



A COMPARATIVE STUDY OF HISTORY AND REFORMS IN MUSLIM PERSONAL LAWS IN INDIA

Mr. Raman, Research Scholar, Faculty of Law, Jagannath University, Bahadurgarh.

Dr. Rekha Kumari, Research Supervisor, Faculty of Law, Jagannath University, Bahadurgarh.

Abstract:

This paper provides a comprehensive introduction to the study, defining the meaning and significance of the UCC and the importance and necessity of its enactment in India. It identifies the objectives of the study and formulates hypotheses. The chapter also outlines the methodology used and presents the overall plan of the study. It also delves into the historical development of personal laws in India. Initially, it discusses the key concepts and philosophy behind the UCC. It then examines personal laws and their evolution under different religious communities, focusing on Hindu, Muslim, Christian, and Parsi laws. It also explores the constitutional provisions related to personal laws and the UCC. It discusses the relationship between the UCC and Fundamental Rights, as well as the Directive Principles of State Policy. The chapter highlights how these constitutional elements interact with personal laws and the implications for the UCC.

Keywords:

UCC, Muslim, Personal Law, Divorce, marriage, family.

Introduction

Muslim Personal Law in India governs a wide range of issues related to family and personal matters, including marriage, divorce, maintenance, inheritance, and succession. Rooted in Islamic jurisprudence, these laws have historically been derived from the “Quran, Hadith (the sayings and practices of Prophet Muhammad), Ijma (consensus among scholars), and Qiyas (analogical reasoning)¹.” The application of these laws in India, however, is influenced by the Anglo-Muhammadan legal framework established during the British colonial era, which aimed to codify and standardize the diverse and complex Islamic legal traditions.²

The historical evolution of Muslim Personal Law in India has been shaped by various socio-political factors. In the colonial era, the British government aimed to establish a consistent legal system by creating a set of

¹ Mohammad Hashim Kamali, “Methodological Issues in Islamic Jurisprudence,” 11 *Arab Law Quarterly* 3–33 (1996).

² Justin Jones, “Towards a Muslim Family Law Act? Debating Muslim women’s rights and the codification of personal laws in India,” 28 *Contemporary South Asia* 1–14 (2020).

personal laws, which resulted in the development of the “Shariat Act” in 1937.³ This Act aimed to ensure that Muslims were governed by Islamic laws in personal matters, rather than customary laws that had been influenced by regional practices and colonial regulations. Despite these efforts, the application of Muslim Personal Law has remained contentious, with debates over its interpretation and implementation continuing to this day.

In the post-independence era, the Indian Constitution introduced a vision for a secular state, encapsulated in Article 44, which directs “*the State to endeavor to secure a UCC for all citizens.*”⁴ This constitutional mandate reflects the aspiration to harmonize personal laws across different religious communities, promoting equality and justice. However, the implementation of a Uniform Civil Code (UCC) has been a subject of intense debate, often framed as a conflict between the principles of secularism and the preservation of religious identity.

The need for reforms in Muslim Personal Law has been highlighted by various landmark cases and judicial pronouncements. For instance, the **Shah Bano case** (1985) brought to the forefront the issue of maintenance rights for divorced Muslim women, sparking widespread controversy and leading to the enactment of the “Muslim Women (Protection of Rights on Divorce) Act” of 1986.⁵ Similarly, the **Danial Latifi case** (2001) reaffirmed the need for equitable treatment of women under Muslim Personal Law, underscoring the necessity for legal reforms to address gender justice.⁶

Despite these judicial interventions, significant challenges remain in aligning Muslim Personal Law with the constitutional principles of equality, non-discrimination, and justice. Critics argue that certain provisions of these laws perpetuate gender inequality and are inconsistent with contemporary human rights standards. Proponents of reform advocate for a comprehensive review and amendment of Muslim Personal Law to ensure its compatibility with the constitutional mandate of Article 44, while respecting the religious and cultural sensitivities of the Muslim community.⁷

This thesis aims to explore the necessity and feasibility of reforms in Muslim Personal Law to fulfill the constitutional requirement of Article 44. Through a comparative study, it seeks to analyze the experiences of other countries with similar legal and religious diversity, drawing lessons and best practices that can inform the Indian context. The research will delve into the historical evolution, current status, and potential future directions of Muslim Personal Law reforms, with a focus on promoting gender justice, legal uniformity, and social harmony. By examining the legal, social, and political dimensions of this issue, the thesis intends to contribute to the ongoing discourse on personal law reforms in India. It will offer a nuanced understanding of the challenges and opportunities associated with implementing a Uniform Civil Code and propose actionable recommendations for achieving a balanced and inclusive legal framework that upholds the constitutional values of justice, equality and secularism.

