MYTHS OF THE NATION, CULTURAL RECOGNITION

AND

PERSONAL LAW IN INDIA

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The members of the Indian nationalist movement and India’s early postcolonial political elite upheld visions of the Indian nation that had some common features, but differed in many ways. The vast majority of them understood India to have a distinctive culture or set of cultures, and considered these shared cultural forms more important than support for particular political principles or institutions in cementing the nation. In doing so, they differed especially from the republican understandings of nationhood predominant in France and the United States. While agreeing that a distinctive culture was crucial to the nation’s character, they imagined the culture or cultures of the nation, and the relationship between national cultures, political institutions and policies in a variety of ways. The myths that Indian nationalists of the late colonial and early postcolonial periods propagated of the Indian nation varied along two axes: first, pluralist/majoritarian; and second, traditionalist/modernist.

**Pluralist/Majoritarian:** Pluralist Indian nationalists considered cultural diversity among India’s special features, and considered the nation a composite of its component cultures. They gave considerable attention to mechanisms to limit conflict and promote mutual respect between cultural groups. The myths of India’s past that they propagated highlighted instances of cooperation between the members of different cultural groups and sometimes the areas of overlap in group practices, in contrast with the dominant colonial narratives in which India had sharply bounded communities whose cultures led them into frequent conflict. The most popular leader of the Indian nationalist movement,
Mohandas Gandhi and India’s first postcolonial Prime Minister, Jawaharlal Nehru, held variants of such pluralist understandings of India. This reflected the support, at least rhetorical, that this view enjoyed among the majority of the political elite of their times. Gandhi (1981) associated the spirituality that he considered common to the major religions of India (and of the world) with the core of the national culture that he wished to revalue and revive. Nehru (1959, 1990) linked Indian cultural genius to the experiences of earlier South Asian kingdoms, led by Hindus Muslims, Buddhists and Jains, linked Indian imperial decline to cultural decline and European colonization, and urged national revitalization through a fusion of earlier cultural glory and Western scientific rationality.

The pluralists varied in whether they accepted dominant understandings, usually static and homogeneous, of group traditions or engaged with the diversities that existed within the traditions of religious groups, language groups and castes and with the initiatives for change emerging among these groups. I call the first kind of pluralism essentialist as it readily accepts the view that dominant group norms are essential to group culture, and the latter engaged as it involves greater association with and knowledge of the practices and initiatives of various groups. While essentialist pluralism urges forms of recognition that are inflexible in the face of social change and reformist mobilization, engaged pluralism is conducive to culturally grounded reform.

The majority of the late colonial and early postcolonial political elite were upper caste and upper-middle caste Hindus, and found it difficult to grasp the nuances in the orientations of non-Hindus, and the middle castes and the lower castes. (While Hindus are about 80.5% of postcolonial India’s population, Muslims, Christians and Sikhs are the main religious minorities, accounting for 13.4%, 2.3%, and 1.9% respectively of the
population). For instance, Gandhi, an upper caste Hindu, attempted to engage with other groups by learning eight of India’s major languages, gaining some awareness of the religious practices of non-Hindus, incorporating some non-Hindu deities and beliefs in the consciously syncretic devotional songs that he composed and had performed at morning prayer meetings, and adopting patterns of dress typical of some lower castes. Nevertheless, he accepted many predominant views of the norms that Muslims and Christians valued most (e.g., the norms that colonial personal law upheld among Muslims; and opposition to divorce among Christians), misunderstood the sense of cultural belonging of many southern Indians and northeastern Indians, and advocated paternalistic approaches to lower caste ‘uplift’ that many lower caste militants found offensive. Such essentialist approaches, that most pluralists of the late colonial and early postcolonial periods took, had an affinity with a preference to maintain cultural boundaries. Other pluralists engaged more with the reform initiatives that emerged among the religious minorities, and the middle and lower castes from the nineteenth century. These engaged pluralists emphasized the cultural practices shared by members of different religious groups more, and wished to promote cultural exchange and culturally grounded reform. More political actors adopted engaged forms of pluralism over the last generation.

The main alternative to pluralist visions was the majoritarian view that India is a preeminently Hindu nation. Hindu nationalists particularly emphasize the distinctiveness of the cultures of the Hindus from those of groups affiliated with religions that originated outside India, i.e., Muslims, Christians, Parsis and Jews. (e.g., Savarkar 2003) They readily borrowed from the British periodization of Indian history in terms of the rule of
kings of particular religious or national groups—i.e., the Hindu, Muslim and British
periods, and added to it the aim to revert to Hindu rule. Hindu nationalists were
significant in the Indian nationalist movement, the early postcolonial elite, and the
dominant party of the late colonial and early postcolonial periods, the Congress party, but
were not the most influential leaders. They mainly valued the cultures of the upper and
upper-middle castes of northern and western India (Hindu nationalism’s core support
groups), and wished to integrate other groups into an Indian nation sharing these
practices. This enabled some convergence with elitist pluralist views of the customs of
the upper castes (Hindu, Muslim, Christian and Sikh) of northern and western India as
central to national culture.

