

**CURRENT SCENARIO OF UNIFORM CIVIL CODE WITHIN THE INDIAN  
MANDATE**

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**Abstract**

Uniform Civil Code has been an on-going topic of discussion within the Indian mandate for years now. There are two possible results of implementing a uniform civil code in India. The initial aim or dialogue of the UCC was more inclined towards the idea of integrating the nation, with the cause of gender equality as an ancillary effect. But, in today's contemporary times, UCC is more concentrated at championing gender equality. And, if it is so, UCC has very evidently missed its mark. Uniformity in laws is desirable but there is extensive cultural diversity in India and as a result, executing UCC as regards to personal laws and customs is undesirable. Personal laws rule particular and distinct realms of family and marriage. Hence, it would be incorrect to take uniformity in criminal law as a benchmark for the goodness of uniformity in personal laws.

The execution and implementation of codification of laws may bring about a long needed and change but its shortcomings are too massive and extensive to bypass. Due to its great disadvantages, it offers, it has become hard to implement it, even though decades have passed since it was proposed for the first time.

For the purpose of this research paper, it will be divided into several parts, first dwelling upon the meaning and concept of a Uniform Civil Code and its development in India, the second part will deal with the relation of a civil code with several different social issues. Then, this paper will analyse the workings and operations of the laws currently governed by U.C.C and the judicial interpretations of a Uniform Civil Code along with case laws. This will be followed by missing element from the current Uniform Civil Code and stating the shortcomings of executing codification of all laws in India.

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Keywords- Uniform Civil code, Personal Laws, Judicial Review, Uniformity

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## **INTRODUCTION:**

A Uniform Civil Code is a common code that implies or signifies the idea of similar set of civil rules for everyone regardless of their religion, caste, tribe, gender etc. It is the exposition of a contemporary progressive nation, which shows that the nation has untied itself from religion, race, caste, and sex and birth discrimination of all levels and forms. UCC seeks to replace the personal laws which are based on the custom of each religion and such laws mainly address four broad categories: Marriage, Divorce, and Maintenance & Succession. If UCC was to be implemented to its core and in true spirit, then it would be sufficient enough to divide the country **socially, religiously and politically**. The framers of the constitution with an aim to implement uniformity of law incorporated **Article 44** which is as follows: *“The State shall endeavour to secure for all citizens a uniform civil code throughout the territory of India.”<sup>1</sup>*

Uniform Civil Code is a term that stems from the concept of Civil Law Code and the purpose of a uniform civil code is to extinguish the contradictions based on religious ideologies and promote the concept of national integration and unity. Its purpose is to execute that each and every community in the country is judged on a similar platform; regarding all civil matters and that the citizens of that country are not governed by their own diverse personal laws. To a great extent, India is a country, which abounds in personal laws and each community has its own personal law.<sup>2</sup> Here, different religious groups govern themselves in accordance to their personal law. Most of the personal laws have their roots in scriptural laws and govern areas of personal spheres such as Guardianship, Succession, Marriage, Divorce and Maintenance. Personal laws inhabit a unique position in today’s world and it plays a key role in keeping the society in the civil bounds. There are few areas in some communities, which are yet to be given a legislative shape. It is actually the political environment hampering the reform in few personal laws of the country.<sup>3</sup>

According to Article 37 of the Constitution the directive principles of state policy are not enforceable by the Court of Law. However, it does not lessen or take away the importance of

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<sup>1</sup>V.N. Shukla, The Constitution of India, 308 (2001)

<sup>2</sup>ParasDiwan, (Imprint Publication 23) (2016)

<sup>3</sup>S.P. Sathe, Judicial Activism in India, (2nd ed., Oxford University Press 2002) 193

the directive principles. One side of the argument regarding the implementation of UCC is of the view that it was not feasible to impose a Uniform Civil Code on the citizens as the circumstances did not allow for it. Hence, the code has been covered under the directive principle of state policy. The preamble of Indian constitution is considered as the mirror of constitutional spirit. Moreover, it clearly emphasizes on India to be a Sovereign, Secular, Democratic, Republic nation. And although ensures Justice, liberty, and equality to the citizens and thereby promotes a sense of solidarity among all citizens while assuring dignity of the individual and unity and integrity of the nation, the makers of the Indian Constitution were convinced that certain amount of **modernization** is required before uniform civil code is imposed upon the citizens.<sup>4</sup>

