

Uniform Civil Code: A Critical Analysis of Its Application in Contemporary India

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ABSTRACT

The concept of the UCC in India has long been a subject of debate and contention. This research work examines the application of a UCC in contemporary India, considering its relevance, challenges, and potential implications.

India's diverse social fabric, characterized by multiple religions and cultures, presents a unique context for the implementation of a UCC. While the Directive Principles of State Policy in the Indian Constitution recommend the enactment of a UCC, its implementation faces significant hurdles due to religious sensitivities, political considerations, and concerns about cultural autonomy.

This dissertation explores the complexities surrounding the implementation of a UCC, including the need to balance principles of equality and justice with respect for religious diversity. It discusses the challenges of reconciling different personal laws governing marriage, divorce, inheritance, and adoption across various religious communities.

Gender justice emerges as a key issue in the debate, with proponents of a UCC arguing that it would promote gender equality by ensuring equal rights for women. However, critics raise concerns about potential infringement on religious rights and the preservation of cultural identities, particularly among minority communities.

Rather than a one-size-fits-all approach, this study suggests exploring gradual reforms and amendments to existing personal laws as a pragmatic step towards achieving the objectives of a UCC. This approach aims to address concerns from all quarters while moving towards a more uniform legal framework.

Public opinion on the issue varies, reflecting diverse perspectives and interests. While some advocate for the implementation of a UCC as a means to foster national integration and equality, others caution against it, citing the need to respect religious and cultural diversity.

This study highlights the complex nature of the debate surrounding the application of a Uniform Civil Code in contemporary India. It underscores the importance of navigating these complexities thoughtfully and inclusively to uphold principles of justice, equality, and pluralism in the country's legal system.

The application of a Uniform Civil Code in contemporary India is a complex and contentious issue that involves balancing principles of equality, justice, religious freedom, and cultural diversity. While there are arguments both in favor of and against its implementation, the debate continues to shape the legal and social landscape of the country.

CHAPTER 1: INTRODUCTION

The UCC is a concept that aims to replace personal laws based on religious scriptures and customs with a common set of laws governing all citizens irrespective of their religion. In India, the idea of a UCC

has been a subject of debate and discussion for decades. Its application in contemporary India is a topic of significant interest and controversy.

In the legal context of India, a UCC refers to a single set of laws governing personal matters such as marriage, divorce, inheritance, adoption, and succession for all citizens of the country, regardless of their religion or community. The idea of a UCC is enshrined in Article 44¹ of the Directive Principles of State Policy in the Indian Constitution, which states that the state shall endeavor to secure for its citizens a Uniform Civil Code throughout the territory of India.²

As of now, India has separate personal laws for different religious communities, such as Hindu Law, Muslim Law, Christian Law, and Parsi Law, which govern matters like marriage, divorce, and inheritance among members of these respective communities. The implementation of a UCC would involve replacing these diverse personal laws with a common set of laws applicable to all citizens uniformly.

The concept of a UCC has been a subject of debate and controversy in India for decades. Proponents argue that it would promote gender equality, secularism, and national integration by ensuring equal rights and treatment for all citizens under the law. They believe that a UCC would eliminate discriminatory practices prevalent in certain personal laws, particularly those that disadvantage women. India is a diverse country with multiple religions and cultures. Each community has its own set of personal laws governing matters like marriage, divorce, inheritance, and adoption. The UCC would aim to replace these diverse laws with a single set of laws applicable to all citizens.

The Directive Principles of State Policy in the Indian Constitution (Article 44) recommend the enactment of a UCC, but it is not legally binding. Despite this, the idea of a UCC is often seen as a step towards achieving social justice and gender equality.

Article 44³ states: "The State shall endeavour to secure for the citizens a UCC throughout the territory of India."

This provision reflects the framers' vision of social justice, gender equality, and national integration. However, it's important to note that Directive Principles are not legally enforceable by courts but are considered fundamental in the governance of the country. The implementation of a UCC remains a directive principle and is subject to legislative action by the government.

The inclusion of Article 44 in the Constitution indicates the importance attached to the idea of a UCC in fostering unity and equality among citizens, irrespective of their religion, caste, or community. However, the actual enactment of a UCC has been a subject of debate and controversy in Indian politics and society, with differing opinions on its necessity, feasibility, and implications.⁴

However, opponents raise concerns about the potential infringement on religious freedoms and cultural identities. They argue that imposing a common civil code could undermine the autonomy of religious communities and their traditions. The debate surrounding the implementation of a UCC is complex and involves considerations of constitutional principles, social justice, religious diversity, and political interests.

¹ Article 44, The Constitution of India

² Satyam Singh & Shobhitabh, Uniform Civil Code: A Critical Study Of Individual Rights And The Role Of Secular State, JCIL, 2023

³ Article 44, The Constitution of India

⁴ Patel, Keshav, Uniform Civil Code in India: A Constitutional Perspective and Ongoing Debate, SSRN (2023)

The implementation of a UCC faces several challenges due to religious sensitivities and political considerations. Critics argue that imposing a common civil code could infringe upon the religious rights and cultural identities of minority communities. There are concerns about potential backlash and resistance from conservative groups. Instead of implementing a UCC in one go, there have been calls for gradual reforms and amendments to existing personal laws to bring them in line with modern principles of justice and equality. This approach aims to address the concerns of different communities while moving towards a more uniform legal framework. The adoption of a UCC would have significant legal and political implications. It would require extensive legislative changes and could lead to contentious debates in Parliament and society at large.⁵

Public opinion on the issue of a UCC varies across different sections of society. While some groups advocate for its implementation as a means to promote national integration and equality, others view it as an infringement on religious freedom and cultural autonomy.

PROBLEM STATEMENT

The UCC has been a subject of contentious debate in India for decades. While Article 44 of the Directive Principles of State Policy in the Indian Constitution recommends its implementation, the application of a UCC in contemporary India faces numerous challenges and complexities.

India's legal system is characterized by the coexistence of diverse personal laws governing different religious communities. This fragmentation leads to disparities in rights and treatment among citizens, particularly in matters concerning marriage, divorce, inheritance, and adoption.

Existing personal laws often perpetuate gender disparities, particularly disadvantaging women in areas such as marriage, divorce, and inheritance. A UCC is seen as a potential solution to address these inequalities and promote gender justice.

The debate surrounding the implementation of a UCC is highly politicized, with different political parties and interest groups holding divergent views. Political resistance poses a significant obstacle to legislative reforms necessary for the enactment of a UCC.

Enacting a UCC requires significant legal reforms and amendments to existing laws. Constitutional provisions must be interpreted in a manner that upholds principles of secularism, equality, and justice while ensuring the protection of fundamental rights and religious freedoms.

OBJECTIVES OF THE STUDY

- To analyze the existing personal laws governing different religious communities in India and analyze their implications on individual rights and societal harmony.
- To identify the diverse socio-cultural landscape of India and its implications for the implementation of a Uniform Civil Code, considering factors such as religious beliefs, traditions, and regional variations.
- To analyze the constitutional provisions related to the UCC, including Article 44 of the Directive Principles of State Policy, and assess their applicability in contemporary India.
- To examine the political factors influencing the discourse on the UCC, including the role of political parties, interest groups, and public opinion, and assess their impact on policy-making.

⁵ Huzaifa Aslam, Constitutional Aspects Revolving Around Uniform Civil Code, TSCLD, 2023

- To compare the experiences of other countries with regards to the implementation of uniform civil codes or similar legal reforms, and draw lessons for the Indian context.

RESEARCH QUESTIONS

1. What are the key features and implications of the existing personal laws governing marriage, divorce, inheritance, and adoption in India's diverse religious communities?
2. How does the socio-cultural diversity of India influence the discourse and implementation of a UCC, considering factors such as religious beliefs, customs, and regional variations?
3. What are the constitutional provisions related to the UCC in India, and how do they align with principles of secularism, equality, and justice?
4. How does the concept of legal pluralism manifest in India, and what are the challenges and opportunities it presents for the implementation of a UCC?
5. What are the political dynamics surrounding the debate on the UCC, including the positions of political parties, interest groups, and public opinion?

CHAPTER 2: HISTORICAL PERSPECTIVE

Historical Background

The historical background of the UCC in India lies in the British administration over India. They gradually took control of the whole of India. Before that different rulers used to rule different parts of the Indian territory. Mughals, however, gained control over a large part of India but uniform laws were never made applicable to rule the entire country.⁶

It can be followed out from chronicled investigations that, the Mughals had cut out an enormous domain and built up an efficient criminal equity framework, though they had also abstained from offering a uniform family code. Many Mughal rulers those came in India, obliterated Hindu temples and trampled Hindu's rights; however, it was rarely evident that they interfered with Hindu personal laws.

Mughal Emperor Akbar, who attempted to declare his new religion, "Din-i-Illahi", did not alter the Hindu personal law. For instance, he even permitted the act of Sati to proceed, however, it was ethically offensive and additionally prohibited in Shariah, as per which the practice added up to suicide and in this way, was not admissible in Islam.

Though, instead of this Mughal History, essentially, the UCC has its origins in colonial India when the British government issued a report in year 1835 that emphasizing the need for uniformity in the codification of Indian law. As per the report, the laws relating to offences, evidence, and contracts, needed to be codified, but the report explicitly recommending that personal laws of Hindus and Muslims have to be left out of such codification because Britishers were aware about the fact that it can instigate sentiments.⁷

During British colonial rule, India had a legal system that recognized different personal laws based on religion and customary practices. Communities were governed by their respective personal laws in matters such as marriage, inheritance, and succession.

During the pre-independence era, the demand for a UCC gained momentum as part of the broader social reform movements in India.

⁶ Destha Kiran, Uniform Civil Code In Retrospect And Prospect (Deep & Deep Publication, 2012)

⁷ <https://www.nextias.com/blog/uniform-civil-code-ucc/>

The Indian National Congress, under the leadership of Mahatma Gandhi and other prominent leaders, advocated for social reforms aimed at promoting gender equality and abolishing discriminatory practices based on religion and caste.

The demand for a UCC was prominent in the discussions leading up to India's independence, reflecting the vision of the freedom struggle for a modern, progressive, and inclusive society.

After independence, the debate over the implementation of a UCC intensified during the drafting of the Indian Constitution.

Article 44 of the Directive Principles of State Policy was included in the Constitution, which states that the state shall endeavor to secure for its citizens a UCC throughout the territory of India.

The framers of the Constitution recognized the importance of a UCC in promoting social justice, gender equality, and national integration. However, the implementation of Article 44 remained a directive principle and not a justiciable right, leaving it to the discretion of the government.

The demand for a UCC gained prominence during India's independence movement. Leaders such as Mahatma Gandhi and B.R. Ambedkar advocated for social reform and gender equality, emphasizing the need for a common civil law applicable to all citizens irrespective of religion or caste.

The framers of the Indian Constitution engaged in extensive debates regarding the inclusion of a provision for a UCC. Ultimately, Article 44 was included in the Directive Principles of State Policy, which states that the state shall endeavor to secure for its citizens a Uniform Civil Code throughout the territory of India.

After independence in 1947, efforts were made to reform personal laws in certain areas. The Hindu Code Bills, introduced in the 1950s, aimed to codify and reform Hindu personal laws related to marriage, succession, adoption, and maintenance. However, similar reforms were not extended to other religious communities due to political sensitivities.⁸

Over the years, there have been several legal battles and landmark judicial pronouncements related to the implementation of a UCC. The Supreme Court of India has reiterated the importance of Article 44 and called for its implementation, emphasizing the principles of equality and secularism.

The debate surrounding the UCC continues to be a contentious issue in contemporary India. Proponents argue that a UCC would promote gender equality, secularism, and national integration, while opponents raise concerns about the potential infringement on religious freedoms and cultural identities.

Political parties in India have varied stances on the issue of a UCC, often influenced by electoral considerations and ideological differences. While some parties advocate for its implementation, others oppose it, citing the need to respect religious diversity and cultural autonomy.

In 2005, the Law Commission of India submitted a report titled "Reform of Family Law," which included recommendations for the implementation of a UCC.⁹

The report highlighted the need for legal reforms to address issues related to marriage, divorce, adoption, and inheritance, particularly with regard to gender justice and secularism.

However, the recommendations of the Law Commission report did not lead to significant legislative action on the implementation of a UCC at the national level.

