**A Conceptual Framework and Comparison of Personal Laws in Light of Uniform Civil Code**

***Aishwarya Upreti***

*Postgraduate, University of Rajasthan, Jaipur, India*

DOI: 10.55662/IPLR.2024.903

**Abstract**

Uniform Civil Code refers to a common and uniform civil code, that would govern citizens of India irrespective of their religion, caste, creed, sex or other markers. As of now, Indians are governed by their religious laws in matters of civil law, leading to growing criticism of discriminatory nature of some these laws. It is a hotly debated proposal in India today, with analysts divided over its advantages and disadvantages. This research paper, using secondary research tools, discusses why Uniform Civil Code should be adopted as a law, the factors that led to its need and problems in the current personal laws. The study puts a particular emphasis on the gendered nature of the discrimination present in the current personal laws by comparing Hindu and Muslim personal law, and its implementation in other countries. This would help, both laymen and policymakers, to understand Uniform Civil Code in greater detail and it’ s pros and cons, as well as Muslim and Hindu religious laws, fulfilling the study’s primary objective. In conclusion, using qualitative method, the paper presents a case in favor of Uniform Civil Code and why it is the need of the hour.

# ***Keywords***: *Uniform Civil Code, Hindu Personal Law, Muslim Personal Law, Secularism, Gender Justice.*

1. **Introduction**

The Uniform Civil Code or UCC, is a Directive Principle of State Policy in Article 44 of the Indian Constitution which says “The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India**”.** It proposes to create a common civil code for all citizens of India, governing their personal laws regardless of their religion. It would make the State the sole authority on deciding a person’s civil or personal matter, instead of his/her religious texts or clergies. At the moment, there are separate family laws that regulate the domestic or family affairs of a person based on their religion such as the Hindu Personal Law, Muslim Personal Law, Parsi Personal Law and Christian Personal Law. Sikhs, Jains and Buddhists are included in the Hindu Personal Law. Hindu, Sikh, Parsee and Christian Marriage Laws are codified while Muslim Law is uncodified and based on Sharia. Scheduled Tribes are exempt. The Special Marriage Act, 1954 also exists for civil marriage, which enables people of two different faiths or those that do not wish to have a religious ceremony, to marry.

Uttarakhand has become the first state after Goa to implement the Uniform Civil Code. Governments of various states, such as Gujarat, Madhya Pradesh, Uttar Pradesh, Assam, Himachal Pradesh and Karnataka have spoken about implementing Uniform Civil Code There is a zest all across India to enforce the civil code as soon as possible, even though it is not a law yet. It is a hotly debated topic currently and has its fair share of proponents and opponents making their case for why it should or should not be put into action.

Having various different, tedious personal laws for citizens has been cumbersome to regulate and implement for the State. The laws date back to colonial times and some of them have not been touched much even after independence of India to this date. Because of their archaic history, they are in dire need of reform as they were formulated over a hundred or more years ago, to keep up with the present century. However, due to religious sentiments attached to these laws, the political parties and courts have been hesitant in introducing reforms or modifying personal laws. This has severely harmed the rights of women, especially Muslim women, which is why its particular goal is towards gender justice. (Palepu, 2017)

The Uniform Civil Code would do away with interference of religion in governing a person’s life, and help the state to initiate progressive reforms in line with social & constitutional justice, without worrying about offending religious sentiments. It is much easier to amend a civil code, than the delicate personal law based on religion. It would also bring uniformity, as the name suggests, and prevent discrimination as all citizens would be treated equally under the Uniform Civil Code. A codified, uniform law would make it easier on the courts to adjudicate and give a gentle, yet firm push to gender equality, development and evolution of society.

## **Colonial History**

The history of the UCC goes back to the British Raj. The British were the first to formulate codified laws and penal code to govern the diverse, heterogenous Indians. They oscillated between the non-interventionist policy of Warren Hastings and steady interventionism of Lord Cornwallis. At first, they dug up all religious literature and scriptures, consulted religious priests or clergy and made first, binding personal laws of Hindus and Muslims based on local customs/ traditions, that would be used in a court of law with pandits/ maulvis presiding over the cases of their respective religion. Regulation 1V of 1793 made the use of Muslim and Hindu customs in matters regarding succession, inheritance, marriage, caste compulsory. However, later the British felt there was too much diversity across different regions of India with regard to Hindu customs and practices, and they were not necessarily connected to the idealized legal system of Dharamshastra, leading to Anglo-Indian Hindu Law.

