

# UNIFORM CIVIL CODE: A DISTANT RAY OF HOPE

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## INTRODUCTION

India is a secular state, world's largest democracy and second most populous country (1,205,073,612 in 2012) emerged as a major power in the 1990s. It is militarily strong, has major cultural influence and a fast-growing and powerful economy. With its many languages, cultures and religions, India is highly diverse. . Religions not only have been serving as the foundation of the culture of India, but have had enormous effect on Indian politics and society. In India, religion is a way of life. It is an integral part of the entire Indian tradition.<sup>4</sup> A vast majority of Indians, (over 93%) associate themselves with a religion. According to the 2001 census 80.5% of the population of India practice Hinduism, Islam (13.4%), Christianity (2.3%), Sikhism (1.9%), Buddhism (0.8%) and Jainism (0.4%) are the other major religions followed by the people of India.<sup>5</sup> There are also numerous minor tribal traditions, though these have been affected by major religions such as Hinduism, Buddhism and Christianity. In India, we have a criminal code that is equally applicable to all, irrespective of religion, caste, gender and domicile. However, a similar code does not exist especially with respect to divorce and succession and we are still governed by the personal laws. These personal laws are varied in their sources, philosophy and application. Thus, a major constraint arises while bringing people governed by different religions under one roof. It is in this diverse context we have to analyse the necessity of Uniform civil code.

The expression is combination of three terms Uniform; Civil; Code. *Uniform* means 'same in Similar conditions', *Civil* derived from Latin word '*civilis*' means 'citizen'; when it is used as Adjective of law it means 'pertaining to private rights and remedies of a citizen'; *Code* means 'Codified laws'. Indeed in legal regime, UCC is confined to having uniform family code for every member across the communities i.e. Hindu, Muslim, Christian, Parsi or Jews residing

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<sup>4</sup> Hindu Law and the constitution, A.M Bhattacharjee, Eastern Law House, 2<sup>nd</sup> Ed, pg 24

<sup>5</sup> UNIFORM CIVIL CODE: Prospects and Constraints by Nithya N.R

in India to achieve the goal embodied in the Constitution of India which solemnly resolved to constitute India into Sovereign, socialist, secular, democratic and republic. Thus the concept has two aspects *firstly*, to have uniform law for all communities; *secondly*, similar laws for all and similarity should be regarding equality and gender justice. It implies the same set of secular civil laws to govern all peoples irrespective of their Religion, Caste and tribe. The areas covered under it are the Laws related to Marriage, Divorce, Adoption, and Inheritance and acquisition and Administration of property.<sup>6</sup> The need for a uniform civil code is inscribed in Article 44 (Article 35 in the draft constitution). This article is included in Part IV of the Constitution dealing with the di-rective principles of state policy. The legal nature of the Directive Principles is such that it cannot be enforced by any court and therefore these are non-judicial rights. The Constitution further calls upon the State to apply these principles in making laws as these principles are fundamental in the governance of the country. Article 44, which deals with the Uniform Civil Code states: “The State shall endeavor to secure for the citizens, a uniform civil code throughout the territory of India”. The objective of this article is to effect an integration of India by bringing all communities into a common platform which is at present governed by personal laws which do not form the essence of any religion. Just after Independence the Circumstances were such that it was not feasible to impose a Uniform Civil Code on the citizens. That is why it has been covered under the directive principle of state policy.

It is really unfortunate that anybody who speaks of this civil code is branded communalist. The impression is always created by the minority community, that the majority community is exterminating the minority by imposing its personal law on them.

