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**ANALYSING UNIFORM CIVIL CODE AND ITS ALTERNATIVE**

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**Abstract**

This paper aims to throw some light on the Uniform Civil Code (UCC). Firstly, UCC is yet to be interpreted in a wider sense and this paper will make effort to provide a fair amount of interpretation to it. Secondly, this paper focuses on the current judicial opinion of the Judiciary and remarks. Thirdly, this paper aims to discuss the various conflicts of religious beliefs and arguments advanced with UCC, and lastly what can be the best alternative that can be brought in or implemented in the place of UCC.

**I. What is Uniform Civil Code?**

There is no clear definition provided under the Indian Constitution for UCC. UCC is provided under Article 44 of the Indian Constitution given under Part IV which is Directive Principles of State Policy. It says “*The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India*”.<sup>2</sup>

This doesn't clearly explain what is Civil code but civil means private in nature and we can draw an inference from it through the Indian Constitution. Civil Code has been laid down under Concurrent List i.e., the List-III of the Indian Constitution which are 5<sup>3</sup>, 6<sup>4</sup>, 7<sup>5</sup>, 8<sup>6</sup>, 9<sup>7</sup>, 10<sup>8</sup>, 12<sup>9</sup>, and 13<sup>10</sup>.

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<sup>2</sup> INDIA CONST, ART.44, AMENDED BY THE CONSTITUTION (ONE HUNDRED AND FOURTH AMENDMENT) ACT, 2019.

<sup>3</sup> LIST 5 STATE MARRIAGE AND DIVORCE; INFANTS AND MINORS; ADOPTION; WILLS, INTESTACY, AND SUCCESSION; JOINT FAMILY AND PARTITION; ALL MATTERS IN RESPECT OF WHICH PARTIES IN JUDICIAL PROCEEDINGS WERE IMMEDIATELY BEFORE THE COMMENCEMENT OF THIS CONSTITUTION SUBJECT TO THEIR PERSONAL LAW.

<sup>4</sup> LIST 6 STATE TRANSFER OF PROPERTY OTHER THAN AGRICULTURAL LAND; REGISTRATION OF DEEDS AND DOCUMENTS.

<sup>5</sup> LIST 7 STATE CONTRACTS, INCLUDING PARTNERSHIP, AGENCY, CONTRACTS OF CARRIAGE, AND OTHER SPECIAL FORMS OF CONTRACTS, BUT NOT INCLUDING CONTRACTS RELATING TO AGRICULTURAL LAND.

<sup>6</sup> LIST 8 STATE ACTIONABLE WRONGS.

<sup>7</sup> LIST 9 STATE BANKRUPTCY AND INSOLVENCY.

<sup>8</sup> LIST 10 STATE TRUST AND TRUSTEES.

<sup>9</sup> LIST 12 STATE EVIDENCE AND OATHS, RECOGNITION OF LAWS, PUBLIC ACTS AND RECORDS, AND JUDICIAL PROCEEDINGS.

<sup>10</sup> LIST 13 STATE CIVIL PROCEDURE, INCLUDING ALL MATTERS INCLUDED IN THE CODE OF CIVIL PROCEDURE AT THE

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Now it is clear that the ambit of civil code is larger in nature. But there exists some common law for many civil subjects such as Code of Civil Procedure, Transfer of property, and many more. But what remains different from these lists is the different personal laws which have no uniformity in India. Personal laws can be said as the laws which govern the family matters such as marriage, divorce, succession, adoption, maintenance, will, etc.

Thus, we can draw a general definition of UCC as “the personal laws which are secular in nature and that will govern all the citizens irrespective of their religion and beliefs”.

If we look at various personal laws and analyse them, we can observe that some personal laws are reformed and some are not but there is no uniformity. If we see Hindu Personal laws then there are four major codified and reformed laws which are The Hindu Marriage Act,1955, The Hindu Succession Act,1956, The Hindu Minority and Guardianship Act,1956, The Hindu Adoption and Maintenance Act,1956. On the contrary Muslim personal laws in India is not codified but a regulation that provides a skeleton to Muslim personal law is in the form of The Muslim personal law (Sharia) Application Act,1939. As a result, there lies a lot of confusion and ambiguity while dealing with Muslim personal law because it is open to various sources and interpretations. Similarly, in the case of Christian law like the Christian Marriage Act,1872 is codified but there need more reforms in case of other areas.

## II. Judicial opinion on Uniform Civil Code

It is important to know the opinion of the Judiciary about UCC in some important cases.

*Ms. JordanDiengdeh v. S.S. Chopra*<sup>11</sup>, In this case, the observed that the law is not uniform in the matters of judicial separation, divorce, and nullity of marriage. The Court suggested the legislature intervene and make laws that are uniform to everyone irrespective of religion and caste. The Court also suggested bringing the Uniform Civil Code of marriage and divorce.

