

# Uniform Civil Code: Need And Feasibility For Application Of Family Law In India

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## ABSTRACT

The Indian constitution is first and prime social document and the majority of its provisions are either directly aimed at furthering the goals of social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement. However, the core of the commitment to this revolution lies in part III and IV, in the Fundamental Rights and in the Directive Principles of State Policy. These are the conscience of the constitution. One of the constitutional commitment among this is the uniform application of family law in India. The significance of the family law applies to every person irrespective of religion, caste or any sphere of grounds is need of the hour. therefore, there is a need and relevance of the Uniform Civil Code in India to address and analyses the problems relating to operation of personal law. The paper discusses the directive of enforcing uniform civil code and its need and possibility for application of family law in India.

**KEYWORDS:** Family Law, Constitutional Commitment, Personal Law, Uniform Civil Code etc.

## INTRODUCTION

Diversity is natural while uniformity is forced. Therefore, in the natural state, which Hobbes described as state of nature<sup>1</sup>, people lived by their group norms, which in one or the other respect differed from group to group. But Hobbes gave a harrowing depiction of that society and developed the idea of a sovereign to whom all people expressed their allegiance in exchange for establishing order. Austin<sup>2</sup> used that concept to define law in top down terms that all law was direct or indirect command of the sovereign and whatever could not be so proved could not be law.<sup>3</sup> In Indian context, we follow the principle of secularism, as introduced in the Preamble of the constitution in the 42<sup>nd</sup> amendment 1976. This means that people have the choice to follow any religion. Such is specified under the constitution as a fundamental right under Article 25 & Article 26.<sup>4</sup>

As mentioned above, the core of the commitment to this revolution lies in part III and IV, in the Fundamental Rights and in the Directive Principles of State Policy. These are the principles guiding the constitution. *The Constitution demands and expects perfect equality between one section of community and another in the matter of political and civil rights, equality of liberty and security in the enjoyment of the freedom of religion, worship, and the pursuit of ordinary applications of life.*<sup>5</sup>

<sup>1</sup> Pranav Kaushal, "Thomas Hobbes, Leviathan, Secularism and Legal Pluralism", (1651) available at: <<https://lawcorner.in/secularism>>

<sup>2</sup> John Austin, *the Province of Jurisprudence Determined* (Cambridge University Press, 1832)

<sup>3</sup> *Supra* note 1.

<sup>4</sup> Joel S Thomas & Ayush Gaur, "Scope of Development of Uniform Civil Code in India", India Legal Stories Count, July 24, 2020, available at: <<https://www.indialegallive.com>>

<sup>5</sup> (The major document on the rights of the Pre-constituent assembly era has been the Sapru Report, published at the end of 1945. The Report suggested a constitutional scheme for India, and although the portions of the Sapru Report dealing with the fundamental rights contained overtones of the social revolution, it addressed itself mainly to the problem of placating minority

## STATUS OF PERSONAL LAW IN INDIA<sup>6</sup>

Personal law deals with the subjects like marriage, divorce, inheritance (which come under Concurrent list). Hindu personal laws have been by and large **secularized and modernized** by statutory enactments. Like The Hindu personal laws (that apply also to the Sikhs, Jains and Buddhists)<sup>7</sup>

This Code Bill has been split into four parts:

The Hindu Marriage Act, 1955

The Hindu Succession Act, 1956

The Hindu Minority and Guardianship Act, 1956

The Hindu Adoption and Maintenance Act, 1956

On the other hand, Muslim personal laws are still primarily unmodified and traditional in their content and approach. The Shariat law of 1937 governs the personal matters of all Indian Muslims in India. It clearly states that in matters of personal disputes, the State shall not interfere and a religious authority would pass a declaration based on his interpretations of the Quran and the Hadith. Apart from it, Christians and Jews are also governed by different personal laws.<sup>8</sup>

## MEANING OF SECULARISM AND UNIFORM CIVIL CODE

Indian is a secular state but not an anti-religious state for the Constitutional guarantees the freedom of conscience and religion<sup>9</sup>. The term secularism holds a critical value amongst the people of India. The concept of faith has always been used as a strategy by the authorities and forums along with their governing bodies. In a country like India laws are governed by different religions.<sup>10</sup>

