

## UNIFORM CIVIL CODE TOWARDS GENDER JUSTICE

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### Abstract

This paper explores the study on Uniform Civil Code towards gender justice. Women are being considered as vulnerable in this society. Rights of women are being grossly violated in each and every part. Women are being discriminated in all parts like marriage, inheritance, property, etc. So Uniform civil code helps to eradicate the gender inequalities and bias. Uniform Civil Code is a decree upon the State under article 44 of the Constitution as dictate of state policy. This Uniform civil code covers mainly portions covered under it are the Laws interconnected to Marriage, Divorce, Adoption, and Inheritance and accession and managing of property. Philosophy of state policy and the fundamental rights are antithetical to each other or vice-versa. The preliminary of Indian constitution is the reflector of constitutional vital spark. It focuses to comprise India as a Sovereign, Secular, Democratic, Republic. It has to secure Justice, liberty, and equality to the citizens and thereby contributing confraternity while assuring prestige of the individual and unity and integrity of the nation. So this paper mainly deals with the need of UCC, advantage and disadvantages of UCC and mainly talks about the difference between equality and uniformity towards gender justice.

**Keywords:** Gender inequality, Fundamental rights, Uniformity, justice and integrity.

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## Introduction:

The designate Uniform Civil Code insinuate the identical set of non-religious civil laws to regulate all peoples notwithstanding of their Religion, Caste and tribe. The portions covered under it are the Laws interconnected to Marriage, Divorce, Adoption, and Inheritance and accession and managing of property. Uniform Civil Code is a decree upon the state under article 44 of the Constitution as dictate of state policy. As it is provisioned under Article 37 of the Constitution that dictate philosophy of state policy aren't executable by the Court of Law. But this verity doesn't undermine the significance of the dictate philosophy. Just after freedom the situation was such that it was not viable to enforce a Uniform Civil Code on the citizens. That is why it has been engulf under the dictate philosophy state policy. In this surroundings it is pertinent to scrutinize here that whether the dictate philosophy of state policy and the fundamental rights are antithetical to each other or vice-versa. The preliminary of Indian constitution is the reflector of constitutional vital spark. It focuses to comprise India as a Sovereign, Secular, Democratic, Republic. It has to secure Justice, liberty, and equality to the citizens and thereby contributing confraternity while assuring prestige of the individual and unity and integrity of the nation. It contains those components which are the quintessence of the Constitution. So, all the provisions stated in the preamble are working towards a remarkable goal i.e. fraternity assuring mutual esteem for each other. In his sense it can be inferred from the Constitutional vital spark that is fundamental rights and dictate philosophies of state policy are Complementary to each other. The fact is enforce ably by the Court of law under article 32 and 226 of the Constitution and others are non-compliance does not undermine the significance of dictate philosophy of state policy. Fundamental rights are the inviolable and inherent rights of the individuals by righteousness of the fact which any individual exist in society. The fundamental rights inflict the responsibility upon the state not to violate these rights. So, in sense these are the nature of negative obligation inflict upon the state. But a mere assurance of the fundamental rights in the constitution would not have been adequate to help the attainment of socialistic pattern of the society. There should be some instruction for the state to act in that direction. Each and every person has their own but the right of a woman is being violated from generations to generations. Women are basically tied up and trapped in the contemporary issues like religion, secularism and freedom. Discrimination nation of women is being high in this society. The discrimination of women starts from the home and reaches everywhere. While implementing Uniform civil code in gender justice it will bring a huge change like empowering women in main areas like social status, gender bias, health, security and empowerment are of urgent necessity.

## Objectives:-

- 1) To know the need for Uniform civil code.
- 2) To know the Advantages and Disadvantages of Uniform civil code.
- 3) To know the difference between equality and uniformity towards gender justice.

## Hypothesis:

**H<sub>0</sub>:** There is no significant change in implementing Uniform civil code towards gender justice.

**H<sub>a</sub>:** There is significant change in implementing Uniform civil code towards gender justice

## Material and Methods:

The methodology used in this study is Doctrinal .It is based on the information and data collected from secondary source. They include publication research , Journals ,historical information of both past and present. When a research is concerned with some legal problem, issue , it is referred to as doctrinal, theoretical or pure legal research. Doctrinal research is a theoretical study where mostly secondary source of data are used to seek to answer one or two legal propositions or questions or doctrines.

