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## “Uniform Civil Code: An Ignored Constitutional Imperative”

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**SUBMITTED BY: Rejoy Singh**

**UNDER THE SUPERVISION OF:**

**Dr. Archana Aggarwal**

AMITY LAW SCHOOL, AMITY UNIVERSITY, NOIDA.

### ABSTRACT

The concept of a Uniform Civil Code has been discussed in our nation since independence. While some advocate for its implementation, arguing that it would unify the population and eliminate discriminatory personal practices, the issue is multifaceted. Implementing such a code could potentially suppress diversity and enforce what may seem like 'progressive' ideas onto a population perceived as 'backward.' When it comes to matters of religion, legal imposition often fails if the desire for change does not arise from within the community. Trying to rationalize personal faith is challenging. However, this does not justify hiding behind claims of diversity and religious freedom to justify outrageous customs. It is essential for both the courts and the government to intervene to safeguard fundamental rights in such situations. Nevertheless, in areas where personal beliefs are deeply ingrained, court rulings might not effectively alter perceptions. In our nation, many people strongly identify with their religion, and personal law plays a significant role in their religious identity. This vulnerability makes people highly prone to disruptions. I will endeavour to assess the feasibility of implementing a Uniform Civil Code in India and explore its potential repercussions. This assessment

will be based on considerations of practicality and morality. Additionally, I will examine how individuals respond when there are attempts to alter deeply held beliefs by referencing the case of the Sabarimala temple entry. Can the Supreme Court dictate how religions should manage their affairs? If so, under what circumstances? These inquiries, along with others, will be addressed by referencing case studies, Supreme Court judgments, and scholarly opinions.

#### ABBREVIATION

A.C.	:	Appeal Cases
A.E.L.R.	:	All England Law Reports
A.I.R.	:	All India Reporter
A.J.C.L.	:	Allahabad Journal of Company Law
A.L.J.	:	Allahabad Law Journal
A.L.J.J.S.	:	Allahabad Laws Journals, Journal Section
A.P.	:	Andhra Pradesh (A.I.R.)
A.P.H.	:	Ashish Publishing House
All.	:	Allahabad
Apas.	:	Apasthamba
B.C.	:	Before Christ
B.H.C.	:	Bombay High Courts Reports
Baud.	:	Baudhyan
Beng. L.R.	:	Bengal Law Reporter
Bom. L.R.J.	:	Bombay Law Reporter Journal
Bom.	:	Mumbai (Bombay)
Bom.	:	Mumbai (Bombay) (A.I.R.)
Bomb. L.R.	:	Bombay Law Reporter
C.L.Q.	:	Comparative Law Quarterly
Cal. W.N.	:	Calcutta Weekly Notes
Cal.	:	Calcutta
Ch., Chap.	:	Chapter
Civ. L.J.	:	Criminal Law Journal

Cr.P.C.	:	Criminal Procedure Code
D.B.	:	Division Bench
D.M.C.	:	Divorce and Matrimonial Cases
e.g.	:	Exempli Gratia
ed.	:	Edition
F.B.	:	Full Bench
Guj.	:	Gujarat
H.C.	:	High Court
H.L.R.	:	High Court Reports
H.P.	:	Himanchal Pradesh
I.A.	:	Indian Appeals
i.e.	:	That is
I.L.R.	:	Indian Law Reports
Ibid.	:	Ibidem
Id.	:	Idem
J.	:	Journal
J.I.L.I.	:	Journal of Indian Law Institute
J.T.	:	Judgment Today
Kant.	:	Karnataka
Ker. L.T.:	:	Kerala Law Times
Ker.	:	Kerala
Ltd.	:	Limited
M.I.A.	:	Moore's Indian Appeals
M.L.J.	:	Madras Law Weekly
M.P.	:	Madhya Pradesh
Mad.	:	Madras
Mat. L.R.:	:	Matrimonial Law Reports
N.O.C.	:	Note on Cases

Nag. : Nagpur  
op.cit : Opere Citato  
Ori. : Odisha  
P.& H.: Punjab Law Reports  
P.C. : Privy Council  
p.pp. : Page, pages  
Pat. : Patna  
Punj. : Punjab  
Pvt. : Private  
Raj. : Rajasthan  
S.C. : Supreme Court Cases  
S.C.J. : Supreme Court Journals  
Sec. : Section  
U.C.C. : Uniform Civil Code  
U.P. : Uttar Pradesh  
U.S. : United States  
Viz. : Videlicet  
Vol. : Volume  
v. : Versus  
W.L.R. : Weekly Law Reports  
Yaj. : Yajnavalk

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## INTRODUCTION

The idea of a Uniform Civil Code (UCC) has become a hot topic in India lately. It suggests having the same set of civil rules for everyone, regardless of their religion, caste, gender, and so on. This concept has stirred up a lot of debate because it reflects the vision of a more modern and fair society. It is about moving beyond divisions based on things like religion or caste and striving for equality for all. The idea of a Uniform Civil Code (UCC) has become a hot topic in India lately. It suggests having the same set of civil rules for everyone, regardless of their religion, caste, gender, and so on. This concept has stirred up a lot of debate because it reflects the vision of a more modern and fair society. It is about moving beyond divisions based on things like religion or caste and striving for equality for all. "The State shall endeavor to secure for all natives a uniform civil code throughout the territory of India."

In 1985, the Supreme Court issued a landmark directive to Parliament regarding the formulation of a Uniform Civil Code (UCC) in the case of Mohammad Ahmed Khan v. Shah Bano Begum, more commonly known as the Shah Bano case. This case revolved around a financially struggling Muslim woman who sought maintenance from her husband after being divorced through triple talaq. The Supreme Court ruled in favor of the woman, affirming her right to maintenance under Section 125 of the Code of Criminal Procedure. Additionally, the Court remarked that Article 44 of the Constitution, which calls for a Uniform Civil Code, had remained unimplemented. The then Chief Justice of India, Y.V. Chandrachud, made notable observations in this regard.

"A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies"

Following this decision, widespread discussions, meetings, and protests took place across the nation. The government, led by Rajiv Gandhi at the time, reacted by overturning the Shah Bano case decision through the enactment of the Muslim Women (Right to Protection on Divorce) Act, 1986. This act restricted the right of Muslim women to claim maintenance under Section 125 of the Code of Criminal Procedure. The justification given for implementing this act was that the Supreme Court's call for a Uniform Civil Code was merely an observation and not binding on the government or Parliament. It was argued that interference with personal laws should only occur if there is internal demand for change within society.

To strengthen a community, it is crucial to consider the collective benefits rather than just adhering to the customs of a specific group within it. If we examine European countries where a Civil Code is in place, individuals from all backgrounds are integrated into the societal framework, and every minority group is expected to abide by the Civil Code. This approach is not perceived as oppressive to minorities.

Some legal experts argue that while progressive laws are beneficial, it is essential to create an environment where all segments of society feel secure enough to collectively refine their personal laws to be more progressive. However, we can look at the example of Hindu law for insight. When the Hindu Code Bill was introduced, which encompassed not only Hindus but also Buddhists, Sikhs, Jains, and various denominations within Hinduism, it faced significant opposition. Nevertheless, the

then Law Minister, Dr. Ambedkar, emphasized the importance of a unified legal framework for India's cohesion. Similarly, the implementation of a Uniform Civil Code (UCC) could provide a comprehensive legal framework covering all religions practiced in India. Under this code, any individual residing in India would be required to comply, fostering unity and uniformity in legal matters.

Many are unaware that a Uniform Civil Code (UCC) already exists in the small state of Goa and is accepted by all communities there. Known as the Goa Civil Code or Family Laws, it was formulated and enforced by the Portuguese colonial rulers through various legislations in the 19th and 20th centuries. Even after Goa's liberation in 1961, when the Indian State abolished all colonial laws and applied central laws to the territory, an exception was made to retain the Family Laws due to the unanimous support from all communities in Goa.

One of the most significant provisions in this law is the prenuptial Public Deed, which outlines the distribution of immovable and movable property in the event of divorce or death. During marriage, both spouses have equal rights over the estate, but in the event of dissolution, the property is divided equally between them, and sons and daughters have equal rights to inherit the property. Furthermore, since marriage registration is mandatory under this law, it effectively prevents child marriage and bigamy.

Commenting that the dream of a UCC in the country finds its realization in Goa, former Chief Justice of India Y.V. Chandrachud had once expressed hope that it would one day "awaken the rest of bigoted India." Opposition to the Uniform Civil Code (UCC) often invokes Articles 25 and 26 of the Indian Constitution, which guarantee the right to freedom of religion. Article 25 ensures every individual's freedom of conscience and the right to profess, practice, and propagate religion. However, this right is subject to public order, morality, health, and other provisions of Part III of the Constitution. Article 25 also grants the State the authority to regulate or restrict any secular activities associated with religious practices and to implement social welfare and reforms.

Furthermore, the protection provided by Articles 25 and 26 extends beyond matters of belief or doctrine. It encompasses acts performed in accordance with religious beliefs and practices, thereby safeguarding rituals, ceremonies, and modes of worship integral to religion.

### Uniform Civil Code: An Overview

India possesses a diverse array of family laws. Christians are governed by the Christians Marriage Act of 1872, the Indian Divorce Act of 1869, and the Indian Succession Act of 1925. Jews follow their uncodified customary marriage law, while their succession matters are regulated by the Succession Act of 1925. Parsis adhere to their Parsi Marriage and Divorce Act of 1936, along with their unique laws of inheritance outlined in the Succession Act, which differs somewhat from the general Succession Act.

Hindus and Muslims, on the other hand, have their distinct personal laws. Hindu law has undergone significant secularization and modernization through statutory enactments. In contrast, Muslim law remains traditional and unmodified in both content and approach.

The legal landscape in India is characterized by communal laws, wherein each religious community has its own distinct set of laws governing domestic relations. Additionally, the law is personal, as individuals carry their personal laws with them wherever they go within India. Family law in India is a combination of statutory and non-statutory elements, resulting in a complex and intricate framework. This complexity is further compounded by the absence of a unified law governing marriage, succession, and family relations across the country, leading to considerable confusion.

With the aim of achieving uniformity, secularization, equity, and non-discrimination in the legal framework, Article 44 of the Directive Principles of State Policy in the Constitution states: "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

## WHAT IS THE UNIFORM CIVIL CODE?

The concept of a Uniform Civil Code (UCC) stems from the idea of implementing a single set of civil laws to govern all citizens of a country, irrespective of their religion, ethnicity, or gender. This replaces the existing practice where individuals are subject to different personal laws based on their religious or ethnic affiliations. The discussion surrounding the UCC has been ongoing since the British era when laws in India began to be codified.

The UCC aims to standardize various aspects of personal law, including marriage, succession, adoption, and inheritance, with the objective of separating family law from religious dictates. However, the exact structure and specifics of a UCC remain ambiguous and undefined, leading to multifaceted debates and challenges in analysis.

The primary objectives of implementing a UCC are widely accepted and understood as follows:

1. Integration of the nation by establishing a single legal framework, thereby promoting consistency and efficiency in the administration of justice.
2. Empowerment of women and other marginalized communities who have historically suffered due to discriminatory family customs and practices often shielded by the guise of religious freedom.
3. Upholding the constitutional value of equity and ensuring equal treatment for all citizens under the law.

During the initial parliamentary discussions surrounding the Uniform Civil Code (UCC) during the post-independence era, there was a significant lack of clarity regarding its implications. Various parliamentarians held divergent views on what the UCC would entail.

