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ABSTRACT

The debate for a Uniform Civil Code has reached its zenith in the recent years. This research examines the debate of Uniform Civil Code with a feminist perspective and delves into tracing the historical correlation between codification of laws and providing equality to women. This article highlights the evolution of personal laws in diverse communities of India, mainly the Hindus and Muslims and how this evolution has impacted rights of women. This article explores the colonial legacy shaping personal laws and how the existing discrimination against the marginalized impacted the need for a change in personal laws of each community. Along with this, the article also delves into the contemporary issues and judicial pronouncements which have debated over the issue of Uniform Civil Code in India and how the UCC can be a beacon of hope for the women and their rights relating to marriage and property and the existing archaic provisions in personal laws which needs reconsideration. This article also talks about the potential impact of a UCC on societal cohesion and individual liberty. It evaluates the ways a uniform legal framework could rectify existing gender disparities while respecting the richness of India's cultural tapestry.

This article contributes to the ongoing dialogue on the UCC's significance in achieving gender justice, by tracing the historical trajectory and examining contemporary debates. As India navigates the path toward a harmonized legal framework, this article underscores the need for a nuanced approach that acknowledges the past, embraces the present, and paves the way for a future where gender justice is intrinsic to legal equality.

INTRODUCTION

Since the dawn of Independence, there has been an ongoing debate on the unification of personal laws. One of the first contentions of the constituent assembly was to create uniformity in personal laws for an Independent India. The main reason behind this was to promote equality among different cultures and eliminate all the archaic provisions and customs of the personal laws that used to discriminate against marginalized sections of

society.

Women in India have often found themselves trapped in a patriarchal approach to traditional customs and practices. Even after legislating against Sati pratha and child marriages, these evils are still practiced in our society. The movement started in 1837 by Raja Ram Mohan Roy to eradicate discrimination in the name of religious customs still has a long way to go. The current debate on the Uniform Civil Code gives a beacon of hope to women. Many feminist activists in India have called for reforming religious personal laws and applying fundamental rights principles in the sphere of marriage and family relations.¹

Article 44 of the Indian Constitution asserts, "The State shall endeavor to achieve for all its inhabitants a Uniform Civil Code throughout the territory of India."² This Article underscores the State's responsibility to enact a Uniform Civil Code for all citizens, transcending religious affiliations and regional differences. While the Directive Principles are not enforceable by courts, their fundamental nature underscores their importance in guiding legislative deliberations. Article 37 of the Constitution explicitly establishes that these principles are integral to the nation's governance, mandating the State to incorporate them in the formation of laws.

Simultaneously, Article 14 guarantees the fundamental right to equality before the law, ensuring that no citizen is subject to discrimination based on religion or gender. Article 15 reinforces this principle by prohibiting any form of discrimination by the State on these grounds. The intersection of these articles brings forth a compelling argument against the differentiation of citizens' rights, particularly in matters as intimate as marriage, divorce, and religious customs.

The linkage between gender justice and the Uniform Civil Code shows that discrimination against women kept alive through diverse personal laws, can only be eradicated by harmonizing them under a common framework. As such, any step taken toward a Uniform Civil Code carries significant implications for enhancing women's status and dismantling systemic gender biases prevalent within varying personal laws.

¹ Siobhan Mullally, "Feminism and Multicultural dilemmas in India: Revisiting the Shah Bano Case," Vol.24 Oxford Journal of Legal Studies, No.4 (2004), pp. 671-692

² The Constitution of India, art.44

The notion of a Uniform Civil Code has remained controversial, primarily due to religious and cultural autonomy concerns. The apprehensions of minority communities, who perceive the initiative as a threat to their distinct identities, call for a different approach to developing the Code. Reconciling the aspirations of a diverse society with the need for gender justice necessitates careful deliberation and consultation to ensure that the Code respects constitutional rights and provides a balanced framework for social transformation.