It was Hastings Plan that placed administration of justice in the hands of English judges,that personal laws began changing. ( Parmeswaran, 2020) .The Lexi Loci Report of 1840 created an uproar in the Hindu community, because its purpose was for a Christian convert to be able to inherit his ancestral property and thus, encouraging conversions. This was the first intervention of British into personal/property laws of Indians. It also recommended a common criminal code for all Indians, leaving out the personal laws. Lord Babington Macaulay as law member started the codification of Indian public law from main basis of Cornwallis’s revision in 1837. The Code of Civil Procedure was introduced in 1859, Indian Penal Code in 1860 and Criminal Procedure Code in 1862.The new codes, sought to establish “universal principles of jurisprudence”, based on “a notion of indivisible sovereignty and its claims over an equal abstract and universal legal subject”*.* (Bandopadhyay, 2004). This streamlined judicial procedure, just like the UCC’s goal to streamline personal laws of all religious into one common code.

Agitation over marriage and property laws came from both mainstream Hindu and Muslim society, as well as from communities like Nayars,Tiyyas,Khojas,Momins and Mapillas.( Sarkar & Sarkar,2007)

Reformists like Raja Rammohan Roy of Brahmo Samaj favored a policy of intervention through which the British Raj could abolish heinous practices prevalent like Sati, because only the Raj at the time would be able to do such a task. Hence, the emerging class of educated Indians that later led the Independence Movement preferred steady reforms in the personal laws of Hindus & Muslims. This is why the B N Rao Committee was formed to codify a common Hindu law in 1941 that would be followed all over India. It also recommended a common civil code of marriage and succession for Hindus.

In addition, the origin of the UCC was influenced by similar common codes in European countries like the French code of 1804, which was a uniform code that removed all other prevailing codes.

## **Post-Independence**

One of the most pressing tasks after Independence of India was the drafting of the Constitution and a Constituent Assembly was set up in 1946 for the same with President H C Mookerjee presiding. Members like Pandit Jawaharlal Nehru and Dr B.R Ambedkar among others wanted to implement the Uniform Civil Code to remove religious influence from laws and treat everyone equally under the law without any disparities. However, a strong section of members, largely Muslims, opposed the civil code on every step. The Muslims argued that believers must guide their personal lives according to the Islamic law, i.e., Sharia, as part of their faith and a uniform civil code would crush this and take away their right to practice their religion freely under Article 25 of the Constitution that guarantees them this freedom.

In the aftermath of the bloody Partition, Congress leaders approached the subject of reform in Muslim Personal Law gingerly. They did not want to give any additional grievances to the Muslims who chose to stay back in India and face a Hindu majority, rather than flee to Pakistan. Muslim leaders wanted amendments, if Universal Civil Code was to be implemented, at all costs; this came in the form of Article 35. Mohammad Ismail proposed the following amendment to the then- Article 35:

"Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law." (CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS))

Naziruddin Ahmed, Mahoob Ali Beg, Pocker Saheb and Hussain Imam made similar motions to prevent any interference in personal law. They insisted that “certain civil laws inseparably connected with religious beliefs and practices” and should not be tampered like marriage and inheritance laws. This was refused by B.R. Ambedkar, S.C Majumdar, K.M. Munshi, and Alladi Krishnaswamy Ayyar as it would leave the whole purpose of Uniform Civil Code null and void. The code was being put into place to be able to amend it as per the social climate of the time and move towards a progressive society free of discrimination, which was present in the personal laws. But if personal laws were outside the ambit of scrutiny, reform would be impossible.

The only reason crucial reforms like widow remarriage, ban against female infanticide and age of consent were put into action, was with the course of law. On top of that, they were initiated by the sanction of the British, who did not care about the local sentiment, or needed it as a colonial authority. Now being an independent democracy, it was common knowledge that passing such acts without the approval of people was impossible, no matter how significant it was.