### **HISTORY OF UNIFORM CIVIL CODE**

India comprises of varied customs and communities. It has a multiplicity of family laws.<sup>5</sup> The Christians have their Christian Marriage Act, 1872, the Indian Divorce Act, 1869 and the Indian Succession Act, 1925 whereas the Jews have their uncodified customary marriage law and in case of their succession matters, they are governed by the Succession Act of 1925. The Parsis follow their own Parsi Marriage and Divorce Act, 1936, and are governed by their own separate law of inheritance contained in the Succession Act which is somewhat distinct from the rest of the Succession Act. Furthermore, Muslims and Hindus have their own distinct personal laws. Over and above these various laws, customs also play some role in the area of marriage, divorce and other family matters.<sup>6</sup> Not only there is diversity of laws, the diverse laws have diverse provisions on similar points.<sup>7</sup>

After India gained its independence, codification of the laws was an extremely debated issue in the Indian Parliament during 1948. Eminent personalities such as B.R. Ambedkar, Gopal Swamy Iyenger, Anatarasayam Iyenger, K.M Munshiji were in favour of implementing UCC but it was strongly opposed by Pocker Sahib and people from other religions. The heated and continuous debates on codification raised the idea of uniform civil code in 1947 and it was incorporated as Section 44 of the Indian Constitution, under “Directive Principles of State Policy”. The chairman of the Drafting Committee of the constitution, Dr. B.R Ambedkar, said that,

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<sup>4</sup> UNIFORM CIVIL CODE IN INDIA: AN ANALYSIS, Tanushree, Supra note1

<sup>5</sup> M.P JAIN, Matrimonial Laws in India, 4 JILI, 71 (1962)

<sup>6</sup>Malakayya v. AvatiBhommayya, AIR 1971 AP.270.

<sup>7</sup> S.S NIGAM, A Plea for a Uniform Law of Divorce, V JILI.47.

*“We have in this country uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete criminal code operating throughout the country which is contained in the Indian Penal Code and the Criminal Procedure Code. The only province the civil law has not been able to invade so far as the marriage and succession ... and it is the intention of those who desire to have Article 35 as a part of Constitution so as to bring about the change.”*<sup>8</sup>

Nehru, in the year 1955, brought in the Hindu Code Bill. One of the major criticism of the bill was that it did not touch upon the Muslim community and hence, Nehru’s idea of secularism suffered a certain amount of void. As a result, a more lenient or lesser version of the Hindu Code was passed after long and continuous opposition in the parliament during the 1955-56 sessions.

In the **post constitution period**, the judiciary of our country has assumed a greater responsibility which is why it is considered to be the guardian of Indian Constitution.<sup>9</sup>In present times, Goa is the only state which has happily implemented and executed uniform civil code along with a variety of personal codes which are also made available to the followers of distinct faiths. Thus, it can be inferred from the past circumstances that since, the uniform civil code was an eminent politically sensitive issue, the founding fathers of the Indian Constitution, arrived at an honourable decision by placing it under Art.44 as a directive principle of the state. This further underlines the fact following UCC in a multi lingual and multi-cultural country like India, is not an easy process and requires continuous evolution of the society in general.

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<sup>8</sup>Lok Sabha Secretariat, Constituent Assembly Debates Vol. III, 551, 23 Nov. 1948.