According to Granville Austin, perhaps the most striking thing about the treatment of rights in the Article 27 and 28 emphasize the secular nature of the state, for they secure to every person freedom from payment of taxes for the promotion of any religion and freedom from attendance at religious instruction or religious worship in certain educational institutions.<sup>11</sup>

The term ‘Uniform Civil Code’ means the same set of secular civil laws shall govern all persons residing in a country irrespective of their religion, caste and tribe. The main areas covered under the ambit of UCC are the laws related to marriage, divorce, adoption, and Inheritance and acquisition and administration of property. The concept of UCC is thus confined to having uniform family code for members of all communities living in India, not merely for the sake of uniformity but also for securing social justice for weaker sections in different communities in the spheres of marriage, divorce, inheritance, maintenance and adoption. In the Indian context, UCC is a mandate upon the State under article 44 of the Constitution and should be conceived as part of secularization of personal laws without shedding religious identities.<sup>12</sup>

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fears which were overshadowing the political scene. The fundamental rights of the new Constitution, said the report will be a ‘standing warning to all’ ) **Shahnaz N**, Research Article Open Access, “Uniform Civil Code: Whether a Directive to Promote Unity? Rhetoric and Reality”, Journal of Civil and Legal Sciences, *available at*: <<https://www.omicsonline.org>>.

<sup>6</sup> Drishti, “Uniform Civil Code”, Indian Society *available at*: <<https://www.drishtitias.com>>.

<sup>7</sup> Codified by the Parliament in 1956.

<sup>8</sup> *Supra note 6*

<sup>9</sup> Article 25 of the Constitution of India.

<sup>10</sup> Hindu Marriage Act of 1956. Such rules apply for them regarding marriage, maintenance, divorce, etc. Christians follow rules established under Christianity meanwhile Muslims follow their Islamic Laws. The three broad factions of private laws in India are: Hindu Law, Christian Laws and Islamic Law. India Legal, “Uniform Civil Code: Another nail in the coffin to satisfy the facade of party manifesto”, India Legal *available at*: <<https://www.indialegallive.com>>.

<sup>11</sup> *Supra note 4*.

<sup>12</sup> Harshita Vatsayan, “India’s Quest for Secular Identity and Feasibility of a Uniform Civil Code”, 1 ILI Law Review, 30-62

A real issue starts with the very fact that In India, positive secularism separates the individual faith, this can be because most of the western countries like America and Europe went through the stages of reformation and renaissance. On the other hand, India failed to go under the process of reformation or rejuvenation pointing pressure on the sovereign state to trespass in the matters of faith in order to remove the obstacles that hamper functioning of a state, the explanation why a rustic like India cannot undergo a reformation is extremely plain.

There are chances that disputes will ascend in numbers rather than descend causing back-peddling effects on the rules that are made:<sup>13</sup>

A Muslim man can keep more than one wife but not a Hindu or Christian. But of course, no woman from Muslim, Hindu or Christian can have more than one husband in our patriarchal society;

Hindus can form an undivided family (HUF) in order to manage their assets better & in the process they tend to reduce their tax liability but not a Muslim or Christian;

A Muslim marriage can be dissolved merely on the pronouncement of Triple Talaq but not a Hindu or Christian marriage;

A Christian woman cannot get a share in her deceased child's property while other communities have their own set of bylaws with respect to it.<sup>14</sup>

## HISTORICAL BACKGROUNDS AND PHILOSOPHY OF UNIFORM CIVIL CODE

The Britishers laid down the foundation of the present Legal system in India. They succeeded in laying down a uniform substantive and procedural law in almost all the areas of law. However, in some civil laws viz. marriage, divorce, maintenance, adoption etc. commonly known as personal laws no uniform law was laid down. Although the First and the Second law commissions, which were adopted in, 1835 and 1853 respectively were asked to prepare a draft of uniform civil laws, which would be applicable to all the communities irrespective of their religion. Yet, they doubted the wisdom of uniformity in these laws and consequently left them untouched. The second law commission even objected the codification of the Hindu and Muslim Personal laws and remarkably observed:<sup>15</sup>

