
BEYOND THE VEIL OF PERSONAL LAW: THE UNIFORM CIVIL CODE AS AN INSTRUMENT OF GENDER JUSTICE IN INDIA

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ABSTRACT

The debate on Uniform Civil Code (UCC) in Article 44¹ of the Indian Constitution has always been politically sensitive due to its relation to religious identity politics and minority rights issues. Regrettably, the political nature of the discussion has steered attention away from the very objective of adopting UCC – achievement of gender justice and obliteration of patriarchy in family laws. This paper considers the rationale for introducing UCC through the prism of feminist jurisprudence. The main thesis in this paper is that uncoded religious laws with their archaic male interpretations influence negatively the civil rights of women regarding marriage, divorce, inheritance, and maintenance. This research paper presents detailed analysis of legislative codification of Hindu personal laws since the controversial Hindu Code Bills in 1950s up to the momentous amendments to Hindu Succession Act in 2005². Such analysis will illustrate the effectiveness of legislative codification in protection of women's rights.

In this research paper, there will be a critical consideration of the problems associated with Muslim women's personal law – the Muslim Personal Law (Shariat) Application Act, 1937³. The focus will be placed on shortcomings of judicial codification in solving problems like permission to have several wives and the right for unilateral divorce. Most importantly, in this paper, it is aimed to challenge the traditional objection to introduction of the UCC saying that Indian society is still immature enough to implement such law. The socio-legal concept of cultural lag will be introduced in the discussion. By means of two historical examples – abolition of sati practice in 1829⁴ in contrast with 1987 tragedy of Roop Kanwar case and opposition to the Special Marriage Act⁵ – this paper claims that legislation should precede

¹ INDIA CONST. art. 44.

² The Hindu Succession (Amendment) Act, 2005, No. 39, Acts of Parliament, 2005 (India).

³ The Muslim Personal Law (Shariat) Application Act, 1937, No. 26, Acts of Parliament, 1937 (India).

⁴ Bengal Sati Regulation, 1829, Reg. XVII (India).

⁵ The Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

social development. In other words, the law must play proactive role rather than follow the trend. Thus, in this paper it is proved beyond doubt that introduction of gender-just UCC becomes absolutely necessary for providing women's fundamental rights in India.

INTRODUCTION

The need for the enactment of a Uniform Civil Code as enshrined in Article 44 of the Constitution of India which is part of the Directive Principles of State Policy is one of the most vexed and yet unfulfilled constitutional obligations of present-day Republic of India. Indeed, Article 44 of the Constitution of India reads, "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". But despite the simplicity and clarity of the above provision, there are a lot of complex issues of religion, society and politics that have blocked any meaningful progress towards the realisation of this constitutional goal in the last more than seven decades. There can be no doubt that the nation can boast about its pluralistic culture. But, when it comes to Family Law, such an idea becomes excessive. While there are consistent laws governing the laws of crime, commerce and procedure, in cases of marriage, divorce, succession, inheritance and adoption there exists a peculiar duplicity as laws have been permitted to be framed in accordance with the faith of the parties involved in these matters. Needless to say, when a law does not distinguish between the spiritual and the temporal life of a person in a democratic state based on the ideas of equality and justice, there is a contradiction.

Sadly, the current debate on UCC, which has been going on for quite a long time became overly politicised in relation to homogenisation in favour of the majority versus the minorities. In the midst of intense debates and discussions over a possible legislation on UCC, one issue is often lost in today's political environment, that is, the goal of achieving uniformity for all citizens in the realm of civil law throughout history has been to remove gender inequalities and the eradication of patriarchy. The current paper aims at turning the heat from the field of politics to feminist jurisprudence. Religious law and texts have always been written by men for men in patriarchal societies. So, if the secular state permits laws to be reflective of the practices of various religions then it will be a repetition of the law made by men for men. The main argument put forward in this research paper is that a UCC can be a stepping-stone to women's emancipation.

Firstly, to comprehend the need for a Uniform Civil Code, it is important to know the clash

between Part III of the Constitution (fundamental rights) and family laws. Right to Equality (Article 14), prohibition of discrimination based on gender (Article 15) and right to live with dignity (Article 21) are in conflict with the right to freedom of religion (Article 25)⁶. Various conservative groups of all religions have tried to hide behind this article for a long time to maintain the status quo of discriminatory family laws. In other words, the doctrinal basis of feminist jurisprudence is the Constitution trumps morality. In other words, there should be no separate law for women of different religious persuasions.

To substantiate the above argument, it may be better to take a comparative view to examine the evolution of Hindu personal law with respect to stagnant Muslim personal law. We will attempt to demonstrate how the Indian state succeeded in breaking patriarchal conventions of centuries through legislative codification by passing the Hindu Code Bills and amending the Hindu Succession Act in 2005. This demonstrates the success of law-making in bringing about genderjust laws. At the same time, the paper seeks to highlight the precarious situation of Muslim women who continue to live under the archaically harsh provisions of the Muslim Personal Law (Shariat) Application Act, 1937. This act allows the practice of legalized polygamy, unilateral divorce and gender disparity in inheritance law.

Finally, the current study makes an attempt from a sociological angle to counter one of the primary objections to the enactment of a UCC in India, that is, the assertion of unreadiness of Indian society. Through making use of the notion of cultural lag, the paper studies the examples of abolition of sati praxis, the case of Roop Kanwar and the introduction of Special Marriage Act.

II. Mandate of the Constitution, Feminist Jurisprudence: Constitutional unfinished business of the Constituent Assembly

The importance of a Uniform Civil Code is reflected in the evolution of Indian laws beginning from the early years of the Republic, that is, the period of Constituent Assembly Debates (1946-1950). Constitution-making was no ordinary exercise of legal drafting; it was a bold and at times, hard-fought process, which attempted to merge a traditional (social and religious) system with a new system under the banner of liberty, equality and fraternity. From the standpoint of feminist jurisprudence, this period reflects a conflict between the norms of

⁶ INDIA CONST. arts. 14, 15, 21, 25.

patriarch and the ideal of the egalitarian society. The discussion that went into the drafting of Article 44 amply shows that the Uniform Civil Code was initially conceived with an eye on the goal of gender equality and not simply on the goals of administration and uniformity. This concern was eloquently and presciently expressed by women members of the Constituent Assembly such as Rajkumari Amrit Kaur and Hansa Mehta⁷. They understood the Uniform Civil Code not as an aspirational but as a necessary and highly judiciable Fundamental Right. As members of the Sub-Committee on Fundamental Rights, they understood that religion-based personal laws were one of the most powerful bulwarks upholding women's subordination to men in society. They asked, "How could there be equality before the law (Article 14) if there was inequality between women within the private sphere of the family?" When the Assembly opted for including the UCC in the Directive Principles of the constitution, rather than as Fundamental Rights, both Kaur and Mehta were strongly opposed. They noted that persistence of personal laws created a segmentation of Indian society along religious lines, deferring the achievement of justice for women. For them, deferring the adoption of a Uniform Civil Code meant that patriarchal laws continued to be protected under the Constitution.

