

**MULTI – CULTURAL DIVERSITY AND GENDER JUSTICE**

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Where women walk in public processions in the  
 Streets the same as men,  
 Where they enter the public assembly and takes  
 Place the same as the men,  
 Where the city of faith fullest friends stands,  
 Where the city of cleanliness of the sexes stands,  
 Where the city of the best bodied mothers stands, There the  
 Great city stands.<sup>1</sup>  
 -Walt Whitman (Whitman)

**ABSTRACT**

*This abstract aims to provide a concise overview of the interconnected concepts of multicultural diversity and gender justice, and uniform civil code in India, highlighting their significance in fostering inclusive and equitable societies. Multicultural diversity refers to the coexistence of multiple cultural, ethnic, and religious groups within a society, while gender justice addresses the pursuit of equality and fairness in opportunities, rights, and treatment for people of all genders. The uniform civil code, on the other hand, pertains to the potential unification of personal laws governing various religious communities into a common set of civil laws applicable to all citizens.*

*Embracing multicultural diversity involves recognizing and valuing the diverse perspectives, practices, and identities present within a society. It requires acknowledging the richness that arises from cultural differences, promoting intercultural dialogue, and challenging stereotypes and biases. Multiculturalism not only enhances social cohesion but also encourages the exchange of ideas and the creation of innovative solutions to complex challenges.*

*Gender justice, on the other hand, emphasizes the elimination of discrimination and oppression based on gender. It advocates for equal access to education, employment, healthcare, and political participation, as well as the eradication of gender based violence. Gender justice recognizes that achieving equality requires addressing systemic barriers, such as patriarchal norms, gender stereotypes, and unequal power dynamics.*

*In Indian context, the uniform civil code has been a subject of ongoing debate and discussion. It proposes the implementation of a common set of civil laws that would apply to all citizens, regardless of their religious affiliation. The UCC aims to promote equality, justice, and a sense of national unity by ensuring uniformity in matters such as marriage, divorce, inheritance, and adoption. However, opinions on the UCC vary, with proponents highlighting its potential to harmonize diverse personal laws and opponents expressing concerns about preserving religious and cultural autonomy.*

*The pursuit of multicultural diversity, gender justice, and the uniform civil code requires comprehensive and inclusive approaches. It necessitates engaging in constructive dialogue, considering multiple perspective, and ensuring the participation of all stakeholders. Strategies encompass promoting inclusive policies, fostering intercultural understanding, investing in education and awareness programs, and empowering marginalized*

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<sup>1</sup> Walt Whitman, “The Great City” (1819-1892).

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groups. Furthermore, it is crucial to engage in critical self-reflection, challenging biases, and actively advocating for social change.

*In conclusion, embracing multicultural diversity, striving for gender justice, and contemplating the implementation of uniform civil code in India are integral to building inclusive and equitable societies. By recognizing and celebrating the richness of diverse cultures, promoting equal rights and opportunities for all genders, and fostering a nuanced dialogue around the uniform civil code, India can progress towards a future that upholds the values of justice, equality, and cultural plurality.*

### **Concept of Gender Justice**

WOMAN- One of the most beautiful creation of God. Her innocence as a Daughter, her care as a Sister, and her warmth as a Friend, her passion as a Beloved, her dedication as a Wife, and her divinity as a Mother is experienced by everyone in walks of LIFE.

The term “gender” refers to the socially constructed that a particular society deems suitable for men and women. Gender is also a socio economic variable used to analyze the roles and responsibilities, limitations and opportunities, and the specific needs of both men and women within any given context<sup>2</sup>. Socially, a common use of the term ‘Gender’ is a substitute for women<sup>3</sup>. Half of the world population consists of women.<sup>4</sup> However, this better half is great sufferers in the male dominated society, even in the 21st century. Women still suffers inequalities and injustices in social, economic and cultural streams. Hence, empowerment of women and enabling women to stand on an equal status with men is inevitable.

In the pursuit of establishing a UCC in India, it is worth considering potential models from a comparative perspective. Examining the experience of other nations can provide insights into how to address the challenges associated with introducing a civil code while maintaining respect for community laws and social customs. Furthermore, it is important to deliberate on how to formulate the relationship between religion and the state in the context of the UCC. By studying these aspects, valuable lessons can be learned to help navigate the path towards implementing a UCC in a manner that balances the diverse needs of society.

Our study began with an examination of Turkey, a predominantly Muslim country that transitioned from a legal system based on Islamic law to a secular republic with a modern civil code encompassing personal law as well. This transformation occurred in 1920s. Additionally, we dedicated specific attention to the analysis of the civil code in Goa, which came under Indian rule in 1961. Similarly, we conducted a detailed study on Nepal’s transition from being a religious Hindu monarchy during this significant change that took place between 2006 and 2008. By exploring these case studies, we can gain valuable insights into how these nations managed the transitions towards a secular legal framework and the implementation of a modern civil code.

