



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a

professional diploma in Public Procurement from the World Bank.

in Public

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi, Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

WHITE BLACK
LEGAL

UNIFORM CIVIL CODE AND SUSTAINABILITY

AUTHORED BY: YASHVARDHAN SHRIVASTAVA

Affiliation: Narsee Monjee Institute of Management studies, Indore

Designation: Under graduate Student of Ba LLB (Hons)

Abstract

In the bliss of independence, Indian soil had found itself blooming with an assortment of people, each varying in their religion and their culture, reflecting the heterogeneity prevalent throughout the confines of the nation. Consequently, in order to preserve the sacrosanctity of their religious and cultural practices, various rights were included in the supreme law of India, i.e., the Constitution, as well as furnishing them with the leeway to be governed by their own personal laws. In the context of civil law, this would imply that the citizens were free to govern their civil affairs, i.e., marriage, divorce, etc., as per their own personal laws, which reflect their extensively followed customs, without any blending of regulations as prescribed by the state. However, the bone of contention that lingers around is the implementation of the Uniform Civil Code, a law that seeks one law for one nation, which might result in jeopardizing the sanctity of personal laws as well as their extensive cultural practices. The debate regarding this topic has been culminating for a very long time, emerging from the discussions put forth by the constituent assembly in 1948 to contemporary times, when the BJP-led government is hard-bent to implement it, yet there is no sight of consensus. The supporters of the UCC had their own set of arguments, which relied upon the premise of national integration and the abolishment of discrimination faced mainly by women. On the contrary, the refuters disregard the code on the premise of violation of Article 25 of the Constitution, as well as the forfeiture of rights and cultural practices of minorities, and termed it nothing but an act of political gimmick. Therefore, this paper would seek to thoroughly analyze the nature of UCC in India with respect to its diversity by relying upon all sorts of arguments and evaluating all sorts of pros and cons for the same. It would also seek to analyze its possible impact on the citizens, especially minorities, and, if it were to be implemented, the possible way forward for them.

Keywords: gender disparity; personal laws; fundamental rights; triple talaq; reformation

Introduction

India as a nation is blessed with uniqueness and a sense of distinctness as compared to other nations in the sense that it has housed a multitude of ethnic groups since the medieval age, each of them varying in their religious and cultural traditions, akin to a portrait of art simmered with various colors. The government of India pre- and post-independence gave these varied communities some autonomy to safeguard their culture by allowing them to govern themselves as per their own personal beliefs and avoiding any blending of regulations put forth by the state by setting aside some exceptions. For example, in the context of civil matters such as marriage, inheritance, succession, adoption, etc., these communities were governed by their own set of laws based upon their religion and custom, in turn perpetuating the traditions set forth by their ancestors.

However, the personal laws that are so cherished by these communities might be felt as discriminatory in nature against women, which caused patriarchy to spread its wings in society, depriving women of receiving equal rights as men and even opportunities in the form of protective discrimination, despite being promised by the Constitution of India. In taking heed of this aspect, many reforms were formed and implemented, mostly according to Hindu laws, not only by the post-independent government but also by the British government, which was found progressive in nature in terms of bequeathing rights to women as much as men, so that the upliftment of Hindu women against the hard-bent patriarchal society became possible. On the contrary, other communities, especially the Muslim community, had been lagging behind for such reforms, which might bring some relief for their women, who had been trapped in various hardships caused by the discriminatory religious and cultural practices in their personal laws.

This consequently brings forth the demand for a uniform civil code, which ensures that the whole nation shall follow one law regarding matters of family, removing all sorts of practices that are found to be discriminatory against the women of India and also perpetuating the diversity encompassing all communities. One of the main supporters of UCC was Dr. B.R. Ambedkar, who, in the constituent assembly, spoke in favor of it, realizing its necessity for the nation along with KM Munshi and Alladi Krishanaswami Ayyar, when the Constitution of India was in formation. However, due to the incident of partition, which left indelible wounds upon the nation, fear amongst the minorities soars that their culture will fade away, making the implementation of such reforms come face-to-face with huge

protests, both in the constituent assembly and in the general public. Realizing that the nation is not ready for any such laws at that moment, the constituent assembly hands over the responsibility of implementing UCC for the future generation when the state deems it fit and people find it acceptable. However, since independence, not a single government has opted to approve this issue in the parliament as a law due to its nature of infringing upon people's religious and cultural rights, which resulted in the continuance of women's position in society regarding the family law matters below as men, except for a few instances where some communities gained relief, either by the judiciary or legislature intervention.