Some believed that the UCC would replace all existing personal family laws, while others, particularly within the Muslim community, feared that it would lead to the dominance of Hindu-majority laws. On the other hand, there were those who saw the UCC as an opportunity to amalgamate the best aspects of all religions.

The reluctance of the Muslim community to embrace changes in their personal laws can be attributed in part to the prevailing post-Partition insecurity. This apprehension was further fuelled by the perception that Hindu communal forces were advocating for the UCC, potentially exacerbating communal tensions.



In such a charged atmosphere, the idea of a UCC attracted sharp criticism and sparked contentious debates within the parliamentary arena.

Uniform Civil Code Bill: -

The proposed Bill introducing a voluntary Uniform Civil Code poses a paradoxical situation. The very essence of uniformity is compromised once the code becomes optional. Any attempt to make the code voluntary undermines its fundamental purpose of ensuring consistency across diverse personal laws. Therefore, there is a need to oppose any such move towards voluntarism or optionality.

Instead of pursuing a voluntary approach, the government should focus on codifying each set of personal laws and incorporating necessary reforms to ensure uniform applicability to all members of the respective communities. This would involve addressing various aspects such as marriage, divorce, minority rights, maintenance, guardianship, and succession within the ambit of the law.

The proposed Bill encompasses a wide range of personal law matters, including those related to marriage, divorce, minority rights, maintenance, guardianship, and succession. However, its applicability would be limited to individuals who choose to opt for it. Furthermore, if the Bill is enacted, it would result in the repeal of the Special Marriage Act of 1954.

Additionally, in line with recommendations from the Law Commission, there are proposals to consolidate the Indian Divorce Act and the Indian Christian Marriage Act into a single statute akin to the Hindu Marriage Act. These proposals also entail certain reforms aimed at modernizing and streamlining existing legal frameworks.

## A BRIEF HISTORY

The first law commission under Lord Macaulay recommended the British government to codify most laws, such as criminal law, but advised against the codification of personal laws. There were several reasons for this stance, including the divide and rule strategy, concerns about extremist backlash, and the complexity involved in documenting the diverse customs and practices observed by various religious sects in India. The colonial rulers often relied on their own interpretations of religious texts to make legal judgments, leading to significant challenges and inconsistencies.

One of the primary issues with personal laws, then as now, is the inherent discrimination they perpetuate against women and other members of religious communities. In response to evolving societal norms and demands for equality, legislative measures were introduced over time. For

instance, the Succession Act of 1865, the Hindu Widow Remarriage Act of 1856, and the Hindu Inheritance Act of 1928 aimed to address such discriminatory practices.

A significant milestone pre-independence was the enactment of the Special Marriage Act in 1872. Initially applicable only to Hindus, this legislation allowed for civil marriages but required individuals to renounce their religion to avail of its provisions. However, this requirement was amended in 1923 to allow for marriage without the need for religious renouncement, marking a progressive step towards secular marriage laws.

The B.N. Rau Committee, established in 1944 (reinstated after its initial formation in 1937), recommended the implementation of a common civil code in India. This recommendation gained traction in parliament, with prominent leaders like Jawaharlal Nehru and B.R. Ambedkar advocating for a uniform civil code to promote social cohesion and gender equality.

The process began with an emphasis on codifying Hindu law, which was met with resistance from Hindu fundamentalist factions, including Rajendra Prasad. Despite the opposition, the Hindu Code Bill was eventually passed in 1956, resulting in the enactment of four separate acts: the Hindu Marriage Act, Succession Act, Minority and Guardianship Act, and Adoption and Maintenance Act. These legislative measures aimed to modernize and standardize Hindu personal laws, thereby advancing principles of gender equality and social justice.

The need to have a Uniform Civil Code was put under Article 448 of the constitution which read, "The state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

Thank you for providing more context. Here's the revised passage:

This article was a directive principle of state policy. Since Nehru believed that the time was not ripe for the introduction of a civil code, he found it convenient to place it in the constitution as a directive principle, to be formulated into law when the time was right. A directive principle is not legally enforceable (non-justiciable) but sets a standard for what the state must seek to achieve. There was no structure to such a code; it merely existed as an ambition to be conceived by a government in the future. Since then, the Supreme Court has been consistent in reminding the government of India of its duty to formulate and implement such a code.

The Special Marriages Act, 1954, was yet another landmark in the process of change as it allowed religious communities to enter civil marriages. The act disallowed polygamy and gave protections to women, which they normally did not enjoy. Inheritance and succession under it were governed by the Indian Succession Act.

After the Supreme Court's verdict on the Shah Bano Case, the debate around a uniform code resurfaced, and a question which was asked repeatedly was – Should we have a common code that overrides some or all personal religious laws to fulfil objectives of harmony and equality?

The current government strongly advocates for a uniform civil code, for which it tasked the Law Commission with scrutinizing arguments and suggestions from people across the length and breadth of the country. For 2 years, the commission collected accounts, based on which it formulated its report on the applicability of a code to all of India.

This paper aims at evaluating the need for such a common code for governing personal matters by analysing various sub-issues and drawing a comparative with the Sabarimala judgement.

## WHAT IS THE DEBATE ABOUT?

At times, personal laws may introduce inefficiencies in terms of morality and justice. This is evident in instances where certain personal laws are viewed as highly discriminatory. One notable example is the practice of Triple Talaq (talaq-e-biddat), where a husband can divorce his wife by simply uttering "Talaq" (divorce) three times. This practice has been problematic as it is perceived as discriminatory and unique to Islam, often shielded by men under the guise of religious rights, particularly under Article 25 and 26 of the constitution.

### Article 25

Freedom of conscience and the right to freely profess, practice, and propagate religion are guaranteed to all individuals, subject to considerations of public order, morality, and health, as well as other provisions within this section. This means that everyone has an equal entitlement to express their religious beliefs without interference. However, this freedom does not override existing laws or prevent the government from enacting new laws:

1. Existing laws can still regulate or restrict any secular activities associated with religious practices, if they are in line with public order, morality, and health.
2. The government can create laws for social welfare, reform, or for making Hindu religious institutions accessible to all Hindus, regardless of their class or section.

Additionally:

- The wearing and carrying of kirpans (a ceremonial dagger) are considered an integral part of the Sikh religion.

- In the context of clause (b), references to Hindus also include individuals professing the Sikh, Jaina, or Buddhist religions, and the term "Hindu religious institutions" encompasses institutions associated with these religions accordingly.

## Article 26

The freedom to manage religious affairs is granted to every religious denomination or any section thereof, with the caveat that it must adhere to public order, morality, and health considerations. This freedom encompasses several rights:

- (a) Establishing and maintaining institutions for religious and charitable purposes.
- (b) Managing its own religious affairs.
- (c) Owning and acquiring movable and immovable property.
- (d) Administering such property in accordance with the law.

Advocates of discriminatory customs often argue that such practices are essential to their religion and therefore warrant protection. However, despite these arguments, certain practices, like the one addressed in the Shayra Bano case, have been deemed unconstitutional by the Supreme Court. This case represents just one instance where the right to equality clashes with the right to religious freedom.

This conflict underscores the necessity for a civil code, which would serve to protect the marginalized and promote societal progress by ensuring equitable rights for all. Some proponents also argue that a civil code is crucial for national integration, although this demand is more aspirational than substantive. The existence of diverse personal laws not only complicates societal issues but also diverts time and resources away from addressing other pressing challenges such as education, poverty, and healthcare.

By establishing clear boundaries for family behaviour based on constitutional morality, the government can alleviate the burden on the courts and society caused by varying personal practices. Simplifying personal laws to focus on principles such as equitable distribution of property between genders, mandatory maintenance for divorced spouses, compulsory marriage registration, and similar provisions would streamline governance and facilitate societal harmony.

## Supporters

### Support in the Constituent Assembly

B. R. Ambedkar was a strong advocate for the Uniform Civil Code (UCC), dismissing claims that its implementation in a vast country like India would be impractical. He emphasized that the only area lacking uniform laws was that of marriage and succession, while other aspects of civil law, such as property transfer, contracts, the Negotiable Instrument Act, easement act, sale of goods, etc., were already uniform.

It is important to note that Ambedkar espoused Western-style reforms and believed in using the Western legal and social model as a reference point for bringing about societal changes in India. In this regard, he differed from Mahatma Gandhi, who held different views. Ambedkar did not advocate for adding exceptions to Article 35, which was already difficult to enforce, but instead favoured a gradual inclusion of communities with their voluntary consent once the legislature fulfilled its promise of implementing a UCC.

He stated: -

“I quite realise their feelings in the matter, but I think they have read too much into article 35, which merely proposes that the State shall endeavour to secure a civil code for the citizens of the country. It does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary. Parliament may feel the ground by some such method. This is not a novel method.”

He highlighted that the application of the Shariat Act, 1936 to all Muslims in India demonstrated the practicality and benefits of uniformity in laws, which was welcomed by the Muslim community. Previously, Muslims governed by Hindu laws in specific areas were collectively brought under the umbrella of this uniform law, which served their interests. Similarly, if certain principles from the majoritarian religion, Hinduism, were to be incorporated into the Uniform Civil Code (UCC), it wouldn't be because of their association with Hinduism, but because they were deemed suitable for a progressive society. Such inclusion shouldn't be perceived as a dominance of the majority.

On the other hand, K.M. Munshi strongly opposed the notion of the majority exerting undue influence over minorities.

“It is not therefore correct to say that such an act is tyranny of the majority. If you will look at the countries in Europe which have a Civil Code, everyone who goes there from any part of the world and every minority, has to submit to the Civil Code. It is not felt to be tyrannical to the minority. The point however is this, whether we are going to consolidate and unify our personal law in such a way that the way of life of the whole country may in course of time be unified and secular. We want to divorce religion from personal law, from what may be called 13 | Page social relations or from the rights of

parties as regards inheritance or succession. What have these things got to do with religion, I really fail to understand.”

Shri Alladi Krishnaswamy Ayyar provides a pragmatic rationale for pursuing a Uniform Civil Code (UCC), highlighting the drawbacks of strictly maintaining separate and isolated communities. He argues that in a diverse country like India, there is significant interaction among different communities, often resulting in conflicts between specific personal laws. Moreover, the legal system of one community can be influenced by that of another, further complicating matters.

In very many matters today the sponsors of the Hindu Code have taken a lead not from Hindu Law alone, but from other systems also. Similarly, the Succession Act has drawn upon both the Roman and the English systems. Therefore, no system can be self-contained, if it is to have in it the elements of growth. Our ancients did not think of a unified nation to be welded together into a democratic whole. There is no use clinging always to the past. We are departing from the past in regard to an important particular, namely, we want the whole of India to be welded and united together as a single nation. Are we helping those factors which help the welding together into a single nation, or is this country to be kept up always as a series of competing communities?

The core question at issue is the challenge posed to the prevailing dialogue of excessive cultural relativity and its associated drawbacks.

#### Case Example: The Supreme Court's View

In the *Smt. Sarla Mudgal vs Union of India & Ors* on 10 May 1995, the Supreme Court emphasized that the State has a clear mandate under Article 44 of the Constitution of India to strive for the implementation of a uniform civil code across the nation. This uniform personal law is seen as a significant step towards strengthening national unity. However, despite this constitutional directive, successive governments have failed to take decisive action to enact such a code.