This viewpoint was strongly supported by the Constituent Assembly's key architect Dr. B.R. Ambedkar. Ambedkar⁸ was convinced that religion should not have unfettered sway over civil issues like marriage, property and inheritance. He believed that placing religion in such a wide ambit would hinder social change. The Constitution, he argued, was created to allow society to break free of certain backward practices, and to redress social inequalities. Ambedkar knew well that many of these inequalities were defended in the name of religion, and he recognised the Uniform Civil Code as a potent legal tool with which to combat these structures in society, particularly in matters relating to women.

This discourse was made stronger by other prominent members of the Assembly, such as K.M. Munshi, who brought up concerns about the rights of religious minorities⁹. He noted that inequality, particularly with respect to women's property and the rights of widows, was often justified in the name of religion. Munshi proposed that religious laws should be limited to matters of faith and belief, and secular laws should be based on the principles of equality, justice and national harmony. His reflections raised a fundamental question: whether a modern democratic country should hold onto archaic religious practices codified through unequal laws

⁷ B. SHIVA RAO, *THE FRAMING OF INDIA'S CONSTITUTION: A STUDY* 326 (1968).

⁸ *CONSTITUENT ASSEMBLY DEBATES* 551 (1948).

⁹ *CONSTITUENT ASSEMBLY DEBATES* 547-48 (1948).

and norms, or embrace a more progressive legal framework enshrined in the Constitution?

But ultimately, the Constituent Assembly settled on a compromise. Confronting opposition from conservative elements of various religious communities, the UCC was relegated to Part IV of the Constitution as a Directive Principle of State Policy¹⁰. This move may have been politically savvy in the nascent years of the nation's independence, but it also had long-term ramifications. It postponed the establishment of a uniform legal framework and perpetuated discriminatory personal laws, which had a profound impact on women for decades.

This decision also led to a constitutional conflict that persists to this day in family law matters. On the one hand, there are Constitutional Fundamental Rights under Part III, such as Article 14 (equality before the law), Article 15 (prohibition of discrimination) and Article 21 (right to life and dignity)¹¹. On the other hand there is freedom of religion, enshrined in Article 25¹². Eventually, this gave birth to a sophisticated legal and philosophical conundrum about individual rights and religious freedoms. More recently, Article 25 has been used as a cover-up by conservative sections of society to prevent reform of personal laws on the premise that such laws are essential to religious practices. However, feminist jurisprudence does not entirely agree with this position by stressing the right to religious practice is not an absolute right¹³. It is fully subject to the restrictions of public order, morality, health and other Fundamental Rights. Moreover, the Constitution allows the State to regulate the secular phenomena of religions, particularly for the purpose of social reform.

In this sense, marriage, divorce, inheritance and property are essentially civil, not specifically religious matters. These issues have significant implications for individual rights, economic livelihood and dignity. Discriminatory practices in relation to these topics cause concrete harm, especially to women. Exclusion of women from equal inheritance rights or the persistence of practices such as polygamy clearly breach constitutional rights to equality, non-discrimination and dignity. Thus, feminist jurisprudence emphasises constitutional morality, which favours constitutional values over customs and practices. The Indian Constitution was designed to be transformative, seeking to transform society by changing it for the better. The persistence of discriminatory personal laws undermines the harmony between constitutional aspirations and

¹⁰ INDIA CONST. pt. IV.

¹¹ INDIA CONST. arts. 14, 15, 21.

¹² INDIA CONST. art. 25.

¹³ FLAVIA AGNES, FAMILY LAW: VOLUME 1: FAMILY LAWS AND CONSTITUTIONAL CLAIMS (2011).

the lived experiences of people, particularly in private spaces like the family. In this sense, the adoption of a Uniform Civil Code should not be seen as a threat to freedom of religion, but as an attempt to realise the transformative vision of the Constitution. It aims to establish that everyone, regardless of gender or religion, is treated on an equal footing. In conclusion, it further emphasises that a woman's position as an equal citizen must take precedence over a position of subordination determined by traditional or community practices.

III. THE STATUTORY EVOLUTION OF HINDU LAW: A PRECEDENT FOR REFORM

Possibly one of the best live case studies that bears testimony to the need and efficacy of a

Uniform Civil Code may be found in the reform of Hindu personal law enacted in post Independent India. Often, advocates against the UCC contend that personal laws are a part of a faith and should, therefore, fall outside the purview of the state. But the 1950s tell a very different story. The Indian state, engaging in a process of carefully planned and structured legislative codification, carried out drastic change in Hindu law and made substantial progress. We can understand this process in three stages: the highly patriarchal nature of pre-reform Hindu law, the political controversy over the Hindu Code Bills and, finally, the abolition of the coparcenary system of discrimination in 2005.

A. Pre-1950s Hindu Law as Oppressive

Prior to the 1950s legislative changes, there was no one singular source of Hindu personal law. Rather, it was a mixture of uncodified traditions, local practices and traditional exegesis of ancient religious treatises, such as the Shrutis and Smritis¹⁴. Broadly speaking, the law of the Hindus was divided into two major schools of thought, Mitakshara (widely followed in most parts of India) and Dayabhaga (followed in Bengal and Assam)¹⁵. From a feminist legal standpoint, the framework of this uncodified system was heavily inequitable and disadvantageous to women, relegating them to a lower status, even in their homes.

This inequality was most pronounced with regard to property rights. In the traditional Mitakshara system, women were not only absent from the coparcenary - the group of

¹⁴ DINSHAH FARDUNJI MULLA, *PRINCIPLES OF HINDU LAW* (23rd ed. 2018).