“While Naziruddin Ahmed and Hussain Imam envisaged the possibility of having uniform family laws in some distant future, the other three speakers ruled out that possibility for all time to come”. (Palepu, A critical study on enactment of uniform civil code vis a vis personal laws in India, 2017) Countering them, M. Ananthasyanam Ayyangar asserted that a contractual marriage like the one in Islam is certainly subject to regulation while K.M Munshi rightly pointed out that Muslims in India did not follow the Arabic type of Islam completely, but Indian Islam was a mix of culture and religion. Many Muslim communities like Khojas and Memons, did not want to follow pure Islamic law and were unhappy when the Shariat Act, 1937 was imposed on them. Ambedkar added that until 1937 when the Shariat Act was imposed, North Malabar (Kerala) Muslims followed Hindu- Marakkathayam- law, a matriarchal law of inheritance and in fact “from the North-West Frontier Province, up till 1937 in the rest of India, in various parts, such as United Provinces, Central Provinces and Bombay, the Muslims to a large extent were governed by Hindu law in matters of successions....” (CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-)

They wished to keep following it as they had been doing before the Shariat Act. Moreover, he stated, if India could have the same civil and criminal code for all citizens regardless of religion, there should be no reason to exclude family law from it. This was an excellent point as the Sharia has laws not just for personal matters but civil and criminal matters too, i.e., the punishment for apostasy is death, which is followed in a lot of Muslim countries, but the Indian Islamists did not have a problem with having a non-Islamic law for the latter. If they do not have a problem with not following Sharia in civil/ criminal cases, it is not fathomable why family law would be sacred or exempted.

K M Munshi also gave the example of Muslim countries like Turkey and Egypt, who did not protect the rights of religious minorities and European countries, that already had a uniform civil code. Since the Constitution was inspired from countries all around the world, including these countries, this should be kept in mind. Chowdhury Hyder Hussain, a member of the constituent assembly, wrote that” living under the British rule for about two centuries we have come to consider it only natural for Hindus to be governed by the Hindu law and Muslims to be governed by the Muslim law; but it is wholly a medieval concept”. (Kaur, 2008)

Ambedkar maintained that personal *law* should absolutely be in the purview of the *law*, not religion. “Dr Ambedkar pointed out that the state was only claiming the “power to legislate’ and not an “obligation” to do away with the personal laws” (Palepu, 2017)

In spite of this, the Muslim community did not budge from their stand. Hindu leaders were incensed at having Hindu laws reformed while Muslim Personal Law were dare not touched, leading to widespread protests and opposition from Hindu Mahasabha leaders and others against Universal Civil Code. Jawahar Lal Nehru, who was in favour of UCC at first, was advised to drop it in view of the upcoming elections and keep the same for a later time. The Fundamental Rights Committee headed by Sardar Vallabhai Patel decided that Freedom of Religion was superior to Uniform Civil Code by a 5:4 majority and hence would not be adopted as a law. (Palepu, 2017)

The Assembly mooted the clause proposed by the Muslim members and instead added the now Article 44 as a Directive Principle of State Policy, leading to the resignation by Dr B.R. Ambedkar. ( Jafferlot,2005)

Still, Hindu Law was successfully amended, though it was so watered down that Madhu Kishwar labelled them as “something of a fraud on women”. To get easier approval from the members, it was subdivided into 4 parts – Hindu Marriage Act (1955), Hindu Succession Act (1956), Hindu Minority and Guardianship Act (1956) and Hindu Adoptions and Maintenance Act (1956).

## **Hindu Personal Law: Issues and Concerns**

The modern Hindu law, evolved from Classical Hindu Law and Anglo-Indian Hindu Law. The four main Acts, known as Hindu Code Bills, were passed in the 1950s with regard to Hindu law and are the main reference for Hindu law now.

* Hindu Marriage Act, 1955: With the passing of this Act, the law eliminated polygamy and made divorce officially legal for Hindus, with both men and women having the right to initiate divorce, giving permission for widow remarriage and inter-caste marriage. It also had provisions for a marriage to be valid only if it was consensual, and completed with proper rituals. The age of consent remained 15 for girls and intercourse with wife above 15 years of age was not considered rape. This position of the court has reversed only recently with the SC ruling it as rape. (The Hindu, n.d.) Child marriages, too, were voidable not void until the Child Marriage Act,2016. The government is now proposing to increase the age of marriage for girls from 18 to 21, to make it equal with boys. This would be easier if Uniform Civil Code was implemented, as well as lucrative as it would increase the marriageable age of girls to 21 for all religions, not just Hindus.

Divorce mentioned in the Hindu Marriage Act, 1955 is nearly comprehensive in the Hindu law, but one area where it lags is that the law of divorce is based on the fault theory, where guilt of one party has to be proven in order to be granted a divorce. 17th Law Commission has recommended making a ‘breakdown of marriage irretrievably’ clause to make the divorce process easier, stating “There is no use of keeping two persons tied by the matrimonial relationship when they cannot live peacefully.” (India, 2009)

Hindu Adoption and Maintenance Act, 1956 codifies legal process of adoption by Hindus and issues related to their maintenance. Currently, the HAMA has a lot of restrictive features in regards to the adoption. For example, one cannot adopt more than one child of the same sex or adopt if they already have an existing child of the same sex.

