

## Uniform Civil Code: A Tool to Promote Justice, Equity and Secularism

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### Abstract

The paper seeks to discuss those aspects of Uniform Civil Code which have not been discussed to a greater extent in the past. Uniform Civil Code is an unfinished business and time and again the political parties and activists have come out in support of it. But despite the support, the Uniform Civil Code remains a distant dream. The paper seeks to discuss the reasons which have caused delay in the adoption and implementation of Uniform Civil Code and analysis the internal conditions as to determine whether they are conducive to having a Uniform Civil Code or not? Moreover, discussion regarding the potential opposition groups to Uniform Civil Code have also been taken up in this paper.

**KEYWORDS:** Uniform Civil Code, Personal Law, Secularism, Constitution and Judiciary.

### Introduction

It is high time that the government of India should start taking some serious steps towards implementing, at least partially or with respect to some aspects of personal law, the Uniform Civil Code (UCC) as envisaged under Article 44 of the Constitution. The National Democratic Alliance (NDA) government in its 2019 election manifesto had promised that the government would take some significant steps in that direction.<sup>1</sup> However, many political parties have blamed the NDA government for using UCC as a tool to polarize the multi-religious Indian society.<sup>2</sup> Polarize or not, but if India has to advance socially and economically, like all other western secular countries, then Uniform Civil Code is the key. At the same time, it cannot be denied that despite having many advantages there are harsh realities that cannot be ignored. There is no doubt that many communities see UCC as a threat that has the tendency to destroy their culture.<sup>3</sup> Also its forceful implementation may not go down well with certain sections of the society. The leaders of United Progressive Alliance (UPA) have warned the government that UCC may lead to communal unrest, and such warning cannot be side lined keeping in mind the anti-government movement that took place after the Citizenship Amendment Act, 2019. Moreover, not only the Muslim Community, whom the supporters of UCC see as the biggest obstacle, but also the people belonging to different sects of the Hindu religion oppose the UCC.<sup>4</sup> So it is clear that that not only the religious factor but cultural and linguistic factors also play a role in delaying the implementation of UCC.

<sup>1</sup> Sachdev, Akasha, "UCC, Citizenship, Article 35A/370: BJP's Manifesto Light on Legal Reform," The Quint, April 8, 2019

<sup>2</sup> "Uniform Civil Code (UCC): who said what," Times Now Bureau, October 16, 2016

<sup>3</sup> Mathew, C. K., "Uniform Civil Code: the importance of an Inclusive and Voluntary Approach," The Hindu Centre, October 26, 2019

<sup>4</sup> Goyal, Shikha, "What is Uniform Civil Code?" Jagran Josh, August 5, 2020

Despite any type of opposition, the Indian government and the Indian Judiciary has time and again, if not directly, but indirectly has taken steps to harmonize the conflicting personal laws and in that sense have constantly aimed at creating an atmosphere conducive to having an Uniform Civil Code. But whether the conditions are conducive or not is something which is debatable, though the leaders of many parties in India have time and again said that the time is not right to introduce UCC, but their statements are politically motivated rather than influenced by reality.

### **History of Uniform Civil Code**

#### **Hindu Era**

During the Hindu Era civil laws originated from the religion. Since in ancient India, there was only one religion, i.e. Hinduism, so all the social and civil laws were based on the Hindu religion. In the ancient period law was not bifurcated from the religion. The monarchs at that time never interfered with the religious life of the people and never interfered with those laws or those aspects of people's life which were essentially associated with religion. In the Hindu Era the religion and all the other laws originating thereof were determined by the learned sages and priests. They preached about the religion and the laws which would govern the daily lives of the people. In the ancient period civil laws related to marriage, succession, etc. were closely associated with religion. Therefore, in that period people essentially saw marriage, succession, etc. as other aspects of religion.<sup>5</sup>

Since in the ancient period there was only one dominating religion and only one set of civil laws based on that religion, therefore there was no conflict in the society with regard to conflicting sets of personal laws.

