Background Guide

Orpheus MUN

AIPPM:
DELIBRATION ON THE NEED OF UNIFORM CIVIL CODE IN INDIA

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LETTER FROM THE EXECUTIVE BOARD

Dear members of the AIPPM,

My name is Ayan Choudhury and it is with great pleasure that I welcome you all to the All-India Political Parties Meet, Orpheus Youth Parliament, 2023. I hope that the two days of the conference will be full of intense discussions and deliberations regarding the pressing issue.

I expect every member to have accurately researched their positions and role in the committee ahead of time. Background research is extremely important for a fruitful debate and a successful committee. Furthermore, I expect each one of you to have impeccable diplomatic conduct in terms of diplomatic courtesy and lobbying. It is important to realize that youth parliament is a learning experience above all.

While the background guide will be providing an overview of the agenda at hand, each one of you will need to do substantial research to deal with these issues and to be able to find concrete solutions for the same.
I will try my best to guide you throughout the conference, so feel free to contact me with any questions or queries.
Looking forward to seeing you all in the committee.

Best of luck,

Moderator,
All India Political Parties Meet

RULES OF PROCEDURE

The All-India Political Parties Meet neither adheres to parliamentary rules of the procedure nor MUN of the procedure. The committee will have its own independent set of rules of procedures which are subject to circumstantial change(s).

PROCEDURAL CONSTRUCT

• Members have the liberty to speak in either Hindi or English

• All documentation of the committee has to be in English.

• All the committee members will be invited to give their introductory statements for which the default period has been set at 90 seconds. The speaker can yield his/her time in three ways which are as follows:

• Yield to comments • Yield to points of information • Yield to the chair

ESTABLISHING SESSIONS IN COMMITTEE The sessions that are established in committee can be of two types:

• **PUBLIC SESSIONS**: The period of public sessions varies between 15 to 30 minutes. However, the individual speakers' time will remain at 60 seconds. The public session will take place in the presence of the media and outside observers. Every word that is spoken by the different representatives during this session will be enshrined in the public record, thereby it can be subjected to public critique.

• **MODERATED PRIVATE SESSION:** All the exchanges that will take place in the moderated private sessions will be out of reach of the media and outside observers. Essentially like a moderated caucus, the session will be moderated by the executive board. However, members cannot refer to anything that was said or done during the private session while the public session is in motion.

• **UNMODERATED PRIVATE SESSION:** The unmoderated private session is informal just like an unmoderated caucus.

ACCEPTANCE OF REPORTS

During committee, only reports by the government will be considered legitimate. This included reports from Parliamentary committees, CBI Reports, Standing Committees, Commissions Reports etc.

COMMITTEE DOCUMENTATION

• **PRESS STATEMENTS:** These statements are either written or verbal which are made by the representatives directly to the national press.

• **WRITTEN STATEMENTS:** These statements can be used by the political representatives to appraise the executive board of any policy line that could not be discussed in committee in terms of speeches due to lack of time available.

• **COMMUNIQUÉ**: A communiqué is an official announcement in writing. However, it is not binding in nature and can be passed in the committee without any formal vote. It is like a draft resolution and is intended for the common understanding of the committee.

• **MEMORANDUM:** A memorandum or memo is a written communication between a member and a concerned branch or to another member belonging to the same political party ordering for a certain action to be taken.

• **RESOLUTION:** A written document which requires at least one sponsor and three signatories. It consists of possible solutions for the agenda at hand and is open for discussion in the committee.

ABOUT ALL INDIA POLITICAL PARTIES MEET

The All-India Political Parties Meet (AIPPM) is a non-technical yet powerful committee supplementary to the parliament. The AIPPM serves as an important forum for an unrestricted political debate taking into consideration that India has a multi-party system.

The AIPPM helps bring together the diverse perspectives and opinions of various leaders and political parties to discuss and debate issues of national importance to come to a solution regarding the same.

The final document of the meeting is in the form of recommendations to the Government of India to solve the issues at hand. Furthermore, for such a document to be passed in committee, a 2/3rd majority of the members present is necessary. However, in the case of the AIPPM, the political parties and representatives do not have the option to abstain and will compulsorily have to vote.

INTRODUCTION

India is a secular state and nation, which implies it does not adhere to any one religion. It means that the state will not be reliant on religious institutions of any kind. It will not meddle with spiritual concerns or the freedom of religion when making decisions for the state. Religion will not obstruct the state's effectiveness. India is a democratic and the world's second most populous country, and it is on the verge of becoming a great power. It has a powerful military and considerable cultural influence. Its economy is rapidly expanding and powerful.

India is a hugely diversified country with many different cultures. Language, culture, and religion are all linguistic, cultural, and religious identities. In India, each community has its own law. The Hindus, the majority community have their separate

family law; so have the Muslims, the biggest minority community. Smaller minority communities, the Christians, Parsis and Jews, whose number, in the context of the total population of India, is not very significant, too, have their separate family law. This is mirrored in the country's federal political structure, in which the federal government and the states share power. Religions have had a significant impact on Indian politics and society, in addition to serving as the foundation of Indian culture. Some of us understand religion as the way of life in India. The Hindu religion is practised by the great majority of Indians (about 93 per cent). According to the 2011 census, Hinduism is practised by 79.8% per cent of India's population. Other major religions practised by Indians include Islam, Christianity, Sikhism, Buddhism, and Jainism. Minor tribal traditions exist as well; however, they have been influenced by major faiths such as Hinduism, Buddhism, and Christianity. The concept of the Uniform Civil Code must be examined in this wide-ranging framework. The state may or may not be the ultimate source of their authority, but it has made them legally and socially authoritative and has given its authority to them. Just as if the family were personal in the sense of the word, it would not need to be governed by law, if the authoritativeness of the personal laws were other than legal, there would be no need to legislate them.

