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Unraveling the Uniform Civil Code: Navigating Misconceptions and Realities

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ABSTRACT

In the evolving landscape of India, characterized by its developmental strides and diverse geographical and cultural tapestry, the coexistence of religious-based moral values and lifestyles has been deeply ingrained since time immemorial. Recognizing the imperative to compete globally, it becomes paramount for the nation to balance its cultural richness with the demands of progress. Rather than outright abandonment, a positive reformation of religious-based moral cultures is proposed as a judicious approach, fostering development without severing ties to deeply rooted traditions.

In the contemporary era marked by technological advancements and the open doors of globalization, the younger generation is increasingly influenced by Western cultures. Upholding the dreams and ambitions of our freedom fighters, as encapsulated in the constitution, becomes a primary duty. The preservation of these constitutional ideologies is crucial in the face of changing cultural landscapes. At this juncture, a shift towards reformative theories, guided by policies that instill awareness of globally accepted moral values, is advocated.

With the recent instances of judicial interventions, such as in Section 377, 498A of IPC, Sabarimala, and Triple Talaq cases, the need for a Uniform Civil Code (UCC) emerges as pressing. Proposing a judicious approach, this article delves into the constitutional and judicial steps required for the realization of UCC that not only aligns with the cherished values enshrined in our constitution but also respects the rich cultural tapestry of the nation. In navigating the course towards a UCC, the intent is to strike a harmonious balance between tradition and progress, ensuring a cohesive and inclusive societal framework for generations to come.

Keywords: *Constitutional assembly debate, Uniform civil code, Secularism, Religion, Judiciary.*

I. INTRODUCTION

India is a pluralistic nation with many different cultures, all of which have long been embraced by society. India became a global role model for unity in diversity because of this attribute. We

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effectively overcome the difficult predicament of division in our nation throughout the period of our freedom. The framers of the Constitution had endured too much hardship to preserve those bonds of common brotherhood. Their efforts to guarantee religious liberty and secularism are apparent in every clause of the Constitution. They were extremely concerned about the formation of a governmental structure based on religion. To guarantee fundamental religious freedom, they added religious freedom as a right in Part III of the Constitution. When the government fears a threat to secularism, it is authorized by the Uniform Civil Code (UCC)³ in Part IV of the Constitution to enact a common civil law. Courts have regularly cited Article 44 during the last seven decades. Every time a personal law issue makes headlines, it serves as a reminder to the State of its unfulfilled duties. It has sparked an insightful public discussion about India's democratic development.

People and the political system are supposed to be mature, focused on social issues or the general advancement of society in a developed society. Indian communities and castes today place greater emphasis on preserving their identities than on upholding national unity. The politics are likewise squarely centered around these identities and their election. Major political parties prioritize the development of communities and cultures over the general well-being of society. Any attempt to adapt the community to the changing nature of the outside world is either outright opposed or prevented by such communities. Politicians and community leaders are terrified about losing control over their own communities.

Conversely, India confronts a number of difficulties that are specifically forbidden by the Constitution and are based on factors such as caste, sex, religion, and place of birth. Political concerns, honor killings, and large-scale attacks on CAW-related issues are prevalent. Whether or not the adoption and application of UCC was the intended constitutional outcome, and if so, is this the right time to do so? Every community is extremely concerned about how its implementation may impact their religious and cultural customs. We must examine the Constituent Assembly Debates as well as other discussions on this topic in order to respond to the first question. We must review the numerous rulings from the Apex Courts in order to clarify concepts and choose when to put them into practice. When someone in society raises a problem, regardless of how much their own culture controls them, the first step is to compare it to the cultures of other groups. In this article, we delve into the Constituent Assembly Debates, broader discussions, and judicial rulings to dissect the intricacies of the UCC and its relevance in contemporary India. The article navigates the complexities of timing, recognizing the need

³ Article 44 of Indian Constitution

for a balanced approach that respects the diversity of beliefs and practices across the diverse tapestry of the Indian subcontinent.

As we continue our investigation, it becomes clear that the UCC dispute is more than just a legal puzzle; rather, it is a reflection of India's social fabric, its dedication to constitutional principles, and its continuous search for the peaceful coexistence of various traditions and progressive ideals. The Unraveling of the Uniform Civil Code invites us to unravel the complexities of a country in transition, looking for balance between diversity and unity, tradition and modernity, and the rights of the individual and the group entrenched in the largest democracy in the world's constitution.

