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Uniform Civil Code: One Code, One Rule

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ABSTRACT

In the name of religion, caste, sex, India has been fragmented over centuries. Having diverse religions, India has different sets of laws governing different people regarding marriage, divorce and succession depending on religious affiliations. Thus, laws on marriage, divorce and succession pertaining to a Muslim person is completely different from those governing the Hindu or Christian communities.

While the Hindu and the Christian communities have their own set of family laws codified by the parliament, the Muslim community still follow the Shariat. All other laws governing the Indian people example, The Indian Penal Code, The Criminal Procedure code and various other special statutes give equal rights and protection to all citizens irrespective of their religion. However, when it comes to managing religious affairs, the law is different for different communities.

The Uniform Civil Code bridges these differences and brings everyone to an equal platform. It propagates a single code for regulating marriage, divorce and succession for all irrespective of religion and personal laws, ensuring equality in the long run. While the personal laws of various communities have been reformed, the Muslim law remains unchanged. This divergence creates the space for a single uniform code for all. It has also been the most controversial code in recent history.

UCC finds support amongst liberals and women groups as it aspires to promote gender equality. The opponents are vociferous about the code interfering with religious practices and compromising minorities' freedom. The question arises, is how abiding the law of the land goes against anyone's religious principles or minority sentiments. Having a Uniform Civil Code does not impose the practice of rituals of one religion on another it just reiterates the requirement for a single code equal for all, for managing social ethics.

This paper seeks to delve into the relevance of this code, examining its advantages and disadvantages from a legal and social perspective while striving to uphold the goals set in Art. 44 of the constitution. More so in light of the controversial Shah Bano case and Triple Talaq judgement 2018 that have surfaced in the wake of the Uniform Civil Code.

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I. INTRODUCTION

India, is one of the world's largest democracies having a population of over 136 crores, with each person belonging to a different faith and practicing a different set of customs, traditions and ceremonies as per their social civil laws/ personal laws. We are a mix of thoughts, beliefs and cultures residing peacefully in this country. Though we are united in spirit, when it comes to religion, all of us stand divided with each person being governed by their own personal laws with regard to marriage, divorce and succession set by their religion.

This creates a lot of confusion leading to conflict and subsequently to inequality. We are a 'secular state' in the sense that there is no state religion and the state allows people to practice and profess the religion of their choice. The state will not interfere with the religious matters of the people, though the constitution empowers the state to make laws with regard to religion when it comes to removing the impediments in the governance of the state.³ With different religions having different sets of personal laws governing people differently, the Constitution framers in 1949-50 wanted to implement a Uniform Civil Code in the form of an ideal to be aspired for and implemented by future governments to bring about equality when it came to personal laws.

The Uniform Civil Code (UCC) is one code governing personal laws which will be applicable uniformly to all people irrespective of their religion, caste and creed. Personal laws are social civil laws governing individuals on the basis of the religion they follow and are governed by a unique set of laws regarding marriage, divorce, inheritance of different groups of people.

For instance, at present the Hindus are governed by the Hindu Code passed between 1955-56 which includes the Hindu Marriage Act, Hindu Succession Act, Hindu Adoption and Maintenance Act. While the Muslim community follows the Shariat Act, 1937 for their personal laws. The Christian Community follows the Christian Marriage Act, 1872 with regard to marriage and other related issues. With each person being governed by a different set of laws shows the inequality in treatment given to different classes of people on the basis of their personal laws governing their religion. This leads to different kind of judgements being delivered to different people when it comes to distribution of justice on social civil cases.

