
EXPLORING PROVISIONS AND JUDICIAL PRECEDENTS PERTAINING TO THE UNIFORM CIVIL CODE IN INDIA

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INTRODUCTION

The concept of a Uniform Civil Code (UCC) in India has been a subject of intense debate and discussion for decades. Rooted in the principles of equality, justice, and secularism, the UCC seeks to establish a single set of personal laws governing various aspects of civil life, irrespective of an individual's religion or faith. This research paper delves into the provisions and pivotal case laws concerning the Uniform Civil Code in India, examining its historical trajectory, contemporary relevance, and the diverse perspectives it elicits.

The multicultural fabric of India is interwoven with a multitude of religious and customary practices, often leading to disparities in personal laws across various religious communities. The UCC aims to harmonize these disparities, promoting a sense of unity and social cohesion while upholding the principles enshrined in the Indian Constitution. By scrutinizing the provisions and legal interpretations surrounding the UCC, this paper seeks to shed light on the complex intersections between personal beliefs, societal norms, and constitutional imperatives.

Through an in-depth analysis of landmark judgments, this paper will critically evaluate the judicial approach towards the UCC. The Indian judiciary, as the guardian of the Constitution, has played a pivotal role in shaping the discourse surrounding this issue. By examining case laws that have grappled with questions of individual rights, cultural preservation, and the state's role in religious matters, this research aims to provide insights into how the legal landscape has evolved over time and the implications it holds for future reforms.

Furthermore, this paper recognizes the diverse range of opinions and concerns that have surfaced in relation to the UCC. Debates surrounding cultural autonomy, minority rights, and gender justice have underscored the complexity of implementing a uniform code that respects individual

freedoms while promoting societal unity. By engaging with various viewpoints, this research paper aims to foster a nuanced understanding of the multiple dimensions associated with the UCC, facilitating a more comprehensive dialogue on this significant constitutional issue.

In conclusion, the exploration of provisions and case laws related to the Uniform Civil Code in India is an endeavor to unravel the intricate tapestry of legal, social, and cultural factors that underlie this contentious topic. By examining the historical evolution, judicial interpretations, and contemporary discussions, this research paper aspires to contribute to a well-rounded comprehension of the challenges and opportunities presented by the pursuit of a Uniform Civil Code in a diverse and pluralistic nation like India.

Many articles of the Indian Constitution have some bearing on the urgent problem of creating a uniform civil code. The only part of our Indian constitution that has direct reference with the Uniform Civil Code is Article 44. There is an indirect connection between the Uniform Civil Code and the other parts of our Indian constitution, such as the Bill of Rights, the State Policy Directives, the Fundamental Duties, and the Preamble.

1.1 PREAMBLE

Our Indian Constitution's Preamble made special note of the Uniform Civil Code as well. The 42nd Amendment Act of 1976 inserted the word secular to the Preamble of our Indian Constitution. Secular refers to a state that does not promote or practice any particular religion. In theory, the state should respect all religions equally in India, but in practice, there exist disparities. The Uniform Civil Code's implementation is a crucial step toward realizing the ideals of a secular nation.

The Constitution of India creates a wall of separation between the government and religion. To emphasize that no religion in the state will receive any state patronage and that no citizen in the state will be treated differently or discriminated against because of the religion they practice, the word "secular" was added to the preamble of the Indian Constitution in 1976. In other words, the government will not take into account how its citizens choose to worship.¹ Religious freedom is

¹ Larson James Gerald, (ed.), "Religion and Personal Law in a Secular India - A Call to judgement", Social Science Press, Delhi (2001) P.24.

not an absolute right and is subject to state regulation, with the exception of the right to freedom of conscience under Article 25 (1) and the right of minorities to preserve their distinct language, script, and culture under Article 29 (1). However, the Constitution protects various religions and religious groups by including religious rights as Fundamental Rights under Articles 25-30. The term "faith" refers to the professed religious ideas and tenets that adherents hold to be essential to their edification.

According to the Supreme Court's decision in *Bijoe Emmanuel v. State of Kerala*, religious practice is more than just holding a set of beliefs; it also entails observance of the religion's tenets through rituals and sacraments.² Government restrictions on religious expression must pass the "public order, morality, and health" test in order to be sustained, and courts are often called to rule on whether or not such restrictions are justified. The Supreme Court reversed school expulsions of Jehovah's Witness children who refused to stand for the national anthem or make a military salute because doing so violated their religious beliefs. A group of Muslims in Gujarat argued that a law prohibiting the public slaughter of cows, bulls, and bullocks violated their Article 29 religious and cultural rights, but the Gujarat High Court ruled otherwise in *Usmanbhai Hasanbhai v. State of Gujarat*.³

1.2 FUNDAMENTAL RIGHTS

Part III of the Indian Constitution guarantees certain rights to all Indian nationals. It is reasonable to demand these basic freedoms. Therefore, under Article 32 or Article 226 of the Indian Constitution, a person may file a suit in a competent court if the state violates his or her basic rights. One of the major obstacles to enforcing the Uniform Civil Code is resolving the tension that exists between the Constitution and the many personal laws. The conflict between the state's authority to establish the Uniform Civil Code and citizens' freedom of religion under different personal laws is extremely difficult to reconcile. Some of the sections of part III of the Indian constitution that deal with this idea indirectly are as follows.

² AIR 1987 SC 748.

³ AIR 1981 Guj. 40.

