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# A Detailed Study on Uniform Civil Code in regard with Personal Laws and its Reforms

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## ABSTRACT

*The expression “Uniform Civil Code” literally means “Common Code” for each and every person living in the country without any religious discrimination”. The main subject is whether our country is developed enough to introduce this common code after getting the Constitution of India. This common law in India that extends to all Indians, regardless of their religion. In the realm of personal law, India has a set of concurrent personal laws that apply to members of different groups. An optional secular system of personal law is included in this personal law system. This paper attempts to assess the whole dialogue across the UCC, the arguments on its necessity, role of British in introducing the idea of UCC, role of constituent assembly and of renowned political heads in reforming the code.*

*If passed, the Civil Code will govern the personal and significant directives of all religious groups related to matrimonial issues, separation issues, issues pertaining to adoption and acceptance, guardianship, inheritance or birth rights, land inheritance and other secular affairs in the Indian state, and promote fraternity. Realize the unity between people by providing people with a set of personal laws that unify the core values of humanism. It is to be believed that the personal legal system used in India today is the result of later colonial reformers of various religious leaders trying to adapt their legal system to their own interests and to trace the roots of current debates. The debates of the century and the beginning of the 20th century on legal reform.*

## I. INTRODUCTION

India being a secular nation was once a British Colony where all the citizens were governed by the British-Indian laws. Before the British rule, various religious communities in India are governed by their laws as they have their “personal laws.” they apply to the people who profess a particular religion e.g. Hindus, Muslims, and Jews are governed by their personal laws respectively. These personal laws apply to the areas of Marriage, Succession,

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Guardianship, Adoption, etc.<sup>3</sup> When these personal laws were reformed, there was great injustice in gender equality. It resulted in the British authorities proposing a uniform personal law known as the “Uniform Civil Code” governing all the citizens without bringing the concept of their religion status. However various religious communities were against the proposal and followed their laws.<sup>4</sup>

After the independence, the Constituent Assembly of India raised the idea of “Uniform Civil Code” in 1947.<sup>5</sup> The subcommittee of the fundamental rights advised to include UCC in article 44 of DPSP. The main aim of the code was to bring a single uniform personal code for all the citizens. But religious communities considered it as a threat to their religious freedom and opposed the UCC. The concept of UCC was reminded time by time by the judiciary through its various landmark judgments like *Shah Bano*<sup>6</sup> case. UCC is still a constitutional dream for not being implemented since Independence. As India is developing the personal laws are also getting amended as per the community’s rights and desire.<sup>7</sup> Though implementation of UCC is lengthy process, it should some come into existence to make India the perfect secular nation.

The researcher has used Descriptive and Analytical Legal Research are used for this particular research paper. Detailed study of the topic is done. The data is collected from different primary and secondary sources. The sources include relevant articles, law journals various databases, law commission reports, reviews, commentaries, relevant statutory laws and their criticisms. A researcher would mainly like to clarify in concise style the situation or case of his / her study. It is a theory-based research design generated by the collection, review and presentation of data collected. A researcher may have information into why and how work is being carried out in a detailed research design.

The approach used for analysis is primarily descriptive. The secondary sources such as books, documents, journals and web contents were given the greatest importance. The collected data has been piled up and carefully presented. With the help of various judgments, I could gather rich facts. It is also the matter of analytical research where pure and applied research was conducted in order to understand the core concepts and find a way to unsolved problems. The research therefore has been carried out to get a brief idea about the Uniform Civil Code related to the personal laws and their pros and cons.

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<sup>3</sup> Christa Rautenbach, *Phenomenon of personal laws in India: some lessons for South Africa*, 39 IFCL, 242, 244 (2006).

<sup>4</sup> Eleanor Newbigin, *The codification of personal law and secular citizenship*, 46 IESH Rev., 83-104 (2009).

<sup>5</sup> Manooja D. C., *Uniform Civil Code: A Suggestion*, 42, no. (2/4) Journal of Indian Law Institute, 450 (2000).

<sup>6</sup> Mohd. Ahmed Khan v. Shah Bano Begum and Others 1985 (3) SCR 844.

