
AN ANALYSIS OF UNIFORM CIVIL CODE

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ABSTRACT

The paper briefly talks about various aspects of the Uniform Civil Code. The paper talks about concerning factors that gave rise to the demand for the implementation of UCC. The paper briefly discusses the personal laws of every religion including tribal laws. The Paper talks about how personal laws have gone through reformation due to the evolution of the legal process in India and also discusses briefly the implementation of the Hindu Code Bill and the changes involved in it. The paper briefly talks about judicial activism involved in personal laws. The paper throws some light on the Goa civil code upon which demand for UCC has relatively increased. The Paper discusses various judgments of the Supreme Court where the court has asked for the need for the implementation of UCC.

Keywords: personal laws, article 14, article 25, uniform civil laws, polygamy, triple talaq, Goa Civil code

Introduction

Uniform Civil Code has now become a hot topic in the country for discussion. Every possible person is having a say in this. Political debates are regularly being held on this topic. Arguments are being raised by both Hindu and Muslim organizations on this topic. Many Hindu organizations have supported UCC just because it is anti-Islam and will ban practices like polygamy, and Nikah Halala while many Muslim organizations are raising their voice against UCC just because they think it will hinder their customs, and beliefs. Comments are being passed in a very bad manner on the subject of UCC due to political propagand. Very rare debates and arguments are being held on the actual points of 'why UCC should be implemented' due to a lack of knowledge among the masses on this subject. Hence it becomes very important to understand what UCC is, its legal aspect, and its challenges.

Meaning

In Uniform Civil Code, 'Civil' means family-related laws. 'Code' means a set of laws existing to be followed. 'Uniform' means equal. Collectively it means the existence of a uniform personal law applicable to every religion in the specific land. Here the specific land means India.

[Note: laws of any country are governed by personal law and Lex Foci. Personal laws apply to persons over civil matters while Lex Foci means law of land.]

Under the family laws, related matters come the following:

1. Marriage.
2. Separation.
3. Divorce.
4. Maintenance/Alimony.
5. Guardianship.
6. Succession/inheritance.
7. Intestate succession (rules of succession when there is the death of a person without making a will).

As of now, Bigamy is allowed in Islam but not in the Hindu religion. Hence Muslim Personal laws became discriminatory towards women. However, based on the opinion of people, demand for laws related to UCC has been categorized into four:

1. Not doing anything with the existing personal laws

2. Revocation of discriminatory laws from personal laws of every religion.
3. Implementing UCC with certain exemptions.

Here, 'Exemptions' means to implement UCC without hindering good customary laws of each religion, tribe, and caste which are non-discriminatory.

Example: In states like Rajasthan, and Haryana, it is to be believed that one cannot marry another of the same gotro i.e, the same gotro vivah is considered to be unsocial and evil by the people of the Hindu society of that region, while in southern states of the country, cousin marriages among Hindus can be seen¹. In Muslim society, a man can marry his cousin's sister but not his own sister.

4. Implementing a homogenous personal law related to civil matters – UCC

It is very important to understand that the homogenous law won't affect the rituals involved in the specific religion but will try to eradicate the discriminatory laws existing in each personal law. UCC cannot be implemented the way it has been done in countries like - Germany, France, and China as India is a multicultural and multi-religious country. Implementation of UCC is a bit challenging as customary beliefs changes of one religion like Hindu, changes with change in regions and also due to the existence of various religious laws in the country.

Example: We all know Hinduism holds a majority in India in terms of population. Hindu society is a patriarchal society where the system of succession happens from father to son. But to these exceptions, the Nair caste (Hindu) of Kerala follows a Matrilineal system of Inheritance (succession from mother to daughter)². In the Khasi Tribe of Meghalaya, the Matrilineal system of Inheritance is being followed.³

One has to understand that India's basis of foundation is based on the concept of religious tolerance i.e., Sarva Dharma Sama Bhava. One also has to understand as India is a Multi-religious and Multi-cultural country, it can't be unified based on religion or caste. Railway,

¹The News Minute. (2020). Marrying first cousins: How the practice evolved and declined in Kerala. [online] Available at: <https://www.thenewsminute.com/article/marrying-first-cousins-how-practice-evolved-and-declined-kerala-138540> [Accessed 19 Dec. 2022].

² www.britannica.com. (n.d.). Nayar | Hindu caste | Britannica. [online] Available at: <https://www.britannica.com/topic/Nayar> [Accessed 20 Dec. 2022].

³ Rathnayake, Z. (n.d.). Khasis: India's indigenous matrilineal society. [online] www.bbc.com. Available at: <https://www.bbc.com/travel/article/20210328-why-some-indians-want-more-mens-rights> [Accessed 20 Dec. 2022].

Cricket, Television, Currency, Constitution, and existing uniform laws are certain factors that unify India.

- **Evolution of legal process in India and the Hindu code Bill**

1. Ancient India: In ancient India, laws were mostly governed by Smritis and Vedas. Manusmriti written by Sidhinadhananda Swami⁴ and Yajnavalkya Smṛti written by Yajnavalka⁵, are two major smritis.
2. Medieval India: Medieval India refers to the time when India was under Muslim rule. During that time, the law was mostly governed by sharia law. Under the sharia law, Qazi used to take judicial decisions in the court of Nawabs. Qazi used to take advice from Mufti when a new case appears before the qazi having a substantial question of law. Qazi will ask advice from the mufti only when Qazi feels that he needs advice from mufti as he feels that such kind of case never appeared before him and has no precedence. During the peak rule of the Mughals, Aurangzeb wrote “Fatwa alamgiri”⁶ which was a compilation of scattered laws that existed during the Mughal rule which then became a law and principle regulating body of the Mughal empire during Aurangzeb rule. Criminal cases were being handled under Sharia law while civil matters were being handled by Qazi by applying basic logic depending on case to case.

A major incident happened during the year 1765. During this year, East India Company got Diwani rights which means they will have the right of collecting revenue of land, and matters/disputes related to land revenue will be handled by East India Company and this resulted in huge corruption⁷. Due to this reason, in the year 1772, Warren Hastings was asked to do something so that management of the judicial system can be done. During the year 1773, regulating act was passed which made Hasting, the governor-general⁸. Under this Act, SC was established. Warren Hastings proposed a judicial plan where there will be courts accessible to

⁴ The Editors of Encyclopedia Britannica (2015). Manu-smriti | Hindu law. In: Encyclopædia Britannica. [online] Available at: <https://www.britannica.com/topic/Manu-smriti> [Accessed 20 Dec. 2022].

⁵ Wikipedia Contributors (2022). Yājñavalkya Smṛti. [online] Wikipedia. Available at: https://en.wikipedia.org/wiki/Y%C4%81j%C3%B1avalkya_Sm%E1%B9%9Bti [Accessed 19 Dec. 2022].

⁶ Wikipedia Contributors (2021). Fatawa 'Alamgiri. [online] Wikipedia. Available at: https://en.wikipedia.org/wiki/Fatawa_%27Alamgiri [Accessed 20 Dec. 2022].

⁷ byjusexamprep.com. (n.d.). Who was the Mughal Emperor who Granted Diwani of Bengal, Bihar, and Orissa to the East India Company in 1765? [online] Available at: <https://byjusexamprep.com/the-mughal-emperor-who-granted-the-diwani-of-bengal-bihar-and-orissa-to-the-east-india-company-in-1765-i> [Accessed 20 Dec. 2022].

⁸ BYJUS. (n.d.). Warren Hastings - Introduction, Reforms and Regulations [UPSC Notes]. [online] Available at: <https://byjus.com/free-ias-prep/ncert-notes-warren-hastings/> [Accessed 20 Dec. 2022].

people of all religions. Criminal cases will be tried based on Sharia law. Civil matters of every religion will be tried as per the respective religion.⁹

In the year 1781, another regulating act was passed. After passing this act, the judicial reformation was done by the British. Civil-related matters of Hindus were being tried as per the respective Hindu personal law¹⁰. The civil matters of Muslims were being tried as per the Fatwa-Alamgir¹¹. The civil matters of other religions (except Hindus and Muslims) will be tried under English law.

Warren Hastings, Lord Cornwallis, and Lord Wellesley tried to establish English criminal procedural law in India. William Bentinck¹² was made Governor-general by the 1833 Charter act and had a good understanding with Raja Ram Mohan Roy. Raja Ram Mohan Roy brought up the issues faced by women due to unjust societal norms, before William Bentinck. Cases like Hindu men having more than one wife¹³, child marriage, and Sati practice forced William Bentinck to think about this matter. In 1929, the Bengal Sati Regulation was passed which banned the Sati practice in all jurisdictions of British India¹⁴. Many intellectuals argued that the sati system happened because there was fear among the dominant, traditional, and non-progressive men that a widow may claim the property of her husband (deceased) and that's why the sati system was practiced. The last recorded case of Sati was of Roopkuvarba Kanwar of Rajasthan¹⁵. William Bentinck banned Female Infanticide through the Female Infanticide Prevention Act, of 1870.¹⁶ Here one needs to understand although legal action has been taken

⁹ Misra, A. (2018). Judicial reforms of Warren Hastings and the advent of Adalat System. [online] iPleaders. Available at: <https://blog.ipleaders.in/judicial-reforms-warren-hastings-advent-adalat-system/> [Accessed 21 Dec. 2022].

