

Empire and the Making of Personal Status

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‘Cultural identities and social justice: Gender and the politics of personal law in post-independence India’

India presents a unique example of legal pluralism, where civil law exists in myriad formats. India recognizes ‘personal’ laws of communities identified on the basis of a shared religion, alongside a neutral civil code which can be opted into by ‘choice’. This recognition of group rights based on religious communities can be problematic in instances where personal law may dis-privilege women and/or preserve other internal inequalities within community laws, or local customary practices. The selective recognition of particular practices as authentic, may privilege those who may be recognised by the state as authorities on religious texts, knowledge, customary practices and its legal interpretations.

Post-independence in 1947, India’s constitution-makers imagine an aesthetic state aspiring for a uniform character of citizenship rights which were universally applicable. The ‘Uniform Civil Code’ thus, finds mention in the directive principles of state policy, enshrined as a principle which remained in the waiting room of history till date as the fundamental right of ‘freedom of religion’ preserves religion-culture-custom based laws, in civil matters (marriage, divorce, succession etc.).

The idea of uniformity of law was called to question only when the Hindu Nationalists in the 1990s aggressively took up the agenda of Uniform civil code, thereby generating a binary opposition between women’s rights it claimed to guarantee, and the Muslim community/identity under threat from the homogenising agendas of the Hindu right. This paper seeks to critique the logic of this binary understanding of group rights being posited against individual rights. This paper traces the history of evolution of parallel jurisdictions (statutory law, personal law and judicial interventions) and how these shape/create the political subject, and articulate a demand for a simultaneous access to cultural freedom and equality.