Indian pluralists often distinguished themselves from majoritarian nationalists by
the claim that they alone were secularists as they did not define the Indian nation mainly
with reference to a specific religious group’s norms and mythologies, and wished the
state to be equidistant from different religious groups. Modernist pluralists added another
basis for this claim - they were more selective in their recognition of religious norms.
However, many of them associated the task of forming the postcolonial citizen mainly
with the reform of Hindu society, and believed that non-Hindus were unprepared for
similar reforms although many Muslims and Christians had initiated social reform too.
Such views encouraged the state to focus on reforming Hindu practices while remaining
disengaged from social and cultural currents among the religious minorities. This was
not in keeping with their claim that their secularism lies in the advocacy of a state
equidistant from the various religious groups. Moreover, Hindu nationalists found a
rhetorical response to pluralist efforts to lay sole claims to the popular secularist label.
They objected to the pluralist openness to recognize the religious minorities, while pressing for the greater adoption of elite Hindu symbols in rituals of Indian nationhood, and claimed that they alone were genuinely secular as they would reduce the inappropriate space given to minority religions in public life. Besides, a small minority associated secularism solely with the construction of the nation with reference to political principles rather than religious norms. Due to these complications in the deployment of the rhetoric of secularism in India, I do not equate the pluralist/ majoritarian divide with a secularist/ non-secularist one.

**Modernist/ Traditionalist:** Colonial exchanges brought post-enlightenment Western ideas of modernity and progress to the attention of various Indians, but also contributed ideas of traditions worthy of maintenance in some form – Victorian traditions, and the traditions of India’s religious groups, regions and castes. Colonial intellectuals described elite as well as folk traditions. Indologists gave special attention to texts that they took to have been the bases of indigenous governance like Manu’s *Dharmashastra* among the Hindus and the *Hedaya* and *Imamiya* among the Muslims, and urged the acceptance of some of their principles to stabilize the rule of colonial law. Emergent anthropology recorded the customs of various lower castes, middle castes and tribal groups for the first time, and often transformed them in the process. Social philosophers like Henry Sumner Maine believed that both kinds of traditions were lived mainly in static and hierarchical village societies. (Maine 2007a, 2007b) Public figures varied in their reception of these notions, and this influenced their constructions of the nation’s past and its future.
Modernist nationalists believed that India’s cultural traditions were more diverse and dynamic than Orientalist intellectuals claimed, and that they should be reformed to meet standards of modernity. The majority of the early postcolonial political elite, particularly those in the Congress party, frequently adopted modernist postures. Their ambitions for India’s future were expressed in the Fundamental Rights and Directive Principles of State Policy mentioned in the Indian constitution. However, only a minority among them wished to make the recognition of traditions strictly contingent on their compatibility with these rights and principles. The majority preferred to promote the reform of indigenous traditions through dialogues with post-enlightenment ideas either because they valued some pre-colonial traditions as they imagined them, or were at least skeptical that Western models could be readily transplanted in India. They included Nehru, who associated himself with European socialism and labor politics, and wished to promote the reform of religious practices. (Nehru 1959, 1990, 1996)

The traditionalists defended traditions that they considered deeply rooted and widely valued, and associated them either with the Indian nation or with specific religious or other cultural groups. Although they claimed to represent pre-colonial ways, their visions of local culture also drew on colonial knowledge. Gandhi considered the static, organic and non-commercial village society of Maine’s depiction the heart of the pre-colonial India that he wished to revive. However, he saw many contemporary social practices like untouchability and some of the limitations of women’s roles in public life as later accretions to more authentic and ethically valuable norms. As a result, he wished to revitalize an imagined national tradition in which castes were organically interdependent occupational groups that had equal status and, along with many other
traditionalists, supported modernist initiatives to end practices like child marriage and the restriction of lower caste access to places of worship. (Gandhi 1981, Parekh 1989) Other traditionalists adhered more firmly to practices that maintained deep social inequalities or limited personal liberties like untouchability and other forms of caste segregation, agrarian bondage and strict limits on women’s rights to own property and choose their partners. They wished to maintain group boundaries and practices, to ensure the integrity of the culture of the nation and its constituent groups. While accepting representative democracy and universal franchise, they especially resisted modernist social and religious reform. Hindu nationalists often supported them in early postcolonial policy debates, but recast some of their positions over the last generation. (Heimsath 1964, Jaffrelot 1995, Bayly 1999)