‘What are the varied purposes of the Hindu Succession Act, Hindu Adoption and Maintenance Act, and Hindu Guardianship Act, such as marriage, adoption, succession, and guardianship?’

Separate personal laws govern Muslims and Christians, and the reason for this is that each religious group has different beliefs, customs, and practices, and it is possible

that the practices and beliefs of one religion may be mistaken for those of another, so for the peaceful running of society, we have separate personal laws.

India has two systems of law, one territorial and one personal. Since personal law deals with the relationship between private individuals, it is clear that personal law cannot be public. A Muslim is subject to Islamic Sharia, a Jew to Halakhah, a Christian to Cannon Law, and a Hindu to Dharmashastra. Women's legal status, as affected by these laws, constitutes, therefore, a key symbolic battleground over which conservatives and progressive forces are struggling to realise their visions of the future.

A portion of them emerges as a result of the difficulties in distributing justice because different types of judgement should be offered in different situations. The part of the distribution of justice that reminds uniform in its application confronts a lot of trouble, therefore to overcome this, substantial efforts towards national consolidation were taken in the shape of the idea of a Uniform civil code, which was first seriously mooted in the constituent Assembly in 1947.

The Indian constitution states in Article 44, Directive Principles of State Policy, that the state must strive to ensure a consistent civil code throughout the country for its residents. Even though we talk about peace, harmony, and brotherhood when it comes to the Hindu-Muslim relationship, we are often traced back to the bloodshed that occurred during independence, and our opinions are often based on the hatred and enmity that have prevailed since then.

Women have for a long time been marginalised in almost every culture and context without being protected by any system of law. Law was originally intended as an instrument to enhance our social state and has its foundations in the Western philosophy of the Enlightenment. Locke, as well as Rousseau, on the basis of

Aristotle's natural law, argued that it was natural for a wife to be in subjection to her husband. Hence, she cannot be seen as a naturally free and equal person. Similarly in the south eastern Indian traditions, the law of Manu ruled, 'as daughters women should obey their fathers, as wives obey their husbands, and widows obey their sons.

UNIFORM CIVIL CODE & PERSONAL LAWS:

Personal Laws in India:

Diversity exists in India because of various cultural, social, and religious backgrounds and communities that follow different laws, practices and customs. Personal Laws, as well as diversity, exist though India is a secular nation.

India is a nation constituting varied customs and communities. Many famous religions and cultures of the world are found in India. Religious diversity and tolerance are both established in the country by law and custom. A country that has secularism in its constitution yet there is a contradiction in this whole concept of secularism, particularly when it is interpreted in comparison to the personal laws of its citizens. It has become a confusing melting pot of Hindus, Muslims, Christians and Parsees who have different personal laws on marriage, adoption, guardianship, divorce, succession and so on. Almost all communities in India have their laws in matters of marriage and divorce. These religious communities coexist as part of one country yet the family laws in India differ from one religion to another. The reason is that the customs, social usage and religious interpretation of these communities as practised in their personal lives depend highly on the religion they were born in and that which they practise laws relating to society.

Some of the codified personal laws relating to marriage, divorce, property and inheritance are

- The Indian Christian Marriage Act of 1872;
- the Cochin Christian Civil Marriage Act of 1920 (applicable for Travancore-cochin areas);
- For Sikh marriages, the Anand Marriage Act of 1909;
- Muslim personal law (Shariat) Application Act,1937 (making Shariat laws applicable to Indian Muslims);
- The Parsi Marriage and Divorce Act,1937;
- Hindu Marriage Act, 1955 (applicable not merely to Hindus, Buddhists and Jains but also to any person who is not a Muslim, Christian, Parsi or Jew, and who is not governed by any other law).

Personal Laws and Part-III of the Constitution:

Two scenarios must be explored to determine the conflicts:

a) Personal laws, codified and customary in practise, that conflict with Part III of the
Indian Constitution.

b) Personal law conflict, which tries to change current laws that have been judged to be arbitrary and unlawful under Article 25 of the Indian Constitution.

Since the commencement of the Indian Constitution, the Indian court has struggled to determine the relationship between personal laws and Part III of the Indian Constitution.

Different Approaches of Personal Laws of Different Religions:

The Muslim law allows polygamy, but the Hindu, Christian and Parsee laws do not. The definition of marriage under Muslim law indicates that the female witness is not equivalent to the male witness. Marriage under Muslim law is a civil contract while under Hindu law even today marriage is regarded as a sacramental union, though only partially. Muslim males are allowed extra-judicial divorce but the Hindu, Christian and Parsee, males as well as females, can affect divorce only through the court. Muslim females can get a divorce only through the court of law on specified grounds. The same is the position of Hindu, Christian and Parsee females.

Under Muslim law, a husband's apostasy from Islam results in the automatic dissolution of a Muslim marriage though the wife's apostasy does not. Under Hindu law, a spouse converting to another religion confers the other spouse's right to sue for divorce. The same is the position under Parsee law. Under Christian law, apostasy does not affect the marriage but when the apostate husband has married again, the wife gets a right to sue for divorce. Under Muslim law, a divorced wife is not entitled to any maintenance, except for the iddat period.