#### **Mughal Era**

During the Mughal Era, the foreign invaders who invaded our country followed Islam. When they came to India it became difficult for them to follow the teachings of Caliph who resided in Arabia. In India the Muslim rulers refused to follow the Hindu religion or even to acclimatize to the Hindu way of living. They retained their own religion and laws which originated from Islam. During the era of some of the Mughal rulers, the Islam faith was forced upon the people who belonged to some other religion. As a result, by the time the Mughal rule came to an end there were considerable number of people in India who had switched to Islam and had adopted the Muslim lifestyle including the laws which governed their civil life. Just like Hinduism, even Islam preached its own set of civil laws to govern matters like marriage, succession, adoption, property, etc. During the Mughal era, the two-conflicting set of civil laws, i.e. Hindu civil laws and Muslim civil laws, operated side by side. Though the religion of Islam was forced upon some of the people, but the Mughal rulers never abolished the Hindu religion or the Hindu system altogether.<sup>6</sup>

#### **British Era**

When the British came to India for the first time, they were mostly interested in trade rather than in the political life of the country. When the British Raj commenced, the English people decided to refrain from interfering in the religious life of the people.

<sup>5</sup> Parminder Kaur, "Personal Laws of India vis-a-vis Uniform Civil Code: A Retrospective and Prospective Discussion," [www.lawmantra.co.in](http://www.lawmantra.co.in)

<sup>6</sup> Supra Note 5

They did not interfere in the religious life because they thought that such interference could ignite rebellious feelings against the Raj. However, to secure their rule they came up with certain enactments which were secular in nature, and which covered those subjects which were up till then governed by religious doctrines. These enactments were made applicable on all the people irrespective of their religion and people were required to be governed (with respect to those subjects) by the enactments rather than by their respective religions. For example, the drafting of the Indian Penal Code was one step towards having a uniform and a secular law on crimes and their punishments.<sup>7</sup>

However, apart from these steps the British never took any other step to come up with a uniform set of codes for civil matters which would be applicable on all the people. The British adopted the policy of neutrality and often switched sides between the two religious' groups in order to maintain their supremacy.

### Post-Independence Period

By the time India became independent, it had already been divided on religious lines. The British had been successful in creating the rift between the Hindus and the Muslims which had led to the demand for the creation of Pakistan. During those days there was social unrest and communal tensions in the country. The partition had forced the Hindus from the other side to escape massacre and flee to India and the Muslims to do likewise. However, despite the partition many Muslims chose to remain in India. At that time there was too much of communal tension and therefore the constituent assembly chose to make the Uniform Civil Code a part of the Directive Principles rather than the Fundamental Rights. The constituent assembly believed that it was necessary to let people develop socially before implementing the Uniform Civil Code. If the Uniform Civil Code would have been made a part of the Fundamental Rights, then the minorities would have seen the UCC regime as the tyranny of the majority and a threat to their culture and the same would have led to civil unrest or even a civil war.<sup>8</sup>

However, gradually many sections of the society have started to feel that it is high time to have a Uniform Civil Code. In most of the western and European states there is a common code covering civil matters which is applicable on all. In India over a period the intensity of the demand to have a UCC has escalated and it won't be long before we start to be governed by a common civil code. However the problem that the supporters of UCC will face is that the religious minorities or the cultural minorities will tag the code as "tyranny of the majority", for example the Muslim community may not be satisfied with the traces of Hindu law, if any, in the code that will be imposed upon them and similarly the Hindus may wish to have a code with features of Hindu Law dominating. So, the question is that how far it would be possible for the legislatures to have a code which will satisfy the demands of the Muslims and the wishes of the Hindus? Will the legislature amalgamate the two set of civil laws or will it come up with a code which will be independent of any religious elements? In the case of the latter there are probabilities that such a code may face opposition from the extremist groups of both the religions who would seek to have at least certain elements of their respective personal laws in the code.