HINDU PERSONAL LAWS AND PROMOTION OF GENDER EQUALITY

In the annals of history, British colonial rule in India wielded a significant influence on the evolution of personal laws and the promotion of gender equality. Lord William Bentinck's introduction of the Abolition of Sati Act in 1829 and Lord Dalhousie's Hindu Remarriage Act in 1856 marked transformative milestones that reshaped Hindu personal laws. The codification of penal provisions in 1860s granted rights to women and widows. By the 1870s, the British were determined to catalyse societal developments by rectifying discriminatory Hindu laws, specifically those about caste and gender.

During the time, there were distinct personal laws for the two major communities, i.e., Hindus and Muslims. Personal law was not uniformly applicable to all community members as Hindus were governed by Mitakshara and Dayabhaga schools of law. Again, Mitakshara school was divided into four parts: Mithila, Madras, Benaras, and Bombay.

During the 19th century, Hindu society was mired in a web of unjust practices. Prominent among these were polygamy, child marriage, prohibition of inter-caste marriage, denial of women's rights in ancestral property, and male dominance in matters of succession and marriage³. These prevailing conditions underscored the need for legal reform to usher in a more equitable society.

In 1873, the Special Marriage Act was introduced by Sir Henry Maine, which was later scrapped. This legislation was aimed to facilitate inter-caste and inter-religious marriages. This pioneering legislation marked a step towards a more uniform and civil-oriented approach to marriage laws.

³ P. Ishwara Bhat, "Directive Principles of State Policy and Social Change with Reference to Uniform Civil Code", vol. 25, 1989 Banaras Law Journal 7596 at 76

Following the Special Marriage Act of 1873, the Age of Consent Act was passed in 1891, which was yet another pivotal development. This Act set the age of consent for women for marriage at 12 years, a progressive measure for that era. In 1929, the Child Marriage Restraint Act was enacted, establishing the legal age of marriage for men as 18 and women as 14, further combatting the menace of child marriages.

Although these provisions were aimed at promoting woman and their rights relating to marriage, there was yet another issue faced by women which was related to property rights. The rights of women in matters of property were a deeply contentious issue. In 1874, The Married Women's Property Act, also known as the 'Deshmukh Act' was introduced, which represented a modest step towards addressing this concern, conferring absolute ownership of wages, earnings, property, investment, and savings of a married woman.

Subsequent advancements came with The Hindu Inheritance (Removal of Disabilities) Act, 1928, which debarred the exclusion of woman from inheritance and joint family property. The transformative Hindu Women's Right to Property Act, 1937 marked a turning point, endowing women with absolute rights over their *stridhana* and a limited estate in other property matters. This Act also heralded the historic moment when widows gained property rights in their husbands' estates.

By this time, the Hindu personal laws were undergoing a metamorphosis under British Raj's influence. There was also strong support from the Hindu Social reformers to the British colonial government, a significant source for facilitating the changes. However, things were not the same on the other side. The Muslim community during that time was not in the mood to accept changes in their personal laws.

The Debate For The Hindu Code Bill and Women's Rights

As the nation entered the 1940s, there was a glimmering hope that soon, India would become independent, which started a debate for a Uniform Civil Code for Independent India. Dr. B.R. Ambedkar aggressively pushed for equality in society and proposed that a Uniform Civil Code should be passed alongside the passing of the Constitution. He thought that India would not be truly independent until there was equality for all and no discrimination should be allowed based on caste and gender in a truly independent India.

It was now well understood that India's religious practices and customs had failed to ensure women a dignified life and that the legislations passed by the colonial government were not enough to grant women equal status in society. A committee was formed in 1941 to examine the issues in Hindu customs and laws. B.N. Rau chaired this committee. This committee submitted a report recommending a complete overhaul of the Hindu laws to establish equal rights and end discrimination based on caste and gender.