The myths of the Indian nation of the kind outlined above influenced the preferences of political elites regarding policies of group recognition, and the strategic interaction of these elites shaped the policies adopted, such as the formation of states primarily along the lines of language use, the extension of preferential policies largely based on caste membership, and the recognition of distinct personal laws for the major religious groups. New national myths emerged in the postcolonial period, and they too had an effect on recognition. For instance, as state-making proceeded over the course of the first postcolonial generation, official discourse came to associate the Indian nation primarily with the state and its development projects, even while asserting the distinctness and sometimes the internal diversity of national culture. For instance, Nehru proclaimed that the dams that the state built, to promote economic development and autonomy from imperial powers, were “the temples of the new India.” This suggested
that the myth of the nation as a state-regulated technical organism would supplement, perhaps limit, ritual invocations of the nation as a religious-cultural community. While secessionist insurgencies grew especially from the 1980s, expressing feelings of cultural and political belonging in regions that did not coincide with nation-state boundaries, many citizens responded to this by associating nation more closely with state, and supporting efforts to consolidate state control even through repression. It specifically increased the appeal of majoritarian nationalism, and discredited policies of recognition in the eyes of some. However, the experience of authoritarian rule in the mid-1970s and the state’s frequently repressive response to insurgents and other dissidents led others to revive the pluralist cultural myths of the nation that some anti-colonial nationalists had articulated, construct new pluralist understandings, and link these myths to the assertion of citizens’ rights in relation to state authorities and perhaps dominant groups.

This chapter addresses the interactions between different myths of the Indian nation and policies of group recognition, especially the personal laws specific to religious group. Section I considers the relationship between visions of nationhood and the major policies of cultural recognition adopted in India. Section II outlines the interaction between the various constructions of the nation prevalent in the 1950s in shaping personal law strategy, specifically the focus on changing Hindu law and the decision not to change the minority laws. Section III indicates shifts in public debate and political mobilization about making the nation and family law from the 1970s. Section IV examines the interactions between changes in prevalent understandings of the Indian nation and reforms in the regulation of family life from the 1970s. Section V assesses the influence of newer visions of the nation and its communities over personal law.
I Discourses of the Nation and Policies of Cultural Recognition

The visions of the nation outlined earlier coexisted in the Congress party, reflecting the support the party enjoyed across region, class, religious group, language group, and caste. While many parties that led anti-colonial nationalist movements had such socially and ideationally diverse coalitions, the Congress party was unusual in prioritizing the consolidation of democracy. As a result, its leaders wished to consolidate support among the country’s various social and cultural groups so that the party could continue to dominate the competitive multi-party system they helped establish. This led them to temper their transformative ambitions.

The recognition of difference appeared crucial in India after independence due to the complex and cross-cutting variations along the lines of religion, language and caste. Engagement with movements focused on political communities other than the Indian nation – on minority religious groups, specific language groups, and the middle castes and the lower castes – especially brought home to policy-makers the need to recognize difference. This was particularly the case with the movement that led to the formation of Pakistan in regions where Muslims were in the majority, amidst considerable violence. The pluralists were most inclined to recognize cultural distinctiveness, but varied regarding the terms on which they wished to accord recognition. Traditionalist pluralists often wanted the presumed traditional character of practices to trump any inclinations
they might have had to promote other ends. Modernist pluralists subjected customs to the test of compatibility with post-enlightenment values, albeit not systematically. The majority of pluralists considered the reform of Hindu society the primary means to form the Indian citizen, creating an area of convergence with majoritarian nationalists. Moreover, when strategies of recognition assumed shape from the 1930s to the 1950s, they were more essentialist in their approach to the traditions of the religious minorities than to Hindu traditions.

Majoritarian nationalists were willing at times to recognize the religious minorities, the middle castes and the lower castes, but were disinclined to draw on the life ways of these groups in their construction of national culture, and preferred that these groups emulate upper caste Hindus. They often made common cause with traditionalists in the early postcolonial years to defend the unequal inheritance rights that the colonial personal laws gave the genders, and the limits they placed on divorce rights. But, the emergence of a more egalitarian public ethos led them to change some of the practices into which they sought assimilation by the 1980s, when they demanded uniform family laws that they suggested would give women more rights.