* Hindu Minority and Guardianship Act, 1956 recognizes the husband as the guardian of a minor wife and father as the natural guardian of the child, not mother. Mother can be the natural guardian only in the absence of father, though custody of a child younger than 5 years is usually given to the mother.
* Hindu Succession Act, 1956 marks entire line of descent or heirs from the Hindu male. Upon death of a married woman, her assets will go to husband’s (if not alive) family or his distant relatives instead of her own blood family. Only if no relative in husband’s family is able to receive her asset at all, will the property revert to her kin. Here again, we see an instance of gender inequality perpetuated by personal laws.

Even though the Hindu Code Bills have covered huge milestone, absolute gender equality has not been yet achieved. These hurdles can be overcome with the enactment of Uniform Civil Code, making it easier to reform these laws for all citizens at once.

## **Muslim Personal Law: Issues and Concerns**

The Muslim Personal Law in India is governed by the Muslim Personal Law (Shariat) Application Act 1937, Dissolution of Muslim Marriage Act,1939 and Muslim Women (Protection of Rights and Divorce). It has been long criticized for human rights violations towards women because it is mostly untouched by Indian law.

* Muslim Personal Law (Shariat) Application Act 1937 is the primary legislation for governance of Muslims in India. It compels a husband to fulfil his share of duties, including providing food and accommodation, only if his wife obeys his “reasonable” orders and cohabits. Muslim law puts the age of consent at 15, which means The Prohibition of Child Marriage Act 2006 does not apply to Muslims and marriage of minor girls is allowed. In fact, a girl below 15 can be married with the consent of their guardians (wali). Same applies for “lunatics” as well. This totally renders the prohibition against child marriage a dead letter and gives a grave setback to all efforts against child marriage even in 2022.

Polygamy is recognized and a man is allowed up to 4 wives. Even if a man marries a fifth wife, the marriage would not be void but just fasid (irregular) which would become regular if one of his wives dies. Although a man is allowed to take more than one wife only if he takes the permission of his first wife and can maintain them equally, this is extensively ignored and is only on paper, indicating the uneven application of Islamic law for men and women in real life, where women face the short end of the stick.

Like the Hindu Minority and Guardian Act, Shariat Act places the father as the natural guardian of the child. The mother has the right of Hizanat (custody of minor child) but the guardianship would still remain within the father, who controls the total upbringing of his child from religion to education. After his death, the guardianship passes on to a male relative according to the will left by the father. A daughter gets half the share of a son under Shariat Act

* Dissolution of Muslim Marriage Act, 1939: Prior to this Act, Muslim women could only seek divorce on grounds of false accusations of adultery, insanity or impotency of husband. This Act extended the grounds on which they could seek divorce. But even after its enactment, divorce rights and grounds for Muslim women remained limited. There are various types of divorces recognized under this Act, and very few of them give women the autonomy to initiate divorce proceedings. Talaq-i-Hasan, Ahasan, Isa, Zihar and Tafweez all give husband the power to divorce while women only have the option of khula or Mubarat, but even both of these require the consent of husband. If a woman initiates Khula, she has to give up her Mehr at least partially. Receiving of Mehr, is also subject to wife not being at more than 50% cause of divorce. A Muslim woman has the right to maintenance only until Iddat or three months after divorce, leaving her vulnerable.
* Muslim Women (Protection of Rights & Divorce) Act, 1986: This Act came into place after the controversial Shah Bano Vs. Mohammad Ahmed Khan case regarding maintenance after divorce for a Muslim woman. The local magistrate directed Khan to pay maintenance to his wife and Shah Bano appealed the case in Madhya Pradesh HC for the maintenance sum to be increased, ultimately going to the SC. The Supreme Court upheld her right for absolute maintenance and stressed for the Uniform Civil Code. However, the judgment was nullified by the- then Congress government in the form of the ironically named Muslim Women (Protection of Rights and Divorce) that reaffirmed Khan’s statement that a Muslim man only needed to pay maintenance till Iddat. Even the maintenance was appointed to the responsibility of Wakf Board and in 1987, the Ministry of Social Welfare reported that no maintenance was awarded by the Wakf Board. (Palepu, A critical study on enactment of uniform civil code vis a vis personal laws in India, 2017) This was condemned widely as minority appeasement, a total violation of the principles enshrined in the Constitution and retrogressive step for women’s rights.

