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THE CONFLICT BETWEEN UNIFORM CIVIL CODE AND THE PERSONAL LAWS IN INDIA

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सत्यमेव जयते

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LIST OF ABBREVIATION

SERIAL NO.	ABBREVIATION	EXPANDED FORM
1	UCC	Uniform Civil Code
2	&	And
3	Sec.	Section
4.	Art.	Article
5	Vs.	Versus
6.	SC	Supreme Court
7	UoI	Union of India

8	AIR	All India Reporter
9	SCC	Supreme Court Cases
10	HC	High Court
11	SCR	Supreme Court Reports
12	Cal	Calcutta
13	ILR	Indian Law Reports
14	RLW	Rajasthan Law Weekly
15	Bomb LR	Bombay Law Reporter
16	AIML	All India Muslim League
17	IPC	Indian Penal Code

LIST OF CASES

- 1) Ahmadabad Women's Action Group vs. UOI AIR [1997] SC 3614
- 2) Bai Tahira A vs Ali Hussain Fissalli Chothia and Ors, AIR [1979] 362, SCR 75
- 3) Daniel Latif v. UOI AIR [2001] SC 3262
- 4) Fazlunbi vs K. Khader Vali and Anr, AIR [1980] 1730, SCR 1127
- 5) John Jiban Chandra Dutta vs. Abinash Chandra Sen ILR [1939] 2 Cal 12
- 6) Mohd. Ahmed Khan vs Shah Bano Begum and Ors, AIR [1985] 945, SCR 844
- 7) Naveen Kohli vs. Neelu Kohli AIR [2006] SCC 558
- 8) Parimal Khosla v. Rajnish Kumar Khosla, AIR [1978] Delhi 78.
- 9) Pragati Varghese vs Cyril George Varghese AIR [1997] Bom LR 349
- 10) Ramesh Jangid v. Smt. Sunita AIR [2007] Raj, RLW 160
- 11) Sarla Mudgal and vs. UOI AIR [1995] 3 SCC 635
- 12) S.R. Bommai vs. UOI AIR [1994] 2 SCR 644
- 13) St. Xavier College vs. State of Gujarat AIR [1974] SC 1389

BACKGROUND OF THE STUDY-

The Government that was established by the Britishers made a submission in 1835 emphasising the necessity for standardisation in codifying Indian law with regard to crimes, evidence, and contracts. They explicitly advised that personal laws that regulate the Hindus and Muslims be kept outside of such formalisation. This report is where the idea and origin of the Unified Civil Code in India were first introduced. The B N Rau Committee was founded in 1941 to codify Hindu law as a result of the government being forced to create a committee due to the expansion of personal-issues laws during British control. The work of the B.N. Rau Committee contributed to the process of reform and codification of Hindu personal law, which subsequently resulted in the enactment of legislation including the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956, and the Hindu Adoptions and Maintenance Act, 1956.

Other laws with standardized administration across the nation were the Indian Evidence Act of 1872, the Transfer of Property Act of 1882, the Indian Partnership Act of 1932, and the Indian Contract Act of 1872, in addition to the aforementioned uniformity code. However, Provinces have made several changes to those Acts, resulting in a variety of those laws in some areas. It can be said to conclude that for the purpose of ensuring effective national government, the writers of the Constitution carefully preserved Article 44 to reflect the fact that the notion of UCC is not a new concept in India.

LITERATURE REVIEW-

The main concern to be tackled as per the paper¹ is whether UCC transcend their right to be subject to distinct personal laws depending on their race or religion, if the UCC is known for its controlling aspect on everyone, regardless of their religious affiliation? One of the principal concerns surrounding the UCC is its potential impact on religious freedom under Article 25 of the Constitution of India, particularly where proposed uniform rules differ from practices recognised under religious traditions. For instance, the relationship between adoption and personal law raises questions about the extent to which religious practices are constitutionally protected and whether they may be regulated through secular legislation. Such questions require careful consideration of the distinction between religious freedom and the State's authority to enact laws promoting social reform. In this context, Article 38(2) further directs

¹ Vaibhav Choudhary, "A Proposal for Uniform Civil Code for Law of Succession in India." (SSRN Electronic Journal, 2010.)

the State to minimise inequalities in income, status, facilities and opportunities among individuals and groups. Accordingly, the debate surrounding the UCC requires an assessment of how constitutional equality and social justice can be advanced while respecting the religious and cultural diversity of Indian society.

There have been various offers of suggestions for how to successfully apply a standard legal code avoiding upsetting the peace or sparking riots. Comparison of two standardized laws helps to indicate and pin down the loopholes that are associated with them. Hence, in this publication work², the author compares the personal laws of Hinduism and Islam to the Uniform Civil Code.

M.S. Ratnaparkhi's book provides the method of interaction between law culture and religion on basis of disagreements; the author is of stern view that India is grappling with turbulence due to negligence shows to UCC for a long time. The author in this book believes that the unified civil code is a forgotten idea that needs to be resurrected and discussed. The author claims that it is past time for the unified civil code to be prioritised and a plan to implement it developed.³

The Law Commission Report⁴ stated that the Special Marriage Act of 1954 made claims about the sanctity of all religions, but the State refused to recognise them. Instead, the Special Marriage Act was advertised as a secular statute that had nothing to do with the religious law of other groups.

A study⁵ on Social Change conducted by Y. Singh described about how with a few caveats that the Muslim community suggested for the same, the Shariat Act's adoption led to the state legal system's declared recognition of the notion. It was mentioned that personal concerns should be controlled by the Shariat and not by any customs. Thus, the State contributed in the enhancing the Islamization of the Muslim Community in such manner.

In the book of Shimon Shetreet and Hiram E. Chodosh a number of principles and concerns have also been put out. In their published book, the authors studied the interaction between the issues of culture, religion, personal laws of the religious communities in light of the numerous intra-community and inter-community disputes⁶.

² Ajay Kumar, "Uniform Civil Code: Challenges and Constraints" (2012)

³ M. S Ratnaparkhi, Uniform Civil Code: An Ignored Constitutional Imperative (Atlantic Publishers & Dist, 1997)

⁴ 15th Law Commission Report (1960)

⁵ Y. Singh, "Modernization of Indian Tradition: A Systematic Study of Social Change." (1973)

⁶ Shetreet, Shimon, and Hiram E. Chodosh, Uniform Civil Code for India: Proposed Blueprint for Scholarly Discourse. (Oxford University Press, 2015)

RESEARCH PROBLEMS-

India is a multilingual and multireligious country in which different personal-law systems govern certain aspects of family life and personal status. The coexistence of these systems raises questions concerning equality, gender justice, religious freedom and the scope of legislative reform. The central research problem is whether, and to what extent, a Uniform Civil Code could reconcile these constitutional objectives while respecting India's legal pluralism and cultural diversity.

OBJECTIVE OF THE STUDY-

1. To study the relationship of Uniform Civil Code with the Constitution of India and
1. with the personal laws.
2. To understand the reason behind the conflict between Uniform Civil Code and
3. Personal Laws in India.
4. To find amicable conditions under which Uniform Civil Code and Personal Laws can be accommodated harmoniously.

RESEARCH QUESTIONS-

1. What are the approaches of the Personal Laws towards the Uniform Civil Code?
2. What is the ambit of “secularism” in a diverse country like India where every citizen is regulated by their own Personal Laws?
3. What are the conditions under which Right to Freedom of Religion and Right to Equality can be balanced to work together?

RESEARCH METHODOLOGY-

- The use of secondary data collection has been made. This is a doctrinal study. Commentaries, Books, Reports, Comments, Journals and other publications have been used to combine the different perspectives of the many jurists with the goal of giving a comprehensive vision. In order to identify a pattern in the court declarations, this study makes considerable use of case laws as well.
- Citation Style: The OSCOLA style of Citation will be followed uniformly for the purpose of referencing throughout the paper.
- Solutions Intended to be explored

CHAPTER 1- INTRODUCTION

A Uniform Civil Code (UCC) seeks to establish a common framework of civil laws governing specified matters of personal law, irrespective of an individual's religious affiliation. The objective is to promote equality, non-discrimination and gender justice; however, the introduction of uniform laws would not, by itself, eliminate all forms of social prejudice or discrimination. The UCC debate primarily concerns the harmonisation or replacement of differing personal-law rules in matters such as marriage, divorce, maintenance, adoption, guardianship and succession.

Article 44 of the Constitution of India provides that: "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." It is based on the concept of "civil law," which strives to settle civil disputes and advance concepts of solidarity and national unity. Its aim is to guarantee that every community in the nation is treated equally in all civil affairs and that its citizens are not exposed to a patchwork of contradictory personal laws. Every community has its own personal law in India, a nation with many different personal laws. Here, several religious communities run things in accordance with their own regulations. Biblical law is a major source of inspiration for much of the personal law that deals with issues like guardianship, inheritance, marriage, divorce, and alimony. In the modern world, individual norms hold a distinctive position and are crucial to upholding society's civic borders. The political situation has prevented the country from amending some personal laws. The concept of a Uniform civil code arose from the concept of a civil law code. It intends to apply the similar set of secular civil standards to the persons of all religions and regions. This extends beyond people's rights to be governed by various personal rules depending on their religion or ethnicity. Personal status, transfer and inheritance of the property and administration of rights connected with it, marriage, divorce, and adoption are all the constituent elements civil code subject matter. Because India is a diverse society with many religious and social variations, establishing a Uniform Civil Code as soon as it is feasible is vital to bridging the gap created by various personal laws that have crept in throughout the years.

In addition to ensuring legal coherence, a consistent law is necessary to honour the variety that creates one of the most unique and diversified society in the world by eliminating the unintentional prejudice that personal law fosters among the citizens of India. It has not yet been put into effect since it is a part of the Directive Principles, which are only unenforceable instructions, and such instances of paper protection are inadequate grounds to petition the Court of Law. In order to have a single set of secular laws addressing the concerns that will apply to all Indian residents, regardless of community, the need for a universal civil code eventually

involves merging all of these personal laws. While the exact framework for Implementing such a unified code has not been established, it should likely be incorporating the most modern and forward-thinking aspects of all current personal laws while discarding those considered decremental for the development of society. Secularism and religious freedom, which are listed in the Indian Constitution, have been the main points of controversy in respect to the Uniform Civil Code. The preamble of the Constitution states that India is a Secular Democratic Republic, implying that the state does not favour any one religion. It also implies that a state's civil decisions should not be impacted by any religion prevailing within the country. The Indian Constitution's Articles 14–18 mandate equality and prohibit gender-based discrimination. However, numerous laws continue to exist that appear to go against these principles, notably in personal and customary laws of local communities that include extremely discriminatory provisions for women.

According to Article 37⁷ of the Constitution, the Court of Law cannot impose directional principles of the state policy. However, it does not mitigate or negate the importance of the principles that govern the Uniform Civil Code. One viewpoint on the adoption of the UCC holds that it is impossible to impose the code on people since the circumstance of India being so religiously diversified, does not allow it. The code, therefore, fits within the directive concepts of state policy. The preamble of the Indian Constitution is said to reflect the nation's constitutional philosophy. It also emphasises India's status as a sovereign, secular, democratic, and republic country. Although the Indian Constitution guarantees justice, liberty, and equality for all citizens and fosters a sense of community among them while upholding every citizen's dignity and the cohesiveness and strength of the country, the Indian Constitution's drafters were persuaded that some modernization was necessary before imposing a Uniform Civil Code on the populace.⁸

The rights of women who are the citizens of India have, however, historically been correlated with personal codes of religions that affect social structures like marriage and the family. Indeed, the legal boundaries of women's inclusion in these social organisations are defined by personal laws. When we try to put ourselves in the shoes of each and every one of these women, we find that what first seems similar is actually highly diverse in form and spirit. Patriarchal

⁷ Article 37, The Constitution of India, 1949, "The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."