II. ORIGIN AND DEVELOPMENT OF UCC IN THE CONSTITUTION OF INDIA

The Uniform Civil Code (UCC) has emerged as a pivotal and often contentious legal and societal discourse in India. This concept envisions a unified set of laws governing personal matters for all citizens, transcending religious and cultural boundaries⁴. Rooted in the principles of equality and justice, the UCC aims to provide a standardized legal framework for issues such as marriage, divorce, and inheritance, traditionally governed by diverse personal laws based on religion and community.⁵ As the term indicates, the uniform civil code is a common code of civil laws that is not yet regularised. It makes it applicable to all its citizens irrespective of their religion, race, caste, sex, or place of birth. It is a term that has confused the majority and the minority, those who were members of the Constituent Assembly, Legislators, Judiciary, and the ordinary people. Framers engaged in nuanced discussions, recognizing the diversity of cultural and religious practices while contemplating the potential for a common civil code⁶.

When crafting the Constitution, the framers were extremely careful to prevent any potential sources of fear for the community. Their initial step was to accept the Objective Resolution⁷, after which they established various committees during the preliminary meeting. An advisory council on fundamental rights, minorities, etc. was established on January 22, 1947. There were five subcommittees in the Advisory Committee during its initial meeting⁸, and the Fundamental Rights Subcommittee was one of them. After taking its members' feedback and

⁴ "Uniform Civil Code: An Overview," PRS Legislative Research, <https://www.prsindia.org/policy/vital-stats/ucc-overview>.

⁵ B. N. Mandal, "Uniform Civil Code: A Critical Analysis," *Indian Journal of Public Administration*, vol. 53, no. 1, 2007, pp. 44–58.

⁶ Granville Austin, "The Indian Constitution: Cornerstone of a Nation," Oxford University Press, 1966

⁷ "a constitution wherein justice, equality and freedom would be guaranteed to all people and adequate safeguards provided for the minorities and backward classes "

⁸ on 27/2/1947

recommendations into consideration on the draft report⁹, the Fundamental Rights Sub-Committee completed and sent its final report to the Advisory Committee. Religious neutrality in marriage or family connections is expressed by KM Munshi in the draft report¹⁰. It suggests that marriage is a topic unrelated to faith.

Sec. 2(1) of the approved draft of the Directive Principles of Social Policy was regarding a uniform civil code for the country. The draft report of the sub-committee on fundamental rights dated 3/4/1947 included Article 41 as "The State shall endeavor to secure for the citizens a uniform civil code." After that, the Constitutional Advisor, B.N Rau, received many dissent letters, and they gave minutes of dissent on 14/04/1947.¹¹ The Sub-Committee on Minorities examined the report of the Sub-Committee on Fundamental Rights and appreciated the Art. 41 Uniform Civil Code, with the condition¹². The Constitutional Advisor, Mr. B.N Rau, prepared the draft constitution and inserted clause 36 as the uniform civil code directive. The Drafting Committee decided to add the word "throughout the territory of India" at the end of clause 35. The committee reframed the same as "The state shall endeavor to secure for citizens a uniform civil code throughout the territory of India" and numbered it as Article 35. All these statements clearly show that the concept of the Uniform Civil Code is not a spontaneous one or that it is not a creature of a particular person. As the Constitution Advisor stated, it has its origin in Sec. 94 of the Constitution of Canada¹³. The prevalent cultural, economic, and political diversity in these provinces necessitated their pre-union to extend the uniformity to other areas.

III. SOCIETAL RESPONSE TOWARD THE INCLUSION OF THE UCC IN THE DRAFT CONSTITUTION

The volume of comments both in favor of and against Art. 35's inclusion in the draft

⁹ on 16/4/1947

¹⁰ FIC SD, Vol. II, 78, Article XI: Right to freedom of Family Relations. (1) Every person has the right to be free from interference in his family relations. (2) No marriage valid according to the law of the union or a state, shall be dissolved unless permitted by the law of the Union or the law of the State concerned and in accordance with the forms and under the conditions of the State concerned.

¹¹ FIC SD, Vol. II, 162-163: The dissent minutes stated as "we are not satisfied with the acceptance of a uniform civil code as an ultimate social objective set out in clause 41 as determined by the majority of the sub-committee.....we therefore suggest that the Advisory Committee might transfer the clause regarding a uniform civil code from chapter 2 to chapter 1 after making suitable modifications in it."

¹² FIC-CD, Vol. II, 209: Clause 39: this clause may be redrafted to make it clear that while a uniform civil code for all citizens was eminently desirable, its application should be made on an entirely voluntary basis.