## Review of Literature:-

**V.N.Shukla Constitution Of India**, Establishing UCC throughOut territory of India \_objections. Infringement of right to freedom of religion - (Article 25). Tyranny to minority. **P.M.Bakshi Constitution Of India**,Pluralist society like Indian people have faith in their respective religious belief. DPSP of Constitution visualise diversity. Attempt to foster uniformity among people. **Durga Das Basu[ Indian Constitution law]**,Our is a secular democratic republic.Freedom of religion is core of our culture. UCC is for protection for oppressed and promotion of national unity and solidarity.**J.N.Pandey, The Constitution law of India**, State to secure Uniformity. Community welfare charter. Securing UCC peace for citizens. **Dr.K.C.Jashi, The Constitution Law of India**, Religion and Uniformity civil code. Hindu law put women under subordination of man. Discriminated highly. Sarla Mudgal vs Union Of India. The SC held that without dissolving the first marriage, the second marriage is invalid. **Prof. Kailash Rai[ Constitution Of India]**, There is no necessary connection between religion and personal law. UCC help to cause of national integration. **Atish Chakraborty**, Envisages controlling the arrangement of common law. To

represent distinctive individuals having a place with various religion. **Chandem Mitra**, UCC should have been brought while setting up the Constitution. There shall no need of different laws for sector of people. **Dr.Jayshri Das**, *MSSV Journal Of Humanities and Social Science*, To establish India a state where all people irrespective of their religion, caste, sex, place of birth shall have equality and Uniformity. DPSP gives some direction to the state to implement these policies towards to attain goal of an egalitarian. **Dr.Debasis Poddar**,*ILI Law review, summer issue 2017 volume 1*, Implementation Of DPSP to secure for UCC appears stuck to discursive between parochial and paranoid minority.**Harshita Vatsayam** *ILI Law review summer issue volume 1*.UCC is that it will further strengthen India nationalism and shall also make a great impact in gender inequality. Religious practices and customs which are violative of human rights. **K.C.Jena**, Various provision of the personal laws followed by the different communities deny equality to women. Personal laws has been extensively reformed but not in all personal laws.

## Need for Uniform civil code:-

**1. It Will Integrate India:** A uniform civil code will aid in amalgamate India more than it has ever been since from freedom<sup>3</sup>. A lot of the hostility is caused by bias treatment by the law of some religious communities and this can be eschewed by a uniform civil code. It will aid in bringing each and every Indian, in-spite his caste, religion or tribe, under one national civil code of comportment<sup>4</sup>.

**2. It Will Help in Reducing plebiscite Bank Politics:** A uniform civil code will also aid in minimizing vote bank politics that most political body overindulge in during each and every election. If all religions are envelop under the same laws, the public servants of the state will have less to offer to some minorities in exchange of their plebiscite. Not having a uniform civil code is injurious to loyal democracy and which has to redesign.

**3. Personal Laws Are a Loop Hole:** The diverse personal laws are basically a inconsistency to be utilized by those who have the authority. Our panchayats persistent to provide judgments that aren't in favor to our constitution and we do not do anything regarding it. Human rights are breached through honour murder and female feticide throughout our nation. By providing personal laws we

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<sup>3</sup> (Shetreet & Chodosh 2015)

<sup>4</sup> (Habibullah 2017)

have constituted an alternate judicial system that still functions on thousands of years old values. A uniform civil code would redesign it.

**4. Every contemporary Nation has it:** A homogenous civil code is that the sign of contemporary progressive nation. It's a proof that the country has moved far from caste and non secular politics. Whereas our economic process has been the highest within the world our social growth has not happened in the slightest degree. Indeed it would be right to mention that socially and culturally we've degraded to some extent where we are neither trendy nor Old. A homogenous civil code can facilitate the society move forward and take India towards its goal of changing into a developed nation

**5. It will Give More Rights to the Women:** A uniform common code will encourage in rising the state of women in India<sup>5</sup>. Our general public is extremely male centric and misanthropic and by allowing old profound guidelines to even now administer the family life we are exculpatory every Indian lady to oppression and abuse. A homogenous civil code can facilitate in dynamic these age old traditions that don't have any place in today's society wherever we have a tendency to do perceive that women ought to be treated fairly and given equal rights.

**6. All Indians Should be Treated equally :** All Indians Should be Treated Same: Personal laws bolstered express religions, which infers that though Muslims can wed various circumstances in India, a Hindu or a Christian will be prosecuted for doing constant. This doesn't look like equality to me. All the laws associated with marriage, inheritance, family, land etc. ought to be equal for all Indians. This can be the sole way to make sure that all Indians are treated same.