It is clear that the Muslim Personal Law has become a hurdle in the path for empowerment of women due to reactionary forces doing everything in their power to halt their progress. It puts the Muslim woman at an inferior and unequal place when it comes to her Hindu counterpart in terms of rights. There is no purpose of outlawing polygamy, child marriage and other evils when it is not applied uniformly and equally to the entire strata of society, and can be practiced in the garb of religion.

## **Legal Battles**

There have been several instances where people have taken to court for the restitution of rights denied to them under their personal laws and highlighted the need for Uniform Civil Code, particularly State of Bombay vs Narasu Appa Mali, Sarla Mugdal Vs Union of India, Ahmedabad Women’s Action Group Vs Union of India and Shayara Bano Vs Union of India, which are pioneers in the fight for gender justice in our laws.

* Narasu Appa Mali Vs State of Bombay ,1951: This case was related to prohibition of polygamy in Hindus while Muslims were exempt under the Hindu law. The court upheld the prohibition as being in line with the right to equality and social reform, with Justice Changla stating “If religious practices run counter to public order, morality or health, or a policy of social welfare upon which the state has embarked, then the religious practices must give way.”. But conflictingly they also held that religious customs, usages and beliefs are outside the ambit of fundamental rights, probably in relation to the non-action on Muslim Personal Law. In 2021, the Supreme Court struck down this argument in the Sabrimala case by counterarguing that “Custom or usage cannot be excluded from ‘laws in force”, significantly declaring that personal laws can be subject to judicial review. (Justice Chandrachud Ends The Unchallenged Reign of a Bombay HC Verdict, n.d.; Times of India, 2012)
* Sarla Mudgal Vs Union of India, 1995: In this case, the petitioner’s Hindu husband had converted to Islam and married another woman. Invoking Article 44, the court stated that there is “no connection between religion and personal law”, and that without divorcing his first wife, he was committing bigamy and could be charged. The confusion arose due to both Hindu and Muslim Personal Law being applicable in the case, since the accused was a Hindu when he married and then converted to Islam. One personal law was codified and reformable while the other was not, underlined the urgent need for Uniform Civil Code to clear up this confusion. Just after this case,” A public opinion was conducted on this issue among 2330 men and women of voting age group in the nine metropolitan cities namely Delhi, Bombay, Calcutta, Madras, Bangalore, Ahemdabad, Lucknow, Hyderabad and Cochin. The opinion poll results showed that an overwhelming majority (84%) of the respondents wants Uniform Civil Code for all citizens irrespective of their religion, where as 73 percent welcomed the Supreme Court’s decision invalidating the second marriage of Hindu husband's converting to Islam. A sizable 64% do not agree with the prime minister that a uniform code should be introduced only if and when the minorities are ready for it. Moreover 61 % of the respondents favoured a unified law even if it means a loss of the Hindu undivided family privilege for Hindus which is a tax saving device under the tax laws.” (Kumar, 2005) This poll indicated that the general majority has been in favour of UCC even before the 21st century.
* Ahmedabad Women’s Action Group Vs Union of India,1997: In 1997 a PIL was filed by the Ahmedabad Women’s Action Group with an aim to challenge the existence of polygamy, Talaq, Shia laws on inheritance and the Women (Protection of Rights on Divorce Act )1986 along with repeal of some discriminatory sections in Hindu Code Bills. The court rejected their argument by citing the Narasu Appa Mali judgment where the court hinted at Uniform Civil Code, instead of individual reforms by court judgement in personal law, which was not permitted by Article 13. The judges dismissed the PIL by implying that the petitioners should knock on the doors of the legislators, not judiciary.
* Shayara Bano Vs Union of India ,2017: This case was dubbed the “Triple Talaq Case”, here, Shayara Bano had been divorced by her husband on the pronouncement of unilateral triple talaq or talaq-e-biddat. She sought to declare this type of talaq as unconstitutional as it was not mentioned in the Quran, and filed a PIL with the Supreme Court. In a landmark judgement, the Supreme Court judges, each of a different faith, along with the Chief Justice, declared the talaq as unconstitutional and called upon the Central government to prepare legislation for its ban. Thus, the Bhartiya Janta Party (BJP) government amended the Muslim Women (Protection of Rights & Divorce) in 2019 to make triple talaq null and void and a criminal offence. The judgment was justified to the effect of “what is bad in theology cannot be good in law” as it found that instant talaq went against the basic tenets of Quran. 22 countries had already banned triple talaq where Saudi Arabia, Brunei, UAE, Libya, Egypt, Iran, Qatar and Sudan have all banned triple talaq despite adhering strictly to Sharia.

