

UNIFORM CIVIL CODE – A WAY FORWARD

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ABSTRACT

The paper explores the complex dynamics surrounding the application of the Uniform Civil Code (UCC) in India, amidst its varied religion and culture. It begins by highlighting India's historical diversity and the unity enshrined in the Preamble. The historical context of the UCC's inception is referred, tracing its roots to the colonial era and subsequent Constitution Draft committee's debates. The conflicts between secular constitutional provisions and personal laws are examined, analysing whether a balance can be struck between the two. Examples such as the Mohd. Ahmad Khan v. Shah Bano case and subsequent legal developments are analysed where the judiciary highlighted the importance of UCC to address gender inequality and uphold constitutional principles.

The paper also explores the constitutional basis for UCC, highlighting conflicts between the directive principles of state policy and fundamental rights. While personal laws are protected under Article 25, they often clash with principles of equality, secularism, and the right to a dignified life outlined in Articles 14, 15, and 21. The abstract suggests that a UCC could reconcile these conflicts by promoting equality, secularism, and uniformity in application of law on personal issues. Benefits of implementing a UCC are discussed, including the promotion of equality, secularism, and uniformity across diverse communities. By identifying patriarchal practices, gender discrimination and promising equality before law, UCC could foster national unity and uphold constitutional principles. Challenges to implementing a UCC are also examined, such as conflicts within the Constitution, cultural diversity, and political opposition.

The research presents an overview of the historical, legal, and social complexities surrounding application of UCC in a diverse nation like India. The need for a balanced approach as per Bentham's Utilitarian theory which respects individual's rights while preserving and advocating national unity and secularism is highlighted herein.

KEYWORDS – Uniform Civil Code, Gender Justice, Constitutional Law, Secularism

1. INTRODUCTION

We as Indians have taken pride in using the quote 'unity in diversity'. India was a diverse nation before independence with many provinces with their own culture and customary laws and remained so after independence as well. Multiple dynasties, invasions, Mughal rule, and colonialism contributed to Indian diversity. India got united for the freedom struggle and after independence "We, The People of India"¹ adopted, enacted, and gave ourselves the Constitution. The Preamble mentions of promoting 'fraternity' for 'unity' of the Nation. The spirit of 'unity' is rooted within the constitution as it is the fundamental duty of every citizen to uphold and protect the unity of India.² Fundamental duties also imposes duty on its citizens to "promote harmony and the spirit of common brotherhood amongst all the people of India transcending

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¹ INDIA CONST. Preamble.

² INDIA CONST. art. 51A, cl. c.

religious, linguistic and regional or sectional diversities”³ Thus, India united to fight for freedom and remained united after independence, maintaining distinct flavour of diversity.

However, when there are debates to strive for structural unification of the nation by imposing equal laws all, specifically when the laws target the personal life of individuals, it is seen as an attack on diversity. One of the common arguments that floats is that every citizen cannot be bound by same personal laws because of different core cultural and religious practices. For example, customary laws related to inheritance and marriage of Hindus and Muslims are strikingly different. The Constitution asks, “ the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”⁴ Some scholars argue that people have right of practising and professing their customary laws according to Article 25 of the Constitution of India and the same is part of the “ basic structure” of the Constitution of India. Other scholars oppose this argument as they consider Rule of Law as “ basic structure” and the fundamental rights to practice customary laws is subject to rule of law. There is an inception like situation brewing within the Indian Constitution regarding rule of law, Article 25 and 44.

This article tries to answer what is Uniform Civil Code ((herein referred as UCC) and identify friction between a citizen’s personal rights and secular constitutional provisions, analysing whether the scale is balanced or tilted when rule of law (secular law) is on one end and preserving the diverse flavour of nation (personal law) is on the other. Further, the utility, problems, and challenges in implementing UCC in a diverse nation like India are discussed.

1.1. OBJECTIVES OF STUDY

The objective of this study is to explore the complexities and potential benefits of implementing UCC in India. The research seeks to dissect the inherent conflicts between personal laws and the secular constitutional provisions, examining how these conflicts affect the rule of law and societal harmony. By analysing historical contexts, key legal precedents, and contemporary debates, the study aims to highlight the friction between individual religious rights and the state’s duty to uphold secularism and equality.

The study delves into the origin of UCC in India, tracing its roots back to the British colonial period and the subsequent legal reforms post-independence. It examines the constitutional framework, particularly Article 44 of the Directive Principles of State Policy⁵, which advocates for a UCC, and contrasts this with the protection of personal laws under Articles 25⁶ and 29⁷ of the

³ INDIA CONST. art. 51A, cl. e.

