



RESPONSE AND SUGGESTIONS REGARDING UNIFORM CIVIL CODE/ GENDER-JUST LAWS

To

The Hon'ble Chairperson and Members

Law Commission of India

Ministry of Law and Justice

4th Floor, Lok Nayak Bhawan

Khan Market

New Delhi: 110003

Date: 14.07.2023

Subject: Response and Suggestions regarding Uniform Civil Code/ Gender-Just Laws

Respected Chair and Members of the Law Commission of India,

We are responding to the Public Notice of the Law Commission of India dated 14.06.2023, soliciting views on the Uniform Civil Code (UCC). As part of the women's movement for many decades working on different issues and women's rights, we would like to submit our demands and suggestions on gender-just civil laws.

Bebaak Collective (Voice of the Fearless) is a campaign and rights-based group working for Muslim women's rights and resisting fundamentalism and repressive forces from a feminist perspective. Our work at the grassroots level continues to highlight how Muslim women are still struggling with gender-discriminatory practices in Muslim Personal Law.

We have been raising our voices, engaging in legal advocacy, and campaigning against the violation of fundamental rights of Muslim women and other marginalised sections of our society. In 2016, we were one of the petitioners in the Hon'ble Supreme Court of India, challenging the constitutionality of triple talaq. We have also engaged with Muslim religious organisations and the community. We drafted the Nikah-Nama, demanded changes in Muslim Personal Law, campaigned against fatwa, and raised our voices for Muslim women's rights. However, no government has paved the way for safeguarding Muslim women's rights.

We have experienced that all personal laws discriminate against women through the patriarchal institution of family and heteronormativity. These laws do not sanction rights to those who challenge the institution of family, religion, and customs. For instance, women in inter-caste or inter-religious marriages, persons from marginalised genders and sexuality, and unmarried couples have compromised rights related to adoption, property, or inheritance. Therefore, we speak from the standpoint of those who are directly affected by the family laws that remain gender unjust.

A law cannot be enacted within a day or two, particularly one that pertains to gender rights or a Uniform Civil Code, because it stands to impact the lives of many marginalised sections. In 2018, the twenty-first Law Commission of India released a positive report on the Uniform Civil Code, and it recommended amendments to the Special Marriage Act, scrapping the criminalisation of triple talaq and addressing the diversity in our country. However, the central government did not implement these recommendations in the last five years. Your notice inviting “views” from the public is confusing because it does not clarify this present process where you “considered it expedient to deliberate afresh”, instead of building on the work already done.

Hence, we are concerned about the Uniform Civil Code and do not think it is possible to give our views on the same. At the same time, we do think that family laws need many reforms and hence suggest ways to make them responsive to a gender-just framework. This in our opinion, is the way reform in personal laws needs to take to bring in equality while maintaining the diversities of the ways in which we make families and live in them.

In keeping with this, we attach a draft of suggestions for all Personal Laws (particularly Muslim Personal Law) based on our work and experience of many years. We appeal that the Law Commission of India considers our recommendations favourably. We hope that a draft of the Uniform Civil Code prepared based on the suggestions received so far will be shared publicly and discussed with groups and people like us who have been working in the field for many years. Additionally, we appeal for wider consultations with women’s groups, queer collectives, and civil society organisations working from diverse perspectives and belonging to different communities, regions, and locations, including children, to formulate truly inclusive gender-just laws.

Thanking you in anticipation,

Bebaak Collective (Voice of the Fearless)

Hasina Khan, Gulshad Khan, Maivesh Sayyed, Rubina Patel (Maharashtra)

Khairunissa Pathan, Samina Mallik (Ahmedabad)

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Suggestions and Response to the Public Notice of the Law Commission of India dated 14.06.2023, soliciting views on the Uniform Civil Code (UCC).

Not in My Name: The Rhetoric of Protecting Muslim Women Eliminates Gender-Just Laws

The foremost assertion we wish to make is that the Muslim community is not homogenous, and Muslim women present great diversity in their identity and the issues faced. Civil matters and personal laws that affect our lives, relationships, and rights should not be considered in the framework of religion. We also demand not to inject criminalisation and preventive justice into laws that primarily concern civil matters and the protection of women's rights.

We welcome this current discussion on Uniform Civil Code (UCC). However, we are sceptical that this process might become just an electoral agenda. Any debate around UCC should not polarise the concerns and should not target a specific community in the name of protecting Muslim women's rights.

Muslim Personal Law, as such, is always surrounded by heated debate inside the parliament or outside. What we miss in the polarisation is a truly gender-just perspective that places women's rights at the centre of the issue. There is a necessity and history of a proper consultation process with the stakeholders in legal reforms and law-making, particularly those that affect a marginalised section of society. The government sought consultation, whether it was the PCPNDT Act or the Domestic Violence Act. Likewise, we hope the Law Commission of India will conduct meaningful consultations with women's groups, civil society organisations, queer collectives, and individuals from marginalised communities, identities, and locations regarding the Uniform Civil Code/ Gender-just laws.