¹⁰ P, A. and ey (2018). Judicial Reforms Brought by Lord Cornwallis. [online] iPleaders. Available at: <https://blog.ipleaders.in/judicial-reforms-brought-lord-cornwallis/> [Accessed 21 Dec. 2022].

¹¹ Wikipedia Contributors (2021). Fatawa 'Alamgiri. [online] Wikipedia. Available at: https://en.wikipedia.org/wiki/Fatawa_%27Alamgiri [Accessed 20 Dec. 2022].

¹² Encyclopedia Britannica. (n.d.). Lord William Bentinck | British government official. [online] Available at: <https://www.britannica.com/biography/Lord-William-Bentinck> [Accessed 21 Dec. 2022].

¹³ Mahawar, S. (2021). Tradition and modernity : an examination of bigamy under the Hindu Marriage Act, 1955. [online] iPleaders. Available at: <https://blog.ipleaders.in/tradition-modernity-examination-bigamy-hindu-marriage-act-1955/> [Accessed 20 Dec. 2022].

¹⁴ BYJUS. (n.d.). Bengal Sati Regulation (Regulation XVII) was passed on December 4, 1829 - This Day in History. [online] Available at: <https://byjus.com/free-ias-prep/this-day-in-history-dec04/> [Accessed 21 Dec. 2022].

¹⁵ The Indian Express. (2019). India's last known case of sati: 'She ceased to be a woman... was a Goddess'. [online] Available at: <https://indianexpress.com/article/india/she-ceased-to-be-a-woman-was-a-goddess-6016915/> [Accessed 21 Dec. 2022].

¹⁶ Jagranjosh.com. (2015). Social Legislation under British Rule. [online] Available at: <https://www.jagranjosh.com/general-knowledge/social-legislation-under-british-rule-1444624177-1> [Accessed 20 Dec. 2022].

to prevent unjust norms but for society to accept that same action, takes time. In the year 1833, for the first time, English felt for codification.

In 1834, the 1st law Commission was established consisting of Lord Macaulay¹⁷ as its chairman and three members, where Macaulay wrote and presented the draft of the Indian Penal Code¹⁸. He also gave the concept of Lex loci i.e.¹⁹, the law of land.

In the year 1853, the 2nd law Commission was given the task to review the drafts of the 1st law Commission and also to make some laws. Sir John Romilly was its chairman who drafted the CPC, and CRPC bill and made certain amendments to the IPC draft given by the 1st law commission.²⁰

Due to the revolt of 1857, in the year 1858, the rule of the East India company declined and the British conquered the whole territory of India. Although after such, the queen promised that the Britishers won't do any intervention in civil matters but contrary to the statement, the English enacted the Civil Procedure Code in 1859, the Indian Penal Code in 1860, and the criminal procedure code in 1861. Meanwhile, Iswar Chandra Vidya Sagar met Lord Dalhousie who later helped Iswar Chandra Vidyasagar to abolish caste practice and also help to enact the Act Widow Remarriage²¹. In 1850, The Caste Disabilities Removal Act, 1850, was enacted by the British to ensure the abolition of the caste system²². Article 17 of the Indian constitution also deals with the abolition of caste.²³ In 1856, Hindu Widow Remarriage Act, 1856 was passed which legalized the marriage of Hindu widows.

In 1861, the 3rd Law Commission was established whose chairman was again Sir John Romilly. In the year 1861, the strength of the Governor General council was increased. The post of the

¹⁷ Drishti IAS. (n.d.). Law Commission of India. [online] Available at: <https://www.drishtias.com/important-institutions/drishti-specials-important-institutions-national-institutions/law-commission-of-india-1> [Accessed 20 Dec. 2022].

¹⁸ BYJUS. (n.d.). Indian Penal Code (IPC) - History, Structure & Recent Developments. [online] Available at: <https://byjus.com/free-ias-prep/indian-penal-code/> [Accessed 21 Dec. 2022].

¹⁹ Kumar, A. (n.d.). ROLE OF THE FIRST LAW COMMISSION IN CODIFICATION. THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES.

²⁰ Mahawar, S. (2022). Law Commission of India. [online] iPleaders. Available at: <https://blog.iplayers.in/law-commission-of-india-3/> [Accessed 20 Dec. 2022].

²¹ Unacademy. (n.d.). History of Widow Remarriage Act. [online] Available at: <https://unacademy.com/content/upsc/study-material/modern-indian-history/history-of-widow-remarriage-act/> [Accessed 20 Dec. 2022].

²² myanmar-law-library.org. (n.d.). The Caste Disabilities Removal Act (1850) - Myanmar Law Library. [online] Available at: <https://myanmar-law-library.org/topics/myanmar-property-law/the-caste-disabilities-removal-act-1850.html> [Accessed 20 Dec. 2022].

²³ Constitutionofindia.net. (2017). Constitution of India. [online] Available at: https://www.constitutionofindia.net/constitution_of_india/17/articles/Article%2017 [Accessed 21 Dec. 2022].

legal member of that council was held by Sir Henry Maine²⁴, who is also regarded as the forefather of modern legal anthropology, legal history, and sociology of law. Upon the advice of Sir Henry Maine and James Fitzjames Stephen²⁵, and the recommendations made by the second and 3rd Law Commission, both being headed by Sir John Romilly, several laws were passed in the next few years. The laws²⁶ are as follows :

- a) Oath's Act
- b) Religious Endowments Act
- c) Official Trustees Act
- d) Carriers Act
- e) Parsi Marriage and Divorce Act
- f) Parsi Intestate Succession Act
- g) Indian Companies Act
- h) Native Converts Marriage Dissolution Act
- i) Trustees Act
- j) Trustees and Mortgage Powers Act
- k) Press and Registration of Books Act
- l) General Clauses Act
- m) Divorce Act
- n) Court Fees Act
- o) Land Acquisition Act
- p) Female Infanticide Act
- q) Female Infanticide Prevention Act
- r) Hindu Wills Act
- s) Code of Criminal Procedure (revised)
- t) Indian Contract Act
- u) Indian Evidence Act
- v) Special Marriages Act
- w) Punjab Laws Act

²⁴ www.britannica.com. (n.d.). Sir Henry Maine | British jurist, historian, and anthropologist | Britannica. [online] Available at: <https://www.britannica.com/biography/Henry-Maine> [Accessed 21 Dec. 2022].

²⁵ Roach, J. (1956). James Fitzjames Stephen (1829-94). Journal of the Royal Asiatic Society of Great Britain and Ireland, [online] (1/2), pp.1–16. Available at: <https://www.jstor.org/stable/25222784> [Accessed 20 Dec. 2022].

²⁶ Wikipedia. (2022). Law Commission of India. [online] Available at: https://en.wikipedia.org/wiki/Law_Commission_of_India [Accessed 21 Dec. 2022]

Meanwhile during that period, many literate and progressive Hindus started to raise their voice against the unjust traditional Hindu laws which were discriminatory and derogatory. As per many social activists and highly literate, progressive people of the Hindu society, the traditional Hindu laws used to do discrimination based on caste and gender. As per the traditional Hindu laws, woman had no rights over property and the practice of polygamy or bigamy was allowed only to Hindu men. At that point of time, the English started doing certain good changes in the Hindu personal laws after seeing the demand for reformation demanded by a certain section of the people from the Hindu society.

During the year 1873, upon the suggestion of Sir Henry Maine, a special Marriage Act²⁷ was enacted that allowed inter-caste and inter-religious marriage then. The said act was later revoked but again enacted in 1954²⁸. The marriage in the court is being held as per the Special Marriage Act where there is no question of religion and caste. The Special Marriage Act is one of the uniform laws that exist in India. In 1891, the Age of Consent Act²⁹ was enacted by the British which dealt with the consent rights on the matter of sexual intercourse of all girls. As per this act, the marriageable age of a girl is 12 years. As per this act, the offense for forcing a girl below the edge of 12 years for sexual intercourse would amount to rape. Bal Gangadhar Tilak was against the age of consent act as he said “We would not like that the government should have anything to do with regulating our social customs or ways of living, even supposing that the Act government will be a very beneficial and suitable measure”³⁰. In 1929, Child Marriage Restraint Act also known as Sharda Act³¹ was passed. As per this act, the marriageable age of a male is 18 while that of a female is 14. In the year 1978, an amendment was done to the Sharda Act, which raised the marriageable age of a male to 21 years while that of a female to 18 years.

Meanwhile seeing the changes happening in the Hindu society, certain literate and progressive Hindu woman also raised their voice against the injustice done to women due to the Hindu traditional laws. As per Mitakshara and Dayabhaga, Hindu women had no rights over property.

