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Uniform Civil Code: The Confluence of Ideologies in a Heterogeneous State

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ABSTRACT

The Uniform Civil Code is a directive principle for state policy provided in Article 44 of the Constitution of India. It aspires to bring a unified civil law system for all kinds of religious and non-religious customs, traditions, and rituals. The discussion on the subject matter has increased and solutions for the same are sought by researching the current dynamics of society. This article aims to understand and study the background and evolution of such codification process, and then interpret it with current social dynamics. The historical viewpoint allows the research to be arranged and makes it sustainable for reaching its core values. The research on the subject matter has helped to reach important solutions and alternatives for the implementation of the Uniform Civil Code and justice administration mechanism in the state. The solutions are varied and allow a free mind to explore possibilities of different kinds.

Keywords: *Uniform Civil Code, Personal Law, Directive Principle of State Policy, Fundamental Rights.*

I. INTRODUCTION

Article 44 directs the state to secure for the citizens a uniform civil code throughout the territory of India. The larger ambit for holding such a conversation is to be conscious of the customs and usages upon which the constitution framers hold such relevance. Part IV of the Indian Constitution holds the value of the state and the duties that it should perform. Indian constitution can be counted under selected texts that have sustained monetary tensions and global turbulences due to the language used in the constitutional text. When India got on its feet, the constitution framers consciously thought that levying more responsibility upon the state would be embodying an additional burden on the state. Therefore, the Constitution rather than promising rights has used restrictive language of limiting the state from doing certain acts. The same example can be extracted from Article 14, the article directs the state to 'not deny' any person 'equality before the law' or 'the equal protection of the laws. The Article has not given any kind of burden on the state but rather restricted the state from doing something. Such

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provisions were kept keeping in mind the economic situation of the state and its people in mind. Such steps provided the realistic development of the state in a sustainable way maintaining the fiscal independence of the nation in the post-independence era.

The framers of the Constitution also stipulated the significance of state policies in the life of common people. But due to limitations of resources, they were not able to provide it through the primary constitution text. They carry forward such directives under part IV of the constitution as the 'Directive Principles of State Policy' (DPSP). One such directive is the Uniform Civil Code (UCC), and currently of core importance in the political satire created.

(A) Why is it important to discuss UCC

The current government's aim is clear they want to work towards an idea under their leadership to achieve the directive assigned in Article 44. The framework is not clearly defined by the government nor do the people have a core understanding of the topic. The importance of discussing a directive principle of such nature is critical to understanding and learning about a country's customs and traditions. The Indian state is a pluralistic nation in its true sense and the diversity that it has inherited makes it a unique terrain for the citizens. The plurality of the nation brings a complicated civil law system to be managed under the law.[3] Many times civil laws are managed through oral traditions and customs, such kind of rituals are difficult to be managed and can be a hindrance to the social prosperity of the state and its people. Hence, such kinds of laws are always conflicted between the practices, and to make things specified such customs are been codified. The codification of such traditions and customs can be said to be civil law.

(B) What is the meaning of the Uniform Civil Code

To understand the context of the first two words, the last one should be contested first. The word 'Code' means an Act that is passed by the legislature as a law. Simplification of the term can be a compilation of various independent ideas or traditions under one roof. The example of the Indian Penal Code can be referred to as it is a compilation of various penal offences under one roof term of the penal code.[4] When things get complicated in an uncodified way then it should get written and approved by the legislature to be formulated as an Act.

The meaning of civil is complex in its traditional nature and should be accessed from a bird's eye view. There are primarily two types of legal justice provided in the English justice administration system, criminal and civil. The criminal matters are contested with a belief that the accused has not just violated the individual's right but conflicted entire society's moral

[3] Deshta, K., 1995. Uniform civil code: In retrospect and prospect. Deep and Deep Publications.
[4] Ratnaparkhi, M.S., 1997. Uniform civil code*:* An ignored constitutional imperative. Atlantic Publishers & Dist.

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traditions and values, hence the state has the responsibility to represent the victim.[5] The criminal justice jurisprudence advocates punishment for the accused as a method of deterrence in society. Civil matters are generally between two legal entities that have a conflict among them and damages or compensation is contested in their conflict.

Then what is included under a wide ambit of the civil code? The substantive part of civil law holds the structure of the family and its deeds. The family has various kinds of conflicts like the matter of separation or matter of maintenance. It also has to define that maintenance should be provided to whom and in what manner prescribed. The rights of the ward are also protected under the term of family. In cases of guardianship or adoption comes under the principle term of family. One of the important matters of family law is succession or inheritance and such rights on the assets that are of a person who died interstate or without a will is also a subject matter of family law.

The major contestation is between the matters of family law as they are distinct and practiced differently across the state. Matters related to property and contract are largely settled under a uniform structure and discussion is limited in such arenas. The procedural part is also formally established under the Code for Civil Procedure and no major conflict is regarding the procedural aspect.

II. MUSLIM PERSONAL LAW

Muslim Personal Law has derived its source from Islamic laws and religion. During the time of Prophet Mohammad, many tribes had unstable governments with traditional local rules. At Medina, Prophet Mohammad assumed the power of legislator and wrote many suras (chapters of the Quran) which contained rules about social laws, marriage, divorce, etc. Solutions could be found in the holy book of the Quran on numerous issues.

