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Uniform Civil Code: A Dream of Undivided India

By: Akshat Mittal

Pg. No.: 126-150

Abstract

A matter of great spirituality, worship, devotion, belief, interest & faith in the one who is termed as divine, supernatural or God is what Religion is all about. The very existence of this world is believed to be by the way of spiritual development. Over thousands of years, Religion has become a whole socialistic & culturist system having its divisions, and each division is governed by a separate set of laws & practices. The idea which was anciently generated to promote purity & unity of souls has now become a virus that is eating the humanity alive. Modern society consists of diverse cultures & belief systems, keeping in mind which the word “Secularism” was incorporated into the Preamble to the Constitution of India. And to honor it further, “Right to Equality” & “Right to Freedom of Religion” were also added. Meaning thereby, each sect of Personal Laws which are based upon different sets of Religions respectively were given separate importance & freedom of practice which includes matters like marriage, divorce, custody, adoption, succession, inheritance, etc. unlike Criminal Law which has the same substantive & procedural provisions for every person irrespective of Religion. Uniform Civil Code is an umbrella, the intention of which is to cover these fragmented laws within a mutual realm. Article 44 of the Constitution imposes a duty upon the Government to secure a Uniform Civil Code for the State of India but to date, no center or state government has taken an initiative for the same, except Goa which has had its Civil Code’s roots in Portuguese Culture. Uniform Civil Code is the only solution not only to curb various legal inequalities but also to promote the true spirit of Religion.

Keywords: Religious Freedom, Equality, Secularism, Uniform Civil Code, Equity, Justice.

Table of Contents

S. No.	Title	Pg. No.
1	INTRODUCTION	130
1.1.	Background of UCC: Pre & Post Independence Scenario	131
1.1.1.	The First Step	131
1.1.2.	The Lex Loci Report	132
1.1.3.	A Conflicted Nation	132
1.1.4.	The Age of Reforms	133
1.1.5.	Formation of Constitution of an Independent Country	134
1.1.6.	The Hindu Code Bill: A Replica for Uniform Civil Code	135
1.1.7.	Special Marriage Act, 1954	136
1.2.	What does Uniform Civil Code propose?	136
2.	RECOGNITION OF NEED FOR UNIFORM CIVIL CODE	137
2.1.	Gender Discrimination under Personal Laws	138
2.1.1.	The Shah Bano Judgement: A Gateway to Uniform Civil Code	138
2.1.2.	The AWAG Judgement: Impoverishment of Indian Judiciary	139
2.1.3.	Section 10 of Indian Divorce Act, 1869: Discrimination against Christian Women	140
2.1.4.	The Shayara Bano Judgement: A New Hope for Uniform Civil Code	141
2.2.	Inequalities among Communities: A Matter of Different Religious Benefits	142
2.2.1.	The Sarla Mudgal Judgement: Indication towards the Need for UCC	142

2.2.2.	The John Vallamattom Petition	143
2.2.3.	No Legal Recognition of Adoption Rights of Muslims	144
2.2.4.	The Sabarimala Incident: An Abomination to the Country	144
2.2.5.	“We, the people of India.....”	145
3.	UNIFORM CIVIL CODE: WAY TO SECULARISM?	146
3.1.	Results/Implications of UCC, if enforced in India	147
3.1.1.	Equality will be held in high esteem	147
3.1.2.	Promotion of National Integration	148
3.1.3.	Dominance clubbed to indistinguishable domain	148
3.1.4.	Outlook of the younger generations matched to a melody	148
3.1.5.	Religious Freedom compromised and yielded	148
3.2.	Suggestion/Recommendation	149
4.	CONCLUSION	149

CHAPTER 1

Introduction

From that very day when India was recognised as a Free Nation, she has emerged as the world's largest democracy which homes millions of communities, honouring each such community with a secular fabric. In order to guarantee this secularity, the Constituent Assembly have incorporated "Right to Freedom of Religion" as a fundamental right enshrined under **Article 25**¹⁵⁴ (**Part III**) of the Constitution with certain exceptions for the matters of public welfare. Further, **Article 26**¹⁵⁵ confers freedom upon the religious sects to manage their own institutions & property affairs. To strengthen the idea of secularism it was also made compulsory that no such knowledge or instruction shall be provided in educational institutions so as to influence the students¹⁵⁶, and no compulsion shall be there when it comes to payment of tax, if and so such payment is for the purpose to promote any religion.¹⁵⁷ The freedom of religious communities led to the formation of different personal laws which were based upon the ancient religious scriptures, beliefs & customs. As a result, fluctuated laws related to the matters of Marriage, Divorce, Custody, Adoption, Succession, Inheritance, Maintenance, etc. were formed based upon different religious opinions, cultural practices and application. Though, the Constitution of India is secular in nature but the epiphany of the recent times, points out the concocted nature of the constitution which brings about contradictions between the concept of secularism and personal laws of varied religions.¹⁵⁸ On one hand these various communities are co-existent parts of one Country but on the flip, family laws of each community differ.¹⁵⁹ These differences exist because India as a country is hearth to the entire wide spread practices of the varied religions and all the people born are swooned towards their customs with utmost admiration.¹⁶⁰ In modern India, questions have been raised regarding personal laws being discriminative in nature and inconsistent with fundamental rights guaranteed by the **Part III** of the Constitution.

¹⁵⁴ INDIA CONST. art. 25, cl. 1.

¹⁵⁵ INDIA CONST. art. 26.

¹⁵⁶ INDIA CONST. art. 28.

¹⁵⁷ INDIA CONST. art. 27.

¹⁵⁸ Saksham Solanki & Shaivya Manaktala, *Uniform civil code and conflict of personal laws*, 03 I.J.L. 08, 08 (2017).