The Hindu, Christian and Parsee laws permit maintenance for a divorced wife till her death or remarriage. Under Muslim law, a divorced wife cannot marry her previous husband without her being remarried to some other man who has pronounced divorce on her or has died after the consummation of the marriage. No such condition is there under Hindu, Christian and Parsee law. Under Muslim law, a daughter inherits half of the share of a son. Under Muslim law, a person cannot dispose of more than 1/3 share of his property by will, but the other personal laws do not impose any such limitation.

In the case of joint family property among Hindus, one can only dispose of his share by will and not the whole of the joint family property. A female under Mitakshara law is not a coparcener. Coparcenaries consist of only male members. Such a system

is not available in other personal laws. Even after the passing of the Hindu Succession Act, 1956 i.e., at present, the concept of coparcenary is retained.

Muslim law recognizes the acknowledgement of paternity and thus clears the legitimacy of the child, while others do not recognize the same. Muslim law, Christian law and Parsee law do not recognize the adoption of a child while Hindu law permits adoption. Under Muslim law, a child born is deemed to be legitimate if born within a particular period of separation of spouses (after divorce or otherwise), which varies from 10 months to 4 years. The courts in India have refused to recognize the Hanafi law, which permits two years of separation, and Shafi law, which permits four years of separation, as it cannot happen in the natural course of events. Hindu, Christian and Parsee laws do not confer legitimacy to the separation period.

HISTORY OF REFORMS IN PERSONAL LAWS IN INDIA

Pre-Independence Era

During the colonial period, the British followed a policy of non-interference when it came to religious beliefs and traditions. The colonial rulers relied on commentators and their interpretations of ancient texts, thereby undervaluing the role of custom as an important source of law. The status of women in Britain in the nineteenth and twentieth centuries was strongly reflected in the status that women of the colonies were given. British women could not vote, and married women could not own property. Under the guise of modernity, the British judges introduced similar concepts in the Indian system. It was in the 1960s that the term ‘personal’ was introduced formally in the Indian setup. Legally, there are only two broad categories of law—civil and criminal—and laws by their very nature are public. The colonial

rulers made a distinction between the ‘public’ and the 'personal' sphere and left the ‘personal’ domain out of the realm of uniform legislation out of fear that this would give rise to unnecessary conflict and unrest. Laws governing marriage, divorce, inheritance, succession, adoption, etc. were deemed as 'personal' and ‘religious.’ After 1923, if people had contracted a civil marriage for the purpose of inheritance, they could not avail of the support of religious laws and had to be governed by the Indian Succession Act, of 1925. The Indian Succession Act, of 1925 is another secular and pro-women law passed during the British era, which gave women equal property rights. It can be considered to be the most progressive piece of legislation, even when tested against the present-day parameters of women's rights. The next important legislation that touched upon personal laws was in 1937; this legislation, called the Hindu Married Women's Property law, provided married women a limited right of a life interest in their husband's property, but did not provide for the right to alienate the property. Around this time, two important legislations were passed in the realm of Muslim personal law: the Application of the Shariat Act, 1937 and the Dissolution of the Muslim Marriages Act, 1939. Both these laws claimed to improve the status of women within Islam. The main agenda was of unifying and strengthening Islam. This was the period when the two-nation theory was being propagated, and a uniform law was required.

Post-Independence Era

The Indian State's approach to personal laws and its reforms has been varied. While laying the foundation of a new nation at the time of independence, the State found it imperative to relocate the scheme of national integration. The issue of personal laws was debated primarily in the Constituent Assembly in the context of the rights of minorities within the new nation. After the partition, the exact power of the State to reform religious personal laws was left undefined to make the minority, especially

the Muslims, less apprehensive. Since the State had clearly assumed the authority to reform Hindu personal law in the early years after independence, particularly as the opposition to the proposed reforms was extremely vociferous, the Indian State could hardly claim the lack of authority when it comes to certain religious personal laws. The debate about religious personal laws till now concentrated on their religious nature and on the capacity of a secular state to change them. This is partly because the State has neither rejected nor accepted the claims about the inviolable character of personal laws. The courts have held that discrimination under the personal laws of various communities is based on reasonable classification. The Supreme Court has distinguished religious matters into essential and non-essential matters and has held that constitutional protection is only available to the essential aspects of religious matters. However, the Supreme Court has not applied this distinction consistently. Moreover, there have been times when the authority to decide whether any matter constitutes essential or not is left up to the community while at other times it is interpreted by the court. As yet, there have been no clear pronouncements on Whether or not the religious personal laws form a part of the essential matters of religion that cannot be legitimately modified by the State. The legitimacy of the State is dubious when it comes to supporting reforms from within or from above.

REFORMS IN CHRISTIAN PERSONAL LAW

Like some other Personal Laws, Christian Personal Law also discriminates against women. Although Christians all over India have a uniform law of marriage and divorce, extreme diversity exists concerning their succession laws. Christian women, like women of other communities, have less rights than men in personal matters. The promulgation of the Government of India Act, of 1935 did not result in any legislative activity to reform the existing Christian Personal Law. After