⁸ Tanushree, "Uniform Civil Code in India- An Analysis." (JCIL, 2016) <https://www.studocu.com/in/document/university-of-delhi/unit-production/uniform-civil-code/9555279> accessed on 23rd April 2023

oppression appears to be a prevailing experience for all of these women from a distance⁹. A formula for a universal civil code must be created in such a situation, and uniformity may be suggested as a solution to all the oppressive issues that have crept into to exist in our personal laws. The UCC, as it is described in our Indian Constitution, has been hailed as a panacea for every social problem that Indian women experience. India is not a uniform nation-state like the West, and it has one of the most diversified as well as diverse people in the whole world. It is heterogeneous in terms of race, language, culture, and religion, yet even these distinctions are not absolute. As a result, they mix and form a group of peoples who are all incredibly enthusiastic but also very difficult to govern.

Secularism and Right to Freedom of Religion as mentioned in the Indian Constitution plays a vital role in the outcome and possibility of the implementation of Uniform Civil Code in India. India is a Secular Democratic Republic, as stated in the Constitution's preamble, indicating that the government does not support any one religion. A state that does not believe discriminating its citizens on the basis of religion is termed to be a secular state. It also means that there should be no religious influence on a citizen's life. The Indian Constitution's Articles 14–18 necessitate equal treatment and gender parity. But almost seventy-four years after the enactment of the Constitution, the goal of a Uniform Civil Code is still unfulfilled. About half of India's population comprises of women, and they are still fighting for a gender-just code that would allow them to live in equality and justice regardless of the society they are a part of.

Thus, it is crucial to create an environment where laws of every community are uniform for everyone in order to guarantee the (a) equality of men's and women's rights. It does not have to be within a set time limit or in an air of hurried urgency to achieve this. (b) consistency of laws throughout communities. Hindu radicals, meanwhile, adamantly demand that Hindu law become the country's primary family law framework. The minority of Muslims who follow Islam are worried that if the former is put into practice, the Quran's sacred Rule would be rendered obsolete. The Supreme Court has regularly expressed its displeasure over the inaction of lawmakers to establish an UCC, which had been considered as an essential secular prerequisite¹⁰.

After gaining independence, there have been intermittent attempts to enact a uniform civil code, and the Supreme Court has instructed the government in a number of cases to implement Article 44 of the Constitution, reform personal laws, particularly those pertaining to be discriminatory

⁹ R. Krishna Iyer, *The Muslim Women Act*, 1987

¹⁰ M.P. Singh, "On Uniform Civil Code, Legal Pluralism and Constitution of India" (2014). https://ir.nbu.ac.in/bitstream/123456789/2825/15/15_chapter%206.pdf accessed on 23rd April 2023

in nature, and get rid of laws that are biased against women and minority community as a whole. A UCC may not be high on the priority list for the country, but value-based progressive changes that maintain the distinctive identities of each faith are an achievable goal that prevents offence and harm to any section of the society as a whole or to a citizen as an individual. This might be the first phase of a unified code. The continuous mobilisation of Muslim, Christian, and Parsi opinion would undoubtedly have an impact and will diminish fundamentalist resistance across the nation. A voluntary standard code, may be, created at the non-governmental level to promote national discourse, giving minorities the option to accept or reject particular components of it, as a kick-start for the slow administration of the Uniform Civil Code.

CHAPTER 2- HISTORICAL BACKGROUND OF UNIFORM CIVIL CODE

The very notion of a Uniform Civil Code was first brought up in 1947 in the Constituent, and it was later included as one of the directive principles of the State policy by the Subcommittee on Fundamental Rights. Clause 39 of that committee's draft on directive principles of the State policy stated that the State shall work towards developing a Uniform Civil Code for the citizen of the nation. It was argued that varied personal laws of different groups of communities based on their respective religious ideologies hindered the advancement of India and that a Uniform Civil Code should be implemented as soon as possible to support the growth of the newly independent country. But the founding members and creators of the Constitution reached a compromise by shifting the Uniform Civil Code under Article 44 as a guiding principle of state policy because it was a politically delicate matter since it ran against people's religious ideas. India is home to many different ethnicities and customs. There are several family laws in it. The Jewish people follow their set of uncodified customary marriage law, and their succession concerns are controlled by the Succession Act of 1925, whereas Christian Marriage Act, 1872, the Indian Divorce Act, 1869, and the Indian Succession Act, 1925 regulates the Christians who are the citizens of India. The Succession Act has a special inheritance law exclusive to the Parsis that is significantly different from the rest of the Succession Acts, and the Parsis follow their own Parsi Marriage and Divorce Act, 1936. Hindus and Muslims each have their own distinct and unique personal laws. In addition to these numerous laws, customs also have an impact on marriage, divorce, and other family-related issues. Not only are there different laws, but even the different laws have different provisions for the same things. Codification of the laws was an extremely contentious subject in the 1948 Indian Parliament following the country's independence. Eminent figures like B.R. Ambedkar, Gopal Swamy Iyenger,

Anatarasayam Iyenger, and K.M. Munshiji were in support of adopting UCC, while Pocker Sahib and people of various religions were vehemently rebuked. The notion of a universal civil code was introduced during the acrimonious and ongoing discussions about codification, and it was included in the Indian Constitution as Section 44 under the heading “Directive Principles of State Policy” in 1947. “There has always been a standard body of rules encompassing nearly every facet of human relationships in this country.” according to Dr. B.R. Ambedkar, head of the constitution-drafting committee. “The Indian Penal Code and the Criminal Procedure Code, which govern criminal law throughout the whole nation, are consistent and comprehensive. The main goal of those who anticipate Article 35 to be a part of the Constitution is to effectuate the change since marriage and succession are the only areas that civil law has not yet been able to infiltrate.” he concluded¹¹.

In 1955, Nehru introduced the Hindu Code Bill. The most concerning challenge associated with the code was that the Code failed to address the Muslim population, which left Nehru’s vision of secularism with some gaps. After extensive and persistent resistance in the parliament during the 1955–1956 sessions, a more tolerant or less restrictive version of the Hindu Code was eventually passed. The judiciary in our nation has taken on more duty in the post-constitutional era, which is why it is regarded as the protector of the Indian Constitution. Currently, Goa is the only state in the country that has successfully adopted a consistent civil code coupled with a range of personal codes that are also accessible to adherents of many religions. Thus, it can be concluded from the previous events that the founding fathers and drafters of the Indian Constitution made an acceptable and honourable choice in including the uniform civil code under Art. 44 as the foundational framework of the state because it was a very sensitive political issue at the time. This serves as another evidence that adopting UCC in an ethnically diverse and pluralistic cultural nation like India is not a simple task and needs ongoing social evolution. Jawaharlal Nehru demonstrated his support for a universal civil code by introducing the Hindu Code Bill in 1930, but he had to deal with criticism from more senior figures like Vallabhbhai Patel and Rajendra Prasad. The Hindu law committee’s report was taken into account in the Indian Parliament’s 1948–1951 and 1951–1954 sessions. A standard civil code was something that the first Prime Minister of the Indian republic, Jawaharlal Nehru, as well as his supporters and female members, wished to see adopted. B. R. Ambedkar, who served as the law minister, was in charge of outlining the specifics of this measure. Due to the presence of monogamy, divorce, and the widow’s ability to inherit property in the Shastras, it was discovered that the

¹¹ M.P. Raju, “Uniform Civil Code: A Mirage.” (2003)
<https://patnawomenscollege.in/upload/Explore%20Vol.%20IX/t21.pdf> accessed on 26th April 2023

orthodox Hindu rules were unique to a certain tradition and school. Ambedkar was unpopular in the parliament because of his frequent criticism of Hindu law and distaste for the higher castes. He had studied the sacred writings and believed that the Hindu social system was defective. He believed that the only way to rescue it was via legal reforms, and the Code bill provided this chance. As a result, he received harsh criticism from the opposition. Despite not sharing Ambedkar's disdain for Hindu society, Nehru subsequently backed his reforms. The primary aspects of the Hindu law that drew the most condemnation were those that dealt with divorce monogamy, the elimination of co-parcenaries (women acquiring a joint title), and succession to daughters. The country's first president, Rajendra Prasad, as well as a few other prominent members of the Congress party, Vallabhbhai Patel, and Hindu fundamentalist organisations were among those who opposed these reforms. It was labelled "anti-Hindu" and "anti-Indian" by fundamentalists, who also requested a unified civil code as a delay tactic. In a remarkable political turn, the women parliamentarians who had previously supported this did the opposite and endorsed the reform of Hindu law because they were concerned that siding with the fundamentalists would result in further erosion of their civil liberties. As a result, the Hindu Marriage Act, Succession Act, Minority and Guardianship Act, and Adoptions and Maintenance Act were all four separate acts that were approved by the parliament in 1956, each of which was a scaled-down version of the original Act. The decision was made to add the phrase, "The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India," in the Directive Principles of the Constitution (Art 44). Women members like Rajkumari Amrit Kaur and Hansa Mehta opposed this. This action, according to scholar Paula Banerjee, was taken to corroborate that it stays out of the boundary of any discussion. Aparna Mahanta criticised the move by saying, "failure of the Indian state to provide a uniform civil code, consistent with its democratic secular and socialist declarations, further illustrates the modern state's accommodation of the traditional interests of a patriarchal society." In the years that followed, the Hindu code bill and the Special Marriage Act both failed to rein in the pervasive prejudice based on gender. The rules governing divorce were created with equal input from both couples, although the majority of divorces were started by males. Women from other communities continued to be underrepresented since the Act only applied to Hindus. For instance, Sharia law prohibited Muslim women from inheriting agricultural land. Nehru acknowledged that the measure was neither flawless nor comprehensive, but he was wary of making significant revisions that may enrage certain populations in particular. Although he acknowledged that it needed significant improvements, he considered it to be a "outstanding triumph" of his time. He played a crucial part in the Hindu Code bill's passage and established

women's equality as a political objective to be followed in India, which was ultimately embraced by the bill's earlier opponents. He believed that a uniform civil code was essential for the entire nation, but he did not wish any religious and ethnic community to be compelled to adopt it, particularly if they were not adequately prepared. He believed that such the absence of consistency was better since it would be useless if put into action. His idea of a uniform family law system was thus abandoned and incorporated to the Constitution's Directive principles. Any citizen, regardless of faith, may get married in a civil court under the Special Marriage Act of 1954, which allows Indians to wed outside the purview of any particular religious personal law. Except for Jammu & Kashmir, the law was applicable throughout all of India. The statute was nearly identical to the Hindu Marriage statute of 1955 in many ways, which provides some insight into how secularised the law pertaining to Hindus had become. Muslims were able to wed under the Special Marriage Act and therefore maintain the safeguards, typically advantageous to Muslim women, that were unable to be attended in their own personal law. This legislation made polygamy unlawful and replaced the relevant Muslim Personal Law with the Indian Succession legislation, which governs inheritance and succession. The religious laws would likewise apply to divorce, and a divorced woman would be maintained in accordance with the civil law.

