

In Quest of Unity: Interrogating the Uniform Civil Code and its Ramifications on Religious and Cultural Rights in India

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ABSTRACT

This article evaluates the protagonist's arguments in favour of the uniform civil code (hereinafter referred to as UCC) treating the common personal law as an instrument to foster national unity and eliminate gender injustice against women. The principal argument in favour of UCC is that, if implemented it would bring greater justice to women, particularly those from minority communities. The article aims to provide an objective assessment of these claims. Considering the vicious political environment in the country it is imperative to re-examine the gender justice question in the context of the current political climate where hate has taken centre stage and secularism and minority rights have been marginalised almost. Furthermore, since the 22nd Law Commission of India invited suggestions, there has been anxiety and concern among various ethnic and religious communities about whether they will be able to maintain their cultural privileges. If UCC is implemented throughout the nation, it would also have socio-legal repercussions that will adversely affect social cohesion, tribal identity, and safeguarding minorities' rights. The objective of this essay is to shed light on the current uproar surrounding how the proposed common personal law throughout the nation will undermine constitutional values, social cohesiveness and national integrity. The article also unpins the claim of the gender justice hypothesis as to how the proposed reform undermines women's rights and liberties if UCC is implemented strictly throughout the nation.

Keywords: Uniform Civil Code, Freedom of Religion, Minorities Rights, Secularism

Prorogue

In this article, the major point of discussion is what would be the constitutional and political ramifications if any unwarranted amendments

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to personal law were introduced by the state in the name of the Uniform Civil Code, hereinafter referred to as UCC. Considering the wider media debate surrounding the UCC the same gained momentum when the 22nd Law Commission of India invited suggestions from the general public about the proposal for the implementation of the Uniform Civil Code throughout the nation.¹ This move of the government has raised certain queries about the viability of the UCC and how the state can ignore its inherent impracticability and the cultural diversity of the country.² Hence, the analysis herein will be surrounded by two important aspects of personal law i.e. democracy and minority rights. The process of change with an explicitly ‘cultural and religious dimension’ denotes a process of amending God-given personal law as freedom of religion covers the personal laws of all communities. With this move, the constitutional and political ramifications will be intense on minorities, tribal and other ethnic communities within the broad category of Hindus as the proposed UCC might intervene to stifle the individual liberty to faith and follow his customary laws.³ Is it possible to a country like India where the chief characteristics of the state is multiculturalism, diversity and pluralism? Of course, such a move is mischievous and not tenable constitutionally but rather an astute manoeuvre to gain political mileage in the impending election.

Since the announcement of the 22nd Law Commission of India seeking suggestions and objections about the UCC in India, the political climate of India has heated sharply.⁴ Prominently two groups in the society debating about the perils and advantages of the proposed UCC. The major political concern facing the nation presently revolves around the debate between the UCC and the Personal Laws adhered to by different religious communities.⁵ In India, the *Shariat*, commonly referred to as Muslim Personal Law, establishes the guidelines governing the lives of Muslims, primarily derived from the Quran and Hadith.⁶ The Muslim Personal Laws have become a contentious issue in Indian politics, sparking intense disagreements and exacerbating tensions, particularly between Hindus and Muslims.⁷ The

1 22nd Law Commission of India constituted under the chairmanship of Justice and recently invited the suggestions and opinion from the general public about the Uniform Civil Code that sparked the controversy and concern of various communities in India.

2 Issacharoff, Samuel “Fragile Democracies” 120 Harvard Law Review 1405 (2007)

3 Khilnani, Sunil, Vikram Raghavan, K. Arun Thiruvengadam (eds), “Inheritance Unbound”, in Comparative Constitutionalism in South Asia, 232 (Oxford University Press, 2016)

4 Law Commission of India-22nd , issued public notice on 14th June 2023 seeking public opinion and suggestions regarding introduction of Uniform Civil Code throughout the nation.