*“The Hindu law and Mohammadan law derive their authority respectively from the Hindu and Mohammadan religion. It follows that, as British legislature cannot make Mohammadan or Hindu religion, so neither it can make Mohammadan or Hindu law. A code of Mohammadan or a digest of any part of that law, if it were enacted as such by the legislative council of India, would not be entitled to be regarded by Mohammadans as very law itself but merely as an exposition of law, which possibly might be incorrect. We think it clear that it is not advisable to make any enactment which would stand on such a footing.”*<sup>16</sup>

## ORIGIN OF THE IDEA OF UNIFORM CIVIL CODE IN INDIA

The idea of Uniform Civil Code was introduced into the national political debate in 1940, when the national planning committee appointed by the Congress made a demand for such a code. The sub-committee for the ‘women’s role in planned economy’ was specifically directed to study the role women would play in future independent India.<sup>17</sup>

UCC was considered to be a threat to the religious freedoms envisaged by the Constitution. However, there

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(Summer Issue 2017).

<sup>13</sup> *Supra note 1.*

<sup>14</sup> *Id at. 5.*

<sup>15</sup> *Supra note 5.*

<sup>16</sup> *Ibid*

<sup>17</sup> Varuna Chakraborty, “Challenging aspects Of Uniform Civil Code In India”, 9 International Journal of Scientific & Engineering Research (January-2018), 1756-1758 available at:< <https://www.ijser.org.>>.

were many reasons given in favor of a common civil code. K.M. Munshi took a very rigid view in negating the claims of majoritarianism over and over the minorities. He states:<sup>18</sup>

*“It is not therefore correct to say that such an act is tyranny of the majority. If you will look at the countries in Europe that have a Civil Code, everyone who goes there from any part of the world and every minority, has to submit to the Civil Code. It is not felt to be tyrannical to the minority. The point however is this, whether we are going to consolidate and unify our personal law in such a way that the way of life of the whole country may in course of time be unified and secular. We want to divorce religion from personal law, from what may be called social relations or from the rights of parties as regards inheritance or succession. What do these things have to do with religion I really fail to understand?”*<sup>19</sup>

B. R. Ambedkar was also a staunch supporter of the UCC. He denied the claims that a common civil code in a vast country, like India, would be impossibility. He stated that the only sphere which did not have a uniform law was that of marriage and succession; rest all areas of civil law, such as transfer of property, contract, the Negotiable Instrument Act, easement act, sale of goods etc. were uniform in nature. Let us not forget that Ambedkar was a man who believed in reform along the western line. He differed from Mahatma Gandhi in this respect and considered the western model of law and social relations to be an apt reference point to bring social reforms in Indian setup. He did not wish to add the proviso to the already unenforceable Article 35, but was open to the slow inclusion of the communities with their voluntary consents once the legislature fulfils its promise to have a UCC. He stated:

*“I quite realized their feelings in the matter, but I think they have read rather too much into Article 35, which merely proposes that the State shall endeavor to secure a civil code for the citizens of the country. It does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future parliament will make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary.”*<sup>20</sup>

This statement made by Ambedkar speaks loudly for itself and his commitment towards having a UCC to bring about the much necessary changes in the personal dimensions of an Indian irrespective of her religion and community. Post-independence his tooth and nail fight to pass the Hindu Code Bills, which also led to his resignation from the cabinet, is yet again a proof of his drive to bring UCC. Although the proposed amendment to Article 35 was not passed, yet there was no clear-cut majority on the issue of the UCC, some of the reservations echo even in the debates of 2016.<sup>21</sup>

## FREEDOM OF RELIGION UNDER CONSTITUTION OF INDIA

The United Nations felt that there is a compelling need to study personal religious law from a human rights perspective. Therefore, in its convention i.e. **The Convention on the Elimination of All Forms of Discrimination against Women CEDAW 1979**, it was held that there’s a need for special formulation that would assert, protect, promote women’s Human Rights. India declares that, about articles 5(a) and 16(1) of the Conventions, “it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent.”<sup>22</sup>

<sup>18</sup> Shambhavi, “Uniform Civil Code: The Necessity and Absurdity”, 1 ILI Law Review, 12-29 (Summer 2017), available at: <<http://ili.ac.in>>

<sup>19</sup> Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948.