<sup>9</sup>Kesavananda Bharati v. State of Kerala [1973] AIR SC 1461

## **UNIFORM CIVIL CODE AS A THREAT OF MAJORITARIAN DOMINANCE OVER MINORITIES**

The Constituent Assembly Debates have already addressed the issues of dominance by the majority communities. It contended that in a secular State all the citizens can enjoy following of their specific faiths and beliefs equally and that a secular State was not necessarily a uniformly regulated State. The debates further underlined the fact that a secular State need not have a specific religion governing the matters of the State and law such as in case of France. The Indian case of UCC resonates closely with this scenario, as the idea of attaining a common Indian identity, adds to the threat of assimilation prevalent amongst minority groups, more so, because its content is unknown. Thus, the minorities view it as a tool employed by majority groups to assimilate them into the national identity, which will generally be a reflection of the majority identity. Though these may appear as hollow claims, they are not without substance. For example, there is, if not substantial, but visible, difference in the religious practices of Sikhs, Jains, Buddhists, and Hindus. Despite this fact they are considered to be a part of the broader domain of Hindu religion.<sup>10</sup>Hence, if UCC is viewed from the perspective of inter group equality and religious identity, then it appears as an idea which perpetuates the will of the majority on the minority. The members of the constituent assembly who stated against a common civil code were well aware of the majoritarian notions of progressive laws and the suppressing of the various other minority views on progress and modernity. Mehmood Ali Baig Sahib Bahadur, stated that<sup>11</sup>

*“People seem to have very strange ideas about secular State. People seem to think that under a secular State, there must be a common law observed by its citizens in all matters, including matters of their daily life, their language, their culture, their personal laws. That is not the correct way to look at this secular State. In a secular State, citizens belonging to different communities must have the freedom to practice their own religion, observe their own life and their personal laws should be applied to them. Therefore, I hope the framers of this article have not in their minds the personal law of the people to cover the words "Civil code".*

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<sup>10</sup> Farrah Ahmed, Religious Freedom Under the Personal Law System (Oxford University Press, UK, 2016).

<sup>11</sup> Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948.

In the recent controversy in France as regards to the “burkini ban” clearly showcases the tyranny of the majority. The secular country is still confused on the popular notions of secularism and modernity. The French majority consider hijaab, burkini, head turbans etc. to be medieval, backward and oppressive. There are very dissimilar takes on the way of life in different communities and by making a fixed uniform law one way of life will be taken as the standard take on modernity and progressiveness.<sup>12</sup> The very backbone of the controversy revolving around UCC has been secularism and the freedom of religion that is enumerated in the Indian constitution under Art. 25<sup>13</sup> and Art.26.<sup>14</sup> In the case of *State of Bombay Vs. NarsuAppa Mali*<sup>15</sup>, the constitutional validity of the “Bombay Prohibition of Bigamous Marriage, Act, 1946”<sup>16</sup> was challenged on the basis of articles 14, 15 and 25. The Bombay held the act to be constitutionally valid and stated that personal laws were not included in the “laws” as mentioned under Art 13(3) of the Indian constitution and that this act was not violative of Art.14 as the State is free to embark on social reforms in stages for the collective good of people. In this manner, the court, without enforcing a mandatory UCC on all personal laws, has amended the personal laws as required in order to uphold the constitutional rights of the citizens.

The constitutional Assembly debated the Uniform Civil Code, Md. Ismail advocated that right to adhere one’s personal law is a fundamental right and personal law is a part of life and way of life of people. And any interference with the personal law will be the interference with the personal way of life of the person. According to Md. Ismail, the British, during their rule, never interfered with the institution of marriage, dower, divorce, maintenance, guardianship, paternity and acknowledgement, administration of estate, wills, gifts, waqf and inheritance and whatever laws were enacted in the area of Muslim personal law during the

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<sup>12</sup>UNIFORM CIVIL CODE: THE NECESSITY AND THE ABSURDITY, Shambhavi, Summer Issue 2017 ILI Law Review Vol. I.

<sup>13</sup>“(1) Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. (2) Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law - a) regulating or restricting any economic, financial, political or other secular activities which may be associated with religious practice; b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.”