Islamic law that primarily adheres to the principles of Prophet Muhammad and the Quran is termed the Sharia. There are four major sources of Sharia Law- Quran, Hadis or Sunna, Qiyas, and Ijma. Interpretation of the Quran and Sunna or Hadis is the same in all Islamic schools of jurisprudence. However, the interpretation of Qiyas and Ijma differs from different Islamic schools of jurisprudence. The interpretation of the Quran and Sunna are regarded as Urfi law.

The Muslim community is not homogeneous. There are two major sects in the Muslim community, Shia and Sunni. Isna Ashari, Ismaili, and Zayadi are the Islamic school of jurisprudence in Shia Muslim and the Hanafi, Hanbali, Maliki and Shafi are the Islamic school

[5] Chavan, N. and Kidwai, Q.J., 2006. Personal law reforms and gender empowerment: a debate on uniform civil code (Vol. 2). Hope India Publications.

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of jurisprudence in Sunni Muslim. Hanafi Sunni Muslim group is a dominant group within the Indian sub-continent. Therefore, Ijma and Qiyas are more inclined toward the Hanafi school of interpretation.

(A) Sources of Muslim Personal Law

1) **Quran:** Quran is regarded as the most important source of Islamic law. It is divided into 114 chapters of poetry. The Medinese form one-third of the contents of the Holy Quran talks about a matter related to marriage, adultery, divorce, public prayer, etc. Quran is the final authority of the matter in all the matters with which it deals although it is not in the form of any definite code either in substance or in form.

The Quran functions as a text that talks about the divinity of god and the code of conduct that is prescribed in it should be followed by a true Muslim. Anything written in the Quran is said and believed to be true as well as must be trusted by every true Muslim. "Since Muhammad was and is regarded as Insan-e-Kamil, i.e. "the one who has reached perfection", every man, woman, and child following Islamic principles must do everything within their power to be like him.[6]

2) **Hadith and Sunna:** After the Quran Hadith and Sunna are referred to as the second most important source of Islamic law. The problem had to be decided by Hadith and Sunna in the absence of any direct revelation of the Quran. Most of the time Hadith and Sunna are used interchangeably but the meanings of both words are different. The direct words of Prophet Mohammad are referred to as Hadith. These words are protected and preserved by the followers of Prophet Mohammad after his demise. It refers to learning through a conversion, with Prophet Mohammad. Hadith is described by the followers and disciples of Prophet Mohammad. Therefore, Hadith could be referred to as the approval, saying, or doing of Prophet Mohammad. Sunna refers to the practice of Prophet Mohammad. It is the path followed by Prophet Mohammad to set an example for Muslims to lead their life. It could be said as the 'way of god'.

3) **Ijma:** Ijma means 'agreement' or 'consensus'. Ijma is the law that is made by the consensus of the Muslim community. Ijma is the secondary source of Islamic law and it cannot override Quran, Hadith, and Sunna but over time it became necessary to solve the numerous problem which could not be solved as no reference was given in Quran or Hadith and Sunna, therefore, the principle of Ijma was evoked by the jurist. Issues were decided by the

[6] Little, John T. "Al-Insan al-Kamil: the perfect man according to Ibn al-'Arabi." Muslim World 77.1 (1987): 43–54.

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consensus of Jurists which was not mentioned in the Quran or Hadith and Sunna. Some contend that the only opinions that matter are those of scholars. Others believe that the laity's consensus is included in Ijma. The majority of individuals concur that the viewpoint held by Muhammad's companions, Medinans, or the Prophet's family is authoritative. A precedent is set once an ijma is established[7]. In the Indian sub-continent, Abu Hanafi's definition of Ijma is followed when it says that consensus only includes the companions of Muhammad, excluding all generations who followed them, in Medina and elsewhere[8].

4) **Qiyas:** With the passage of time and the expansion of Islamic states coming into contact with different societies and tribes Muslim jurists were unable to dispose of the problem through these three processes. At this time jurists used their reason and beliefs. The use of reason for independent judgment which is subject to the dictates of the Quran is known as Qiyas. Qiyas is often used to deduct new beliefs and customs based on similarities from the previous customs and beliefs. Interpretation is the fundamental instrument of Qiyas. It does not modify existing law or challenge existing law but it is used to find the new legal principle in Islamic law which is by the existing beliefs, customs, and Quran.

Like Ijma, different Islamic school of jurisprudence has interpreted Qiyas differently. "*Among Sunni traditions, there is still a range of attitudes regarding the validity of analogy as a method of jurisprudence. Imam Bukhari, Ahmad ibn Hanbal, and Dawud al-Zahiri, for example, rejected the use of analogical reason outright, arguing that to rely on personal opinion in law-making would mean that each individual would ultimately form their subjective conclusion*"[9].

