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Defects in Personal Laws - Constitutional Perspective and an Emphasis on One Common Civil Code that governs India

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Igniting flames in the name of religion has been done a lot of times in our country, before and after independence. The Constitution of India gives freedom to people to profess their religious practices¹ without getting disturbed by anyone but does that mean we should follow everything that is documented in our laws? Certainly not. The rationality within ourselves must rise and we must have the guts to question traditional practices that target the rights of a certain section of Society. Our founding fathers imagined a nation that focuses on growth rather than targeting other religions or defending evil practices that are taking place without any objection. A society without culture is like a life without values. However, we must maintain critical thinking and look out for the flaws that we have in our laws and also amend them with time to maintain the balance between society and laws. In this article, we see the personal laws of religions that are being practiced in India and also focus on the defects that the laws contain. To have a better and equal society, the demand for a Common Civil Code is valid and through the sentences written below, we understand how things have worked till now and the reason behind them. We acknowledge some of the good parts of the laws that need to be maintained with moral grounds. Through the judgments of the Supreme Court, analysis is easy to do with suggestions being included in them.

Keywords: *religion, constitution, rationality, evil practices.*

¹ Constitution of India 1950, art 25(1)

INTRODUCTION: CONSTITUTIONAL ASSEMBLY DEBATES

Meena Mohani, a Congress leader from Bombay, presented the idea of a Uniform Civil Code in the Constituent Assembly.² Certain members of the Assembly supported his thoughts wholeheartedly, including J.L. Nehru, Dr. Ambedkar, and K.M. Munshi, however, the members having conservative thoughts opposed the idea of the Uniform Civil Code, citing the reason of religious diversity and the importance of Personal laws.

'Pt. Nehru felt the Common Civil Code to be a necessary step towards social reform and modernization.'³ Thinking about modernization in those times when the majority of the country was facing poverty and illiteracy, was a brave thought.

Through the reforms in Hindu laws during 1955-56, Pt. Nehru until extent proved his thoughts to be correct and important for the nation. The Hindu laws are arguably the most liberal in the country currently with lots of freedom and rights, especially for women. His ideas directly impacted almost 85% of the population at that time. Although, he always got criticism for implementing the same laws for Muslims, however, he advocated himself by arguing that the post-partition scars were not healed and that was not the perfect time to bring the same changes for Muslims.

Dr. Ambedkar, because he had faced the extreme divide in society for his caste identity, knew the pain and struggle that the underprivileged go through. 'He favored the idea of a Uniform Civil Code to eliminate discrimination and promote gender equality to its peak'.⁴ He wanted to create a society that provides equal rights to men and women in the matter of decision-making, marriage, divorce, share of property. Even after independence, he suggested that a common civil code could be voluntary for a beginning. Dr. Ambedkar was an exceptional intellect with high

² Ramesh Sharma, 'What Framers of our Constitution said about UCC and why they didn't implement it' *India Today* (31 July 2023) <<https://www.indiatoday.in/nation/story/uniform-civil-code-what-farmers-of-our-constitution-said-about-ucc-constituent-assembly-debates-2402758-2023-07-07>> accessed 05 February 2024

³ Vaibhav Purandare, 'Uniform Code: Nehru okayed principle, but didn't make it a directive' *The Times of India* (23 August 2017) <<https://timesofindia.indiatimes.com/india/uniform-code-nehru-okayed-principle-but-didnt-make-it-a-directive/articleshow/60183225.cms>> accessed 05 February 2024

⁴ Vikas Pathak, 'Ambedkar favoured Common Civil Code' *The Hindu* (25 March 2016) <<https://www.thehindu.com/news/national/ambedkar-favoured-common-civil-code/article7934565.ece>> accessed 05 February 2024

values and grounds, his views shaped the base of current India. The Country shall always be indebted to him.

Sardar Vallabhbhai Patel, the icon who unified the Indian geographical boundary, also supported the idea of a common law, that remains equal for all irrespective of his/her background, religion, caste, and class. He not only the land but wanted to integrate India with common law as well.

K.M. Munshi, a great legal mind, felt it 'important to move from discriminating personal laws to an undivided set of laws that would not only impact the minority but the majority as well and also promote women's rights and social progress.'⁵

KT Shah, a prominent Socialist leader of those times, did not approve of the idea and assumed it to be a threat to the minority's right to freedom. He rather advocated for reforms within the personal laws. His views were partially correct but still so many personal laws would have again created trouble for the judiciary to decide every judgment by keeping the religion of the people in mind.

Maulana Abul Kalam Azad, one of the best intellects of India ever, opposed the concept of the Uniform Civil Code by saying that it disrupts the valuable diversity of India concerning religion and cultures. However, he might not have understood its importance for the rights of women of every religion and the different succession rules that each religion follows.

Looking at the dissents in the Constituent Assembly, the members decided not to implement the Uniform Civil Code at the earliest. However, they did consider it for the future, and therefore they added it to the Directive Principles of State Policy in the Constitution, which we will discuss ahead in the Article.

