

## Legal Analysis of Uniform Civil Code in India

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### Abstract

**“A people and their religion must be judged on by social standards based on social ethics. No other standard have any meaning if religion is held to be necessary good for the well- being of the people”---- Dr. B.R.Ambedkar**

In India it is debatable issue on to implement the uniform civil code. As the Constitution of India is the law of the land and basic document of India. The validity of all legislation is checked with the Constitution. The constitution of India emphasizes on Uniform civil code. The meaning of the uniform civil code is to apply common civil laws to entire society without any discrimination on the ground of race, religion, caste, sex, etc. Constitution maker sowed seed of Uniform civil code under Art. 44 of the Constitution of India. It comes under directive principle of state policy part IVth of the Constitution. Generally, we are saying that Directive principles of state policies are not enforceable by law but it doesn't mean that these are not valuable. These principles are supplementary and complimentary with fundamental rights. Therefore the researcher has tried to analysis of UCC, hurdles of implementation, efforts taken by the Judiciary, Legislature on uniform civil code and in India. Researcher has also tried to highlights International Conventions on protection of human rights.

**KEYWORDS:** Uniform Civil Code, Constitution, rights, India, Religion, discrimination, Preamble.

### Introduction:

The preamble of the Constitution of India states that The India is a secular<sup>1</sup> country. It means that the state has no religion or equal treatment to all religion. Freedom of religion is fundamental right guaranteed under Article 25 to 28 of the Constitution. It means that freedom of religion is fundamental right of every citizen and it should be protected by the state. The idea of Uniform civil code is relevant to the right to religion. Uniform civil code proposes to administer the same set of secular civil laws to govern all people irrespective of their caste and religion. The object behind uniform civil code is to apply uniformity in the civil laws without any discrimination on the ground of religion. The common areas covered through Uniform Civil Code are laws relating to marriage, divorce, adoption succession etc. Therefore this is debatable issue relating to the personal laws and personal matters in India.

The India is Secular country, and the people who residing in India having freedom of religion and minorities also protected under the constitution of India. Therefore in India many family laws are available and applicable to the religion. The Christians having their Christians Marriage Act 1872, Hindus having their Hindu marriage Act,

1955, the Indian Divorce Act, 1869 and the Indian Succession Act, 1925. The Jews have their uncodified customary marriage law, the Parsis having their own Parsi Marriage and Divorce Act, 1936, and separate law of inheritance contained in the Succession Act. Hindus and Muslims have their own separate laws from the rest of the Succession Act. Hindus and Muslims have their own separate persona laws.

These separate legislation shows that there is no uniformity in the civil laws in India. Therefore it is difficult to implement the UCC in India. All these religions follow their own principles of their personal law and hence it is difficult to them to adopt new changes in their personal law.

The basic aim of the Uniform civil code is to achieve uniformity in the civil laws in India, maintain equality and prohibit discrimination then only the object of Article will fulfill. The UCC also will helpful to maintain unity and integrity of nation. Mostly some issues come before the court of law relating to Muslims with reference to marriage, divorce, maintenance, succession.

- **Objectives of Research paper:** Following are objectives framed by the researcher-
  - a. To discuss the meaning and nature the Uniform Civil Code.
  - b. To examine objectives of the Uniform Civil Code.
  - c. To find out the barriers on implementation of Uniform Civil Code in India.
  - d. To highlight the religious issues on Uniform Civil Code in India.
  - e. To find out the judicial contribution on Uniform Civil Code in India.
  - f. To highlight efforts taken by the Government on Uniform Civil Code in India.

- **Research Methodology:**

While writing this article the researcher has collected data from books of the imminent authors, Law Journals, articles. Therefore the researcher has adopted doctrinal method and collected second hand data from above mentioned sources. Hence the doctrinal method is suitable for second hand data.

- **Meaning and need of Uniform Civil Code:**

The term civil code is used to cover the entire body of laws governing rights relating to property and otherwise in personal matters like marriage, divorce, maintenance, adoption and inheritance. The demand for a uniform civil code essentially means unifying all these personal laws to have one set of secular laws dealing with these aspects that will apply to all citizens of India irrespective of the community they belong to. Though the exact contours of such a uniform code have not been spelt out, it should presumably incorporate the most modern and progressive aspects of all existing personal laws while discarding those which are retrograde.