Article 13 of the Indian Constitution declares null and illegal any and all laws that run counter to the provisions of Part III. Equal protection and equal treatment under the law are guaranteed to all citizens in accordance with Article 14. When a government body upholds discriminatory norms regarding matrimonial rights, succession, division, maintenance, and guardianship, this is called institutionalized prejudice. If so, that goes against the letter and spirit of Article 14 of the Indian Constitution. Article 21 of the Constitution guarantees every citizen the right to freedom, which must be enjoyed within the bounds of the law. A recent ruling by the Supreme Court established that any such process must be just and fair.⁴ Given that families are associations, they are only subject to limited legal restrictions to ensure public order and decency. The constitutional provisions at issue here place an emphasis on fairness, including in the domain of private law.

Other parts permit or even require the state to bring about societal reforms. Nothing in this article (particularly, Article 25(1) guaranteeing freedom of religion) shall affect the operation of any existing legislation or prevent the state from "passing any law providing for social welfare and reform..." as stated in Article 25(2)(b). The state may pass legislation that provide special protections for women and children in accordance with Article 15 (3). Furthermore, the state has the capacity to implement social changes under Art. 25, therefore the right to protect religion under Article 29(1) cannot be interpreted to safeguard personal laws. (1).

The essential question when using Part III of the Constitution as a yardstick for establishing the constitutional legitimacy of personal laws is whether or not personal law is law at all for the purposes of Part III. Personal law, whether derived from tradition or statute, is a body of rules that governs the rights and duties of individuals and is enforced by the courts or the executive branch of government. As the court rightly saw, the challenged Act was actually a social reform legislation with the goal of promoting gender equality within the Hindu community. Because each community's personal law is connected to different social, cultural, and historical reasons, widespread reforms that affect all communities at once are unrealistic; instead, reasonable reforms should be enacted piecemeal and gradually, starting with the community that is most developed

⁴ Meneka Gandhi v. Union of India, 1978 1 (SCC) 248.

and ready to receive the reforms. This could have been the response to the Hindu and Muslim comparison.

The criteria that will be applied here can be gleaned from the Constituent Assembly's discussions on Article 44. If adequate sociocultural grounds could have been shown for the basis of categorization, the challenged rule may have been upheld as consistent with Art. 14. This would have been the fair and reasonable way out of the predicament. To avoid a potential liberal or egalitarian influence on personal law, the court ruled that it is not law for the purposes of Article 13.

Now, we'll go over every part of the Indian constitution that has anything to do with the UCC.

1.2.1 ARTICLE 13

This article states that to the extent that any law is in conflict with Part III of the Indian Constitution, such law is null and invalid. The provisions of Part III of the Indian Constitution are at odds with a number of personal laws in India. However, this does not nullify the provisions of personal laws. In one of the precedent instances, it was contested. *Narasu Appa Mali v. State of Bombay* According to the Bombay High Court's interpretation of the phrase "law in force," personal laws are not included.⁵ As a result, despite having broken article III of the Indian Constitution, they are nonetheless valid.

To the extent that any statute, executive order, rule, regulation, bylaw, notification, custom, or usage is in opposition to or inconsistent with the provisions of the Constitution, such statute, executive order, rule, regulation, bylaw, notification, custom, or usage shall be null and invalid. No state may pass a legislation that denies or restricts a right guaranteed by Article III of the United States Constitution. To the extent that they were or are inconsistent with Part III of the Constitution, pre-Constitutional laws that were in effect before its enactment are null and invalid. The text of this Article 13 makes plain the intent of the Constitution's framers. Nothing may be done to undermine Part III, which serves to defend basic rights for Indian citizens. Due to the personal nature of the rights guaranteed here, this provision receives further safeguards. Whatever

⁵ AIR 1952 Bom.84.

fundamental rights are provided in Part III are of the sort that neither the people of this nation nor those of India can claim to be Secular in the truest sense if they are not upheld.

It goes against the spirit of this Art. to create barriers between people in order to guarantee them the freedoms guaranteed by Article III of the Constitution. In India's personal law system, citizens of different religious persuasions are afforded different protections under the law. Fundamental rights include things like fair treatment under the law and equal access to the courts. In this respect, Art. 13 stands in stark contrast to the personal law system, which is essentially based on local norms and usages. This article offers no compelling argument in favor of the wide variation in local personal laws.

Both pre-Constitutional laws and post-Constitutional legislation are addressed in Article 13, with one clause addressing the former and the latter. Both sets of rules need to conform to Part III of the treaty. A third provision of Article 13 defines the terms "law" and "laws in force" as used in the first two clauses of Article 13. It is clear that un-codified personal laws are not within the scope of Article 13 (1) due to the lack of any mention of "personal law" in the definition clause and the meaningful use of the term "competent authority" in relation to pre-constitutional laws. Any ordinance, by-law, rule, regulation, notification, custom, or usage with the force of law in the territory of India is included in Article 13 of the Indian Constitution.

Furthermore, it stated that "laws passed by a legislature or other competent authority in the territory of India prior to the commencement of this Constitution and not previously repealed, notwithstanding that any such laws or any part thereof may not be in operation at all or in any particular area at the time," are considered to be "laws in force." Personal law is not discussed in this article.

In *Narasu Appa's case*⁶, The M.C. Chagla was compelled to record these "extremely unambiguous points" in the case of *Narasu Appa* due to the inapplicability of Article 13(1) to personal laws that are not codified in statute. The same case also featured an argument by P.B. Gajendragadkar that Article 13(1) only applied to "what may compendiously be defined as statutory legislation." D.D. Basu, H.M. Seervai, and Mohammad Ghouse are just a few of the eminent academics who disagree

⁶ AIR 1952 Bom.84

with the judicial opinion of the two prominent judges of the time and hold that Article 13 applies to all elements of personal law, statutes and otherwise. The Chagla Gajendragadkar judgement from 1952 has been followed by all of the country's highest courts, although in silence and without much fanfare.

