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Reforming The Mosaic: Personal Laws, Uniform Civil Code, And The Future Of Women's Rights In India

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Abstract

The legal landscape of India is characterized by a complex interplay between personal matters and religious affiliations, known as personal law. This system, governing crucial aspects of individuals' lives such as marriage, inheritance, and adoption, draws heavily from religious scriptures and customs. While it allows for the preservation of cultural traditions, it also perpetuates gender inequalities inherent in certain religious texts, creating a bias against women. Despite the diversity of religious practices in India, only Hindu personal laws are codified into national statutes, leaving other religious communities to rely on their respective religious texts. This lack of uniformity has prompted debates over the need for a Uniform Civil Code (UCC), which would apply secular laws to all citizens regardless of religion. Such a code has the potential to address gender disparities and promote true gender equality by dismantling discriminatory practices embedded within personal laws. While codification of religious laws remains an option, the UCC represents a more progressive approach to achieving gender equality in contemporary Indian society.

Keywords: Personal law, codification, women's rights, uniform civil code (UCC), secular law, minority rights, legal reform.

I. Introduction

India's legal landscape is a fascinating mosaic, where personal matters are governed by religious affiliations rather than a unified civil code. This system, known as personal law, shapes a wide range of aspects in an individual's life, from marriage and inheritance to adoption and maintenance. To understand its intricacies, we must delve into the definitions of both personal law and religion.

Personal law refers to a set of legal principles specific to a person's religion or community. These principles address issues central to our lives, such as marriage, divorce, inheritance, adoption, and financial support. Unlike criminal or contract law, which applies uniformly across the nation, personal law creates a system where legal rights and obligations can vary depending on one's faith.

Religion, on the other hand, is a complex phenomenon that encompasses a set of beliefs, practices, values, and institutions¹. It provides a spiritual and moral framework, often including a belief in a higher power, sacred texts, and rituals that shape both community and personal identity. In India, religion plays a central role in shaping cultural practices, social norms, and, as we will see, legal systems.²

Personal law often draws heavily from religious scriptures, doctrines, and customs. This creates a deep connection between religious identity and legal rights. For instance, the minimum age of marriage, grounds for divorce, and property inheritance may differ based on one's religion. This intersection of personal law and religion can lead to both positive and negative consequences.³

On the one hand, it allows for religious communities to maintain their unique traditions and cultural practices. However, it can also perpetuate gender inequalities and discriminatory practices enshrined within certain religious texts.

India's rich cultural heritage is reflected in its diverse religious landscape. Hinduism, the majority religion, accounts for roughly 80% of the population. Other significant religious communities include Islam, Christianity, Sikhism, Buddhism, Jainism, and Zoroastrianism. Each of these religions has its own set of personal laws, influencing the lives of millions of Indians.

Interestingly, only Hinduism has its personal laws codified into national statutes. The Hindu Marriage Act (1955), the Hindu Succession Act (1956), and the Hindu Adoption and Maintenance Act (1956) represent attempts to codify and modernize Hindu personal laws. However, other religious communities continue to rely on their respective religious texts and customary practices.

¹ Mubeen Farooqi vs. State of Punjab CWP-PIL-52-2020 (O&M)

² Tole, L. A. (1993). Durkheim on religion and moral community in modernity. *Sociological inquiry*, 63(1), 1-29.

³ Newbigin, E. (2009). The codification of personal law and secular citizenship: Revisiting the history of law reform in late colonial India. *The Indian Economic & Social History Review*, 46(1), 83-104.

This lack of uniformity in personal laws across religious groups has sparked a national debate on the need for a Uniform Civil Code (UCC), a single set of secular laws that would apply to all Indian citizens regardless of their faith. The following sections of this paper will delve deeper into this debate, analyzing the arguments for and against a UCC, its potential impact on women's rights, and the ongoing quest for

gender equality within India's legal framework. While personal laws offer a degree of religious autonomy, a closer look reveals a troubling uniformity – a bias against women. Though the specifics may differ across religions, the underlying principle often remains the same: men are afforded greater rights and privileges.

Take marriage, for example. Minimum age restrictions for girls can be lower than for boys in certain religions, raising concerns about child marriage and limiting girls' educational opportunities. Inheritance rights are another area of disparity. Many personal laws prioritize male heirs, leaving daughters with a significantly smaller share of ancestral property. This not only creates financial insecurity for women but also reinforces the notion that sons are more valuable contributors to the family lineage. Furthermore, religious doctrines may make it difficult for women to initiate divorce or impose stricter conditions compared to men. These are just a few examples of how, despite their outward differences, personal laws often create a system where women are subject to unequal rights and limited agency compared to their male counterparts. This creates a chilling uniformity – not of legal principles, but of gender bias enshrined within the very framework that governs personal lives.