Following the pathway of the Hindu Code bill, the general Indian populace and the Muslim minority, whose laws were shielded from any changes, were the two main beneficiaries of Indian personal law. Until the Shah Bano case¹² in 1985, there was less frequent debate between secular and religious authorities on the need for a unified civil code. In addition to her case, a pair of other Muslim women had previously obtained maintenance in 1979¹³ and 1980¹⁴ under the Criminal code. The Shah Bano case quickly rose to national political prominence and sparked intense discussion. The Supreme Court's recommendation was just one of several elements that affected the political as well as public interest in her case. Minorities in India, with Muslims being the biggest group, felt endangered during the anti-Sikh riots of 1984 and felt compelled to defend their culture. The All-India Muslim Board upheld the way in which their rules were implemented and sided with Muslim extremists who charged the government with encouraging Hindu supremacy over all Indian citizens to the detriment of minorities. The Muslim Personal Law, the law they felt to be a part of their ethnic background, was viewed as being threatened by the Criminal Code. They believed that the judiciary's recommendation for

¹² Mohd. Ahmed Khan vs Shah Bano Begum and Ors, AIR [1985] 945, SCR 3 844

¹³ Bai Tahira A vs Ali Hussain Fissalli Chothia and Ors, AIR [1979] 362, SCR 75

¹⁴ Fazlunbi vs K. Khader Vali and Anr, AIR [1980] SCR 1127

a Uniform civil code was proof that Hindu ideals were going to be forced onto every Indian citizen of the country. The conservative Muslims believed that if the judiciary oversaw their personal rules, the identities that shared through their ethnicity and religion would be in jeopardy. The Muslim Community that had previously faithfully backed Rajiv Gandhi's Congress administration, but as a result of the party's support for the Supreme Court's ruling, it lost the local elections in December 1985. Muslim board members launched a push to have total control over their own personal laws. Through the consultation of lawmakers, ministers, and media, it quickly attained national prominence. The media significantly contributed to the sensationalization of the event. A measure to defend their own personal legislation was introduced in the parliament by an independent Muslim member. The Hindu right, the Left, Muslim liberals, and women's organisations all fiercely opposed this measure, but the Congress switched its former stance and backed it. After the passage of the Muslim Women's (Protection of Rights on Divorce) Act in 1986, Muslim women were excluded from the protection of Section 125 of the Criminal Procedure Code. The discussion now focused on their own law's divinity. Only a Muslim judge could intervene in such circumstances, claimed a Muslim member of parliament, underscoring the value of cultural organisations above the national. Later, Bano stated in a statement that she disagreed with the Supreme Court's decision. Political activist Jaffar Sharief stated, "Today, in the Shah Bano's Issue, I am discovering that numerous people have become more compassionate regarding Muslim women than their fellow Muslim women. This led to the dispute defining a woman's right according to her unique group. This is quite odd." Because of the politization, there are now two main sides to every debate: the Congress and Muslim conservatives against the Hindu right-wing and the Left. According to Rajendra Kumari Bajpai, the minister of social welfare, the Wakf Board did not provide support for any women in 1986. Women activists brought up their legal situation, saying that the "main problem is that there are many laws, but women are dominated not by secular laws, not by uniform civil laws, but by religious laws." The 1980s saw a severe setback for the national women's movement due to the legal reversal caused by the introduction of the Muslim Women law.

One of the most contentious topics in Indian politics in the twenty-first century is the argument over a uniform civil code, which has been a hot topic since 1985 because of its wide-ranging consequences and concerns about secularism in the nation. The country's variety and religious laws, which vary not just by sect but also by community, caste, and region, provide the biggest obstacles to its implementation. Women's rights organisations assert that, notwithstanding its politization, this problem exclusively pertains to women's rights and security. The reasons in

favour of it included the need to strengthen the nation's unity and integrity, the disapproval of distinct regulations for various communities, the significance of gender equality, and the need to modernise the archaic personal laws of Muslims, which permit unilateral divorce and polygamy. These arguments are all found in Article 44 of the Constitution. Qutub Kidwai claims that as opposed to being exclusively Islamic, Muslim personal rules are "Anglo-Mohammadan." Hindu nationalists see this matter from the perspective of their legislation, which they claim is egalitarian and secular for women as well as men. As a result of politics of identity, the country's religious leaders and secular groups see calls for a unified civil code adversely.

The preservation of private liberties, regardless of variations in caste, faith, religion, race, sex, and place of birth, was guaranteed by our constitution in Part III. It has placed severe restrictions on the state, forbidding it from passing any laws that would lead to discrimination on any of the aforementioned grounds. The state accords all religions the same respect under the fundamental principle of secularism. Every religion is given the freedom and discretion to create its own unique set of rules that will protect it from the reach of the government. Although at first it would have seemed desirable and acceptable to include these essential liberties in our constitution, particularly in the area of religion. But circumstances have significantly evolved; women are becoming more knowledgeable in all professions, holding the most demanding and respectable positions across all industries, being aware of their rights, and being in a position to contest the legitimacy of those rights. They might therefore gradually discover the snowball effect that occurs in this regard. Of course, unless the situation at all is challenged or opposed, anything will continue to operate in the society even though it is unreasonable and irrational. It is an established and well-recognised truth that each person's faith, tradition, culture, and customs must be given top priority. This clause, which is included in Articles 25 through 28, guarantees religious freedom to all faiths. It opened the door for customized regulations that were tailored to each person's faith and culture. However, personal laws frequently infringe on other fundamental rights protected by Articles 14–18 and 21 while masquerading as religious liberties.

By examining Articles 14, 15, and 21 of the Constitution, which serve as a shield against any gender-based discrimination, inequity, or other transgressions of our fundamental rights. However, in actual situations, it has been seen that the anticipated outcome has failed to be achieved. India is growing quickly in all areas—technological, scientific, economic, and philosophical. Despite these advancements, discrimination against women still persists in India largely. The shift in the sex ratio in India effectively illustrates the prejudice against women

from the moment of birth. It is acknowledged that the long-standing preference for males over women in India's patriarchal society has a significant role in preventing women's emancipation.

India, a multicultural nation with a kaleidoscope of cultures, religions, customs, and usages, upholds unity in diversity. However, a detailed examination of the internal structure as it relates to specific laws and their long-standing implementation reveals an adverse impact on the status of women and the less fortunate segment of society as a whole.

CHAPTER 3- UNIFORM CIVIL CODE AND THE CONSTITUTION OF INDIA, 1950

Over the course of its history, India has been home to a wide range of practices, beliefs, and cultures. Religion is unquestionably the primary cause of these divergences. In our nation, religion plays a crucial role in regulating and analysing men's and women's behaviour. Be that as it may, India as a place where there are varieties in view of religion is vigorously influencing individuals, their social, moral, and common life. India, by contrast, has no official religion and is seen as a secular country that treats all people equally. Our constitution, which is also a copy of secularism, contains the idea of a Uniform Civil Code.

Currently, the Uniform Civil Code entails unification and amalgamation all personal laws into a single set of secular laws that would apply to all citizens of the country, regardless of their nationality. Since India is a different land, it is profoundly vital to have a Uniform Common Code to overcome any barrier made by a few individual regulations which have made a spot as the years progressed. This uniform law is necessary because it would eliminate the discrimination that personal laws cause among citizens and would reflect the diversity of our nation.

The primary characteristics of the Constitution are outlined in its Preamble. It accords equality to every citizen and religion. The right to profess, practice, and spread religion and freedom of conscience are guaranteed to every citizen by the constitution's Articles 25 to 28. The SC ruled in the case *St. Xavier College vs. State of Gujarat*¹⁵ that the Constitution contains Articles 25 to 28 because "even though the words Secular State are not expressly mentioned in the Constitution but there can be no hint of a doubt that the Constitution-makers wanted to establish such a State." The SC ruled that "secularism is the basic feature of the Constitution" in *S.R.*

¹⁵ AIR [1974] SC 1389

Bommai vs. UOI¹⁶. Therefore, in essence, despite the fact that the concept of a UCC is not explicitly defined in the Constitution, certain provisions, such as equality, freedom, justice, and secularity, are emphasized to safeguard the unrestricted interests of the nation's citizen.

The Constitution of India has already made an arrangement for Uniform Common Code under Article 44 as a Mandate Rule of State Strategy which plainly expresses that "The State will try to get for the residents a uniform common code all through the region of India". Although these directives are necessary for the country's governance, they are not citizens' legitimate rights. These orders direct the state to act in a positive way in certain circumstances and aim to improve people's well-being and welfare.

The entire structure of wealth and other personal matters such as marriage, divorce, inheritance, alimony, and adoption fall within the scope of the Uniform Civil Code. However, secularism and freedom of religion enshrined in the Indian Constitution were the main points of contention when it came to the Unified Civil Code. According to the preamble to the constitution, India is a secular state that does not adhere to any particular religion. However, there are still some laws that are very disrespectful to women and go against these principles. The Indian Constitution invests wholeheartedly about standards upholds orientation fairness, but even after such countless long periods of freedom as well as outlining of Constitution, the ideal of Uniform Common Code is yet to be accomplished. Despite the fact that women make up a large portion of our population, they continue to advocate for gender equality in order to benefit from fairness and justice. As a result, the Uniform Civil Code mandates both (i) uniformity of law across communities and (ii) uniformity of law within communities while maintaining gender equality. This is very important and our regulations need to be strong enough to control this important issue.

The SC has additionally been giving instructions and directions to the public authority for carrying out Article 44 of the Constitution, with the goal that the individual regulations can be improved, particularly those which are connected with minorities. Gender discrimination and bias must also be eradicated, as must prejudice against women. Although the Uniform Civil Code is not exactly at the top of the nation's agenda, certain progressive changes can benefit a lot of minority groups. This might end up serving as a road map to a common code.

In 1947, the Constituent Assembly first proposed a uniform civil code, and a subcommittee made it one of the guiding principles of national policy. The Uniform Civil Code mandates state protection of civil rights as a guide to national policy. The introduction of a unified civil

¹⁶ AIR [1994] SCR 2 644

law was absolutely necessary for India to progress and develop as a new independent nation. This is because religious communities have different personal legal systems. The Founding Fathers found a compromise by introducing the Uniform Civil Code as the guiding principle of Article 44 of national policy.

Judicial Journey of Uniform Civil Code in India

The Judiciary is considered as the watchman as well as viewer of equity. Its essential obligation is to give equity to each individual at whatever point any unfair demonstration or break happens. The courts typically adhere to the natural justice concept. However, the judge and his social environment influence the majority of the decision. This is unquestionably true when it comes to aspects of the uniform civil code that have gained various dimensions and theories over time.¹⁷ However, one thing that ought not be ignored is that the judiciary through its different judgment has consistently maintained the orientation reasonableness in cases relating to the Uniform Common Code.

In the landmark case of Mohammad Ahmed Khan vs. Shah Bano Begum¹⁸, more commonly referred to as the "Shah Bano Case," the Supreme Court considered the entitlement of a divorced Muslim woman to maintenance under Section 125 of the Code of Criminal Procedure, 1973. The Court held that Section 125 applied to the claim before it and discussed Article 44 in the context of the desirability of a Uniform Civil Code. The judgment is significant to the debate on maintenance, gender justice and personal laws. However, the Court's observations concerning Article 44 should not be described as a binding direction to Parliament to enact a UCC. But in the midst of it all, it became abundantly clear that, even in a secular state like India, women's rights are not treated fairly. As a result, religious establishment autonomy was prioritized over women's rights.

In the discussed case of Sarla Mudgal and vs. UOI¹⁹, the Supreme Court examined issues arising from conversion to Islam and a subsequent marriage during the subsistence of a Hindu marriage. The judgment discussed Article 44 and expressed concern about the lack of progress towards a Uniform Civil Code. Article 44 is a provision of the Constitution and must not be confused with a constitutional amendment.

However, in the case of Ahmadabad Women's Action Group vs. UOI²⁰, a PIL was filed where

¹⁷ Dipa Dube, "Rape Laws in India" (2008) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3386512 accessed on 16th April 2023

¹⁸ AIR [1985] SC 945

¹⁹ AIR [1995] 3 SCC 635

²⁰ AIR [1997] SC 3614

the orientation separation was tested in Hindu, Muslim, and Christian legal and non-legal regulation. In the succeeding case, the SC adopted a more cautious stance and decided that state policies should not be the focus of the court's consideration when deciding whether to eliminate gender discrimination from personal laws and regulations. The supreme court nonetheless issued harsh criticism of the decision.

There was another significant case, *Pragati Varghese vs Cyril George Varghese*, where the full seat of Bombay Court struck down Segment 10 of the Indian Separation Act. As the petitioner sought a divorce on the grounds that her fundamental rights as a Christian woman to live with dignity under Art. 21 had been violated.

