

## Uniform Civil Code Role of Judiciary

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### Abstract

Whole world is made up of men and women. Half of the population is of women. But when it comes to the rights of a woman, in most of the areas the women are deprived of their rights, the most effected women in the country is the Muslim woman. This article focuses on the rights and position of a woman in general and Muslim woman in particular, and it also deals with the Constitutional, legal rights of women, decided cases, and lastly the need of uniform civil code and conclusion.

**Keywords:** Uniform civil code, judiciary, UCC

### Introduction

#### What is Uniform Civil Code?

- Article 44 of the Directive Principles of the State Policy (DPSP) states that it is the duty of the State to secure Uniform Civil Code (UCC) for the citizens throughout the country.
- It mainly aims to replace Personal Laws based on the scriptures and customs of each major religious community in India with a common set of rules governing every citizen.
- “Uniform” in UCC signifies:
  - Uniformity of laws between communities.
  - Uniformity of laws within communities ensuring equalities between the rights of men and women.

#### What are the Efforts towards UCC in India?

- **Special Marriage Act, 1954:** The Special Marriage Act of 1954 provides for civil marriage for any citizen irrespective of religion, thus, permitting any Indian to have their marriage outside the boundaries of any religious personal law.
- **Shah Bano Case 1985:** In this case, Shah Bano was refused her claim for maintenance. The Supreme Court ruled in her favour under Section 125 of Code of Criminal Procedure (CrPC), which applied to all citizens the order for maintenance of wives, children and parents.
  - The Supreme Court further recommended that the long pending Uniform Civil Code should be finally enacted.
- The Supreme Court also called on the government to implement the UCC in the 1995 Sarla Mudgal judgment as well as in the Paulo Coutinho vs Maria Luiza Valentina Pereira case (2019).

#### What are the Arguments in Favour of UCC?

- **Accommodating the Aspirations of the Youth:** As the world transitions into the digital age, the social attitude and aspiration of the young population is shaping by

universal and global principles of equality, humanity and modernity.

- Thus, the enactment of Uniform Civil Code will help in utilising their full potential towards nation building.
- **Support National Integration:** The Constitution guarantees all citizens equal treatment in courts of law whether it is criminal laws or other civil laws (except Personal Laws).
  - Thus, the implementation of Uniform Civil Code will grant equal set of personal laws to all, resulting in the end of politicization of issues of the discrimination or concessions or on the other hand exceptional benefits appreciated by a specific community on the basis of their specific religious personal laws.
- **The Rise above the Patriarchal Mindset:** The existing personal laws of most religions are based upon the upper-class patriarchal notions of the society. Thus, the codification and implementation of the Uniform Civil Code will destroy the sanctity of the patriarchal orthodox.
  - Thus, the Uniform Civil Code will promote gender equality and will bring both men and women at par.
- **Convenient for Judicial Process:** There exist many personal laws, including Hindu Code, Sharia Law, etc. The presence of so many laws leads to confusion, complexity, and inconsistencies in the adjudication of personal matters, sometimes resulting in delayed or incomplete justice.
  - UCC will help the judiciary deliver justice efficiently and within a reasonable timeframe.

#### What are the Arguments against UCC?

- **21st Law Commission Report:** The Law Commission of India has opined that a Uniform Civil Code (UCC) is neither necessary nor desirable to reconcile conflicts in personal/family laws.

- It stated that many 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.
- Therefore, the Commission has suggested amendments to existing family laws to tackle discrimination and inequality in personal laws, rather than do away with differences between them altogether.
- **Against Cultural Diversity India:** Practical difficulties due to diversity in India, it is difficult to come up with a uniform set of rules for personal issues like marriage due to the tremendous diverse culture in India across the religions, sects, castes, states, etc.
- **Encroachment on Religious Freedom:** Articles 25 to 28 of Indian Constitution provide the Right to Freedom of religion. The Uniform Civil Code is viewed as a threat to religious freedom (Article 25) by many communities, especially the minority communities.
  - According to them, the Uniform Civil Code will neglect their traditions and impose rules which will be mainly influenced by the majority religious communities.
- **Against the Indigenous Rights of Tribes:** The Naga Community has claimed that the implementation of UCC would bring about clear trouble for their culture and dignity.
  - It can potentially cause social disorder, as the personal and social life of the tribes are quite distinct from the rest of the people in the country.