<sup>20</sup> Dr. B.R. Ambedkar, *The Annihilation of Caste: The Annotated 11* (Navayana Publication.2014)

<sup>21</sup> Ibid.

<sup>22</sup> *Supra* note 15.

Thus, Principle of equality, non-discrimination and fairness form an essential part of the Human Rights law and also enshrined in the Preamble of the Constitution. But in the context of uniform civil code this is a matter of debate regarding personal law of India. As we see, that Article 15(3) of the Constitution empowers the State to make special provisions for protection of women and children. Article 25(2) mandate that social reform and welfare can be provided irrespective of the right to freedom of religion. Article 44, which directs the state to secure for its citizens a Uniform Civil Code throughout the territory of India, is the cornerstone for women's equality in the country and must be urgently implemented so as to eliminate antiquated discriminatory norms of religion laws.

### FEASIBILITY OF UNIFORM CIVIL CODE AND GENDER EQUALITY

It is a known fact that gender injustice is inbuilt in the personal laws of all the communities. The socio-economic conditions are supposed to be the result under which the personal laws are evolved. The women are considered inferior in most of the personal matters as compared to men, especially when it comes to the discussion of the topic of the matrimony or the succession, adoption or even the inheritance. Under the Hindu Law specifically, in the year 1955 and 1996, the Hindu women did not enjoy equal rights along with the Hindu men be it anything or any matter. Before 1955, polygamy was prevalent among the Hindus. The Hindu women could not hold any property as its absolute owner except in the case of Stridhan. She had only limited estate which was passed onto the legal last full heirs of the male owner called revisionary on her death. She owned a limited interest, in the sense that whenever an issue came up for the desertion of the property and mortgaging or selling the property, she could not do it on her own. When it came to the matter of adoption a Hindu woman did not have the right to adopt a child on her own. She could not be natural guardian of her children during the life of her husband. These examples are illustrative enough to show the patriarchal nature of the Indian society. Even though the Hindu law has been codified, certain discriminatory provisions still exist even today. For example, a Hindu woman is not a coparcener in Hindu coparceners except in a few states like Andhra Pradesh, Maharashtra, Karnataka and Tamil Nadu. Consequently, she is not entitled to the share in the coparcenary. Thus, it is oblivion to the fact that the codification of personal laws of Hindus has not succeeded completely in eradicating the gender inequality. When it comes to discussing about the Muslim Law, in the Pre-Islamic Arabia, the women enjoyed a secondary status because since then it has been a patriarchy since then. The women since then were considered secondary to men. The advent of Islam has contributed much when it comes to the deterioration of the Muslim women and the escalation of their problems. The Holy Quran gives equal rights to men and women and places women in a respectable position.<sup>23</sup>

However, there are certain aspects in Islam that render the position of Muslim women especially the wives insecure and inferior. In Islam, a man is allowed to marry four times whereas the women cannot and if they do, they are treated as unchaste and impure. Women are not even given the right to divorce their husbands, when particularly the method of divorcing the wife by the husband by pronouncing triple Talaq is highly discriminatory. This is in spite of the message given in the Holy Quran. This has been held void<sup>5</sup> and unlawful, recently in the Allahabad High court judgement. Even in the matter of succession, a Muslim woman is discriminated against the assertion of certain Muslim scholars that the Islam in this regard is more progressive and liberal. The legal position is that when two scholars or residuary of opposite sex but of the same degree inherit the property of the deceased, the Muslim male gets twice the share of the female. Even in the matter of maintenance, the muslim wife is not required to be maintained beyond the Iddat period. The Criminal Procedure Code which imposes an obligation on the husband to maintain his wife including divorced wife until she maintains herself is a secular law and is applicable to all, however there is a