Based on the comparative study and a thorough analysis of the Indian constitution, as well as the social and legal landscape, several conclusions have been drawn regarding the potential recommended course of action to advance the constitutional mandate of implementing a uniform civil code in India. To facilitate the achievement of a UCC, a proposed model suggests the following four guidelines to govern its application.

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<sup>2</sup> Ronke Iyabowale Ako-Nai, *Gender and Power Relations in Nigeria* (pg. no. 350) (Lanham: Lexington Books, 2013).

<sup>3</sup> Joan W. Scott, “Gender: A Useful Category of Historical Analysis”, Vol. 91, No. 5, *The American Historical Review* (1986).

<sup>4</sup> Hany Besada, Leah McMillan Polonenko, et. al., “Did the Millennium Development Goals work?: Meeting future challenges with past lessons”, *Bristol University Press* (2017).

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1. **Respect for Cultural Pluralism:** Acknowledge and respect the diversity of cultural, religious and social customs present in Indian society. Ensure that any formulation of a UCC takes into account the multiplicity of traditions and customs while promoting harmonious coexistence.
2. **Gender Equality and Human Rights:** Prioritize the principles of gender equality and human rights within the framework of the UCC. Ensure that provisions and reforms are aimed at empowering women and safeguarding their rights, addressing historical inequalities and discriminatory practices.
3. **Progressive And Inclusive Approach:** Adopt a progressive and inclusive approach while formulating the UCC. Engage in extensive consultations with stakeholders, including religious and community leaders, legal experts, and representatives of marginalized groups, to ensure their perspectives are considered and their concerns addressed.
4. **Gradual Implementation:** Recognize the complexity and sensitivity of implementing a UCC and consider a phased approach. Gradually introduce reforms and provisions over time, allowing for adaptation and acceptance within society while maintaining the principle of justice, equality, and secularism.

These guidelines aim to strike a balance between the constitutional mandate of a UCC, the diverse cultural fabric of India, and the principle of justice, equality and secularism. By adhering to these guidelines it is anticipated that the path towards implementing a uniform civil code can be navigated with greater inclusivity, social acceptance, and respect for the rights and beliefs of all citizens.

Supporters of Uniform Civil Code often emphasize national unity, preserving a collective identity, protecting human rights, and promoting equality. On the other hand, opponents of UCC tend to emphasize the importance of religious freedom, safeguarding the rights of minority groups, and recognizing the diverse nature of communities. An alternative principle that avoids predetermined outcomes is the consideration of comparative harm.

The presentation presents an illustration of various approaches and facets related to these relationships. It will subsequently examine the application of these models in multiple countries, along with the trends observed in the evolution of civil law within these nations. The aim is to establish a solid theoretical and practical foundation for analyzing diverse models that could be recommended for the implementation of a UCC in the Indian context and identifying the most suitable model for India. By accomplishing this, we can gain a deeper comprehension of the potential methods to achieve a uniform civil code in India.

The first principle emphasizes that everyone should be granted equal rights and freedoms that are compatible with those of others. No individual should be treated as privileged, and certain rights and freedoms are essential to offer opportunities for a better life. Failure to provide these rights and freedoms amounts to oppression.

The second principle of justice, as articulated by John Rawls, focuses on the fundamental structure of the society. It examines the inequalities and natural contingencies present in the original position and seeks to regulate them in the suitable manner for the benefit of all. While natural inequalities will persist, they should be regulated in a way that brings advantages to everyone.

Gender justice includes guaranteeing equal status and equitable treatment for both men and women within the framework of law and command. Giving a first concern to women's want and contributions is imperative in order to apparatus historical gender disparities, discriminatory policies, and inequality. The key factors contributing to different form of bias experienced by women encompass issues such as literacy, economic dependency, caste limitations, religious restrictions, and shortage of leadership, opportunities, and the apathetic and insensitive attitudes of males in society.

Activists and academics are increasingly employing the term "gender justice" as they feel that terms like "gender equality" or gender "gender mainstreaming" do not sufficiently capture the profound sense of ongoing gender-based injustice experienced by women. These individuals believe that the concept of gender justice provide a more robust framework to address these issues effectively.

However, defining gender justice becomes challenging due to the diverse cultural perspective on what constitutes fairness and equity in gender relations. The understanding of what is considered right and fair in different cultural contexts varies significantly, making it difficult to establish a universal definition of gender justice that encompasses all cultural nuances.

There are three essential principles underlying gender justice. Firstly, it is crucial to recognize that women cannot be lumped together as homogeneous group with other marginalized segments of society, such as ethnic minorities or socially excluded immigrants. Gender intersects with these categories and all other social divisions, leading to variations in interests and perceptions of justice among women<sup>5</sup>.

Secondly, unlike any other social group, the relationship between women and men within families and communities play a pivotal role in perpetuating gender specific injustices<sup>6</sup>. Therefore, any strategy aimed at advancing gender justice must prioritize addressing power dynamics within dynamics within domestics and community settings.