³ Muslim Personal Law (Shariat) Application Act, 1937 (Act 26 of 1937).

⁴ The Constitution of India, art. 44.

⁵ 1985 SCR (3) 844.

⁶ 2001 7 SCC 740.

⁷ Subhro Bhattacharya and Akshay Shandilya, “Arguing for a Uniform Civil Code in India in the Light of Gender Discriminatory Practices under Muslim Personal Law,” *NUALS L.J. NUALS Law Journal* 1–43 (2017).

Constitution Assembly on UCC

The discussions on the UCC within the Constituent Assembly were characterized by vigorous debates and differing perspectives, highlighting the intricate socio-political context of newly independent India. The drafters of the Indian Constitution aspired to establish a cohesive legal system that would reflect the values of justice, equality, and national unity. Nevertheless, the journey to embed the UCC into the Constitution faced significant obstacles, mainly arising from issues related to religious liberty and cultural plurality.

Dr. B.R. Ambedkar, the Chairman of the Drafting Committee, strongly advocated for the UCC. He believed that a common civil code was essential for national unity and the eradication of gender inequality. Dr. Ambedkar argued that personal laws, which varied significantly among different religious communities, often conflicted with the principles of equality and justice enshrined in the Constitution. He maintained that the UCC would ensure equal rights for all citizens, irrespective of their religion, and would help in building a cohesive society.⁸

However, the proposal faced considerable opposition from several members of the Constituent Assembly, particularly from the Muslim community. **Mohammad Ismail** from Madras was a vocal critic of the UCC. He argued that personal laws were an integral part of religious and cultural identity and that any attempt to impose a uniform code would infringe upon the fundamental rights to religious freedom. Ismail emphasized that personal laws were deeply rooted in the traditions and way of life of religious communities and that their abrogation would lead to social unrest.⁹

K.M. Munshi, another prominent member, countered these arguments by stating that the UCC would not interfere with religious practices but would address civil matters like marriage, divorce, and inheritance. Munshi stressed that the Directive Principles of State Policy, including Article 44, were designed to guide the State in enacting progressive laws aimed at achieving social justice and equality. He argued that the UCC was necessary to eliminate discriminatory practices and to bring about uniformity in civil laws across the country.¹⁰

The debates also highlighted the pragmatic approach adopted by the framers. **Alladi Krishnaswami Ayyar** and others suggested that while the goal of a UCC was desirable, its implementation should be gradual and consensual, taking into account the diverse cultural and religious contexts of India. This view was instrumental in shaping the decision to include the UCC in the Directive Principles rather than making it a fundamental right, thereby allowing flexibility for gradual adoption.¹¹

The discussions underscored the need for a balanced approach that respected religious freedoms while promoting equality and justice. The framers recognized that the UCC was a long-term goal that required careful negotiation and consensus-building among various stakeholders. The inclusion of Article 44 in the

⁸ Dr H V Hande, "Uniform Civil Code, as conceived by Dr B R Ambedkar" *The New Indian Express*, 27 July 2023.

⁹ M. Mohsin Alam Bhat, "Constructing Secularism: Separating 'Religion' and 'State' under the Indian Constitution" (Rochester, NY, 2009).

¹⁰ Sushim Mukul, "Why Uniform Civil Code wasn't made enforceable by framers of Constitution" *India Today*, 7 February 2024.

¹¹ M. Mohsin Alam Bhat, "Constructing Secularism: Separating 'Religion' and 'State' under the Indian Constitution" (Rochester, NY, 2009).

Directive Principles reflected this nuanced understanding, aiming to guide future legislatures towards the gradual realization of a uniform civil code.

In conclusion, the Constituent Assembly debates on the UCC encapsulate the enduring tension between the ideals of secularism, equality, and the preservation of religious and cultural identities. These debates continue to resonate in contemporary discussions on personal law reforms, highlighting the need for an inclusive dialogue that balances constitutional values with cultural pluralism.