¹⁵ *Id.*

individuals in a joint Hindu family who had a share in ancestral property based on his or her birth - but also from the joint family itself. Therefore, women could not inherit property as absolute owners. Rather, they held what is called a "limited estate" which enabled them to only hold an interest in property for life, without being able to alienate, sell, or transfer the property, unless legally necessitated¹⁶. When they died, the property would not be inherited according to their intentions but be inherited by male relatives (known as reversioners). These reversioners often heavily monitored the female's use of the property to ensure it remained unharmed to be passed down to future generations of males¹⁷. This meant that women were economically constitutionally dependent on their fathers, husbands, sons or other male relatives.

Besides inequalities in property, the patrilineal institution of marriage under traditional Hindu law also served to promote patriarchy. In fact, marriage was considered a sacrament (*samskara*) and divorce was not available as an option in most upper caste Hindu societies¹⁸. There was no legal means for women to escape unhealthy marriages. Yet, men were not bound by these restrictions and allowed to take several wives. Bigamy and polygyny were well tolerated, creating challenging emotional and social contexts for women. While these characteristics are examples of how pre-reform Hindu personal law was an institution that enabled gender inequality, they are by no means a comprehensive list.

B. The Politics of the Hindu Code Bills

The state of newly independent India recognised the inherent injustices in the system and began a series of ambitious reform measures to advance women's status. These efforts began as early as 1941, when a committee was set up to consider the question of codification of Hindu law¹⁹. It called for a Hindu Code Bill. The first Indian Law Minister, Dr. B.R. Ambedkar, shouldered the mammoth responsibility of drafting the bill and pushing for its enactment.

A bitter political struggle ensued. Ambedkar's draft contained a series of radical reforms, including the scrapping of the birth-based *Mitakshara* coparcenary for property inheritance, removal of the limited estate, conferral of absolute property ownership on women, outlawing of polygamy and the creation of grounds for divorce. This drew sharp criticism from the

¹⁶ PARAS DIWAN, *MODERN HINDU LAW* (24th ed. 2019).

¹⁷ FLAVIA AGNES, *FAMILY LAW: VOLUME 1: FAMILY LAWS AND CONSTITUTIONAL CLAIMS* (2011).

¹⁸ DIWAN, *supra* note 16.

¹⁹ See generally GRANVILLE AUSTIN, *WORKING A DEMOCRATIC CONSTITUTION: A HISTORY OF THE INDIAN EXPERIENCE* (1999).

conservative and orthodox communities, who feared that the changes would destroy the foundation of the Hindu religion and family system. Arguments included that eliminating Mitakshara would lead to property being dispersed among daughters, and that legalising divorce would undermine the sanctity of marriage. President Dr. Rajendra Prasad speculated about whether Parliament had the right to meddle in matters of "religious concern"²⁰.

However, Ambedkar was unwavering in his belief that this was not a religious issue but a constitutional one, and reform was needed to uphold equality and justice. He was, however, unsuccessful in garnering political backing for the bill. In 1951, he resigned from his post to move another step in the fight for gender equality²¹. His action highlighted his unwavering dedication to women's rights.

However, the fight for reform did not stop. Prime Minister Jawaharlal Nehru realised the need for reform, and pursued a more realistic approach. In 1955-56 the original bill was split into four laws, which focused on different aspects of Hindu personal law. These laws included: the Hindu Marriage Act, 1955²², which established monogamy and provisions for divorce; the Hindu Succession Act, 1956²³, which replaced the concept of limited estate with absolute ownership of property; the Hindu Minority and Guardianship Act, 1956²⁴; and the Hindu Adoption and Maintenance Act, 1956²⁵. While these reforms marked a compromise, they marked a tremendous change in the status of Hindu women.

C. The 2005 Amendment and the Vineeta Sharma Judgment

Notwithstanding the revolutionary nature of the 1950s reforms, they were not completely "patriarchy-free". For example, some discrimination remained in the Hindu Succession Act of 1956. Section 6 of the Act excluded women from coparcenary rights, which were reserved for male family members (sons, grandsons and great-grandsons)²⁶. Women could only be property owners in certain restricted capacities, which meant that they were not on equal footing with men.

²⁰ Id. at 7.

²¹ Dr. B.R. Ambedkar, Statement in Parliament in Explanation of his Resignation from the Cabinet (Oct. 10, 1951), in 14(2) DR. BABASAHEB AMBEDKAR: WRITINGS AND SPEECHES 1317 (Vasant Moon ed., 1995).

²² The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

²³ The Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956 (India).

²⁴ The Hindu Minority and Guardianship Act, 1956, No. 32, Acts of Parliament, 1956 (India).

²⁵ The Hindu Adoptions and Maintenance Act, 1956, No. 78, Acts of Parliament, 1956 (India).

²⁶ The Hindu Succession Act, 1956, § 6, No. 30, Acts of Parliament, 1956 (India).

This inequality remained in place for decades, until persistent efforts by women rights' organisations resulted in the passage of the Hindu Succession (Amendment) Act, 2005²⁷. This law was a game changer as it recognised the coparcenary rights of daughters by birth, equal to their male counterparts, in relation to ancestral property.

But the application of the reform was fraught with challenges. One major point of contention was whether the amendment should be given retrospective effect. In *Prakash v. Phulavati* (2015)²⁸, the Supreme Court ruled that a daughter was eligible for coparcenary rights only if her father was alive at the time of the passing of the amendment. This reading of the amendment had a great impact on limiting the reform. This decision was subsequently challenged in *Danamma v. Amar* (2018)²⁹ in which the Supreme Court adopted a different position, resulting in confusion.

The issue was finally settled in *Vineeta Sharma v. Rakesh Sharma* (2020)³⁰, where the Supreme Court held that coparcenary rights are created by birth, regardless of whether the father was alive during the amendment. This decision overruled the decision in *Prakash v. Phulavati* and stated that the amended act will have retrospective effect. This revisited and affirmed that daughters have the same and inherent right of coparcenary from birth. The Court's-statement, "a son is a son till he gets a wife, but a daughter is a daughter for life", highlighted the pervasive and indissoluble nature of the relationship and its legal consequences³¹.

Finally, the shift from the notion of a limited estate to the equality of a daughter in property matters as promoted in *Vineeta Sharma's* case is a hopeful sign of the role of legal reform in facilitating social transformation. It shows that codification, coupled with a progressive legislative intention, can undo entrenched inequities. If this were possible with Hindu law, it lends support to the argument that more inclusive reform, such as the Uniform Civil Code, is possible.

IV. THE SUBJUDICATION OF WOMEN UNDER MUSLIM LAW

Unlike the progressive and reformist trajectory in the evolution of Hindu personal law over the

²⁷ The Hindu Succession (Amendment) Act, 2005, No. 39, Acts of Parliament, 2005 (India).

