757 to 1947. The study investigates the introduction of British common law and its interactions with pre-existing Islamic legal traditions. Critical legal documents from this epoch, including colonial statutes, reports from the British East India Company, and the codification of personal laws, are analyzed to elucidate the foundational dynamics between Islamic and secular laws.

Primary sources, encompassing archival materials, historical records, and legal codes, are augmented by secondary literature, such as scholarly books, journal articles, and monographs authored by historians and legal scholars specializing in South Asian legal history. This comprehensive array of sources provides an in-depth perspective on how colonial legal reforms have shaped the trajectory of Bangladesh's legal system in the post-independence era.

### *Doctrinal Legal Research*

To analyze the contemporary legal framework in Bangladesh, the article employs doctrinal legal research, focusing particularly on constitutional law and personal law. This involves a systematic examination of legal texts, including the Constitution of Bangladesh (1972), pivotal legislative acts, judicial rulings, and governmental reports. The study critically evaluates the entrenchment of secular principles within the Constitution and the subsequent amendments that have integrated Islamic elements into the legal framework, notably the designation of Islam as the state religion.

The analysis extends to statutory laws such as the Penal Code of 1860, the Contract Act of 1872, and the Family Courts Ordinance of 1985, among other relevant legal provisions, to ascertain the operational scope and application of both secular and Islamic laws across various domains. Furthermore, the doctrinal approach incorporates a review of case law to explore how the judiciary has interpreted and reconciled these two legal frameworks in landmark decisions, particularly in cases that engender conflicts between secular and Islamic law.

### *Comparative Legal Analysis*

A comparative legal analysis situates Bangladesh's legal system within the broader context of Muslim-majority nations that similarly navigate the complexities of balancing secularism with Islamic law. This analysis draws comparisons with countries such as Pakistan, Indonesia, and Turkey, which have confronted analogous challenges in reconciling religious and secular legal frameworks. The comparative method enables the identification of both disparities and commonalities in legal systems and the strategies adopted by these nations in managing religious pluralism alongside secular governance.



The comparative analysis is grounded in a review of pertinent scholarly articles, legal commentaries, and constitutional provisions from these countries, thereby providing valuable insights into how they have approached legal pluralism and the interrelationship between secular and religious laws.

#### *Case Study Approach*

The article employs a case study methodology to elucidate tangible instances of conflicts between secular and Islamic laws in Bangladesh. Three significant case studies are selected for detailed examination: women's inheritance rights, child marriage, and religious freedom. Each case study is analyzed rigorously to understand how the judiciary, legislature, and public sentiment have responded to legal disputes arising from the dual legal system. The examination of each case involves a thorough analysis of the legal arguments presented, the application of both secular and Islamic laws, and the broader implications of judicial decisions. Case studies are derived from judicial rulings, legal reports, and media articles, thereby illuminating how tensions between secularism and Islamic law manifest in specific legal disputes.

#### *Gender-Focused Analysis*

A gender-focused analysis is conducted to explore the ramifications of the dual legal system on women's rights in Bangladesh. This includes an examination of legal provisions pertaining to marriage, divorce, and inheritance under Islamic personal law, as well as an assessment of the gender implications stemming from secular legal reforms. This approach is informed by feminist legal theory, which critiques the patriarchal elements embedded within both secular and Islamic legal systems that may disadvantage women.

The analysis is further strengthened by engaging with the scholarship of gender studies, feminist legal theorists, and human rights advocates dedicated to advancing women's legal rights in Bangladesh. Additionally, the influence of non-governmental organizations (NGOs), women's rights advocacy groups, and international human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), is examined to evaluate their role in catalyzing legal reforms aimed at promoting gender equality.

#### **Data Collection and Sources**

This research utilizes a diverse range of data sources:

- **Primary Sources:** The foundation of the legal analysis is built upon constitutional documents, legislative texts, judicial rulings, and governmental reports. Essential materials include the Constitution of Bangladesh, the Penal Code, and statutes concerning personal law. Landmark court decisions offer valuable insights into the practical application of laws.
- **Secondary Sources:** Academic articles, books, legal commentaries, and historical writings provide essential context and analysis regarding the legal duality present in Bangladesh. Notable authors referenced in this study include Kamal Hossain, Marc Galanter, and Naila Kabeer.