5 S. Kazi, Muslim Women in India (Minority Rights Group, London, 1999)

6 Mulla, Principles of Mohammedan Law (N. M.Tripathi, Bombay, 1990) (19th ed.)

7 R. Upadhyay, ‘Muslim Law: Should it be Politicised?’, , vis ited on 17 January 2005; T. Mahmood, Muslim Law of India (Lexis Nexis Butterworths, New Delhi, 2002)

Muslim Personal Laws in India have become a source of intense political debate, resulting in a sharp division of opinions and strained relations, particularly between Hindus and Muslims.⁸ At the core of this issue is the challenge of reconciling the inherent diversity of the Indian social fabric with the call for uniformity. This dilemma is crucial, as the pursuit of legal uniformity aims to foster unity but risks diminishing the rich tapestry of cultural diversity.⁹ The concept of legal uniformity, advocated since the deliberations of the Constituent Assembly, finds expression in Article 44 of the Constitution.¹⁰ This article urges the State to strive for a common civil/personal law which applicable to all citizens¹¹, a perspective endorsed by the apex court in the *Sarla Mudgal* case¹². However, many Indian Muslims perceive the constitutional commitment to a Uniform Civil Code, as outlined in Article 44, as an attempt to erode the cultural identity of their community.

Does UCC Oppose Democracy?

At the political level, the bigger concern is not whether the state can implement the UCC without consultation, but rather how the state can establish a consistent approach that permits ample room for reinterpretation of religious reforms through legislative means within a constitutional framework.¹³ Ideally, any reforms if required in a society should come from the community itself not from the political class. Though the Constitution of India permits substantive religious reforms through legislation there is a limitation that protects the culture and customary laws of certain minorities. Additionally, granting unbridled power to the state to restrain the practice of personal law may pose a serious threat to the very essence of the social and cultural fabric of Indian society. It is crucial to delineate that such a decision would also amount to deceiving the people of India who united with the Indian state following independence according to the Indian Independence Act of 1947. This act ensured that minorities, tribal communities, and other indigenous groups have the right to follow their laws, beliefs, and faiths, and the state has no jurisdiction to interfere in the personal and religious affairs of its citizens.

The topic of functional democracy, which is intimately related to minorities' rights and UCC nuisance has tarnished the nation's democratic past and has been overlooked in the discussion mentioned above. The

8 *Ibid*

9 A. A. Engineer, 'Uniform Civil Court: An Indian Perspective' (Centre for the Study of Society and Secularism, Bombay, 1995)

10 *Ibid*

11 Jain M.P. "Constitutional Law of India" LexisNexis Pub. 2018

12 *Sarla Mudgal v. Union of India*, AIR 1995 SC 153

13 *Ibid*

term democracy is not merely about giving the right to vote to the entire population of the state but rather to ensure the enjoyment of equality and liberty by all citizens including ethnic and religious minorities.¹⁴ Since 1947, the Indian democratic system has remained a subject of acute scrutiny from scholars and jurists across the globe. While a section of social scientists has acknowledged India as a vibrant and successful democracy in Asia and conveniently ignored the nuance and context. The flip side of ‘successful democracy’ rhetoric tells us there are many concerning phases as how the state muzzled the interests and rights of the largest minorities.¹⁵

Despite having a developed democracy, the nation is still behind in addressing the criticism of the inequitable treatment of minorities. Evaluating data on communal violence throughout the country in the past seven decades of “successful democracy” reveals that Muslims make up the bulk of those who are killed in these riots and countless massacres. The country has failed to put the suggestions made by the different judicial commissions and committees set up following the massacre and subsequent riots that have continued since Independence. According to Gandhi, to test a country is democratic or not is to see how minorities in the state are truly benefiting from liberty and equality.¹⁶ Simply introducing the right to vote is not the criteria to examine a successful democracy. Dr Ambedkar did not view democracy as merely a mechanical means of electing a government by the political aspirations of self-serving individuals. He stresses the term democracy signifies a kind of fraternal expression in which the representation and the represented are united by love, affection, empathy, and shared dignity.¹⁷ In this sense it is both a vision of a desirable society based on the ideas of liberty¹⁸, equality, fraternity¹⁹, and above all dignity,

14 Butola, B S, “Crisis of Indian Nationalism” in *What the Nation Really Need to Know* 297 (Harper Collins Pub New Delhi, 2016)

15 Rahman, Sheikh Azizurrehman “Delhi Muslims Despair of Justice after Police Implicated them in Riots” *The Guardian*, London newspaper available at <https://www.theguardian.com/world/2020/mar/16/delhis-muslims-despair-justice-police-implicated-hindu-riots> (last visited on July 07, 2023)

