

A.F.R.
Reserved

Court No. - 51

Case :- WRIT - C No. - 14896 of 2021

Petitioner :- Mayra Alias Vaishnvi Vilas Shirshikar And Another

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Ajay Kumar Mishra

along with

1. Case :- WRIT - C No. - 16411 of 2021

Petitioner :- Smt. Zeent Aman @ Neha Soti & Another

Respondent :- The State Of U.P.And Others

Counsel for Petitioner :- Amit Rana

2. Case :- WRIT - C No. - 16796 of 2021

Petitioner :- Smt. Maahi @ Manaal Khan And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Alok Kumar Srivastava

Counsel for Respondent :- C.S.C.,Subhash Chandra Tiwari

3. Case :- WRIT - C No. - 16848 of 2021

Petitioner :- Smt. Shama Paravin And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Amarendra Mani,Indra Alok Singh,Salil Krishna

Counsel for Respondent :- C.S.C.

4. Case :- WRIT - C No. - 15464 of 2021

Petitioner :- Smt. Gulafasa @ Gauravi And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Sunil Kumar Dubey

Counsel for Respondent :- C.S.C.

5. Case :- WRIT - C No. - 15675 of 2021

Petitioner :- Ekta Madhwani @ Mehar Khan And Another

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Nanhe Lal Tripathi

6. Case :- WRIT - C No. - 15778 of 2021

Petitioner :- Mahira @ Mamta Maurya And Another

Respondent :- State Of U.P And Others

Counsel for Petitioner :- Mohammad Waseem

7. Case :- WRIT - C No. - 13623 of 2021

Petitioner :- Fija And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Satya Prakash Maurya,Surya Nath Bhatt

Counsel for Respondent :- C.S.C.

8. Case :- WRIT - C No. - 16062 of 2021

Petitioner :- Smt. Sarita @ Salma Kaur And Another

Respondent :- State Of U P And 2 Others

Counsel for Petitioner :- Dhiraj Kumar Pandey

Counsel for Respondent :- C.S.C.

9. Case :- WRIT - C No. - 6422 of 2021

Petitioner :- Snehlata @ Rukaiya Mansuri And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Mohd. Ayub

Counsel for Respondent :- C.S.C.

10. Case :- WRIT - C No. - 17568 of 2021

Petitioner :- Naseema @ Neha & Another

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Janardan Prasad Tripathi

11. Case :- WRIT - C No. - 16321 of 2021

Petitioner :- Smt. Renu @ Ruby

Respondent :- State Of U P And Others

Counsel for Petitioner :- Shri Prakash Dwivedi

12. Case :- WRIT - C No. - 18559 of 2021

Petitioner :- Salma @ Sarla And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Atul Kumar Kushwaha

Counsel for Respondent :- C.S.C.

13. Case :- WRIT - C No. - 14731 of 2021

Petitioner :- Smt. Ayasha @ Pratibha And Another

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Abrar Ahmad Siddiqui

14. Case :- WRIT - C No. - 17790 of 2021

Petitioner :- Nisha @ Nisha Khatoon And Another

Respondent :- State Of U.P. And Others

Counsel for Petitioner :- Shivangi Bhargava,Ajay Kumar Srivastava

Counsel for Respondent :- C.S.C.

15. Case :- WRIT - C No. - 17940 of 2021

Petitioner :- Smt. Siba Bano And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ajeet Kumar Srivastava
Counsel for Respondent :- C.S.C.

16. Case :- WRIT - C No. - 13508 of 2021
Petitioner :- Baby @ Fatima Khatoon And Another
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Nagendra Pratap Singh
Counsel for Respondent :- C.S.C.

Hon'ble Suneet Kumar,J.

1. The judgment is being structured in the following framework to facilitate the discussion:

- A. Facts
 - B. Rival Submissions
 - C. Anti Conversion Laws/Freedom of Religion Act
 - D. Law Governing Interfaith Marriage
 - E. Development of Law
 - F. Multiplicity of Marriage Law
 - G. Uniform Civil Code (UCC)
 - (i) Historical Perspective
 - (ii) Constituent Assembly Debate
 - (a) Objection to UCC
 - (b) Response to UCC
 - (c) UCC whether necessary or desirable
 - H. Hindu Family Code – Its impact
 - I. Personal liberty and Privacy
 - J. Analysis and Conclusions
 - K. Relief
-

2. Heard learned counsel for the petitioners and learned Standing Counsel appearing for the State-respondents.

3. Notice is not being issued to the contesting private respondents in view of the order proposed to be passed.

4. Petitions are being decided finally at the admission stage, as per Rules, on the consent of the parties.

A. Facts

5. The batch of petitions (17 in number), pertain to interfaith marriage contracted by the petitioners. Petitioners, herein, claim to be major and one of the party to the marriage has converted to the religion/faith of his/her partner. The petitioners apprehend threat to their life, liberty and well-being. Hence the instant writ petitions seeking protection.

6. In the leading writ petition (14896 of 2021)¹, it is pleaded that both the petitioners are medical professionals. The first petitioner (Vaishnavi), a Hindu, after conversion accepted Islam, thereafter, she married the second petitioner according to Muslim customs. The petitioners have applied for registration of their marriage. It is specifically pleaded that since they belong to different faiths, they eloped and got married on their free will. They apprehend threat to their life and liberty as the contesting private respondent, father of the first petitioner, is opposing the interfaith marriage. The first petitioner converted to Islam on 5 January 2021 and the Nikahnama is dated 23 January 2021. It is also pleaded that the first petitioner belongs to Maharashtra and the second petitioner is from Bijnor, Uttar Pradesh. The conversion and marriage had taken place in the State of Maharashtra. The registration of the marriage has been applied before the Marriage Registrar/Officer at Bijnore.

7. In Writ Petition No. 16411 of 2021², the first petitioner Zeent Aman @ Neha Soti, aged about 27 years, a muslim, converted and accepted the Hindu faith. It appears that the

1. Marya @ Vaishnvi Vilas Shirshikar and another vs. State of U.P. and others

2. Smt. Zeent Aman @ Neha Soti and another vs. State of U.P. and others

conversion and the marriage under Hindu rites and customs was solemnized on 22 April 2021 at Arya Samaj Mandir in Bijnore. It is specifically pleaded that the registration of marriage is not possible without prior permission of the District Magistrate. The couple apprehends honour killing.

8. In Writ Petition No. 16796 of 2021³, the first petitioner Maahi @ Manaal Khan, a Muslim, converted and accepted Hindu faith on 29 August 2020, thereafter, the petitioners solemnized marriage under the Hindu rites and customs at Arya Samaj Mandir, District Kanpur, on the same date.

9. In Writ Petition No. 16848 of 2021⁴, the first petitioner Shama Paravin, a Muslim, converted and accepted Hindu religion. Petitioners have applied for registration of their marriage at Ghazipur.