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*

The Author through this study offers a detailed understanding of the concept of Uniform Civil Code. The topic of Uniform Civil Code is important as it has been one of the most heated, debated and trending topics since the British Rule. If brought into existence, it would be a life altering law for the citizens of the Country. The research work will benefit the readers to recognize the need for unified law to govern the personal matters irrespective of religion in the present time. The research will take into account various research studies, journals, online blogs and would analyse Judiciary's judgments & opinions, expert's opinions to present the detailed arguments benefiting the social & economic conditions of women, and highlighting Uniform Civil Code as a way to curb the regional inequalities. The Author has also provided various suggestions at the end which can form the basis for one possible Model Uniform Code in regard to promote Secularism in the Nation.

1.1. Background of UCC: Pre & Post Independence Scenario

The debate regarding Uniform Civil Code has always been in trend since the rule of East India Company. A Country like India where the culture is vastly diversified, the British fearing the massive opposition from religious leaders, abstained themselves from entering into the sphere of domestic law.¹⁶¹

1.1.1. The First Step

The idea of Uniform Civil Code found its origin even prior to British Rule. The first most step in this regard was taken by Lord William Bentinck, the then Governor-General of India when he passed the Bengal Sati Regulation Act, 1829 and suppressed the infamous practice of *Sati* (a practice where widow is compelled to death on the funeral of her husband). The said Act was later on made applicable to all English territories in India.¹⁶²

¹⁶¹ Anonymous, *Uniform Civil Code in India*, GK TODAY (Dec. 23, 2018), <https://www.gktoday.in/gk/uniform-civil-code-in-india>.

¹⁶² Anonymous, *The abolished 'Sati Pratha': Lesser-known facts on the banned practice*, INDIA TODAY (Dec. 04, 2015, 11:23 AM), <https://www.indiatoday.in/education-today/gk-current-affairs/story/sati-pratha>. See also; *Infra Note 11*.

1.1.2. The Lex Loci Report

The British Government in 1840 for the first time recognised the need for codification of laws for India. The laws related to Crimes, Evidence & Contracts were framed with uniformity irrespective of religion, sex, caste, region, creed, race, etc. But as per the recommendations of the Report, Hindu & Muslim personal laws were not to be meddled with and were kept aside.¹⁶³ The British preferred to keep religious divisions alive and suggested that in case of disputes, local panchayats or courts should be formed consisting with people of the same religion or caste and the decisions delivered were to rely upon laws and religious scriptures of the ancient period.¹⁶⁴

The British State acting upon the proclamation made by the Queen in the year 1858 promised not to interfere in religious matters of any sort¹⁶⁵, and if such interference is required it shall be only in exceptional circumstances. As history is the evidence, the British never intended to unite India. Rather, they used religion as a lethal weapon of their infamous practice of “Divide & Rule.”¹⁶⁶

1.1.3. A Conflicted Nation

India at one point or other has been home to almost all the religions and communities existing. This stands to be the reason that India has witnessed the richest history of culture & traditions throughout the world and also why India has always been tagged as a Nation at War. Difference in opinion and variance in preference exists even among the practices of one particular religion. One example would be, permitting remarriage of a widow in the Shudra caste, one among the Hindus, even though expressly forbidden by scriptural principles.¹⁶⁷

¹⁶³ *Supra Note 08.*

¹⁶⁴ Neha Maheshwari, *Should India have a Uniform Civil Code*, LAWORDO (Nov. 18, 2019), <https://www.lawordo.com/uniform-civil-code/>.

¹⁶⁵ Dr. V., *Landmark Judgements that Transformed India*, CIVILS DAILY (Jan. 24, 2016), <https://www.civildaily.com/part-4-whose-law-is-it-anyway-landmark-judgements-that-transformed-india>.

¹⁶⁶ Abhishek Verma, *Uniform Civil Code: Give it a serious thought*, DECCAN HERALD (Sep. 20, 2019, 07:40 AM), <https://www.deccanherald.com/opinion/main-article/uniform-civil-code-give-it-a-serious-thought-762623.html>.

¹⁶⁷ SUMIT SARKAR & TANIKA SARKAR, *WOMEN AND SOCIAL REFORM IN MODERN INDIA*, 93 (2008).

Even though such issues remain, the greatest religious war has always been between Hindus & Muslims of the Country. In British India, Hindu Law, due to fear of dominance & ease of operation were given more importance over Muslim Law by the British-Indian Judiciary.¹⁶⁸ The British Government not taking the pain of investigating the customary practice of each specific community, group or society, kept ignoring this issue for a long time. But towards the end of 19th Century recognising the local opinions & traditions became unavoidable.¹⁶⁹

1.1.4. The Age of Reforms

Muslim Law in India is mostly based upon Sharia practices which in its true nature were discriminatory in favour of men in matters of property, inheritance, marriage & divorce. But even then due to pressure from Muslim leaders the Shariat Law of 1937 came into force, according to which each & every Indian Muslim is to be governed by the wallow of this law in matters of marriage, divorce, adoption, succession, inheritance and maintenance.¹⁷⁰ As regards to the Hindu Law, the earnest concerns have always been of gender inequality in the matters of remarriage, inheritance and divorce.

