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Uniform Civil Code: Adjusting Regional Disparities and Problems Associated with It

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ABSTRACT

Through this paper we will discuss about the UCC and its impact on regional disparities and the problem associated with it, we will try to draw a solution for these problems associated with the UCC. The UCC would not only make straightforward the legal procedures present in matters under governance of persona laws but will promote causes of equality, secularism and integration of the country too. It even discusses about the need to reform the personal laws or bring about a UCC to bring about gender justice. This Research paper is largely focused upon the different sides of UCC and overcoming its shortcomings. We will discuss about the misconceptions about UCC and would provide a clearer view to UCC to remove the vagueness to the true meaning of UCC. The success of UCC completely depends on the enhanced and parallel level of literacy in the people of all religions, mass mobilisation, and increased socio-cultural and political responsibility leading to impactful awareness and enlightened discussions over the benefits of having UCC. Therefore, the penultimate aim behind bringing up the reform should be to secure unity, integrity and equality among the citizens of the country be it male or female of any religion

I. INTRODUCTION

“So long as you do not achieve social justice, whatever freedom is provided by the law to you will be of no avail” – Dr. B.R. Ambedkar

India lives by the mantra of Atithi Devo Bhava which means 'Guest is equivalent to God' and treat our guests with utmost love, respect, and hospitality. This is one mantra that represents our country as the Incredible India. India is a land of culture a variety of languages, ethnic groups, communities, sects, etc. each with their own speciality and own uniqueness. It is a bit difficult to promise on one hand to provide equality and on the other hand has separate personal law for time. India was invaded many a times by invaders such as Mughals, British etc. and some of them settled in India left an impression on India's culture. Culture interlinked with religion has been at the heart of India's past, present and will be in the future. At present we

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have 19,569 (the report of the 2011 census) and out of which 22 languages are included in the Eighth Schedule² of the Constitution and major religions people of separate faith and it much more a difficult job for judiciary to provide justice to people seeking justice in court.

India is a ‘Secular’³ i.e, the state has no religion, but we have separate personal laws with for the purpose of marriage, divorce, maintenance etc. It applies to ‘Hindu’ customs also; they are as numerous as there are dialects in India.⁴ For example – ‘in the Bhils they have a yearly ‘bhagora’ celebration where a male elopes alongside a woman and they are accepted from then on accepted as a pair; Baigas of Narmanda region and Santhals recognised polygamy. Not only Muslims but also in Hindus polygamy are prevalent’⁵. Not all Hindus within the country are governed by one law marriage amongst close relatives is prohibited by the “Hindu Marriage Act of 1955”, but is taken into account auspicious within the south. The Hindu Code Bill recognises customs of various Hindu communities. Even the “Hindu Succession Act of 1956” made several compromises and will not make daughter a coparcener till 2005. Wives are still not coparceners.

Where do these Personal laws get their authority?

The term ‘personal law’ is indicated in Entry 5 of list III of the 7th schedule of the Constitution by the framers of the Constitution according to which all matters including marriage, divorce, intestacy, succession, adoption, minor, infants, etc. in which parties in judicial proceedings were immediately prior to the Constitution of India’s commencement.

So the question that arises is what solution is for it?

Uniform Civil Code (UCC), Instead of personal laws regulating the problems associated with family i.e, marriage, separation, guardianship, inheritance and succession etc. that dealt by separate personal law there will be Uniform Civil Code which will bring uniformity in these matters. Uniform Civil Code is one of the main Directive Principles of State Policy (DPSP) under Article 44 which provides that it will be the State’s endeavour to provide a UCC for its citizens.⁶ Being a Directive Principle, Uniform Civil Code is non-justiciable in nature (Uniform Civil Code cannot be made subject to trial in a court of law). Though these principles are "non-justifiable" but they are Constitutional directions which the state is supposed to abide by. Justice Mathew has aptly observed that “moral rights embodied in Part IV of the Constitution

² (Census of India Website : Office of the Registrar General & Census Commissioner, India, 2011)

³ Inserted by The Constitution (42nd Amendment) Act, Preamble (1976).

⁴ Journal of the Indian Law Institute, 2000. UNIFORM CIVIL CODE: A SUGGESTION. 42(2/4).

⁵ NAIR, P. One Nation, One Law: After Article 370, Uniform Civil Code BJP's Next? How It Will Affect You

⁶ INDIAN CONST. art. 44

are equally an essential feature of it, the only difference being that they are not specifically enforceable as against the state by the citizen in a court of law in case the state fails to implement its duty, but nevertheless, they are fundamental in the government of the country and all the organs of the state including the judiciary are bound to enforce these directives⁷”.