The Hindu Law Committee was again revived in 1944 to draft a complete code of Hindu personal laws. The committee submitted its report in February 1947 and was introduced in the constituent assembly on April 9, 1948, and introduced some reforming changes in the Hindu personal laws. These changes included removing polygamy, introducing civil marriages, and extending the grounds for divorce to women.

The Hindu code bill also proposed a significant increase in property rights for Indian women, which included absolute property rights in intestate succession and *Stridhana* property and the removal of the concept of coparcenary.

Despite being a revolutionary step, the Hindu Code Bill aimed to establish equality, but it was heavily debated and criticized among traditional purists. The question of property rights in intestate succession became one of the dominant themes in public debates. There was a huge hue and cry among the orthodox segments in the constituent assembly over the Code. The constituent assembly formed a Select Committee to look after the Code. Dr. B.R. Ambedkar headed this committee. The discussions could not be completed due to the polarizing atmosphere, and the assembly could not conclude, and as a result, in the early 1950s, the bill lapsed, which also resulted in the resignation of Dr. B.R. Ambedkar as law minister of India.

The Hindu code bill remained in hibernation for the next few years until the first Lok Sabha election occurred, and Pandit Jawaharlal Nehru came into power with a landslide majority. Using this power, the Hindu Code Bill was passed for different legislation between 1953-56. These legislations were:

1. Hindu Marriage Act, 1955
2. Hindu Succession Act, 1956
3. Hindu Marriage and Guardianship Act, 1956

5. Hindu Adoption and Maintenance Act, 1956.

These 4 acts completely changed the atmosphere of Hindu personal laws, especially concerning women's rights. The movement, which started with Raja Ram Mohan Roy in 1937, aiming for an equal, prosperous society, can said to have been come into the final stage in 1956. These acts introduced significant changes in Hindu culture. The Hindu Marriage Act of 1955 and the Hindu Succession Act of 1956 presented the most prominent ones. With the enactment of these legislations, uniformity was reached within the Hindu personal laws, along with some equality among genders and castes.

The Hindu Marriage Act introduced monogamy, and bigamy was now considered a criminal offense. Along with the abolition of bigamy, extra provisions were introduced this Act for women as grounds for divorce or judicial separation. These provisions were aimed at giving justice to women. Along with the rights introduced in the provisions of marriage, women were also granted property rights under Hindu Succession Act, 1956.

The question of property rights to women was one of the dominant themes in public debate over the Hindu Code Bill in 1944 and 1945. A major segment of the assembly believed that women were incapable of managing property. Also, there were a lot of complications regarding the property rights of married women and a widow. However, this act gave absolute right of coparcenary property to women, although no rights were granted in terms of agricultural land. The Hindu Succession (Amendment) Act 2005 later diminished these disparities in the bill, giving absolute rights to women in their share of ancestral property.

MOVING TOWARDS GENDER EQUALITY IN MUSLIM PERSONAL LAWS

The legal system prevalent in Muslims is known as "Shariat." Shariat is a "divine law" believed to be Allah's word. In Islam, four sources are included in making this law: Quran, Hadith, Qiyas, and Ijma. There are two sects of Islam, i.e., Shia and Sunni. The Sunni sect was divided into Hanafi, Hanbal, Maliki, and Shafi, and the Shia sect was divided into Ithna, Ishari, Ismaili, and Zyadia—these two sects Shia and Sunni, differ from each other in the application of personal law.

Most Muslims in India are Sunni and follow the Hanafi school of Shariat. For a long time, there was a prevailing silence over Muslim personal laws and their unjust practices. Even after India got its long-awaited Independence, there was a long time before the government or the courts tried to resolve these unfair practices, especially against women, mainly due to an enormous distrust and protest by the Muslim representatives. The Muslim personal law had rigid practices such as polygamy, unilateral divorce, non-maintenance of the divorced wife, inhuman practices like Nikah-Halala, and gender discrimination on succession matters.