CONSTITUTION'S ARTICLES

Whenever any debate arises between groups of people in which one is advocating for Common laws and the other argues for Personal laws, both sides base their arguments on certain

⁵ Arun Anand, 'How Ambedkar, Munshi & Krishnaswamy Ayyar argued for Uniform Civil Code at Constituent Assembly' *The Print* (26 November 2016) <<https://theprint.in/india/how-ambedkar-munshi-krishnaswamy-ayyar-argued-for-uniform-civil-code-at-constituent-assembly/771945/>> accessed 05 February 2024

Constitutional articles. To understand both sides, it is necessary to know on what principles, our Constitution stands.

The Constitution framers made some absolute Fundamental Rights⁶, which every citizen of the country has; however, some Directive Principles of State Policy (DPSP)⁷ were also added as a responsibility for the state to look for. Uniform Civil Code is a part of DPSPs but the arguments that define the principle are the parts of Fundamental Rights. On a larger scale, the superiority between Fundamental Rights and DPSPs has been an issue. After a long judicial battle, the Supreme Court clarified a lot of concerns regarding these two pillars of the Constitution in the cases of *I.C. Golaknath v State of Punjab*⁸ and *Keshavananda Bharati v State of Kerala*⁹.

To dive further into details, we must understand the meaning of the Articles that we are continuously going to see ahead. The side that wants to have a Common Civil Code cites these Articles to make their arguments impactful.

Article 13(1): Even before our independence, certain acts were active; this clause protects those laws but also gives power to the Parliament to amend the parts of the acts that are against the value of Fundamental Rights, defined in the Constitution.¹⁰

Article 14: 'The law sees no religion, caste, class, gender, race, or power while deciding the judgment', is the simple explanation of the Articles. It stands for equality in the eyes of the Judiciary.¹¹

Article 15: Just a bit of extension to the ideas of the previous article, this one dictates that the state shall not differentiate based on anything. However, in clause (3) of the Article, the state has a special power to make partial provisions for women and children.¹²

⁶ Constitution of India 1950, Part III

⁷ Constitution of India 1950, Part IV

⁸ *I.C. Golaknath & Ors. v State of Punjab & Anrs* (1967) AIR 1643

⁹ *Kesavananda Bharati v State of Kerala* AIR 1973 SC 1461

¹⁰ Constitution of India 1950, art 13(1)

¹¹ Constitution of India 1950, art 14

¹² Constitution of India 1950, art 15

Article 21: The importance of this Article is such, that even in the case of emergency; this one cannot be restricted or taken away by the state. A citizen gets the Right to life and also gets the full liberty to live his/her life.¹³

Article 44: The state gets the autonomy to establish a Uniform Civil Code through this Article.¹⁴ The conservative side wants to let Personal laws be sustained; take the help of these 2 Articles, but in certain judgments, the Supreme Court has held them otherwise.

Article 25: One has the freedom to practice his religion because of this Article. Except for Public order, morality, and health, religious freedom is absolute, but the state still has the power to make laws if it feels necessary.¹⁵ Therefore, it is not absolute and it can only allow those practices to survive which are compulsory for the religion.

Article 26: A person, through this article, gets the right to establish any religious institution and to maintain any.¹⁶

REFORMS IN HINDU LAWS

Fundamentalism towards local cultural values significantly shaped the then-traditional Hindu society. Discriminating and encouraging inhuman behavior with a particular section, citing Caste created a vacuum. 'As per the scriptures, in the Satyug, people believed in the idea of 'Vasudhaiva Kutumbakam', which meant 'the whole world is a family', however, the misinterpretation of the Caste system created an unwanted hierarchical stage of society, which was to be decided based on Caste of an individual. The Hindu society evolved to be an ideal space for Brahmins, Kshatriyas, and Vaishyas, however, it was highly unequal and harsh towards the Shudras and untouchables. The laws and dynamics were different for everybody, which led to different punishments for the same crime, decided by looking at the caste of victim and wrongdoer.

¹³ Constitution of India 1950, art 21

¹⁴ Constitution of India 1950, art 44

¹⁵ Constitution of India 1950, art 25(1)

¹⁶ Constitution of India 1950, art 26

Around two centuries ago, the co-ordination between Ishwar Chandra Vidyasagar and Lord Dalhousie, met its best result when the Hindu widows got legal rights to remarry through The Hindu Widows' Remarriage Act.¹⁷ This significantly changed the way traditional Hindu society used to have an opinion about women. Before that, Raja Ram Mohan Roy fought a long-needed battle within the society to abolish the evil 'Sati Pratha', he received the support of Lord Bentick and finally, in the year 1829, The Sati Abolition Act¹⁸ was passed.

Due to several reforms, the Hindu society became easier than before to deal with. While making the Constitution of India, the demand for a Uniform Civil Code arose from within, but criticisms could not make it successful back then. Later, Dr. Ambedkar tried his best to bring the Common Civil Code but he did not get support from the Parliament, and then he resigned as the Law Minister. Prime Minister Pt. Jawaharlal Nehru was aware of the benefits of the reforms and while campaigning for the Lok Sabha elections of 1951-52, he promised that he would bring changes in the traditional laws of the Hindus. Indian National Congress received a huge mandate and that allowed Pt. Nehru to fulfill his promise to the people of India.