**7. It Promotes Real Secularism:** We have right away in India is selective secularism which implies that in some areas we tend to be secular and in others we aren't. A homogenous civil code means all voters of India need to follow equivalent laws whether or not they are Hindus or Muslims or Christians or Sikhs. This sounds truthful and secular to me. a consistent civil code doesn't mean it'll limit the liberty of individuals to follow their religion, it just implies that everybody will be treated an equivalent<sup>6</sup>.

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<sup>5</sup> (Rajan 2000)

<sup>6</sup> (Thistlethwaite 2014)

## **Advantages of Uniform Civil Code:-**

### **Gender equity:-**

By the execution of a uniform common code the country all over will empower to cancel sexual orientation segregation from the country. For instance, as indicated by different religions, legacy, relational unions and so forth are male commanded. Following seven many years of freedom likewise ladies are fighting for fairness. It is generally watched that individual laws of all religions are prejudicial towards ladies. Men are normally conceded upper special status in issues of progression and legacy. Uniform common code will bring the two people at standard.

### **A lift to national integrity:-**

The development of UCC will support the national honesty. Despite the fact that our nation have assorted social qualities, a bound together individual law independent of sexual orientation , position, statement of faith and so on will help the national solidarity.

### **Foundation of secularism:-**

The introduction of our constitution unmistakably expresses that India is a sovereign, communist, common state. In any case, ample opportunity has already past to imagine that whether the residents of India will appreciate genuine secularism without the usage of UCC. Indeed, even following quite a while of autonomy likewise extraordinary individual laws are in presence for various religions.

### **Social changes:-**

Once the UCC is detailed the country over, India will experience another social change in this century. For example, in Indian setting, Muslim ladies are denied with individual laws in connection to marriage, separate and so forth. On opposite, different Muslim countries like Pakistan, Bangladesh, Turkey, Morocco and so forth ladies appreciate systematized individual laws. So after the execution of UCC Indian ladies [especially Muslims, Christians etc] will likewise appreciate an arranged individual law. Subsequently, a venturing stone towards another social change the nation over.

## **Disadvantages of Uniform civil code:-**

### **A threat to communal harmony:-**

Potential mistaken assumptions with respect to Uniform Civil Code made a dread among different religions particularly minorities. It is regularly seen by numerous religions that UCC is pointed

against their religious traditions and qualities. Prior to the usage of UCC, experts should win the trust of minorities. Else, it will obliterate the collective congruity of the country<sup>7</sup>.

### **Government's impedance into individual rights:**

It is regularly seen by numerous that it is the crooked session of the administration to meddle in individual flexibility of people. In any case, Uniform Civil Code is pointing just to ensure and defend the privileges of all subjects.

### **Not right time for execution:-**

The Muslim people group is contradicting the execution of Uniform Civil Code and expressing that it isn't the right time. Additionally they are contending that the subject should think about alongside other ongoing issues the quiet of experts in connection to saffronization of schools, hamburger issues and so on are activating them and further expressing as the overruling of larger parts over minorities.

### **Difficult because of India's diversity:-**

The usage of Uniform Civil Code is an awkward assignment because of wide decent variety of our country. Social contrasts from state to state and group to group is yet another deterrent for a bound together individual law.

## **Difference between Equality and Uniformity towards gender justice:-**

One issue that has not been addressed adequately in the current debate on the UCC is the practical difficulty in arriving at a uniform code for a country as large and diverse as ours towards gender equity. On some elements, like inheritance and maintenance, it may be feasible to come up with a common rule, but for subjects like marriage, it would be difficult to reconcile different religious practices and arrive at a universally applicable law. In some cases, as some minorities fear, it may lead to a situation where reconciliation is impossible; pushing the state to choose between two religious beliefs or practices<sup>8</sup>. For example, Section 5 of the Hindu Marriage Act prohibits marriage between two individuals based on whether they are related to each other before they get married.

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<sup>7</sup> (Agnes 2006)

<sup>8</sup> (Mohapatra et al. 2017)