16 Dr. Ravindra Kumar and Kiran Lata Dangwal, “Gandhi: Democracy and Fundamental Rights”, *comprehensive Website by Gandhian Institutions-Bombay Sarvodaya Mandal & Gandhi Research Foundation*, available at <https://www.mkgandhi.org/main.htm> (last visited on July 07, 2023)

17 “Why BR Ambedkar’s three warnings in his last speech to the Constituent Assembly resonate even today” *Scroll.in*, available at <https://scroll.in/article/802495/why-br-ambedkars-three-warnings-in-his-last-speech-to-the-constituent-assembly-resonate-even-today>

18 James A. Colaiaco, “Liberty, Equality and Fraternity” in *James Fitzjames Stephen and the Crisis of Victorian Thought* 122-166 (Palgrave Macmillan, London, 1983) available at https://doi.org/10.1007/978-1-349-16987-0_7 (last visited on July 08, 2023)

19 ANI, “Constitution rests on 3 pillars - liberty, equality, fraternity: PM Kovind” *Business Standard* last updated Nov 27, 2017, available at <https://www.business-standard.com/article/news-ani/constitution-rests-on-3-pillars-liberty-equality-fraternity->

and it is also an institutional framework to realise those ideals, democracy is both an end and a means.²⁰

Constitutional Restraints around UCC

A close look at the ongoing debate on the Uniform Civil Code (UCC), it appears that the implementation of a common civil code could be beneficial for the progress of the nation if the society is uniform. However, it may not be suitable for a diverse and multi-religious country like India, where a heterogeneous society exists. Enforcing the UCC through a single legislative stroke may have unintended consequences and potentially disrupt the socio-cultural fabric of the country.²¹ A uniform set of personal laws for all citizens may be beneficial in a homogeneous society, but it is not appropriate in a heterogeneous society, the apex court shares its opinion in the *Pannalal Bansilal* case while examining UCC if implemented forcefully. It is crucial to note that in the United States, each state has its own set of laws that regulate its civil, customary and cultural entitlements, and the US Congress has never attempted to impose a single set of laws on all regional governments. The UCC should not aim to create animosity and inter-religious conflicts in society. Instead, it should prioritize creating gender-just laws that apply to all religious and cultural communities. The idea of promotion of all personnel should have a gender-justice spirit is a welcoming gesture and nobody would object such an initiative of the government as a reform within the community is a welcoming step and can ensure the elimination of all anti-women practices.²²

It's difficult to draw a conclusion about the UCC as there is no draft available yet. The UCC has been a topic of heated debate in the legal arena and media galore due to concerns about the secular nature of the nation and the freedom of religion that is guaranteed by the Indian Constitution. The idea of a Common Civil Code is also against the very spirit of democracy and minority rights which is one of the essential features of the Indian Constitution. The preamble of the Indian Constitution states we represent a secular society and India is a "secular democratic republic". Through this principle, there is no State religion but State equally respects all religions which is also an important component of secularism. A secular State shall neither discriminate against anyone on the grounds of religion nor interfere

pm-kovind-117112700059_1.html (last visited on July 08, 2023)

20 Peter Sack, "Legal Technology And Quest For Fraternity : Reflections On Preamble Of Indian Constitution" 32(3) *Journal of Indian Law Institute* 294-308 (1990) available at <https://www.jstor.org/stable/43952306> (last visited on July 07, 2023)

21 *Pannalal Bansilal Patil v. State of Andhra Pradesh* (19966)

22 Chhibber, Pradeep and Rahul Verma, "Ideology and Identity-Changing Party System in India", Oxford University Press, 2018 New Delhi, p. 68

in the religious affairs of the communities.²³

The general argument placed in favour of the UCC is that the proposed legislation would eliminate all gender-based discrimination. A chunk of loyal media outlets has demanded uniformity of personal laws to curtail gender-based discrimination in Muslim communities. Undeniably, there are some gender-based inequalities in the Muslim community, however, strict enforcement of the UCC is not a viable solution. In the peculiar circumstances of diverse India, uniformity in personal laws can be achieved only gradually and through judicial pronouncements. It would be better if the government pushed the Muslim Law into a codified law for better judicial clarity and to defeat malicious attempts of misinterpretation of Islamic principles. In seventy-two years of the post-Constitution era, all sorts of people have indeed said all sorts of things about a UCC – truth, falsified, self-contradictory, imaginary, and even based on misconceptions or misinformation. The judicial stand too has not been uniform concerning this issue.