The quest for achieving gender equality within India's personal laws presents two potential paths. One approach involves codifying existing religious laws, creating a clearer and more standardized framework within each faith. This approach holds merit by bringing transparency and potentially reducing ambiguity in legal proceedings. However, the Uniform Civil Code (UCC) offers a more progressive option. By establishing a single set of secular laws applicable to all Indians, irrespective of religion, the UCC has the potential to dismantle discriminatory practices embedded within certain personal laws. While codification might have been a suitable strategy decades ago, the UCC represents a more significant step towards achieving true gender equality in the contemporary Indian society.

II. A Case Study of Codification of Muslim Personal Law in India:

The legal environment in India presents a distinct picture, where personal matters are guided by religious affiliations rather than a unified civil code. This arrangement, termed personal law, can lead to inequalities, especially for women. The situation of Muslim personal law in India highlights the necessity for codification to ensure fairness and uphold the fundamental principles of Islam.⁴

One primary argument for codification stems from the current system's static nature. British colonial authorities codified Muslim personal law in India, making it inflexible and unsuitable for evolving social contexts. This rigidity contrasts sharply with the historical adaptability of Sharia law, which traditionally accommodates changing circumstances.⁵ However, the misconception among some Muslims that the existing personal law is divinely ordained obstructs calls for reform. It's essential to grasp that Sharia is based on interpretations of scripture, not fixed pronouncements. Additionally, the current system suffers from a gap between written laws and the essence of Islamic law. British and Indian judges often focus solely on the letter of the law, overlooking the emphasis on justice central to Islamic jurisprudence.

Historically, Islamic judges (Qadis) exercised discretion, drawing upon broader Sharia principles to deliver fair judgments. This disparity in legal interpretation and Islamic principles particularly harms women, who face disadvantages in areas like divorce and inheritance under current personal law. For instance, the practice of triple talaq, a form of instant divorce, illustrates how a literal interpretation of the law can cause hardship.⁶

Codifying Muslim personal law offers an opportunity to address these issues. A revised code could ensure more equitable treatment, adequately safeguarding women's rights. The Dissolution of Muslim Marriage Act 1939 provides a historical precedent for such reform, addressing issues like waiting periods for divorce and offering relief to Muslim women. A modern codified law could similarly reflect contemporary social realities and ensure fairer treatment for all. Crucially, codification aligns with Islamic principles and could better adhere to the spirit of Islamic law, particularly its emphasis on justice. The Quran prioritizes fairness and respect in matters of

⁴ Engineer, A. A. (2000). The need for codification and reform in Muslim Personal Law in India.

⁵ Rizwan, M. M. A., & Khatana, M. A. R. (2023). Is Codification a Solution or Problem in Regulating the Personal Affairs of Muslims Under Islamic Law?. *Malakand University Research Journal of Islamic Studies (MURJIS)* ISSN: 2708-6577, 5(01), 01-06.

⁶ Karmakar, K. K. (2023). Significance as to Codification of Muslim Personal Law. *Significance as to Codification of Muslim Personal Law* (March 28, 2023).

marriage and divorce. By integrating these principles into a codified system, the law could effectively uphold Islamic values.⁷

One avenue for reform could involve adopting practices from other Islamic schools of thought. Historically, this approach has promoted fairness within the Sharia framework. Muslim scholars (Ulama) have a pivotal role in leading these reform efforts, utilizing their expertise in Islamic jurisprudence to create a codified law faithful to Islamic principles and responsive to the contemporary needs of the Indian Muslim community. Rigid stances, like those often taken by the Muslim Personal Law Board, impede progress towards a more just and equitable legal system.

Codification of Muslim personal law is not an assault on Islam but a necessary step towards ensuring justice for women and upholding the genuine spirit of Islamic principles. Reform, through the creation of a dynamic legal framework grounded in Islamic values, can pave the way for a fairer and more equitable society for all Indian Muslims.⁸

III. Effects of Codification on Women's Rights

The lawful scene in numerous countries is a mind-boggling embroidery woven from different sources. Individual regulations, which oversee matters like marriage, legacy, and reception in light of strict connection, are a huge string in this texture. Nonetheless, these regulations frequently miss the mark concerning contemporary norms, raising indisputable claims for their codification. Very first is that it provides Consistency. Overcoming any barrier One of the vital contentions for codification lies in the intrinsic differences inside private regulations. These regulations, frequently established in verifiable understandings and normal practices, may not mirror the real factors of a different and developing society. For example, a lady's legacy privileges might vary fundamentally relying upon her religion, making a feeling of shamefulness and subverting the guideline of equivalent treatment under the law. Codification offers a way towards more prominent consistency, guaranteeing a reliable legitimate structure that applies

⁷ AL MUZAINI, A. R. (2022). Is Codification a Solution or Problem in Regulating the Personal Affairs of Muslims Under Islamic Law?. *Journal of Law & Sociocultural Studies*, 2(2).