### Religion and Law

<sup>7</sup> Supra Note 5

<sup>8</sup> Supra Note 5

To understand the importance of UCC, it is important to first understand and answer the question that, “Whether laws governing civil matters can be independent of religion?” Many experts will answer that question in the affirmative. In all the civilized and secular countries there are laws that govern the civil matters, and they are independent of any religion. It is high time that the concept of religion be restricted to rites, ceremonies and festivals only and other matters which up till now are governed by religion and which are essentially civil in nature be governed by laws that are reasonable, practical and possible to implement. Such laws should be devoid of any religion. It is evident that in many religions, especially with respect to marriages and divorce, laws are quite unreasonable. For example, under the Muslim Personal Law, the women are not at an equal footing with that of men. Practices like “halala” and “triple talaq” (though banned now) do not symbolize a civilized society. In a civilized society, equality, fairness, and reasonableness are necessary elements of any law and laws devoid of these elements will be tantamount to a jungle raj. So, in the 21<sup>st</sup> century we must understand that religious practices as developed over the period of time may prove to be cruel, arbitrary and unreasonable and in some cases barbaric. If we are to have a civilized life, then we have to keep the religion aside and get rid of these practices. Practices like “sati” which were barbaric in nature definitely wouldn’t have made the society civilized and therefore there is a need to have laws which are reasonable and which will regulate the life of the people in a civilized manner and not make their lives miserable.

There is no doubt that all the religions across the globe aim to make the societies civilized but cruel practices, especially with respect to marriages and divorce and other civil matters, are contrary to their aim. In such a case it is necessary that laws governing the daily lives of the people be separated from and devoid of any religious influence.

Anti-social religious practices have the tendency to make the lives of the people miserable. Fortunately, people have started to recognize and raise their voices against such practices, which in a way will lead to uniformity in laws governing civil matters. In a developing state like India, where secularism is the foundation of the Indian society, civilization and welfare should override religious considerations. Laws to govern the daily lives of the people should originate from the legislature and not from the religion and these laws should seek to promote the welfare and all-round development of the people. Religion is important too, but if religious practices are proving to be an obstacle in the all-round development of the people then the same should be curbed. The current trend in secular states is that civil laws are independent of religion which is only concerned with rites and ceremonies. This practice has made most of the secular countries advance in all the spheres. In India, the legislature should abide by this notion that “religion is concerned with rites and ceremonies only” and laws to govern the civil matters should be made keeping in mind the welfare and not religious practices.

So, in many states law has been bifurcated from religion. In India therefore we must understand that religion and laws are two different things, and we must have a law which will be applicable to all and the same will not destroy any religion. The civil matters like property, succession, marriage, divorce, adoption, etc. are those matters with which people are concerned in their daily life and laws which govern them currently and which are based on religion are in most of the cases discriminatory and unreasonable. So, a Uniform Civil Code will get rid of these defects and will ensure

uniform practices across the country. To have a civilized life it is necessary that laws should be based less on religion and more on equity and good concise. Therefore, the reason that religion and laws are separate is another point in favour of UCC.

### Role of Indian Judiciary

When we talk about the Uniform Civil Code in the context of Indian Judiciary or in other words, the Role of Indian Judiciary in the Implementation of the Uniform Civil Code then the Indian Judicial System has played a very supportive role in this field since the post-colonial times. It is observed that the Indian Judiciary by means of interpretation, has been a mode by which the personal laws of various communities have aligned and have made their way towards the implementation of the uniform civil laws. The various Judges of Supreme Court and High Court have played the role of a catalyst in most of the developments related to personal laws under the umbrella of Uniform Civil Code. There have been various instances when major developments took place to harmonize and align the conflicting personal laws. If we look at the cases i.e., *State of Bombay vs. Narasu App Mali*,<sup>9</sup> in this case the statute, i.e. Bombay Prevention of Hindu Bigamous Marriage Act's constitutionality was challenged. This act imposed severe penalty on bigamous marriages by people belonging to Hindu community. The validity of the polygamy was also challenged in this case. It was observed by the court that one community may be willing to accept and implement any kind of laws and social reforms, but it is not necessary that the other communities will be ready and willing to do the same. Article 14 of the Indian Constitution was also discussed and further it was observed that Article 14 does not specifically says that while implementing reformatory statutes, the state legislatures can bring about reformatory laws in stages and such stage wise reforms can be either territorial or community based. So, if any social reform is made by the State legislature, then it is made on reasonable grounds between the Hindu and the Muslim community and it does not violate Article 14. The Hindu Bigamous Marriage Act was challenged on many grounds, firstly that the personal laws of all the religions that are applicable to their respective communities i.e., Hindu, Muslim, Sikh, Christians, Jews, etc., should be compatible and in conformity with the Part III of the Indian Constitution. Secondly, the act was gender biased and against the women as it only allowed polygamy and not polyandry. Where provisions under the Personal laws permit polygamy then the same would be against the Article 15(1)<sup>10</sup> of the Indian Constitution. So it was held in this case that, the legislation was valid and not violative of any article but instead a step towards reforming a particular society and the court also stated that the legislation was a move to promote and secure the Concept of Uniform Civil Code.<sup>11</sup>