Personal Laws and Hindu in India

In ancient Hindu India, the state did not maintain neutrality or intervene in religious matters. Instead, society itself functioned as the main organizational unit. Hindu sages led this society, setting forth rules that governed not only religious ceremonies and rites but also established a code of ethics and morality. These rules influenced social interactions and even extended to politics and government.¹² Initially, the writings of these sages did not distinguish between civil laws and religious or social rules. Civil laws were interspersed throughout their treatises. However, as time progressed, later texts began to dedicate separate chapters to civil law. Eventually, entire treatises focused solely on discussing civil law, indicating an evolution towards distinguishing civil matters from religious and social directives.¹³

In Hindu jurisprudence, both the king and his subjects were equally bound by the laws established by the sages.¹⁴ While the king enforced these laws, he rarely had a role in creating them. Although the king was considered divine, the established laws and customs held even greater sanctity. During his coronation, the king had to pledge to uphold these laws faithfully, without any authority to alter them at will.¹⁵ These accounts suggest that in ancient Hindu India, society was considered more important than the state and religion.¹⁶ Hindus viewed law as an integral aspect of their religion, believing that the sages, as lawgivers, were divinely inspired. This belief is supported by references in Hindu scriptures. For instance, the Rigveda mentions Purukutsa as semi-divine only once, and the Atharvaveda refers to King Parikshit as a god among men in a solitary late passage.¹⁷ The notion of the king's divinity was limited to the imagination of a few grateful subjects. The ability of a Samiti (popular assembly) to depose a king indicates that the idea of the king's divinity did not firmly root in society.¹⁸ According to A.S. Altekar, although laws were considered divine, they were fundamentally based on social customs and traditions.¹⁹

In the early stages of Hindu history, religion became closely linked with the development of law. This connection arose because people feared divine powers before they recognized the authority of kings. Divine

¹² U.C. Sarkar, "Hindu Law: Its Character and Evolution," 6, J.I.L.I. 213-222 (1964) of A.S. Altekar, *State and Government in Ancient India* 55 (3rd ed. 1958)

¹³ U.C. Sarkar, "Epochs in Hindu Legal History" 23 (1958).

¹⁴ U.C. Sarkar, "Hindu Law: Its Character and Evolution."

¹⁵ A.S. Altekar, "State and Government in Ancient India" (1958).

¹⁶ A. Chakerbarti, *Nehru His Democracy and India* (1961) p. 213.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

sanction was more effective in enforcing laws than royal decrees. The laws that people followed were often considered natural laws, based on customs proven beneficial for the community over time. Given these circumstances, it was natural for people to believe in a supernatural force, whether God or a deity, behind these laws. Early Hindu law operated at a time when religion was the primary governing force. As a result, the priestly class, or Brahmins, held significant power. They interpreted and disseminated both religion and law. The Code of Manu exemplifies this connection. It is a compilation created by the priestly class and attributed to the mythical sage Manu to lend it religious authority. This code reflects the Brahmins' supremacy and their role in shaping the early legal and religious landscape of Hindu society.²⁰

The early history of Hindu laws begins with a highly personal understanding of law. Each individual had rights and duties determined solely by the laws of their own tribe, city, or class. They were judged according to these specific laws, and no other laws applied to them. This personal concept extended to the idea that when a person moved from one territory to another, they took their own laws with them, as these laws were considered personal. However, this rule had to be adjusted if the personal laws conflicted with the interests of the new territory or contradicted public interest.²¹

The study of Hindu legal history reveals that during the Hindu period, there was no state interference with Hindu law. The community enjoyed complete autonomy, and their affairs were governed by their personal laws without any state involvement. The state functioned as a welfare organization, only intervening in matters of social interest. In Hindu India, society operated as an organizational unit led by Hindu sages. These sages established universal laws that regulated not only religious ceremonies and rites but also served as a comprehensive code of ethics and morality. These laws governed all aspects of social life, and there was no distinction between civil laws and religious or social rules. Hindus perceived their laws as an integral part of their religion. This belief stemmed from the notion that Hindu law-givers, or sages, were divinely inspired. They were considered to have the spiritual insight necessary to develop practices that regulated human conduct over time.

The unique foundation of Hindu law is the conviction that religion and law originate from a heavenly source, specifically from the Brahmin class.²² It is common knowledge that godly inspired people like sages and academics like Manu established laws that governed the social, political, and economic aspects of Hindu society.²³ These ancient Hindu sages played a significant role in both the creation of new rules and the revocation of certain preexisting ones.²⁴ It was believed that these sages' deep inspiration and ultimate realisation resulted in the creation of Hindu rules.