The chief justice of India has concluded his arguments by following observation.

“Although the point urged before us is not free from difficulty on the whole, after a careful consideration of the various provisions of the Constitution we have come to the conclusion of personal law is not included in the expression „law in force“ used in article 13 (1)”.⁷

Justice Gajendradkar agreed with Chief Justice Chagla that article 13(1) refers to "what may compendiously be defined as statutory laws," or laws "approved or made by a legislative or other competent body." He continued by saying that the personal norms of Islam and Hinduism, which are based on "scriptural scriptures," "do not fall within the ambit" of article 13 since they cannot be said to have been created or adopted by a legislator or competent authority.⁸

In another case, *Sri Krishna Singh v. Mathura Ahir*, the Supreme Court ruled that personal law does not qualify as law under Article III of the Constitution. The circumstances surrounding this case were likewise quite exceptional. After Swami Atmavivekanand of 'Sant Math' Mathura Ahir passed away, the 'Bhesh of Sant Math' held a ceremonial Bhandra to choose his closest disciple as the next Mahant, honoring the wishes of the late Swami. Srikrishna Singh, Atma Vivekanand's (in his purvahrama) son, was in charge of the mathematical qualities. Following the new Mahant's assertion of ownership over the Math, Krishna Singh contended that the statute mandating service to one's father upon the latter's acceptance of sanyasa was discriminatory and hence the Shudra could not become a Mahant of Sant math. The court rejected the first line of defense, ruling that the challenged regulation was not discriminatory and that even if it had been, it could not have been struck down under Art. 13 since personal law is not a law. For the second part of the case, the court backed the validity of the appointment after explaining the norms for the devolution of Mahantship in the Sant Math Sampradaya. The fact that Article 13 did not apply since it did not

⁷ AIR 1952 Bom. 89, para 13.

⁸ AIR 1952 Bom. 91, para 13.

deal with personal law was irrelevant. Neither the laws in question in *Narasu Appa* nor the ones in *Krishna Singh* were fundamentally incompatible with Articles 14, 15, or 16. The Court's rationale was based on the right to equality, which led to a similar outcome. Because of its ambivalence and the fact that the right to equality is both malleable and activist, the judiciary had to tread carefully.⁹

In *Gurdayal Kaur v. Mangal Singh*, the High Court of Punjab said, "If the claim of discrimination based on caste or race is true, it will be impossible to have different personal laws in this country, and the court will have to go so far as to say that different creeds or communities are constitutional. To assert such a thing is to be refuted. Some have claimed that the concept of equality's logical extension to this extreme is unnecessary, notwithstanding the advantages of the idea itself. All personal laws can employ Part III to counteract unfair, discriminatory, and anti-liberation ideas. Mohammad Ghouse argues that the fact that different jurisdictions have different sets of personal law is no excuse when those laws violate basic liberties. He sees the decision made by the Punjab High Court as mere obiter dicta."¹⁰

In the landmark case *Sant Ram v. Labh Singh* (1965), the Supreme Court was asked for the first time to determine if the personal law of Muslims pertaining to pre-emption constituted law under Art. 13 and if it was in violation of Art. 19 (1) (f). According to the Court's response, Article 13 must be interpreted in light of both the definition of "law" in Art. (3) (b) and the definition of "laws in effect" in Art. It was decided that the pre-emption principles infringed Article 19 (1)(f), which guaranteed the freedom to acquire, hold, and dispose of property, because they were based on customs and traditions.¹¹

1.2.2 ARTICLE 14

"Equality before law - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India"

No citizen or resident of India will be treated differently from any other citizen or resident for whatever reason, as guaranteed by this Article. This implies that persons of different faiths, races,

⁹ AIR 1980 SC 707.

¹⁰ AIR 1968 Punj. 396. at 398.

¹¹ AIR 1965 SC 314.

castes, sexes, and national origins should all get the same level of protection from the state. However, in India, distinct personal laws apply to people of different religions. Different personal laws have discrepancies.

The main gist of this Article is that everyone inside India's borders has the same level of legal protection and treatment. Both Indian citizens and foreigners are equally entitled to this basic freedom. To put it simply, "any person" is meant to convey the intent of the article's crafters. There is a strong emphasis on "equality of statutes and of opportunity..." in India's founding document. This means that the government has to treat everyone equally under the law. If this requirement is not met, it is a violation of the Constitution.

Article 14 uses two clauses to establish equality as a legally obligatory basis of state behavior. The former claims that all persons are protected equally in the same position and under the same conditions, whereas the latter claims that everyone is equal before the law, that no one may claim special privileges, and that all classes are equally subject to the ordinary law of the nation. There can be no partiality in the provision of benefits or the imposition of duties. The Supreme Court has looked at one side of the issue, the positive side, and has not yet assessed the impact of bad content on positive content.

The question of whether or not the equality clauses in articles 14 and 15 of the Constitution would affect the religious and sex-based diversity present in the fabric of such laws has been raised in relation to the applicability of Part III of the Constitution to non-statutory personal laws. Traditional personal norms, especially those pertaining to Hindus and Muslims, have been criticized for their alleged religious and sexist bias. The courts have been presented with several instances alleging discrimination under various laws, but have generally sustained such laws on the grounds that Part III of the Constitution does not extend to non-statutory personal laws.