Even as far back as 1954, Pandit Jawaharlal Nehru, while advocating for the Hindu Code Bill over a uniform civil code, expressed reservations about the readiness of Indian society for such a change. Over four decades later, there still appears to be a reluctance among the ruling authorities to revive Article 44 from its dormant state since 1949. The government's efforts have largely been confined to codifying Hindu laws through acts such as the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956, and the Hindu Adoptions and Maintenance Act, 1956. These acts have replaced diverse traditional Hindu laws with a unified code. With more than 80% of the population already covered by these codified laws, there seems to be no valid justification for further delaying the implementation of a uniform civil code applicable to all citizens of India.

It further noted,

Till the time we achieve the goal - uniform civil code for all the citizens of India - there is an open inducement to a Hindu husband, who wants to enter into second marriage while the first marriage is subsisting, to become a Muslim. Since monogamy is the law for Hindus and the Muslim law permits



as many as four wives in India, errand Hindu husband embraces Islam to circumvent the provisions of the Hindu law and to escape from penal consequences.

## Opponents

The Muslim members of the Constituent Assembly highlighted the significant influence of Western colonial perspectives on notions of progress and modernization. B. Pocker Sahib succinctly captured this sentiment by stating:

“It is very easy to copy sections from other constitutions of countries where the circumstances are entirely different. There are ever so many multitudes of communities following various customs for centuries or thousands of years. By one stroke of the pen, you want to annul all that and make them uniform. What is the purpose served? What is the purpose served by this uniformity except to murder the consciences of the people and make them feel that they are being trampled upon as regards their religious rights and practices? Such a tyrannous measure ought not to find a place in our Constitution. Uniformity in personal laws is not a harbinger of communal harmony.”

In its 2018 consultation paper, the Law Commission expressed the view that a Uniform Civil Code is currently neither necessary nor desirable. The authors of the paper argue that the role of the state is to enable rights rather than initiate them. This implies that social reform should precede legal reform. The paper promises to delve deeper into this concept by examining a specific case later on.

The commission states, “This Commission has therefore dealt with laws that are discriminatory rather than providing a uniform civil code which is neither necessary nor desirable at this stage. Most countries are now moving towards recognition of difference, and the mere existence of difference does not imply discrimination but is indicative of a robust democracy.”

The report discusses the sixth schedule and the exceptions contained within it. It references the schedule, stating: “..cultural diversity cannot be compromised to the extent that our urge for uniformity itself becomes a reason for threat to the territorial integrity of the nation.”

The sixth schedule (Articles 371 (A) (I)) offers exceptions to the states of Andhra Pradesh, Assam, Nagaland, Mizoram, and Goa concerning family law. In the case of *Madhu Kishwar & Ors v. State of Bihar*, the court observed that tribal practices cannot be "remedied" through judicial intervention. Therefore, the report argues...

“The constitutional exception has to be harmonised and a fair and just balance is to be struck, keeping in view societal interests.”

Questions surrounding the topic include, but are not limited to:

- What specific provisions will the civil code encompass?
- Is the implementation of a civil code feasible for India given its diverse cultural and religious landscape?

- Who will establish the standards for morality within the civil code?
- To what extent is religious freedom considered sacrosanct and how does it intersect with the concept of a uniform civil code?

Further discussion on this debate will be explored later.

## Personal Laws

Unlike Western nations, India is far from being a homogenous nation-state and instead hosts one of the most diverse and variable populations in the world. It is characterized by ethnic diversity, linguistic diversity, and cultural and religious diversity, with these categories often overlapping and not strictly delineated. This amalgamation results in an exceptionally vibrant but challenging populace to manage.

In the realm of family law, India adheres to a system of legal pluralism, commonly known as a personal law system. Under this system, various religious communities, including Hindus, Muslims, Christians, Jews, and Parsis, are subject to their own distinct sets of laws. These laws encompass a range of matters related to marriage, divorce, maintenance, adoption, and inheritance, and may exist in either codified or uncoded forms.

For a broader understanding, personal laws can be defined more comprehensively. Personal Law is described as "a body of law that applies to an individual or a matter solely based on their affiliation with or association with a particular religion." This definition expands beyond the traditional scope of matters such as marriage, divorce, succession, inheritance, maintenance, and adoption. Personal laws encompass private laws governed by religious beliefs, governing how individuals manage their personal lives in accordance with their religion.

For instance, the Manu Smriti espouses more restrictive rules for women, often viewing them as property. In contrast, the Qur'an presents a radical declaration of equality between men and women, asserting that women's rights are equal to their duties. Similarly, passages like "There is neither Jew nor Greek, Slave nor free, male nor female, for you are all one in Christ Jesus" from Galatians 3:28 underscore the principle of equality in Christianity.

Parsi women face discrimination under laws that have no basis in their community's religious beliefs. Despite being a community with a high literacy rate of 90%, Parsis contend with some of the most unjust inheritance laws in the country today.

In Hinduism, marriage is considered a sacred union, and historically divorce rights were not readily available to women. Additionally, laws pertaining to monogamy were not firmly established. These issues were addressed through the Hindu Code Bill, which aimed to codify divorce rights and mandate monogamy within Hindu marriages.



In contrast, within Islam, marriage is viewed as a contractual agreement, resulting in comparatively greater rights for women concerning marriage, inheritance, and divorce.

It's worth noting that personal laws not only vary between different religions but also within the same religion. For example, a Brahmin woman in West Bengal may adhere to different social and religious norms compared to a Bengali woman from a lower caste. Furthermore, these norms may differ significantly from those followed by a Namboodiri Brahmin woman in Kerala.

Role of Court

Particulars	Excerpts of what the court said
<p>1. Sarla Mudgal Case 1995 AIR 1531, 1995 SCC (3) 635 Description: Against the practice of solemnising a second marriage by conversion to Islam without dissolving the first marriage.</p>	<p>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, anymore, the introduction of "uniform civil code" for all citizens in the territory of India.</p>
<p>2. Shah Bano Case 1985 AIR 945, 1985 SCR (3) 844 Description: Against escape of maintenance of a divorced Muslim wife, by upholding the Code of Criminal Procedure.</p>	<p>A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies.</p>
<p>3. Ms. Jordan Diengdeh vs S.S. Chopra 1985 AIR 935, 1985 SCR Supl. (1) 704 Description: A Single Judge of the High Court rejected the prayer for declaration of nullity of marriage but granted a decree for judicial separation on the ground of cruelty. Division Bench affirmed the decision of the Single Judge on appeal.</p>	<p>The present case is yet another which focuses attention on the immediate and compulsive need for a uniform civil code. The totally unsatisfactory state of affairs consequent on the lack of a uniform civil code is exposed by the facts of the present case.</p>
<p>4. Narasu Appa Mali Case AIR 1952 Bom 84, (1951) 53 BOMLR 779, ILR 1951 Bom 775 Description: upholding the prevention of bigamy amongst Hindus through the Bombay Prevention of Hindu Bigamous Marriages Act, 1946</p>	<p>The personal laws prevailing in this country owe their origin to scriptural texts. In several respects their provisions are mixed up with and are based on considerations of religion and culture; so that the task of evolving a uniform civil code applicable to the different communities of this country is not very easy.</p>
<p>5. Pannalal Bansilal Pitti Case 1996 AIR 1023, 1996 SCC (2) 498 Description: Sections 15, 16, 17, 29 (5) and 144 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987</p>	<p>A uniform law though is highly desirable, enactment thereof in one go perhaps may be counter-productive to unity and integrity of the nation. In a democracy governed by rule of law, gradual progressive change and order should be brought about.</p>



## Public Perception

In light of the Supreme Court's decision in the Sarla Mudgal case, a public opinion poll was conducted among 2330 men and women of voting age in nine metropolitan cities: Delhi, Mumbai, Kolkata, Chennai, Bangalore, Ahmedabad, Lucknow, Hyderabad, and Kochi. The results of the opinion poll revealed significant sentiments:

- An overwhelming majority (84%) of respondents expressed support for a Uniform Civil Code for all citizens, irrespective of their religion.
- 73% of respondents welcomed the Supreme Court's decision to invalidate the second marriage of Hindu husbands converting to Islam.
- A sizable 64% disagreed with the Prime Minister's stance that a uniform code should only be introduced when minorities are ready for it.
- Additionally, 61% of respondents favored a unified law even if it meant losing the tax-saving privilege of the Hindu Undivided Family under tax laws.
- City-wise variations were observed, with Hyderabad and Bangalore showing more disapproval of the Supreme Court's ruling against the second marriage of Hindu husbands compared to the other seven cities. Hyderabad was also the only city where the majority (57%) agreed with the Prime Minister's viewpoint that a Uniform Civil Code should be introduced only with the agreement of minorities.

## The Recent Case of Sabarimala

Sabarimala is a temple complex located in the Periyar Tiger Reserve in Kerala, dedicated to Lord Ayyappan, a celibate deity widely worshipped in Kerala. The temple holds significant religious importance since ancient times. However, it has also been a center of controversy, particularly since 1991, when the Kerala High Court, in response to a PIL by the Travancore Devaswom Board, banned the entry of menstruating women aged 10-50, citing it as an age-old practice to be enforced by law. Before this ban, women visited the temple in small numbers for non-religious ceremonies.

In a landmark decision, the Supreme Court overturned this ban following a plea by the Indian Young Lawyers Association, allowing entry to all women aged 10-50 into the temple by a majority decision of 4:1. The defendants argued that Lord Ayyappan is a "Naisthik Brahmachari," and allowing young women's entry would violate his celibacy and austerity. The removal of the ban sparked vehement protests from opponents.

I will explore the arguments presented by the dissenting judge regarding essential activities, organic change, and the clash of fundamental rights. This exploration aims to draw conclusions regarding the

implementation of a civil code, particularly when it contradicts religious customs in favor of implementing "progressive" ideas. The Sabarimala case study will be utilized to predict the outcome of establishing a civil code in such contentious contexts.

## Review of Literature

### Introduction and Literature

In her 2017 work, Shalini explores the merits and demerits of a Uniform Civil Code, particularly focusing on its implications for gender justice, a core objective of such a code. Shalini delves into parliamentary discussions surrounding the code.

Advocates of the Uniform Civil Code argue that uniformity is essential to ensure equality among diverse religious communities and to promote gender justice. However, Shalini contends that discussions on gender justice often overlook the nuanced forms of oppression experienced by women within different religious groups. Instead of viewing women as a homogenous oppressed group, she emphasizes the need to acknowledge the unique challenges faced by women due to varying cultural and religious contexts.

Additionally, Shalini discusses concerns regarding the perception of backwardness and the imposition of Western values inherent in advocating for uniformity. In conclusion, the paper suggests considering alternative approaches, such as voluntary or incremental legislative measures, rather than mandating uniformity across all communities.

The Law Commission's Consultation Paper on Family Reform (2018) advocated for a reformation and codification of individual family laws to maintain diversity while ensuring that fundamental rights enshrined in the constitution are not violated. It proposed prioritizing equality between men and women within communities before addressing disparities between different communities. The paper emphasized the need for piecemeal reforms but cautioned against potential loopholes, citing the example of the Special Marriages Act, 1954.

Furthermore, the report highlighted the significance of personal laws and customs for women while condemning social evils like "Sati" and "Triple Talaq," which seek refuge under religious customs but violate basic human rights principles. It discussed the concept of "essential practices" within religions and underscored that rights such as Freedom of Religion and Equality are not absolute and may be subject to necessary limitations.