¹³ Section 94 of Canadian Constitution: Legislation for Uniformity of Laws in Three Provinces Notwithstanding anything in this Act, the Parliament of Canada may make Provision for the Uniformity of all or any of the Laws relative to Property and Civil Rights in Ontario, Nova Scotia, and New Brunswick, and of the Procedure of all or any of the Courts in those Three Provinces, and from and after the passing of any Act in that Behalf the Power of the Parliament of Canada to make Laws in relation to any Matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making Provision for such Uniformity shall not have effect in any Province unless and until it is adopted and enacted as Law by the Legislature thereof.

demonstrates how much people in society are aware of the clause and how much they value maintaining their long-standing customs. Their primary concern was how it might impact their traditional ways. As a result, memorandums to protect their cultures were submitted. Their proposed requirements indicate that they all wish to safeguard their traditions and practices and liberate them from judicial and legislative interference. Furthermore, women's groups and reformists hailed the prospect of a UCC as a progressive step towards gender justice¹⁴

Parsees requested to preserve the Parsee Marriage and Divorce Act of 1936, no change can be brought without their consent, and no enactment affecting the religion, custom, personal Law, etc. should be initiated without getting their concurrence¹⁵; Sikhs demanded that the preparation and use of "Jhatka" meat in public institutions, wearing of Kirpans and its allied activities shall not be restricted and every religious denomination shall have the right to own, maintain, and control institutions for religious and charitable purposes¹⁶; for Plains Tribal People in Assam; it was represented that the distinct cultural peculiarities of the said Assm Tribals should be protected¹⁷, and Muslim, Jain, and other communities also submitted their representation to protect their personal laws.

The societal response was not homogeneous, reflecting the complex socio-cultural landscape of post-colonial India. Public discussions, articles, and editorials in newspapers and magazines of the time provided platforms for diverse voices to express their opinions on the UCC. The discourse often intersected with broader debates on secularism, individual rights, and the role of the state in shaping social norms.

IV. THE UCC BECOMES PART OF THE CONSTITUTION OF INDIA

On 23rd November 1948, the Assembly took Article 44 (originally Art. 35) for discussion. After hearing the anxieties of all concerned and giving reasonable explanations, all the amendments and demands required by the members were rejected and accepted as the committee drafted it as "The state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India." Minority delegates expressed their concerns to the Assembly when the UCC was brought up for discussion. The drafting committee's main concerns and the justifications for them are as follows:

¹⁴ Flavia Agnes, "Family Laws and Constitutional Claims: A Study of the Implications of the Uniform Civil Code," *Economic and Political Weekly*, Vol. 21, No. 32, 1986, pp. 1409–1418.

¹⁵ Framing of India's Constitution, Vol. II, (B. Shiva Rao), 318, 321: Memorandum on Minorities By R.K. Sidhwa, March 31, 1947

¹⁶ Ibid 362, 368: Memorandum on Minorities By R.K. Ujjal Singh and Harnam Singh, March/ April, 1947

¹⁷ Ibid, 370, 372: Memorandum on on the safeguards for the Plains Tribal People of Assam, By R.N. Brahma, March/ April, 1947

It forces the communities to renounce their personal laws; one of the essential liberties protected by Part III of the Constitution is the freedom to observe and uphold one's personal laws. If something has an impact on the personal laws, it will have an impact on the community's previously protected freedoms of religion and culture. It will undoubtedly have an impact on the nation we are working to establish being secular. Therefore, this movement proposes to amend the current one, adding the following clause: "provided that any group, section, or community of people shall not give up its personal laws in case it has such law." This clause does not only apply to minorities; it also applies to those who follow the personal laws of majorities.¹⁸

It might violate the assurance provided by Article 19 (now Article 25). Article 25 only confirms what Art. 19 already states, with the exception of some threats. Its purpose is to reverse the provisions of Article 19. It is likely to incite the State to violate the rights provided under Article 19, even if it is not subject to legal recourse. Even while the Art. is useful for limiting a lot of harmful and secular actions under religious considerations, it must be applied cautiously. Therefore, the religious laws that apply to certain communities shouldn't be changed without their permission to be determined in a way that Parliament may decide by legislation. law.¹⁹

The third reason relates to odd conceptions of secularism: it is bad for residents of a secular state to be forced to abide by common law in all areas, including daily affairs, language, culture, and personal laws. Its people ought to be free to follow their own laws, live their own lives, and practice their own faith. People appear to believe that this is not taken into consideration in this art. Thus, the phrase "provided that nothing in this Article shall affect the personal laws of the citizens" must be added to the Article.²⁰

The issue concerning the definition of the word "civil code" became the fourth topic of debate. There are several laws concerning inheritance, marriage, succession, divorce, adoption, etc. because of the current state of the nation. For over 150 years, people have been able to exercise their personal laws freely. We could have reasonably believed that the independence we already enjoy from the British would protect the freedom of personal laws rather than curtail them. What really worries Mr. B Pocker Sahib Bahadur is the true objective of the people who introduced this article in the Constitution under the heading "Civil Code." No one would complain if it were for procedural reasons, such as those covered by the Civil Procedure Code or other Acts governing civil courts across the nation's provinces. Should the issues be related