In *Nalini v. State of Bihar*, the Patna High Court ruled that the ban on females serving as coparceners is not covered by Article 15 of the Constitution.¹² The Karnataka High Court concluded in *Mukta v. Kamalaksha* that "the legitimate illegitimate differentiation in the question of children's maintenance rights under Hindu law does not result in unconstitutional

¹² AIR 1977 Pat. 171.

discrimination.”¹³ On the basis of article 15, the Punjab High Court earlier refused to put the power to dispose of ancestral property to the test.¹⁴

It's worth noting that, in Ahmedabad Women Action Group v. Union of India, “the Supreme Court of India dismissed three writ petitions challenging the constitutionality of various parts of several personal laws, alleging, among other things, that they violated articles 14 and 15.”¹⁵ The matters addressed in the case were issues of State policies with which the court will not typically have any concern, the Court said in Maharshi Avadhesh v. Union of India, the Supreme Court shared the same sentiment.¹⁶

So far, the judicial trend shows reluctance on the part of the courts to rule on the validity of numerous personal legislations based on the criteria of article 14 and 15.

1.2.3 ARTICLE 15

No citizen shall be subjected to racial, religious, caste, gender, or national origin bias in accordance with the provisions of this article. In light of India's Personal Law System, however, it becomes clear that this Article is also violated by the Personal Law System, as it handles laws differently depending on factors such as one's religion, race, caste, gender, and place of birth. Personal laws for people who identify as Hindu differ from those of Muslims. Personal laws for Christians are distinct from those for Parsis. Articles 15(3), 15(4), and 15(5) do not apply to such harm.

1.2.4 ARTICLE 25 TO 28

RIGHT TO FREEDOM OF RELIGION

Article 25 of the Indian Constitution guarantees every Indian citizen certain basic rights. Every Indian citizen has the right to freely profess, practice, and spread their religion, as guaranteed by this article. Article 26 guarantees the right to control religious institutions. The freedom to form and support religious and philanthropic organizations is protected under this section. Taxes

¹³ AIR 1960 Mys, 182.

¹⁴ 1971 Cur. L.J. 660.

¹⁵ (1997) 3 SCC 573.

¹⁶ 1994 Supp. (1) SCC 713.

collected for the purpose of advancing any religion are not prohibited by Article 27 of the Indian Constitution. No individual or group of individuals will be required to pay any taxes for the purpose of supporting or advancing any specific religion or religious sect, as provided in this article. Article 28 also protects students' rights to participate in religious teaching or worship at school. It is made quite plain in this provision that no state-funded school may offer religious instruction to its students. Articles 25 through 28 of the Indian constitution provide the greatest challenge to the implementation of the Uniform Civil Code. However, the liberties enumerated below are not absolute.

Freedom of religion, thought, and expression are all protected under Article 25 of the Indian Constitution. Therefore, (1) everyone has the right to believe what they want and to freely practice, teach, and propagate their faith, within the bounds of public order, morality, and health, and subject to the other provisions of this part; and (2) nothing in this article shall affect the operation of any existing law or prevent the state from making any law - (a) regulating or restricting any economic, financial, political, or other secular activity which may be associated with r; According to its explanation clause (1), kirpan usage should be considered part of the Sikh religious profession.¹⁷

Articles 25 and 26 should be read together for clarity. Article 25 protects an individual's freedom of religion, whereas Article 26 protects the freedom of religion for organized groups. Both articles protect the free expression of religious ideas and practices, including rites, observances, ceremonies, and forms of worship. Religious tolerance is discussed in these articles; it is one of the hallmarks of Indian culture and has existed since the beginning of time, with the few exceptions being brief blips on the historical radar.

However, protections for religious freedom cannot be invoked to excuse conduct that endangers public safety, health, or morality. Article 25 states that this freedom must be balanced with the need to protect "public order, health, and morals." Since section 295-A of the Indian Penal Code imposes a restriction in the interest of public order by criminalizing the deliberate and malicious intention of outraging the religious feelings of any class of Indian citizens, the Supreme Court

¹⁷ The Constitution of India, Article 25.

ruled in *Ramji Lal Modi v. State of Uttar Pradesh* that it does not violate articles 25 and 26.¹⁸¹⁹ There is protection for the free exercise of religion within the bounds of public order, health, and morality, but no such protection exists for acts that are economic, commercial, or political in nature, even if they are tied to religious practice. It's true that it's not always simple to tell if an issue is properly classified as a religious practice or if it's really just a secular, commercial, or political action that has been given a religious veneer. However, the Supreme Court has determined that foreign authority cannot be used to determine what issues are and are not governed by religion in the United States.

A person has the right "not only to entertain such a religious belief as may be approved by his judgement or conscience, but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion," the Supreme Court ruled in *Ratilal Panchand v. State of Bombay*, with the caveat that this right is limited by Article 25.²⁰

The Supreme Court said in another case, *Comm. H.R.E. v. Lakshmindra* that, "Religious practises or the performance of activities in furtherance of religious belief are as much a part of religion as faith or belief in certain doctrines."²¹

In *Mulla Tahir Saifuddin v. State of Bombay*, the Supreme Court stated that in order to apply Article 25(2)(a), religious acts must be divided into those that are primarily religious in nature and those that are not.²² It was held in *Durgah Committee v. Hussain* that "determining whether a religious activity is an essential aspect of a religion is an objective question for the court to decide, and that a religious denomination's position is not final. In light of these legal decisions, we must consider the role of personal law as an integral aspect of Islamic faith, to which a Muslim will typically respond with a resounding affirmative. There are numerous comments made by Muslim ulemas, attorneys, and politicians, as well as resolutions approved at Muslim conferences, declaring that Muslim personal law is an integral element of Islam. However, in light of the

¹⁸ AIR 1957 SC 620

¹⁹ Section 295-A, Indian Penal Code, 1860.

²⁰ (1954) SCR 1055.

²¹ Ibid.

²² AIR 1962 SC 853.