⁴ INDIA CONST. art. 44.

⁵ *Id.*

⁶ INDIA CONST. art. 25.

Fundamental Rights. This juxtaposition underscores the persistent legal and social dilemmas in reconciling individual freedoms with collective national interests.

Furthermore, the study scrutinizes landmark Supreme Court judgments, such as the *Shah Bano*⁸ case, which underscored the necessity of a UCC for ensuring gender justice and national unity. These cases illustrate the judiciary's role in advocating for a uniform legal framework that transcends religious boundaries to promote equality and secularism. The analysis extends to the various benefits of a UCC, including the elimination of gender-based discrimination, the unification of diverse legal practices, and the enhancement of national solidarity.

Additionally, the study addresses the practical challenges and societal resistance to implementing a UCC, considering India's vast cultural diversity and the potential political repercussions. It emphasizes the need for a phased and inclusive approach, recommending that reforms initially target the most discriminatory aspects of personal laws while gradually moving towards comprehensive uniformity. This pragmatic strategy aims to balance respect for cultural diversity with the pursuit of constitutional values of equality and secularism.

In conclusion, the study aspires to contribute to the ongoing discourse on UCC by providing a nuanced understanding of its implications, challenges, and potential pathways for implementation. It advocates for a balanced approach that harmonizes personal laws with the constitutional mandate, ultimately fostering a more just and unified legal system in India.

2. RESEARCH METHODOLOGY

This research paper employs a doctrinal research methodology, heavily relying on existing literature and law journals. It also incorporates commentaries, case comments, newspaper articles, viewpoints from various legal jurists, and case law pronounced by the Supreme Court of India. Given the scope and nature of the research, the paper aims to be solution-oriented, utilizing extensive internet sources and e-book references to support its findings.

3. CONTENT ANALYSIS

The examination of legal materials, including statutes and case law, is crucial in understanding the need for and implications of a UCC in India. This analysis explores key legislations and landmark judgments that highlight the ongoing tension between personal laws and constitutional principles of equality and secularism.

⁷ INDIA CONST. art. 29.

⁸ Mohd. Ahmed Khan v. Shah Bano Begum and Ors., A.I.R 1985 S.C. 945 (India).

Several landmark cases underscore the judiciary's stance on personal laws and the necessity of a UCC. In *Mohd. Ahmed Khan v. Shah Bano Begum*⁹, the Supreme Court granted maintenance to a Muslim woman beyond the iddat period under Section 125 of the CrPC¹⁰, highlighting the inadequacy of personal laws and sparking a nationwide debate on the need for a UCC to ensure justice and equality. Following the *Shah Bano* case, the Muslim Women (Protection of Rights on Divorce) Act, 1986¹¹ was enacted to restrict Muslim women's maintenance rights. In *Danial Latifi v. Union of India*¹², the Supreme Court interpreted this Act to ensure it did not violate the fundamental rights of Muslim women, thus harmonizing personal laws with constitutional principles.

In *Sarla Mudgal v. Union of India*¹³, the Supreme Court emphasized the need for a UCC to prevent the misuse of personal laws, particularly in cases of bigamy. Hindu men converting to Islam to practice polygamy were evading their monogamous obligations under Hindu law, prompting the court to call for a unified legal framework to promote gender justice. *Shayara Bano v. Union of India*¹⁴ marked another significant milestone. The Supreme Court declared the practice of triple talaq unconstitutional, viewing it as a violation of Articles 14¹⁵ and 21¹⁶. This judgment emphasized that personal laws must conform to constitutional values, advocating for reforms to protect individuals from arbitrary and discriminatory practices.

Further reinforcing the necessity for a UCC, the court in *Lily Thomas v. Union of India*¹⁷ dealt with issues of bigamy and fraudulent conversions, reiterating that personal laws should not undermine constitutional mandates of equality and secularism. *John Vallamattom v. Union of India*¹⁸ also highlighted this need when the Supreme Court struck down Section 118 of the Indian Succession Act¹⁹, which imposed restrictions on Christians in bequeathing property for religious uses, underscoring the need for uniform laws governing succession and inheritance to eliminate discrimination based on religion.

The UCC finds its constitutional basis in Article 44 of the Directive Principles of State Policy, urging the state to secure a UCC for its citizens. Although not legally enforceable, this provision underscores the importance of

⁹ *Id.*

¹⁰ The Code of Criminal Procedure, 1973, No. 2, Acts Of Parliament, 1974 (India) § 125.

