

SYNERGIES IN GENDER JUSTICE AND PERSONAL LAWS: NEED TO REGULATE AND REFORM VIA UNIFORM CIVIL CODE

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ABSTRACT –

Article 44 of the Indian Constitution establishes the Uniform Civil Code as a guiding principle. Its goal is to safeguard the most vulnerable members of society while simultaneously promoting patriotic sentiment and fairness. Gender equality has always been the key argument in favor of Uniform Civil Code's implementation. In terms of personal rights, it asserts that Uniform Civil Code will provide equal legislation for males and females. This premise is invalid in two ways. As-firstly, there is no clear idea of what the Uniform Civil Code should include. The second issue is that there's no guarantee that Uniform Civil Code's discriminate. If we think the Uniform Civil Code will lead to gender parity, there will always be potential part of a community which will not accept this legislation. This includes customs like child marriage and dowry, which are still widespread behind locked doors in our Indian society. Female equality is critical in aspects such as social standing, gender prejudice, healthcare, safety, and autonomy. The Indian legal system has recognized the discrimination against women in various aspects of personal law. It has expressed its concern through a series of judgements highlighting the need for consistency in all individuals' personal concerns. This article will bring forth the conflicts between the personal law and uniform law in our Indian society and argues that there is a need to bring forth uniform civil law but in consonance with the personal law which will help in the cause of a national integration as well upliftment of female gender in the society.

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INTRODUCTION

In a democratic nation like India, which has a long history of plurality, cannot function unless the universal spirit is respected. It is also worthy to state that the Western countries has developed Pluralism after the Second World War and hence they refer pluralism as a post-modernist phenomenon as it involves two or more groups in a society to co-exist. Modernization has led to various new issues as we have personated them in our culture, but we have failed to consider our difficult social strata which involves various groups of minorities. However, it was known in India even throughout the Middle Ages. Shabeer Ahmed defines civil code as “set of laws governing the civil matters of the citizens in the country relating to matters like marriage, divorce, adoption, custody of children, inheritance, succession to property etc.”.¹

Article 44, which the framers while making the constitution included in “Directive Principles of State Policy” underneath the Nation's foundational structure, does not bind the legislature to a binding duty that it shall be legislated by constitutional and statutory procedures. Furthermore, the language used to describe it appears to indicate a desire rather than a command. The lawmaker, on the other hand, is under no less of a responsibility to attain the article's utmost desirable purpose. These are no longer religion matters, but rather societal challenges that influence the population of humans and interpersonal connections².

Article 44's phrase 'uniform' suggests that all societies must be regulated by the principle of equality and Gender Justice principles. As a result, each personal legislation must be assessed from the standpoint of social and gender equality. Personal legislation will be modernized and humanized as a result. A “Uniform Civil Code” law would not absolutely be a common law, but rather a focus on Personal legislations founded on the same ideals of gender parity and personal rights.³

¹ Shabbeer Ahmed & Shabeer Ahmed, *Uniform Civil Code (Article 44 of the Constitution) A Dead Letter*, Vol. 67, No. 3 (JULY - SEPT., 2006) The Indian Journal of Political Science (2006), <https://www.jstor.org/stable/41856241>. (last visited Feb 7, 2022)

² *Ibid.*

³ S. P Sathe, *Uniform Civil Code: Implications of Supreme Court Intervention*, Vol. 30 Economic and Political Weekly (1995), <https://www.jstor.org/stable/4403156> (last visited Feb 7, 2022).

VIABILITY OF “UNIFORM CIVIL CODE”

As soon as the constitution went into effect, the necessity for a “Uniform Civil Code” became evident. This regulation could not be executed even after so many years of independence for causes that are well understood to those involved with this directive. The Uniform Code also attempts to address the individualistic and sometimes conservative elements of personal laws pertaining to minorities. As a result, bringing social transformation and elevating the status of women in our society is also a priority. In the interests of societal development and a single sense of justice for all, this “Uniform Civil Code” is highly desired as without a “Uniform Civil Code”, difficult, unreasonable, and unpleasant circumstances arise. The “Uniform Civil Code” if it is applied and legislated will be dealing with “Personal laws” of minority groups which are secular and promote equality and unity among individuals by giving them a set of “Personal Laws” that integrates basic humanist values.