Supreme Court's decision in the Durgah Committee case, their conviction is not conclusive in the case and must be reviewed by the courts.”²³

The Allahabad High Court has declared, in two consecutive decisions, that bigamy is not central to either the Muslim or Hindu faiths. While deciding the first case, Justice Oak might rule "that under Muslim personal law, one may have as many as four wives." But I don't think it's a religious practice to have several spouses. Therefore, a law that forbids a Muslim man from marrying more than one woman does not violate his constitutionally protected freedom of religion or expression.

In Narasu Appa Mali's case Justice Chagla had said :

*“If religious practices run counter to public order, morality or health, or a policy of social welfare upon which the state has embarked, then the religious practices must give way.... Marriage is undoubtedly a social institution, an institution in which the state is vitally interested. Although there may not be universal recognition of the fact, still a very large volume of opinion in the world today admits that monogamy is a very desirable and praise worthy institution. If, therefore, the state of Bombay compels Hindus to become monogamists, it is a measure of social reform the state is empowered to legislate with regard to social reform under Art. 25(2) (b) notwithstanding the fact that it may interfere with the right of a citizen of process, practice and propagate religion.”*²⁴

Therefore, the law does not recognize bigamy as "an essential feature" or "religious practice" of any faith. Since it cannot be demonstrated by any compelling grounds that Islam bans a husband to divorce his wife in a unilateral and arbitrary way, the judicial attitude towards unilateral divorce in Islamic law is likely to stay unchanged. What about the heirs' separate portions of the inheritance, which are codified in their local laws and regarded as a "integral aspect" of their faith? In the case of Muslims, marriage and divorce seem to fit more well under the category of "secular activities linked to religion" than do issues of inheritance and succession.

The discussion so far suggests that personal laws do not find the protection of Religious Freedom provided under Article 25, notwithstanding the lack of a clear cut boundary between "essentially

²³ AIR 1961 SC 1402.

²⁴ State of Bombay v. Narasu Appa Mali, AIR 1952 Bom. pp. 86-87.

religious" and "secular" activities. Naturally, where the personal law system fits into the scheme of article 26, which provides every "religious denomination" the right to conduct its own "affairs in issues of religion," depends on how one interprets the different aspects of article 25. Art 26 cannot apply to personal laws if "practice of religion" does not include adherence to personal laws, and if matters now regulated by personal laws are "secular activity associated with religion."²⁵

People of various languages, scripts, or cultures who live in India or any portion of it have the right to equal protection under the law, as guaranteed by Article 29(1). However, the Constitution's intent in safeguarding this basic right is not to establish a new body of personal law or to provide any group of people special status. A strict interpretation of the phrases "different language, script, or culture" rules out the possibility of individual legal systems.

In *A. S. Namyan Deekshitulu v. State of Andhra Pradesh*, the Supreme Court issued a strong opinion that the right to religion guaranteed under Art. 25 or 26 is not an absolute or unfettered right to propagate religion, and is instead subject to State legislation limiting or regulating any economic, financial, political, or secular activity associated with religious belief, faith, practice, or custom. If the state introduces legislation to overhaul social welfare, they will be affected. Though faith or conviction in a specific theory is just as essential to religion as the religious rites and activities undertaken in support of those beliefs, this is neither conclusive nor definitive. Articles 25 and 26's protection of religious practice are meant to serve as a moral compass for society as a whole, with each religion group being responsible for conducting its activities in line with the norms established by its own culture and society. Therefore, the freedom of conscience to commune with his Cosmos, Creator, and realise his spiritual self is balanced by the rigidity of religious belief and faith, as well as their inherent restrictions in matters of religion, religious beliefs, and religious practices, in Articles 25 and 26.²⁶

The true categories' validity must be assessed cautiously within the bounds of the individual's right and the State's legitimacy for social development, welfare, reforms, social intensification, and national unity, according to the ruling. The law is a dynamic instrument of social engineering and

²⁵ Tahir Mahmood, *Personal Laws in Crisis*, p. 20 (1st Ed. New Delhi, 1986).

²⁶ AIR 1996 SC 1765.

social transformation.

Bijoe Emmanuel v. State of Kerala, a famous case involving Articles 19(1)(a), 25(1), and 51A(a), was decided by a division bench consisting of O. Chinnappa Reddy and M. M. Dutt JJ. They noted that Article 25's protection of religious freedom is qualified by two factors: (1) the need to maintain public order, morality, and health; and (2) the need to comply with other provisions of Part III of the Constitution. However, the State is allowed to pass laws that restrict or regulate any economic, financial, political, or other secular activity that may be associated with religious practice, and to provide for social welfare and reform, even if doing so violates the right guaranteed by Art. 25. (1). The court summed up its ruling by saying, "Our tradition teaches tolerance; our ideology preaches tolerance; our constitution practices tolerance; let us not dilute it."²⁷

Minorities Commissions established at the Central or State levels must keep in mind the Constitutional purpose while fulfilling their obligation to minorities, as stated by a bench of the Supreme Court consisting of R. C. Lahoti, the then Chief Justice of India, D. M. Dharmadhikari, and P. K. Balasubramanyan JJ. in *Bal Patil v. Union of India*. Commissions representing India's minorities should work toward eliminating the country's minority and majority populations as a whole. In a country as religiously and linguistically diverse as India, there will be no end to claims of "minority" status if they are considered and conceded solely on the basis of a difference in religious belief or a lack of health, wealth, education, power, or social rights. If one group of residents made a claim, it would inspire others to do the same, setting the stage for civil war.²⁸

Thus, caste is the basis for the division of Hindu society into a number of distinct minority groups. Each group of people calls itself "higher" than the others. In India's stratified caste system, no single group of individuals can ever be considered the norm. They are a minority group within the Hindu faith. Many of them claim such status due to their small population and the expectation of special treatment from the state on the grounds that they are culturally or socially backward. A atmosphere of mutual fear and distrust might develop if one minority group fears the other, which would be very dangerous for the stability of our country. This would be a step toward multi-nationalism in India. Therefore, the Minority Commission must act in a way that does not

²⁷ AIR 1987 SC 748.