The first major call for the implementation for the Uniform Civil Code was put up by Lakshmi Menon in the All India Women's Conference (AIWC) in 1933 where the conference expressed the need for inclusion of women in legislature and to which Ms. Menon said, "If we are to seek divorce in court, we are to state that we are not Hindus, and are not guided by Hindu law. The members in the Legislative assembly who are men will not help us in bringing any drastic changes which will be of benefit to us." The Women Conference depended upon the resolution passed by the Indian National Congress in Karachi Session of 1931 wherein Gender Equality was one of the supreme concerns.¹⁷¹

The B.N. Rau Committee was specifically set up in 1937 to examine the need of unified Hindu Law. The Committee in its report concluded that keeping in mind the changing trends of society & equality of women, the need of the hour demands a common civil code. The committee

¹⁶⁸ *Ibid.*

¹⁶⁹ *Supra Note 14 at 263.*

¹⁷⁰ *Supra Note 11.*

¹⁷¹ Satyam Singh & Shobhitabh Srivastav, *Uniform Civil Code: A Critical study of Individual Rights & the Role of the Secular State*, 03 J.C.I.L. 01, 06 (2017).

primarily focused on the aspects of Hindu law and suggested common laws to be made for marriage and succession. The committee's recommendations were sought again in 1947.¹⁷²

1.1.5. Formation of Constitution of an Independent Country

“The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”¹⁷³ A provision for Uniform Civil Code was instituted as a Directive Principle under **Part IV** of the Constitution. After long debates on uniformity of personal laws, the Constituent Assembly came up with the solution to incorporate a duty upon the State to keep the principle of Uniform Civil Code in mind while making laws for the Country. The main concern in the Indian Parliament during the 1951-1954 sessions was regarding the codification of common code for Hindus.

Dr. B. R. Ambedkar was handed over the responsibility to present the Hindu Code Bill. He was of the view that majority of Hindu Laws had its basis in a specific school. He studied the religious Hindu *Shashtras* and attacked the dominance of Hindu upper caste saying that provisions like monogamy & widow's rights were available in orthodox Hindu laws. He also added that the Hindu structure was flawed and Uniform Civil Code was the only way to preserve it.¹⁷⁴ The then Prime Minister Pandit Jawaharlal Nehru even though supported Ambedkar's opinion on the necessity for Uniform Civil Code, opposed his opinions regarding Hindu Society.¹⁷⁵ Further the idea of Uniform Civil Code faced high criticism by Vallabhbhai Patel & Rajendra Prasad. The words of Dr. B.R. Ambedkar were, “I personally do not understand why religion should be given this vast, expansive jurisdiction, so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequities, discriminations and other things, which conflict with our fundamental rights.”¹⁷⁶

¹⁷² *Supra Note 13.*

¹⁷³ INDIA CONST. art. 44.

¹⁷⁴ *Supra Note 14 at 480-91.*

¹⁷⁵ *Ibid.*

¹⁷⁶ Christophe Jaffrelot, *Ambedkar and the Uniform Civil Code*, OUTLOOK (Aug. 14, 2003), <https://www.outlookindia.com/website/story/ambekar-and-the-uniform-civil-code/>.

1.1.6. The Hindu Code Bill: A Replica for Uniform Civil Code

The closest attempt to implementing a Uniform Civil Code was witnessed by Indian History when the bill of Hindu Code was presented. The Bill codified the laws, laid out a common structure to be followed by all the Hindus including Buddhist, Jain & Sikhs throughout the Nation. The Bill faced high criticism in the Parliament. Issues like monogamy, divorce, inheritance rights of women/daughters which were subjected to be equal in terms of share, eradication of coparcenaries were targeted to bring out a solution but were opposed even by the women members of the parliament due to various political reasons.¹⁷⁷ The bill could have been termed as “Anti-Hindu” or “Anti-Indian.” And later on, the solution to this debate resulted in passing of four different Acts namely; Hindu Marriage Act 1955, Succession Act 1956, Minority & Guardianship Act 1956, and Adoptions & Maintenance Act 1956.¹⁷⁸

It was then, the Assembly decided to implement the Uniform Civil Code under **Article 44** of the Constitution. This move was addressed as “the 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” by Aparna Mahanta.¹⁷⁹ It is very much agreeable as it was a perfectly worked out step to shove the concept of Uniform Civil Code into oblivion. Directive Principles are not justiciable and are tame in comparison to the Fundamental Rights, even though they are to be claimed to be fundamental in nature.¹⁸⁰ It is only in the books & papers that harmony shall be construed between the two but in reality the extent of consonance has been always immeasurable.

¹⁷⁷ *Supra Note 18.*

¹⁷⁸ Shikha Goyal, *What is Uniform Civil Code?*, JAGRAN JOSH (Aug. 05, 2020, 12:02 PM), [https://www.jagranjosh.com/general-knowledge/why-uniform-civil-code-is-necessary-for-india-1477037384-1#:~:text=Uniform%20Civil%20Code%20\(UCC\)%20is,means%20one%20country%20one%20rule.](https://www.jagranjosh.com/general-knowledge/why-uniform-civil-code-is-necessary-for-india-1477037384-1#:~:text=Uniform%20Civil%20Code%20(UCC)%20is,means%20one%20country%20one%20rule.)

¹⁷⁹ C.K. Mathew, *Uniform Civil Code: The Importance of an Inclusive and Voluntary Approach*, THE HINDU CENTRE (Oct. 26, 2019, 03:19 PM), <https://www.thehinducentre.com/publications/issue-brief/article29796731.ece>

¹⁸⁰ M.P. Singh, *On Uniform Civil Code, Legal Pluralism and the Constitution of India*, 05 J.Ind.L.Soc. 05, 05 (2014)

1.1.7. Special Marriage Act, 1954

This Act was enacted as damage control of the failure of the Hindu Code Bill with regard to gender discrimination and to fill a few gaps of inter-religion inequalities. The said Act allows the marriage between two individuals irrespective of their religion, cast & communities. This Act only provides for Marriage, Divorce & Maintenance provisions. Matters pertaining to property or adoption shall be governed by the specific enactments.¹⁸¹ This was only an attempt to cover few basic aspects like giving the option to the citizens to marry outside their religion. But the Act failed to address the effects of such marriage with regard to the reaction of society or individual's families which is why the only solution which can salvage the communities from the unseen consequences is the implementation of the Uniform Civil Code.