*Mohd. Ahmed Khan v. Shah Bano Begum*<sup>12</sup>, This case was a highlight to the whole nation and it is still in every discussion when maintenance and UCC come up for a discussion. In this case, the Court actually understood the various difficulties for the implementation of UCC but the Court also emphasized bringing a common civil code. Court also said that the ultimate power and intent is with the legislature and some steps must be taken to initiate UCC to give meaning to the Constitution as it is the vision of the makers who intended a common code.

In *SarlaMudgal V. Union of India*<sup>13</sup>, The Court said that “there is no necessary connection

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COMMENCEMENT OF THIS CONSTITUTION, LIMITATION, AND ARBITRATION.

<sup>11</sup>AIR 1985 SC 934,940: (1985) 3 SCC 62.

<sup>12</sup> AIR 1985 SC 945,954: (1985) 2 SCC 556.

<sup>13</sup>AIR 1995 SC 1531, 1538: (1995) 3 SCC 635.

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between religion and personal law in a civilized society.”

Later in the Case of Lily Thomas v. Union of India<sup>14</sup>, the Court clarified its remarks which were made in the case of SarlaMudgal. The Court clarified that it has not directed for the enactment of a common civil code.

But the Court in the Case of John Vallamatton v. Union of India<sup>15</sup> emphasized UCC. the Court suggested implementing UCC which will help in national integration by removing contradictions based on ideologies.

It is clear in the mind of the Judiciary that a common code for personal laws must be enacted and implemented and it is not violative of any Articles given under Part-III of the Indian Constitution.

### **III. Conflict with religious beliefs and other arguments advanced-**

It is true that India is a secular country as given under the preamble of the Indian Constitution. The secular word was inserted in the Constitution by the 42<sup>nd</sup> Amendment but even if the secular word would not have been there in the preamble it can be construed from Articles 25<sup>16</sup>, 26<sup>17</sup>, 27<sup>18</sup>, and 28<sup>19</sup> of the Constitution that India was always a secular nation. The word secular is a big misunderstood word in India.

India believes and “*Sarva Dharma Sambhava*”. It takes pride in unity in diversity and it is one of the peculiar features of this nation. There are various people with various faiths in India who are free to profess, practice, and propagate religion which is subject to certain restrictions. Such practice of religion is very old and was in practice before the commencement of the Constitution. It is often seen that laws regarding marriage, adoption, succession, divorce, etc, are a part of religious belief and practice. Making all the laws equal for everyone will destroy the secular fabric of India which is one of its peculiar and unique features. There are various customs that are of utmost importance to people because it is their religious mandate. Sometimes, the lawmakers must look from the eyes of the believers or seekers.

Personal laws are very sensitive in nature and often treated as sacred by religious people. If the State starts interfering in matters of personal laws, then the sacredness of such laws will be destroyed and even if such interference will be good in the eyes of law will be bad in the eyes of religion.

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<sup>14</sup> AIR 2000 SC 1650: (2000) 6 SCC 635.

<sup>15</sup> AIR 2003 SC 2902

<sup>16</sup> ARTICLE 25 STATES FREEDOM OF CONSCIENCE AND FREE PROFESSION, PRACTICE AND PROPAGATION OF RELIGION.

<sup>17</sup> ARTICLE 26 STATES FREEDOM TO MANAGE RELIGIOUS AFFAIRS.

<sup>18</sup> ARTICLE 27 STATES FREEDOM AS TO PAYMENT OF TAXES FOR PROMOTION OF ANY PARTICULAR RELIGION.

<sup>19</sup> ARTICLE 28 STATES FREEDOM AS TO ATTENDANCE AT RELIGIOUS INSTRUCTION OR RELIGIOUS WORSHIP IN CERTAIN EDUCATIONAL INSTITUTIONS.

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### Other arguments advanced

Following are the views of the Muslim Community for opposing the implementation of the Uniform Civil Code.<sup>20</sup>

- Uniform Civil Code opposes Shariat.
- Uniform Civil Code opposes Koran and Muslim laws cannot be changed.
- To keep it optional for the Muslims to adopt Uniform Civil Code.
- Uniform Civil Code extinguishes the identity of a Muslim.

Arguments advanced by other religious community says that just after the commencement of the Constitution and codifying their personal laws ignored various customs and practices which were sacred to them and further implementing a common code will just be a compromise with their existing customs and practices.

Another relevant argument is that the Constitution itself protects religious, social practices, customs of tribals, and people belonging to the State of Nagaland, Mizoram under Article 371-A<sup>21</sup>, 371-G<sup>22</sup>. Implementing a common or uniform code will be a breach of trust with the people of Nagaland and Mizoram.