Thirdly, the patriarchal mindset and social dynamics that emerge within private spheres extend beyond those boundaries and permeate economic, social and political institutions<sup>7</sup>. They exert influence and shape these institutions to a significant extent.

Gender justice requires that women are to be able to ensure their ability and capacity in holding power, whether in the household or in the society. Thus, gender justice as a process brings an element of capacity and ability of women into picture. It can be made clear that empowerment of women in political, economic, religious, social, and cultural sphere is meant with the concept of gender justice.

### **Comparative Analysis of Religion, Culture and Law**

#### **General Analysis of Models of Religion-State Relations and Models of Minority Culture Recognition**

The degree of recognition given to minority cultures within a particular state can be correlated with specific model of religion-state relations. In order to clarify this link, we will initially explore the five models of religion-state relations. Subsequently, we will analyze how these models are connected to the treatment of minority cultures.

There are five distinct models of religion-state relations. The theocratic model, the absolute secular model, the separation of state and religion model, the established religion model are characterized by non-democratic approaches to their interaction with religion, while the remaining three models exhibit democratic characteristics in their handling of religious matters<sup>8</sup>.

States that implement the theocratic model are characterized by a dominant influence of religion. While the theocratic model, there is a singular officially acknowledged religion, while other religions are prohibited. On the other hand, the absolute secular model visualizes a state that is officially atheistic, where any religious practices are forbidden.

#### **The Separation of Religion and State Model**

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<sup>5</sup> *Who is being left behind? Patterns of social exclusion.*

<sup>6</sup> Javier Cerrato & Eva Cifre, "Gender Inequality in Household Chores and Work-Family Conflict", *Frontiers*, <https://www.frontiersin.org/articles/10.3389/fpsyg.2018.01330/full>.

<sup>7</sup> Robert Bahlieda, "The New Patriarchy", *The Democratic Gulag: Patriarchy, Leadership & Education* Vol. 488 (2015).

<sup>8</sup> Rex Ahdar & Ian Leigh, *Religious Freedom in the Liberal State* (Oxford University Press, 2<sup>nd</sup> edn., 2013).

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The initial model of democracy among the three is known as the model of state and religion separation. Within this model, the laws established by the state are secular, indicating that they are not derived from religious doctrines, and the goals of these laws are devoid of religious influence. Furthermore, no particular religion is granted privileged treatment over others<sup>9</sup>. The principle of state and religion separation is based on the concept that the state abstains from involvement in religious organizations affairs, and conversely, these organizations refrain from interfering in the affairs of the state.

The United States understanding of the separation of state and religion model is frequently cited as a prominent example of this model. The first amendment of the U.S. constitution states that “congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.” While this clause does not explicitly require an absolute and complete separation, it has been construed as such through judicial interpretation.

The U.S. judicial system has interpreted the first amendment to establish a strict regime of separation between the state and religion. This interpretation means that the government should not favor any particular religion or interfere with the free exercise of religion. The aim is to maintain a neutral stance and prevent the establishment of an official state religion while safeguarding individual’s freedom to practice their chosen faith.

### **Genesis of Uniform Civil Code in India- At a Glance**

Like any other parts of the world, laws in India also reflect male dominance. The practice of triple talaq, laws for succession etc. are the prevalent examples for laws, which reflects male dominance. Laws such as religious, personal and customary tend to discriminate women in the most fundamental ways. The state has failed to enact laws in favor of women. In the pre- Independent India, law reform attempts first started during the British period when women related issues such as Sati, Child marriage etc. were rampant. The position of women in a given society can be understood properly through the different customs that exist there. The Vedic and Epic periods were totally an exception for such disgraceful situation.

India is the sole country in the world that faced and resisted foreign aggression for thousands of years. She had a great cultural tradition than any other nations in the world. As known to everybody, this is the single culture existing even today though she has had a long history of invasion and foreign rule. According to historical evidences, we had a social structure, which gave equal importance to both men and women before foreign aggression. According to Vedas, both men and women are the two sides of the same atman. During Vedic period both sons and daughters followed ‘gurukulavidyabhyasam’<sup>10</sup>. But during the flow of epoch, and long periods of invasions the status of society itself began to deteriorate. Due to continuous invasions, the people and rulers of our nation were compelled to give more protection to our women and children from foreign rulers. Several practices like Sati, and child marriages were prevalent to protect the purity of them. But unfortunately all these practices begun to follow as evil customs and practices during the later period which began to be questioned by the then social reformers like Raja Ram Mohan Roy, Ishwar Chandra Vidya Sagar etc.

