

UNIFORM CIVIL CODE FOR GENDER JUSTICE

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ABSTRACT

*This article aims to define and explain the terminology of “Uniform Civil Code towards Gender Justice”. A Civil Code can be defined as a set of laws which govern the rights pertaining to property as well as laws pertaining to personal matters like divorce, adoption, marriage etc. One has to observe that the Constitution of India basis its principles on the ideology that people of all walks of life are equal and deserve an equal opportunity. The constitution speaks about the philosophies of equality, justice and sovereignty. But the major question to be asked is whether the women of India enjoy equality in the true sense of term. Most of the women in India suffer from patriarchy and are treated as subordinates in the society. They are not only discriminated based on their sex, but also based on their religion, which in most cases becomes the biggest hindrance in a woman’s life. In India it can be seen that women are constantly struggling to achieve the basic virtues of **equality, liberty and justice**. One can also note that women in India have suffered from gender biases from time immemorial and even today when India is moving towards modernization they still experience the same atrocities. Hence it becomes very necessary to establish a **Uniform Civil Code** by getting rid of multiple laws for various religious communities. It is mentioned in **Article 44** of the Indian Constitution where it is applicable to everyone irrespective of caste, creed or religion. Even though **Uniform Civil Code** is considered a solution towards the path of obtaining Gender Justice in India , there are a share of legal and social experts that believe that enacting a **Uniform Civil Code** could be problematic for two main reasons one being that that there is no well written conception of what the **Uniform Civil Code** should actually contain and two that there is no concrete assurance that if a Uniform Civil Code is enacted in India it will not be discriminatory towards women as ultimately most of the members of the parliament consist of men who ultimately will frame the laws. However **Uniform Civil Code** is a dream that India has been dreaming for from quite a few years as except the state of Goa, all the other states follow Personal Laws. But it is to be seen in the future when the preview of the draft is*

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presented in the Parliament of India if it will bring gender justice/equality/liberty or not? Lastly, but the most important point one has to remember is that in a country like India where there is so much diversity it would be myopic to expect everyone to accept a Uniform Civil Code and this mindset of the people has to be resolved first, if the implementation of Uniform Civil Code has to be a success.

INTRODUCTION

One of the basic and main objectives of the **Indian Constitution** is **Gender Equality** which speaks about equal rights to both the men and women of this country. It has to be duly noted that the implementation of the **Uniform Civil Code** and the issue of gender justice/equality are very closely interconnected in the pursuance of law. The issue of gender equality has to be treated with grave seriousness. **Article 44** of the constitution of India very clearly states that the states should safeguard all the citizens of India by a Uniform Civil Code. But this is far from reality. Except the state of Goa which follows a Uniform Civil Code, all the other states follow the personal laws set up by their respective religions. These include laws that deal with topics on marriage, maintenance etc. The personal laws pertaining to different religions of Hinduism, Islam and Christianity vary tremendously among each state. Even though the Apex Court of India has asked the Central Government to draft a Uniform Civil Code, this dream can only become a reality for the citizens and especially the women of India if all the state governments in collaboration with the Central government consider it to be a serious issue.²

WHAT IS THE MEANING OF A UNIFORM CIVIL CODE?

The major aim of Art 44 of the Indian Constitution was to secure a single codified law for its citizens throughout the territory of India, but it fails to assess any single law that would be applicable to different religious communities amongst its Indian Citizens. There is however no proper explanation of “**Uniform**” in the Indian Constitution and hence it becomes a hassle for states while trying to implement a codified uniform law. The art further states that there should be uniformity in law in the principles of gender and human justice.

² Sathya Narayan, selected works of S.P.Sathe, Social Justice and Legal Transformation, Vol.3,Oxford University Press,2015,p.251.