Among other things, it prohibits two individuals whose parents are siblings from getting married. Other religions do not prohibit such a marriage. Section 7 (2) of the Act says the ceremony for a Hindu marriage includes the saptapadi and the marriage becomes complete when the seventh step is taken. (Saptapadi is the process of the bride and groom taking seven steps by before the sacred fire to complete their marriage ceremony). As we all know, a Christian marriage ceremony is completely different, which in most cases, includes the bride and groom exchanging rings. How will the UCC deal with this issue? Will it mandate that non-Hindus follow saptapadi or force non-Christians to exchange rings? One could go on. Another simple example could be the timing of the marriage. Section 10 of the Christian Marriage Act says that a marriage can only be solemnised between 6 am and 7 pm. Isn't it common in other faiths to solemnise marriages early in the morning or late in the night? How can this be made uniform? Also, more fundamentally, why should it be made uniform? The demand for a UCC stems from a lack of adequate understanding of the differences between equality and uniformity towards gender justice<sup>9</sup>. Yes, it's absolutely necessary for the state to treat its citizens equally, irrespective of religion, caste and gender. This essentially means that it should not discriminate against any of its citizens and ensure that all citizens get uniform rights. But should it ensure uniform procedure, that too, in personal matters? To address the genuine issue of gender orientation equity the concentration ought to be to make our own laws nondiscriminatory as the greater part of them do not adequately provide justice to women<sup>10</sup>. The way forward is to identify the provisions of all personal laws that are discriminatory and to amend them suitably, irrespective of their religious sanction. With this, we will end up with a nondiscriminatory civil code towards the gender justice.

## **Legal provisions and landmark cases:-**

Uniform civil code is governed by Article 44 of Indian constitution, which states "Uniform civil code for the citizens The State shall try hard to secure for its citizens a uniform civil code in every part of the Indian region"<sup>11</sup>.

## **The famous Landmark cases:-**

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<sup>9</sup> (Edwards & Stewart 2017)

<sup>10</sup> (Raina 1996)

<sup>11</sup> Constitution of India Article 44



- **Mohd. Ahmed Khan vs Shah Bano Begum And Ors on 23 April, 1985**

**Equivalent citations: 1985 AIR 945, 1985 SCR (3) 844**

The Shah Bano case of 1985 was a test suit of all the higher than principles. in this case Shah Bano, a Muslim women and wife of Mohammed Ahmad Khan filed a petition at a neighbourhood court in Indore, against her husband beneath section 125 of the Code of Criminal Procedure, asking him for a maintenance amount for herself and her kids.

Husband gave an irreversible talaq (divorce) to her that was his perquisite beneath Islamic law and took up the defense that since Shah Bano had ceased to be his wife and so he was beneath no obligation to supply maintenance for her as except prescribed beneath the islamic law that was in total Rs. 5400. The difficulty was finally obsessed by Supreme Court and it determined it in favour of Shah Bano mistreatment profane Criminal Procedure Code despite faith. After the verdict of Shah Bano case there was some agitation within the Muslim community. So, in consequence of that the Muslim women (Protection of Rights on divorce) Act, 1986 was passed that states that the husband is prone to pay maintenance to the better half daring iddat. In this case the court held maintenance to Shah Bano. So laws are always common to all religions<sup>12</sup>.

- **Smt . Sarla Mudgal, President, ... vs Union Of India & Ors on 10 May, 1995**

**Equivalent citations: 1995 AIR 1531, 1995 SCC (3) 635**

In Sarla Mudgal case, the issue was that the husband has accomplished the second marriage while transformed into Islam but without disintegrating the first marriage. The interpretation of section 5 and 11 of the Hindu marriage act, 1955 is done then he can't t be held liable under the Hindu marriage act for polygamy because section 5 uses the word, "If a marriage is criminalized between to Hindus." The Supreme Court has settle the issue by saying that if there if a altercation between two personal laws then such law should triumph which is serving the purpose best. So, it was held that a conversion to Islam does not amount to automatic cessation of the marriage performed under Hindu law<sup>13</sup>.

- **In Lily Thomas and others vs. Union of India & others, Equivalent citations:**

**2000 (2) ALD Cri 686, 2000 (1) ALT Cri 363, 2001 (1) BLJR 499, 2000 CriLJ 2433, II (2000) DMC 1 SC, JT 2000 (5) SC 617, 2000 (4) SCALE 176, (2000) 6 SCC 224, 2000 (2) UJ 1113 SC**

The court spurned the disputation that the decision in Sarla Mudgal vs. Union of India is violative of rights indemnified under article 21 of the constitution. The verdict in Sarla Mudgal case has either altered the procedure or generated any law for the of the person sought to be

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<sup>12</sup> (Gupta 2011)

<sup>13</sup> (Sen 2016)

proceeded opposed for the alleged commission of offence beneath section 494 IPC.”So, if the Uniform Civil Code would have been provided for the citizen as the constitutional mandate then the problems which has arisen in the cases of (MohamedAhmed Khan vs. Shah Bano), (Daniel latifi & other Vs. UOI would've not been there.