## **HISTORY OF UNIFORM CIVIL CODE**

Though it is said the concept of Uniform Civil Code is the child free India (Post Independent) it has its deep roots generally in the history of struggle for independence. In the past, India was scattered into tiny republics, which were ruled, administered and governed by the respective sovereigns or their representatives. With the political unification of India, after the advent of Britishers, necessity of common law governing the whole citizenry of this sub-continent became more acute. Before that, the common law- Civil as well as Criminal,

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<sup>6</sup> Available at <http://economics.indiatimes.com/cms.dll/html/uncomp/articleshow?msid=98057> (Last last seen on 11/8/16)

enacted by the territorial heads, according to their conventions, which they inherited from their previous generations, having religious sanctity. Each kingdom had its own law, and its own machinery for administration thereof. There was no uniformity either in law or in procedure as each state was sovereign and there was no cohesive bond which could foster uniformity in the administrative of justice.<sup>7</sup>

During the British regime urgent steps were taken to bring uniformity in law which could govern whole citizenry of British India, excluding the princely states. They were sovereign as far as their administration was concerned. However the Britishers were conscious of their own limitations in doing exercise. And therefore, the personal law applicable to each community remained untouched and it continued to operate as it would hurt the religious sentiments of the natives and further assured that their religious beliefs and sentiments would be scrupulously honoured.

However at the time of drafting our constitution, there were extensive debates regarding these personal laws. For some, they were too divisive. They argued that a Uniform Civil Code would help in constructing an Indian national identity and eradicate those based on caste and religion. But the proposal was also resisted on the grounds that it would destroy the cultural identity of minorities. Subsequently, a compromise was reached. The UCC was placed under the Directive principles, which the state shall endeavour to achieve but which is non-binding. Quite similarly, during the debates over the Hindu code bills (a set of common laws governing personal matters for all Hindus), large segments of the Hindu population protested and held rallies against the bills.

They argued that practices such as divorce were prohibited by Hinduism and that for a Hindu the institution of marriage is indissoluble. They were also against granting equal property rights to women, fearing the concept of a joint family might crumble because of it. These people saw themselves being singled out as the only religious community whose laws were to be reformed. However, Nehru saw such codification as necessary to unify the Hindu community, which he saw as a first step towards unifying the nation.

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<sup>7</sup> Uniform Civil Code, An Ignored Constitutional Imperative by M.S Ratnaparkhi, Atlantic Publishers and Distributers, ed 1<sup>st</sup>, Pg 54

Nehru split the Code Bill into four parts, including the Hindu Marriage Act, the Hindu Succession Act, the Hindu Minority, and Guardianship Act, and the Hindu Adoptions and Maintenance Act. These were met with significantly less opposition and were passed in the mid-1950s.

Indian Christians (except in the state of Goa) are governed by the Indian Christian Marriage Act 1872 and their divorce-related matters fall under the Indian Divorce Act of 1869.<sup>8</sup>

## **NEED OF UNIFORM CIVIL CODE IN INDIA**

The supporters of a uniform civil code have been campaigning for it even before the independence of India. India has always been a place of many colours and spices and before independence in 1947 it would have been hard to point out what constituted India. Fighting the British rule and winning our independence also helped in creating this nation we call India. It was known even at that time that to further unite India and make it a truly secular nation we would need a uniform civil code. But even after 69 years of independence we haven't been able to do this.<sup>9</sup>

The reasons for why this has not been done are complex and a different topic on its own but it all boils down to political will. Politicians have always found it beneficial to play vote bank politics and try to appease different castes and groups instead of attempting to integrate our nation. Instead of focusing on the negative let's focus on the positive and talk about the reasons why we do need a uniform civil code.

### **1. It Promotes Real Secularism**

What we have right now in India is selective secularism which means that in some areas we are secular and in others we aren't. A uniform civil code means that all citizens of India have to follow the same laws whether they are Hindus or Muslims or Christians or Sikhs. This sounds fair and secular to me. A uniform civil code doesn't mean it will limit the freedom of

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<sup>8</sup> *Ibid*

<sup>9</sup> Uniform Civil Code, Women Empowerment And Gender Justice, 2016 Dr. Saroj Bohra, ed 3rd, pg 11

people to follow their religion, it just means that every person will be treated the same. That's real secularism.