²⁸ *Prakash v. Phulavati*, (2016) 2 SCC 36 (India).

²⁹ *Danamma @ Suman Surpur v. Amar*, (2018) 3 SCC 343 (India).

³⁰ *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1 (India).

³¹ *Id.*

last seven decades, India's Muslim personal law has remained largely unchanged, not codified, and under the protective umbrella of religious conservatism. Roughly governed by the Muslim Personal Law (Shariat) Application Act of 1937³², this law still operates with little conformity to constitutional principles. The Act itself merely offers a general instruction - in matters of family law, Muslim Personal Law (Shariat) must be followed. But beyond this is a gap, which is often filled by conservative and orthodox interpretations made by religious liberals. From a feminist jurisprudential perspective, this absence of codification has allowed the maintenance of a system of structural subordination of Muslim women within a patriarchal legal system. This has allowed Muslim women to continue to experience systematic inequality in relation to marriage, divorce, maintenance and inheritance.

A. Marriage, Polygamy and the erasure of dignity

Perhaps one of the most stubborn instances of gender inequality under the Muslim personal law in India is the fact that polygamy continues to enjoy legal sanction. Whereas the Hindu Marriage Act of 1955³³ has barred bigamy and punished second and third marriages under Section 494 of the Indian Penal Code³⁴, a man under Muslim personal law can have as many as four wives. In a polity that embraces dignity, equality and freedom, this is a deeply concerning granting of their legal sanction. It violates a Muslim woman's right to dignity under Article 21 of the Constitution³⁵. The trauma, counselling, and financial hardships endured by women in these types of marriages can be overwhelming.

The lack of a Uniform Civil Code has also opened the doors to abuse of personal law across different faiths. There have been instances where men from other faiths have abused Muslim personal law to commit bigamy. For instance, in the case of *Sarla Mudgal vs. Union of India* (1995)³⁶, certain Hindu men had converted to Islam in order to commit bigamy. The Supreme Court, on petitions by aggrieved women such as Meena Mathur, explained that conversion is not a ground for dissolution of a Hindu marriage. Therefore, any second marriage would be invalid, and the man could be charged with bigamy.

While making observations, Justice Kuldeep Singh emphasised the need for a Uniform Civil

³² The Muslim Personal Law (Shariat) Application Act, 1937, No. 26, Acts of Parliament, 1937 (India).

³³ Hindu Marriage Act, 1955.

³⁴ PENAL CODE, 1860, § 494, No. 45, Acts of Parliament, 1860 (India).

³⁵ INDIA CONST. art. 21.

³⁶ *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635 (India).

Code, stating that the law of polygamy under Muslim personal law was being exploited to the disadvantage of women. This was reiterated in *Lily Thomas v. Union of India (2000)*³⁷ where the Court reiterated that conversion for the purpose of entering into a second marriage is an abuse of the law and not protected under the freedom of religion under Article 25 of the Constitution³⁸.

But a significant and concerning point arises from a feminist standpoint. In this context, though the courts have shielded Hindu women from such exploitation, there have been no such efforts in relation to Muslim women within their own legal system. This discrimination highlights a legal disparity. It implies that judicial intervention is often inadequate to redress entrenched injustices, and that reform - especially in relation to polygamy - should take place at the legislative level, perhaps through the adoption of a Uniform Civil Code.

B. Divorce Law: Triple Talaq and the Turbulence of Supremecy

If polygamy is one form of inequality, traditional Muslim divorce practices provide another, more damaging, type of inequality. For a long time, Muslim divorce laws were biased against women, as exemplified by the practice of *Talaq-e-Biddat* (instant triple talaq). Under this practice, a husband could unilaterally dissolve a marriage by uttering the word "talaq" thrice in one sitting, without recourse to the husband and wife attempting reconciliation, mediation, or judicial arbitration. In recent years, this practice has been employed through long-distance and electronic communication methods such as telephone, text messages, and emails, leaving women suddenly divorced and without immediate financial recourse. The unfairness of this practice was highlighted in the case of *Shayara Bano v. Union of India (2017)*³⁹.

Case Brief: Shayara Bano v. Union of India

Facts: Shayara Bano, after a fifteen-year marriage to Rizwan Ahmed, experienced a history of domestic violence, including forced abortions. In 2015, she was sent a talaqnama at her doorstep by her husband, who had divorced her without reconciliation. She then brought a writ petition, alleging that instant triple talaq was unconstitutional and violated Articles 14, 15, and

³⁷ *Lily Thomas v. Union of India*, (2000) 6 SCC 224 (India).

³⁸ INDIA CONST. art. 25.

³⁹ *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).

21 of the Constitution⁴⁰.

Majority Opinion: In a slim 3:2 majority, the Supreme Court ruled Talaq-e-Biddat unlawful. The majority invoked the concept of "manifest arbitrariness" and argued that the practice, which enabled a man to arbitrarily terminate a marriage without any process, was inequitable and contravened Article 14's equal protection provision. Justices R.F. Nariman and U.U. Lalit pointed out that such unilateralism contradicted the rule of law. Justice Kurian Joseph agreed, and added that it did not have any basis in the Quran.

Dissenting Opinion: The dissenting judges, Chief Justice J.S. Khehar and Justice Abdul Nazeer, disagreed. They contended that while the practice of Talaq-e-Biddat might be repellent or undesirable or even a sin, it was part of the personal law of the Hanafi school and thus protected under Article 25. They also held that law reform should be left up to the legislature.

Since this ruling, Parliament has passed the Muslim Women (Protection of Rights on Marriage) Act, 2019⁴¹, to prohibit the practice of instant triple talaq. This act provides for a man pronouncing such a divorce to pay a fine, and possibly be imprisoned for six months to three years.

This law, which is a significant step forward in the struggle for Muslim women's rights, only gets us part of the way there. Alternative methods of divorce, like Talaq-e-Hasan, continue to favour men. Moreover, the practice of Nikah Halala still lacks legal recognition⁴². In this practice, a divorced woman must remarry another man and then separate from him to be able to remarry her first husband. This procedure turns women into legal objects of an inflexible legal-religious system and devalues their personhood and power.

Another area of concern is the problem of inheritance of divorced Muslim women. Often women play a crucial role in their families' economic survival, but this is not always accounted for within the law. Contestations and complexities of women as sole earners or equal contributors to marriage are often overlooked in Muslim personal laws. These issues reveal the shortcomings of non-reforms and the need for more coherent legal reforms. Overcoming ingrained inequalities may therefore require fresh legislative tools, such as consideration of a

⁴⁰ INDIA CONST. arts. 14, 15, 21.