It is important to acknowledge the diversity of India before arguing about executing the common law for all citizens throughout the country. India is a multi-cultural, multi-linguistic and multireligious society, where each community, caste and religious society has its own set of laws, customs and norms that deal with family relations. There is no uniformity among different Indian societies regarding their family relations, personal laws and other civil matters. It is crucial to note that even criminal procedure law is different from state to state due to being under the Concurrent List. Similarly, personal law is also under the Concurrent List, which means that States have a larger say in the matter of personal law reforms, not the union government. The Supreme Court has highlighted the issue of the UCC through its various judgments. However, a section of the political class has raised the issue of uniformity of personal law to settle their own vested interests and they have tried hard to polarize the society on communal lines.

It must be accepted that any talks of a UCC, in the absence of uniformity in most of the other laws prevailing in the country, are absurd. It may be surprising to know that even the Criminal Procedure Code 1973²⁴ and the Code of Civil Procedure-1908²⁵ are not uniform throughout the country²⁶

23 M. P. Jain, *Indian Constitutional Law*, (Lexis Nexis, New Delhi, 8th edn 2018).

24 The Code Of Criminal Procedure, 1973 ACT NO. 2 OF 1974 available at https://www.indiacode.nic.in/bitstream/123456789/15272/1/the_code_of_criminal_procedure%2C_1973.pdf (last visited on 08 July, 2023)

25 The Code Of Civil Procedure, 1908 ACT NO. 5 OF 1908 available at <https://www.indiacode.nic.in/bitstream/123456789/2191/1/A1908-05.pdf>

26 Supreme Court affirms Non Application of CPC & CrPC to tribal areas” Livelaw, available at <https://www.livelaw.in/supreme-court-affirms-non-application-cpc-crpc-tribal-areas/>

as they have been amended and modified by various State Governments. Here are a few points about reform in Personal Law: The Goa Civil Code (1867) is a prominent example of separate personal law governing all Goans irrespective of religion, ethnicity, or linguistic affiliation. The “Goa Civil Code (1867)” also known as Goa Family Law was based on the “Portuguese Civil Code (1867)” and was retained in Goa after the merger with the Indian Union in 1961. To quote another example, Section 118 of the Indian Succession Act 1925 was struck down by the Supreme Court as unconstitutional for being unfair to Christians. Yet, Hindu Undivided Families continue to enjoy tax benefits in India which are not available to the other communities. It is unexplainable why the supporters of a UCC do not call for a common or uniformed fiscal code in the country. It must be answered whether the impending reforms will also reform or abolish the special status enjoyed by the Goan people retaining their own Portuguese Civil Code. Hence, the proposed UCC would also eliminate the Goan Civil Code which applies on all people of Goa.

Comparing the personal laws of Muslims, Hindus, and other minorities will show that there is no room for uniformity of any kind because of the extreme diversity of these laws and the fervent adherence to them. Even the idea of a single Hindu code is ruled out due to the diversity of Hindu law itself. When it comes to marriage alone, the Hindu Marriage Act of 1955²⁷, permits unions to be formally celebrated in line with the customs and traditions of several individuals who fit the description of a “Hindu.” For example, in the *saptapadi* type of marriages primarily practised in northern parts of India, in this custom, the union of the bride and groom is consummated when they walk seven steps in front of a sacred fire. Contrarily, in the majority of southern societies, the *suyamariyathai* and *seerthiruththa* forms of marriage are frequently followed also known as *Kalyanam*.²⁸ Under the later forms, a marriage is valid if the parties to the marriage declare in the presence of relatives that both consented partners marry each other or if they garland each other or if the bridegroom tied the *Mangalsutra* around the neck of the bride or puts a ring on each other’s finger.