¹⁸ Constitutional Assembly Debate, 23rd Nev.1948, P 541-543; Muhammed Ismail Sahib

¹⁹ Constitutional Assembly Debate, 23rd Nev.1948, P 541-543; Mr. Nizarudhin Ahmad

²⁰ Constitutional Assembly Debate, 23rd Nev.1948, P 543; Mr. Mahboob Ali Baig Sahib Bahadur

to personal laws, it will be an oppressive rule for Muslims, the minority community, and the majority. The very idea of secularism that we have embraced will lead to the destruction of the variation in uniformity that we celebrate among other nations.²¹

The "Uniform" standard was the subject of the following discussion. Mr. B Pocker Sahib expressed concern about the Assembly's plan to repeal all existing, inconsistent personal laws and enact new ones for every community in an effort to bring them all into uniformity. He wondered which community would be considered the norm. If it is Muslim personal laws, there are Sunni and Shia schools, and among these schools, there are numerous sub-schools having significant differences in all of the subjects of current personal laws. If it is Hindu, there are various schools among Hindus, such as Mitakshara and Dayabaga, having differences in many aspects, especially in succession. Its acceptance by other majority faiths or the religious community at large, as well as its logic, will be called into question if it is of any other minority religion or if we introduce our own concept into it. Is it true that individuals who introduced this article have taken into consideration all of these?

The second issue related to uniformity was the Constituent Assembly's jurisdiction to impede on religious freedom and customs. The Indian people elected the Constituent Assembly to draft a national code of conduct that would guarantee and reinforce the nation's progress and the well-being of its residents. Since the people have given the Assembly permission to act on subjects on which the people are capable of acting, either explicitly or implicitly, they should do so. In a democratic secular nation, it can be argued that individuals are free to select their own religion and customs, but they are not allowed to allow others to choose their laws for them. Conducting regular elections in a democracy allows the populace to choose representatives who share their values. According to the election manual, which is the mechanism we are using, each party outlines the key tasks they must complete if elected. Has the Assembly made a suggestion of this kind or not?²²

The intention of the authors of this article was the subject of the following discussion. Is the goal of the authors of this article to completely transform the nation and its entire system? If so, does it matter if the situation calls for it right now? All of its residents are guaranteed the freedom of religious belief, practice, and propagation as enshrined in Article 25 (formerly Article 19). If the authors of this article want to implement a civil code that all religious organizations must abide by, regardless of their own religious code, then this will conflict with

²¹ Ibid, 544; Mr. B Pocker Sahib Bahadur

²² Ibid, 545

previous laws.²³

It is important to verify that whatever we copy from other countries are compatible with the state where we are adopting. Adoption of this article, in whatever form it takes, does not take the Indian situation into account. In India, there are countless communities that have been practicing different practices for hundreds or even thousands of years. With a single penstroke, you wish to erase everything and make them all the same. Then ,What is the goal that is achieved?" Without taking into account the gravity of the situation or the diversity of cultures, the author of the said article copied it from somewhere.²⁴

There was also concerns that it would instill in people a sense of despotism. Regardless of their respective religions, Indians had taken an active part in the nation's struggle for independence. When the British partitioned this country, they had made the decision to be a part of it. This Assembly is now pressuring them to give up their way of life and embrace the culture of the governing party. The Government was granted complete authority to determine the national culture thanks to this article. It is going to undermine India's core culture. In a democracy, the state is required to safeguard minority culture. It is not democracy at all; rather, it is tyranny, if the majority bullies the rights of the minorities.²⁵

The nation's diversity and sizeable population presented further challenges.India has implemented a three-tier system to establish laws as entries in the Union, State, and Cuncerrant lists. India is a large country with a diverse population and a range of social, economic, political, religious, and weather situations. It is to pass legislation that takes into account each State's unique circumstances and recognizes that a common law might not be appropriate for the entire nation. Furthermore, state modifications are allowed by the central legislation themselves. Given all of these circumstances, the authors of this provision is well aware that it might be pointless to try to harmonize personal rules in a situation where people have lived in a foreign culture for generations.²⁶

The final concern was the fear of an abrupt implementation.A statute should only be successfully implemented after receiving the consent of all parties involved. Nobody can be considered advanced if they lack a proper education and the ability to support themselves economically. A sophisticated civilization is limited to self-determination. A law such as a standard civil code can only be put into effect in a secular nation once it has been created in an

²³ Ibid, 554; Mr. B Pocker Sahib

²⁴ Ibid, P 545

²⁵ Ibid, P 545

²⁶ Ibid, 546; Mr. Hussain Imam

independent capacity. The first effort must be to empower them with economic independence and knowledge.