When East India Company gained control over Bengal, Bihar, and Odisha from the Mughal Empire Sharia law was in force. Codification of Shariya law in India was done by Aurangazeb in the book Fatawa Alamgiri. Disputes between the Muslims which were civil were resolved according to the Shariya law and disputes between the Hindus which were civil were resolved according to Hindu law but the criminal disputes were resolved according to the Shariya law. But after East India Company started to control the administration in various parts of India, it realized for better administration it was necessary to have an effective judiciary. East India Company abolished the Sharia law and made a uniform law in criminal, civil, and commercial law but family law and the law relating to property were left to the respective religious groups of Hindu and Muslim communities. For the first time in the history of the Indian sub-continent

[7] "Ijma." In The Oxford Dictionary of Islam. Ed. John L. Esposito. Oxford Islamic Studies.
[8] Muhammad Muslehuddin, Philosophy of Islamic Law and Orientalists, Kazi Publications, 1985, p. 81.
[9] Mansoor Moaddel, Islamic Modernism, Nationalism, and Fundamentalism: Episode and Discourse, pg. 32. Chicago: University of Chicago Press, 2005.

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distinctions were made between secular and religious law. British Magistrates trained in English law replaces Qazi and Mufti in criminal law, commercial law, and civil law but unlike Hindu family law, Britishers never interfered with the family law of the Muslim community. Qazi still has a significant role in adjudication in matters of Family law. Britishers guaranteed the validity of Islamic law in matters of inheritance, succession, and family law.

III. THE CURRENT SITUATION

By enacting the Muslim Personal Law (Shariat) Application Act, 1937 Muslim Personal Law was codified by British India however, this codification was following the Sharia law and it did not bring any significant change to Muslim Community. In Independent India, Hindu Personal Law was extensively modified to give Hindu women greater rights but the state was reluctant to reform Muslim Personal Law. Muslim Personal Law (Shariat) Application Act, 1937 legitimized the use of Sharia law in family law in Muslims. This act has not defined the jurisdiction of the court to adjudicate the matter nor it has given any procedure to adjudicate the issue so it will not be wrong to say that Muslim Personal Law is not codified and this act was enacted just to give legitimacy to Sharia law. Qazi and Mufti play a very important role in adjudicating personal law in Muslim Community. Qazi resolves the matter between the two parties which is concerned with marriage, divorce, and succession and if Qazi needs any interpretation then he refers the matter to Mufti. Under Sharia law, Mufti has the right to issue Fatwa. It can be said that the main objective of this act was to govern the Muslim community from a unified Sharia law and not to modernize or codify the Muslim Personal Law.

The Dissolution of Muslim Marriage Act, of 1939 could be considered as a progressive step in protecting the rights of Muslim women but it has its shortcoming. Under the Hanafi Dhara of Muslim law right to seek divorce was given to only Muslim men. Muslim women had no right to take a divorce without the consent of their husbands but Muslim men have the right to take a divorce from their wives without their consent. Section 2 of the Dissolution of Muslim Marriage Act, of 1939 had given special circumstances under which Muslim Women have the right to obtain a divorce decree from the judiciary and dissolve their marriage.

This act was a step forward toward achieving progressive and moderate Muslim Personal Law. However, this act has its shortcoming and it is silent on the issues like maintenance of women and the custody of the children after the dissolution of marriage. These matters still are adjudicated under Sharia law.

Like other religions, Islam is also a strong advocate of marriage but marriage in Islam is a civil contract and not a sacrament. Nikah Nama is a document in the Muslim marriage where

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essential conditions of the marriage are written. It could be said that Nikah Nama is a contract paper for marriage. According to Sharia law for a valid marriage parties must have the capacity to marriage, like other contracts there should be Ijab (proposal) and Kabool (acceptance), the consent of both parties should be free, there should be no legal impediment, there should be a consideration (Mahr). Consideration is necessary for the completion of marriage under Islamic law and at the time of marriage it is written in the Nikah Nama the particular amount which the bridegroom is entitled to give to the bride after completion of marriage or at the time of divorce and that particular amount is known as Mahr. Registration of marriage is necessary for Muslims in India. According to section 3 of the Muslim Marriage Registration Act, 1981 registration of Muslim marriage is compulsory. The most debatable and controversial aspect of Muslim law is polygamy. Islam is the only religion in India where polygyny is allowed. Polygyny means that one man can marry several women. Sharia law permits the man to marry up to four women. However, many Islamic jurists had pointed out that the holy Quran has kept two conditions for a man for doing polygyny, first to maintain the sex ratio, and second that the husband should treat all his wives equally and all his wives should live a dignified life.

Unlike other religions, divorce is allowed under traditional Islamic Law although provisions of divorce under sharia law are male-centric. One full chapter of the Holy Quran is devoted to divorce and in another chapter, its details are explained. According to Sharia law, divorce can be initiated by the husband which is referred to as talaq, by the wife which is referred to as Khula and it can be through mutual consent which is referred to as Mubarat. Talaq is a unilateral divorce where a Muslim man can give divorce to his wife without her consent while Khula is not a unilateral divorce and the consent of the husband is necessary to obtain a divorce, wife is not entitled to get the Mahr amount in khula since the divorce was initiated by her. Divorce under Mubarat is obtained from mutual consensus.