independence, the government prepared two reports but did not reform the Christian Personal Law. The government introduced the Christian Marriage and Matrimonial Causes Bill in the Lok Sabha in 1962. This bill lapsed in 1971 and since then, no legislative activity or any other effort by the State to reform Christian Personal Law has been noticed. In 1983, the Law Commission prepared another report on the grounds of divorce for Christians, but the government has yet to act upon its recommendations. There is no direct information available about the government's view on the matter of Christian Personal Law reform, although the government has been made aware of the demands. The Supreme Court delivered a landmark judgement in Mary Roy's case in 1986 and declared that the Indian Succession Act, of 1925 supersedes the Travancore Christian Succession Act, of 1916. The Supreme Court further held that the Travancore Act Became inoperative following the enforcement of the part B State Laws Act, 1951 and thus the succession to property left by intestate Christian males during the last thirty-five years is now open to dispute. In other words, the judgement had a retrospective effect. The Kerala Government filed a review petition, seeking the elimination of the retrospective effect of the judgement, but it was rejected. The reaction of the Christians was the same as the reaction of the Muslims in the Shah Bano Case. A new Personal law for Christians was demanded by Bishop Abraham Marclemis of Kananya Church. He said that the Supreme Court judgement has created an economic impasse for the Christian community and this judgement was likely to destroy the whole Christian Community of India. He was very critical of the judgement where no property could be transferred without the consent of a female. The Jacobite Church similarly demanded a new Personal Law for Christians. The Church’s opposition to the application of the Indian Succession Act instead of the Travancore Succession Act has no obvious religious basis. Meanwhile, a private member's Bill was introduced in the parliament by Professor P.J. Kurien, a senior Christian Congress (I) member

of Kerala. Significantly, the M.P. who moved this bill represented a constituency where rich Christian landowners wield power. The Bill sought to modify the Supreme Court judgement so that it does not impart the retrospective effect. The religious functionaries' solidarity with men rather than women in this instance is a clear illustration of how the power of religion is used to perpetuate male privilege. The Indian Divorce Act, based on an outdated English enactment, has been prevented from being modified by religious leaders. No justification is forthcoming either from them or the government. Given the government's stand in response to the Muslim community's demand that the Shah Bano judgement be overturned by legislation, the State may enact the Current Bill into law if there is enough agitation on the part of the Christian religious leaders. The state may, in future, be compelled to give in to similar demands by other communities, at the risk of being made to appear inconsistent.

REFORMS IN PARSI PERSONAL LAW

As far as Parsi Personal Law is concerned, a move to reform it was taken up by the Parsi Central Association in 1923. A sub-committee was appointed to suggest suitable changes. The subcommittee, known as the Parsi Law Revision Sub-committee, submitted its report in 1927. This report was also published in the press and certain modifications were also circulated for public opinion. A conference was arranged under the patronage of the Parsi Panchayat, with Parsi associations. A bill to amend the Parsi Marriage and Divorce Act, of 1865 was considered by the Federal Assembly in 1936. This bill was first introduced in the Council of State in 1934 by Sir Phiroze Sethna. It was circulated for opinion and a joint Select Committee was appointed to consider the bill in 1935. The Select Committee reported to the Council of State in 1935 and it passed the bill. As far as the applicability of Parsi Personal

Law goes, it applies to Zoroastrian Children born to Zoroastrian parents and the children of a Parsi father and a non-Parsi mother who have been admitted to the Zoroastrian religion. The difference in rules governing children of non-Parsi mothers and fathers is based on a Bombay High Court decision. It was held that in a marriage between a Parsi woman and a non-Parsi man, the presumption is that the wife will have to accept the religious faith of her husband. It means that the children will be brought up according to the religion of the father. Similarly, the rules embodied in the Parsi Marriage and Divorce Act, 1936 and the Indian Succession Act, 1925 applicable to Parsis are not even claimed to be based on _the tenets of Zoroastrianism. As explained above, the modifications to Parsi Personal law were brought about by consulting members of the community and not merely by the religious leaders. The Government of India has not made much effort to modify the Parsi laws even in case of rules that discriminate against women. In 1986, in the Rajya Sabha, the process of amending the Parsi Marriage and Divorce Act, of 1936 was initiated by the Board of Trustees of the Bombay Parsi Panchayat. It submitted recommendations to the government which introduced a bill to amend the Act. From the above discussion, it is clear that the attitude of the State towards reform in Personal Laws of majority and minority communities is not the same. As far as the Hindu majority is concerned, the State reformed their Personal Law although the Hindu Personal Law does not treat women at par with men. The reform in Hindu Personal Law was the need of the hour. As far as the minority religions' Personal Laws are concerned, the State, after the partition, did not try to interfere in that area on the assumption that this endeavour would hurt the religious minorities and alienate them from the majority. One more reason for not interfering in minority Personal Laws was that the State did not want to give the impression of implementing coercion in the matter of religious laws.

UNIFORM CIVIL CODE: CONCEPT, RELEVANCE AND UTILITY CONSTITUENT ASSEMBLY AND UCC

Soon after independence, the question of the position of personal laws got entangled in the whirlpool of national politics. On the floor of the Constituent Assembly, for about two years, the issue suffered convulsions caused by the utterances of progressive legislators, dissenting voices of their so-called conservative brethren, apprehensions echoed by the spokesmen of the minorities, and bricks and buckets were thrown from outside by laymen and law-men. The Constituent Assembly Debates in the Constitution-making process revealed that the Constitution makers debated on the topic of the Uniform Civil Code. The Muslim members of the Constituent Assembly opposed the move with all possible intensity. Framers of the constitution envisage establishing a sovereign, democratic, republic based on the ideas of justice, liberty, equality, and fraternity. Later on, in 1976, the words ‘secularism’ and ‘socialism’ were added to the Preamble. Fundamental rights, especially the right to freedom of religion, were designed in our Constitution before its implementation in 1950. Since then, in the Constituent Assembly as well as on other platforms, a great deal of discussion on personal laws has taken place.