What will be the impact on Indian women through UCC?

Uniform Civil Code will have a positive impact on women, irrespective of her religion, a social stability to her. It ensures equality of rights of women and men.⁸ Let it be Hindu, Christian, Muslim, Parsi, Jew or any other religion they have traces of patriarchy, men’s right will be always a bit higher than woman’s⁹. After 71 years of forming the constitution we can still see difference among the people of same caste ie, Kashmiri Brahmin lady, West Bengal Brahmin lady and Namboodri Brahmin Lady in Kerala. Muslim man is allowed to practice polygamy¹⁰ and Hindu sons inherit property of their parent’s estates. These separate personal laws have been inefficient in protecting the interest of women instead they have worked in deepening the gap between Hindus and Muslims these personal laws have reinforced separate identities to them to oppose each other. But this will no longer be the case when UCC is implemented as there will be a law to level these differences in the matter of marriage, separation, guardianship, inheritance and succession etc. by a uniform code and it would bring both genders at equal level.¹¹

Understanding Article 25 with that of Uniform Civil Code

Article 25 deals with the “freedom of conscience and free profession, practise, and propagation of religion”. So, because of this right it'd not be a right to suddenly forcefully executing the Uniform Civil Code upon the people because it would violate this right. Uniform Civil Code is nothing new or out of the book but combining all the present personal laws with the modern and progressive aspects and getting rid of the old and redundant ones. Therefore, Uniform Civil Code and personal laws should be co-existed.

Currently do we have UCC in any part of India?

Goa is the only state that has Uniform Civil Code. It should be taken as inspiration to attain a

⁷ Keshavananda Bharti v. State of Kerala AIR 1973 SC 1461

⁸ Flavia Agnes, “Hindu Men Monogamy and UCC XXX (50). Economic and Political Weekly 32 (1995); B. Karat, “Uniformity v. Equality” Frontline 17 November 1995

⁹ Sethi.I. A uniform civil code: towards gender equality. India International Quaterly,31(4)

¹⁰ See MARTHA C. NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH 229-30 (2000)

¹¹ See Robert D. Baird, Gender Implications for a Uniform Civil Code, in RELIGION AND PERSONAL LAW IN SECULAR INDIA: A CALL TO JUDGMENT 145, 149 (Gerald James Larson ed., 2001)

Uniform Civil Code all over India. Many countries have already formed their Uniform Civil Code namely Israel, France, Japan and Russia.

After the Independence, Goa has taken on the Portuguese Civil Code which enforced a uniform Civil Code upon all of its citizens. Under the Goa Civil Code, there is joint ownership of all the assets either owned or acquired by both husband and wife. Either parties' parents cannot completely disinherit the parties as they must pass on at least half the parental to them. People, regardless of their faith, whose marriage has been registered in Goa, cannot remarry.

This study's focus is the ascertain of feasibility to remove the present personal laws and regularise the Uniform Civil Code. If Uniform Civil Code is allowed then what challenges Uniform Civil Code will face, what would be the regional disparities, will the Uniform Civil Code in any way threaten the religious beliefs.

What are the misconceptions among people regarding UCC?

There are many misconception regarding UCC and these misconceptions causes vagueness in the true meaning of UCC. Some of these misconceptions are:

- a. People associates their personal laws to their identity and they believe in the divinity of their personal laws' origin, and disturbing it will make them lose their unique identity in the society, and their personal laws are of unalterable in nature.
- b. People fear that right to religious freedom would be taken away from them in the name of UCC
- c. People also fear that, in the name of UCC, the Hindu Law shall be applicable to them.

II. JUDICIAL APPROACH TOWARDS UCC

The Supreme Court and the different High Courts in number of cases emphasised the need for enacting UCC that would be applicable to all citizens irrespective of their religion, race, caste, creed, gender etc.

“Shah Bano Case”¹²

A 38-year old Muslim woman moved to the Supreme Court on the grounds of denial of maintenance to her by her husband, which is mandated by Section 125 of the Code of Criminal Procedure. Upholding her right to the maintenance, the Supreme Court held that the provision was applicable to all Indian citizens irrespective of the personal laws they follow. Former Chief Justice Y.V. Chandrachud had observed in the judgement that UCC is a path to national

¹² Mohammad Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945.

integration and removal of disparities with respect to loyalty to laws. The Court reiterated the need for the Parliament to enact the UCC.¹³

Owing to widespread protests and political pressure, the Government overturned the Court's judgement and enacted Muslim Women (Protection of Rights) on Divorce Act, 1986.¹⁴ The legislation shifted maintenance of women to her relatives or to the Wakf Board and stated that she is eligible for maintenance only after three months after the iddat or divorce period.

