

## **UNIFORM CIVIL CODE – a means to sought gender justice**

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### **What is uniform civil code and what is the need to implement it:**

In India there exists different personal laws and all religions are governed by their respective personal laws. The people of India belong to different religions and faiths. They are governed by different sets of personal laws in respect of matters relating to family affairs, i.e., marriage, divorce, succession, etc.<sup>1</sup> Uniform civil code is a proposal to replace all these personal laws with a single common law for all the religion and covers marriage , divorce , succession and inheritance. The constitution of India lays down the provision for uniform civil code under article 44 of the Indian constitution. It states that Uniform civil code for the citizens The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India<sup>2</sup>. If the scenario of the political parties is taken in concern , the Bhartiya Janta party and the Left support it while the Congress party and All India Muslim Personal League oppose it.

The framers of the Indian constitution were in support of the implementation of the uniform civil code as well as several decisions by the honorable Supreme Court of India points towards the urgency of the implementation of the uniform civil code in India. It has once said by the father of the Indian Constitution that “I personally do not understand why religion should be given this vast, expansive jurisdiction so as to cover the whole of life and to prevent the legislature from

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<sup>1</sup>PERSONAL LAW, available at <http://www.archive.india.gov.in/citizen/lawnorder.php?id=16>.

Last seen on 20 November 2016

<sup>2</sup> <https://indiankanoon.org/doc/237570/>

encroaching upon that field. After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequities, so full of inequalities, discriminations and other things, which conflict with our fundamental rights.”<sup>3</sup>

**The need for uniform civil code:**

The uniform civil code is mainly needed for two reasons. The first reason to establish the uniform civil code in the country is to bring the real secularism in the country. A secular republic like India should have one law and there should not be any discrimination on the basis of religion until and unless it falls under the ambit of essential religious practices of that religion. It has been rightly said by B.R Ambedkar “We have in this country uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete criminal code operating throughout the country which is contained in the Indian Penal Code and the Criminal Procedure Code. The only province the civil law has not been able to invade so far as the marriage and succession ..... and it is the intention of those who desire to have Article 35 as a part of Constitution so as to bring about the change.” The second reason for implementing uniform civil code is to establish gender justice in the Indian society. From time immemorial the women have been considered inferior to men. They are given a subordinate position in the Indian society and all the personal laws in India tend to do the same whether it is Hindu , Muslim or Christian etc. India has signed several international treaties due to which it is mandatory for India to give equal right to women in the Indian society. Under International law, a state that ratifies an international instrument becomes legally bound to implement its provisions.

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<sup>3</sup> Vikas Pathak, *Ambedkar favoured the common civil code*, The Hindu, 1/12/15, <http://www.thehindu.com/news/national/ambekar-favoured-common-civil-code/article7934565.ece> last seen on 18 November 2016

Accordingly India having 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 equalities in its national laws<sup>4</sup>. . There are certain provisions in the constitution of India to protect the rights of women.

- Article 14 ensures to women the right to equality.
- Article 15(1) specifically prohibits discrimination on the basis of sex.
- Article 15(3) empowers the State to take affirmative actions in favour of women.
- Article 16 provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office.<sup>5</sup>

Along with these in a democratic country like India it is the responsibility of the government to protect the rights of each and every citizen of the country and women consisting of almost half of the population of India it is necessary to preserve their rights and ensure them a equal status in the society.

***Various provisions of personal laws which disriminate women:***

- Under the HINDU ADOPTION AND MAINTENANCE ACTS 1956<sup>6</sup> a women cannot adopt a child without his husbands consent. She cannot adopt a

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<sup>4</sup> Mahesh Sharma, *Declassifying the uniform civil code*, <http://www.livelaw.in/declassifying-uniform-civil-code/>, last seen on 23/11/16

<sup>5</sup> *WOMEN EMPOWERMENT IN INDIA*, WOMEN EMPOWERMENT available at <http://www.indiacelebrating.com/social-issues/women-empowerment/>, last seen on 24/11/16

<sup>6</sup> THE HINDU ADOPTIONS AND MAINTENANCE ACT 1956

child on her own will and in her name until and unless she is unmarried or is a widow or if the husband has completely renounced the world or has ceased to be a Hindu or has been declared of unsound mind by the court.