This made the Constituent Assembly include the idea of UCC in Art 44 under the Directive Principles of State Policy to the Constitution, "The state shall endeavour to secure for its

³ *Uniform Civil Code and Its Legal Dimensions* by Leepakshi Rajpal, Mayank Vats, 52-57, Quest Journal, Volume 5, https://www.academia.edu/33762704/Uniform_Civil_Code_and_Its_Legal_Dimensions?email_work_card=view-paper

citizens a uniform civil code throughout the territory of India”.⁴ Though Directive Principles are only directives which are non-enforceable by a court of law as per Article 37, which means that it is not mandatory for the state to implement it. If implemented, it should be with a view to achieving uniformity in law, secularization and making it equitable and non-discriminatory.⁵

II. HISTORICAL BACKGROUND

Personal laws were framed during the British Raj for both the Hindu and Muslim Communities. At the beginning of the 20th century, women activists for the first time demanded a Uniform Civil Code with the object to achieve “rights for women, equality and Secularism.”⁶ Though the idea of this uniform code was presented by the National Planning Commission which was appointed by the Congress in the 1940s to scrutinize the status of women and recommend reforms to personal laws on the issue of gender equality.

Later on, this was debated in the constituent assembly vehemently by Dr. B.R. Ambedkar to be made a part of the constitution. Thereby being added as a part of Directive Principle of State Policy, in Part IV, as a duty of the state to implement.

For the first time, in 1985 the Supreme Court in the case of Mohammad Ahmed Khan v. Shah Bano Begum⁷ directed the Parliament to frame a Uniform Civil Code reiterating the words of the then Chief Justice, Y.V. Chandrachud “A common civil code will help the cause of national integration by removing disparate loyalties to law which have contracting ideologies”⁸. In this case a 73-year-old woman, Shah Bano had approached the court claiming maintenance from her husband under s. 125 of the Criminal Procedure Code who had divorced her after 40 years of marriage by the process of Triple Talaq and was subsequently denied regular maintenance beyond the iddat period; this sort of unilateral divorce was permitted under the Muslim Personal law. The Supreme Court held that Muslim women have the right to claim maintenance under s.125 of the Criminal Procedure Code (CrPC). Further, it held that s.125 of the Criminal Procedure Code is of a truly secular character as it imposes a liability upon an “individual to maintain close relatives who are indigent as their obligation towards society in order to prevent destitution and vagrancy This is the moral edict of the law and morality cannot

⁴ Article 44, Part IV, Constitution of India, 1950

⁵ Uniform Civil Code: *One Nation One Code* by Qwerty9729, Legal Service India <http://www.legalserviceindia.com/legal/article-685-uniform-civil-code-one-nation-one-code.html>

⁶ Uniform Civil Code: *One Nation One Code* by Qwerty9729, Legal Service India <http://www.legalserviceindia.com/legal/article-685-uniform-civil-code-one-nation-one-code.html>, *Uniform Civil Code- The Need of Hour*, by Dr. R.I. Parikh, IRJMSH, Vol-9 Issue 12(Year-2018) ISSN 2277-9809

⁷ Mohammad Ahmed Khan v. Shah Bano Begum AIR 1985 SC 945.

⁸ *A Uniform Civil Code in India* by Tina M. Thomas, International Affairs Journal Vol. 5 No.1, 11 (2009)

be clubbed with religion.”⁹ This led to nationwide agitation leading to the Rajiv Gandhi Government to overturn the Supreme Court’s verdict of the case by the implementing the Muslim Women (Right to Protection on Divorce) Act 1986, which curtailed the right by which Muslim Women could claim maintenance under s.125 CrPC. This Act was implemented with the view that the Supreme Court had not made it binding on the Parliament or the Government to enact the UCC it was a mere observation that there should be no interference with the personal laws unless the demand comes from within.¹⁰

The second instance when Supreme Court stressed on the need for the government to implement Art 44 was in the case of Sarla Mudgal v. Union of India¹¹ where the issue was whether a Hindu man who was married under the Hindu Marriage Act 1955 at first, could convert to Islam and thereby solemnise his second marriage. It was held that marriage solemnised under the Hindu Marriage Act¹² could only be dissolved under the same Act and not by converting to Islam which would not dissolve the first marriage. It would actually amount to an offence under s.494(5) of the IPC Marrying again during the lifetime of husband or wife.¹³ It opined that it was high time for the Uniform Civil Code to be introduced and Art.44 was to be taken out of cold storage.¹⁴