10. In Writ Petition No. 15464 of 2021⁵, the first petitioner Gulafasa @ Gauravi, a Muslim, married the second petitioner a Hindu at a Radha Krishna Temple, Amroha on 14 June 2021, after leaving her parents home. It is pleaded that the first petitioner accepted Hindu faith, but there is no document evidencing her conversion, nor have the petitioners applied for registration of their marriage.

11. In Writ Petition No. 15675 of 2021⁶, the first petitioner Ekta Madhwani @ Mehar Khan, a Hindu converted to Islam on 21 June 2021, thereafter on the same day contracted marriage with the second petitioner, a Muslim. The petitioners are graduates.

3. Smt. Maahi @ Manaal Khan and another vs. State of U.P. and others

4. Smt. Shama Paravin and another vs. State of U.P. and 3 others

5. Smt. Gulafasa @ Gauravi and another vs. State of U.P. and 3 others

6. Ekta Madhwani @ Mehar Khan and another vs. State of U.P. and others

12. In Writ Petition No. 15778 of 2021⁷, the first petitioner Mahira @ Mamta Maurya, a Hindu converted to Islam on 11 January 2018, thereafter, marriage was contracted on 15 June 2019, according to Muslim rites and customs at Bareilly.

13. In Writ Petition No. 13623 of 2021⁸, the first petitioner Fija, a Muslim, converted and accepted Hindu faith. The marriage was solemnized in a Shiv Temple at Badaun, on 15 March 2021. Petitioners apprehend harassment accordingly a notarized marriage affidavit was prepared on 14 April 2021, declaring their marital status.

14. In Writ Petition No. 16062 of 2021⁹, the first petitioner Sarita @ Salma Kaur, a Muslim, converted to Hindu faith in a ceremony conducted at Arya Samaj Mandir, Saharanpur, thereafter, solemnized marriage under Hindu rites and customs on 16 March 2021. The first petitioner is aged about 34 years, whereas, the second petitioner is 25 years. It appears that the petitioners are illiterate and the second petitioner is working as a carpenter. Aadhaar has been filed as proof of age by the respective petitioners.

15. In Writ Petition No. 6422 of 2021¹⁰, the first petitioner Snehlata @ Rukaiya Mansuri, a Hindu, aged about 42 years converted to Islam and contracted marriage with the second petitioner aged about 40 years. The conversion and marriage appears to have taken place at Surat, Gujarat.

16. In Writ Petition No. 17568 of 2021¹¹, the first petitioner-Naseema @ Neha, a Muslim, converted to Hindu faith,

7. Smt. Mahira @ Mamta Maurya and another vs. State of U.P. and others

8. Fija and another vs. State of U.P. and others

9. Smt. Sarita @ Salma Kaur and another vs. State of U.P. and 2 others

10. Snehlata @ Rukaiya Mansuri and another vs State of U.P. and 3 others

11. Naseema @ Neha and another vs. State of U.P. and others

thereafter, married the second petitioner on 7 July 2021 in a Shiv Temple, at Prayagraj, according to Hindu rites and customs.

17. In Writ Petition No. 16321 of 2021¹², the first petitioner Renu @ Ruby, a Hindu, converted to Muslim religion, thereafter, married the second petitioner on 21 June 2021, according to Muslim rites and customs.

18. In Writ Petition No. 18559 of 2021¹³, it is the second marriage of both the petitioners. The first petitioner, Salma @ Sarla, a muslim by birth, contracted marriage with second petitioner after taking divorce from her husband, thereafter, she converted to Hindu religion. The second petitioner is a widower. The marriage of the petitioners is alleged to have been solemnized on 24 March 2020, at Arya Samaj, Adarsh Colony, Muzaffar Nagar, according to the Hindu rites and customs.

19. In Writ Petition No. 14731 of 2021¹⁴, the first petitioner- Ayasha @ Pratibha, a Hindu, converted to Muslim faith, thereafter, married the second petitioner on 3 August 2020, at Jalalnagar Bajariya, Shahjahanpur, according to Muslim rites and rituals.

20. In Writ Petition No. 17790 of 2021¹⁵, the first petitioner- Nisha @ Nisha Khatoon, a Hindu, converted to Muslim faith, thereafter, married the second petitioner on 4 September 2013 at PAC Naya Gaon, Moradabad, according to Muslim rites and customs.

12. Smt. Renu @ Ruby vs. State of U.P. and others

13. Salma @ Sarla and another vs. State of U.P. and others

14. Smt. Ayasha @ Pratibha and another vs. State of U.P. and others

15. Nisha @ Nisha Khatoon and another vs. State of U.P. and others

21. In Writ Petition No. 17940 of 2021¹⁶, the first petitioner-Smt. Siba Bano, a Muslim, converted to Hindu faith, thereafter, married the second petitioner on 14 July 2021 in a Shiv Temple, at Jahanpur Bilar Mau, according to Hindu rites and customs.

22. In Writ Petition No. 13508 of 2021¹⁷, the first petitioner-Baby @ Fatima Khatoon, a Hindu, converted to Muslim faith, thereafter, married the second petitioner on 28 December 2018, according to Muslim rites and customs.

23. The common thread running through all the petitions is that the petitioners have contracted interfaith marriage upon conversion; petitioners are major. It is pleaded that the conversion is on free will; some petitioners are highly qualified i.e. professionals, graduates and some appear to have not passed secondary examinations. They apprehend threat to their life and liberty at the hands of their parents, relatives and other family members in connivance of the State machinery. Some of the petitioners have approached the District Police seeking protection.

24. The petitioners are before this Court, under Article 226 of the Constitution of India, seeking protection of their life, liberty and privacy guaranteed under Article 21, to live independently as man and woman without the interference of the private respondents.

B. Rival Submissions

25. Learned Standing Counsel appearing for the State-respondents submits that the conversions is for the purpose of

16. Siba Bano and another vs. State of U.P. and others

17. Baby @ Fatima Khatoon and another vs. State of U.P. and others

marriage; approval of the District Magistrate has not been obtained before conversion, and/or, contracting marriage; marriage cannot be registered without the district authority making an enquiry, as to whether, the conversion is voluntary and not induced by coercion, allurement and threat. In other words, the State-Counsel submits that the petitioners are not entitled to any relief from this Court, they should approach the competent district authority and obtain approval, in the first instance, with regard to their conversion. The writ petitions are liable to be dismissed.

26. Per contra, the learned counsel for the petitioner submits that the argument advanced by the State counsel is misconceived; the citizens have a right to make choice of their partner and faith; the conversion of religion/faith, followed by marriage under the personal law is on free will without coercion, threat or inducement. Interference by the State or by the private respondents would tantamount to encroaching upon their constitutional right to freedom, choice, life, liberty and to live life on own terms as man and woman. The prior approval of the district authority followed by registration of marriage is not sine qua non before conversion and marriage.

27. He further submits that even taking a case that approval of the authority was not taken prior to conversion, the petitioners still have a right to live together being major. He further submits that the legal frame work, pertaining to interfaith marriage, as it stands today, is archaic, regressive and primarily discourages registration and recognition of interfaith marriage, rather, the law compels and encourages a party to convert. The petitioners are entitled to protection

under the Constitution as their life, liberty and privacy are under threat.