Marriage is the basic cornerstone of civilization, according to the court. Once a relationship is established, the law takes over and binds the members to different roles and responsibilities. Majority of people are not interested in marriage as it is not considered as an entity. On the other hand, it is the institution's and, by extension, mankind's bedrock, and without it, no civilization can exist.⁴

As Hindu law only permits monogamy and Muslim law allows for up to four spouses in India, an unfaithful Hindu male could convert to Islam to avoid the laws of Hinduism and flee from penalties. The issue over this uniform code has taken an unusual path since it goes through three stages such as National Consolidation, Equity of Law, and Gender Equity⁵. Furthermore, if it is considered carefully, it appears that just two issues have been more concerning: first is National Consolidation and second is Gender Equity. The other concern, namely, legal equality is promoted on the basis of the previous two issues⁶. In other words, legal equality is the question of uniformity of code itself. These two issues are examined from the standpoint of equality existing in the religious groups, as equality is a multi-layered principle that functions at several levels.

⁴ Supra note 2.

⁵ Peter Ronald deSouza, Politics of the Uniform Civil Code in India 50(48) Economic and Political Weekly 51 (2015).

⁶ Shabbeer Ahmed & Shabeer Ahmed, *Uniform Civil Code (Article 44 of the Constitution) A Dead Letter*, Vol. 67, No. 3 (JULY - SEPT., 2006) The Indian Journal of Political Science (2006), <https://www.jstor.org/stable/41856241>. (last visited Feb 7, 2022).

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Flavia Agnes⁷ gives a satisfying remedy while considering the situation of Hindu women following the codification of Hindu personal laws in terms of the efficacy of the code for the issue of gender equity in personal laws. She claims that since independence, uniformity in laws has not yet functioned effectively and had detrimental ramifications for Hindu women's rights. Females must not be barred from the realm of rights, and a wide strategy is essential to ensure that a female does not lose their right to dignity due to the traditional concept of cultural customs. To overcome these cultural boundaries, females demand an accessible and affordable system of delivery of justice. This observation by Agnes depicts that equality in uniform laws is not much of aid to the female in uplifting them. Therefore, on the same rationale it can be assumed that it shall be the same for other sections of females belonging to different religions in our country.

INTERVENTION OF JUDICIARY IN PERSONAL LAWS OF DIFFERENT MINORITIES

*Sarla Mudgal's case*⁸ was a recent case in which a Hindu male embraced Islam because he wanted to marry another female which would result in second wife while the first one was still alive. The Apex Court of India was compelled to question into the Central government's actions in light of Article 44, which requires it to take efforts to establish a "Uniform Civil Code" for every citizen of our country. This has revived the debate on this issue. While a "Uniform Civil Code" is undoubtedly a desirable goal, the time and circumstance for the Supreme Court's interference was unsatisfactory. Furthermore, the justices' statements are likely to be misconstrued, conveying mixed messages to distinct audiences. They have the potential to encourage both majoritarian chauvinist and minority extremism. Justice Kuldeep Singh, one of the justices described that a "Uniform Civil Code" will improve National Consolidation and that religious groups or communities should forgo their belief in the two-nation concept⁹ in favour of a "Uniform civil code" Hindus were also said to have fully

⁷Flavia Agnes, *Liberating Hindu women*, Vol. 50 Economic and Political weekly (2015), <https://www.epw.in/journal/2015/10/commentary/liberating-hindu-women.html> (last visited Feb 7, 2022)

⁸ 1995 AIR 1531.