In conclusion, the concerns raised during the draft constitution sessions were pivotal in shaping the foundational document of independent India. The framers acknowledged the importance of fostering a just and equitable society, enshrining values that continue to guide the nation today. Despite the challenges, the Constituent Assembly succeeded in crafting a constitution that has withstood the test of time, laying the groundwork for India's democratic journey.

V. CLARIFICATION OF THE DRAFTING COMMITTEE

The founding visionaries of the constitutional ideals, who aimed to create a society based on the values of justice, equality, and secularism, are inextricably linked to the origins of the Uniform Civil Code (UCC). The founders of the Constitution struggled to strike a balance between cultural diversity and the need for a common legal system as the creators of a young democracy. During the UCC constitutional debates, these framers envisioned a unified legal system that would cut across religious lines and promote a society in which individual laws would be regulated by a single code that would apply to all members of society. Deciphering the elucidation offered by these founders is imperative to comprehending the substance of the UCC, since it mirrors their goals of a fair and comprehensive community as well as the subtle factors that molded the legal basis of this enduring discussion. Mr. K M Munshi²⁷, Shri Alladi Krishnaswami Ayyar²⁸ and Dr. Ambedkar²⁹ clarified all the above-raised apprehensions and averments.

It was stated that this article has already been discussed in front of numerous committees at different places. The question of whether words like "civil code," "secularism," and "uniform" are unfamiliar is therefore unimportant. Civil codes are those laws, such as the Transfer of Property Act and the Negotiable Instruments Act, that deal with civil concerns. Art. 35 defines "civil code" as the marriage and succession-related civil laws. These are the only provinces where civil law has not yet taken hold, and uniform law denotes that the same laws apply across the nation. As P K Tripathi noted, secularism was envisaged in the Constitution as the outcome of India's social experience and brilliance. This envisions the State being neutral toward all religions rather than erecting a wall separating religion and politics. The constitutional spirit also reflects ambiguity on the meaning of secularism.³⁰

²⁷ Ibid, 546-548

²⁸ Ibid, 549- 550

²⁹ Ibid, 550-552

³⁰ Sanghamitra Padhy, *Secularism and Justice A Review of Indian Supreme Court Judgment*, Economic and

They added that this article's implementation will not be impacted by violations of the fundamental rights guaranteed by Article 19 (of draft constitution). Article 19 makes it abundantly evident that nothing in it shall interfere with the functioning of any law already in effect or prohibit the State from enacting legislation controlling or restricting... for social welfare and reforms. Upon ratifying Article 19, this house has also ratified the idea that the legislature may enact legislation pertaining to secular activities that have been practiced as religious practices or that are the focus of social reforms or welfare, provided that the rights of minorities are properly protected. Dr. Ambedkar defined religion as "beliefs and rituals that may be associated with ceremonies that are fundamentally religious." Certain types of legislation, such those pertaining to succession or tenancy, may not necessarily need to be influenced by religion.³¹ There won't be any conflict between Article 19 and 35 if we interpret the word "religion" in that section of the Constitution in the way that the Framers intended.

It is not accurate to assume that the government must enact it; Parliament has the exclusive discretion in this regard. "The whole purpose of this Article is that as and when the Parliament thinks proper or rather when the majority in the parliament think proper an attempt may be made to unify the personal laws of the country" . Therefore, there's no reason to be concerned about its quick adoption. It is merely an enabling clause that allows the Parliament to function as needed.

They also allayed anxieties about the code's potential to be oppressive toward minorities by providing an explanation. The desire to put their idea into practice stems from people's mindsets. When combining a community, the good of the entire community must be taken into account, not just the traditions of a small portion of it. As previously mentioned, it does not violate Article 19; rather, it is an enactment that does not violate any religious practice, majority or minority. Divorcing religion from personal legislation is not the plan.

The framers of this article made it quite evident that their goal was to create laws that were exclusively secular in nature and to discriminate between religious and secular issues. Since there is nothing that is outside the purview of religions, separating secular from religious issues would have an impact on all religions. There is nothing we can do to safeguard fundamental rights in the absence of separation. Article 14 exists, but every faith opposes it. How can we guarantee women's equality without this division? This is what this article highlights.

The British monarchs contributed significantly to the development of the idea that personal

Political Weekly , Nov. 20-26, 2004, Vol. 39, No. 46/47 (Nov. 20-26, 2004), 5027.