However, that was not easy for him to disrupt the Family laws, as the then Indian President Dr. Rajendra Prasad had already refused to sign the Hindu Code Bill. Apart from him, a large chunk of leaders from the opposition severely criticized the idea of changing Hindu laws.

Pt. Nehru therefore, broke the Hindu Code Bill into 4 parts and brought them one by one in the Parliament. The Hindu Marriage Act¹⁹ became the first to come. The Act revolutionized the Hindu laws and gave so many rights to women that they would have never expected. Hindu men lost their freedom to marry more than once as it restricted Bigamy or Polygamy.²⁰ According to the Hindu religion, marriage is a sacred bond that can never be broken but through Section 13, Hindu women get the privilege to approach the Court and ask for divorce from their

¹⁷ Hindu Widows' Remarriage Act 1856

¹⁸ Sati Abolition Act 1829

¹⁹ Hindu Marriage Act 1955

²⁰ Hindu Marriage Act 1955, s 11

husband if she has a valid ground for her claim.²¹ Section 494 of the Indian Penal Code criminalized the practice of Polygamy.²²

The next year marked the arrival of three other Acts, starting from The Hindu Succession Act of 1956.²³ The daughters got their rightful right on the property of their father and wives got their right on the property of their husband. If the Indian Civil Code comes, then a few Succession clauses shall be changed, like the claim on the property of the deceased wife by the husband's relatives and not her relatives.

The Hindu Minority and Guardianship Act 1956²⁴ described the meaning of the word 'minor'²⁵ (below the age of 18) and gave certain terms such as Natural Guardian and Custody.²⁶ The responsibilities of a parent towards their ward were defined in the Act, and the rights a child gets, are well-explained. The Hindu Adoption and Maintenance Act 1956²⁷, on a large scale, determined the rules for adopting a child and gave rights to women, to get an Alimony and Maintenance²⁸ from her ex-husband.

After all the developments during the 50s, few leftovers were cleared in the landmark judgment of the Sarla Mudgal Case²⁹, where the Supreme Court delivered that those Hindu men who changed their religion to Islam just to marry more than once, then such people would be punished by the Section 494 of Indian Penal Code.

The revolutionary laws impacted not only Hindus, but Sikhs, Buddhists, and Jains as well.³⁰ Apart from the religions, certain communities like Virashaiva, Lingayat, or followers of Brahma Samaj, Arya Samaj, and Prarthana Samaj also were part of the Hindu Laws.³¹

²¹ Hindu Marriage Act 1955, s 13

²² Indian Penal Code 1860, s 494

²³ Hindu Succession Act 1956

²⁴ Hindu Minority and Guardianship Act 1956

²⁵ Hindu Minority and Guardianship Act 1956, s 4

²⁶ Hindu Minority and Guardianship Act 1956, ss 6-7

²⁷ Hindu Adoption and Maintenance Act 1956

²⁸ Hindu Adoption and Maintenance Act 1956, s 18

²⁹ *Smt. Sarla Mudgal v Union of India* (1995) AIR 1531

³⁰ Hindu Marriage Act 1955, s 2(1)(b)

³¹ Hindu Marriage Act 1955, s 2(1)(a)

If the Uniform Civil Code comes, Hindus will not be affected much except by the tax benefits on the Hindu Undivided Family scheme that benefits in money saving.

SIKH PERSONAL LAWS

Although Hindu laws govern the majority of Sikh laws, the marriage laws are still governed by The Anand Marriage Act of 1909³². The said laws, however, deal only with marriage and not divorce, because there is no provision for divorce in Sikh Personal laws. Therefore, The Hindu Marriage Act³³ comes into action, and the common Hindu laws govern all divorce cases.

CHRISTIAN PERSONAL LAWS

Referring to the Christian Laws in India, even before the Independence, it can be said that their laws were moralized much earlier in comparison to others. The British Empire mainly consisted of Christians; hence, they had a much better sense of making laws for their religion. Conflict between Catholics and Protestants led to the innovation of several necessary laws. The rational thinking of Protestors contradicted the Fundamentalist thoughts of Society, which paved the way for new-age laws and punishments within the Society.

Reformation through the enactment of The Indian Penal Code³⁴, made a good belief within the lawmakers of that era, and that went on to the adoption of The Indian Divorce Act³⁵, The Indian Christian Marriage Act³⁶, and several others, which impacted the life of the Christian Community of India.

Despite having the most 'ahead of time' laws, few flaws in the Laws took more than enough time to get morally correct. One such incident took place in the case of *Mary Roy v State of Kerala & Ors.*³⁷, where Mrs. Mary Roy, a widow fought a legal battle against her brothers who harassed her and did not equally distribute their father's property. The Respondents cited The Travancore Succession Act of 1916³⁸, which did not provide equal property rights to women of

³² Anand Marriage Act 1909

³³ Hindu Marriage Act 1955

³⁴ Indian Penal Code 1860

³⁵ Indian Divorce Act 1869

³⁶ Indian Succession Act 1925

³⁷ *Mrs. Mary Roy v State of Kerala & Ors* (1986) AIR 1011

³⁸ Travancore Succession Act 1916

the house. The issue included whether The Indian Succession Act of 1925³⁹ applied to that particular area or not. The Supreme Court delivered a favorable judgment by citing Article 14 and Article 15 of The Constitution of India of 1950⁴⁰ that gave a new meaning to the lives of women of the Christian community in India, by awarding the right to have an equal share in the family property.

