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### UCC: BOOST OR ROADBLOCK TO WOMEN'S RIGHTS

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#### I. INTRODUCTION

The impending general election in India has brought the Uniform Civil Code (“UCC”) back into the forefront of discussions. The proposed concept is straightforward: rather than the existing legal system that permits different religious groups to adhere to customized regulations, the central government of India may implement a uniform civil code applicable to all individuals, irrespective of their religious affiliation, and ensure its enforcement.

During a recent talk to booth-level party workers in Bhopal, Prime Minister Narendra Modi expressed his disapproval of the implementation of distinct legislations for different communities. The fact that his address was delivered in Madhya Pradesh, a state currently in the midst of an election campaign, suggests a strategic political move aimed at capitalizing on electoral prospects.<sup>2</sup>

During his address, the speaker proceeded to level accusations of appeasement against the opposing political parties, while positioning his own party and government as the genuine advocates for the welfare of minority communities. The Bharatiya Janata Party (“BJP”) and the Prime Minister have prioritized the emancipation of Muslim women as a significant endeavor, with the UCC being presented as the apparent means to achieve this objective.

It is noteworthy that the Prime Minister's address, statements made by members of the ruling party, and the current Law Commission all advocate for a fresh discourse surrounding the UCC. Currently, there is a lack of an available draft template inside the public domain.

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<sup>2</sup>T. K. Rajalakshmi, *Empowerment or exploitation? How UCC will impact women's rights in India*, THE HINDU, available at <https://frontline.thehindu.com/the-nation/empowerment-or-exploitation-how-uniform-civil-code-will-impact-womens-rights-in-india/article67109276.ece>.

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According to the Consultation Paper presented by the 21st Law Commission in 2018, it was concluded that the UCC was deemed unnecessary.<sup>3</sup>

However, in the author's perspective, India, as a nation characterized by its diversity, possesses a multitude of personal laws that have been in existence for several centuries. Hence, the majority of laws exhibit an orthodox perspective, as they originated within a patriarchal societal framework. Nevertheless, as societal progress has unfolded, there has been a growing emphasis on achieving gender equality by elevating women to a position of equal standing with males.

The achievement of this objective necessitates the implementation of reforms to amend the antiquated and male-dominated personal legal systems. The UCC might be regarded as a significant milestone in this trajectory. This paper endeavors to examine the potential benefits of the UCC for women and the resultant impact on their rights.

## **II. UNIFORM CIVIL CODE: THE HISTORY AND SCOPE**

India is characterized by its pluralistic nature, encompassing a diverse and cosmopolitan community that adheres to various personal laws. Currently, there exist distinct personal laws that are applicable to individuals based on their religious affiliations. The legal provisions in question exhibit variations that are contingent upon factors such as ethnic background, as exemplified by the Khasi Hills Autonomous District (Khasi Social Custom of Lineage) Act, 1997<sup>4</sup>, and regional customs, as exemplified by the Tamilnadu modifications to Sec. 7 of the Hindu Marriage Act, 1955<sup>5</sup>, which acknowledge Suyamariyadhai weddings. While these laws acknowledge and accommodate the various differences present within the territory, they also grant permission for the continuation of disparities inside the legal framework. However, it should be noted that this approach was not intended to be a permanent solution. Article 44 of the Constitution mandates the State to make efforts towards establishing a consistent civil code that applies uniformly to all people across the whole territory of India.<sup>6</sup>

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<sup>3</sup>Shakeel Sobhan, *India: What would Uniform Civil Code mean for Muslim women?*, DW, available at [dw.com/en/india-what-would-uniform-civil-code-mean-for-muslim-women/a-66429364#:~:text=What%20is%20the%20Uniform%20Civil,divorce%2C%20succession%2C%20and%20inheritance](https://www.dw.com/en/india-what-would-uniform-civil-code-mean-for-muslim-women/a-66429364#:~:text=What%20is%20the%20Uniform%20Civil,divorce%2C%20succession%2C%20and%20inheritance).

<sup>4</sup> Khasi Hills Autonomous District (Khasi Social Custom of Lineage) Act, 1997.