Again, in the case of *Naveen Kohli vs. Neelu Kohli*²¹, it was boldly urged to the Indian government to amend the Hindu Marriage Act to allow for the dissolution of thirty-year-old marriage while making “irretrievable breakdown” of marriage a valid ground for divorce. According to the court's decision, the UOI was advised to take into account the fact that “irretrievable break-down of marriage” was a common cause of divorce in a number of other nations and to amend the Hindu Marriage Act of 1955 to include it as a cause of divorce.

Again, in the case of *Daniel Latif v. UOI*²² the Supreme Court upheld the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The Court interpreted the Act to require a divorced Muslim woman's former husband to make a reasonable and fair provision for her future within the iddat period. The judgment is important to the interpretation of the 1986 Act and the protection of divorced Muslim women's financial rights.

In the most recent case, *Ramesh Jangid v. Sunita*²³, the wife demanded that her husband to live separately from his parents. As the interest made by the spouse was totally irrational and as wife was living independently for a considerable length of time while denying any actual relationship, it was held by the Court that the previously mentioned grounds were enough for the conceding of the separation. That is what the Court saw, the distance has extended up for more than 10 years at this point, the relationship can't be retouch and the main reason was the separation of the spouses.

All marriages to be Registered in Court of Law

In *Seema v Ashwani Kumar*, the Supreme Court emphasised the importance of compulsory registration of marriages and directed States and Union Territories to frame rules for this

²¹ AIR [2006] 4 SCC 558

²² AIR [2001] SC 3262

²³ AIR [2008] 1 HLR 8 Raj

purpose. Marriage registration can provide documentary evidence of a marriage and help protect the legal rights of spouses. However, registration alone does not prevent child marriage, polygamy, bigamy or abandonment; these matters are governed by the applicable substantive laws and enforcement mechanisms

Art. 25 and 26 of the Indian Constitution Act guarantee the inhabitants the possibility to practice their religion and to observe strict obligations. Article 44 of the Constitution requires states to work towards creating a unified Indian Civil Code. Determining the provisions of the Uniform Civil Code is a difficult task, as each religion's personal law contains numerous components. It is therefore imperative to find a balance between the religious beliefs of different communities and the protection of their fundamental rights. And the most crucial point to remember about all of this is to avoid hurting or offending the feelings of the community.

Therefore, a conclusion can be drawn from the above points made that, given the development of the country, a uniform civil code must be enacted as soon as possible. It is time to put all private law of all religions in a tough spot and remove regulations that have been found to be unconstitutional. All private regulations that separate women on issues such as marriage, separation and inheritance should be abolished. A draft uniform civil law based on the principles of gender justice and equality must be drawn up from the fair laws of all religions. Personal laws continue to put a negative impact on the lives and rights of women in every community in our country, leaving them in a very miserable situation. Even though a number of initiatives and efforts are being taken to ensure gender equality, including the introduction of international instruments, changes to national laws, the most recent judicial trends, the recommendations of the law commission, and participation from a variety of elite groups, women in our country still face severe equality issues and are discriminated even in the field of family law, particularly when it comes to marriage, divorce, maintenance, inheritance, and so on.

It is time to introduce the idea of a unified Civil Code. It can be said that in order to promote national unity and unification and promote national integration, a unified set of rules is an urgent need. The different religious streams should align and merge towards a common destination and some unified and rigorous principles should come to mind in the real world of secularism. India must necessarily unite and create a unified code under one umbrella for all its constituent religions.

CHAPTER 4- APPROACHES OF PERSONAL LAWS TOWARDS **UNIFORM CIVIL LAW**

India is the land of culture and diversity where everyone is free to profess, propagate, and practice their faith and belief according to their choice. Every religious set has its own code of conduct in the form of personal laws that is applied commonly for their followers. The secular character and the neutrality of the state in such matter of religion is the peculiarity of this land. The SC of India has shown its keen interest for implementing the Uniform Civil Code in a nationwide scope.

Debates concerning the Uniform Civil Code involve several recurring arguments: whether the codification of Hindu personal laws has achieved gender equality; whether the proposed Code would affect religious freedom and minority rights; whether opposition to reform is confined to any one community; and whether the coexistence of personal laws necessarily results in unequal treatment. These questions require examination of the relevant legislation, judicial decisions and academic literature rather than generalisations about particular religious communities.

However, this is not the case at all. It is not true that only Muslims oppose changes to personal laws based on religion. If a deeper look is taken into the Hindu Code Bill's history, it can be seen that Hindu religious scholars, constitutional scholars, political influencers, and the upper castes of the Hindu community fought hard against it. The original Hindu Code Bill faced substantial political opposition and was not enacted in its original form. Hindu personal-law reforms were subsequently enacted through separate statutes, including the Hindu Marriage Act, 1955, and the Hindu Succession Act, 1956. Despite heavy threats, the then-Prime Minister Jawaharlal Nehru passed the bill in Parliament despite of all oppositions he received because of the miserable and heart breaking state of Hindu women in ancient times. Four Hindu Acts included anti-women and anti-secular laws as a result of serious threats made by the president at the time, Dr. Rajendra Prasad, and persistent opposition from upper Hindu communities, particularly the Brahmin community.²⁴

There is no real requirement that all Hindus be subject to the same law and that it be observed uniformly across the country. Nobody is concerned about the abolition of the customary Hindu law that is still in force. Law enforcement officials interested in Article 44 have focused on the personal rights of religious and cultural minorities, particularly Muslim personal rights that are

²⁴ Tahir Mehmood, "Personal Laws in Crisis" (1986) <https://www.ijlmh.com/paper/uniform-civil-code-and-its-fallacies/> accessed on 26th April 2023

inconsistence with the personal rights of an individual, which the uniformists want to legislate to abolish.

In the past, the legislature and courts have attempted to apply Hindu law to non-Hindu communities, frequently under the guise of achieving uniformity in family law. For example, there was limitation on marrying a cousin which was taken from the Hindu Regulations under the Special Marriage Act. One more remarkable occasion of this regulative pattern was found in a regulation ordered in 1950 by the West Bengal Government that safeguarded the implementation of the traditional Hindu Regulation to the Muslims in the previous province of Cooch Behar which has now converged in West Bengal²⁵.

Hindu Law Reform

The purpose is to examine and reach to the reasons behind why in some specific areas till now legal equality has not been able to be achieved and to review the history of legislation of the Hindu Law Reforms in order to determine the motivation for such reforms regarding women's legal rights. This in-depth look at how Hindu law reforms were implemented reveals the justifications given for denying women equal rights.

Under the Public Rights Act of India, 1935, Indians had a unique opportunity to have a mandated governing body. G.V. Deshmukh introduced a bill in 1937 emphasizing the importance of Hindu women's property rights in the Federal Legislative Assembly. The purpose of this bill was to provide the Hindu widow and her widowed daughter-in-law with the deceased man's property. In spite of the fact that the first Hindu Law Committee was tasked with recommending certain modifications to the Hindu Women's Right to Property Act of 1937 and 1938, it presented a report with very different recommendations in 1941. "The better plan would be to leave the acts to their respective operation for the present and enact a Comprehensive Law," the Hindu Law Committee suggested.²⁶

A few reformers and social activists initiated the demand to modify the Hindu law, but they did so without a strategy. As they gradually gained control of the government, these reformers carried out their work of reforming Hindu law to bring about the much-needed social change with dedication and determination.

The Initial Committee for Hindu Law

The first Hindu Law Commission established by the government greatly expanded its powers

²⁵ The Cooch Behar Assimilation of Laws Act 1950

²⁶ First Hindu Law Committee report (1941)

beyond its scope. Opinions that allowed for the codification of Hindu personal law were the basis for the first Hindu Judiciary Commission. Questionnaires were sent to judges, barristers, citizens, members of the Central Assembly, bar associations of HCs, heads of religious groups, and women's associations. It was pointed out that the strategy would not be implemented if the majority of public opinion were against such changes. The Public authority acknowledged its report and the bill got ready by the Principal Hindu Regulation Board of trustees as the report turned out to be of great help.²⁷

The Hindu Law Committee claims that the main reason behind making such drastic amendments and changes was because the current Hindu law had become harsher than its drafters and authors had ever intended it to be. The real question was not how many people demanded this change or how few, but rather whether the proposals themselves were appropriate and worthy of acceptance. As a result, the second Hindu Law Committee held that the Legislative had the authority to determine when and what changes to the law were required. The first Law Minister of India after it gained its independence, B.R. Ambedkar, argued that the Hindu Code Bill was necessary because it would prevent the Hindu System from being eroded as well as from being eradicated. He advised his colleagues in the legislature that if they wanted to safeguard the Hindu System, Hindu Culture, and Hindu Society as a whole, they should not be afraid take a step forward to repair and rebuild it when and where it is necessary.²⁸ The Second Hindu Law Committee immediately based its authority on the provisions of the Government of India Act, 1935, as it attempted to address all of the objections to the reform of Hindu law. It established its authority to legislate on issues such as marriage, divorce, succession, and other similar topics that required attention. The justification that was followed for reforming Hindu Personal Law was that the Hindu Law of Succession and Marriage had already been altered by the central legislature in the past, and no one had ever questioned their validity. As a result, the second Hindu Judicial Commission's response represented a marked change from the positions of the first Hindu Judicial Commission and the Joint Commission. Additionally, the Second Hindu Law Committee stated that the draft of the code it formulated and presented reflected that ancient law was significantly superior to current law.

The introduction of the idea of uniformity was one of the primary objectives of Hindu law reform. This point could have been intended to reduce the intricacies of Hindu Regulation fundamentally, yet the conspicuous point was to enlarge the periphery and the scope covered by the transformed laws and regulations. However, it soon became abundantly clear that the

²⁷ Pataskar, Lok Sabha Debates, (5) Vol.55

²⁸ Constituent Assembly Debates, 24(ii)

Hindu Law Reform Bill had been repeatedly announced but only has been successful in the partial implementation of the same. Moreover, in reality, the government did not make any additional efforts to achieve uniformity. When the Joint Committee reduced the scope of these exceptions, the Government supported the changed proposals and even implemented them without any hesitation. In several instances, the Government retracted from the proposal of the pre-election Hindu Code Bill and implemented several exceptions to the rules of the Bill. After these proposals were modified and were made more and practical and radical in nature by the Joint Committee and the Rajya Sabha, the Government actually succeeded in enacting them into law despite all the difficulties and hardships it faced.

Reforms that took place in different religious group

It is of paramount importance to trace down the legislative history of Personal Law in India and understands the sequential changes and modification in various religious personal laws of Christians, Parsis, Sikhs, etc. who constitute a minority group of community in India. In a democratic country like India, the state is unlikely to ignore the minority communities' requests for providing special protection to them. In contrary to which, minorities may not remain in consonance with the Government and may even question the state's efforts to reform laws to ensure legal equality for every individual.

Implementation of Muslim Personal Law Legislation

Very much like the Hindus, Muslims additionally utilized their chances given by the Government of India Act of 1935 to adjust a few parts of their strict personal laws and regulations. The All-India Muslim League (AIML) and the group consisting of religious clerics²⁹ were two well-known organizations that were looking after the function of regulating the Muslim community. In the final years of British rule in India, the Muslim Personal Law Application Act of 1937 was by far the most important law. The Jamiat-ul-Ulema-i-Hind adopted a resolution in 1925 to express their disapproval of the practice of some Muslims adhering to customs that were against Sharia.