Despite periodic discussions and debates on the issue, progress towards enacting a UCC remained slow due to political sensitivities, concerns about religious diversity, and the complexity of legal reforms.¹⁰

⁸ Shetreet Shimon & Chodosh Hiram E., *Uniform Civil Code*, Oxford University, 2015

⁹ *Uniform Civil Code in India* <https://www.crpc.in/images/uniform-civil-code.pdf>

¹⁰ Megha Ojha, *Scope For The Implementation Of Uniform Civil Code In Contemporary India*, *Palarchs Journal*, 2020

The debate then focused on the Muslim Personal Law, which is partially based on the Sharia law, permitting unilateral divorce, polygamy and putting it among the legally applying the Sharia law. UCC was proposed twice, in November 2019 and March 2020 but was withdrawn soon both of the times without introduction in parliament. The bill is reported to be being contemplated due to differences between BJP and RSS. Many opposition parties and BJP's allies from the NDA have opposed the Uniform Civil Code, especially from Northeast India, claiming it will go against the "idea of India" and will end special privileges of tribal communities after renewed calls by Prime Minister Narendra Modi in June 2023 about implementing a UCC.

Legal Reforms

Legal reforms related to the UCC in India have been a subject of debate and discussion for decades. While significant progress has been made in certain areas, comprehensive reforms towards a UCC remain elusive. Here are some key legal reforms and initiatives related to the UCC in India:

Hindu Code Bills (1950s):

Shortly after independence, the Indian government introduced a series of legislations known as the Hindu Code Bills to reform and codify Hindu personal laws.

The Hindu Marriage Act (1955), Hindu Succession Act (1956), Hindu Minority and Guardianship Act (1956), and Hindu Adoptions and Maintenance Act (1956) were enacted to address issues related to marriage, inheritance, guardianship, and adoption among Hindus.

These reforms aimed to promote gender equality and modernize Hindu personal laws but were limited to the Hindu community, leaving other religious communities governed by their respective personal laws.¹¹

Muslim Personal Law Reforms:

The issue of legal reforms within the Muslim community, governed primarily by Sharia law, has been a subject of debate and controversy.

Various efforts have been made to address issues such as triple talaq (instant divorce), polygamy, and women's rights within Muslim personal laws.

The Supreme Court of India, in the landmark case of Shayara Bano v. Union of India (2017), declared the practice of instant triple talaq unconstitutional and called for legislative reforms to protect the rights of Muslim women.

Goa Civil Code:

The state of Goa, a former Portuguese colony, has its own UCC known as the Goa Civil Code, which governs personal matters for all residents irrespective of religion.

The Goa Civil Code, enacted in 1867, is based on the Portuguese Civil Code and applies uniform laws related to marriage, divorce, inheritance, and adoption.

Law Commission Reports:

The Law Commission of India has periodically examined the issue of a UCC and submitted reports with recommendations for legal reforms.

The 71st report of the Law Commission (1978) and the 270th report (2017) included recommendations for the implementation of a UCC, emphasizing the need for gender justice, equality, and secularism.

¹¹ Nilanjana Bhaduri Jha, "Does India really need a Uniform Civil Code?" Times of India, 2020

Public Interest Litigations (PILs):

Various public interest litigations have been filed in Indian courts seeking reforms related to the implementation of a Uniform Civil Code.

Courts have occasionally intervened in cases related to personal laws and gender justice, issuing rulings and guidelines aimed at promoting equality and protecting individual rights.¹²

Despite these legal reforms and initiatives, comprehensive progress towards a UCC applicable to all citizens of India remains a complex and contentious issue. The challenges are multifaceted, including political sensitivities, religious diversity, societal norms, and legal complexities. Implementing a UCC requires careful consideration of these factors while upholding constitutional principles of equality, secularism, and justice.¹³

India's commitment to human rights

India's commitment to human rights is reflected in various international agreements, including the Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Here's how India's commitment to human rights intersects with the concept of a UCC in the context of these articles:

Universal Declaration of Human Rights (UDHR):

India played a significant role in the drafting and adoption of the UDHR in 1948 and has been a signatory to it since then.

Article 16 of the UDHR specifically addresses the right to marriage and family, stating that "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family."

A UCC, if implemented in accordance with the principles of the UDHR, would ensure equality in marriage and family matters, regardless of religion or other considerations. It would uphold the right to marry and found a family without discrimination.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):

India ratified CEDAW in 1993, committing to take steps to eliminate discrimination against women in all areas of life, including civil matters.

Articles 15 and 16 of CEDAW address the right to equality in marriage and family matters, emphasizing the elimination of discrimination based on gender.

Implementing a UCC that ensures equal rights for women in matters such as marriage, divorce, inheritance, and adoption would align with India's obligations under CEDAW.

In summary, India's commitment to human rights, as outlined in the UDHR and CEDAW, underscores the importance of ensuring equality and non-discrimination, particularly in civil matters such as those addressed by a UCC. By implementing a UCC that upholds these principles, India can demonstrate its dedication to promoting gender equality, secularism, and human rights for all its citizens.¹⁴

Concept of secularism in India

Secularism in India, as enshrined in the Indian Constitution, is a foundational principle that ensures the state maintains an equal distance from all religions and treats all religious communities impartially. The

¹² Rajeev Dhawan, "The Apex Court and Personal Law" The Hindu, 14 March 1997

¹³ <https://www.nextias.com/blog/uniform-civil-code-ucc/>

¹⁴ Tanushree, Uniform Civil Code In India: An Analysis, JCIL, 2020

idea of secularism in India is aimed at fostering harmony among its diverse religious, linguistic, and cultural groups.

The concept of secularism in India is primarily articulated in Article 25 to Article 28 of the Indian Constitution:

Article 25: This article guarantees the freedom of conscience and the right to freely profess, practice, and propagate religion subject to public order, morality, and health. It ensures that every individual has the right to practice and propagate their religion without interference from the state.

Article 26: This article grants every religious denomination or any section thereof the right to manage its religious affairs, including establishing and maintaining institutions for religious and charitable purposes, managing its own affairs in matters of religion, and owning and acquiring movable and immovable property.

Article 27: This article prohibits the state from compelling any individual to pay taxes for the promotion or maintenance of any particular religion or religious institution. It ensures that the state remains equidistant from all religions and does not promote any particular religion.

Article 28: This article deals with the freedom of religion in educational institutions. It prohibits the state from providing religious instruction in educational institutions wholly maintained out of state funds. However, it allows religious instruction in educational institutions recognized by the state but not maintained by the state.

Secularism in India has been a subject of debate and interpretation over the years. While the Constitution guarantees secularism, in practice, challenges arise due to various socio-political factors, including communal tensions, identity politics, and controversies surrounding religious practices and institutions. India's secularism is often described as "principled distance" rather than "absolute separation" of religion and state. The Indian state respects all religions equally and intervenes only to ensure justice, social harmony, and individual freedoms. However, there are ongoing discussions and debates on the interpretation and implementation of secularism in the Indian context.

CHAPTER 3: PERSONAL LAWS AND UNIFORM CIVIL CODE

India's legal system recognizes different personal laws based on religious affiliation, customary practices, and community traditions. Major religious communities in India, including Hindus, Muslims, Christians, Sikhs, and others, have their own set of personal laws governing various aspects of personal and family matters. These personal laws dictate rules related to marriage, divorce, inheritance, adoption, guardianship, and maintenance, among others, and are administered by respective religious authorities or codified in statutes.

Hindu Law is one of the major personal laws in India that governs matters related to Hindus, including marriage, succession, adoption, and maintenance. Here's how Hindu Law relates to the concept of a UCC:

Hindu Law applies to individuals who are Hindus by religion, including Buddhists, Sikhs, and Jains, as well as those who have converted to Hinduism. It primarily governs personal matters for individuals belonging to the Hindu community.

Hindu Law encompasses various texts, customs, and statutes, including ancient religious texts like the Manusmriti and the Hindu Succession Act, 1956, which codifies laws related to inheritance and succession among Hindus.

Hindu Law is characterized by its patriarchal nature, with certain provisions that traditionally favored male heirs over female heirs in matters of inheritance and succession. However, with legislative reforms in recent years, there have been efforts to promote gender equality and women's rights within Hindu Law.

The UCC proposes a common set of laws applicable to all citizens of India, irrespective of their religion, caste, or community. In the context of Hindu Law, the implementation of a UCC would mean unifying personal laws across religious communities, including Hindus, Muslims, Christians, Sikhs, and others.¹⁵ The debate surrounding the implementation of a UCC in India often includes discussions about Hindu Law and its implications. Proponents argue that a UCC would eliminate disparities and discrimination inherent in different personal laws, including those within Hindu Law, promoting equality and secularism. However, there are also concerns about the potential impact on religious freedoms and cultural identities, particularly among minority communities.

While there have been efforts to reform Hindu Law to address issues of gender inequality and promote social justice, the enactment of a UCC remains a subject of political debate and contention in India. Legislative reforms such as the Hindu Succession (Amendment) Act, 2005, which provides equal inheritance rights to daughters, reflect ongoing efforts to modernize Hindu Law and align it with principles of equality.

In conclusion, Hindu Law is an integral part of India's legal framework governing personal matters for individuals belonging to the Hindu community. The implementation of a UCC would entail significant reforms aimed at harmonizing personal laws across religious communities, including Hindu Law, to ensure equality and justice for all citizens.

Muslim Women (Protection of Rights on Divorce) Act, 1986

"Marriage for example Nikah in pre-Islamic Arabia, mint various types of sex connection between a man and lady set up on specific groups. In pre-Islamic days, lady was treated as babble and were not given any privilege of legacy and were completely needy. It was Prophet Mohammed who achieved a total change in the situation of ladies. He set ladies on a balance practically ideal correspondence with men in the activity of every single legitimate force and capacities"¹⁶.

Under Muslim Law marriage is considered as a civil agreement. After marriage a lady, doesn't lose her independence. She stays a particular individual from her locale, her reality of character isn't converged into that of her significant other. The agreement of marriage in Islamic law gives no capacity to anybody over her individual or property past what the law characterizes. Lady remains unquestionably the proprietor of her individual rights much after marriage she can estrange or move her property in any capacity wherein she satisfies with no incidental control of her better half. She can go into restricting agreements with her significant other and continue against him in law courts, if fundamental. The lady appreciates this situation through directives of the Quran¹⁷.

The Muslim Women Act is a piece of legislation in India aimed at protecting the rights of Muslim women in matters of divorce and maintenance. It provides certain safeguards to Muslim women who have been divorced by their husbands through the practice of "triple talaq" (instant divorce). Here's how

¹⁵ Taha Ali, Is India Ready for a Uniform Civil Code? SOUTH ASIAN VOICES, 2024

¹⁶ Charles Himilton, *The Hedaya: Commentary on the Islamic Laws*, 25 (1989).

¹⁷ Aqil Mohammedan Law, 23rd edition, page 107

the Muslim Women (Protection of Rights on Divorce) Act, 1986, relates to the concept of a UCC in India:¹⁸

The Act specifically addresses the rights of Muslim women who have been divorced through the practice of triple talaq. It ensures that they receive a reasonable and fair provision for maintenance during the iddat period (waiting period) following the divorce. The Act aims to protect the rights of Muslim women by providing them with financial support during the iddat period, which typically lasts for three menstrual cycles or three lunar months after divorce. This provision helps alleviate the financial hardships faced by divorced Muslim women.¹⁹

The Muslim Women (Protection of Rights on Divorce) Act, 1986, is often cited in discussions about the need for a UCC in India. Proponents of a UCC argue that uniform laws should govern matters such as divorce, maintenance, and inheritance across all religious communities, including Muslims, to ensure equality and justice for all citizens. The enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, has been subject to debate and controversy. Critics argue that while the Act provides some protection to Muslim women, it does not fully address the discriminatory nature of triple talaq and other practices that disadvantage women within Muslim personal law. Advocates for a UCC argue that piecemeal legislation, such as the Muslim Women (Protection of Rights on Divorce) Act, is not sufficient to address the broader issues of gender equality and women's rights within different personal laws. They call for comprehensive reforms that would ensure uniformity and equality in all aspects of personal laws across religious communities.

While the Muslim Women (Protection of Rights on Divorce) Act, 1986, provides some protection to Muslim women divorced through triple talaq, it is viewed within the broader context of the debate surrounding the implementation of a UCC in India. The Act highlights the complexities and challenges involved in reconciling religious laws with principles of equality and justice for all citizens.