Lastly, in Lily Thomas v. Union of India it was held by the Supreme Court that “the desirability of Uniform Civil Code can hardly be doubted.”¹⁵ Though it is only possible if the social climate is appropriately built up and political leaders must come forward and awaken the masses to accept the change.¹⁶ It also laid emphasis that “uniform” would not mean the same laws for all the people but it would mean having similar laws for all with respect to equality within the religion and gender justice.¹⁷

In August 2017, when the practice of instant triple talaq, that is, saying talaq three times by the husband would dissolve the marriage, was struck down by the Supreme Court in the case of Shayara Bano.¹⁸ This caused gender inequality within the personal law itself by favouring the

⁹ *Need and Challenges to Uniform Civil Code in India: A Special Reference to Muslim Ethos* by Dr. G.S. Rajpurohit & Dr. Nitesh Saraswat, 20-44, Journal of Law and Public Policy, Uniform Civil Code, Vol-IV, 2017.

¹⁰ *Family Law 2* by Ravi Ranjan

¹¹ Sarla Mudgal v. Union of India, 1995 AIR 1531: 1995 SCC (3) 635.

¹² Hindu Marriage Act, 1955

¹³ Section 494, The Indian Penal Code 1860.

¹⁴ *Uniform Civil Code: An Attempt to explore its affordability* by Vijender Kumar & Naresh Kumar Vats, 1-19, Journal Of Law and Public Policy, Uniform Civil Code, Vol-IV, 2017.

¹⁵ Lily Thomas v. Union of India, AIR 2000 SC 1650; (2000) 6 SCC 224

¹⁶ *Uniform Civil Code- The Need of Hour* by Dr. R.I. Parikh, IRJMSH, Vol-9 Issue 12 (Year-2018) ISSN 2277-9809

¹⁷ *Uniform Civil Code: An Attempt to explore its affordability* by Vijender Kumar & Naresh Kumar Vats, 1-19, Journal Of Law and Public Policy, Uniform Civil Code, Vol-IV, 2017.

¹⁸ Shayara Bano v. Union of India, Writ Petition No. 118 of 2016

males over the females and showed the limited rights available to women under the religion they follow. Calling for the need of a Uniform Civil Code.

III. ARGUMENTS IN FAVOUR OF IMPLEMENTING A UNIFORM CIVIL CODE

- **It would accelerate national integration:**

If the Uniform Civil Code is implemented it would help in integrating India more than it has ever been since independence. Preferential treatment meted out to different religious communities based on different personal laws have caused a lot of animosity previously. Which can be avoided by implementing this code this would help bring every Indian on an equal footing despite their caste, religion or tribe. Therefore, it is the obligation of the State to endeavour to secure a Uniform Civil Code so that national unity and stability is maintained and the personal laws are reformed in the light of changing values of modern society.¹⁹

- **Gender Justice will be achieved:**

Personal laws have treated women as not equal to men and violated their rights. Before 1955, polygamy was prevalent, men could marry several times. Hindu women did not have the absolute power to hold or own property of their own other than in the case of Stridhan. On her death her limited estate was passed to her legal heirs of the male which was called revisionary.²⁰ Whenever there was an issue on desertion or mortgaging or selling of property she had to do with the help of a man. A Hindu woman could not be the natural guardian of her children till the death of her husband. This shows the patriarchal nature before the codification though the discrimination still continues.

Under Muslim Law, the laws on maintenance and divorce were in favour of the husband and not the wife. Previously, under talaq-e-ibdat the husband got the upper hand in deciding when the marriage was over between them and not the wife. Maintenance was not allowed to be given to the wife after the period of iddat. These instances show women do not have an equal stand when it comes to matters of divorce and maintenance. Though it still continues when a Muslim man can marry more than once as polygamy is recognised under the Shariat Act but women aren't allowed to have more than one husband.

This shows gender discrimination is still followed. Women are not given the same position as men when it comes to personal laws. Furthermore, there is inequality between communities.

