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Guidelines for Contributors

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Manuscripts submitted for publication must be in three copies, double-spaced typescript or electronic print-out on A4 size (8.5"×11") white sheets with margins of 1" on all sides and pages consecutively numbered. The manuscript should have a title-page with the title of the article and the author's name, designation and contact address. The author's name or anything that may identify the author should not appear anywhere in the text paper. An abstract in English must be provided within 200-300 words at the beginning of the article. Submissions should be addressed to the Editor in Chief, Rajshahi University Law Journal, Faculty of Law, University of Rajshahi, Rajshahi 6205, Bangladesh.

Uniform Family Code: A Path for Gender Equality in Bangladesh

Punam Chakrabarty *

Debjyoti Sarkar **

Abstract: Bangladesh is a multi-religious and multi-racial country. The majority of the population consists of Muslims, Hindus, Buddhists Christians and some other minor communities. There are several indigenous tribes as well (i.e., Chakmas, Marmas, Tripuras, Garos, Santhals, Murong, Khasia, Kuki, Hazong etc.) living mostly in the hilly fringes of the Country. In absence of any Uniform Code of Family Laws, family disputes related to marriage, divorce, maintenance, custody of children, guardianship, inheritance etc. are dealt with under various Personal Laws. In addition to the Codified Personal Laws, many family disputes are resolved through local customs, practices and various methods of informal dispute resolution. This study has employed doctrinal methodology. To conduct this study several documents relating to family laws, cases and different article relating to this has been analyzed. This study finds how does the Uniform Family Code promote gender equality, women's and children's rights, and social cohesion, how a Uniform Family Code can promote gender equality, protect women and children, boost economic growth, and reduce social unrest having implementation issues, religious sentiments, and political opposition present challenges, despite its benefits. It also examines the challenges to implementing the Uniform Family Code in Bangladesh. This paper argues that gender equality for Bangladeshi women must transcend political and religious boundaries and the urgent need for a Uniform Family Code to achieve gender equality and social unity in Bangladesh's diverse context.

Keywords: Family Laws, Gender Equality, Uniform Family Code, Religious Diversity, Women's Rights, Social Harmony

1. Introduction

The concept of a "Uniform Family Code" typically refers to a legal framework that aims to unify family laws across different religious and ethnic groups within a country. Uniform Family Code (UFC) refers to a set of model laws or statutes that aim to standardize and harmonize family law provisions across different jurisdictions within a country. These codes are designed to address various aspects of family law,

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including marriage, divorce, child custody, adoption. In the context of Bangladesh, where there is a diverse population with various religious beliefs, the implementation of a UFC could be a complex and sensitive issue. The call for a UFC has long featured in the political and legislative debates ever since before the days of formulation of the Constitution. Time and again, the Supreme Court has also been asserting the need for a UFC. The *Bangladesh Mohila Parishad* has submitted a consultation paper on reforms in family laws in Bangladesh.¹ UFCs are in place in many countries around the world, including India, Turkey, and Tunisia. In India, the Uniform Civil Code was proposed in the 1950s but has not yet been implemented.² The constitution established equal rights for women and men in all spheres of the State and public life.³ The Constitution of Bangladesh which is the supreme law of the land, guarantees equal status and rights to all citizens, irrespective of their religion, race, caste or sex. In addition, Bangladesh has also undertaken to ensure women's equal rights and to end all forms of gender discrimination by participating in a number of international human rights treaties.⁴ But all communities in Bangladesh are not equally treated. Matters regarding marriage, divorce, dower, maintenance, guardianship, custody, and inheritance are governed by each religious community's 'religious personal law' system which are, in general, discriminatory against women.

The absence of a uniform legal framework results in disparities in the rights and safeguards that women in these communities are granted. Different personal laws and regional customs often result in unequal treatment of women of different religious groups in situations such as

¹ Rummana Foisal Nafiu, 'Mahila Parishad Bats for Uniform Family Law', *The Dhaka Tribune*, 23 August 2021, available at dhakatribune.com, last accessed on 31 September 2023.

² Zeenat Shaukat Ali, 'The Implementation of a Uniform Civil Code', *India Foundation Journal*, 5 January 2023, available at indiafoundation.in/articles, last accessed on 31 September 2023.

³ Article 28, *The Constitution of the People's Republic of Bangladesh*.

⁴ Kawser Ahmed, 'Interpreting Discrimination in the Constitutional Context of Bangladesh', *The Daily Star*, 15 December 2020, available at thedailystar.net/law-our-rights, last accessed on 10 September 2023.

marriage, divorce, inheritance, and child custody disputes.⁵ This research backs the implementation of the UFC in Bangladesh, which advocates for a secular legal framework to govern key areas of family law. The UFC's mission includes the aggressive promotion of social harmony and gender equality, and the fair treatment of women of all faiths. This research analyses the discriminatory provisions of current personal laws and argues for a UFC to protect the rights of women from all faiths. In addition, this study seeks to identify and assess the obstacles that prevent the implementation of a Universal Free Education Policy in Bangladesh's complex social context. The goal of this study is to advance the urgent need for a UFC in Bangladesh by utilizing a multifaceted framework that takes into account legal, social, and cultural perspectives. The ultimate goal is to promote a more equitable and harmonious society.