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<sup>23</sup> S Pandey, Property rights of Indian women., available at <https://www.womenslinkworldwide.org › files>



controversy regarding the Muslim men following this provision.<sup>24</sup>

This is the reason there is a need to reform the personal laws or bring about a uniform civil code to ensure not only equality between men and women but also to bring about gender justice. Women of our country undergo many difficulties and experience severe trauma in matters concerning day to day matters including marriage, divorce and inheritance. Polygamy, desertion, triple divorces are just a few instances to show the possibilities of harassing women. However, The Indian Constitution legally grants Indian women equality in political rights. But due to the difference in the personal laws, women generally experience inequality, deprivation and violence. Within the family, their position is pitiable. The question of women's rights as humans is completely ignored. The personal laws are designed and formulated to keep the women always under the control of men. Some instances like: - In Hindus, sons, and not daughters, can inherit the property till recently. And a wife has fewer rights than her in-laws over her husband's property, but on the other hand, a husband has more rights than his in-laws over his wife's property. In Christian law, a husband can get divorce on adultery ground, whereas a wife has to prove adultery and cruelty. Even in Punjab, it is a common practice that all brothers marry one woman so that their property is not divided. In Muslim law, The procedure of talaq as mentioned in the Holy Quran is an elaborated procedure which includes reconciliation as quoted in Surah IV verse 35 "And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted [with all things], which means Allah wants reconciliation between the husband and wife via mode of arbitrators if the divorce is given by the husband in anger so that he can take it back within the Iddat period if he desires. Triple Talaq is irrevocable form of talaq where there is no possibility of reconciliation between the parties therefore it is also called Talaq-i-Bid'ah which means innovative (or sinful) form of divorce, which was not here during the time of Muhammad. In this form of divorce, the husband under his arbitrary power pronounces talaq thrice in one sitting when the wife is in the period of purity (tuhr) and it becomes effective as soon as the words are pronounced, i-e when man says: I divorce thee, I divorce thee, I divorce thee, or in one sentence saying: "I divorce thee thrice, or "I pronounce my first, second and third talaq.. This mode of talaq is not permissible under Ashari and Fatimi laws but it is permissible under Hanafi law although it is legal under this law but also considered sinful. Although the Constitution of India gives equality to women in legal and social areas, they are not effective enough to ensure them real equality. A critical look at the constitutional debate, legislative enactments and judicial decisions very clearly indicate the lack of seriousness in ensuring justice to women. For long Christian women too had the law loaded against them. A Christian man could obtain a divorce on the basis of adultery; a woman had to establish an additional charge like desertion or cruelty under the Indian Divorce Act 1869 as well. But in 1997, cruelty, physical and mental torture were made ground enough for a Christian woman to obtain a divorce, with the Bombay High Court recognizing cruelty and desertion as independent grounds for the dissolution of a Christian marriage.<sup>25</sup>

Divorce under the Hindu Marriage Act 1955 can be obtained on the grounds of adultery, cruelty, desertion for two years, conversion in religion, an unsound mind, suffering from venereal disease or leprosy or if the spouse has renounced the world and has not been heard from for seven years. Also no resumption of co-habitation for one year after the decree of judicial separation, no restitution of conjugal rights for one year after decree for restitution of conjugal rights, or if the husband is guilty of rape, sodomy or bestiality. Thus

<sup>24</sup> S. Sadhana, "A Contemporary Study on the Uniform Civil Code", 120 International Journal of Pure and Applied Mathematics 4683-4694 (2018) available at: < <https://acadpubl.eu> >

<sup>25</sup> Mufti Muhammad Qasim Attar, "Who is Right? Divorce and Islam's Approach to Women", available at <https://www.dawateislami.net> > august 22.

All major religions have their own laws that govern divorces within their own community, and there are separate regulations under the Special Marriage Act, 1954 regarding divorce in interfaith marriages.