## **2. All Indians should be Treated Same**

Right now we have personal laws based on particular religions, which means that while Muslims can marry multiple times in India, a Hindu or a Christian will be prosecuted for doing the same. This doesn't seem like equality to me. All the laws related to marriage, inheritance, family, land etc. should be equal for all Indians. This is the only way to ensure that all Indians are treated same.<sup>10</sup>

## **3. It will give More Rights to the Women**

A uniform civil code will also help in improving the condition of women in India. Our society is extremely patriarchal and misogynistic and by allowing old religious rules to continue to govern the family life we are condemning all Indian women to subjugation and mistreatment. A uniform civil code will help in changing these age old traditions that have no place in today's society where we do understand that women should be treated fairly and given equal rights.<sup>11</sup>

## **4. Every Modern Nation has it**

A uniform civil code is the sign of modern progressive nation. It is a sign that the nation has moved away from caste and religious politics. While our economic growth has been the highest in the world our social growth has not happened at all. In fact it might be right to say that socially and culturally we have degraded to a point where we are neither modern nor traditional. A uniform civil code will help the society move forward and take India towards its goal of becoming a developed nation.<sup>12</sup>

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<sup>10</sup> *Ibid*

<sup>11</sup> *Ibid*

<sup>12</sup> *Ibid*

## **5. Personal Laws Are a Loop Hole**

The various personal laws are basically a loop hole to be exploited by those who have the power. Our panchayats continue to give judgments that are against our constitution and we don't do anything about it. Human rights are violated through honour killings and female foeticide throughout our country. By allowing personal laws we have constituted an alternate judicial system that still operates on thousands of years old values. A uniform civil code would change that.

## **6. It Will Help in Reducing Vote Bank Politics**

A uniform civil code will also help in reducing vote bank politics that most political parties indulge in during every election. If all religions are covered under the same laws, the politicians will have less to offer to certain minorities in exchange of their vote. Not having a uniform civil code is detrimental to true democracy and that has to change.

## **7. It Will Integrate India**

A uniform civil code will help in integrating India more than it has ever been since independence. A lot of the animosity is caused by preferential treatment by the law of certain religious communities and this can be avoided by a uniform civil code. It will help in bringing every Indian, despite his caste, religion or tribe, under one national civil code of conduct.<sup>13</sup>

## **OBSTACLES TO UNIFORM CIVIL CODE**

The three objections raised for implementations of UCC in India by communities: *Firstly*, Article 44 of Indian Constitution must be repealed because personal laws are sacrosanct and immutable and no legislature can amend it: Such an objection is baseless, irrational and meaningless because there is nothing divine about personal laws. A popular misconception which shrouds the issue of 'personal laws' is that these laws are based on religious texts

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<sup>13</sup> Available at <http://hillpost.in/2013/08/top-7-reasons-why-india-needs-a-uniform-civil-code/95038/>, (Last Accessed on 09/08/2016)

which lay a claim to ‘divine revelations’ and hence pre- ordinate, infallible, sanctimonious and static. While ‘divine revelations’ can at best be termed as a source of law, they do not contain ‘law as we understand the term today. Divine law-making cannot be termed as a legal system in its own right it needs human interventions by way of interpretation, application and live-in experience of people to transform it into law of land hence it would be accurate to state that the diverse laws regulating family relationships are rooted either in customary practices or in interpretations of the divine law by scholars which were later modified through colonial interventions.<sup>14</sup> The provision in Art. 44 is nothing but an implementation of the objective of ‘fraternity, unity and integrity of the Nation’, which is not only enshrined in the Preamble to the Constitution, but also in the Fundamental Duties in Article 51A (c) and (e) of the Constitution.<sup>15</sup>

*Secondly*, UCC is against fundamental right guaranteed under Article 25 and 26 of the Constitution. Both Article 25 of Indian Constitution (the right freely to profess, practice and propagate religion) and Article 26 of Indian Constitution (freedom to manage religious affairs) are, however, “subject to public order, morality and health” and to the values enshrined in all other fundamental rights such equality and social justice. Article 25 of Indian Constitution, while protecting religious freedom, also empowers the State to regulate or restrict “any economic, financial, political or other secular activity which may be associated with religious practice”. This introduces an important distinction between sacred and secular. Thus practices such as witchcraft, superstition, ordeals, sati, child marriage, prohibitions against widow remarriage, caste discrimination, casual triple talaq and polygamy may be and have been barred or regulated. However, whether and where a boundary is to be drawn could be contentious.