<sup>14</sup> “Subject to public order, morality and health, every religious denomination or any section thereof shall have a right- a) to establish and maintain institutions for religious and charitable purposes; b) to manage its own affairs in matters of religion; c) to own and acquire movable and immovable property; and d) to administer such property in accordance with law.”

<sup>15</sup> [1951] ILR Bom 775

<sup>16</sup>Article 372 it was in the category of “All laws in force”.

reign of the British, were due to the initiative taken by the Muslim community.<sup>17</sup> Our constitution recognizes the existence of various norms, customs which are prevalent in society and hence gives parliament and State legislature to convert them to law.<sup>18</sup> Our Indian Constitution is based on the federal structure which recognizes geographical, social, linguistic and other difference among different states & accordingly doesn't treat them uniformly in any of the matter.<sup>19</sup>

### **PROBLEM OF IMPLEMENTATION OF UNIFORM CIVIL CODE IN THE NORTH EAST**

More than 200 indigenous tribes, having their own varied form of personal laws spread across the north eastern states of Assam, Arunachal Pradesh, Manipur, Tripura, Meghalaya, Mizoram and Nagaland. They have varied laws governing divorce, marriage, inheritance, adoption and so on. It is almost impossible to establish a uniform civil code in these states as there is zero homogeneity in the customary laws of these tribes and this also includes the sub-tribes and different clans. Polygamy, though not so rampant in the new generation, has been an age old custom in the tribal world. In Arunachal Pradesh, there is a culture where women have no property rights over immovable assets. Moreover, the aspect of tribal marriage of the system of bride price, also differs from other laws. It is feared that a common civil code will disturb the social fabric and customs of the indigenous culture as well as impact the flexible and spontaneous traditional jurisprudence justice system.

Even, our constitution provides for special provisions in regards to Tribal areas within some of the states and for predominantly tribal states.<sup>20</sup> There also has been concern regarding the constitutional protection of Art.371(A). The Naga minority community is said to be upset by the implementation of UCC. Also the Nagaland Bar Association has said that the implementation of UCC would bring about changes and disturbance in the culture and dignity of the Naga people. These indigenous cultural entities are best left out of the ambit of UCC.<sup>21</sup>

Initially, the UCC was enumerated under **Art.35 of the Draft Constitution** and was not made obligatory in nature. Moreover, it was also stated that the personal laws are to be kept

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<sup>17</sup>MohdShabbir, "Muslim Personal Law, Uniform Civil Code, Judicial Activism: A critique", XII Alig. L.J. 1997, p.48

<sup>18</sup>CONSTITUTION OF INDIA, ENTRY 5 of list III, 7th Schedule r/w art. 246

<sup>19</sup> CONSTITUTION OF INDIA, art 370 & 371(a) – 371(j)

<sup>20</sup> CONSTITUTION OF INDIA Part X, Schedule V & VI

<sup>21</sup> Uniform Civil Code and Tribal Customary Laws- Uniformity in Diversity, Dr, Topi Basar, National Law University Assam

out of its purview. The proviso stated that “Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law.”<sup>22</sup> Art.35 namely proposed that the State shall **endeavour** to secure the civil rights. The use of the word “endeavour” and the intentional dropping of the phrase “The State shall enforce...”, clearly highlights the fact that the makers of the constitution were aware of the fact that it was not easy to achieve the Uniform Civil Code in a country like India.

According to the preamble of the constitution of, India is a secular State and a secular State does not discriminate against anyone on the ground of religion, as a secular State is to be only concerned with the relation between man and man and not with the relation of man with God. In India, spiritualism with individual faith is distinguished through positive secularism. Positive secularism is a common doctrine of secularism accepted by America and some European states i.e. there is a wall of separation between religion and State. The reason behind this acceptance is that America and the European countries went through the stages of renaissance, reformation and enlightenment and thus they can enact a law stating that State shall not interfere with religion. Whereas, such stages have not been experienced by India and thus there is interference of State in the matters of religion so as to remove the impediments in the governance of the State.