**Objectives behind Uniform Civil Code in India:**

The Constitution makers inserted this article under the directive principle of state policy<sup>2</sup>. At that time they thought that, it will be need of the society in future to maintain and apply uniformity in civil laws for all citizens in India. Following are main objectives of uniform civil code

- To prevent discrimination in matters of marriage, divorce, inheritance etc.
- To maintain uniformity in the civil laws.
- To provide gender justice.
- To prevent violence and exploitation against women.
- To settle ambiguity in various personal laws.

- To bridge the gap between the personal laws.
- To provide equal justice to all without any discrimination on any ground.
- **Barriers for implementation of Uniform civil code in India:**

Following are important factors which creates hurdles to implement the principle of uniform civil code in India as-

- India is largest democratic country in the world.
- India is secular country it means that India is not connected with religious or spiritual matter.
- Freedom of religion is fundamental right in India
- India having cultural influence and a fast growing and powerful economy.
- Gender Inequality is one of the reason of implementation of UCC in India.
- India has adopted federal political system it means that powers have been distributed between the central government and the state governments.
- In India many languages, race, caste, cultures and religions therefore in India unity and diversity plays vital role.
- In India, customary practices prevail over laws.
- In India Personal laws plays significant role in India while deciding issues before the court of Law.

#### **Efforts taken by the Indian Government on UCC:**

In India the applicability of uniform civil code is difficult due to the above mentioned reasons but still in India few initiatives has been taken by the Indian Government as under-

- **Special Marriage Act, 1954 :**

This Act provides protection to the parties who are performing marriage under this Act. This Act is applicable to parties of different religion and performing marriage, condition of marriage, divorce, registration etc. This act is enacted with objectives to provide protection, safety and recognizing inter-caste and inter religion marriages. The act also provides certain requirements given in section 4 of the Act<sup>3</sup> which are similar to that of the requirements given under section 5 of Hindu Marriage Act. Any marriage which fails to comply with these requirements will become void. It means that the special marriage Act specifies essential condition for marriage otherwise the marriage would be treated as void like Hindu Marriage Act.

- **Hindu Minority and Guardianship Act, 1956:**

Under this Act, father is natural guardian of a Hindu child. However, as per the act if the child is born out of wedlock, the mother is the natural guardian. This provision was struck down by the Supreme Court and it was held that the father cannot have a preferential right over a mother in matters of guardianship.<sup>4</sup> In this way the conflict may arise between civil law and religious Law regarding guardianship in India.

- **Law on Maintenance to wife:**

Section 125 of Cr.P.C provides maintenance to wife. This section is applicable to all the women irrespective of their religion. The main objective behind this section is to provide maintenance to needy women after divorce. This section is applicable to all women including Muslim women also. Though there is controversy with Muslim Personal but still it is prevailing in India.

In India first time the Judiciary directed to government to apply Uniform Civil Code In Mohammed Ahmed Khan Vs. Shah Bano Begam<sup>5</sup>, wife of Ahmed Khan, filed petition under Section 125 of Cr.P.C for maintenance. While deciding this issue, the Hon'ble Supreme Court held that Muslim women are entitled to claim to maintenance under section in 125 Cr.P.C as this is a secular provision and the benefit is available to every citizen irrespective of their caste or religion etc. It was further held that although the Muslim law limits the husband's liability to provide for maintenance of divorced wife to the period of Iddat, it does not contemplate or countenance the situation envisaged by section 125 of the code of criminal procedure. The court held that it would be incorrect and unjust to extend the above principle of Muslim law to case in which the divorced wife is unable to maintain herself.