⁸ Rizwan, M. M. A., & Khatana, M. A. R. (2023). Is Codification a Solution or Problem in Regulating the Personal Affairs of Muslims Under Islamic Law?. *Malakand University Research Journal of Islamic Studies (MURJIS)* ISSN: 2708-6577, 5(01), 01-06.

evenhandedly to all residents no matter what their confidence⁹. Modernization is just one of many other fruits. Staying up with Social Change Individual regulations, frequently settled hundreds of years prior, battle to stay up with the quick friendly changes that describe the advanced world. Moving orientation jobs, monetary real factors, and advancing social mentalities can deliver these regulations obsolete and insufficient. Codification permits these lawful structures to be refreshed, guaranteeing they stay applicable and address the necessities of contemporary society. This modernization cultivates a feeling of inclusivity and guarantees the general set of laws mirrors the qualities and goals of the residents it oversees. Codification also provides Equity to all¹⁰. Tending to Orientation Inclination A basic contention for codification lies in the possibility to address orientation predisposition frequently implanted inside private regulations. Numerous conventional lawful systems might hindrance ladies in regions like separation procedures or legacy privileges. Codification offers an open door to reexamine these arrangements and make a more evenhanded situation that maintains the privileges, everything being equal, paying little heed to orientation¹¹. It also Straight forwards the path. Demystifying the Law Individual regulations, frequently founded on complex strict texts and understandings, can be covered in haziness for the typical resident. This absence of straightforwardness can prompt disarray and even double-dealing. Codification,

by making an unmistakable and open authoritative report, advances straightforwardness and enables people to figure out their privileges and commitments.¹² It likewise works with more straightforward admittance to legitimate response, guaranteeing that equity isn't just revered in the law yet additionally promptly accessible to all. Codification also guarantees Amicability. The codification of individual regulations doesn't require a dismissal of custom. Strict convictions and practices stay a significant piece of many people's lives. Rather, codification gives a chance to make a more amicable connection between living practices and the legitimate structure. A very much created

⁹ Newbigin, E. (2009). The codification of personal law and secular citizenship: Revisiting the history of law reform in late colonial India. *The Indian Economic & Social History Review*, 46(1), 83-104.

¹⁰ Bodenheimer, E. (1982). Is Codification an Outmoded Form of Legislation. *Am. J. Comp. L. Supp.*, 30, 15.

¹¹ Mathews, A. (1887). *Thoughts on Codification of the Common Law*. Bar Association Building [of the Association of the Bar of the City of New York].

¹² Pihlajamäki, H. (2015). Private law codification, modernization and nationalism: A view from critical legal history. *Critical Analysis of Law*, 2(1).

systematized regulation can regard and recognize strict standards while guaranteeing they are converted into a legitimate structure that mirrors the upsides of a cutting-edge society¹³.

IV. Effect of UCC on Women's Right

In India's legal landscape, where personal matters are often governed by religious affiliations rather than a unified civil code, women stand at the forefront of the need for change. The introduction of a Uniform Civil Code (UCC) offers a promising avenue towards gender justice and empowerment across all faiths. By advocating for a single set of secular laws applicable to all Indian citizens, irrespective of their religious background, the UCC aims to rectify the disparities and inequalities prevalent in the current system.

First and foremost, a UCC holds the potential to promote equality for women by bridging the existing divide created by varying personal laws¹⁴. Currently, women encounter significant discrepancies in their legal rights based on their religious identity, leading to a sense of injustice and unequal treatment. Implementing a UCC would ensure that women from all backgrounds are subject to the same legal framework in matters of marriage, divorce, inheritance, and adoption, thereby fostering a more inclusive and equitable society¹⁵. Furthermore, the UCC prioritizes gender justice by addressing the systemic biases embedded within traditional personal laws. These laws often perpetuate gender inequality, leaving women disadvantaged in areas such as inheritance rights, child custody, and divorce proceedings. Through the

establishment of uniform rights and obligations, a UCC would empower women across religious lines, granting them equal access to justice and legal protection, regardless of their faith¹⁶.