<sup>7</sup> Shambhavi, *Uniform Civil Code: The Necessity and the Absurdity*, 1 ILI Law Rev., 13 (2017).

**Research Questions are as follows:**

1. What is the philosophy of UCC in its retrospective and prospective aspect?
2. Whether there are any discriminations in various personal laws and does state have any power to regulate personal laws through legislation?
3. Does India needs Uniform Civil Code and what are the debates surrounding around it?
4. How the UCC and personal laws effect the concept of Secularism in India?
5. How does UCC relate to the fundamental rights to religion and how it can be enforced?
6. What were the reforms in personal laws in late colonial India and after independence?

**Research Objectives are as follows:**

1. To know the historical background of Goa model of Uniform Civil Code
2. To find out the effect of Personal laws before independence.
3. To analyse the concept of secularism and various forms of it in India
4. To know the Constitutional validity of Personal Laws
5. To understand the conflict between UCC and Personal laws
6. To study the role of Judiciary in interpretation and implementation of UCC

**II. HISTORICAL BACKGROUND AND MEANING OF PERSONAL LAWS IN INDIA**

Prior to British rule i.e. before 1612, Mughals were ruling the Indian territory. During their command, justice was administered by the *Quazis* also known as Judges. The *Quazis* applied the Muslim law only to Muslims leaving Hindus and other religions without any litigation assurances. Criminal laws and land laws were considered as Muslim criminal laws which were administered on a uniform scale by *Quazis* and *Muftis* under Mughal King.

During the British Rule, Mughal system of law continued till 1772 and when Warren Hastings had thought to administer the laws, he combined and provided uniform courts of law in provincial areas of then Bengal, Bihar and Orissa adjoining Calcutta in order to eradicate discrimination between Hindus and Muslims. The civil side of courts then applied personal laws for various religious communities. But criminal courts continued to follow Muslim criminal law with certain amendments. After the establishment of Supreme court in 1774, Regulating act of 1773 came into force with only three laws i.e. Hindu, Muslim and

English laws and no other laws. The remaining religious communities were being administered by English law.

However, starting in 1781, the rules that mandated the application of personal laws to various communities on issues such as matrimonial issues, separation issues, issues pertaining to inheritance or birth rights, and religious systems allowed existence and continuation of personal laws, which could be replaced by a single civil code known as “Uniform Civil Code. Typically, in this context, it was believed no society can disagree with the application or introduction of the “Uniform Civil Code.”

### **Personal Laws**

These laws are the array of laws that are applied to certain category of people based on their religion, faith and culture. for e.g. Hindus are governed by Hindu law, Muslims are governed by Muslim law and Jews by Jewish law. These personal laws apply to the areas of Marriage, Succession, Guardianship, Adoption etc. There exist five major communities in India i.e. Hindu, Muslim, Christian, Parsis and Jews. During the British regime, Hindus were governed by the laws of Mitakshara and Dayabhaga schools. Muslims were governed by Holy Quran. Christians, Parsis and Jews by their own personal laws. In spite of all the personal laws there is no common law for Indians. In the next chapter we will discuss about the efforts made by the then British government in introducing the idea of UCC.

### **Role of British Colonial Rule on the idea and proposal of UCC**

Consequently, as a measure of administrative convenience, the British attempted and often succeeded in bringing uniformity to civil laws. In 1835, Lord MacCauley was assigned as the chairman of first law commission. The commission specified that there is no *lex loci* i.e. local law and there is mixed law for both Hindus and Muslims. The commission examined each and every aspect of the personal laws of both Hindus and Muslims, further pointed out that there is no uniformity in laws pertaining to religious communities in India. In addition to this the commission referred to the uniformity in law i.e. *lex loci*.<sup>8</sup> Even today India has no *lex loci*. In the next chapter changes done by the constituent assembly in personal law will be discussed.