There were no other religious communities in ancient India, hence Hindu Law was basically ingrained with Hindu ideas. As a result, disputes concerning personal laws were rare. A unified legal system was in place, despite minor variations in viewpoints regarding personal laws among the smaller Hindu sects. According to

²⁰ G.R. Rajgopal, "Uniform Civil Code or Dream ?" *The Civil and Military Law Journal* (1985), Vol. 21. No. 1-2 p. 47.

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

Hindu law, the king and his subjects had an equal responsibility to abide by the rules that the sages had established and clarified.

The king executed the laws but rarely, if ever, created them.²⁵ “Law was the king of the king; the king could not set the law aside.”²⁶ Indeed, at his coronation, the king had to vow to scrupulously respect established laws and customs.²⁷ From these accounts, it appears that in Hindu India, society was given primacy over the state and religion. It would be an oversimplification to argue that Hindus regarded law as an integral part of their religion.²⁸ This claim is perhaps based on the fact that the sages, who were Hindu law-givers, were regarded as divinely inspired.²⁹ Divinity was attributed to them because they were highly enlightened men of encyclopedic learning. Altekar notes: “Laws, though regarded as divine, were really based upon social customs and traditions. By sanctioning their operation, the state did not become an instrument in the hands of the Church or the priest; it rather became the mouthpiece of the social will.”³⁰

Hindu Law and the Legislature

During ancient times, Hindu law exhibited a flexibility and an inherent capacity for growth.³¹ The typical methods used to advance the law included interpretation and the assimilation of customs. Following the introduction of the British system of justice in India, these traditional means of legal change and growth were halted. Consequently, during this period, the development of Hindu law was impeded, leading to its stagnation.³² To adapt Hindu law to the changing societal patterns, legislation became the only viable option for the British administration.

The ancient Hindu legal system, rooted in Shruti, Smritis, Commentaries, and Digests, was shaped by the economic conditions, social environment, and state of civilization of that era, which were vastly different from modern times. Therefore, some aspects of the traditional law inevitably became misaligned with contemporary social conditions and realities.³³ This discrepancy necessitated modifying the law to meet modern needs and circumstances. However, British administrators approached this task with a self-imposed discipline and limitation. They were reluctant to modify personal laws to align with modern societal needs due to the perception that personal laws were deeply intertwined with religion. Nevertheless, some changes were enacted through corrective and ameliorative legislation over the past hundred years, often driven by strong public opinion in favor of the proposed changes and supported by enlightened and progressive elements within Hindu communities. Despite this, conservative and orthodox Hindus viewed these innovations as encroachments on their religious practices.³⁴

²⁵ Saletore, *Ancient Indian Political Thought and institutions* (1963).

²⁶ Brihaspati Upanishad, cited by Altekar, *State and Government in Ancient India* (1958).

²⁷ Altekar, *State and Government in Ancient India*, Motilal Banarsidas, New Delhi (1958). p. 106.

²⁸ Chakrabati Nehru, *His Democracy and India*, Thaker's Press Calcutta (1961) p. 61.

²⁹ U.C. Sarkar, *Hindu Law: Its Character and Evolution*, 6, J.I.L.I. p. 213.

³⁰ Altekar, *State and Government in Ancient India*, Motilal Banarsidas, New Delhi (1958). p. 55.

³¹ M.P. Jain, *Outlines of Indian Legal History*, p. 483. (4th ed. 1981).

³² Gajendragadkar, ‘The Hindu Code Bill’, p. 53 Bom. L.R. (1951).

³³ M.P. Jain, *Outlines of Indian Legal History*, p. 484.

³⁴ D.K. Srivastava, *Religious Freedom in India*, p. 235 (New Delhi 1982).

Muslim Law and the Legislature

In the sphere of Muslim personal law, legislative actions have been notably minimal, primarily driven by the initiatives or demands of the Muslim community itself. Both before and after Independence, the legislature's stance towards Muslim personal law has been characterized by a policy of 'non-interference'.³⁵ The following sections provide a concise overview of the legislative developments in the domain of Muslim law.

Conflict between Hindu Law and Christian Law

In India's pluralistic legal system, conflicts between different personal laws are inevitable, particularly in a society where multiple religions coexist. Hindu law and Christian law represent two major legal frameworks that often intersect in matters of marriage, divorce, and succession. The complexity of these intersections is heightened in cases of inter-religious marriages, conversions, and the application of different laws to the same set of facts. These conflicts necessitate detailed judicial interpretation and legislative clarity to ensure equitable resolutions.³⁶

The dual legal systems of Hindu and Christian laws have evolved separately, with distinct principles and procedures. The British colonial administration laid the groundwork for this duality by codifying personal laws based on religious practices. Post-independence, these laws continued to govern personal matters, leading to a complex legal environment where the intersection of different religious laws often results in legal conflicts.