28. Rival submissions fall for consideration.

29. It would be apposite to briefly gauge into the laws governing conversion, particularly, in State of Uttar Pradesh and the relief, if any, the petitioners are entitled to.

C. Anti Conversion Laws/Freedom of Religion Act

30. Freedom of religion and belief is a basic human right across civilized states. The Constitution of India and the Declaration of Human Rights guarantees every person right to freedom of thought, conscience and religion which includes freedom from religion, freedom to change religion and belief. The freedom of conscience means that a person is free to entertain any belief or doctrine regarded by him/her as conducive to his/her spiritual well being. Religion and thought constitute the most intrinsic part of human nature. This implies that State cannot enquire into or take notice of a persons religious or moral beliefs. However, reasonable restrictions can be imposed upon the external manifestation of thought, conscience, religion and belief to protect public safety, public order, health, morality and fundamental right of others. It follows that no person can be compelled to profess a particular religion or be bound to remain a member of a particular sect.

31. In this backdrop, it would be apposite to briefly consider the Anti Conversion Laws/Freedom of Religion Acts.

32. India is home to all the principal religions of the world – Hinduism, Islam, Sikhism, Buddhism, Jainism, Zoroastrianism and Bahaim. In the Indian sub-continent enactment of anti-

conversion laws is an age old practice. During the British era the Hindu Princely States enacted laws during 1930-40 restricting religious conversion¹⁸.

33. After independence, Parliament introduced a number of anti-conversion laws but none saw the light of the day. The Freedom of Religion Act or Anti-Conversion Laws came to be enacted, thereafter, by the States. The first law was enacted by Odisha, followed by Madhya Pradesh. Thereafter, several States followed suit- Andhra Pradesh, Chattisgarh, Gujarat, Himachal Pradesh, Rajasthan, Jharkhand, Uttarakhand and Uttar Pradesh. The Anti-Conversion Laws/Freedom of Religion Acts came to be enacted between 1967 to 2021. The provisions of the enacted laws primarily are similar, varying in the degree of punishment and penalty. The later enactments of Uttarakhand, Uttar Pradesh and the Gujarat (Amendment) (Freedom of Religion Act, 2021), are stringent and in particular prohibit conversion for the sole purpose of marriage, mandating advance notice to the District Magistrate. In some of the enactments the offence has been made cognizable and non-bailable. The legislations primarily prohibit active proselytizing, conversions from the religion of one's ancestors carried out by forcible or fraudulent means. The vires of the Uttarakhand, Uttar Pradesh and Gujarat enactments are under challenge and pending in respective High Courts.

34. Supreme Court upheld the anti-conversion laws of Odisha and Madhya Pradesh and refused to read the freedom to convert within the right to propagate one's religion and held that:

¹⁸ Raigarh State Conversion Act 1936, Patna Freedom of Religion Act of 1942, Sarguja State Apostasy Act 1945, Udaipur State Anti-Conversion Act 1946.

“What the article (25) grants is not the right to convert another person to one’s own religion, but to transmit or spread one’s religion by an exposition of its tenets. It has to be remembered that article 25(1) guarantees “freedom of conscience” to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person as one’s own religion because if a person purposely under-takes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the “freedom of conscience” guaranteed to all the citizens of the country alike.” (Refer: Rev. stainislaus vs. State of Madhya Pradesh)¹⁹.

35. These legislations in the opinion of the Court pertain to public order, as forcible conversions could result in disturbing public order. The Court was of the view that one has a right to propagate but not to propagate in order to convert another.

36. In **Lily Thomas vs. Union of India**²⁰ and **Sarla Mudgal vs. Union of India**²¹, Supreme Court held that religious conversion without a bona fide belief and for the sole purpose of deriving some legal benefit are illegal. The cases pertain to conversions to Islam by Hindu/Parsi, married under personal law, to contract bigamous marriages during the subsistence of their earlier marriage. In the opinion of the Court such a marriage would be void.

37. It is urged by learned counsel for the petitioners that Uttar Pradesh enactment²² proposes to criminalise conversions for the purpose of marriage. The Act, inter alia, violates the right to privacy read into Article 21. He submits that the individuals right to make a choice of his/her spouse/partner as families, marriage, procreation and sexual orientation is absolute, as long as, it is not illegal. The State or the

19. 1977 AIR 908

20. 2000 (6) SCC 24

21. 1995 (3) SCC 635

22. U.P. Prohibition of Unlawful Conversion of Religion Act, 2021

Executive have no business to encroach upon the space of 'conscience'. The act of conversion and interfaith marriage does not per se disturb public order. The marriage and consent to conversion is voluntary act exercised on free will. Most of the parties have submitted before the authority and applied for registration of their marriage, no further permission with regard to conversion is required from the district administration. There is merit in the submission of the learned counsel for the petitioners. I would revert to the submission later during the course of the order.

D. Law Governing Interfaith Marriage

38. Parliament enacted Special Marriage Act, 1954²³, for regulating and registration of interfaith marriage. It is a secular enactment providing for civil marriage. All marriages, whether interfaith or contracted in any other form, including, under the personal law can be registered under the Special Marriage Act. The Act mandates conditions relating to solemnization of special marriage²⁴. The Special Marriage Act further mandates that parties to the marriage shall give prior notice in writing to the Marriage Officer; the marriage ceremony is required to be performed within three months from the date of notice. The Act further requires domicile of one of the parties for a period of not less than 30 days immediately preceding such notice.

39. The Marriage Officer, thereafter, shall call every such notice to be published and if any one of the parties is not permanently residing within the local limits of the district of the Marriage Officer, the provision mandates that the Marriage Officer shall call a copy of the notice to be transmitted to the

23. Special Marriage Act

24 Section 4

Marriage Officer of the district within whose limit such party is permanently residing. In other words domicile of one of the party at the place of notice is mandatory.

40. The Special Marriage Act provides that any person before expiry of thirty days period of notice can file objection to the marriage. The Act further provides that where marriage has been contracted in any other manner, the parties can seek registration of the marriage²⁵. The procedure thereunder again mandates publication of a notice inviting objections and domicility of a party.

41. On bare perusal of the provisions, the Special Marriage Act contemplates marriage and registration both at pre and post marriage stage. But what is compulsorily mandated is of providing notice and inviting objections in either case and in the event of an objection being received, the Marriage Officer will have to decide the objection. In other words, the Special Marriage Act, enacted in 1954, the legislature could not have contemplated the situation as it exists after 65 years of its enactment. The society since has transformed phenomenally and the Special Marriage Act does not subscribe, nor does it meet the changing attitudes, needs and expectation of the present day society. The principal object of law is to serve the society as per its requirements and it necessarily requires that the law also keeps evolving with the perceptible changes occurring in the society. The Special Marriage Act miserably falls short of its objective and is surely not responsive to the changed circumstances with the massive rise in interfaith marriage²⁶.