The main ways in which cultural specificity was accommodated in India were the formation of states primarily along the lines of language use, the use of a range of official languages by the national government and the state governments, the introduction and later expansion of preferential policies in higher education and government employment largely based on caste membership (perhaps supplemented by income), the provision of political representation and special civil rights protections to the lower castes and tribal groups, the restriction of land rights to the members of certain tribal groups in the regions
of their prolonged habitation, and the continued recognition of distinct personal laws
governing the major religious groups. The majority of political elites agreed with these
policies although they differed in their understandings of the nation. Policy makers
justified these approaches to recognition as expressions of modernist, pluralist and
secularist visions of the nation, and much of the literature accepts this understanding.
(e.g., Brass 1991, Bhargava 1999, Jacobsohn 2003) For instance, the formation of states
based on language rather than religion is said to follow the secularist principle of denying
religious groups political rights and the maintenance of personal laws is supposed to give
religious groups social and cultural rights in acknowledgement of religion’s major public
presence, while the preferential policies and special civil rights protections for the lower
castes and tribes are mean to reduce inequalities related to religious practice.

Particular features of the policies of recognition do not fit well with such
interpretations. Based on the earlier experience of the formation of Pakistan, many
national policy-makers felt that non-Hindus were more likely to favor secession, and so
more readily repressed autonomist demands among language groups that were
predominantly not Hindu. Such was the experience in the Muslim-majority state of
Jammu and Kashmir. The Indian government granted the state greater autonomy than the
other states, and left open for some years the possibility that the state’s accession to the
Indian union could be reversed in a plebiscite, to accommodate Kashmiri autonomists,
urge them to abandon secessionist ambitions, and discourage them from entertaining
invitations to join Pakistan. But, the state having a predominantly Muslim population
and the Pakistan government’s desire to annex it led the government to repress Kashmiri
nationalist organizations, rig elections to favor parties that accepted their tutelage, and
thereby divest the state’s autonomy of much substance through long periods. Along with the repression of ethnic movements at various points in the four other states in which Hindus were not in the majority (the three Christian-majority states of Nagaland, Mizoram and Meghalaya and the Sikh-majority Punjab), these actions suggested that the national government was more comfortable accommodating the autonomist demands of predominantly Hindu language groups than those of others. Such a course was in tension with the state’s proclaimed equidistance from the various religious groups. (Ganguly 1999, Bose 2003, Subramanian 1999)

Such asymmetries were also evident in the groups that were made eligible for preferential policies and special civil rights protections. Only lower caste Hindus were in the 1950s, based on the argument that Hinduism recognized differences in social roles and rights based on caste, while other Indian religions did not. Lower caste individuals belonging to other religions of South Asian origin (Sikhism, Buddhism and Jainism) were made eligible for these preferences later, but lower caste Muslims and Christians were not, despite abundant evidence that the latter groups faced much the same constraints and indignities as the Hindu lower castes. (Galanter 1984) These policies were also in tension with claims that the state was equidistant from the various religious groups.

Approaches to making state, nation and party, and conflicts between pluralistic and majoritarian visions of the nation influenced personal law policy too.

II Postcolonial Nation and Family

The postcolonial state maintained the diverse personal laws that it inherited from its colonial predecessor to recognize the public relevance of religion. The legislature
changed only Hindu law in the first postcolonial decade, but not the personal laws of the religious minorities. The constitution urged the government to homogenize family law, thereby leading to a Uniform Civil Code (UCC), but did so in a section according to whose articles the judiciary could not assess legislation (the section on the Directive Principles of State Policy), and did not set a definite time frame for this step. State elites did not undertake such legal homogenization because of the strong links that many people felt between group law and group identity and the support that many who valued unequal gender relations gave the existing personal laws, all of which provided women less rights in various ways.

The parliament only took a first step to establish a system of family law towards which all citizens could be urged in the future – by making it possible for all couples to choose to have their marriages governed by the so-called Special Marriage Act (SMA). However, both reformers and their critics gave greater attention to Hindu law reform than to the SMA. This was the case although the SMA seemed more compatible with the state’s proclaimed secularism as it was accessible to all citizens and did not draw explicitly from religious sources. Political elites gave the content of the SMA less attention than Hindu law because most modernists and traditionalists considered the reform of Hindu society the main way to form the postcolonial citizen. Policy makers focused so much on Hindu law that they did little to encourage couples to opt for the SMA. Rather, they maintained the status of the law of the couple’s religious group as the default choice for couples belonging to the same religious group; and placed burdens on those opting for the SMA, such as the need to give a month's notice of their weddings (time during which the couple’s families could learn of their marital plans and try to
obstruct them), and their legal separation from their joint-families, meant to discourage them from claiming their shares of ancestral property.