Key Areas of Conflict

1. Marriage

Hindu Law: According to the "Hindu Marriage Act, 1955," marriage is a sacred and indissoluble union that must adhere to specific rites and ceremonies. This Act mandates monogamy and prohibits polygamy, emphasizing the religious and sacramental nature of Hindu marriage.³⁷

Christian Law: Christian marriages are regulated by the "Indian Christian Marriage Act, 1872," which treats marriage as a civil contract. This Act requires formal registration and solemnization by a licensed minister or registrar, with a strong emphasis on monogamy and lifelong commitment.

Conflict: A significant conflict arises when a Hindu marries a Christian, as seen in **Parmial Khosla vs. Rajnish Kumar Khosla**³⁸. In this case, the marriage was performed according to Arya Samaj rites, and the wife later petitioned for judicial separation under the "Indian Divorce Act, 1869," on the grounds of cruelty. The husband contested, arguing that their Hindu marriage should be governed by the "Hindu Marriage Act,

³⁵ Rina Verma Williams, "5 Noninterference and Muslim Personal Law: Shah Bano and the Muslim Women Bill, 1984–86," in R. V. Williams (ed.), *Postcolonial Politics and Personal Laws: Colonial Legal Legacies and the Indian State* 0 (Oxford University Press, 2006).

³⁶ Faizan Mustafa, "Legal pluralism in personal law" *The Hindu*, 29 October 2019, section Comment.

³⁷ SA NEWS, "Supreme Court Ruling on Hindu Marriage Ceremonies" *SA News Channel*, 2024 available at: <https://news.jagatgururampalji.org/supreme-court-ruling-on-hindu-marriage/> (last visited May 26, 2024).

³⁸ Pramilla Khosla vs Rajnish Kumar Khosla AIR1979DELHI78

1955." The court had to decide whether the marriage was subject to Hindu or Christian law, ultimately noting that relief could be sought under both the Hindu Marriage Act and the Indian Divorce Act if one party was a Christian at the time of filing the petition.

Divorce

Hindu Law: Under the "Hindu Marriage Act, 1955," divorce is permitted on specific grounds such as adultery, cruelty, desertion, conversion to another religion, mental disorder, and communicable diseases. The Act provides for judicial separation and annulment of marriage, aligning with the principles of Hindu tradition while recognizing the need for legal dissolution in certain circumstances.³⁹

Christian Law: The "Indian Divorce Act, 1869," governs divorce among Christians, allowing it on grounds like adultery, conversion, cruelty, desertion, and insanity. However, the procedures and grounds differ significantly from those under Hindu law, reflecting the Christian perspective on marriage as a lifelong commitment.

Conflict: In cases like **Parmial Khosla vs. Rajnish Kumar Khosla**, the jurisdictional issue arises when one spouse converts to Christianity and seeks divorce under Christian law. This creates a legal conflict over which personal law should apply. The court recognized that if a party professes Christianity at the time of filing, the Indian Divorce Act could apply, notwithstanding the original Hindu rites of marriage.⁴⁰

Succession and Inheritance

Hindu Law: The "Hindu Succession Act, 1956," provides a uniform framework for inheritance, recognizing the rights of both male and female heirs. It details rules for intestate succession, ensuring equitable distribution of property among heirs.

Christian Law: The "Indian Succession Act, 1925," governs inheritance for Christians, offering a different set of rules for intestate succession compared to Hindu law. The Act aims to protect the rights of spouses and children, with specific provisions for Christians.

Conflict: Conflicts can occur in mixed marriages or conversions when the application of different succession laws leads to disputes over property distribution. For example, differences in how daughters' inheritance rights are treated under Hindu and Christian laws can result in legal battles, as each set of laws provides different heirs and shares of inheritance.

Adoption

Hindu Law: The "Hindu Adoptions and Maintenance Act, 1956," regulates the process of adoption among Hindus, providing legal recognition and rights to adopted children. The Act sets out conditions and procedures to ensure the welfare of the child and the legal certainty of the adoptive relationship.

³⁹ "Grounds for divorce in India," available at:

<https://timesofindia.indiatimes.com/readersblog/lawpedia/grounds-for-divorce-in-india-35652/> (last visited May 26, 2024).

⁴⁰ ezyLegal, "Divorce under Christian Law" *EzyLegal* available at:

<https://www.ezylegal.in/blogs/divorce-under-christian-law> (last visited May 26, 2024).