²⁵ Section 15

²⁶ Safiya Sultana and others vs. State of U.P. & others, 2021 (1) ADJ 466

42. The legislation, be it Special Marriage Act, that has been upheld earlier at the given point of time, the Court may strike down the same if in the changed circumstances become arbitrary, unreasonable and violative of principles enshrined in the Constitution. (Refer: **Madhya Pradesh v. Bhopal Sugar Industries**²⁷; and **Satyawati Sharma v. Union of India**²⁸).

43. There is merit in the objection raised by the learned counsel for the petitioner that the Special Marriage Act, in the changed circumstances, where society has progressed considerably, in the backdrop of expanding secular space and mobility of the citizen, the Special Marriage Act, mandating notice, declaration of all particulars and inviting objections thereupon, subjecting it to public scrutiny is violative of the fundamental right of liberty and privacy granted to the petitioners under the Constitution.

44. It is urged that Special Marriage Act requires to be scraped and re-enacted in response to the changed social scenario so as to make it reasonable and rational. A private and personal affair between two individual has been made mandatorily public. It is urged that the provisions of the Special Marriage Act is primarily responsible in compelling couples to take recourse to instant conversion under the personal laws to escape the rigours of the delayed and prolonged procedure mandated under the Special Marriage Act. In other words, it is submitted that the Special Marriage Act compels and encourages conversion. An unwilling person who intends to contract interfaith marriage, retaining his/her faith, has no option but to convert. The learned counsel for the

27 AIR 1964 SC1179

28 (2008) 5 SCC 287

petitioner submits that there should be a single uniform secular family code for all the citizens irrespective of faith, as against multiple laws governing marriage so as to avoid the mischief of anti conversion laws.

E. Multiplicity of Marriage Laws

45. One of the issues governing marriage and registration is multiplicity of marriage and registration laws. The muslim marriage is governed as per Muslim Personal Law (Shariyat) Application Act, 1937.

46. In the State of Uttar Pradesh, the government has framed the U.P. Marriage Registration Rules, 2017, pursuant to a Supreme Court decision rendered in 2006, requiring mandatory registration of all marriages performed in the State of Uttar Pradesh or where one of the parties to the marriage is a resident of the State. Under this Rule all marriages can be registered, including marriage with a foreigner. It is a secular law.

47. That apart the Arya Samajist are governed by the Arya Marriage Validation Act, 1937. It was enacted to recognize and remove doubts as to the validity of inter-marriages among Arya Samajist. It is a short Act of two sections. Section (2) provides, notwithstanding any provision of Hindu law, usage or custom to the contrary, no marriage contracted by two persons being at the time of marriage Arya Samajist shall be invalid or shall be deemed to have been invalid by reason only of the fact that the parties at the time belong to different castes or different sub-castes of hindus or that either or both of the parties at any time before the marriage belong to religion other than hindu.

The Arya Samajists fall within the ambit of 'hindu' defined under the Hindu Marriage Act, 1955.

48. The State further has enacted the U.P. Hindu Marriage Registration Act, 1973, in exercise of power conferred under Section 8 of the Hindu Marriage Act, 1955. Then we have Christian Marriage Act, 1872, and Parsi Marriage and Divorce Act, 1936. Both these Acts separately provide for registration of marriage. Under the Christian Marriage Act, a Christian can solemnize marriage with a non-christian.

49. The interfaith marriage generally are performed either under the Muslim Personal Law, (Shariyat) Application Act, and/or, under the Arya Marriage Validation Act. The services provided by the Qazi, and/or, the Arya Samajist is instant matrimonial service across the counter. The conversion of faith followed by marriage stands concluded within hours. Whereas, registration of the marriage, under the U.P. Marriage Registration Rules, 2017, the Special Marriage Act, or seeking approval of the district authority of interfaith conversion, is time consuming requiring mandatory notice and enquiry. In any case, the time for registration of marriage, from the date of application takes several weeks, which necessarily compels the couple to take recourse under the personal law by converting.

50. In the backdrop of multiplicity of marriage and registration laws, the State of Uttar Pradesh has enacted the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021²⁹. The Act provides for prohibition of unlawful conversion from one religion to another religion by

29. Unlawful Conversion Act, 2021

misrepresentation, force, undue influence, coercion or allurements or by any fraudulent means or by marriage and in the matters connected therewith or incidental thereto.

51. The Act, inter alia, defines ‘religion convertor’, ‘undue influence’, ‘unlawful conversion’, which reads thus:

“(i) **“Religion Convertor”** means person of any religion who performs any act of conversion from one religion to another religion and by whatever name he is called such as Father, Karmakandi, Maulvi or Mulla etc.;

(j) **“Undue influence”** means the conscientious use by one person of his/her power or influence over another in order to persuade the other to act in accordance with the will of the person exercising such influence;

(k) **“Unlawful Conversion”** means any conversion not in accordance with law of the land.”

52. On perusal of the definitions, any person of any religion who performs any act of conversion to another religion would fall within the ambit of ‘religion convertor’, and such conversion not performed in accordance with law would be ‘unlawful conversion’. Sub-section (1) of Section 3 mandates that no person shall convert or attempt to convert. The explanation to sub-section (1) categorically provides conversion by solemnization of marriage or relationship in the nature of marriage shall be deemed included in the sub-section. Section 3(1) is extracted:

“No person shall convert or attempt to convert, either directly or otherwise, any other person from one religion to another by use or practice of misrepresentation, force, undue influence, coercion, allurements or by any fraudulent means. No person shall abet, convince or conspire such conversion.”

Explanation: For the purposes of this sub-section conversion by solemnization of marriage or relationship in the nature of marriage on account of factors enumerated in this sub-section shall be deemed included.”

53. Interfaith marriage, per se, is not prohibited under the Unlawful Conversion Act, 2021, but the parties undergoing interfaith marriage can be subjected to harassment. Admittedly, the petitioners, herein, have solemnized marriage after conversion to another faith. The conversion would fall within the ambit of the Act, and would be liable to be dealt with under the penal provisions. The issue, therefore, is whether such a conversion for the purpose of marriage would be 'unlawful conversion' against the will of the person is a question of fact, open to enquiry. The expressions used in sub-section (1) of Section 3 i.e. misrepresentation, force, undue influence, coercion, allurement or any fraudulent means, is a question of fact which has to be determined by the competent court on an allegation being made by the aggrieved party to the marriage or the aggrieved person i.e. parents, brother and sister as stipulated in Section 4. Section 6 further provides that an aggrieved person to the marriage can seek a declaration before the Family Court and get his or her marriage declared void in the event of unlawful conversion.

54. Taking a case that there is an objection from an aggrieved person i.e. parents, brother and sister of any one party to the marriage, that would not ipso facto nullify the marriage, if it is lawful and the parties are adult. A declaration would have to be sought from the competent court. Marriage Registrar/Officer cannot refuse registration of the marriage merely on an allegation or a complaint by an aggrieved person. The registration merely evidences the factum of marriage between two persons. The validity of the marriage being void or voidable cannot be gone into by the Marriage

Registrar/Officer. The authority, be it the Marriage Registrar/Officer, or the district authority under the unlawful Conversion Act, 2021, is neither a court nor authorised by law to enter into the issue pertaining to the validity of marriage or prohibit inter faith marriage.