However, since the onset of the BJP-led government, the clouds surrounding the possibility of the implementation of UCC have been shedding away, creating an image for the future where UCC has been enforced. The main manifestos of the BJP since their arrival were the revocation of Article 370, the formation of Ram Mandir, and the implementation of UCC. Two out of three goals have already been achieved, leaving only UCC to be implemented. Besides the BJP party led by Narendra Modi, the judiciary of India has also advised the government from time-to-time in various instances regarding the need for UCC in the country and its implementation. Nonetheless, the sustainability of the given law calls for question in these contemporary times due to the soaring communal tensions caused by the consecration of the Ram temple in Ayodhya, along with the instability in the Northeast region and the rise of Hindutva ideology. These instances give away hope in regards to people's acceptance of the given law when the country is facing the dilemma of majoritarianism vs. minoritism. This paper would delve deep into the need for UCC to mitigate the prevalent gender disparity by highlighting the struggle of women in regards to their fundamental rights vested under Part 3 of the Constitution and would also highlight whether it should be prioritized by the government when the nation is facing the dilemma of unrest amongst different communities.

This paper would delve deep into the need for UCC for the mitigation of gender disparity prevalent by highlighting the struggle of women in regards to their fundamental rights vested under part 3 of the constitution and would also highlights whether it should be prioritized by the government, when the nation is facing with the dilemma of unrest amongst different communities.

Research problem: The necessity of UCC, and its sustainability in this contemporary period.

Research question: Whether the citizens of India are conditioned for interference in their personal law with the implementation of the UCC or not?

HYPOTHESIS:

It would be sustainable for the state to pass Uniform civil code as a legislation in these contemporary times to uphold the Fundamental right of equality by elevating women's right in the society regarding the Family affairs.

A Case for The Ucc

A STRUGGLE FOR EQUALITY: STATUS OF WOMEN

The society of India is based on patriarchal pattern since ancient times, where the male was given more preference as compared to the women, and this principle is still lurking within the society even though the world is now marching towards the progressive path. This patriarchy is prevalent throughout all religious communities in India such as Hindus, Islam, Christians, Parsees, etc., however some of these practices, which disseminates as patriarchal has been reformed by the efforts of government and judiciary, yet the complete relief is still far from sight.

This discrimination, which widens the gender parity, could be observed in various rituals followed by varied communities. This paper would demonstrate such practice by specifically focusing upon the practices followed in the Hindu and Muslim community in the matters of marriage, divorce, succession etc., as the communal tensions between these are the main source of hindrance regarding the implementation of UCC. The paper would also define the remedies taken up by the state in order to mitigate the gender disparity between male and female in the society and would also cover up the rituals, which are still deprived of such reforms.

➤ **IN HINDU COMMUNITY:**

The Hindu community in India formed the majority with approximately 80% Indian population being Hindus following Hindu custom. However, their customs were not exclusive of discrimination against women regarding family matters before 1955. It can be observed in various practices, which were a part of their traditions since time immemorial. The text that is extensively followed by the Hindu community was Manusmriti, who had put women in a low pedestal, acting as a legitimate tool to

justify discriminatory practices amongst them.¹Practices such as:

Sati custom: A practice, which was followed by the Hindus in the Indian subcontinent involving the burning of widows. In the past, Hindu rituals associated sati with the culmination of a marriage. It was a deliberate deed where a woman went to the afterlife with her husband in evidence of her obligations as a wife. As a result, it was regarded as the wife's crowning act of devotion to her deceased husband. It eventually turned into a compulsory ritual. Different approaches were put upon women who did not want to die in this manner. Widows were viewed as burdens and had no place in society in the past. Women were therefore pressured to take sati if they had no living children who could provide for them.² A point to be noted is that this practice is not followed extensively by the whole Hindu community and it remained confined to the northern part of India. However, after certain time period, people realized the brutality and unnecessary of such customs prevailing in the society, which later lead to the demand for its abolition, led by the bravery of Raja Ram Mohan Roy³ in collaboration with Lord William Bentick, who in 1829 passed the Sati abolition Act.