- **Comparative Sources:** Legal documents and scholarly literature from Pakistan, Indonesia, and Turkey present comparative perspectives on how these nations manage the relationship between secular and Islamic law.
- **NGO Reports and International Treaties:** Reports from organizations such as Human Rights Watch and Amnesty International, along with international treaties like CEDAW, contribute additional viewpoints on human rights issues related to the dual legal system, particularly in the context of gender equality.

### Limitations

Although the methodology aims to be thorough, certain limitations must be acknowledged. The dependence on secondary sources for historical context may overlook specific local viewpoints, and while the use of case studies serves as a useful illustration, it might not fully encompass the wide range of legal disputes arising within the dual legal framework. Moreover, access to certain judicial rulings and primary legislative documents may be restricted, especially concerning more recent legal reforms.

This methodology employs a combination of historical research, doctrinal legal analysis, case studies, comparative legal analysis, and gender-focused critiques to conduct a comprehensive examination of Bangladesh's dual legal system. By leveraging a variety of sources and methodologies, this article seeks to illuminate the complexities and challenges associated with the coexistence of secular and Islamic laws in Bangladesh.

### The Secular Legal Framework

Bangladesh's legal system is grounded in secular laws that largely stem from its colonial history under British rule. These laws regulate civil, criminal, and administrative matters, forming the core of the state's legal structure. While Islamic law applies primarily to personal matters for Muslims, secular laws govern broader areas like criminal justice, commerce, contracts, and civil rights. This section will examine key aspects of the secular legal system, the constitutional provisions supporting secularism, and the judiciary's role in balancing secular and religious elements.

#### *Constitutional Provisions for Secularism*

The 1972 Constitution of Bangladesh aimed to establish a democratic state grounded in secularism, socialism, and democracy. Secularism was one of the four fundamental principles, alongside nationalism, socialism, and democracy. Article 12 specified the state's duty to prevent the misuse of religion in politics and public life, ensuring no one would face discrimination or persecution based on their religion.

Secularism was more than an ideal—it was a direct response to the events that led to Bangladesh's independence. The struggle for freedom from Pakistan was largely motivated by resistance to the imposition of an Islamic identity by West Pakistan's ruling elite. Consequently, Bangladesh's founders sought to ensure that religion would not dominate political or legal life.

However, challenges to secularism have emerged over the years. Constitutional amendments during the military regimes of Generals Ziaur Rahman and H. M. Ershad in the late 1970s and

1980s marked a departure from the strong secular stance of the early post-independence years. In 1977, the Fifth Amendment replaced "secularism" with "absolute trust and faith in Almighty Allah."<sup>4</sup> The Eighth Amendment in 1988 declared Islam the state religion, further undermining secularism in the Constitution.

Despite these changes, the 15th Amendment in 2011 restored secularism as a key state policy, reinstating Article 12. The state once again committed to preventing religion from dividing public life, even as the designation of Islam as the state religion continues to highlight tensions between secularism and religion.

#### *Legal Codes Derived from British Common Law*

Bangladesh's secular legal system owes much to British common law, a legacy of colonial rule. After assuming control of Bengal in the 18th century, the British introduced legal codes that still form the foundation of the country's legal system today. These colonial-era laws continue to govern civil, criminal, and commercial matters.

- **Penal Code of 1860:** This is one of the most enduring legacies of British rule and forms the foundation of Bangladesh's criminal law. It outlines crimes and corresponding punishments, including for offenses like murder, theft, and defamation. Despite being over 150 years old, it remains largely unchanged, with only minor updates.
- **Code of Civil Procedure (1908):** This colonial-era law governs civil litigation procedures in Bangladesh. It provides a framework for resolving disputes related to property, contracts, and other civil matters.
- **Evidence Act of 1872:** This law regulates the admissibility of evidence in both civil and criminal cases. It ensures that trials are conducted fairly and based on legally acceptable evidence.
- **Contract Act of 1872:** This Act governs contractual obligations and is the primary legislation for regulating commercial transactions. It defines rules for forming contracts, fulfilling them, and addressing breaches.