## JUDICIAL APPROACH RELATING TO UNIFORM CIVIL CODE

The Supreme Court in a few judgments has opted for a legislation on common civil code as enshrined in Article 44 of India's Constitution. It said so in *Shah Bano's Case* in 1985, in *Sarla Mudgal Case* in 1995 and in *Vallamattam case* in 2003. This way, the Judiciary through its various judgements time and again has always upheld gender justice in cases pertaining to the Uniform Civil Code.<sup>26</sup>

### *Mohamad Ahmed Khan v. Shah Bano* [AIR 1985 SC 945]

A 73-year-old woman called Shah Bano was divorced by her husband using triple talaq (saying "I divorce thee" three times) and was denied maintenance. She approached the courts and the District Court and the High Court ruled in her favor. This led to her husband appealing to the Supreme Court saying that he had fulfilled all his obligations under Islamic law.

The [Supreme Court](#) ruled in her favor in 1985 under the "maintenance of wives, children and parents" provision (Section 125) of the All India Criminal Code, which applied to all citizens irrespective of religion. Further, It recommended that a uniform civil code be set up.

### Facts about the case:

Under Muslim personal law, maintenance was to be paid only till the period of iddat. (three lunar months-roughly 90 days).

Section 125 of CrPC (criminal procedure code) that applied to all citizens, provided for maintenance of the wife.

Impact – After this historic decision, nationwide discussions, meetings and agitations were held. The then government under pressure passed The Muslim Women's (Right to protection on divorce) Act (MWA) in 1986, which made Section 125 of the Criminal Procedure Code inapplicable to Muslim women.

### *Daniel Latifi v. Union of India* [AIR 2001 SC 3958]

Muslim Women's Act (MWA) was challenged on the grounds that it violated the right to equality under Articles 14& 15 as well as the right to life under Article 21. The Supreme Court while holding the law as constitutional, harmonized it with section 125 of CrPC and held that the amount received by a wife during iddat period should be large enough to maintain her during iddat as well as provide for her future. Thus, under the law of the land, a divorced Muslim woman is entitled to the provision of maintenance for a lifetime or until she is remarried.

### *Sarla Mudgal & others v. Union of India* [AIR 1995 SC 1531]

In this case, the question was whether a Hindu husband married under the Hindu law, by embracing Islam, can solemnise a second marriage. The court held that the Hindu marriage solemnized under Hindu law can only be dissolved on any of the grounds specified under the Hindu Marriage Act 1955. Conversion to Islam and marrying again, would not by itself dissolve the Hindu marriage under the act and thus, a second marriage solemnized after converting to Islam would be an offence under section 494 of the [Indian Penal Code](#)(IPC).

### *John Vallamattom & Anr v. Union of India* [(2003) 6 SCC 611]

In this case, a priest from Kerala, John Vallamattom challenged the Constitutional validity of Section 118 of the Indian Succession Act, which is applicable for non-Hindus in India. Mr Vallamatton contended that Section 118 of the act was discriminatory against Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purposes by will. The bench struck down the section as unconstitutional.

<sup>26</sup> Atish Chakraborty, "Uniform Civil Code and Indian Judiciary", available at:< <https://www.lawof.in.>>

In *Naveen Kohli v. Neelu Kohli* [2006 (4) SCC 558] the Supreme Court, boldly laid down that while permitting dissolution of thirty-year-old mismatch, urged the Government of India to amend Hindu Marriage Act in order to make Irretrievable break down of marriage a valid ground for divorce. The court held that irretrievable break down of marriage was prevalent as a ground for divorce in many other countries and recommended the Union of India to seriously consider bringing an amendment in Hindu Marriage Act, 1955 to incorporate irretrievable break down of marriage as a ground for the grant of divorce. The court ordered to send a copy of the judgment to the Secretary, Ministry of law and justice, Department of legal affairs, Government of India for taking appropriate steps and to accommodate such demands that arose before the Court in the instant case.