Dowry system: A custom wherein the money or important presents are given to the groom's family by the bride's family at the time of marriage. Though its initial purpose was to guarantee financial security, it has since developed into a practice that is criticized for maintaining gender inequality and placing financial strain on the bride's family. This also became the reason for the male child preference in poor families and the cause of the sin of female infanticide, so that the problem of dowry would not become a strain upon any father and mother.⁴ Even though, parliament has passed a legislature called Dowry Prohibition act, 1961, for combating this social evil, it is still being practiced in the society, especially in the rural areas, where poverty and illiteracy is highly prevalent. The dowry system has become a serious reason for a woman remaining unmarried⁵, dowry death, cruelty etc.

¹The Manusmriti and a divided nation (no date) The Wire. Available at: <https://thewire.in/caste/manusmriti-history-discrimination-constitution> (Accessed: 05 February 2024).

² Jain, R. (2023) The dark history behind 'Sati' a banned funeral custom in India, Culture Trip. Available at: <https://theculturetrip.com/asia/india/articles/the-dark-history-behind-sati-a-banned-funeral-custom-in-india> (Accessed: 02 February 2024).

³ Chauhan, M. (2021) 'Raja Ram Mohan Roy: A voice against operation and social injustice in Hinduism', RESEARCH REVIEW International Journal of Multidisciplinary, 6(1), pp. 292–295.

⁴ Dowry a 'social evil': Breaking the chain (2021) Times of India Blog. Available at: <https://timesofindia.indiatimes.com/readersblog/echo/dowry-a-social-evil-breaking-the-chain-36724/> (Accessed: 05 February 2024).

⁵ Pandey, G. (2023) India: 'I have been rejected by dozens of men over dowry', BBC News. Available at: <https://www.bbc.com/news/world-asia-india-66084575> (Accessed: 10 February 2024).

making itself a serious issue, which require State's intervention.

Mitakshara and Dayabhaga customs for succession: The civil law that applied to upper castes was called Mitakshara, while that of lower castes was known as Dayabhaga. The Dayabhaga system restricts the sons' ability to claim property rights to the moment the father passes away. In contrast, the Mitakshara system allows the sons to claim the property during their father's lifetime. The Mitakshara school did not consider a woman to be a coparcener. However, the Dayabhaga school permitted a widow to inherit her late husband's belongings, with limited rights over the estate. Regardless of whether a widow had daughters or not, under Dayabhaga law, her property would belong to the closest male successor if she passed away without a son⁶, but since the enactment of Hindu Succession Act 1956, this system has been removed, thereby conferring more rights upon women in regards to property and since then, it has only getting more evolved.⁷

Polygamy was also very prevalent in the Hindu society before 1955, which can somehow lead to the relinquishing of husband's duty towards his previous wife, unlike in Muslim community, where they are obligated to serve equal respect to each of their spouse as per the Quran. Ancient Hindu books and scriptures such as the Upanishads, Puranas, and epics Ramayana and Mahabharata contain references to polygamy. Several women were taken by both warriors and kings in order to enlarge their families and form political alliances.⁸ This later became an unjust practice for the women as it demeans their Human right, which soon many people came to realize like Raja Ram Mohan Roy⁹ and became conscious regarding its downturn effect, leading to its abolition in Hindu marriage act, 1955. The remedy for such practice also found its place in the Indian penal code, under the section 494¹⁰, which prevents a person to enter into bigamous marriage, with the Muslim community as the only

⁶Hindu Succession Act: Property Rights of Women in India (no date) cleartax. Available at: <https://cleartax.in/s/hindu-succession-act> (Accessed: 10 February 2024).

⁷Women's right to property under Hindu law (no date) Women's Right to Property under. Available at: <https://www.drishtijudiciary.com/to-the-point/ttp-hindu-law/women%E2%80%99s-right-to-property-under-hindu-law> (Accessed: 10 February 2024).

⁸ Admin (2023) Polygamy and polygamous marriages in India: An in-depth look into practices and legal framework, Century Law Firm Blog. Available at: <https://www.centurylawfirm.in/blog/polygamy-and-polygamous-marriages-in-india-an-in-depth-look-into-practices-and-legal-framework/> (Accessed: 10 February 2024).

⁹ Roshni (2018) Remembering Raja Ram Mohan Roy, Brahma Samaj founder and India's first feminist, India Today. Available at: <https://www.indiatoday.in/education-today/gk-current-affairs/story/remembering-raja-ram-mohan-roy-brahmo-samaj-founder-and-india-s-first-feminist-1238517-2018-05-22> (Accessed: 10 February 2024).