²⁷ simplifiedupsc.in. (2021). Special Marriage Act – Simplified UPSC. [online] Available at: <https://simplifiedupsc.in/special-marriage-act/> [Accessed 20 Dec. 2022].

²⁸ Drishti IAS. (n.d.). Special Marriage Act, 1954. [online] Available at: <https://www.drishtiiias.com/daily-updates/daily-news-analysis/special-marriage-act-1954-2> [Accessed 20 Dec. 2022].

²⁹ www.britannica.com. (n.d.). Age of Consent Act 1891 | British-Indian legislation | Britannica. [online] Available at: <https://www.britannica.com/topic/Age-of-Consent-Act-of-1891> [Accessed 20 Dec. 2022].

³⁰ Mohammad Shabbir Khan (1992). Tilak and Gokhale: A Comparative Study of Their Socio-politico-economic Programmes of Reconstruction. APH Publishing, p. 36. ISBN 978-81-7024-478-3.

³¹ BYJUS. (n.d.). Child Marriage Restraint Act, 1929 - Sarada Act Overview, Formation and Significance. [online] Available at: <https://byjus.com/free-ias-prep/child-marriage-restraint-act-1929/> [Accessed 21 Dec. 2022].

Seeing such uproar for ensuring the rights of women, the English enacted Married Women's Property Act 1874³² in the year 1874. This act defined the kinds of property rights over which women will enjoy. "Shridhan" was clearly been defined under this act and help that such cannot be claimed by other than the married woman herself. In the year 1928, The Hindu Inheritance (Removal of Disabilities) Act³³, was e which enacted due to which for the first time, the woman got rights over the property. A significant act was passed by the British in the year 1937. Hindu Women's Rights to Property Act which was popularly known as the Deshmukh act³⁴ was passed in the year 1937. This act ensured that the married woman enjoys absolute rights over the "streedhan". Under this act, a woman had limited estate over the property i.e, a woman can have shares over the land but cannot sell it. Widows were given property rights for the first time under this act. Although the widow didn't have the right to sell but was guaranteed the right to property for the first time.

During that period when the English were reforming Hindu society through various legislations, the Muslims were in tension. Muslims didn't want any kind of intervention in religious matters. It is to be noted even English didn't show any kind of intention to reform the unjust Muslim laws. Many intellectual says that English did such a thing to create a gap between the two religious sets i.e, divide and rule. In the year 1937, the British parliament passed Muslim Personal Law (Shariat) Application Act, 1937³⁵ which says that Muslim personal disputes will be tried under this act. In the year 1939, the Dissolution of Muslim Marriages Act³⁶ was passed which revoked Section 5 of the Muslim Personal Law (Shariat) Application Act, of 1937.

It is to be noted that at that time, a new contradiction aroused due to the Deshmukh act. The Deshmukh act empowered the widows to have property. Act also empowered the daughters of the family to have property. Due to such contradictions, it was feared that the introduction of new female heirs would be made at the expense of the decedent's own daughter. During that

³² Singh, C.D.P. (2022). Married Women's Property Act, 1874- Provision Related to Insurance Proceeds. [online] TaxGuru. Available at: <https://taxguru.in/corporate-law/married-womens-property-act-1874-provision-related-insurance-proceeds.html> [Accessed 20 Dec. 2022].

³³ myanmar-law-library.org. (n.d.). The Hindu Inheritance Removal of Disabilities Act (1928) - Myanmar Law Library. [online] Available at: <https://myanmar-law-library.org/topics/myanmar-property-law/the-hindu-inheritance-removal-of-disabilities-act-1928.html> [Accessed 20 Dec. 2022].

³⁴ Wikipedia. (2022). Hindu code bills. [online] Available at: https://en.wikipedia.org/wiki/Hindu_code_bills [Accessed 20 Dec. 2022].

³⁵ Rai, D. (2021). The Muslim Personal Law (Shariat) Act, 1937. [online] iPleaders. Available at: <https://blog.ipleaders.in/the-muslim-personal-law-shariat-act-1937/> [Accessed 20 Dec. 2022].

³⁶ www.bareactslive.com. (n.d.). Dissolution Of Muslim Marriages Act, 1939. [online] Available at: <http://www.bareactslive.com/ACA/ACT025.HTM> [Accessed 20 Dec. 2022].

time, there was a practice of bigamy or polygamy among Hindu men which was another matter of concern. The concept of divorce was absent in Hindu society. Hence it was quite normal to observe 2 or 3 wives of one Hindu man. In such cases, some women used to leave the house of their husbands to live life with dignity. In such cases sometimes the husband used to abandon their first wife to marry another. In both cases, a matter of respect and the maintenance of the wife came into question.

For such reasons (Deshmukh contradictions and bigamy), a Hindu law committee was established in the year 1941 whose chairman was B. N. Rau. B.N. Rau gave a report on the above concerned matter to the British parliament³⁷. Upon seeing the report, the Britishers asked B.N. Rau to do more research on the concerned matter. B.N Rau at that point of time felt for the need for a systemic code for the Hindu society. Again a law committee was established for the extended research in the year 1944. A report for such was published in February 1947 and was submitted to the constituent assembly then.

(It is to be noted that the constituent assembly was India's first parliament. From 9th December 1946 - 25th December 1950, our constituent assembly acted as our parliament. It is to be noted India's first-ever parliament members were not the ones elected by the public. Hence to show that there is no such biases in the constituent assembly, certain representation from different organization and a different section of society was ensured. certain members who were non-congress then also sat in the constituent assembly. Dr.B.R .Ambedkar (schedule caste federation), and Shyama Prasad Mukerjee (Hindu Mahasabha) were certain members who were non-Congress politicians then and sat in the constituent assembly .)

It was the same year when India got its independence hence the whole constituent assembly was busy in the process of Independence and due to this, debates on the Hindu code bill were rarely held. Hence due to this, Select Committee was established which was headed by Dr. B.R. Ambedkar (law minister). Many members of the assembly including Shyama Prasad Mukerjee used to dislike Dr. B.R. Ambedkar due to his revolutionary nature. Ambedkar used to feel furious after seeing the women and the lower cast of society being treated badly by the traditional, religious men and dominant castes respectively. The Hindu code bill draft which was presented by Ambedkar created havoc in the assembly. Reasons for such havoc were

³⁷ Hindustan Times. (2020). BN Rau: An idealist and a staunch constitutionalist. [online] Available at: <https://www.hindustantimes.com/india-news/bn-rau-an-idealist-and-a-staunch-constitutionalist/story-IG9tBvsvmm2TTfTs5L9I0N.html> [Accessed 20 Dec. 2022].

normal because almost all the leaders were mostly traditional thinkers then. In the Hindu code bill draft, for the first time, the concept of divorce and abolition of polygamy, and enactment of monogamy were seen. As per this code bill draft, the violation of monogamy was made an offense. As per the code bill draft woman were ensured certain property rights over the joint family property. Due to such a bill, many traditional Hindu politicians of the constituent assembly protested against the bill. Vallabhbhai Patel, Rajendra Prasad, Shyama Prasad Mukherjee, Purosattam Das Tandon, and J.B kripalani were the leaders who were against the bill.

A disagreement was observed between the then PM, Jawaharlal Nehru, and president Rajendra Prasad on the Hindu code bill where Jawaharlal Nehru forced then-president Rajendra Prasad to sign the bill later³⁸.

Many traditional politicians argued that there is no need to intervene with Hindu traditional Laws which had been followed for so many years. Ambedkar argued that Independence doesn't mean mere Independence of the country. It also means ensuring the removal of social issues, caste and gender discrimination, and the upliftment and empowerment of women.

The Hindu code bill was divided into 4 parts:

- i. Part 1 – The Hindu Marriage Act, 1955
- ii. Part 2 - The Hindu Succession Act, 1956
- iii. Part 3 - Hindu Minority and Guardianship Act, 1956
- iv. Part 4 - Hindu Adoptions and Maintenance Act, 1956

Under the Hindu Marriage Act, of 1955, the definition of 'Hindu' became very distinct and clear. As per this act, under the purview of 'Hindu', apart from Hindus, Budh, Jain, and Sikh will also come. People of VirShaiva (community in Karnataka) and Lingayat (Community) and followers of Arya Samaj, Brahmo Samaj, and Prarthana Samaj will come under the purview of the definition of 'Hindu'³⁹.

³⁸ Delhi July 10, india today digital N., July 14, 2017UPDATED: and Ist, 2017 19:12 (n.d.). Disagreement between Rajendra Prasad and Nehru over Hindu code bills. [online] India Today. Available at: <https://www.indiatoday.in/fyi/story/rajendra-prasad-jawaharlal-nehru-disagreement-hindu-bill-codes-uniform-civil-code-1023473-2017-07-10> [Accessed 21 Dec. 2022].

³⁹ Garg, R. (2021). Hindu law notes. [online] iPleaders. Available at: https://blog.iplayers.in/hindu-law-notes/#Who_are_Hindus [Accessed 20 Dec. 2022].