- Under the Hindu law of maintenance only an unmarried daughter has the right to maintenance which means it does not include a widowed daughter or a daughter who has obtained a decree of divorce. The daughter who has been forced to obtain divorce should also not be given right to maintenance.<sup>7</sup>
- In the Hindu law a women can never be a **COPARCENER**. Coparceners are such persons who jointly inherit property whereof they have unity of possession , which , however maybe served at any time by partition<sup>8</sup>. As the women are not a coparcener she has no right to enforce the partition.
- Under Muslim law , a person who is sane and has attained the age of puberty is competent to marry. The age of puberty is the age at which a person becomes capable of performing sexual intercourse and procreation of children. The age of puberty for both boys and girls is 15 years.<sup>9</sup> At 15 years a girl is very young and tender to fulfill the responsibilities of marriage and is not even fit for giving birth to a child. Marriage at such an early age can lead to severe physical and mental health issues which even lead to death in certain cases.

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<sup>7</sup> Rega Surya Rao, *Lectures on Family Law in India*,143( second edition,2012)

<sup>8</sup>Rega Surya Rao, *Lectures on Family Law in India*,201( second edition,2012)

<sup>9</sup> Rega Surya Rao, *Lectures on Family Law in India*,16( second edition,2012)

- According to the MUSLIM MARRIAGE DSSOLUTION ACT 1939<sup>10</sup> any Mahommedan , who is of sound mind and has attained puberty , can divorce his wife, whenever he desires by pronouncing **TALAQ** commonly known as **TRIPLE TAALAQ**. It may be even pronounced in her absence and need not to be addressed to her. It must come to her knowledge for the purpose of dower.
- Under the Muslim law of right to maintenance after divorce a woman is entitled to maintenance only till the Iddat period and after that she has no right to maintenance and the women is a stranger to the man and the man has no obligation to maintain his wife.

Due to presence of such provisions for women in the personal laws which discriminate women in almost every sphere of the life and do not give them equal status in the society and do not bring them at par with the men in the society there is a dire and urgent need to implement uniform civil code in the country.

The debate on secularism:

India is a secular democratic republic which means it has no religion of its own. It shall not promote any religion nor disregard any religion and consider every religion equal. A State is only concerned with the relation between man and man. It is not concerned with the relation of man with God. It does not mean allowing all religions to be practiced. It means that religion should not interfere with the mundane life of an individual <sup>11</sup>. Also article 25<sup>12</sup> of the Indian constitution of guarantees freedom of conscience and the right to freely practice,

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<sup>10</sup> MUSLIM MARRIAGE DSSOLUTION ACT 1939

<sup>11</sup> Gauri Kulkarni, *Uniform Civil Code*, available at <http://www.legalserviceindia.com/articles/ucc.htm>, last visited on November 23 2016

<sup>12</sup> Art. 25 , The Indian Constitution

profess and propagate the religion but this right is subject to public , health and morality along with the other provisions contained in part 3 of the Indian constitution . Along with it also empowers the state to regulate any economic , political , financial or any other secular activity. Article 25 of the Indian constitution covers only those activities that falls under the ambit of the essential practices of the religion and is related to the faith and belief of an individual.

It is often argued that the uniform civil code is in contravention to the article 25 of the Indian constitution and it violates article 25 but the act of marriage , succession etc are nowhere related to the beliefs and faith of a person and are purely of a secular nature which can be regulated by the state. It has been clearly stated by Justice Khare in *JOHN VALLAMOTEN V. UNION OF INDIA*<sup>13</sup> that marriage , succession are purely of secular nature and are nowhere related to the freedom of practice of religion.

