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**Gender inequality under Muslim Law in India: An alleyway for
Uniform Civil Code**

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Abstract

The Indian constitution exhibits the concept of an egalitarian civilization. The prime perception of draftspersons of the Indian constitution was to inculcate India, as a state where all the persons heedless of their religion, caste, sex, place of birth conjointly has equality before law and also equal protection of the law. Constitutional rights are an inherent right which all human species have just after birth. On the soil of democratic India, there has always been much ado in the Muslim community about the conservancy of what is popularly known in India as the Muslim personal law. Diverse personal laws prosper in India to administer the personal lives of the humans in concurrence with the belief. However, it's instinctive that in a secular nation like India, the public associated with numerous religious dominations have been relinquished the constitutional independence to be ruled by their particular personal laws regarding certain amenable matters like marriage, divorce, and succession. Several laws have been specifically enacted for the protection of women since they have been deprived of legal status and egregiously affected by the family laws which became a hindrance for their progressive future. All over the globe women have always been subject to discrimination much of it is in a flagrant and legal form. Therefore, for protecting women's right many treaties has been signed. Being maintained or getting maintenance after or during marriage is legal also qualifies as Human Rights for women. The elementary outlook behind the nascence of a civil code is to terminate unfairness arising out of religion. It's the ugly truth of the community that women are the worst sufferer of discrimination under personal laws. A uniform civil code would make certain that all citizens of India are ruled by an identical set of secular civil laws. In this paper the author would first like to study up on the history of Muslim law, the present scenario of the legal regime under Muslim law, and the injustice given that. Then, this paper suggests the enactment of a uniform civil code in India also including other measures that could be a progressive stride for the forthcoming situations.

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1. Introduction

India is acknowledged as a multi-religious country, and each religion has its philosophies, own concepts, and rules about marriage, divorce, adoption, etc. and our constitution protects all religions. India has no religion by which it is recognized. It treats all religions equally. The basic ideology behind the conceptualization of a civil code is to finish discrimination relying on different religions. It's the bitter truth of our society that women are the worst victims of discrimination under personal laws. In a polarized habitat too, where 'neutral, secular, liberal and also progressive' voices that demand equity for Muslim women are placed in opposition to the 'bearded, misogynist and patriarchal' Muslim clerics, which ultimately closes the door for Muslim women to express a nuanced perception regarding the present controversy of triple talaq and reinforce upon them an artificial identity question. B. S. Sherin, a research scholar of literature in Hyderabad, articulates her concern:

“It is genuinely unlucky that Muslim women’s integrity is displayed only in terms of personal laws, especially after the Shah Bano case. This overshadowing locus on personal law presents any development of Muslim women’s lives as contingent only on rectifying personal laws. By lifting the query on personal laws and on a community-binding, the larger association of culture, class, and region on the lives of Indian Muslim women are protracted. Muslim women themselves have come out together opposing the present campaign on Triple Talaq to say what’s more urgently required is empowerment and education. But the voices of those women don’t receive a larger audience. Recently, those Muslim women have challenged ‘progressive voices’ has been written as ‘encouraged by patriarchal forces’ or maybe ‘indoctrinated’.”⁸⁰

Although Islam is among the fastest-growing religion, yet it is the most misunderstood belief in the world because many claim that it's unjust to women. Although the Indian constitution grants women the same and equal rights and prospects, also some of liberal laws such, e.g. Equal Remuneration Act signify this value, India's adaptation of law differentiate contrary to women. This is most apparent in two areas: the inheritance laws, divorce and maintenance laws. Uniformity of law has been a larger question pertaining to Indian democracy ever since India emerged as a sovereign nation. During the course of life, females are always the sufferers of

⁸⁰ B.s, S. (2018). Intersections of Justice: Gender, Uniform Civil Code and the Muslim Question in India. *Www.Academia.Edu*, vol.25 no. 2. https://www.academia.edu/37371728/Intersections_of_Justice_Gender_Uniform_Civil_Code_and_the_Muslim_Question_in_India.

various vicious acts like discrimination, injustice, and violence, within the nation as a whole, at the workplace too. Laws that directly discriminate are a baptism of fire. Public dissertation on removing legal perception against females has paved a way to the target on the need for a uniform civil code.