THE ATTITUDE OF THE ANTAGONISTS

The Constituent Assembly debates the Uniform Civil Code under Article 35. Mohammad Ismail from Madras challenged the Uniform Civil Code and referred to Article 33 which provides that 'any group, section or community of people shall not be obliged to give up its set of Personal Laws. He advocated that the right to adhere to one’s laws was one of the fundamental rights. He asserted that personal laws were a way of life for the people. He elucidated that India was emerging as a secular state

and it must not do anything to hinder the religious and cultural ethos of the people. To enrich his arguments, he named protective clauses of other European constitutions which dealt with minorities. However, he pointed out that such clauses were narrow in scope as they dealt with any group, section or community of the people and were not confined to just minorities. His proposed amendments read: "That any group, section or community of the people shall not be obliged to give up their Law in case it has such a law."

By following their Laws, people of different castes and communities would not conflict with each other. Mohd. Ismail's arguments were objected to by H.C. Majumdar, another member of the Constituent Assembly, who contended that the proposed amendment was in direct negation of Article 35. His objection was sustained by the vice president and Mohd. Ismail could not succeed. Another member of the Constituent Assembly, Nazir Alimad, remarked that the Uniform Civil Code would create inconvenience not only for Muslims but for all communities that have religion-oriented laws. He further pointed out that the very concept of the Uniform Civil Code clashed with the religious and cultural freedom guaranteed to every citizen. Whatever laws were enacted in the area of Muslim Personal Law during the British administration of justice were mostly on the initiative of the Muslim community. Mahboob Ali Beg moved a proviso to Article 35, where he emphasised that the civil code spoken of in Article 35 did not include family law and inheritance, but since some people have doubts about it, it should be made clear by a proviso to assure that the civil code would cover the transfer of property, contract, etc., but not matters regulated by Personal Laws. He also claimed that secularism had no negative diversity in Personal Laws. M.A. Ayyanger, a member of the Constituent Assembly, intervened and remarked on it as a matter of contract. Ayyanger tried to put his argument forcefully and asserted that the matrimonial contract was enjoined by the Holy Quran and the Traditions of the Prophet. He stated

that the Indian concept of secularism tolerated the existence of all religions with equal honour and dignity. He emphasised that in a secular state like India, different communities must have the freedom to practise their religion and culture. Article 35 was thus antagonistic to religious freedom. Hussain Imam too expressed similar views and pointed out: "India is too big a country with a large population so diversified that it is almost impossible to stamp them with one kind of anything. In the north, we have got extreme heat. In Assam we have got more rain than anywhere else in the world" "The apprehension felt by the members of the minority community is very real. A secular state does not mean that it is anti-religious but non-religious and as such there is a world of difference between the irreligious and non-religious. I, therefore, suggest that it would be a good policy for the member of the Drafting Committee to come forward to such safeguards in this proviso as will meet the apprehension genuinely felt and which people are feeling and I have every hope that the ingenuity of Dr Ambedkar will be able to find a solution to this."

While Hussain Imam visualised the possibility of having uniform family law sometime in the future, the other speakers ruled out the possibility of having A Uniform Civil Code for all time to come. Thus, members of the minority strongly argued for the exclusion of Personal Laws from the ambit of the Uniform Civil Code. Nevertheless, despite their convincing arguments and deep resentment, they could not succeed.

THE ATTITUDE OF THE PROTAGONISTS

Many members of the Hindu community expressed their opinions contrary to the views of Muslim members. K.M. Munshi expressed the following views:

• Even in the absence of Article 35 it would be lawful for the Parliament to enact a Uniform Civil Code since the article guarantees religious freedom and gives to the State the power to regulate secular activities associated with religion.

• In some Muslim countries, for example, Turkey and Egypt, the Personal Laws of religious minorities were not protected.

• Certain communities amongst Muslims, for example, Khojas and Memons, did not want to follow the Shariat but they were made to do so under the Shariat Act, of 1937.

• European countries had uniform laws applied even to minorities.

• Personal laws discriminated between person and persons based on sex which was not permitted by the Constitution;

• People should outgrow the notion given by the British that personal law was part of religion.

Conclusively, he proposed to divorce religion from Personal Laws. "I want my Muslim friends to realise that the sooner we forget this isolationist outlook on life, the better it will be for the country. Religion must be restricted to spheres which legitimately belong to religion and the rest of life must be regulated, unified and modified in such a manner that we may evolve into a strong and consolidated nation." A.K. Iyer, a member of the Constituent Assembly, supported K.M. Munshi and urged the assembly to pass the article dealing with the Uniform Civil Code. The Assembly passed the article accordingly, brushing aside the proposal of the Muslim members for the exclusion of personal laws from the ambit of the Uniform Civil Code. Dr B.R. Ambedkar did not accept the amendments and defended the right of the state to interfere in the Personal Laws of different communities. He defended the laws of different communities. He defended the arguments of Hindu members of the Constituent Assembly. At the same time, he also gave some assurances to the Muslim members as he explained that the proposal was creating only a ‘power’ and

not an ‘obligation.’ He closed the debate with these memorable words: “Sovereignty is always limited, no matter even if you assert that it is unlimited because sovereignty in the exercise of power must reconcile itself to the sentiments of different communities. No government can exercise its power in such a manner as to provoke the Muslim community to rise in rebellion. I think it would be a mad government if it did so. But that is a matter which relates to the exercise of power and not the power itself.”