¹¹ Muslim Woman (Protection of Rights on Divorce) Act, 1986, No. 25, Acts of Parliament, 1986 (India).

¹² *Danial Latifi v. Union of India*, A.I.R. 2001 S.C. 3958 (India).

¹³ *Smt. Sarla Mudgal v. Union Of India*, A.I.R. 1995 S.C. 1531 (India).

¹⁴ *Shayara Bano v. Union of India*, A.I.R. 2017 S.C. 1388 (India).

¹⁵ INDIA CONST. art. 14.

¹⁶ INDIA CONST. art. 21.

¹⁷ *Lily Thomas v. Union of India*, (2000) 6 S.C.C. 224 (India).

¹⁸ *John Vallamattom v. Union of India*, (2003) 6 S.C.C. 611 (India).

¹⁹ The Indian Succession Act, 1925, No. 39, Acts of Parliament, 1925, § 118.

a uniform legal framework to ensure equality and secularism in personal matters. Various statutes highlight gender disparities entrenched in personal laws. The Hindu Succession Act, 1956, and its 2005 amendment aimed to provide equal inheritance rights to women, allowing daughters to inherit ancestral property and act as Karta of the family.²⁰ In contrast, the Muslim Personal Law (Shariat) Application Act, 1937²¹, governing Muslim personal laws in matters of marriage, divorce, and inheritance, still permits gender discrimination, such as unequal inheritance rights for daughters. The Special Marriage Act, 1954 allows individuals of different religions to marry without renouncing their respective religions, demonstrating how secular laws can coexist with personal laws without infringing on religious freedoms.²² The Muslim Women (Protection of Rights on Divorce) Act, 1986²³, enacted in response to the *Shah Bano*²⁴ case, highlighted the complexities and conflicts arising from personal laws, bolstering the case for a UCC.

Christian personal laws have undergone significant scrutiny and reform through statutes like the Indian Divorce Act, 1869²⁵, and the Indian Christian Marriage Act, 1872²⁶, addressing discriminatory provisions against women.

The Law Commission of India in August 2018 submitted its report saying that the UCC is neither necessary nor desirable at this stage in India²⁷. The report focused on the discriminatory laws rather than addressing the need for UCC.

The analysis of case laws and statutes reveals persistent gender biases in personal laws and judicial advocacy for a UCC. The proposed UCC aims to harmonize these laws with constitutional principles, ensuring equality, secularism, and justice for all citizens, irrespective of religious affiliations.

4. ARGUMENT AND DISCUSSION

4.1. BIRTH OF UCC IN INDIA

After the colonisation, when the British Raj took the control of governing India, they brought in uniform laws for a smooth administration of the nation such as

²⁰ The Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956, (India), as amended by the Hindu Succession (Amendment) Act, 2005, No. 39, Acts of Parliament, 2005 (India) § 6.

²¹ Muslim Personal Law (Shariat) Application Act, 1937, No. 26, Acts of Parliament, 1937 (India) § 2 – Application of Personal Law to Muslims.

²² The Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

²³ Smt. Sarla Mudgal, *supra* note 13.

²⁴ The Code of Criminal Procedure, *supra* note 10.

²⁵ The Indian Divorce Act, 1869, No. 4, Acts of Parliament, 1869 (India).

²⁶ The Indian Christian Marriage Act, 1872, No. 15, Acts of Parliament, 1872 (India).

²⁷ Law Commission of India, *Consultation Paper on Reforms of Family Law*, Press Information Bureau, Government of India, (Feb. 05, 2024, 9:32 AM), <https://archive.pib.gov.in/documents/rlink/2018/aug/p201883101.pdf>.

laws relating to contract evidence, and criminal laws. This was the introduction of structured uniform code. However, during the British empire, the personal laws remained untouched, except for prohibition of some customs such as sati.

After the Independence, when the Constitution was being drafted, the members sub-committee on the fundamental rights were asked to make personal drafts. Dr. B.R. Ambedkar along with few other members proposed on adopting a UCC. The sub-committee proposed on dividing these rights in two categories, justiciable and non – justiciable. UCC was added to the later group. Thus, when the Constitution was enacted, Article 44 provided for UCC but the same was not essentially legally binding as it was part of Directive Principles of State Policy (here in referred as DPSPs) and not Fundamental Rights.