They initiated movements and advocated for the betterment of women by eradicating detrimental customs like sati, mistreatment of widows, the prohibition of widow remarriage, polygamy, dowry, child marriage, denial of property rights, and limited access to education for women. These socio-religious reformers also facilitated an environment where women could actively fight for their rights. Raja Ram Mohan Roy for instance, addressed the issue of women’s inheritance rights. He highlighted that ancient lawmakers unanimously recognized a mother’s

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<sup>9</sup> Paul Cliteur & Afshin Ellian, “The Five Models for State and Religion: Atheism, Theocracy, State Church, Multiculturalism, and Secularism”, *ICL Journal* (2020).

<sup>10</sup> Nikhil Chandwani, “The importance of the Gurukul system and why Indian education needs it”, *Times of India* (Mar. 8, 2019), <https://timesofindia.indiatimes.com/blogs/desires-of-a-modern-indian/the-importance-of-the-gurukul-system-and-why-indian-education-needs-it/>.

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equal entitlement, alongside her son, to the property left behind by her deceased spouse<sup>11</sup>. He recognized the vulnerable economic position of women, particularly after the death of their husbands, which often led them to engage in the practice of sati voluntarily, albeit in some cases.

The focus of these legislations was primarily on promoting women's welfare. However, the British intervention went beyond welfare legislation for women and extended into two other areas, although these aspects received less attention. The leaders of progressive reform movements at that time began advocating for a civil law concerning marriage. Despite facing opposition from conservative's factions, the special marriage act of 1872 was enacted, which provided an opportunity for Indians to have civil marriage. However this required individuals to explicitly renounce their religious practices, which became hindrance as people were unwilling to abandon their religion in order to opt for a civil ceremony. Consequently, in 1912, a demand was made to remove this provision, and eventually, in 1923, an amendment was passed to eliminate this requirement.

Following Queen Victoria's proclamation in 1858, the British parliament initiated a process of legal reform in India, resulting in the enactment of several laws. It was during this time that the term "personal" was introduced within the legal framework. These personal laws were specific to an individual based on their religion and covered various aspects such as marriage, divorce, inheritance, succession, adoption, and more. Interestingly, despite being enacted by the state, these personal laws were often considered "religious" in nature. Unfortunately, many of these laws exhibited discriminatory features against women and were deeply rooted in Victorian moral values. However, it was a significant milestone when a small segment of women gained the right to seek divorce through the state, aligning with the Victorian moral code. Hindu women, in particular, obtained this progressive right nearly a century later in 1956 after extensive debates and opposition.

Women were deprived of the right to property, excluding the dowry known as Stridhan, under the Hindu law of inheritance. Consequently, women's economic security between entirely reliant on the social standing of men, such as their father, husband, brother, or son. To address this issue, numerous movements emerged in the latter half of the nineteenth century with the aim of empowering women within society. In 1865, the Indian succession Act was enacted, stating that no individual could gain any interest in the property of the person they married, nor become incapable of performing any actions concerning their own property that they would have been able to do if not married to that person.

"The married women's property bill of 1874 is a remarkable one. On 24 February 1874, the council of the governor general of India met at government house to consider the bill. (W, 2007) The bill was passed into act III of 1874. The initial law contemporary times that expanded the reach of Stridhan (dowry) was this. It stated that the wages and earnings of any married women ought to be considered her individual property. Any property obtained by a women through her artistic abilities, skills, and all her savings and investments should also be regarded as her individual property. Despite being a groundbreaking legislation, it did not provoke any significant reaction within Hindu society. The reason behind was that, until 1923, the act applied only to Indian Christian women. But married women belonging to Hindu, Mohammedan, Sikh and Jain communities remained outside the preview of the act."<sup>12</sup>

Polyandry, the only conceivable blood relation could be ascertained through females. (Polyandry in India) In addition, Section 494 and 495 of the Indian penal code of 1860, "prohibited polygamy for the Christians."<sup>13</sup> But in the State of Mizoram, a Christian section called "PuChana Pawl" or "Chana", was formed in 1942 who practices

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<sup>11</sup> Dr. Bipasha Sinha, "Raja Ram Mohan Roy on Paving the Way for Women's Education", *International Journal of Creative Research Thoughts (IJCRT)*, Vol. 9 Issue 6 (2021).

<sup>12</sup> Proceedings of the Council of the Governor General of India, 1874.

<sup>13</sup> Indian Penal Code, 1860, Ss. 494 & 495.

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polygamy. The founder of this Sect, Ziona was a 66 year-old man, with 39 wives, 94 children and 33 grandchildren, living under one roof.”<sup>14</sup>

Under Sharia law, Muslim men are allowed to practice Polygamy (polygyny). According to Sharia law, a Muslim man can have more than one wife, where the husband should be Muslim and Wife should be either Muslim or Kitabia, (refers to Christians) at the time of Marriage<sup>15</sup>. If a Muslim man marries a Muslim women or women from other religions, under the Special Marriage Act, he would be denied from practicing polygamy. If that particular man marries twice, he could be punished for bigamy or polygamy (polygyny). Polyandry is not permitted under Sharia law.