The primary objective of this study is to provide a thorough examination of the discriminatory elements of Bangladesh's current personal laws. Specifically focusing on the rights and protections afforded to women of different religious backgrounds. Secondly, this study aims to assess the significance of adopting UFC in Bangladesh and investigate the obstacles that prevent the UFC from being implemented in Bangladesh. Thus, the methodology chosen for this study is doctrinal, and the data used for the research is qualitative. The data is collected from books, journals and research, articles, and the internet. It also includes content analysis, case study research - usually used—then summarized and analyzed, and global and regional approaches and precedents.

2. Conceptualizing the Uniform Family Code

2.1 Definition and Concept

The UFC aims to promote consistency and uniformity in family law matters, making it easier for individuals and legal professionals to navigate family-related legal issues, even when dealing with different

⁵ Mala Htun and S. Laurel Weldon, 'State Power, Religion, and Women's Rights: A Comparative Analysis of Family Law', *Indiana Journal of Global Legal Studies*, Issue no. 1, 2011, pp 145–65, available at doi.org/10.2979/indjglolegstu.18.1.145, last accessed on 10 September 2023.

states or regions. A comprehensive definition of a uniform family code has not been established. The UFC serves as a comprehensive codification of family laws that are applicable to all communities and social classes. Its primary objective is to eliminate any discriminatory practices that may exist within these communities.⁶ The primary objective of implementing a UFC is to eliminate instances of discriminatory treatment in matters of justice. The guarantee of equal justice for all citizens, regardless of their religion, race, sex, or tribe, as enshrined in our supreme law, necessitates the abandonment of any notion of separate citizenship based on religion. This principle is in accordance with the concept of due process. Discrimination may give rise to circumstances that pose a threat to the fundamental tenets of natural justice.⁷

According to Article 27, all individuals are considered equal under the law and have the right to receive equal protection from the law. Similarly, Article 28 (1) stipulates that individuals possess the right to freedom and security of person. The state is prohibited from engaging in discriminatory practices solely based on an individual's religion, race, caste, sex, or place of birth.⁸ In Bangladesh, every individual is entitled to the protection of fundamental laws and access to the court system, regardless of their religious affiliation, caste, race, gender, or place of birth. This applies equally both for male and female. Despite the fact that every religion has its own personal law governing various aspects of life, such as marriage, dissolution of marriage, inheritance, and disputes, these personal laws often lead to divisions within society. This is indirect contradiction to the principles of fundamental rights and the universal declaration of human rights.

The presence of diverse personal laws has resulted in instances of religious discrimination among the populace of the state. These personal laws do not only result in discrimination against individuals

⁶ Regan Ahmed, "Marriage, Inheritance, Maintenance And Talaq", available at issuu.com/reganahmed/docs, last accessed on 10 November 2023.

⁷ Faustina Pereira, Shahnaz Huda, and Sara Hossain eds, 'Revisiting Personal Laws in Bangladesh' Leiden, The Netherlands, Brill Nijhoff, 19 March 2019, available at doi.org/10.1163/9789004357273, last accessed on 10 September 2023.

⁸ Article 28(1), *The Constitution of the People's Republic of Bangladesh*.

of various religions, but also against individuals within the same religion who openly oppose the government. The implementation of a policy aimed at promoting the development of women has been announced. The diverse circumstances experienced by citizens in our country are attributed to the variations in personal law across four different religions.⁹ It is noteworthy to consider the reformation of personal laws in order to provide equitable solutions for individuals of diverse religious backgrounds, including Muslims, Hindus, Christians, and Buddhists, who may encounter similar challenges. In this context, it is imperative for our nation to establish a uniform family code that guarantees equitable treatment for all citizens, regardless of their religious affiliation, racial background, gender, caste, or place of birth.

2.2 Background and History

The historical implementation of personal laws pertaining to familial affairs in Bangladesh can be traced back to the religious and customary traditions of various communities. The aforementioned legislations, namely Muslim Personal Laws and Hindu Personal Laws, were responsible for regulating various aspects pertaining to marriage, divorce, inheritance, and familial connections. Consequently, individuals belonging to diverse religious affiliations often experienced unequal treatment under these laws. The demand for a Uniform Family Code experienced a surge in popularity during the 1980s and 1990s, primarily driven by mounting apprehensions regarding gender inequalities and the necessity to reconcile conflicting provisions found in various personal laws.¹⁰ The discussion regarding the adoption of a code of conduct became more intense as Bangladesh aimed to harmonise its legal structure with the constitutional ideals of equality and justice.