In another case of *Zohra Khatoon vs. Mohd. Ibrahim*<sup>12</sup>, there was a substantial question of law which was raised before the High Court of Allahabad. The High Court of Allahabad had cancelled the orders which were passed by the magistrate

<sup>9</sup>[https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewjDp4qd\\_eXrAhVdyDgGHcI9BP4QFjADegQIBBAB&url=https%3A%2F%2Findiankanoon.org%2Fdoc%2F54613%2F&usg=AOvVaw3YJrLMECcSW5vMNxeZz7-v](https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewjDp4qd_eXrAhVdyDgGHcI9BP4QFjADegQIBBAB&url=https%3A%2F%2Findiankanoon.org%2Fdoc%2F54613%2F&usg=AOvVaw3YJrLMECcSW5vMNxeZz7-v)

<sup>10</sup>Pandey, J.N., "Constitutional Law of India."

<sup>11</sup> Parminder Kaur, "Personal Laws of India vis-a-vis Uniform Civil Code: A Retrospective and Prospective Discussion," [www.lawmantra.co.in](http://www.lawmantra.co.in)

<sup>12</sup>[https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewib4ay7\\_eXrAhVuzTgGHSBaDrkQFjACegQIBRAB&url=https%3A%2F%2Findiankanoon.org%2Fdoc%2F528296%2F&usg=AOvVaw0qt4FVktjzMM-25afPcGMY](https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewib4ay7_eXrAhVuzTgGHSBaDrkQFjACegQIBRAB&url=https%3A%2F%2Findiankanoon.org%2Fdoc%2F528296%2F&usg=AOvVaw0qt4FVktjzMM-25afPcGMY)

where, according to the order, the wife couldn't claim maintenance when she is granting divorce to her husband, but the same was cancelled by the High Court. In this case, The Supreme Court held that wife could claim maintenance as per Section 125 of the Criminal Procedure Code and under the personal law as well. The decision of High Court was overruled and hence the Uniform Civil Code was secured in context with the Personal laws.

In case of, *Mohammad Ahmed Khan vs. Shah Bano Begum*<sup>13</sup> which is also known as the *Shah Bano Case*, where it was observed by the Hon'ble Supreme Court of India that Article 44 of the Indian Constitution after this case is more like a dead letter. Further, the decision of this case was very much criticized by the Muslim fundamentalists. In this context, where the fundamentalists pressured the system towards adopting the Muslim Women's (Protection of Rights on Divorce) Act, 1986 which denied the women's right to claim maintenance under Section 125 of Criminal Procedure Code. This was also a symbol that women right had no importance even in a Secular State.

In case of *Sarla Mudgal (Smt.), President, Kalyani and others vs. Union of India and Others*<sup>14</sup>, it was stated by the Supreme Court of India, that the Government of India should have a fresh look at Article 44 of the Indian Constitution and should plan to secure the much needed uniform civil code for its citizens.

Again in case of, *Lily Thomas etc. v, Union of India and others*<sup>15</sup>, which stated that the "Level of Attractiveness" of the Uniform Civil Code cannot be questioned at any point but on the same hand, it can only be achieved or build up only when the level of social climate is maintained at a very strong note, the statesmen who are with the leaders do not care much about their advantage but instead care for the society and work towards the betterment of the society. There have been number of cases as well which have supported the adoption and implementation of the Uniform Civil Code i.e., *Danial latifi and Another vs. Union of India*.<sup>16</sup>

These below mentioned cases which are related to divorce where the courts had declared them as unconstitutional. *Prabhakar vs. Shanti Bai, Ramesh Jangid vs. Sunita and Swapanna Ghosh vs. Sadananda Ghosh* etc.