1.2. What does Uniform Civil Code propose?

Uniform Civil Code proposes to set out a common code which intends to synchronize the set of personal laws based upon various different religious scriptures. In other words, it is the one set of secular laws which will govern people belonging to different religion, caste or tribe. The Code aims to cover the common subjects like marriage, divorce, adoption, custody, inheritance, succession and maintenance. It can be seen as a bridge which gaps the inequalities created by the religious practices with respect to personal status, property rights, maintenance rights, adoption rights, etc.

Uniform Civil Code shall be not only be seen as a tool to ease out the legal operations but also to promote justice by putting an end to the long time running discriminatory practices by different religions. The Code specifically aims at promoting gender equality. The presumption is that the Common Code shall be based upon the modern day traditions and practices thereafter, respecting every religion and to delete those laws which have become backward & regressive. The Code not only proposes to bind the different religions together but also to bind the number of communities within a particular religion.

¹⁸¹ *Supra Note 26.*

It shall be the purpose of Uniform Civil Code aims to protect and help vulnerable sections of the society to rise as high as the dominant & oppressive ones. UCC is a way to promote nationalism by uniting the citizens and instilling the sense of being an “Indian” first and then recognise the personal bifurcations into, Hindu, Muslim, Sikh, Jain, Christian, Buddhist and Parsi.

CHAPTER 2

Recognition of Need for Uniform Civil Code

There may be number of reasons which justify the implementation of “One Law, One Nation” but the most basic one would be the embarking revolutions marking its beginning in the 21st Century. Modern times, Modern practices, Modern youth who fail to understand the religious justifications for gender inequality, disparities between human dignities. The young population today is one of the major factor which screams for the implementation of Uniform Civil Code. The history is the evidence for the formation of a patriarchal society establishing dominance of men over women since ages. Even from the past few years the Nation has been striving for Women Empowerment which has positively resulted but till date the gap remains unfilled at certain junctures. Religiously these differences have been widened by the right wing ideologies existing in the communities itself, as Men have always been given preference in family matters such as being declared as the ruler of the family business, succession, inheritance, etc. With the implementation of UCC, hope to curb discrimination and achieve sense of true women empowerment and mark beginning of a new era seems a mile closer.

After the enforcement of Hindu Code throughout the Nation, the main conflict was left between two major communities i.e. the Hindus & the Muslim, whose laws were not subjected to any sort of reform by the Constituent Assembly and till date aim to abjectly prove their spiritual supremacy. But the conflicts between the two communities were at rest until the lighting of *Mohammad Ahmed Khan v. Shah Bano*,¹⁸² case struck the nation and forced the topic of Uniform Civil Code once again to be left open for discussions.

¹⁸² Mohammad Ahmed Khan v Shah Bano, (1985) 2 S.C.C. 556

2.1. Gender Discrimination under Personal Laws

2.1.1. The Shah Bano Judgement: A Gateway to Uniform Civil Code

Shah Bano was a 73 years old woman who has approached the local court through a petition seeking maintenance from her husband who had divorced her by way of Triple Talaq, by pronouncing the word “Talaq” three times after 40 years of their marriage. She was granted maintenance by the local court initially in the year 1980 but her husband took this matter to the Supreme Court of India and argued that his actions are justified under Muslim Personal Law as this form of unilateral divorce is permitted under Islam and he has successfully fulfilled all the obligations under Laws governing him.¹⁸³ But the Supreme Court observed that, “Section 125 of the Criminal Procedure Code applies to all citizens of the Country irrespective of Religion.”¹⁸⁴ And while ruling in favour of Ms. Bano, the Court expressed regret noting that “Article 44 of our Constitution has remained a dead letter.”¹⁸⁵ The then Chief Justice Y.V. Chandrachud specifically recommended that “Uniform Civil Code would help the cause of National Integration by removing disparate loyalties to law and by removing the contradictions based on ideologies.”¹⁸⁶ The case was the first instance where the Indian Judiciary has strongly recommended the formation of Single Codified Law.

The Judgement faced nationwide criticism from Muslim Fundamentalists. The Muslim Communities felt threatened that they were being deprived of their cultural identity and that Judiciary is trying to impose UCC is the evidence as to supremacy of and dominance of Hindus over Muslims in the State. The Central Government under the rule of Rajiv Gandhi was forced to pass The Muslim Women’s (Protection of Rights on Divorce) Act, 1986 which reversed & nullified the precedent of *Shah Bano* case.¹⁸⁷ This step of Government was widely opposed by the Muslim Women Activists and voicing their concerns they exclaimed that “this showed that Women’s rights have a low priority even for the secular state of India which is why Autonomy of a religious establishment was made to prevail over women rights.”¹⁸⁸

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.*

¹⁸⁷ Soumalya Ghosh, *Uniform Civil Code: An Ideal Vision of Modern India*, 09 Indian J.L. & Just. 207, 209 (2018).

¹⁸⁸ Atish Chakraborty, *Uniform Civil Code & the Indian Judiciary*, SSRN (Sep. 25, 2017), <https://ssrn.com/abstract=3536262>.

Later on, the constitutional validity of the said Act was challenged in the case *Danial Latifi v. Union of India*,¹⁸⁹ by the Advocate representing Shah Bano. The Court in this case went for a middle path and decided the Act to be in conformity with the provisions of **Article 14, 15 & 21** of the Constitution. Further it was concluded that, it is the duty of a Muslim husband to make “reasonable & fair provision” considering the future of the wife if divorced and such arrangements shall extend beyond Iddat period as by the interpretation of **Section 03(1)(a)** the Act in question. Also that a Muslim Woman who is unable to maintain herself and is not remarried can invoke **Section 04** of the Act and seek maintenance from her relatives and even the State Wakf Board if relatives are not able to maintain her.