There are three types of Talaq Talaq-e-Hasan, Talaq-e-Ahasan, and Talaq-e-biddat. Talaq-e-biddat. Talaq-e-biddat which is also known as triple talaq is the most controversial form of talaq in Sharia law. In this form of talaq, the husband can pronounce talaq in one sitting. The Supreme Court of India in 2017 in the case of Shayara Bana v. Union of India[10], held that the practice of triple talaq is 'manifestly arbitrary' and not protected by Article 25 of the Constitution of India. The majority opinion of the judgment held that instant talaq is merely permissive and not an absolute right and since it is 'manifestly arbitrary' it cannot get protection under Article 25. After this judgment parliament in the year, 2019 passed the Muslim Women (Protection of

[10] Shayara Bana v. Union of India, (2017) 9 SCC 1.

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Rights on Marriage) Act, 2019 which made Talaq-e-biddat a criminal offence and the jail term could extend up to three years and this offence is compoundable.

Provisions of maintenance are given in Sharia law. Under Muslim law, the wife is entitled to get maintenance only during the period of iddat which is of three months from divorce and the wife is entitled to get the Mahr which was written in Nikah Nama at the time of their marriage. If an antenuptial agreement between the parties to the marriage provides for the payment of the special allowance known as Kharcha-i-pandan, the wife is also eligible for it. It is an absolute property of the wife. However, under Sharia law, if there is no antenuptial agreement between the parties to the marriage then the wife is entitled to only the amount of Mahr and maintenance for the period of iddat which is of three months from divorce and in various cases, it has been seen that very little amount is written in Nikah Nama as Mahr and at the time of divorce that particular amount could not help the wife to live her life with dignity. In the landmark judgment of Mohd. Ahmed Khan vs Shah Bano Begum[11], 1985 Supreme Court of India held that Section 125 of the Code of Criminal Procedure will be applicable in the matter of maintenance of Muslim women. This section talks about the maintenance of Wives, parents, and children. This section applies when any person having sufficient means neglects or refuses to maintain his wife, unable to maintain herself a first class judicial magistrate upon proof of such refusal or neglect orders such person to make monthly allowance for maintenance to this wife on such rate as the magistrate deems fit. This section also contains the provision of interim maintenance payable during the pendency of the proceeding related to Maintenance and the application for such interim maintenance shall as far as possible be disposed of within sixty days from the date of service of notice of the application to such person. Supreme Court had held that Section 125 is a secular law, Muslim women are entitled to get the benefit of it, and any conflict between personal law and secular law, the secular law should prevail and in this case, Section 125 of CrPC will prevail upon sharia law. Justice YV Chandrachud had said in this judgment that "*Section 125 was enacted to provide a quick and summary remedy to a class of persons who are unable to maintain themselves. What difference would it then make as to what the religion professed by the neglected wife, child, or parent? Neglect by a person of sufficient means to maintain these and the inability of these persons to maintain themselves are the objective criteria that determine the applicability of section 125. Such provisions, which are essentially prophylactic, cut across the barriers of religion. The liability imposed by section 125 to maintain close relatives who are indigent is founded upon the individual's obligation to society to prevent vagrancy and destitution. That is the moral edict of the law and morality cannot be*

[11] Mohd. Ahmed Khan vs Shah Bano Begum, 1985 AIR 945, 1985 SCR (3) 844.

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clubbed with religion." However, under pressure from conservative Muslims, the parliament of India in the year 1986 passed the Muslim Women (Protection on Divorce Act), 1986, and overturned the judgment of the Shah Bano case. According to this new law maintenance period can only be liable for the period of iddat, the wife is entitled to get the payment of Mahr if the wife is pregnant then up to the delivery of the child and if there are children then maintenance should be given until the child reaches the age of two years. According to the new law, the magistrate had the authority to order the Wakf Board to provide the aggrieved mother and her dependent children with means of subsistence if she was unable to fend for herself.[12] In the case of Noor Saba Khatoon vs Mohd. QuasimNoor Saba Khatoon vs Mohd. Quasim[13] Supreme Court had reiterated that after divorce father will be liable for maintenance until the male child attains the age of majority and until the marriage of the female child. The constitutional validity of the act was challenged in the case of Daniel Latifi v. Union of India[14]. Supreme Court upheld the constitutional validity of the act but the court had said that liability cannot be limited to the iddat period. Court had interpreted 'fair and reasonable amount' for the maintenance of such that the standard of living of the wife should be maintained for the whole of her life and by considering the income of the husband should give a lump sum amount to the wife in iddat period and if he is not in a position to give it at one installment then the court can order it to give in installments even after iddat period. The acknowledgment of women's claims to equality and dignity, particularly in marriage-related situations, was one of the verdict's most important relevant aspects that distinguished it from earlier decisions.

Succession in the Muslim community is also done through Sharia law. Irrespective of the schools of jurisprudence there are some general rules which need to be followed:

i. Both movable and immovable property is included in the deceased person's succession, and there is no difference between the two.

ii. Only when a person dies does the issue of property inheritance arise. In a Muslim family, a child's property rights are not granted to him at birth.

iii. In Muslim law, there is no concept of Joint Family Property.

iv. There is no differentiation between inherited property and self-acquired property in Muslim law.

