

# BURNISHED LAW JOURNAL

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## UNIFORM CIVIL CODE: AN INDIAN DEMAND

### INTRODUCTION

I personally do not understand why religion should be given this vast, expensive jurisdiction so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, and what are we having this liberty in order to reform our social system, which is so full of inequities, discrimination and other things, which conflict with our fundamental right.

-Dr. B.R. Ambedkar<sup>1</sup>

The human right of the Indian women vested in their personal laws like Hindu law and Muslim law for example marriage, divorce and property. Personal laws play a vital role in establishing the human rights of the women's in the society.

Uniform civil code is a code applicable equally regardless of the race, colour, caste and religion. By enacted uniform civil code we can protect Art. 14 of the constitution of India from the violation. Article 14 of the Indian constitution talks about the equality and we can achieve the equality by applying Uniform civil code throughout the India.

Application of the uniform civil code means that single law will apply to all the citizens of the Indian regardless of their religion, race. Caste, colour.

### ARTICLE 14 OF CONSTITUTION OF INDIA- EQUITY BEFORE LAW

*The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*<sup>2</sup>

Uniform Civil Code (UCC) is the manifestation of contemporary progressive nation, which shows that the nation has been elevated from religion, race, caste, and sex and birth discrimination. UCC entreats to replace the personal laws based on customs of each religion with a common set governing each citizen. Such laws address four broad areas: Marriage, Divorce, and Maintenance & Succession<sup>3</sup>.

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<sup>2</sup>INDIA CONST.art.14

<sup>3</sup>Tanushree, Uniform civil code in India: An analysis, JCIL, 1, 2016, <http://jil.lsyndicate.com/wp-content/uploads/2016/11/Tanushree.pdf>

In 1976, the word secularism and socialism added to the Preamble of India. So, we can establish uniform civil code in the society for giving the meaning to “SECULARISM”.

By the application of the uniform civil code we can protect human right and fundamental rights of the woman's. we can give the equal status to the women as well.

### **HISTORY OF THE UNIFORM CIVIL CODE-**

It is believed that at the time of the framing of the Constitution of India several debates were going on the burning topic of the uniform civil code. in the constituent assembly some members were in favour of implementing uniform civil code but some are opposing for that implementation.

Even after debating for a long time there was no outcome. So that the framers of the constitution came up with the conclusion that they placed the uniform civil code in the Directive Principles of the State Policy so that whenever there is a need then the uniform civil code can be applicable as a law.

Later on, first 10 year of Independence government of India has passed the Hindu Code Bill even when the Hindus were against that bill but they amend the Hindu Personal laws.

Govt were trying to amend the Muslim law as well and also wants to abolish the triple talaq because triple talaq violates the fundamental and human right of the women as we can see in the case of Shah Bano case.

But the govt. thinks that they were not still recovered from the trauma of the partition of India and Pakistan.

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As per the Author's point of view this was the biggest mistake of the govt. that they do not made the amendment the Muslim Personal law. I think if the amendment was made that time then we can save many women who are the victim of the triple talaq.

### **SUPPORTERS OF UNIFORM CIVIL CODE**

We can proudly say that the BJP government is a supporter of the uniform civil code because by the virtue of the uniform civil code we can protect the fundamental right and the human right of the women which are being violating by the certain provisions of the personal laws but if govt take the steps for removing that law or trying to implement uniform civil code then the leaders manipulate the intention behind this step and make this a controversial aspect.

### **WHAT IS THE GOVERNMENT THINKING?**

Sadanand Gowda the union law minister recently said in his interview that sometimes the personal laws bring some ambiguity in providing the justice and the motive of providing equal status is not being fulfilled.

And it is true that only the uniform civil code is capable to remove that ambiguity and the motive of the government which is security and the human rights will be fulfilled.

Our union law minister also talks about that emotions which were attached with the personal laws. But it is also taken into consideration for the sack of emotions we cannot ignore the thing that somehow some of the provision of the personal laws are infringing the human rights of the women. And the infringement of the human rights can be tolerated at any cost. so, we should take some steps to improve this ambiguity from the laws and simultaneously human rights also being protected.

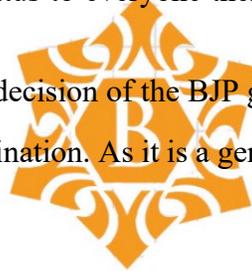
### **TRIPLE TALAO :A CURSE**

Triple talaq is a practice in Muslim law in which Muslim man can divorce to his wife by the pronouncement of talaq 3 times.

Now from the Author's point of view it is a clear exploitation of the women because article 14 of Indian constitution has given equal status to everyone then why this tortured is being done with women.

Abolishment of triple talaq is the best decision of the BJP government.

Triple talaq is the clear gender discrimination. As it is a gender discrimination it also infringes the fundamental rights of the victim.



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### **NEED OF THE UCC IN THE SOCIETY-**

As we want to make the based on the principle of Equity, Justice and Good Conscience then it is very important to have UCC.

As we can see the legislation framed by the Britishers are beyond the religious emotions rather they are based on the equity justice and good conscience.

From the perspective of the author's the family law should also based principle of the equity justice and good conscience.