However, the then-prevailing customs had seriously undermined Muslim women's position. This was one of the red flags that the Shariat Bill sought to address.³⁰ The sole purpose behind

²⁹The Jamiat-ul-Ulema-i-Hind was established in 1919

³⁰ Syed Khalid Rashid, "Muslim Law" (1960)
<http://182.160.97.198:8080/xmlui/bitstream/handle/123456789/694/Muslim%20Law%20by%20Syed%20Khalid%20Rashid%27s%20-%20Introductory%20page%20%20%26%20Chapter%201%20-%208.pdf?sequence=1>
accessed on 26th April 2023

the introduction of the bill was to help the applications of Shariah guarantee mutual rights and obligations with certainty. The rationale given for supporting this bill was that it would preserve the uniformity of the law among Muslims throughout British India.³¹ One more justification for presenting the bill was that the people belonging to the Muslim community are bound by heart to embrace and comply to their own regulations of the Quran thus "The presence of the legitimate situation that permitted profound avoidances as well as resistance of that specific regulation is a matter which is profoundly detested by the local area. People who supported the bill repeatedly asserted that it was intended to provide women with justice when the Federal Assembly considered and accepted the Select Committee's report. The Muslim Women's strong support for this action which played a major influential part in this journey."³²

In conclusion, the implementation of the Shariat Act resulted in the explicit acceptance of the principle by the state legal system, with the exception of the Muslim obligation that personal matters should be governed by the Shariat rather than the prevailing customs. Subsequently, the State contributed to the improving the Islamization of the Muslim People group in the same way. The impactful and growing ideology of several Muslim communities to establish a distinct and distinctive identity from the majority Hindu community was referred to as Islamization.³³

Changes that transpired in Christian Personal Law

Every personal law is distinct from every other personal law in India. Distinction and diversity are not what brings a specific law into the ambit of questionability but the degree of inequality and inconsistency prevailing within a specific personal law is the reason why it is put into the weighing scale of fairness and justice. Despite this fact, women are subjected to discrimination in the Christian Personal Law. Even if the Christians all over India have a uniform law of marriage and separation, yet women belonging to Christian community have less freedoms than men in private sphere of life. The majority of the Christian Personal Laws are state formulated laws. Because they were also Christians, the British government had more faith and confidence in legislating for Christians than Muslims or Hindus did. After the Independence of India, the public authority had arranged two reports³⁴ yet anyway did not change Christian Individual Regulation immediately. The Christian Marriage and Matrimonial Causes Bill³⁵ was

³¹ Legislative Assembly Debates, (37) Vol. III

³² Abdul Qaiyum, Legislative Assembly Debates, Vol. 9.

³³ Y. Singh, Modernisation of Indian Tradition: A Systematic Study of Social Change, (1973) <https://www.sociologygroup.com/modernization-indian-traditions-yogendra-singh-summary/> accessed on 4th May 2023

³⁴ Fifteenth and Eighteenth report of the Law Commission of India, 1960 and 1983.

³⁵ 1962.

introduced by the government in the Lok Sabha in 1962.

In the case of Mary Roy³⁶, the Supreme Court issued a landmark decision in 1986, declaring that the Indian Succession Act of 1925 prevails over the Travancore Christian Succession Act of 1916. This decision led to the Syrian Christian women having the same rights as their brothers over their father's property. The Travancore Act was later overturned by the Supreme Court, which also upheld the Part B State Laws Act of 1951. This case was a clear example of how the power of religion is used to promote male privileges is the religious support that men received over women.

Reform that took place in Parsi Law

With respect to the Parsi individual regulation, a transition to change it was taken up by the Parsi religion community in 1923. A sub-board of trustees to be specific Parsi Regulation Update Sub-Panel presented a report in 1927. The report was distributed throughout India by the Parsi Central Association to all Parsi Associations, Parsi Chief Matrimonial Court delegates, Parsi jurists, and publicists. Twenty-five Parsi associations attended a conference sponsored by the Parsi Panchayat following the publication of the report in the media. And the Twenty-one associations approved the changes. The Federal Assembly considered a bill to amend the Parsi Marriage and Divorce Act of 1865 in light of the favorable response. In April 1936, the Bill was introduced for the first time and passed.³⁷

The Public authority of India had never put forth any attempts to acquire changes the Parsi Regulations that separates ladies. A Parsi Marriage and Divorce Amendment Bill was first introduced in the Rajya Sabha in 1986. The Bombay Parsi Panchayat's Board of Trustees initiated the Parsi Marriage and Divorce Act of 1936, amendment process.

The laws and constitution of India have served as the foundation for preserving diversity of the country. The implementation of the Uniform Civil Code guarantees gender equality. In order for the Indian democracy system to flourish, certain efforts ought to focus on harmony in plurality rather than uniformity in general. The accentuation ought to be on friendly and orientation reasonableness and important positive changes must be initiated. The focus needs to be more on welfare and justice than anything else.

The Special Marriage Act, 1954

Following the India's partition, Muslim leaders who shared Indian nationalism joined hands in

³⁶ Mrs. Mary Roy versus State of Kerala and others AIR [1986] SCR 1 371

³⁷ Legislative Assembly Debates, (1935), pp. 3246-247

the nation-building process. However, a significant portion of the community lacked faith in this very procedure. A bigger extent of these Muslims got no exceptional qualification or recognition in the independent and liberated India. Because of this, the Muslims began to consider forming their own groups, which prompted scepticisms regarding their loyalty to the nation. The Muslim's religious identity gained prominence and became a common religious Personal Law. The state had a difficult time integrating Muslim women into the rights and benefits provided under the scope a single nation, despite the fact that the rights that Hindu women enjoyed were being planned for them as well. Consequently, the Muslim chiefs not just affirmed that the Parliament could not obstruct the Shariats, they were likewise attesting that Parliament should not take any drastic or unfortunate step that would compel and urge a Muslims to abandon his religion. The Muslim community hoped that the government would make it easier to control people's religion. The state publicized the Special Marriage Act as a secular law that had nothing to do with the religious laws of various communities rather than accepting the Special Marriage Act's claims about the sanctity of all religions.

CHAPTER 5- CHALLENGES IN THE IMPLEMENTATION OF UNIFORM CIVIL CODE

The opposition of Muslim Members to the Uniform Civil Code is based on the argument that it would infringe upon their religious liberties. However, proponents of the Uniform Civil Code perceive it as a mechanism to attain parity, impartiality, and national solidarity. The argument put forth was that Personal laws do not constitute an inherent aspect of religion, and in the event that they do, the State possesses the authority to govern freedom.

The unresolved issue of the Constitutional Conflict between the freedom of religion and the requirement to have a Uniform Civil Code persists even after seventy three years of India's independence. It appears that the country is currently experiencing a level of division comparable to that which existed prior to August 15th, 1947. The adversaries of the Uniform Civil Code continue to rely on the protection of religious liberty.

An additional challenge to the implementation of the Uniform Civil Code in India is the contention that religious communities are unable to embrace a Uniform Civil Code, as their personal laws are an integral aspect of their religion and therefore unchangeable. Religious personal laws are considered to be of divine origin and therefore cannot be violated, as they are believed to be commands from God or the Prophets. According to the historical record of personal laws, it can be observed that the majority of religious communities, with the exception

of the Muslim community, have gradually relaxed their positions over time. As a result of this relaxation, the codification of Hindu law was carried out despite the objections of certain fundamentalist Hindus.

Impediments in the way of Implementing UCC

There are many challenges that have been raised by several communities in India for the implementation of a uniform civil code.

Secularism in India

The development of the notion of secularism in India has been influenced by various historical occurrences. India boasts a rich legacy of religious pluralism and forbearance, which is manifested in the nation's secular ethos. The contemporary Indian culture is a culmination of amalgamating diverse social movements and spiritual traditions, facilitated by the land and its inhabitant's reverence for the world's multifariousness. The Indian Independence Movement, spearheaded by Mahatma Gandhi, stands out as a pivotal occurrence that influenced the development of secularism in India. Gandhi's vision for India was one of complete religious tolerance, where all religions would coexist harmoniously. He held the belief that parity should be accorded to all religions, without any particular religion being favored over others.

Prior to the 42nd amendment in 1976, the term 'secular' was not included in the Indian Constitution. The 42nd amendment changed Article 25(2) and included the word 'secular' in the Preamble of the Indian Constitution. Prof. K.T. Shah proposed a provision for the secular character of the state in the Constitution as the sole member of the Constituent Assembly to do so. The proposed amendment was rejected on December 3, 1948. However, the term "Secular" introduced by Prof. K.T. Shah was acknowledged in 1976 when it was included in the Constitution's Preamble.³⁸

Secularism is enshrined in multiple sections of the Indian Constitution. Article 25 ensures freedom of conscience and the right to freely practice and propagate religion, subject to public order, morality, and health. Article 26 grants the right to regulate religious matters, with consideration for public order, morality, and health. Apart from the aforementioned provisions, the Indian Constitution contains various other provisions that endorse secularism. Article 27 prohibits state-mandated taxation for the promotion or maintenance of any specific religion or religious group. Religious teaching is not allowed in state-funded educational institutions

³⁸ Shivam Garg, "Uniform Civil Code: In Context of Secularism" (SSRN, 2013) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2343500 accessed on 22nd April 2023

according to Article 28. Overall, the Indian Constitution recognizes secularism as a fundamental principle and seeks to ensure equal treatment for all religions irrespective of any consideration of majority or minority.³⁹

Apart from the aforementioned incidents, there exist a number of judicial proceedings that have significantly influenced the development of secularism in India. Apart from the aforementioned instances, a number of judicial proceedings have played a significant role in influencing the development of secularism in India. In the year 1985, the apex court delivered a ruling pertaining to the payment of alimony under the purview of Muslim personal law. The Court decreed that such payments must be made in accordance with the principles of justice, equity, and good conscience. The aforementioned verdict contributed to the promotion of parity in the application of Muslim personal law with regard to women.⁴⁰ The historical occurrences in question have significantly impacted the development of secularism in India and have facilitated the advancement of religious harmony and impartiality towards all faiths.

Personal Laws and Their Contradiction with the Secularism

The conflict between personal laws and secularism is a longstanding issue. The matter gained prominence during the 1980s due to multiple incidents of communal unrest in India. Personal laws were claimed to fuel communal tensions by endorsing discrimination against specific communities. Efforts have been made to amend personal laws in India in light of these concerns. In 1986, the Indian government enacted the Muslim Women (Protection of Rights on Divorce) Act to safeguard the rights of divorced Muslim women. In 2005, the Indian government enacted the Hindu Succession (Amendment) Act, granting daughters equal inheritance rights as sons.

Notwithstanding the earlier mentioned reforms, several concerns persist with respect to personal laws in India. India lacks a uniform civil code that is applicable to all citizens regardless of their religion. Critics argue that personal laws foster discrimination against specific communities. Personal laws in India contradict secularism and have been a concern for years. Efforts to modify personal laws have been made, but achieving parity among citizens regardless of their religion remains a distant goal. Uniform civil code is the absolute requirement of the hour and the; government should work on the implementation of the same.

³⁹ The Constitution of India, 1950.

⁴⁰ Mohd Ahmed Khan v. Shah Bano Begum, AIR [1985] 945

Freedom of Religion and UCC

The seeming necessary impact a uniform civil code will have on religious freedom is one of the biggest barriers to its creation. There is a perception that UCC opposes the fundamental liberties protected by Articles 25 and 26 of the Constitution. However, both Article 25 of the Indian Constitution (the freedom to profess, practise, and propagate religion) and Article 26 (the freedom to manage religious affairs) are "subject to public order, morality, and health" as well as the principles embodied in all other fundamental rights, such as equality and social justice.

While safeguarding religious freedom, Article 25 of the Indian Constitution also gives the State the authority to control or impose restrictions on "any economic, financial, political or other secular activity which may be associated with religious practice." This establishes a crucial difference between sacred and secular. Witchcraft, superstition, ordeals, sati, child marriage, bans on widow remarriage, caste discrimination, casual triple talaq, and polygamy are examples of practices that may be and have been prohibited or controlled. However, the decision of whether and where to create a boundary might be contentious.

Fundamental rights enshrined in Articles 25 and 26 of the Constitution are routinely utilized as a weapon in the struggle against the UCC by those who, for whatever reason, do not want it to become a reality. Their contention is that these Acts safeguard their right to practice personal law.