2. History: Muslim Law

The nucleus of Muslim law had come into existence along with Islam. Its original sources were the Quran also the Hadith (sayings of Prophet) or Sunnat (known as traditions of Prophet). Muslims believe in the divine origin of their Holy book which according to their belief was revealed to Prophet Mohammad (PBUH) by Angel Gabriel. Islam recognizes all the former Prophets and considers Zaboor, Taurate, and Injeel, as divine books besides Quran. Islam is solely a religion in which the lawgiver is God. It can't be (Islamic Law) amended, repealed, or altered since it's a divine law, while all other laws can be repealed, amended, or altered. It's pertinent to those who are believers and have belief in God and acknowledge his authority over their actions. Islam, meaning 'to surrender to God, law and thus to be an integral whole' and Muslims, is a person who so surrenders.⁸¹

Muslim law in India signifies "that part of Islamic Civil law which applies to Muslims as a personal law". It consist of the injunction of Quran⁸², also of traditions brought by 'practice' of Prophet, of common jurist opinion (Ijma), also analogical conclusion of these three (Qiyas), and pre Islamic customs not annulled by Prophet. Further, it's been supplemented by jurist preferences (Istihsan), precedents (Taqlid), and independent interpretation (Ijtihad) also modified by legislature and judiciary.⁸³ Earlier to the disclosure to Muhammad, the Arab tribes weren't having a formal legal system, but they did have traditional methods of performing things that, even if they were not written down, did regulate and guide their lives. The custom of Arab tribes survived the dominance of Islam. In reality, Arab tribal law, even some Roman and Sasanian law as practiced in Egypt, Syria, and Iraq were included in the sharia. In Sharia,

⁸¹ Rahman, F., & Mahdi, M. S. (2018). Islam | religion. In *Encyclopædia Britannica*. <https://www.britannica.com/topic/Islam>.

⁸² The word QURAN, derived from word Qara signifies proper reading or rather than which ought to be read , by which name, the Muslim denotes not only the entire book of Quran but also many particular chapters , just as jew call entire scripture or any part of it by name of 'Korroh' or 'mikrah' words of the same origin and import.

⁸³ Ahmad, A. (2016). *Mohammedan Law* (twenty sixth, pp. 1-5). Central Law Agency.

custom isn't generally an official source of law, and when it is, it's not given much importance. Although in practical life it had a huge impact. Custom is imbibed in the sharia. Sunna consist of that which Muhammad said and had done, and also included things which he tacitly approved of. There were also other schools of law in Sunni Islam, but only the Maliki, Hanafi, Shafi'i, and Hanbali survive. The Abbasid's followed the Hanafi school. It's mainly followed in India and to east Africa and Southeast Asia.⁸⁴

Important changes were made inapplicability of Islamic law. Islamic criminal law was replaced by IPC in 1862 and Islamic law of evidence by Evidence act in 1872. Islamic law recite to contract, tort, civil and criminal proceedings, and practically every field except personal law, e.g., dissolution of marriage, waqf, maintenance etc have been touched by legislation regardless not in manner repugnant to Islamic law. As Fyzee states, "Mohammedan law as received in our India is the Shariat modified by principles of English common law and equity, in the varying social and cultural conditions of India. The Shariat Act, 1937 in effect abrogated local customs and revive to the Muslims to have their law."⁸⁵

3. Present Legal Framework: Muslim Law

Muslim law is applied to Muslims all over India in some matters only. Before moving ahead, perhaps there's a demand to disclose the complicated terrain of family laws. Within our laws and legislation dwelling in India, a choice of civil law of marriage coexists inextricably with religion-centric family laws and also customary practices. The goal to have a secular and uniform family law is enunciated in Article 44 of the Indian Constitution. The potential of courts to apply Muslim law to Muslims is derived from and regulated partly by statutes of British parliament along with article 225 of the Indian constitution⁸⁶ and mostly by Indian legislations. Thus, the whole body of this law may is classified under the following three headings –

⁸⁴ Rahman, F., & Mahdi, M. S. (2018b). Islam | religion. In *Encyclopaedia Britannica*. <https://www.britannica.com/topic/Islam>.

⁸⁵ Supra 5.

⁸⁶ Durga Das Basu, Roy, S. R., & S P Sen Gupta. (2011). *Indian constitutional law*. Kamal Law House.

- Those that have expressly directed by the legislature that has to be implemented to Muslim, such as, rules of succession.
- Those that are applied to Muslims as an issue of justice, equity, and good conscience, e.g. the rules of Muslim law of pre-emption run down, now to Article 19(1)(f) of the Indian constitution.
- And those that are not applied at all, though they are Muslims such as, Muslim Criminal Law and also Muslim Law of Evidence.