Moreover, the modernization and progress facilitated by a UCC are essential for women's advancement in society. As personal laws remain rooted in historical interpretations, they often fail to accommodate the changing realities of a modern and evolving society. A UCC would offer a dynamic legal framework, capable of adapting to shifting social norms and aspirations.

¹³ MacQueen, H. L., Vaquer, A., & Espiau, S. E. (Eds.). (2003). *Regional private laws and codification in Europe*. Cambridge University Press.

¹⁴ Kim, M. S., Boo, K. M., Im, K. D., Ko, S. B., & Kim, S. B. (2010). An interactive UCC creation and the effect analysis. *Science of Emotion and Sensibility*, 13(3), 459-466.

¹⁵ Malik, M. (2023). Uniform Civil Code: A Step Towards Women Empowerment. *Innovative Research Thoughts*, 9(2), 76-82.

¹⁶ Maya, R., & Vohra, R. EMPIRICAL RESEARCH ON THE NEED FOR UNIFORM CIVIL CODE IN INDIA.

This adaptability ensures that the legal system remains relevant and effective in addressing the contemporary challenges faced by women.

Additionally, the clarity and transparency afforded by a UCC are particularly beneficial for women, simplifying the often complex and opaque legal landscape. By enshrining rights and obligations in a clear and accessible legal document, a UCC promotes transparency and empowers women to understand and assert their legal rights effectively. Simplifying legal proceedings also makes the justice system more approachable and navigable for women, ensuring that they can access justice without barriers¹⁷.

Lastly, a UCC goes beyond legal uniformity to foster national integration and social cohesion, which are vital for women's holistic development. By subjecting all citizens, regardless of gender or religious background, to the same legal framework in personal matters, a UCC cultivates a shared sense of identity and solidarity. This sense of unity transcends religious differences and promotes cooperation, ultimately leading to a stronger and more inclusive society where women can thrive¹⁸.

V. Advantages of UCC over Codification

Firstly, the process of codification is inherently more time-consuming and labor-intensive compared to implementing a Uniform Civil Code. Codification involves a meticulous study of various religious texts, traditions, and customs to create a comprehensive legal framework that accommodates diverse beliefs. This process can be incredibly intricate and demanding, requiring extensive research and consultation with religious scholars and community leaders. In contrast, the adoption of a UCC streamlines this process by implementing a single set of secular laws applicable to all citizens, irrespective of their

religious affiliations. This saves significant time and resources that would otherwise be spent navigating the complexities of multiple religious legal systems. The time saved in this streamlined approach can then be allocated to other important tasks, such as addressing pressing social issues or enhancing governance efficiency.

¹⁷ Franklin, M. (1951). On the Legal Method of the Uniform Commercial Code. *Law and Contemporary Problems*, 16(2), 330-343.

¹⁸ Ghosh, P. S. (2018). *The politics of personal law in South Asia: Identity, nationalism and the uniform civil code*. Routledge India.

Secondly, while codification may have been a suitable reform approach fifty years ago, a Uniform Civil Code represents a more progressive and forward-thinking solution for contemporary times. Codification aims to consolidate existing personal laws into a unified legal framework, often based on historical interpretations and traditions. However, these codified laws may struggle to keep pace with the evolving needs and aspirations of modern society. In contrast, a UCC offers a more adaptable and flexible approach to legal reform, capable of accommodating changing social norms, values, and advancements in gender equality. By establishing a single set of secular laws applicable to all citizens, a UCC reflects a commitment to equality, justice, and inclusivity in line with contemporary principles and aspirations.

Thirdly, the adoption of a Uniform Civil Code can offer significant geopolitical advantages, particularly in a diverse and multi-religious country like India. Geopolitically, a UCC promotes national unity and cohesion by fostering a shared sense of identity and belonging among citizens. By transcending religious differences and establishing a common legal framework, a UCC mitigates potential sources of social and political division, promoting stability and harmony within the nation. Additionally, a UCC can enhance India's global standing by signaling its commitment to secularism, rule of law, and human rights, thereby bolstering its image as a progressive and inclusive democracy on the international stage. Furthermore, a UCC can streamline legal processes and promote ease of doing business, attracting investment and fostering economic growth. Overall, the adoption of a UCC can have far-reaching geopolitical implications, strengthening India's domestic unity and global reputation while advancing principles of equality, justice, and secularism.