Chief Justice Khare in **John Vallamattom case**<sup>16</sup> reminded that there is no necessary connection between religious and personal law in a civilized society. Article 25 of the Constitution confers freedom of conscience and free profession, practice and propagation of religion. The aforesaid two provisions viz. Articles 25 and 44 of Indian Constitution show that the former guarantees religious freedom whereas the latter divests religion from social relations and personal law. It is not matter of doubt that marriage, succession and the like

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<sup>14</sup> Flavia Agnes ,’Family Law :Family laws and Constitutional Claims’, Vol 1, Oxford Press, 2011

<sup>15</sup> UNIFORM CIVIL CODE, WOMEN EMPOWERMENT AND GENDER JUSTICE by *Dr. Saroj Bohra*

<sup>16</sup> John Vallamattom and another v. Union of India (2003) 5 SCALE 384 at 397 Para 44

matters of a secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution.’

*Thirdly*, UCC is against fundamental right contained in Art. 29 of Indian Constitution. The defence taken against Art. 44 of the Constitution is of Art. 29 of Indian Constitution that guarantees right as to ‘culture’. It is contended that personal law forms a part of ‘culture’. The word ‘culture’ is not defined in Art. 29. However, one thing is certain that it has to be read with Article 44 & 51A (f) of the Constitution. Firstly, it has to be noted that Articles 25-28 of the Constitution are grouped under the heading ‘freedom of religion’ and thereafter, comes the heading ‘Cultural & Educational rights’ including thereunder Articles 29 & 30 of the Constitution. It would follow that the ‘culture’ referred to in Art. 29(1) of the Constitution is something which is not founded on religion and which may belong to any section of the citizens’ which may not be necessarily a religious minority. The distinction between culture and religion needs to be taken into consideration. The best illustration of this proposition would be a saying “I am Muslim by religion, but a Hindu by culture”. If this proposition be true, a Muslim’s claim to be governed by a different personal law, alleged to be founded on religion, cannot be defended as a fundamental right under Article 29(1) of the Constitution.

A fear is expressed that if Art. 44 of the Constitution is implemented, it would take away the separate identity of Minority communities. This fear is totally unfounded as there are Articles 25-27 of the Constitution to protect one’s own religion, religious beliefs & sentiments.

### **THE HINDU CODE BILL AND UNIFORM CIVIL CODE**

In 1944 itself the government had appointed a Hindu Law Committee under the Chairmanship of B.N. Rao, the purpose of which was to formulate a code of Hindu Law. According to Derret, the Hindu code is a step in the direction of a uniform civil code.<sup>17</sup>

D.E Smith also felt the same. However, many felt that instead of Hindu code bill, uniform civil code should have been adopted. But Nehru was against its implementation. He is reported to have said as follows "*If he or anybody else brings a Civil Code Bill, it will have my extreme sympathy. But I confess, I do not think that at the present moment, the time is ripe*

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<sup>17</sup> Available at [http://paperroom.ipsa.org/papers/paper\\_418.pdf](http://paperroom.ipsa.org/papers/paper_418.pdf) (Last accessed on 13/08/2016)

*in India to try to push it through. I want to prepare the ground for it and this kind of thing is one method of preparing the ground."*<sup>18</sup>

Even in 1947 i.e. prior to the partition of India and also in 1951, the Hindu Code Bill was placed but dropped due to opposition. In 1955 and 1956 the Code was passed in the form of 4 separate bills.