Mohd Ahmed Khan v. Shah Bano²⁰ Begum is a landmark legal case in India that raised significant debates regarding the rights of Muslim women in matters of maintenance after divorce. Here's a summary of the case and its relation to the UCC:

Shah Bano Begum, a Muslim woman, was divorced by her husband, Mohd Ahmed Khan, in 1978. Following the divorce, Shah Bano filed a petition under Section 125 of the Code of Criminal Procedure (CrPC) seeking maintenance from her husband. Khan argued that his obligation to provide maintenance to Shah Bano had ended after the iddat period (three months following the divorce) as per Muslim personal law.

The case reached the Supreme Court of India, which delivered its judgment in 1985. The Supreme Court ruled in favor of Shah Bano, holding that Section 125 of the CrPC, which provides for maintenance to wives, including divorced wives, applies to all citizens irrespective of their religion. The Court emphasized the need to provide social justice to Muslim women and upheld Shah Bano's right to maintenance beyond the iddat period. Controversy and Political Response:

The judgment in the Shah Bano case sparked widespread controversy and led to protests from conservative Muslim groups who argued that the Court's decision interfered with Muslim personal law. The government, led by Prime Minister Rajiv Gandhi, introduced the Muslim Women (Protection of

¹⁸ Taha Ali, Is India Ready for a Uniform Civil Code? SOUTH ASIAN VOICES, 2024

¹⁹ Huzaiifa Aslam, Constitutional Aspects Revolving Around Uniform Civil Code, TSCLD, 2023

²⁰ 1985 SCR (3) 844.

Rights on Divorce) Act, 1986, to overturn the Supreme Court's ruling and limit the right to maintenance for divorced Muslim women.

The Shah Bano case reignited debates about the need for a UCC in India. Proponents of a UCC argued that the case highlighted the disparities and injustices within personal laws governing different religious communities. They advocated for a common civil law applicable to all citizens, irrespective of their religion, to ensure equality and justice in matters such as marriage, divorce, and maintenance. In summary, Mohd Ahmed Khan v. Shah Bano Begum was a significant legal case that brought attention to the rights of Muslim women and raised debates about the need for uniformity in personal laws in India. The case underscored the challenges of reconciling religious laws with principles of equality and social justice, prompting discussions about the implementation of a UCC.

Special Marriage Act, 1954

The Special Marriage Act, 1954 is a piece of legislation in India that provides a legal framework for civil marriage ceremonies. It allows individuals of different religions, castes, or creed to marry each other without necessarily renouncing their faith or converting to another religion. The Act is often seen as a step towards the implementation of a UCC in India. Here's how the Special Marriage Act relates to the concept of a Uniform Civil Code²¹:

The Special Marriage Act allows individuals to marry without reference to their religion or customary rites. Couples can choose to marry under this Act if they wish to have a secular or non-religious ceremony, thereby bypassing the personal laws governed by different religions.

The Act provides a uniform legal framework for marriage, divorce, and succession, irrespective of the religious backgrounds of the individuals. It offers a common set of rules and procedures for civil marriages, contributing to the idea of uniformity in personal laws across different communities.

By allowing inter-faith and inter-caste marriages and providing a secular alternative to religious ceremonies, the Special Marriage Act promotes the principles of secularism, equality, and social harmony. It upholds the right of individuals to choose their life partners without any religious or caste-based restrictions.

Despite the provisions of the Special Marriage Act, inter-faith and inter-caste marriages often face social stigma, familial opposition, and legal hurdles in India. Some individuals may still prefer to marry under their respective personal laws due to cultural or social pressures.

The Special Marriage Act is often cited in discussions about the implementation of a UCC in India. Advocates for a UCC argue that the Act provides a template for a common civil law applicable to all citizens, regardless of their religious affiliations.

Overall, the Special Marriage Act, 1954 plays a significant role in promoting secularism, equality, and uniformity in personal laws in India. While it represents a step towards a UCC, challenges remain in ensuring its widespread acceptance and implementation across the country.

Bigamy

In PEK Kalliant Amma²², the Apex court depended upon the Principles Of Hindu Law composed by Jogendra Chunder Ghose expressed that under the first and antiquated Hindu Law, in spite of the fact that polygamy was not permitted by the Hindu law, it was as yet a predominant practice among the

²¹ Shetreet Shimon & Chodosh Hiram E., Uniform Civil Code, Oxford University, 2015

²² AIR 1996 SC 1963: (1996) 4 S.C.C. 76.

Hindus and rehearsed generally, anyway the subsequent spouse couldn't be made piece of strict penances and the subsequent wife was seen as taken not for obligation yet for desire²³.

It was likewise referred to in the book Hindu Law of Marriage and Stridhan by Sir Gooroodas Banerjee, that a Hindu spouse, was allowed to wed again even in the lifetime of his first wife, yet the main condition was that there ought to be a noble motivation. A second marriage without admirable motivation was firmly objected²⁴.

The equivalent was likewise expressed in Mr. K.P. Saksenas Commentary on the Marriage Act, 1955, that a Hindu spouse as indicated by Hindu law, has no bar on wedding a second time in the lifetime of his first wife if the reason was advocated. Henceforth the Hindu sages didn't out properly preclude polygamy yet attempted to dishearten the training by endorsing the principal marriage to be of strict character and by allowing the second marriage just when the object of marriage couldn't be satisfied in the primary marriage²⁵.

The Apex court held that despite the fact that polygamy was as such was not allowed, from a limited perspective second marriage was not prohibited and was permitted if the principal marriage couldn't satisfy the fundamental object of marriage. Thus, the court held in PEX Kalliani Amma²⁶, that "Aside from these contemplations, there is nothing in the Hindu Law, as relevant to marriages till the sanctioning of the Hindu Marriage Act of 1955, which made a second marriage of male Hindu, during the lifetime of his past wide void" and saw that "In this way if a subsequent marriage took place, youngsters conceived of such marriage, it was not in any case invalid, were not ill-conceived and in the matter of legacy, they had equivalent rights".

As the years progressed, various statures overseeing various groups of Hindus came up. While some precluded Polygamy totally, other allowed it on a specific scale. In any case, as found on account of PEX Kalliani Amma, there was no uniformity in the law which was appropriate to various classes of Hindus²⁷.

It was right now, because of the distinctions in a similar law applying to various groups of Hindus, the Hindu Code was drafted by the Rau Committee and acquainted with the authoritative Assembly and was additionally alluded to a Select Committee. The Select council presented its report and the code was part and the Act came into power on 18.05.1955²⁸ furthermore, prompted the formation of the Hindu Marriage Act, 1955.

Section 4 of the Act, expresses that the demonstration will overridingly affect any content, rule, or understanding of Hindu Law or custom or use that was a piece of Hindu Law preceding the beginning of the demonstration. All laws in power preceding the beginning of the Act, to the extent that they are conflicting with the arrangements of the Act stopped to work from coming into power of the Act²⁹.

Accordingly, Section 5 of the Act, sets out the conditions for a Hindu Marriage, in which a marriage may be considered as a legitimate marriage if the principal proviso if neither one of the parties has a life partner living at the hour of marriage. Thus the idea of permitting a Hindu man to rehearse polygamy

²³Commentary on Hindu Law, Sixth Edition, Srinivas, page 176

²⁴ibid

²⁵ibid

²⁶ Supra, pg 3

²⁷Commentary on Hindu Law, Sixth Edition, Srinivas, page 177

²⁸ ibid

²⁹Karuvankandy Narayani v. Nelliadan Aravindakshan, A.I.R. 2006 Ker.26 at pp. 31-32

which was not essentially restricted by the Hindu Jurisprudence in the prior occasions, was presently expelled and a boycott was set on wedding again in the lifetime of another life partner regardless of whether there was a "legitimate" reason.

It was seen that section 5 came to fruition as a social government assistance measure, and on account of *Srinivas Aiyar v. Saraswati Ammal*³⁰, in which it was held that playing out a subsequent marriage, within the sight of the main marriage doesn't in any capacity structure a vital piece of Hindu religion and can't be viewed as working on, claiming or spreading Hindu religion which is ensured under Article 25³¹. Regardless of whether polygamy might be viewed as a fundamental piece of Hindu religion the reproved rule is secured under Article 25 (b) of the constitution³².

Therefore, it is overserved that despite the fact that prior a subsequent marriage was not as such denied under the previous Hindu laws, with the happening to the Hindu Marriage Act, 1955 it has been precluded and made an offense. As such section 5 of this demonstration obviously presents the idea of monogamy and makes any marriage which is done while a man/lady has a mate living will be held void abdominal muscle initio under section 11 of the demonstration. Section 17 of the demonstration further proceeds to make plural marriage a culpable offense.

While Hindu law with the happening to the Hindu marriage act, prohibited polygamy and carefully presented the idea of monogamy, marriage under Muslim law was extraordinary and prompted the conflict that individuals some portion of one country ought to be exposed to similar rules and guidelines regardless of their religion.

Christian Law:

Christian marriage in India is additionally a hallowed agreement and it is typically solemnized by a Minister of Religion authorized under the Indian Christian marriage Act, 1872. It can likewise be solemnized by the Marriage Registrar.

The Indian Christian Marriage Act, 1872 accommodates marriage in a monogamous structure as it were. Section 60; of the Act sets out the accompanying condition; Section 60(2) neither of the people planning to be hitched will have a spouse or a husband despite everything living. Section 4 of the Christian Marriage Act, 1872 states that each marriage between people, either of whom is or are Christians, will be solemnized as per the arrangements of the following after Section; and any such marriage solemnized, between a Christian and a non-Christian, in any case than as per such arrangements will be void.

This demonstration is appropriate where one of the groups is a Christian. At the end of the day, the non-Christian gathering might be a Muslim, a Hindu or an individual having a place with some other religion. This factor offers ascend to issues concerning struggle of laws, which are relational. For sure it is on indistinguishable lines right now that of the Special Marriage Act, 1954.

Section 5 of the Christian Marriage Act, 1872 solemnization of marriages: by any individual who has gotten Episcopal appointment. Given that the marriage solemnized by the rules, rituals, functions and customs of the Church of which he is a Minister; given that such marriage be solemnized by the rules, services and customs of the Church of Scotland; by any Minister of Religion authorized under this Act to solemnize marriages; by or within the sight of a Marriage Registrar selected under this Act; by any individual authorized under this Act to concede authentications of marriage between Indian Christians.

³⁰A.I.R. 1952 Mad. 193 cited in 1957 A.L.J. 439 at p.444

³¹ Article 25, The Constitution of India

³²Commentary on Hindu Law, Sixth Edition, Srinivas, page 227

The Christian Marriage Act, 1872 recommends the customs and rituals like the living and spot for solemnization of marriage very in detail since marriage among the Christians has been viewed as a ceremony or a heavenly association. In this manner, no ground in the Act has been recommended for the wedding reliefs like disintegration and detachment. The Act recommends punishments for the infringement of specific arrangements, which are important to be consented to under Section 6 of the Act. The age for marriage under Section 60(2) of the Indian Marriage Act, 1872, is 21 years for man and 18 years for the lady. Further sub Section (2) sets out that neither of the people aiming to be hitched will have a spouse nor husband despite everything living. Section 88 of the Act states, "nothing right now be considered to approve any marriage which the individual law appropriate both of the side prohibits the person in question to enter".³³

Goa Civil Code

Goa is the only Indian state to have a UCC in the form of common family law. The Portuguese Civil Code that remains in force even today was introduced in the 19th century in Goa and wasn't replaced after its liberation.

Features-

The Uniform Civil Code in Goa is a progressive law that allows equal division of income and property between husband and wife and also between children (regardless of gender).

Every birth, marriage and death have to be compulsorily registered. For divorce, there are several provisions.

Muslims who have their marriages registered in Goa cannot practice polygamy or divorce through triple talaq.

During the course of a marriage, all the property and wealth owned or acquired by each spouse is commonly held by the couple.

Each spouse in case of divorce is entitled to half of the property and in case of death, the ownership of the property is halved for the surviving member.

The parents cannot disinherit their children entirely. At least half of their property has to be passed on to the children. This inherited property must be shared equally among the children.

However, the code has certain drawbacks and is not strictly a uniform code. For example, Hindu men have the right to bigamy under specific circumstances mentioned in Codes of Usages and Customs of Gentile Hindus of Goa (if the wife fails to deliver a child by the age of 25, or if she fails to deliver a male child by the age of 30). For other communities, the law prohibits polygamy.