The report also distinguished between Equality and Equity and revisited the importance of necessary discrimination, such as reservations, to illustrate how the Right to Equality cannot always be invoked to justify disparities between religious practices. Additionally, it explored the concept of voluntary access to the code, considering examples like the Shariat Act of 1937.

Overall, the paper provided valuable insights into opposing arguments and offered avenues for developing a framework for further research on the topic.

In her 2015 paper, Fatima K discusses the inseparable connection between personal laws and religion, citing precedents set by the court, such as in the case of Mohd. Hanif Qurishi v. State of Bihar. The paper emphasizes that the determination of "essential practices" lies within the purview of religion rather than the court.

The paper revisits the landmark Sarla Mudgal judgment and the court's advocacy for a uniform civil code. Justice Sahai, in his concurring opinion, highlights how matters such as inheritance, adoption, divorce, marriage, and succession are deeply rooted in religious traditions.

In conclusion, the paper challenges the notion of uniformity surrounding the uniform civil code and argues that implementing such a code could be counterproductive given the heterogeneous nature of India. It suggests that a one-size-fits-all approach may not be suitable for the diverse religious and cultural landscape of the country.

In his 2008 paper, Singh, Rajiv discusses the significance of a civil code from a socio-legal perspective. The researcher conducted an empirical study to explore how people perceive the civil code. The paper places emphasis on understanding the "conceptual contours" such as the legal implications associated with civil law and the concept of a code.

Additionally, the paper provides a historical overview of codification, tracing its origins back to the age of enlightenment in Europe. This historical context helps shed light on the evolution of civil codes and their importance in shaping legal systems.

Overall, the paper offers valuable insights into the technicalities surrounding the research topic, providing a comprehensive understanding of the socio-legal aspects related to the civil code.

In her 2014 paper, Khan, Aisha explores the discriminatory nature of personal laws against women across different religions. The paper reveals that many personal laws inherently discriminate against women, highlighting the disparities within various religious legal frameworks.

Furthermore, the paper sheds light on numerous personal laws prevalent across different religions, providing valuable insights into the diversity of legal systems and their impacts on gender equality.

In his 2004 paper, Das, Arjun presents three suggestions for achieving uniformity in personal laws and proposes divorcing personal laws from religion.

Firstly, he suggests making the process of achieving uniformity a gradual one through court judgments. This approach would involve courts interpreting and applying laws in a consistent manner over time.

Secondly, Das recommends making the uniform civil code optional, similar to the Indian Succession Act. This would allow individuals the choice to adhere to either their personal religious laws or the uniform civil code.

Lastly, he proposes preparing a draft code and subjecting it to public scrutiny. This would involve soliciting feedback and input from the public to ensure that the proposed code reflects the diverse needs and perspectives of society.

## Research Gaps and Objectives

Based on the literature review, the following gaps were identified:

1. **Fragmented and Unconsolidated Research:** Existing research on the Uniform Civil Code (UCC) was found to be scattered and lacking consolidation. This indicates a need for more comprehensive and cohesive studies that can provide a holistic understanding of the UCC and its implications.

2. **Lack of Comparative Analysis:** There is a notable absence of comparative studies between the UCC and similar concepts already implemented in other jurisdictions. Comparative analysis could offer valuable insights into the potential consequences and challenges of enforcing a UCC in India, drawing parallels with experiences from other countries or regions where similar legal frameworks exist. Such comparative studies could aid in assessing the feasibility and effectiveness of implementing a UCC in the Indian context.

## Research Objective

The objective of this paper is to evaluate the necessity and potential effectiveness of implementing a uniform civil code (UCC) by drawing insights from the debate surrounding the Sabarimala temple entry issue. This analysis aims to assess the relevance of a UCC in addressing societal challenges and promoting equality within the Indian legal system. By examining the complexities and controversies surrounding the Sabarimala temple entry issue, the paper seeks to draw conclusions regarding the viability and potential impact of introducing a UCC in India.

The Sabarimala Temple Case has been specifically chosen for analysis over numerous other judgments due to two key reasons:

i) The case presents a new and contemporary legal issue, offering greater scope for academic discussion and analysis. Given its recent occurrence, there is a wealth of fresh perspectives and insights to explore, making it a pertinent case study for evaluating the need and potential effectiveness of a uniform civil code.

ii) The Sabarimala Temple Case is more holistic in nature, encompassing perspectives from both the proposing judges and the dissenting judge. This comprehensive approach allows for a deeper examination of various aspects, including the public reaction to court intervention in religious matters, the significance of religious identity, the precedence of social reform over legal reform, the perceived degree of oppression, and the potential consequences of implementing a uniform civil code. By delving into these multifaceted dimensions, the case provides valuable insights into the complexities surrounding the debate on a uniform civil code in India.



## Research Methodology

“The method of political science is the interpretation of life; its instrument is insight, a nice understanding of subtle, unformulated conditions.”

-Woodrow Wilson\

1. Use of Secondary Data: My research relies solely on secondary data, indicating that I have gathered information from existing sources such as Law Commission Reports and Supreme Court judgments rather than conducting primary data collection.

2. Qualitative Research Approach: My research is qualitative in nature, utilizing a case study methodology to develop a framework for predicting the outcome of a Uniform Civil Code. This approach focuses on understanding and interpreting complex phenomena, such as legal debates and social issues, without numerical data analysis.

3. Credible Sources: I have obtained facts from reputable sources such as Law Commission Reports and Supreme Court judgments, ensuring the reliability and validity of my research findings.

4. Case Study: My research centers around the Sabarimala Temple entry ban for menstruating age women, with a specific focus on evaluating the arguments presented by the five-bench panel in this case. I have attempted to link these arguments to the potential effectiveness of a civil code, providing a comprehensive analysis of the implications of legal decisions on broader social issues.

Overall, my research approach appears rigorous and methodical, with a focus on analyzing real-world legal disputes to inform broader theoretical frameworks related to the Uniform Civil Code.

Sabarimala and the Uniform Civil Code (UCC) are linked on the following grounds:

1. Discrimination and Equality in Religious Matters: Both the Sabarimala temple entry ban and the debate surrounding the UCC raise questions about discrimination and equality in religious practices. The Sabarimala case highlighted the issue of gender discrimination in religious rituals, while discussions on the UCC often revolve around ensuring equality and non-discrimination across various religious communities.

2. Sanctity of Personal Laws: The Sabarimala case brought attention to the sanctity of personal laws within religious communities. Similarly, debates on the UCC involve discussions about the autonomy

of religious communities to govern their own personal laws versus the need for a uniform legal framework that ensures equality and justice for all citizens, irrespective of their religious affiliations.

3. Reaction of the Public on Religious Matters: Both the Sabarimala case and discussions on the UCC have elicited strong reactions from the public regarding religious matters. The public response reflects deeply held beliefs, religious sentiments, and cultural norms, which play a significant role in shaping the discourse surrounding these issues. Understanding public reactions is crucial for policymakers and legal authorities when considering changes to religious practices or legal frameworks.

The Uniform Civil Code has rarely been juxtaposed against a comparable concept. It's worth noting that many of these parameters are closely intertwined, intersecting at various junctures. I have made efforts to articulate these parallels and construct a skeletal framework for evaluating the code. This entails a comparative analysis structured around four key pointers:

1. Right to Equality and Right to Religious freedom:

Often, the two rights clash when certain practices that are seen as being 'unequal' are defended by religious communities under their right to profess, practice and propagate religion.

2. Degree of perceived oppression:

Certain religious practices and personal laws can be seen as oppressive by observers outside the religious community. The religious community might not see the same practice or law as being oppressive. If the court should intervene will depend upon the degree of oppression it perceives is taking place. In other situations, civil societies must push for change. This point also encapsulates an understanding of the fact that reason cannot be sought in religious practices.

3. Essential religious practices:

Certain religious practices and personal laws are seen as indispensable to a religious faith. Essentiality is often used as a yardstick for measuring disposability of an essential practice in terms of time and effort.

4. Social Reform, and it preceding legal reform:

Social reform must always precede legal reform in matters of religion, since people's attitudes do not change through judicial pronouncements alone. If the people do not accept a law, it is a mere token. This is strongly connected to degree. All those laws which are hard in degree must be struck down regardless of this point.

## Results and Discussions

### Findings

In evaluating the necessity and potential effectiveness of a Uniform Civil Code (UCC) in light of the Sabarimala Case, I have reached two carefully worded conclusions based on my study of the case and its linkage to the concept of a Civil Code:

1. A UCC, if introduced all at once, is deemed impractical and unfair in the Indian scenario.
2. The introduction of a UCC is likely to result in either the creation of ineffective law or incite violent uproars and communal violence.

In the subsequent sections, I will elucidate the rationale behind these conclusions.

### Analysis on the Sabarimala Judgement

Before proceeding to analyze my findings, it's essential to present the foundational information upon which I'm building my case and examine them in isolation. Following this analysis, I will endeavor to scrutinize the Uniform Civil Code within that framework.

### Arguments by proposing judges: A brief

The case was decided in favor of the petitioners, the Association of Young Lawyers, with a 4-1 majority. Below is a summary of the arguments put forward by the proponents. These arguments have not undergone rigorous analysis as they are specific to this particular case and do not necessarily extend to the implementation of a Uniform Civil Code (UCC). I found the dissenting judge's opinion more relevant, and hence, it will be primarily used for application. Furthermore, some of these arguments will be examined in detail while discussing Justice Indu Malhotra's judgment, which provides additional insights into our case while also addressing the rulings of the other four judges:

1. Violation of Article 14 of the Constitution.
2. Practice of a form of untouchability. This argument will later aid in analyzing the "degree." Justice Chandrachud argued that no practice can supersede constitutional morality.
3. The practice not being "essential," and therefore subject to state intervention under Article 25 and 26.
4. Equal access to public spaces for all individuals.

## Arguments by the dissenting judge

Justice Indu Malhotra was the only judge on a five-judge panel opposing the entry of menstruating age women inside the temple.

1. Justice Malhotra emphasized that Article 14, the right to equality, cannot be the sole criterion to evaluate religious customs and practices. She underscored that Article 25, which guarantees freedom of religion, specifically ensures equal entitlement for individuals to freely practice their religion. However, equal treatment under Article 25 is contingent upon the essential beliefs and practices of any religion. Justice Malhotra argued that equality in religious matters must be contextualized within the framework of worshippers of the same faith. Her argument gains significance because if all religious practices are exclusively scrutinized through the lens of equality, subject to immediate constitutional scrutiny upon any perceived violation of that right, it may deprive individuals of their right to adhere to their traditional practices. In the conflict between the right to equality before the law and the right to religion, the significance often lies in the specific practice under consideration.

Another crucial point highlighted by Justice Malhotra is the importance of change originating from within a community to ensure its acceptance. In the Sabarimala Case, the petitioners were the Association of Young Lawyers, rather than the aggrieved community, which diminishes the seriousness of the matter in terms of its consequences and implications. When the affected stakeholder who is supposedly "discriminated against" does not seek redress, external intervention may lead to the enactment of ineffective laws. Justice Malhotra addressed this aspect in the context of maintainability, asserting that the right to approach the Supreme Court under Article 32 for the violation of fundamental rights should be based on a claim that the petitioners' personal rights to worship in the Sabarimala Temple have been infringed. As the petitioners do not profess to be devotees of the temple, it would require the court to adjudicate on religious matters at the insistence of individuals who do not adhere to that faith.