In 1961, Goa was liberated from Portuguese rule. The Portuguese Civil Code of 1867, a form of UCC, often referred to as Family Law, governs issues such as marriage, divorce, maintenance, adoption, guardianship, succession, and domicile. It applies these regulations impartially, ensuring no discrimination against individuals. This is an example that UCC does not destroys the personal law but is complementary with latter in its combined form. For instance, The Code of Gentile Hindu Usages and Customs of Goa of 1880 was for the interest of Hindus living in Goa and is still not revoked, even though rarely used by people²⁸. This combination of personal laws has been suggested by Jawaharlal Nehru and his supporters and women members during the post-colonial era.²⁹

Time and again, the debates surrounding UCC flare up. When the Hon'ble SC passed the landmark *Shah Bano*³⁰ judgement granting right to Muslim women to seek maintenance under sec.125 of CrPC³¹ as under Muslim personal laws, maintenance for wife is limited till Iddat period. The court observing the importance of a UCC to unite the nation, recommended the government to draft laws relating to marriage, divorce, inheritance, maintenance, etc. as secular common laws with universal application. It was a positive move towards gender-based justice and a key development of personal laws. In *Sarla Mudgal*³² and *Lily Thomas's*³³ case, the Hon'ble SC again pointed out the need to have UCC to eradicate the practice of bigamy as non- Muslim men were adopting Islam only to take benefit of legality of bigamy in personal laws.

²⁸ Dário Moura Vicente, *Family Law In Goa After The Act Of 2012: Key Concepts In The Portuguese Civil Code Of 1867 And The Code Of Gentile Hindu Usages And Customs Of 1880*, Faculty of Law, University of Lisbon, (Jan. 01,2024, 05:08 PM), <https://www.fd.ulisboa.pt/wp-content/uploads/2020/02/Goa-FAMILY-LAW-IN-GOA-AFTER-THE-ACT-OF-2012.pdf>.

²⁹ *Id.*

³⁰ The Code of Criminal Procedure, *supra* note 10.

³¹ *Id.*

³² INDIA CONST., *supra* note 15.

³³ The Indian Succession Act, *supra* note 19.

Later, in 2017, the Hon'ble SC in a wave changing case of *Shayara Bano*³⁴ made triple talaq unconstitutional aiming for equality and to protect women from this arbitrary divorce.

Some argued that the State or courts cannot temper personal laws, other called upon the need for secular laws using the tool of UCC for gender justice.

4.2.CONFLICT BETWEEN UNIFORM CIVIL CODE AND PERSONAL LAWS – WHERE DOES THE BALANCE LIES?

The conflict between a UCC and personal laws in India is deeply rooted in constitutional principles, religious practices, and societal norms. The Rule of Law, a cornerstone of democratic governance, ensures equality before the law, a principle enshrined in Article 14 of the Constitution. Yet, historical religious practices such as Sati, Devadasi, child marriage, and dowry were recognized under customary laws, contradicting constitutional principles and violating human rights. Legal interventions such as 'The Bengal Sati Regulation, 1829' and 'The Dowry Prohibition Act, 1961' sought to criminalize these practices, aligning with constitutional values.

In Islamic law, practices like Nikah Halala, Muta'h marriage, and triple talaq have raised concerns due to their discriminatory nature and violation of human dignity. Nikah Halala mandates a divorced Muslim woman to marry another man, consummate the marriage, obtain a divorce decree, and observe iddat before remarrying her ex-husband. Muta'h Marriage, akin to temporary prostitution, and triple talaq, a unilateral form of divorce, have faced legal scrutiny. The Hon'ble Supreme Court's decision in *Shayara Bano v. Union of India*³⁵ declared triple talaq unconstitutional, subsequently outlawed by the Parliament through The Muslim Women (Protection of Rights on Marriage) Act, 2019³⁶.

Concerns extend to maintenance and inheritance laws, particularly in Muslim personal law, where women's rights are limited. While the Supreme Court's decision in *Shah Bano* case allowed Muslim women to seek maintenance beyond the iddat period under secular provisions, the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986³⁷, provided limited maintenance rights compared to those under Section 125 of the CrPC. The pending case of *Mohd Abdul Samad*³⁸ addresses whether divorced Muslim

³⁴ INDIA CONST., *supra* note 16.

³⁵ *Id.*

³⁶ The Muslim Women (Protection Of Rights On Marriage) Act, 2019, No. 20, Acts Of Parliament, 2019 (India) § 3 – “ Talaq to be void and illegal. – Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal. “

³⁷ Smt. Sarla Mudgal, *supra* note 13.

³⁸ *Mohd Abdul Samad v. State of Telangana and anr*, W.P.No.6113 of 2019 (India).

women can claim maintenance under Section 125 of the CrPC against their former husbands.