The British found these civil issues to be beyond the purview of faith, and therefore should rule such civil laws by clear religious principles. The transition of power in our nation from the colonizers to the colonized was marred by the high tensions in the society. In the minds of the constitution makers was the preservation of the social unity which was disrupted to a very great extent. Article 35 of India's draft Constitution was added to Article 44 of the Guideline Principles of State Policy in Section IV of India's Constitution. It was introduced as an feature in the Constitution that would be fulfilled when the nation was ready to recognize it and the social recognition of the UCC could be made. However, after 72 years of our Constitution being adopted,

UCC remains a constitutional dream that needs to be fulfilled. The judiciary has reminded the legislature time and again of the need for a UCC through its numerous judgments.<sup>4</sup>

### UCC : GENDER JUSTICE<sup>5</sup>

Education of women in the major areas such as social status, gender inequality, health, protection and education are of urgent need. While the Indian state has promoted the codification of traditional tribal laws. Article 44 requires the State to provide for a Uniform Civil Code for all Indian residents. India does not have a Uniform Civil Code but there is a Uniform Criminal Code. The Criminal Law extends fairly to all residents, irrespective of their religious affiliation. However, in the case of civil law, there is no uniformity especially in the matter of personal rules. In **Mohammad Ahmed Khan v. Shah Bano Begum**, Popularly known as the case of Shah Bano, the Supreme Court held that "It is also a matter of regret that Article 44 of our Constitution remains a dead document." While this decision was widely criticized by Muslim Fundamentalists, it was still considered a moderate reading of the law as demanded by gender justice. , In **Ahmadabad Women's Action Group (AWAG) v. Union of India**, A PIL has been published in Hindu, Muslim and Christian legislative and non-statutory legislation opposing gender biased provisions. This time, the Supreme Court was a little careful and held that the issue of removing gender discrimination in personal laws "involves aspects of state policy that the court would not usually be concerned with." The decision was criticized for having effectively abdicated the apex court's position as a sentinel in protecting the values of equality regarding gender-related issues of personal laws of various Indian communities.<sup>6</sup>

### UCC AND JUDICIARY

The Indian judiciary interpret the uniform civil code very effectively whenever there is a need of the such interpretation. Firstly, it is interpreted in the case of **Mohd. Amhed Khan v. Shah Bano Begum** further in the case of **Ms. Jordan Deigndeh v. S.S. Chopra**.

The Supreme Court held that Section 125 Cr.PC Mohd Ahmed Khan vs. Shah Bano Begum<sup>10</sup> relating to a Muslim husband's duty to maintain his divorced wife beyond iddat time, who is unable to support herself. P. C which imposes this duty on all married couples is of a secular nature and extends to all religions.<sup>7</sup>

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<sup>4</sup> Tanushree, Uniform civil code in India: An analysis, JCIL, 8, 2016, <http://jcil.lsyndicate.com/wp-content/uploads/2016/11/Tanushree.pdf>

<sup>5</sup> Tanushree, Uniform civil code in India: An analysis, JCIL, 8, 2016, <http://jcil.lsyndicate.com/wp-content/uploads/2016/11/Tanushree.pdf>

<sup>6</sup> Tanushree, Uniform civil code in India: An analysis, JCIL, 8, 2016, <http://jcil.lsyndicate.com/wp-content/uploads/2016/11/Tanushree.pdf>

<sup>7</sup> Tanushree, Uniform civil code in India: An analysis, JCIL, 8, 2016, <http://jcil.lsyndicate.com/wp-content/uploads/2016/11/Tanushree.pdf>

In Jordan Deigndeh against the S.S. Chopra, Reddy D Chinappa, J. Writing for the court referred to Chandrachud's findings, C.J. In the case of Shah Bano, and noted as follows: "The present case is yet another occurrence centered on the urgent and compulsive need for a uniform civil code."<sup>8</sup>

For Ms. Zohra Khaton v. Mohd. Ibrahim, A substantial question of law was raised by the High Court of Allahabad, which revoked the orders of the Magistrate's maintenance allowance on the grounds that the divorced proceedings started with the dissolution of the Muslim Marriage Act 1939 from the female side, In these cases, wife can not demand protection from her former husband under either Muslim law or Sec. 125 of the Cr. P.C .. Finally, the Supreme Court overruled the High Court's judgment on the ground that it was based on the misinterpretation of Clause 1(b) of the clarification under this provision to section 125 that the wife remained a wife even though she was separated from her husband or has otherwise obtained divorce and has not remarried<sup>9</sup>

## CONCLUSION

From the above research we can conclude that the application of uniform civil code is very important now a days because the application of the laws based on the Equity, Justice and Good Conscience. Because some of the rules of the personal laws which deals with Marriage, Divorce and Succession are based on the religious emotions and due to this there are some loop holes present in the personal laws.

For removing this absurdity, we need to opt uniform civil code in the society so this will help in doing fare treatment with of the people if the society. And the equality which guaranteed by the constitution of India. Will be achieved.

From the point of view to the author it is necessary to make one law for nation it is basic need now to protect the human right of the women and it is an only solution for removing of that absurdities.

As we can say that the people are now every Indian demands the application of the uniform civil code as it is only solution is there to protect them.

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<sup>8</sup> Tanushree, Uniform civil code in India: An analysis, JCIL, 8, 2016, <http://jil.isyndicate.com/wp-content/uploads/2016/11/Tanushree.pdf>

<sup>9</sup>Tanushree, Uniform civil code in India: An analysis, JCIL, 8, 2016, <http://jil.isyndicate.com/wp-content/uploads/2016/11/Tanushree.pdf>