### **Reforms made by the Constituent Assembly after Independence**

The idea of UCC throughout India was first introduced in 1947 in the constituent assembly. The sub-committee of fundamental rights decided to include UCC in “directive principles of

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<sup>8</sup> M.P. Jain, *Outlines of Indian Legal & Constitutional History* 516-17 (1976).

state policy”. Despite the fact that clause 39 (current art. 44) was one of the directive principles, it was firmly opposed.<sup>9</sup> In the constituent assembly, two objections were raised against the introduction of UCC for the entire nation. That it will violate religious rights ensured in art. 25 of “Constitution of India” and It will extend to discrimination of minority groups.<sup>10</sup>

Following India’s independence, the course of action for codifying Hindu law began under the direction of Dr. B.R. Ambedkar. As a result of Dr. Rajendra Prasad, then President, opposing the enforcement of a detailed Hindu Code, Hindu law had to be enforced piecemeal, with the “Hindu Marriage Act of 1955, Hindu Adoption and Maintenance Act of 1956, Hindu Minority and Guardianship Act of 1956, and Hindu Succession Act of 1956.” Due to the strict opposition for a uniform code by Dr. Rajendra Prasad, Dr. B.R. Ambedkar resigned in the cabinet. As a result, Pandit Jawaharlal Nehru introduced Hindu bill instead of Uniform code with the intention that it was not the right moment to introduce the idea of UCC.

The debate on a UCC was reignited in 1972 when the Adoption Bill of India was introduced in the house of council of states i.e. Rajya Sabha. The law minister said while presenting the bill that it was the first step towards the code, it was unfortunate that the law couldn’t be passed.<sup>11</sup> It was well comprehended by the constituent assembly that idea of UCC had filled the minds of Indians with opposition by Muslims and there were hardly few Hindus who are in support of implementing uniform civil code.

They considered personal law, such as inheritance and succession, to be an integral part of their religion. If this is the case, Indian women will never be granted the equality guaranteed by Article 14 of the Indian Constitution. According to Article 15(1), “the state shall not discriminate against any person solely on the basis of faith, ethnicity, caste, sex, place of birth, or any combination of these factors.” If you look at Hindu law, you’ll notice that there’s a lot of violence against women. If Hindu personal law is a part of their faith, equality between men and women can never be achieved. For a strong and consolidated country, religion must be constrained to religious convictions only, and the secular activities associated with religion must be controlled, united, and changed.<sup>12</sup> Arguments in favour and against the implementation of UCC will be discussed in the next chapter.

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<sup>9</sup> *Constituent Assembly Debates* vol. VIII, 543.

<sup>10</sup> V.N. Shukla, *Constitution of India* 307 (8<sup>th</sup> ed., 1990).

<sup>11</sup> N.R. Madhava Menon, *National Convention on Uniform Civil Code for all Indians* 1 (1986).

<sup>12</sup> *Constituent Assembly of India Debates* Vol. VII 547-48.

### III. ARGUMENTS SURROUNDING UCC

The controversy over “Uniform Civil Code” is a major point of contention in any discussion of India’s secularism and religious freedom. Though secular laws based on the ideologies of “justice, equality, and good faith” now rule only a few aspects of social life, personal religious laws remain largely unchanged.

#### **Arguments in favour of UCC**

Concerns about the infant nation’s independence and dignity clouded India’s journey toward destiny, which began on August 15, 1947. Following India’s tragic partition, our forefathers left no stone unturned in their efforts to restore the country’s unity. They became so committed to the task of national integration that they devised a number of novel strategies to achieve it. National reformers are insisting on the implementation of UCC for the improvement of India’s integrity. The nation’s spirit requires that the law be applied equally to all people. It was assumed that having a unified substantive law was one of the characteristics of a real nation state. The presence of various laws whose applicability was determined by religion or race was seen as a sign of inadequacy; it indicated a political body exposed to breakdown, one with slight global impact.<sup>13</sup> Furthermore, by preventing the encouragement of communalism for political ends, UCC would serve as a defence against political dominance by minorities’ irreducible beliefs, it is seen as forerunner of true social equality.

Gender equality is another ultimate aim of supporters of UCC. It was noticed that gender inequality is integrated into the personal laws of all cultures. This is supposed to be the “outcome of the socioeconomic circumstances under which they developed.” UCC proponents sincerely believe that by ensuring equality between men and women, a UCC can guarantee religious reformation. Women have always faced discrimination in personal rules. As a result, women have faced many challenges in their marriages, divorces, and inheritances. Moreover, though one’s faith decides which law applies to them in terms of issues of marriage, separation, maintaining, guardianship, acceptance, inheritance, and succession, a public thread running across all of India’s religious personal law systems is men’s patriarchal supremacy and women’s inequitable treatment.