Similar to the Succession aspect, the case of *John Vallamattom & Anr. v Union Of India*⁴¹, dealt with the Constitutional validity of Sec. 118 of The Indian Succession Act 1925⁴². The above-mentioned section restricted the right of Christians to choose the desirable achiever of their property, which are religious institutions. The petitioner wanted to donate his property to his religion's institutions, however, was unable to do so because of the Act. The Supreme Court, viewing Article 14 of the Constitution of India of 1950, held Section 118 as unconstitutional and struck it down.

Section 10 of The Indian Divorce Act of 1869⁴³ created a ruckus during the case of *Pragati Varghese v Cyril Georg*⁴⁴, which was filed on the ground of Adultery and the law being biased against the rights of Christian women that asked for one other reason apart from 'Adultery', to ask for a divorce. It was not the same for men. The Supreme Court considered it violative of Article 14 and removed a certain part.

The Indian Parliament, in 2001, amended Section 10 of The Indian Divorce Act of 1869 and inserted 'Mutual Consent' as a Ground of Divorce with a flaw not being removed and that was highlighted in the case of *Albert Anthony v Union of India*⁴⁵, where the Petitioners felt injustice towards the Christian Community because of the period of 'Mutual Divorce' is 2 years, which was not similar to the laws of other religions which asked for just 1 year. The Supreme Court

³⁹ Indian Succession Act 1925

⁴⁰ Constitution of India 1950, arts 14-15

⁴¹ *John Vallamattom & Anr v Union of India* WP (C) 242/1997

⁴² Indian Succession Act 1956, s 118

⁴³ Indian Divorce Act 1869, Sec 10

⁴⁴ *Pragati Varghese & Anr v Cyril George Varghese & Anr* AIR 1997 Bom 349

⁴⁵ *Albert Anthony v Union of India* WP (C) No 127/2015

heard the matter and delivered the verdict, considering it violative of uniformity with other laws.

The Christian laws have still been morally correct in comparison to others and if the Common Civil Code comes into force, not too many changes would happen and certainly, there will not be any kind of protest from the community as the people have been liberal with the laws from the beginning.

PARSI PERSONAL LAWS

Despite being very small in Population in India, the Parsi religion forms an inseparable bond with the Country. As India does not have a common civil law for all religions, the Parsi religion's laws are governed either by their Laws or by some common laws for minorities, excluding Muslims.

The Parsi Marriage and Divorce Act⁴⁶ governs the marriage and divorce-related matters of the Parsi community, which feels familiar to the Parsis. Because of having such less population, the community feels scared to lose or merge its identity; therefore, they shy away from accepting certain laws that can break their family structure. The Parsi religion follows a traditional way to conciliate the breaking marriage of a couple. Few intellectual and respected members of the religion come together to save the family and make people sort out their issues.

One major issue with the religion's law in India is that, If a Parsi man marries a non-Parsi woman, then their kid will be considered Parsi, however, if a Parsi woman marries a non-Parsi man, then their kids won't be considered as Parsi. This system is still in continuation and there has not been any appropriate action taken to remove the partial law.

For Guardianship of kids, the Guardians and Wards Act of 1890⁴⁷ has always prevailed in the religion and The Indian Succession Act of 1925 has dedicated Sections 50 to 56 for the Parsi community⁴⁸ that states 'Chapter III – Special Rules for Parsi Intestates'.

⁴⁶ Parsi Marriage and Divorce Act 1936

⁴⁷ Guardians and Wards Act 1890

⁴⁸ Indian Succession Act 1925, ss 50-56

The Parsi community is very low in numbers but has been a significant contributor towards the upliftment of India. The Personal laws of Parsis are very neutral and do not have any major issues apart from not recognizing the kids born from a Parsi woman married to a non-Parsi man. This is something that needs to be changed and it does not look difficult to implement.

JEWISH PERSONAL LAWS

Only a few thousand Jewish people are citizens of India. Considering the marital laws for Jews in India, people in the community believe marriage is a very sacred duty and they do not believe in the idea of divorce. There is no law for divorce in Jewish people, however, if they want, they can live separately. There is no personal law for Jews, as of now.

Like Christians and Parsis, The Indian Succession Act of 1925 also governs Jewish laws⁴⁹ for Succession and Inheritance, and The Guardianship and Wards Act of 1890⁵⁰, if they want to become a Guardian of a kid. Except for the matter of divorce, we do not see any law that needs to be changed. Seeking for divorce in a toxic marriage is not a wrong thing to do and people should have the right to move on in life and live in whatever way they want.