⁹ One of the major reasons of Partition of India in 1947 was that "Hindu" and "Muslim" Groups cannot co-exist in a single nation without differentiating and oppressing each other according to the Two nation Theory.

accepted modification in their "Personal laws" and made sacrifices for national consolidation. As a result, the learned judge urged the state to take efforts to create a "Uniform Civil Code".¹⁰

The Apex Court of India in the case of *Narasu Appa Mali*¹¹, dealt with the Validity of the "Bombay Prevention of Hindu Bigamous Marriages Act, 1946". The said Act aims to prevent a Hindu from bigamous marriages among Hindus in the state of Bombay indefinitely. The Act was disputed on the subject that it violates the fundamental rights i.e., 14,15 and 25 enshrined under our Indian constitution. It was contended that while Article 44 directs the province to safeguard for inhabitants a "Uniform Civil Code" all across India's borders, the State of Bombay has created prejudice between the groups belonging to Hindu and Muslims solely on the basis of their practice to religion and has established another Code of progressive change for Hindus from that which applies to Muslim people. Article 44 of the Constitution identifies distinctly separate personal laws, as it indicates that India will benefit from a "Uniform Civil Code" to all of its inhabitants, regardless of racial background, within a reasonable time frame. As a result, the "Hindu Bigamous Marriages Act" is an effort by the parliament to bring progressive change to a specific society that has its own personal legislation. Hindus and Muslims have opposing viewpoints on the concept of marriage. Whereas it is a sacrament for the first, it is an agreement for the other. That is also why the issue of marital divorce is approached differently by both the religions.

The Code of Criminal Procedure 1898 which is valid and applied on every citizen of our country without any bar from their religion, customs and Personal laws applicable to the community of the concerned individuals are the two main components and source of maintenance for female spouses in India. The above-mentioned ruling was pronounced by the Apex Court of India in the case of Shah Bano¹², a 60-year-old Bhopal Muslim lady, took it to court to demand compensation from her divorced spouse after "43 years" of being married. The Madhya Pradesh High Court announced the historic decision in her favor. Mohammad Khan, Shah Bano's former spouse, went to the supreme court of India and filed an appeal claiming that under Islamic laws, a former spouse is not obligated to give lifelong alimony for his ex-wife. Justice Y.V Chandrachud confirmed the decision of the Madhya Pradesh High Court and held that a female is entitled to compensation under section 125 Crpc. He described that section 125 aims to give a fast remedy to those individuals who are not in a position to

¹⁰ Supra note 3.

¹¹ State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84.

¹² Mohd. Ahmed Khan v. Shah Bano Begum, 1985 AIR 945.

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maintain themselves after divorce from his Spouse therefore the said law is applicable to every female irrespective of their religion. The criteria which determine the applicability of the act is that a person is unable to meet their survival needs due to the neglect by a person of sufficient means, therefore these provisions are preventive in essence and thus they are not limited by any personal law.

The Members of Islamic minority were outraged by the Judge's Ruling, and the Congress, which was in force at the moment, rushed to implement the "Muslim Women (Protection of Rights on Divorce) Act, 1986", under force from the Muslim conservatives. This legislation has been made with the intention of providing a relief and a safeguard to females belonging from a Muslim community who are subject to a divorce by their spouse or have won a decree against them. The "Muslim Women (Protection of Rights on Divorce) Act 1986", on the other hand, made Muslim women's lives much more difficult and gave no remedy. It excluded Muslim males from Section 125 of the Cr.P.C¹³. It was mentioned in the Act that the husband is obligated to provide his wife alimony during her Iddat term. Beyond that, her family and the state waqf board are responsible for her care. Those who regarded the law as a loss for Muslim women condemned it. First, it made females belonging to Muslim community defenseless and dependent on family; secondly, the Wakf Board's incompetence, mismanagement and corruption, made it hard to predict whether they would be willing to handle the responsibility of providing necessary support.¹⁴ Numerous Muslim groups have stepped forward to fight for Muslim female's rights inside wedlock in order to better protect their right to maintenance. The act triggered a major controversy on 'Muslim Personal laws and lead to engagement of local groups as well as various other organizations supporting the Muslim Women.