End dominant practices under religion that threaten to undermine women's constitutional rights

We believe that when it comes to gender equality, the constitutional courts should and do have the power to strike down laws—personal or otherwise—which are arbitrary, discriminatory, or against the broader framework of Articles 14, 15, and 21, that is, against the dignity of women. Once any provision of a “personal law” is found to violate the constitutional mandate, it needs to go. Laws need to be tested on the anvil of the Constitution and not on whether they are based on a true interpretation of a particular religious text. In recognition of the fact that gender relations in society are unequal, the laws must provide special safeguards to secure the rights of women.

Article 13 (3) (a) states that “‘law’ includes any ordinance, order, by law, rule, regulation, notification, custom or usage having in the territory of India the force of law.” Therefore, even a custom or usage that violates fundamental rights can and should be declared void and unconstitutional.

There are many examples of such violations in all personal laws like triple talaq, polygamy, halala, all conferred on men, father declared as natural guardianship of children in Hindu Minority and Guardianship Act, 1956; the difference in age between the man and the woman even in the Special Marriage Act; the preference given in inheritance to the parents in law of a married Hindu woman over her parents; the excommunication of Parsi women if they marry outside the community; and many other such clauses and practices that have been challenged by women in different courts.

A question arises whether the judiciary should intervene in matters of personal laws or whether this should be left to the legislature. While courts (including the Supreme Court) are in no position to formulate a Uniform Civil Code, one expects the constitutional courts to strike down discriminatory aspects of personal or family laws. But by and large, despite giving regular homilies on the equality of women, the High Courts and the Supreme Court have failed to bring changes in these laws and have focused only on individual cases. The Law Commission is the statutory body advising the government on laws. We expect you to advise the State and recommend suggestions that make all personal laws in consonance with the Constitutional principles, while retaining the diversity of lived realities and religious practice.

Our Recommendations regarding Gender-just Laws

Marriage:

- Marriage among Muslims is a contract between a woman and a man and hence cannot be dissolved unilaterally. There can be no more injustice than constantly fearing being unilaterally divorced, with no judicial recourse available.
- **Polygamy** favours the masculinist's sexuality that violates the fundamental rights of Muslim women and it should be abolished. We demand that the rights (maintenance, custodial) of those women who are already in polygamous marriages before this law is in effect should not be negated.
- Marriage should be registered as well as the role and accountability of the Qazi should be registered within a legal framework, and there should be legal guidance to conduct any marriage.
- **Mehr** is a form of social security for married Muslim women. Muslim women should themselves decide the calculation of Mehr at the time of marriage without any force. This should be in addition to their right to residence in matrimonial home, other share in matrimonial property, and their inheritance rights.
- **Matrimonial Property Rights:** Muslim women should be given maintenance and matrimonial property rights upon divorce and death of the husband. The matrimonial home as the residence of a married woman has to be ensured in law, along with an equitable right of ownership and access to all property belonging to the partners at the time of marriage and dissolution of marriage.

Divorce

- We demand that all the forms of unilateral talaq (including talaq-ahsan and talaq-hasan) should be invalidated as it vests power in the hands of the man and reinforces unequal relations within the marriage. Accordingly, the matters related to talaq under the Muslim Personal Law (Shariat) Application Act, 1937 should not be applicable.
- **Dissolution of Muslim Marriages Act, 1939** should be applicable to both spouses: Muslim men should have a law to approach the court for divorce under the Dissolution of Muslim Marriages Act, 1939. There should be legal provisions to deal with the matters of dower and maintenance of the wife, child custody, the right of the wife to reside in the matrimonial home, and other economic obligations.
- The practice of **Nikah-halala** is a dehumanizing practice, and it should be abolished.
- **Repeal the criminalization of Triple Talaq:** We do not support the criminalisation of triple talaq. Since marriage is a civil contract between two adult persons, the procedures should also be civil after its breakdown. Penal actions to discourage the practice of instant triple talaq are a myopic view. In our present conjuncture, the move to imprison Muslim men will add to the prevailing insecurity and alienation of the Muslim community. Family and community members create undue pressure on the woman not to report against her husband.

There might be a need for criminal intervention if domestic violence is prevalent, along with the instance of triple talaq. On such occasion, the aggrieved woman could use the existing provisions of the Protection of Women from Domestic Violence Act, 2005, and Section 498A of the Indian Penal Code. These two legal options are available for women encompassing criminal and civil provisions.

The Ministry of Minority Affairs should formulate a scheme to spread awareness about the Supreme Court's judgment, take cognisance of complaints of its violation and the issues arising out of such matters with appropriate authorities, provide monetary relief and socio-legal aid to women who are affected by the violation of this judgment.

Maintenance:

- There should be entitlements for the women at the time of divorce. This financial responsibility should be of the husband irrespective of who filed the divorce for any reason.
- Single women, persons who are physically and psychosocially disabled, and outside of marriage or dependent on their parents or natal family should also have a right to maintenance.