MUSLIM LAWS

Linking to political gains, Muslims in India have been kept far from uniform reforms even now. The majority of members who categorically opposed the inclusion of the Uniform Civil Code cited the reason for the secular fabric of the country and the freedom to practice religious cultures, however, their thoughts failed to analyze the situation of women in the religion, and the judiciary to read a bunch of personal laws that somewhere maintained partiality. The British took a few measures to regulate the Muslim laws, but they feared the backlash from the community. That continued even after the independence when the government did not pass any specific law that cleared the flaws in the Muslim Personal laws. However, the Supreme Court in a few judgments either struck down certain parts or instructed the Government to implement the Uniform Civil Code. To understand the developments and non-uniformity in the Muslim

⁴⁹ Indian Succession Act 1925

⁵⁰ Guardians and Wards Act 1890

Personal laws, we have to go through the timeline of the laws being made for Muslims or amended.

PRE-INDEPENDENCE LAWS

When the Britishers were making amendments to personal laws of every religion and coming up with a few uniform laws for every minority, they passed an act to appease the Muslim citizens of India. Their intentions can be debatable, as they might have done so to grow more divide-and-rule propaganda, or they did not want to make changes to avoid clashes in the community. Actions taken by them made it more difficult to remove the evil practices done in the name of religion.

British passed a bill, mainly based on Shariat laws in 1937⁵¹. Through this, instead of going forward, the community was pushed centuries back. There should have been a liberal attempt to bring new changes in the community and grant more power to the Judiciary to take needful actions rather than relying on the Qazis and Muftis. The act authorized Qazis to decide civil matters, and in case they faced obstacles, could approach Mufti.

Two years later, some developments happened through The Dissolution of Muslim Marriages Act⁵², which was progressive in comparison to the previous laws. Women were awarded certain rights, especially to seek divorce on certain grounds.⁵³ However, no provision for maintenance was added.

UNDERSTANDING MUSLIM CUSTOMS

Understanding the further steps taken by the Judiciary, Parliament, and Community would be much easier if we understood the concepts and traditions followed by the people. During the time of marriage, a Nikahnama is made and an amount is fixed which the groom has to pay to the bride, Mehr. If a marriage breaks down, the amount is completely paid by the husband. The Islamic scriptures have allowed Bigamy or Polygamy to four marriages for men under two conditions i.e. to maintain the sex ratio or if the husband promises that, he will not differentiate

⁵¹ Muslim Personal Law (Shariat) Application Act 1937

⁵² Dissolution of Muslim Marriages Act 1939

⁵³ Dissolution of Muslim Marriages Act 1939, Sec 2

among his wives. The concept of divorce is biased towards men and severely harsh towards women. The controversial form of divorce practiced in Islam is the Triple-Talaq, which comprises three types, including Talaq-e-ahsan (husband saying the word ‘Talaq’ three times in span of irregular intervals of time), Talaq-e-hasan (husband saying the word ‘Talaq’ three times in the ninety days), and Talaq-e-biddat (husband saying the word ‘Talaq’ three times, quickly). All three practices are against women, as they do not have the right to do the same. If in case, the couple wants to marry each other, then the process of Nikah halala is done, which is in all aspects, against the dignity of a woman and also must be abolished without any second thought, this process can be traumatic for a woman for the rest of her life. Apart from these, there is no scope of maintenance in the Muslim Personal laws, as the husband has to pay a reasonable amount to his wife until the Iddat period ends. Moving on to the Succession laws, a daughter gets absolute rights on her family property which is commendable in comparison to other religious laws, however, the partiality continues when a son gets double the amount of property than a daughter.

CASES THAT IMPACTED MUSLIM LAWS

After the failure of the Parliament to pass rightful laws for Muslims, the only hope left in these circumstances is the order of the Judiciary. Since Independence, on different occasions, the respected High Courts and the Supreme Court have delivered judgments that have put pressure on the Government to restore morality.

Soon after Independence, a man named Narasu Appa Mali⁵⁴ faced the eyes of the Bombay High Court as even after being a Hindu, he married twice. He pleaded before the Court that if Muslims are allowed to have more than one wife, then why the laws are partial towards other religions? The Court held that the changes in the Muslim Personal law of 1937⁵⁵ can only be done by the Parliament and Article 13(1)⁵⁶ does not apply to religious laws. This judgment turned out to be a wrong one and the High Courts of other states and the Supreme Court remained silent on the issue, which led to the sheer mismanagement of Muslim Personal laws

⁵⁴ *State of Bombay v Narasu Appa Mali* AIR 1952 BOM 84

⁵⁵ Muslim Personal Law (Shariat) Application Act 1937

⁵⁶ Constitution of India 1950, art 13(1)

in the Society. Even Justice D.Y.Chandrachud, while delivering the judgment of the Sabrimala case⁵⁷ held that there was a flaw in the Narasu Appa Mali judgment.