Constitutional provisions guaranteeing freedom of religion under Article 25 are subject to restrictions based on morality, public order, health, and other fundamental rights. Article 25 coexists with Articles 14, 15, and 21, which prohibit discrimination based on religion and ensure the right to a dignified life. However, the prevalence of discriminatory religious practices challenges these constitutional guarantees, necessitating a balance between religious freedom and constitutional rights.

Article 44 of the Directive Principles of State Policy mandates a UCC, aiming for non-discriminatory personal laws accessible to all citizens. However, the coexistence of personal laws, rooted in fundamental rights like Article 25, with the UCC poses challenges. The dynamic nature of the Constitution allows for amendments to personal laws to align with constitutional principles, integrating them into the UCC framework. This approach ensures a balance between religious freedoms and constitutional rights, fostering societal harmony and upholding the Rule of Law. As the society evolves, so should its laws, ensuring justice, equality, and dignity for all citizens, irrespective of religious affiliations.

5. RESULT AND FINDINGS

5.1. BENEFITS OF INCORPORATING UNIFORM CIVIL CODE IN INDIAN LAWS

To quote Dr. B.R. Ambedkar:

*“ 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.”*³⁹

The personal laws, irrespective of religion, are based on social and religious practices which are backed by patriarchy. “ There are many perks of UCC like equality and no gender-based discrimination regarding succession and property laws, women of all the religions will be treated equally in terms of personal practices such as marriage, grounds of divorce, custody and maintenance.”⁴⁰ UCC will enhance the spirit of secularism in the nation. With criminalising

³⁹ Vikas Pathak, *Ambedkar favoured common civil code*, The Hindu, (Feb. 02, 2024, 10:13 AM), <https://www.thehindu.com/news/national/ambedkar-favoured-common-civil-code/article7934565.ece>.

⁴⁰ Vikas K. Choudhary, *The Idea of Religious Minorities and Social Cohesion in India's Constitution: Reflections on the Indian Experience*, Religions, 12, 910, (2021).

bigamy and making it only an exception, will prevent men to convert from one religion to another to take benefit of bigamy. UCC will also decrease the burden of court as uniform law will lead to speedy trials. All these benefits are discussed in detail herein:

i. Equality

“The Hindu women get equal rights in property as per the Hindu Succession Act, 1956 after the 2005 Amendment, i.e. the sons and daughters each get one share”⁴¹. “Father is a class II heir whereas mother is a class I heir”⁴². The Indian Succession Act, 1925 does not discriminate between offsprings on the basis of gender while allotting shares of interstate succession.⁴³ However, the share of male heirs is double as that of female’s in the Muslim personal law, and the share of the mother is half of what the father gets.⁴⁴ In all these three situations, there are different laws applicable to women who reside in the same country. The Indian Constitution proudly provides equality under Article 14, however, because of personal laws, not all the citizens are not treated the same since women are discriminated as to the shares of interstate succession. Muslim women face this dual facet discrimination on two grounds, one based on gender as they get less share than their male counterparts and the other based on religion as women outside Islam get equal share as their male siblings.

Further, it was only in Muslim religion that the husband could announce divorce without giving any reasonable explanation using the practice of triple talaq, which the Hon’ble SC in *Shayara Bano*⁴⁵ declared unconstitutional and was declared illegal by the Parliament by enacting Muslim Women (Protection of Rights on Marriage) Act, 2019⁴⁶. This was done as this practice was against the constitutional principles of Equality and right to life and personal liberty which includes the right to live a dignified life⁴⁷.

Grounds of divorce across the three major religions in India, i.e., Hindu, Muslim and Christians is also discriminatory for women on grounds of religion. Where one religion is more liberal and less rooted in patriarchy, the other is more backed by patriarchal practices and is more restrictive. For example,

⁴¹ The Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956, (India) § 10, Rule 2 – “The surviving sons and daughters and the mother of the intestate shall each take one share.”

⁴² *Id.* The Schedule 2

⁴³ The Indian Succession Act, 1925, No. 39, Acts of Parliament, 1925, § 10, – Where intestate has left child or children only.— “Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there is only one, or shall be equally divided among all his surviving children.”

⁴⁴ The Hindu Succession Act, *supra* note 41.

⁴⁵ INDIA CONST., *supra* note 16.

⁴⁶ Mohd Abdul Samad, *supra* note 38.