⁹ Tarunabh Khaitan and Jane Calderwood Norton, 'The Right to Freedom of Religion and the Right against Religious Discrimination: Theoretical Distinctions', *International Journal of Constitutional Law*, Issue no. 4, 31 December 2019, pp 1125–45, available at doi.org/10.1093/icon/moz087, last accessed on 12 October 2023.

¹⁰ Abu Ismail Mohammad Daniel, 'Law Commission Mulls Uniform Family Code for Women Empowerment', *The Daily Observer*, 20 February 2018, available at observerbd.com/news.php?id=123456, last accessed on 18 November 2023.

The pursuit of a UFC in Bangladesh arises from a historical context characterised by a variety of family laws deeply rooted in religious and customary traditions, leading to inequalities in terms of rights and access to resources, particularly for women. At present, there exist separate legal frameworks pertaining to marriage registration, property rights, guardianship, and adoption that are specific to various religious communities. Muslim women are subject to restricted inheritance rights in comparison to their male counterparts, whereas Hindu women are completely devoid of inheritance rights, thereby highlighting the prevailing disparities. In light of these disparities, the Citizens Initiatives on CEDAW Bangladesh, comprising a coalition of 56 women's and human rights organisations, advocated for the implementation of a Uniform Family Code. The Committee on the Elimination of Discrimination against Women (CEDAW) emphasised the need for reform in response to Bangladesh's periodic report in November 2016. CEDAW urged the government to provide a mid-status report detailing the actions taken to address the recommendations.¹¹ The recommendations included in the report consist of a comprehensive assessment and annulment of laws that perpetuate discrimination, the development of a standardised set of regulations pertaining to family matters, enactment of legislation aimed at combating discrimination, and the provision of sufficient human, technical, and financial resources to safeguard the rights of women and girls. Notwithstanding these instructions, advancements have been constrained. In 2013, the Law Commission put forth a proposal to eliminate reservations that impede gender equality. However, no significant measures have been taken since 2016.¹²

The endeavour to establish a UFC has been a subject of continuous deliberations and suggestions for legal modifications. The discourse

¹¹ T Shahid, 'Islam and Women in the Constitution of Bangladesh: The Impact on Family Laws for Muslim Women' 2013, Publisher's version. Development and the Implications for Law, Justice, and Society. Foundation for Law, Justice and Society.

¹² Staff Correspondent, 'A Uniform Family Code to Make Way for Gender Equality', *The Daily Star*, 1 November 2018, available at thedailystar.net/city/news, last accessed on 20 September 2023.

was enriched by the active participation of the Bangladesh Mohila Parishad, which made a valuable contribution through the submission of a consultation paper focusing on reforms in family law.¹³ The discourse in Bangladesh is in line with international efforts, taking cues from countries like India, Turkey, and Tunisia, where Uniform Family Codes have been implemented. India introduced the UFC as a proposal during the 1950s; however, its execution has yet to be realised. The aforementioned historical context and background underscore the ongoing efforts and suggestions for a comprehensive legal structure aimed at rectifying discrepancies in family legislation and advancing gender parity within the nation of Bangladesh.

2.3 Importance of the Uniform Family Code

The basic objectives of a UFC are to protect women's right and to bring the equality and social justice. To be more specific the followings are the importance of UFC:

2.3.1 Gender Equality and Justice

A UFC's primary purpose is to ensure fairness in family matters for people of all different backgrounds, including but not limited to gender, religious affiliation, and socioeconomic status. The goal of promoting fairness and equity in social frameworks through the standardisation of regulations pertaining to marriage, divorce, inheritance, and child custody is to overcome discriminatory biases that may be present in various religious and customary legal systems.¹⁴ Fairness and equity are promoted in social frameworks through the standardisation of regulations.

2.3.2 Protecting Women's and Children's Rights

The code that has been provided functions as a mechanism of protection against discriminatory practices that have their origins deep within religious and customary laws. The promotion of the welfare of children and the defence of the rights of women are its highest

¹³ Rummana Foisal Nafiu, *Op.cit.*

¹⁴ Staff Correspondent, 'Uniform Family Law Must to End Discrimination', *The Daily Star*, 4 September 2015, available at thedailystar.net/city/uniform-family-law-must-end-discrimination-137635, last accessed on 11 November 2023.

priorities. The elimination of gender-based biases and the establishment of an environment that is safe and encouraging for children should be given top priority under a system of laws that applies equally to everyone.¹⁵

2.3.3 Economic Development and Social Harmony

The implementation of a standardised family law code encourages the growth of the economy by producing a legal climate that is amenable to the conduct of business. This climate is characterised by consistency and favourable conditions. In this effort to reduce discrimination and strengthen social cohesion, one of the goals is to consolidate family laws across religious and ethnic boundaries. Other goals include removing barriers, encouraging mutual understanding among diverse populations, and removing barriers. Through the implementation of a Uniform Family Code, which creates a level playing field for all of the various jurisdictions, the practise of "forum shopping"¹⁶ can be curtailed and put to an end.