55. Having regard to the rigour of the enactments governing conversion, marriage and registration of marriage, the parties in the backdrop of the opposition of the family members, as is the case with the petitioners, are compelled to take recourse, either, under the Arya Marriage Validation Act or Muslim Personal Law (Shariyat) Application Act i.e. instant conversion followed by marriage. In other words, the legal system, particularly secular laws, governing marriage and registration, as it exists on date, compels and coerces a party to interfaith marriage to compulsorily convert. The conversion of faith may appear voluntary, but, at the same time it could in all probability be a case of going against one's conscience, thus, unwillingly violating the freedom of conscience guaranteed to the individual under Article 25 of the Constitution.

56. The stage has reached that the Parliament should intervene and examine, as to whether, the country requires multiplicity of marriage and registration laws or the parties to a marriage should be brought under the umbrella of single Family Code. Marriage is just an association of two persons, recognized by law. There is nothing 'special' about marriage to subject it under different laws for various communities, thus, erecting barriers in the free intermingling of the citizens. The petitioners, herein, cannot be hounded as criminals. Their

crime, if any, is that they have succumbed to the dictates of their heart for each other.

F. Uniform Civil Code³⁰

57. The issue of UCC, though Constitutional, rakes political overturns whenever raised or debated in public domain.

58. In the midst of all this clamour, the Law Commission³¹ struck a wary note. In its report, the Commission observed:

"While diversity of Indian culture can and should be celebrated, specific groups or weaker sections of the society must not be dis-privileged in the process. Resolution of this conflict does not mean abolition of difference. **This Commission has, therefore, dealt with laws that are discriminatory rather than providing a uniform civil code which is neither necessary nor desirable at this stage** Most countries are now moving towards recognition of difference, and the mere existence of difference does not imply discrimination, but is indicative of a robust democracy. (emphasis supplied)

59. The single sentence/observation by the Commission that *'uniform civil code is neither necessary nor desirable at this stage'* has been flagged by the opponents of UCC as their anchor sheet to oppose the enactment of UCC. The entire report of the Commission neither discusses nor points out the merit or demerit of UCC for the citizen. The observation is probably confined to the discrimination noted in the personal laws of various religious groups. On having detailed the discrimination with regard to family laws within the personal laws of Hindus, Muslims, Christians and Parsis, the Commission recommended their removal, in the first instance, to make the personal laws equitable with regard to marriage, divorce, guardianship, succession and adoption. In doing so, probably the 'stage' for enacting UCC would be facilitated, therefore, the

30. UCC

31 21st Report dated August 31, 2018

Commission opined that the stage for enacting UCC has not reached. The desirability, and/or, non desirability of UCC, in the backdrop of differences/discrimination of various personal laws has not been considered by the Commission so as to keep the directive of Article 44 in abeyance. The bald observation of the Law Commission is of no assistance to the opponents of UCC.

60. Supreme Court, very recently (2019), in **Jose Paul Coutinho vs Maria Luiza**³², as against the view of the Commission, observed that:

“Whereas the founders of the Constitution in Article 44 in Part IV dealing with the Directive Principles of State Policy had hoped and expected that the State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territories of India, **till date no action has been taken in this regard.**”

61. The observation of the Supreme Court that till date no action has been taken with regard to UCC comes within a year, in contradiction to the observation of the Law Commission. In other words, the Supreme Court desires that UCC should be enacted as ‘the stage’ has reached the citizens of the country.

62. UCC is enlisted in Article 44 of the Constitution of India as a Directive Principle of State Policy. It is clarified that reference to UCC is confined to Family Code uniformly applicable to all the residents of India. It would be apposite to turn the pages of history to briefly examine as to how uniform codification of law evolved and gradually cemented and integrated, the Indians into a nation in the making.

(i). Historical Perspective:

32. Civil Appeal 7378 of 2010 delivered on September 13, 2019

63. The colonial rulers transformed the otherwise archaic, and feudal administration of justice by codifying the laws, both civil and criminal, making it uniformly applicable to all its residents through a defined hierarchy of courts and jurisdictions. The process commenced in the beginning of the eighteenth century (1700A.D.) when the then State of Bengal was handed over to the colonial ruler with diwani rights. A number of legislations came to be enacted framing Regulations commencing 1772 A.D. Law Commission was constituted in the year 1834 by the colonial rules to codify the laws in India based on the laws of England adaptable to the India conditions. The Commission, inter alia, recommended codification of substantive civil law for India having regard to the condition, character and institutions of India and religious usages/customs of the population. The caveat, however, was that codification should not extend to matters pertaining to personal laws of the Hindus and Muslims which is embedded in and derived authority from their respective religions³³.

64. In between the one hundred years that followed, until the setting up of the Hindu Law Committee/B.N. Rau Committee in 1941, to examine the necessity of common Hindu Laws, a spate of laws came to be enacted by the colonial rulers that delved into the personal laws of the Hindus, in particular, with property, inheritance, widow remarriage. Based on the Rau Committee Report (1944), Hindu Code Bill came to be introduced in the Parliament in independent India. The Bill lapsed and was resubmitted in 1952, after the first General Elections. Having regard to the massive opposition, across the board, the provisions of the Hindu Code Bill came to be

33. Refer: Sarla Mudgal & others vs. Union of India and others; 1995 SCC (3) 635

broken into four separate enactments and received assent of the Parliament after drastically diluting and abridging the provisions of the Hindu Code Bill. The laws that came to be enacted, for the sake of convenience, is being collectively referred to as the Hindu Family Code³⁴.

65. It would be relevant to briefly refer to the Constituent Assembly debate on the UCC (Article 35, corresponding to Article 44 of the Constitution of India). The objections and apprehension to the UCC raised by the members, of minority/community and counter argument and reasons assigned to reject the objections and misgivings about UCC.

(ii). Constituent Assembly Debate

(a). Objection to UCC

66. Mr. Mohamad Ismail Sahib: Sir, I move that the following proviso be added to article 35: (Article 44 of the Constitution of India)

"Provided that any group, section or community of people **shall not be obliged to give up its own personal law in case it has such a law.**"

67. Now the right to follow personal law is part of the way of life of those people who are following such laws; it is **part of their religion** and part of **their culture**. If anything is done affecting the personal laws, it will tantamount to interference with the way of life of those people who have been observing these laws for generations and ages. This secular State which we are trying to create **should not do anything to interfere with the way of life and religion of the people.**

68. Mr. Naziruddin Ahmad:— [...] But during the 175 years of British rule, they did not interfere with certain fundamental personal laws. Today, even without article 35, **there is nothing to prevent the future Parliament of India from passing such laws.** Therefore, the idea is to have a uniform civil code.