²⁸ AIR 2005 SC 3172.

encourage a sense of multi-nationalism among the people of India. The Commission should propose ways and means to help in creating social conditions in which the list of notified minorities is steadily lowered and finally deleted, rather than promoting claims from diverse communities to be placed on the list.

1.3 DIRECTIVE PRINCIPLE OF STATE POLICY AND UNIFORM CIVIL CODE

Part IV, Articles 37–51 of the Indian Constitution outline the guidelines for governing the country. It is not possible to file a lawsuit in court for a breach of these Directive principles since they are not justiciable. This is a serious flaw of the State Policy's directive premise. It is the responsibility of the state to implement these principles while establishing laws, as the constitution states they are fundamental in the Governance of the nation.

According to Article 37, it is the state's duty to establish and maintain a social order in which social, economic, and political fairness are fully represented in all elements of national life. There should not be a monopoly on wealth or control over its means of production; instead, these things should be pooled for the common benefit, so that everyone has access to adequate means of sustenance and receives fair payment for their efforts. Employees' health and safety, as well as their right to employment, education, and aid in times of need, should be protected by the state, as shall the right to a livable wage, safe and humane working conditions, a consistent civil code, and free and compulsory education for children. State action is required to establish local panchayats, advance the economic and educational interests of the poor, improve public health, advance organized agricultural and animal husbandry, divide power between the executive and the judicial branches, and advance international peace and security.²⁹

1.3.1 Article 44

Article 44 is the only provision in our Indian constitution that directly deals with Uniform Civil Code. This provision read as follow,

²⁹ Ashutosh Kumar Mishra, *Leading Cases of the Supreme Court of India*, 825 (Discount Book Publisher, New Delhi, 2014).

"The state shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India".

Given the context of the Constitution, it is clear that the state must undertake efforts in this area, as guaranteed by Article 44. Part IV of the constitution was amended to include this clause after much dispute; it requires the state to take the steps outlined here by passing appropriate legislation; the phrases "endeavor" and "secure" are particularly important in this context.³⁰ To guarantee that all Indian citizens have access to a uniform civil code, these two phrases suggest that the state may adopt a more permissive stance and make use of an intermediate arrangement. The word "state" in Article 44 has a broad meaning, much like the word "nation" in Article 12 of the Indian Constitution. All local and other authorities inside India's territory or under the administration of the Government of India are considered to be part of the "state" for the purposes of Article 12 of the Indian Constitution.

However, under the Constitution of India, all Indian authorities are committed to work toward a unified civil code for the whole country. This is supported by constitutional provisions for a division of powers between the federal government and individual states. Entry 5 of list III of schedule VIII of the Constitution gives the federal government and each state legislature the power to strive toward a unified civil code. What follows is the text of this entry.

All subjects with respect to which judicial procedures were subject to their personal law immediately before to the start of this Constitution, including marriage and divorce, babies and minors, adoption, wills, intestate, and succession, joint family, and partition."³¹

In order for our democracy to thrive over time, it is not only the responsibility of the legislature to work toward establishing a common code for citizens of this country (Article 44, list III, entry-5), but also the responsibility of all government officials. The foundation of our democratic system is a legal framework that will aid in maintaining the rule of law in Indian society and removing obstacles of all types, including those based on religion, caste, and creed.

³⁰ Vishal Gangopadhyay, *Inherent Pluralism and Social Demand for Uniformity*, MJIS, Vol. 20(3) 1999.

³¹ Constitution of India, Schedule VII List III, entry-5.

Therefore, the purpose of having Article 44 in the Constitution is to make the country less diverse. The fact is that religion and caste boundaries continue to divide India even now. Until our country won its independence, there was this system of segregation, which we may term heterogeneous society. On the other side, our nation's forefathers labored to include Article 44 of our National Charter in an effort to foster conformity.³²

Therefore, this article solely imposes an obligation to create the Uniform Civil Code and does not instruct any lawmaking body to do so. The question of justifiability lies at the heart of the debate between basic rights and State Policy as a guiding principle. While infringements on fundamental rights can be taken to court, DPSP cases cannot. Since this congressman has not shown any effort in passing a special Act on Uniform Civil Code, the situation remains unchanged.

1.3.2 Relationship between Directives and Fundamental Rights:

Part IV of the Indian Constitution contains the Directive Principles, however any law that conflicts with the provisions of Part III, or indeed any section of the Constitution, would be deemed invalid. In Chapter III of the Constitution, the Fundamental Rights are enshrined, and Article 13(2) declares that the state shall not adopt any law restricting or limiting these rights. State legislative authority is fundamentally constrained, and the Directive Principles cannot transcend this. Consistent with the Directive Principles, the Constitution must be crafted such that its provisions do not infringe upon or otherwise undermine people's basic freedoms and liberties.³³

The Directive Principles must be consistent with and run in tandem with the Fundamental Rights Chapter. Nonetheless,

(i) “in determining the scope and ambit of the fundamental rights relied on by or on behalf of any person or body, the court may not entirely disregard the Directive Principles of State Policy set forth in Part IV of the Constitution, but rather should apply the principle of harmonious construction, attempting to give effect to both as much as possible, and

³² Rajan Pillai, Framing of a Uniform Civil Code and Some Policy Issues, Published by Centre for Social Studies, at page 333.