A. Muslim Personal Law (Shariat) Application Act, 1937: An analysis of this Act shows that various subjects which come under the ambit of Muslim law are placed under three different categories as (i) those subjects in view of which the Muslims will be compulsorily ruled by the Muslim personal law, notwithstanding any custom/usage to the contrary. These include: marriage (including all matters incidental thereto), including all forms of divorce, gifts, maintenance, inheritance, trusts, and waqfs⁸⁷ (ii) Those subjects regarding which a Muslim may, if he/she so desires, adopt the Shariat. A procedure is given by the Act which is binding on an individual who desires to do so. Once a person adopts this law of Shariat by complying with the necessary proceeding, not only that person but also their minor and the descendants become subjected to Muslim law on these subjects. So long as it's not achieved, a Muslim will be ruled accordingly, regarding these subjects, by custom or statute law. The subjects covered by this category are: testamentary succession, legacies, and adoption.⁸⁸ (iii) Since certain subjects that would ordinarily be regulated by personal laws are not in the legislative competence of the central legislature and belong to state jurisdiction. The Shariat Application Act, that's a central law, doesn't apply to them. Hence it's for the state legislatures to rule if the cases among Muslims involving such subjects will be driven by Muslim personal law. Among these subjects are: succession to agricultural lands, charities, and endowments. The state legislation relating to the application of Muslim personal law in these fields is not uniform.⁸⁹

B. Dissolution of Muslim Marriage Act, 1939: Marriages as it's said are decided in heaven and executed on earth. Now marriage isn't considered as an indissoluble relation. In present days the laws regarding divorce are constantly modified and liberalized. The act

⁸⁷ Shariat Application Act, 1937, S. 2.

⁸⁸ Id. at ss, 3-4.

⁸⁹ See, for instance, the Madras Act XVIII of 1949 (as amended by Act XXVI of 1957) and the Andhra Pradesh Act, VIII of 1949. However, in most of the states succession to agricultural land is governed by the local tenancy laws and not by personal laws.

got assent on 17 march by a governor-general. Under this, a woman can get a divorce by methods that include talaq, ila, zihar. Also, the wife can claim divorce under judicial process by mode of lian (Noor Jahan Bibi v. Kazim Ali)⁹⁰ and the doctrine of fask. There are a variety of grounds specified in the act for divorce like the husband is missing for four years, not able to give her maintenance for a period of two years, cruelty, unsuccessful to perform his duty without reasonable cause for a period of three years, imprisonment for 7 years or more, any other ground which is recognized as valid for the dissolution of marriages under Muslim Law. The judicial observations in some recent cases, e.g., Shahulameedu v, Subaida Beevi⁹¹ and Yusuf Rowthan v. Sowrammaw,⁹² may provide valuable guidance in the revision of the Act of 1939

- C. Special Marriage Act, 1954:** The act was introduced to secularize the family personal laws concerning marriage and other related concepts. It deals with different caste, religion etc. act applies to the Indian citizens but also NRI's can be included. For marriage under this act consent of parties is of utmost importance. Upon a genuine registration, parties are awarded with marriage certificate. Chapter 2 of the act reads about the solemnization of marriage with conditions of age (18 of bride, 21 of the groom), the required soundness of mind, free consent, absenteeism of any living spouse, and following degree of prohibition. This act restricts the filing of any divorce petition till one year after marriage. Also, the parents having a child under this act of marriage has a right to the property of his/her parents. Divorce under this act may be granted on the scope of venereal disease, sodomy, adultery, cruelty i.e. stated in S.27 and 28. This act removes obstacles of casteism.
- D. Muslim women (Protection of rights on divorce) Act, 1986:** This is a Central law enforced in 1986 to secure the rights of divorced Muslim women who got separated from their spouse either by themselves or by the will of the husband himself. The Act was passed to invalidate the decision of the Supreme Court in Mohammed Ahmed Khan v. Shah Bano Begum,⁹³ in which the Court observed that where a Muslim woman isn't marrying again and isn't able to maintain herself, she can ask for maintenance from her ex-husband as long as she remains single.

⁹⁰ AIR 1977 Cal. 90.

⁹¹ Shahulameedu v, Subaida Beevi, (kerala high court December 8, 1969). <https://www.lawyerservices.in/SHAHULAMEEDU-Versus-SUBAIDA-BEEVI-1969-12-08>.

⁹² Yusuf Rowthan v. Sowrammaw, (kerala high court June 24, 1970). <https://indiankanoon.org/doc/1322686>.

⁹³ Hawley, J. S., & Hawley, P. and C. of the D. of R. B. C. D. of the S. A. I. J. S. (1994). Fundamentalism and Gender. In *Google Books*. Oxford University Press. https://books.google.co.in/books?hl=en&lr=&id=pdW1vIicp1oC&oi=fnd&pg=PA63&dq=shah+bano+case&ots=1NCu7ragtD&sig=TNBzkFV0ip1Ve9EudesprTXsryc&redir_esc=y#v=onepage&q=shah%20bano%20case&f=false.