Thus, when examining equality through the lens of the court or the petitioners in religious matters, a verdict risks being perceived as a mere imposition that the populace will resist, as seen in the Sabarimala case. The outbreak of violent protests signals that the public may not be prepared for change, with even women within the affected community expressing willingness to exercise patience. Even if change is deemed necessary, it should ideally evolve organically through civil societies. Court intervention in such cases becomes highly contentious as it assumes the role of adjudicating what is deemed "right or wrong."

In her judgment, Justice Malhotra underscored the potential harm posed to the constitutional or secular fabric of the country by entertaining PILs challenging religious practices of any group, sect, or denomination within a pluralistic society. Sabarimala serves as an illustration of the imposition of a liberalist "progressive" ideology onto a perceived "backward" mass. The Lawyers' Association positioned themselves as champions of this equality, with the court, expected to facilitate rights, concurring.

To further elucidate the significance of these assertions, consider the following excerpt from the book, "American Anthropologists": "Rather than seeking to 'save' others (with the superiority it implies and the violences it would entail), we might better think in terms of (1) working with them in situations that we recognize as always subject to historical transformation and (2) considering our own larger responsibilities to address the forms of global injustice that are powerful shapers of the worlds in which they find themselves. I develop many of these arguments about the limits of 'cultural relativism' through a consideration of the burqa and the many meanings of veiling in the Muslim world."

The author draws upon this example within the context of the 'War on Terror', wherein the American government positioned itself as a liberator of the Afghan people, particularly Afghan women who were oppressed under practices like the pardah. However, it was surprising to observe that Afghan women did not revert to wearing what might be considered "immodest" clothing even after the oppressive government was toppled. Despite the state-mandated veil, the veil itself was not perceived as a symbol of captivity.

This highlights the importance of recognizing that cultural relativism is shaped by historical experiences. The author emphasizes that legal interventions alone cannot alter deeply ingrained notions of equality. The crux of the matter once again revolves around the degree of social evils present, where the court must exercise prudence in determining when to impose bans and introduce concepts of equality.

Justice Indu Malhotra was of the opinion, that what constitutes essential must be left to the group to decide.

In *Tilkayat Shri Govindlalji v. Rajasthan*, Justice Gajendragadkar referred to the rights enshrined in Articles 25(1) and 26(b) of the Constitution and emphasized that if a matter is clearly secular rather than religious, a court would be justified in rejecting its claim to be a religious practice if it is based on irrational considerations. The crucial question is whether the religious denomination considers it an essential part of its religion, and even if it may seem irrational to those who do not share that religious belief, the denomination's perspective must prevail. A court cannot label as irrational something that is integral to a denomination's religion.

The actual decision in the case, that the right to manage the property was a secular matter, is deemed correct. This is because, as noted by Mukherjea J., Article 26(b), when contrasted with Article 26(c) and (d), illustrates that matters of religious belief and practices are distinct and separate from the management of property of a religious denomination. While religious beliefs and practices are beyond the control of the court, the management of a religious denomination's property can be subject to limited regulation, as recognized by the Article itself.

However, this distinction between religious belief and practices, which are immune from control, and the management of religious denomination's property, which can be regulated to a certain extent, does not bear relevance to the question of whether a religious practice itself is irrational or secular.

In *Regina v. Secretary of State for Education and Employment & Ors.*, the House of Lords clarified the court's role in identifying a religious belief deserving protection under article 9. When the genuineness of a claimant's professed belief is contested, the court conducts an inquiry into and decides this issue as a question of fact. However, this inquiry is limited to ensuring that the assertion of religious belief is made in good faith, not fictitious, capricious, or an artifice.

Importantly, the court does not judge the validity of the asserted belief by any objective standard, such as the source material upon which the claimant bases their belief or the orthodox teaching of the religion in question. Freedom of religion protects the subjective belief of an individual, recognizing that religious belief is intensely personal and can vary from one individual to another.

The European Court of Human Rights has also emphasized that the right to freedom of religion precludes the state from assessing the legitimacy of religious beliefs or how they are expressed. Objective factors like source material may be considered only to determine whether the professed belief is genuinely held.

Indeed, there are several temples across India where certain restrictions on entry are imposed based on gender, marital status, or other criteria. For example, the Attukal Temple in Kerala is known for its annual Pongala festival, which is attended only by women. Similarly, the Chakkulathukavu Temple in Kerala is dedicated to the goddess Bhagavathy, and only women are allowed to offer prayers during certain festivals.

Additionally, the Lord Brahma Temple in Pushkar, Rajasthan, has a tradition of not allowing married men to enter the inner sanctum, purportedly due to a curse from Goddess Gayatri. These customs and restrictions are deeply rooted in religious beliefs and mythology, and attempting to rationalize or impose objective standards on them may not be feasible or appropriate.

It's essential to respect and understand the cultural and religious significance of these practices, even if they appear irrational or inconsistent from an outsider's perspective. As demonstrated in various court cases and legal discussions, religious beliefs and practices are intensely personal and protected under the right to freedom of religion. Therefore, while debates and discussions on these matters are important, any intervention or assessment by external entities must be approached with sensitivity and caution.

Indu Malhotra's statement underscores the importance of considering the degree of perceived oppression when evaluating religious practices. She emphasizes that courts should refrain from



intervening in religious practices unless they are deemed pernicious, oppressive, or constitute a social evil, such as Sati.

This principle highlights the need for a nuanced approach to assessing religious customs and traditions. While some practices may appear unconventional or irrational to outsiders, they may hold deep significance and meaning within the context of a particular faith community. As such, courts must exercise caution and sensitivity when considering challenges to these practices, particularly when they touch upon matters of religious belief and identity.

By emphasizing the threshold of perceived oppression, Malhotra advocates for a balanced approach that respects religious freedoms while also safeguarding against practices that are inherently harmful or discriminatory. This principle acknowledges the complexity of religious diversity and the need to uphold fundamental rights without unduly infringing upon religious autonomy.

In "softer" cases like Sabarimala, adopting a policy of non-intervention until the denomination itself addresses perceived oppression can be prudent. Distinguishing between "hard" and "soft" religious practices is valuable, with soft practices being more amenable to organic change and causing minor perceived inequalities, as seen in the Sabarimala case. In contrast, hard practices, such as Sati, are inherently pernicious and oppressive.

It's noteworthy that the discrimination at Sabarimala is not systematic, as women are allowed in other temples of Lord Ayyappa. Women of all ages can visit temples where he has not manifested himself as a 'Naishtik Brahamachari,' indicating that gender equality in worship is upheld in those temples. The fact that menstruating age women are the only ones restricted from entry diminishes the scale of perceived oppression, categorizing it as a soft issue. Even if viewed as wrong or backward by some groups, the appropriate course of action is to mobilize and pursue social reform rather than immediate judicial intervention. The size of the movement and the participation from within the community will ultimately determine if change is necessary (hypothesis). For instance, in the case of the practice of Triple Talaq, the court was able to effectively strike down the practice because it had support from within the community. Moreover, the ban by other nations on the same practice set a standard. Therefore, the movement fulfilled the proposition that social reform must precede legal reform. These movements play a crucial role in deciding whether a soft practice is discriminatory or outdated and thus subject to change.

Even if we were to consider the extreme case where the practice of entry ban were deemed immoral, social reform must still precede legal reform unless it constitutes a social evil of the highest immorality. When legal changes, especially in matters of religion, precede social change, it leads to a disharmonic effect where people do not accept the law, and discriminatory practices continue. Since the law has been framed but its practice not in place, it becomes obsolete over time, merely existing on paper. This situation is reminiscent of what happened with the Hindu Code Bill, where many of its provisions were not properly implemented. The implicit repercussions were confirmed when vehement protests

erupted, disallowing entry to women. Five women who attempted entry were denied by protesters, and no woman has since reached the sanctum sanctorum.

Through the context of Sabarimala, a parallel can be drawn about the uniform civil code on certain points:

- i) Essential Activities
- ii) Organic Change
- iii) Repercussions in terms of ineffective law, or vehement and violent protests
- iv) Imposition of Liberalism
- v) Destruction of diversity
- vi) Rationality and religion
- vii) Right to Equality
- viii) People and their religious identities

All of these points will be explored under a framework of four points.

### Discussion and Comparison

In this section, I will apply the framework derived from analyzing the Sabarimala case to evaluate its relevance to the implementation of a Uniform Civil Code, which aims at homogenizing personal law.

1. Right to equality: The Uniform Civil Code (UCC) is often advocated as a solution to eliminate discriminatory practices in personal laws by standardizing them. Proponents argue that it would promote the right to equality enshrined in Article 14 of the Constitution. UCC is perceived as a means to achieve equality within and between communities. Within communities, it is seen as a way to end discriminatory practices based on gender or other factors. For example, it could eliminate practices like polygamy, thus ensuring equal treatment of individuals within the same religious community. However, imposing uniformity between different religious communities raises concerns. Each community has its own historical experiences and traditions, and enforcing uniformity may not be appropriate. The Law Commission suggests prioritizing equality within communities over uniformity between them. This approach aims to address inequalities within personal laws while preserving meaningful differences among communities.

Drawing from the results of our case study, it's evident that equality alone is not the sole criterion for evaluating the authenticity of religious practices. Article 14 of the Constitution, which guarantees the right to equality, does not always supersede Article 25, which guarantees the freedom of religion. India's religious diversity is a fundamental aspect of its identity, and it is essential to preserve this



diversity along with the religious identities of its people. In the case of Pannalal Bansilal Pitti & Ors. Etc vs State Of Andhra Pradesh & Anr on 17 January 1996, the court recognized this aspect, highlighting...

“The first question is whether it is necessary that the legislature should make law uniformly applicable to all religious or charitable or public institutions and endowments established or maintained by people professing all religions. In a pluralist society like India in which people have faith in their respective religions, beliefs or tenets propounded by different religions or their off- shoots, the founding fathers, while making the Constitution, were confronted with problems to unify and integrate people of India professing different religious faiths, born in different castes, sex or sub-sections in the society speaking different Languages and dialects in different regions and provided secular Constitution to integrate all sections of the society as a united Bharat. The directive principles of the Constitution themselves visualise diversity and attempted to foster uniformity among people of different faiths. A uniform law, though is highly desirable, enactment thereof in one go perhaps may be counter-productive to unity and integrity of the nation. In a democracy governed by rule of law, gradual progressive change and order should be brought about. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute. It would, therefore, be inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go. The mischief or defect which is most acute can be remedied by process of law at stages.”

The Special Marriage Act, which governs family matters, is distinctive in its secular nature. Unlike personal laws, which often restrict interreligious marriages, the Special Marriage Act allows parties of any religion, or even different religions, to marry under a secular law. This Act provides a uniform legal framework for all marrying parties, including matters of succession governed by the Indian Succession Act 1925. However, an amendment in 1976 introduced a religious element by exempting Hindu marrying parties from certain provisions. This exemption raises questions about the Act's secular nature and its ability to provide a truly uniform legal framework. If exemptions based on religion are allowed, it challenges the feasibility of replacing religious-based personal laws with a single uniform law. The amendment to the Special Marriage Act highlights the complexities of implementing a uniform civil code in a heterogeneous society, suggesting that such a code may not be viable.

Degree: In the Sarla Mudgal Case, the Supreme Court noted,

“...ours is a Secular Democratic Republic. Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fibre. But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms, are not autonomy but oppression.”