#### **Law on Marriage:**

While talking about uniform civil code of or law of marriage or uniformity in Hindu Law and Muslim, many Muslim women in India have been discriminated. On the one hand, Muslim personal law imposes certain restrictions on the enjoyment of rights of women and on another side some fundamental rights speaks about no discrimination on any ground<sup>6</sup>, equality before law and equal protection of law<sup>7</sup> etc. The application of Muslim personal law in the matters of marriage, divorce, maintenance, inheritance and the like, Muslim women are deprived from enjoyment of rights. Therefore Gender justice cannot be achieved through personal laws, especially in the case of Muslim women. Hence there is conflict between Hindu law and Muslim Law. Muslim personal law is not protecting rights of the Muslim Women it means that there is exploitation of Muslim women on above mentioned grounds. Muslim male can perform four marriages without dissolution of previous marriage but women have been restricted from doing this by personal law.

This is the second instance where the Supreme Court has directed to apply UCC in Sarla mudgal Vs. Union of India and others<sup>8</sup>. In this case the husband has converted in Islam Religion and performed second marriage without dissolving the first marriage. Therefore following issues were raised before the court as

#### **1. Whether a Hindu husband, married under Hindu law, by embracing Islam, solemnize a second marriage?**

While resolving this issue the court clarified that, as per the Hindu Personal Law which was existed prior to its codification in 1955, a Hindu marriage presumed to continue even after one of the spouses converted to Islam religion. There was no automatic dissolution of the marriage.

Whereas if marriage is performed under Hindu Law, the parties having certain rights and obligations against each other. If one of the parties has dissolved the marriage by adopting and enforcing a new personal law even then the other spouse continues to be Hindu. In this case court further observed that the second marriage performed by husband is violation of the natural justice principle as justice, equity and good conscience. It means that the Hindu Husband has right to convert Muslim religion but he has no right to perform second marriage without dissolution of first marriage and it is violation of natural justice principles. Hence the nature of second marriage would be void.

**2. Whether the second marriage without dissolving first marriage under the law, would be a valid marriage qua the first wife who continued to be a Hindu?**

While discussing this issue the court held that, the modern Hindu Law strictly enforces monogamy. Under the Hindu Law marriage is sacrament and hence it cannot be dissolved except on the grounds available under section 13 of the Act<sup>9</sup>. In that situation parties who have solemnised the marriage under the Act remain married even when the husband embraces Islam in pursuit of other wife. The second marriage would be treated as illegal marriage qua his wife who married him under the Act and continues to be Hindu.

**3. Whether the husband is guilty of the offence of Section 494 of the IPC?**

Bigamy is an offence under the IPC in India. For such second marriage punishment is also provided under the IPC. This section states that, "Marrying again during lifetime of husband or wife. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."<sup>10</sup>

This section clearly speaks about the punishment for bigamy or second marriage. Any person who is performing second marriage without dissolution of second marriage, shall be liable with imprisonment extend to seven years and fine.

The nature of second marriage would be treated as void.<sup>11</sup> The expression 'void' for the purpose of the Act has been defined under Section 11 of the Act. It has a limited meaning within the scope of the definition under the section. On the other hand the same expression has a different purpose under Section 494 IPC and has to be given meaningful interpretation. The expression 'void' under Section 494 IPC has been used in the wider sense. A marriage which is in violation of any provisions of law would be void in terms of the expression used under Section 494 IPC. A Hindu marriage solemnized under the Act can only be dissolved on any of the grounds specified under the Act.

The Supreme Court held that the second marriage of a Hindu- husband after conversion to Islam, the second marriage would be void in terms of the provisions of Section 494 IPC and husband would be guilty of the offence under Section 494 IPC.

• **Indian Succession Act:**

In John Vallamattom v. Union of India<sup>12</sup> in this case the Christian Priest raised issue on Constitutional validity of Section 118 of the Indian Succession Act. He filed writ petition in 1997 on the ground that, section 118 of the said Act was discriminatory against the Christians because it imposing unreasonable restrictions on their donation of property for religious or charitable purpose by will. . Therefore the Supreme Court struck down this and stated that it is unconstitutional.

In this case C.J. Khare stated that, "We would like to State that Article 44 provides that the State shall endeavour to secure for all citizens a uniform civil code throughout the territory of India It is a matter of great regrets that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a

common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies<sup>13</sup>"

Thus, on the basis of above decisions it is clear that the apex court has on several instances directed the government for implementation of UCC.