In 1956, polygamy was prohibited for all citizens of India, except for Hindus in Goa and Muslims, who were still permitted to have up to four wives. In Goa, a specific law allows the marriage of a “gentile Hindu” man from goa under certain conditions, such as if his former wife does not any children before the age of 25 or if she does not have a male child by the age of 30<sup>16</sup>. In India, a single female or a married couple is eligible to adopt a child of any gender. However, a single male person is not eligible to adopt a female child.

Globally, the United Nations has placed significant emphasis on promoting gender justice. The commitment to gender equality and justice has been present since the establishment of United Nations in 1946, leading to the formation of separate entity dedicated to the advancement of women<sup>17</sup>. Recognizing the enhancing the status, positions, and living conditions of women can contribute to the economic development of the country, efforts have been made to prioritize gender issues.

In countries like India, the establishment of national and state human rights commissions, as well as national commission for women, has led to increased attention to gender related concerns. These initiatives reflect a growing recognition of the importance of addressing gender justice at both national and international level.

The pursuit of gender justice took shape in 1999 with the establishment of the convention on the elimination of all forms of discrimination against women (CEDAW). This convention regards the absence of gender-based discrimination as a key measure of achieving gender justice. CEDAW’s legal definition of “discrimination against women” is outlined in Article 1 of the covenant, which “states that it encompasses any distinction, exclusion, or restriction based on sex that impairs or nullifies women’s recognitions, enjoyment, or exercise of human rights and fundamental freedoms. This definition applies to women regardless of their marital status and emphasizes the equality of men and women in various realms such as politics, economic, social affairs, culture, civil rights, and more. CEDAW, established in 1999, is legally obligated to enforce relevant provisions and ensure gender equality within its member nation’s domestic laws”.

Gender justice is crucial for the successful existence of a distinctive country like India, which is characterized not only by its geography but also by its diverse social scenario. India is a land of various religions and cultures, where diversity in social life holds great significance. The Indian culture places emphasis on the spirit of unity in diversity, and the framers of constitution prioritized the goal of unity and integrity of the country. This pluralistic

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<sup>14</sup> “Ziona Chana: Head of 'world's Largest Family' Dies in India's Mizoram State”, BBC (2021), <https://www.bbc.com/news/world-asia-india-57465379>.

<sup>15</sup> The Quran, Surah Al-Maa'idah 5:5.

<sup>16</sup> Faizan Mustafa, “Explained: Why Goa’s Civil Code Is Not As Uniform As It Is Made Out To Be”, *Indian Express* (April 20, 2021), <https://indianexpress.com/article/explained/why-goas-civil-code-is-not-as-uniform-as-it-is-made-out-to-be-7279365/>.

<sup>17</sup> “UN Women: The United Nations Entity for Gender Equality and the Empowerment of Women”, UNITED NATIONS, Office of the Secretary-General’s Envoy on Youth, <https://www.un.org/youthenvoy/2013/07/un-women-the-united-nations-entity-for-gender-equality-and-the-empowerment-of-women/>.

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approach is evident in various provisions of the Indian constitution, particularly those found in part III, IV and IVA. The Indian context, it is important to note that the issue of gender equality as accepted as a key component in the Philosophy and strategy of social transformation of Mahatma Gandhi. Although protest against women's oppression both preceded and followed his movements, it was made part of the mass struggle for democratic rights by Gandhi in colonial India. If feminism is accepted as referring to all those people seeking to end women's oppression, then Gandhi is a foremost feminist<sup>18</sup>. The issue of gender equality was a very sensitive issue, in the given Indian ethos. The objective pre supposed as much an external mode of struggle as reform from within, which is, change in the mindset of both men and women. Gandhi's vision of gender reconstruction, as part of social reconstruction, thus, envisages a simultaneous emancipation of both man and woman, and thereby, of the society.

Article 15 of the constitution of India establishes and ensures the principle of "no discrimination on any grounds of religion, race, caste, sex, place of birth, or any of these factors." Article 15(3) specifically allows for special provision to be made by the state for women and children, thereby providing constitutional protection for women's empowerment. Furthermore, Article 39 (a), (d), and (e) outline certain policy principles that the state must adhere to. These principle include ensuring equal rights for men and women to a sufficient means of livelihood, equal pay for equal work, and the prevention of exploitation of the health and strength of male and female workers. Additionally, Article 42 guarantees just and humane working conditions as well as maternity relief. Lastly, Article 44 highlights the importance of a uniform civil code.

The term "gender justice" is commonly associated with initiatives and endeavors aimed at enhancing women's rights by legal reforms or advocating for women's interest in social and economic policies. However, there is often a lack of precise definition for the term, and it is frequently used interchangeably with concepts such as gender equality, gender equity, women's empowerment, and women's rights. Gender justice encompasses distinctive elements that extend beyond the notions of justice based on social class or race. It encompasses a broader understanding of justice that addresses the specific challenges and disparities faced by individuals based on their gender.