34. Hindu Marriage Act, 1955
Hindu Succession Act, 1956
Hindu Minority and Guardianship Act, 1956
Hindu Adoption and Maintenance Act, 1956

[....] They have been **imposed gradually** as occasion arose and they were intended to make the laws uniform **although they clash with the personal laws** of a particular community. But take the case of marriage practice and the laws of inheritance. They have never interfered with them. It will be **difficult at this stage of our society to ask the people to give up their ideas of marriage, which are associated with religious institutions** in many communities. The laws of inheritance are also supposed to be the result of religious injunctions. I submit that the **interference with these matters should be gradual** and must **progress with the advance of time**. I have no doubt that a stage would come when the civil law would be uniform. But then that time has not yet come. [....] I have therefore in my amendment suggested that religious laws relating to particular communities should not be affected except **with their consent**.

69. B. Pocker Sahib Bahadur – By uniform, I ask, what do you mean and which particular law, of which community are you going to take as the standard? [....] By this one clause you are revolutionising the whole country and the whole setup. There is no need for it. [....] What is the purpose served by this uniformity except to murder the consciences of the people and make them feel that they are being trampled upon as regards their religious rights and practices? Such a tyrannous measure ought not to find a place in our Constitution. [....] as I take it, it is the duty of the majority to secure the sacred rights of every minority.

70. Mr. Hussain Imam: [....] I feel that it is all right and a very desirable thing to have a uniform law, but at a very distant date. For that, we should first await the coming of that event when the whole of India has got educated, when mass illiteracy has been removed, when people have advanced, when their economic conditions are better, when each man is able to stand on his own legs and fight his own battles. Then, you can have uniform laws.

(b) Response in favour of UCC:

71. Shri K. M. Munshi – A further argument has been advanced that the enactment of a Civil Code would be tyrannical to minorities. Is it tyrannical? Nowhere in advanced Muslim countries the personal law of each minority has been

recognised as so sacrosanct as to prevent the enactment of a Civil Code. But I go further. When the Shariat Act was passed or when certain laws were passed in the Central Legislature in the old regime, the Khojas and Cutchi Memons were highly dissatisfied. [...] We want to divorce religion from personal law, from what may be called social relations or from the rights of parties as regards inheritance or succession. What have these things got to do with religion I really fail to understand. [...] But after all we are an advancing society. We are in a stage where we must unify and consolidate the nation by every means without interfering with religious practices. If however the religious practices in the past have been so construed as to cover the whole field of life, we have reached a point when we must put our foot down and say that these matters are not religion, they are purely matters for secular legislation. This is what is emphasised by this article. [...] They feel that the personal law of inheritance, succession etc. is really apart of their religion. If that were so, you can never give, for instance, equality to women. But you have already passed a Fundamental Right to that effect and you have an article here which lays down that there should be no discrimination against sex. [...] Therefore, there is no reason why there should not be a civil code throughout the territory of India. [...] There is one important consideration which we have to bear in mind-and I want my Muslim friends to realise this that the sooner we forget this isolationist outlook on life, it will be better for the country. Religion must be restricted to spheres which legitimately appertain to religion, and the rest of life must be regulated, unified and modified in such a manner that we may evolve, as early as possible a strong and consolidated nation. Our first problem and the most important problem is to produce national unity in this country. We think we have got national unity. But there are many factors-and important factors-which still offer serious dangers to our national consolidation, and it is very necessary that the whole of our life, so far as it is restricted to secular spheres, must be unified in such a way that as early as possible, [...] I hope our friends will not feel that this is an attempt to exercise tyranny over a minority; it is much more tyrannous to the majority.

72. Shri Alladi Krishanaswami Ayyar – The second objection was that religion was in danger, that communities cannot live in amity if there is to be a uniform civil code. The article actually aims at amity. It does not destroy amity. [...] It is not as if one legal system is not influencing or being influenced by another legal system. [...] Therefore, no system can be self-contained, if it is to have in it the elements of growth. There is no use clinging always to the past. We are departing from the past in regard to an important particular, namely, we want the whole of India to be welded and united together as a single nation. Are we helping those factors which help the welding together into a single nation, or is this country to be kept up always as a series of competing communities? That is the question at issue.

73. Dr. B. R. Ambedkar – I was very much surprised at that statement, for the simple reason that we have in this country a uniform code of laws covering almost every aspect of human relationship. [...] I can cite innumerable enactments which would prove that this country has practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this little corner which we have not been able to invade so far and it is the intention of those who desire to have article 35 as part of the Constitution to bring about that change. [...] Coming to the amendments, [...] members who put forth these amendments say that the Muslim personal law, so far as this country was concerned, was immutable and uniform through the whole of India. Now I wish to challenge that statement. I think most of my friends who have spoken on this amendment have quite forgotten that up to 1935 the North-West Frontier Province was not subject to the Shariat Law. It followed the Hindu Law. That is not all. [...] Up till 1937 in the rest of India, in various parts, such as the United Provinces, the Central Provinces and Bombay, the Muslims to a large extent were governed by the Hindu Law in the matter of succession. In order to bring them on the plane of uniformity with regard to the other Muslims who observed the Shariat Law, the Legislature had to intervene in 1937 and to pass an enactment applying the Shariat Law to the rest of India. [...] The Mussulmans, therefore, in North Malabar were up to now

following the Marumakkathyam law (matrilineal law) [...] I am quite certain that it would not be open to any Muslim to say that the framers of the civil code had done great violence to the sentiments of the Muslim community.

74. The arguments that resonate today opposing the UCC was unequivocally raised seven decades back. The pattern of debate is the same even today as voiced earlier:

- (i) personal law is part of religion & culture;
- (ii) difficult at this stage of the society;
- (iii) murder the conscience of the people;
- (iv) tyrannous measure;
- (v) let masses get educated, and when people have advanced economically would be the appropriate stage;
- (vi) the Code may be made purely voluntary;

75. The counter arguments in support of UCC is equally relevant today:

- (i) divorce religion from personal law to cement social relations;
- (ii) unify and consolidate the nation but preserving religious practices;
- (iii) these matters are not religion, but are purely matters for secular legislation;
- (iv) personal laws are in conflict with fundamental right i.e. right to equality and gender justice;
- (v) marriage, divorce, maintenance, succession, inheritance and adoption is restricted to secular sphere and must be unified;

(vi) enactment of UCC is not an attempt to exercise tyranny over a minority, it is much more tyrannous to the majority;

76. The Supreme Court, citing similar reasons and observations, focused on implementation of UCC in several cases, such as, **Mohd. Ahmad Khan vs. Shah Bano Begum**³⁵; **Jorden Diengdeh vs. S.C. Chopra**³⁶; **Smt. Saria Mudgal vs. Union of India**³⁷. But later in **Ahmedabad Women Action Group vs. Union of India**³⁸, the court refused to entertain the writ petitions by observing that it is an issue of state policy with which the court will not ordinarily have any concern.