¹⁰ (No date) Section 494 in the Indian Penal Code, 1860. Available at: <https://indiankanoon.org/doc/508426/> (Accessed: 10 February 2024).

exceptions.

Pratiloma marriages were also not allowed amongst the Hindu community, which advocates that a woman belonging from 'high Varna' cannot marry-off a man belonging from 'low Varna', whereas anulom marriages were allowed,¹¹ hereby defining men's position of higher varna in greater aspect as compared to women's position of higher varna.

Child marriages of women were also very prevalent due to the prevalent belief in the society of women as a burden in the family. Child marriages take place in a social and economic setting, was based on attitudes about women's and girls' status and roles as wives and mothers. These are associated with the realities of women's domestic and care work, the assumption that girls must marry young for safety and protection, and concerns about vulnerability to family honour or financial strain. Another explanation is a preference for sons, which results in more daughters than desired.¹² Now, in this modern era, Government had altered the legal age of women, eligible to marry by raising it to 18 years. Yet still, child marriage is still in motion, especially in rural areas, due to the prevalent financial scarcity and lack of education.

These are some of the many practices defined, which were extensively followed in the Hindu society. Some of them found its cure; some of them are still prevailing like a disease. The plus point, however regarding these practices was that in due time, alteration had been initiated for the betterment of the women's treatment in the society. The reform in Hindu law regarding these matters gained traction since 1829, when William Bentinck took the charge to abolish the sati practice prevalent in Hindu culture, with the help of Raja ram Mohan Roy. It later reached its peak when the uniform Hindu Code Bill was passed into four legislations, which resulted in rectifying most of the practices that put men in higher pedestal as compared to women in regards to their family matters. For example, monogamy became a norm, Mitakshara and Dayabhaga were abolished, age limit was set to 18 for a girl to get married, etc.

11 Hooda, B. (2023) How marriage became the biggest tool for Brahmanical Patriarchy, NICKLED AND DIMED. Available at: <https://nickledanddimed.com/2023/11/06/how-marriage-became-the-biggest-tool-for-brahmanical-patriarchy/> (Accessed: 10 February 2024).

12 Drishti IAS (2021) Menace of girl-child marriage in India, Drishti IAS. Available at: <https://www.drishtias.com/daily-news-editorials/menace-of-girl-child-marriage-in-india> (Accessed: 10 February 2024).

➤ IN MUSLIM COMMUNITY:

The Muslim community constitutes the largest minority in India, with approximately 14.2% of the population. They were governed by their personal law, known as Sharia, which consists of four optimal sources: Holy Quran, formulated by Muhammad Paigamber (Prophet), also known as the founder of Islam; Hadith and Sunnas, defined as accounts of events involving the Prophet that are provided by eyewitnesses and his way of life, respectively; Ijma, defining the broad agreement on any given issue among jurists at a given era because as time wore on, an array of issues emerged that could not be resolved by resorting solely to the Quran; and lastly, the Qiyas, defining the independent judgement and logic used by the Muslim jurist to solve some particular issue by keeping themselves subjected to the teachings of the Quran and by the guidance of traditions.¹³ Muslims are also bifurcated into two sub-groups, Shia and Sunni, with the Sunni community constituting the population of India. Sunni Muslims are also categorized into four sects, of which Hanafi sect constitute the Muslim population in India.¹⁴

In contrast with Shia's personal laws, Sunni's personal laws are quite rigid and harsh, mostly with respect to the rights of women. In India, with respect to the criminal law of Muslims, reforms have occurred in the form of the Indian penal code because of its characteristics of being cruel and rigid. For example, in the offence of 'Zina', which is a term for unlawful sexual intercourse, the punishment derived in the case for women is 'Rajm', where the woman was stoned to death by the Muslim believers, so that other wannabe adulterers would get a warning.¹⁵ From the moral and progressive point of view, this punishment was not only harsh but also against the human rights of any given individual. That is why the enactment of the IPC was seen and accepted as an upgrade to uphold the rights of aggrieved persons who earlier became prone to disadvantages. However, with respect to their personal laws, a modicum of alterations had been initiated, making it objective, vulnerable to further changes for upholding the rights of people, especially women. It is no denying that some of the rights and obligations are very progressive as compared to other personal laws, yet by taking the

¹³ Patel, R. (no date) *Indian Muslim women, politics of Muslim personal law and ...* JSTOR. Available at: <https://www.jstor.org/stable/pdf/25663732.pdf> (Accessed: 10 February 2024).