2.1.2. The AWAG Judgement: Impoverishment of Indian Judiciary

The case of *Ahmadabad Women’s Action Group v. Union of India*,¹⁹⁰ is considered to be a “classic example” of “judicial restraint.”¹⁹¹ A PIL was filed before the Supreme Court of India which challenged the provisions of Hindu, Muslim & Christian Personal Family Laws on the grounds of gender discrimination and to be violative of **Part III** of the Constitution. Specifically, the permissibility of Polygamy & Instant Triple Talaq under Islamic Law violates principle of “Right to Equality” as under **Article 14**. The Court reversing from its earlier stand held that the adjudication upon the matter of gender discrimination in personal laws is outside the jurisdiction of Court because it involves questions of meddling with the State policy which shall not be counted for duty of the Courts.

However the Courts in its previous judgements highlighted the importance of consistency of personal laws with the **Part III** of the Constitution. The Judgement faced opposition as Judiciary was alleged to be running away from its duty to safeguard the principles of Fundamental Rights.¹⁹² Although, through this Judgement the Court tried to show its inability and conveyed that these issues can only be addressed by the Parliament. In its opinion highlighting the importance of legislative process, the Court deems fit that such reforms shall not be made by the Judiciary.¹⁹³ Further it can be concluded that such reforms when brought

¹⁸⁹ Danial Latifi v Union of India, A.I.R. 2001 S.C. 2181.

¹⁹⁰ Ahmadabad Women’s Action Group v Union of India, A.I.R. 1997 S.C. 3614.

¹⁹¹ *Supra* Note 05 at 09.

¹⁹² *Supra* Note 35.

¹⁹³ *Supra* Note 05 at 09.

about by the parliament will be much valued and will truly achieve the purpose rather than boosting the sense of neglect amongst the minorities.

The Apex Court clearing out the same in *Lily Thomas v. Union of India*,¹⁹⁴ observed that the it is no doubt that Uniform Civil Code is the answer to a secured future but, “it can concretize only when social climate is properly built up by the society, Statesmen amongst leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change for the betterment of the Nation at large.”¹⁹⁵

2.1.3. Section 10 of Indian Divorce Act, 1869: Discrimination against Christian Women

The 10th Law Commission Report (no. 90) in the year 1983 wherein the Law Commission in a *suo moto* action reviewed **Section 10** of the said Act. The said provision was said to be discriminatory against Christian women which can be figured out by the *prima facie* skim of the Section. In order to seek divorce, a Christian husband only had to produce relevant evidence raising reasonable doubt as to commission of adultery by the wife. But in case if a Christian wife had to prove the same, the evidence produced is required to prove one other aggregative factor for example adultery being accompanied by bigamy. The Report finds the said provision to be violative of **Article 14 & 15** of the Constitution of India.¹⁹⁶

The same issue was raised before the High Courts of Calcutta, Kerala & Bombay in the cases of *Swapana Ghosh v. Sadananda Ghosh*,¹⁹⁷ wherein the Court expressly suggested that **Section 10** shall be adjudged as unconstitutional but still the judgement remained ignored till 1995. But then again in *Ammini E.J. v. Union of India*¹⁹⁸ & *Pragati Verghese v. Cyril George Verghese*,¹⁹⁹ the courts of Kerala & Bombay observed **Section 10** to be violating the principles of Gender equality and explicitly held it to be unconstitutional.

¹⁹⁴ Lily Thomas v. Union of India, A.I.R. 2000 S.C. 1650.

¹⁹⁵ *Ibid.*

¹⁹⁶ Law Commission of India 90th Report, *The Grounds of Divorce Amongst Christians in India: Section 10 Indian Divorce Act 1869*, LATEST LAWS, URL: <https://www.latestlaws.com/library/law-commission-of-india-reports/law-commission-report-no-90-ground-divorce-amongst-christians-india/>.

¹⁹⁷ Swapana Ghosh v Sadananda Ghosh, A.I.R. 1989 Cal. 1.

¹⁹⁸ Ammini E.J. v Union of India, A.I.R. 1995 Ker. 252.

¹⁹⁹ Pragati Verghese v Cyril George Verghese, A.I.R. 1997 Bom. 349.

2.1.4. The Shayara Bano Judgement: A New Hope for Uniform Civil Code

The most recent and inspirational judgment of *Shayara Bano v. Union of India*,²⁰⁰ has proved to be the “path breaking judgment” delivered by the Apex Court. The main issue raised before the Court of law was regarding the constitutional validity of Instant Triple Talaq. Further the practices of polygamy & *Nikah Halala* were also challenged by the petitioner. The Bench in the ratio of 3:2 observed that practice of *Talaq-e-biddat* (Instant Triple Talaq) to be contradictory with the principles of Islam and thereby, abolished the said practice. The Court was of opinion that such practice raises the issues of human dignity, gender quality, secularism & justice. J. Joseph specifically noted that, “There cannot be any Constitutional Protection to such a practice.”²⁰¹ The Parliament was then directed to form a law to protect the rights of Muslim Women in marriage within 6 months. The result of which was the Muslim Women (Protection of Rights on Marriage) Bill, 2017 which was later on out-dated by the Muslim Women (Protection of Rights on Marriage) Act, 2019. The Act imposed criminal penalty on the practice of Instant Triple Talaq and made it a cognizable²⁰² & non-bailable offence.²⁰³

The desperate need for Uniform Civil Code can easily be seen starting from the episode of *Shah Bano* to the stunning case of *Shayara Bano*. It shall be observed that the Indian Judiciary on one balance has always respected religious practices but on the other balance has also prioritised the principles of gender quality & human dignity. With this step the judiciary has proved to be a reliever of encumbrance and a perfect center of balance, preserving traditions and eradicating ill practices. These landmark cases over the time have proved the aspirational character of women to challenge the orthodox practices of religious communities & to raise their voice against discrimination in matrimonial relations.²⁰⁴ The distinction of Uniform Civil Code to that of personal laws which are driven by oppressive backward thinking and religious dominance has clearly made visible that the true spirit of Secularism lies in the implementation of the Uniform Civil Code.