S.3 and 4 were the principles sections under attack. Section 3 states that a divorced woman is titled to procure from her former husband ‘maintenance’, ‘provision’, and ‘*mahr*’, also to regain from his possession her belongings, dowry and the Magistrate to direct the payment or recovery of these amounts or property. Section 4 enables the magistrate to sanction an order for paying the maintenance to the divorced woman. The Act indicates that it condenses and regulates the responsibility of a Muslim woman divorcee by putting them outside the ambit of Section 125 Cr.P.C. The maintenance is paid by the husband for the tenure of the *iddat* period and this obligation doesn’t go beyond the *iddat period*. The Court noticed the function of the Act was to permit the Muslim husband to keep his freedom of dodging payment of maintenance to the ex-wife after divorce and the period of *iddat*. The judgment was subject to denunciation from its inception that the main agenda of the Act was to rescue men and not women. Additionally, the Act has been made a long time ago and till now no steps have been taken to rectify the dubious provisions and protect a weaker section of Indian society. It’s contended that the Act is not in compliance with the thoughts of the Constitution and it wouldn’t aid the purpose articulated in the Preamble.⁹⁴

E. S.125 of Cr.P.C.: In India, we will find various personal laws supervising respective religions and communities. Although these laws too have genesis and are secured under fundamental rights but then also situation arises where bring such common laws to deter the weakness which these personal laws fail to mitigate e.g. maintenance of illegal child is on such matter that should be cut across religion and community. This provision reads about the protection and maintenance of wives, parents, legitimate and illegitimate children as these sections of society need greater attention because of their present condition. In an era of equality, it’s really concerning the question, whether the second wife shall be enabled to seek maintenance under the respective personal or uniform law or not? The second wife isn’t even treated as a wife. Law may not give her the same status as of first wife however, she indeed is a sufferer. She has to struggle not just with disgrace but also with her illegal status in the prevalent Indian laws. She has her own set of rights which when infringed entitles her to seek remedy. Contrary to that, the majority of courts in India have the opinion that she shouldn’t be entitled to maintenance and have taken conflicting views relying on the facts and situation of each case and interpreting the

⁹⁴ The Muslim Women (Protection of Rights on Divorce) Act, 1986. <https://indiankanoon.org/doc/1933289>.

expression ‘wife’ under s.125 of Crpc either liberally or narrowly. In Shah Bano’s case,⁹⁵ she appealed the court pleading for the maintenance under §125 of CrPC, the law doesn’t apply to Shah Bano because it doesn’t come under the ambit of Muslim Law, therefore the husband would be only liable to pay till iddat and Mehr in this case came with the historic decision as it was in the favor of Shah Bano that even a Muslim women can ask maintenance under CrPC. And after that MWPRDA was passed which overturned the decision of Shah Bano's case of claiming maintenance in this section. Thus, s.125 helps in speedy, effective, and inexpensive recovery against the person who denies maintaining their wives, children, and parents.⁹⁶

4. Injustice Considering Various Aspects

For a long time women have been barbarized, predisposed, diminish, degraded, disempowerment, disenfranchised, subjugated, also silenced. In old times, widows were burnt alive on the pyre of their dead husbands. A division Bench has ruled for enrolment of a PIL and questioned the CJ to allocate a Special Bench for gender discrimination issues tolerated by Muslim women. Thirty years after the SC urged the government to frame a uniform civil code⁹⁷ to “help in the cause of national integration” in the Shah Bano case⁹⁸, a two-judge Bench of the court has suo motu ordered registration of a public interest litigation petition and asked the Chief Justice to set up a Special Bench to consider gender discrimination suffered by Muslim women owing to “arbitrary divorce and second marriage of their husbands during the currency of their first marriage”.

Judge Anil R. Dave and Adarsh Kumar Goel passed notice to the Attorney-General and the NLSA of India to reply, on if “gender discrimination” which Muslim women face shouldn’t be considered as a breach of the fundamental rights under Articles 14, 15 & 21 of the Constitution⁹⁹ and international laws. The 16th October ruling refers to a number of its

⁹⁵ Supra 15.

⁹⁶ Kant, A. (1996). RIGHT OF MAINTENANCE TO INDIAN WOMEN. *Journal of the Indian Law Institute*, 38(3), 392-404. Retrieved September 4, 2020, from <http://www.jstor.org/stable/43952393>.

⁹⁷ Whether “gender discrimination” suffered by Muslim women can be considered as violation of their fundamental rights? (2015, October). Lawweb.In. <http://www.lawweb.in/2015/10/whether-gender-discrimination-suffered.html?pfstyle=wp>.

⁹⁸ AIR 1985 SC 945.

⁹⁹ Mahabir Prashad Jain. (2014). *Indian constitutional law*. Haryana, India Lexisnexis.

judgments since the 1990s to record the court's growing realization that gender discrimination because of personal laws breached the constitutional rights of those women.