### **IRREGULAR NATURE OF THE CRIMINAL CODE WITH REFERENCE TO UNIFORM CIVIL CODE**

It’s always been said that we have uniform criminal code in India, but this contention fade away when we analyse the current way the criminal code works in India. For example, In India; it’s allowed, to amend criminal law by different states, as per their choice. Different states have different criminal law. For instance, State of Uttar Pradesh doesn’t have the system of anticipatory bail but all state do have this system of anticipatory bail.

If we see, both State of Bihar and State of Mizoram has banned the sale, consumption etc. of alcohol. If we compare both the laws, “Bihar excise Act, 1915” (herein after Bihar liquor law) & “Mizoram Liquor total prohibition Act, 1955” (herein after Mizoram liquor law) both the acts, provide for the prohibition of sale, consumption of liquor in state, with the punishments. While Section 47 of ‘Bihar liquor law’ prohibits for sale, consumption, manufacturing of liquor with the punishment of term, which may extend up to 3 years and

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<sup>22</sup> Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948.

fine up to three thousand rupees whereas section 7(a) of Mizoram liquor law prohibits the act of consumption, sale, import and export of liquor and section 8 provides for the punishment, which states the convict should be punished with the term, which may extend to 5 years and which shall not be less than 3 months and fine which may extends to ten thousand rupees and which shall not be less than one thousand rupees. We can see that there is clear distinction, between the term provided for punishments between these two states regarding the same issue.

So, the arguments made by the proponents that since, India has Uniform Criminal code, therefore, it should also implement a Uniform Civil Code; is wrong. Hence, it's not correct to say that India should touch civil matters including of personal laws to drag it into the ambit of Uniform civil code.

### **GENERALIZATION OF OPPRESSION OF WOMEN**

Uniformity in civil law has for a long time been advocated so as to promote and secure women rights and empower them, relieving them of the burden of patriarchal components of religion and culture. But still, the proponents of uniform civil code have failed to address the core issues of women rights, which has thus resulted in what can be called a “failed formula of uniformity”, that would be sufficient to secure the rights of women within India. The Code, rather than devising ways for upliftment of women has over the years stressed more upon the diverse identities of the people and the collective identity of communities. This, as a result, has left the argument of women rights lost in the political cacophony.

## UNIFORM CIVIL CODE AND THE CONSTITUTION OF INDIA

Initially, the UCC was enumerated under **Art.35 of the Draft Constitution** and was not made obligatory in nature. Moreover, it was also stated that the personal laws are to be kept out of its purview. The proviso stated that “Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law.”<sup>23</sup> Art.35 namely proposed that the State shall **endeavour** to secure the civil rights. The use of the word “endeavour” and the intentional dropping of the phrase “The State shall enforce...”, clearly highlights the fact that the makers of the constitution were aware of the fact that it was not easy to achieve the Uniform Civil Code in a country like India. The very backbone of the controversy revolving around UCC has been secularism and the freedom of religion that is enumerated in the Indian constitution under Art. 25<sup>24</sup> and Art.26.<sup>25</sup> In the case of *State of Bombay Vs. NarsuAppa Mali*<sup>26</sup>, the constitutional validity of the “Bombay Prohibition of Bigamous Marriage, Act, 1946”<sup>27</sup> was challenged on the basis of articles 14, 15 and 25. The Bombay held the act to be constitutionally valid and stated that personal laws were not included in the “laws” as mentioned under Art 13(3) of the Indian constitution and that this act was not violative of Art.14 as the State is free to embark on social reforms in stages for the collective good of people. In this manner, the court, without enforcing a mandatory UCC on all personal laws, has amended the personal laws as required in order to uphold the constitutional rights of the citizens.

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<sup>23</sup> Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948.

<sup>24</sup>“(1) Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. (2) Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law - a) regulating or restricting any economic, financial, political or other secular activities which may be associated with religious practice; b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.”

<sup>25</sup> “Subject to public order, morality and health, every religious denomination or any section thereof shall have a right- a) to establish and maintain institutions for religious and charitable purposes; b) to manage its own affairs in matters of religion; c) to own and acquire movable and immovable property; and d) to administer such property in accordance with law.”