UNIFORM CIVIL CODE IN OTHER COUNTRIES

Rome

In ancient Rome, there was no concept of a "UCC" in the modern sense. However, Roman law did provide a comprehensive legal framework that governed various aspects of civil life, including personal status, property, contracts, and obligations. The body of law that evolved in ancient Rome formed the basis for many modern legal systems, particularly in civil law jurisdictions.

The legal system of ancient Rome was characterized by its codification and development over time. One of the most significant contributions to Roman law was the Corpus Juris Civilis (Body of Civil Law),

³³ <https://lawcorner.in/an-analysis-of-the-uniform-civil-code-mentioned-under-the-directive-principles-of-state-policy/>

compiled under the Byzantine Emperor Justinian I in the 6th century AD. The Corpus Juris Civilis included several components³⁴:

The Digest (or Pandects): A compilation of jurists' opinions and interpretations of Roman law, serving as a primary source of legal principles.

The Institutes: An introductory textbook that provided an overview of Roman law principles, intended for law students and practitioners.

The Codex Justinianus (Justinian's Code): A codification of Roman imperial laws issued by Justinian I, organized by topic and intended to streamline and clarify existing legal rules.

Novels (Novellae Constitutiones): Later additions and amendments to the Corpus Juris Civilis made by Justinian and subsequent emperors.

Roman law covered a wide range of civil matters, including contracts, property rights, marriage, inheritance, and torts. It emphasized principles such as legal equality, protection of property rights, and the enforcement of contracts.

While the legal system of ancient Rome influenced many aspects of modern law, including the development of civil law systems in continental Europe, the concept of a "UCC" in the sense of a single comprehensive legal code applicable to all citizens regardless of social status did not exist in ancient Roman times. Instead, Roman law evolved through a combination of legislation, judicial decisions, and legal scholarship over centuries, shaping the legal systems of subsequent societies.

The theory of civil law is directly attributable to the Romans. The Romans used doctrines to develop a code, precise to the Roman people, which determined how legal issues would be decided. They termed it *Jus Civile*, a legal contemporary term that upholds all the rules and principles of law derived from the laws and customs of Rome, as opposed to those derived from the customs of all nations known as *jus gentium* or from the fundamental ideas of right and wrong implicit in the human mind, known as *jus naturale*.

Emperor Justinian who took over the throne in 527 CE, was responsible for this Code. In fact, Roman law persisted in use in many other countries, even though it had been interpreted, developed and adapted to later conditions by generations of jurists and had gone through many judicial precedents.³⁵

France

In France, the concept of a "UCC" (Code Civil in French) refers to a comprehensive legal code that governs civil law matters, including personal status, property, contracts, and obligations. The French Civil Code was originally established in 1804 under Napoleon Bonaparte's rule and has undergone numerous revisions since then.

The French Civil Code provides a unified framework for civil law matters throughout the country, ensuring consistency and predictability in legal matters. It covers a wide range of topics, including:

Personal status: This includes laws related to marriage, divorce, parental authority, adoption, and succession.

Property law: The Civil Code regulates property rights, ownership, real estate transactions, and leases.

Contracts: It establishes rules governing the formation, interpretation, and enforcement of contracts.

Obligations and liability: The Civil Code outlines principles related to civil liability, torts, and damages.

³⁴ Friedmann, *Law in a changing society* 24 (Universal Law Publishing Co. 2011)

³⁵ Satyam Singh & Shobhitabh, *Uniform Civil Code: A Critical Study Of Individual Rights And The Role Of Secular State*, JCIL, 2023

One of the key principles of the French Civil Code is its emphasis on legal equality and uniformity. It seeks to ensure that all citizens are subject to the same legal rules and protections, regardless of their social or economic status.

However, it's worth noting that France has undergone societal and legal changes over the years, leading to amendments and updates to the Civil Code. Additionally, certain matters, such as family law issues concerning marriage and divorce, have seen reforms reflecting evolving societal norms and values.

In recent years, there have been discussions and debates about potential reforms to the Civil Code, particularly concerning family law and issues related to gender equality. However, any significant changes to the Civil Code would likely involve thorough deliberation and legislative processes.

United States of America:

In the United States, where the issue of diversity can be more in keeping with Indian circumstances, there are multiple layers of legislation that apply separately to the nation, the state and the county, or to agencies and cities. States are independent legal entities with their own Supreme Courts, which follow their own practises and legal conventions. Even though there are common principles that govern these civil laws in the States in a manner that is universal across the nation. Only issues of a federal nature or those affecting the country as a whole, such as security, taxation, general legal issues, etc., are dealt with by the Federal Supreme Court.

In the United States, "personal laws" are not typically referred to in the same way they might be in other countries. However, the concept of personal laws generally pertains to laws governing personal matters such as marriage, divorce, inheritance, and adoption. In the U.S., these matters are primarily governed by state laws rather than a single uniform code applicable across the entire country.

Each state has its own set of statutes and regulations concerning these personal matters, leading to variations in laws from one state to another. For example, the requirements for marriage, grounds for divorce, property division upon divorce, and rules regarding inheritance can differ significantly between states.

While there isn't a UCC at the federal level, there are federal laws and constitutional principles that influence personal matters. For instance, the U.S. Supreme Court has issued rulings that impact marriage laws, such as the legalization of same-sex marriage nationwide in the landmark case *Obergefell v. Hodges* (2015).

Efforts to standardize certain aspects of personal laws across states would require significant legal and political considerations, given the principle of federalism that underpins the U.S. legal system and the autonomy afforded to individual states in regulating these matters. As a result, discussions about implementing a UCC in the U.S. context often face complex challenges.

Turkey

In Turkey, the concept of a "UCC" refers to a legal framework that governs personal status matters, such as marriage, divorce, inheritance, and family relations, in a unified manner. The idea of a uniform civil code is rooted in the secular legal reforms introduced by Mustafa Kemal Atatürk and the Turkish Republic's early leaders in the early 20th century.³⁶

One of the most significant legal reforms in Turkey was the introduction of the Turkish Civil Code (*Türk Medeni Kanunu*) in 1926, which replaced the Islamic law-based Ottoman Civil Code. The Turkish Civil

³⁶ Smith, 'India as a secular state', *Secularism and its Critics*, Oxford University Press, New Delhi, 2008.

Code aimed to modernize and secularize family law by introducing principles of equality, individual rights, and legal uniformity.

Key features of the Turkish Civil Code include:

Equality: The Civil Code establishes legal equality between men and women in matters such as marriage, divorce, inheritance, and parental rights. For example, it abolished polygamy and granted women equal rights in marriage and divorce proceedings.

Marriage and Divorce: The Civil Code regulates marriage and divorce procedures, including requirements for marriage, grounds for divorce, and property rights upon divorce.

Inheritance: It establishes rules governing the distribution of property and inheritance rights among family members, regardless of gender.

Guardianship and Parental Rights: The Civil Code outlines provisions related to guardianship, custody, and parental rights concerning children.

The introduction of the Turkish Civil Code represented a significant departure from the traditional Islamic legal system and marked a shift toward secularism and modernization in Turkish society. Subsequent amendments and updates have been made to the Civil Code over the years to reflect changing societal norms and legal developments.

While Turkey has a uniform civil code at the national level, there have been debates and discussions regarding its application and interpretation, particularly concerning issues such as women's rights, gender equality, and religious influences on family law. However, the Turkish Civil Code remains a cornerstone of Turkey's legal system, shaping family relations and personal status matters across the country.³⁷

Lessons for India from other countries

India's consideration of a UCC draws interest from various legal systems globally. Here are lessons and insights from other countries with UCCs or similar legal frameworks:

The French Civil Code (Code Civil) serves as a model for uniformity in civil law matters. It provides a comprehensive legal framework covering personal status, property, contracts, and obligations. India could study France's experience in implementing and maintaining a UCC, ensuring legal equality and consistency across diverse populations.

Turkey's transition from Islamic law-based regulations to a secular civil code offers valuable insights. India may learn from Turkey's efforts to modernize family law, promote gender equality, and navigate the balance between secularism and religious influences in legal reforms.

Tunisia is another example of a predominantly Muslim country that has implemented a UCC, known as the Code of Personal Status. It abolished polygamy, established legal equality between men and women, and introduced progressive family law reforms. India could examine Tunisia's approach to harmonizing personal laws with modern principles of equality and human rights.

Before the Islamic Revolution of 1979, Iran had a secular legal system influenced by European legal traditions. India might explore Iran's pre-revolutionary legal framework as a reference for integrating secular principles into personal laws while respecting cultural and religious diversity.

South Africa's post-apartheid constitution guarantees equality and prohibits discrimination based on various grounds, including race, gender, and religion. While South Africa does not have a UCC, its

³⁷ <https://organiser.org/2023/07/18/184355/bharat/uniform-civil-code-what-is-the-worlds-take-on-ucc/>

constitutional principles of equality and non-discrimination could inform India's efforts to reform personal laws while safeguarding individual rights and diversity.³⁸

Although the U.S. does not have a UCC at the federal level, it provides insights into managing legal diversity within a federal system. India could examine how the U.S. balances federal and state laws, respects cultural and religious pluralism, and safeguards individual rights while promoting legal uniformity in certain areas.

Germany's Civil Code (Bürgerliches Gesetzbuch) is another example of a comprehensive legal framework governing civil law matters. India may study Germany's experience in maintaining a UCC while addressing cultural, religious, and regional diversity within a federal system.

In considering lessons from these countries, India can tailor its approach to a UCC to suit its unique socio-cultural context, ensuring that reforms promote equality, justice, and individual rights while respecting diversity and pluralism.

CHAPTER 4: APPLICATION OF UNIFORM CIVIL CODE IN CONTEMPORARY INDIA

The need for a UCC in India is a subject of debate and contention, with proponents and opponents holding differing views. Here are some reasons often cited in favor of implementing a UCC:

Equality and Justice

A UCC would ensure equal rights and treatment for all citizens, irrespective of their religion, caste, or community. It would eliminate disparities and discrimination inherent in different personal laws and promote the principles of equality and justice enshrined in the Constitution.³⁹

A UCC would ensure equal treatment for all citizens, irrespective of their religion, caste, or gender. Currently, personal laws in India vary based on religious affiliations, leading to disparities and discrimination. Implementing a UCC would eliminate these differences and ensure that all citizens are subject to the same laws and enjoy equal rights and protections.

A UCC would contribute to social justice by promoting fairness and equity in society. It would ensure that individuals from marginalized and disadvantaged communities are not deprived of their rights due to discriminatory laws based on religion or caste. By providing a common legal framework for all citizens, a UCC would uphold the principles of justice and ensure that everyone has equal access to legal remedies and protections.⁴⁰

Secularism

India is a secular country, and the implementation of a UCC would uphold the secular ethos by providing a common civil law applicable to all citizens. It would separate religion from civil matters and promote a more inclusive and cohesive society.

A UCC would ensure that all citizens are subject to the same set of laws regardless of their religion, caste, or community. This ensures equality before the law and eliminates any preferential treatment based on religious affiliations. By establishing a common civil law applicable to all citizens irrespective of their religious background, a UCC ensures that personal matters such as marriage, divorce, adoption, and inheritance are governed by uniform principles. This reduces the influence of religious authorities in civil matters and promotes a secular legal framework. Implementing a UCC demonstrates the government's commitment to maintaining neutrality in matters of religion. Instead of favoring or

³⁸ Destha Kiran, *Uniform Civil Code In Retrospect And Prospect* (Deep & Deep Publication, 2012)

³⁹ Rajeev Dhawan, "The Apex Court and Personal Law" *The Hindu*, 14 March 1997

⁴⁰ Tanushree, *Uniform Civil Code In India: An Analysis*, JCIL, 2020

privileging any particular religious community, a UCC ensures that all citizens are treated equally under the law, regardless of their religious beliefs. A UCC fosters social cohesion by promoting unity and commonality among citizens. By providing a common legal framework for personal matters, it reduces divisions along religious lines and encourages integration among different religious communities, contributing to a more cohesive and inclusive society.

Personal laws in India often contain provisions that discriminate against women based on religious customs and practices. A UCC would uphold principles of gender equality by ensuring that women have the same rights and protections as men in personal matters, regardless of their religious background.