⁴⁷ The Hindu Succession Act, *supra* note 41.

adultery is a common ground of divorce for women. However, the application of the same is different. For Hindus, Sec.13 (1) (i) of the Hindu Marriage Act, 1955 recognises adultery as a ground of divorce.⁴⁸ For Muslims, Sec.2 of Dissolution of Muslim Marriages Act, 1939 provides for the grounds for dissolution of marriage, one of them being when husband treats the wife with cruelty, including associated with women of evil repute or leads an infamous life⁴⁹ (i.e., adultery). The grounds of divorce of Christians are codified in The Divorce Act, 1969, where Sec.10 provides for situations when marriage can be dissolved which includes adultery.⁵⁰ Section 27 of The Special Marriage Act, 1954, a secular legislation, applicable to all the citizens provides grounds of divorce which includes if “after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse.”

Thus, the personal and the secular laws acknowledge adultery as grounds of divorce. However, on close inspection of these provisions, one can observe that under Muslim law, the wife has to prove cruelty as well as adultery to obtain a divorce from her husband and the act of adultery can be only with a “women of evil repute or leads an infamous life”⁵¹ Moreover, practices such as Muta’h marriage and bigamy legitimises adultery in a loose sense and is discriminatory towards Muslim women and is targets their dignity.

Regarding maintenance after marriage is dissolved, rights and entitlement of Muslim women are not the same as that of others. While women of other religion can claim maintenance from secular laws such as sec.125 CrPC, the same is restricted for Muslim. The call for claiming maintenance after marriage of Muslim woman is dissolved started with *Shah Bano*⁵² judgement which granting right to Muslim women to seek maintenance under sec.125 of CrPC as under Muslim personal laws, maintenance for wife is limited till Iddat period. This led to enactment of Muslim Women (Protection of Rights on Divorce)

⁴⁸ The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955, (India) § 13 Divorce – “1) Any marriage...on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party- (i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse;...”

⁴⁹ The Dissolution of Muslim Marriages Act, 1939, No. 8, Acts of Parliament, 1939, (India) § 2. “Grounds for decree for dissolution of marriage. —A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely...(viii) that the husband treats her with cruelty, that is to say, - ... associates with women of evil repute or leads an infamous life, or “

⁵⁰ The Divorce Act, 1969, No. 4, Acts of Parliament, 1969, (India) § 10. “Grounds for dissolution of marriage. — (1) Any marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001 (51 of 2001), may, on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent— (i) has committed adultery...”

⁵¹ *Pragati Vargis and etc. v. Cyril George Vergis and etc.* AIR 1997 BOM 349 (India).

⁵² The Code of Criminal Procedure, *supra* note 10.

Act⁵³, 1986 where under Sec.3, Muslim women could claim maintenance in proportion to mahr. Sec.5 of the Act restricts women to claim maintenance under s. 125-128 CrPC.

Therefore, having UCC administering personal practices like marriage, adoption, divorce, maintenance, succession, etc will be a step towards equality and ensuring dignity of every woman across religious and cultural background.

ii. *Secularism*

“ According to the Chairman of the Law Commission, Justice B.S. Chauhan, any reform shall be in conformity with the principles of the Constitution including that of Secularism, Freedom of Religion and Equality.”⁵⁴ Secularism means that the state should not have a religion. India’s rich cultural and religious diversity necessitates a secular and impartial state. Secularism, a principle embedded in the Preamble of the Constitution, is safeguarded by the judiciary as part of Constitution’s basic structure that puts implied limitations on the legislature to alter the fundamental features of the Constitution⁵⁵. This, Indian context, a “ religiously inclusive secularism ” is the foundation of freedom of religion, as guaranteed in Article 25 of the Constitution.⁵⁶ Secularism in India can be understood in two ways: first, as the state’s separation from religion, and second, as the state’s impartiality towards all religions.

In *Kesavananda Bharati*⁵⁷ ” , the judges laid down that “*Religion is a matter of one’s personal belief and mode of worship; secularism operates on a different plane. Freedom and tolerance of religion are only to the extent of permitting the pursuit of a spiritual life that is different from the secular life. The latter falls in the domain of the affairs of the state*”.

The Apex Court interpreted that while constitution supports equal respect for all religions, it also propagates a certain degree of separation of state and religion.⁵⁸

⁵³ Smt. Sarla Mudgal, *supra* note 13.

⁵⁴ Anusha Soni, *Law Commission Chairman on Uniform Civil Code: Each religion would continue to have personal laws*, INDIAN TODAY, (Feb. 02, 2024, 11:19 AM), <http://indiatoday.intoday.in/story/uniform-civil-code-law-commission-chariman-religionpersonal-laws-gender-justice/1/810271.html>.