As per this act, Jews, Christians, Muslims, Persis, and people of mentioned scheduled tribal areas will not fall under the definition of 'Hindu'. As per this act, polygamy and bigamy are prohibited while only monogamy is allowed which has been mentioned in sec 11 and 17 of the act. As per sec 17 clause 1 of the act, if a man commits bigamy, then that individual will be held liable under IPC 494 and will be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. As per clause 2 of sec 17 of the act, if a man marries another woman by hiding the fact that he is already married then such person will be termed to imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine under IPC 495. As per sec 11 of the act, 2nd wife won't get legal status if such a person has been married already.

The concerned act introduced the system of divorce. As per this act, marriage between people who have a Sapinda relationship is banned under this act unless any custom authorizes it. As per this act, a person below the age of 18 years will be considered to be a child and minor. Hence, in the case of the marriage of a minor, the parents will have the right to give consent. As per the act, if a girl whose marriage was performed when she was minor, realizes on or after attaining puberty that she doesn't want to stay in the marriage, as she feels marriage is not fit for her, then she can denounce such marriage.

Case 1 :

*Sarla Mudgal, & others. v. Union of India*⁴⁰

The Sarla Mudgal case is a landmark case that highlighted the need for Uniform Civil Code. This case involves mainly two petitioners.

Petitioner 1: Kalyani, an NGO which used to work for the upliftment of women headed by Sarla Mudgal.

Petitioner 2: Meena Mathur

Meena Mathur was married to Jeetendra Mathur and had 3 children. Jeetendra Mathur then fell in love with Fatima and then accepted Islam and abandoned his first wife. While living with his 2nd wife, J. Mathur had one child with her. After a certain time, Mathur again converted

⁴⁰ legalserviceindia.com. (n.d.). Case Analysis: Sarla Mudgal v/s Union Of India. [online] Available at: <https://www.legalserviceindia.com/legal/article-9651-case-analysis-sarla-mudgal-v-s-union-of-india.htm> [Accessed 20 Dec. 2022].

himself to Hinduism and went to Meena Mathur to live with her. The case was filed before SC where Justice Kuldeep Singh took the matter very seriously. Court held that Under Under the Hindu Marriage Act, 1955, the married person cannot convert his/her religion before the issue of the decree of divorce, and violation of such will amount to punishment under sec 494 of IPC. While giving judgment Justice Kuldeep Singh asked the Law minister secretary of the Union to reply within 3 months, that what Union or central government has done regarding UCC.

The Hindu Succession Act 1956 deals with rules of succession among the Hindus. It is to be noted that Yajnavalkya Smriti is considered to be one of the important books on matters of property in Hindu Society. It is to be noted here that the Mitakshara is a commentary on only one Smriti called Yajnavalkya Smriti, whereas Dayabhaga is a digest of all the Smritis. The inheritance/succession was followed by Hindus as per Mitakshara and Dayabhaga then. The Dayabhaga system was being followed mainly in Assam and Bengal. Mitakshara system/law school was divided into four major categories:

- I. Mithila law school
- II. Banaras law school
- III. Bombay law school
- IV. Dravida or Madras law school

Although the four schools are a bit different from each other but follow the basic principles of Mitakshara. As per both systems (Dayabhaga and Mitakshara), inheritance/succession can be done only by the son of the family from his father.

Mitakshara has defined property into three types: Inherited property (ancestral), self-acquired property, and other property. Here other property means property acquired from the maternal side. While Dayabhaga hasn't categorized the property. It has categorized all types of property as one. As per Mitakshara, the son acquires the right of claim over the property as soon as he takes birth while as per Dayabhaga, the son acquires the right to claim over the property only after the death of the father. After the enactment of the Hindu Succession Act 1956, both the Mitakshara system and the Dayabhaga system were abolished. As per this act, women will have absolute rights over their property (no limited estate). In the Hindu Succession Act 1956, women were not given right over agricultural property. Due to this reason, the Hindu succession act was widely criticized. The married daughters were not given property rights under this act. Such controversial provisions were later revoked in 2005 through an amendment where women got absolute rights in agricultural property too. Daughters (married and unmarried) were given

property rights after the amendment of the act. As per the Hindu succession act, one will have absolute right over his or her self-acquired property while in the case of ancestral property, one can only enjoy, use and consume such property but cannot sell such property. The ancestral property will be passed on to the next generation and will be inherited from generation to generation.⁴¹

As per Hindu Minority and Guardianship Act, of 1956, an individual below the age of 18 years will be considered to be a minor. The concerned act has also defined who is a 'natural guardian'. As per this act natural guardian of a son (below the age of 18) and an unmarried daughter (the marriageable age of the girl was 14 during the enactment of the act) will be the father and in the absence of the father, the mother will be the natural guardian. In case of a son or daughter born due to an illicit relationship, then the first guardian of such will be the mother and in the absence of the mother, it will be the father. The husband will be the natural guardian of the wife as per this act. As per this act, on the death of both mother and father (natural guardians), legal guardians will be appointed by the court, if natural guardians before their death have not appointed any guardian/guardians for the children.⁴²

It is to be noted that adoption was possible only by Hindus as there is no concept of adoption in the personal laws of other religions. As per Hindu Adoptions and Maintenance Act, of 1956, legal parents enjoy the same rights as biological parents. Adopted children have rights over the property of legal parents. There should be a gap of 21 years between an adoptive parent and the adopted child. As per this act, if the adoptive parents have a child then they cannot adopt a child of the same sex, rather they have to adopt a child of the opposite sex of their child if any (for example: if the parents have male child, then they cannot adopt a male child, they have to adopt a female child). Although as per personal laws of other religions, no one can do adoption⁴³. People of other religions (Muslims, Christians, Parsi, Jews) can adopt only under the Juvenile Justice (Care and Protection of Children) Act, 2015⁴⁴. As per this act, on matters of judicial separation and divorce, the husband has to give maintenance to the wife (if the wife is not

⁴¹ Rai, D. (2020). The Hindu Succession Act, 1956: An ultimate guide. [online] iPleaders. Available at: <https://blog.ipleaders.in/the-hindu-succession-act-1956/> [Accessed 21 Dec. 2022].

⁴² Rai, D. (2020a). Overview of the Hindu Minority and Guardianship Act, 1956. [online] iPleaders. Available at: <https://blog.ipleaders.in/overview-of-the-hindu-minority-and-guardianship-act-1956/> [Accessed 20 Dec. 2022].

⁴³ Asthana, S. (2020). All you must know about the Hindu Adoption and Maintenance. [online] iPleaders. Available at: <https://blog.ipleaders.in/hindu-adoption-maintenance/> [Accessed 21 Dec. 2022].

⁴⁴ Mahawar, S. (2021a). An analysis of adoption under the Juvenile Justice (Care and Protection of Children) Act, 2015. [online] iPleaders. Available at: <https://blog.ipleaders.in/analysis-adoption-juvenile-justice-care-protection-children-act-2015/> [Accessed 20 Dec. 2022].

married to anyone else). Maintenance will be based on the income of the husband. Maintenance also covers the children, parents, and in-laws. In the case of maintenance of a widow, the father-in-law will ensure the maintenance, if the father-in-law is in a capable position to do so. It has to be understood that the Hindu code bill is mostly a secular law that is non-discriminatory.

Minority civil code

Now to understand the matter of the Uniform Civil Code in a detailed manner, one needs to understand the personal laws of minorities of India and then only one can understand, why there has been a regressive demand for the implementation of a uniform Civil Code.

➤ Christian personal law:

Christians living in India are of two types – Catholic and Protestant. As Indian Christian laws were made by the Britishers, hence hardly any kind of protest was observed as Britain itself was a Christian country then (presently also). Hence, there was a minimum difference between the laws which applied to the Christians of India and Christians of Britain.

Four laws were enacted concerning Christian civil matters:

- I. The Indian Christian Marriage Act, 1872
- II. The Indian Divorce Act, 1869
- III. Indian Succession Act 1925
- IV. The Guardians and Wards Act, 1890

Case law 2:

*Mrs. Mary Roy Etc. vs State Of Kerala & Ors*⁴⁵

The concerned case is a famous case regarding the Indian succession act 1925. Mary Roy is the mother of the famous author Arundhati Roy. Mary Roy is a Syrian Catholic. She used to live in an area where the Indian succession act was not applicable then she used to live in an area where the Travancore succession act 1916 was applicable. Due to this, she was denied her right over the property. Sree then filed a case against her brothers in the lower court of Kerala. The lower court dismissed her petition. The matter was filed before the High Court then and then it

⁴⁵ Anon, (2022). Mrs. Mary Roy vs. the State of Kerala › The Legal Lock. [online] Available at: <https://thelegallock.com/mrs-mary-roy-vs-the-state-of-kerala> [Accessed 20 Dec. 2022].

reached the Supreme Court where Mary Roy won the case. The Supreme Court held that the Indian succession act will apply to all Christians living in India and hence there is no need for Acts like the Travancore succession act 1916.