“Sarla Mudgal Case”¹⁵

Court dealt with four Hindu men who had converted into Islam to get remarried. Upholding such colourable legislations to be an “abuse of personal laws”, the Supreme Court observed that mere conversion does not dissolve a marriage under the Hindu Marriage Act, 1955. The Court also observed that a UCC would help ease all of these complexities.

“John Vallamattom v. Union of India Case”¹⁶

In the year 1997 John Vallamattom, a Priest from Kerala, filed a writ petition challenging constitutional validity of “Section 118 of the Indian Succession Act” on grounds that it discriminated Christians as it enacts “unreasonable restrictions on their donation of property for the religious or charitable purpose by will”. The Bench comprising of Chief Justice of India V.V Khare, Justice S.B Sinha and Justice A.R. Lakshmanan struck down the provision as unconstitutional.

Khare, CJI observed that Article 44 lays a duty on the government to secure UCC for its citizens and he also reiterated the Court's observation in previous cases, that UCC would help in achieving national integration. He also regretted that Article 44 was not yet given effect upon and that the Parliament is to execute the same.

Jorden Dieng desh v. S.S. Chopra

The Supreme Court in this case to contemplated upon the necessity for the legislation to take action with respect to the Uniform Civil Code and that it was a need, now more than ever. The Court also observed that a uniformly applicable legislation on marriage is something for which the time has arrived.¹⁷

¹³ Rao, P., 1985. SHAH BANO'S CASE AND UNIFORM CIVIL CODE—A SURVEY OF PUBLIC OPINION AMONG MUSLIM COMMUNITY AT TIRUPATI. Journal of the Indian Law Institute, 27(4).

¹⁴ Sen, K., 2004. Uniform Civil Code. Economic and Political Weekly, 39(37).

¹⁵ Sarla Mudgal Vs Union of India [1995 AIR 1531, 1995 SCC (3) 635]

¹⁶ (Writ Petition (civil) 242 of 1997)

¹⁷ Jorden Dieng desh v. S.S. Chopra AIR 1985 SC 935

III. RESEARCH QUESTIONS ALIGNED WITH RESEARCH OBJECTIVES

The fundamental questions sought to be answered through the study is:

1. What is meant by Uniform Civil Code and what are some other terms related to Uniform Civil Code?
2. How Uniform Civil Code for significant to Indian women?
3. Is there a need to enforce Uniform Civil Code in 21st Century India?
4. How will the Uniform Civil Code tackle with the regional disparities?
5. What are the main challenges in front of legislature in legislations of Uniform Civil Code?

The objectives sought to be fulfilled through the study are:

1. Understand the meaning of 'Uniform Civil Code', by also taking into consideration other personal laws dealing with cases of similar nature, including *Hindu Law* and *Muslim Law*.
2. Explore the all the aspects of Uniform Civil Code and its significance to providing equality to Muslim Women.
3. Contemplate upon the need for enforcing the Uniform Civil Code in the modern India.
4. Focus on the issues (a) dividing through religion and (b) women equality

DATABASE AND METHODOLOGY

The study will be done through the doctrinal methodology of research. Also known as 'armchair' research it refers to research done with the help of articles, journals, books and other such sources. The Uniform Civil Code all other related concepts (personal laws), terms and phrases sought to be discussed in this study are best understood when perceived through the written word, thus making doctrinal research the ideal methodology for this study. The paper finally attempts to provide a solution to the problem.

REVIEW OF LITRATURE

"Arguing for a Uniform Civil Code in India in the Light of Gender Discriminatory Practices under Muslim Personal Law"¹⁸ This Paper explores the dimension of equal rights to Muslim women if Uniform Civil Code is brought into legislation. It starts with a brief history of Muslim

¹⁸ Subhro Bhattacharya and Akshay Sandhilya, Arguing for a Uniform Civil Code in India in the light of Gender Discriminatory Practices under Personal Laws , 10 NUALS L.J.1 (2016).

invasion to post partition. “Article 44 of the Constitution mandates implementation of uniform civil laws in matters of marriage, divorce, maintenance, inheritance, succession and adoption.” But the enactment of this Code is hindered: firstly, “by virtue of it being a non-binding Directive Principle of State Policy”; secondly, by the obsessive opposition of critics who cite the compromise of religious identities of minorities. This leads to overlooking objectivity and pragmatism during fervent planning on the Code. To safeguard religious identity, women are denied a range of rights intrinsic to every individual. Therefore, the very fact must be extricated from fiction for any purposeful deliberation on the Code. This paper argues that “the implementation of Article 44 poses no threat to religious identities and practices. Instead, it’s often a tool to secure gender equality. This study is undertaken within the light of, and with special reference to, existing gender discriminatory practices under personal laws.”