Under International law, a State that ratifies an international instrument becomes legally bound to implement its provisions. India, having ratified the International Covenant on Civil and Political Rights, 1966, and International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, is bound to enforce the relevant provisions and ensure gender equality under its national laws. However, women in India under Hindu, Muslim and Christian laws continue to suffer discrimination and inequalities in matters of marriage, succession, divorce and inheritance. So, as a step towards a gender justice code, the Personal Laws of various communities in India need reform, not only in compliance with the Indian Constitution but also as per the provisions of International law. The prevalence of discrimination against women under various Personal Laws of different communities in India was openly accepted by India in its periodic report before the United Nations Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW). The term ‘Civil Code’ is used to cover the entire body of laws that govern rights related to property and otherwise personal matters like marriage, divorce, maintenance, adoption and inheritance. A Uniform Civil Code essentially means unifying all the personal laws to have one set of secular laws that will apply to all citizens of India irrespective of the community they belong to. Though the exact contours of such a uniform code have not been spelt out, it should presumably incorporate the most modern and progressive aspects of all

existing personal laws while discarding those which are conservatively backward. The spine of controversy revolving around the Uniform Civil Code has been secularism and the freedom of religion enumerated in the Constitution of India. A secular State shall not discriminate against anyone on the grounds of religion. A State is only concerned with the relationship between men. It is not concerned with the relationship of man with God. It means that religion should not interfere with the mundane life of an individual.

Rebecca J. Cook rightly points out that although the Indian Constitution contains articles mandating equality and non-discrimination on the grounds of sex, several laws exist that violate these principles and continue to exist in the Personal Laws of certain communities with provisions that are highly discriminatory to women. The Indian State has, however, made no efforts to change these laws or introduce new legislation in conformity with Constitutional principles. The Indian government seems to have chosen to ignore these principles completely and act as if they did not exist.

For example, Article 44 of the constitution envisages a Uniform Civil Code for all citizens and lays down, "The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India." However, even half a century after the framing of the Constitution, the ideal of a Uniform Civil Code is yet to be achieved. Women continue to clamour for a gender-just code to enjoy equality and justice irrespective of the community to which they belong. The Uniform Civil Code is required not only to ensure uniformity of laws between communities but also within communities, thus ensuring equality between the rights of men and women. There is apprehension amidst the Muslim minority that the Quran is in danger, and that its sacred family law will be jettisoned. In the Shah Bano case of 1986, the Supreme Court expressed displeasure at the delay in framing a Uniform Civil Code,

which was regarded quintessentially in terms of secularism. Attempts have been made from time to time for enacting a Uniform Civil Code after independence. The Supreme Court, in various cases, has been giving directions to the government for implementing Article 44 of the Constitution to reform the Personal Laws relating to minorities and eradicate the gender bias therein. While a Uniform Civil Code is not particularly high on the national agenda, value-based progressive changes and preserving the separate identity of each religious group is a feasible project to avoid insult and injury to any minority. This may be a preliminary step to pave the way for a common code. Mobilisation of Muslim, Christian, and Parsi opinions in this direction is sure to yield salutary results and reduce fundamentalist resistance. To facilitate a national debate, a common code may be drawn up at a non-governmental level. It will be purely optional for minorities to accept or reject those provisions. Initially, the idea of a Uniform Civil Code was raised in the Constituent Assembly in 1947 and it was incorporated as one of the directive principles of State policy by the sub-committee on Fundamental Rights. The argument put forward was that different personal laws of communities based on religion "kept India back from advancing to national integration" and it was suggested that a Uniform Civil Code should be guaranteed to the Indian people within a period of five to ten years. The chairman of the drafting committee of the Constitution, Dr B.R. Ambedkar said, "We have in this country a uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete criminal code operating throughout the country, which is contained in the Indian Penal Code and the Criminal Procedure Code. The only province the civil law has not been able to invade so far is marriage and succession and it is the intention of those who desire to have Article 35 as a part of the Constitution to bring about the change."

Though Ambedkar was supported by Gopalaswamy Ayyangar and others, Jawaharlal Nehru intervened in the debate. In 1954, Nehru said to the Parliament, "I

do not think at present the time is ripe for me to try to push it (Uniform Civil Code) through." Since the Uniform Civil Code was a politically sensitive issue, the founding fathers of the Constitution arrived at an honourable compromise by placing it under Article 44 as a directive principle of State policy. Even after more than five decades after the framing of the Constitution, the ideal of a Uniform Civil Code under Article 44 is yet to be achieved.

IMPLEMENTATION OF A UNIFORM CIVIL CODE IN INDIA:

1. The framers of the constitution by adding Article 44 in the constitution which accommodate the foundation of the Uniform Civil Code, mooted to have one law for all the residents of this country. Article 44 of the constitution expresses that "The state will attempt to secure for the residents a Uniform Civil Code." The arrangement is carefully phrased and calls upon the state to 'attempt' to get and not to institute a uniform common code. It is neither time-bound nor conveys an impulsive earnestness. We can't likewise pursue this arrangement in seclusion with different arrangements of the constitution which accommodates equity under the watchful eye of law and equivalent security of law.
2. The genuine soul of this arrangement is to set up a homogenous society which is unadulterated and isn't partitioned on religion and rank lines, in consonance with different arrangements of the constitution.
3. Reality isn't rejected, India is a place where there are varieties and various religions follow their laws in family matters, which generally vary, from each other. In the expression of Krishna Iyer,
4. 'A typical common code is not great, it is an objective we should rush gradually yet not practise the artistic work of stopping.'