⁴¹ The Muslim Women (Protection of Rights on Marriage) Act, 2019, No. 20, Acts of Parliament, 2019 (India).

⁴² For an authoritative overview of these traditional practices under uncodified Islamic law in India, see DINSHAH FARDUNJI MULLA, *PRINCIPLES OF MAHOMEDAN LAW* (22nd ed. 2017).

Uniform Civil Code, which guarantees justice, equality and dignity to all, regardless of their faith.

V. THE UCC AS THE ULTIMATE EQUALIZER

In order to take the debate on the enactment of the UCC from the level of abstract conceptualisation and bring it to the level of drafting a law, the debate must extend to drafting and blueprinting. The common myth put by conservative critics of UCC, about the UCC, in the garb of the code aims at pressurizing the minorities to adopt the Hindu Succession Act and Hindu Marriage Act. To ensure the transformational implementation of UCC, the drafting process should move beyond the majoritarian approach and adopt elements from various national and international legal systems and exclude those religious orthodoxies which are gender-inequal and outdated. Accordingly, a model draft of UCC from a feminist jurisprudence perspective should have the following four elements. Firstly, it should legislate monogamy as mandatory for all communities, disallowing polygamy and bigamy for safeguarding the dignity of the female gender. Secondly, the draft should enact a homogenous secular age limit for marriage for both sexes, regardless of their religious backgrounds and invalidate all the scriptural provisions for child marriages after becoming "woman" through puberty for girls. Thirdly, the UCC should recommend equality of inheritance by removing the forms of fractional inheritance among males and females and among heirs and heiresses. Lastly, the UCC should make provisions for divorce and recognise free consent and marriage dissolution and make permanent and fully secular maintenance agreements. The question whether the adoption of UCC is feasible in spite of the diversity of the Indian population must be answered through some examples. In this context, focusing on the Indian State of Goa is best. On becoming free from the Portuguese domination, the Indian government has opted to retain the Goa Civil Code⁴³ that is based on the Portuguese Civil Code of 1867 and became the only secular family law in India.

The most progressive element of the Goa Civil Code from the feminist perspective is the concept of "Communion of Assets" (Article 1098)⁴⁴. According to this scheme of matrimonial property, each spouse gets 50 percent share of all the assets of the spouse owned before marriage and all the assets acquired by one's spouse during marriage. At the time of divorce

⁴³ PORTUGUESE CIVIL CODE, 1867 (Goa).

⁴⁴ Id. art. 1098.

the wife receives half of the matrimonial property. The law constitutes an important advancement for women's empowerment. In fact, all the Indian laws follow the principle of "Separation of Property" which leaves all the property to individuals/owners (i.e. husbands) and nothing to the women as they do not have the right to be compensated for their unpaid household work. Therefore, the Goan notion of Communion of Assets monetise and legalise women's work. Even with some shortcomings of the code (which include in itself controversial clauses such as, if the first wife fails to conceive a male child by the age of thirty, the man will be required to marry a second woman), this is a good example of UCC.

As we have explained the historical example of implementation of UCC - the example of the State of Goa - we can proceed to discuss the present day example of UCC - the case of the State of Uttarakhand, 2024⁴⁵. The UCC, being the first attempt of independent India's law, aims to stop institutionalised discrimination against women.

Most importantly, the Uttarakhand Act addresses all the issues stated above. That is, in accordance with the UCC, bigamy and polygamy are banned in any form of religion and only monogamy is permitted in the case of marriages in Uttarakhand. It makes all the inhuman patriarchal practices and rituals (such as Nikah Halala and Iddat) unlawful and punishable for forcing women into these acts. On the other hand, the UCC has prescribed the same marriageable age for the male and female population (18 for females and 21 for males). It abolishes all the Muslim Personal Laws to marry girls at the tender age of puberty; it fights the issue of child marriages.

As far as the property relations are concerned, the Act removes the Muslim Personal Law (Shariat) Application Act 1937⁴⁶ in Uttarakhand and creates equal rights for male and female children in matter of property inheritance and equal shares in the property assets to get rid of the tradition of Hanafi ratios whereby a female gets only half of the share of her brother. So, no woman in the state will be discriminated against as far as property and inheritance are concerned. The final and not least innovative feature of the new Act is sets up rules on regulating live-in relationship (Part III of the Act)⁴⁷. This makes registering such relationships mandatory with a provision of fine in case of any breach of the Act and seems to be a testament of women's lack of privacy as it should be guaranteed by the Article 21 of the Constitution of

⁴⁵ The Uniform Civil Code, Uttarakhand, 2024, No. 3, Acts of Uttarakhand State Legislature, 2024 (India).

⁴⁶ Muslim Personal Law (Shariat) Application Act, 1937.

⁴⁷ Uniform Civil Code, Uttarakhand, 2024, pt. III

India⁴⁸.

But revisiting the feminist impact of regulation of "private life" one should note a complex feminist undercurrent of this move. Live-in relationships in India are legally in limbo; thus, women who are victims of domestic violence and other forms of whimsical actions of their partners don't get alimony. Further, the children of live-in couples are discriminated over their legitimacy. Therefore, the Uttarakhand Act makes children born to live-in couples legally born and gives them an equal right to the property of the parents equal to the rights of children born in wedded families.

And the Act makes a bold step forward in extending the provision of equal rights to women in live-in relationships to receive the same maintenance as a wife does.

The Law has to Cajole Society to Change

Let's solve one of the most common arguments against enacting a Uniform Civil Code (UCC) now: the good old chestnut that "the public isn't ready". You hear it everywhere. Politicians, clerics, and a few, well-intentioned legal academics love to go around saying this. They tell us (usually with much theatrics) that once we get rid of our current fragmented set of religious personal laws and settle on one secular rulebook, there will be social hell to pay. Their advice? Sit tight. Wait it out. The government should merely hold its breath while the world spontaneously develops into utopia and then only if we have a harmonious agreement on the gigantic changes should we consider such a massive legal overhaul.

I have to say that on the face of it it seems like such a "safe" and "studied" approach. It sounds safe. Asking yourself this question - subjecting this argument to its scrutiny, the scrutiny of sociological jurisprudence - it completely fails. It's plainly defective. And not only is it a theoretical error; it has very real consequences - particularly as applied to the pursuit of gender justice.