Gender equality is the idea to provide as much liberty to women in such sense as to equate them with men in matters of economic & social policy.²⁰⁵ It shall be construed as a duty that

²⁰⁰ *Shayara Bano v Union of India*, (2017) 09 S.C.C. 01.

²⁰¹ *Ibid.*

²⁰² Section 04, Muslim Women (Protection of Rights on Marriage) Act, 2019, No. 20, Acts of Parliament, 2019.

²⁰³ Section 07(c), Muslim Women (Protection of Rights on Marriage) Act, 2019, No. 20, Acts of Parliament, 2019.

²⁰⁴ *Supra Note 34.*

²⁰⁵ Medha Sarin, *Uniform Civil Code for Gender Justice*, 03 Inter. J.L. Manage. & Human. 665, 667 (2020).

lies upon every individual to respect & promote women's rights. This concept shall not be perceived as questioning the relationship of a man & woman, but instead balancing those relationships to such an extent where both men & women are valued equally rather than one in the terms of others. The Arbitrariness in social relations, subordination of women shall be changed to well-reasonable arrangements & fair social relationships.²⁰⁶

2.2. Inequalities among Communities: A Matter of Different Religious Benefits

The Constitution of India being a Secular Democratic Republic does not impose a State Religion upon its citizens and guarantees no interference in the religious practices. The “spine contention” against Uniform Civil Code is that it does not support the idea of “Secularism.”²⁰⁷ Having separate laws for each religious sect has created inequality among people on the basis of religion. Every religion is justified & reasonable as per own interests & orthodox thinking.

It is believed by many that implementation of UCC will contradict **Article 25** and restrict the communities from practicing their religion freely.²⁰⁸ Uniform Civil Code focuses to bind the practices of every religion related to family matters under one shed and not to disrupt the religious beliefs of the people. The modern day youth is forced to assess the benefits and rights under every religion and then declare ones practice as the list contains a varied diversified range of inequalities. For example, A Hindu Man legally cannot have two wedded wives but such practice is no offence for a Muslim Man. Likewise, there are various differences in Adoption Laws, Succession Matters, family business matters, etc.

2.2.1. The Sarla Mudgal Judgement: Indication towards the Need for UCC

The question before the Court of law in *Sarla Mudgal v. Union of India*²⁰⁹ was to adjudge the legal validity of the second marriage. In the present case, a Hindu husband without giving divorce to the first wife, in order to solemnise a second marriage converted himself into a

²⁰⁶ *Ibid.*

²⁰⁷ Shweta Mishra & Amit Kumar Pandey, *Necessity of Uniform Civil Code in India*, 02 J.C.L.J., 23, 25 (2019).

²⁰⁸ *Ibid.*

²⁰⁹ *Sarla Mudgal v Union of India*, A.I.R. 1995 S.C. 1531.

Muslim as it is legally valid for Muslims to have more than one wife. The Court whereas held that, “conversion to Islam and marrying again would not, by itself, dissolve the Hindu Marriage.” The first wife is to be divorced first as by the Hindu Marriage Act, 1955 and then it shall be open to the Husband to marry again. Otherwise, the Husband shall be liable to criminal penalty under **Section 494** of the Indian Penal Code, 1860 for the offence of Bigamy.

Following the decision, J. Kuldeep Singh noted that, “Article 44 has to be retrieved from the cold storage where it is lying since 1949 reiterating that where more than 80% of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of citizens in the territory of India.”²¹⁰ Once again recognising the need for Uniform Civil Code, the Supreme Court requested the Government to initiate the development of UCC.

2.2.2. The John Vallamattom Petition

Another indicating judgement was passed by the Supreme Court in the year 2003 trying to influence the need for Uniform Civil Code throughout the Nation. In the case of *John Vallamattom v. Union of India*,²¹¹ the petitioner challenged the constitutional validity of **Section 118** of the Indian Succession Act, 1925. He argued that the provision is imposing unreasonable restriction upon Christian community and is therefore discriminatory in nature. The restriction was with regard to the “donation of property for religious & charitable purposes.” The Apex Court found the provision to be violative of **Article 14 & 15** recognising that there shall not be any discrimination between religious communities and took down **Section 118** of the Act.

Further the then C.J.I. Khare took a note that, “we would like to state that Article 44 provides that the State shall endeavour to secure for all citizens a uniform civil code throughout the territory of India. It is a matter of great regrets that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country.”²¹²

²¹⁰ *Ibid.*

²¹¹ *John Vallamattom v Union of India*, A.I.R. 1995 S.C. 1531.

²¹² *Ibid.*

2.2.3. No Legal Recognition of Adoption Rights of Muslims

In the case of *Shabnam Hashmi v. Union of India*,²¹³ a Muslim activist had approached the Apex Court by way of Public Interest Litigation (PIL) requesting, “To lay down optional guidelines to enable and facilitate adoption of children by persons irrespective of their religion, caste, creed, etc.” The petitioner sought legal recognition as a “parent” of her adopted daughter because in Islam, the system of *Kafala* is followed which only regards the petitioner as a “Guardian” and her daughter a “Ward.” The petitioner has sought recognition as per the provisions of Juvenile Justice Act, 2000 (Amended in 2006) contending that the said Act is secular in nature and provides for every person to adopt a child, irrespective of religion.