### Introduction to Uniform Civil Code

India is a country with multi cultures and taboos. As far as Ancient India is concerned the only religion which dominated is the Hindu religion, which was based on dharmasastras. The roots of deprivation of rights of a woman started from ancient times onwards, when the smritis and Upanishads have come into existence. It was the Hindu dharma sastra which degraded the women from bad to worst.

This made the woman to a sexual grade citizen. To overcome such discrimination the concept of uniform civil code has to be brought.

The concept of uniformity among men and woman recognised way back from Buddhism in 6th century B.C where in those days lord Buddha recognised the atrocities committed by the men towards woman. "He said that social inequalities are the result of dharma sastras. He said that no caste; no inequalities; no superiority; on inferiority; all are equal". This is what he stood for'. The emphasis was made by Lord Buddha that Sudras and women are to be equally treated with other people in the society. It was from that day till today we are struggling for uniformity among human beings.

Then the Age Consent Act came into existence based on a decided case? In which a 22year old lady by name Rukhmabai was brought before the Bombay High Court by her husband because she refuses to accept the marriage as it was a child marriage. She lost her case, but the result was The Consent Act of 1891 and the age was raised from ten years to twelve years.

Slowly the improvement started and it was decided, 12 years for marriage. Followed by Sharda Act (Child Marriage Restraint Act), this is the First Social Reform where for the first time, age for girls was fixed as 14 years for marriage\* So it was Sharda Act, 1929 which freed the age of a girl as 14

years for marriage. Slowly empowerment of the women started and for the first time a school was started in the 18<sup>th</sup> century by Savithri Bai Phule and Fatima Begum at Bhide wada, Pune on January 1st 1848 and also the Christian minorities started in Bombay, Ahmed Nagar and Bengal.

It was the famous woods dispatch', in 1854 was a land mark in the history of Indian Education, to promote primary education particularly to a girl child. Later in 1916 a Women University was started in Bombay. This paved the way for equal rights i.e. Uniform Civil Code.

### Status of Women in India

When the whole world is moving towards 21<sup>st</sup> century and we claim that we are advanced, half of the population is of women, still they are struggling for their rights. Even today women are in the second position to that of men. The framers and the social reformers like Ambedkar, Mahatma Phule, had done a lot for the upliftment of the women. It was for the first time in Constituent Assembly in 1947, a proposal was brought by the Chairman of the Drafting Committee of the Constitution, Dr B.R. Ambedkar for Uniform Civil Code which covers almost all human relationships. He said that as we have Indian Penal Code, Criminal Procedure Code,

### Muslim woman in India

To some extent by enacting Hindu Marriage Act, Guardianship Act, amending the Succession Laws to some extent the legal rights of the Hindu woman has been recognised.

Whereas Muslim woman is concerned, there are lot of variations in the marital rights as well as property rights, when compared with the rights of other women in India. Muslim personal laws are based on Quran. The marriage is a contract and the dower is the consideration of her marriage. There is no statute to fix the amount of Mehr (consideration). Woman has been remained as a household worker.

On the other hand husband, according to his wish and will, he can breakdown the marital tie at any time anywhere and she may be thrown out and put to disgrace. He can give divorce whenever he desires. It may be out of compulsion, injest or anger, it is a valid divorce.

Divorce is an integral part of Muslim law, husband can have four wives at a time, which is against the penal laws, but accepted by the personal law. If he marries for fifth time, then it will be an irregular marriage but not void marriage, whereas woman do not have such a right.

### Disapproved forms of Talaq

- i) Disapproved or non-revocable form is talaq-talaq-e-biddat, three pronouncements in a single sentence-also known as triple talaq.
- ii) Talaq-e-tafweez the husband delegates his own right of pronouncing divorce in favour of third person or his wife

Recently one husband had given divorce through internet pronouncing talak, talak talak three times. Pronouncing talak for three times, he says that the legal bond between wife and husband ends with triple talak. Recently Supreme Court has given a sensational judgment in Shayara Bano vs. Union of India'

The other aspect is the maintenance to the wife. In case of Hindu and Christian's woman, the provisions of CrPC will attract. But when it comes to Muslim woman they pay mehr and get rid of the woman. This was the situation until shah bano opposed. This was bought into limelight by Shah Bano's

case where a 75 year old woman was given divorce by her husband and she filed a maintenance petition under Section 125 of CrPC. There was a clash between the statutory laws and religious laws. Muslims felt that no enacted law should interfere into their personal laws. But Section 125 of CrPC which provides maintenance to a woman who is not in a position to maintain her after divorce by the husband. Supreme Court is of the opinion that a divorced Muslim woman has been unreasonably discriminated on the basis of personal Law and further it is said that if a woman is not married after divorce, she should be maintained by the former husband. This case paved the way towards uniform civil code. As far as property is concerned, Hindu women had been given equal rights as that of male".