If we are to break down this mentality of "wait and see", we have to examine two powerful sociological ideas which jell like mayonnaise. First, there is Roscoe Pound's beautiful theory of the law as wedge⁴⁹. Second, we have William F. Ogburn's "cultural lag"⁵⁰. When we

⁴⁸ INDIA CONST. art. 21.

⁴⁹ ROSCOE POUND, SOCIAL CONTROL THROUGH LAW (1942).

⁵⁰ WILLIAM F. OGBURN, SOCIAL CHANGE WITH RESPECT TO CULTURE AND ORIGINAL NATURE (1922).

combine these two ideas, it becomes clear why it's not just idealistic, but also actively pernicious for low income folks who need legal protection to wait until society is "ready" to have their rights given to them on a silver platter.

Let's start with Roscoe Pound. As the great exponent of sociological jurisprudence, Pound categorically denouncing the notion that the law should be a passive, reflexive vessel, simply reflecting whatever social prejudices and prejudices society happens to carry around at that time. Rather, he insisted, law must be someone with a lot of muscle. He saw it as a key means of "social engineering." For him, laws were carefully crafted instruments to remedy blatant injustices and contribute to enhancing human society. Consider societies where traditions from thousands of years ago and extreme forms of inequality are ingrained in day-to-day reality. In this type of society, the law cannot afford to be merely a passenger. It has to take the wheel. The law has to win the struggle for control over large groups of screaming, flailing people in much the same way that a powerful engine trains might forcibly drive a train into the future.

But, of course, it is never a particularly smooth ride, which brings us to William F. Ogburn's cultural lag theory. Ultimately, Ogburn saw human culture as split into two parts. On one hand you have "material culture", the physical things like our laws, institutions and technology. And you have "non-material culture", the intangible, the "stuff" like our beliefs, our morals, our traditions, and our norms. Here's the rub: when it comes to material culture (new law, anyone?), we can change everything overnight with the enactment of new legislation, but non-material culture changes with the speed of a sloth-turtle-worm-crawl and typically takes generations to catch up. That pesky, persistent lag between the radicals' new law and the reactionary attitudes of people? That is precisely what Ogburn called "cultural lag".

So, when you've got a new, progressive law, chances are it will be ahead of its time. People push back. They protest. But it doesn't mean the legislation was wrong or that it was passed "too early". It's natural resistance to change; it's something you'd expect. Consider the risk: if the government decided to do what they could to wait until everyone's mind was changed and in full agreement with our current, 21st century constitutional values before they moved to address the issue, we would never see reform. Nothing would ever change. And while the politicians wait around for this mythical day, women and men and all other those in need of protection (let's be really honest here, we are talking mainly about women) are left to languish in the reality of their plight every day due to antiquated, highly discriminatory institutions and

customs.

Just look to history to see why. It is a huge tomb of fascinating, often disturbing illustrations of this phenomenon. Perhaps one of the most visible battles in India's history is the fight to end Sati. Let's go back to the first half of the 19th century. At that time, Sati - the brutal practice of burning to death a living widow on the open air pyre of her dead husband was not universally opposed. Far from it, it was stubbornly prevalent in orthodox circles. Supporters of the custom enthusiastically tried to promote it as a noble act of supreme feminine worship and holy religious obligation, while totally obscuring the downright cruelty of burning a woman to death.

When fearless social reformers such as Raja Ram Mohan Roy launching an energetic campaign to stamp out this horrorscape, they ran into an uphill battle. Its opponents screamed from the skies that it was part and parcel of the religious creed. Their primary argument? You guessed it: "Society is not ready for such a drastic change." Sound familiar? Nonetheless, in the face of the loud bellow of opposition, Lord William Bentinck passed a law in 1829 that effectively outlawed the practice and deemed it illegal⁵¹. This was an example of "using the hammer of law to more aggressively push, and finally, change an entrenched and ominous social practice".

So, did the enactment of the law suddenly change everyone's attitudes? Of course not. As Ogburn foresaw, there was lag between the norms and practices of Sati, which was glorified, and the beliefs that made such a practice possible. The most shocking, pathetic instance of this lag occurred more than a hundred years later in 1987 with Roop Kanwar in Rajasthan. A young and newly widowed 18-year-old was cremated with her husband. And the worst part? Thousands reportedly encouraged, openly applauded and even celebrated the ghastly ceremony. This incident confirmed, without doubt, that despite it being illegal for over 150 years, a certain cultural attitude had yet to be fully converted to legality.

The outrage that erupted after the Roop Kanwar incident finally drove the government to act, and to pass the Commission of Sati (Prevention) Act in 1987⁵². But the real point of all this is indisputable. For a moment, suppose the government back in 1829 had had the theory that they must wait until "society was ready" to drop Sati? How many thousands of innocent women would have been burned while the politicians waited for the rest of society to catch up? The

⁵¹ Bengal Sati Regulation, 1829, Reg. XVII (India).

⁵² The Commission of Sati (Prevention) Act, 1987, No. 3, Acts of Parliament, 1988 (India).

law had to be the first step, no doubt. Social consensus was going to have to follow.

But it doesn't just matter from times like ancient Greece. Cultural lag also plays out closer to the present day with the inter-faith and inter-caste marriages facilitated under the Special Marriage Act (SMA)⁵³. In fact, the state provided a legal infrastructure to make this possible way back in 1872 and overhauled this in 1954, with a specific purpose of making inter-faith marriages possible without any coercive conversions. At face value, it is a most progressive bit of laws, and a quantum leap in the fields of personal liberty, freedom and equality.

And once we get off the page and into the reality of the world around us, it's quite a different, and much darker story. Despite the fact that this so-called secular marriage law is now - on paper at least - more than 100 years old, hundreds of couples who dare to choose to marry under the SMA, are targeted with brutal, intense discrimination. Hate-filled ideas about caste purity, village boundaries and "family honour" still inform public opinion to a large extent. We all read the news. In the most disturbing, devastating cases, young couples are tracked down, tortured beyond imagination and, finally, the infamous "honor killings".

This shocking, profoundly grating disjuncture between legal and social worlds is the very proof of cultural lag. But here's the catch: would any rational, responsible legal scholar ever suggest that, simply because it might not have been readily accepted by a large part of society, we should now get rid of the Special Marriage Act? Absolutely not. The law must stand and continue to protect, as an important defence. It gives courageous people a judicial space to exercise their inalienable human rights, although it guarantees they'll be fighting against society's discrimination.