Women's Rights

Personal laws in India often contain provisions that discriminate against women, particularly in matters of marriage, divorce, inheritance, and maintenance. A UCC would promote gender equality by ensuring equal rights and opportunities for women in personal matters. A UCC would ensure equal rights for women in matters of marriage, including consent, age of marriage, and choice of spouse. It would prohibit practices such as child marriage, forced marriage, and polygamy, which disproportionately affect women's rights and autonomy.

Currently, personal laws in India provide different provisions for divorce and maintenance based on religious affiliations, often disadvantaging women. A UCC would ensure that women have equal rights in divorce proceedings and are entitled to fair and adequate maintenance irrespective of their religion or community. In many religious personal laws, women have limited or unequal rights in matters of inheritance and property ownership. A UCC would guarantee women's equal rights to inherit property and assets, empowering them economically and ensuring their financial security.

Personal laws often grant preferential treatment to fathers in matters of child custody and guardianship. A UCC would ensure that custody and guardianship decisions are made in the best interests of the child, taking into account factors such as the child's welfare and the parents' ability to provide care, without discrimination based on gender. A UCC would prohibit discriminatory practices against women, such as triple talaq, halala, and nikah halala, which violate women's rights and dignity. It would provide legal recourse for women subjected to such practices and ensure that perpetrators are held accountable under the law.⁴¹

Social Cohesion

India is a diverse country with various religious communities, each governed by its own set of personal laws. Implementing a UCC would foster social cohesion by promoting unity and commonality among citizens, irrespective of their religious affiliations.

India is a diverse country with a rich tapestry of cultures, religions, and traditions. However, this diversity often translates into fragmented legal systems based on personal laws that vary across religious communities. A UCC would provide a common legal framework applicable to all citizens, irrespective of their religion, caste, or community, promoting a sense of unity in diversity. Personal laws in India sometimes perpetuate divisive practices that segregate communities and reinforce social barriers. Implementing a UCC would eliminate such divisive practices by ensuring that all citizens are subject to the same set of laws, regardless of their religious affiliations. This would help bridge the gap between different religious communities and promote social harmony. A UCC would encourage cultural integration by fostering interactions and exchanges among diverse communities. By providing a

⁴¹ Puniyani, Riya, Uniform Civil Code and Conflicts of Personal Laws, SSRN (2020)

common legal platform for personal matters such as marriage, divorce, and inheritance, a UCC would facilitate greater understanding and collaboration among citizens from different cultural backgrounds, strengthening social bonds and solidarity.

Legal Certainty

Personal laws in India are often complex and vary across religious communities, leading to confusion and legal uncertainty. A UCC would provide clarity and consistency in legal principles and procedures, making the legal system more accessible and understandable for all citizens.

Currently, personal laws in India are diverse and complex, varying across religious communities and leading to ambiguity and confusion. A UCC would establish clear and uniform legal principles applicable to all citizens, irrespective of their religion, caste, or community, ensuring that everyone understands their rights and obligations under the law. Personal laws often have different procedures and requirements for matters such as marriage, divorce, and inheritance, creating inconsistencies and procedural hurdles. Implementing a UCC would streamline legal procedures and standardize requirements, making the legal system more efficient and accessible to all citizens. A UCC would provide predictability in legal outcomes by establishing uniform rules and guidelines for resolving disputes related to personal matters. Citizens would have confidence that similar cases will be treated similarly, reducing uncertainty and promoting trust in the legal system. The complexity and diversity of personal laws sometimes make it challenging for individuals to navigate the legal system and access legal remedies. A UCC would simplify legal procedures and make the legal system more user-friendly, ensuring that all citizens can exercise their rights and seek redressal for grievances effectively.⁴²

Modernization and Progress

India is a rapidly evolving society, and its legal system needs to adapt to changing social realities and norms. A UCC would reflect contemporary values and aspirations, contributing to the modernization and progress of Indian society. Personal laws in India are often complex, diverse, and inconsistent, leading to ambiguity, confusion, and delays in the legal system. A UCC would provide clarity, consistency, and predictability in the legal framework governing personal matters, making the legal system more efficient, accessible, and user-friendly. It would streamline legal procedures, reduce procedural hurdles, and ensure that all citizens have equal access to justice. A UCC would uphold the fundamental rights and freedoms guaranteed by the Constitution, including the right to equality, freedom of religion, and the right to personal liberty. It would protect individuals from arbitrary and discriminatory practices, ensuring that everyone enjoys the same rights and protections under the law.

Cultural Integration and National Identity

A UCC would encourage cultural integration by fostering interactions and exchanges among diverse communities. By providing a common legal platform for personal matters such as marriage, divorce, and inheritance, a UCC would facilitate greater understanding and collaboration among citizens from different cultural backgrounds, strengthening social bonds and solidarity. Implementing a UCC would reinforce a sense of national identity and belonging among citizens by emphasizing their common rights, responsibilities, and obligations under the law. This would contribute to forging a stronger sense of unity and patriotism among the diverse population of India.

However, it's important to note that there are also arguments against the implementation of a UCC. Critics argue that it could infringe upon religious freedoms, undermine cultural identities, and disrupt

⁴² Nilanjana Bhaduri Jha, "Does India really need a Uniform Civil Code?" Times of India, 2020

social harmony. The debate surrounding the need for a UCC in India involves balancing the principles of equality, secularism, and individual rights with concerns about religious pluralism and diversity. Ultimately, the decision to enact a UCC requires careful consideration of these complex and nuanced issues.

PROBLEMS IN IMPLEMENTING UNIFORM CIVIL CODE

Implementing a UCC in India is a complex endeavor fraught with various problems and challenges:

Diverse Religious and Cultural Landscape: India is a diverse country with multiple religions and cultures, each with its own set of personal laws governing matters such as marriage, divorce, inheritance, and adoption. Implementing a UCC requires navigating through these diverse legal traditions and addressing concerns about cultural and religious sensitivities.

Religious Opposition: Many religious communities are strongly attached to their personal laws, which they see as integral to their identity and religious freedom. Implementing a UCC might face resistance from religious leaders and conservative groups who perceive it as an infringement on their religious rights.

Political Resistance: Political parties often exploit religious and cultural identities for electoral gains. Parties representing specific religious or cultural groups may oppose a UCC to maintain their support base, hindering legislative efforts to enact a uniform code.

Gender Inequality: Personal laws in India often perpetuate gender inequalities, with different rights and obligations for men and women in matters such as marriage, divorce, and inheritance. While a UCC aims to ensure gender equality, implementing it effectively to address existing disparities poses significant challenges.

Enforcement and Implementation: Even if a UCC is enacted, ensuring its effective enforcement and implementation across the vast and diverse Indian population is a formidable task. This requires adequate administrative infrastructure, resources, and mechanisms for awareness, compliance, and enforcement.

Legal Complexity: India's legal system is complex, with numerous laws, customs, and judicial precedents governing personal matters. Harmonizing these diverse legal traditions into a single code without causing injustice or discontent among any community is a challenging task.

Socio-Cultural Resistance: Certain communities may resist the implementation of a UCC due to concerns about losing their cultural identity or traditional practices. There may be apprehension that a uniform code could undermine the rights and protections provided by their personal laws.

Constitutional Hurdles: While the Indian Constitution allows for the implementation of a UCC under Article 44⁴³, any attempt to introduce such a code must carefully navigate constitutional provisions protecting religious freedom and cultural diversity.

Lack of Consensus: There is no consensus among policymakers, legal experts, and civil society on the specifics of a UCC. Debates surrounding issues such as marriage, divorce, and inheritance are highly contentious, making it challenging to draft a uniform code that satisfies all stakeholders.

Historical Context: Historical factors, including colonial-era laws and post-independence developments, have shaped India's legal landscape. Introducing a UCC requires addressing historical injustices and

⁴³ Article 44, The Constitution of India

ensuring that the new code reflects contemporary realities while respecting the country's pluralistic ethos.

Despite these challenges, proponents argue that a UCC is essential for promoting national integration, secularism, and gender justice. However, achieving consensus and addressing the concerns of various stakeholders are critical steps in the process of implementing a UCC in India.

systematic approaches of Implementing a UCC

Implementing a UCC in India requires a systematic approach and careful consideration of various factors, including legal, social, cultural, and political aspects. Here are some proposed steps to implement a UCC:

Conduct Comprehensive Consultations: Begin by conducting extensive consultations with stakeholders, including religious leaders, legal experts, women's rights activists, community representatives, and civil society organizations. Gather input and feedback on the proposed UCC to ensure that it reflects the interests and concerns of diverse groups.

Drafting Legislation: Establish a committee comprising legal experts, scholars, and representatives from different communities to draft the UCC legislation. The drafting process should be transparent, inclusive, and based on principles of equality, justice, and human rights.

Public Awareness Campaign: Launch a comprehensive public awareness campaign to educate the public about the objectives and benefits of a UCC. Address misconceptions and concerns regarding the UCC's impact on religious and cultural practices, emphasizing its potential to promote gender equality, social justice, and national integration.

Political Consensus Building: Engage with political parties across the spectrum to build consensus on the need for a UCC and garner support for its implementation. Highlight the importance of secularism, equality before the law, and the principle of one nation, one law in promoting social harmony and national unity.

Legislative Process: Introduce the UCC legislation in the Parliament or State Assemblies, depending on the jurisdiction. Hold debates and discussions to deliberate on the provisions of the proposed code and address any concerns raised by lawmakers. Seek bipartisan support for the passage of the legislation.

Safeguarding Religious Freedom: Ensure that the UCC respects the constitutional guarantees of religious freedom and does not infringe upon individuals' rights to practice their religion. Provide adequate safeguards to protect religious customs and practices while promoting uniformity in civil laws.

Phased Implementation: Consider implementing the UCC in a phased manner, starting with less contentious areas such as marriage registration, divorce procedures, and inheritance rights. Gradually extend the scope of the UCC to cover other aspects of personal law, taking into account the complexities and sensitivities involved.⁴⁴

Capacity Building and Training: Invest in capacity building and training programs for judicial officers, lawyers, and law enforcement agencies to ensure effective implementation and enforcement of the UCC. Provide resources and support for the judiciary to adjudicate cases related to the new civil code impartially and efficiently.

Monitoring and Evaluation: Establish mechanisms for monitoring the implementation of the UCC and evaluating its impact on various segments of society. Collect data on key indicators such as gender

⁴⁴ Salim Akhtar and Ahmad Naseem, *Personal Laws and Uniform Civil Code*, p. 3 (1998).

equality, access to justice, and social cohesion to assess the effectiveness of the UCC in achieving its objectives.

Addressing Challenges and Grievances: Set up grievance redressal mechanisms to address any challenges or grievances arising from the implementation of the UCC. Ensure that marginalized and vulnerable groups have access to legal aid and support services to uphold their rights under the new civil code.

By following these proposed steps, India can move closer to achieving the goal of implementing a UCC that promotes equality, justice, and social harmony while respecting the country's diverse religious and cultural fabric.

Succession And Inheritance

Succession and inheritance laws in India are currently governed by various personal laws based on religion, as well as secular laws in certain areas. Implementing a UCC would aim to unify these laws and create a single set of rules governing succession and inheritance across the country. Here's how succession and inheritance laws could be addressed under a UCC framework:

Equal Inheritance Rights: One of the primary objectives of a UCC would be to ensure equal inheritance rights for all individuals, regardless of gender, religion, or other factors. Under current personal laws, inheritance rights can vary significantly based on factors such as gender and religious affiliation. A UCC would aim to eliminate these disparities and ensure that all heirs have equal rights to inherit property from their ancestors.

Unified Rules: A UCC would establish unified rules governing succession and inheritance, providing clarity and consistency in matters such as the distribution of property, succession to intestate estates (when there is no will), and rules regarding testamentary succession (when there is a will). This would simplify the legal framework and reduce ambiguity in inheritance matters.

Protection of Family Property: Inheritance laws often involve complex issues related to family property, including ancestral property, joint family property, and self-acquired property. A UCC would need to address these issues while ensuring that the rights of family members, including spouses, children, and other heirs, are protected and respected.

Special Provisions: Certain communities may have specific customs and practices related to succession and inheritance that are currently governed by their personal laws. A UCC would need to carefully consider these customs and may include special provisions to accommodate them while ensuring that they are consistent with the principles of equality and justice.⁴⁵

Transition Period: Transitioning from the current system of diverse personal laws to a unified inheritance framework under a UCC would require a transition period to allow for adjustment and adaptation. During this period, provisions could be made to address any conflicts or inconsistencies between existing laws and the new unified code.