It is contended that the implementation of the Uniform Civil Code would not be in contravention of the principles of secularism, and would not infringe upon the rights enshrined under Articles 25 and 26 of the Constitution. The principle underlying Article 44 posits that in a cultured society, there exists no inherent correlation between religion and personal law. The matters of marriage, succession, and similar issues are of a secular nature and are thus subject to regulation by law. There is no religious doctrine that sanctions the intentional misrepresentation of facts. It appears that the Uniform Commercial Code (UCC) will only have jurisdiction over issues related to inheritance, property rights, maintenance, and succession. In all other matters, the common law will apply. Justice Khare expressed that matters such as marriage, succession, and other secular affairs cannot be included in the protection provided by Articles 25 and 26 of the Constitution.⁴¹ The Chief Justice issued a warning that any legislation that includes matters of succession and similar secular matters under the scope of Articles 25 and 26 should be viewed with suspicion. According to Article 25, individuals

⁴¹ Sarla Mudgal v. Union of India, AIR [1995] SC 1531.

possess the right to practice and profess their religion. Conversely, Article 44 mandates the separation of religion from social relations and personal law.

Because Indian secularism is riddled with paradoxes, it is unable to deliver clear policies to the people. As a consequence, religious beliefs dominate everyday life, causing friction throughout the nation. As a result, careful consideration must be given to this situation in the nation. To make secularism durable in the nation, we must promote our secular governmental structure. We should create a paradigm of secularism in which religion is not allowed in politics and religious freedom is constrained. People are allowed to practice their religion as long as it does not interfere with the freedom of others. The system's ultimate goal should be the benefit of society. There is now no effective measure in place to prevent these community agencies. To deal with such organs that disseminate violence in the guise of religion, we need strong and effective legislation. There is a need for some beneficial changes in society as well as in the constitution, and it is critical for the legislature and leaders to develop new regulations and policies to ensure secularism.

Article 29 of the Indian Constitution

The UCC is said to be violative to the Article 29 of the Indian Constitution, which protects fundamental rights. Art. 29 of the Indian Constitution, which provides the right to "culture," is used as a defence against Art. 44 of the Constitution. Personal law, it is claimed, is an aspect of 'culture.' Art. 29 does not define the term "culture." One thing is certain that is it must be interpreted in conjunction with Articles 44 and 51A (f) of the Constitution. To begin, Articles 25-28 of the Constitution are grouped under the category 'freedom of religion,' followed by the heading 'Cultural & Educational rights,' which includes Articles 29 and 30 of the Constitution. As a result, the 'culture' alluded to in Art. 29(1) of the Constitution is something that is not based on religion and can belong to any sector of the population, including religious minorities. It's important to keep the distinction between culture and religion in mind. The clearest example of this concept is the phrase "I am Muslim by faith, but Hindu by culture." If this is correct, a Muslim's claim to be controlled by a different set of personal laws, ostensibly based on religion, cannot be justified under Article 29(1) of the Constitution.

Objections by Minorities

Minorities in multicultural states always worry about losing their identity. Naturally, the majority will tend to neglect the cultural demands of minorities as it creates policies in a spirit that fits it. Undoubtedly, many minorities worry that the adoption of a unified civil code would

resemble Hinduism, or at the very least, would deny them a platform to exhibit their culture. Except for a few individuals, religious minorities have consistently expressed opposition to the UCC. They believe that their personal laws come from a divine and religious source. They are also concerned that by attending UCC, their unique identity will be lost. This is nothing more than a vague fear created and supported by members of a particular community who do not want their people to be free of erroneous religious perceptions. Religious minorities have been adamant in their opposition to UCC. In many ways, their terror is manufactured rather than genuine. They are unwilling to take a progressive stance on these personal regulations. Minorities are opposed to it due of a lack of awareness. They believe that once UCC is implemented, the majority will gain religious domination and they will be forced to follow the majority's faith.⁴²

People's mindsets are also influenced by the customs and usages of different sections of the country. People follow what has been practiced in the past, but they make no attempt to determine whether or not what they are following is really authentic. UCC is opposed by nearly all minorities, but the Muslim community is the most vocal. The law that is applied in the name of Islam is not entirely based on the Quran. In India, Muslim law differs from that of the Holy Quran. It has been highly affected by various customs and social behaviours.

Inefficiency of Government

It is the government's responsibility to put UCC into effect. However, since the incorporation of this mandate into the Constitution, there has been no documented activity on the side of any government that may have even initiated this matter. The reasons are numerous, but the most important argument is that no government would dare to confront minorities' objections. There has not been a single known event in which any of the governments who have ruled this country thus far attempted to have genuine discussions with the minority about this subject. In actuality, the government's position and attitude have remained same and hostile to the UCC. In fact, governments' attitudes toward the UCC have remained numb because they do not want to go against interest of any community.

Contradictions with Muslim Personal Law

In this respect, Muslim Personal Law is already modern, as it has codified individual property rights since the 1930s, in contrast to Hindu law, which assumes the family's natural properties

⁴² <https://theprint.in/india/uniform-civil-code-can-ensure-parity-equality-to-minorities-women/950092>

has to be "shared." Contrary to later debates about Muslim law being orthodox, Hindu laws were regarded to be failing behind and needed to be brought into the modern realm of individual property rights in the 1930s and 1940s.⁴³

All marriages would have to be civil contracts since the Muslim marriage as contract protects women more in the event of divorce than the Hindu marriage as ceremony. Mehr, which is paid by the husband's family to the wife upon marriage in Muslim Personal Law, is the wife's private property and is hers following divorce, providing her with protection that Hindu women do not have. As a result, the Uniform Civil Code would make mehr mandatory for everybody while removing dowry.

Prof. J.N.D. Anderson correctly identified two separate causes for the majority of Muslims' strong opposition to the Uniform Civil Code. Their first argument, he claims, is theological, because they feel that their personal law is not only based on divine revelation, but is also an integral component of their religion. Their second issue is sociological, in that they believe that abandoning their personal law will result in the loss of their identity and the eradication of the Muslim community's particular character.⁴⁴

Ignorance and Illiteracy

Illiteracy is one of the country's most important socio-political issues. Illiterate individuals are unable to comprehend the true essence of the legislation that was created for them. Furthermore, they are unable to read and comprehend such matters. They are ignorant as a result of their illiteracy. And illiteracy and ignorance both cause such people to remain silent. Such folks are adamant that they are not a part of the policy-making process. As a result, they never strive to express their point of view on any matter.

Religious laws are inviolable

As per current observations, the Muslim Community is demonstrating a steadfast stance. The steadfast position of the Muslim community dates back to the inception of the concept of Uniform Civil Code in India. The Uniform Civil Code was met with opposition by a majority of Muslim members in the Constituent Assembly, who presented arguments grounded in the unchangeable nature of personal laws. On the opposing end, Shri Munshi, Shri Aiyer, and Dr. Ambedkar provided a compelling argument in support of the implementation of the Uniform

⁴³ J.N.D. Anderson, "Muslim Personal Law in India" (1975); Tahir Mahmood (ed), "Islamic law in Modern India", (1972). <https://www.jstor.org/stable/43950467> accessed on 5th May 2023

⁴⁴ Ibid, Page no. 10

Civil Code.⁴⁵ The argument put forth by Shri Munshi suggests that in countries with a predominantly Muslim population such as Turkey and Egypt, the personal laws of minority communities are not considered inviolable, thereby allowing for the implementation of a Civil Code. It has been noted that Khojas and Kutchi Memon expressed a high level of dissatisfaction following the passing of the Shariat Act in India. The individuals in question adhered to specific Hindu practices in order to undergo a religious conversion process. The non-conformity of certain individuals to the Shariat resulted in its imposition upon them through legislation, as a group of Muslim members believed in the enforcement of Shariat upon the entire community. The Khojas and Cutchi Memons were compelled to comply with it, albeit with great reluctance.

Conflicts between the Personal Laws and Uniform Civil Code

In India, there is almost no chance of direct conflict between the laws of different communities. Every society has its own set of personal laws, most of which forbid interfaith marriages. However, an intercommunal legal conflict may arise inadvertently. The issue of whether the law in force at the time of marriage or the law in effect after conversion would regulate the parties' marital relations in existence, for instance, if one of the married spouses' changes to a different religion. The law of the converted spouse or the law of the non-converted spouse will apply in the latter case. This subject has come up in the courts in a number of instances to be dealt with in accordance with the law of the land. The cases related to one or both of the spouses converting to another religion have been one of the major causes of personal law conflicts.

Personal laws are sacred and unchangeable, and no legislative may change them: Article 44 of the Indian Constitution must be repealed. Because personal laws are not divine, such an objection is unfounded, unreasonable, and pointless. A common misunderstanding about 'personal laws' is that they are founded on religious writings that purport to be 'divine revelations' and so are supreme, infallible, sanctimonious, and static. While "divine revelations" can be considered a source of law, they do not contain "law" in the modern sense. Divine law-making cannot be considered a legal system in and of itself; it requires human intervention in the form of interpretation, application, and lived experience to transform it into law of land; thus, it is accurate to say that the various laws governing family relationships are rooted either in customary practices or in scholarly interpretations of divine law that were later modified through colonial interventions. The provision in Art. 44 is nothing more than a manifestation of the Constitution's goal of "fraternity, unity, and integrity of the nation," which

⁴⁵ Baxi U. - "Uniform civil code and the crisis of common sense in family law and social change" (1975) <https://core.ac.uk/download/pdf/144516425.pdf> accessed on 6th May 2023

is enshrined not only in the Preamble, but also in Article 51A (c) and (e) of the Constitution's Fundamental Duties.⁴⁶

In multicultural states, minorities always fear losing their identity. Naturally, when it develops policies in a manner that suits it, the majority will have a tendency to disregard the cultural needs of minorities. Undoubtedly, a lot of minorities fear that if one civil code were adopted, it would resemble Hinduism or, at the very least, would prevent them from having a place to showcase their culture. There are several models for how nations should view multiculturalism. The neutral paradigm and the assimilationist model stand out. There is concern that if Article 44 of the Constitution is put into effect, minority populations' distinct identities may be lost.

1) Between Hindu Law and Muslim Law

It is essential to note that the key issue that has to be clarified is whether personal law, whether Hindu or Muslim, is to be used by the court when one party is a Hindu and the other is a Muslim at the time of the establishment of the dissolution of the marriage between them. This raises the obvious issue of 'apostasy and conversion',⁴⁷ for which we must first address the example of Mohammadan law, whose implementation varies depending on whether the country is under Islamic or non-Islamic control. Dar-ul-Islam is the former, and Dar-ul-Harb is the latter. Because India is a non-Muslim country, the Mohammadan law of Dar-ul-Harab will apply. A person who accepts Islam is instantly ruled by Islam law, according to the general principles of Mohammadan law. There are four types of scenarios to take into consideration to better understand the ideas that support the set of rules governing the matrimonial status of people who reject or embrace Islam: The two most common types of apostasy are for a Muslim husband to become an apostate and for a Muslim wife to forsake Islam. Third, a non-Muslim husband and fourth, a non-Muslim wife may convert to Islam; these are the two most prevalent conversion scenarios.