<sup>5</sup> Hindu Marriage Act, 1955, Sec. 7.

<sup>6</sup>INDIAN CONST., Art. 44.

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In the context of Article 44, the term "Uniform" denotes the requirement for all communities to be subject to standardized personal laws.<sup>7</sup> In this context, a Civil Code pertains to a comprehensive body of legislation that governs various aspects concerning marriage, divorce, adoption, property rights, succession, and inheritance, among other related concerns.

The UCC encompasses a comprehensive set of personal laws that would be universally applicable to all individuals in India, irrespective of their religious affiliation, gender, or sexual orientation. The aforementioned laws pertain to several aspects including matrimonial unions, dissolution of marriages, transfer of property rights upon death, and the passing down of assets and liabilities to heirs.<sup>8</sup> Women frequently encounter discrimination within the existing framework, because separate personal laws are permitted for various religious sects. The implementation of the UCC would align the aforementioned rules with the existing criminal law of the nation, which is already applicable to all individuals.

During the 1930s, the All India Women's Conference actively advocated for the attainment of equal rights for women, regardless of their religious affiliation, particularly in relation to family law problems such as marriage and divorce.<sup>9</sup> Notably, the organization consisted predominantly of women freedom fighters representing many religious backgrounds. In 1950, with the implementation of the Indian Constitution, a provision was included stating that the State shall make efforts to ensure the establishment of a UCC for all people. In due course, the UCC was intended to supplant the laws that were based on religious principles.<sup>10</sup>

During the 1950s, the Nehru administration undertook the codification and revision of several Hindu personal laws, despite encountering opposition. This initiative aimed to ensure the provision of fundamental rights for Hindu women. Over the course of time, several amendments have been made to various legal frameworks. However, it is worth noting that a comparable systematization of personal laws has yet to be implemented for individuals belonging to the Muslim, Christian, Sikh, or Parsi communities.

In 2016, the government of India tasked the Law Commission of India with determining the appropriate approach to establishing a UCC amidst the existence of various personal laws. However, the report submitted by the Law Commission in 2018 asserted that the formation of

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<sup>7</sup>*Ibid.*

<sup>8</sup>Shetreet S, Chodosh EH (2015) Uniform civil code for India. Oxford University Press, New Delhi.

<sup>9</sup>*Ibid.*

<sup>10</sup> Seth L (2005) Uniform civil code: towards gender justice. India Int Cent Q 31:40–54.

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a UCC is not an imperative nor a desirable course of action at the present stage, emphasizing that a unified nation does not inherently require absolute uniformity.<sup>11</sup> In contrast, the proposal put out recommendations for modifications within the various personal legal frameworks.

### **III. INDIAN PERSONAL LAWS AND WOMEN'S RIGHTS**

The personal laws encompass a collection of legal principles that regulate and oversee the interactions stemming from certain elements that link individuals together. The factors that serve to protect the integrity of a relationship include the institution of marriage, familial ties through blood relatives, and the bond formed through affinity. Personal laws encompass various aspects of civil law, including but not limited to marriage, divorce, maintenance, succession, minority, and guardianship. The legislation in question is informed by the scriptural comprehension that has influenced several domains of daily life.<sup>12</sup> The family setup encompasses conventions, rules, and regulations that control personal relations within it. Over time, these societal standards were officially acknowledged by the implementation of various legislative measures pertaining to marriage, divorce, financial support, inheritance and succession, guardianship, and adoption.

#### **1. *Hindu Law***

As per the *Mitakshara law*, the inheritance of property belonging to a Hindu male is transmitted through survivorship, collectively shared by four successive generations of male descendants.<sup>13</sup> The system of ownership was determined by birth rather than succession, whereby the male member would inherit the title to property at his birth. Women were excluded from the customary joint family property or coparcenary, resulting in their inability to assert their right to partition the property. Females were only granted the entitlement of *streedhan*, which constituted their sole absolute property. However, there were instances where this exclusive property of women was unjustly denied, as it was not recognized as their rightful possession. For instance, in the case of *Deo Prashad v. Lujoo Roy*, the court

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<sup>11</sup> *Supra* note 1.