- **Laws on Divorce in India:**

In India it is difficult to apply uniformity on law of divorce. As per the Muslim personal law triple talaq is valid even if the husband says talaq three times on the phone or in a letter. This right is available to only Muslim male and not female. The basis of triple talaq is in the Sharia Law. Under Muslim personal law woman also gives the right to divorce to her husband in the form of khula (a wife separating from her husband after returning a payment). However, khula and talaq cannot be equated because a woman can only seek khula from her husband at the cost of returning her mehr (dower) to him. However, the Quran does not mention triple talaq as a method for divorce. According to the Quran, the correct way to get a divorce is to pronounce it three times on three different occasions, following a three-month waiting period wherein there is ample opportunity for the couple to reconcile. Another method the Quran prescribes for talaq is to pronounce it during two successive periods of purity (tuhr), during which the talaq remains revocable. If the talaq is not revoked and is pronounced a third time, it becomes irrevocable.

As per the Hindu marriage Act, 1955 grounds of divorce have been mentioned. These grounds are available to both parties for divorce. These grounds are legally valid without any discrimination. As per the Christian law some grounds of divorce has been prescribed by the law.

This conflict recently cleared by the Supreme Court of India in Shayara Bano Vs. Union of India and others<sup>14</sup>. This is one of the historic judgments on triple talaq. The judgment is delivered by five-judge bench of the Supreme Court declaring that the practice of unilateral divorce (by husband) it is also known as triple talaq or talaq-e-biddat is unconstitutional because it violates fundamental rights under Art. 14, 15 and 21 of the Constitution of India. Triple taalq is based on gender discrimination and violation of fundamental rights of equality.

The Supreme Court has consulted and cited the laws of as many as 19 countries including Egypt, Pakistan, Turkey and other nation-states from the Arab peninsula, South-East Asia, and South Asia that have abolished triple talaq. Arab countries such as United Arab Emirates, Egypt, Kuwait, Algeria, Iraq, Jordan, Lebanon, Libya, Morocco, Sudan, Syria, Tunisia and Yemen have enacted laws against the practice of triple talaq.

- **Halala Under Muslim Law:**

Halala is the procedure prescribed for remarrying a divorced spouse in the Muslim Law. It entails the (former) wife marrying another man, consummating the marriage and subsequently getting a divorce using the same elaborate procedure. Only after that is she eligible to marry her first husband again. While Muslim scholars rightly argue that halala should not be seen as a procedure to legalise the reunion, problems regarding the validity of a marriage arise in case a husband remarries his wife without observing halala.

Sabah Adnan Sami Khan Vs Adnan Sami Khan<sup>15</sup> in this case the issue came before the Bombay high court relating to validity of singer Adnan Sami challenged the validity of his marriage. He married with his wife in 2001, divorced her in 2004 and then remarried her in 2007. Since halala was not performed by the parties, therefore the family court held the second marriage to be invalid. The court also held that, halala is mandatory only if the couple divorced using triple talaq.

On the basis of above discussion we can say that now there is needed to incorporate UCC and to do away with the practice of halala, which violates the basic rights and dignity of Muslim woman.

- **Constitutional validity of Muslim Women (Protection of Rights on Divorce) Act, 1986:**

Daniel Latifi & other vs. Union of India<sup>16</sup> in this case, the constitutional validity of Muslim Women (Protection of Rights on Divorce) Act, 1986 was challenged. It was held by the Hon'ble Supreme Court that clause (1-a) of section 3 does not limit the duty of the husband to pay maintenance only for the period of iddat rather the duty is to make the necessary arrangements within the iddat period but the arrangements has to be made for the entire life of the wife until she gets remarried. It was also observed that clause (I-a) requires the husband to make necessary provisions for the wife which means provisions like her shelter and the similar means where as it also requires the payment of maintenance which implies payment of Money. In this Case it was also emphasized that the Act of 1986 is only available to the divorced woman and therefore a woman who is still having a subsisting marriage cannot file an application under the Act. She has to file it either under the personal law or the Cr.P.C

**International conventions on Uniform Civil Code:**

As we know that UCC is mentioned under article 44<sup>17</sup> of the Constitution of India. Under International law, a state that ratifies an international instrument becomes legally bound to implement its provisions. Accordingly India has ratified the International Covenant on Civil and Political Rights, 1966, and International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, is bound to enforce the relevant provisions and ensure gender equality under its national laws. However, women in India under Hindu, Muslim and Christian laws continue to suffer discrimination and inequalities in the matter of marriage, succession, divorce and inheritance.