It is necessary to mention here that the Hindu Marriage Act, 1955 (as considerably revised) changes traditional law in India by providing Hindus the ability to divorce by considering the situation under Hindu law. Additionally, section 13(1)(ii) of the act has an interpersonal conflict of law provision that permits a Hindu spouse to sue for divorce on the grounds that the

⁴⁶ Dr. Saroj Bohra- "Uniform Civil Code, Women Empowerment and Gender Justice" (SAJMS, 2016) <https://www.ijlmh.com/wp-content/uploads/2020/05/Uniform-Civil-Code-for-Gender-Justice.pdf> accessed on 6th May 2023

⁴⁷ Peral David, "Interpersonal conflict of Laws India, Pakistan and Bangladesh" (1981) p. 66-67. https://blog.ipleaders.in/uniform-civil-code-problems-prospects/?amp=1#Possible_solutions_to_the_issues_surrounding_UCC accessed on 8th May 2023

other spouse has converted to a different faith. The other partner is able to file for divorce under Section 13(1)(ii) on the premise that the respondent no longer happens to be a Hindu through a conversion to a different religion, regardless of the personal law conditions that apply to the newly converted spouse. A rule of interpersonal conflict of law is established: when a spouse to a Hindu marriage converts to another religion, on an application for divorce by the unconverted spouse, the court applies the reformed Hindu law.⁴⁸

The Special Marriage Act of 1954 allows couples to choose between a civil marriage ceremony and registering their existing religious marriage under the Act. A marriage performed or registered under this Act is governed by the provisions of this Act in connection to any conceivable matrimonial relief, regardless of the couples' personal laws at the time of marriage or at any point in the future. The Indian Succession Act, 1925 controls the succession of property of any individual whose marriage has been solemnized or recorded by this Act, except in the case of marriage between two Hindus.⁴⁹ In terms of succession, Hindus who marry under this Act are currently governed by the Hindu Succession Act, 1956. Hindus are exempted from the effects of Section 19 and Section 21 of the Special Marriage Act, 1954 (as amended by the Act of 1976). A severance of any member of an undivided family who professes the Hindu, Buddhist, Sikh, or Jain religion is affected by Section 19. Because of the cumulative effect of these sections, Section 19 will not apply when two Hindus marry. A marriage under the Special Marriage Act of 1954, however, does not impact any vested rights of inheritance under the parties' respective personal laws, subject to Section 19.

To sum up the preceding discussion, none of the following statutes in the existence give a satisfactory acknowledged choice of law rule that may be implemented in a contradictory circumstance. In any event, it is not necessary to choose the law controlling the dissolution of the marriage *qua lex celebration* or *qua lex personae* because the law governing legal marriages and the personal law of the two individuals at the point of the marriage are usually comparatively identical.

The argument is that the Constitution provides an individual's right to personal law, and that a uniform civil code would be a breach of that right. Perceived intervention in individual lifestyles will harm the concept of secularism. In India's long history, colonial authorities have

⁴⁸Section 13(I)(ii) of the Hindu Marriage Act, 1955 – “Any marriage solemnized, whether before or after the commencement of this Act, may be dissolved by a decree of divorce on the ground that the other part – II, has ceased to be a Hindu by conversion to another religion on a petition presented by either the husband or the wife.”

⁴⁹ Section 21(a) of the Special Marriage Act of 1954 – “Where a marriage is solemnized under this Act between a person who professes the Hindu, Buddhist, Sikh, or Jain religion and a person who professes the Hindu, Buddhist, Sikh, or Jain religion, Sections 19 and 21 shall not apply, and so much of Section 20 that creates a disability shall not apply”.

never interfered with customary laws. Finally, it was assumed that because India is such a huge and diverse country, enforcing a standard code would be impossible.

2) Between Hindu law and Christian law

Now the point is, if there is a dispute between Hindu and Christian law, which law will prevail in that situation? In a case that came before it, the Indian court was confronted with such a situation.⁵⁰ The parties were married according to Arya Samaj traditions in this case. Following that, the wife filed a petition for judicial separation on the grounds of cruelty under the Indian Divorce Act of 1869, claiming that she practiced the Christian religion and that the Act only applied if one of the parties was a Christian. The petition was challenged by the husband, who claimed that theirs was a Hindu marriage done in a Hindu manner and hence should be governed by the Hindu Marriage Act, 1955. As a result, the court was in a dilemma and had to decide whether the Hindu Marriage Act or the Indian Divorce Act applied to the marriage in the said issue.

In a specific case, the question of whether a lawful marriage could take place if one partner was a Hindu and the other a Christian was raised. Because both parties to the marriage must be Hindus, according to Section 5 of the Act. Both parties to the marriage said that the woman was a Christian at the time of the marriage, but that she later converted to Hinduism before returning to Christianity. According to the court, every marriage is granted a presumption of validity, which in this case essentially implied that the two individuals were eligible to wed in accordance with Hindu traditions because both parties were Hindus. As a result, if the wife now claimed to be a Christian, it can only mean that she later converted (or reconverted) to Christianity. If so, the case will be governed by the Hindu Marriage Act, 1955.⁵¹

3) Between Christian law and Muslim law

Now we will look at the next complicated issue in Muslim Christian marriages, where the *lex celebrandi* and the *lex personam* differ. A Muslim man can marry any Kitabiya woman, according to the law. In the case of a Muslim male marrying a Christian girl in Muslim form, it appears that the general law would accept the marriage, despite Section 4 of the Christian Marriage Act of 1872. In this case, it is proposed that section 4 of the Christian Marriage and Divorce Act 1872 be interpreted in a way that is consistent with basic Muslim law.

⁵⁰ Parimal Khosla v. Rajnish Kumar Khosla, AIR [1978] Delhi 78.

⁵¹ The Hindu Marriage Act, 1955, Section 13(1) (ii) – “Any marriage solemnized whether before or after the commencement of this Act, may on a petition presented by either the husband or the wife. Be dissolved by a decree of divorce on the ground that the other party has ceased to be Hindu by conversion to another religion”.

As a result, it is reasonable to argue that the law governing the dissolution of a marriage between a Muslim male and a Christian female celebrated in Muslim form is the same law that governs the celebration and the personal law of the husband both at the time of the dissolution and at the time of the marriage. In the case of a Muslim male marrying a Christian girl in non-Muslim form (for example, in an English register office), the law governing the dissolution should be the law that governs both the lex festivities and the personal law of the wife.

In an Indian case of *John Jiban Chandra Dutta vs. Abinash Chandra Sen*.⁵² Dukhiram Sudakshina, an Indian Christian woman, was married to an Indian Christian. He was afterwards converted to Mohammedanism and married at a Mosque to a Muslim woman named Alfatenessa. The court had to decide if the second marriage was valid, but he did so in the middle of his decision. "It may be difficult to say whether Dukhiram might have divorced Sudakshina through talaq," Mr. Justice Henderson stated.

The people who strongly opposes UCC claims that personal laws are religious hence, they are immutable. People who oppose UCC believe that personal laws are religious in nature and so cannot be amended or altered. This belief's authenticity or falsity cannot be determined just on the basis of their aspects. Many people claim that the state cannot meddle with the core framework of family laws and that they do not fall under the ambit of "laws" because of Article 13. Given the strong opposition from the Muslim community in India to this issue, which coincides with controversies over beef, saffronization of school and college curriculum, and love jihad, as well as the top leadership's silence on these issues, sufficient time must be given to instil confidence in the community. Otherwise, these efforts toward common ground may backfire, leaving minorities, notably Muslims, more insecure and prone to fundamentalist and extremist beliefs. As a result, we might conclude that the moment is not yet ripe for this reform.

CHAPTER 6- SUGGESTIONS ON UNIFICATION OF PERSONAL LAWS AND UNIFORM CIVIL CODE

India is a country filled with diversity. People who live here come from many castes, creeds, and races. In some situations, such as marriage, adoption, inheritance, and maintenance, the law has given them the freedom to adhere to their own customs and rituals. These issues are referred to as personal community affairs. Personal laws are those that deal with these issues. Based on it, different laws are permitted, but the reality is that these private laws, like polygamy and unilateral divorce, divide societies. The main barrier to granting rights, equality, and

⁵² ILR [1939] 2 Cal 12

secularism to the least fortunate members of society is these disparities in legal systems. In order to combat these issues and bring about true justice, the uniform civil code (UCC) must be put into effect. The issue of what exactly the UCC is currently stands for interpretation. The phrase "Uniform Civil Code" refers to the unification of all personal laws into a single law that would be applicable to all Indian people, regardless of their faith or culture.

At this point, a very important question emerges—why the UCC could not be Formulated and there hence, be implemented? If the entirety of time is taken into account, British control is responsible for the codification of law. Before them, whether it was a civil, criminal, or familial problem, disagreements were settled in accordance with the laws of the society to which the disputant parties belonged. A common law on crime, the "IPC," could not be formed until the British Empire was established, in 1860. It has always been equally appropriate to any Indian, regardless of his or her community. Other laws include the Contract Act, the Transfer of Property Act, the Code of Criminal Procedure, and the Code of Civil Procedure are some other instances of law made and enforced in the British rule. All personal laws have regulations pertaining to the topics covered by these laws, but the British were successful in creating secular laws and persuading people to abide by them. It becomes evidently clear as if the British would have been successful to adopt the UCC here if they so desired. Though they would first have been objected to, individuals would eventually accept the laws as stated above. However, they did not favour it since they did not want any local authorities to object. They abandoned it as a result and engaged in polarising politics out of personal pursuit.

Our current political leaders are still engaging in dishonest propaganda. They do not move in that direction for the sake of their support base since they are aware that the people would be perturbed if they are forced to give up the freedoms granted to them by their own faith. They would undoubtedly lose some of their support. They occasionally make the UCC promise but never truly carry it out. The prevailing consensus is that Muslims will be most negatively impacted if the UCC is implemented. But this is untrue. In order to make the law really consistent, secular, and well-wisher, the good and progressive aspects of personal law from Hindu, Muslim, Christian, Parsi, or Jewish traditions will be included into the UCC. It is crucial to keep law and religious sentiment distinct to one another. With the UCC in place, secularism will be intensified, much of the division and hostility that currently exists between the country's numerous religious groups would vanish, and India will become a much more cohesive and integrated society. Even our judicial system has acknowledged the value of UCC and has emphasised the need to develop it.

In *Sarla Mudgal Case*⁵³, the UCC is essential for both the defence of the downtrodden and the encouragement of national cohesion, as the Supreme Court has pointed out. Even Justice Kuldeep Singh expressed regret that the Indian government had not passed a unified civil code despite the country having been independent for 47 years. The same was held in *Lily Thomas v. Union of India*⁵⁴. Again, in *Mohd. Ahmad Khan v. Shah Bano Begum*⁵⁵, the Hon'ble Justice Y.V. Chandrachud, the then Chief Justice of India had thus said, "I grieve that Article 44 of our Constitution has continued to be a mere "dead letter". "The State shall endeavour to secure for the Citizens a uniform civil code throughout the Territory of India," Article 44 states. There is no evidence that formal work on a national civil code has been done. The idea that the Muslim community ought to lead personal law reform seems to be gaining support. A single civil code will promote national unity by reducing various allegiances to laws with conflicting viewpoints. Making unwarranted concessions on this issue is unlikely to worry any communities. Unquestionably, the State has the legislative authority to ensure that the citizens of the country have access to a uniform civil code.

In contemporary India, which is growing progressively more like the rest of the world, the customary conformist-affected boundaries, such as caste, religion, and community, are gradually eroding. When young people in India from various castes, faiths, groups, or tribes get married, they should not have to cope with issues brought on by disparities in personal laws, particularly when it pertains to getting married and getting divorced.

Although the UCC will not alter any religion's personal law, it will unite all of them under a single set of regulations. People's perceptions of UCC have been distorted to the point that they believe it violates their individual rights and customs as a result of certain people's incorrect beliefs and the political party's use of brainwashing tactics. However, reality diverges far further from this tale. No matter which religious faith someone practices, he or she will be treated equally. It will aid in achieving a just society and ensuring that individuals of all religions are treated in an equitable manner. Although it is not simple to adopt a consistent civil code of law, it must be done. Discrimination cannot be justified by customs and traditions. The rules governing the inhabitants of a country must be the same for equality to exist. The Constituent Assembly planned for Uniform Criminal Law (UCL) to be adopted by succeeding administrations once the society is prepared for it. In order for a person to understand exactly what criminal law is and when he is breaking the law, this Criminal Code would be an all-

⁵³ Smt. Sarla Mudgal vs Union of India & Ors AIR [1995] SCC (3) 635

⁵⁴ AIR [2000] 176 SCC (6) 224

⁵⁵ AIR [1985] 945 SCR (3) 844

encompassing legislation that would embrace the criminal provisions of all Central and State Acts.