Muslim law has recognized some duties when a man dies which should be performed:

[12] Muslim Women (Protection of Rights on Divorce) Act, 1986, § 4, No. 25, Acts of Parliament, 1986 (India).
[13] Noor Saba Khatoon vs Mohd. QuasimNoor Saba Khatoon vs Mohd. Quasim, (1997) 6 SCC 233.
[14] Daniel Latifi v. Union of India, 2001(7) S.C.C. 746.

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i. Paying the expenses of burial and funeral.

ii. The debt of the deceased should be paid.

iii. Determining the will or value of the deceased.

iv. Sharia-compliant distribution of the assets to the deceased's family members.

A will under Muslim law can be made only for one-third of the property and the rest two-third of the property will be distributed among the heirs according to Sharia law. Muslim law prevents any undue bias towards any particular heir. Heirs are further broadly categorized into two types a) Sharers and b) Residuaries. Sharers are the one who is the first in the line to inherit property and in the absence of sharers, residuaries inherit the property. In sharia law, there is a concept name 'Shuffa' according to which in a joint property when any particular heir wants to sell his share the first preference should be given to the remaining heirs to purchase the property. Muslim women have the absolute right to inherit property but the Muslim daughter will get half the property as compared to the Muslim son. Under Muslim law, an heir cannot inherit the property until and unless he or she does not pay the inherited debt. In the case of Syed Shah Muhammad Kazim vs Syed Abi Saghir and ors the Patna High Court had observed that "the heir must pay all debts before appropriating any portion of the assets to his use."[15]

Sharia law is silent on the procedure of adoption and many Muslim jurists had said that adoption is not permissible in Muslim law. However, the Supreme Court in 2014 in the case of M/S Shabnam Hashmi vs Union of India had said that under the Juvenile Justice (Care and Protection of Children) Act, 2002 Muslims can also adopt a child as it is a secular law and it does not discriminate on the religious basis for giving adoption right. However, Supreme Court refused to recognize the right to adoption as a fundamental right. "The JJ Act 2000 is a secular law enabling any person, irrespective of the religion he professes, to take a child in adoption. It is akin to the Special Marriage Act 1954, which enables any person living in India to get married under that Act, irrespective of the religion he follows. Personal beliefs and faiths though must be honored, cannot dictate the operation of the provisions of an enabling statute,"[16]

The Constitution should always prevail upon any personal law of any religion. The superiority of the Constitution is very important for rule of law in society. Article 14 guarantees equality before the law and equal protection of the law.[17] One facet is that there shall be no privileged person or class and that none shall be above the law. Another facet is the obligation upon the

[15] Syed Shah Muhammad Kazim vs Syed Abi Saghir And Ors, 136 Ind Cas 417.
[16] M/S Shabnam Hashmi v. Union of India, (2014) 4 SCC 1.
[17] INDIA CONST. art. 14.

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State to bring about an equal society as equality can be predicated meaningfully only in an equal society[18]. Article 14 permits reasonable classification but the class classification is prohibited under it. The classification should be based on pure reasoning and not on any arbitrary and artificial reasoning. Section 494 of the Indian Penal Code makes an arbitrary classification by criminalizing polygamy for Hindus, Christians, Parsis, and Jews and exempting Muslim men, and criminalizing polygamy even for Muslim women. Discrimination is there on the sole basis of religion and sex.

The classification must be founded on substantial differences which distinguish persons grouped from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.[19]

According to the provision of succession under Sharia law, the daughter can inherit only half the share of a son. Under other religions' laws, the right to inherit property is the same for both son and daughter and both will get an equal amount of share. The right of the daughter has been subjugated under Muslim Personal Law and appropriate alternatives shall be provided.

Another discriminatory part of Muslim Personal Law is ‘Nikah halala’. Nikah means marriage and halala means which makes it permissible. According to Nikah halala, a divorced woman is prohibited from remarrying her ex-husband unless she first marries another guy who has granted her a divorce or who has passed away after the marriage was consummated. There is no such condition in any other religious personal law and the wife can remarry her ex-husband without any condition. Nikah halala keeps an unreasonable burden on Muslim women and discriminates against other women of a different religion.

IV. PERSONAL LAW OF CHRISTIAN

During British rule, canonic customary laws were practiced by Christians all over India. Roman Catholic Churches have the Code of Canon Law and Syrian Christians used to follow the Code of Canon of Eastern (Oriental) Churches. During British rule, these canonic customary laws were modernized by passing two legislations, the Indian Divorce Act, of 1869 and the Indian Christian Marriage Act, of 1872. Like Hindus, Christians did not recognize divorce in their customary law and they recognized their marriage as sacramental but by codifying the divorce law under Indian Divorce Act Christians had got the legal right to divorce. Under Christian Marriage Act, Christians are bound to observe the marriage prescribed under Canon law in India. The term ’Indian Christian’ is defined in Section 2(x) of the Christian Marriage Act as

[18] Sri Srinivasa Theatre v. Govt. of Tamil Nadu, (1992) 2 S.C.C. 643.
[19] Laxmi khandasari v. State of Uttar Pradesh, (1981) 2 S.C.C. 600.