OBJECTIONS TO THE IMPLEMENTATION OF A UNIFORM CODE

When the idea of enacting a Uniform Civil Code in India was proposed while drafting the Constitution, a huge number of Muslim Parliamentarians raised objections. These objections were mainly raised on two grounds. The **first objection** is based on the foundation that there was already a great deal of uniformity of law and though the law was maybe a little diverse in its nature among personal laws, there was nothing wrong about it. It was also strongly recommended that personal laws and secularism should be separated from religion. **Clause (2) of Article 25** specifically saves secular activities associated with religious practices from the guarantee of religious freedom contained in **Article 25(1)**.

The **second objection** was **K.M.Munshi** who pointed out that that the founding fathers of the constitution are going to enact the laws in such a manner that the personal laws in due course of time will unify with those who argued that the framing fathers of the Constitution are going to Consolidate and unify the personal law in such a way that it will unify with the whole country in due course of time. He tried to support his argument with the example of Europe which has implemented a civil code throughout their country and everyone who goes there irrespective from whichever part of the world they may belong or from whichever minority community they represented, irrespective they had to submit to the civil code.³

Dr.B.R. Ambedkar in support of enacting the Uniform Civil Code put forth a very strong argument in which he rightly argued that he did not understand why there was a need to mix religion with the judiciary or legislature. He also believed that the legislature was for the freedom of the common people, Hence it had to be liberal of any religious interference which was based on a social stigma of inequalities and discriminations and directly conflicted with the supremacy of our fundamental rights.⁴

The founding fathers of the Indian Constitution merged Uniform civil code with Constitution with a goal of separating law from religion and in order to promote the feeling of equal rights among its people/citizens which will lead to a unified and strong India in the long run. But however, another major issue of gender justice was not considered an important topic in the debate of the members of the constituent assembly while framing the constitution. In absence of Uniform Civil Code, however, The Supreme Court of India has to completely rely

³ M.P.Jain, Indian Constitutional Law, Lexis Nexis, 7th Edition 2015,p.1430.

⁴ Constituent Assembly Debate,Vol.VII,547-48

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upon **Article 44** of the Constitution of India to interpret many provisions of the personal laws of Hindu as well as Muslim to protect the rights of women in cases of matrimonial affairs.

HOW DO PERSONAL LAWS DISCRIMINATE AGAINST THE WOMEN IN INDIA?

Most of the personal laws in India are based on a patriarchal mindset keeping the atrocities suffered by the women to the very far end of fair justice. Society has always looked to treat women as the weaker sex, to treat them as subordinates to men and personal laws are no different. There is no element of fairness, equality and justice in such laws and hence it becomes a necessity for the country as a whole to implement a Uniform Civil Code towards Gender Justice in India.

As we can note that between the years of 1955 to 1956 women were barred from enjoying any rights that were equal to men as per the **Hindu Personal Law**. Also, one can rightly note that the concept of polygamy was a very normal phenomenon before the year of 1950 same cannot be said when it came to the Hindu women. Another interesting point one can note is that Hindu law prohibited Hindu women from having any kind of independent land holdings in any form of ancestral property owned by the family except when it came within the sphere of Stridhan. Previously a Hindu woman could not adopt a child as a single mother she needed to have a spouse as per Hindu Law, but this has been amended today. From this we can gather that even though a few of the laws have been amended, we still have a long a way to go as a country to bring about gender equality in terms of laws.

When we talk about the position of women with regards to **Muslim Law** it has to be noted that the Holy Book of the Muslims i.e. The Holy Quran holds women in a very high position with respect to men, it speaks about equality between the rights of men and women, yet the Muslim women feels discriminated upon many times, she feels there is lack of equality, justice and liberty that she enjoys. The Muslim Law state that a man is entitled to have 4 wives at the same time, the only requirement being that he can take care of them monetarily and perform all the duties expected from him as a husband. This is not the case when it comes to women, a Muslim woman is not entitled to polyandry.⁵

The practice of Triple Talaq was a concept which was so prevalent and unfair and unjust to the Muslim women until it was struck down and criminalized by the Government recently.