Christian Law: Christians lack a codified adoption law similar to the Hindu Adoptions and Maintenance Act. Instead, they rely on the "Guardians and Wards Act, 1890," which appoints guardians without conferring the same legal status as adoption under Hindu law.⁴¹

Conflict: The absence of a formal adoption framework for Christians can create ambiguities, especially in mixed marriages. This disparity affects the legal status and rights of adopted children, leading to potential conflicts over custody and inheritance.

Indian courts frequently navigate conflicts between Hindu and Christian personal laws. For instance, in **Parmial Khosla vs. Rajnish Kumar Khosla**⁴², the court had to determine whether the marriage, performed under Hindu rites, should be governed by Hindu or Christian law for divorce proceedings. The court recognized that a change in religion does not automatically change the applicable personal law, highlighting the complexities of inter-religious marriages and conversions.

Legislative efforts have aimed to address these conflicts and provide a more unified legal framework. The "Special Marriage Act, 1954," allows for civil marriages irrespective of religion, providing a neutral framework that can mitigate conflicts between personal laws. Marriages under this Act are governed by the "Indian Succession Act, 1925," for inheritance, thus avoiding conflicts between Hindu and Christian laws.

The conflict between Hindu law and Christian law in India highlights the challenges of governing a diverse society with multiple legal systems. While personal laws are crucial for respecting cultural and religious identities, they also create complexities in a pluralistic legal system. Ongoing judicial interpretation and legislative reform are essential to harmonize these laws and ensure justice and equity for all citizens. The legal system must continue evolving to address these conflicts, balancing religious freedom with the need for a cohesive and fair legal framework.⁴³

Conflict between Muslim Law and Hindu Law

An important issue that shall have to be carefully considered is the determination of what personal law-Hindu or Muslim-will be applied by the court in a suit for dissolution of marriage when one party is a Hindu and the other is a Muslim. This brings us to tackle the all-important question of 'apostasy and conversion' (i.e., that a Muslim renounces Islam, in other words, apostasy (ridda), or a non-Muslim embraced Islam, i.e., conversion).⁴⁴ To appreciate this point, let us first take up the consideration of Mohammadan law. Here, the position is different, according to whether the country in which Mohammadan law is invoked is under Islamic rule or non-Islamic rule. The former is referred to as Dar-ul-Islam, and the latter is referred to as Dar-ul-Harb. India, being a non-Muslim state, the Mohammadan applies to her of Dar-ul-Harb. According to the said law, the court is bound to offer Islam to the non-convert spouse thrice. If the non-convert spouse refuses to adopt Islam, the court can legally dissolve marriage. In contrast, according to Dar-ul-Islam, if the wife

⁴¹ Asha Bajpai, "2 Right to Family Environment: Adoption and Other Non-Institutional Services," in A. Bajpai (ed.), *Child Rights in India: Law, Policy, and Practice 0* (Oxford University Press, 2006).

⁴² Pramilla Khosla vs Rajnish Kumar Khosla AIR1979DELHI78

⁴³ "What's Uniform Civil Code: What does Constitution say about UCC and why it's so controversial in India?," *The Economic Times*, 6 February 2024.

⁴⁴ "The Issue of Apostasy in Islam | Yaqeen Institute for Islamic Research," available at: <https://yaqeeninstitute.org/read/paper/the-issue-of-apostasy-in-islam> (last visited May 26, 2024).

becomes Muslim, her marriage stands dissolved automatically if her husband does not become a Muslim within the period of three menstrual cycles of the wife or, in the alternate, within three months.⁴⁵

In general, under Mohammadan law, a person who embraces Islam is there and then brought under the operation of Islamic law. In the context, of principles that determine the marital status of the parties who renounce or embrace Islam, is 'to be judged from the following four: first, the husband who was a Muslim apostatizing from Islam; second, the Muslim wife who becomes apostate — these would be the most frequent forms of apostasy; and, third, the unconverted husband, and, fourth, of the non-Muslim wife who embraces Islam — these two are the most usual instances of accession.'⁴⁶

Apostasy can be either express, as in the declaration **we hereby renounce Islam'** or we do not believe in God and the Prophet Mohammad', or it can be by conduct, as, for example, the use of grossly disrespectful or abusive language towards the Prophet. Conversion to another faith is also recognized as apostasy. When a Muslim husband became an apostate on the ground of his renunciation of Islam, his marriage with his Muslim wife stood automatically dissolved. But when both a Muslim husband and a Muslim wife apostatized together by renouncing Islam and adopting another religion, in that event, their nikah would continue.⁴⁷

The mere act of apostasy on the part of a Muslim wife did not operate to dissolve her marriage. This, however, is not the position when a lady who was a non-Muslim became a Muslim and then went back to her original religion. In that event her marriage stood automatically dissolved.