Policy-makers presented their decision to postpone changes in the minority laws as a way to accommodate the religious minorities, among whom they claimed there was lower support for personal law reform. However, significant initiatives to reform social life and personal law had emerged among Muslims, Christians and Sikhs, and changes in the minority laws grounded in the norms, practices and initiatives of the concerned group would have been compatible with minority accommodation. Many Muslim religious elites as well as Muslim intellectuals educated in secular institutions favored a revival of *ijtihad* (innovative interpretations of Islamic law). Such imaginative legal reasoning led Muslim religious elites, in alliance with various secular cultural mobilizers including those associated with the Pakistan movement and Indian nationalism, to reduce exceptions from Muslim law on grounds of custom (a move that increased women’s rights among the majority of Indian Muslims) and to increase Muslim women’s divorce rights in 1937 and 1939 respectively. (Kugle 2001, Zaman 2002, Robinson 2008, Minault 1998) By the 1950s, some Christians also attempted to increase divorce rights and to introduce adoption rights in Christian law. However, most Indian nationalists, both pluralist and majoritarian, were disengaged from non-Hindu reform initiatives, partly because they were conceived in religious discourses with which they were unfamiliar. This impeded minority law reform in the first postcolonial generation more than concerns of minority recognition or minority opinion did. As a result, the state engaged with culturally grounded reform initiatives to change Hindu law, but accepted the colonial-era minority laws as unchangeable aspects of minority identities.
Constitutional rights, such as those to equality and individual liberty, did not systematically shape the changes in Hindu law. These reforms reduced certain rights of some women—e.g., the right of women in some matrilineal groups to inherit ancestral property, the right of remarried widows to enjoy a part of their ex-husbands’ property, and the right of later wives to inherit some property from their polygamous husbands. Moreover, they did not address many gender inequalities in colonial-era Hindu law. For instance, they gave the “conjugal right” to the company of a spouse who prefers to live on her own the fixity that comes from incorporation in statute, despite the risk this carried of enabling marital violence and rape. The access of Hindu daughters to ancestral property was seriously constrained until 2005 as male joint-family coparcenaries (collective entities) controlled such property, and daughters could not demand their shares of ancestral property.

Reformist interpretations of Hindu legal and religious traditions mainly shaped the changes in Hindu law. The ideas of political and legal elites regarding Hindu legal tradition were mainly based on the texts of Hindu law compiled by British Orientalists, colonial administrators, and lawyers and judges in the colonial courts from the late eighteenth to the early twentieth centuries—e.g., Halhed 1776, Strange 2007, Mulla 1975. These texts were law books in the British common law tradition that drew from particular commentaries on the dharmashastras (codes of Hindu conduct), that the authors took to lay the foundations of schools of Hindu law, and the precedents in colonial courts. (See Lingat 1998, Rocher 1972)

Participants in the early postcolonial Hindu law debates based themselves on these texts of Anglo-Hindu law, as they were appropriately called, and loose references to
the *shastras* and other pre-colonial Hindu texts. They also alluded to customs specific to caste, sect and region, particularly the customs that colonial courts had recognized as bases for departure from Anglo-Hindu law. This culturally specific repertoire was an important basis on which reforms were both proposed and resisted. Thus, reformers like B.R. Ambedkar, postcolonial India’s first Law Minister, proposed to give daughters greater rights to inherit ancestral property through modifications to the inheritance shares prescribed by the *Dayabhaga* school of Hindu law; and to give all Hindu men and women divorce rights by incorporating in the main body of postcolonial Hindu law the divorce customs of various middle castes and lower castes. Conservatives resisted such proposals by giving priority to the inheritance rules of the *Mitakshara* school of Hindu law, which gave male lineage members control over ancestral property; to the colonial understanding that the view in various Hindu *shastras* of marriage as a *samskara* (sacred purifying ceremony) gave marriage the same status as the Judeo-Christian sacrament; and to upper caste customs of marriage indissolubility.

Compromise regarding personal law was made easier by the much greater priority that the modernists gave state-directed change in economic and political life. While they wanted to encourage certain changes in family life, the majority of them were willing to limit Hindu law reform to prevent major splits in the Congress party. Modernist initiatives were more successful if they could find support in some Hindu traditions and were framed in ways that made rapid and unpopular social change seem unlikely. This was the case with divorce rights, which were made available solely based on spousal fault and only three years after judicial separation, to encourage the reconciliation of estranged spouses and reduce the chances of divorce rates rising quickly. Proposals that could be
credibly justified mainly through explicit reference to post-enlightenment ideals, and seemed contrary to both Hindu legal traditions and the customs of the influential upper castes were not successful at this point. This was the case with efforts to give daughters shares in ancestral property, which was contrary to both major schools of Hindu law and to the authority of patrilineages. (Also see Subramanian 2009a)