- **Triple talaq in India:**

No religion has ever promulgated the possibility of woman suppression<sup>14</sup> and embarrassment. Truth be told, every religion regards them as equal and parallel to man in every aspect. It is human personality which has, from ages, manipulated religion according to its own benefits and requirements and disgraced woman by characterizing them inferior to man.

However, when negative things go extreme, something or someone generally comes to the fore and stops it. While articulating its verdict in Shah Bano case in 1985, Supreme Court of India upheld that a Muslim woman has appropriate to receive provision from his better half after divorce. at that point Congress government with incomparable dominant part in Parliament, instituted a law under strain of Muslims, which weakened the judgment of peak court and by and by antagonized Muslim women were deprived of their true rights.

Be that as it may, relatively after more than three decades, the history was challenged in Supreme Court once more. It appeared like history would rehash itself when a constitution seat of the zenith court began hearing a case on Triple Talaq or talaq-e-biddat or minute separation in basic terms, a method of divorce used by Muslims in India in the name of Muslim Personal Law. A practice where a spouse can divorce his wife by trying to say Talaq for three consecutive times on her face or in written form or even on telephone. After divorce estranged wife can't request any reason or budgetary support from the spouse. This gave Muslim men tremendous unequivocal power and they used this power unsparingly. Triple Talaq was begun to be given by means of online systems administration media, even through electronic messages. Preeminent Court was to choose whether this frame or minute separation is built up or not..

Apex Court was to choose whether this frame or minute separation is built up or not.India as a country wanted to get free of this type of inflexible custom which had been consistently making harassment Muslim women since an indefinite time.

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<sup>14</sup> (Molla 2017)

Amidst all hatred among universal male overwhelmed Muslim social order, Supreme Court of India on 22 August 2017 considered triple Talaq or talaq-e-biddat unlawful. This point of interest verdict conveyed an end to a biased practice which has definitely destroyed numerous lives.

Sub-sequential to the verdict, there was a urgent need to implement the decision of apex court by enacting a law against Triple Talaq. Because, even however Supreme Court declared this practice as unlawful, there were several instances of moment divorce the nation over. In the absence of a proper rule of law, police, as well, was unable to act against it.

In an imperative move Union Cabinet on 15 December 2017, endorsed a recommendation to introduce the Muslim Women (protection of Rights on Marriage) Bill 2017, to make "Talaq-e-Biddat" or moment triple Talaq illegal and a punishable offence.

With the Cabinet endorsement this Bill will be introduced in Parliament and the government is hopeful that this will be passed in the winter session itself. Being an ordinary Bill, this won't require a special majority in the parliament, a simple majority will be enough to transform this Bill into a demonstration. Albeit, some extreme arguments will definitely be there in its passage.

One thing is undeniable that once this Bill will become a law, not any more Muslim women will face such adversity in future. In any case, for that this circumstance should not to be seen through religious eyes and society should likewise come forward and act against this social evil with no prejudice. At exactly that point such an excess of drudging will produce desirous results. Since no general public can advance without the dynamic and equivalent speculation of ladies and no country can end up incredible where a lady isn't dealt with deferentially.

## **Conclusion:**

This can be inferred from the above judgments that the Supreme Court has recapitulated about the requirement of Uniform Civil Code again and again and has settled the disputation and vagueness which have arisen due to the evident strife in the personal laws. If the Uniform Civil Code would have been executed for the whole country then such kind of contentious issues would have been settled by the statutory proclamation only. India is a country of Unity in diverseness having numerous religions and cultures. So, civil issues of the citizens should be taken in the same clutches of law only then the prime constitutional desire of fraternity can be materialized in the real sense otherwise these isolating forces would continue to violate the constitutional spark. So, in this sense uniform civil code is required for our society. A vigorous political is needed for the same along with the tenderness of religions sufferance and mutual esteem on part of each and every citizen of India. Discrimination toward gender is being prevailing in our society at each and every

part. The inequality has become a threat to women. And women are considered a weaker section in society till now. Very few sectors of women being empowered but not all women. So this strongly shows and proves that there is no significant change of implementing Uniform civil code towards gender justice. Steps should be taken compulsory at all circumstances. Measures shall be effective and male dominated society should pay way for the women in our country. If there no inequality of gender justice there will be a balanced economic development of our country. The foremost complication is there are many religious occurrence and laws for their corresponding religion which may be a hindrance to launch Uniform Civil Code in India. The cognizance should be created and if UCC is commenced then the right to equality for the citizens may be praised. The culture may be unified and proper legislation would be there but on the other hand, it would be a confusion for the people to continue and rules and regulations would be little difficult because still in India, there are people who are unlettered.

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