The case of talaq-e-biddat, or Triple Talaq, provides a compelling example of why social reform often precedes legal reform. When the Supreme Court struck down the practice of Triple Talaq, it did so

because it violated the basic dignity and human rights of Muslim women. This decision was justified on two grounds similar to those discussed in the Sabarimala Case. Firstly, the degree of harm caused by husbands abandoning their wives through Triple Talaq was significant, particularly in the context of Islamic society where men are traditionally the breadwinners. This treatment was deemed outrageous and a violation of women's right to life, representing a "hard" practice in our framework. Secondly, the court determined that the practice was not essential to the religion, despite the belief that essential practices should be decided by the religious community. The court's decision was influenced by widespread protests and international condemnation, demonstrating the importance of social mobilization in effecting legal change.

Furthermore, the Triple Talaq case aligns with our framework as it exemplifies how demand for reform originated from within the community itself, with Shayra Bano, a Muslim woman and victim of Triple Talaq, being the petitioner. This underscores the principle that social movements play a crucial role in prompting legislative action.

Indeed, it's crucial to recognize that not all personal law practices can be treated in the same manner. For softer practices, it's essential to understand them within the specific context of each community's understanding of equality. Otherwise, efforts to impose uniformity may inadvertently undermine the very principles they seek to uphold.

In the case of the uniform civil code, mandating the lifting of entry bans in all places of worship for all groups, as illustrated, could have unintended consequences and prove counterproductive. Such blanket measures risk being perceived as dictatorial rather than reformative. Therefore, a more nuanced approach that respects the diversity of religious beliefs and practices within society is necessary to ensure effective and equitable reform.

**Essentiality:** Exactly, the determination of what is essential to a community's religious identity should ultimately rest with the community itself. Personal laws often hold significant cultural and religious importance for people, shaping their sense of identity and belonging. While some practices, such as Triple Talaq or Polygyny, may indeed be considered outrageous and deserving of intervention, there are also softer practices where societal views can evolve over time through the leadership of civil societies.

However, it's essential to emphasize that the label of "essential" cannot be used to justify practices that perpetuate discrimination or violate fundamental rights. While respecting religious freedom, it's imperative to ensure that no practice is immune from scrutiny when it leads to injustice or harm.

Absolutely, protecting the freedom of religion and the right to practice and propagate one's faith is paramount in a secular democracy. However, it's crucial to recognize that some social evils may

disguise themselves as religious customs. Practices like sati, slavery, dowry, and others do not align with basic human rights principles and should not be shielded under the guise of religion.

While the concept of essentiality shouldn't serve as a justification for oppressive practices, it's important to acknowledge that personal laws often hold significant cultural and religious significance for individuals, including women. These laws, along with language and cultural practices, contribute to their sense of religious identity and freedom. Therefore, essentiality alone cannot be used as a criterion for oppression.

When evaluating religious and customary practices, the Supreme Court should focus on whether these practices violate human rights to such an extent that immediate intervention is necessary, irrespective of their perceived essentiality. While the court should refrain from determining what constitutes essential religious practice, practices that are deemed non-essential may be easier to address through legal means without infringing on religious freedom.

In the case of Narasu Appa Mali, the Bombay High Court concluded,

“A sharp distinction must be drawn between religious faith and belief and religious practices. What the State protects is religious faith and belief. If religious practices run counter to public order, morality, health or a policy of social welfare upon which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole.”

Hence, the notion of essentiality should not be overemphasized. If a practice is egregious, regardless of its perceived essentiality, the court or the law must intervene to strike it down. Determining what constitutes egregiousness is the responsibility of the judiciary.

Social change before legal change: The discussion highlights the importance of prioritizing social reform over legal reform. As law is a reflection of society, imposing a uniform civil code abruptly would disregard this crucial aspect of our identity rooted in customs. Therefore, it is imperative that social reform is led by civil societies rather than enforced through legal means.

One can confidently conclude that the Commission's efforts to reform family law stem more from civil society organizations, educational institutions, and marginalized groups, rather than from legislative directives. Through legislative endeavors to codify just and acceptable laws governing marriage, alongside the Supreme Court's efforts to invalidate unfair traditions and the tireless advocacy of civil society movements in exposing issues within personal laws, India is gradually moving towards building a more equitable society.

From the Sabarimala case, it's evident that implementing a uniform civil code, a law primarily addressing religious sentiments, is likely to result in two main consequences:

Eruption of violence: The Indian population holds strong attachments to religious sentiments. This, combined with widespread ignorance, renders Indians highly vulnerable to violent reactions when the state attempts to intervene in matters of faith. In cases where such changes lack community approval,

there is a risk of resorting to violence, resulting in significant damage to life and property. Given that the Uniform Civil Code addresses all religions simultaneously, the collective uproar could lead to dire consequences.

Ineffective Law: Regardless of whether violence erupts or not, such a law will definitely be ineffective. Many norms of this common code are highly likely to be ignored when it has not received societal approval. The question of whether we are ready for this level of instability is relevant. Stanford Economist Matthew O. Jackson puts this idea forward in his paper: when laws are in conflict with norms so that many others are breaking the law, anticipating little whistle-blowing, each agent has further incentives to also break the law. My ideas are further propounded by his results.

“..We further show that laws that are in strong conflict with prevailing social norms may backfire and lead to a significant decline in law-abiding behavior in society. In contrast, gradual imposition of moderately tight laws can be effective in changing social norms and can thus alter behavior without leading to pervasive lawlessness. We also show that excessively strict (or badly designed) laws concerning some dimensions of behavior encourage broader law-breaking in society.”

The paper provides the example of duelling in France as a case in point. Despite being outlawed by Louis XIII in 1626, with authorities even executing officers participating in duels, the practice persisted as a strong tradition for centuries thereafter.

Therefore, it wouldn't be inaccurate to conclude that the Uniform Civil Code would merely exist as a formality, a mere piece of paper, if it fails to influence customs and prevailing norms. Such change can only be brought about through the force of awareness campaigns and education, rendering the need for a code itself obsolete.

Conclusion :-

Policy Implications

A Uniform Civil Code symbolizes our ongoing discussion about personal law and its evolution with changing times. However, implementing such a code all at once is both unjust and impractical. It's unfair because it would stifle diversity and prevent religious communities from evolving organically. Moreover, it's impractical because the resulting law may prove ineffective. In matters of religion where rationality often has no place, law serves more as a reflection of societal beliefs rather than a tool for changing them. This perspective primarily applies to the "soft" practices discussed throughout this paper. Practices that flagrantly violate human rights should be abolished, regardless of their perceived essentiality. However, assessing essentiality can still provide a useful framework for social movements seeking to identify morally objectionable practices in need of change. The Sabarimala case illustrates how people react when a religious custom is altered. Throughout this paper, I've operated under the assumption that a Uniform Civil Code would be implemented all at once, resulting in the homogenization of most personal laws. Now, I'll relax these assumptions to provide more nuanced policy suggestions.

I have prepared a list of the following policy suggestions to consider:-

Piecemeal reform: Indeed, adopting a piecemeal approach to reforms may be more pragmatic and feasible. By addressing specific issues one at a time, it allows for careful consideration of each aspect of personal laws and ensures that changes are implemented gradually, with due regard to their impact on religious communities.

Historically, there have been instances where reforms have been introduced incrementally, such as the reforms introduced by the British in Muslim Law during colonial rule. These reforms targeted specific aspects of personal laws, such as abolishing slavery, addressing civil rights issues related to apostasy, and replacing Islamic criminal law with the Indian Penal Code.

Attempting to enact a uniform civil code all at once may be overly ambitious and could face significant challenges, both in terms of acceptance and implementation. Instead, focusing on targeted reforms that address pressing issues while respecting the diversity of religious practices and beliefs may lead to more sustainable and widely accepted changes over time.

In conclusion, a piecemeal approach to reforming personal laws, based on lessons from past experiences and tailored to address specific concerns, may offer a more pragmatic and effective path forward.

Optional code for a period of time: UCC shouldn't be forced down the throats of people. We must give people the time to appreciate law.

Prepare a design: The Law Commission or government should draft a Uniform Civil Code (UCC) and subject it to public scrutiny. This approach fosters progress by allowing for feedback and input from various stakeholders. By involving the public in the legislative process, it helps alleviate potential communal tensions as people become more receptive to the proposed changes. Additionally, this process allows individuals time to adjust to the new legislation, increasing the likelihood of successful implementation.

Ensuring codification of personal law first: The process of transitioning from diverse civil codes to uniformity through legal means must be gradual and cannot be achieved overnight. India's strength lies in its multicultural and multi-religious diversity, and forcing homogeneity upon all personal laws may compromise this diversity. Instead, a gradual approach involving borrowing from each other's laws, making incremental changes, ensuring gender equality through judicial pronouncements, and adopting inclusive interpretations of marriage, maintenance, adoption, and succession laws can lead to uniformity over time. Initiatives to reform each personal law independently can eventually result in a unified legal framework. The Law Commission's consultation paper emphasizes the importance of ensuring that any codification of personal laws aligns with the Constitution and does not perpetuate discrimination or stereotypes. Moreover, the act of codifying separate personal laws could potentially be challenged as a violation of Article 14 of the Constitution.

Hence, it is strongly recommended that the legislature prioritize ensuring equality within communities, particularly between men and women, rather than aiming for equality between communities. This approach would allow for the preservation of meaningful differences within personal laws while simultaneously addressing inequality to the greatest extent possible without necessitating absolute uniformity.

**Civil Society movements:** In matters of religion, it is preferable for non-governmental organizations and societies to lead the way in changing perspectives, by encouraging those who are disadvantaged within a community to challenge unfair practices. This principle echoes the recurring theme emphasized throughout this paper: social reform must precede legal reform, as without it, laws remain ineffective.

### Research Limitations

1. Due to time constraints, I only analyzed Justice Chandrachud's judgment on the Sabarimala issue, limiting the scope of my analysis to one judge out of four.
2. The breadth of literature on the Uniform Civil Code was vast, and I couldn't explore it comprehensively, potentially resulting in historical or factual inaccuracies in the research.
3. This study is based solely on argumentation and does not incorporate empirical data, which could affect the accuracy of predictions regarding the implementation of a Uniform Civil Code and public reactions.
4. The assumption that a Uniform Civil Code would mandate all personal laws may not hold true if only certain personal laws are covered and not all.

### Final Words

The discourse surrounding the implementation of a Uniform Civil Code (UCC) transcends mere dichotomies, delving into the intricate interplay of equity and discrimination within the fabric of Indian society. At its core, the debate prompts a critical examination of whether a singular legal framework governing personal laws across diverse religious communities is a progressive step towards fostering equality or a potentially divisive imposition that undermines religious freedoms and cultural pluralism.

Within this nuanced discussion, it becomes imperative to acknowledge the multifaceted nature of societal transformation and the inherent complexities associated with legal reform in matters deeply intertwined with religious beliefs and practices. At the forefront of this deliberation lies the question of whether change should emanate organically from within communities or be enforced through legislative mandates.

Drawing insights from the Law Commission's Consultation Paper and scholarly discourse, it becomes evident that civil societies play a pivotal role in advocating for social change by addressing



discriminatory practices both within and between religious communities. However, the pace and trajectory of this transformation are contingent upon a myriad of factors, including historical contexts, cultural sensitivities, and legal frameworks.