5. Our legal scholars and judges, our legislators and heads of networks should go to the positive qualities in each close-to-home law and nationalised it. Such a mix of guidelines and strategy will assist with building up the new dharma- a moderate, just, normal, family, code. A typical common code is the indication of balance in family relations among people who have distinctive strict perspectives, yet resemble - arranged on transient issues. Sadly, even today following seventy years of autonomy that idea is as yet a fantasy, which was considered by our constitution creators as a brilliant string for solidarity and uprightness of the country.

Challenges in the Implementation of Uniform Civil Code:

1. In a democratic and secular nation like India, execution of UCC is obligatory to secure underestimated gatherings, like ladies, kids and strict minorities. UCC is additionally alluring to encourage nationalistic intensity through solidarity. In any case, in a pluralist society like India individuals trust their convictions or teachings that are dependent on their religion; consequently, it is hard to execute UCC in India. Most explicitly, the originators of the Constitution of India likewise confronted serious problems to join the religion; and most certainly it was the fundamental explanation because of which it became difficult to carry out the UCC in India even after freedom.
2. The designers of the Constitution of India likewise attempted to join together and incorporate the diverse strict religions, be that as it may, they couldn't achieve it; however, they gave a common constitution to Indians. Core values of the Indian Constitution perceive variety while endeavouring to empower consistency among residents of different groups. The individuals who are in help for the execution of UCC contend that the UCC would make confounded

laws simpler that identified with marriage, legacy, progression and appropriations, to comprehend and material to all. The UCC would likewise work on close-to-homes in India which are right now isolated based on strict qualities and customs.

3. In India, there are various arrangements of individual laws like Hindu individual laws, Shariat law, Parsi law, Christian law and so forth. Consequently, in present-day India, a uniform arrangement of individual law is exceptionally attractive. As indicated by the adversaries of the Uniform Civil Code, individual laws are obtained from strict qualities, accordingly, it isn't needed to meddle in them, since this may prompt antagonism and grinding between various strict gatherings.
4. In India, the individuals who are testing the Uniform Civil Code additionally contend that India is a common republic country and opportunity of religion is likewise a central right in India; other than that, Articles 29 and 30 ensure minorities rehearse their confidence, culture, and customs, along these lines, UCC ought not to be executed in India. Along these lines, by understanding both perspectives, it is well perceived that for the execution of the
5. Uniform Civil Code and a solid political will is required other than a feeling of capacity to bear other religions and shared regard for each piece of India are moreover fundamental for it.

Need to Implement Uniform Civil Code in India:

1. In India, there is a diversification/difference in the matters of marriage, adoption, maintenance, guardianship and inheritance/ succession based on religion as per the customs of each religious community. These

diversification/inequalities are incorporated under the provisions of various personal laws.

2. To remove these inequalities, develop a spirit of national integration and achieve a true concept of secularism, the implementation of UCC is urgently needed as an achievement of equality is of crucial importance.
3. In Sharaya Bano21 The Supreme Court of India declared triple talaq unconstitutional. But the Act for the abolition of triple talaq couldn't get passed yet. Other issues are polygamy, halala etc. Implementation of UCC is urgently needed to remove religious inequalities such as triple talaq, polygamy, halala etc. It is also required to remove inequalities in the matters of succession, adoption, guardianship etc. prevailing among the Hindu, Muslim, Christian and Parsi religions.
4. Personal Laws are contradictory to the very core concept of secularism, which professes a state to be neutral towards all religions. Secularism in India is under threat because the political parties are using religious communities for their vendettas. Hence strong opposition can be seen from the political parties to the adoption of the Uniform Civil Code. UCC provided in Article 44 of the Constitution of India is actually a tool to make India truly secular, and all citizens will be governed under the same laws and it will not treat any citizen differently because of the religion they belong to.
5. Along with secularism, UCC will also bring gender justice, national integration and harmony among the religious communities. If UCC is not adopted and if every single discriminatory law will be dealt with singularly, then it will take decades to finally get rid of the discriminatory laws. Triple talaq is an evident example of this matter. Goa has a common 'Goa Civil Code' that governs all the people in Goa under the same set of civil laws. The Hon'ble Supreme Court has called it a "shining example" for implementing a

common civil code. The researcher believes that India does not have to implement UCC all over the country right at this moment. Instead, all the states should be encouraged to adopt their common civil code. This has many advantages. The common civil code implemented at the state level can take into consideration the religious and ethnic composition of its people.

6. After evaluating the needs of the states, the Central government can formulate a comprehensive Uniform Civil Code at the central level. The concern regarding UCC destroying the diversity & culture preserved by the tribes is real, but this can be taken care of while implementing a common civil code at the state level, the state can make sure that the laws discriminatory in nature are quashed, but the cultural diversity and ethnicity of the tribes are still preserved. The same can be done while implementing UCC all over the country, with required modifications. This process may take several years and delay the implementation of UCC, but at least it will be a step towards having a common set of laws that will treat every citizen the same without any distinction because of religion and can finally become a secular country.