Maintenance under Muslim Law: Means a periodic amount of sum that is given by the husband to the wife for the divorce or the termination of the marriage in the name of support by spouse or alimony. In Muslim Law men are eligible to marry up to four therefore if he marries more than once and living with one wife and abandon the others then he is liable to pay maintenance to the abandoned wife/ wives. The liability of a husband is limited/ restricted because of the nature of Muslim Marriage.¹⁰⁰ Therefore, the husband needs to maintain the wife/wives till the iddat period only in Muslim Law which made the condition of the wife/wives egregious. Therefore, for safeguarding the interest of the Muslim wife/wives, the Muslim Women (Protection of Rights on Divorce) Act, 1986 came into existence. The wife is only entitled to ask for the maintenance when she respected the husband and his decision and if she does not she becomes Nashuza and she is not entitled to claim maintenance. Shah Bano's case showed the real picture that how women faced difficulties after divorce when no financial support is given to her by her husband.

In *Danial Latifi v. Union of India*,¹⁰¹ “the efficacy of the MWPRDA, 1986 was questioned on the grounds that the law was prejudicial of the right to equality i.e. Art.14 as it robs Muslim women of maintenance benefits similar to those provided to other women under § 125 of Criminal Procedure Code. Further, it was inferred that the law would leave Muslim women poor and also was breach of under Art.21. The SC, on the MWPRDA, 1986, favored its constitutionality.” Under § 3 (1) (a) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 “the husband has to make a fair and reasonable provision for the maintenance of the wife beyond the iddat period.” One situation under Muslim law is also there which describes that a divorced woman can file an application in regards to maintenance from her relatives or Wakf board but only when she is not in a position to maintain herself from her husband, this section imposes two requirements: She is unable to maintain her after iddat period and she hasn't remarried.

In an era of equality, it is a very concerning question, whether a second wife shall be entitled to seek maintenance under the respective personal or uniform law or not? The second wife is

¹⁰⁰ Maheshwari, P., & Pandey, A. (n.d.). *Breaking the Law of Maintenance into its Components – Under Hindu and Muslim Law*. file:///D:/Documents/Research%20Papers/Gender%20justice%20under%20muslim%20law/02d95543-5027-4411-a174-221aba1442b6.pdf.

¹⁰¹ *Danial Latifi v. Union of India* (2001) 7 SCC 740.

not even considered as a wife. Law may not give her the same status as of first wife however, she indeed is a sufferer. She has to struggle not just with disgrace but also with her illegal status under the prevalent Indian laws. She has her own set of rights which when infringed entitles her to seek remedy. Contrary to that, the majority of courts in India are of the opinion that she should not be entitled to maintenance and have taken conflicting views depending on the facts and situation of each case and interpreting the expression 'wife' under Section 125 of CrPC either liberally or narrowly. In *Savitaben Somabhai Bhatiya v. State of Gujarat*,¹⁰² an appeal to accord maintenance by the second wife was not granted by the Gujarat High Court on the grounds that the plaintiff was not her husband's legally wedded wife. The issue of maintenance for the second wife was settled by the apex court when the matter reached the aforementioned court. The Supreme Court took into account the provisions of Section 125 of CrPC which provides for maintenance of an illegitimate child but does not include a woman not lawfully married. It observed that it was an insufficiency of the law to not protect women who unwittingly got into a relationship with a man who had suppressed the fact of an earlier marriage. But the court believed that such lacunas could be cured by the legislature and so she was denied maintenance. The law must change with the change in societal reality and therefore, interpretation of provisions to advance the social cause of justice is the demand of the hour.

Marriage and Divorce Laws: A Muslim marriage called nikah is not a sacrament but a civil contract made for procreation. Consent of the bride and the bridegroom is the basis of this contract. So, if the parties are adults, then their free consent is essential for a valid marriage and nobody else's consent is required. If there is no free consent, then there is no marriage. In the case of a minor or person of unsound mind, consent can be given by the guardian. In such cases, the minor on attaining majority can either ratify the marriage or repudiate the marriage. It is called the option of puberty. So, a girl cannot be forced into marriage. Even if she is forced into it, it is not a valid marriage. She can exercise the option of puberty and dissolve the marriage. This legal provision seems to be in favor of women giving their right to decide about her marriage. But she can exercise the option of puberty, only when she can support herself or where somebody is there to support her. Unrestricted powers are given to the Muslim husband to dissolve the marriage. But, a Muslim woman has no such rights. She can dissolve her marriage only according to the provisions of the Dissolution of Muslim Marriage Act, 1939.

¹⁰² AIR 2005 SC 1809.

Hence the grounds available are limited and the same constraint follows. A Muslim woman can opt for divorce only when she can support herself or somebody is there to support her.