In the southern part of India, the concept of *Sapinda* relation has no relevance and marriages frequently take place within the so-called prohibited degree of the *Sapinda* concept. There is no condition of *saptapadi*

(Last visited on July 07, 2023)

27 The Hindu Marriage Act, 1955 ACT NO. 25 OF 19551

28 A Subhramani, “Self-respect marriages in Tamil Nadu can’t be declared illegal, rules Madras High Court”, *Times of India* dt Nov 09, 2015 available at http://timesofindia.indiatimes.com/articleshow/49725552.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (last visited on July 02, 2023)

before the sacred fire in the Hindu marriages in southern societies which is one of the important rituals in northern India. Also, for a marriage to be valid under Hindu law, it has to be solemnized following the customary rites and ceremonies of at least one of the parties²⁹. Thus, if a Jain marries a Buddhist by performing the rites of a Sikh; the marriage is void, as per the ruling of Bombay High Court in *Shakuntala v. Nilkantha*³⁰. Henceforth, suggesting that the entire Hindu community follow uniform personal laws is wrong. There isn't a single legislation that applies to all Hindus in the nation. For example, the marriage between the two Hindus under the Hindu Marriage Act of 1955 forbids marriages between close relatives, however in some parts of south India, it is seen as usual. These many practices are recognised by the Hindu Code Bill. The issue herein is the proposed reform in personal laws also abolish the marriages practices, customs, and religious rituals in southern parts of India?

Concern of North-East States

With a sizable percentage of the population belonging to different tribal clans, the North East area of India is distinguished by its rich cultural and ethnic variety. These groups have unique traditions, rituals, and religious beliefs that have long been a part of their daily lives. Discussions over the possible violation of these communities' religious and cultural rights have been sparked by the anticipated introduction of a UCC. In states like Jharkhand, Madhya Pradesh, and Chhattisgarh the ethnic population has their own personal and customary laws that apply to their marriages, divorce, adoption, inheritance and other family matters and they are apprehensive about denial of their religious and cultural rights if UCC is implemented in their rural or tribal belt. It is unclear whether the new proposed reforms in the name of UCC would also apply to the Northeast region and tribal belts of India and eliminate their personal and customary laws.³¹ In April 2022, the apex court agreed with the observation of the High Court of Gauhati that as per the Mizo customary law, inheritance of property depends upon the question of whether a person supported the deceased in his old age or not. The Hon'ble Supreme Court endorsed the

29 Narendra Subramanian, "Making Family and Nation: Hindu Marriage Law in Early Postcolonial India" 69(3) *Journal of Asian Studies* 771-798 (2010) available at <https://www.jstor.org/stable/40929192> (last visited on July 02, 2023)

30 *Shakuntala V/S Nilkanth and Others.*, Cri. A. No. 29 of 1970, Decided On, 25 October 1972, At, In the High Court of Bombay at Nagpur, By, THE HONORABLE JUSTICE: B.A. MASODKAR, available at <https://lawyerservices.in/Shakuntala-Versus-Nilkanth-and-Others-1972-10-25> (last visited on July 07, 2023)

31 Nechiket Deuskar, "explained-why-some-north-eastern-states-are-opposing-the-uniform-civil-code " *Scrollin* available at <https://scroll.in/article/1043505/explained-why-some-north-eastern-states-are-opposing-the-uniform-civil-code> (last visited on July 08, 2023)

community-specific customary law of Mizoram in the inheritance subject and how property should be bequeathed amongst all heirs.³²

Similarly, the concern of Meghalaya state seems quite legitimate as the sharpest protest against UCC has been registered from Meghalaya state of North East India is the home of three major matrilineal communities i.e. Jaintia, Khasi and Garo. In the Khasi tribal community, the daughter's role is advantageous as she vests the right of inheritance. She also has to perform religious ceremonies, looking after her parents and family caring as the community social system is altogether different from the mainstream north Indian society. The proposed UCC is in direct conflict with the 6th Schedule of the Indian Constitution which facilitates the establishment of autonomous district councils in Assam, Meghalaya, Tripura and Mizoram.³³ The application of personal laws is not the same for Christians and Muslims of the tribal region of North East. Since majority of tribal populations have their own set of laws which are different within the population of the state. The Nagaland regional customs are safeguarded by the Constitution of India itself.³⁴ Similarly, the Meghalaya and Mizoram states enjoy safeguards of their personal laws under the Indian constitution. The proposed UCC must address the apprehension of the tribal communities of the northeast states and other parts of the country including whether they will continue their constitutional protection and entitlements.³⁵

As Muslim law deals with two separate sets of laws for the Sunni and the Shia communities, whether the proposed reforms in the name of UCC also undertake the two different personal laws? It is undefined whether the proposed common law initiated by the government would have provisions of community-specific law or not. The marriage, divorce and other personal matters of Sunni and Shia are altogether different and there is no clarity on how to reconcile these issues through the UCC.³⁶ In so far as Muslim law is concerned though there are no elaborate rites or ceremonies, there exist some differences between Sunni and Shia marriages³⁷.