Notably, Shayara had petitioned for polygamy and Nikah halala to be outlawed as well but the court did not dwell on it.

1. **Analysis**

“The judicial trend, so far, clearly indicates the reluctance of the Courts to determine the constitutionality of various personal laws on the touchstone of articles 14 and 15” (Palepu, 2017). It seems that the court is in favour of reforming personal laws throughout its judgments but is limited in its power of judicial review by Article 13, that leaves out personal law from the hands of judiciary “ this article by necessary implication recognises the existence of different codes applicable to the Hindus and Mahomedans in matters of personal law and permits their continuance until the State succeeds in its endeavour to secure for all the citizens a uniform civil code..”- Justice Gajendcagadkar. Perhaps the Supreme Court can declare retrograde practises, that are more of a custom than religious, or ones that do not find religious backing, void as per its previous rulings. This would be, however, time consuming and controversial to go through individual reforms one by one and more beneficial to just enforce a Constitutionally backed Uniform Civil Code. The courts have suggested this time and again as with the Allahabad HC directing the Centre to a committee for implementation of UCC quickly and commenting that it cannot be made voluntary, just like Dr Ambedkar had believed; “A common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably, it has the legislative competence to do so”, read the directives of the Allahabad HC.

A plea in the Delhi HC sought a high-level expert committee or commission to speed up the process of enactment of UCC and in April 2021, it was transferred to the Supreme Court which proposed that the draft of UCC would be put up on the internet for 60 days to allow debate and dissent. The 2017 Shayara Bano case ignited a fierce debate on the need for UCC once and for all to design an ameliorated family law applicable throughout the territory of India. A special reference has to be made to the Minerva Mills Ltd Vs Union of India, a stepping stone to the evolution of the tenets of Constitution. The ruling stated the Fundamental Rights have to be harmonized with directive principles as it is within the basic principles of Constitution. It is in accordance with the process of injecting the spirit of Directive Principles into the veins of Fundamental Rights and the Nehruvian two-pronged strategy of legal reforms plus educating the public for any social reform.

Moreover, India has ratified the International Covenant on Civil and Political Rights, 1966, and International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, and thus, it is obligated to ensure gender equality under its national laws but women in India continue to suffer discrimination in the matter of inheritance, maintenance, divorce marriage and divorce under personal laws based on religion.

Religion must be divorced from personal law, and Article 13 violates the spirit of Article 14 and Article 21 by disallowing the judiciary to amend personal laws that discriminate against sections of society. “The existence of multifarious personal law cannot be valid defence when a personal law violates fundamental rights. Application of state power becomes a must when the norms governing interpersonal relations within the family do not accord to guarantee human rights. The 'living law' of the people namely, customary personal law, ought not to live in contradiction to the avowed policies and values enshrined in the Constitutional or against the well intentioned, reformist legislations” (Palepu, 2017). And when that happens, a ‘surgical operation’ through law is necessary. The state under Article 24 has powers to make legislations for social reform in semi religious matters.

The Judiciary has made cardinal strides in the path leading to Uniform Civil Code but ultimately it is up to the legislators to transform the suggestion into a reality as a decisive step towards national consolidation.

## **UCC In the Developed World**

The debate on Uniform Civil Code in India makes one turn to other countries, especially developed countries, to view their perspective on a common civil code and treatment to personal laws.

* France

The French follow the Napoleonic Code, or the French Civil Code of 1804, that is based on the concept of “laicite”. It emphasizes on the division of private and public life i.e.; individuals should not show any symbols of their ethnicity or religion in public to promote neutrality. There are no personal laws governing issues pertaining to the family/ private sphere but a common law for everyone, in accordance with laicite. Statue is the basis of law and custom is secondary.

There is a strict separation of Church and State. Islamic law on personal matters, such as divorce is not recognized.” In 2004, the Cour de Cassation ruled those Islamic divorces are in fundamental contravention of French public policy since they infringe the principle of equality between spouses that is mandated by the European Convention of Human Rights (Article 5, Protocol VII). “ (Law Office of Jeremy D Morley)

* Canada

Canada follows common law except the province of Quebec that follows Napoleonic Code of France. Canadian law does not allow personal laws, for example, like France, Canada does not recognize Islamic divorce. People from all ethnicities and religions must follow the uniform civil code. However, even though there is a codified Canadian civil law in place, in 1991 Ontario passed the Arbitration Act that allowed Shariat councils to adjucate family disputes in accordance with Sharia. This allows a select population to evade the Canadian Charter of Rights and Freedom.