1. Hindu Marriage Bill
2. Hindu Succession Bill
3. Hindu Minority and Guardianship Bill
4. Hindu Adoptions and Maintenance bills.

Many members opposed the Hindu Code Bill. The arguments varied widely. Some of them agreed that the Bill is opposed to Manu's code which they equated as God's will. For many Hindus, marriage was a sacrament which should not be interfered. Some other members pointed out that the Hindu law has emerged from the Vedas which should not be altered.

Arguments opposing the bill pointed out the different obligations of men and women. They also argued that the bill is against the Hindu law which will cause disruption to family. Some men even argued that the women themselves did not want these changes. Hence, with great difficulty, the bill was passed. Some of the arguments raised during this debate indicate the fact that it is extremely difficult to carry on reforms pertaining to personal laws.

It shows that the Hindu women also were not able to gain equality due to the Hindu orthodox opinion and secondly due to the strong religious and communitarian identity of the Hindus as a whole. However, the reforms which were made in the Hindu personal law improved the position of women with regard to divorce and inheritance but did not bring about total equality. The reason was that the objective of reform was to codify Hindu law. Women's interests were subordinated to the political interests of the state as well as to the interests of men in the family and society.

It is a fact that basic rights of women may be obtained if she is granted equal property rights, custody and guardianship rights etc.. This would empower and prevent violence against

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<sup>18</sup> Secularism and the Constitution of India, 1971, P.B.Gajendragadkar, Bombay University Press, pg 124.

women. But through the personal laws, subordination of women to men is obtained. "The society, family and religion put a number of restrictions on women in the name of 'honor' and with a view to keep women dependent on men and family."<sup>19</sup>

For instance, even in spite of the Hindu Code Bill, the inheritance rights of women according to Hindu personal law shows that equal rights are not given to woman on the ground that it would disturb family peace, lead to fight between brothers and sisters, result in fragmentation of land and so on. So, patriarchal order of family is promoted. When a woman is denied the ownership, inheritance and matrimonial rights, it indicates male dominance and non-recognition of women's labor at home. Custody and adoption laws also enforce the notion of father as the natural guardian. A married Hindu woman is not allowed to adopt a child in her own name. Thus, there is legitimization of male dominance in a family system. Similarly the Hindu succession law protects son's rights by keeping the provision of making a will.<sup>20</sup>

## CASE REFERENCES

In **Agnes alias Kunjamol v. Regeena Thomas**<sup>21</sup>, the High Court of Kerala has been confronted with a peculiar question of which the law has been dormant. It has, inter alia, reference to a long awaited issue of enactment of Uniform Civil Code. Despite the Constitutional mandate by Part – IV of the supreme law of the land, no state has had courage to make the law on the subject.

In this case, Mrs. Agnes, was married to one Sebastian, the youngest son of the defendant. At the time of the marriage, a sum of Rs. One Lakh has allegedly been given to the defendants' family by the plaintiff's family. Sebastian was also allegedly having 75% share in the Prakash Gold Covering business managed by his father. As the father was sick, the business was being run by Sebastian. Later on, Sebastian became mentally sick and undergoing treatment in a mental hospital. . The plaintiff has been living in the ancestral residential house in the name of the defendant which is said to have been maintained with the One Lakh rupees brought by the plaintiff. The defendant has been providing Rs. 1000/- per month and Thomas

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<sup>19</sup> Uniform Civil Code: A Mirage, Justice & Peace Commission, Delhi and Society for Media & Value Education, Delhi, 1<sup>st</sup> ed 2003, pg 69.

<sup>20</sup> Available at [www.thehindu.com/opinion/lead/union-minister-venkaiah-naidu-on-uniform-civil-code-why-not-a-common-civil-code-for-all/article8855995.ece](http://www.thehindu.com/opinion/lead/union-minister-venkaiah-naidu-on-uniform-civil-code-why-not-a-common-civil-code-for-all/article8855995.ece),(Last accessed on 08/08/2016)

<sup>21</sup> Agnes alias Kunjamol v. Regeena Thomas (RSA. No.703 & 958 of 2009)

was giving Rs.2000/- per month for some time to the plaintiff. Suddenly the defendants stopped giving the amounts to the Plaintiffs and strangely served eviction notice to the plaintiff. The plaintiff replied obviously that she and her daughter would be rendered homeless.