Case law 3

*John Vallamattom & Anr vs Union Of India*⁴⁶

The petitioner (John Vallamattom) argued in the Supreme Court that section 118 of the Indian succession act is discriminatory. Section 118 says that a person cannot transfer his property to a religious charitable trust if the close relative/relatives of that individual are alive. As per this provision of the act, the wife has not been defined under the word 'close relative' which violates article 14 of the constitution. Supreme Court then revoked section 118 of the Indian succession act. Supreme Court while giving the judgment arranged for the immediate need for a uniform Civil Code.

Case law 4

*Mrs. Pragati Varghese And Etc. vs Cyril George Varghese And Etc.*⁴⁷

The petitioner was having a certain problem with her husband who is the defendant in the case. She approached Supreme Court for divorce based on the Indian divorce act. Section 10 of the act deals with the grounds of divorce. It has been observed by Supreme Court in this case that section 10 is a gender-based discriminatory clause. The provision said that a husband can take a divorce if his wife commits an offense of adultery, while for the wife to take the divorce, she has to prove that her husband has committed adultery and domestic violence upon her. Supreme Court revoked section 10 of the act stating it Unconstitutional.

In the year 2001, the central government amended the Indian divorce Act. Section 10 clause (a) of the Act says that a couple can take divorce with consent only after being in judicial separation for 2 years and hence another case was filed upon the such section in the supreme court.

Case law 5

⁴⁶ India, E.-J. (2020). John Vallamattom & Anr. vs Union of India. [online] E-Justice India. Available at: <https://www.ejusticeindia.com/john-vallamattom-anr-vs-union-of-india/> [Accessed 20 Dec. 2022].

⁴⁷ AIR 1997 Bom 349

*Albert Anthony vs Union Of India Ministry Of Law and justice through secretary*⁴⁸

Albert filed the case in the Supreme Court stating that section 10 clause (a) is discriminatory. He said that section 13 clause b of the Hindu Marriage Act, the judicial separation among the Hindu couple for mutual consent divorce is one year. As per Section 28 of the Special Marriage Act, the judicial separation for mutual consent devotes is one year. As per section 32 of the Parsi Marriage and Divorce Act, 1936, the judicial separation for mutual consent divorce is one year. Albert argued in the court, why the judicial separation among the Christian couple for mutual consent divorce under the Indian divorce act is two years. Supreme Court stating that there is a violation of article 14 lowered the judicial separation time for mutual consent divorce from two to one year in the Indian divorce act. Supreme Court again asked the central government to take immediate steps to implement the Uniform Civil Code in the country.

➤ Parsian personal law

3 laws have been enacted concerning the civil matters of Parsis:

1. The Parsi Marriage and Divorce Act, 1936
2. Indian Succession Act 1925
3. The Guardians and Wards Act, 1890

Under the Parsi Marriage and Divorce Act, 1936, a special court will be established for solving matters related to matrimonial disputes. Parsi society doesn't accept the marriage of Parsi women and non-Parsi men. Children born through such marriage won't be considered Parsi by Parsi society. The same can be observed in Hindu traditional law. One has heard the terms "Anuloma marriage" and "Pratiloma marriage". The Anuloma marriage⁴⁹ considered to be socially friendly as per Hindu traditional law as it is a marriage between a man of a higher cast and a woman of a lower cast. Pratiloma marriage⁵⁰ is considered to be evil as per Hindu traditional law, as it is a marriage between a woman of a higher caste and a man of a lower caste.

⁴⁸ Mandhani, A. (2015). 2 years period for Christians to seek divorce by mutual consent 'does not make sense': SC. [online] [www.livelaw.in](https://www.livelaw.in/2-years-period-for-christians-to-seek-divorce-by-mutual-consent-does-not-make-sense-sc/). Available at: <https://www.livelaw.in/2-years-period-for-christians-to-seek-divorce-by-mutual-consent-does-not-make-sense-sc/> [Accessed 20 Dec. 2022].

⁴⁹ Wikipedia. (2021b). Anuloma. [online] Available at: <https://en.wikipedia.org/wiki/Anuloma> [Accessed 21 Dec. 2022].

⁵⁰ Wikipedia. (2021c). Pratiloma. [online] Available at: <https://en.wikipedia.org/wiki/Pratiloma> [Accessed 21 Dec. 2022].

➤ Jew personal law

2 laws were enacted concerning the civil matters of Jews :

1. Indian Succession Act 1925
2. The Guardians and Wards Act, 1890

The rituals for the marriage of the Jews are being done as per the customary beliefs and laws of the Jews. There is no such legislation for Jews concerning marriage and divorce. There is no such concept of divorce in the traditional laws of Jews. If a Jew performs his marriage as per the traditional laws of the Jews, then such an individual wouldn't be able to take a divorce. Regarding this, there is a case. In 2012 A couple moved to the Bombay High Court for taking divorce. Dismissing the petition, the High Court of Bombay said that the court can't issue the decree of divorce only as the couple did their marriage as per the Jewish traditional laws and there is no such provisions of divorce in the Jewish traditional laws. ⁵¹Further High Court said that it can issue a decree of divorce to those Jewish couples who performed their marriage under the Special Marriage Act.

➤ Muslim personal law

In India, Muslims follow the sharia law. Sharia means a divine law. The legal sources of Sharia are Quran, Hadith, Qiyas, and Ijma. It is to understand that Muslims are broadly classified into Sunni and Shia. No one has to understand who are Sunnis and Shias. After the death of Prophet Muhammad, a question aroused who should be the successor of Prophet Muhammad? Certain people said that among the family members of Prophet Muhammad, one should succeed him. Those people are known as Shias. Those who said that one who can be the successor doesn't matter whether that individual is a member of the family of Muhammad or not, are known as Sunnis. Shias are the liberal classes who never accepted triple talaq. Quran is the religious book of Islam, which was written by the prophet after the oral revelation of God to the Prophet Muhammad with the help of Gabriel. It took 23 years for the Prophet Muhammad to complete the work. Hadith which is another legal source of the Sharia consist of two parts- Sunnah and deeds. 'Sunnah' are the sayings of the prophet while deeds are the good works done by the prophet in his course of life. Qiyas is the analogical reasoning applied to interpret the Islamic

⁵¹ Nov 11, R.S. / T. / U., 2018 and Ist, 07:06 (n.d.). Jews have own laws, can't decide on their divorce pleas: Mumbai court | Mumbai News - Times of India. [online] The Times of India. Available at: <https://timesofindia.indiatimes.com/city/mumbai/jews-have-own-laws-cant-decide-on-their-divorce-pleas-says-court/articleshow/66573728.cms> [Accessed 21 Dec. 2022].

laws not covered in Quran or Sunnah. Ijma is a universal agreement that has been made by an Islamic scholar in a consensus manner.

Now the paper will throw some light on the criminal laws of Muslims which are based on Sharia law. There are 3 criminal laws for Muslims and they are Hudud, Qisas, and Tazir.

Hudud defines the crime against God (for example – Zina). Here Zina means adultery. If any woman commits the crime of adultery, then she will be punished with death by pelting stones. As per Hudud, if anyone commits the offense of theft, then the hands of such will be chopped off.

As per the doctrine of Qisas or Qisas law, an individual will be given the punishment in the way, the individual has committed the offense against the victim. This law is based on the principle of “eye for an eye”. One thing to be noted here is that in such kind of case, the victim or the victim's family has the right to grant forgiveness to the offender upon which the offender won't be given punishment.

Tazir refers to the punishment given for offenses at the discretion of the judge. One can observe a procedural issue in the proceedings of criminal matters under Muslim law. As per traditional Muslim law, the testimonial value of women is considered to be less important than men. As per Hudud, in a case of gang rape, the victim has to come up with four male witnesses who will say that they have seen the gang rape validating the allegations of the victim and in failure of such, the victim will be charged with adultery⁵². Mukhtar Mai case which highlighted the procedural issues as discussed.⁵³

Now the people would discuss the issues involved in the civil laws of Muslims. As per Muslim personal law, marriage is a contract. Nikah Nama is an official document where the details of both the groom and bride are enlisted. The nikah Nama makes the marriage of the Muslim an official. As per Muslim law, the groom and the bride have to say ‘kabool hai’ or yes “I accept” three times in front of Qazi (Judge), after which the marriage will be considered. As per Muslim personal law, the groom has to pay Mehr or have to promise to pay Mehr. Mehr is a certain amount of money that is given by the groom to the bride. The groom must pay Mehr to the

⁵² LIM, B.S.-L.A.I. (2014). Hudud will drive rape survivors deeper into shadows, say women's groups. [online] Malay Mail. Available at: <https://www.malaymail.com/news/malaysia/2014/05/03/hudud-will-drive-rape-survivors-deeper-into-shadows-say-womens-groups/662197> [Accessed 21 Dec. 2022].