#### **Arguments against UCC**

The majority of the objections to the enactment of UCC have come from the country’s

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<sup>13</sup> John H. Mansfield, “*Personal Laws or a Uniform Civil Code?*” *Sociology of Law*, (Oxford University Press, New Delhi, 2005).

minority group. Not only has the interpretation of UCC been opposed from the beginning, but so have radical changes in community personal laws. Opponents of UCC argue that their personal rules are closely linked to their religion. Any tampering with the law would inevitably lead to conflict with a person's religion. This type of intervention is prohibited by the Constitution. However, it is important to note that the preceding statement overlooks a crucial element of the “right to profess, practice, and spread religion.” Article 25’s right is constrained by public order, health, and morality. In addition, when social reform is required for societal welfare, the government can intervene. A morally reprehensible activity cannot be permitted to continue under the guise of faith.

The code stood opposed in India on the spurious grounds that it would be an imposition of Hindu religion on minorities. “One objection raised by the Muslim community to the enactment of a uniform civil code is the fear that it would be influenced by a Hindu perspective presented as neutral and secular...”<sup>14</sup> The above objections, in the researcher’s view, suffers from the vice of irrationality and is demonstrably false and unsustainable. Even though this code is a difficult concept to put into effect, no one can deny that it is desirable and essential in India. Herein discussing the arguments, the real meaning of secularism will be discussed in the next chapter.

#### **IV. THE CONCEPT OF SECULARISM THROUGH PERSONAL LAWS**

To begin, it is important to recognise that India is a unique country with wide range diversities. The Indian Constitution makes frequent attempts to consider and preserve the diversity of social situations and to re-emphasize the importance of unity in diversity. It recognises ‘pluralism of religions and convictions’. In Indian culture, religion has always played a dominant role. On one hand, religion has contributed to the moral upliftment of the masses, while on the other hand, a misunderstanding of divine edicts has perpetuated many social evils. Discrimination has been fuelled in large part by religious and custom-based personal laws in various cultures.<sup>15</sup>

Secularism is a complex notion with various meanings in different countries. Secularism can be interpreted as the state’s neutrality in matters of religion or creed in general. Generally, one factor which is common with the formation of states is that they are not formed by religious output nor by theocracy. It can also be described as the state’s “non-patronizing attitude toward any one religion.” There is no state religion in a secular state, and citizens are

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<sup>14</sup> Vrinda Narain, “*Women’s Rights and the Accommodation of ‘Difference’: Muslim Women in India*”, 8 S. Cal. Rev. L. & Women’s Stud. 43, 62 (1999).

<sup>15</sup> Neera Chandhoke, *Beyond secularism: The Rights of religious minorities* (Oxford University Press, 2010).

free to preach, practice, and spread any religion.<sup>16</sup> As a result, secularism describes how a country's citizens conduct their personal lives as well as their interactions with others.

Indian secularism is not solely concerned with the separation of church and state, but the principle of religious equalism is central to the Indian perception of secularism. The introduction of Western education to India brought attention to what had previously been "neglected and oppressed notions of equality in Indian thought." Western education emphasised intra-community equality while also introducing inter-community equality as a replacement for caste and religious hierarchy. Indian secularism addresses both individual religious freedom and the religious freedom of minority groups.<sup>17</sup> Indian secularism has accommodated and is consistent with the concept of state-sponsored religious reform. Understanding the concept of secularism, the first ever model of this code which was implemented by Portuguese will be explained.

## V. THE GOA MODEL OF UCC

Goa is the first state to implement UCC. After the federation of the union territories of Goa, Daman, and Diu in 1961 and the union territory of Pondicherry in 1962, two international legal systems were introduced into the already existing composite system of personal laws. The Portuguese Civil Code, 1867, which is based on Code Napoleon, is the general rule that applies to all residents in Goa, Daman, and Diu. However, by 1880, the Portuguese had safeguarded certain practises and customs of specified Hindus belonging to Goa. Hindus in Daman and Diu were also governed by these laws. The legal situation in this regard has remained unchanged to this day. Accordingly, it is the "French Civil Code, 1802" which is pertinent to all the citizens of Pondicherry. In the following years of independence, Indian Parliament codified and revised the Hindu personal law to some level. Personal laws of other religious communities were unaffected, with the exemption of the Special Marriage Act of 1954, which applied uniformly to all religious communities. Understanding the nature of Portuguese civil code, next is the objectives and the need of civil code in India.