For a long period, the Courts refused to entertain such pleas but looking at the gross injustice towards Shah Bano⁵⁸ by her husband Mohd. Ahmed Khan, the Supreme Court delivered one of the most important judgments in the history of the Indian Judiciary. Shah Bano faced lots of backlash when she approached the Court to seek her rights. A particular group of conservative and fundamentalist Muslim men tried their best to manipulate the Supreme Court and create chaos on the streets, but the judiciary did what it was there for. The Supreme Court upheld the High Court's order that Ahmed Khan must give 179.80 rupees per month and an amount of ten thousand rupees for her expenditure on Advocate and legal fight. All India Muslim Personal Law Board opposed the decision and were slammed by the Supreme Court⁵⁹. However, Shah Bano and all the Muslim women who were victims of the Personal laws did not get justice even after the Supreme Court's order.

The Indian government led by Prime Minister Rajiv Gandhi overturned the judgment to appease the Muslim votes and came up with a new law that used the word 'Protection of Rights on Divorce'⁶⁰ but unarguably it suppressed the Muslim women's voice and did what a traditional society used to do with women, silent them. The demand for maintenance was also silenced. The Supreme Court's demand for a Uniform Civil Code was also suppressed in the political battle.

After a few more years, Noor Saba Khatoon also faced similar issues, even in the unavailability of concerned laws, the Supreme Court directed that the father is liable to pay for his kids till they become adults.⁶¹

⁵⁷ *Indian Young Lawyers Association v State of Kerala* AIR 2018 SC 243

⁵⁸ *Mohd. Ahmed Khan v Shah Bano Begum & Ors.* 1985 AIR 945

⁵⁹ 'Rs.20/month alimony: How 1985 Shah Bano case paved way for UCC debate' *The Deccan Herald* (29 June 2023) <<https://www.deccanherald.com/india/month-alimony-how-1985-shah-bano-case-paved-way-for-ucc-debate-1232459.html>> accessed 08 February 2024

⁶⁰ Muslim Women (Protection of Rights on Divorce) Act 1985

⁶¹ *Noor Saba Khatoon v Mohd. Quasim* (1997) 2 DMC 356

In the case of Shah Bano, Danial Latifi was the advocate who represented her in court. From the failure on the government's side, the laws were not correctly implemented. However, Danial Latifi appealed to the Supreme Court⁶² and reminded them, that there should be a reasonable amount paid to the wife during the time of Iddat and that should be decided according to the standard of living of the woman during her married days and as per the Husband's income. The Supreme Court supported her claims and it indeed made a few things easier for Muslim women.

Shah Bano's case would have been the most impactful case for Muslim women but due to the changes, it did not become. So the most important judgment can be considered of Shayara Bano⁶³, in which she had filed an appeal that her husband gave her Talaq-e-biddat through speed post and it violated her rights. She raised the issues of Triple-Talaq, Nikah-halala, and Polygamy but the court decided to hear just the Triple-Talaq part. A 5 judge Constitutional Bench sat for a hearing which included one judge for Sikh, Christian, Hindu, Muslim, and Parsi communities each. Bharatiya Muslim Mahila Andolan supported the victim and like the Shah Bano case, the All India Muslim Personal Law Board opposed it. The Supreme Court found that even if the Right to profess religion⁶⁴ is mentioned in the constitution, it has the ground that immoral laws must be repealed and therefore, with the majority of 3:2 yet again stood by the principles and ordered the Parliament to pass a law and abolish Triple-Talaq. The Indian government through The Muslim Women (Protection of Rights on Marriage) Act, 2019, did the same⁶⁵. The Act criminalized the Triple-Talaq and made it non-bailable and Compoundable.

The Guardians and Wards Act of 1860 did not grant the people to become Parents of an adopted child, but rather become Guardians and care for the child until he/she becomes an adult guided the Adoption rights of Muslims. Shabnam Hashmi, a social activist felt it unlawful, and being a Guardian of an adopted daughter, she approached the Supreme Court and pleaded. The Court said that the Right to Adopt and the Right to be adopted comes under the Fundamental Right to Life and Liberty⁶⁶.

⁶² *Danial Latifi & Anr v Union of India* AIR 2001 SC 3958

⁶³ *Shayara Bano v Union of India & Ors* AIR 2017 SC 4609

⁶⁴ Constitution of India 1950, art 25(1)

⁶⁵ Muslim Women (Protection of Rights on Marriage) Act 2019

⁶⁶ *M/S Shabana Hashmi v Union of India and Ors* AIR 2014 SC 1281

REQUIRED CHANGES IN MUSLIM LAWS

The Muslim community has been deprived of liberal laws for a long time and it is the best time to demand rights and create a needful change in the community. Practicing Bigamy or Polygamy is a trauma for a woman that she may never speak. Women need uniform laws so that they can live their lives with dignity without fearing that their husbands will marry somebody else.

In addition, there cannot be anything more evil than Nikah-halala that is being practiced somewhere. India Today did an expose in 2017⁶⁷, where they exposed a few Qaziz who charge anything between 20,000 and 1,50,000 for one-night stands, in the name of saving marriages through Nikah-halala. This practice snatches away the self-respect of a woman. A woman has to go through such trauma because of the mistakes that their husband has made. This is a sheer violation of The Right to life and liberty⁶⁸ of a woman.