⁵³ UN News. (2006). Pakistani rape survivor turned education crusader honored at UN. [online] Available at: <https://news.un.org/en/story/2006/05/177202> [Accessed 21 Dec. 2022].

bride. Such kinds of customs can also be observed among Hindus in certain areas of Madhya Pradesh and is known as bride price. If the husband dies without paying Mehr, then such will be ensured to the widow and then only the partition of the property will take place. As per Muslim law, a man has to give maintenance to his divorcee wife only during the period of iddat (3 months after the divorce) and in case the wife is pregnant husband has to maintain his wife till the birth of the child. There is no such specific law regarding the maintenance of Muslim women under the personal laws of Muslims. If Mehr is given, the husband holds no responsibility for the maintenance of his divorced wife after the Iddat period.

Regarding Mehr, Zakia Soman, women's rights activist and the founding member of Bharatiya Muslim Mahila Andolan, did a survey of 4000 women on the subject of Mehr. It was found that Only 40% of the women surveyed, got below rupees 1000 while in 44% of the case, there was no such Mehr price⁵⁴.

Now the paper will discuss the most controversial aspect of Islam. As per Muslim personal law, a woman cannot have four husbands while a man can have 4 wives. If one reads the actual words of the Quran regarding this, the message of the prophet regarding this is a bit different. During that time women were subjected to rape, cruelty, violence, and other serious crimes. Hence prophet said that to save those innocents only, a man can marry only up to four. Later this message has been interpreted into something else by certain bad people in Muslim society to benefit themselves. Prophet also said that if any Muslim man marries anyone although he is already married, then such an individual needs to ensure that his wives are living their lives with dignity and integrity.

Then comes another controversial law in Islam which is known as Nikah Halala. Let's first understand what is halal, Haram, and Halala. An act permitted under Muslim law is known as halal while an act not permitted under Muslim law is Haram. The process of making not a permitted act as per Muslim law, into a permitted act as per Muslim law is known as Halala. Nikah Halala is a practice in which a woman, after being divorced by triple talaq, marries another man, consummates the marriage, and gets divorced again to be able to remarry her former husband. Let us understand Nikah Halala in a better way by an example. X is the husband of Y. After marriage, X & Y were having a certain dispute and in the process X said

⁵⁴ Nov 7, T. /, 2016 and Ist, 06:16 (n.d.). BMMA survey contradicts census data on Muslim divorces | Hyderabad News - Times of India. [online] The Times of India. Available at: <https://timesofindia.indiatimes.com/city/hyderabad/bmma-survey-contradicts-census-data-on-muslim-divorces/articleshow/55280449.cms> [Accessed 21 Dec. 2022].

Talaq thrice to Y . After a certain time, X realized his mistake. Now X once to go back to Y but as per Muslim law, once divorced, husband and wife cannot marry each other again. now if Y wants to marry X Then Y needs to marry another man Z. Y needs to have a physical relationship with Z and then after taking a divorce from Z, Y can marry X. This whole process is known as Nikah Halala. Nikah Halala is one of the most derogatory provisions present in Islam. India Today did a sting operation on the matter of Nikah halala and found out that maulvis news took money (ranging from 50,000 rupees to 1,50,000 rupees) for one-night stands with divorced women to save marriages⁵⁵.

Now the paper will discuss another controversial aspect of Islam which is divorce. Divorce can be performed by Muslims for the following:

1. Talaq
2. Khula
3. Mubarat
4. Tafweez
5. Lian
6. Khyar
7. Dissolution of Muslim Marriages Act, 1939

Under Khula law, couples can take a divorce with mutual consent (the wife initiates the divorce). Under such law, a woman has to give compensation and the compensation should not be more than the value of Mehr decided by Qazi.

Under Mubarat law, divorce can take place with the mutual consent of both.

The basic difference between the both is that in Khula, the wife desires the divorce and initiates it while in Mubarat, both spouses desire the divorce.

Under Tafweez law, a wife has the right to pronounce her marriage and such right has been guaranteed by her husband.

Under Lian law, if a wife is being charged falsely of adultery by the husband, and the husband fails to prove that his accusations are true, then the wife can file a suit for divorce on the grounds

⁵⁵ India Today. (n.d.). Exposed: How maulvis take money for one-night stand with divorced women trying to save marriage. [online] Available at: <https://www.indiatoday.in/india/story/nikah-halala-islamic-scholars-one-night-stand-divorced-muslim-women-marriage-1029887-2017-08-16> [Accessed 21 Dec. 2022].

of lack of trust between the two.

Under Khyar law, if a girl is being married to anyone with or without her consent before the onset of her puberty, then after attaining puberty, the girl can denounce her marriage if she feels the marriage is not fit/good for her. The essence of Khyar law can also be found in the Hindu Marriage Act. Under sec 13 – clause 2- sub-clause IV, if a girl marries before the age of 15 then she can denounce her marriage till she attains the age of 18. Such provisions were made to avoid child marriage then.

Under Muslim personal law, talaq is of 2 types - Talaq-E-Biddat and Talaq-ul-Sunnat. Talaq-ul-Sunnat includes the forms of divorce prescribed by the Prophet Muhammad himself while Talaq-E-Biddat includes the forms of divorce which have not been prescribed by the Prophet Muhammad but rather made by the people of Muslim society. It is to be noted that Shia Muslims never accepted Talaq-E-Biddat. . Talaq-ul-Sunnat is of two types- Talaq-e-Hasan and Talaq-e-Ahsan.

As per Talaq-e-Ahsan, men while saying talaq to their wives, there should be a witness. After the utterance of the word talaq, husband and wife have to live separately for 90 days and if any kind of relationship occurs between the two in those 90 days, then the divorce will not happen.

As per Talaq-e-Hasan, in severe matters where couples are not willing to live together, the husband will utter the word ‘talaq’ once a month and this will continue for 3 months that is altering the word ‘talaq’ thrice in 3 months. It is to be noted here that the wife has to leave the House of her husband as soon as the husband uses the word ‘talaq’ for the first time to ensure that there is no such cohabitation between the two. If co-habitation occurs, then no divorce.

Now the paper will discuss the maintenance laws and property laws under Muslim personal law-

1. Under Muslim law, the husband has no responsibility towards his wife after the period of Iddat. The husbands have to give maintenance to their divorced wife only during the period of Iddat (3 months after the divorce) and in case the wife is pregnant, the husband has to maintain his wife till the birth of the child.
2. Shuffa law or pre-emption law is being followed by Muslims on matters of succession. Examples are as follows:

- a) Daughters can inherit only half of the shares inherited by the son of the family. The daughters will have absolute rights over the inherited property.
- b) Under Muslim law, no Muslim individual can make a will of more than 1/3 of his property and the rest 2/3rd of the property will be inherited or succeeded as per the traditional Muslim law.

Judicial Aspects

As the topic, UCC is now a topic for discussion. Hence many people were giving an opinion on whether it should be implemented or not. Those who are saying that a uniform Civil Code should not be implemented are keeping their views and opinions with the help of article 25, and article 26 of the Indian constitution. Article 25 deals with religious freedom while article 26 deals with the management of religious affairs.

Those who are arguing that a Uniform Civil Code should be implemented are keeping their views and opinions with the help of article 14, article 21, article 15, and article 44. Article 14 deals with the right to equality, article 21 deals with the right to life, and article 15 ensure no discrimination based on sex, caste, race, religion, or place of birth. Article 15 directs the state to make laws for the protection of children and women. Article 44 talks about the enactment of a Uniform Civil Code.

Now it becomes very important to understand article 25 which has become a fundamental article for the ones who are arguing against the implementation of a uniform Civil Code. Article 25 deals with religious freedom, the freedom of conscience, and the freedom to profess, practice, and propagate. The freedom of conscience will apply to those individuals also if that individual is an atheist. In the case of atheists, freedom of religion will not come into play practically as atheists do not believe in the existence of god although atheism is not recognized by the Constitution of the Country. Supreme Court clearly stated that the propagation of religion with a bad intention, the intention to mislead, won't be considered as propagation. The propagation of religion will be considered valid only when it is done in good faith. It is very important to understand the reasonable restrictions which can be imposed upon religious freedom which have been highlighted in clause 1 and clause 2 of article 25.

Clause (1) talks about four grounds upon which the freedom of religion can be restricted. These are

public order

health

morality

other fundamental laws and rights.

Article 25 talks about 2 grounds upon which the freedom of religion can be restricted. They are as follows:

the economic, financial, political, or other secular activity related to religious practice will be regulated.

2. For social welfare or religious reformation, the state can restrict such.

Referring to clause 1 of article 25, one can associate the case of Azan. As many times many governments tried to ban the use of loudspeakers as the sound is a bit high which disturbs old people and children. Whenever government tries to ban the use of loudspeaker used for the recitation of azan. The Muslim community always have approached the court under article 25. Supreme Court in such matters through the doctrine of essentiality said that Supreme Court won't interfere in the essential aspects but will not leave the secular or non-essential aspects. Supreme Court said that loudspeaker is not an essential part of Islam.