Under Muslim Law, a Muslim husband is permitted to have four wives at a time. Quran says: ‘Marry of the women, who seem good to you, two or three or four, if you fear that you cannot do justice to so many, the one.’ But a Muslim woman can have only one husband. If she contracts a second marriage during the subsistence of the first marriage, then the second marriage is void. She can be punished for bigamy under the IPC, 1860. A Muslim man can marry a Muslim girl, a Christian, or a Jewish girl. But a Muslim girl can marry only a Muslim man. If she marries a Hindu, Jew, or a Christian man, the marriage is void.¹⁰³

Article 3 of the Universal Declaration of Human Rights provides that everyone has the right to life, liberty, and security of person while Article 7 provides that everyone is equal before the law and is entitled without any discrimination to equal protection of the law.¹⁰⁴ Since the adoption of the Universal Declaration of Human Rights, universality and indivisibility of human rights have been emphasized and it has been specifically recognized that women’s human rights are part of universal human rights. In the year 2000, on the grounds that it violates the dignity of women, the United Nations Human Rights Committee considered polygamy a destruction of the internationally binding International Covenant on Civil and Political Rights (to which India acceded on 10.04.1979) and recommended that it be made illegal in all states.¹⁰⁵ It’s well recognized in international law that polygamy critically undermines the dignity and worth of women.

Social ills in Muslim Inheritance: The present practice is that the women as mothers, wives, daughters, and widows do not have equal rights, while Qur’an gives equality to them. The customary practices are highly discriminatory and it excluded daughters and others, like widows in the bottom line of the succession order. This practice runs contrary to the Shariat, where a daughter and a widow cannot be excluded by any other heir and also have the protection from the testamentary restrictions. While most Muslim women (75 percent) were well informed about the share of daughters in inheritance, but when asked about whether (especially married) they had claimed their share (in case not given), most of them had relinquished their share of property to their brothers in the name of emotional

¹⁰³ Lakshmi, P. (1970). Personal Laws and the Rights of Women. *Christ University Law Journal*, 1(1), 91–99. <https://doi.org/10.12728/culj.1>.

¹⁰⁴ United Nations. (2018). *Universal declaration of human rights*. United Nations; United Nations. <https://www.un.org/en/universal-declaration-human-rights>.

¹⁰⁵ Ashwini Kumar Upadhyay v Union of India, (2018) 9 SCC 64

attachment.¹⁰⁶ Secondly, they felt the Gift at the time of marriage given to them as well as expenses incurred on their marriage is another form of giving the daughters share. In most of the cases, Mehr was not given to women not even after divorce had taken place, neither in Khula nor in Fasakah. No divorced women were given maintenance either for themselves or for their children despite their persistent approach of Shariat Courts. A few of them got back their dowry. The practice of Islamic principles and laws are far behind the gender justice for which Islam stood and advocated 1400 years ago. Most of her rights are confined within the pages of the rule book. The rights granted to women by Islam have given them desirable rights, exalted status, and a constructive role in society.

5. Recent Reforms

The position of Muslim women in India is eminently contentious. Most importantly by women facing atrocities of triple talaq, inheritance, maintenance has drawn much attention. Though, our Constitution has lent equality and exemption from discrimination relying upon gender or religion, then also there are customs that are based on vicious conservative culture. A huge part of Muslim Personal Law is yet uncodified and most of the legal sentence relying on the rule mentioned in Quran and hadith. The acknowledgment of the judiciary on the status of women under this law is conflicting. The following elements affected the motif of judgment and legislation: (1) legal mobilization, especially by women's organizations and other rights organizations for women's rights and cultural pluralism, and by community organizations to promote visions of group identity and to uphold particular versions of group law; and (2) policymakers' orientations toward the regulation of family life, their understanding of group norms and group initiatives, and their normative vision of family life. Differences in these fields over the last era subsidized to gender-equalizing advances in personal laws.¹⁰⁷

To give the color of feminism to the issue of changes in Muslim personal law is in itself wrong. The question concerns the whole Muslim community irrespective of sex. It is fallacious to say that only women suffer on account of the drawbacks in Muslim personal law. In many cases

¹⁰⁶ Supra 25

¹⁰⁷ Subramanian, N. (2008). Legal Change and Gender Inequality: Changes in Muslim Law in India. *Law & Social Inquiry*, 33(3), 631–672. Retrieved August 30, 2020, from <https://iproxy.inflibnet.ac.in:2060/stable/20108777>.

men suffer; and in some circumstances, men and women both share the consequences of the drawbacks. For instance, a very low amount of mahr, coupled with the husband's arbitrary freedom to pronounce a divorce, may prove disastrous for women; but an exorbitant mahr, coupled with a pre-marriage stipulation curtailing man's right to dissolve the marriage, and might play havoc with the man. Again, as regards the hardship faced, under the Islamic law of inheritance, by issues of predeceased children, the magnitude of men's suffering is no less than that of women's. Some important judgments regarding this are as follows - Ahmad Khan v. Shah Bano Begum¹⁰⁸ (which ultimately led to the enactment of the MWPDA also criminalizes triple talaq), Danial Latif V. Union of India ¹⁰⁹(The court observes that the “ MWPDA, 1986 doesn't try to act out unconstitutional laws” but Court dictate an authentication of the constitutional validity of this statute), in Shamim Ara v. s/o UP¹¹⁰ (decree provides with few standards and limits in which the husband would be able to pronounce a talaq. The right of unilateral triple talaq was attacked). From these cases, it's apparent that the court had played a chief role in the security of the women's rights in Muslim law, but still, the expedition of equality is to be pursued.¹¹¹ Women in the independence movement began to demand formal equality for women. And the contemporary women's movement structured its activism around the concept of patriarchy and sought to identify and understand women's subordination and oppression.