<sup>26</sup> [1951] ILR Bom 775

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<sup>28</sup>MohdShabbir, "Muslim Personal Law, Uniform Civil Code, Judicial Activism: A critique", XII Alig. L.J. 1997, p.48

<sup>29</sup>CONSTITUTION OF INDIA, ENTRY 5 of list III, 7th Schedule r/w art. 246

<sup>30</sup> CONSTITUTION OF INDIA, art 370 & 371(a) – 371(j)

## **ROLE OF THE INDIAN JUDICIAL SYSTEM IN UNIFORM CIVIL CODE**

The boiling issue of the Uniform Civil Code has led to various cases and petitions being filed in the Supreme Court by various communities so as to uphold their fundamental rights to equality and liberty. The Indian Constitution has a provision for UCC in Sec.44 under the **Directive Principles of State Policy**, which aims at providing equal status to all citizens regardless of their gender, caste, race and religion. The constitution of India, explicitly establishes the doctrine of judicial review<sup>31</sup>, which empowers the Supreme Court of India to declare any law passed by the State as unconstitutional if it is inconsistent or at conflict with any provisions of Part III of the Indian Constitution. In order to expand the horizon of particular provisions of Part III, Supreme Court of India has displayed judicial creativity of a very high order and expanded the scope of certain provisions of Part III.<sup>32</sup> But, at the same time it has also put limitations on the exercise of legislative power by the State, such as in the case of **Kesavananda Bharati v. State of Kerala**<sup>33</sup>. In this case, J.Khanna J. drew light towards the importance of judicial review in following words:

*“As long as some fundamental rights exist and are a part of the Constitution, the power of judicial review has also to be exercised with a view to see that the guarantees afforded by these rights are not contravened... Judicial review has thus become an integral part of our Constitutional system.”*

J.Chandrachud.in **Minerva Mills Ltd. v. Union of India**<sup>34</sup> observed that:

*“It is the function of the Judges, may their duty, to pronounce upon the validity of laws. If courts are totally deprived of that power, the fundamental rights conferred on the people will become a mere adornment because rights without remedies are as writ in water. A controlled constitution will then become uncontrolled.”*

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<sup>31</sup> M.P. Singh, Indian Constitutional Law, (5th ed., Wadhwa Publications 2006), page 1563

<sup>32</sup> For example Article 21

<sup>33</sup> [1973] AIR SC 1461

<sup>34</sup> [1980] AIR SC 1789

When the question of conflict between the UCC and personal laws is raised, the doctrine of judicial review cannot be ignored. The constitutionality as well as the rationality of various personal laws is being questioned which again makes it a challenge for the courts as they have to maintain a balance between the religious laws and customs and the fairness of law. The court, instead of codifying the personal laws has and is dealing with each case distinctively while bringing the required reforms and amendments in the personal laws. In the landmark case of **Md. Ahmed Khan v. Shah Bano Begum**<sup>35</sup>, the honourable Supreme Court of India provided maintenance to a Muslim divorced lady under Sec.125 of CrPC<sup>36</sup> and ruled against the tenets of Muslim personal law. In this case, a Muslim woman named Shah Bano, had filed a suit for maintenance under Sec125 of CrPC after getting divorced from her husband. Despite prohibition under the Muslim Personal law, the Supreme Court upheld the claim of Shah Bano. But soon after the judgement of the case, due the adverse political scenario, the then Rajiv Gandhi government changed its mind<sup>37</sup>enacted the Muslim Women (Protection of Rights on Divorce) Act, 1985, according to which a Muslim women was taken out of the purview of section 125 of Cr.P.C. Also, in the case of **T. Sareetha V/s. T. Venkataubbiah**<sup>38</sup>, Section 9 of Hindu Marriage Act, 1955 struck down as unconstitutional by the Andhra Pradesh High Court and held that it was violative of Art.21<sup>39</sup> of the constitution. But in the case of **HarvinderKaur v. Harminder Singh**<sup>40</sup>, the constitutionality of the provision was upheld. There have been numerous instances of cases wherein the Supreme Court has amended the personal laws to achieve fairness amongst all, without having to codify the personal laws.