### **Bypassing Pseudo-Secularism**

In India, if the government cannot implement UCC directly, then it does have an alternate route. After Independence, each religion was permitted to maintain their own personal laws but the Nehru administration had several legislations passed, related to civil matters, which were applicable on all the religions. For example, the Special Marriage Act, 1954 and the legislation enacted in the year 1925, i.e. the Indian Succession Act, 1925. These enactments were applicable on all the Indian Citizens irrespective of their religion. People were free to opt for such laws to be applicable on them and thereby they used to be governed by such legislations only. This enabled the people to abandon their personal laws where they operated against their interest and be governed by those civil laws which were applicable on all and which they were

<sup>13</sup>(1985) 2 SCC 556

<sup>14</sup>AIR 1995 SC 1531

<sup>15</sup>AIR 2000 SC 1650,

<sup>16</sup> AIR 2001 SC 3958

free to choose. This way people aligned themselves with similar civil laws, thus taking a step towards uniformity.<sup>17</sup>

Today, if the government is unable to implement the UCC because of the opposition which they are receiving from the various communities then in that case it would be appropriate to enact laws related to civil matter which would be applicable on all and which people would be free to choose, but the government should not make such laws' application mandatory. It should be left on the people to either adopt such law or refrain from adopting and to continue with their personal law. It is probable that to escape the inequality, discrimination, and harshness that some personal laws inflict, many people will start abandoning their personal laws to be governed by such secular and universal laws.

In India, the government can slowly take steps towards implementing such secular and universal laws for each civil matter. However, its mandatory application on all the religions is not advisable as it will be tantamount to enforcing the Uniform Civil Code, which the minorities and the various communities may see as "tyranny of the majority." Instead the government should let people develop socially till they realize the need to have a uniform civil code and then the mandatory application of such secular and universal laws will not create a problem. It is evident that many personal laws, especially in the Muslim personal law, the Muslim women are subjected to various types of discrimination. To escape such discrimination, as already said, they may be more than willing to switch to such secular and universal laws related to civil matters. However, the government must ensure that the people, especially the women, are able to opt for such laws without any resistance and the government should also make provisions to deal with situations, especially with respect to marriage and divorce, where one spouse chooses the special, secular and universal law and the other spouse chooses to retain its own personal law. It may seem to be difficult in the beginning but slowly people will start adjusting to this new universal legal regime.<sup>18</sup>

However, to ensure its proper applicability and effectiveness the government must ensure that people who opt for such secular and universal laws continue to be governed by such laws and that they do not revert back to their personal laws. If people can opt and switch between laws as per their whims and fancies, then such laws will have no effect and their object to achieve uniformity will be defeated.

This set up may not lead to uniformity immediately but surely one day it will lead to such uniformity. However, the advantage is that such a set up will enable the uniform civil laws and personal civil laws to operate side by side, with people given a choice to opt for the former.

### **Opposition to Uniform Civil Code**

It should be well understood that not only the religious minorities but ethnic and cultural minorities in India also do not see the Uniform Civil Code favourably. As said earlier, they see the UCC as a "tyranny of the majority." The reason why these minorities do not favour UCC is that they fear that it has the tendency to destroy their

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<sup>17</sup>Kumari A. K., "In the absence of Uniform Civil Code, Special Marriage is the best alternative for women," SSRN, January 12, 2007

<sup>18</sup>Supra Note 13

unique identity in the Indian society.<sup>19</sup> Moreover, the identity politics practiced in India has made it even worse, increasing people's inclination and loyalty more towards their cultural principles rather than towards secular principles. In the Hindu religion itself there are many sects and sub-groups, each having a unique culture, an identity and religious practices which include laws governing their civil matters. If a secular code is to be adopted, then the question arises that whether it will be able to satisfy all the sub-groups in the Hindu religion?<sup>20</sup>

There is no doubt that even the some sections of the Hindu religion are also opposing the Uniform Civil Code, the Hindu religion being very diverse it is improbable that any code will be able to align, satisfactorily, all the sections and sub-groups of the Hindu religion.

On the other hand, the Muslim community sees it as a cultural imperialism of the Hindus, who are determined to apply their own civil laws to different parts of the country. However, this is not true. The laws which the NDA government seeks to present can either be independent of all the religions or it may include elements of all the religions. In India, the mistrust between the religious groups and their capitalization by the political parties have caused further impediments in the adoption of Uniform Civil Code.