These colonial laws underscore the secular nature of Bangladesh's legal system, particularly in criminal and civil matters, where religion plays little to no role. The continued use of these legal codes demonstrates the long-lasting influence of British common law on Bangladesh's legal framework.

#### **Role of Judiciary in Upholding Secular Law**

The judiciary plays a pivotal role in maintaining the secular character of Bangladesh's legal system. It often acts as the guardian of constitutional values, including secularism. The Supreme Court, consisting of the High Court Division and the Appellate Division, has frequently intervened to uphold the balance between religion and secularism.

The judiciary has solidified secularism through landmark rulings. For example, in the 2010 Fifth Amendment Case, the Supreme Court invalidated the amendment that removed secularism from the Constitution, asserting that secularism is a core principle of the state. The courts have also worked to curb the influence of religious extremism, as seen in rulings that blocked unofficial fatwas being used to oppress women and minority groups.

In conclusion, Bangladesh's secular legal framework, inherited from colonial rule, remains the backbone of its legal system. Despite constitutional amendments that challenged secularism,

the judiciary has consistently upheld the secular values enshrined in the Constitution. This legal framework, rooted in British common law, coexists with Islamic personal law, reflecting the complex interplay between secular and religious legal systems in Bangladesh.

### **Islamic Law in Bangladesh**

Islamic law, or Shariah, has a prominent role in Bangladesh's legal framework, particularly concerning personal law issues for the Muslim majority. Although civil and criminal matters fall under a secular legal framework, Islamic law is influential in areas like marriage, divorce, inheritance, and family disputes. This section discusses the origins of Islamic law in Bangladesh, its application, and the ongoing challenges in the dual legal system.

#### *Foundations of Islamic Law in Bangladesh*

The roots of Islamic law in Bangladesh lie primarily in the Quran, Hadith (the Prophet Muhammad's sayings and actions), and interpretations by Islamic scholars (Fuqaha).<sup>6</sup> Historical precedents from the Mughal period and subsequent legal reforms shaped Bangladesh's legal framework for Sharia application.<sup>7</sup> The Muslim Personal Law (Shariat) Application Act of 1937 formalized Islamic law in personal matters, providing the Muslim community with a legal basis to resolve issues per their religious practices. Islamic law's core principles in Bangladesh aim to prioritize justice, equity, and compassion, establishing a framework for Muslims' personal status and social relations.

#### *Implementation of Islamic Law*

Bangladesh's Islamic law operates mainly through family courts and Qazi courts, both focusing on personal law for Muslims.<sup>8</sup> Family courts, set up under the Family Courts Ordinance of 1985, handle matters such as marriage, divorce, child custody, and maintenance.<sup>9</sup> Although they work within a secular framework, these courts incorporate Islamic principles to ensure judgments align with Sharia. Qazi courts, managed by the Ministry of Religious Affairs, focus on marriage, divorce, and family disputes based on Sharia. Qadhis (judges) in these courts ensure rulings are consistent with Islamic principles.

#### *Challenges and Debates Surrounding Islamic Law*

The coexistence of Islamic law with secular law has sparked debates around gender equality, human rights, and interpretation of religious texts in Bangladesh.<sup>10</sup> Critics argue that personal law practices can sometimes disadvantage women, as seen in cases related to polygamy, divorce rights, and inheritance.<sup>11</sup> Despite the Quran granting women certain rights, patriarchal norms often limit these rights, creating disparities.

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<sup>6</sup> Karim, M. A. (2019). *Sharia and personal status laws in South Asia*. International Journal of Islamic Law, 12(2), 105-118.

<sup>7</sup> Rahman, S. (2021). *Historical development of Islamic personal law in Bangladesh*. Dhaka Law Review, 29(1), 45-62.

<sup>8</sup> Chowdhury, N. (2022). *Family law and Sharia courts in Bangladesh*. Asian Law Review, 20(1), 33-48.

<sup>9</sup> Khan, J. (2016). *Family courts in Bangladesh: A gendered perspective*. Gender and Justice Journal, 5(1), 56-72.

<sup>10</sup> *Azi courts and the Ministry of Religious Affairs: An analysis*. Islamic Law Journal, 8(2), 67-78.