### UCC and other Countries

As far as other countries are concern they follow uniform civil code irrespective of people living in that region. Bigamy has been abolished or restricted by law in most of the countries like Turkey, Tunisia have completely abolished and countries like Egypt, Syria, Jordan, Iraq, morocco, Pakistan and Bangladesh subjected to administrative or judicial control. In countries like France, Belgium and Italy banned wearing veils in public streets and other public places.

### Judicial Response towards Uniform Civil Code

Judiciary played an important role: some of the decisions are

- i) Jordan Dieddeh/SS Chopra?, it is a case for breakdown of marriage. The court said that this is the need of the hour to frame law relating to judicial separation, divorce and nullity of marriage, far from uniform law applicable to all people irrespective of religion or caste. It appears to be necessary to introduce irretreivable break down of marriage and mutual consent as grounds of divorce in all cases.
- ii) In Shah Bhano case?\*, it is a sensational case where a woman after divorce, as a matter of right fought for maintenance under CrPC from her husband. The apex court said that a Muslim husband is liable to pay maintenance to the divorced wife beyond the iddat period. This was one of the land mark case towards Uniform Civil Code. In this case the term wife was defined, which includes a divorced wife also irrespective of the religion professed by her or her husband.
- iii) Sarla Mudgal, President Kalyani and Ors./Union of India, A PIL was filed challenging gender discriminatory positions in Hindu, Muslim, Christian. Husband got married to a Hindu wife and converted to Islam and got married again without giving divorce to the first wife. The question was whether husband is liable for bigamy under the Indian penal code or not. It is the duty of the Supreme Court to protect the right to equality among all the communities. Article 44 based on the concept that there is no necessary connection between religion and personal law in a civilised society. Article 25 guarantees religious freedom whereas Article 44 seeks to divest religion from social relations and personal law. Marriage, succession and like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26 and 27. Jus. Kuldeep Singh directed the government to implement the director of Article 44 and to secure UCC throughout the territory of India.
- iv) Shayara Bano vs. Union of India and others", this is one of the landmark case, where the husband without any reason if he pronounce triple talag the marriage has to

breakdown. This has been challenged by shayara bano, in which the SC said that it is unconstitutional.

- v) Seema/Ashwani Kumar. All marriages irrespective of their religion are compulsorily registered in a way it was the step towards the UCC.

All these cases are been the result of the judicial activism and focussing towards Uniform Civil Code. Every woman whether she is a Hindu, Muslim or Christian or of any religion, suffering is one at the same, there is a need for the UCC.

### Conclusion

- The goal of a UCC should ideally be reached in a piecemeal manner through a brick-by-brick approach rather than an omnibus approach. A just code is far more important than a uniform code.
- There is a need to consider social adaptability of UCC while forming a blueprint for a uniform civil code. Whether a single law is framed for all religions or reforms are made to our personal laws, they should be based on gender justice and ensure that the principle of equality enshrined in our Constitution remains intact.
- The bottom line is that the government and society need to build trust in order to proceed towards a Uniform Civil Society that respects human rights and promotes gender equality that holds more importance than a Uniform Civil Code.
- There must be a uniform civil code to all the citizens to achieve the real secularism.
- For the country like India, with unity in diversity, national integration is a must which can be achieved by uniform civil code.
- Irrespective of caste, religion this uniform civil code has to be implemented.
- Our constitution believes in one society with single citizenship, it is highly desirable that one single set of civil laws should govern all its citizens.
- Art 44 of DPSP of the state it is the duty of the state to secure uniform civil code for the citizens throughout the country. Which mainly aims to replace personal laws based on the scriptures and customs of each major religious community.

KN Munshi rightly expressed his opinion that if personal Law of inheritance succession act is considered as part of religion the equality of woman can never be achieved and the article 44 will be a dead letter on paper.

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