A key consideration in the discourse surrounding the UCC is the tension between the principles of equality enshrined in the Constitution and the preservation of religious diversity and cultural autonomy. While proponents argue that a UCC would streamline legal processes and uphold the principle of gender equality, critics caution against the potential erosion of religious freedoms and the imposition of a monolithic legal framework that fails to accommodate the diverse religious practices and beliefs of Indian society.

Furthermore, the practical implications of implementing a UCC cannot be understated, particularly in a country as diverse and culturally heterogeneous as India. The potential for social unrest, communal tensions, and resistance from religious communities underscores the need for a nuanced and inclusive approach to legal reform.

In light of these complexities, policy suggestions must prioritize gradual and inclusive reforms that respect the cultural and religious pluralism inherent in Indian society. Rather than imposing a uniform legal framework, a piecemeal approach that addresses specific issues within personal laws while preserving the unique cultural identities of religious communities may be more pragmatic and sustainable in the long run.

Moreover, any attempt to enact a UCC must be preceded by extensive public consultation and engagement to ensure broad-based consensus and minimize social discord. By soliciting feedback from diverse stakeholders, including religious leaders, legal experts, civil society organizations, and marginalized communities, policymakers can foster a more inclusive and participatory approach to legal reform.

Additionally, it is essential to recognize that legal reform alone cannot address deeply entrenched social inequalities and discriminatory practices. Complementary efforts, such as public awareness campaigns, education initiatives, and community-led advocacy, are equally crucial in challenging societal norms and fostering a culture of equality and inclusivity.

In conclusion, the debate surrounding the Uniform Civil Code epitomizes the complex interplay between law, religion, and social change in India. While the pursuit of gender equality and social justice is a laudable goal, it must be pursued in a manner that respects the religious freedoms, cultural traditions, and diverse identities of all citizens. Through inclusive dialogue, gradual reforms, and

concerted efforts to promote social cohesion, India can strive towards a more equitable and inclusive society where the principles of justice and equality are upheld for all.

The times are changing, and we change in them.

### The Common Civil Code: Constitutional Aspect-

Article 44 of the Constitution of India requires that the country shall work to secure for its citizens a Uniform Civil Code throughout the nation.

Secular activities, such as inheritance governed by personal laws, should be distinguished from matters of religion. Implementing a uniform law applicable to all would promote national unity. Concerns were raised that a Common Civil Code would violate the fundamental right to freedom of religion outlined in Article 25 and would oppress minority communities. However, the first objection is unfounded because secular activities associated with religious practice are excluded from this guarantee. Personal laws, considered from this perspective, pertain to secular activities and are within the state's regulatory authority.

As for the second objection, in advanced Muslim countries like Türkiye and Egypt, the personal laws of minorities do not hold the same level of sanctity to prevent the enactment of a civil code. In these countries, no minority is granted such rights.

If we observe the countries in Europe with a civil code, individuals from any part of the world, including minorities, are subject to the same Civil Code. This is not perceived as oppressive to minorities. Our foremost and most critical challenge is to foster national unity in our country. While we may believe that we have achieved national unity, there are several factors, some significant, that still pose serious threats to our national cohesion.

Communalism fosters discrimination on two fronts: firstly, between people of different religions, and secondly, between the sexes. This divisive and detrimental impact should be eradicated, potentially through the implementation of a Uniform Civil Code. For women, who comprise half of India's population, a Uniform Civil Code offers the promise of equality and justice in courts of law, regardless of their religion. This extends to various aspects such as marriage, divorce, maintenance, custody of children, inheritance rights, and adoption.

While the codification of Hindu law was met with significant protest, it was a step forward in this direction. However, the codification of Muslim law or the enactment of a Common Civil Code remains



a contentious issue due to its politicization. Nonetheless, enlightened Muslim opinion is supportive of codification.

Merits Of Uniform Civil Code:

If a Common Civil Code is enacted and enforced:

- Its world help and accelerate national integration;
- Overlapping provisions of law could be avoided;
- Litigation due to personal law world decrease;
- Sense of oneness and the national spirit would be roused, and
- The country would emerge with new forces and power to face any odds, defeating the communal and the dividing forces.

Exactly, Article 44 of the Constitution of India mandates that the State shall endeavour to secure for its citizens a Uniform Civil Code throughout the country. ("Uniform Civil Code - INSIGHTSIAS - UPSC IAS EXAM PREPARATION")

India aspires to be a secular society, and in this context, the attainment of a uniform civil code becomes increasingly desirable. Such a code would eliminate diversity in matrimonial laws, streamline the Indian legal system, and foster a more cohesive society. It would disentangle law from religion, a crucial objective in a secular and socialist framework. Additionally, it would contribute to forging a national identity and mitigating divisive tendencies in the country.

A uniform civil code would comprise standardized provisions applicable to all individuals, grounded in principles of social justice and gender equality in family matters.

According to the Committee on the Status of Women in India, the persistence of various personal laws that endorse discrimination between men and women contradicts fundamental rights and the Preamble to the Constitution. The Preamble promises to ensure "equality of status" to all citizens and goes against the spirit of natural integration. The Committee recommended the swift implementation of the constitutional directive outlined in Article 44 by adopting a Uniform Civil Code.

## Approach Of the Judiciary:

In the landmark case of Mohammad Ahmed Khan v. Shah Bano Begum, commonly known as the Shah Bano case, the Supreme Court directed the Parliament for the first time in 1985 to frame a Uniform Civil Code (UCC). In this case, a financially struggling Muslim woman sought maintenance from her husband under Section 125 of the Code of Criminal Procedure after he pronounced triple talaq. The Supreme Court ruled in favour of the woman, affirming her right to maintenance under Section 125. Additionally, the Court emphasized that Article 44 of the Constitution, which calls for a Uniform Civil Code, had remained unimplemented. Chief Justice Y. V. Chandrachud observed that "A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies."

Following the Shah Bano case decision, widespread discussions, meetings, and agitation ensued. The government led by Rajiv Gandhi overturned the decision through the enactment of the Muslim Women (Right to Protection on Divorce) Act, 1986. This act limited the right of Muslim women to claim maintenance under Section 125 of the Code of Criminal Procedure. The justification provided was that the Supreme Court's observation regarding enacting the Uniform Civil Code was non-binding on the government or Parliament, and interference with personal laws should only occur if there is internal demand.

In the case of Mary Roy v. State of Kerala, the Supreme Court was presented with the argument that certain provisions of the Travancore Christian Succession Act, 1916, were unconstitutional under Article 14 of the Constitution. These provisions granted a widow only a life interest terminable at her death or remarriage and provided for limited inheritance rights for daughters. While the Supreme Court avoided directly addressing whether gender inequality in succession and inheritance matters violated Article 14, it ruled that the Travancore Act had been superseded by the Indian Succession Act, 1925. This decision in the Mary Roy case has been regarded as significant in advancing gender equality in succession laws.

In the case of Sarla Mudgal v. Union of India, the Supreme Court directed the Union of India to make efforts to frame a Uniform Civil Code and report the steps taken by August 1996. The Court emphasized that those who chose to remain in India after partition understood that India rejected the notion of a two-nation or three-nation theory, and instead embraced the idea of a single nation where no community could claim separate status based on religion.

However, it is important to highlight the Supreme Court's stance in the Lily Thomas case, where it clarified that the directives outlined in Part IV of the Constitution, including Article 44 regarding the Uniform Civil Code, are not enforceable in courts as they do not establish justiciable rights for individuals. The Supreme Court lacks the authority to enforce the Directive Principles. Therefore, it should be emphasized that the Supreme Court did not issue directives for the enactment of a Common Civil Code, aiming to address any misunderstandings or concerns.

In July 2003, the Supreme Court reiterated the government's constitutional duty to enact a Uniform Civil Code (UCC) in response to a challenge brought forth by a Christian priest regarding the Constitutional validity of Section 118 of the Indian Succession Act. The petitioner, John Vallamattan, argued that Section 118 unfairly discriminated against Christians by imposing unreasonable restrictions on their ability to donate property for religious or charitable purposes through wills.

The bench, consisting of Chief Justice V.N. Khare, Justice S.B. Sinha, and Justice A.R. Lakshmanan, ruled in favour of the petitioner, declaring Section 118 unconstitutional. Chief Justice Khare emphasized the importance of Article 44 of the Constitution, which calls for the State to strive for a Uniform Civil Code throughout India. He expressed disappointment that Article 44 had not been implemented, noting that Parliament has yet to enact a common civil code. Chief Justice Khare underscored the potential of a Uniform Civil Code to promote national integration by eliminating contradictions based on differing ideologies.

Indeed, as demonstrated through various instances, the apex court has consistently directed the government to fulfil the Directive Principle enshrined in our Constitution. The urgency to implement these directives can be inferred from the repeated reminders and rulings issued by the Supreme Court.

## Secularism VS Uniform Civil Code:

The central controversy surrounding the Uniform Civil Code (UCC) revolves around the principles of secularism and freedom of religion enshrined in the Constitution of India. The Preamble of the Constitution declares India as a "secular democratic republic," indicating the absence of a state religion. In a secular state, discrimination based on religion is prohibited, and the state is solely concerned with regulating human relations rather than matters of religious belief. This does not imply unrestricted practice of all religions but rather emphasizes that religion should not interfere with the everyday life of individuals.

In the case of *S.R. Bommai v. Union of India*, Justice Jeevan Reddy highlighted that religion is a matter of personal faith and should not be intertwined with secular activities. Secular activities can be regulated by the state through legislation.

India follows the concept of "positive secularism," which differs from the secularism embraced by the United States and some European nations. Positive secularism in India maintains a distinction between spirituality and individual faith, rather than advocating for a complete separation of religion and state.

Articles 25 and 26 of our Constitution safeguard the right of every individual to freely practice their religion. This means that everyone has the freedom to believe, worship, and share their faith without interference, except in cases where it disrupts public order, morality, or health. Additionally, the government is empowered to regulate secular activities associated with religious practices and enact laws for social welfare.

The concept of a Uniform Civil Code (UCC) is not contradictory to our secular principles, or the rights guaranteed by Articles 25 and 26. Rather, it is rooted in the belief that personal laws governing matters like marriage and inheritance should be uniform for all citizens, irrespective of their religious beliefs. The UCC does not seek to compel individuals to alter their religious practices, such as marriage ceremonies; rather, its focus lies in ensuring consistency in areas like inheritance and property rights.

As emphasized by Justice R.M. Sahai, India cherishes its secular identity and upholds the freedom of religion as a fundamental value. However, practices that infringe upon human rights or restrict personal freedoms run counter to our ethos. Hence, the implementation of a common civil code is deemed crucial—it serves to protect the rights of all individuals and fosters a sense of unity and solidarity within our diverse nation.

## Common Civil Code: Need Or No Need?

The instances of Shah Bano Begum, Mary Roy, National Anthem, and Sarla Mudgal underscore the pervasive influence of religion within various communities across India. Whether it is the Muslim community, Syrian Christians, or Jehovites, the dominance of religious norms often results in the minority's beliefs exerting undue control over the majority, posing a significant challenge to the unity of the nation.

As a Sovereign Socialist Secular Democratic Republic, India staunchly upholds the principle of secularism, ensuring that the state remains impartial towards all religions. It promotes humanism as its foundational creed and aspires towards a legal framework that transcends religious boundaries, thus advocating for a Common Law applicable to all citizens.