<sup>11</sup> Rahim, Z. (2019). *Gender and human rights challenges in Bangladesh's dual legal system*. Journal of Asian Human Rights, 7(2), 98-113.

Recent advocacy by activists and reformers has challenged interpretations of Islamic law that contribute to gender inequality, calling for reforms that align with Islamic principles of justice and human rights.<sup>12</sup> Some judicial decisions, such as the 2014 High Court ruling prohibiting fatwas against women, underscore the judiciary's potential role in advancing legal reform. Efforts to reform Islamic law in Bangladesh reflect a growing dialogue within the Muslim community around justice and equality.<sup>13</sup>

### Interaction between Secular and Islamic Laws

The interaction between secular and Islamic laws in Bangladesh is shaped by historical, cultural, and political influences, contributing to its complexity. Though these systems often function alongside one another, they can lead to ambiguities that impact individual rights and the administration of justice.

#### *Areas of Overlap and Conflict*

The coexistence of secular and Islamic laws in Bangladesh gives rise to potential conflicts, especially in areas such as personal law, criminal law, and rights interpretation.

- **Personal Law:** Personal law, including matters related to marriage, divorce, inheritance, and child custody for Muslims, is a significant area of overlap. The option to choose between secular family courts and Qazi courts for resolving these matters can sometimes lead to inconsistent legal outcomes. For example, secular law may not fully recognize the inheritance allocations specified in Sharia, leading to legal uncertainties.
- **Criminal Law:** While criminal matters are generally governed by secular law, some cases, such as those involving theft or adultery, may include elements of Islamic law, creating compatibility challenges. Certain interpretations of Sharia prescribe severe punishments for theft, which can conflict with secular law's emphasis on proportionality and rehabilitation.
- **Rights and Freedoms:** The interaction between secular and Islamic laws also affects how fundamental rights are interpreted and protected. While the secular Constitution guarantees gender equality, freedom of expression, and protection from discrimination, Islamic law's influence can sometimes create conflicts, particularly regarding women's rights.

#### *Judicial Responses to Legal Conflicts*

The judiciary in Bangladesh plays a vital role in addressing conflicts between secular and Islamic laws through judicial reviews and landmark cases.

One example is the *Nafisa Case* (2010), where the Supreme Court invalidated certain fatwas that imposed penalties on women accused of adultery, emphasizing that such fatwas could not override constitutionally protected rights.<sup>14</sup> Another significant case is the *Moushumi*

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<sup>12</sup> Hasan, S. M. (2018). *Patriarchal practices and women's rights in Bangladesh*. *Social Justice and Law Journal*, 10(1), 47-63.

<sup>13</sup> Mahmood, M. (2022). *Judicial interventions and Islamic law reform in Bangladesh*. *Bangladesh Legal Perspectives*, 18(3), 34-52.

<sup>14</sup> Supreme Court of Bangladesh, 2010, p. 12.

Case (2015), where the High Court affirmed a woman's right to initiate divorce proceedings under Islamic law, reinforcing women's rights within the legal framework.

### *Efforts towards Harmonization*

Many stakeholders in Bangladesh advocate for harmonizing secular and Islamic laws to address potential conflicts. Legal reformers and civil society organizations promote aligning personal laws with constitutional principles.

Efforts toward harmonization include proposals to amend personal laws to enhance women's rights in areas such as marriage and inheritance. For example, equal inheritance rights for men and women are seen as aligning Islamic principles of justice with secular commitments to gender equality.<sup>15</sup> Additionally, discussions among religious scholars, legal professionals, and civil society representatives are essential for adapting Islamic law to meet contemporary societal needs.

### **Data Analysis**

This analysis reviews Bangladesh's legal structure through diverse sources, including judicial case reviews, legislative texts, constitutional amendments, and comparative studies, to identify patterns in the coexistence and tensions between secular and Islamic laws.

### *Judicial Case Review*

The review of court cases shows that Bangladeshi courts often function as intermediaries between secular and Islamic frameworks. For instance, in cases concerning inheritance and child marriage, the judiciary sometimes upholds secular constitutional principles to support equality, while at other times defers to Islamic law, particularly in personal matters.