³³ Shailja Chander, Justice V. R. Krishna Iyer on Fundamental Rights and Directive Principles, 65 (Deep and Deep Publication, New Delhi, 2015).

(ii) The Directive Principles can be taken into account in construing ambiguous provisions of the Constitution.”³⁴

The Supreme Court has looked to Article 47 of the Constitution when assessing if a regulation serves the public interest. In addition to Article 43, which upheld the validity of the Minimum Wages Act of 1948, Article 39 was relied upon to support the government's claim that the abolition of Zamindari was in the public interest. Because they are meant to enforce Article 48 of the Constitution, state legislation prohibiting the killing of cows, calves, and other animals have been upheld. Article 43 of the constitution was used to uphold the legitimacy of the excise laws that exclude small co-operative organizations that produce cotton textiles from paying duty.

Parliament and the Supreme Court have evaluated the Directive Principles' status in light of the Fundamental Rights, and their popularity has grown over time. The inclusion of provisions to Article 81 by Parliament was a significant step in the right direction. In the Fundamental Rights case, its legitimacy was challenged. Think about the issue from the perspectives of Matthew, J., and Beg. Justice J. Mathew emphasized the importance of the Directive Principles by saying, "There are rights that inhere in human beings because they are human beings—whether you name them natural rights or by any other nomenclature is immaterial." It is clear from the preamble that the people enacted the Constitution in order to secure political, social, and economic justice, but they also did so in order to protect fundamental human rights like freedom and equality.

Therefore, the moral rights guaranteed by Part IV of the Constitution are fundamental to the functioning of the government and all branches of the state, with the notable exception that citizens cannot bring a legal action against the state for a violation of these rights under the Constitution. All involved parties, including the judicial system, must adhere to such directives. The actual Fundamental Rights themselves are devoid of any predefined content; rather, they are mostly empty containers into which the experiences of each successive generation must be poured. It is possible that circumstances will arise in which it will be necessary to limit, abridge, restrict, or even abrogate these rights; their claim to primacy or priority is likely to be over-borne at some point in the nation's history by the moral arguments represented in Part IV of the constitution.³⁵

³⁴ Ibid.

³⁵ Maddukuri Venkatarao and Others v. The State of Andhra Pradesh, AIR 1975 AP 315.

Articles in Part IV have been left with the language chosen by the Drafting Committee. It's useless to try to freeze anything that is essentially fluid, subject to change based on context and circumstance. Claiming the guiding principles are meaningless is likewise fruitless. For the benefit of its citizens, the state must work to develop and maintain a social order in which social, economic, and political fairness permeate every facet of national life.³⁶

1.4 FUNDAMENTAL DUTIES AND UNIFORM CIVIL CODE

When India's constitution was first drafted, fundamental obligations were left out. The Constitution 42nd Amendment Act of 1970 added section IV-A, which is about basic obligations. The purpose of the Uniform Civil Code and that of Article 51-A (e) of the Indian Constitution are strikingly similar. To promote communal peace and thereby national unity, the Uniform Civil Code was enacted. To "renounce practices derogatory to the dignity of women" and "promote harmony and the spirit of common brotherhood among all the people of India transcending religious, linguistic, regional, or sectional diversities," as article 51A(e) puts it, are among the duties of all Indian citizens. Every Indian citizen has a responsibility under this article to safeguard women's rights in India. However, in practice, religious personal rules often discriminate against women. Every Indian must ultimately agree with the notion of a unified civil code.

India has yet to realize its ideal of a unified civil code. Lack of political will and the fierce hostility of some communities in India prevent this vision from becoming a reality. Many Indian individuals still have false beliefs regarding the Uniform Civil Code. Educating the public on why UCC is so vital is, hence, essential. India's progress toward national unity would be aided by the adoption and implementation of a uniform civil code. It also aids in reducing lawsuits filed in India's many separate courts, each of which applies its own set of personal laws. The widespread applicability of the Uniform Civil Code in other Muslim nations across the world and in the Indian state of Goa raises serious questions about why it is not applicable throughout the rest of India. We look forward to the day it can be used.

³⁶ The Constitution of India, Article 39.

1.5 ARTICLE 372

In accordance with the text and spirit of Article 372 of the Constitution, the Muslim Personal Law (Shariat) Application Act, 1937, which secures and controls the application of Muslim Personal Law, is the 'law in effect' as it is adopted by the competent legislative. According to Article 372 of the Constitution, the Act is a "law in force" or "living law" since it has been changed, repealed, or amended by the competent legislature or other competent body since its commencement.

Article 372's reference to "all the law in force" appears to include not just statutes and customs but also personal laws. Similar to section 292 of the Government of India Act of 1935, which acknowledged the continued applicability of "all law in force," article 372(1) of the Constitution does the same. The Federal Court ruled in *United Provinces v. Atiqa* that the word encompassed common law as well as statutes.³⁷ The High Courts of Rajasthan, Hyderabad, Calcutta, Madhya Pradesh, and Bombay all ruled after the Constitution was ratified that Article 372 of the Constitution extended to personal laws. At the very least, this article is the only area in the Constitution where personal laws are even arguably recognized. If we don't apply it to private laws, the Constitution won't recognize them.³⁸

A variety of personal laws, both codified and uncoded, were applied to numerous faiths and ethnic groupings prior to the 1950s, as required by the Constitution's premise of continuity and change in pre-1950 legislation. By virtue of Article 372 of the Constitution, a statutory lease was granted to all of these legislation in their many iterations. However, the lease was short-term only. In accordance with all such laws, the lease was extended until "further action," if any, was taken by a "competent authority." According to Article 372(1), this "additional action" might be a rewrite, a repeal, an amendment, or a modification. The primary "competent authority" that may take such "activity" would naturally be parliament or a state legislature. However, an executive authority may exercise a legislative power that has been delegated to it.³⁹ It has been unclear whether the President of the Republic can exercise his power of adaptation and modification of existing laws in the event of an uncoded law or custom, as authorized by Article 373 (2). Since

³⁷ A.I.R. 1941 F.C. 16

³⁸ Mohd. Shabbir, "Muslim Personal Law, Uniform Civil Code, Judicial Activism : A Critique", XII Alig. L.J. 1997, p. 97.