In another case of *Jordan Diengdeh v. S.S. Chopra*¹⁵ concerned the constitutionality of the 'Special Marriage Act', 'Parsi Marriage Act', 'Dissolution of Muslim Marriage Act' and 'Hindu Marriage Act' where the petitioner who belongs to Khasi tribe of Meghalaya and her husband is a Sikh, filed a divorce on the grounds mentioned in the Indian divorce Act. Justice Chinnappa held that a comparison of the above-mentioned provisions pertaining various personal laws shows that the law relating to "separation and nullity of marriage" are distanced from being "uniform" in nature. The court also referred to the decision given in the matter of

¹³ Code of Criminal Procedure 1908.

¹⁴ Qazi Sarah Rasheed & A.K. Sharma, *Muslim Women's Rights in India: Codified Personal Laws Needed*, Vol. 51 Economic and Political Weekly (2016), <https://www.jstor.org/stable/44003703>. (last visited Feb 7, 2022).

¹⁵ *Jordan Diengdeh v. S.S. Chopra*, 1985 SCR Supl. (1) 704.

“Shah Bano” and importance is placed upon “unsatisfactory state of affairs” with reference to absence of “Uniform Civil Code”. The court further described that there needs to be a fundamental revision of the existing marriage laws which shall be uniform in nature irrespective of the grounds of caste or religion. The court believes that the time has arrived for the parliament to step in and give a “Uniform Civil Code” for marriage and divorce, as well as a legal route out of the uncomfortable situations that spouses like the current ones have found themselves in¹⁶. The court in this case took the concern of “Uniform Civil Code” very serious and gave direction that a copy of the order “may be forwarded to the ministry of law and Justice for such actions as they deem fit to take” as the time during the “Shah Bano” matter was of a nature of communal tension and confrontations between the “Hindu” and “Muslim” groups.

In the year of 1994, the petitioners in *Maharshi Avadhesh v. Union of India*¹⁷ urged the Apex Court of India to examine the question of establishing a ‘Uniform Civil Code’ and to declare the Muslim Women Act¹⁸ illegal. This Writ Petition was completely dismissed, with the justification that these are all concerns for the parliament to decide. It is unknown why the court is unable to consider the Muslim Women act’s legality. When the court proclaimed itself unfit to adjudicate on matters pertaining to the “Uniform Civil Code”, the decision became a significant benchmark. It is, for instance, quoted in “*Ahmedabad Women Action Group case (1997)*”¹⁹, in which various female's rights activists petitioned the apex court of India to determine many sections of Muslim personal law to be unlawful. This intriguing case, in which many interest groups planned to fight deliberately in order to obtain a historic verdict but failed on the ground that the court cannot prescribe. Justice Sahai in his separate judgment stressed upon the necessity of having a “Uniform Civil Code” and said that the issue should be entrusted with the law commission of India which may consult with other minority commissions.

In 2002, the court decided on the legality of Christian personal law in *John Vallamattom*²⁰, which is considered a milestone ruling. Following previous hesitations, the court took a more assertive stance but also relying on old stereotypes. The ‘Uniform Civil Code’ is brought up again at the conclusion of the verdict, with ‘Sarla Mudgal’ arguing that religion and Personal laws have no vital relation in a civilized society. The legislature is being urged to intervene in the design of a “Uniform Civil Code” for the nation, as such a law would

¹⁶ *Ibid.*

¹⁷ *Maharshi Avadhesh v. Union of India*, (1994) Supp (1) SCC 713.

¹⁸ Muslim Women (Protection of Rights on Divorce) Act, 1986.

¹⁹ *Ahmedabad Women Action Group v. Union of India*, (1997) 3 SCC 573.

²⁰ *John Vallamattom & Anr v. Union of India*, (2003) 6 SCC 611.

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assist the process of 'national consolidation' by eradicating ideological conflicts. The court allowed the Writ and considered *Section 118* of the Indian Succession Act to be unreasonable, arbitrary, and discriminating, and so in contravention of Article 14 of the Constitution. On the one hand, the judge was bolder in this ruling than in previous decisions, where it merely ignored debating the legitimacy of personal law legislations. On the other side, the case's references to "national integration" and civilized society show communal undertones yet again.