¹⁴ Malik, R.R. (2022) Into how many sects is the Muslim society divided? Times of India Blog. Available at: <https://timesofindia.indiatimes.com/readersblog/ramiz-raja-malik/into-how-many-sects-is-the-muslim-society-divided-44163/> (Accessed: 10 February 2024).

¹⁵ Ngema, N.M. and Iyer, D. (2023) Penalty for committing fornication & adultery (zina) in Islamic law as a violation of freedom from torture, SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4376178 (Accessed: 10 February 2024).

Muslim personal law as a whole, it is in dire need for more progressive changes, which have become redundant in this modern era.

In the aspect of marriage, there are many practices that are progressive in nature, yet the bleakness of redundant practices is also prevalent. For example, marriage is termed a contract in Sharia,¹⁶ where it allows the husband and wife to enter into the marriage through a document called Nikah-nama, which is in contrast to sacramental marriage. Due to its contractual nature, divorced women are excluded from the demeaning remarks of society, unlike in the Hindu community, where marriage is considered a sacrament.

There is also a concept of Mehr, where at the time of marriage, a husband-to-be will provide his wife-to-be with a gift or some contribution for her exclusive use, as a mark of respect for her and a token of appreciation for her independence. It is not an offering in the conventional sense; rather, the soon-to-be wife is entitled to it and must accept it as such.¹⁷ However, it is not exclusive of any demerits because after the talaq between husband and wife, the husband has a duty to pay for the maintenance and the pending Mehr, which he promised at the time of marriage during the iddat period, and after its completion, he is duty-free from paying anything anymore, causing a disadvantageous situation for a woman who is suffering from financial strain in society. Another such demerit is found in the findings of the survey conducted by the Bhartiya Muslim Mahila Andolan. It was found that 50% of the wife has not received their Mehr yet and those who received it are those, whose Mehr amount was less than 1000,¹⁸ and if the husband gave divorce to his wife in such a situation, he will be duty-bound only for maintenance in the iddat period, and the Mehr, which is not more than 1000 rs, which in this modern economy, where inflation is a detrimental factor, can cause various hardships upon the lives of women, who are dependent upon others for their wellbeing.

There is also a provision of polygamy in the Quran, providing free reins to a man to marry more than

16 Azam, K. (no date) Nature of muslim marriage sacrament or civil contract, Legal Service India - Law, Lawyers and Legal Resources. Available at: <https://www.legalserviceindia.com/legal/article-1645-nature-of-muslim-marriage-sacrament-or-civil-contract.html> (Accessed: 10 February 2024).

17 The concept of mehr under Muslim law [redirects to clatalogue] (2023) AlJazeera. Available at: <https://aljazeera.co.in/law/the-concept-of-mehr-under-muslim-law-redirects-to-clatalogue/> (Accessed: 10 February 2024).

18 Soman, Z. and Naaz, N.S. (no date) Triple talaq report - bharatiya Muslim mahila andolan. Available at: <https://bmmaindia.files.wordpress.com/2016/01/triple-talaq-report.pdf> (Accessed: 10 February 2024)

one woman. At the time of the commencement of the Quran, when monarchy was prevalent and the frequency of wars was rapid, this practice was necessary to even out the sex ratio between male and female;¹⁹ however, in this contemporary period, it is in dire need of some changes because it has become redundant, resulting in the dwindling of their human rights. Other religious communities abused such practices by converting to Islam in order to gain the benefit of polygamous marriage, for example, in the case of Sarla Mudgal and Lily Thomas. It should also be noted that polygamy does not constitute as religious practice under Quran.

Another hard-core and most unfair practice followed by Indian Muslims is *nikah-halala*. Within the Islamic faith, the term “halala” originates from the word “halal,” which signifies something that is allowed and hence “lawful.” In the context of marriage, this suggests that upon the conclusion of *nikah-halala*, a divorced woman can once again become “halal” (lawful) for her husband. A Muslim man is entitled to divorce and remarry the same woman twice, according to Islamic law. However, if he opts to end the marriage for the third time, he can only wed the same woman afresh if she first weds someone else, consummates the union, and only gets to marry her first spouse again if he passes away or voluntarily files for divorce.²⁰ This, from the modern viewpoint, is not only unjust for any woman with dignity but also brutal for any community that is marching towards the modern world with scientific thinking and a progressive outlook.