2.3.4 Specific Measures to Protect Rights

A standardised family law code's primary purpose is to formally establish parity between the sexes as one of its primary goals. This includes making it illegal for people to engage in discriminatory practises, putting an emphasis on the well-being of children, shielding them from the dangers of domestic violence, ensuring that the divorce and inheritance processes are fair, and facilitating educational and awareness campaigns to educate women and children on their rights and the legal options that are available to them.

2.4 Best Practice in Different Countries

To begin, India has been working towards the creation of a UFC, which would regulate family-related matters for individuals of all faiths. It

¹⁵ Tetevi Davi, 'African Court on Human and Peoples' Rights Delivers Landmark Ruling on Women's Rights and the Rights of the Child in Mali', *EJIL: Talk!* (blog), 27 July 2018, available at ejiltalk.org/, last accessed on 31 September 2023.

¹⁶ Kenneth M Cuno, 'Modernizing Marriage: Family, Ideology, and Law in Nineteenth-and Early Twentieth-Century Egypt', Syracuse University Press, 2015, available at jstor.org/stable/j.ctt1j1nvc1, last accessed on 10 November 2023.

does provide some helpful guidelines, despite the fact that it is not entirely implemented. The Hindu Marriage Act of 1955 and the Hindu Succession Act of 1956 work together to offer Hindus a unified legal framework for issues concerning marriage, divorce, and inheritance. The Special Marriage Act of 1954 is also important because it established a legal framework for couples of different faiths to marry under the same civil law. This was a significant step forward in the fight against discrimination against interracial marriage.¹⁷ Second, Turkey, which in 1926 adopted a civil code that replaced Sharia law with a secular legal framework, effectively ending the use of the former. This action effectively brought an end to the use of Sharia law.¹⁸ This codified set of laws brought parity to the areas of marriage, divorce, inheritance, and child custody by unifying legal provisions across all religious affiliations and codifying them in a standardized format. Thirdly, Tunisia, in 1956, the country enacted a Code of Personal Status in order to update its antiquated family laws. This was done in order to modernize the laws. The practice of polygamy was made illegal, and women were granted full inheritance rights and protections in marriage, divorce, and child custody arrangements. Additionally, the practice of polygamy was made illegal. The changes that were made to the law ensured that significant progress would be made in the areas of family justice and gender equality. Legal protections for married and divorced women in Turkey were expanded as a result of changes made to the country's Civil Code in the year 2000.¹⁹ The modifications were made in order to bring the law into conformity with the values that are held by modern society and to further the cause of gender equality by providing women with expanded legal protections in areas such as divorce, inheritance, and child custody. The Moudawana Reforms, which were put into effect in

¹⁷ Harsh Rathi, 'Uniform Civil Code: A Tyranny of the Majority or the Necessity of the Democratic Nation', available at legalserviceindia.com/legal/article, last accessed on 11 November 2023.

¹⁸ Başak Baysal and Gizem Arslan, 'The Making of the Turkish Civil Code', in *The Making of the Civil Codes*, ed. Michele Graziadei and Lihong Zhang, vol. 104, *Ius Gentium: Comparative Perspectives on Law and Justice*, Singapore, Springer Nature Singapore, 2023, pp 51-63, available at doi.org/10.1007/978-981-19-4993-7_4, last accessed on 06 November 2023.

¹⁹ George N Sfeir, 'The Tunisian Code of Personal Status (Majallat al-Ahw al al-Shakhsiy Ah)', *Middle East Journal*, Issue no. 11 (3), 1957, pp 309-318.

Morocco in 2004²⁰, made a significant impact on the country's family law. This modification was brought about in order to bring family law in line with principles of equality and justice, particularly in societies where Muslims make up the majority of the population, as well as to give women more rights pertaining to marriage, divorce, and child custody.

3. Discriminatory Provisions in Different Laws in Bangladesh

3.1 Muslim Personal Law

Muslim women have unequal position in matters of marriage. Minimum age of marriage is lower for women than for men and women's capacity to stand as witness is lesser (one half) than that of men. Besides polygamy is legal but polyandry illegal, women cannot marry non-Muslims. Women's right to divorce are subject to conditions but men have absolute right to divorce, Muslim women have to observe Iddat for a period of 90 days to determine pregnancy and paternity of the child during which women cannot marry. Women do not enjoy equal rights regarding the guardianship and custody of the child and women do not enjoy equal rights with regard to inheritance.