So, even though by and large, there is a common civil code but, in some instances, personal law can prevail.

* United States

Owing to its diversity, states in the United States of America can decide their own laws except for common principles of federal governance. “States establish who may marry (traditionally, a man and a woman), who may not (close relatives, of varying degrees of consanguinity), at what age marriage may take place what legal steps the parties must take to enter marriage, and what legal rights and duties the marital contract entails.” (OxfordHandbook, n.d.) US does not recognize any personal laws, and any religious marriage or divorce must be in accordance with the particular state’s, which has the jurisdiction, laws. Religious ceremonies like enforcement of Mehr, will not be enforced by the US courts.

In fact, the Enforcement Clause of the US Constitution prohibits the consideration of religion in civil law including Jewish halakha, Christian canon law or any dharma. More than a dozen states in the US have banned foreign law from interfering with US civil law.

* United Kingdom

Like the US, France and Canada, UK law also requires religious ceremonies relating to family to be in accordance with the Lexi loci (law of the land), specifically the UK law. Marriages must be officiated by a licensed officiant, and take place in a building built for solemnization of marriages. They must be registered with two witnesses present and registrar. There is an exception for Jews and Quakers.

In the landmark case, Akhter Vs Khan, the court agreed with the husband that Nikkah ceremony was not a valid marriage and was void, but granted financial relief to the wife. UK courts have said time and again that religious law, like Sharia law, will not be included in English civil law or have any jurisdiction in the UK.

* Germany

The German Civil Code remains in place since 1900, and though it runs supreme in all legal subjects it does give importance to personal law in cognizance of German International Private Law. This means in event of a conflict; foreign or religious law would be given consideration but ultimately German Civil Code may prevail.

The application of Sharia varies by country to country in Sharia compliant countries, with some following the classic system of following Sharia as the primary source of law, while some follow Sharia in mixed/ secular systems where Sharia is given consideration in the adjudication of law, but is not the sole authority. Algeria, Ethiopia, Kenya, Libya, Jordan, Bangladesh, Tanzania, Uganda and Morocco give importance to Sharia only in family laws, though Morocco has recently started using Sharia in criminal code as well. The countries that are strictly based on Sharia are in a minority: Saudi Arabia, Iran, Afghanistan, Brunei, parts of Indonesia, Sudan, Nigeria, Libya, Egypt, Somalia, Bahrain, Tanzania, Maldives, Oman, Qatar, Syria and UAE.

Today, the adherence to Sharia by Muslims and Muslim countries is mixed. Most of the time, culture and Islam are followed interchangeably, especially in non-Arabic countries. Sometimes the leniency in following Sharia has been good, such as Iran’s modification to its Sharia system by creating an appeals system and long-term imprisonment instead of physical punishments in some cases, the former not being sanctioned by Sharia.It is interesting to know that, prior to the Islamic Revolution of 1979,Muslim majority Iran had enacted a Uniform Civil Code as early as 1929 and outlawed child marriages and polygamy.In the 21st century, with much upheaval on human rights and liberalism, out of 50 countries with Muslim majority population, only 8 follow Sharia as law. Even in these 8 countries, public sentiment is changing and one may not follow Sharia in day-to-day life or stand for change like the recent, hard won rights of women in Saudi. It is good for certain sections of society, like women, who are disproportionately held accountable for their deeds than men

Most of Sharia is based on Hadiths. With the forceful enforcement of Sharia, Muslims lose their right to choose their individual interpretation of Sharia.” It is a moral religious system, not a legal system.” (Abdullahi Ahmed An-Nai'm, n.d.)

In the face of this, enforcing Sharia in any country as a binding law is not right. Most western countries have already recognized this and so, they use a uniform civil code. With light being thrown on the problems in Indian Muslim communities, specifically women, in relation to these very issues, inarguably points in favour of bringing Uniform Civil Code in India

##

## **Conclusion**

A Uniform Civil Code is in line with the Directive Principles of State Policy and spirit of the Constitution. It would usher in a better future for Indian women of all communities, bringing in uniformity, thus, also strengthening our national unity. It’s a change much needed to align our personal laws to the 21st century. Traditions and customs have never remained static, always evolving with the values of the present time and the need of the hour. Hence, a Uniform Civil Code that streamlines personal laws into one, uniform law for everyone, updated with our current value system, is the need of the hour.