In regards to their divorce system, a Muslim husband and wife can file for divorce through various methods; some of them are progressive, for example, *khula*, *mubarak*, and *khiyar*, and some are not, like *talaq-e-biddat*. *Talaq-e-biddat* is not only regressive but also very demeaning towards the rights of women, as it allows men to get instantaneous divorce by pronouncing *talaq* three times, either orally, by writing, by phone, or by text message, giving no scope to women to have a say in this regard. However, due to the good graces of the judiciary and legislature, triple *talaq* is now prohibited in India, through the exceptional judgement in the *Shayra Bano* case and the enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019, respectively.²¹

19 Iqbal, F. (no date) Why does Islam allow polygamy?, Islam Ahmadiyya. Available at: <https://www.alislam.org/articles/why-does-islam-allow-polygamy/> (Accessed: 10 February 2024).

20 Iyengar, R. (2018) What is *Nikah Halala*, how it was established and where it stands in Modern India, The Indian Express. Available at: <https://indianexpress.com/article/what-is/what-is-nikah-halala-how-it-was-established-and-where-it-stands-in-modern-india-triple-talaq-4618415/> (Accessed: 10 February 2024).

21 Deswal, V. (2019) Law criminalizing triple *talaq*- a momentous occasion for Muslim women in India, Times of India

In the case of succession laws in Islam, the Hanafi community follows the Shuffa tradition, which grants absolute rights to women, i.e., they are allowed to sell their property; however, in contrast to sons, daughters only received half of the property, whereas sons received double of their daughter's right over property.

Neither of the personal laws, i.e., the Hindu personal law and the Muslim personal law, were perfect or are perfect as they still, by some means, dissipate gender bias in the favour of men, making it necessary for the current regime to carry out reforms to bridge the ever-growing lacunae between the rights of men and women in their respective family matters. Since 1829, many reforms had been pronounced upon Hinduism by the British, which, according to them, were unjust and unfair, yet the people belonging to Hindu communities who cherished such practices found it infuriating that an outsider was interfering with their personal laws. Therefore, it can be predicted that the Muslim community will display the same reaction if the state ever tries to implement any legislation that might tamper with their extensive religious customs when communal tensions are booming again. These reforms are not merely confined to Hindus but other religious communities as well, with the sole exception of the Muslim community, where reforms were confined to as little as possible. All such communities, i.e., Christians, Jews, and Parsees, found some changes in their customs in the form of law, which aided their women to gain some relief from the hard-bent traditions. Regarding the Muslim personal laws, on the contrary, no such drastic change has occurred that might result in the elevation of their women, except for a few, such as the Shayra Bano judgement, where triple talaq was prohibited. That is what brings forth the demand for UCC, so that the women in society would get fresh air of relief from their respective family laws.

➤ THE CONSTITUTIONAL VALIDITY:

Regarding the situations prevalent in Indian society with respect to patriarchy, the constituent assembly incorporates various clauses in the Constitution in order to mitigate those factors by upholding and putting women's rights on a higher pedestal through the instrument called the Constitution of India. The Constitution is the supreme law of India, with a mandate on its back that every institution, every statute, every rule, every guideline, etc., will be governed as per the realm of

constitutional values without any kind of disregard for the rule of law. That is why it became necessary to determine the status of UCC in India through the lens of a legal standpoint in order to find its sustainability in society.

Many people who put forth arguments in favour of UCC use Articles 14, 15, and 21 of the Indian Constitution, whereas on the contrary, those who oppose it argue that it is a violation of Articles 25 and 26 of the Constitution. All of the above-mentioned articles reside in Part 3, which defines the fundamental rights of the people and puts the state under the obligation to preserve them. This paper would seek to analyze the arguments through the interpretation of the said articles and determine whether UCC holds any sustainability from a legal standpoint or not.

Article 25²²: It defines the religious freedom of any given individual by providing them the right to profess, practice, and propagate whatever religion they want to. Refuters of the UCC use this as a premise to argue that by implementing the UCC, the state would be curtailing their religious freedom and thereby restricting their fundamental rights. However, Article 25 is not an absolute right as it is subjected to certain reasonable restrictions, and one such restriction under Article 25(1)²³ is that it is subjected to other provisions of Part 3, i.e., it is subjected to Articles 14, 15, and 21, which advocate for the right to equality and the right to life with dignity. Another such restriction is mentioned under Article 25(2)²⁴, where the state has the power to regulate those religious activities, which are political, financial, and in any other way secular in nature, and through this contextualization, property and succession-related methods in different personal laws can be altered by the state, as long as they do not hold any religious values within their realm. In Article 25(2)(b)²⁵, the state can curtail religious freedom when it is a matter of social welfare, hereby allowing the state to curtail religious freedom when it is for the welfare of the women in society who are in a subservient situation. The state can also interfere in personal laws with the help of the doctrine of essentiality, which separates essential religious practices from non-essential religious activities, so that reform could occur in non-essential practices without undermining the value of essential practices.