Weirdly, the government is anxious to enact a law that will give substance

32 Article 371G special provision for Mizoram, Constitution of India, 1950

33 Sixth Schedule of the Constitution of India, 1950

34 UCC in its present form is against the idea of India, Central Nagaland Tribes Council tells Law Commission.

35 Rahul Karmakar and Abhinay Lakshman, "The infinite variety of custom' *The Hindu*, July 8, 2023

36 Tahir Mahmood, "Tahir Mahmood writes: The case for a Uniform Civil Code" *Indian Express* dt 02 July 2023 available at <https://indianexpress.com/article/opinion/columns/uniform-civil-code-common-civil-code-article-37-narendra-modi-govt-8694942/> (last visited on July 08, 2023)

37 Soutik Biswas, "UCC: The coming storm over a single common law in India" BBC News 30 May 2022 available at <https://www.bbc.com/news/world-asia-india-61589491> (last visited on July 08, 2023)

to Article 44³⁸, which is essentially a directive principle that cannot be implemented through the judiciary now pushing through legislative way. It's amazing how the government has maintained a complete silence about why there are so many disparities in living wages, the elimination of pay differences in the private sector, sexual harassment in the private sector, caste-based violence against SC/ST community members, equal pay for equal work issue, early childhood care issue, raising standards for nutrition and public health, and other issues. In fact, despite the fact that Article 47 forbids intoxicating beverages in wording that is exactly the same as Article 44, the Supreme Court's ruling to restrict alcohol sales to 500 metres away from a roadway—rather than prohibiting its consumption—was rejected by everybody. This seems like hypocrisy; why are there no laws on other topics specified in the Indian Constitution's Directive Principles of State Policy? Though there is no legislation that gives Article 47 of the Indian Constitution actual effect, the state of Gujarat has legalised the sale of alcohol in some areas of the state, which is also against the instruction contained in Article 47, which forbids the sale of any kind of intoxicating beverage.³⁹

The Law Commission of India (22nd Body) sought opinions on the implementation of the Uniform Civil Code from the general public and other stakeholders but only offered them one month to do so. Conveniently, the commission ignored to peruse the report of the previous 21st Law Commission⁴⁰, which found that the creation of a UCC is neither essential nor desirable at this time. The suggestions of the 21st Law Commission⁴¹ were loud and clear over the issue of community-specific personal law and concluded that these personal laws should not be disturbed. The Commission had stated that “diversity and different norms in community-specific personal law does not constitute discrimination, but rather is a sign of a multiculturalism, pluralism and healthy democracy”. It had been noted that most nations were moving away from legal provisions that were built on cultural uniformity among persons of different backgrounds because they were discriminatory to the weaker and more vulnerable groups. The recommendations of the previous 21st Law Commission report was pragmatic and based on the multiculturalism ideals of Indian society⁴².

38 Part IV, Article 44 of the Constitution states that “The State shall endeavour to secure the citizen a Uniform Civil Code throughout the territory of India”.

39 Indian Express, New Delhi 29.12.2023

40 The Wire Staff, “After Previous Panel Rejected Uniform Civil Code, Law Commission Seeks Public Views Afresh” The Wire Dt 15 June 2023 available at <https://thewire.in/government/law-commission-uniform-civil-code-notice> (last visited on July 08, 2023)

41 “Consultation Paper on Reform of Family law” 21st Law Commission of India, Government of India 31 Aug 2018 available at <https://archive.pib.gov.in/documents/rlink/2018/aug/p201883101.pdf> (last visited on July 07, 2023)

42 Krishnadas Rajagopal “Uniform civil code neither necessary nor desirable at this stage,

It emphasized the need to change family rules in every religion to make them gender-just, as opposed to passing a UCC through a single legislative stroke. It discussed the consistency of rights rather than legislation. In its consultation document, the Commission highlighted that embracing diversity must not prejudice any one group and that “women must be guaranteed their freedom of faith without any compromise on their right to equality.”