The Court favoured the petitioner and held that, “The JJ Act, 2000 is a small step in reaching the goal enshrined by **Article 44** of the Constitution. Personal beliefs and faiths, though must be honoured, cannot dictate the operation of the provisions of an enabling statute. An optional legislation that does not contain an unavoidable imperative cannot be stultified by the principles of Personal Law which, however would always continue to govern any person who chooses to so submit himself until such time that the vision of a Uniform Civil Code is achieved.” The bench also observed that, “the same can only happen by the collective decision of the generations to come to sink conflicting faiths and beliefs that are still active as on date.”²¹⁴

2.2.4. The Sabarimala Incident: An Abomination to the Country

The historic case of *Indian Young Lawyers Association v. State of Kerala*²¹⁵ was the most recent dispute where the Sabarimala temple authorities argued that, “the presiding deity Lord Ayyapa is a celibate which is why women of ‘menstruating’ age shall not be allowed entry into the temple on account of purity.” The Supreme Court observed such practices to be legally void & unconstitutional and struck down the ban on the entry women into places of worship. The Court in the original petition filed in the year with the ratio of 4:1 opined that, “We have no hesitation in saying that such an exclusionary practice violates the right of women to visit and enter a

²¹³ *Shabnam Hashmi v Union of India*, A.I.R. 2014 S.C. 1281.

²¹⁴ *Ibid.*

²¹⁵ *Indian Young Lawyers Association v State of Kerala*, (2019) 11 S.C.C. 01.

temple to freely practise Hindu religion and to exhibit her devotion towards Lord Ayyapa. The denial of this right to women significantly denudes them of their right to worship.” Further it was observed that, “any exception placed on women because of biological differences violates the Constitution; that the ban violates the right to equality under **Article 14**, and freedom of religion under **Article 25**.”

Even though the Judiciary has taken a positive step in favour of promoting the equality of women, this case particularly reflected that after all, even the modern India is not so modern. Biological processes in human body like Menstruation Cycle can also be one of the factors promoting discrimination between a man & a woman is a pity to witness. It is a shame to see that how all those Women Empowerment campaigns are encouraged, motivating daughters of the Country to be the one who can break all world records but still your menstrual process makes you inferior to men. Such cases make it more necessary to have a Uniform Code to put an end to such practices. India is a country of diverse religious beliefs and practices and it is an accepted fact that it is what makes it unique but such beliefs shall also evolve through time so as to conform to the modern day norms.

2.2.5. “We, the people of India.....”

The Preamble to the Indian Constitution starts with the note “We, the People of India.....”²¹⁶ which doesn’t bifurcate further between men & women, Hindu & Muslim, or any other differentiation based on caste, color, class, region, religion, etc. The idea was to unite India to promote the feeling of “Justice,” “Liberty,” “Equality,” & “Fraternity” among individuals.²¹⁷ But religion has become a way of competing, making a foe of each other and deciding upon the question of superiority. And this sense of accomplishing superiority is achieved by counting items and length of the list starting the grandeur and offerings of the said religion. In the present day scenario a daily dose of criticisms amongst the religious with regard to their practices and beliefs are a easy fetch. One can always see a Hindu criticising the practice of a Muslim or a Christian and vice-versa. These divisions in society have created war like situations in the Country, a classic example of which can be the *Ram Janma-bhoomi & Babri Masjid* land dispute; a fight between two communities to prove dominance & superiority of beliefs and

²¹⁶ INDIA CONST. preamble.

²¹⁷ INDIA CONST. preamble.

traditions. Religion shall be understood as a means to achieve mental peace & harmony and a sense of meditation between the supernatural and mere humans but not as a means to achieve sense of superiority by creating competitions and further rift amongst people.

Uniform Civil Code doesn't guarantee to end the differences amongst the religions, genders or communities as there always will be issues regarding the political, social and economic stands. But it surely would minimise the legal disputes between families, accumulate the thinking of the young generation, and bring National Integration. It shall be understood that the present society is driven by the trends of modernisation and their social attitudes understands the principles of universal & evergreen equality. A young aspirant would be an asset to the Nation only if he is free to choose his religion not by comparing the legal benefits but by recognising the best belief system to attain true prosperity.

CHAPTER 3

Uniform Civil Code: Way to Secularism?

The main argument against the implementation of Uniform Civil Code is that it would violate the doctrine of “Secularism.” UCC is seen as a tool by which the State it is trying to interfere in the “freedom of religion & affairs of religious denominations” as guaranteed by the law of the land under **Article 25 & 26**. It shall be strongly recommended that **Article 44** does not aim to disrupt the connection between a man & God rather it aims to solve the disputes between humans themselves. As also rightfully opined by the Apex Court in the case of *S.R. Bommai v. Union of India*,²¹⁸ through J. Jeevan Reddy that, “religion is the matter of individual faith and cannot be mixed with secular activities, Secular activities can be regulated by the State by enacting a law.”

The Uniform Civil Code is indeed a way to achieve Secularism. It intends to create a society where there is no discrimination between & among religions but equality in the personal & family matters of individuals. UCC will not in any case, force a Muslim to perform “*Saptapadi*” or a Hindu to perform “*Nikah*.”²¹⁹ The religious practices and beliefs are secured, it is only the

²¹⁸ S.R. Bommai v Union of India, (1994) 3 S.C.C. 01.