The plaintiff claims that the amount of Rs. One lakh given by her family at the time of the marriage was utilized for the maintenance ancestral house. The defendant being a retired teacher claims that the schedule property was acquired with her own funds. She wants to evict the daughter in law and sell the residential house to utilize the sale proceeds for treatment of her son Sebastian. The Trial Court came to the conclusion that the plaintiff was unable to establish any manner of right over the suit property and therefore, dismissed the suit on ground that “being a Christian there is no ‘tharawadu’ (ancestral) for the family and the plaintiff has no manner of the right over the suit property.” The court said as it was evident that plaintiff hails from a poor family and her family will not be able to support her, if she goes to her parental house. One can only say that the position of the plaintiff and her daughter is deplorable and precarious<sup>22</sup>. The only course now open to this Court, is to let the plaintiffs continue to reside in the plaint schedule property till they are provided with another home by her husband’s family members. The Court finally ruled that certainly, the Plaintiff, ‘has a right to reside in the matrimonial house,’ reminding that her husband has been mentally ill and ‘one can easily understand the plight of the plaintiff and her daughter.’

This judgment of the Kerala High Court through the Justice P. Bhavadasan would be an eye opener for the parliamentarians to come forward to enact a law in pursuance of Article 44 of the Constitution of India in the interest of rendering famine justice. It may be pointed out that time is ripened for the legislature to enact a law for a Uniform Civil Code. It is analytically clarified in the case and the Court’s historic venture to do justice to an unfortunate Christian woman of whom the law has been silent, was so apt and appreciable. But, the State cannot remain a mere spectator when many a Shah Bano and Agnes suffer due to lack of the statutory aid given in pursuance of Article 44 of the Constitution.

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<sup>22</sup> Available at [www.legalindia.com/uniform-civil-code-the-dormant-law/](http://www.legalindia.com/uniform-civil-code-the-dormant-law/)(Last accessed on: 12/08/16)

In **John Vallamattom v. Union of India**<sup>23</sup>, The Court had reason once again to express its opinion on the subject of a uniform civil code. In this instance, John Vallamattom, a Christian priest, under Article 32 challenged the constitutional validity of Section 118 of the Indian Succession Act, 1925, claiming that it was unfairly discriminatory against Christians for placing unreasonable restrictions upon them from bequeathing property for religious and charitable purposes for charitable and religious purposes.<sup>24</sup> A three-judge bench of the Supreme Court, comprising Chief Justice V.N. Khare, and Justices A.R. Lakshmanan and S.B. Sinha, struck down the provision as being violative of Article 14 of the Constitution. Chief Justice Khare commented: “We would like to State that Article 44 provides that the State shall endeavour to secure for all citizens a uniform civil code throughout the territory of India. It is a matter of great regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies.” This case was also acknowledged in the 209th Law Commission Report on the Proposal for the Omission of Section 213 of the Indian Succession Act, 1925.

In **Sarla Mudgal v. Union of India**<sup>25</sup>, the question which is dealt with is whether a Hindu husband can solemnise a second marriage. The court held that this would amount to nothing but merely abusing the personal laws. It was held that a Hindu marriage can be dissolved under the Hindu Marriage Act, 1955 only and by converting into Islam and marrying again does not dissolve the marriage under Hindu Marriage Law.<sup>26</sup> The judge in this case opined that it is high time that a uniform civil code be introduced as more than 80% of the citizens have already been brought under the codified personal law, there is no justification whatsoever to keep in abeyance, any more, the introduction of the ‘uniform civil code’ for all the citizens in the territory of India and that Art.44 be taken out of cold-storage