³¹ Ibid, Vol. VII, 781

regulations are a component of religion as part of their divide and rule strategy. Our ancestors did not envision a single nation that could be brought together to form a democratic whole. Because Muslim law include criminal laws, contract laws, and other legal provisions, and because British regulations do not align with Muslim personal laws, the British have violated Muslim laws. Article 19 itself allows the future Indian Parliament to make such laws, therefore even in the absence of Article 35, nothing would stop it.

Inspired by the equality and secularism established in the constitution, the framers saw the UCC as a catalyst for societal unity. The intricacy of India's varied cultural fabric highlights the difficulties in putting such a code into effect, even though their hopes for a single legal framework were based on the principles of fairness and inclusivity. Even so, the framers' explanations of the UCC continue to shine a light on the necessity of balancing tradition and modernity, diversity and unity, and individual rights and the welfare of the group—a never-ending task that characterizes the dynamic character of constitutional discussions in the changing context of India's democracy.

VI. JUDICIAL INTERVENTIONS ON THE UCC

The Indian judiciary has scrutinized the Uniform Civil Code (UCC) extensively, and it has been instrumental in forming the intricate legal discourse surrounding it³². The Indian court, entrusted with the responsibility of safeguarding the Constitution, has encountered challenges in striking a delicate equilibrium between customary rules that stem from religious and cultural traditions and the pursuit of a cohesive legal system that supports the principles of the constitution³³. The developing legal landscape of India, where the values of justice, equality, and secularism collide with the rich tapestry of cultural and religious customs, is reflected in judicial action in UCC-related situations³⁴. This overview aims to examine the most significant cases of judicial intervention on the UCC, elucidating the legal rationale and ramifications that have influenced the continuing discourse on this pivotal facet of India's constitutional development.³⁵

Our supreme court declared Article 44 to be a dead letter in the Shah Bano Begum³⁶ case. It conveys its dissatisfaction with these remarks and claims there is no proof of official efforts to create a national civil code. The highest court advises the legislature to try to enact such a bill. The Supreme Court stated in the Smt. Sarla Mudgal case³⁷ that Article 44 of the Constitution

³² M.P. Jain, "Indian Constitutional Law" (LexisNexis, 7th ed. 2019).

³³ Granville Austin, "The Indian Constitution: Cornerstone of a Nation" (Oxford University Press, 1999).

³⁴ Tahir Mahmood, "Uniform Civil Code: A Blueprint for Modern India" (Universal Law Publishing Co., 2015).

³⁵ Upendra Baxi, "The Indian Supreme Court and Politics" (Eastern Book Company, 1980).

³⁶ AIR 1985 SC 945

³⁷ 1995 AIR 1531.

clearly mandates the introduction of a uniform civil code. It's for the unification of the country. The Court states that it is concerned about the Government policy of purposefully postponing the introduction of the code and provides no rationale for the indefinite delay. The Court emphasizes the distinction between Art. 25 and Art. 44 in this instance. The fundamental idea of Art. 44 is to prove that, in a civilized society, there is no requirement that religion and personal law be related.

Its goal is to remove religion from interpersonal interactions. It is not appropriate to include marriage, succession, and similar secular issues within the purview of the arts. from 25 to 27. This goal must be shared by all religious sects. The nation's highest court, in *Ms. Jordan Diengdeh vs. S.S. Chopra*³⁸, cited the Constitution Bench's statement that a uniform civil code is urgently and obsessively needed in *Mohd. Ahmed Khan vs. Shah Bano Begum*³⁹. In *Ahmedabad Women Action Group v. Union of India*⁴⁰, the petitioner contested every discriminatory provision of the Muslim personal law on the grounds that it violates fundamental rights. However, this petition was dismissed because Article 13 does not apply to personal law. In the *Shayara Bano case*⁴¹, the Apex Court modified that stance. The Kerala High Court noted in *Agnes Alias Kunjumol v. Regeena Thomas*⁴² that Hindu, Muslim, and Christian wives differed in their support entitlements, and that Christian wives were not entitled to maintenance simply because they are Christian. This emphasizes how important a unified civil code is. The court laments the lack of a unified civil code in the instances of *Lily Thomas v. Union of India*⁴³ and *ABC v. The State (NCT of Delhi)*⁴⁴, among others.

VII. WHY IS THE UCC CONTINUING AS A DEAD LETTER?

The majority community's technique of remaining silent during the Assembly served to

³⁸AIR 1985 SC 935,

³⁹ "It was just the other day that a Constitution Bench of this Court had to emphasise the urgency of infusing life into Art. 44 of the Constitution which provides that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." The present case is yet another which focuses .. on the immediate and compulsive need for a uniform civil code. The totally unsatisfactory State of affairs consequent on the lack of a uniform civil code is exposed by the facts of the present case. Before mentioning the facts of the case, we might as well refer to the observations of Chandrachud, CJ in the recent case decided by the Constitution Bench (*Mohd. Ahmed Khan vs. Shah Bano Begum*)."