77. In **Mulla Tahir Saifuddin v. the State of Bombay**³⁹, the Supreme Court observed that for the application of Article 25(2) (a) it is necessary to classify religious practices into such, as are essential for a religious character and those which are not (secular aspect of religion). In **Durgah Committee vs. Hussain**⁴⁰, it said that whether a religious practice is an essential part of a religion is an objective question to be determined by the court and that the view of a religious denomination itself is not final.

78. The existence of multifarious personal laws cannot be a valid defense when personal laws across the board violates fundamental rights. The catena of decisions of the Supreme Court consistently resonates the views expressed by the learned members of the Constituent Assembly in defence of Article 35, (Article 44), seven decades thereafter.

35. 1985 (2) SCC 556

36. 1985 (3) SCC 62

37. 1995 (3) SCC 635

38. 1997 (3) SCC 573

39. 1962 AIR 853

40. 1961 AIR 1402

(c) UCC whether necessary or desirable

79. After seven decades, since independence, the Indian society has transformed drastically and many customs and practices have evolved/received acceptance of the people which could never have been thought of or imagined a few decades back. The limited recognition of rights of L.G.B.T.Q. community; 'live in' relationship⁴¹; legitimacy of children borne from such relationship; surrogacy; right of adoption by enacting secular law⁴²; right to maintenance irrespective of personal law; recognizing single parent family; right of persons with disability etc. There has been a steep rise in intercommunity, intercaste and interfaith marriage/relationship, which has exploded specially in the last few decades. The society since 1950 has considerably evolved and the relationships, be it interfaith, inter culture, coupled with the rise in the number of single women requires a comprehensive Family Code which is in conformity with the changing times.

80. The education and mobility, particularly, amongst women has drastically unleashed forces transforming the society. The fertility rate has considerably dropped. There has been a massive rise of women, women technocrats, both in India and of Indian origin abroad. Their presence is decisively and emphatically felt in government offices, corporates and they dominate the White House.

81. Goa the only Indian State which has a uniform civil code applicable to all, also requires reform. The Family Laws of Goa

41. Section 2(f) of Protection of Women from Domestic Violence Act, 2005

42. Section 56/57 of Juvenile Justice (Care & Protection of Children) Act, 2015

are uniform in all respects is a misconception as pointed out by the Chairman of the Goa Law Commission⁴³.

82. The piecemeal attempts of Courts to bridge the gap between personal laws cannot take the place of a common civil code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case. The Court has its limitations and cannot embark the activist role of providing a civil code. The Parliament has to step in and initiate the process of enacting the UCC by appointing a committee, and/or, making a reference to the Law Commission⁴⁴.

G. Hindu Family Code-Its Impact⁴⁵

83. The HFC can be said to be the UCC governing the Hindus and the communities, falling within the ambit and definition of 'hindu'. The HFC covers and has sway over 80 percent of the population.

84. The HFC laid the foundation of transforming the traditional Hindu society. The legislations lifted and transported the Hindu personal law from the Shastra/Religion and placed it within the domain of the Parliament. The HFC, henceforth, could be amended/modified inconformity with and in response to the modern/changing society without the intervention of Shastra, and/or, the Shastri.

85. HFC saw the light of the day in 1955-56 after fifteen years of deliberation and public debate. The enactments have worked successfully in the six and a half decades thereafter. Amendments in conformity with the changing dynamics of the society was incorporated from time to time – bridging the

43. Shri Ramakant D. Khalap, April 2009-March 2012, Report No. 21

44. Shah Bano case

45. HFC

wedge and gradually moving towards equality. Much is still required to be achieved as pointed by the Law Commission.

86. HFC divorced the secular aspects of Hindu personal law – marriage, divorce, adoption and maintenance etc. from religion without touching or encroaching upon the essential/core elements of Hindu religion and practices which is exclusively within the domain of Shastra/Shastri.

87. Parliament through HFC in a single stroke provided a legal platform where Hindu citizens could interact with each other on equal terms irrespective of rigid Hindu social order embedded in rigid caste, jati, creed, gotra and the concept of purity, pollution in marriage and dining.

88. HFC has been largely instrumental, (apart from other factors viz. education, mobility, health services), in facilitating, and creating, what the sociologist refer to as a Hindu ‘social class’, and/or a Hindu ‘citizenry’. The expression means where the citizens can interact with each other on equal terms at will without discrimination and age old social barriers, thus, uniting and integrating Hindu’s into a body of citizens.

89. The Hindu citizenry after 65 years of the implementation of HFC, is distinct and different class of hindus as against their ancestors prior to 1955. The rigidity/barrier of caste, pollution, purity has been made permeable, if not obliterated, by the effect, successful implementation and operation of HFC. They can interact with each other through marriage or otherwise, the so called class, born from the forehead of the Lord and that those born from the feet, are entering into relationship on equal terms. Such a situation was unenvisagable prior to 1955.

90. Every Indian is a citizen but it does not imply that the citizens together foster unity to be classified as citizenry. The citizenry does not come about naturally. It has to be fostered by the legislature and the executive consciously by creating the necessary legal ecosystem by enacting the requisite law, as has been in the case of HFC.

91. HFC has not encroached upon the religious custom, culture, practise, and propagation of the miniscule minority i.e. Sikhs, Buddhist and Jains, included within the definition of Hindus. There is no friction or animosity between the majority and the minority religions, including the sub religious groups, that has grown out of Hinduism. The afore-noted minorities have not complained that HFC in any manner encroached, influenced or was an impediment in their cultural practices or the way of life. Rather, HFC has fostered and cemented the minority communities included within the definition of Hindus as a citizenry interacting on a legal platform on equal terms, without, the intervention of religious texts, priest customs and dogmas of the respective communities.

92. To put it in a nutshell, the HFC as a uniform civil code has integrated the citizens into an integrated and united Hindu citizenry, on terms that is equal and uniform, insofar as the law regulating family law is concerned. The impact of HFC on Hindu society has been phenomenal.

93. The area that immediately demands attention of the Parliament is with regard to the interfaith relationships. The answer to regulating such relations is through legislative intervention by enacting the UCC. The Court since **Shah Bano (1986)** opined that enactment of UCC is necessary for the

unification and national unity of the country. This has been reiterated by the Supreme Court time and again until recently. By national unity, the Court meant to say that by enacting UCC, the legislature would create an environment based on uniform law pertaining to family that would foster creation of an Indian citizenry where citizens of the country, irrespective of their religion, culture can interact on equal terms without the intervention of religious texts, priest, customs and dogmas of personal law.

94. There is no evidence of any official activity for framing a uniform civil code for the country. A belief seems to have gained ground that it is for the minority community to take a lead in the matter of reforms of their personal law. That has been the consistent official stand of the Government within the country and in international forums. A common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably, it has the legislative competence to do so. The Supreme Court speaking through Justice Kuldeep Singh⁴⁶ had humbly requested the Government through the Prime Minister to intervene and initiate the process of framing the UCC by appointing a committee, but after a lapse of so many decades nothing has been done.