The amount of opposition that the government will face can be analysed after scrutinizing the opposition which the government faced to have the Citizenship Amendment Act, 2019 passed. There is no doubt that the UCC will be opposed by not only the Muslim political parties and Muslim leaders but also by many sections of the Muslim community. Moreover, RSS' over involvement in the drafting of the Uniform Civil Code and its delay owing to the differences between the Bhartiya Janta Party and the RSS has aggravated the false belief of the Muslim Community that the Uniform Civil code will symbolize the laws which govern the civil matters of the people belonging to the Hindu religion.<sup>21</sup>

Therefore, looking at the number of the people ready to oppose the Uniform Civil Code and the intensity with which it will be opposed, it is not incorrect to say that the time to implement the Uniform Civil Code has not yet come.

### **Position in other Secular Countries**

We must look at the position of the Uniform Civil Codes in Middle Eastern, Latin American, African and European countries, to understand its importance and to also see that whether the codes of these countries would be of any relevance to us or not?

If we talk about the Muslim countries, then in such countries the "Sharia Law" is applicable on all the people. The middle eastern countries do not allow for religious minorities to practice their own laws. By virtue of this, the people in these countries adhere to uniform civil laws as provided under the "Sharia." However, the law relates to only one religion and disregards all the other religions. In India, where we call ourselves truly secular, such a law would not be possible, keeping in mind the

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<sup>19</sup> Krishnadas Rajagopal, "What is the debate on the Uniform Civil Code all about," The Hindu, September 09, 2018

<sup>20</sup> Supra Note 15

<sup>21</sup> Smriti KakRamchandran, "BJP, RSS hope for consensus on Uniform Civil Code", The Hindu, 22<sup>nd</sup> August 2020



diversity and the democratic setup in the country as contrary to the totalitarian setup in most of the middle eastern countries.<sup>22</sup>

In most of the European countries, uniform codes for both civil and criminal matters have been prevalent for a long period of time, though one may find exceptions with respect to family laws.<sup>23</sup> However, the drawback in most of the codes of the European countries, especially those concerning civil matters, is that they are gender biased, promoting patriarchy. In India, we must not forget that the purpose of a uniform civil code is not only to get rid of harsh religious practices and to align the conflicting personal laws but also to ensure the equality between men and women in civil matters. It is evident that most of the personal laws in India are gender biased too and such biasness the Uniform Civil Code seeks to eliminate. However, the European countries have started to get rid of the gender-biased nature of their codes and bit by bit they are making progress in that direction.

Most of the North and West African countries are underdeveloped and devoid of any proper law enforcement machinery. Moreover, most of these countries are Muslim dominated and thus the Muslim legal system prevails in these countries, with little exceptions. These countries have a long way to go before they can have their own set of uniform civil laws.

The nations around the world may have different characteristics and different demographic setup and may be functioning under various conditions, therefore, the need for a Uniform Civil Code should be looked at from the Indian perspective. Whether the time has come to implement a Uniform Civil Code or not should be determined not by looking at the other countries but by analysing our own internal conditions.

### **Uniform Civil Code and Prospective Aspect**

So, if we take the above discussion in consideration, then it is clear that even without having the Uniform Civil Code in India, India and its Judiciary has managed to maintain the uniformity and harmony amongst the conflicting personal laws over the period of time. But unfortunately, most of the citizens of the country and even the academicians related to the same, does not have the knowledge about the same as they have failed to notice the applicability of the Uniform Civil Code in the country and even the state has its own motive for not coming up in front of the people and clearly telling them the actual reason behind not performing anything related to the applicability of the Uniform Civil Code.<sup>24</sup> After reading all these judicial instances it can be said with pride that Indian Judicial System has acted very responsibly, cautiously and has over the time has slowly worked in a manner where they have successfully maintained the harmony between the personal laws and the implementation of Uniform Civil Code in the Country. The Judicial System has worked in a way that it has not conflicted with the various core principles of the personal laws and has dealt with the same in an effective manner without challenging their core status as personal laws. It has been observed that over the time, the Judicial System has slowly implanted little amendments for the longer run or in other words a

<sup>22</sup> Pallov Upadhyay, "Uniform Civil Code around the World," Lex Insider, December 4, 2015.

<sup>23</sup> Werner Menski, "Don't look to the west, India has evolved its own way," The Times of India, September 14, 2017.