*Uniform Civil Code: An Ideal Vision of Modern India*¹⁹ This paper examines the growing demands in favour of a UCC which will put in situ a set of provisions to administer and regulate personal affairs of all of Indians regardless of their faith is probably the necessity of the hour. It also analyses cases, judgements and their implications which have argued in favour of Uniform Civil Code to improve the social and economic conditions of particularly Muslim women by eradicating gender-based inequalities to achieve the desired goal of the constitution makers.

*“Charting a New Path Toward Gender Equality in India: From Religious Personal Laws to a Uniform Civil Code”*²⁰ This Note focuses on the correspondent provisions and reverent protections set forth in the “Indian Constitution”, their relationship with spiritual personal laws, and the significance of “Article 44”. It lists the reasons why the problems associated with personal laws cannot be removed piece by piece through court, and the reasons y the legislature cannot enforce the UCC all of a sudden in present scenario. At the very end it gives a multistep plan not for legislature to work on for UCC but to the religious institutions to move towards UCC. The main aim of this is to have a steady process in order to bring new measures for equality among different genders without displacing the political power from religious groups to legislators. By enabling the conversion to a UCC, reverent communities will maintain control of the process, thus legitimizing the results and fulfilling “India's constitutional” vision of “unity through diversity”.

“ACADEMIC BLUEPRINT FOR THE IMPLEMENTATION OF A UNIFORM CIVIL CODE

¹⁹ Soumalya Ghosh, *Uniform Civil Code: An Ideal Vision of Modern India*, 9 Indian J.L. & Just. 207 (2018).

²⁰ Shalina A Chibber, *Charting a new path towards Gender Equality in India: From a religious personal law to a uniform civil code*, 83 Ind. L.J 695(2008)

FOR INDIA”²¹ Four guidelines are proposed by this paper, which seek to ease the applicability of Uniform Civil Code in India. For this purpose, the first and foremost factor which has to be resolved through these guidelines is that the resistance towards UCC, especially by Hindus and Muslims, should be mitigated. Maintenance of certain values central to a community is also necessary, specifically so that discrimination and unfair treatment of women does not prevail. The Courts however, can only stick to making recommendations, as drafting a comprehensive legislation is a legislative and not judicial function. The second recommendation is of marinating a parallel between religious and personal laws. People must be able to choose which law they will abide by. The State’s role in such a religious-legal system is not merely enacting the required legislation but to also intervene in those situations when the circumstances demand its intervention²². A civil law’s existence will never negate the existence of such a system altogether. To make sure that the citizens get accustomed to the Uniform Civil Code, the third guideline suggests that its application in India be gradual and not sudden. A drastic change such as this, especially in civil lives of people, is to be made through a slow and steady process. The application can be done through divisions including in topic and parts. The final guideline is of mediation, which can be either intercommunity or individual. When there is an issue where two communities are in conflict, intercommunity mediation can be used as a tool to deal with the issue and when the same conflict is between two persons and in the arena of personal laws, individual mediation can be done.

“*Dhagamwar Vasudha (1989)*”²³, it mostly aims at “Pre and Post Constitutional history of Family Laws, Public and academicians view towards UCC”, the reasons because of which there is a need of UCC and the role of different stake holders of law. To demonstrate the opinion of Constitution framers, brief notes of Constitutional debates on UCC is given. Extracts from the fourth Annual report of Minorities Commission is also given. Issues related to the process of adoption are indepth discussed. Change in mindset is must in order to bring the complete change in the personal laws. Only after that Uniform Civil Code could be considered a reality for this country.

IV. SUGGESTIONS FOR FORMING DRAFT OF UCC

UCC has become the need to fulfil the present social demand. Following are the essential

²¹ Shimon Shetreet , Academic Blueprint for the implementation of a Uniform Civil Code for India, 2011 Utah L.Rev 97(2011).

²² Kumar, R., 2005. The uniform civil code under the constitution of India A critical Appraisal. Bundelkhand University,

²³ Vasudha Dhagamwar, Towards Uniform Civil Code (Indian Law Institute, New Delhi,1989)

ingredients which are necessary to consider while drafting UCC.