Argument of National Unity and Gender Parity

The general arguments cited for the implementation of UCC are strengthening the unity of the state and confounding it with “Gender Parity” is untenable due to its undertone of homogenization. Firstly, it is false and inaccurate to suggest that while “other” communities continue to hold on to various regressive anti-women laws and pose a threat to the unity of the nation-state, Hindus have voluntarily accepted reform. Presuming that the Hindu Personal Law has undergone reform is inaccurate, wrong and baseless; it has only undergone codification. In 1951, on the occasion of the first general election in India, conservatives and hardliners within the Congress party pressured parliament to reject the Hindu Law reform legislation designed to rectify certain incongruities in marriage, divorce, adoption and inheritance from consideration. Even the law minister, Dr. Ambedkar, who had originally written the Hindu Code Bill, resigned in protest.⁴³

Nehru eventually succeeded in passing some significant legislations viz “The Hindu Marriage Act, Hindu Succession Act, 1956⁴⁴, Hindu Minority and Guardianship Act⁴⁵, and Hindu Adoption and Maintenance Act in 1955–1956⁴⁶.” The laws enacted in the mid-1950s aimed to bring the diverse practices of non-Muslims, non-Parsis, and non-Christians community in compliance with what were presumed to be Hindu standards, which were in reality, North Indian upper-caste practices. During the parliamentary

says Law Commission”, The Hindu updated 28.11.2021 available at <https://www.thehindu.com/news/national/uniform-civil-code-neither-desirable-nor-necessary-at-this-stage-says-law-commission/article61498390.ece> (last visited on July 07, 2023)

43 For more details please Faizan Mustafa, “Debate-1 Uniform Civil Code” Legal Awareness Web Series- available at you tube channel of Legal Web Awareness Series of Faizan Mustafa.

44 The Hindu Succession Act, 1956 Act No. 30 of 1956 available at https://www.indiacode.nic.in/bitstream/123456789/1713/1/AAA1956suc__30.pdf (last visited on July 07, 2023)

45 The Hindu Minority And Guardianship Act, 1956 Act No. 32 of 1956 available at <https://www.indiacode.nic.in/bitstream/123456789/1649/1/195632.pdf> (last visited on July 07, 2023)

46 The Hindu Adoptions And Maintenance Act, 1956 Act No. 78 of 1956 https://www.indiacode.nic.in/bitstream/123456789/1638/1/AA1956__78.pdf (last visited on July 07, 2023)

deliberations, certain behaviours that did not conform to these norms were labelled as “un-Indian.” Unfortunately, these laws were not an ideal step forward for women’s rights as they put an end to the variety of Hindu laws that were previously practised in different regions, leading to the loss of existing and often more liberal customary provisions.⁴⁷

In contrast, some aspects of Muslim Personal Law are more progressive for women than those of Hindu personal law. For example, the Muslim marriage is an agreement which protects a Muslim wife better in a divorce situation than the Hindu marriage as a ritual; the Muslim law of succession, property and inheritance also protects women’s rights better than Hindu law; and the *Mehr* is the exclusive right and property of the Muslim wife.⁴⁸ Furthermore, Hindu men who engage in polygamous relationships which are prohibited under the Hindu Marriage Act 1955, are tactfully escaped from this obligation in their second or third marriages. Legally, Muslim males who remarry have to honour their commitments to each of their spouses. In practice, those who claim that a UCC will consider every advantageous aspect of every personal law are not being truthful. For instance, although these are beneficial characteristics of Muslim law as compared to Hindu law, *Mehr* cannot be brought into Hindu weddings, nor can the Hindu marriage rite be transformed into a contract.

Building Trust between State and Minorities

There are a large number of minority populations in India, the nation is recognised for its diversity in culture, traditions, and religious beliefs. Building harmony and trust between the state and these minorities is essential to the nation’s success and inclusive growth. The promulgation of a uniform civil code (UCC), which runs against to the fundamental principles of the Indian Constitution, must not take precedence over historical injustices, minority rights, and social cohesion initiatives. The variety of India is one of its greatest assets. The nation’s diversity, secularism and inclusive ideals are reflected in its pluralistic fabric⁴⁹. India must develop a climate where minorities feel accepted, respected, and safeguarded by appreciating the distinctiveness of various religious and cultural practices. The state should prioritise equal rights and respect for various cultures,

47 Menon, Nivedita “Uniform Civil Code in India-The State of Debate in 2014” 40 *Feminist Studies* (2014)

48 George Poikayim “Uniform Civil Code can wait, bring Muslims under secular Indian Succession Law”, Onmanorama dt 24 June 2023 available at <https://www.onmanorama.com/news/kerala/2023/06/24/uniform-civil-code-muslims-secular-indian-succession-law-women-nisa-property-inheritance.html> (last visited on July 07, 2023)