And now, think of all these lessons from history with respect to the debate over the Uniform Civil Code. If you think this through, the answer is screaming at you. That the state should just "put off" any meaningful reform to our country's legal system until that system is ready for it, or until every sector of society is ready for it, is not only wildly unrealistic; it is deeply unjust. Pushing off the question until there is finally unanimous agreement, especially when you consider that the groups that are most vocal about the need for delay are often the very same groups that have a vested interest in maintaining the current, unfair status quo - is just postponing justice. It means justice delayed, jurisdiction denied. Or as the saying goes, justice

⁵³ Special Marriage Act, 1954.

delayed is justice denied.

The ugly reality is that in most cases, social acceptance comes after rather than before the law. Once a law change is made, it stakes a claim. It provides a new moral and legal standard, by necessity creating the crack in which staunchly traditional attitudes come to change. If we are unwilling to take the brave first step of legislative enactment, we do not create any demand for any cultural change to happen.

To continually delay the introduction of a Uniform Civil Code on the basis of "social readiness" is a ploy. It means putting a licence on discriminatory and inherently unequal practices, permitting them to continue to flourish unabated. More significantly, it unfairly shifts the unbearable burden of waiting to those who are the most disadvantaged. It asks vulnerable populations (especially women who are routinely denied equal status under personal laws) to be quiet and bear unequal status and privilege while we wait for the rest of the population to build up its tolerance level for equality and justice.

Ultimately, what is it that the state does? The state's role is not certainly not to pat us all on our backs and wait until we're all warm and cuddly about the changes that are about to be wrought. The job of the state is to unswervingly defend constitutional principles, guarantee basic civil rights and administer the uncompromising justice. When it comes to issues of civil rights and fundamental humanity, timidity can be more noxious than brutality. The law simply needs to have the guts to be first in line and open a path, no matter how reluctant the society may be to follow after many, many years.

VII. ADDRESSING THE RESISTENCE

Let's address the biggest legal and political obstacle to a Uniform Civil Code (UCC). It is not ordinarily the administrative aspects that are the strongest source of opposition; it is the vociferous, shrill argument that a UCC is constitutionally impossible. It's portrayed as a brazen, relentless attack on the freedom of religion. We hear this everywhere. Conservative community leaders, traditional clerics and politicians often join hands to claim that religion and personal laws are interwoven. They see efforts to make laws on marriage, divorce and inheritance uniform as an attempt to wrest away the rights of minorities which are enshrined in Article 25

of the Indian Constitution⁵⁴.

If we are to defend the UCC vehemently, from a feminist point of view, we must debunk this argument. And to do that, how? We use the same Constitutional provisions they are abusing in order to do so. The fact is, the opposition to the UCC is based on a huge misconception of the Constitution. Article 25(1) yes, protects freedom of conscience and the right to freely profess, practice and propagate religion. That's a wonderful right. But we are a complex, intensely traditionalist society where religious dogmas have in the past attempted to control every facet of human activity. And our Constitution drafters were well aware of this. That's why this right is not an unfettered right. If you read the first clause of Article 25(1), it clearly says that freedom of conscience is not an absolute right, but subject to "public order, morality and health and to the other provisions of this Part"⁵⁵.

The key to this particular room is that little phrase - "other provisions of this Part". It is critically important. It refers to all of Part III of the Constitution, the heart-and-soul of our fundamental rights. This includes the right to equality (Article 14), the right against discrimination (Article 15) and the fundamental right to life and human dignity (Article 21). Let's take this to people and the real world. When a religious tradition decrees that a mourning daughter must, by law, inherit only half of her brother's inheritance, or that a woman must submit to a polygamous marriage, that is a clear and obvious breach of Articles 14, 15 and 21⁵⁶. The Constitution was written in such a way that the secular guarantee of equality and dignity will always prevail over the right to practise a discriminatory religion. Article 25 is a haven for religion, not for gender injustice and oppression.

And it's not simply that the Constitution lays down these principles; it's that it actually mandates government intervention to curb unjust religion. Look at Article 25(2)(a)⁵⁷. This expressly allows the government to make laws "regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice". And if this was not enough, Article 25(2)(b)⁵⁸ allows the state to "provide for social welfare and reform". This ingenious delineation of the sacred and the secular is the very absolute foundation of Indian

⁵⁴ INDIA CONST. art. 25.

⁵⁵ INDIA CONST. art. 25, cl. 1.

⁵⁶ INDIA CONST. arts. 14, 15, 21.

⁵⁷ INDIA CONST. art. 25, cl. 2(a).

⁵⁸ INDIA CONST. art. 25, cl. 2(b).

secular jurisprudence, best exemplified by the "Essential Religious Practice" (ERP) doctrine.

Let's see how this doctrine originates. It emerged out of the landmark Supreme Court case of 1954, **The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt** - popularly known as the **Shirur Mutt** case⁵⁹. In this case, a seven-judge Constitution bench laid down the law. They concluded that Article 25(1) of the Constitution protects only those religious practices that are "essential" and "integral" to a faith. The court wasn't naïve; the judges well understood that in a country like India, religious texts often seek to regulate everything - including how much beef a Muslim can consume in a week. But the court firmly affirmed that the state has the final say in regulating secular activities, even though they may be given a religious cloak, or be based on ancient scriptures.

Thus, if we want to answer the question whether a particular personal law should be excluded from a Uniform Civil Code, we just need to apply the **Shirur Mutt** test. We need to ask ourselves: Is the decision to not allow a woman to inherit property "integral and essential" to a religion? Is polygamy an essential doctrine? And the answer is a very clear, "no."

Consider the facts of the matter. Marriage is a civil and economic union. Marriage is a civil union. Succession is the passing on of tangible, secular property. Divorce is the breaking up of a contract. Alimony or maintenance is a totally secular financial provision to make sure a vulnerable spouse does not become homeless. Neither of these things are related to prayer. They don't explain what a religious person must do to obtain salvation in the after-life. Since they are all secular in nature, dealing solely with human relations and civil agreements, they can and should be regulated by Article 25(2)(a) and (b).

The courts have applied the ERP doctrine on numerous occasions over the years to unmask archaic and pernicious social practices that were frantically trying to cloak themselves as religious practices that are beyond the law. It doesn't change anyone's faith to remove these discriminatory laws by enacting a UCC. It doesn't alter the core of a religion. It just strips the religious organisation's unconstitutional right to interfere with the secular rights of its citizens.