By failing to create a single civil code that is consistent with its democratic, secular, and socialist declarations, the modern Indian state has catered to the traditional interests of a patriarchal society. A unified code will safeguard the weaker members of society, such as women and religious minorities, and it will also foster a sense of patriotic togetherness. It will also make it simpler for all residents, regardless of faith, to participate in various marriage rituals, adoption ceremonies, succession ceremonies, etc. One may argue that the application of the UCC will terminate all personal law and eradicate gender prejudice in the current legal system.

Before anything else, there is a requirement to address how can personal laws be made uniform without affecting the unique characteristics of each and every part of society? What leads to the thought that the customs of one group are outdated and unjust? It might fall into the same terrible error as the Americans, who viewed the native people as barbaric people who needed to be freed from their traditions and saved by the progressive in nature, enlightened principles of Christianity if it failed to confront these issues with severity and gravity. The second is if uniformity has been able to eliminate gender disparities that lower women's standing in our society. Inequality may be defined differently according to each culture. The multiple levels of gender-based inequalities and injustices that operate differently in one community than in others must be identified. Undoubtedly, a culture's personal law contains numerous provisions that remain antithetical to the notion of equality between men and women that is prevalent in that community. Therefore, the primary goal is to eliminate the unfair practices that are pervasive in that particular community. It is essential that all of these civilizations first acknowledge the meanings of unfairness and inequalities within their unique spheres of existence rather than hastily developing a standard definition of injustice and inequality, which is the prevalent point of view. If not, then disparities inside these civilizations' communities become concealed and they become combative towards the calls for uniformity. This constructive component of the UCC discussion repeatedly serves as a reminder for people to treat the ailments in their own legal systems and modernize them by drawing insights from other, perhaps more progressive communities. Never lose sight of the fact that all of this takes time, and making unnecessary haste would only lead to disaster contrary to the intended result. An applaudable decision was made by the Apex Court of India in *Shabnam Hashmi v. Union*

of India⁵⁶. In accordance with Section 40 of the Juvenile Justice (Care and Protection of Children) Act 2000, adoption is permitted even for Muslims, and it was held that, "Personal beliefs and faiths, though must be respected, and it furthermore cannot dictate the operations of an enabling Statute." One must determine the driving principle of UCC: is it national integration under the motto of "one nation, one people" or is it the eradication of the gender-based injustices ingrained in all personal laws? These two UCC future results are very different from one another. It has been noted that the initial discussion around UCC was primarily oriented regarding the concept of national unification, with the objective of gender parity serving to everyone as an additional consequence. A contrast to the modern era, UCC has emerged as a supporter of gender equality. If so, then the conversations around UCC have utterly failed to hit their target. Not that having uniform laws is something that is detrimental. India is a country with a wide range of cultural traditions, yet having completely different laws is also objectionable. It is absolutely true that uniformity limits the opportunity for arbitrary action and ensures that every subject, regardless of their varied backgrounds, is afforded equal protection of the law. The goal of removing all forms of religious intrusions from the law has always been the rallying cry for UCC in India. Even personal laws should be unaffected by particular religious or cultural restrictions.

The initial action in achieving this aim should be to make marriages mandatory for registration. The registration of marriage ensures that child marriage is prevented, unlawful bigamy and polygamy are tracked down, married women are able to assert their entitlement to maintenance and other assists after their husbands pass away, widows are able to assert their inheritance rights and other benefits and privileges after their husbands pass away, men are discouraged from abandoning their wives after marriage, and guardians are prevented from trading their children as slaves. Second, the UCC should comply with constitutional requirements while blending the finest aspects of all personal laws. It must be originated on principles of gender equality and political and religious neutrality. Taking the substantive advantages of the Special Marriage Act of 1954 which allows for a marriage that is not sanctioned by a particular faith, into consideration. It is applicable to all of India, with the exception of the State of Jammu and Kashmir, regardless of religion, community, caste, etc. Polygamy is prohibited by this Act, and the Indian Succession Act, 1925, governs succession. This law might be made mandatory for everyone, with any required modifications. Hence, the Uniform Civil Code is crucial for the nation to bring a diversified society under the same preview of legal identification. By

⁵⁶ AIR [2014] SC 1281

combining the many laws and creating a single code that is accepted by all the communities, it may be effectively created and enforced. The State should immediately implement it and stop delaying its formulation.

The opinions of its stakeholders who carry a personality of great importance, who represent many sects and religions in society, are a delicate subject. Even though it is a painful procedure that requires a lot of tiresome work and patience, the consensus choice wins out. The government should take the initiative to extract the most beneficial elements of various personal laws from the country's multiple religions. Thus, the government might be able to establish a single code and do justice to the numerous laws of diverse religions in this way. It should be remembered when creating UCC not to offend anyone's religious sensibilities by disobeying any of their various personal laws. Since change is a constant feature of nature, the law is a dynamic realm that occasionally need special adjustments. Those changes ought to be embraced with open arms. There is no requirement for the Indian government to enforce any such contrary code on its people. However, they ought to willingly embrace such codes that have been formulated only with the view of the betterment of the country as a whole. All the targeted gender and religious equality may not be achieved as a result of the formulation and application of UCC. As a result, certain gaps may be filled in the future, and the Code should be flexible in that regard. To reform the current personal laws, significant awareness-raising efforts are needed, and the communities must take the lead. For this change, it is necessary to reform, liberalise, and reinforce current organizations. Sincere endeavours for women's empowerment must be done for all women of all religions. India now takes pride in its pluralistic democratic rule. As a result, efforts should be focused on harmony in diversity rather than total uniformity to celebrate and protect the vibrant Indian democracy.

It would be appropriate to deduce that an openly democratic and secular country like India requires essential regulations like the Uniform Civil Code. A population that is not yet prepared to change need not be subject to any Code, nevertheless. The Uniform Civil Code could only be properly applied with increased literacy rates, comprehension of important sociopolitical concerns and rational arguments, and more social and religious mobility. The Uniform Civil Code should be revised with equality, dignity, national integration, and justice for everyone as its ultimate goals. A Uniform Civil Code that respects India's extensive legal tradition of which all personal laws are comparable components can only be developed through an evolutionary progression. As a result, initiatives should be focused on harmony in diversity rather than the imposition of strict uniformity upon all if India is to have a vibrant democracy.

No great nation is built instantaneously, and in a similar manner, no legal system can be built

overnight by just passing the UCC Bill that is currently under scrutiny. These are some potential remedies for UCC: To improve the laws and society, the Indian government must cooperate with those who feel that Uniform Civil Code would violate their freedom to practice their religion. After addressing the mass of the community who fear UCC would infringe on their freedom to practice their religion, this may be accomplished by polls, camps, etc. The government must effectively raise public awareness in general of the advantages of UCC. The government must gradually incorporate new elements, such as marriage, divorce, succession, and inheritance, into the already established UCC. People who oppose the implementation of UCC must be engaged in frequent meetings, and the government must determine the root of the issue. The creation of a high-level committee may be the best course of action to address the issue of UCC Bill implementation and execution. The group must implement educational initiatives and identify the issue's fundamental causes.

Due to the qualities, it includes, Goa's Uniform Civil Code has been called to as a "Shining Example" by the Supreme Court of India. The Uniform Civil Code⁵⁷ (UCC) in Goa includes provisions such as mandatory marriage registration, polygamy, and bigamy prohibitions, a uniform age for marriage for men and women, consent from both sexes to execute a marriage, consent from both sexes to achieve a legal separation, etc. These characteristics can be used as justification for nationwide UCC implementation.

In order to be in existence, such the Code must freely borrow from other personal laws, make constant changes to all, move forward with the legal declaration guaranteeing gender equality, and acquire extravagant interpretations of marriage, adoption, succession, and maintenance by acknowledging the advantages that one group gains from the communities of others. This process takes a long time and involves human willpower. The government should administer with both populations, i.e., the community supporting the Uniform Civil Code and the religious community that is determined and rigid to be regulated by their own personal laws, in a persuasive and responsive manner at all times. Otherwise, the outcome can be more violent and terrible.

“A set of rules will be created under the Uniform Civil Code that will safeguard the civil liberties of every citizen regardless of their faith, which seems to be the pressing issue at hand. Actually, this is the fundamental concept of secularism. Such progressive modifications would support transparency, improve the secular framework, and help put an end to prejudice against women. India's social structure has to be changed since it is plagued with unfairness, prejudice,

⁵⁷ The Goa civil code is largely based on the Portuguese Civil of 1867, which was introduced in Goa in 1870

and corruption, all of which are at odds with the country's own fundamental rights. The country has a Penal Code that applies to everyone equally, regardless of religion, caste, or place of residence. But there is no uniform law in our country with regard to divorce and succession and these subjects are controlled by the personal laws. Hence the Uniform Civil Code should be ensured to all citizens residing in areas where the population of entire geographical area resides.”⁵⁸

CHAPTER 7- CONCLUSION

The concept of Uniform Civil Code has been in existence in form of discussions and pre meditations since the time of framing of Indian constitutions, where the drafting committee members were in affirmative to foster Indian sense of unity with common codified laws without contradicting the archaic religious customs, although the enforcement of fundamental rights of citizens is superior to that of directive principle of state policies, the characteristics of uniform civil code can never be forced on general masses. A salubrious example can be given of developed countries like USA, Germany, Russia who have followed a concomitant uniform civil code to the path of development. If the notions can be further scrutinized, it is applaudable to see that Goa, the state which has followed a succinct form of uniform civil code of family law pertaining to marriage since 1961, that has uplifted the status of women by abolishing polygamy and giving equal representation to women in terms of divorce and property inheritance.

The subject component of UCC has been a paraphernalia utilised by extremists, propagandists, and segregationists in creating confusion among general populace regarding the fragmentation and delirium it may cause in Indian society, which is absolutely apocryphal in nature. Uniform Civil Code will enshrine the optimum features of all personal and religious law bodies existing in the nation and would be flexible in practicality so that religious sentiments and practices are not hampered while the minorities and marginalised are adequately represented and gender disparities arising out of social customs can be nullified with prior discussions and considerations with stakeholders of varied religious groups and representatives.

The very grievous notion that UCC will cause a defragmentation of national unity and secularism is indeed fallacious as the law itself will represent secularism by fostering an amalgamation of salubrious features of all religious laws and customs. The very apprehension that it will hamper the fundamental right of diversified citizens belonging to different religion

⁵⁸ The Uniform Civil Code in India, 2018

to maintain their own religious identity and propagate their religious practices is highly questionable as other religious laws have also been codified by Indian parliament, for example It is clearly stated that the State shall not interfere in matters of personal disputes, and a religious authority would make a declaration based on its interpretation of the laws and customs that regulates them. In such cases, the implementation of UCC should not be absolute but must be composed of gradual application in socio-religious glebe of various religious communities, the minority religious groups must be provided with an alternative choice to visualise the rudiments of uniform civil code, and if accepted by them, only then it be made mandatory law to be followed, provided religious dictums still dictate the formulation of family and social laws in a majority of religious community in our country. Spokespersons representing religious groups, pastors, monks must be consulted and deliberated with promptly and benefits of UCC must be made limpid for them. It must be construed that volatility of approach will only derelict the aim of unification of India despite of diversities and government must employ a liberal and considerate approach towards the implementation of uniform civil code.

India is a country where the rule of law predominates, making it impossible for any other component to have supremacy. However, because of individual religious views, the law of religion and the rule of law are frequently in conflict, necessitating government intervention. The Uniform Civil Code is the ideal piece of legislation for the Indian legal system to establish secularism and uniformity in civil or personal laws. Since the resistance to UCC is based on persistent misconceptions among Indians, the administration must implement the aforementioned measures.

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