¹⁹ *Need and Challenges to Uniform Civil Code in India: A Special Reference to Muslim Ethos* by Dr. G.S. Rajpurohit & Dr. Nitesh Saraswat, 20-44, Journal Of Law and Public Policy, Uniform Civil Code, Vol-IV, 2017.

²⁰ *Uniform Civil Code and Its Legal Dimensions* by Leepakshi Rajpal, Mayank Vats, 52-57, Quest Journal, Volume 5.

Under Hindu Law polygamy is punishable for both males and females, but under Muslim Law only the male is allowed and not the female. Therefore, a Muslim woman faces inequality when it comes to personal laws as well as on an unequal standing with regard to women in general. A Uniform Civil Code will improve the condition of women in Indian society which is patriarchal and misogynistic and condemning Indian women to mistreatment. It will help in changing these old traditions which have no place in modern India where women should be treated equally and given equal rights.

- Uniformity within the religion as well as amongst communities:

If implemented it will result in a complete reform to personal laws thereby making one law which would be uniformly applicable to all irrespective of their sex, religion, caste. It will not only to secure uniformity of law amongst people of the same community in the case of Marriage, Divorce and Inheritance but also across communities. In the past, absence of uniform laws governing these inter-personal relationships have led to the denial of the constitutionally mandated provision of equality of all citizens before the law and equal protection of the law.²¹ This will also lead to uniform delivery of justice when similar cases are filed before the court by people of different communities.

- It promotes real Secularism:

India is selectively secular state. This means that in some areas we are secular but not in entirety. Implementation of a UCC would mean that all citizens would follow the same laws whether they are Hindus, Muslims, or Christians. It will not curtail anyone's freedom to religion but it will promote equal treatment irrespective of one's religion which is real secularism. There are different sets of laws under different religions for marriage, divorce, maintenance. It will not be possible to make a single ceremony or ritual for all religious communities as this will cause conflict and agitation. This would seem to favour a particular religion. A uniform civil code will lay down certain regulations on the personal laws which will be uniformly followed by all. For instance, polygamy to be banned uniformly, maintenance to be given to the wife despite the religion she belongs to, making it easier for a wife to file petition for divorce, inheritance should be equally divided between the males and females. These instructions would truly make India secular and equality to all while following personal laws.

²¹ Article 14, Constitution of India, 1950.

- It will help in reducing vote bank politics:

A UCC would help in reducing the vote bank politics that most political parties indulge in before every election. If all religions are covered under the same laws, the politicians have less to offer certain minorities in exchange of their votes. Not having a Uniform Civil Code is detrimental to true democracy which has to change.

- Personal laws are a loophole:

The various personal laws are basically a loop to be exploited by those in power. Our panchayats continue to give judgements that are against the constitution and we don't do anything about it. Human rights are violated through honour killings and female foeticides all over. By allowing personal laws we constitute an alternate judicial system that still operates on old values.

In conclusion all these arguments favour the implementation of a Uniform Civil Code.

IV. ARGUMENTS AGAINST THE IMPLEMENTATION OF A UNIFORM CIVIL CODE:

- Government's Interference in personal freedom:

It is often seen that the government should not interfere in the religious matters of individuals. Being a diverse, multi-religious country with each religion having their own set of laws with regard to marriage, divorce, succession. Government interference will be seen as an intrusion on the individual rights of citizens which is differs with the religion they follow. This causes people to agitate when it comes to interference in practicing the religion of their choice.

- A threat to communal harmony:

Potential misunderstandings regarding uniform civil code create a fear amongst various religions especially minority religions. Often viewed by them that the practices of majority religions will be favoured over their customs and values. Further, there are so many different religions, each having its unique laws to be followed by those practicing that religion. Along with a history of communal riots, agitations have taken place when communities have misunderstood the situation of favoured treatment meted out to a particular community. If one code is implemented then there are chances that conflicts would arise instead of decrease.