In 1937, the British colonial government passed the Muslim Personal Law (Shariat) Application Act which established that the Muslim community would be governed based on the laws of Shariat. Following this, the Dissolution of Muslim Marriage Act (1939) was passed, laying provisions for divorce from courts. However, this Act was silent about the issue of maintenance to the divorced wife.

The provision of Marriage in Islam is termed as a contract between a man and a woman, and the consideration for the contract of marriage is termed 'Mehr.' In Muslim Personal Law, a divorced lady is only entitled to maintenance till the period of *iddat*, along with the amount decided as Mehr. This practice was discriminatory and unjust for women, making them forcefully bound to marriage.

A survey conducted in 1996 showed that 7% of the families surveyed had polygamy in practice; 30% of families had one or more divorced women showing clear evidence of oral talaq; the period of marriage after which talaq was pronounced ranged from less than one year to four-five years; and the reasons mentioned by these women were dowry (44%), anger (32%), second wife (16%), no son/daughter (4%). Divorced women who had to leave home immediately were 92% of the respondents. All of them said they needed proper maintenance. The mehr – which is an amount the husband is supposed to return after talaq – was less than Rs 500 in 76% of the cases (Patel 1994)⁴

Alongside a poor maintenance system and practices like Nikah-Halala and polygamy, women are dependent and in an inferior societal position. A prevalent practice of *Talaq-e-biddat*, or Triple Talaq, a form of unilateral divorce, used to snatch the rights of married women. In matters of succession, there is an unequal distribution of men and women in property.

⁴ Razia Patel, "Indian Muslim Women, Politics of Muslim Personal Law and Struggle for Life with dignity and Justice" vol.44 Economic and Political Weekly (2009) pp. 44-49

Due to such prevailing practices, there was a demand to change Muslim Personal Laws and develop a Uniform Civil Code at the time of Independence. Still, there was a massive uproar in the orthodox Muslim society against this idea. The first issue which came to light that decided the fate of Muslim Personal Laws in Independent India was that of *State of Bombay vs. Narasu Appa Mali, 1951*⁵. In this case, the question arose before the Hon'ble Bombay High Court whether the Court has the power under Article 13 of the Indian Constitution to quash the indiscriminate practices in personal laws as it violates Article 14 and Article 19 of the Indian Constitution. The Court, however, held that the term "laws in force" used in Article 13(1) does not include personal laws as this was based on customary practices and no substantive law in force was there which regulated the Muslim Personal Law, and hence cannot be tested as whether it is a violation of a fundamental right. This judgment laid down an extent to which personal laws can be subject to fundamental rights.

No further improvements took place till the next three decades due to the precedent set by the ruling of this case, and Muslim women were forced to follow the unjust customary practice established by the Muslim Personal Laws.

The next big step that came to light was the case of *Ahmed Khan vs. Shah Bano Begum*⁶, a controversial lawsuit demanding maintenance for Muslim women. In Muslim Personal Law, there was no provision for maintenance, and the husband was only liable to maintain the wife till the period of *Iddat*. The question before the Hon'ble Supreme Court was whether a secular law of maintenance in S.125 of CrPC would also apply in cases of Muslim women. It was held that in cases of conflict between husband and wife, the secular law of maintenance in S.125 of the Code of Criminal Procedure would override the personal laws of religious communities. The Chief Justice concluded that the obligation imposed by section 125 was founded upon the commitment to prevent vagrancy and destitution. That was 'the moral edict of the law,' and morality could not be 'clubbed with religion.' The duty to pay maintenance 'cut across the barriers of religion.'⁷ This judgment began imposing a Uniform law regarding civil disputes in Independent India.