<sup>12</sup> GR Rajagopaul, *The Story of the Hindu Code* 17(4) *Journal of the Indian Law Institute* 537-543 (1975).

<sup>13</sup> DC BUXBAUM, *FAMILY LAW AND CUSTOMARY LAW IN ASIA* 209 (Springer 1968).

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determined that the property inherited by a daughter from her father did not qualify as her streedhan.<sup>14</sup>

The clause outlined in *Section 6 of the Hindu Succession Act of 1956*<sup>15</sup> has been criticized for its perceived discriminatory nature, as it grants females much less property rights compared to males. This provision also establishes the right of the son to inherit by birth with regard to the father's shares. The idea of joint family in India exhibits bias and exacerbates the limitations on women's inheritance rights. Nevertheless, in 2005, an *amendment* was introduced to the Hindu Succession Act 1956<sup>16</sup> in order to grant daughters equal rights as coparceners in joint family property. However, this reform has been criticized for its failure to effectively address issues of justice and equality for women. This exemplifies one of the cases within Hindu personal law wherein women have faced discrimination and their rights have been subjected to unequal treatment.

## 2. Muslim Law

There have been numerous instances in which Muslim women have experienced adverse consequences due to their traditional personal regulations. The case of *Mohd Ahmad Khan v. Shah Bano*<sup>17</sup> in 1985 involved a legal petition made by Shah Bano, a 62-year-old Muslim woman, against her divorced husband Mohammed Ahmad Khan. Khan, a well-known lawyer in Indore, Madhya Pradesh, had pronounced an irrevocable talaq, or divorce, which prompted Bano to seek maintenance through the judicial system. The individual in question found recourse in Section 125 of the Code of Criminal Procedure<sup>18</sup>, a secular legal provision, after being denied maintenance under Muslim personal law.

In the year 2017, the case of *ShayaraBano v. U.O.I*<sup>19</sup> (Triple Talaq Case) resulted in the declaration of the practice of triple talaq as unconstitutional. However, it is important to note that despite this legal ruling, the challenges faced by Muslim women persisted. Following the issuance of the aforementioned verdict, the Muslim Women (Protection of Rights on Marriage) Act, 2019<sup>20</sup> was enacted, thereby establishing criminal liability for husbands

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<sup>14</sup> Deo Prashad v. Lujoo Roy, (1873) 20 WR 102 295.

<sup>15</sup> Hindu Succession Act, 1956, Sec. 6.

<sup>16</sup> Hindu Succession (Amendment) Act, 2005.

<sup>17</sup> Shah Bano Begum v. Mohd. Ahmed Khan, 1985 (2) SCC 556.

<sup>18</sup> Code of Criminal Procedure, 1973, Sec. 125.

<sup>19</sup> ShayaraBano v. Union of India, (2017) 9 SCC 1.

<sup>20</sup> Muslim Women (Protection of Rights on Marriage) Act, 2019.

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engaging in the practice of triple talaq. In such instances, it is the female population that experiences the hardships of homelessness and extreme poverty. The persistence of these archaic customs, which are an integral component of Sharia Law, has endured since the era of Nehru. Their repercussions are evident now as we find ourselves advocating for justice on behalf of the women in our nation within the confines of the court.<sup>21</sup> Instead of effectively resolving a large number of pending cases, the judiciary is currently engaged with the interpretation of statutes that were established during antiquated periods.

#### IV. WILL UCC BRING A CHANGE?

The existence of Personal Laws indicates their utilization as selective instruments of government, which have frequently resulted in disadvantages for women. The presence of religious disparities within the realm of family legislation has emerged as a contentious topic in relation to gender parity.<sup>22</sup> The Constitution of India provides its citizens with the fundamental right to freely engage in and promote religious activities, as well as the autonomy to administer their religious affairs. Furthermore, the constitution ensures that all citizens are granted the fundamental right to equality before the law, including equal protection of the laws. It prohibits any kind of discrimination based on religion, caste, or sex, and upholds the right to liberty, among other rights. However, the implementation of personal laws is in conflict with the principles of gender equality and impedes the progress of gender justice.