²² Indian Const. art. 25

²³ Indian Const. art. 25, cl. 1

²⁴ Indian Const. art. 25, cl. 2(a)

²⁵ Indian Const. art. 25, cl. 2(b).

Article 26²⁶: As per the purview of this provision, people have a right to manage their own religious affairs. However, identical to the reasonable restrictions mentioned in Article 25, this provision is also entitled to the same restrictions, where the state can interfere in those religious affairs that are secular in nature. This principle was advocated in various judgements, such as in *N. Adithayan v. Travancore Devaswom Board*²⁷, where it was confronted about whether non-Brahmins could be appointed as pujaris in temples. The Supreme Court declared that Brahmins are not the only people who can perform worship at temples. The court further stated that, provided they possess sufficient knowledge of their profession, non-Brahmins may be designated as pujaris. Therefore, the state has the power to interfere with their religious rights as long as they are subjected to the reasonable restrictions of Article 26.

Articles 14²⁸, 15, and 21: All of these articles vouch for the right to equality and the right to life with liberty and dignity. Article 15²⁹ specifically states that no amount of discrimination would be permitted on the basis of sex or religion; thus, any form of discriminatory practice between husband and wife or two or more religious communities would not only induce the state to abolish such practice but also push them to implement UCC upon its citizens. Article 21³⁰, on the other hand, gives women a right to live with dignity, through the interpretation carried out by the Supreme Court in *Maneka Gandhi v. Union of India*³¹. Moreover, if Article 25 and Article 26 are subjected to other articles in Part 3, that would imply that they are subjected to these recognised principles mentioned in Articles 14, 15, and 21, allowing the state to intervene upon the personal laws to rectify the gender bias prevalent.

Even in various judgements, the Supreme Court advised the government to take actions for the implementation of the Uniform Civil Code, such as the *Sarla Mudgal case*³², the *Lily Thomas case*³³, *John Vallamattom and another v. Union of India*, etc., displaying the need for UCC in India to counter this gender disparity. These advices are the product of huge disparities regarding the practices in

²⁶ Indian Const. art. 26.

²⁷ *N. Adithayan v. Travancore Devaswom Board*, A.I.R 2002 S.C. 106.

²⁸ Indian Const. art. 14.

²⁹ Indian Const. art. 15, cl. 1.

³⁰ Indian Const. art. 21

³¹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248

³² *Sarla Mudgal v. Union of India*, A.I.R 1995 S.C. 1531.

³³ *Lily Thomas v. Union of India*, A.I.R 2000

different personal laws as well as high misuse of the principles of these personal laws for their own personal advantage.

The Question of sustainability in contemporary times

THE POSSIBLE IMPEDIMENTS:

Communal consideration: The rising trend of communalism in India has created a sense of insecurity amongst the minorities, like Muslims, and with the rising demand for a uniform civil code, this insecurity is turning into apprehension that they may lose their sense of touch with their extensive culture that they followed for so long. The communal tensions have been present since the mediaeval age, when there was an influx of Muslim invasions upon the soil of India, creating discontent amongst the hearts of existing Hindu rulers. It further got fueled through British Divide and Rule policy, which later laid down the path towards partition into two nation states, India and Pakistan, which was simmered in violence. Since then, the remaining Muslim population and Hindu population have been in incessant conflict with each other.

Now in this contemporary era, when India has witnessed so many terror attacks by Islamist organizations and so much violence caused by the demolition of Babri masjid, when India is witnessing a demand for Ram Rajya with the prevalence of Hindutva ideology, it could be concluded thereby that the implementation of UCC might be taken in a very negative light, which may cause huge unrest upon the nation through the means of protests caused by the Muslim community. That is why it became necessary for the state actors to take measures regarding the mitigation of communal tensions prevailing in society so that a successful implementation of the Uniform Civil Code could become possible. The government should also design the UCC in such a way that it targets discriminatory and redundant practices instead of plurality and diversity.