### Objectives and Aim in implementing UCC

As soon as the constitution went into effect, the need for a "Uniform Civil Code" became apparent. This ordinance could not be enforced even after 54 years for reasons that are well known to all those involved with this ordinance. The UCC often aspires to go beyond the

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<sup>16</sup> Arthur Mayhew, Faber & Gwyer, "Christianity and the Government of India" 5(1) Bulletin of the School of Oriental and African Studies (Oct.1929).

<sup>17</sup> Rajeev Bhargava, "What is Secularism for?" *Secularism and its Critics* (New Delhi, Oxford University Press, 1998)

materialist and sometimes conservative aspects of personal laws of various religious groups. As a result, bringing about social change and elevating the status of women is also a goal. In the interests of societal modernization and a shared form of justice for all, the UCC is highly desirable.<sup>18</sup>

In the absence of UCC, tense, unwarranted, and unpleasant circumstances arise. Marriage is the appropriate support of civilised life, according to the court. When a relationship is formed, the law takes over and binds the parties to various responsibilities and liabilities. Marriage is not a tradition in which the general public is particularly involved. It is the bedrock of the family, and thus of culture, and without it, no civilization can survive.<sup>19</sup> Until such time as the government establishes a “uniform civil code” for all people entering a second marriage while the first marriage continues to exist in order to become a Muslim, Since Hindu law requires monogamy and Muslim law allows for up to four wives in India, the errand Hindu husband converts to Islam to avoid the Hindu law’s provisions and avoid penalties. There were important landmark judgments in which the Supreme Court opined the necessity of implementing UCC which will be discussed in the next chapter.

## VI. JUDICIAL INTERPRETATION THROUGH VARIOUS LANDMARK JUDGMENTS

A few enlightened judgments from high courts and the Supreme Court are mentioned below, highlighting the need for adopting UCC. The Supreme Court delivered its recent landmark decision in “*Sarla Mudgal v. Union of India*,”<sup>20</sup> directed the Union Government to take active scrutiny at article 44 to secure a uniform civil code. further, it also directed the Ministry of Law and Justice to draft an affidavit through the secretary on all the efforts made; actions taken by the government towards ensuring a uniform civil code.

Further, one of the accused person in the earlier cases had preferred an appeal. While hearing it, the court further stated about the earlier decision that it was not binding on the government as it was only an *obiter dictum*. Later, the allowance to a divorced Muslim woman is allowed to claim maintenance under section 124 of Cr.P.C. this is so, basing on section 125 is a general provision. It applies to everyone irrespective of their religion.

The Supreme court delivered the above decision in the “*Mohd. Ahmad Khan v. Shah Bano Begum*”<sup>21</sup> case. The Supreme Court, on the other hand, has been chastised by Muslim religious leaders for interfering with Muslim personal law through section 125, and they have

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<sup>18</sup> Ahmed, Shabbeer, and Shabeer Ahmed. “UNIFORM CIVIL CODE (ARTICLE 44 OF THE CONSTITUTION) A DEAD LETTER.” IJPS 67, no. 3 (2006): 545-52.

<sup>19</sup> C.C. Desai, “Need for UCC for India”, 3 Journal of Constitutional and Parliamentary Studies, 1969.

<sup>20</sup> (1995) 3 SCC 635.

<sup>21</sup> AIR 1985 SC 945

requested that section 125 be repealed or amended from the Criminal Procedure Code, 1973. In Shah Bano's judgment, Chief Justice YV Chandrachud, speaking on behalf of the constitution bench, observed: "A common civil code will help the cause of national integration by removing disparate loyalties to the law which have conflicting ideologies."

A tool was established to exclude the specified dispute. It is "The Muslim Woman Act of 1986". Muslim males, divorced without a decent reason, are liberated from the obligation of maintaining their wives. For maintenance, she has to depend on her family.