6. Way Forward

A. Need for Codification: The Muslim personal law isn't godlike when compared to rules in the Quran. Shariat is mostly an attempt to understand the divine will and it's for this reason that we have various interpretations of the Quran and four schools in Sunni- Hanafi, Shafii, Maliki, and Hanbali, aside Zahiri and Shiah Schools like Ithna Ashari and Ismaili. Had these included the true meaning of the Quran the status of women would have been quite fair. Quran neither sanction divorce nor free polygamy. It's real that these hadiths of marriage and divorce have been differently portrayed; the Ulama will have to develop a general agreement around

¹⁰⁸ AIR 1985 SC 945.

¹⁰⁹ (2001) 6 SCALE 537.

¹¹⁰ AIR 1979 SC 362.

¹¹¹ Yadav, A. (2015). *Rights of Muslim women: An Analysis of Indian Muslim personal Law*. https://www.researchgate.net/publication/274702838_Rights_of_Muslim_women_An_Analysis_of_Indian_Muslim_personal_Law.

the interpretations best for the women. Many Muslim countries have worked upon this earlier and since here Muslims are in the minority the ulama shouldn't change the method of reform and alter within the Islamic framework. Everyone should keep in mind that Muslim women are also a minority within the Muslim minority and justice should be served to them as well. The sad state of the Muslim personal law in India offers an action provoking contrast to the existing position of Islamic family law and succession in a large number of Muslim countries. It is an intriguing experience to compare the personal law of Indian Muslims with the following developments in the countries where Muslims are in a ruling or predominant majority – (i) replacement of the traditional Islamic law by modern civil codes in Turkey and Albania; (ii) substantive reform of the Muslim personal law in Egypt, Sudan, Lebanon, Jordan, Syria, Tunisia, Morocco, Algeria, Iran, Pakistan and Bangladesh; enlargement of the surviving spouse's right to inheritance in Egypt, Sudan, Syria, and Tunisia; and (iii) unqualified recognition of the validity of bequest in favor of an heir-apparent in Egypt, Sudan, and Iraq. (iv) restriction of extra-judicial and unilateral divorces, or compulsory interposition of reconciliatory proceedings, in Turkey, Tunisia, Algeria, Iraq, Iran, Indonesia, Pakistan, and Bangladesh; (v) enlargement of women's rights relating to dower, divorce, maintenance and custody of children, etc., in a large number of Muslim countries. There is indeed much in the legislation promulgated in Muslim countries, illustrated above, to show that some of the principles of the Muslim personal law still applicable in India have outlived their utility and need an imminent reconsideration. A unified, codified, and modernized Jaw of personal status is now the order of the day in a large number of countries where Muslims constitute overwhelming majorities. In India, the Muslims have to live in the company of a dominant non-Muslim majority and other communities, all of whom are now governed by largely modernized and codified personal laws. How can they afford to insist on an undisturbed continuance of their classical and uncodified personal law? And if they do so it would be to their sheer detriment.

B. Alleyway for Uniform Civil Code: There's an urgent necessity for comprehensive legislation to be formulated under the guidance. Islamic law is so dynamic that it can become the foundation for a Uniform Civil Code. Traditional Muslim society pulled the Quran declaration to its level and brought in, through human reasoning various verse, which hindered women's rights. Despite various Muslim countries following ulma still equality isn't

achieved.¹¹² The Supreme Court of India has repeatedly put great emphasis on the enactment of the Uniform Civil Code for the past two decades. Is it not too late or do we still have enough time to make this common covenant with modernity? Our country has always been paternalistic in its moves. Apart from the practical problems involved in this case, there is a larger question of the symbolism inherent in the institutions' acknowledgment of the problem. Personal religious laws need to be examined for their compliance with principles of equality.¹¹³

The Indian constitution in DPSP provides us **Uniform Civil Code in Article 44** that “**The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.**” The UCC will contain uniform provisions pertinent to all and planted on social justice and gender equality in personal matters. It will be fair and impartial so that every member of the society may feel equal in terms of social status necessary for social change and will thus create a national identity. Several Muslim members had apprehension that enforcement of Art. 44 would revoke their personal law. Persons, who were of opposing views, contend that India is a secular state and as mentioned in Art. 25 to 29 as there's liberty of religion.