Legal Recognition of Wills: A UCC would likely include provisions for the legal recognition of wills, allowing individuals to specify their wishes regarding the distribution of their property after their death. This would provide individuals with greater autonomy and flexibility in estate planning and succession matters.

Dispute Resolution Mechanisms: Inheritance disputes are common and can be complex, often involving issues of interpretation, validity of wills, and competing claims among heirs. A UCC would need to

⁴⁵ Puniyani, Riya, Uniform Civil Code and Conflicts of Personal Laws, SSRN (2020)

establish effective dispute resolution mechanisms, such as mediation, arbitration, or specialized inheritance courts, to resolve disputes in a timely and fair manner.

Public Awareness and Education: Implementing a UCC for succession and inheritance would require public awareness and education campaigns to inform individuals about their rights and obligations under the new legal framework. This would help ensure that citizens understand the changes and are able to navigate the inheritance process effectively.

Overall, implementing a UCC for succession and inheritance in India would require careful consideration of legal, social, and cultural factors, as well as broad consensus and political will to enact meaningful reforms.

Legal issues

Implementing a UCC in India raises several legal issues that need careful consideration. Here are some key legal aspects and challenges associated with the UCC:

Constitutional Validity: The primary legal issue surrounding the UCC is its constitutional validity. Article 44 of the Indian Constitution recommends the enactment of a UCC, but it falls under the Directive Principles of State Policy, which are not enforceable by the courts. Implementing a UCC requires reconciling it with other fundamental rights, especially those related to freedom of religion and minority rights.

Conflict with Personal Laws: India's legal system recognizes personal laws based on religion for matters such as marriage, divorce, inheritance, and adoption. Implementing a UCC would require repealing or amending these personal laws, which could face resistance from religious communities and pose constitutional challenges regarding the protection of minority rights.

Secularism vs. Religious Freedom: A UCC aims to promote secularism by ensuring uniform laws regardless of religious affiliations. However, it must also respect individuals' right to freedom of religion guaranteed under the Constitution. Balancing secular principles with religious freedoms is a complex legal issue that requires careful deliberation.⁴⁶

Gender Equality: One of the objectives of a UCC is to promote gender equality by eliminating discriminatory practices prevalent in personal laws. Addressing issues such as polygamy, unilateral divorce, and unequal inheritance rights requires legal reforms that uphold principles of equality and non-discrimination.

Uniformity vs. Diversity: India is a diverse country with multiple religious and cultural traditions. Implementing a UCC raises questions about balancing uniformity in laws with respecting and preserving cultural diversity. Legal provisions must accommodate pluralism while promoting common principles of justice and equality.

Legal Complexity: Crafting a comprehensive UCC that addresses various personal laws while ensuring coherence, clarity, and enforceability is a significant legal challenge. Resolving legal complexities related to marriage, divorce, adoption, and succession requires thorough legal analysis and drafting expertise.

Enforcement and Implementation: Even if a UCC is enacted, ensuring its effective enforcement and implementation across diverse regions and communities is a practical challenge. Adequate mechanisms for legal education, awareness, and dispute resolution are essential to ensure compliance and access to justice.

⁴⁶ Tanushree , Uniform Civil Code In India: An Analysis, JCIL, 2020

Political Consensus: Implementing a UCC requires political consensus and bipartisan support. Political parties may have divergent views based on ideological, cultural, and electoral considerations. Building consensus among stakeholders and overcoming political resistance is crucial for legislative reforms.

Judicial Review: Any legislation related to the UCC is subject to judicial review by the courts to ensure its compatibility with constitutional principles and fundamental rights. Courts play a critical role in interpreting and upholding the legality and constitutionality of UCC-related laws and policies.

Public Opinion and Social Acceptance: Public perception and societal acceptance of a UCC also influence its implementation. Consultation with civil society organizations, religious leaders, and the general public is necessary to gauge public opinion, address concerns, and build support for legal reforms.

Navigating these legal issues requires comprehensive legal analysis, consultation with stakeholders, and a balanced approach that upholds constitutional values, protects individual rights, and promotes social cohesion. It is essential to engage in informed and inclusive dialogue to address the complexities of implementing a UCC in India's diverse and pluralistic society.

Possible solutions to the issues surrounding UCC

Implementing a UCC in a diverse country like India requires careful consideration of various legal, social, and political factors. Here are some possible solutions to address the challenges associated with the UCC:

Inclusive Consultation and Dialogue: Engage in comprehensive consultations with stakeholders, including religious leaders, legal experts, civil society organizations, and members of diverse communities. Foster inclusive dialogue to understand concerns, build consensus, and garner support for UCC reforms.

Gradual Approach: Adopt a phased approach to implementing the UCC, starting with areas of consensus and feasibility. Prioritize reforms that address gender inequality, protect individual rights, and promote social justice. Gradually expand the scope of the UCC over time, considering societal readiness and acceptance.

Legal Reforms and Harmonization: Undertake legal reforms to harmonize personal laws across religious communities while respecting fundamental rights and religious freedoms. Identify common principles and practices that can form the basis of a unified legal framework, while accommodating diverse cultural traditions.

Constitutional Amendments: Consider amending relevant provisions of the Indian Constitution, such as Articles 25-28 (Freedom of Religion) and Article 44 (Directive Principles of State Policy), to provide a constitutional basis for the UCC. Ensure that constitutional amendments uphold the principles of secularism, equality, and pluralism.

Safeguards and Protections: Incorporate safeguards and protections in the UCC to prevent misuse, abuse, or infringement of individual rights. Include provisions for judicial review, dispute resolution mechanisms, and enforcement mechanisms to uphold the rule of law and protect vulnerable populations.

Education and Awareness: Conduct educational campaigns and awareness programs to inform the public about the objectives, benefits, and implications of the UCC. Promote understanding and acceptance of common legal principles that transcend religious and cultural differences.

Capacity Building: Invest in capacity building for legal professionals, judicial officers, and administrative officials to effectively implement and enforce the UCC. Provide training on uniform legal

procedures, dispute resolution mechanisms, and human rights principles to ensure consistent application of the law.

Social Reforms and Empowerment: Complement legal reforms with social initiatives aimed at empowering marginalized communities, promoting gender equality, and combating discrimination. Invest in education, healthcare, and economic opportunities to uplift disadvantaged populations and foster social inclusion.

Public Participation and Accountability: Encourage public participation in the UCC reform process through consultations, public hearings, and feedback mechanisms. Ensure transparency, accountability, and responsiveness in the formulation and implementation of UCC-related policies and laws.

Adaptability and Flexibility: Recognize the dynamic nature of Indian society and the need for adaptability and flexibility in legal reforms. Review and revise UCC provisions periodically to reflect evolving social realities, address emerging challenges, and incorporate lessons learned from implementation experiences.

By adopting a holistic and inclusive approach, India can navigate the complexities of implementing a UCC that upholds constitutional values, promotes social justice, and fosters unity in diversity.

Way Forward

Brick by Brick Approach: In order to achieve a UCC in India, a brick-by-brick approach should be taken rather than an omnibus approach. A just code is far more important than a uniform code. Checking the Social Adaptability: There is a need to consider social adaptability of UCC while forming a blueprint for a UCC.

Starting with the areas of personal law that are most widely accepted and uncontroversial, such as laws related to marriage and divorce. This could help to build consensus and support for the UCC, while also addressing some of the most pressing issues faced by citizens. Discussion and Deliberations with Stakeholders: Also, involving a broad range of stakeholders, including religious leaders, legal experts, and community representatives, in the process of developing and implementing the UCC.⁴⁷ This could help to ensure that the UCC takes into account the diverse perspectives and needs of different groups, and that it is seen as fair and legitimate by all citizens.

Uniform Civil Code favoring arguments

The Uniform Civil Code (UCC) in India refers to the proposition of a single set of personal laws applicable to all citizens regardless of their religion, replacing the existing personal laws which vary based on religious affiliations. One of the primary arguments in favor of a UCC is that it promotes equality and justice among citizens by ensuring that laws apply uniformly to everyone, irrespective of their religious beliefs. It aligns with the principle of equality enshrined in the Constitution of India.

A UCC is seen as a crucial step towards achieving true secularism in India. It reinforces the principle of secularism by separating religion from matters of personal laws, ensuring that the state does not discriminate on the basis of religion. Implementing a UCC is often advocated as a means to enhance gender equality and women's rights. Currently, personal laws in India, particularly those related to marriage, divorce, and inheritance, are perceived to be discriminatory against women in certain communities. A UCC would eliminate such discriminatory practices and provide equal rights to women across all religions.

⁴⁷ <https://www.drishtias.com/daily-updates/daily-news-editorials/uniform-civil-code-balancing-tradition-and-modernity>

India is a diverse country with a multitude of religious communities. Having separate personal laws based on religion can sometimes lead to divisions among communities. A UCC is believed to promote national integration by fostering a sense of unity and common identity among citizens.

Uniform laws can contribute to socio-economic development by streamlining legal processes and reducing complexities associated with multiple legal systems. This can facilitate easier access to justice and contribute to a more efficient legal system overall.

The existing personal laws in India are often criticized for being archaic and out of sync with contemporary values and principles. Introducing a UCC would provide an opportunity to modernize the legal framework and bring it in line with the evolving societal norms and values. Many countries around the world have adopted uniform civil codes or similar legal frameworks. Implementing a UCC in India would bring the country in alignment with international standards and best practices in legal jurisprudence.

Having a single set of laws governing personal matters can lead to administrative efficiency and reduce the burden on the judiciary. It would simplify legal procedures and reduce the complexity associated with adjudicating cases involving different personal laws.

The proponents argue that a Uniform Civil Code is not only a matter of legal reform but also a crucial step towards upholding the principles of equality, secularism, and justice in a diverse and democratic society like India.

Arguments Against UCC

Opponents of the Uniform Civil Code (UCC) in India present several arguments against its implementation.

Critics argue that implementing a UCC could undermine the rights of religious minorities by imposing majority norms on them. India is a diverse country with various religious communities, each with its own distinct cultural practices and traditions. Imposing a uniform set of laws could be perceived as an infringement on the autonomy and rights of these communities.

Opponents argue that a UCC could violate the principle of religious freedom enshrined in the Indian Constitution. Personal laws are deeply intertwined with religious beliefs and practices, and imposing a uniform code could curtail the freedom of individuals to practice their religion as per their beliefs, particularly in matters like marriage, divorce, and inheritance.

India is a vast and diverse country with multiple religious communities and subcultures. Implementing a uniform civil code that accommodates this diversity while ensuring fairness and equality for all citizens is a complex task. Critics argue that the practical challenges associated with drafting and implementing a UCC could outweigh its potential benefits.

Religious institutions and leaders often oppose the idea of a UCC, viewing it as a threat to their authority and influence over their respective communities. Any attempt to impose uniform laws could face significant resistance from these institutions, leading to social and political unrest. Introducing a UCC could trigger social unrest and communal tensions, particularly in sensitive regions with a history of inter-religious conflicts. Critics fear that attempts to impose uniform laws could exacerbate existing fault lines and lead to polarization along religious lines.

India's diversity extends beyond religious differences to encompass regional, linguistic, and cultural variations. Critics argue that a one-size-fits-all approach may not adequately address the diverse needs and aspirations of India's population. Any attempt to impose uniform laws should take into account

these multifaceted aspects of diversity. Some critics argue that the debate over a UCC diverts attention and resources away from more pressing social and economic issues facing the country, such as poverty, education, healthcare, and infrastructure development. They contend that the government's focus should be on addressing these urgent challenges rather than engaging in contentious debates over personal laws. Introducing significant changes to personal laws, which are deeply ingrained in societal norms and practices, could disrupt social structures and relationships. Critics warn against the unintended consequences of hastily implementing a UCC without adequate consultation and consensus-building among stakeholders.

The opponents of the Uniform Civil Code raise concerns about its potential impact on minority rights, religious freedom, social harmony, and the complexity of implementation in a diverse and pluralistic society like India. They advocate for a more nuanced approach that respects the autonomy of religious communities while striving for equality and justice for all citizens.