**Argument infavour of Uniform Civil Code:**

- Uniform Civil Code will promote Gender equality and prevents gender bias it is for welfare of women.
- Uniform Civil Code helps to promote justice, equity and good conscience as principle of natural justice.
- Uniform Civil Code tries to maintain religious equality amongst the Indians. Personal Laws violates the principle and right of equality under the Constitution because by having different personal laws prevailing in India. But UCC can promote equality and justice by incorporating similar laws for all citizens.

- Uniform Civil Code controls religious interference in the legal matters which maintains equality and protects rights of women without any discrimination.
- The paramount objective of Uniform Civil Code is to maintain unity and integrity of Nation.
- In India, secular laws like Special Marriage Act 1954, already exists. This Act governs members of all the religions including Hindu, Muslim, Parsi, Christian, etc. it is acceptable among all the citizens of India.
- Uniform Civil Code helpful to implement common principles of civil laws without discrimination on the ground of religion in India.
- It has been rightly pointed that UCC will not violate Article 25 and 26 and it will help in attaining secularism and Article 44. Further, it can be argued that marriage, succession etc. are secular matters and law can regulate them. Article 25 of the Constitution of India gives power to state to interfere in matters of religion. So, the state can enact provisions for welfare of religious entities and we can argue that UCC is welfare legislation because it will remove the inherent injustice and loopholes of Personal Law System.
- The Uniform Civil Code will promote monogamy among all the citizen of India including Muslim and it will lead to betterment in the position of women.
- Uniform Civil Code will also remove prejudices against women regarding personal laws on divorce and maintenance.

#### **Sum Up:**

The objective of article 44 is to maintain unity and integrity of the Nation and to bring all communities into a common platform. It means that if in real sense the UCC is implemented then the goals of the Constitution maker will be achieved. Goa is the only state in India that has uniform civil code regardless of religion, gender, caste. Goa has a common family law. Thus Goa is the only Indian state that has a uniform civil code. In Goa Hindu, Muslim, Christians all are bound with the same law related to marriage, divorce, succession. The Uniform Civil Code will promote justice, Gender equality and national integration. Uniform Civil Code can promote monogamy among all the citizen of India including Muslim and it will lead to betterment in the position of women and protection of rights of women. Now it is high time in India to incorporation UCC, it will be beneficial to all the religions without any discrimination.

#### **References:**

1. This word 'secular' has been inserted in the preamble through 42nd Amendment of the Constitution of **India** in 1976.
2. Conditions relating to solemnization of special marriages.
3. See Art. 44 of the Constitution of India
4. Ms. Githa Hariharan Vs. Reserve Bank of India AIR 1999, 2. SCC 228
5. 1985 SCR (3) 844
6. Art. 15 of the Constitution of India.
7. See Art. 14 of the Constitution of India.
8. (1995) 3 SCC 635
9. Section 13 of the Hindu Marriage Act, 1955 emphasis on Divorce. In this section some grounds of divorce has been mentioned.
10. See. Sec. 494 of the Indian Penal Code, 1860.
11. Section 11 of the Hindu Marriage Act, 1955 states that Nullity of marriage and divorce- Void marriages - Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either

party thereto, against the other party be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v), Section 5.

12. Writ petition No. 118 of 2016 and judgment has been delivered by the Supreme Court on 22-08-2017.
13. Writ Petition No.6625 Of 2010
14. Available at <https://www.lawteacher.net/free-law-essays/constitutional-law/article-44-of-the-constitution-of-india-constitutional-law-essay.php> accessed on 12-5-2017.
15. 2001 Cri.L.J. 4660
16. This article clearly states that, Uniform civil code for the citizens The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India

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