⁴⁰*Ahmedabad Women Action Group ... vs Union Of India*, On 24 February, 1997.

⁴¹*Shayara Bano vs Union Of India And Ors.*, on 22 August, 2017

⁴²*Agnes Alias Kunjumol vs Regeena Thomas*, on 18 May, 2010, The issue regarding maintenance and residence as far as Hindus and Muslims are concerned, is taken care of by the statutes. It is the Christians, who are left with no statutory remedy during the subsistence of the marriage. It is here that one has to highlight the need for a uniform civil code.

⁴³ 2000 (2) ALD Cri 686

⁴⁴ on 6 July, 2015

heighten the minority community's concerns. The majority community intervened, preventing the adoption of the UCC as the third part of the Constitution, despite support for its adoption. They vehemently opposed the first Legislature's proposal to implement the Hindu code, which marked the first step in actualizing the UCC. Rather than drafting a code, the government waited almost 10 years to develop several laws pertaining to Hindu Personal Laws, and many of those laws' contents do not align with the ideals of our founding fathers. Dr Ambedkar was deprived of his position as Law Minister. All of these demonstrate the clear and unwavering purpose of our founding fathers to implement the UCC in a secular manner, notwithstanding the steadfast and unwavering views of some members of the dominant community. The minority communities think it will follow the rules set forth by the majority group, and that its execution will have an impact on their traditions and ways of life. Maintaining their quiet, the main faction is waiting for a chance to apply the UCC in accordance with their religious law. Minorities consistently oppose the UCC's implementation because they are unaware of this. It is time to implement the UCC in accordance with the Constitution, protecting people's right to practice their religion and maintain legally recognized customs and usages.

(A) Proposed Remedies:

The first part's discussions demonstrated that the framers of the Constitution genuinely intended for Art. 44 to be implemented. The Supreme Court and other High Courts elaborated their views and needs for the enactment and enforcement of this Article in the second section, which was highly explicit and included some feelings of disappointment and anxiety. The implementation of this art involves high-risk socioeconomic and political components. Religions are the government's most powerful lobby. Until recently, the governments of all political parties remained mute about whatever observations the judges made in order to maintain their political stability. The Union Home Minister has announced that the Bill of UCC will be introduced in parliament prior to the actual 2024 election, and that Utharakhand will be the site of a trial study. According to the Union Law Minister, a thorough analysis of the various groups was necessary for this issue. The 22nd Law Commission of India may decide to look into the issue. The Law Commission stated that their conclusion was "Neither necessary nor desirable at this stage⁴⁵" in response to a consultation document that was published in 2018. This year, the Apex Court received multiple petitions requesting that the government form a high-level expert committee or judicial commission to create the UCC. The government is making every effort to prevent misunderstandings and uncertainty with

⁴⁵ Krishnadas Rajagopal and Sandeep Phukan, Uniform Civil Code Debate gains momentum, the Hindu Daily, (4th April 2022), 8

relation to the UCC's implementation. The actions listed below could assist in preventing pointless confrontations:

1. Prioritize the Judiciary. To design the UCC, attempt to appoint a Judicial Commission itself. If not, ask the court for instructions on how to form a high-level body with members from the judiciary.
2. Publicize consultation papers in a timely manner and conduct extensive awareness campaigns about the UCC's contents, the state of current personal laws in comparison to religious laws, and the realities of living in a nation like India.
3. In the marriage registration form, it may be stated how they intend to resolve any disputes—whether they arise from common law or personal laws—until the UCC is put into effect. It will raise awareness among young people and be useful in court in the future.
4. In all of these civil cases, the pre-litigation mediation system will be made legal and the post-litigation mediation system will be required.
5. It's important to be clear about the differences between personal legislation and Article 13. This will help prevent judicial activism.

As per Art. 13 of the Constitution of India, any pre-constitutional law that is in contravention of any provisions of the part III of the Constitution will be void, and any post-constitutional law is in contravention of any provisions of the part III of the Constitution be declared as void ab initio. The constitutionality of the statute or any provision thereof is done by Judiciary through Judicial Review. The 3rd proviso of Art. 13 explain the term law and which does not specify the term personal law. So the conflict regarding the the inclusion of personal law within the ambit of Art. 13 was started at 1952 in State of Bombay Vs Narasu Appa Mali case⁴⁶ to Shayara bano Vs Union of India.⁴⁷ There was a paradigm shift in the judicial review in these cases that in former case the Court held that personal law does not come under the ambit of judicial review while in the latter case the court consider the principle of Constitutional Morality instead of doctrine of Essential Religious Practice. All acts of parties having protection of law should be brought under the Judicial review and the judiciary should be empowered to deals with all matters in contravention of Fundamental Rights irrespective of the fact that whether there is any specific statute or not and it need not be wait till such enactment by the Parliament. These are two positive steps initiated by the apex court through majority decision in Shayara Bano case.