<sup>24</sup> Werner Menski, 'The Uniform Civil Code Debate in Indian Law: New Development and Changing Agenda' (2008) 9(3) German Law Journal, at 212-213.

kind of balancing mechanism which makes sure that there is a balance between the Parliamentary intervention and Judicial Activism, which has left the various aspects of personal law as separate entities of the same. Due to this, there has been a very successful implementation of the solutions to all the problems in the personal laws, because of all this, all the personal laws in the country have aligned more than ever due to all the amendments they have a common “un-codified code of conduct.” The personal laws are still different from each other on aspects like religious terms, ethics and identity but are similar on the ground of common code of conduct. The fact is, when we talk about the Indian Muslim law the codification of such a law was not in demand but after the decision of *Shah Bano Case*, the Indian Muslims demanded the codification of their personal law. Though codification has a matter of issue for the people who were the supporters of the idea that there should be only the general law which will govern all the laws but even after creating a separate law for the Indian Muslims, they enacted the law in a way where their respective key points were also taken care of indirectly, for e.g.- where the husband is obliged to provide maintenance to his wife till her last breath or till the time she gets remarried, so the ex-wife was entitled under Section 125 of Criminal Procedure Code but even under the Muslim law under the section 3(a) of the 1986 Act<sup>25</sup>, the husband is liable to pay the maintenance to his wife. *Shah Bano case* had been a very strong example of a good law thus reinforcing the generally accepted principles related to the Social Welfare that ex-husbands are liable to provide their wife with maintenance until the time they die or the remarry.

### **Drawbacks of Uniform Civil Code**

When we talk about the country then India is a secular state which needs a common law, but it has different laws and rules which is based on the various religious practices. So, it is a challenge to convince every religion that they should follow a specific uniform civil code.<sup>26</sup> In terms of gender based biasness, the women are still deprived of their rights under the personal law or in other words it can be said that the general law empowers the Women but then the personal law suppresses the same rights if we talk with respect to succession rights or rights related to inheritance.

With reference to the customary rights, then there are many practices under the personal laws, or the traditional laws based on the customs which are simply contrary to the Rights guaranteed by the Constitution of India.<sup>27</sup> When we talk about the Fundamental Rights, then the Constitution itself says that there is a right to freedom of religion but if Uniform Civil Code would be implemented by the State then it would go against the Fundamental Right of the individual, unless protected by other articles of the Constitution.

If there is to be a uniform civil code then it means that there will be a set of rules for everyone irrespective of their religion which may also mean that people will be obliged to follow those particular set of rules which may also be against their own rules based on the practice of religion. If Uniform Civil code will be applied then it may create a feeling amongst people that their religious practices are in danger and this may disturb the harmony between various communities on the simple thought that

<sup>25</sup>Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948.

<sup>26</sup>Pratishtha Yadav, “Personal Laws vs. Need of Uniform Civil Code in India,” Journal of Advances and Scholarly Researches in Allied Education

<sup>27</sup>Krishnadas Rajagopal, “What is the debate on Uniform Civil Code all about?” September 08, 2018

the Uniform Civil code is discriminating or is not in favor of their religion or inclines towards other religion.

It is very difficult to implement the Uniform Civil Code because there is a very wide dispersal of spirituality, caste systems, etc. in the Country. There have already been many controversies like the abolishment of Article 370, Citizenship Amendment Act, 2019 so UCC's implementation may lead to something even worse because it takes time for everyone to accept the changes brought about for the betterment of the society and the country.

### **Conclusion**

Hence, in the end after all the research it can be said that Uniform Civil code is a set of rules or certain Code of law which simply comprises those laws which are manipulative in nature for all the citizens irrespective of their Religion or without violating their Fundamental Right or any other right. Uniform Civil Code is simply based on a thought of One Nation One Code, which means that whole nation is governed or is based or adjudicated on basis of one Uniform Code of law. There have been many instances where even the Judicial System has ensured that there is applicability of the Uniform Civil code and even made sure that it is applicable with the utmost harmony. It is supported by Article 44 of the Indian Constitution but still the judicial system has also played a major role in the security of the Uniform Civil Code. There have been major Developments under the same concept but still in order to get it codified and universally accepted by all the Citizens of the Country, it needs a lot of major developments without hurting the sentiments of the People belonging to various religion, as India is a Secular Country. Thus, Uniform Civil Code is present in many instances but is still needed at other possible Instances also.

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