3.1.1 Marriage

The Child Marriage Restraint Act of 1929, as amended in 1984, established the current minimum ages of marriage as being 21 for men and 18 for women. These ages have since been increased. Although the law imposes criminal penalties on those who assist in or witness the contracting of a marriage between a minor and an adult, the law does not render the marriage itself invalid and void. Marriages between Muslims are required to be registered. Even though it does not render the marriage invalid if it does take place, failing to register a marriage is still considered a criminal offence. This provision is unfair and discriminatory because it considers one man to be the same as two women when it comes to being a witness to a marriage. A man who considers himself to be Muslim is permitted by law to marry either another Muslim or a Kitabia, which is a Jewish or Christian woman. On the other hand, a Muslim woman is not permitted by law to wed a person who does not practice her religion.²¹

²⁰ Oriana Wuerth, 'The Reform of the Moudawana: The Role of Women's Civil Society Organizations in Changing the Personal Status Code in Morocco', *Hawwa*, Issue no. 3, 2005, pp 309-333.

²¹ Saudia Afrin, 'Interfaith Marriages and the Law of the Land', *Dhaka Tribune*, 2018, available at dhakatribune.com/magazine/avenue, last accessed on 11 November 2023.

3.1.2 Divorce

According to Section 8 of The Muslim Family Laws Ordinance, 1961, it is stipulated that a Muslim husband possesses the authority to unilaterally divorce his wife without providing any justification. Conversely, a Muslim wife does not possess the same prerogative to dissolve the marriage at her own discretion. However, it is possible for a female to seek legal permission to initiate divorce proceedings through the intervention of the court. In accordance with Islamic law, it is permissible for a Muslim wife to initiate divorce proceedings, granted that her husband has granted her the right to do so.²² Prior to the enactment of the Dissolution of Muslim Marriage Act in 1939, the act of apostasy from Islam by either party resulted in the complete and instantaneous dissolution of the marriage. Following the enactment of the Act, it is stipulated that the dissolution of a marriage is not affected by the wife's apostasy from Islam (as per Section 4 of the Act), whereas the husband's apostasy leads to an immediate dissolution of the marriage.

3.1.3 Maintenance

Following the dissolution of a marriage, it is the responsibility of the husband in the Islamic faith to provide financial support to his former wife, covering all necessary living expenses, until the completion of three menstrual cycles or until the conclusion of her pregnancy, whichever duration is longer. Maintenance during the period of Iddat is not available in other religious communities due to the lack of recognition of this concept among them. In accordance with Muslim Law, both legitimate and illegitimate sons have the right to receive maintenance until they reach the age of puberty. However, only legitimate daughters are entitled to receive maintenance until they are married. According to Islamic jurisprudence, the mother is granted exclusive custody of her minor child, with the duration of custody varying based on the gender of the child.²³ However, she does not possess the inherent authority to act as the custodian of the child's well-being or assets. The legal guardian, in accordance with the law, is solely the father or, in the event of his demise, his designated representative. Nevertheless, according to the provisions outlined in the Family Courts Ordinance of 1985, a mother retains the right to petition the court for the appointment as the legal guardian of her children.

²² Lucy Carroll, 'A Note on the Muslim Wife's Right to Divorce in Pakistan and Bangladesh', *New Community*, Issue no. 13 (1), 1986, pp 94-98.

²³ Nicola J Taylor, *Care of Children: Families, Dispute Resolution and the Family Court*, PhD Thesis, University of Otago, 2006.

3.1.4 Custody and Guardianship

According to Islamic Jurisprudence, the father is the natural guardian of the children. After his death guardianship accrues upon the paternal grandfather and the paternal grandfather's executor. A Muslim mother can never be the legal guardian of her children. Instead of guardianship, she can claim the custody of her son until he is seven years of age and of her daughter until she is eighteen years of age.

3.1.5 Inheritance

The significance lies in the provision within the Qur'an that ensures daughters, mothers, and wives are entitled to a share in inheritance and cannot be excluded from it. However, it is important to note that they are not treated equally to their male counterparts, namely sons, fathers, and husbands. Consequently, the rules governing inheritance can be considered discriminatory to some extent:

According to Muslim Law, the distribution of a husband's estate to his wife (or wives collectively) is determined based on whether or not they have children. If there are children, the wife is entitled to one-eighth of the estate, whereas if there are no children, she is entitled to one-fourth. In contrast, the husband receives double the share, with one-fourth if there are children and one-half if there are no children. In the given scenario, the mother is entitled to receive one-sixth of the estate when her son has a child, or when there are two or more siblings (either brothers or sisters) of her son. Conversely, if there is no child and no more than one sibling of her son, the mother is entitled to receive one-third of the estate. Conversely, the father is entitled to receive one-sixth of the estate of his son if the son has a child. In the event that the son does not have any children, the father is entitled to the entirety of the remaining assets after fulfilling the claims of other beneficiaries. This pattern continues in a similar manner. In cases where there are one or more daughters and no son or grandson, the father is entitled to receive one-sixth of the inheritance both as a sharer and as a residuary.