CHAPTER 5: JUDICIAL APPROACH

Mohd. Ahmed Khan v. Shah Bano Begum⁴⁸

This case is one of the most significant in the context of the UCC debate. The Supreme Court ruled that Muslim women are entitled to maintenance beyond the iddat period (the waiting period after divorce), under Section 125 of the Code of Criminal Procedure (CrPC), irrespective of the personal laws governing them. However, this decision sparked controversy and led to protests from conservative Muslim groups, ultimately resulting in the government's intervention through the Muslim Women (Protection of Rights on Divorce) Act, 1986, which sought to override the Supreme Court's judgment. Shah Bano Begum, a Muslim woman, was divorced by her husband, Mohd. Ahmed Khan, in 1978 after 43 years of marriage. Shah Bano sought maintenance under Section 125 of the Code of Criminal Procedure (CrPC) from her husband. Mohd. Ahmed Khan argued that the Muslim Personal Law governed their divorce and maintenance, and he was not obligated to pay maintenance beyond the iddat period (the waiting period after divorce) prescribed by Islamic law.

Key Issues:

The case raised questions regarding the conflict between personal laws based on religion and the principles of gender equality and social justice enshrined in the Indian Constitution. It highlighted the disparity between maintenance provisions under Section 125 of the CrPC, which applies uniformly to all citizens, and the limited rights available to Muslim women under Muslim personal law.

Judgment:

The Supreme Court ruled in favor of Shah Bano, holding that Muslim women are entitled to maintenance beyond the iddat period under Section 125 of the CrPC, irrespective of the Muslim Personal Law. The Court emphasized the principle of gender equality and the need to provide social justice to Muslim women who are economically vulnerable after divorce.

Impact:

The judgment received widespread attention and triggered debates on the reform of personal laws and the enactment of a Uniform Civil Code. It was celebrated as a victory for women's rights and gender equality but also faced backlash from conservative Muslim groups who viewed it as an interference in religious matters.

⁴⁸ 1985 AIR 945 1985 SCR (3) 844

The judgment led to political controversy and pressure from conservative Muslim leaders, ultimately prompting the government to pass the Muslim Women (Protection of Rights on Divorce) Act, 1986. This Act effectively nullified the Supreme Court's judgment by restricting the right to maintenance for Muslim women to the iddat period only, as prescribed by Muslim Personal Law.⁴⁹

Debate on Uniform Civil Code:

The case reignited the debate on the need for a Uniform Civil Code in India to ensure equality and justice in personal laws across all religions. Proponents argued that a UCC would eliminate disparities and provide a common legal framework for all citizens, irrespective of their religious affiliations. Opponents raised concerns about religious freedom and cultural diversity, arguing that a UCC could undermine religious traditions and practices.

It highlighted the tensions between personal laws based on religion and constitutional principles of equality and justice. While the case underscored the need for legal reform, particularly in matters concerning women's rights, the legislative response underscored the challenges in enacting significant changes to personal laws in a diverse and religiously pluralistic society like India.

Sarla Mudgal v. Union of India⁵⁰

In this case, the Supreme Court addressed the issue of bigamy under Hindu personal laws, specifically concerning Hindu men converting to Islam to marry a second time without legally divorcing their first wives. The court held that such conversions and subsequent marriages amounted to illegal bigamy under Hindu law. The judgment highlighted the need for a UCC to address inconsistencies and discriminatory practices in personal laws.

The case arose from a petition filed by Sarla Mudgal, a Hindu woman, seeking action against her husband, who had married another woman after converting to Islam. Sarla Mudgal argued that her husband's second marriage amounted to bigamy under Hindu law, and she sought legal remedies to annul the second marriage and hold him accountable for bigamy.

Key Issues:

The case raised questions regarding the conflict between personal laws based on religion and the principles of gender equality and social justice enshrined in the Indian Constitution.

It highlighted the loophole in Hindu personal law that allowed Hindu men to convert to Islam to marry a second time without legally divorcing their first wives, thereby circumventing the law against bigamy.

Judgment:

The Supreme Court held that a Hindu man who converts to Islam to marry a second time without legally divorcing his first wife continues to be governed by the Hindu Marriage Act, 1955, and cannot escape prosecution for bigamy. The Court emphasized that personal laws cannot be used to evade legal obligations and that the principles of equality and justice must prevail over religious considerations.

The judgment underscored the need for a UCC to ensure uniformity and equality in personal laws across all religions. The Court observed that the absence of a UCC leads to disparities and discrimination, particularly against women, and called upon the government to take steps towards enacting a UCC.

Impact:

⁴⁹ Friedmann, *Law in a changing society* 24 (Universal Law Publishing Co. 2011)

⁵⁰ AIR 1995 SC 1531

The judgment received widespread acclaim for upholding the principles of gender equality and social justice. It rekindled the debate on the need for legal reforms and the enactment of a UCC to address inconsistencies and discriminatory practices in personal laws.

The case sparked discussions and debates in political and social circles, with proponents advocating for the enactment of a UCC to ensure equality and justice for all citizens. However, the issue remains politically contentious, with opposition from conservative religious groups and political parties citing concerns about religious freedom and cultural diversity.

In summary, *Sarla Mudgal v. Union of India* underscored the importance of legal reform and the enactment of a UCC to ensure uniformity, equality, and justice in personal laws across all religions. The case highlighted the challenges and complexities in achieving legal reforms in a diverse and religiously pluralistic society like India.

Shah Bano Case Revisited (2001)

The Supreme Court revisited the Shah Bano case in 2001 in *Daniel Latifi & Anr v. Union of India & Anr*. The court reaffirmed the principles laid down in the original Shah Bano judgment regarding Muslim women's right to maintenance under Section 125 of the CrPC. The judgment reiterated the importance of gender equality and emphasized the need for a UCC to ensure uniformity and equality in personal laws.

John Vallamattom v. Union of India⁵¹

This case dealt with the issue of Christian personal laws regarding divorce. The Supreme Court held that divorce granted by ecclesiastical tribunals, such as Christian churches, could not be considered valid under Indian law unless registered under the Indian Divorce Act, 1869. The judgment highlighted the need for a UCC to address inconsistencies and provide a uniform legal framework for divorce across all religious communities.

The case stemmed from a petition filed by John Vallamattom, a Catholic priest, challenging the validity of divorce decrees granted by ecclesiastical tribunals (church courts) under Canon Law. Vallamattom argued that divorce decrees granted by ecclesiastical tribunals should be considered valid under Indian law, even if not registered under the Indian Divorce Act, 1869.

Key Issues:

The case raised questions about the recognition of divorce granted by religious institutions under Indian law. It highlighted the conflict between religious personal laws and secular laws, particularly in matters of marriage and divorce.

Judgment:

The Supreme Court held that divorce decrees granted by ecclesiastical tribunals under Canon Law are not valid under Indian law unless registered under the Indian Divorce Act, 1869. The Court emphasized the primacy of secular laws over religious personal laws in matters of marriage and divorce, stating that ecclesiastical tribunals have no jurisdiction to grant divorce that is legally recognized in India.

Implications:

The judgment clarified the legal status of divorce decrees granted by ecclesiastical tribunals, ensuring uniformity and consistency in divorce laws across all religious communities.

It underscored the principle of legal supremacy and the importance of secular laws in regulating marital matters, regardless of religious affiliations. While the case did not directly address the issue of a UCC,

⁵¹ (2000) 6 SCC 224

it highlighted the need for a common legal framework to govern personal laws across all religions. The judgment emphasized the challenges and complexities arising from the coexistence of diverse personal laws and the importance of harmonizing them under a UCC to ensure equality and justice for all citizens.⁵²

The case reignited the debate on the need for legal reforms, including the enactment of a UCC, to address inconsistencies and disparities in personal laws. Proponents of legal reform argued that a UCC would provide a common legal framework for all citizens, ensuring equality before the law and upholding fundamental rights.

In summary, *John Vallamattom v. Union of India* underscored the supremacy of secular laws over religious personal laws in matters of marriage and divorce. While the case did not directly address the issue of a UCC, it highlighted the challenges posed by diverse personal laws and the importance of legal reforms to ensure uniformity, equality, and justice for all citizens.

*Shayara Bano v. Union of India*⁵³

It is a landmark case that addressed the constitutional validity of the practice of instant triple talaq (talaq-e-biddat) among Muslim men in India. Here's an analysis of the case in the context of the UCC:

Shayara Bano, filed a petition challenging the practice of instant triple talaq, where a Muslim husband can divorce his wife by uttering "talaq" thrice in quick succession, without any judicial intervention or consideration for reconciliation.

Bano argued that instant triple talaq violated her fundamental rights to equality, dignity, and non-discrimination enshrined in the Indian Constitution.

Key Issues:

The case raised questions about the constitutionality of instant triple talaq and its compatibility with fundamental rights guaranteed under the Indian Constitution. It highlighted the need to reconcile personal laws with constitutional principles of equality and justice, particularly concerning gender rights and religious freedoms.

Judgment:

The Supreme Court, in a historic judgment, declared the practice of instant triple talaq unconstitutional, holding that it violated Muslim women's fundamental rights under Articles 14 (right to equality), 15 (prohibition of discrimination), and 21 (right to life and personal liberty) of the Indian Constitution. The Court emphasized that instant triple talaq was arbitrary and discriminatory, and it struck down the practice as being incompatible with constitutional principles.

Implications:

The judgment provided relief to Muslim women who had been vulnerable to arbitrary divorce through instant triple talaq, ensuring their right to dignity, equality, and non-discrimination. It underscored the importance of constitutional principles in regulating personal laws and ensuring that religious practices comply with fundamental rights.

While the case did not directly address the issue of a Uniform Civil Code, it reignited the debate on the need for legal reforms, including the enactment of a UCC, to ensure uniformity, equality, and justice in personal laws across all religions. The judgment highlighted the challenges posed by the coexistence of

⁵² Uniform Civil Code in India <https://www.crpc.in/images/uniform-civil-code.pdf>

⁵³ *Shayara Bano vs. Union of India* (2017) 9 SCC 1

diverse personal laws and underscored the importance of harmonizing them under a common legal framework to uphold constitutional values.

The case sparked discussions and debates on the reform of Muslim personal laws and the broader issue of implementing a UCC in India. Proponents of legal reform argued that a UCC would provide a common legal framework for all citizens, ensuring equality before the law and upholding fundamental rights, while opponents raised concerns about religious freedoms and cultural diversity.

It was a significant case that addressed the constitutional validity of instant triple talaq and highlighted the need for legal reforms to ensure gender equality and justice in personal laws. While the case did not directly address the issue of a UCC, it underscored the challenges posed by diverse personal laws and the importance of harmonizing them under a common legal framework to uphold constitutional values.

*Ishrat Jahan v. Union of India*⁵⁴

Ishrat Jahan case is another significant case related to the issue of instant triple talaq (talaq-e-biddat) and its constitutionality. Here's an analysis of the case:

Background:

Ishrat Jahan, a Muslim woman, filed a petition challenging the practice of instant triple talaq after her husband divorced her by pronouncing "talaq" three times in quick succession through a phone call and a written message. *Jahan* argued that instant triple talaq violated her fundamental rights to equality, dignity, and non-discrimination guaranteed under the Indian Constitution.

Key Issues:

The case raised similar questions as *Shayara Bano v. Union of India* regarding the constitutional validity of instant triple talaq and its compatibility with fundamental rights.

It also highlighted the plight of Muslim women who were subjected to arbitrary and unilateral divorce without any legal recourse or due process.

Judgment:

The Supreme Court, in its judgment delivered along with *Shayara Bano v. Union of India*, declared the practice of instant triple talaq unconstitutional. The Court held that instant triple talaq violated Muslim women's fundamental rights under Articles 14 (right to equality), 15 (prohibition of discrimination), and 21 (right to life and personal liberty) of the Indian Constitution. The Court emphasized that instant triple talaq was arbitrary, discriminatory, and against the principles of gender equality and justice.

Implications:

The judgment provided relief to Muslim women like *Ishrat Jahan* who had been victims of instant triple talaq, ensuring their right to dignity, equality, and non-discrimination.

It marked a significant step towards gender justice and the protection of fundamental rights for Muslim women in India.

This case reignited the debate on the need for legal reforms, including the enactment of a UCC, to ensure uniformity, equality, and justice in personal laws across all religions. The judgment highlighted the challenges posed by the coexistence of diverse personal laws and the importance of harmonizing them under a common legal framework to uphold constitutional values.

The case further fueled discussions and debates on the reform of Muslim personal laws and the broader issue of implementing a UCC in India. Proponents of legal reform argued that a UCC would provide a

⁵⁴ Writ Petition (C) No. 665 of 2016

common legal framework for all citizens, ensuring equality before the law and upholding fundamental rights, while opponents raised concerns about religious freedoms and cultural diversity.