In the case of **Dania Ilatifi v. Union of India**<sup>41</sup>the constitutional validity of the Women (Protection of Rights on Divorce) Act, 1986, popularly known as the “Muslim Women Act” , enacted by the government was challenged. The constitutional validity of the act was upheld by the Supreme Court but it provided a more gender just interpretation of the act. Again, in the case of **Bai Tahira v. Ali Hussain Fissalli Chowthia**<sup>42</sup>, J. V.R Krishna Iyer ,insisted upon

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<sup>35</sup> [1985] AIR SC 945

<sup>36</sup> Hereinafter read ‘Code of Criminal Procedure, 1973’ as ‘Cr.P.C.’

<sup>37</sup> S.P. Sathe, (n 4) 266

<sup>38</sup> 6[1983] AIR 5 AP 356

<sup>39</sup> Guarantees “Right to privacy and human dignity”, under the Indian constitution.

<sup>40</sup> [1984] AIR Del 66

<sup>41</sup> [2001] 7 SCC 740

<sup>42</sup> AIR 1979 SC 362.

the fact that a cultural autonomy is not an absolute measurement for national unity and stated.<sup>43</sup>

*“Speaking for myself, there are several excellent provisions of the Muslim law understood in its pristine and progressive intendment which may adorn India’s common civil code. There is more in Mohammed than in Manu, if interpreted in its humanist liberalism and away from the desert context, which helps women and orphans, modernises marriage and morals, widens divorce and inheritance.”*

Moreover, in the case of *Lily Thomas etc. v. Union of India*<sup>44</sup> the Apex court held “The desirability of Uniform Civil Code can hardly be doubted. But it can concretize only when social climate is properly built up by elite of the society, statesmen amongst leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change.”<sup>45</sup> In the case of *Pannala Bansilal v. State of Andhra Pradesh*<sup>46</sup>, the Supreme court of India was of the view that the directive principles of the state themselves visualized diversity and a uniform law, though extremely desirable, may become counter-productive to the unity and integrity of our country. It further stated that, it would be incorrect to think that all laws have to be made uniformly applicable to all people in one go.<sup>47</sup>

In one of the most important case of *Ahmedabad Women’s Action Group (AWAG) v. Union of India*<sup>48</sup> Muslim personal law dealing with polygamy and oral divorce by uttering the word ‘talaq’ thrice, also popularly known as triple talaq, were challenged on the ground that they were violating the fundamental right of right to equality under Indian constitution. The court in this case held that the petition fell out of its scope as it raised questions based on public policy and thought that it was not correct to make drastic reforms in personal laws through judicial process. This easily conveys the message of the judiciary that it is for the Parliament initiate reforms in personal laws through legislative process.

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<sup>43</sup> V. R. Krishna Iyer, *The Muslim Women (Protection of Rights on Divorce) Act, 32* (Eastern Book Company, Lucknow, 1987).

<sup>44</sup> AIR 2000 SC 1650, at 668.

<sup>45</sup> UNIFORM CIVIL CODE IN INDIA: AN ANALYSIS, Tanushree.