Finally, the court has referenced Article 44 in two cases recently. The right to adopt and be adopted under the Juvenile Justice (Care and Protection of Children) Act, 2000 is considered in the matter of *M/S Shabnam Hashmi v. Union of India & Ors*²¹. This legislation is a minor step toward the purpose stated in Article 44, according to the court. While the court stated that personal views and beliefs of the religions should be respected, it also emphasized that the significance of secular legal solutions till the objective of a "Uniform Civil Code" is fulfilled²². In *Abc v. State*²³, on 6 July 2015 the court addressed the issue of a mother's guardianship over her kid who is born out of wedlock. In addition to promoting single mothers' rights, the court made generic comments on Personal law and the "Uniform Civil Code", indicating that India is a secular state, and it is a basic requirement that religions be distant from the law, and underlines that the Directive Principles envisage a "Uniform Civil Code".

GENDER JUSTICE AND THE BAN ON TRIPLE TALAQ

The Supreme court of India on 22nd August 2017, declared that Triple Talaq violates article 14 of the constitution and is unconstitutional in nature. The said judgement was declared in the case of *Shayara Bano vs Union of India*²⁴.

Marriage is referred in Muslim personal law as a dissoluble contract, with numerous means of dissolution of marriage for both spouses. Quran refers to dissolution of marriage in a limited extent, it is the scholars of Islam that has given clarity on the modes and under one of them is the Triple Talaq. This mode of dissolution of marriage refers to the pronouncement of the word "Talaq" in one sitting and is "effective" and "irrevocable". The legislation at hand is the "Muslim Personal Law (Shariat) Application Act" of 1937. There have been many incidents

²¹ *M/S Shabnam Hashmi v. Union of India & Ors.*(2014) 4 SCC 1.

²² Tanja Herklotz, *Dead Letters? The Uniform Civil Code through the Eyes of the Indian Women's Movement and the Indian Supreme Court*, Vol. 49 *Nomos Verlagsgesellschaft mbH* (2016) (Feb 8, 2022), <https://www.jstor.org/stable/2616007>.

²³ *Abc v. State*, 2015 10 SCC 1.

²⁴ *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

where the female spouse has been divorced over social media handles like whatsapp, Facebook or Skype²⁵. This form of Talaq is only recognized by Hanafi School of Sunni Muslims while other schools of Muslim personal law doesn't accept it and it has been prohibited in 22 Islamic countries including Pakistan.

The Case of Shayara Bano was filed through a writ petition for infringement of her fundamental right enshrined under the constitution of India. She was married for 15 years, and her marriage was dissolved by her spouse on 15th October. Many major groups like the Bhartiya Muslim Mahila Andolon and Bebak collective supported the petitioner and the major entity refuting the said petition was the "All India Muslim Personal Board". The main arguments of the petitioner were that this mode of divorce infringes their fundamental rights i.e., article 14, 15 and 21. The respondent argued that the constitutionality of the "Personal laws" cannot be considered or determined in the court as decided by the Supreme Court in case of Narasu Appa Mali and Women Action Group.

The Court tested the constitutionality through the following two tests. The first was whether it has been codified in the Sharia law and if it is then it is subject to scrutiny under Fundamental Rights and hit Article 13(1). They said that the Act codifies and enforces all sorts of "Talaq". The Second test was whether section 2²⁶ of the 1937 Act is unconstitutional and void. According to the court, any sort of arbitrary dissolution of marriage, wherein the wedding can be dissolved arbitrarily by a man with no attempt for reconciliation, is a violation of the fundamental rights guaranteed by Art. 14 of the Indian constitution²⁷.

Justice Nariman, Lalit and Kurian Joseph by 3:2 majority came to the conclusion that Triple Talaq is unconstitutional. Even though the judgement is landmark for Muslim Women but the issue whether Triple Talaq is protected under the ambit of article 25, it is still unclear.

ARGUMENT FOR THE UNIFORMITY OF A CIVIL CODE

Personal Laws for all religions were imposed in the ancient history and are out of sync with a contemporary culture that has caused problems and oppressed females in a number of ways. This can be alleviated by establishing a proper uniform civil code that reflects

²⁵ Pandey. G, Triple talaq: *How Indian Muslim women fought, and won, the divorce battle*, BBC News (Feb 11, 2022) , <https://www.bbc.com/news/world-asia-india-40484276>.