Another argument laid down by Prof.Faizan Mustafa, who is an eminent lecturer and currently, Vice-Chancellor of NALSAR University of Law is the subject of personal law is laid down under entry number 5<sup>23</sup> of List-III which is Concurrent List. According to Prof. Faizan Mustafa “to preserve legal diversity personal law has been added under this list which gives both Centre and State to make laws upon it.”<sup>24</sup>

These arguments certainly cannot be ignored and the State must use the application of mind and provide some reasonable justification to the arguments placed.

### IV. Alternative of Uniform Civil Code

If the State is of the opinion that implementing UCC will not be a success then the other which

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<sup>20</sup> DD BASU: COMMENTARY ON THE CONSTITUTION OF INDIA, 9TH ED, VOL 7, ARTICLES 36 – 79.

<sup>21</sup> ARTICLE 371-A STATE SPECIAL PROVISION WITH RESPECT TO THE STATE OF NAGALAND. INSERTED BY THE CONSTITUTION (THIRTEENTH AMENDMENT) ACT, 1962.

<sup>22</sup> ARTICLE 371-G STATE SPECIAL PROVISION WITH RESPECT TO THE STATE OF MIZORAM. INSERTED BY THE CONSTITUTION (FIFTY-THIRD AMENDMENT) ACT, 1986.

<sup>23</sup> LIST 5 STATE MARRIAGE AND DIVORCE; INFANTS AND MINORS; ADOPTION; WILLS, INTESTACY, AND SUCCESSION; JOINT FAMILY AND PARTITION; ALL MATTERS IN RESPECT OF WHICH PARTIES IN JUDICIAL PROCEEDINGS WERE IMMEDIATELY BEFORE THE COMMENCEMENT OF THIS CONSTITUTION SUBJECT TO THEIR PERSONAL LAW.

<sup>24</sup> THE INDIAN EXPRESS, [HTTPS://INDIANEXPRESS.COM/ARTICLE/EXPLAINED/EXPERT-EXPLAINS-ISSUES-IN-UNIFORM-CIVIL-CODE-7771828//](https://indianexpress.com/article/explained/expert-explains-issues-in-uniform-civil-code-7771828/) (LAST VISITED FEB 19, 2022).

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remains with the State is “Reformation of Personal Laws”. The reformation of various personal laws is the way forward to bring positive changes and curb gender inequalities. It is recommended for the State to not generalise the personal laws but to bring reform in different personal laws which are not in conformity with Part-III of the Constitution.

Hindu Law Reforms Committee which was set up in the year of 1941 suggested many reforms and based on the suggestions the Parliament later enacted the Laws. Similarly, the State must constitute various committees that will ascertain various factors relating to personal laws and suggest reforms within the respective personal laws so that Parliament can act according to such suggestions. This will ensure stability in the country and will serve the purpose.

Secondly, Judicial activism must increase in the matters of personal laws as we have seen that Judiciary has always been a flag bearer for reformation by giving some landmark judgments. Some notable judgments are Vineeta Sharma v. Rakesh Sharma<sup>25</sup>, the effect of this judgment was of so much importance that the Hindu Succession (Amendment) Act, 2005 had to be given a retrospective effect. This Judgement gave the daughter the same right as a son in the coparcenary property irrespective of the father being alive before the Amendment.

Mohd. Ahmed Khan v. Shah Bano Begum<sup>26</sup>, In this landmark case the Supreme Court said that a Muslim husband is liable to pay maintenance to his divorced wife during and after the Iddat period also and Section 125 of the Code of Criminal Procedure, 1973 is a secular provision.

Sarla Mudgal v. Union of India<sup>27</sup>, In this case, the Court held that a Hindu husband doing a second marriage after converting to Islam and without dissolving the earlier marriage is void.

Shayara Bano v. Union of India<sup>28</sup>, this case is commonly known as the triple talaq case. In this historical Judgement, the Supreme Court held the practice of triple talaq unconstitutional and declared it as a social evil.

### Conclusion-

India is a sensitive country when it comes to the matter of religion and when we say about implementing Uniform Civil Code then it requires a lot of analysis for its implementation. Many say that India is not yet ready for such code but it cannot be ignored forever. Thus, to serve the purpose of the UCC other ways can be chalked out such as reforming the personal laws by forming committees and taking its suggestions and implementing the same. The

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<sup>25</sup> (2020) AIR 3717 (SC)

<sup>26</sup> AIR 1985 SC 945, 954: (1985) 2 SCC 556.

<sup>27</sup> AIR 1995 SC 1531, 1538: (1995) 3 SCC 635.

<sup>28</sup> AIR 2017 9 SCC 1 (SC)

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Judiciary must also keep it active in matters of personal laws so that three pillars of democracy i.e., Legislative, Executive, and Judiciary can work together to bring reforms in the areas of personal laws.



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