The call for a Uniform Civil Code (UCC) echoes the need for establishing a comprehensive legal system that fosters equality and justice for all. Dr. Ambedkar, a principal architect of the Indian Constitution, argued for incorporating provisions related to a uniform civil code within the fundamental rights chapter, making it enforceable in courts of law. However, the drafting committee faced divergent views on the matter. While some, such as Rajkumari Amrit Kaur, M.R. Masani, and Hansa Mehta, voiced discontent with merely considering a Common Civil Code as a distant aspiration. They stressed that India's progress towards national unity has been hindered by the existence of personal laws dictated by religion, advocating for the urgent implementation of a uniform civil code within a specific timeframe to mitigate divisions within society.

The quest for a Common Civil Code represents a critical step towards establishing the rule of law and addressing societal disparities. It embodies the nation's commitment to fostering inclusivity, equality, and unity among its diverse populace.

Summary: The contentious issue of implementing a Uniform Civil Code (UCC) in India, as enshrined in Article 44 of the Directive Principles of State Policy, has sparked significant controversy and debate. This provision calls for the state to strive towards establishing a uniform set of civil laws applicable to all citizens across the country.

Several court cases have brought this issue to the forefront, with challenges to the constitutionality of personal laws and calls for the enactment of a Common Civil Code. One notable case is the State of Bombay vs. Narasiappa Mali, where modifications to Hindu law were contested on the grounds of violating Articles 14, 15, and 25 of the Constitution.

Arguments were made asserting that marriage among Hindus is inherently religious and that having a son is considered a spiritual benefit, thus justifying polygamy. However, these arguments were rejected by the court, with Justice Gajendra Gadkar emphasizing the importance of adoption over second marriages.

Chief Justice Chagla also upheld the validity of the Bombay Act, drawing on precedent such as the Davis vs. Beason case. Ultimately, the court refrained from making a definitive ruling on the Uniform Civil Code, deferring to the legislature to address this complex and sensitive issue.

Similarly, the Madras Hindu (Bigamy and Divorce) Act of 1949 faced legal challenges on similar grounds as the Bombay Act. In this case, the court recognized that while religious beliefs are protected by the Constitution, religious practices can be subject to regulation by the state. Additionally, the Allahabad High Court upheld statutory provisions prohibiting bigamy among Hindus in the case of Ram Prasad vs. State of U.P.

The Shah Bano case, which arose from a petition filed under section 125 of the Criminal Procedure Code (CrPC) in 1978 in Indore, stirred significant controversy. The case reached the Supreme Court, where Chief Justice Chandrachud delivered the judgment on behalf of a five-judge bench. The judgment made notable observations regarding Muslim Personal Law and the Uniform Civil Code. Criticizing the Government of India for its failure to enact a Uniform Civil Code, the court's decision was met with opposition from the All India Muslim Personal Law Board, which argued against the court's interpretation of Shariah and the Qur'an. The judgment exacerbated communal tensions and fueled anti-Muslim sentiments, highlighting the need for judicial restraint in such matters.

Another case of significance pertains to Christian Personal Law, where Justice O. Chinappa Reddy delivered a judgment without considering Christian Personal Law or the preferences of the Christian community.

In the Sarla Mudgal case, which addressed personal laws applicable to Hindus and Muslims, as well as the issue of a Uniform Civil Code, the judgment favored the enactment of a Uniform Civil Code, touching upon various aspects of religious laws and their implications for the Indian legal system.

Following the Sarla Mudgal case, another significant case emerged through a Public Interest Litigation (PIL) raising various issues related to Muslim Personal Law. These issues included polygamy, unilateral talaq, the Muslim Women (Protection of Rights on Divorce) Act 1986, and inheritance laws. The PIL was filed by the Ahmedabad Action Group and was disposed of by the Supreme Court alongside two other petitions filed by the Lok Sevak Sang and the Young Women Christian Association. However, the court refrained from disposing of any of the cases and left them for the legislature to address. In this instance, the court sought to uphold the original constitutional position regarding the Uniform Civil Code.

From the discussions presented in this chapter, it becomes evident that whenever the constitutionality of any provision(s) of personal laws was challenged on the grounds of violating fundamental rights, the court exercised self-restraint and deferred the matter to the wisdom of the legislature, citing it as a matter of state policy beyond the court's usual purview.

Nevertheless, it is worth noting that the court has occasionally assumed the role of an activist, emphasizing the importance of enacting a Uniform Civil Code. This occurred predominantly when the issues in question did not necessitate such incidental observations. At times, the court even made unwarranted remarks about the Uniform Civil Code, bypassing the specific issues at hand in the case.

### "Uniformity and Women's Rights: Debunking a Myth"

The Uniform Civil Code (UCC) has long been hailed as a panacea for the societal inequalities plaguing Indian society, particularly concerning gender disparities. From the early days of the Constituent Assembly debates to contemporary discussions, the focus has often been on how a common civil code could rectify these inequalities. However, amidst these debates, the voices and perspectives of women have often been sidelined, leading to a critical gap in understanding the true impact of such legislation.

During the deliberations on Article 35 (now Article 44) of the Constitution, which pertains to the UCC, the discourse primarily revolved around cultural differences and fears of majoritarian dominance. Unfortunately, the vital question of how the UCC would specifically benefit women remained largely



unaddressed. Moreover, the absence of female representation in these discussions further compounded the issue, as their viewpoints and concerns were not adequately considered.

A common comparison is often drawn between Hindu and Muslim women, with Hindu women being perceived as more empowered due to the codified Hindu law. However, the reality is more nuanced, as the codification of Hindu personal law has not fully addressed the underlying issues of gender inequality. Despite the recognition of discriminatory practices within Hindu law, the subsequent measures to rectify these injustices have been insufficient.

The codification of Hindu law, while lauded as a milestone in social reform, has its shortcomings. The process was influenced by colonial ideologies and Western ideals, resulting in a system that may not fully align with the cultural and societal realities of India. Furthermore, the imposition of monogamy and other Western principles has led to discontent within certain Hindu communities, highlighting the complexities of social reform.

In contrast, some indigenous systems, such as the matrilineal-based system in Kerala, had progressive divorce and inheritance laws for women prior to codification. However, the imposition of codified Hindu law has often resulted in the erosion of these progressive practices, pushing certain communities into a more regressive legal framework.

It is clear that genuine social reform cannot be achieved through top-down legislative measures alone. Instead, there must be a concerted effort to raise awareness about women's rights and empower them to advocate for change. Monogamy, for example, became accepted among Hindu men not solely due to legislative fiat, but through a broader societal shift in attitudes and values.

In conclusion, while the UCC may hold promise as a means of promoting gender equality, its implementation must be approached with caution and sensitivity to the diverse needs and perspectives of women across Indian society. Without meaningful engagement with these stakeholders, any legislative reform runs the risk of falling short of its intended goals.

The introduction of monogamy and the prohibition of polygamy within Hindu law, as outlined in the Hindu Marriage Act of 1955, aimed to address issues of inequality and discrimination. However, the implementation of these provisions without accompanying social awareness initiatives has had unintended consequences.

Despite the legal prohibition of polygamy, many Hindu men continue to practice it, albeit with greater impunity. They exploit loopholes in the law, such as the specific requirements for a valid Hindu

marriage under the Act, to evade legal consequences. By claiming that their subsequent marriages do not meet the criteria laid out in the Act, these men avoid accountability for their actions.

This situation further exacerbates the vulnerability of second wives within Hindu communities. Without legal protection or recognition under the codified law, these women find themselves in precarious positions. Their rights and well-being are often disregarded, as they lack the legal safeguards afforded to first wives.

In essence, while the Hindu Marriage Act aimed to promote monogamy and strengthen the institution of marriage, its implementation has fallen short of achieving these objectives. Instead, it has created loopholes that enable the continuation of discriminatory practices and undermine the rights of second wives. Addressing these shortcomings requires not only legal reforms but also comprehensive efforts to raise awareness and foster societal change.

The quest for gender equality cannot solely rely on legal provisions. Despite the existence of laws such as the Dowry Prohibition Act of 1961, Section 498-A of the Indian Penal Code, the Protection of Women from Domestic Violence Act of 2005, and the amended Hindu Succession Act of 1956, tangible progress towards gender equality remains elusive. Women's social and economic empowerment is essential for the effective implementation of these laws. Without significant strides in enhancing women's social and economic status, the full benefits of legal protections cannot be realized.

This underscores the complexity of addressing gender inequalities through a Uniform Civil Code (UCC). While proponents advocate for a UCC as a means to achieve gender equality, its effectiveness in this regard is debatable. The UCC must navigate the diverse social and religious landscapes of India, recognizing the unique challenges faced by women from various backgrounds. A one-size-fits-all approach may overlook the specific needs and realities of different communities, potentially undermining its progressive objectives.

The underlying objectives of a UCC also warrant scrutiny. Is the primary goal to foster national integration, or is it to eradicate discrimination inherent in personal laws? While early discourse may have focused on national integration, contemporary perspectives increasingly view the UCC as a tool for achieving gender equality. However, if gender equality is indeed the desired outcome, current discussions may have missed the mark, overlooking the broader implications of a UCC beyond national unity.

Drawing parallels with uniform criminal law may not be appropriate, given the distinct nature of personal laws governing family relations. Achieving uniformity in personal laws requires nuanced

approaches that respect the diversity of Indian society. Identifying and addressing injustices inherent in different personal laws and societal norms is paramount. This necessitates a comprehensive understanding of the inequalities prevalent in various communities and the formulation of targeted interventions to address them.

The discourse on a UCC serves as a catalyst for addressing anomalies within personal laws and prompting societal change. However, effecting meaningful change is a complex and time-consuming endeavor, requiring careful consideration of diverse perspectives and socio-cultural contexts. Ultimately, progress towards gender equality must transcend legal frameworks, encompassing broader social and economic reforms to empower women and uphold their rights.

The ongoing debate surrounding the Uniform Civil Code serves as a poignant reminder of the shortcomings within personal laws and underscores the need for reforms that align with contemporary values and realities. Communities are urged to draw inspiration from others who have successfully adapted to changing times, fostering a spirit of introspection and progress.

It's important to recognize that meaningful reform is a gradual process that requires careful consideration and inclusive dialogue. Rushing into change without thorough deliberation and consensus-building is likely to result in failure rather than achieving the intended outcomes. Therefore, patience and a steadfast commitment to addressing inequalities and injustices are essential for fostering lasting societal transformation.

#### Conclusion:

After thorough deliberation, it becomes evident that the mere mention of a Uniform Civil Code can evoke both jubilation and lamentation across the nation. This code carries significant social, political, and religious implications. It aims to strike a delicate balance between safeguarding fundamental rights and respecting individual religious beliefs. The ideal code should be fair and impartial, devoid of any prejudice or favoritism towards religious or political interests.

In conclusion, it is imperative to address the disparity arising from citizens adhering to different property and matrimonial laws based on their religious affiliations. This not only undermines the unity of our nation but also raises questions about whether we truly embody the principles of a sovereign secular republic. We are living in a fragmented landscape where people are subjected to the whims and dictates of religious authorities.

I strongly advocate for the implementation of the Uniform Civil Code and the standardization of personal laws. My support stems not from bias but from a recognition of the pressing need for such reforms. It is high time that India adopts a uniform legal framework governing crucial aspects such as

marriage, divorce, succession, inheritance, and maintenance. This step would contribute significantly to fostering unity and equity across our diverse society.

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