⁴⁶ AIR 1952 Bom 84.

⁴⁷ 2017 (9) SCALE 178.

VIII. CONCLUSION

We need to simultaneously safeguard two different types of interests. Secularism is essential for democracy and national integration because of the diversity of religions and cultures, but it is also necessary because modernizing our traditional society and enacting social reform will demand government involvement in matters of faith. It demands that the boundaries between religious and nonreligious features be drawn clearly. Try to preserve fundamental religious practices only when they are impacted by social reforms or modernization in a secular nation where state-religious neutrality is upheld. The authors of the Indian Constitution separated the duties of the state into two categories: fundamental rights and Directive Principles of State Policy. The former were deemed justified while the latter were deemed non-justifiable based on the social and economic circumstances of that country's society at the time. Only the India that the framers of the Constitution envisioned might be realized if the issues listed in both sections are resolved.

Apex courts also followed this principle till the the Kesavananda Bharathi case⁴⁸, the matters enumerated in Part IV were inferior to Part III of the Constitution. Thereafter both parts are treated as supplement to each other and harmonious construction is to be made. If this basic principle is applied in mind, the anxiety regarding the implementation of UCC and its consequences on religious freedom can be avoided. Those who read the Constitution without exact knowledge about its evolutions and the ability to interpret its terms in that sense will definitely be confused. While taking to account the intention of the Constitutional makers, except a few⁴⁹, all were the supporters of any religion or other ideology or the wellwishers of them. Why can't we support them if they receive it? According to an unambiguous understanding of the explicit language of Articles 25 and 44, they are incompatible. Only those who are specifically aware of the creators' intentions can truly comprehend the true significance and goals of these two articles. Many misconceptions about Art. 44 have been deeply ingrained in culture. This explains why the public reacted violently when they learned that the UCC was going into effect. The UCC is the constitutional requirement in that it can be implemented as society demands and can be approved by the Parliament at any moment without impairing religious freedom. It has no meaning that it has to be implemented soon. So the question

⁴⁸ AIR 1973 SC 1461

⁴⁹ When the draft Constitution's articles on religion were discussed in the Constituent Assembly in December 1948, K T Shah raised the demand again that an article be included expressly forbidding any link between the State and religion. Such an article would begin as: "The state in India being secular shall have no concern with any religion, creed or profession of faith".Tajamul Hussain wanted to replace the terms 'practice and propagate religion' with 'practice religion privately'. We see then that the exact phrasing of the main Article on religious freedom remained contentious till the very last.

regarding whether the Constitutional Makers intended the UCC is very clear, and the question regarding whether it is the time to enact and implement is to be answered as it can be enacted at any time, but its implementation at the initial stage shall be restrict to those who make a declaration that they are prepared to be bound by it.⁵⁰ It was impossible to overlook the crucial role the courts played in advancing Art. 44 from a bedridden state to one where its execution was being discussed. By adding all the blood and flush to it, the court brought it to life. The Indian judiciary preserves the Constitution, with Art. 44 being one of its pillars. The judiciary, acting in its support alone, can make any and all contributions to the goal's accomplishment.

To sum up, the investigation into the nuances of the Uniform Civil Code (UCC) unveils a complex picture interlaced with harsh truths and misconceptions. The debate over the UCC is not limited to legal issues; it is a continuous dialogue with cultural, religious, and constitutional aspects. As we work our way through the complexities of this topic, it becomes clear that a thorough comprehension necessitates a careful balancing act between the goals of maintaining cultural variety and the aspirations for a single legal framework. Misconceptions frequently result from unclear or incorrect interpretations of the UCC's complex structure. Dispelling these myths calls for an all-encompassing strategy that takes into account the country's dynamic sociocultural fabric, historical circumstances, and constitutional tenets. The UCC is real because of its capacity to promote justice, equality, and secularism while realizing the difficulties brought about by the wide range of customs and beliefs. In order to create a shared understanding that is in line with the changing circumstances of India's constitutional path, it is crucial that we have educated and candid conversations as we work to unravel the UCC.

⁵⁰ Constitutional Assembly Debate, 23rd Nov.1948, 551