Case law 6

*Bhurinath vs Jammu and Kashmir*⁵⁶

The pujari of the temple used to have certain shares from the Charavas (money offered to God). After the Jammu and Kashmir government constituted a board, considering pujari was just a member of the trust, his salary was calculated and pujari will have no right of shares among the Charavas. Bharinath went to the court under article 25 stating that the court cannot intervene in matters of religious customs and belief. Supreme Court said that there is no such violation as such practice of having shares from the Charava is not an essential aspect and the government has the right to fix the salary of a poojary and can decide whether the poojari will get the share or not as it is the matter of economic activity related to the religious practice mentioned in the article 25 clause 1.

There is a case in Kerala where the priest said that only brahmins can become a priest under article 25. Supreme Court referring to article 16 clause 5 said that only a Hindu man can become a priest of a Hindu religious institution. Supreme Court said that if one reads article 16 clause

⁵⁶ AIR 1997 SC 1711

5, one can see that article 16 has given 100% reservation to the concerned religious people of the concerned religious institution. But the word 'cast' is missing in article 16 clause 5. Supreme Court said that if a Hindu of a lower cast attains all the knowledge to become a priest then that individual will be considered as a priest. Supreme Court referring to the matter of sati pratha, said that although sati pratha was followed as a custom, such custom affects the society at large hence under article 25 clause 2, for doing reformation for the goodwill of the society, such practices or customs must be banned.

Now the paper will discuss article 13 of the Indian constitution which is playing a huge role in the demand for a uniform Civil Code. Article 13 clause (1) talks about pre-constitutional laws. Article 13 clause (2) talks about the post-constitutional law. As per clause 1 of article 13, any part of the pre-constitutional law which is inconsistent with the constitution of India will be revoked and the rest will remain as same while clause 2 says that any part of the post-constitutional law which is inconsistent with the constitution of India, will be revoked and the rest will remain as same. Laws passed during the British era are known as pre-constitutional laws. These laws are passed by the British Government without imagining the emergence of Fundamental Rights in one fine day. Post Constitutional Laws are laws passed by the legislators after the commencement of the Indian Constitution. If one reads the article 13 provision there is a word called 'Laws in force' in clause 1 and another word 'law' in clause 2. As per article 13, 'Laws' includes ordinance, order, customs, and notification while 'laws in force' includes laws made by the legislature or other competent authority. Now if again one reads article 13 clause 1, the word is 'laws in force' which does not include the customs hence it means the pre-existing customs won't get revoked even after they are found to be violative of the fundamental rights. Regarding such, there is a famous case of *The State Of Bombay vs Narasu Appa Mali*.

Case law 7 :

*The State Of Bombay vs Narasu Appa Mali*⁵⁷

Narasu Appa Mali was a Hindu person living in Maharashtra. In 1946, the Bombay Prevention of Hindu Bigamous Marriages Act was enacted which banned the practice of bigamy. Narasu Appa Mali in the case said that such implementation of the act causes a violation of article 25. He argued that with his first wife, he didn't have any male child, due to which 'Pind dan' could not be performed. He said that except for Muslims, no one can practice bigamy which is a clear

⁵⁷ AIR 1952 Bom 84

violation of articles 14 and 15. As per section 494 of IPC, bigamy is an offense and a compoundable crime but section 494 of IPC does not apply to Muslims. As per the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, bigamy is a non-compoundable crime. He argued that for the same offense, how two acts can treat the concerned offense differently

Bombay High Court stated that such customs cant be revoked as such customs are being followed before the enactment of the constitution. Hence referring to article 13 clause 1, such practice cannot be banned although such practice violates the fundamentals of the constitution. Hence a question aroused whether the court can review personal laws under article 13. In the Sabarimala case, 2018, the present Chief Justice of India, Dhananjaya Y. Chandrachud, (not a part of the judgment of the Sabarimala case) said that the verdict given in The State Of Bombay vs Narasu Appa Mali, was flawed as the verdicts goes against the principles of rule of law and said that India is not religious country and hence such judgments shouldn't be given.

Case 8 :

*Mohd. Ahmed Khan v. Shah Bano Begum*⁵⁸

This is a famous case that highlighted the flaws in Muslim personal laws. Shah Bano was married to Muhammad Ahmed Khan. They had 5 children from the marriage. After 14 years of the marriage, Ahmed Khan did another marriage. In the year 1975, Ahmad Khan asked Shah Bano to leave the house. Ahmad Khan promised to pay ₹200 per month to Shah Bano as maintenance and he did so till the year 1978 when he stopped paying Shah Bano. As per section 125 of the criminal procedure code, the husband has to maintain his wife after divorce (if the wife cannot maintain herself and is not married to anyone). After Shah Bano filed the case in the Lower court, immediately Ahmed Khan gave talaq to Shah Bano. Ahmed Khan argued before the court that the husband has to maintain his wife only during the period of Iddat and hence he said that he will pay ₹5400 for the maintenance of his first wife during the Iddat period. Amount also includes the Mehr. Indore court held that Ahmed Khan has to maintain his wife by giving her ₹25 every month. Ahmed Khan filed a petition to the High Court stating that the order of the lower core violates the Muslim Personal Law (Shariat) Application Act 1937. The High Court after studying the facts and section 125 of the criminal procedure code carefully, said that the order of the Indore court is valid.

⁵⁸ 1985 SCALE 767

High Court said that Ahmed Khan has to maintain his wife by paying her ₹179.20 every month. The matter then went to Supreme Court. When the matter first appeared in the Supreme Court, the matter was being heard by 2 judges. After understanding the facts, the 2 judges' bench of the Supreme Court referred the matter to a constitutional bench of the Supreme Court. The constitutional bench of the court held that the verdict of the High Court is completely correct. The Supreme Court held that not only did Ahmed Khan have to pay ₹179.20 to his Shah Bano every month as maintenance but also have to pay Rs 10,000 as compensation due to the problems faced by Shah Bano in the process of the case. Supreme Court while giving the judgment asked for the implementation of the uniform Civil Code.

The judgment led to severe violence which was done by the traditional Muslim leaders. The All India Muslim personal law board was against such a decision. Ziaur Rahman Ansari⁵⁹ and MJ Akbar stood against the judgment⁶⁰ of the Supreme Court while Arif Mohammad Khan (22nd governor of Kerala) stood with the judgment.

Observing such stern violence the union government then passed the Muslim Women (Protection of Rights on Divorce) Act, 1986 which nullified the judgment of the court. As per this act, the maintenance amount during the Iddat has to be fair and reasonable. As per this act, section 125 of the criminal procedure code won't apply to Muslims. The matters relating to Muslim divorces can only be solved under section 125 of the criminal procedure code when couples will give in writing to the court that they want to settle the matter under section 125 of the criminal procedure code. As per this act if the wife is pregnant during the period of divorce then the husband will have to maintain her till the birth of the child. If the couple has a child of age below 2 years during the time of divorce, then the husband needs to maintain such child till the child attains the age of 2 years. As per this act, the husband has to pay Mehr the amount to the wife if not paid. The act also says that if the husband is incapable to pay maintenance to his divorced wife then it will be the relative's responsibility (the relatives here are those who will get shares in the property from the property of the divorced wife) to maintain the divorced wife and if the husband and the relatives, both are incapable to do so then the maintenance will be ensured by the Wakf board of the state.

⁵⁹ Kidwai, R. (2018). Who really influenced Rajiv Gandhi to act against Shah Bano judgment? [online] ThePrint. Available at: <https://theprint.in/opinion/who-really-influenced-rajiv-gandhi-to-act-against-shah-bano-judgment/87263/> [Accessed 21 Dec. 2022].

⁶⁰ IANS (2016). MJ Akbar persuaded Rajiv Gandhi to override Shah Bano ruling: Former CIC. Business Standard India. [online] 18 Oct. Available at: https://www.business-standard.com/article/news-ians/mj-akbar-persuaded-rajiv-gandhi-to-override-shah-bano-ruling-former-cic-116101801213_1.html [Accessed 21 Dec. 2022].

Case 9 :

*Noor Saba Khatoon vs Mohd. Quasim*⁶¹

The court held that the husband will maintain his male child up to the age of 18 years and the female child till her marriage.

Case 10:

*Danial Latifi & Anr vs Union Of India*⁶²

Daniel Latifi filed a petition asking Supreme Court what will be a reasonable and fair amount that will be ensured to the Muslim woman after divorce. Supreme Court held that the amount will be calculated based on the standard of living of the woman and the income of the husband. Supreme Court also stated that if one cannot pay the amount at once, then he will have to pay the amounts in installments.