Historically, reform in personal laws have benefited women from various communities, for example low caste Hindu widows and Punjabi widows demanded changes in property and inheritance laws in the late 1800s (Sarkar & Sarkar, 2007). Throughout this paper, we see a gradual escalation in Indian women’s position through these legal reforms, from 1800s to Post Independence to 2024. From having little to no rights in terms of marriage, property and divorce, Indian women have come a long way. As of July 2024, Assam cabinet has abolished Muslim Marriage & Divorce Registration Act to curb child marriages. ( The Hindu,2024) This is another instance of personal law reform aimed at gender justice and betterment of society. With the government mulling over setting the age of possible marriage for women 21 to make it equal with men, Uniform Civil Code would ensure that this and every other provision for the advancement of women, is applied equally across all communities and religions. There should not be any scope of disproportionate reform, that only helps one section of women. This being said, due sensitivity should be taken into consideration while enacting the Uniform Civil Code.

# **References**

*Constituent Assembly Debates* (no date).*Loksabha.* http://164.100.47.194/loksabha/writereaddata/cadebatefiles/C23111948.pdf

‘Early Indian Responses: Reform and Rebellion’ (2019) in *Plassey to Partition and After: A History of Modern India*. Hyderabad, Telangana: Orient Blackswan

*Irretrievable Breakdown of Marriage* (2009) *Law Commission of India.*https://lawcommissionofindia.nic.in/reports/report217.pdf.2009

*Islamic Family Law* (no date) *The Law Office of Jeremy D. Morley.*https://www.international-divorce.com/divorces-in-france-islam.htm

Jafferlot, Christophe (2005).*Dr. Ambedkar and Untouchability*

*Fighting the Indian Caste* *System.*Columbia University Press

Kaur, T.(2008).*Uniform civil code: a perspective socio legal study*.PhD Thesis. Shodhganga. https://shodhganga.inflibnet.ac.in/bitstream/10603/87554/9/09\_chapter%201.pdf.

Kumar, R.(2005).*The uniform civil code under the constitution of India :A critical appriasal*. PhD Thesis. Shodhganga

*Marriage Rights and Religious Exemptions in the United* States (2017). *Oxfordhandbooks.com*.https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199935352.001.0001/oxfordhb-9780199935352-e-19.2017

Palepu, R. (2017).*A critical study on enactment of uniform civil code vis a vis personal laws in India*. PhD Thesis. Shodhganga.

Parmeswaran,L.( 2010). *History of Personal Laws in India*. India Policy Foundation. https://www.ipf.org.in/encyc/2020/11/13/2\_02\_27\_53\_History-of-Personal-Laws-in-India-Papers\_1.pdf

PTI/Updated.( May 8,2012).*A wife should be like goddess Sita: Bombay HC: Mumbai News - Times of India, The Times of India*. [https://timesofindia.indiatimes.com/city/mumbai/a-wife-should-be-like-goddess-sita-bombay-hc/articleshow/13054421.cms. 8](https://timesofindia.indiatimes.com/city/mumbai/a-wife-should-be-like-goddess-sita-bombay-hc/articleshow/13054421.cms.%208)

PTI( July 19,2024). *Assam Cabinet approves Bill to abolish Muslim marriages, divorce Act; Himanta says repeal will be a ‘significant step’ against child marriage*, *The Hindu*.https://www.thehindu.com/news/national/assam-cabinet-approves-bill-to-abolish-muslim-marriages-divorce-act/article68420569.ece#:~:text=%22In%20the%20meeting%20of%20the,registration%20of%20marriage%20and%20divorce%22.

Rajagopal,K.(2021) *With Sabarimala verdict, ‘ghost of Narasu’ is finally exorcised, The Hindu.*https://www.thehindu.com/news/national/justice-chandrachud-ends-the-unchallenged-reign-of-a-bombay-hc-verdict/article61528629.ece. 2021.

Rajagopal, K. (2021) *Intercourse with minor wife is rape, says Supreme Court, The Hindu.*https://www.thehindu.com/news/national/sex-with-minor-wife-is-rape-says-supreme-court/article62036534.ece.

Sarkar,S & Sarkar,T (2007). *Women and Social Reforms in Modern India: A Reader*. Indiana University Press.

*Sharia law*( no date). *Muslims for Progressive Values* .https://www.mpvusa.org/sharia-law