The Uniform Civil Code Is most important for the Muslim community so that the people who belong here, do not face the shameful laws that preside in the society.

UNTOUCHED TRIBALS LAWS

When we discuss implementing a common civil code throughout the country, every legislative body excludes the Tribal community from such debates. The Parliament does not have the power to amend the customary laws in a few states of the North-west of India. If it intends to, then a resolution must be passed in the State Assembly before that. Such provisions are applicable in Nagaland⁶⁹, Assam⁷⁰, and Mizoram⁷¹.

Even in Schedule 6 of the Constitution, there are ten areas given which have special powers vested in the Governors of the states. Those areas include The North-Cachar Hills District (Dima Haolang), The Karbi-Anglong District, and The Bodoland Territorial Area District from Assam;

⁶⁷ Sushant Pathak and Jamshed Adil Khan, 'Exposed: How maulvis take money for one-night stand with divorced women trying to save marriage' *India Today* (16 August 2017) <<https://www.indiatoday.in/india/story/nikah-halala-islamic-scholars-one-night-stand-divorced-muslim-women-marriage-1029887-2017-08-16>> accessed 09 February 2024

⁶⁸ Constitution of India 1950, art 21

⁶⁹ Constitution of India 1950, art 371-A

⁷⁰ Constitution of India 1950, art 371-B

⁷¹ Constitution of India 1950, art 371-G

The Khasi Hills District, The Jaintia Hills District, and The Garo Hills District from Meghalaya; The Chakma District, The Mara District, and The Lai District from Mizoram; and The Tripura Tribal Areas⁷².

Cultures and traditions followed by the Tribal people are far different from the people like us who live in cities and towns. We should not and cannot enforce our laws on them, until and unless some demand comes from themselves. Such diversity should be maintained.

PRE-CONSTITUTIONAL LAWS AND UNIFORM ACTS

CRIMINAL LAWS

The British Crown was unable to govern India without a common law for civil and crime matters as each religion had different laws and punishments for the same category of crime. After the Great Rebellion of 1857, the Britishers tried to play safe in India but also did some needful work that changed the society in certain aspects. To form a common law for everyone in the Country was next to impossible, but they successfully enacted The Indian Penal Code of 1860⁷³. Even now, this is in force, and to an extent, this law ended the discrimination for punishment based on caste and religion. The enactment of the act was nothing but a blessing in disguise in those times. Recently, the Indian Parliament passed The Bharatiya Nyaya Sanhita of 2023⁷⁴, intending to decolonize the British impact, but it is still more or less influenced by the old law. Apart from it, a few other acts were also passed to manage India on an undivided basis, including The Code of Criminal Procedure⁷⁵ and The Indian Evidence Act⁷⁶. These two have also been uniform for everyone. In 2023, the government brought new laws to replace them, The Bharatiya Nagrik Suraksha Sanhita⁷⁷ and The Bharatiya Sakshya Adhinyam⁷⁸.

The enactment of these laws, be it in the British era or independent India, it can be proposed that the country has accepted the Uniform laws and they have made it easier for the authorities

⁷² Constitution of India 1950, Sch 6

⁷³ Indian Penal Code 1860

⁷⁴ Bharatiya Nyaya Sanhita 2023

⁷⁵ Code of Criminal Procedure 1861

⁷⁶ Indian Evidence Act 1872

⁷⁷ Bharatiya Nagrik Suraksha Sanhita 2023

⁷⁸ Bharatiya Sakshya Adhinyam 2023

to regulate the working. Such laws have been easier to understand, without having any exception related to religion or caste in mind.

UNIFORM LAWS FOR ABSOLUTE MAJORITY

We have uniform laws for Hindus, Sikhs, Buddhists, and Jains; Personal laws are there for Muslims, but the Christians, Parsis, and Jewish laws are not included in these two. For them, the laws made by the British are still applicable because the Constitution permits the pre-constitutional laws to be in force.⁷⁹

The Indian Succession Act⁸⁰ is there to govern the manage the succession and inheritance of the other religions that do not have their laws. The absolute majority of religions either have their laws or follow their traditional culture, but for Divorce, The Indian Divorce Act⁸¹ remains applicable to all.

In India, under The Hindu Adoption and Maintenance Act 1956⁸², the religions included, have the right to adopt and raise the kids but the minority religions did not get the right to do the same. Through The Guardians and Wards Act⁸³, they had the authority to raise kids and become their Guardians, till they became adults. But they could be declared 'Parents' of the child, and their authority over the child is lost after they become adults.

COMPLETE SECULAR AND UNIFORM LAWS

Apart from the Criminal laws, only a few laws are in force that do not differentiate even a small provision based on religion. One such act was passed back in 1954. The families used to be conservative about marriage and relations in those times; marriage was a highly sacred thing that used to be practiced only in the same caste and religion and thinking beyond that was considered as anti-societal values. The Indian government passed The Special Marriage Act⁸⁴ that allowed a person from any community to marry anyone of the opposite gender in case they

⁷⁹ Constitution of India 1950, art 13(1)

⁸⁰ Indian Succession Act 1925

⁸¹ Indian Divorce Act 1869

⁸² Hindu Adoption and Maintenance Act 1956

⁸³ Guardians and Wards Act 1890

⁸⁴ Special Marriage Act 1954

belong to different religions. The act was a revolution that tried to promote inter-religious marriages, without any threat from the society and authority.