THE INTENT OF THE JUDICIARY

The Supreme Court of India has always been an ardent supporter of the UCC. It was the legendary case of Mohd. Ahmed Khan v. Shah Bano (hereafter referred to as the Shah Bano case) once again brought up the issue of UCC in the preface. In this much-celebrated case, the Supreme Court brought a divorced Muslim woman within the cover of section 125 of the Code of Criminal Procedure, 1973 and declared that she was entitled to maintenance even after the completion of her iddat period. Although the Supreme Court had assumed the role of a social reformer in many other previous cases, the Shah Bano case usurped a landmark position in the history of

debates on religion, secularism and women's rights. If we carefully sidestep the political drama that later unfolded, we would be able to trace the problems the courts of our country have been facing due to the separate conflicting personal laws. As pointed out in the Constitutional Assembly debates, there already exist several uniform laws in our country. The Supreme Court's use of a uniform law to provide the remedy to Shah Bano proved to be a much easier path to protect the basic rights of women. Had the Supreme Court taken recourse to the specific personal laws, it might have found itself embroiled in debates of theology, thus neglecting the plight of the women. An excerpt from the Court's statement: "Section 125 was enacted to provide a quick and summary remedy to a class of persons who are unable to maintain themselves. What difference would it then make as to what the religion professed by the neglected wife, child or parent? Neglect by a person of sufficient means to maintain these and the inability of these persons to maintain themselves are the objective criteria which determine the applicability of section 125. The liability imposed by section 125 to maintain close relatives who are indigent is founded upon the individual's obligation to society to prevent vagrancy and destitution. That is the moral edict of the law and morality cannot be clubbed with religion."

The Shah Bano case highlights the need for a uniform law which addresses the core need of a woman in distress. It tries to state that it is the suffering of the woman that should be at the core of any gender justice law. The refusal of the husband to maintain his wife after conveniently giving her a divorce is the issue which the law should address rather than addressing what the specific religion has laid down for that woman. V. R, Krishna Iyer J., who is known to have given a scintillating judgement in Bai Tahira v. Ali Hussain Fissalli Chowthia, also has an Ambedkarian viewpoint on the common civil code. Instead of being a majority undertaking, the common code is supposed to be a collection of the best from every system of

personal laws. He states: Speaking for myself, there are several excellent provisions of the Muslim law understood in its pristine and progressive intent which may adorn India's common civil code. There is more in Mohammed than in Manu, if interpreted in its humanist liberalism and away from the desert context, which helps women and orphans, modernises marriage and morals, and widens divorce and inheritance. Iyer J. insists that cultural autonomy is not an absolute anathema to national unity. However, religious practices cannot be justified and upheld by sacrificing human rights and human dignity. Religion cannot and should not be allowed to suffocate the dignity and freedom of the citizens. The judiciary has faced a plethora of problems in upholding social reforms in the private sphere that the legislation tries to bring through various enactments. Surprisingly enough, the recourse to fundamental rights is taken in challenging such enactments. It becomes extremely difficult to gauge the effects of such social reforms on a large scale since it might be possible that one community might be impervious to such social change due to its religious canons. In the case of the State of Bombay v. Narasu Appa Mali, the Supreme Court was face-to-face with such a situation. The constitutional validity of the Bombay (Prevention of Hindu Bigamous Marriages) Act, 1946 was to be determined by the High Court of Bombay. One of the two major contentions was that it was violative of articles 14 and 15 since the Hindus were singled out to abolish bigamy while the Muslim counterparts remained at full liberty to contract more than one marriage and this was discrimination on the grounds of religion. Questions such as this were raised due to an absence of a common civil code and the clash of different principles in different personal laws. M.C. Chagla J. upheld the validity of the Act by stating that it was not violative of any fundamental rights since such prohibition should not be seen through the lens of religious discrimination. He argued that the Muslims and Hindus differed from each other not only in religion, but also in historical background, cultural outlook towards life, and various other

considerations. The High Court of Madras, in Srinivasa Aiyar v. Saraswati Ammal, upheld the validity of the Madras Prohibition of Bigamy Act on similar grounds. The trend which we have to notice is that the courts took a roundabout way to justify such discriminatory laws through extra-religious methods. Otherwise, such discriminatory yet laudable attempts by the legislature to bring social change would have been rendered unconstitutional on the touchstone of Article 15. Hence, justifications such as personal laws not falling within the purview of Article 13 and distinct historical subject positions of religious communities were given. Such examples merely cite the problem of excessive reliance on relativity in the field of personal laws. Sadly, in political debates and public discussions, this has always been projected from the perspective of a man. Since a Hindu man is subject to such discrimination, all men should give up their privilege of having gender-specific superiority. Equality definition is portrayed in this manner and not through the subject position of the woman.

CONCLUSION

Two questions need to be addressed here.

Firstly, how can uniformity in personal laws be brought about without disturbing the distinct essence of every component of society? What makes us believe that the practices of one community are backward and unjust? Secondly, whether uniformity has been able to eradicate gender inequalities which diminish the status of women in our society. This question is interlinked with the previous question. The definitions of inequality may differ from community to community. It is necessary to determine the layers of gender injustices and inequalities that work separately in one society than in others. The personal laws of one society, without a doubt, are dotted with many aspects which are contradictory to the sense of gender equality

existing in that society. The first step, therefore, is to eradicate those unjust practices which are endemic to that specific society. Instead of hurriedly creating a uniform definition of injustice and inequality, which is the dominant point of view, it is necessary that all these societies first recognise the definitions of inequality and injustice within their peculiar sphere of life. Otherwise, what happening is that these societies become defensive against the demands of uniformity and injustices within their communities. This positive side of the debate on UCC time and again reminds the people to tend to the diseases in their personal law system and adjust them to the contemporary times, by taking inspiration from another community which might be more progressive in certain aspects. It must never be forgotten that this is a slow process and any undue haste would only result in failure rather than the desired outcome.

“I personally do not understand why religion should be given this vast, expansive jurisdiction so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty to reform our social system, which is so full of inequities, so full of inequalities, discriminations and other things, which conflict with our fundamental rights.” **Dr Bhimro Ramji Ambedkar**