It widens its cases in affair of religion such group of persons strongly obstruct implementation of UCC and claim that the code is unlawful to the freedom of religion. They oppose the code, because of the existence of conservatism among certain sections of the Indian population, and Governments defer to these sentiments because of political considerations; political parties, (Legislature) oppose this code because of their selfish interest; they do not interfere in the personal laws of Muslim or minority population because if they give support to uniform civil code, it becomes dangerous to their vote bank thus because of their personal interest, they oppose the code and it becomes extremely difficult to have any progressive measure in the area of family law. A common civil code will help the cause of National Integration by removing disparate loyalties to laws that have conflicting ideologies according to the present position. Just like medicines are important for a healthy India, Uniform Civil Code is necessary for a secular India so that the same laws are valid for every citizen without taking religion into consideration. At present Goa is a single state in India that has UCC irrespective of religion, gender, caste. In Goa, every religion be it Hindu, Muslim, or Christian all are obligated to identical laws related to every aspect like marriage or divorce. When Goa was included as a part of the union territory in 1961 by Goa Daman and Diu administration act 1962 the

¹¹² Asghar Ali Engineer. (2004). *Abolishing Triple Talaq what next?* JSTOR. <https://www.jstor.org/journal/econpoliweek>.

¹¹³ Madhushala, 'Need for Uniform Civil Code in India: A human rights perspective' (Centreright, 13 Oct 2011) <http://centreright.in/2011/10/need-for-uniform-civil-code-in-india-a-human-rights-perspective/#.UY9iDaKmiSo>.

parliament ratified the Portuguese civil code of 1867 to Goa and should be amended and repealed by the qualified legislature.¹¹⁴

Despite the rising disputes, India has to find a way towards the road of development by enforcing UCC. A vast number of interests and sentiments must be addressed as it shouldn't be executed carelessly. Otherwise, it could create turmoil. Implementing UCC would prove to be a social transformation and needs to be done evenly, not hastily. A UCC incorporate justice and there shouldn't be any bargaining on that.

C. Additional Changes: Media awareness, only when one's mindful of their rights, be able to secure them. Hence spreading legal awareness is critical— particularly about a standard nikahnama and another way of evading the disadvantages of the systems currently in place, are the so called “women's courts” (Mahila Adalat or Mahila Mandal). These are dispute-resolution fora run by government bodies or voluntary organizations that are designed to address women's marital and related family problems.¹¹⁵ They aim to provide a safe and unthreatening environment in which women can air their grievances, work out satisfactory settlements with their husbands and in-laws or find ways to escape their difficult situations altogether. Declaring triple talaq to be illegal by SC was not a bed of rose but the step was initiated thus change will automatically follow. But it's definitely not enough to bring in reforms on the ground and reach it to the lowest social strata. The strategy that seems to be somewhat acceptable is bringing about an ‘Optional Code’. The optional code would necessitate acceptance on a large chunk of our population and indicative of their approval of the new law. The above-mentioned strategies are not mutually exclusive but they should operate in tandem to further the objectives.¹¹⁶ While the piping hot discussion flares on, people ask themselves if UCC is that important. Instead, they plan on that provisions shall be made for women to opt for a common civil code. If the religious head themselves aren't welcoming the changes it will be troublesome for women to accept the law and the changes will be only on surface, leaving the amendment completely useless. Therefore for changes to be effective for Muslim women again there comes a situation where it has to be accepted by people dominating the religion or one in whom people of that community have blind faith.

¹¹⁴ Ram, S. (2014, September 16). *Uniform Civil Code: The Unique Goa Experience*. Wwww.Livelaw.In. <https://www.livelaw.in/uniform-civil-code-unique-go-a-experience>.

¹¹⁵ Sylvia Vatuk, ‘The “Women's Court” in India: An Alternative Dispute Resolution Body for Women in Distress’ (2013) 45 *The Journal of Legal Pluralism and Unofficial Law* 76.

¹¹⁶ Krishnayan Sen, ‘Uniform Civil Code’ (2004) 39 *Economic and Political Weekly* 4196.

7. Conclusion

The journey of Muslim personal law in India has not been less than that of a roller coaster ride. After the discussion of all the above aspects, it can be noted that the opinion of consensus demands to be heard in facilitating such liberal judgments and certain uniform codified laws which assist them in a valuable way to revoke to some extent the inequities in the existing prevailing personal laws. Shayara Bano's case too produced a new dialogue on law reform. This had a positive impact when it produces attempts to reconsider those laws that are biased against women or draw on patriarchal and patronizing understandings. The admixture of religion and law is perplexing. Indian women demand a Uniform Civil Code- one that is just, reasonable, and protective of women's rights. We should complete the unfinished agenda of our founding fathers. Educate women, empower them and not do things in haste. We need to move slowly and start to test newer and innovative methods.