North-east situation: The government also has to consider the impact of UCC in the North-eastern states, as those states lived in continuous armed conflict for their preservation of autonomous identity separate from India and due to the region being a home for tribal populations who seek to preserve their cultural values. It is true that the Union Home Minister had promised the tribal population that they would be exempted from the implementation of UCC; however, it would merely serve as unfair treatment towards women of the tribal population, who are victims of the discriminatory practices of

their tribes.

In regards to the tribal population, the Indian Constitution provides protection for the customary regulations of tribal people in the Northeast. The northeast of the country is home to about 220 distinct ethnic groups, making it one of the world's most culturally varied regions. Significant tribal communities in the Northeast fear that their long-standing customs and practices—which are protected by the Constitution—would be infringed upon by a uniform civil code, particularly one that takes a majority-centric approach.³⁴ Inheritance, marriage, and religious freedom laws in the northern states—Mizoram, Nagaland, and Meghalaya, in particular—are expected to be impacted by UCC. Based on the 2011 census, the proportion of tribal people in Mizoram, Nagaland, and Meghalaya is as high as 94.4%, 86.5%, and 86.1%, respectively. The assembly of Nagaland even passed a motion opposing the Uniform Civil Code (UCC) and asking for the state to be exempted in the event that the Code is introduced, as the implementation of the UCC could potentially lead to encroachment on their religious and social customs, as well as the cultural laws of the Naga people.³⁵ That is why it becomes an ardent task for the state to not make haste regarding the implementation of the UCC unless they convince these tribes that it is for their betterment and welfare, which could be achieved by means of education. The state should also try to restore peace in the north-eastern region, where various armed conflicts are being carried out, for example, by Naxalites, unrest in Manipur, etc. Unless the escalating situation is mitigated, any kind of reform would only be met with huge protests against the state.

The structure of UCC: The structure of UCC would also determine its sustainability and its acceptance by the people of India. If the structure is manipulated as per the views of the majority, i.e., without consideration of the essential practices of minorities, it might result in disaster as it would destroy the plurality of the nation by making everything uniform as per the majoritarian principles. However, if the structure counters the ill practices of the communities without attacking their diversity, it might in some way become acceptable to the people. The same happened when reforms in the Hindu community were under way, as at first people found it unacceptable that their religious practices were

34 Talukdar, S. (2023a) Uniform civil code: Tribal communities fear erosion of customary laws, cultural heritage, Frontline. Available at: <https://frontline.thehindu.com/the-nation/uniform-civil-code-tribal-communities-in-northern-eastern-india-fear-erosion-of-customary-laws-cultural-heritage/article67105854.ece> (Accessed: 10 February 2024).

35 Nagaland Assembly unanimously adopts resolution seeking exemption from Uniform Civil Code (no date) The Wire. Available at: <https://thewire.in/government/nagaland-assembly-adopts-resolution-seeking-exemption-from-uniform-civil-code> (Accessed: 10 February 2024).

hampered, but in due time, people came to realise the significance of the given alternation.

Therefore, in order to bring the purview of UCC upon the nation, the following considerations have to be taken so that its sustainability becomes possible and allows women to have a legal back-up to uphold their rights in matters pertaining to the family:.

Conclusion

The implementation of UCC is a very important task for society for its welfare; however, after considering the recent events happening around the nation, it might not be a feasible option to implement it at once, as it may lead to the spread of a wide array of repercussions, such as the public unrest amongst the north-eastern states as well as the religious communities, which constitute minorities.

It is no denying that even though the nation is marching towards a progressive era, the people are still bound by their rituals of the past, which in no way help a person grow, render women the rights they deserve, or lead the nation to bridge the ever-widening disparity between genders in any religious community. That is why, in order to go past such practices, UCC becomes necessary, but it will only be able to sustain itself if the growing impediments in its path pass away. The status of women from time immemorial was all-time low as compared to that of men in society. That is why it is now the duty of the state to go past such mistakes and uphold all the constitutional values in the form of UCC without attacking the diversity and plurality of their customs, but in a gradual manner, when the communal tensions as well as the instability in the north-eastern region would become tolerable.

Therefore, the research concludes that UCC is not sustainable yet with the above-mentioned problems are lurking within the nation, however, if the current impediments get resolved, state should definitely implement it, in order to provide justice to various women, who are still part of the discriminatory practices in their civil practices.