This judgment, however, gave rise to further controversies, which sparked a heated debate in the nation. The pressure from the orthodox Muslim community and the All India Muslim

⁵ AIR 1954 BOM 82

⁶ AIR 1985 SC 945

⁷ *Ahmed Khan vs Shah Bano Begum* AIR 1985 SC 945

Personal Law Board led the Parliament to enact the Muslim Women (Protection of Rights in Divorce) Act, 1986, which aimed to reverse the judgment given by the Supreme Court in *Ahmed Khan vs Shah Bano Begum*. By the provisions of this Act, it was made clear that in cases of a Muslim woman, the maintenance would be done by the personal laws and not by the secular law, i.e., S.125 of CrPC. Section 3(1)(a) of this Act states that a divorced woman is entitled to fair and reasonable maintenance from her husband until the period of *iddat*. The Shah Bano judgment and 1986 act created an uproar in society and put a question mark on the institutions of the Judiciary and the Legislature.

This Act was, however, challenged in 2001 by *Daniel Latifi & Anr. vs. Union Of India*⁸ as being violative of Articles 14, 15, and 21 of the Indian Constitution. The Supreme Court upheld the validity of the Act. However, it interpreted the 1986 Act, which included two different obligations. The term 'Fair and Reasonable' used in section 3(1)(a) of the Act demands the man to provide in advance the amount which would be enough for the ex-wife to ensure her security for the rest of her life as per her standard of living prevalent before marriage. This amount in total must be paid during the period of *iddat* as mentioned in the 1986 Act.

Another unjust practice in Muslim personal law which discriminated against women was 'triple-talaq' or 'talaq-e-biddat,' an instant unilateral divorce mechanism in which the man has to say the word 'talaq' thrice, and that would amount to a legal divorce between a husband and a wife—this led woman in a very insecure position to their husbands. The practice of 'triple-talaq' came into question before the Supreme Court in *Shayara Bano vs Union Of India*.⁹ In this judgment, the Court declared the practice of 'triple-talaq' unconstitutional and stated that this is a distorted custom and has no mention in the Holy Quran.

This 2017 judgment raised a new hope for the UCC, and the judiciary formidably established itself as the protector of citizens' rights. The decisions of Shah Bano Begum and Shayara Bano can be considered a revolutionary step of the Indian judiciary to establish gender equality and protect women from the discriminative customary practices of the personal laws of every community.

⁸ (2001) 7 SCC 740

⁹ AIR 2017 9 SCC 1

Despite the steps taken by the judiciary in promoting gender equality in society, Muslim Personal law remains uncodified, leaving the practices such as polygamy and succession-related issues to women prevalent in Indian society.

CONTEMPORARY DEBATE ITS ROLE IN ACHIEVING GENDER JUSTICE

Since the dawn of Independence, the debate for personal law unification has taken a central position in India's socio-political structure. During the constituent assembly debates, Dr. B.R. Ambedkar seemed to be pushing the idea of a Uniform Civil Code as he believed it would protect the rights of the marginalized sections of society. The debate, however, ended by putting the concept of the Uniform Civil Code as a Directive Principle for State Policy in Part IV of the Indian Constitution.

Since then, the government has been silent on the issue despite the Supreme Court continuously prompting the Central Government to create a Uniform Civil Code in various of its judgment. This would not only solve the existing disparities in personal laws of different communities but also help grant rights to marginalized sections of society, especially women. Many women are continued to be victims of the existing injustice in the personal laws of each community.

In *Sarla Mudgal vs. Union Of India*¹⁰, the Supreme Court observed;

"Freedom of religion is the core of our culture ... But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms, are not autonomy but oppression. Therefore, a uniform civil code is imperative to protect the oppressed and promote national unity and solidarity."¹¹

In *John Vellamottam vs. Union Of India*, the Supreme Court once again referenced the Uniform Civil Code and expressed deep regret on the Parliament for not fulfilling its duty abiding by Article 44 of the Indian Constitution.