VI. Conclusion

In conclusion, India's legal landscape, characterized by the diversity of personal laws governed by religious affiliations, presents both a fascinating mosaic of cultural traditions and a troubling uniformity of gender bias. While personal laws serve to preserve religious autonomy and cultural practices, they also perpetuate systemic inequalities, particularly disadvantaging women across various aspects of life. The disparities within personal laws, ranging from minimum age restrictions for marriage to inheritance rights and divorce proceedings, underscore the urgent need for reform. While the codification of existing religious laws may offer transparency and standardization within each faith, it falls short of addressing the root cause of gender bias entrenched within these legal frameworks. On the other hand, the Uniform Civil Code (UCC) emerges as a progressive solution capable of dismantling discriminatory practices and promoting genuine gender equality. By establishing a single set of secular laws applicable to all citizens, irrespective of religious affiliation, the UCC has the potential to create a more just and equitable society where women have equal rights and agency in personal matters. Moreover, the quest for gender equality within India's legal framework extends beyond mere legal reforms. It necessitates a broader societal shift towards challenging entrenched patriarchal norms and advocating for the empowerment of women at all levels of society. While the journey towards gender equality may be long and arduous, embracing the principles of secularism, equality, and justice inherent in the Uniform Civil Code represents a crucial step forward in realizing the aspirations of a truly inclusive and progressive India.

VII. References

Article

- Mubeen Farooqi vs. State of Punjab CWP-PIL-52-2020 (O&M)
- Tole, L. A. (1993). Durkheim on religion and moral community in modernity. *Sociological inquiry*, 63(1), 1-29.
- Newbigin, E. (2009). The codification of personal law and secular citizenship: Revisiting the history of law reform in late colonial India. *The Indian Economic & Social History Review*, 46(1), 83-104.
- Engineer, A. A. (2000). The need for codification and reform in Muslim Personal Law in India.
- Rizwan, M. M. A., & Khatana, M. A. R. (2023). Is Codification a Solution or Problem in Regulating the Personal Affairs of Muslims Under Islamic Law?. *Malakand University Research Journal of Islamic Studies (MURJIS) ISSN: 2708-6577*, 5(01), 01-06.
- Karmakar, K. K. (2023). Significance as to Codification of Muslim Personal Law. *Significance as to Codification of Muslim Personal Law (March 28, 2023)*.
- AL MUZAINI, A. R. (2022). Is Codification a Solution or Problem in Regulating the Personal

Affairs of Muslims Under Islamic Law?. *Journal of Law & Sociocultural Studies*, 2(2).

- Rizwan, M. M. A., & Khatana, M. A. R. (2023). Is Codification a Solution or Problem in Regulating the Personal Affairs of Muslims Under Islamic Law?. *Malakand University Research Journal of Islamic Studies (MURJIS) ISSN: 2708-6577*, 5(01), 01-06.
- Newbiggin, E. (2009). The codification of personal law and secular citizenship: Revisiting the history of law reform in late colonial India. *The Indian Economic & Social History Review*, 46(1), 83-104.
- Bodenheimer, E. (1982). Is Codification an Outmoded Form of Legislation. *Am. J. Comp. L. Supp.*, 30, 15.
- Pihlajamäki, H. (2015). Private law codification, modernization and nationalism: A view from critical legal history. *Critical Analysis of Law*, 2(1).
- Kim, M. S., Boo, K. M., Im, K. D., Ko, S. B., & Kim, S. B. (2010). An interactive UCC creation and the effect analysis. *Science of Emotion and Sensibility*, 13(3), 459-466.
- Malik, M. (2023). Uniform Civil Code: A Step Towards Women Empowerment. *Innovative Research Thoughts*, 9(2), 76-82.
- Maya, R., & Vohra, R. EMPIRICAL RESEARCH ON THE NEED FOR UNIFORM CIVIL CODE IN INDIA.
- Franklin, M. (1951). On the Legal Method of the Uniform Commercial Code. *Law and Contemporary Problems*, 16(2), 330-343.

Books

- MacQueen, H. L., Vaquer, A., & Espiau, S. E. (Eds.). (2003). *Regional private laws and codification in Europe*. Cambridge University Press.
- Mathews, A. (1887). *Thoughts on Codification of the Common Law*. Bar Association Building [of the Association of the Bar of the City of New York].
- Ghosh, P. S. (2018). *The politics of personal law in South Asia: Identity, nationalism and the uniform civil code*. Routledge India.

Legislations

- The Hindu Marriage Act (1955)
- The Hindu Succession Act (1956),
- The Hindu Adoption and Maintenance Act (1956)
- Dissolution of Muslim Marriage Act 193