Case 11 :

*Shayara Bano v. Union of India*⁶³

This is a famous case relating to talaq under the Muslim personal law in which it was held that triple talaq is unconstitutional. Shayara Bano was married to Rizwan Ahmed. After certain years of marriage, dispute aroused between them. When Shayara Bano was in her paternal house, Rizwan Ahmed gave her divorce (triple talaq) through the speed post. Then Shayara Bano approached the Supreme Court under article 32 of the Indian constitution. She contended that there are 3 laws in Muslim personal laws which are derogatory and discriminatory. They are – Triple Talaq, Polygamy, and Nikah Halala. These laws are against article 14, article 15, and article 21. She accused her husband of domestic violence and dowry. The Supreme Court took the matter and said that they will examine the validity of triple talaq. After the declaration of intentions of the Supreme Court, a huge protest was seen from the Muslim community. The All India Muslim personal law board supporting Rizwan Ahmed said that Supreme Court cannot interfere in religious matters as per article 25 and as per the decision of Bombay High Court in *The State Of Bombay vs Narasu Appa Mali*.

⁶¹ AIR1997SC3280

⁶² *Danial Latifi & Anr v. Union of India* (2001) 7 SCC 740

⁶³ (2017) 9 SCC 1.

Supreme Court said that it will check whether an activity like triple talaq is part of Islam or not and if it is, then it will check whether it is an essential practice or not. Looking at the sensitivity of the case, the 5 judges bench was constituted where every judge belonged to a different religion to ensure natural justice and no biasness. The bench by 3: 2 majority said that triple talaq is unconstitutional. The dissenting judges i.e, those 2 judges, didn't say that triple talaq is valid rather they said that it is the task of the legislature to abolish the such practice.

While giving the judgment the court gave an injunction (direction or order) that divorce through the form of talaq will be held valid and asked the government to make act upon this. In 2019, the Muslim Women (Protection of Rights on Marriage) Act, was enacted upon a such matter which says divorce through triple talaq will be held as an offense where the offense will be cognizable, nonbailable, and compoundable

Case 12:

*Sameena Begum vs Union Of India*⁶⁴

After the case of Shayara Bano v. Union of India, another case appeared before the Supreme Court on a similar matter. Sameena Begum filed a case before the Supreme Court stating that polygamy, nikah Halala, and triple talaq are against the fundamental rights of a person. Sameena Begum's first marriage got dissolved due to violence upon her by her husband. She did another marriage but unfortunately faced domestic violence in her second marriage too. Her second husband gave her divorce through talaq after the judgment of Shayara Bano v. Union of India. She approached the court regarding this matter. After hearing the facts of the case, Supreme Court asked the central government on this matter, that why triple talaq is still in practice. The central government then contended that such practice is not an essential part of Islam as many Islamic countries have banned polygamy, Nikah Halala, and triple talaq. The central government also said that they are trying their best to ensure there are no further cases of triple talaq. The case is still pending in court.

One more factor which gave rise to the implementation of the uniform Civil Code is the adoption of laws. As per the respective personal laws, only Hindus can do adoption through

⁶⁴ Supreme Court Observer. (n.d.). Writ Petition Summary (Sameena Begum). [online] Available at: <https://www.scobserver.in/reports/sameena-begum-v-union-of-india-constitutionality-of-muslim-marriage-laws-writ-petition-summary-sameena-begum/> [Accessed 21 Dec. 2022].

The Hindu Adoptions and Maintenance Act, 1956. The Parsis, Muslims, Christians, and Jews cannot adopt but can become a guardian of a ward till the ward attends the age of 18 years as per The Guardians and Wards Act, 1890.

Case law 13

*M/S Shabnam Hashmi vs Union Of India*⁶⁵

Shabnam Hasmi was a woman who adopted a child of one year. While adopting she didn't know that she didn't have the right to adopt as per her religion. After the child attained majority, then she came across such rules. RC filed a case in the Supreme Court regarding this matter Supreme Court said that anyone can adopt any child under the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 which was later amended into Juvenile Justice (Care and Protection of Children) Act, 2015. Supreme Court while giving the judgment highlighted two rights. They are the 'Right to be adopted' and the 'Right to adoption'.

Tribal laws

Now if one goes back to the initial first few pages of this article, one can see that the paper has categorized certain opinions of the people regarding the uniform Civil Code. The categorization has been done into 4 categories where one such category talks about the implementation of the uniform Civil Code with certain exceptions. It's fair to say that the tribal areas remain in alienation and have not seen that progress as much as the other communities have seen. It is to be noted here that the tribal community or the community living in the tribal areas mentioned have remained alienated from that world in which the Reformation and the progression were happening. Hence it's very unusual to expect people in such areas to behave progressively. Although the tribe community or the community or the people living in the tribal areas mentioned remained alienated from the outer world they are still progressive in certain cases as compared to the outer world. Cases of dowry, rape and domestic violence are relatively very low in the tribal areas.

As per articles 371 A and 371 F Nagaland and Mizoram are given a special status. As per these articles, laws made by the Lok Sabha for these states will apply to the two states only when the Vidhan sabha of the respective states will pass a resolution. The concerned laws are:

1. Customary laws

⁶⁵ W.P. No. 470 of 2005

2. Civil and criminal laws

If one reads article 244 of the constitution, one can understand that the concert article talks about scheduled areas (schedule 5) and tribal areas (schedule 6).Schedule 6 talks about the tribal areas. As per clause 2 of article 244 of the Indian constitution, “The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam Meghalaya, Tripura and Mizoram”⁶⁶. Assam, Meghalaya, and Mizoram have 3 tribal areas each while Tripura has one tribal area. Tribal areas of Assam are The North-Cachar Hills District (Dima Haolang), The Karbi-Anglong District, and The Bodoland Territorial Area District. Tribal areas of Mizoram are The Chakma District, The Mara District, and The Lai District. Tribal areas of Meghalaya are The Khasi Hills District, The Jaintia Hills District, and The Garo Hills District. The tribal area of Tripura is the Tripura Tribal Areas District. “The tribal areas in the four states of Assam, Meghalaya, Tripura, and Mizoram have been constituted as autonomous districts. But, they do not fall outside the executive authority of the state concerned. If there are different tribes in an autonomous district, the governor can divide the district into several autonomous regions. Each Autonomous District shall have a District Council consisting of not more than thirty members, out of which four are nominated by the Governor while the rest are elected based on adult franchise. The elected members hold office for a term of five years (unless the council is dissolved earlier) and nominated members to hold office at the pleasure of the governor. Each autonomous region also has a separate regional council”⁶⁷. The district autonomous council has been given certain powers in civil or criminal judicial proceedings.

Goa civil code

The concerned Civil Code is acting as a booster in the demand for the immediate implementation of a Uniform Civil Code in the country. Goa is the only state where a uniform Civil Code is implemented. Some people are saying that if no one is having an issue while living in Goa, why a protest can be seen regarding the same matter in the country except Goa? It has to be understood that goas Uniform Civil Code is not as uniform as it looks. Under The Code of Gentile Hindu Customs and Usages, the gentile Hindus are allowed to perform bigamy. Here the gentle Hindus mean those Hindus who do not acknowledge the beliefs of Jews and

⁶⁶ BYJUS. (n.d.). Sixth Schedule of the Indian Constitution | UPSC Indian Polity Notes. [online] Available at: <https://byjus.com/free-ias-prep/sixth-schedule/> [Accessed 22 Dec. 2022].

⁶⁷ BYJUS. (n.d.). Sixth Schedule of the Indian Constitution | UPSC Indian Polity Notes. [online] Available at: <https://byjus.com/free-ias-prep/sixth-schedule/> [Accessed 21 Dec. 2022].

Christians. Gentile Hindus can perform bigamy if their wife is unable to give birth to a girl when the wife's age is 25 and unable to give birth to a male child when the wife's age is 30. The uniform Civil Code of Goa has also given an exemption to the Catholics. The Catholics marrying in the church do not come under the divorce provisions of the civil law of Goa. As per the uniform Civil Code of Goa, the property will be distributed equally among the wife and the husband. As per article 1784 of the Goa Civil Code, assets cannot be disposed of for more than 50% through a will that ensures the succession of the property of at least 50% to the legal heirs or natural heirs of the concerned person. The Muslim having a domicile in Goa cannot perform triple talaq, polygamy, and Nikah Halala. It will be considered an offense if they do such.

Conclusion

The implementation of UCC will ensure the elimination of discrimination based on sex, creed, religion, and caste. With the enactment of UCC, women's empowerment can be ensured. UCC will help in establishing a secular Indian society, with its enactment, the elimination of certain discriminatory laws in every personal law of every religion can be ensured. UCC will help to wipe out the complexity involved in various laws but the Uniform Civil Code has its challenges. UCC is witnessing certain challenges while implementing the law. Tax application for Hindu Undivided families is the biggest question that legislatures need to answer before implementing UCC. The country's various tribal laws, and customary laws of various religions, are creating a challenge for the implementation of UCC. A misconception among minorities in this country that UCC will hinder their religious beliefs and laws has become a big challenge for the parliament to enact UCC. Article 25 which gives freedom of religion also somehow became like a fork in the path of implementing the UCC. Hence parliament needs to ensure that the stakeholders involved in this matter are consistent with the parliament while implementing the UCC across the country.