The next big step that ended discrimination related to Adoption was The Juvenile Justice (Care and Protection of Children) Act⁸⁵. As we discussed above, the minority religions did not get the right to adopt a child and become a Parent but through this act, everyone got the chance to adopt if they wanted and become a legal parent.

GOA'S UCC

Through the bravery of Indian soldiers in Operation Vijay, the Indian Government merged the territory of Goa and Daman & Diu into India. Before that, unlike the rest of the country, Goa used to be under Portuguese rule for a very long time. As it is a western coast, it was much easier for the Portuguese to enter and trade with India. Goa was the first state and till a few months back, it was the only state of India to have its own Uniform Civil Code.

Back in 1867, the Portuguese Civil Code was implemented in the territory of Goa⁸⁶. However, if we go through the act, many provisions abandon the claim of it being uniform.

Unlike the rest of India, Hindu men of Goa can practice bigamy if their wives have not delivered a child till the age of 21, or if there is no male child born till the age of 30⁸⁷. For every religion, the process of divorce shall get settled only in the Court but for Catholics, the priest has the right to dissolve marriages.

Apart from these biased laws, the act also has some ideal laws that even the Central government should consider while drafting the Common Civil Code. The Succession laws in Goa are much easier to deal with. Under any circumstances, the parents have to give 50 percent of their property to their kids, regardless of gender. The property shall also be equally distributed among the kids, without any kind of bias. The Husband and wife are also entitled to equal share

⁸⁵ Juvenile Justice (Care and Protection of Children) Act 2015

⁸⁶ Portuguese Civil Code 1867

⁸⁷ Arvind Mishra, 'How uniform is Goa's civil code? | Explained' *India Today* (2 July 2023)

<<https://www.indiatoday.in/law/story/goa-uniform-civil-code-marriage-polygamy-adoption-divorce-property-children-2400680-2023-07-02>> accessed 10 February 2024

in every property that they have after their marriage, it can only be exempted if they decide something otherwise, before their decision of separation.

Even after the independence of Goa, the citizens there followed their old laws as the Indian Government had granted them rights to do that, through The Goa Daman and Diu Administration Act of 1962⁸⁸. However, if we analyze the laws, we can easily know there is a lack of uniformity in their laws. If the Indian Government considers making a Uniform Civil Code, they must repeal the act.

RECENT DEVELOPMENTS WITH UCC

The Uttarakhand Government recently passed The Uniform Civil Code of Uttarakhand 2024⁸⁹ and banned Bigamy and Polygamy for Muslims. The Assembly, however, exempted Tribal communities from any changes and understood their need for different laws than others. The controversial law made provisions for registration of Live-in relationships, but there is still a debate about whether it invades the couple's privacy or not. Concerning inheritance, there is a provision that dictates equal share in property for all.

Governments of other states like Haryana, Assam, Madhya Pradesh, Uttar Pradesh, and Gujarat have started talking about making a committee to make a draft for the Uniform Civil Code.⁹⁰

CONCLUSION

Even after so many years of struggle, Indians have not gotten rid of the Personal laws and a few people still do not want to have one Common law that will guide the nation In civil matters. Diversity is important but that does not mean that we give way to evil and unnecessary practices in the name of religion. Indian society has seen lots of changes, when the Sati was abolished, a few Hindus took it to their heart and considered it a potential threat to Hindu traditions, however, they forgot that the said practice was not divine and was created by humans to

⁸⁸ Goa Daman and Diu Administration Act 1962

⁸⁹ Uniform Civil Code of Uttarakhand 2024

⁹⁰ Shyma Rauf, 'Uniform Civil Code: States that spoke about its implementation' *Deccan Herald* (08 February 2024) <<https://www.deccanherald.com/india/uniform-civil-code-states-that-spoke-about-its-implementation-2885852>> accessed 10 February 2024

suppress the women. Sati's abolition opened a new direction for society to have a re-look at the customs and traditions that we have been following for ages, and if we find something out, it needs to be changed at the earliest. Usually, in civil and family matters, women faced the harsher side and the patriarchal society had not left any choice to them, but as time passed, the demand for justice increased. The Parsi community does not allow the child of a Parsi woman and a non-Parsi man, to be called a Parsi. The Jewish community still does not have any provision for divorce. The Muslim laws promote Nikah-halala and Polygamy, even though Turkey, a Muslim country has banned Polygamy. It is not a matter of religion but of conservativeness. A society that guarantees equality is the most ideal to live in. We should focus on how we can get better and create a society that becomes rational and has an idealistic thought to raise questions and ask for explanations rather than intimidating by the name of God. A country has to manage its economy, defense, and laws; it cannot only waste its time on tackling Personal laws and impressing religions one by one to appease. Therefore, we must find a solution and that is to implement a Common Civil Code that remains equal to all its citizens.