1. The best provisions of existing personal laws should be the base of forming the UCC.
2. *Marriage and Divorce*: There is only Special Marriage Act, 1954, (SMA) under which anyone can get married and such marriages are known as “Civil Marriages”. Marriages solemnized in any other form, can also be registered under this legislation and once the parties get registered under this Act, they are bound to follow the rules laid down under this legislation.
3. *Guardianship and Wards*: There are mainly two legislations to regulate these issues. First is the Guardians and Wards Act (GWA) and second is the Hindu Minority Guardianship Act (HMGA). The provisions of HMGA are mainly extracted from the GWA only. They are proved to be best in practice. Though GWA is a secular law but some of its provisions are in accordance with the personal law of the ward, and the HMGA is especially for Hindus. After omitting the personal law related part from the provisions of GWA and HMGA, they can be the best base to form code on these issues. All the citizens should be allowed to get married, only after attaining the age of majority, as prescribed under SMA. Registration of marriage should be made compulsory for all. The provisions from SMA and PMDA can be the base to form the code regarding marriage and divorce.
4. *Maintenance*: Under all the personal laws, including s.125 of Cr.PC, provisions are incorporated regarding maintenance. But they do not provide the same and equal base. Moreover, on some part, they are not up to the standards to meet the present social demands. Most of the personal laws provide very limited scope of dependent but under Hindu Adoptions and maintenance act (HAMA), the definition for dependent is better to meet the social demand of present time. But there too, some corrections are required. Hence, the provisions from HAMA, along with other personal laws and also the Maintenance and Welfare of Parents and Senior Citizen’s Act, 2007, can be the base to form law regarding maintenance for different relations.
5. *Inheritance and Succession*: All the personal laws have different rule in this regard, ss. from 50 to 56 of Indian Succession Act (ISA), are of such nature which are capable to meet the present social need. Hence, ss. 50 to 56 of ISA can be the base while uniforming the law in this regard.
6. *Will*: There are specific provisions for will under ISA. With some modification, provisions regarding will, under ISA, can be the foundation in this regard. The same set of rules should be applied in reference of Will executed in favour of any religious or charitable purpose

too. The limit prescribed under Muslim law, for the share of, how much can be bequeathed is in fact nowhere mentioned in holy Quran. In practice too, it makes no sense in casting such limit.

7. *Gift*: Specific chapter is incorporated under Transfer of Property Act (TPA) in this regard. Provisions of TPA, can be made the base for court in this reference, ss. 112 to 129 of TPA are very clear and are of nature which can be applied to all the citizens. However, s. 129 of the said legislation should be struck down because; it again creates limitation for the gift made by a Muslim. The limitation of the gift property should be struck down, except the ancestral property.
8. *Religious Endowments*: Limitations cast upon making religious endowments should be struck down from s.118 of ISA. There should be no limit either for time or for quantum of the property, except the ancestral property.

V. CONCLUSION

According to my point of view in order to safeguard citizen's rights Uniform Civil Code would be the best choice and it would be a progressive legislation to adopt it. With the pace of time the laws must be amended and the redundant laws and customs must be removed in order to not let our progress be resisted or delayed any further then it should be. UCC must be executed when all the citizens unanimously accept it, ensuring that their fundamental and Constitutional rights are protected. Through UCC Secularism and National Integrity also can be strengthened.

The debate for UCC is never ending but a decisive action has to be taken by the related parties, be it the legislature or the judiciary. In conclusion, the debate for UCC is never ending but a decisive action has to be taken by the related parties, be it the legislature or the judiciary. UCC can't be implemented in one night as it will make people revolt against it, so instead of suddenly taking away the personal law parliament should first reform the current personal laws so that instead of a higher dose a smaller dose but in regular interval should be given so that when at last UCC is implemented it would not be so different from that time current personal laws and would make it easier for people to get on board with the idea of UCC and there would be minimum protest and maximum implementation of UCC.

The aforesaid challenges, and many others, stands face to face to the very conceptual frame work of the UCC. The most important question that arises is if all the people of different faith are agreeing to accept UCC over their respective personal laws. And the answer to this question must be unambiguous in nature, if not then we are still far away from UCC. But, in any sense, this does not mean that we should forget about implementing UCC. A strong political will is

required and everything can be done by bringing each and every section of the society to a common stage and hence a common code i.e. The UNIFORM CIVIL CODE.

At the end, we must remember what Mohandas Karamchand Gandhi said: *“I do not expect India of my dreams to develop one religion, i.e. to be wholly Christian or wholly Mussalman, but I want it to be wholly tolerant, with its religious working side-by-side with one another”*.