49 Michael Gottlob , “India’s Unity in Diversity as a Question of Historical Perspective” 42(9) *Economic and Political Weekly* 3-9 (2007) available at <https://www.jstor.org/stable/4419309> (last visited on July 07, 2023)

cultivating an inclusive society where each resident may freely practise their faith, rather than mooting the idea of UCC that could erode these varied identities.⁵⁰

Concluding Remarks

Enforcing a single law, such as a common personal law or uniform civil code, across the country could negatively impact the social and cultural fabric of the nation. The proposed common personal law could harm not only Muslims but also Hindus, Tribals and other ethnic communities. Many Tribal groups see the UCC as a threat to their religious and cultural rights, which they have been practising for a long time. The UCC would interfere with the traditional privileges of these groups, so they would not support the legislation proposed by the union government. The tribal people in North-East region, Jharkhand, Chhattisgarh, and Rajasthan were concerned that, if the proposed UCC were implemented, it would take away their crucial cultural practices and also remove their customary laws from the villages.

The union government has attempted to quell the unrest by making deceptive promises that the interests of tribes and other indigenous communities would not be compromised by the proposed UCC. So, the question is, how will it be uniform if a sizable portion of the population is not covered by the UCC? Regardless of the character, nature and status of UCC, it will be presumed that this is targeted legislation intended to undermine the constitutional protections granted to religious minorities and other ethnic communities. Is it not violative of Article 14 of the Constitution of India which significantly ensures equal protection of law or substantive equality? Such a move will reinforce the notion that Indian society is a flawed democracy and that since the sudden introduction of the unconstitutional civil code, the divide between the state and the minority has grown considerably high.

India has already been confronting condemnation from global human rights bodies about the unfair treatment to Muslims and Dalits and this new legislation will spark unnecessary controversy across the globe. Establishing trust between the state and minorities, particularly the Muslim community, should be a top priority at this point. While the adoption of a Uniform Civil Code is a contentious issue, it would be preferable to reinterpret uniformity in the context of providing equal status to all personal laws applicable in

⁵⁰ Version 01-Art 35, Draft Constitution of India, 1948 (Now Version 02-Art 44 of Constitution of India, 1950) *Constitution Assembly Debate* Dt 23Nov 1948, Vol VII – 4Nov 1948-08 Jan 1949, available at https://eparlib.nic.in/bitstream/123456789/763009/1/cad_23-11-1948.pdf (Last visited on July 08, 2023)

India⁵¹. The state has no role or remains neutral regarding the personal laws of all communities, this position amounted to uniformity across the communities and class.⁵² Further, fostering peaceful relationships requires placing a high value on inclusivity, valuing variety, and resolving old resentments. Every person can feel respected, protected, and empowered in a society that upholds constitutional guarantees, protects minority rights, and advances social justice⁵³. India will become more powerful and inclusive as a result of our shared obligation to build trust and onus is on the state to ensure constitutional guarantee and minorities rights.⁵⁴

51 Faizan Mustafa, Anant Sangal, “Strike A Fine Balance, Have A Just Civil Code” *The Hindu* Dt 24.06.2023 available at <https://www.thehindu.com/opinion/lead/strike-a-fine-balance-have-a-just-civil-code/article67002855.ece> (last visited on July 08, 2023)

52 Riya Puniyani, “Uniform Civil Code and Conflicts of Personal Laws” SSRN dt 31 July 2020, available at SSRN: <https://ssrn.com/abstract=3643457> or <http://dx.doi.org/10.2139/ssrn.3643457> (last visited on July 08, 2023)

53 Manjur Ali, “Ambedkar’s Idea of Minority Rights in a Democracy: Status of Muslim as a Test” 9(1) *Journal of Social Inclusion Studies* available at <https://journals.sagepub.com/doi/abs/10.1177/23944811231166131?journalCode=sisa> (last visited on July 08, 2023)

54 Rimjhim Singh, “Uniform Civil Code: What is it and what are the arguments against it?” *Business Standard* Last updated 15.06.2023 available at https://www.business-standard.com/india-news/uniform-civil-code-what-is-it-and-what-are-the-arguments-against-it-123061500996_1.html (Last visited on July 08, 2023)