The Constitution of India is first a social document, earmarked to instate a social revolution. The framers of the constitution have given women proper place in the social structure of this country. The constitution of India has recognized almost all the rights envisaged by various international instruments in either Fundamental Rights or Directive Principles of State Policy. The Preamble of Indian Constitution through the expression 'justice' attempts to remove the prevailing disabilities of women and protects the rights of women. The constitution of India guarantees equality and equal protection to all persons. Article 14, 15 and 16 of the Indian Constitution guarantees equality to women with men in the enjoyment of various rights. The provisions, which deal with women's rights, are as follows. Article 14 of Indian constitution says, "The state shall not deny to any person the equality before law and equal protection of laws with in the territory of India." Article 15(3) that provides for special provisions in favor of women is a direct endeavor to empower women. The concern for women can be also traced in article 23, which prohibits trafficking in women, and forced labour. Articles 32 and 226, which provides for writ remedy also aid women when their rights are violated.<sup>19</sup>

Directive Principles are vibrant with the idea of Gender Justice. "Article 39 (a) of the constitution provides that the state in particular direct its policy towards securing that citizen, men and women equally have the right to an adequate means of lively hood". Fundamental duties also give due regard to this respect. It has been laid down in Article 51 A (c) that "it shall be the duty of every citizen of India to uphold and protect the sovereignty, Unity and integrity of India. Apart from the goal of national unity, one of the most important objects of the Uniform Civil

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<sup>18</sup> "Feminism and Women's Rights Movements, Council of Europe", <https://www.coe.int/en/web/gender-matters/feminism-and-women-s-rights-movements>.

<sup>19</sup> The Constitution of India, 1950, Art. 32 & 226.



Code has been to protect the dignity of women by giving them equal status in the society.” It is clear that the personal laws of almost all the communities have been against the equal right of women. The implementation of Uniform Civil Code has been considered as a friend of women as it will abolish the negative effects of personal laws. Article 51 (e) of the constitution provides “that it will be the duty of every citizen to renounce practices derogatory to the dignity of women”<sup>20</sup>. This Article pointed out that Fundamental Duties and Uniform Civil Code is the same, and any opposition to Uniform Civil Code by any community would be a violation of Article 51 A. “That is, all persons irrespective of their gender, religion, culture, ideology or belief are equal. This principle of equality is the basis for the pluralistic principle in our constitution.”

The reservation given to women in local self-government institutions has contributed its due share in the political empowerment of women at the grass root level. The Constitution of India aims at Gender Justice and women empowerment either directly or indirectly. The Constitution attempts to remove the prevailing disabilities of women by providing various protective measures to safeguard their rights, there by facilitating the realization of Gender Justice. Hence, it can be rightly concluded that the constitutional framework as to gender justice is satisfactory except the reservation of seats in parliament and state legislatures. It is in fact conducive for women empowerment and gender justice, if accompanied by appropriate national and state laws, which makes the constitutional guarantees and aspirations reality.

Women, the better half of man who are guaranteed equality with men in all spheres of life by the so described ‘gender sensitive legal systems and laws’ throughout the world do suffer from inequalities from birth to the funeral pyre. The root causes for all evil practices faced by women are, illiteracy, economic dependency, caste restrictions, apathetic and callous attitude of male in the society. Polygamy, Triple Talaq, etc. are the major evil practices in the community, which are claimed on personal laws, may be a hurdle for their overall uplift. However, some Muslims argued that the Uniform Civil Code as the open violation of religious freedom.

#### **Uniform Civil Code as a Need to Ensure Gender Justice**

Gender Justice means giving social, political and economic equality to all. It is indispensable for development in a true sense. Article 15(1) of the constitution says, ‘The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them’. However, past is the evidence to the fact that gender justice is one of the most neglected ideas. Around half of the world population is denied equality in almost every spheres of life. That means, equality without gender Justice cannot be fulfilled.

The strident claim of a uniform civil code in India has been recognized for over a century. The absence of a UCC has caused significant challenges for the country. Currently, in India, distinct laws govern personal matters such as marriage, divorce, maintenance, adoption, and inheritance, for different communities. The call for a UCC stems from the need to establish a common set of laws that apply uniformly to all citizens, irrespective of their religious or cultural background. This would promote equality and eliminate disparities in personal laws across various communities. The academicians who favored Uniform Civil Code enumerated several visions while debating the subject. But this was mostly tied with their own preferences. But all of them were agreeing on the purpose of Gender Justice. Both the feminists and the commentators equally highlighted the factor of gender Justice in the Uniform Civil Code. However, it is worth noting that there has been a lack of outright rejection regarding the potential for equality through the implementation of the UCC. Even those who have opposed the idea have acknowledge the possibility of achieving equality through such code. Opponents of the uniform civil code, particularly advocates of religious freedom, often attempt to showcase that their respective religions already ensure equal protection for women. They argue that women receive greater protection within their religious

<sup>20</sup> The Constitution of India, 1950, Art. 51 (e).

