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## UNIFORM CIVIL CODE: A CONTEMPORARY ISSUE

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### ABSTRACT

*The main focus of the paper is on the need of a Uniform Civil Code and its legal importance. The paper begins with the overview of UCC and explains its historical development and evolution over the time. The gender unjust laws have also been discussed and problems in the existing personal laws has been examined. The stand of Indian Judiciary and Constituent assembly on UCC has also been discussed. At last, the paper comes to a conclusion with suggestions.*

**KEY WORDS** – Uniform Civil Code, Gender Justice, Personal Laws, Religion.

### INTRODUCTION

Religion has been a source of conflict for ages and it has always been used as a weapon by political parties. A society like India defines it as the way of life. People don't understand the fact that it is the religion that is made by them and they are not made by religion. And in a country like ours where people give so much importance to religion religious conflicts become inevitable and people usually see everything through the prism of religion and in this process law is something that suffers the most. There is a variety of religions and every religion has its laws, these laws are known as personal laws. These personal laws are mainly based on culture, traditions, and social practices which prevailed in society in old times. These cultures and traditions were disrupted by the colonial experience.

Now as the fundamentalists seek to restore aboriginal religious society and at the same time others have started seeing the society with a modern view the conflict between these modern thinkers and the revivalists has started. The fact that personal laws affect the rights, burdens, and roles of women is well-known to everyone. These gender unjust laws are originally prescribed in the religion or not is

debatable and concern of interpretation but the personal laws prevailing in today's time are very much promoting gender biases and inequality. When it comes to marriage, divorce, maintenance, adoption, inheritance, and succession women are considered inferior to men. Law related to adoption in Hindu society and the practice of bigamy in Islam are a few examples of gender unjust laws. To eliminate these unjust laws the higher judiciary has time and again asked the government to implement a uniform civil code.

### UNJUSTIFIED JUST

In the pre-independence era we were having a patriarchal society and all the personal laws have been interpreted and framed by them in a way that has always favored men. Though these laws were derived from customs and traditions which prevailed in the society at that time it is no hidden fact that personal laws have been favorable to men's society. The motive behind bringing personal laws in the early 20th century was to keep religious and personal affairs away from the colonial eyes.

In most criminal matters, we have uniform criminal laws throughout the territory of India and they are governed by laws such as Indian Penal Code, 1860, and Criminal Procedure Code,

1974, etc. But when it comes to civil matters such as marriage, divorce, inheritance, adoption, and succession we still follow personal laws and these personal laws have many provisions which affect gender equality and promote conservatism.

Even in today's time when the Hindu law has been codified some discriminatory provisions still exist. For example, except in states like Karnataka, Maharashtra, Tamil Nadu and Andhra Pradesh a Hindu woman cannot be a coparcener in Hindu coparceners and she is not entitled to the share in coparcenary. Thus, it can be said that the codification is not in itself sufficient to promote equality.

In Pre-Islamic Arabia, when social evils like female infanticide were prevalent in society and women were considered secondary to men, they were not even having the right to inheritance. Islam emerged as the more progressive and liberal religion. It eliminated discriminatory practices and gave equal rights to men and women and hence, putting women in a respectable position. But in today's time, Muslim society is not less discriminatory against women. A husband is allowed to marry as many as four wives but the same cannot be done by a woman and laws like 'triple talaq' infringes the women's right. However triple talaq has been declared unconstitutional by the Hon'ble supreme court in **Shayara Bano v. Union of India**. According to Muslim Personal law, in matter of inheritance a muslim male is entitled to get twice the share of a woman and a husband is entitled to grant maintenance to his wife (divorced Muslim women not remarried) only till the period of Iddat and not beyond that. These practices prescribed under personal laws have widened the gender gap. This unfairness and inequity have ultimately resulted in a demand for Uniform Civil Code and this demand has been raised by the people especially women all over the country.