According to modern thoughts, ultimately all religions are the same in the eyes of the law, and the administration of justice cannot differentiate between one religion and another. That being so, a non-Muslim who was validly married under the law of his religion could not have his marriage dissolved on his embracing Islam.

Fundamental Duties and UCC

The inclusion of essential obligations in the Indian Constitution is a significant component, even if it was not initially included. The inclusion of Part IV-A, which delineates the essential obligations of citizens, was enacted by the Constitution 42nd Amendment Act of 1976, rather than in 1970. Out of these responsibilities, Article 51-A(e) is particularly relevant to the goals of the UCC.⁴⁸

Article 51-A(e) mandates citizens *“to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional, or sectional diversities; to renounce practices derogatory to the dignity of women.”*⁴⁹ This responsibility closely corresponds to the objectives of the UCC, which seeks to harmonise the various personal laws that now regulate different religious communities under one legal system, thereby fostering national cohesion and coherence. The primary aim of the UCC is to

⁴⁵ “‘Dar ul Kufr’ vs. ‘Dar ul Islam’ – The Divisions of the World, Revisited – Suhbah: Companionship, Fellowship, Mentorship,” *available at*: <https://suhbah.com/articles/dar-ul-kufr-vs-dar-ul-islam/> (last visited May 26, 2024).

⁴⁶ Fazee, A.A.A. : *Outlines of Mohammadan Law*, 4th Ed. P. 178.

⁴⁷ “The Issue of Apostasy in Islam | Yaqeen Institute for Islamic Research,” *available at*: <https://yaqeeninstitute.org/read/paper/the-issue-of-apostasy-in-islam> (last visited May 26, 2024).

⁴⁸ “Ideological Basis of Indian State – Indian Politics-I,” *available at*: <https://ebooks.inflibnet.ac.in/psp01/chapter/ideological-basis-of-indian-state/> (last visited May 16, 2024).

⁴⁹ The Constitution of India, art. 51-A(e).

promote social cohesion by establishing uniform legal procedures and rights across all religious groups, while also striving to eliminate traditions that degrade the dignity of women.

Nevertheless, the establishment of a UCC has proven to be difficult to achieve because to a lack of determination from political leaders and significant resistance from certain religious groups. These cultures frequently experience apprehension about the potential erosion of their cultural identity and independence in areas of personal religious beliefs. Moreover, there is a prevalent misconception among several residents regarding the essence and consequences of the UCC, highlighting the need for more comprehensive public education on its advantages.⁵⁰

Challenges and Debates

The interaction between Article 372 and the advocacy for a UCC has been characterised by significant controversy. The inclusion of the obligation to uphold current legislation has been perceived as a means to protect cultural and religious customs, but it can also impede legislative changes, particularly in relation to gender equality and secularism. The controversial nature of personal laws and their revision has been seen in the intense discussions inside the Constituent Assembly and the divided reactions from different community groups about the UCC.

After gaining independence, the process of making personal laws political and the discussions around the UCC demonstrate the challenges of balancing community-specific laws with the goal of achieving legal consistency across the nation. Parliament and state legislatures possess the power to modify and consolidate these laws, but the absence of agreement and robust community identities provide notable difficulties.

Article 372 establishes a legal framework that upholds previous legal traditions and allows for future reform by preserving the continuity of current laws, especially personal laws. India is now facing difficulties in establishing a Uniform Civil Code. Article 372 plays a crucial role in comprehending the constitutional, legal, and social aspects of personal laws in India's diverse culture. The development of these laws, influenced by legislative measures and judicial analysis, will have a substantial effect on the achievement of a more cohesive and fair legal system under the UCC.⁵¹

Conclusion

This study summarizes the findings of the study and presents conclusions. It offers recommendations and suggestions for the future, proposing ways to address the issues identified and enhance the implementation and effectiveness of the UCC in India. This chapter not only summarizes the broad conclusions of the present study but also advances suggestions for legislative and judicial approaches to achieve a more equitable legal framework. The paper highlighted the dichotomy between religious practices and constitutional principles, setting the stage for an in-depth analysis of personal laws and their implications on women's rights. The

⁵⁰ "Uniform Civil Code: Tough challenges and raging debates over the years," *India Today*, 2023 available at: <https://www.indiatoday.in/law/story/uniform-civil-code-challenges-and-debates-over-the-years-2393239-2023-06-15> (last visited May 16, 2024).