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"Indian Christian includes the Christian descendants of natives of India converted to Christianity, as well as such converts"[20]. Conversion does not result from baptism alone. A convert must confess Christianity under Christian customs. Judiciary has also played an important role in interpreting the law on marriage for Christians. In the case of Rosalyn Mary v. Ravi Gnanaselvam, Madras High Court held that the consent of the father of a minor girl is mandatory to marry her. When consent was not obtained from the father and the boy committed fraud by changing the year of birth of the girl to avoid taking the consent of her father, it was held not to be legal[21]. In another case of S. Selvaraj v. Martha Peter, Madras High Court held that even though the paperwork was done a few weeks before the alleged marriage to arrange for the dowry, the court would not recognize the marriage since no priest officiated the ceremonies and the marriage did not occur in a church.[22] In the case of Mrs. Pragati Varghese, Etc. vs Cyril George Varghese, Etc[23] Court struck down the void part of section 10 of the Indian Divorce Act. Section 10 has given the grounds under which a husband or wife can ask for a divorce. It was given in section 10 that adultery can be a ground on which the husband can claim divorce from the wife but if the wife wants to claim divorce from the husband on the same ground then there should be one more ground of divorce against the husband like cruelty etc. Court held that man and woman should be treated equally and grounds of adultery would be enough for a woman to claim divorce from her husband. After this judgment, Parliament enacted the Indian Divorce (Amendment) Act, 2001 through which under Section 10 the grounds for divorce were made the same for both husband and wife and Section 10(A) was added to this section according to which divorce can be granted through mutual consent, however, the period of judicial separation was of two years. But in the year 2015, Supreme Court had made the separation period from two years to one year.

Succession under Christians is governed by the Indian Succession Act, of 1925. This law governs both intestate and testamentary succession of immovable property of Christians. In the case of Mrs. Mary Roy Etc. Etc vs State Of Kerala & Ors[24], Supreme Court held that the Indian Succession Act will apply to all Christians even to Syrian Christians, Travancore Succession Act, and Cochin Succession Act will not be applicable and daughters will have equal rights on the inherited property as compared to the son. In the case of John Vallamattom & Anr v. Union of India, the Supreme Court held that Section – 118 of the Indian Succession Act, 1925 is

[20] The Indian Christian Marriage Act, 1872, § 2(x), No. 15, Acts of Parliament, 1872(India).
[21] Rosaline Mary alias Valli v/s Ravi Gnanaselvam, 1997 SCC Mad 825, (1998) 1 LW 264.
[22] S. Selvaraj v/s Martha Vanitha Peter & Others, 1988 SCC Mad 24, (1988) 1 LW 76.
[23] Mrs. Pragati Varghese And Etc. vs Cyril George Varghese And Etc, AIR 1997 Bom 349.
[24] Mrs. Mary Roy Etc. Etc vs State of Kerala & Ors, 1986 AIR 1011, 1986 SCR (1) 371.

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unconstitutional as it violates Article 14 of the Constitution. The rigorous procedure mentioned under Section 118 of the said Act for testamentary disposition of property for religious or charitable purposes applies to Christians only and not to a person belonging to any other religion.[25]

There is no specific legislation under which Christians can adopt a Child. In 1890 Britishers enacted the law named The Guardians and Wards Act, 1890 under which a Christian can adopt a child however, under this act the parent will not get the right of the biological parent and the child will not get the right of the biological child since this law gives the right of guardianship and not of adoption. However, the Supreme Court in the case of M/S Shabnam Hashmi vs Union of India[26] had said that a person from any religion can adopt a child under Juvenile Justice (care and protection) Act, 2002 so Christians can now adopt a child under JJ Act.

V. PERSONAL LAW OF PARSI AND JEWS

Marriage and divorce under the Parsi religion are regulated under the Parsi Marriages and Divorce Act, of 1936 and which got amended in the year 1988. According to this act, Parsi is defined as any person who is Parsi Zoroastrian. The marriage under Parsi Marriage and Divorce Act should be done under the customs and rituals of Parsis. This is a modernized and non-discriminatory law except for one aspect. According to the customs of the Parsis, children from Parsi fathers and non-Parsi mothers can be Parsi but children from non-Parsi fathers and Parsi mothers cannot be Parsi. Bombay High Court in the case Sir Dinshaw Maneckji v. Sir Jamshedji had said that if they are accepted into the Parsi religion and proclaim Zoroastrianism, the offspring of a Parsi father and a non-Parsi mother are considered to be Parsis but children born to a Parsi mother and a non-Parsi father could not be considered as Parsi[27]. This act has the provisions of the Matrimonial Court for divorce where respected people from the community will mediate. Succession under Parsi Community is done following the Indian Succession Act. Chapter III of the Indian Succession Act deals with Parsi intestate succession. Before the Indian Succession Act was passed there was the Parsi Intestate Succession Act, of 1865 which used to deal with it. Like Muslims and Christians, Parsi can also adopt a child under the Juvenile Justice (Care and Protection) Act, of 2000.

There is no specific legislation for the Jewish community for marriage and divorce in India. Judicial precedents played an important role in determining Jewish law in India. In the case of Mozelle Robin Solomon v. Lt. Col. R.J. Solomon Bombay High Court had established that the

[25] John Vallamatom & Anr v. Union of India, (2003) 6 SCC 611.
[26] M/S Shabnam Hashmi vs Union of India, AIR 2014 SC 128, (2014) 4 SCC 1.
[27] Sir Dinshaw Maneckji v. Sir Jamshedji, 2 Ind Cas 701.