In summary, *Ishrat Jahan v. Union of India* was another significant case that addressed the constitutionality of instant triple talaq and underscored the need for legal reforms to ensure gender equality and justice in personal laws. While the case did not directly address the issue of a UCC, it highlighted the challenges posed by diverse personal laws and the importance of harmonizing them under a common legal framework to uphold constitutional values.

*Naveen Kohli v. Neelu Kohli*⁵⁵ is a landmark case in India that dealt with the issue of matrimonial disputes and highlighted the need for reforms in family laws, including the possibility of a UCC. Here's an analysis of the case:

The case involved a matrimonial dispute between Naveen Kohli and Neelu Kohli, who were married under Hindu law. Neelu Kohli filed a petition under Section 9 of the Hindu Marriage Act, 1955, seeking restitution of conjugal rights against her husband Naveen Kohli. The case raised questions about the adequacy of existing family laws and the need for reforms to address matrimonial disputes more effectively.

Key Issues:

The case highlighted the challenges faced by individuals in resolving matrimonial disputes under existing family laws, which are often complex, time-consuming, and adversarial. It underscored the need for legal reforms to streamline the adjudication of matrimonial disputes and promote the welfare of spouses and their children.

Judgment

The Supreme Court, in its judgment, acknowledged the shortcomings of existing family laws in addressing matrimonial disputes and called for reforms to ensure the speedy and effective resolution of such disputes. The Court emphasized the importance of promoting reconciliation and preserving the institution of marriage while also protecting the rights and interests of spouses and their children.

Implications:

The judgment highlighted the need for reforms in family laws to address the growing incidence of matrimonial disputes and provide adequate mechanisms for their resolution. It emphasized the importance of promoting alternative dispute resolution mechanisms, such as mediation and counseling, to facilitate amicable settlements and reduce the adversarial nature of matrimonial litigation. The judgment highlighted the challenges posed by the fragmented nature of personal laws and the benefits of harmonizing them under a common legal framework to ensure uniformity, equality, and justice in family matters.

Naveen Kohli v. Neelu Kohli contributed to the ongoing debate on legal reforms in India, particularly in the realm of family laws. It spurred discussions on the possibility of enacting a UCC to address the disparities and inconsistencies in personal laws and provide a more coherent and equitable legal framework for family matters. In summary, *Naveen Kohli v. Neelu Kohli* was a significant case that underscored the need for reforms in family laws and highlighted the potential benefits of enacting a UCC in India. While the case did not directly address the issue of a UCC, it contributed to the broader discourse on legal reforms and emphasized the importance of ensuring uniformity, equality, and justice in family matters.

⁵⁵ AIR 2006 SC 1675,

In **Pannalal Bansilal v. State of Andhra Pradesh**⁵⁶, it held that a uniform law though highly desirable, the enactment thereof in one go may be counter-productive to the unity and integrity of the nation. Gradual progressive change should be brought about.

Similarly, in **Maharishi Avadhesh v. UOI**⁵⁷, the Supreme Court dismissed a writ petition to introduce a common Civil Code on the ground that it was a matter for the legislature and in **Ahmadabad Women Action Group v. UOI**, the Supreme Court showed reluctance to interfere in matters of personal law.

In **Prabhakar v. Shanti Bai**⁵⁸, parties were married in 1955 however they have not stayed together since 1958, and no cohabitation was there since last 49 years. The court granted the decree of Divorce as the marriage between the parties was irretrievably broken and it was no use to continue with such a marriage any longer.

The Law Commission of India and the Supreme Court have recommended that the irretrievable break down of marriage should be made a separate ground of divorce by the legislature. No useful purpose would be served by keeping alive de jure what is dead de facto. It is possible that if Parliament does not act on this recommendation the legislature of some states of India may take the lead, exercising power under entry 5 of the concurrent list of the 7th schedule.⁵⁹

Daniel Latifi & other Vs. Union Of India.⁶⁰

- In this case, the constitutional validity of Muslim Women (Protection of Rights on Divorce) Act, 1986 was challenged.
- It was held by the Hon'ble Supreme Court that clause (1-a) of section 3 does not limit the duty of the husband to pay maintenance only for the period of iddat rather the duty is to make the necessary arrangements within the iddat period but the arrangements has to be made for the entire life of the wife until she gets remarried.
- It was also observed that clause (I-a) requires the husband to make necessary provisions for the wife which means provisions like her shelter and the similar means where as it also requires the payment of maintenance which implies payment of Money.
- In this Case it was also emphasized that the Act of 1986 is only available to the divorced woman and therefore a woman who is still having a subsisting marriage cannot file an application under the Act. She has to file it either under the personal law or the Cr.P.C.

Sarla Mudgal Vs. Union of India⁶¹.

- The husband has performed the second marriage while converted into Islam but without dissolving the first marriage.
- It was questioned that whether such marriage is valid under Hindu Marriage Act or not. • The Hon'ble Supreme Court has resolved the issue by saying that if there if a controversy between two personal laws then such law should prevail which is serving the purpose best. So, it was held that a conversion to Islam does not amount to automatic dissolution of the marriage performed under Hindu law.
- The Hon'ble Supreme Court also directed to take a fresh look at Article 44.

⁵⁶ AIR 1996 SC 1023 paragraph 12: (1996) 2 SCC 498

⁵⁷ 1994 Supp (1) SCC 713

⁵⁸ Prabhakar v. Shanti Bai 2008 HLR 250

⁵⁹ Ramesh Chander Nagpal, Modern Hindu Law, 182 (2008 Butterworths Wadhwa Publications, Nagpur)

⁶⁰ AIR 2001 7 SCC 740

⁶¹ AIR 1995 SC 1531

Khursheed Ahmad Khan v. State of U.P. and Others⁶²

The Hon'ble Supreme Court upheld the validity of the rule that prohibits second marriage during the subsistence of first marriage without the permission of the government and held that this provision affect the rights of the Muslims at all. Thus if the legislature has not made direct laws for the UCC, the Judiciary has taken good step by interpreting the secular laws in such a way that they help in implementing it. Though it is good that the Judiciary has come forward, but legislative work has its own value. While the case of Khursheed Ahmad Khan v. State of UP doesn't directly relate to the UCC, the issues raised in the case, particularly concerning women's rights and protection from domestic violence, could intersect with discussions around the implementation of a UCC. The UCC has been a subject of debate in India for many years, with proponents arguing for its implementation to promote gender equality and uniformity in laws, while opponents raise concerns about preserving religious diversity and autonomy.

So, laws should also necessarily be made to implement the UCC. Dr. Tahir Mahmood⁶³ has made a powerful plea for framing a UCC for all citizens of India. He says: "In pursuance of the goal of secularism, the State must stop administering religion based personal laws". He wants the lead to come from the majority community but, we should have thought that, lead or no lead, the State must act.

Prof. M P Jain has rightly stated: "It is necessary that law be divorced from religion. With the enactment of the UCC, secularism will be strengthened; much of the present day separation and divisiveness between the various religious groups in the country will disappear; and India will emerge as a much more cohesive and integrated nation."⁶⁴ Even our Judiciary has also realized the importance of UCC and has emphasized to establish it for many times. **In Sarla Mudgal Case**⁶⁵, the Supreme Court has emphasized that UCC is imperative both for the protection of the oppressed and promotion of the national unity and solidarity. Justice Kuldeep Singh even lamented that Indian government, even after 47 years of independence, had failed to enact a uniform civil code. The same was held in **Lily Thomas v. Union of India**⁶⁶.

It was said in Sarla Mudgal v. Union of India: "When more than 80% of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of "uniform civil code" for all citizens in the territory of India."

CHAPTER 6: CONCLUSION AND SUGGESTIONS**CONCLUSION**

The UCC has been a subject of debate in India for many years. It proposes a common set of laws governing personal matters such as marriage, divorce, inheritance, and adoption, irrespective of an individual's religion. The idea behind the UCC is to promote gender equality, secularism, and social harmony by ensuring uniform laws across different religious communities. However, the implementation of a UCC in contemporary India remains a contentious issue due to various reasons:

⁶² Civil Appeal No. 1662 of 2015

⁶³ Muslim Personal Law, 1997 Ed., at 200-202

⁶⁴ Indian Constitutional Law, 5th Ed., at 1386.

⁶⁵ AIR 1995 SC 1531

⁶⁶ (2000) 6 SCC 224

India is a diverse country with multiple religions and personal laws governing various aspects of life for different religious communities. Any attempt to impose a UCC is often met with resistance from religious groups who fear it would infringe upon their autonomy and religious practices.

The issue of UCC is highly politicized in India. Political parties often use it as a tool to mobilize support among their respective voter bases. Some parties, particularly those representing religious minorities, oppose the UCC on the grounds that it could undermine the cultural and religious identity of their communities.

While the Indian Constitution provides for the possibility of implementing a UCC under Article 44, which is one of the Directive Principles of State Policy, the practical challenges of enacting such a code while respecting religious diversity and fundamental rights pose significant hurdles.

India's society is deeply entrenched in religious and cultural traditions. Implementing a UCC requires extensive societal consensus and education to ensure acceptance and understanding of the common laws across diverse communities.

Crafting a comprehensive UCC that addresses the complexities of personal laws while ensuring gender equality and protecting individual rights is a daunting task. Legal experts need to navigate intricate issues related to family law, inheritance, marriage, and divorce across different religious communities. Despite these challenges, there have been periodic calls for the implementation of a UCC, especially in the context of promoting gender equality and addressing discriminatory practices prevalent in personal laws. Proponents argue that a common civil code would foster national integration, simplify legal procedures, and uphold the principles of equality and justice enshrined in the Constitution.

In contemporary India, the debate surrounding the UCC continues, with periodic discussions and proposals from various quarters. However, achieving consensus and addressing the concerns of different stakeholders remain key obstacles to its implementation. Any progress in this direction would require extensive dialogue, engagement, and a careful balancing of competing interests to ensure inclusivity, equality, and social harmony.

SUGGESTIONS

- Initiate comprehensive discussions involving legal experts, religious leaders, policymakers, civil society organizations, and members of diverse communities to understand their perspectives, concerns, and aspirations regarding the UCC. Inclusivity is essential to foster trust, build consensus, and address apprehensions.
- Conduct awareness campaigns and educational programs to inform the public about the concept, objectives, and potential benefits of a UCC. Emphasize the principles of equality, justice, and secularism enshrined in the Constitution to garner support and dispel misconceptions.
- Study and analyze the personal laws and legal systems of different countries that have implemented a UCC or similar uniform legal frameworks. Learn from their experiences, best practices, and challenges to tailor a suitable model for India's diverse socio-cultural context.
- Highlight the role of the UCC in promoting gender equality, safeguarding women's rights, and eliminating discriminatory practices entrenched in personal laws. Advocate for provisions that ensure equal treatment and protection for all individuals, regardless of gender or religious affiliation.
- Design the UCC in a manner that respects and accommodates the religious beliefs, customs, and practices of diverse communities, while also upholding fundamental rights and constitutional

principles. Strive for a balance between uniformity and plurality to preserve religious freedoms and cultural diversity.

- Develop clear, coherent, and unambiguous legal provisions under the UCC to mitigate ambiguity, interpretation disputes, and legal complexities. Provide adequate mechanisms for dispute resolution and enforcement to uphold the rule of law and ensure effective implementation.
- Recognize that transitioning to a UCC may be a gradual and iterative process, requiring phased reforms and incremental changes over time. Prioritize areas of consensus and feasibility, such as inheritance rights, marriage registration, and adoption procedures, before addressing more contentious issues.
- Encourage political parties and policymakers to rise above partisan interests and ideological differences to prioritize the national interest and the welfare of citizens. Foster bipartisan cooperation and consensus-building efforts to advance legislative reforms and policy initiatives related to the UCC.
- Seek guidance and expertise from constitutional scholars, jurists, and legal experts to ensure that the formulation and implementation of the UCC adhere to constitutional principles, fundamental rights, and the spirit of democracy. Uphold the supremacy of the Constitution and the independence of the judiciary in safeguarding the rule of law.
- Monitor and Evaluate Impact: Establish mechanisms for ongoing monitoring, evaluation, and feedback to assess the impact, effectiveness, and equity of the UCC's implementation. Solicit input from stakeholders, conduct periodic reviews, and incorporate lessons learned to refine and improve the legal framework over time.

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