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systems. However, numerous example of discriminatory religious personal laws exists. Therefore, the necessity for a uniform civil code has been emphasized.<sup>21</sup>

The close connection between the implementation of the uniform civil code and ensuring gender justice is evident. Many modern issues like religion, secularism, freedom, are trapping the basic elements for the assurance of Justice and equality to women. It is obvious that, “women have been granted lower status in most of the private matters compared to men. During the medieval epoch onwards, the Hindu Women did not enjoy equivalent status with men, until the codification of Hindu law in 1955 and 1956. Despite attempts to codify personal laws for Hindus, complete eradication of gender inequality has not been achieved. The laws governing inheritance or divorce among Hindus were thus, distinct from those pertaining to Muslims or Christians etc. In India, most family laws are determined by the concerned religions themselves. Women enjoy an inferior status in all respects when compared to men, in the pre-Islamic periods. The Holy Quran gives equal rights to men and women and respectable status to women in some places. However, there are certain aspects in Islam that makes the status of Muslim women especially the wives in insecure and lower status because Muslim law is based on the Sharia law. But the Government of India is trying to codify all personal laws of all communities, through an Act by the parliament. Since India has a long history of personal laws, it is not easy to manage the situation. Unless a broad consensus is drawn among different communities, the Uniform Civil Code cannot do much good to the country.”<sup>22</sup>

The Indian constitution recognizes the concepts of equality and gender justice within its fundamental rights and directive principles of state policy. These provisions, along with the idea of a uniform civil code, aim to uphold these principles. In terms of jurisprudence, gender justice is encompassed within the broader concept of equality.

The idea of equality encompasses two dimensions: uniformity between communities and uniformity within communities. Debates on the UCC have been ongoing since the constitutional assembly discussions. The judiciary has actively engaged in efforts to promote a UCC through various judgments and opinions. Recently, the Supreme Court inquired whether the central government was inclined to implement a UCC in order to address inconsistencies in personal laws among different religions. The court expressed concern over the lack of clarity and coherence in regulations pertaining to marriage, divorce, adoption, maintenance, and inheritance. It requested the solicitor general of India to provide the government’s stance within three weeks. The court also suggested the need for uniformity in personal laws and sought a definitive response from the government.

Under section 7 of the Hindu Marriage Act, Hindu women are bestowed with dowry during marriage ceremonies, despite the existence of laws prohibiting such practices. Since marriage is considered a sacred bond, divorce carries a social stigma, causing women to choose to endure even abusive marriages rather than be labeled as divorcees. In Muslim law, marriage is viewed as a contract where certain conditions can be included. Mehr, a predetermined amount specified by the husbands as future security for the wife, proves to be more beneficial for women compared to the dowry system. Christian women have faced challenges in obtaining divorces, as mutual consent was not recognized as a ground for divorce until 2001, while the law came into effect.<sup>23</sup>

The discussions surrounding the formulation of a UCC in India extends beyond the clash between secularism and religious nationalism. It also encompasses the pursuit of justice for women within the personal laws of different

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<sup>21</sup> Rupam Lal Howlade, “Uniform Civil Code Towards Gender Justice”, *Legal Services India*, <https://www.legalservicesindia.com/article/1832/Uniform-Civil-Code-Towards-Gender-Justice.html>.

<sup>22</sup> Nieharika Sharma, “Status of Women under Hindu Law”, *India Legal Live* (Jun. 24, 2022), <https://www.indialegalive.com/laws-research-indepth/status-of-women-under-hindu-law/>.

<sup>23</sup> Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford Academic Books, 2001).

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religious communities. Gender justice has emerged as a central aspect in the UCC debate. Therefore, addressing gender justice has concerns in India without considering the UCC debate would be incomplete.

The UCC debate encompasses not only secularism and communal politics but also the quest for justice for women. It requires an examination of how the discourse on the secular state versus religious nationalists, as well as the tensions within the constitution between individual and collective rights, impact the prospects of achieving justice for women. The UCC debate has raised numerous questions for the women's movement. From a gender justice perspective, the UCC issue raises concerns about women's rights as citizens, which are often compromised in the face of communal politics. It also raises the challenge of formulating a gender-just code of family law delving into the realm of identity politics.

In India, while there is no uniform civil code, there does exist a uniform criminal code that is equally applicable to all without discrimination. However, when it comes to civil law, especially regarding personal laws, there is lack of uniformity. However, the concept of Uniform Civil Code has also faced unjustified criticisms. UCC does not insist anyone to follow the rituals of other religions. All it says is, with changing living styles of the society along with the changing era, Uniform Civil Code is desirable to all irrespective of religions and ethics are concerned.<sup>24</sup> One of the reasons for why personal laws based on religion is not favored, is that those laws tend to be highly gender based. Since these religious laws are having different codes on the matters of marriage, divorce, inheritance, etc. which are not in parity with our country's personal laws based on Constitution. This trend has created numerous issues of child marriage, polyandry, polygamy, unequal inheritance rights extrajudicial unilateral divorce rights, misinterpretation of holy books etc. However it is unfortunate that even after 71 years of independence we could not accept a single civil code for our nation.