In recent judgement of triple talaq *Shayara Bano v Union of India* AIR 2017 9 SCC 1 (SC) . wherein ,Shayara Bano, a Muslim girl, was married to Rizwan Ahmed for 15 years. But in 2016, he divorced her by way of triple talaq without stating any reason. In return, she filed a writ petition in the Supreme Court challenging the constitutionality of talaq-e-biddat along with practices of polygamy and nikah halala as they infringe upon the fundamental rights of women ([Article 14](#), [15](#), [21](#), [25](#)).

The case of Shayara Bano against triple talaq echoes the same concerns. In her petition, she challenged this personal law practice, citing her Fundamental Rights under Articles 14, 15, 21 and 25 of Constitution. In this case, refereeing to the want of uniform civil code, the gender-discriminatory practices of other religions are also being questioned as **"What we need is not a Uniform Civil Code but uniformity of rights across different religions"**.<sup>27</sup>

### NEED FOR A COMMON CIVIL CODE

One law would govern all divorces for all communities based on religion. One should not forget that nationhood is symbolized by one Constitution. A single citizenship, one flag and a common law applicable to all citizens. India's obligations under international law and requirements of various international instruments relating to the human rights of women such as Universal declaration of Human Rights, 1948 and the Convention on the Elimination of all forms of Discrimination Against Women, 1979 demand that even if one rules out Article 44 the Union of India cannot evade its international obligation to make laws to remove discrimination against women.<sup>28</sup>

The Law Commission of India and the Supreme Court have recommended that the irretrievable break down of marriage should be made a separate ground of divorce by the legislature. No useful purpose would be served by keeping alive de jure what is dead de facto. It is possible that if Parliament does not act on this recommendation the legislature of some states of India may take the lead, exercising power under entry 5 of the concurrent list of the 7th schedule.<sup>29</sup>

The Law Commission has suggested that immediate action needs to be taken to introduce an amendment in the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 for inclusion of irretrievable breakdown of marriage as another ground for grant of divorce.<sup>30</sup>

India is a vast country be in religion, language or geographical diversity, the framers of the constitution never intended India to have total uniformity of law, therefore, they decided to keep the Uniform Civil Code under the Directive Principles and not Fundamental rights. And the power to legislate is even given to both the parliament and the state hence the personal laws may differ in 29 states and union. The power of amending the laws are given to the states and various states have amended the criminal and civil laws

<sup>27</sup> Flavia Agnes, a lawyer specializing in marital, divorce and property law, stresses on the need for uniformity of rights across religion. [Outlook India, 23-Oct-2016](#) , <https://www.outlookindia.com> › National.

<sup>28</sup> Jyoti Rattan, "Uniform Civil Code in India: A Binding Obligation Under International And Domestic Law", 46 JILI 577 (2004).

<sup>29</sup> Supra note 5.

<sup>30</sup> Ibid



according to the need of the state. The main problem of implementing UCC arises due to people having no knowledge and minors having the fear of losing their rights. UCC sometimes even gives the perceived imposition of that the Uniform Civil Code will be according to Hindus which adds an opposition. The next problem arises due to interruption of political parties to gain power by using the debatable topics in the country and even have a misconception of loss of culture and identity of minorities. The implementation of UCC might lead to communal dispute. Therefore, it would be much better if some reforms were brought slowly and gradually by certain amendments in personal laws making them suitable for modern times. The focus should be on removing the social differences raising due to religion and providing them with proper information about what the basic idea behind implementing the UCC, which will not hinder the religious rights of the people, rather will be focused on providing them with various benefits, which they face due to different personal laws in the country. Uniform civil code should be implemented but slowly starting with certain reforms.<sup>31</sup>