Custody and adoption of children

- **Custody** of the child upon divorce should be given to the birth mother if she so desires. This should be done irrespective of her marital status (if she has married again) or other conditions put by the father of the child pertaining to the mother's economic status or otherwise. Women should have the choice to withdraw their custody as well.
- **The right to adoption** should be granted to any consenting adults, married couples, couples in a civil partnership, or singles, irrespective of their gender, and the adopted child should get all rights given to the child born from the marriage/partnership.

Inheritance:

- We appreciate the provision of assured property rights for all legal heirs and the restriction on willing away the whole property to any heir/(s). This could be considered as a model for all other laws as well so that women and others who may be in conflict with the family are assured rights of inheritance.
- Women should inherit an equal share of property from their matrimonial and parental home. Property rights should be based on equal rights for both sons and daughters.
- All daughters (including single women who chose not to marry, women in civil partnerships and chosen families, and divorced women) should have equal property rights in their parent's property.
- Under Muslim Personal Law, those who choose to undergo religious conversion and gender reassignment (change their gender assigned at birth) have their property and inheritance rights nullified. We demand that the property and inheritance rights of such individuals should not be negated.

A few additional important points

- **Social Security for dependents and women:** Our society does not provide any mechanisms for providing social security. It should be provided and should consist of educational support, housing and infrastructure, health facilities, working women hostels, and creche facilities. Women from vulnerable groups suffer a lot in order to sustain their lives without such security. Thus, it is the state's responsibility to prioritize, allocate the funds from the budget, and recognized it as a separate

entitlement. The corporate sector shall also contribute more than 30 percent to the fund for social security.

- **Special Marriage Act:** We suggest that the 30 days' notice period should be removed. The institution of family and religious organizations through personal laws often opposes those who want to have inter-faith or inter-caste violence. The 30 days' notice periods tend to be arbitrary and discriminatory. The notice is sent to the family of the inter-faith couple, and it poses a severe danger to the lives of those inter-faith couples by their family members and the conservative forces in society.
- **Civil Partnership Rights:** Broaden the scope of the discussion on women's legal rights to include partnerships and civil unions outside the institution of heterosexual marriage and live-in relationships. Here, looking at and recognizing alternate forms of relationships and families are imperative. Specific recommendations from those who are part of such living arrangements and face issues due to the non-recognition of their form of relationship should be sought in this regard.
- **Chosen Family:** Muslim community is in itself a diverse community that consists of persons who are from marginalized gender and sexuality. All personal laws, including Muslim Personal Law, do not recognize non-heteronormative partnerships, and many marginalized individuals are not able to get married. Civil partnerships should be legally recognized with all the rights related to property, inheritance, and social rights provided to individuals.
- **Abolish the practice of female genital mutilation (FGM):** Abolish the practice of female genital mutilation (FGM amongst the Bohra community and declare it punishable under the Protection of Children from Sexual Offences Act 2012 and Juvenile Justice and Juvenile Justice (Care and Protection of Children) Act, 2015. FGM is a cultural practice endorsed and promoted by the religious body of the Dawoodi Bohra community, defiance of which may entail a social boycott for community members. The control exercised by religious heads over women's bodies and sexuality in the name of religion requires special safeguards for children and women who are subjected to inhuman practices, along with an increasing reduction in the hold and influence that such patriarchal figures have over women's bodies.
- **No Codification for Personal Law:** We do not want the Codification of Muslim Personal Law as it exists within the religious framework and seeks to reinforce the existing unequal laws on polygamy, divorce, property, maintenance, adoption, legal heirs, and inheritance. Codification also excludes diverse forms of relationships and civil partnerships. We want separate efforts to draft inclusive gender-just laws that draw legitimacy from the Constitution.

- **Non-involvement of Khap Panchayat, Jamaat, or any religious institution:** No recourse or redressal mechanism should involve going to community Khap panchayats, jamaats, fatwa-judgments, Shariat courts, or other alternative systems or bodies. There are court rulings that do not recognize shariat courts as judicial bodies with arbitration powers, and our demand is in keeping with such orders.

We are aware that formulating any law based on the foundation of the Indian Constitution is an arduous task. It requires tremendous effort and commitment to the basic tenets of the secular, democratic socialist framework of the Constitution.

From 1930 onwards, women's organisations put out the demand for a comprehensive code. In response, under the chairmanship of law minister Dr. B.R. Ambedkar, a committee was formed that further modified the first draft of the Hindu Code Bill formulated in 1941. But many Hindu fundamentalist voices from the Constituent Assembly did not allow passage of this bill, and in protest, Dr Ambedkar resigned as law minister. After that, between 1952 and 1956, Jawaharlal Nehru got the Hindu Code Bill passed in four separate segments. We state all this to emphasise that no far-reaching, effective, and just legal reform can be carried out without putting in similar sustained and intense efforts.

We are pleased that Law Commission is making efforts to engage with the public. We urge the Commission to look at the issues from a holistic perspective rather than moving towards piecemeal legislation for each discriminatory practice. We hope that you, along with the support of other Members of the Commission, will kindly initiate a broader consultation with the women's groups, queer collectives, and civil society organisations to recommend legislative changes that secure gender justice.

Thank you.

Bebaak Collective (Voices of the Fearless)