⁵⁵ *Keshavananda Bharti vs. State of Kerala*, A.I.R. 1973 S.C. 1461 (India).

⁵⁶ Bharath Gururagavendran, *Examining the Fundamental Dichotomies of Personal Laws and Human Rights with Reference to a Growing Consensus for a Uniform Civil Code*, 4, JLPP, 144, 151 (2017).

⁵⁷ *Keshavananda Bharti*, *supra* note 55.

⁵⁸ *Id.*

In *Indra Sawhney*⁵⁹, the court pointed out “ *Secularism envisages a cohesive, unified and casteless society and seems have defined secularism to extend beyond religion and polity* “ .

Justice BP Reddy, in *S R Bommai*⁶⁰ highlighted that “ *in matters of the state, religion was irrelevant. More importantly, here the court strongly held the opinion that secularism undeniably sought to separate the religious from the political*”⁶¹.

Thus, observing all these landmark pronouncements, it is easy to make out that secularism is integral part of the Constitution, and the state is separate from religion. Thus, when there is a conflict between constitutional principles and religious laws, the constitutional principles shall prevail and since the state is secular, discriminatory customs and practices of one religion cannot overpower the constitutional right to lead a dignified life with equal treatment.

One could contend that freedom to practice religion under Article 25 is a fundamental right and thus within the constitutional principle. However, the same is subject to some restrictions and limitations. Thus, in the interest of secularism, every individual should be treated equally despite of personal laws as the personal laws are not superior to the grundnorm, i.e., the Constitution. UCC will enhance secularism as people from across the religions will be subject to a common law, which will promote uniformity as well as unity. The following cases are proof that UCC is needed to promote secularism instead of personal and religious laws.

In *Mohd. Ahmed Khan v. Shah Bano Begum*⁶², as discussed before, the court granted maintenance to Muslim woman beyond iddat period under the secular provisions of s. 125 CrPC. The judges commented on the need of a UCC to address the issue of maintenance among other matters governed by personal laws.

In *Sarla Mudgal*⁶³ and *Lily Thomas*⁶⁴, the Supreme Court while commenting on the practice of adopting Islam for the benefit of bigamy, emphasized the need for a UCC to address personal laws governing different religious communities, especially in matters related to inheritance, marriage and divorce. The court highlighted that UCC could provide equality before the law and strengthen the secular fabric of the nation.

⁵⁹ *Indra Sawhney v. Union of India*, A.I.R. 1993 S.C. 477 (India).

⁶⁰ *S R Bommai v. Union of India*, 1994 S.C.C. (3) 1 (India).

⁶¹ *Id.*

⁶² The Code of Criminal Procedure, *supra* note 10.

⁶³ INDIA CONST., *supra* note 15.

⁶⁴ The Indian Succession Act, *supra* note 19.

Thus, implementing a common law applicable on all citizens, irrespective of religion will strengthen the secular thread of the nation.

iii. Uniformity

A UCC stands as a cornerstone for fostering unity and solidarity within a diverse nation like India, as envisioned by the preamble to the Constitution. The judiciary has recognized the role and need of UCC, while giving a secular interpretation and bent to the personal law for securing gender justice. The courts have stressed on the inclusion in Article 44 of the DPSP. The judiciary has gone to the extent of holding that the time has now come for a complete reform of personal laws and make a uniform law applicable to all people irrespective of their sex, religion and caste. By ensuring uniformity of laws across communities and within them, irrespective of gender, religion, or caste, a UCC upholds the constitutional principle of equality before the law and equal protection. The absence of such uniformity has led to the denial of constitutionally mandated equality, impeding the realization of the fundamental duty enshrined in Article 51A(c) and the overarching goal of national unity articulated in the preamble.

To sum up the benefit of UCC towards securing unity of the nation, observations of Justice R.M. Sahai in *Sarla Mudgal*⁶⁵ case can be quoted. He said:

*“ Ours is a secular democratic republic. Freedom of religion is the core of our culture. Even the slightest of deviation shakes the social fibre. But 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 for promotion of national unity and solidarity.”*⁶⁶

5.2. PROBLEMS AND CHALLENGES TO IMPLEMENT UCC IN INDIA

Justice Gajendragadkar in *Tilkayat*⁶⁷ case said –

*“ What is protected under Articles 25(1) and 26(b) respectively are the religious practices and the right to manage affairs in matters of religion. If the practice in question is purely secular or the affair which is controlled by the statute is essentially and absolutely secular in character, it cannot be urged that Article 25(1) or Article 26(b) has been contravened.”*⁶⁸

⁶⁵ Smt. Sarla Mudgal, *supra* note 13.