<sup>46</sup> AIR 1996 SC 1023

<sup>47</sup> *The Constitution of India*, P.M Bakshi

<sup>48</sup> [1997] AIR SC 3614

## **CONCLUSION:**

India's civil code is different only on the topics of personal law (i.e. - family law) - Marriage, Divorce, Alimony, Succession, and inheritance. If a person A governed by a different personal law than person B, there is no possible way in which A's personal law can affect B. So if one community traditionally has certain customs, the personal law for them has been framed to fit those customs. Codification of personal laws cannot be brought without disturbing the distinct essence of each and every component of the society. What makes us believe that practices of one community are backward and unjust? If we do not address these problems with intensity and depth, then we would commit the same horrible mistake of the Americans who considered the indigenous population as savages, needed to be liberated from their customs and rescued by the progressive, civilised norms of Christianity.<sup>49</sup> When it comes to judicial discretion, the courts have time and again responded to and handled each case in its “individuality”, rather than deciding upon a universalized position, as in the instance of the Apex Court’s judgement in Ahmadabad Women’s Group case. At the end of the day, the implementation of UCC may not necessarily result in the desired and expected equality among genders and religions. Moreover, the codification of personal laws can emerge as a victorious evolutionary process, only if it preserves India’s rich heritage of which all the varied personal laws are the equal constituents. Even, Dr. B.R. Ambedkar, regarding the codification of laws, had mentioned that “the government will be a mad government which will force a uniform civil code”, although he was in favour of establishing UCC in India.

If UCC is enacted, it would lead to high chances of massacres and riots all around, which may ultimately end up dividing the country. Also, codification of personal laws will not be able to cover each and every aspect of these laws which would eventually lead to more

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<sup>49</sup> Supra note 1

problems than we have today. Due to the undeniable diversity of our country, acceptance of the codified law will not come easy and if a large section of people of the country are not willing to accept the codified laws, then it would lose its purpose in the first place. Instead of establishing a UCC there should be amendments and changes brought in the personal laws and customs. Significant changes in the current form of UCC and sensitization efforts need to be carried out in order to reform the present personal laws. Also, the current institutions need to be more evolved, modernized and democratized to be able to withstand this change. The plural democracy is an identity of the modern India. Therefore, efforts should be focused on harmony in plurality than blanket uniformity for flourishing Indian democracy.<sup>50</sup> This argument stems from the fact that in order to maintain diversity, we need to respect every minority community's personal customs and laws, as it has led this country to balance and maintain peace in this country. A uniform civil code is a nice ideal, if the population is uniform enough. But as long as the personal law for each community is amended to the standards of the constitution and does not infringe on the rights of other communities, we should embrace our differences.

### **WHAT IS MISSING FROM THE UNIFORM CIVIL CODE?**

The reasons that support the execution of a uniform or common civil code, are unfortunately dealing with the restricted issues which usually revolve around the patronizing patriarchal perspective, constitutional validity of certain practices under particular religions and the economic perspective. Various arguments such as the ones encompassing the issues of Triple Talaq and Polygamy revolve around the issue of whether these practices are valid under the Sharia law or not. But the concern should be that if a particular law or custom is valid under the constitution and not under a particular law.

What is forgotten in the long heated debate of for and against the implementation of UCC is that there is an optional (not a mandatory) UCC existing in the form of the Indian Succession Act, 1925 and the Special Marriage Act of 1954. Hence, any of the citizens of the country can register their marriage under the Special Marriage Act and according to Sec. 21 of this act, if such an registration is made, the parties are to be governed by the that particular act and not by their personal law. More than a compulsory or mandatory uniform civil code, what is required is the strengthening of the current working institutions. What is needed to be done is to amend and modernize the current personal laws in existence and not implement a rigid and

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<sup>50</sup> Uniform Civil Code (UCC): Pros and Cons in a nutshell, <https://www.clearias.com/uniform-civil-code-ucc/>

mandatory common civil code. This can be achieved by putting the following missing elements in force:

- There needs to be an increase in number of courts manned by judges who are specially trained in and experienced with family issues.
- Also, courts need to be located outside the regular court campuses.
- We need to provide an environment conducive for parties as well as streamline procedures for a quicker resolving of cases.
- Moreover, alternate processes such as conciliation and mediation through properly trained and skilled and equipped personnel needs to be established.
- The assistance of full-time psychologists and counsellors for the courts should also be executed.

Therefore, the State needs to give value to the welfare of its citizens and needs to provide necessary means for a peaceful resolution of family disputes. Absent this, a uniform civil code may not be a panacea but a curse.<sup>51</sup>

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<sup>51</sup> The Uniform Civil Code Debate- A.J Jawad, Madras High Court