III Changing Discourses of Nation and Family

Personal law became peripheral to public debate for two decades after the Hindu law reforms of the 1950s, which Congress party leaders felt had sufficiently demonstrated their modernism. Women’s organizations had pressed for greater advances in women’s rights, but their policy influence was constrained by their limited effect on voting and their dependence on political parties. Moreover, they believed that a UCC was the optimal path to women’s empowerment in family law, and such a move seem very unlikely in the foreseeable future. As a result, they shifted their focus from the 1950s to the 1970s to changes in the criminal laws pertinent to family life, such as those to punish the practice of dowry and domestic violence. (Forbes 1981)

Public debate on the meaning of nationhood and the content of personal law was reinvigorated from the 1970s, and especially from the 1980s. The most influential Indian nationalist narratives had associated the nation with the postcolonial state, and sometimes also the Congress party through the first postcolonial generation. The Congress party’s electoral and institutional decline from the 1970s and the weakening of its association with particular conceptions of the nation prompted the articulation of alternative views of the Indian nation. The growth of secessionist insurgencies among the religious minorities
in Punjab and Kashmir, and the intensification of some such insurgencies in northeast India led some to pledge greater loyalty to the state-nation. The growing feeling that the inclination to include various cultural groups had deprived official nationalism of cultural specificity and the contrasting effectiveness in the cultural mobilization of particular religious groups, language groups and caste clusters increased the appeal of other conceptions of political community, including majoritarian nationalism. These trends led to the revival of the rhetoric of a UCC, though not to successful steps towards legal homogenization. Policy makers accompanied some personal law reforms and reform proposals with statements that these were steps toward a long overdue UCC. This was the case with the unsuccessful bid to introduce uniform adoption legislation in the early 1970s, and with some reformist Muslim law judgments from the 1980s.

Hindu nationalists gave increased attention to a UCC as a means to national consolidation. They especially did so after the Supreme Court's 1985 alimony verdict in *Mohammad Ahmed Khan v. Shah Bano Begum*, which triggered the greatest mobilization regarding personal law since the 1950s, in this case by conservative Muslims who opposed the judgment. Hindu nationalists underpinned their calls for a UCC with criticisms of gender-unequal practices among Muslims and some gender-unequal features of Muslim law, but not of similar practices among Hindus and the recognition of some of them in Hindu law. But, the Hindu nationalist Bharatiya Janata Party (BJP) did not devise proposals for a UCC even when it led a multi-party coalition government from 1998 to 2004. This suggests that such rhetoric was intended to pillory Muslims for their insistence on retaining distinct personal laws rather than to enable legal change.
The mobilization of the religious minorities took new directions and addressed personal law more systematically. The All India Muslim Personal Law Board (AIMPLB) was formed in 1972 to defend judicial precedent in Muslim law and to prevent the introduction of a UCC. It coordinated conservative Muslim legal mobilization thereafter. Associations of Muslim women and reformist Muslims grew, demanded extensive changes in gendered practices, and offered novel interpretations of Islamic law that gave women greater rights - e.g., the All India Muslim Women’s Rights Network, the Muslim Women’s Forum, the *Awaz-e-Niswan*. (Vatuk 2008, Subramanian 2008)

Various Christian and Parsi organizations mobilized to change the personal laws of their communities (e.g., the Joint Women’s Program, the All India Catholic Union, the Young Women’s Christian Association), and some Sikh organizations (e.g., the Shiromani Akali Dal) raised demands for the recognition of a Sikh personal law incorporating the patrilineal customs prevalent in north-western India. The Christian reformists initially aimed for a UCC, but shifted to arguing for Christian law reform in a religious discourse as there was strong Muslim opposition to a UCC and to help them build alliances with the major organizations of the Christian clergy. (Jacob 1999) The reformist community organizations presented the personal law reforms they advocated as means to culturally grounded community revitalization.

Engaged forms of pluralistic Indian nationalism grew, in closer association with initiatives among the religious minorities, the lower castes and middle castes, and various language groups. Rights organizations grew after the suspension of democratic liberties during the “emergency” of the mid-1970s. Many of them came to value cultural accommodation more from the 1980s, in response to the growth of Hindu nationalism.
and the attendant increase in attacks on non-Hindus. They aimed to revitalize pluralistic visions of India through building empathic understandings of religious traditions, especially those of the religious minorities. The increased emphasis of Hindu nationalists on a UCC led them to shift their immediate goal in family law to the reform of group-specific personal laws. The new pluralists explored the richness and variation in non-Hindu religious traditions. This helped them rebut Hindu nationalist criticisms of these traditions, criticize these traditions from within, and propose the incorporation of their more gender-equal features in personal law. The reliance of these organizations on the more gender-equal features of group tradition also restricted the ability of conservative elites to oppose their proposals as attacks on group identity. These changes contributed to a shift from essentialist to engaged forms of accommodation in minority law.