3.2 Hindu Personal Law

Hindu community is the second largest religious community in Bangladesh. According to population census report 2001 national report 9.2% of the population of our country belong to the Hindu Community.²⁴ Hindu Women in Bangladesh suffer due to the presence

²⁴ Population Census, 2001, National Report (provisional), published in 2003 by Bangladesh Bureau of Statistics.

of ancient *shastric law* and the absence of "uniform family code". Practically there is a long-time demand for the introduction of a "uniform family code" which may be applicable to all communities of Bangladesh irrespective of religion. Hindu women in Bangladesh are not subjected to the same amount of scrutiny than Muslim women.

3.2.1 Registration of Marriage

Hindu marriages are ceremoniously conducted in accordance with established religious customs within Hindu social traditions. In Bangladesh, Hindus do not have a marriage registration system available to them, with the exception of the Bangladesh Special Marriage Act of 1872.²⁵ Furthermore, it should be noted that apart from the aforementioned act, there is a lack of Hindu marriage legislation and a Hindu marriage registrar in the nation.

3.2.2 Polygamy

In the context of Bangladesh, it is observed that Hindu males have the ability to enter into multiple marriages, even when they already have a wife. According to the Hindu law in Bangladesh, Hindu women are permitted to have only one husband at a given time. In the Hindu tradition, it is permissible for men to engage in polygamy, whereas polyandry is proscribed.

3.2.3 Dissolution of Marriage

According to the orthodox Hindu Law in Bangladesh, the recognition of divorce is absent. Manu posited the belief that the obligations of a wife persist beyond the realm of mortality. She is precluded from entering into a subsequent marital union. The rationale behind this perspective is that, according to Hindu beliefs, marriage establishes an unbreakable bond between the husband and wife. In certain contexts, it is observed that women may lack the ability to dissolve a marriage and may also be ineligible to receive any form of compensation.

3.2.4 Adoption

According to the Shastric Hindu law as practiced in Bangladesh, adoption is limited to males and requires that the adopted individual belongs to the same caste as the adoptive parents. In many jurisdictions, it is typically required for a wife or widow to obtain explicit consent from her husband in order to proceed with the adoption process.

²⁵ Mian, Nannu, and Shaikh Rajib Hossain, 'Modernizing marriage registration law in Bangladesh', *International Journal of Physical and Social Sciences*, Issue no. 7, 2013, pp 127-146.

3.2.5 Property Rights

In the context of Hinduism as practiced in Bangladesh, a significant portion of women are subject to exclusion from inheritance. There is a contention that Hinduism advocates for this practice in order to uphold the integrity of the joint Hindu family system and to mitigate the risk of its dissolution. However, it is evident that conservative males within society have historically pursued their own interests by marginalizing and devaluing females, perceiving them as the most inferior social class. According to the Dayabhaga School of Hindu law, it is theoretically posited that only five classes of women are eligible for inheritance. The individuals listed in order of preference are as follows: wife, daughter, mother, paternal grandmother, and paternal great-grandmother. However, their entitlements to the property are restricted in scope. Women are being excluded from the process of succession. In the event that a Hindu individual undergoes a conversion to another religious faith, it is important to note that they may be ineligible to inherit assets or property if the opportunity for succession arises subsequent to their conversion. In the event of a Hindu widow entering into a subsequent marriage, it is incumbent upon her to relinquish any property or entitlements that were bestowed upon her by her former husband.

3.3 Others Family Laws of Minority Communities

In Bangladesh, adherents of the Christian faith commonly adhere to the Christian Personal Law when addressing issues related to marriage, divorce, succession, and inheritance. This legislation primarily derives its foundations and practices from Christian religious doctrines and traditions. The process may encompass the allocation of assets among living relatives, including spouses, offspring, and additional beneficiaries, in accordance with Christian customs.²⁶ The Buddhist legal system is shaped by the fundamental principles and customary practices of Buddhism. In Buddhism there is a surprising rule that a non should be behave respectfully towards a junior bhikshu in his respect to greet him, no matter how old she is. This clearly shows the sexist attitude of Buddhism. The regulation of divorces, dissolution of marriages, or judicial separation among Christians or atheists in Bangladesh is governed by the Divorce Act of 1869.²⁷ In the context of Hinduism and Buddhism, it is noteworthy that there is no distinct legal framework established to govern the process of divorce. In accordance

²⁶ Pereira Faustina, 'Civil Laws governing Christians in Bangladesh: A proposal for reform', in *Revisiting Personal Laws in Bangladesh*, Brill Nijhoff, 2019, pp 6-57.

²⁷ Shahnaz Huda, 'Gender, personal laws and practices of the Bengali Barua Buddhists of Bangladesh', in *Revisiting Personal Laws in Bangladesh*, Brill Nijhoff, 2019, pp 195-211.

with the provisions outlined in The Hindu Married Women's Separation and Maintenance Act of 1947, it is possible for a Hindu woman to choose to separate from her spouse, subject to specific criteria.