⁵¹ "What's Uniform Civil Code: What does Constitution say about UCC and why it's so controversial in India?," *The Economic Times*, 6 February 2024.

paper also highlighted the colonial and post-colonial legislative developments that have shaped the current legal landscape, underlining the need for continuous reforms to align personal laws.

References:

- Akhilendra Pratap Singh, “Utility of Uniform Civil Code”, 59(2) *Journal of the Indian Law Institute* 178–87 (2017).
- Alexander J. Wulf, “Insights From The Historical German Codification Debate With Relevance For The Development Of A Uniform Civil Code For India.”, 60(2) *Journal of the Indian Law Institute* 121–36 (2018).
- Amalendu Misra, “Hindu Nationalism and Muslim Minority Rights in India.”, 7(1) *International Journal on Minority and Group Rights* 1–18 (2000)
- Ashwani Malhotra, “Personal Laws and the Constitution: Revisiting Narasu Appa Mali” (Rochester, NY, 2018).
- D. K. Srivastava, “Personal Laws and Religious Freedom,” 18 *Journal of the Indian Law Institute* 551–86 (1976).
- D.K. Srivastava, *Religious Freedom in India* (Deep & Deep, New Delhi c 1982,)
- David Pearl, “INTERNAL CONFLICT OF LAWS IN PAKISTAN (A comment on Marina Jatoi v. Nuruddian Jatoi),” 11 *Journal of the Indian Law Institute* 362–70 (1969).
- Dr H V Hande, “Uniform Civil Code, as conceived by Dr B R Ambedkar” *The New Indian Express*, 27 July 2023.
- Dushyant Kishan Kaul, “The ‘Essential Practices’ Doctrine: Examining the Constitutional Impact of Inordinate Judicial Intervention on Religious Freedoms,” 29 *International Journal on Minority and Group Rights* 350–93 (2021).
- Equilibrium Between Articles 25-28 and 44: The Imperative for a Uniform Civil Code, *The Wire*, available at: <https://thewire.in/law/equilibrium-between-religious-freedom-and-ucc-dpsp>.
- Explained: Uniform Civil code — the debate, the status, *The Indian Express*, 2019, available at: <https://indianexpress.com/article/explained/explained-uniform-civil-code-the-debate-the-status-6004396/>.
- Faizan Mustafa, “Legal pluralism in personal law” *The Hindu*, 29 October 2019
- G.R. Rajgopal, "Uniform Civil Code or Dream ?" *The Civil and Military Law Journal* (1985), Vol. 21. No. 1-2 p. 47.
- Generally Derrett, ‘The Codification of Personal Law in India : Hindu Law’, 6 *Indian year Book of International Affairs*, p.p. 189-211 (1957).
- Hajed A. Alotaibi, “Modern approaches to address the concept of territorial division in Islamic jurisprudence,” 11 *F1000Research* 794 (2023).
- Justin Jones, “Towards a Muslim Family Law Act? Debating Muslim women’s rights and the codification of personal laws in India,” 28 *Contemporary South Asia* 1–14 (2020).

- Jyoti Rattan, “Uniform Civil Code In India: A Binding Obligation Under International And Domestic Law.” 46(4) *Journal of the Indian Law Institute* 577–87 (2004).
- Katherine Lemons, “Sharia Courts and Muslim Personal Law in India: Intersecting Legal Regimes,” 52 *Law & Society Review* 603–29 (2018).
- M. D. Fred M. Feinsod, “The Ethical Principle of Justice: The Purveyor of Equality,” 16 *Annals of Long-Term Care* (2008).
- M. Mohsin Alam Bhat, “Constructing Secularism: Separating ‘Religion’ and ‘State’ under the Indian Constitution” (Rochester, NY, 2009).
- Martha C. Nussbaum, “Personal Laws and Equality: The Case of India,” in T. Ginsburg (ed.), *Comparative Constitutional Design* 266–93 (Cambridge University Press, Cambridge, 2012).
- Michael Hancher, “Reading and Writing the Law: Macaulay in India,” in M. Freeman, F. Smith (eds.), *Law and Language: Current Legal Issues Volume 15* 0 (Oxford University Press, 2013).