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<sup>23</sup> AIR 2003 SC 2902

<sup>24</sup> Available at <http://blog.mylaw.net/the-supreme-courts-advocacy-of-a-uniform-civil-code/> (Last accessed on: 11/08/16)

<sup>25</sup> AIR 1995 SC 1531

<sup>26</sup> Available at [www.lawctopus.com/academike/need-uniform-civil-code-india/](http://www.lawctopus.com/academike/need-uniform-civil-code-india/) (Last accessed on: 12/08/16)

In **Mohd. Ahmed Khan v. Shan Bano Begum**<sup>27</sup>, the petitioner Shahbano had sought maintenance from her husband Mohammad Ahmad Khan, who divorced her after 40 years of their marriage by triple Talaaq and denied her regular maintenance. The Supreme Court gave a verdict in favour of Shah Bano by applying section 125 of All Indian Criminal Code, which applied to all citizens of India irrespective of religion. The Court also recommended that a Uniform Civil Code should be set up.<sup>28</sup> The court was of the opinion that a uniform civil code may reduce the discrimination faced by the women from the personal laws. But the Muslim conservatives saw it as an attempt to weaken their cultural identity. The case was such a controversial that the Rajiv Gandhi government was panicked from the issue. Rather than showing some political spine, the government enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986. This act was passed to nullify the Supreme Court judgement in Shah Bano case and let Muslim Personal Law prevail in matters of divorce. The act maintained that a Muslim woman has the right to maintenance for only the period of iddat (about three months) after the divorce, and thereafter shifted the onus of maintaining her to her relatives or the Wakf Board.

In **S.R Bommai v Union of India**<sup>29</sup>, it was opined by Justice Reddy as religion was a matter of faith and cannot be mixed with secular activities. The State may regulate secular activities by the enactment of laws. A uniform code has been wrongly thought to be an assault on religion. What it essentially aims at is secular reform of property relations in respect of which all religious traditions have grossly discriminated against women. A uniform civil code is, therefore, foremost a matter of gender justice. But male superiority and greed have joined with religious conservatism to forge an unholy alliance to perpetuate a major source of gender discrimination thereby impeding the modernisation of social relations and national integration.<sup>30</sup> A uniform civil code will focus on rights, leaving the rituals embodied in personal law intact within the bounds of constitutional propriety. A uniform civil code should not be constructed, as sometimes suggested, by putting together the best elements from various existing personal codes.

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<sup>27</sup> AIR 1985 SC 945

<sup>28</sup> Available at [www.gktoday.in/blog/uniform-civil-code-in-india/](http://www.gktoday.in/blog/uniform-civil-code-in-india/) (Last accessed on: 12/08/16)

<sup>29</sup> 1994 (3) SCC1

<sup>30</sup> Available at [www.lawctopus.com/academike/uniform-civil-code-gender-justice/](http://www.lawctopus.com/academike/uniform-civil-code-gender-justice/) (Last accessed on: 13/08/16)

In **Daniel Latifi & other Vs. Union of India**<sup>31</sup>, when validity of Muslim Women (Protection of Rights on Divorce) Act, 1986 was questioned. It was held that clause (1-a) of section 3 does not limit the duty of the husband to pay maintenance only for the period of iddat rather the duty is to make the necessary arrangements within the iddat period but the arrangements has to be made for the entire life of the wife until she gets remarried. It was also observed that clause (I-a) requires the husband to make necessary provisions for the wife which means provisions like her shelter and the similar means whereas it also requires the payment of maintenance which implies payment of Money. In this Case it was also emphasized that the Act of 1986 is only available to the divorced woman and therefore a woman who is still having a subsisting marriage cannot file an application under the Act. She has to file it either under the personal law or the Cr.P.C. Therefore the need for Uniform Civil Code was becoming very much necessary to bring everyone under the same code.