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nature and incidence of a Jewish marriage and the matrimonial relief to which a Jewish husband or wife would be entitled must be ascertained from their personal law[28]. In another case of Rachel Benjamin v. Benjamin Solomon Benjamin Court held that in the event of any dispute, the custom of the Jewish community will be considered before any ruling on the matter may be pronounced[29].

VI. UNIFORM CIVIL CODE FOR TRIBAL

Drafting a codified uniform law for tribals will be a very difficult task. There are almost more than two hundred tribals groups spread across Arunachal Pradesh, Assam, Meghalaya, Mizoram, Nagaland, Manipur, and Tripura and all these groups have a different form of customary law governing marriage, divorce, maintenance, and succession. The customary laws of these tribals are very different from the customary law of Hindus, Muslims, Christians, Parsi, and Jews.

Amongst the tribes, there is no homogeneity in customary laws even amongst the sub-tribes and different clans. Despite the large percentage of the population embracing Christianity, Hinduism, and Buddhism, native tribal religion and customary practices are still intact in many forms. In all personal customary laws, traditional dispute redressal mechanisms at the village or community level are still the core of tribal society even today. A system that is more efficacious, spontaneous, and free of procedural hurdles aiming at mutually amicable solutions.[30]

Some tribal communities are matrilineal where like Khasis and Garos where there is a custom that the youngest daughter from the family will inherit the property and some tribal communities are patriarchal where the youngest son inherits the property. The system of bride price, which radically differs from other personal rules, is an intriguing component of tribal marriage. An overwhelming of tribes regularly do it. The bride price is provided from the boy's family to the girl's side, typically in various sorts with varying forms. In contrast to other tribes, the Khasi culture considers the girl's household to be the matrimonial home, where the male must move in after the wedding.[31]

The Constitution of India of India has given special rights to these tribes to protect, preserve

[28] Mozelle Robin Solomon v. Lt. Col. R.J. Solomon, (1979) 81 Bom LR 578.
[29] Rachel Benjamin v. Benjamin Solomon Benjamin, (1926) 28 BOMLR 328.
[30] Dr. Topi Basar, Uniform Civil Code And Tribal Customary Law-Uniformity In Diversity?, Live Law (Oct. 21, 2016, 3:51 PM).
[31] Dr. Topi Basar, Uniform Civil Code And Tribal Customary Law-Uniformity In Diversity?, Live Law (Oct. 21, 2016, 3:51 PM).

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and practice their custom. Article 371A[32] and Article 371F[33] has special provisions for Nagaland and Mizoram whereby any act of Parliament on customary law, the civil and criminal law will be applicable in these states if the assembly of these states passes the resolution concerning this. Schedule sixth[34] of the Constitution of India has given autonomy concerning criminal and civil judicial proceedings to ten tribal areas. Three autonomous areas are from Meghalaya, three are from Mizoram, three are from Assam, and one is from Tripura. They have their own District Autonomous Council or Regional Autonomous Council.

Doing reform and codifying the customary laws of these tribal communities will not be easy as these communities have not interacted much with the outside world and any sudden reform will not be accepted by these communities and the expectation cannot be made from these tribal communities to accept sudden reform as these are very indigenous groups. An established custom can only be declared unlawful through a natural process of change that arises from the community; otherwise, it will have a detrimental effect on the tribal culture, which celebrates diversity as a way of life. Instead of taking any big step, the state needs to take small steps to reform, modernize and codify the customary law.

VII. CRITICAL ANALYSIS

The contention is being raised on the subject that individual rights are guaranteed under several articles in the Constitution of India but the religious customs and traditions on several occasions contradict them. The issue regarding implementations lies in the structure of its formation as it is not prescribed by the constitution framers. The makers of the constitution lay down the provision of Article 44 and directed the state but there is no draft or a model structure available for the construction of the Uniform Civil Code. The core idea can be understood regarding the formation of such legislative work that replaces all current religious and custom texts or practices and becomes codified under one principle framework.

The case of Sarla Mudgal V. Union of India[35] is a key judgment that shall be analyzed to understand the need for a uniform civil law system. The landmark judgment majorly laid down the principles against the practice of solemnizing second marriage by a Hindu man by converting to Islam and the first marriage not being dissolved. Moreover, the judgment also discussed issues regarding the personal laws that provide a rigid and uneven structure that does not provide the aim that the constitution framers had in their mind for the 'Independent

[32] INDIA CONST. art. 371, § A.
[33] INDIA CONST. art. 371, § F.
[34] INDIA CONST. schedule 6.
[35] Sarla Mudgal V. Union of India, AIR 1995 SC 1531.