The current debate over the Uniform Civil Code revolves around maintaining a balance between a uniform, personal law, and religious freedom enshrined in Articles 25-28 of the

¹⁰ AIR 1995 SC 1531

¹¹ *Sarla Mudgal vs. Union of India* AIR 1995 SC 1531

Indian Constitution, along with the cultural and educational rights under Article 29. There is a constant fear, especially among minority groups, that if a Uniform Civil Code is enacted, it will take away their separate identity. However, the Supreme Court has clarified its stand on this issue in various instances. The Supreme Court has said that "It is no matter of doubt that marriage, succession and the like matters of secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution."¹²

Despite the constant push from the Indian judiciary and legal experts of this nation, the UCC does not seem to be welcomed in the current social and religious spectrum. The personal laws of every community are based on patriarchal lines, and it is high time for society to step up and walk together toward making a progressive society.

There have been many cases in Independent India where the Supreme Court has stepped up to nullify the personal laws discriminating against women. Some of these cases include *Thota Sesharathamma and Anr. vs. Thota Manikyamma*¹³ and *Gita Hariharan v. Reserve Bank Of India*¹⁴, along with various other judgments and dictum given by the judiciary, suggests a Uniform system for personal laws to promote equality among all genders.

Even though a lot of improvements have been made with regards to ensuring the rights of women, still, even after the codification of progressive law such as the Hindu Marriage Act, 1955 and Hindu Succession Act, 1956, there exists shades of patriarchy in the fabric of personal laws, especially in matters of intestate succession. Some cultures still practice age-old rigorous customs that are discriminatory and require special attention. UCC will undoubtedly help elevate the standard of women and other marginalized sections of society who are being subjected to discrimination in the name of personal laws.

Most importantly, a uniform law would not necessarily mean a common rule but different personal law based on consistent principles of individual liberty and equality. Such uniformity can sustain diversity in law.¹⁵ The framework of the UCC needs to maintain a balance between the rights of the minority and individual liberty.

¹² *John Vellamottam vs. Union of India* 6 SCC 611

¹³ 1991 SCC (4) 312

¹⁴ AIR 1999 SC 1149

¹⁵ 3 S.P. Sathe, Social justice and legal transformation 91-92 (Oxford University Press, 2015)

CONCLUSION

In conclusion, the journey toward achieving a Uniform Civil Code in India is intricate, marked by historical debates, legal reforms, and societal challenges. The concept of a Uniform Civil Code has been embedded in the Directive Principles of State Policy since the inception of the Indian Constitution, highlighting the State's aspiration to create a just and equitable society by harmonizing diverse personal laws. The interconnection between gender justice and the Uniform Civil Code is undeniable, as it aims to rectify discriminatory practices that have long marginalized women within varying personal laws.

Over the years, significant strides have been made through legislative reforms and landmark judicial decisions to address gender disparities within personal laws. The Hindu personal laws, for instance, have transformed with the passage of legislation like the Hindu Marriage Act, 1955, and the Hindu Succession Act, 1956, elevating women's rights in areas such as marriage, divorce, and inheritance. The judicial interventions, particularly in cases like *Shah Bano Begum* and *Shyara Bano*, have demonstrated the courts' commitment to upholding women's rights and advocating for gender equality.

However, the issue remains complex, especially in Muslim personal laws, where cultural and religious sentiments are deeply intertwined. The path to achieving a Uniform Civil Code must tread carefully to respect the rights of minority communities while striving for gender justice. The key lies in striking a balance between personal beliefs and constitutional principles.

The current socio-political landscape is a tapestry of diverse cultures, beliefs, and identities, making enacting a Uniform Civil Code sensitive. While the legal and constitutional framework encourages the adoption of a common civil code, it is equally important to ensure inclusivity and protect cultural autonomy. A comprehensive and balanced Uniform Civil Code would serve as a crucial instrument for societal progress, eliminating gender biases and promoting a more egalitarian and just society.

The journey toward a Uniform Civil Code in India is ongoing, and the commitment of lawmakers, policymakers, legal experts, and society will determine its fruition. By learning from historical experiences, addressing the concerns of minority communities, and upholding the principles of gender justice and individual rights, India can move closer to achieving a

uniform and equitable legal framework that respects diversity while ensuring social transformation.

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