The strategic change from demanding a UCC to personal law reform was particularly significant for women's organizations, that grew in number and membership, become more autonomous of political parties, engaged in more grassroots mobilization, and gained greater direct input into policy-making. (Gandhi and Shah 1992; Mazumdar 1999) The growth of rights organizations and reformist community organizations contributed to the formation of a public ethos in which certain women’s rights were valued more. The new public ethos affected the public postures of many political organizations. It urged the Hindu nationalist organizations, which had resisted many of the Hindu law reforms of the 1950s, to don the garb of modernity while pressing for a UCC by the 1980s. Furthermore, it led conservative Muslim organizations to advocate changes in certain gendered practices in their community, devise a model *nikahnama*
(marital contract) that recognized some rights for women in family life, and demand that Muslim women be entitled to inherit agricultural land.

**IV Personal Law Reform over the Last Generation**

**A. Minority Laws**

The changes in political mobilization and the public ethos over the last generation enabled further changes in personal law, including in the minority laws. Minority law reform became possible for two reasons. First, reform initiatives emerged from within various religious minority groups based on the traditions and practices of these groups. Second, the networks that reformist organizations built with policy bureaucracies made some policy-makers value women’s empowerment in family life more and increased their awareness of modernist and feminine interpretations of minority traditions. This enabled the introduction of changes in the minority personal laws from the 1970s that were based on the traditions of the relevant groups.

Judges changed Muslim law to give divorcees alimony and restrict men’s right to unilaterally repudiate their wives. Moreover, the parliament made divorce more accessible to Parsis and Christians, and equalized the divorce rights of Christian men and women. In some states, the courts also granted Muslim women divorces because their husbands practiced bigamy, and gave Christian couples the adoption rights they lacked in much of India. As reform faced considerable conservative opposition when it was presented as a step towards a UCC, many policy makers abandoned such rhetoric.
Policy makers’ understanding of desirable family life and the majoritarian visions of the Indian nation that some of them shared limited changes in minority law at least as much as minority opinion did. Policy makers only accommodated those demands made on the grounds of group tradition that coincided with their visions of desirable family life. For instance, they did not enable all Muslim women to inherit agricultural land despite the support of even conservative Muslim organizations, as they did not value the division of family property. Christian law in India did not provide adoption rights in the colonial era as administrators wished to limit the access of people of Indian ancestry to property in Britain. The major Christian organizations demanded adoption rights for Christians as some Christian couples wished to adopt children and such rights were not contrary to the doctrine of any of the churches. However, majoritarian constructions of the nation filled some policy makers with anxieties that non-Hindus might use adoption rights to increase the population shares and the political influence of their communities. As a result, these actors were willing to give Christian couples the right to adopt only children of known Christian parentage, although Hindu couples could adopt foundlings of unknown parentage. The main Christian organizations rejected such limits to Christian adoption rights, and the effort to give Christians adoption rights failed. (Subramanian 2009b)

B. Further Changes to the Governance of the National Mainstream

Even while the minority laws were changed, Hindu law remained the focus of the state’s efforts to make the personal life of citizens. The Special Marriage Act (SMA) was not amplified into a fuller body of optional family laws. Rather, the inheritance of the
property of Hindu couples opting for the SMA was subject to Hindu law, rather than the Indian Succession Act that gave women greater inheritance rights, from 1976.

The modernist coalition was stronger by the 1970s than it had been in the 1950s. Ongoing family nuclearization and a decline in lineage control over property led more political elites to give the nuclear family priority over the patrilineage as the main unit of domestic life. This reinforced the effect of a decline in the relevance of Hindu legal traditions in public debate and adjudication, traditions that gave the patrilineage control over ancestral property and barred individuals from marrying most agnates. These changes brought modernist visions of the Indian/Hindu family closer to the normative family that Western legal systems upheld around the middle of the twentieth century – one that is nuclear, monogamous, heterosexual, and formed and maintained by autonomous adult partners. (Glendon 1989, Friedman 2005) However, modernists varied in their relative valuation of conjugal autonomy and the continuity of the nuclear family, which many of them considered an important Indian cultural value. Many feminists and women’s organizations argued to limit divorce rights not on the grounds of cultural authenticity but that of women’s rights, which they felt such limits would better serve as long as alimony awards were poorly implemented and women’s ability to inherit ancestral property was constrained. (e.g., Committee on the Status of Women 1974)