⁵ M.P.JAIN, INDIAN CONSTITUTIONAL LAW, 1431 (Lexis Nexis, 7th Edition 2015).

It not only caused the women mental torture, but it also caused the women economical torture as many Muslim women are dependent on their husbands for their livelihood.

Another horizon in which Muslim personal law discriminated against women unjustly was in the form of maintenance after divorce, which made the husband not liable to pay beyond the time period of Iddat. This was struck down by the Court in the epic case of *Mohd. Ahamed Khan v. Shah Banu Begum*.⁶

WHY DO WE NEED UNIFORM CIVIL CODE FOR GENDER JUSTICE IN INDIA?

A Uniform Civil Code for Gender Justice in India is required for the following purposes.

1. It will guarantee that all the laws that are enacted are in favor of both the men and women of India, thus promoting a sense of liberty and equality between both the genders.
2. Enacting a Uniform Code throughout the country will bring about consistency in laws, thus removing any form of arbitrariness or any discrepancy.
3. It will help promote the idea of justice that the Constitution of India seeks to establish in its very true sense.
4. Personal Laws always cause a great confusion as to the rights and duties that are assigned to the two genders, thus causing a power differential to rise, if a Uniform Code is to be implemented throughout the country it will eliminate all forms of uncertainty regarding the rights and duties for the two sexes.

WHAT WILL BE THE MERITS IF A UNIFORM CIVIL CODE IS ADOPTED IN INDIA?

If a Uniform Civil Code is adopted by the central government in India and is truly implemented without any unbiased motives that it can.

1. Help in bringing about national integration throughout the country
2. There are many provisions of personal law that have been seen by judicial experts getting overlapped, if a Uniform Civil Code is adopted this overlapping can be avoided.

⁶ Mohd. Ahamed Khan v. Shah Banu Begum, AIR 1985 SC 985.

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3. The number of cases of litigation that arise due to the inconsistencies and inequality in personal laws would show a sharp decrease.
4. The country being unified as one through a Uniform Civil Code will come out stronger as a sovereign and as one power.

THE LEGAL/JUDICIAL OPINION PERTAINING TO THE UNIFORM CIVIL CODE

The judiciary has time and again pointed out that the injustice caused due to the unfair provisions mentioned against women in personal laws is tremendous. The Apex Court of India had urged that there should be consistency in laws while dealing with the personal matters of its citizens. In one of the most groundbreaking decisions given by the court in the matter of *Mohd. Ahamed Khan v. Shah Banu Begum*, it was held by the Honorable Court that the Muslim man is liable to maintain his divorced wife beyond the period of Iddat. The court further stated that the decision will be executable on all the religions under Section 125 of the Code of Criminal Procedure⁷

Yet in another case *Sarla Mudgal v. Union of India* the Supreme Court held that if any Male who is Hindu by birth converts his religion to Islam for the sole purpose of bigamous obstacles, then such a matter will be treated within the purview of **Section 494** of the Indian Penal Code. Such marriages will be considered void ab initio by the court.⁸

CONCLUSION

In a country like India which bases all its laws on the foundation of the principles laid down in Democracy women's rights and upliftment have always been the talk, but that's all it has been, just talk rarely any action is taken to achieve this goal. The main aim of the Central Government as well as the Law makers of India should be the women's position and rights by doing away separate personal laws. Today one can see that the Hindu Personal Law has made some changes to accommodate the rights of women, but it still has a long way to go, but on the other hand Muslim Laws have been and are still, even in these modern times, rigorous and outdated. This gender bias in the respective personal laws keeps the woman caged and at the mercy of the

⁷ Mohd. Ahamed Khan v. Shah Banu Begum, AIR 1985 SC 985.

⁸ Sarla Mudgal v. Union of India, AIR 1995 SC 1531.

opposite gender. Hence a Uniform Civil Code becomes the need of the era as it will do away with most of these socio-legal evils and will treat the needs of both genders equally without any bias, thus achieving the goal of Gender Justice.