⁶⁶ *Id.*

⁶⁷ *Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan*, A.I.R.1963 S.C. 1638 (India).

⁶⁸ *Id.*

The same was cited in *Indian Young Lawyers Association*⁶⁹. In this case, Justice Indu Malhotra, commented “ *The equality doctrine enshrined under Article 14 does not override the Fundamental Right guaranteed by Article 25 to every individual to freely profess, practise and propagate their faith, in accordance with the tenets of their religion.*”⁷⁰

One of the major problems in implementing UCC is the conflict within the Constitution. Article 14 and 15 provides for equality and right against discrimination based on gender and religion among other grounds. However, Article 25 provides for freedom of religion and Article 29 protects the rights of minorities. These are the provisions that back the personal laws. It is not a secret that there were and still are many personal laws discriminatory towards women as discussed above, which in turn violates Article 14 and 15.

Further, the preamble aims towards secularism and unity and the same is included within the Fundamental Duties under Article 51 A (c) and the UCC provided under Article 44, a DPSP. If the principles of secularism and unity override the personal laws using the tool of UCC, Articles 25 and 29 are violated and if personal laws are considered, they may at some instances go against unity and secular intent of the constitution. This ongoing conflict within the constitutional provisions and with the personal laws create a never-ending loop.

The Law Commission of India in August 2018 submitted its report saying that the UCC is neither necessary nor desirable at this stage in India. It also stated that “ *secularism cannot be contradictory to plurality*”⁷¹. The report focused on the discriminatory laws rather than addressing the need for UCC.

Other problems in bringing a UCC to India include cultural diversity and misunderstanding among people as well as challenges in practical implementation. Further, in the era of communal politics, it is important to make sure that the timing is right⁷².

6. CONCLUSION AND SUGGESTIONS

The debate regarding UCC in India is multifaceted, reflecting the intricate balance between unity and diversity, secularism and personal laws, and Constitutional Principles and religious practices. The goal of UCC is to provide equality, secularism, and national unity by establishing a standardized

⁶⁹ *Indian Young Lawyers Association v. The State Of Kerala*, (2019) 11 S.C.C.1 (India).

⁷⁰ *Id.*

⁷¹ Law Commission of India, *Consultation Paper on Reforms of Family Law*, Press Information Bureau, Government of India, (Feb. 05, 2024, 9:32 AM), <https://archive.pib.gov.in/documents/rlink/2018/aug/p201883101.pdf>.

⁷² Koneru Anuradha, *One Nation One Law: Need Of Uniform Civil Code In India*, 3, *IJIRL*, 1, 15-15, (Feb. 06, 2024, 8:47 PM), <https://ijirl.com/wp-content/uploads/2023/08/ONE-NATION-ONE-LAW-NEED-OF-UNIFORM-CIVIL-CODE-IN-INDIA.pdf>.

framework of regulations that apply to personal affairs like marriage, divorce, inheritance, succession and maintenance. However, the implementation of the same faces significant challenges and complexities. The conflict within the Constitution itself along with deeply rooted cultural diversity, political dynamics, and societal norms contribute to the resistance and scepticism surrounding UCC.

Nevertheless, the benefits of UCC in ensuring equality, dignity, and secularism cannot be understated. It would provide a level playing field for all citizens, irrespective of religion or gender, promoting social justice and nation's unification. The judiciary's recognition of the need for reform and its efforts to uphold constitutional values, as evidenced by landmark judgments, highlight the need of moving towards a universal and uniform legal framework.

In navigating these challenges, it is imperative for policymakers to engage in inclusive dialogue, consider diverse perspectives, and address concerns regarding cultural sensitivity and individual rights. A phased approach, focusing on addressing discriminatory practices within personal laws while gradually transitioning towards a comprehensive UCC, may offer a pragmatic way forward. It is suggested that the UCC may target the secular provisions of personal laws such as grounds of divorce, adoption, succession, etc., rather than the procedural religious practices, and whenever there is conflict between personal laws and UCC, the law in the favour for the development of society should prevail. Further, the provisions to make state amendment similar to the criminal laws will help to make the application of UCC more flexible and acceptable as the personal laws are part of concurrent list. Ultimately, the pursuit of a harmonious balance between unity and diversity is central to the pursuit for a just and equitable legal system in India.

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