While there are individuals who contend that the implementation of the UCC is neither essential nor advantageous, it is imperative to consider the multiple justifications for its enactment. The primary factor contributing to this phenomenon is the pursuit of gender fairness. It can be argued that personal laws possess an inherent patriarchal nature. The judicial system has intervened in numerous cases, such as *Thota Sesharathamma and Anr v. Thota Manikyamma*<sup>23</sup>, *Gita Hariharan v. Reserve Bank of India*<sup>24</sup>, and others, to invalidate the gender discriminatory impact of personal laws. However, this is not always the case, particularly in circumstances where the language used is explicit and clear.

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<sup>21</sup>DR. TAHIR MAHMOOD, MUSLIM PERSONAL LAW 200-202 (Vikas Publishing House 1977).

<sup>22</sup>CK MATTHEW, UNIFORM CIVIL CODE: THE IMPORTANCE OF AN INCLUSIVE AND VOLUNTARY APPROACH, (Hindu Centre for Politics and Public Policy 2019).

<sup>23</sup>*Thota Sesharathamma and Anr v. Thota Manikyamma*, 1991 SCC (4) 312.

<sup>24</sup> *Gita Hariharan v. Reserve Bank of India*, AIR 1999 SC 1149.

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Therefore, it is opportune to introduce a gender-inclusive UCC. The value of the UCC in promoting gender equality is undeniable, particularly in a country like India where women's rights are frequently challenged and frequently denied. The implementation of the UCC in India is expected to contribute significantly to the enhancement of women's status and well-being. Indian society is widely acknowledged to exhibit a pronounced patriarchal structure.<sup>25</sup> The perpetuation of traditional religious regulations inside our post-independence legal framework serves to endorse the oppression and mistreatment of Indian women, so impeding their progress and well-being. The UCC will expedite the process of eliminating old misogynistic traditions that are deemed incompatible with contemporary societal norms.<sup>26</sup>

The UCC has the potential to serve as a mechanism for the empowerment of women who face numerous restrictions under personal laws. In many societal contexts, women have consistently been assigned a subordinate position, hence becoming subjects of male dominance.<sup>27</sup> According to Gautam<sup>28</sup>, the implementation of the UCC in India will result in the transformation of personal laws into a simplified, transparent, and standardized framework applicable to all Indian people.

The current state of Muslim personal laws continues to exhibit disparities in the treatment of women, as these rules remain uncodified and allow for practices such as polygamy and triple talaq. In addition to the Hindu and Muslim personal laws, it is noteworthy that Christian personal laws also impose limitations on the rights of women. In Christian doctrine, a husband is permitted to seek a divorce from his wife based on the grounds of adultery.<sup>29</sup> Conversely, the wife is required to substantiate at least two instances of fault in order to initiate a divorce proceeding. The implementation of a UCC can be regarded as a potential strategy to address instances of discrimination and violence. It seeks to initiate reforms within personal laws, thereby establishing a comprehensive legal framework that promotes gender

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<sup>25</sup>Shambhavi (2017) Unifrom civil code: the necessity and the absurdity. Indian Law Inst Rev I:12–29.

<sup>26</sup>*Ibid.*

<sup>27</sup> Prasad L (2013) The need for uniform civil code. IUP Law Rev 3(1):23–32.

<sup>28</sup> Gautam V (2017) The politics of Muslim identity and the personal laws: safeguarding the rights of the internal minorities. IOSR J Humanit Soc Sci 22(5):11–19.

<sup>29</sup>*Ibid.*

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equality. This framework encompasses not only personal laws but also other domains where women's rights are infringed upon.<sup>30</sup>

The absence of adequate measures to address women's concerns in India has resulted in the reinforcement of women's social subordination through legal means.<sup>31</sup> A uniform legislation is considered to be of great importance in promoting gender justice, integrity, and unity across all societal groups. The UCC is recognized as a means to empower and promote freedom for women.



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<sup>30</sup> Patel R (2007) Hindu women's property rights in rural India: law, labour and culture in action. Ashgate Publishing House, Aldershot.

<sup>31</sup> *Uniform Civil Code Is About Women's Rights*, LAWBEAT, available at <https://lawbeat.in/columns/uniform-civil-code-about-womens-rights>.

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