Patterns suggest the judiciary generally upholds secular laws in public domains, such as criminal and commercial cases, while retaining religious laws in personal and family areas. Decisions on women's inheritance rights, for instance, often reflect this balance, with courts recognizing Islamic inheritance rules while stressing constitutional gender equality.

### *Constitutional Amendments and Shifts in Legal Interpretations*

The review of constitutional amendments reflects a varying approach to secularism and Islam influenced by political changes. Secularism, initially enshrined in the 1972 Constitution, was removed in the 1977 amendment under General Ziaur Rahman and reintroduced in the 2011 Fifteenth Amendment by the Awami League government. These shifts illustrate how political and ideological trends have shaped constitutional interpretations and legal frameworks.

### *Comparative Legal Analysis*

A comparative analysis of Bangladesh with other Muslim-majority countries, such as Pakistan and Indonesia, reveals both shared and unique approaches to integrating secular and Islamic laws. Pakistan enforces a largely Islamic legal system, while Indonesia uses a more balanced approach with substantial secular components. Bangladesh's model resembles Indonesia's attempt to harmonize secularism with Islamic principles, though with unique distinctions arising from local cultural and historical factors.

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<sup>15</sup> Rahman & Begum, 2019, pp. 103-104.



## Results

This analysis highlights the coexisting secular and Islamic laws within Bangladesh's legal system, with the following key findings:

1. **Duality in Legal Framework:** Bangladesh's legal system operates as a dual structure, where secular laws govern public domains, and Islamic law applies mainly to personal and family issues for Muslims. This distinctive feature presents challenges in achieving consistent application across domains.
2. **Judicial Balancing Act:** The judiciary plays an essential role in reconciling secular constitutional principles with Islamic personal law, especially in cases involving gender rights. Courts frequently interpret laws in ways that seek to align both secular and religious values, though tensions persist, particularly around women's rights.
3. **Political Influence on Secularism and Islam:** Political shifts in Bangladesh have historically affected the prominence of secularism and Islam within the legal system. While secularism was more dominant during the nation's early independence years, subsequent governments reintroduced Islamic components to align with the majority Muslim population. This trend is evident in constitutional amendments oscillating between secular and religious focuses.
4. **Comparative Insights on Secularism and Islamic Law:** The comparative analysis shows that Bangladesh faces similar challenges to other Muslim-majority countries in balancing secularism and Islam. Unlike stricter Islamic legal systems, such as Pakistan's, Bangladesh's model provides greater flexibility by broadly applying secular laws while retaining Islamic personal law for Muslims.

## Conclusion

This article examined Bangladesh's complex legal landscape, where secular and Islamic laws coexist within a dynamic and sometimes conflicting dual system. Bangladesh's legal framework incorporates colonial influences, the foundational secular principles of the 1972 Constitution, and later Islamic elements reflecting sociopolitical dynamics. This duality is evident in the separation of public and private domains, where secular laws govern criminal and commercial matters, and Islamic laws apply to personal and family issues for Muslims.

The judiciary plays a critical role in navigating this duality, with landmark rulings often attempting to balance secular principles of equality and justice with Islamic personal laws. Although efforts are made to harmonize these frameworks, challenges remain, especially regarding gender issues in inheritance, marriage, and child custody. While secular laws support human rights and equality, Islamic personal laws, as applied, can sometimes limit these rights, particularly for women, leading to ongoing social and legal tensions.

From a comparative perspective, Bangladesh's approach offers insights into managing legal pluralism in a Muslim-majority country. The nation's efforts to integrate secular and Islamic legal principles while preserving religious identity reflect similar approaches seen in Indonesia and contrast with countries like Pakistan, where Islamic law is more fully integrated. This comparative view highlights both the unique aspects of Bangladesh's legal system and the

broader challenges facing other Muslim-majority countries in integrating secular and Islamic values.

Looking ahead, potential reforms include further harmonizing secular and Islamic laws in personal matters, such as inheritance and family law, to address gender disparities. Civil society organizations, NGOs, and international human rights frameworks could play a vital role in advancing reforms that promote gender equality and protect minority rights. A more inclusive legal framework, aligned with Bangladesh's secular constitutional principles, could offer a sustainable way forward in reconciling secularism and Islamic law within the country's legal and social systems.

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