³⁹ Salim Akhtar and Ahmad Naseem, *Personal Laws and Uniform Civil Code*, p. 43 (1998).

the President did not exercise this authority during the first three years after the Constitution was ratified, it is no longer a pressing issue.⁴⁰

All the three lists in Schedule VII of the Indian Constitution include subjects relating to personal laws. List III (Concurrent List) provides following subjects relating to personal law.

(1) Marriage and divorce; infants and minors; adoption; wills, inheritance and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.⁴¹

(2) Transfer of property other than agricultural land; registration of deeds and documents.⁴²

(3) Charities and charitable institutions, charitable and religious endowments and religious institutions.⁴³

The sole entry relevant to Muslim law in List I is "Pilgrimage to places outside India."⁴⁴ Parliament can pass laws governing Haj and Ziyarat under this provision.

This has resulted in the state legislature or parliament taking over almost all areas formerly handled by personal law. After India gained its independence, the country's personal laws were politicized. For two years, the Constituent Assembly heard passionate arguments for and against a uniform civil code. Under the Uniform Civil Code, the house was really split up along community lines. Muslims were opposed, while Hindus were very much on board. Parliament in India is given the power to establish a Uniform Civil Code by the Indian Constitution. After the passing of the Hindu Code, it became clear that both the Muslim Personal Laws and the Uniform Civil Code needed updating. The Constitution allows for the revision or amendment of all laws, including those pertaining to individuals. Parliament and the legislature are the actual bodies with authority over matters of personal law.

⁴⁰ Ibid.

⁴¹ Entry 5 of List III in Schedule VII of Indian Constitution.

⁴² Entry 6 of List III in Schedule VII of Indian Constitution.

⁴³ Entry 28 of List III in Schedule VII of Indian Constitution.

⁴⁴ Entry 20 of List I in Schedule VII of Indian Constitution.

CONCLUSION AND SUGGESTIONS

In examining the provisions and case laws concerning the Uniform Civil Code in India, this research paper has traversed a landscape marked by complex legal, social, and cultural considerations. The notion of a Uniform Civil Code, while rooted in principles of equality and secularism, remains a subject of ongoing debate and deliberation. The Indian judiciary's role in interpreting constitutional values and safeguarding individual rights has been pivotal in shaping the discourse surrounding the UCC. Through a thorough analysis of landmark judgments, it becomes evident that the courts have consistently sought a delicate balance between upholding individual freedoms and advancing societal harmony.

The legal landscape surrounding the UCC demonstrates the intricate interplay between the constitutional mandate for equality before the law and the preservation of cultural and religious diversity. The diversity that characterizes India has led to a cautious approach by the courts, acknowledging the importance of respecting deeply held beliefs while striving for uniformity in certain legal matters. The judgments examined in this paper underscore the judiciary's commitment to fostering a progressive social framework that respects individual rights and empowers marginalized groups.

However, it is crucial to recognize that the journey towards a Uniform Civil Code is fraught with complexities and nuances. The UCC must be approached with sensitivity to the diverse cultural and religious practices that constitute the Indian society. The challenge lies in finding a balance between promoting uniformity in certain legal matters without infringing upon the rich tapestry of personal beliefs that shape the nation. Moreover, any progress towards a UCC must be accompanied by comprehensive dialogues that take into account the concerns and aspirations of all stakeholders, fostering an environment of inclusivity and mutual understanding.

Suggestions:

1. **Inclusive Dialogues:** To ensure a holistic and well-informed approach towards implementing a Uniform Civil Code, it is imperative to engage in inclusive dialogues involving legal scholars, religious leaders, community representatives, and gender advocates. This would help address concerns, build consensus, and foster a greater understanding of the nuances involved.

2. **Gender Justice:** The UCC discussions must be grounded in principles of gender equality and justice. Any reform must take into consideration the rights and welfare of women, ensuring that legal provisions uphold their dignity, autonomy, and fundamental rights.

3. **Gradual Reforms:** Given the intricate fabric of Indian society, the implementation of a Uniform Civil Code could be pursued through incremental reforms, focusing on areas where uniformity can be achieved without compromising on cultural and religious diversity.

4. **Public Awareness:** Public awareness campaigns, seminars, and workshops can play a crucial role in educating citizens about the implications and advantages of a Uniform Civil Code. This would foster informed discussions and alleviate misconceptions.

5. **Continued Judicial Deliberation:** The judiciary's role in interpreting and shaping the contours of the Uniform Civil Code remains pivotal. The courts must continue to strike a balance between constitutional values and societal diversity, while also considering evolving social dynamics.

6. **Legislative Reforms:** The legislature can play an active role in fostering legal reforms that promote equality and social cohesion. Efforts should be made to enact laws that resonate with the principles of the Constitution while respecting cultural and religious pluralism.

In conclusion, the journey towards a Uniform Civil Code in India is one that requires nuanced considerations, open dialogues, and a commitment to upholding both individual rights and societal diversity. By drawing insights from provisions and case laws, this research paper has illuminated the multifaceted nature of the UCC debate and provided a foundation for further exploration and meaningful engagement with this crucial constitutional issue.