In summary, women in India face discrimination and inequality under most religious laws concerning marriage, divorce, succession, and inheritance. Therefore, it is crucial to closely examine and reform the personal laws of various communities, not only in accordance with the Indian constitution but also with provisions of international laws, as a step toward achieving gender just-code. By having a single set of laws for all Indians, politicians will be unable to exploit any community in exchange for votes. This would not only enhance the dignity of our legal system but also contribute but the progress and stature of our nation.

Today, no country can go forward by ignoring the role and importance of women in both social and national life. In India, economic and social upliftment of women was initiated with the adoption of the constitution in 1950. The state resorted to a variety of social welfare schemes and laws for empowering women with preferential rights, benefits and entitlements. Besides Fundamental rights, the Directive Principles of State Policy directs the state for receiving certain measures for the protection and welfare of women. In spite of these protections, gender disparities are still to be rampant in India, which in turn has affected the country's developmental efforts.

“Uniform Civil Code, a common code that connotes the idea of similar set of civil rules regardless of their religion, caste, sex etc. has now-a-days propounded a high-powered controversy in India. Uniform Civil Code is the manifestation of contemporary progressive nation, which shows that the nation has been elevated from religion, race, caste, and sex and birth discrimination. However, if Uniform Civil Code not implemented in its true spirit, then these three words are sufficient to divide the country politically, religiously and socially. In India even after 72 years of independence, the personal laws of their respective communities are still infuriating people. The framers of the constitution with a view to achieve uniformity of law incorporated Article 44 in the constitution. Uniform Civil Code is a term, which has its roots from the concepts of Civil law code. The purpose covered in the Uniform Civil Code is to eliminate the contradictions based on religious ideologies and promote the concept of national integration. Then, all communities in the country would be judged on a similar platform in civil matters

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<sup>24</sup> Explained Desk, “Law Commission seeks views on Uniform Civil Code: What is the UCC and the debate around it”, *Indian Express* (Jun. 18, 2023), <https://indianexpress.com/article/explained/explained-law/law-commission-uniform-civil-code-8671382/>.

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and would not be governed by diverse personal laws. With various judgments of the Supreme Court of India where the Apex Court has suggested the Central Government for the enactment of a Uniform Civil Code a Uniform Civil Code will help the cause of national integration and Gender Justice.”<sup>25</sup>

According to the committee on status of women in India, the persistence of various personal laws, which recognize discrimination between men and women, infringe the fundamental rights and the preamble to the constitution which guarantees to secure to all citizens “Equality of status”, and is against the spirit of national integration and secularism.<sup>26</sup> The committee recommended quick implementation of the constitutional directive in Article 44 by adopting a Uniform Civil Code.

The incorporation of Art 44 aimed to promote unity and integrity as cherished goal of the constitution. While the Hindu laws on marriage, succession, and others matters have already been reformed, the Muslim community has shown resistance to similar changes. This resistance, along with the sympathetic attitude of political parties towards the community, has resulted in the delay of implementing the uniform civil code. This delay allows for the misuse of laws and permits inhumane and undignified treatment of women, including the legal acceptance of polygamy. Justice Kuldeep Singh, in the leading judgment on the *Sarla Mudgal vs. Union of India*<sup>27</sup>, noted that Art 44 is based on the understanding that there is no necessary connection between religion and personal laws. Matters such as Marriage, succession, and others of a secular nature cannot be considered under the guaranteed freedom in Article 25-28. The practice of polygamy is viewed as contrary to public morality in several countries, including the USA and some Islamic nations. Women, regardless of their religious background, must also take initiative to secure equal rights in personal matters, in accordance with the constitution.

Equality and Gender justice are the twin principles, which are necessary for the development and progress of a society. The contemporary society witnessed the presents of numerous legal systems which attempt to achieve the goals of equality and gender justice. The progress of a country depends upon the welfare and progress of all the members irrespective of gender. In a society like India, where women constitute nearly half of its population, in which only one section of development does not lead to the total progress of the country. India has necessary constitutional foundation for the implementation of Uniform Civil Code that aims to ensure gender justice. It is the opinion of the researcher that a Uniform or common civil code is possible only when the governments consider Gender Justice as the ultimate goal. But, contemporary situations are not in favor to enforce such laws to accomplish the vision.

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<sup>25</sup> *Ibid.*

<sup>26</sup> “Equal Opportunity Commission: What, Why And How?”, *Report by the Expert Group To examine and determine the structure and functions of an Equal Opportunity Commission Set up by the Ministry of Minority Affairs*, Government of India (2008).

<sup>27</sup> *Sarla Mudgal v. Union of India*, 1995 AIR 1531.