4. Obligations of Nondiscrimination under International Law

4.1 Right to Life

As per the provisions outlined in Article 3 of the Universal Declaration of Human Rights (UDHR), all individuals possess the inherent entitlement to the preservation of life, freedom, and personal security. The International Covenant on Civil and Political Rights (ICCPR) also acknowledges and upholds the fundamental right to life.²⁸ According to the provisions outlined in Article 6 of the aforementioned covenant, it is established that every individual possesses an inherent entitlement to the preservation of their life. The aforementioned entitlement shall be safeguarded through legal means.

4.2 Freedom from Discrimination

Article 2(b) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 2 of the International Covenant on Civil and Political Rights (ICCPR) serve as legal provisions that prohibit any form of discrimination on the grounds of race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth, or any other status.²⁹ These provisions ensure that individuals belonging to these protected categories are able to fully exercise their rights in the realms of economics, social affairs, culture, civil liberties, and political participation. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) explicitly prohibits all forms of discrimination against women, as stated in its preamble and articles. Article 1 of the declaration asserts that the act of discriminating against women, by either denying or restricting their rights in comparison to men, is inherently unjust and represents a violation of human dignity.

²⁸ Mohamed Elewa, 'Basic principles governing limitations on individual rights and freedoms in human rights instruments' *The International Journal of Human Rights*, Issue no. 4, 2003, pp 63-92.

²⁹ Athanasios Yupsanis, 'The Concept of Categories of Cultural Rights in International Law-Their Broad Sense and the Relevant Clauses of the International Human Rights Treaties' *Journal of International Law and Commerce*. 37, 2009, p 207.

4.3 Equality for Women

Without privilege, discrimination, or bias, all individuals must be treated equally before the law, irrespective of their race, gender, national origin, colour, ethnicity, religion, disability, or other distinguishing attributes. Article 15 of the CEDAW mandates equal treatment before the law for both men and women. This is a fundamental provision of the CEDAW Convention.

"All are equal before the law and are entitled to equal protection under the law without discrimination," states Article 7 of the UDHR. Status-based discrimination, including but not limited to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth, or other statuses, is explicitly prohibited in Article 26 of the ICCPR. It is stated that "all persons are equal before the law and are entitled to the equal protection of the law without discrimination."

4.4 Women Equality in Civil and Political Rights

Article 1 of the ICCPR stipulates that every people is entitled to self-determination. They are entitled to exercise their freedom of choice in determining their political status. According to Article 3 of this covenant, every individual is entitled to enjoy all civil and political rights in an equal manner. Regarding civil and political rights, Articles 7, 8, 9, 14, 15, 16, 17, 18, 19, 26 of the ICCPR are also applicable.³⁰

4.5 Right to Property

A right to property is recognized in Article 17 of the UDHR. According to this article, everyone has the right to own property alone as well as in association with others and no one shall be arbitrarily deprived of his property.

5. Challenges to Implement Uniform Family Code in Bangladesh

The implementation of uniform family code is challenging. The implementation of a uniform civil code in a country as diverse as Bangladesh would be both unconstitutional and impractical. It is in

³⁰ Rosie Walters, 'Are Women's Rights Human Rights?', *E-International Relations Students* (2013), available at www.e-ir.info/2013/07/20/are-womens-rights-human-rights, last accessed on 31 September 2023.

opposition to provisions 2A and 41 of the Constitution. In Bangladesh, 89.1% of the total population is Muslim, primarily with 10% Hindu and other religions make up the remaining 0.9%, including Buddhist and Christian.³¹ The application of a uniform civil code to personal or civil law will result in increased complexity. The other challenges are:

5.1 Political Interference

Uniform civil code must ensure uniformity and equality of rights with gender justice. Uniform civil code must be framed transparently with all types of communities. If this code is used as a political tool to isolate the minor community, it will create a vulnerable situation that harms social relations and national integrity.³² So, if our country adopts a uniform civil code, there is a chance it will create inequality.

5.2 Prioritizing Customary Rules over Courts

In the event of personal law disputes, individuals prefer community regulations and approach the local "Panchayet" or "Shalish" as opposed to formal court proceedings. Disputes are resolved in accordance with the traditions and practises of the community. Traditional customs may continue to be observed by rural and tribal communities in the event that the uniform civil code is implemented.

5.3 Difficulty of implementation

UFCs can be difficult to implement in countries with a diverse population and a long history of following religious or customary laws. It can be difficult to find a set of laws that is acceptable to all religious and ethnic groups.

5.4 Gender and Equality Concerns

the dominant religion will exert control over other faiths by suppressing their culture and religious legislation. All other religious communities will be subject to the authority of the majority religious

³¹ Chara Scroope, 'Bangladeshi Culture - Religion' Cultural Atlas, 2017, available at <http://culturalatlas.sbs.com.au>, last accessed on 31 September 2023.

³² Saumya Kalia, 'We Asked Six Experts to Explain the Impact of a Uniform Civil Code in Modern India', *The Swaddle*, 2021, available at theswaddle.com/we-asked-six-experts-to-explain-the-impact-of-a-uniform-civil-code-in-modern-india, last accessed on 11 November 2023.

community, which will impede their religious practice. While a uniform code can promote gender equality, critics may argue that it does not go far enough in addressing deeply entrenched gender biases and discrimination. Some believe that more comprehensive legal and societal changes are necessary to achieve true gender equality.