#### **Supreme court judgements in favour of uniform civil code:**

From the very first case in the Supreme Court is has always laid the stress on implementation of the uniform civil code in India and has always requested the parliament to formulate a uniform civil code in the country. Some of the famous Supreme Court judgements are as follows:

The first major case was the *Mohammed Ahmed Khan v. Shah Bano Begum* (AIR 1985 SC 945)<sup>14</sup> in which took place in 1985 where a Muslim woman claimed maintenance from her husband under section 125 of the code of the civil procedure. The court held that even the muslim woman are entitled to maintenance. Chief justice Y.V Chandrachud stated that “A common civil code will help the cause of national integration by removing disparate loyalties to law

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<sup>13</sup> John Vallamattom v. Union of India AIR 2003 SC 2902

<sup>14</sup> Mohammad Ahmed Khan v. Shah Bano Begum AIR 1985 SC 945

which have conflicting ideologies.” But the then Rajiv Gandhi government did not accept the decision.

The second major landmark case was *Sarla Mudgal v. Union of India* (AIR 1995 SC 1531)<sup>15</sup> in which the question was raised if the first marriage can be dissolved after conversion of a hind man to Islam and it was held that a Hindu marriage can only be dissolved according to the Hindu Marriage Act 1955 . it was further held by Justice Kuldip Singh “the Rulers of the day are not in a mood to retrieve Article 44 from the cold storage where it is lying since 1949. The Governments – which have come and gone – have so far failed to make any effort towards “unified personal law for all Indians”. He went on to note that, “When more than 80% of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of “uniform civil code” for all citizens in the territory of India.”

The latest case in which the Supreme Court in which the Supreme Court emphasized on the implementation of the uniform civil code was the *John Vallamattom v. Union of India* (AIR 2003 SC 2902)<sup>16</sup> in which a Christian priest moved to the Supreme Court of India challenging the constitutional validity of section 118 of The Indian Succession Act 1925 stating that it discriminates Christians placing restrictions on them to freely donating their wills for religious purposes. It was held by Justice Khare “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 regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in

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<sup>15</sup> *Sarla Mudgal v. Union of India* AIR 1995 SC 1531

<sup>16</sup> *John Vallamattom v. Union of India* AIR 2003 SC 2902

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.”

**It is not impossible to achieve: goa has it**

Goa is the only state in India where a single uniform code commonly known as the Goa civil code exists. It is a same set of rules for each and every religion whether he or she is a Hindu , Muslim or Parsi<sup>17</sup>. The Goa civil code has its roots attached with the Portuguese civil code 1867 as earlier Goa was a colony of Portugal. Even after liberation from Portugal rule in 1961 the Goa continues to follow the civil code and creates a legacy for rest of the nation. It has been observed by the honorable Supreme Court that the Portuguese Civil code “had ended up being an intense weapon to forge a cohesive and to create homogeneous and well-knitted society with its people living harmoniously, and additionally to reinforce that essential and basic unit of the society – the family – by shielding the interests of the kids and of widows.”

Under the Goa civil code all Goans are considered equal irrespective of their gender and religion. It treats men and women equally and all the practices related to marriage , divorce , succession etc are non discriminatory in nature. It gives both men and women equal property rights and prohibits polygamy or Triple Talaq etc. For example when it comes to marriage there are provision such as only monogamy is permitted and the age of marriage is fixed at 18 and 21 respectively for girls and boys. There is equal distribution of the salary among men and women and is distributed in equal ratio.

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<sup>17</sup> Anisha Jhanwar, *The Goan Way Of Civil Code* available at <http://racolblegal.com/the-goan-way-of-civil-code-in-contrast-to-personal-family-laws-in-india-a-grand-success-or-steep-failure-with-special-reference-to-marriage-regimes/>, last visited on 23 november 2016

Therefore Goa civil code can be considered as an example and a common civil code can be formulated for the rest of the country and can be implemented.

**Conclusion:**

Uniform civil code is the need of hour. India is on the road to be developed country and this kind of injustice to a majority of the section of the society is not a sign of a progressive nation. We need to create a society in which each and every individual is considered equal and given equal rights and freedom then only we can become a truly developed nation. For this purpose implementation of a uniform civil code is a must so that we can ensure that a uniform civil code is implemented. Also for attaining the real secularism which is enshrined under the Preamble of the constitution implementation of a uniform civil code is must

The government should take this matter with utmost priority and should take necessary steps to implement the uniform civil code. It should be discussed and debated in both the houses of the Parliament and appropriate bill should be passed so that the uniform civil code can be implemented.