95. We have entered in the third decade of the twenty first century, the UCC is long due. It should be taken note of the

46. Sarla Mudgal Case (paragraph 35)

fact that before HFC could see the light of the day the deliberations went on for 15 years. The Government, if decides to initiate the process by appointing a Committee/Commission for enacting the UCC, it would take considerable time. The process, therefore, should be initiated forthwith. This Court reiterates and calls upon the Government of India to initiate the process as the ‘stage’ has been reached. The UCC is a necessity and mandatorily required today. It cannot be made ‘purely voluntary’ as was observed by Dr. B.R. Ambedkar 75 years back, in view of the apprehension and fear expressed by the members of the minority community.

96. The Supreme Court way back in 1995 expressed its anguish and observed:

“30. One wonders how long will it take the Government of the day to implement the mandate of the framers of the Constitution of India... [] There is no justification whatsoever in delaying indefinitely the introduction of the uniform personal law in the country.” (Sarla Mudgal case)

H. Personal Liberty and Privacy

97. Personal liberty, choice and privacy is a facet of basic Human Rights – a fundamental right conferred upon the individuals. The concept of liberty has evolved and expanded gradually since the case of **Lata Singh v. State of U.P.**⁴⁷, till the case of **Navtej Singh Johar v. Union of India**⁴⁸. The law has travelled a long distance defining fundamental rights of personal liberty and of privacy:

“Once a person becomes a major he or she can marry whosoever he/she likes.” [**Lata Singh vs. State of U.P.**⁴⁹]

47. (2006) 5 SCC 475

48. (2018) 10 SCC 1

49. (2006) 5 SCC 475

“An inherent aspect of Article 21 of the Constitution would be the freedom of choice in marriage.” [**In Re. vs. Indian Woman Says Gang-Raped on Orders of Village Court**⁵⁰].

“Choice of woman in choosing her partner in life is a legitimate constitutional right. It is founded on individual choice that is recognized in the Constitution under Article 19.” [**Asha Ranjan v. State of Bihar**⁵¹].

“The consent of the family or the community or the clan is not necessary once the two adult individuals agree to enter into a wedlock.[...], it is a manifestation of their choice which is recognized under Articles 19 and 21 of the Constitution.” [**Shakti Vahini vs. Union of India**⁵²]

“Neither the State nor the law can dictate a choice of partners or limit the free ability of every person to decide on these matters..... Social approval for intimate personal decisions is not the basis for recognising them.” [**Shafin Jahan vs. Asokan K.M.**⁵³]

“Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-determination..... Privacy is one of the most important rights to be protected both against State and non-State actors and be recognized as a fundamental right.” [**S. Puttaswamy (Privacy-9J.) v. Union of India**⁵⁴]

98. Life is precious in itself. But life is worth living because of the freedoms which enable each individual to live life as it should be lived. The best decisions on how life should be lived are entrusted to the individual. They are continuously shaped by the social milieu in which individuals exist. The duty of the State is to safeguard the ability of the individuals to take decisions, the autonomy of the individual and not to dictate those decisions.

99. In protecting consensual intimacies, the Constitution adopts a simple principle: the State has no business to intrude into these personal matters.

50. AIR 2014 SC 2816

51. (2017) 4 SCC 786

52. (2018) 7 SCC 192

53. (2018) 16 SCC 368

54. (2017) 10 SCC 1

I. Analysis and Conclusions

100. The Supreme Court, as well as, other Constitutional Courts have time and again realized that in a society undergoing rapid social and economic change, static judicial interpretation of the Constitution would stultify the spirit of the Constitution.

101. The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters.

102. The consent of the family or the community or the clan or the State or Executive is not necessary, once the two adult individuals agree to enter into a wedlock which is lawful and legal. Their consent has to be piously given primacy, with grace and dignity. The Marriage Officer/Registrar cannot refuse to register a duly solemnized marriage, and/or, insist of a conversion approval of the district authority.

103. The factum of marriage and the registration of marriage are entirely distinct and different. The registration merely evidences the factum of marriage between the parties, whereas, legality of the marriage, whether void or voidable, is for the aggrieved party to settle in accordance with the law before the designated forum/court.

104. The duty of the court is to uphold the right and not to abridge the sphere of the right unless there is a valid authority of law. The choice of a partner, whether within or outside marriage, lies within the exclusive domain of each individual. Intimacies of marriage lie within a core zone of privacy, which

is inviolable. The absolute right of an individual to choose a life partner is not in the least affected by matters of faith.

105. The Constitution as a living instrument, which enunciates eternal values for Indian society, possesses the resilience necessary to ensure its continued relevance. Constitution is not cast in stone to make it rigid beyond change. The features that is basic to the Constitution is fluid adapting and precisely responding to the changing social-cultural milieu in its ability to allow succeeding generations to apply the principles on which it has been founded, to find innovative solutions to intractable problems of their times. In doing so, we must equally understand that our solutions must continuously undergo a process of re-engineering. The Constitution is in the realm of philosophy than grammar. The Constitution has undergone change (over 100 amendments) in 70 years since 1950, in conformity with the changing social milieu reflecting the aspiration of the Indian people.

106. The law would be assessed not with reference to its object but on the basis of its effect and impact on the fundamental rights based on the test of fairness and reasonableness. The Unlawful Conversion Act, 2021, per se, does not prohibit interfaith marriage. The Marriage Registrar/Officer, however, lacks power to withhold the registration of marriage, merely for the reason that the parties have not obtained the necessary approval of conversion from the district authority. Such an approval is directory and not mandatory. If interpreted otherwise the Act would not satisfy the test of reasonableness and fairness, and would fail to pass the muster of Article 14 and Article 21.

J. Relief

107. The writ petitions are **allowed** by passing the following orders:

(i) The State respondents and the private respondents are restrained from interfering with the life, liberty and privacy of the petitioners to live as man and woman;

(ii) The police authorities of the respective districts shall ensure the safety of the petitioners and provide protection to them, if demanded or needed;

(iii) The Marriage Registrar/Officer of respective districts are directed to forthwith register the marriage of the petitioners, without, insisting/awaiting approval of the competent district authority with regard to conversion of faith;

(iv) It will be open to the aggrieved party, in the event of fraud and misrepresentation, to take recourse of law, both – criminal and civil, including, annulment of marriage before the competent forum;

(v) The Government of India to consider the constitution of a Committee/Commission for implementing the mandate of Article 44, as directed by the Supreme Court;

(vi) The State Government to issue appropriate Government Order to the Marriage Registrar/Officer, District Authority, to comply and implement this order;

(vii) It will be open to the private respondents to seek modification/recall of this order in the event of being affected by the order;

(ix) The Registrar General of this Court is directed to supply copy of this order to –

(a) Department of Justice, Ministry of Law and Justice,
Government of India, New Delhi.

(b) The Chief Secretary, Government of Uttar Pradesh,
Lucknow.

Order Date :- 18.11.2021

S.Prakash

(Suneet Kumar,J.)