## CONSTITUTIONAL DEBATES

The struggle for independence, our leaders who came from different streams of the caste, creed, had visualized the picture of independent India. They wanted this Republic to be built on the four pillars of justice, liberty, equality and fraternity. "Uniform Civil Code" is one of the directions or mandate given to the Government of the Union or the states. This article came to be passed after considerable debate. And the persons who participated in the debate and propagated for this Article were never branded as communal even by staunchest communalists. The constituents Assembly formed different committees for different topics. Accordingly, a committee for Directive Principles was also formed. It is interesting to note that three members of this committee appended their dissenting note to this majority report. More interesting is that two of these three dissenting members belonged to the majority community. Dr. Ambedkar, with the greatest foresight, politely but firmly rejected all the amendments proposed by different members. Civil as well as criminal. All these laws are uniform throughout India. Some of these laws were in direct contravention of the principles propounded by Quran. Prevalent without any objection. Sheriyat Act in 1937, sizable part of the Muslim community was governed by Hindu Law. There was no uniformity in Muslim Law. Dr. Ambedkar, however, gave an assurance to the house that when the parliament would make such law in future, it may make it voluntary initially, and some mechanism may

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<sup>31</sup> 2001 (7) SCC 741

be found out so that the fears entertained by the minority may be belied. The argument that legislative had absolutely no power to enact any Muslim Law, because it directly flows from Quran. Dr Ambedkar's reply was that similar objection was raised in the Central Legislature when the Muslim Women's Divorce Bill, 1939 was debated.

The result was clear;

1. That the argument that Muslim Law was based on religion was negative.
2. The argument that the consent of the minority is necessary before the passing of the Civil Code, was negative, and
3. The argument that it would hurt the religious feelings of the Muslim community was also negatives.

Two objections were put forward in the Constituent Assembly against the making of a uniform civil code applying throughout India: firstly, it would infringe the fundamental right of right to freedom and secondly it would be a tyranny to the minority.

However, Sri K.M. Munshi in his speech in the Constituent Assembly did not agree that uniform civil code will be a tyranny to the minority.

Mr. Mohamad Ismail Sahib, in his speech in the Constituent Assembly, said that this amendment (i.e Draft Article 35) does not seek to introduce any innovation or bring in a new set of laws for the people, but only wants the maintenance of the personal law already existing among certain sections of people.

Finally the Assembly came to a conclusion that the personal laws should draft their respective laws in accordance to the Constitution of India and the areas which are not covered under such personal laws will come under the umbrella of Draft Article 35

## **CONCLUSION**

So, it can be inferred from the above judgments that the Hon'ble Supreme Court has reiterated about the need of Uniform Civil Code again and again and has settled the controversies and ambiguities which have arisen due to the apparent conflicts in the personal laws. Being optional, it will provide free choice and facilitate harmonization of social relationships across the country in keeping with the changing contours of emerging societal

realities. If the Uniform Civil Code would have been implemented for whole of the country then such kind of controversial issues would have been resolved by the statutory enactments only. As India is a country of Unity in Diversity having Multi religions and cultures. So, civil matters of the citizens should be taken in the same clutches of law only then the prime constitutional goal of fraternity can be materialized in the real sense otherwise these divisive forces would continue to violate the constitutional spirit. A secular India needs a uniform civil code but urgent need to force any uniform civil code on an unwilling population is not necessary. Most people are not ready to adopt truly secular laws separated from religious custom. Uniform Civil Code can be successfully introduced only after achieving improved levels of literacy, awareness on various socio-political issues, enlightened discussions and increased social mobility. If the Centre is unwilling to move forward, there is no reason why some progressive States should not take the lead as they have done in the case of legislating Freedom of Information Acts. A national uniform civil code could follow. A secular India needs a uniform civil code. To mark time is to march with the communalists. Thus the ultimate aim of reforming uniform civil code should be usher in the new dawn of freedom, dignity and opportunity for both the sexes equally. So, in this sense uniform civil code is the need of the hour. A strong political will is required for the same along with the feeling of religions tolerance and mutual respect on part of each and every citizen of India.