²¹⁹ *Supra Note 54 at 26.*

matters which tend to create differences or discrimination among religious groups will be governed by the Code. But as everything in the world, Uniform Civil Code is also no perfect solution considering the present variances in thinking of the society.

It was the ratio of the bench in *Sarla Mudgal* case that, “Article 25 is very widely worded. Religion is any faith or belief. The Court has expanded religious liberty in its various phases guaranteed by the Constitution and extended it to practices and even external overt acts of the individual. Religion is more than mere matter of faith.”²²⁰ Interpreting this, it can be said that matters of marriage, divorce, inheritance, etc. shall be considered as much of religious belief & faith. But further it was also observed that, “Religious practices violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms are not autonomy but oppression. Therefore, a unified code is imperative both for protection of the oppressed and promotion of national unity and solidarity.”²²¹

The Uniform Civil Code in no way offends the principle of Secularism rather promotes it. As interpreting the Constitution of India and various precedents given by the Apex Courts, it is very much clear that the State can direct secular activities to be proper by enacting the necessary laws and that it is the duty of the State to secure National Integration if and so it involves interfering in the religious matters to eradicate the obstructions.²²² It is available by the law that if larger public interest is in question, freedom under **Article 25 & 26** can also be limited.²²³ It is important to understand that Uniform Civil Code is no obstruction to religion but it is a way of sanitizing the orthodox practices as per modern societal beliefs & principles of equality.

3.1. Results/Implications of UCC, if enforced in India

3.1.1. Equality will be held in high esteem

A law commonly applicable to the population of the Nation will secure the ends of equality and demoralize discrimination on the basis of sex, caste, religion, etc. Prosperity in superior terms will abide by the principle of “Esprit-de-corps”.

²²⁰ *Supra Note 56.*

²²¹ *Ibid.*

²²² *Supra Note 34 at 211.*

²²³ INDIA CONST. art. 25. cl. 2.

3.1.2. Promotion of National Integration

Implementation of the Uniform Civil Code will unify all the laws and weave all the nationals in one web. Utilization of tags like “special status” used to politicize thoughts and outcomes pursued by particular communities, will be discouraged.

3.1.3. Dominance clubbed to indistinguishable domain

Lives of minorities as well as public figures will be held aloof of contrast. Class difference will be eradicated and kept clear of discrimination which was in the past based on the norms believed and followed by the majority or upper-class groups. The aggrieved and victimized classes will now stand on a pedestal of equal length and density with those belonging to higher communities relying its weight on the Uniform Civil Code.

3.1.4. Outlook of the younger generations matched to a melody

The young population will be raised in a refined society where they can achieve their full potential and accomplish greater growth single minded. Without the influence of human made bifurcations, youth around the nation would steed the country towards amelioration of the general public, exploiting their flair on unbiased platforms.

3.1.5. Religious Freedom compromised and yielded

Implementation of the Uniform Civil Code can be widely considered as encroachment and interference of the State into personal and religious freedoms which have been followed by the communities over the years as traditions. The code can be deemed as a threat to conventions

that have been standing long enough to predict a consequence of wide spread danger to the humanity.

3.2. Suggestion/Recommendation

It is indeed a difficult task to ascertain the ingredients of such unified law because each sect of personal law is determined upon different belief, custom & practice which had its root in ancient biblical times. The core objective of this law shall be to strike a balance between religious sentiments and principles of human rights & dignity. As regards to application of such a law Dr. B.R. Ambedkar rightfully quoted, "It is perfectly possible that the future parliament may 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."²²⁴ The Application of the Uniform Code shall be parallel to the religious law or practice. Meaning thereby, UCC shall not in any case negate the option to an individual the availability of opting and practicing his religious law. In other words the religious law system shall not be wholly erased from existence, it shall exist parallel to the Civil law system and shall also be enforceable in the court of law if circumstances provide for such interference.

CHAPTER 4

Conclusion

“Desperate times call for desperate measures”. It is nothing short of appropriate to abjectly stress upon the despairing need to raise the concept of Uniform Civil Code beyond mere words and weights in paper, to match pace with the present day society and ensure continuing tranquillity. Commitment to the proposal of The Uniform Civil Code by all the citizens of India has to be deliberately woven with perspectives of liberalism and prosperity. Considering the depth and prospective outlook involved, codification of this idea should be amicably rejoiced. To achieve the desired results of acceptance, people of the nation should overlap their thoughts

²²⁴ *Supra Note 26.*

with nationalism and aim to blend the code into the running system by adapting to changing times in the right frames of mind and reasonable time. A prominent hurdle for implementation of the Uniform Civil Code would be the diversified cultures, manifold religions and varying communities that reside in the nation. But, to safe guard the integrity of The Constitution of India, people need to expand their legion of outlook and adapt to the dynamic adjectives. The Uniform Civil Code owes its grandeur to the duty of the government to maintain peace and order but also strike a balance with fortifying the honour of The Constitution. Hence, its implementation demands immense efforts in the way of educating people and creating awareness with regard to the Socio-political issues and promote religious mobility. The Minorities who have since forever lived in the fear of being victimized to marginalization and loss of identity should be sufficiently addressed and comforted by building up unshakable faith in the government for proper treatment and providing solutions for increasing concerns. The Uniform Civil Code is a modern day initiative to match the need of the youth of a Nation which also demands modernised practise of law by the makers themselves. The true spirit of Secularism is recognised when the divergent religions harmonise and justify The Uniform Civil Code as the final destination to uphold solidarity. The initiative maybe an altruistic approach by the government but its existence and credibility purely depends on the much necessary adaption of the people.

“Uniform Civil Code shall not only by the endeavour of the State but shall necessarily be by the Will of the people.” – Akshat Mittal.