One has to identify what is the moving jurisprudence behind UCC that is its national integration with one nation-one people motto or is it the eradication of the gender-based injustices engrained in the all personal laws. These two future results of the UCC are quite distinct from each other. It has been observed that the original dialogue around UCC was more inclined towards the idea of national integration, with the cause of gender equality as an ancillary effect. However, today in the contemporary times UCC has come up as a champion of the gender equality. If so, then the dialogues around UCC have woefully missed their mark. It is not that uniformity in laws is undesirable. Extensive cultural diversity is the truth of India, but absolute heterogeneity in laws is also not desirable. Uniformity very rightly leads to a constricted scope for arbitrariness and equal protection of law to all the subjects irrespective of the diverse backgrounds they come from. The clarion call for UCC in India has always been with the idea of divesting law from all kinds of religious influences. That law, even the personal laws should be stoic without specific religious and cultural hurdles creeping in. Religion and culture since a very long time have been the ultimate explanation to any and every social evil that exists in the society. However, in a country where Hindus shared their day-to-day lives with other religions where women who need not deliberately die with their husbands existed, questions were raised that why Hindu women be subjected to such atrocity?<sup>32</sup>

The directive principles in the constitution demonstrate diversity and attempt to foster uniformity among people of different faiths. A uniform law, though tremendously beneficial, may be counter-productive to unity and integrity of the nation. In an autonomy thrived by rule of law, gradual progressive change and order should be key. Making law or amendment to a law is a taxing process and the legislature attempts to provide with remedy wherever there is a question of law which is acute for answering. It would, therefore, be inexpedient and grossly wrong to interpret that all laws have to be made uniformly applicable to all people in one go. At whatever time the alteration of Uniform civil code get initiated the rights given in above two articles forms a defense against the implementation of Uniform civil code. However, the rights given above though being fundamental rights are not absolute in nature, as they are subject to public order, morality and health as consistent with clause 1 of article 25 and 26 of the constitution.<sup>33</sup>

## SUMMARY

Our Constitution guarantees freedom of conscience and free profession, practice and propagation of religion and freedom to manage religious affairs by Article 25 and 26. Article 44 also does not say that all personal laws should be repealed and that the proposed uniform civil code be imposed on all citizens. As rightly assured the Constituent Assembly by Dr. Ambedkar, that the citizens would be required to declare voluntarily that they would be governed by such code when enacted and not imposed on all citizens.

<sup>31</sup> Kumrawat Sheetal, "Should India have a uniform civil code", 4 International Journal of Advance Research, Ideas and Innovations in Technology, 430- 432 available at: <<https://www.ijariit.com>>

<sup>32</sup> *Supra* note 5

<sup>33</sup> *Supra* note. 4.

However, a section of people misinterprets this Article and urge the government to abolish the Muslim personal law and enact a uniform civil code, thus, this has caused threat to the national unity or integration. Not much progress has been made towards achieving the ideal of a uniform civil code; the only tangible step taken in this direction has been the codification and secularization of Hindu law. The codification of Muslim law still remains a sensitive matter. The Special Marriage Act, 1954 and the Hindu code, which is applied to the majority of Indians, have already achieved the very object of inserting Article 44. Those having any objection to their personal law can register their marriages under the Special Marriage Act and enjoy its benefits with regard to matters connected with marriage; and of Indian Succession Act, 1925 regarding succession to property. There is no justification for denying this protection to the personal laws of those to whom the Hindu Succession Act, 1956, is not applicable, by the Legislature. Article 44 of the Constitution has lost all its significance and become redundant. It is necessary that law should be separated from religion. With the enactment of a uniform civil code, secularism will be heightened; the differences between various religious groups will disappear and India will emerge as a much more cohesive and integrated nation.

Uniform Civil Code will provide women with the right to equality and justice in courts of law- irrespective of their religion in matters pertaining to marriage, divorce, maintenance, custody of children, inheritance rights, adoption, etc. The Supreme Court for the directed the Parliament to frame a UCC in the year 1985 in the case of *Shah Bano Begum*, case and now in *Shayara bano* triple talaq judgement.

The basic idea behind Implementing the UCC should be on removing the social differences raising due to religion and providing them with proper information about what which will not hinder the religious rights of the people rather will be focused on providing them with various benefits which they face due to different personal laws in the country. Uniform civil code should be implemented but slowly starting with desired reforms. Gender issues need to be addressed very seriously. A Uniform Civil Code is, therefore, foremost a matter of gender justice. If it is implemented it will lay the foundation for women to overcome many social evils like dowry system, bigamy etc. which makes a woman feel inferior and degraded.

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