5.5 Enforcement Challenges

Having uniform laws in place is helpful, but it can be difficult to ensure that they are enforced uniformly across all jurisdictions. The ability and willingness of local authorities to enforce the law is often crucial to successful enforcement.

5.6 Constitutional Framers Intention

Personal law, which is based on religious traditions, was never intended to be part of our legal system, and its absence from our founding documents is evidence of that. One possible explanation is the added complexity religious issues can bring to the court system. In addition, article 44 of the Indian constitution mandates the establishment of a uniform civil code, but there is no such provision in Bangladesh.³³ Therefore, there are no constitutional impediments to developing a unified legal system. The Uniform Civil Code, on the other hand, will run afoul of Articles 2A and 41 of our Constitution, which protect the free exercise of religion.

5.7 Ensuring Access to Justice

Although the implementation of a uniform code is intended to streamline legal procedures, detractors may contend that it can still present challenges in terms of complexity and limited accessibility for individuals lacking legal proficiency. The potential consequence of this situation is that marginalized or economically disadvantaged populations may encounter barriers in their ability to obtain justice.

6. Suggestions

Creating a precise and all-encompassing Uniform Family Code that addresses matters such as marriage, divorce, inheritance, and child custody, with the aim of ensuring that all individuals have a clear

³³ Staff Correspondent, 'Uniform Civil Code - Latest News on Uniform Civil Code News | What Is Uniform Civil Code?', *Business Standard*, 2019, available at [business-standard.com/about/what-is-uniform-civil-code](https://www.business-standard.com/about/what-is-uniform-civil-code), last accessed on 11 November 2023.

understanding of their rights and obligations is the main goal. To reach to the goal there are some recommendations. That are given below:

- (i) The research proposes that in order to safeguard women's rights, reforms should be made to remarriage procedures by mandating spousal consent and government approval, while also recognizing the importance of religious property distribution.
- (ii) Potential reforms to Hindu family law in Bangladesh may encompass streamlining marriage ceremonies, guaranteeing gender parity in property ownership, safeguarding wives against financial hardship and mistreatment, and acknowledging the legitimacy of divorce.
- (iii) Need to promote the knowledge through advocacy campaigns and educational initiatives for better understanding of the code,
- (iv) Judges and legal authorities must be trained and guided with standardized legal training modules can help legal practitioners consistently apply legal codes to ensure fair and just outcomes.
- (v) Alternative Dispute Resolution (ADR) methods like mediation and arbitration can speed up family dispute resolution and prevent court proceedings.
- (vi) Enhancing child protective services and engaging community leaders and organizations are essential to child welfare and Uniform Family Code compliance.
- (vii) Regularly monitoring code effectiveness, imposing penalties for violations, updating the code to reflect social changes, and learning from international best practices will make UFC more justified in this regard.

7. Conclusion

The presence of ancient *shastric law* and the absence of a "uniform family code" in Bangladesh contribute to the suffering experienced by Hindu women. There has been a persistent and widespread call for the implementation of a "uniform family code" in Bangladesh that would be universally applicable across all religious communities. The decision to not implement a Code of Conduct can be attributed to several factors, including concerns over potential negative repercussions on the religious sentiments of Muslims, the risk of losing support from a significant voter base, and the formidable opposition posed by political

parties with religious affiliations. These considerations have effectively deterred any government from actively pursuing the enactment of such legislation. It is noteworthy to acknowledge that the discourse surrounding the status of Muslim women in Bangladesh is extensively examined, whereas the examination of the conditions experienced by Hindu women in Bangladesh does not receive equivalent levels of scrutiny. We need a systematic, well-rounded approach that includes legal, cultural, and educational changes to get the country closer to a unified family code. Only then can we move toward a national family code. This movement has sought legal equality for women in marriage, divorce, inheritance, and child custody. Divorce recognition, property rights, and strong legal protections for women are top priorities. You must overcome many obstacles to succeed in this endeavor. Complex political systems, competing religious tenets, and long-standing cultural norms must be navigated. It takes skill to find a balance between established norms and standardized laws, possibly through individualized amendments that are sensitive to community expectations. Social opposition, system complexity, and political conflict are implementation barriers. More advocacy, community involvement, and comprehensive educational programs could reduce these obstacles. Keep communication open and show religious sensitivity to gain public trust and acceptance during the reform process. So, establishing a uniform family code in Bangladesh is difficult, but it is necessary to create a more equitable and just society. Bangladesh can create a new era of harmonized laws that reflect the country's rich diversity and guarantee equal rights for all by combining legislative amendments, public awareness campaigns, and inclusive policymaking. These amendments will promote legal uniformity, social inclusion, and gender parity. Gender parity will enable this.