### Indian Constitution and Uniform Civil Code

The uniform civil code is in debate even before the independence but after Independence, it was first discussed in the Parliament in 1948. The first Prime Minister of India Pandit Jawaharlal Nehru demanded it for the very first time but he decided not to bring it as according to him people and communities (especially the Muslim community) were not ready for it. Dr. B.R. Ambedkar and some other nationalists were in favor of bringing a uniform civil code but on the other hand, fundamentalists from the Muslim community were against it.

### Article 44 in The Constitution Of India 1949

"The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India".

Uniform Civil Code here means a set of common civil laws that will apply to every citizen of India irrespective of their religion. The main issue that arises is that as the UCC comes under Directive Principles of State policy, they cannot be enforced in any court of law. They are just directions to the state and their implementation is not compulsory. But the thing that is to be kept in mind is that if something is not compulsory that does not mean that that is not required at all.

### The stand of Indian Judiciary

Though it is not easy to persuade people and to bring persons of different faith on a common platform together Hon'ble Supreme Court in **Ms. Jorden Diengdeh v. S.S. Chopra** said "a beginning has to be made if the Constitution is to have any meaning"<sup>14</sup>. In **Sarla Mudgal v. Union of India**<sup>15</sup> Hon'ble supreme court said that "the desirability of the Uniform Civil Code can hardly be doubted". The Apex Court in the **Pannalal Bansilal**<sup>16</sup> case observed that while making the Constitution the makers were confronted with the problems to integrate and unify the people of different faiths and castes. The issue was not limited to only these aspects

<sup>14</sup> Ms. Jorden Diengdeh v. S.S. Chopra, AIR 1985 SC 935

<sup>15</sup> AIR 1995 SC 1531

<sup>16</sup> Pannalal Bansilal v. State of A.P., AIR 1996 SC 1023

but the language and region were also the matter of concern as social practices and languages differ from place to place. Even after all these issues the founding fathers succeeded to unite the country and provided a secular Constitution. The Hon'ble Court also said that though it is highly desirable it cannot be done in one go as it might be counterproductive to the unity and integrity of the Country. Most people argue that bringing a Uniform Civil Code will be against freedom of religion and violative of Articles 25 and 26 of the Constitution. But in the case of John **Vallamattom v. Union of India**<sup>17</sup>, the learned Chief Justice explained that the matters like marriage and succession and matters of secular character are not protected under articles 25 and 26. The significance of the Uniform Civil Code has been discussed by the courts again and again but it can only be brought if the masses are ready to accept the change.

### Conclusion and Suggestions

This is high time that people should realize that a Uniform Civil Code is not about threatening minorities instead it is about unifying them and preventing discrimination. Its implementation is not going to stop you to follow your religion and even after its implementation, the constitutional guarantee of freedom of religion will allow every person to follow their respective religion without hindrance. The implementation of a UCC was a dream for the makers of the Constitution and it is still a dream for the legal scholars and Judges as they know its importance and the need for a country like India. While implementing it we cannot take western countries as a model because we don't possess similar conditions.

Nothing can be changed in a society if people are not willing to do it and it is almost impossible to implement it without social support hence to implement it first we should persuade people the change. The uniform civil code should be a fresh law altogether and not a

blend of personal laws. If we blend personal laws then there is a high chance for bias to arise. Instead of making it mandatory, we can also make it obligatory, if any personal law is not violating anyone's right also treat everyone equally then in a diverse and plural country like ours we can also have the option to either choose the personal law or a uniform civil law: In other words, UCC and personal laws can co-exist, we already have an example of this in the form of Special Marriage Act for the people who do not wish to marry under their respective personal laws, they can opt for it. Thus, it is high time that people should start thinking about empowering all classes and separating religion from the law.

### Reference

1. Ms. Jorden Diengdeh v. S.S. Chopra, AIR 1985 SC 935
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3. Pannalal Bansilal v. State of A.P., AIR 1996 SC 1023
4. AIR 2003 SC 2902

<sup>17</sup> AIR 2003 SC 2902