However, the most important directions were made in *Jordan Diengdeh v. S.S. Chopra (1985)*,<sup>22</sup> when Justice Chinappa Reddy said: "We suggest that the time has come for the intervention of the legislature in these matters to provide for a uniform civil code of marriage and divorce and to provide by law for a way out of unhappy situations in which couples like the present have find themselves in. we direct that a copy of this order may be forwarded to the Ministry of Law and Justice for such action as they may deem fit to take."

Since 1950, many governments have come into power and left. But no government made a serious attempt to implement the constitutional mandate under article 44. Consequently, the problem today is that many Hindu males, having the spouse living, by embracing Islam are getting married again without any fear of the consequences of bigamy. Analysing the above landmark cases it is clear that the Judiciary is in the favour of implementing the code and the suggestions pertaining to the changes in the code shall be discussed in the next chapter.

## VII. SUGGESTED REFORMS TO BE MADE IN UCC

Today's debate over the "Uniform Civil Code" is miserably polarised along political and religious lines. There are more discussions about the system of applying UCC and who rules the mechanism than there are about the ideology of UCC. The solution is to encourage a process that includes gentlemen and ladies from different religious communities and consider all fascinated opinions on to the table. Since this project is so big, it's important for the government to move forward in stages that keep religious groups involved. If both men and women from different religious backgrounds were interested in the discussion and final result, the validity of such a code would be greatly enhanced, as would its ultimate efficacy.<sup>23</sup> The focus on majority-minority tensions would be virtually eliminated if this course is taken. It's also important to note that a UCC doesn't have to absolutely abolish all personal laws.

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<sup>22</sup> 1985 AIR 935.

<sup>23</sup> Shalina A. Chibber, "Charting a New Path towards Gender Equality in India: From Religious Personal Laws to a Uniform Civil Code", 695, Volume 3, Indiana Law Journal, 2008

For those who want to follow their apparently innocuous provisions, there must be ways to protect them. Some claim that although a UCC should exist, everybody should have the option to opt out. Other alternatives may also be considered. This is not a case that should be rushed into. Sociological probe and analysis are needed in advance to arrive at a trustworthy result.<sup>24</sup> Altering the constitution is another choice for achieving equality. After all the discussions and findings from the above, it is founded that there are both pros and cons after analysing the arguments with respect to the various religious communities and judgments of apex court. Though few religious communities are not willing to support the idea of this code, the country is in great need of the uniform code to achieve a better position in the world.

It is now clear that there is no political controversy in this issue. Rather, this is a significant and progressively advanced step towards a proper judicial administration, but also towards coherent systems of “personal law,” leading to greater unity and harmony between different communities.

## VIII. CONCLUSION

It can be concluded that there is a vital necessity of UCC in the country so as to limit the rights of various religious groups in order to create a peaceful environment among the society and to achieve equality among in all irrespective of religion or gender. The main aim of implementing this code is to build a homogenous nation and secure the rights of the citizens throughout the country. Under the umbrella of defending religious communities, the states cannot continue to shirk its responsibility to provide women with equal rights to men. It is not the principle of gender equality that stings minority religious groups; it is the idea that the state would provide that equality by infringing on their rights and endangering their identity. However, a process that includes religious groups as full contributors in the drafting of a “Uniform Civil Code” can allay worries of minority groups that their beliefs will be set aside by the key troupes.

Religious groups would be able to change from within, and community identity would lose its allegiance to patriarchal personal rules, by including both men and women in the course and specifying that their final result must adhere to constitutional framework. As a result, the populace will legitimise the universal civil code, ensuring fundamental gender equality. For a “uniform civil code” to have any chance of making a meaningful difference in the lives of

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<sup>24</sup> Pratibha Jain, “Balancing Minority Rights and Gender Justice: The Impact of Protecting Multiculturalism on Women’s Rights in India”, 23 Berkeley J. Int. Law 201(2005).

real India, both are needed. In addition, it can be perceived, the answers to above mentioned research questions and objectives have been met on the same line. In the view of the above, it can be rightly said that there is an urgent need of introduction of UCC in India.

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