²⁶ Section 2 in The Muslim Personal Law (Shariat) Application Act, 1937.

²⁷ Tanja Herklotz, *Shayara Bano v. Union of India & Ors. The Indian Supreme Court's Ban of Triple Talaq and the Debate around Muslim Personal Law and Gender Justice*, 50 Nomos Verlagsgesellschaft mbH (2017) (Feb 11, 2022), <https://www.jstor.org/stable/2642924>.

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contemporary society. These personal standards were conceived in a Golden Age that is vastly different from modern female's position, ideologies, and general growth. The Atmosphere formed all around notion of religions has resulted in humanity's incapacity to understand the essence of frequent necessary adjustments in the “Personal laws” of various minorities as time passes²⁸.

The implementation of a “Uniform Civil Code” that embraces all religions while preserving their essential foundations and only removing aspects that are detrimental to females will be a blessing. Several ethnicities think that the “Uniform Civil Code” will serve to boost Hindutva and eradicate their faith. But it's important to note that only the rules that oppress women would be eliminated, not the religion's essential principles²⁹. Introducing a Uniform Civil Code will assist to put the spotlight on the urgent need for women's rights rather than any discrimination towards a religious denomination. It would serve the objective of gender parity if the uniform civil code isn't created hurriedly and with the participation of all minorities³⁰.

ARGUMENT AGAINST THE UNIFORMITY OF A CIVIL CODE

India, as a secular nation, has traditionally been controlled by numerous personal legislations governing diverse populations, which have now become an important aspect of family law practice. As a result, the repeal of existing regulations in favor of a single “Uniform Civil Code” threatens religious diversity. The motives for creating a “Uniform Civil Code” are ambiguous. Advocates of the “Uniform Civil Code” proclaim it is committed to social justice and gender equality while also promoting administrative efficiency; nonetheless, the administration's involvement with progressive goals will call secularism into doubt. Administrative measures will not be able to overcome the spiritual ideologies that underpin rules; thus the Code must explain its position.³¹ The Uniform Civil Code makers should present a clear image of the procedure that will be used to achieve female's socioeconomic advancement.

The presence of substitute legal recourse that female legal practice has effectively used during past, such as the Protection of Women from Domestic Violence Act and the Muslim

²⁸ Shefali Murthy, Uniform Civil Code v. Secular Personal Laws, Bharati Law Review (2016).

²⁹ *Ibid.*

³⁰ *Id.*

³¹ *Id.*

Women (Protection of Rights on Divorce) Act 1986, to deal with problems of female's oppression such as polygamy, triple talaq, and obtaining maintenance, custody of children, and privileges to the matrimonial home. Regardless of religion, the Domestic Violence Act may be beneficial to women³². With such strong rules in place for women, the demand for a "Uniform Civil Code" isn't quite as pressing, since it would add to the complexity of the personal laws.

Personal laws nowadays have been noticed by the community as restricting society's distinct identity. Social standards are always changing, and existing laws aren't keeping up.³³ It is merely a matter of adjusting existing rules to the current situation through personal law reforms, not that of implying that these personal laws have a harmful influence on society.

CONCLUSION

The premise behind the Uniform Civil Code execution is broad and should be fully appreciated. Law is changeable and evolves with the flow of time. "Uniform Civil Code" is also a concept for responding with biased personal laws and the changing social environment. It is a secular code for personal laws, which is required in a nation like India, where secularism is a fundamental part of the Constitution. As a result, the issue of women's rights crosses religious boundaries. To achieve this purpose, customary and statutory legislation must be directed toward women's empowerment instead of being confused with reforms in religion. What one needs to understand and realize is that there is need for social equity of women and gender sensitization must be adopted. The personal laws shall generate a female's individuality and her rights without inculcating it with her religion and beliefs.

³² Supra note 27.

³³ *Ibid.*