But let's move onto the second reason for opposition: tyranny of the majority. Historically, minority groups have been fearful that a Uniform Civil Code would just be the Hindu Marriage

⁵⁹ Comm'r, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282 (India).

Act and Hindu Succession Act imposed on them; in other words, a complete obliteration of their cultural identity. We cannot brush this fear aside. But, we also can't let this fear be perpetually used as a stalling tactic against feminist rights. As we pointed out above, a genuine Uniform Civil Code must simply not become an instrument of majoritarianism. If we are going to do this, a "true" UCC must be able to embrace the most progressive, egalitarian elements of **all** traditions - such as Goa's spectacular concept of community property, or the outright prohibition of polygamy - while ruthlessly stripping the patriarchal elements of **all** personal laws, including Hindu law.

At its core, at the end of the day, a lot of this legal resistance can be boiled down to patriarchal waffle. When conservative religious leaders are vocally protecting the "sanctity" of uncodified, inequitable personal laws, let's be really clear: they are not concerned about the overall rights of their minority group. They are fighting tooth and nail to protect their own patriarchal rights within the community, at the grave, unacceptable expense of their own women. Minority rights - real minority rights - can never be established by subjugating half their population. It is time the government rises above the din, and legislates a Uniform Civil Code using its constitutional power under Article 25(2) which finally places a woman's right to live a dignified and equal life at the centre of this debate.

VIII. CONCLUSION

Let's be honest about the result of the debates about the Uniform Civil Code in India. We've seen this crucial debate playing out for too long as an act of deliberate, and sadly misguided, victimisation. It has been sealed firmly inside the sordid and raucous echo chamber of religious identity politics, majoritarian anxiety, and a trenchantly dogmatic leadership. But as we have seen in this massive investigation, we must now bring about an effective end to this unrelenting politicization. We must rescue the UCC from the slime of identity politics, and bring it back to the domain where it belongs, in the domain of feminist jurisprudence, universal human rights and foundational constitutional morality. You only need to cast an eye over the history of our family laws since India's independence to see the bigger picture. These uncodified personal laws are not the dogmatic and divine utterances of God. Rather, they are ingrained patriarchal regimes, carefully crafted and sustained to keep women down, to restrict their autonomy and independence.

We have can evidence from the past that the state can intervene to redress this. Remember the

acrimonious and excruciating passage of the Hindu Code Bills in the 1950s? Look at the great leaps forward with the Hindu Succession (Amendment) Act of 2005⁶⁰ and the landmark Supreme Court decision in *Vineeta Sharma v. Rakesh Sharma*⁶¹ that finally put to rest the coparcenary discrimination in property laws. These landmark events help demonstrate, beyond a shadow of a doubt, that the Indian state has the legal and moral right to champion the successful fight against religion-based gender discrimination.

All this, in contrast with the abhorrent tragedy on the other end of the spectrum. We have the continued strict interpretation of the Muslim Personal Law (Shariat) Application Act of 1937⁶². It is an archaic system that leaves millions of Muslim women powerless, trapped in a rigid system. It's not only that it leaves them exposed to the daily sadism of polygamy; it makes them miserably vulnerable to the atrocity of unilateral divorces such as Talaq-e-Hasan and the highly traumatic and demeaning Nikah Halala. Add to this a fairly belated economic impoverishment occasioned by grossly inequitable maintenance laws and an enforced socioeconomic subordination through the inequitable distribution of property following the Hanafi ratios of inheritance for women and men, and you have a grim picture of the reality facing these women.

And yet, whenever we hear cries for reform, we know what the politicians will do: they will invoke the political rhetoric of their choice, and tell us that we just "aren't ready" for a UCC. They want to put the pause button on, and perpetuate the waiting game. As we have written at great length, this is not only a poor argument in law, but also a socio-goliathan blunder. If we think of William F. Ogburn's idea of cultural lag⁶³, combined with Roscoe Pound's model of social engineering⁶⁴, it should all make sense. History certainly tells us so. Consider the enormous, violent, societal outcry over the ban on Sati in 1829⁶⁵, or the sometimes vicious resistance to inter-faith couples seeking to use the Special Marriage Act today⁶⁶. These two instances show definitively that if we're going to get change in this country, we must first get the law right. The law must be the sabre that slashes through social rustiness. To delay the introduction of a Uniform Civil Code simply because some orthodox groups are making a fuss is shameful. It is a full blown capitulation to patriarchy and a blatant, unacceptable betrayal of

⁶⁰ Hindu Succession (Amendment) Act, 2005.

⁶¹ *Vineeta Sharma*, (2020) 9 SCC 1.

⁶² Muslim Personal Law (Shariat) Application Act, 1937.

⁶³ OGBURN, *supra* note 50.

⁶⁴ POUND, *supra* note 49.

⁶⁵ Bengal Sati Regulation, 1829.

⁶⁶ Special Marriage Act, 1954.

Indian women who are reduced to ceaselessly suffering under the scourge of law every day.

And the arguments in support of the retention of personal laws also make no sense under legal examination. Over and over again, the Supreme Court has invoked the doctrine of "essential religious practices" to establish a clear line of defence⁶⁷. They have confidently drawn the line between worldly and religious practices, with acts such as marriage, divorce, succession and alimony firmly in the former category. They are legal and economic contracts; they are in no way protected under the right to practice religion (formerly under Article 25 of the Constitution). Let me just make this point clear: reno-vating family laws and scrubbing out discrimination in a mindfully crafted, universally applicable UCC does not wipe out anyone's minority status. On the contrary, it takes away from faith based institutions their unauthorised, unconstitutional right to interfere with and undermine a woman's civil rights.

Given all the above, the final verdict is inevitable. The Indian Constitution is not some perverted, qualified form of secularism where religious fundamentalist, male chauvinist practices are protected behind the shield of the Constitution and the rights of half the population are crushed underfoot. Fundamental Rights are not conditional. The absolute, unconditional protection of equality guaranteed by Article 14, the absolute prohibition on discrimination provided by Article 15 and the right to lead a life of the highest human dignity under Article 21, does not miraculously transform and become ineffective the moment a woman turns to enter the front door of her house. The enactment of a Uniform Civil Code is the final, inevitable step towards an equal society. Until our polity finds the courage to frame and implement it, the ego-boosting constitutional promise of equality will be nothing more than flatus and the fundamental rights of our women will be pitilessly sacrificed on the altar of personal laws.

⁶⁷ Shirur Mutt, AIR 1954 SC 282.