- Difficulties due to Diversity:

The implementation of a UCC is a cumbersome task due to the diversity of our nation. Cultural differences between states and between communities is another hindrance for a unified personal law since there are so many people practicing and professing different religion. The

state has to keep in mind the religious sentiments of every community so as to not hurt any particular communities' sentiment and personal laws. As Justice Chagla rightly said "One community might be prepared to accept and work social reform, another may not yet be prepared for it and article 44 does not lay-down that any legislation that the state may embark upon must necessarily be of an all-embracing character. The state may rightly decide to bring about social reform by stages and the stages may be territorial or they may be community-wise."²²

- Not yet the correct time for implementation:

The Muslim community sees the implementation of the Uniform Civil Code as a threat to their identity and interference with their laws which are perceived to be of a divine origin and since they feel it favours the Hindu Majority. They are arguing to take into consideration the silence of the authorities in relation to saffronization of schools, beef issues etc and thereby triggering a debate of favouring the majority over the minorities.

Personal laws will continue to be followed even after the implementation of this code since the code will only set uniform rules to be followed on a few aspects of personal laws but not all aspects. If this happens, and there is a conflict between the personal laws and the uniform code, which would prevail is the other issue.

V. ANALYSIS AND CONCLUSION

The bone of controversy revolving around the Uniform Civil Code (UCC) has been secularism and Freedom of Religion enumerated in the Constitution. The Preamble states that India is a "secular, democratic, republic."²³ This means that being a secular state there is no state religion and the state shall not discriminate anyone on the grounds of religion and everyone is free to practice, preach whichever religion she/he wishes to without the interference of the state.

The UCC is not opposed to secularism nor violative of Articles 25 and 26. In fact, Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. The only thing it strives to do is form one rule applicable to all for Marriage, Succession and Divorce which would be applicable to all despite the religion. This does not mean that the state will interfere in a person's religious belief. For instance, a Hindu will not be compelled to perform Nikah or that a Muslim person would be forced to perform Saptapadi.

²² Justice Chagla quoted in Vasudha Dhagamwar. Op. Cit. Pg.4 also see Narasu Appa Mali's Case AIR 1952 Bom. 85-87

²³ Preamble of the Constitution of India, 1950

In the Parsi community Parsi daughters lose their property rights when they marry outside the community whereas non-Parsi wives are entitled to half of their husbands' property. This issue is still being debated over on by the community. Change has taken place in the Hindu Mitakshara school of law regarding property and in the Christian community with the amendment of the Christian Divorce Act only shows that the age old personal laws are crumbling from within. A Uniform Civil Code is indeed a necessity.

I feel, a Uniform Civil Code would implement a uniform set of rules that will be applicable to all people irrespective of religion which would promote uniformity within the community and between communities. This would include having a uniform law for divorce, where women are given equal right to file a petition, maintenance to be given to the wife, grounds for divorce, prohibiting the practice of polygamy and women are given equal share in inheritance as a male member of the same religion. These would ensure equality and real secularism.

Undoubtedly there will be hurdles in the passing of a Uniform Civil Code due to the deep-rooted prevalence of cultures, customs caused due to personal laws. Along with changing the mindset of a huge population and especially the minority communities who feel they will lose their identity if it is implemented. There are chances that it may lead to communal massacres if it is not enacted and implemented in the right manner.

There are always going to be two sides of the same coin, there will be people accepting it and people against it. The state should look for a right time to implement this code since it is very much needed in the present times. I would like to recommend that when enacting the UCC a balanced opinion should be taken of the various religious communities without getting the clerics, pandits involved. An open-minded representative from each community to be involved while formulating it.

To conclude I would like to say that citizens belonging to different religions who follow different set of laws relating to property and matrimonial laws which is not only affront to the nation's unity, but also makes me wonder whether we are actually a sovereign secular republic²⁴ or a loose confederation of feudal states where people live at the whims and fancies of mullahs, bishops and pandits. Keeping the above-mentioned arguments in mind I strongly support the implementation of a UCC and homogenising the personal law. I support it not because of any bias but as a need of the hour for a progressive nation giving equality and dignity to its citizens especially women.

²⁴ Preamble to the Constitution of India, 1950

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