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Republic.' The personal laws of different religions have come into conflict on several occasions. Justice Kuldip Singh remarked the following during the delivery of his judgment, "*When more than 80% of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of "uniform civil code" for all citizens in the territory of India."*

The Hon'ble Court also provided its wisdom in the case of John Vallamattom v. Union of India[36], in the case once again the issue of the Uniform Civil Code had knocked on the doors of the Hon'ble Court. The case was filled by a Christian priest that challenged the constitutional validity of section 118 of the Indian Succession Act, of 1925. After analysis court by using its wisdom found out that the section was violative of Christianity and against the constitutional provisions and hence struck down the provision being violative of Article 14. The important part is the comment given by Chief Justice Khare, "*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 nation integration by removing the contradictions based on ideologies."*

Time and again the apex court has manifested the need for the Uniform Civil Code for the proper administration of law and enabling ends of justice for the people of India as guaranteed in the constitution. India may be ready on several social and legal administrative fronts to tackle a sensitive topic of the Uniform Civil Code but the question that lies in front is 'in which manner would it happen?'

VIII. Structure of Uniform Civil Code

The research done on the history and evolution provided four basic structures that can assist in the formation of the Uniform Civil Code. The second and third option is the one that can be closed to the formation of such legislation as it respects the plurality and even protects each individual from religious discrimination. The revision of that two points is as follows:-

1. The current separate laws for different customs should remain but the part that is discriminatory or conflicting with uniformity can be amended.
2. There can be the formation of a Uniform Civil Code that is in the form of one document that has one principle aim and then exceptions according to the class-specific. Such a way would allow diversity to sustain and give a principal structure to the majority of things.

The first pointer advocates that plurality is best in the form of making uniqueness felt and not

[36] John Vallamattom v. Union of India, AIR 2003 SC 2902.

only naming it in principle. Generally, religion feels that their unique practices by uniforming become abstract and prey to the will of other parties. Religious beliefs should be given space and support to make their utilization optimum.

Removing the part that is discriminatory or conflicting with uniformity would be supported majorly by the disadvantaged class. In the triple-talaq case, the inner support of Muslim citizens made the move more rational and easy for the legislature to help the disadvantaged. In the case of Sati, the support of Raja Ram Mohan Roy was a prominent one with many other thinkers in Hindu society. When the demand for reform comes from the community itself then amending legislature and customs become easy for the state and complete focus can be given to the people and their rights.

The aim of legislation should not only be to satisfy the will and wisdom of the legislature but the impact should be a witness on the ground. If the legislative work is prepared and administrative law is not applied uniformly then such work of legislation would just be subject to criticism on a mass scale. Justice administration is a core subject that has to be taken into account. Justice is an element that has been functional on the planet even before the existence of the human mass. Even the modern concept of state is embodied around the notion of delivering justice to hoi polloi.

The second point that explains the documentation process of forming a single document shall help in the administration of justice as the procedure and customs shall be compacted in one document making law simplified and accessible. The single document that interpreted similar forms of customs and traditions would allow the hoi polloi to understand the relevance of diversity and uniqueness in each other religion. The unity of the state can be strengthened by such steps that make the judicial system the same and equal for all.

The major issue in this argument is regarding the method and complicity in the process. Formation of one unified document shall not be easy as all religions have different importance towards different cultures. Formation of exceptions shall be subject to several confusions and overlapping of legislative work would make the law regressive to the justice administrative work. When the complex legislature would be subject to continuous amendments then the smooth procedure of administration would be disturbed and confined to matters of least importance such as the interpretation of policies. The same can be understood by the following example.

If a couple claims to be an atheist when marriage is confirmed and registers the marriage as per the regulation of the special marriage act, later the husband develops spiritual guidance and

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decides to convert to Islam. Even his wife agrees and converts to Islam. A few years later, they take divorce as per Islam's exception in the law. In this case, there would be a complicated situation where the marriage was as per other religions and divorce was from another but both came from the same document. Such a bundle of cases would create fatigue in the judicial work and make the process more tedious.

There can also be one more alternative that provides the state with Uniform Civil Code in a simple manner. The first pointer is that the discussion can be implemented into the system. After the implementation of the pointer that removes discriminating customs and rituals. Then there can be the formation of such legislation that restricts people from performing activities that are discriminatory towards others. Such a document would be uniformly applicable to all religions and all customs and traditions have to follow the law established through this uniform act.

Such kind of move would allow the pluralistic society to enjoy a free way to practice their religion and customs while respecting individual rights and freedom. Such restrictions can easily be check-balanced by the state and even the people would not feel their customs and traditions are being interfered with by the state machine.

IX. Conclusion

Uniformity is not just an ambition but a need for the state to run a smooth justice administration task force. Without the aim of justice administration, any law cannot reach the desired limit. The changes in civil laws are needed as many customs, traditions, and rituals are conflicting with individual freedom and rights. When the constitution provides an individual with certain rights and freedoms, later by a social construct the individual reaches to disadvantage, such adversity shall be countered and all individuals should be equal before the law. The solution proposed to implement would let the pluralistic nature of religions, customs, and traditions be intact. A homogeneous society is not the goal but a unified system is. A law that restricts all customs and traditions from creating disadvantaging social constructs should be a sufficient means to establish a uniform civil code. The progress towards maintaining compliance towards DPSP makes a promising notion of creating a welfare state, that is of aspirations that constitution framers engraved and needs of upcoming generations to enjoy fruits of the well-nurtured tree planted 75 years ago.

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