The changes in modernist understandings of the family enabled an increase in Hindu divorce rights. Parliament reduced and then eliminated the waiting time between judicial separation and divorce on the grounds of cruelty, desertion, and adultery, in 1964 and 1976 respectively, and made divorce possible under conditions of mutual consent in 1976. Besides, divorces based on spousal fault became more accessible as judges set
lower standards of proof of cruelty and adultery. Furthermore, the economic costs of divorce were reduced for many women because the parliament mandated alimony for indigent divorcees in 1973, and the family courts established in many cities and towns from 1984 enabled litigants to represent themselves in court and receive speedy adjudication. However, the government continued to require judges to urge spousal reconciliation before they pronounced divorce (e.g., in the Family Courts Act, 1984), and rejected the suggestions of a Law Commission and the Supreme Court to make divorce available when marriages seemed irretrievably impaired, even in the absence of mutual consent and spousal fault. (Law Commission of India, 71st Report, 1978) A way to reconcile conjugal autonomy with economic well-being is currently being considered - granting such divorces only if the spouses and children have adequate financial support. (Law Commission of India, 217th Report, 2009)

Traditionalists continued to refer to patrilineal norms, even while abandoning Hindu legal traditions as standards. They argued against giving daughters shares in ancestral property as daughters were taken to join their husbands’ patrilineages upon marriage, when five state governments considered this step from the 1970s to the 1990s and the national government did so in the early part of this decade. They also claimed that the custom of sons performing memorial ceremonies justified giving sons greater control over ancestral property. To overcome these objections, modernists had to point to some Hindu upper castes having customs of bilateral inheritance and of daughters performing memorial ceremonies. (Hearings of the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice 2005; Agarwal 2008)
V Making Nation and Family: Changes in Contestation

Visions of the nation, its religious groups, and the relations between the nation and specific religious groups influenced debates and policies regarding cultural recognition and personal law in India. Participants in these debates linked the kind of nation they wished to build and the forms of family life they aimed to promote. Traditionalists and modernists gave cultural authenticity and modernity greater respective weight as the standards according to which nation and family were to be made. Many pluralists and majoritarian nationalists shared a focus on reforming Hindu society as a means to making nation and tradition. Along with the essentialist approach of most pluralists to minority traditions and the demands of conservative Muslim elites to retain colonial-era Muslim law, it led to extensive changes in Hindu law, but none in the minority laws in the first postcolonial decade.

The visions of the nation expressed in personal law debates converged in certain respects, and diverged in others over the last generation. There was partial convergence in the forms of family life that political elites and policy makers wished to cultivate in the nation. As their ranks expanded, the ambitions of the modernists grew regarding the authorization of the nuclear family, the enhancement of conjugal autonomy, and the extension of certain rights to women. Besides, the changed public ethos and the growth of culturally grounded legal mobilization muted traditionalist resistance to reform.

However, the visions of group traditions, and of the relations of religious groups to the nation diverged. Majoritarian visions became stronger, leading some political organizations and policy makers to resist minority recognition and to demand a rapid move to a UCC.
At the same time, more pluralists engaged more with minority traditions and initiatives, and thereby recognized their diversity and dynamism. The organizations that fostered engaged pluralism adopted novel interpretations of religious traditions, revived marginalized features of these traditions, and mobilized for personal law reform on these bases. They argued that citizens ought to engage with different religious traditions in multi-religious societies in which religion plays major public roles, to promote mutual respect and cultural exchange across religious boundaries, and to provide the nation ongoing spiritual renewal.

The engaged pluralists offered proposals for personal law reform and built support for them within and outside the communities governed by these laws. Moreover, they contributed to changes in the values of crucial policy-makers, and advances in these actors’ knowledge of religious traditions and their successful and potential contemporary appropriations. Some judges and legislators drew from these new forms of knowledge to reform the personal laws from the 1970s, in a wave that extended to the minority laws. The majoritarian nationalists accompanied their calls for a UCC with sharp denunciations of Muslims, but not with specific proposals. This suggested that they might impose uniform laws over the objections of the religious minorities and of various pluralists, increasing the opposition to a UCC. As a result, the new pluralists influenced personal law more than the majoritarian nationalists did.

As somewhat similar visions of desirable family life shaped the recent reforms, some features of India’s major personal law systems became more similar. This was the case regarding, the divorce rights of Hindus, Christians and Muslim women (based on mutual consent or similar spousal faults), and the inheritance rights of Hindus and
Christians. By promoting exchanges across religious boundaries, the new pluralists may increase the areas in which the personal law systems converge, leading to the emergence of uniform laws in the future, although they do not press for this outcome.

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