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**CONCEPT OF UNIFORM CIVIL CODE**

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**ABSTRACT**

“This paper would primarily elucidate about the concept of uniform civil code and its legal dimensions with respect to the division of properties on basis of the given personal laws.

In this paper, the basic essence of the Uniform Civil Code is examined and what does it mean and its legal perspective and theories. This paper commences with the introduction to the Uniform Civil Code in which it defines the concept of the Uniform Civil Code and also discusses about its origin or where it has derived from.

This paper desires towards the personal laws with respect to the division of properties and their succession talking about the weather having uniform civil code its need in the country and also being driven towards the Uniform civil code as one common law and its needs.

Then it further discusses about the Uniform Civil Code and the constitutional guarantees. This paper also talks about the judgments and the take of the Indian Judiciary towards the Uniform Civil Code. Last but not the least, this paper concludes with certain sets of recommendations and conclusions.”

**INTRODUCTION**

<sup>2</sup>“India follows a belief of a multi religious system and multi-cultureless which creates its own wide forms of beliefs; they have been following since eras. Multifaceted and multi religious society wherein each community following its own religion is governed by its own set of personal laws. All faiths are covered in our Constitution. India does not have one faith of its own. This considers all religions equally. The fundamental principle behind the creation of a Civil Code is to eliminate religious discrimination. It is the society's bitter truth that under

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<sup>2</sup> **Part IV of the constitution of the constitution; the directive principles of State Policy provide that the state Shall endeavour to secure for the citizens a common civil code throughout the territory of India.**

personal law, women are the worst victims of discrimination.

Under the article 44 of our constitution it defines the term Uniform civil code for the citizens, it states that “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”

<sup>3</sup>India is defined with secular state by the 44<sup>th</sup> amendment, the basic ideology behind the formulation of civil code is to end discrimination based on religion. It is the bitter truth of the society that women are the worst victims of discrimination under personal laws. A uniform civil code would ensure that all citizens of India are governed by the same set of secular civil laws in matters of marriage, divorce, maintenance, adoption, inheritance, etc.”

India has its own personal laws with respect to secularism, under the present set of laws where India has its belief of personal laws in regards to the inheritance of property and the succession, every religion has its own law. Each religious community has its own un-codified and codified personal laws. Personal laws govern matters relating to marriage, matrimonial remedies, adoption, maintenance, succession etc.

<sup>4</sup>“Under the present set of laws, Hindus are bound by law to practice monogamy, whereas Muslims are not. Similarly, whereas Hindus have a comprehensive enactment on adoption, this concept is not recognized by the personal laws of Christians and Parsees.. It is true that present day family law is a mixture of old and new; it is of complicated, incoherent and non-symmetrical nature and so there is need for such a code which will do away with diversity in matrimonial law. Family laws of religion need to be changed in view of contemporary social circumstances. It is important to simplify the Indian legal system to make Indian society more homogeneous; only then the idea of a secular society can be achieved and for these there is need for uniform civil code for all religions.”

## **EVOLUTION**

“India's persuasively official postcolonial plan for the adoption of a Uniform Civil Code seemed to suit the West, embodying a freshly revitalized civilizing project, a clarion call for unified nation-building and the achievement of legal modernity by top-down secularizing changes

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<sup>3</sup> Chand, Yumna, Pietro Sirena, Sherin B.S, Yolanda B., Tarunjyoti Tewari, Saptarshi Mandal, Aparna Srivastava, et al. “UNIFORM CIVIL CODE.” UNIFORM CIVIL CODE Research Papers - Academia.edu. Accessed January 29, 2020. [https://www.academia.edu/Documents/in/UNIFORM\\_CIVIL\\_CODE](https://www.academia.edu/Documents/in/UNIFORM_CIVIL_CODE)

<sup>4</sup>Parveen, Gazala. “The Legal Odyssey of the Uniform Civil Code.” iPleaders, October 22, 2019. <https://blog.iplayers.in/uniform-civil-code/>

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guided by the state.

With evolving part, if look at this concept of Uniform civil code is the child of India [post-independent], it has its deep roots generally in the history of struggle for Independence. In the defunct, India was interspersed into the small republics, where were ruled, administered, and governed by the respective sovereigns or their representatives. With the political unification of India, after the advent of the britishers, the necessity of common law governing the whole citizenry of this sub-continent became more acute. Before that, the common law- civil as well as criminal was enacted by the territorial heads, according to their conventions, which they inherited from their previous generations, having religious and ethical sanctity. But many times despotic whims prevailed over legal ethics. Each kingdom had its own law, and its own machinery for administration thereof. There was no uniformity either in law or in procedure, as each state was sovereign and there was no cohesive bond which could foster uniformity in the administration of justice.

<sup>5</sup>During the case of Shah Bano in 1985 the standardized civil code became a flashpoint in Indian politics. The Supreme Court also ruled that her ex-spouse should be receiving alimony from Bano, a Muslim woman. The court had said a uniform. Personal laws were first framed during the British Raj in connection with that judgment, mainly for Hindu and Muslim citizens.”

The British expected resistance from community leaders and declined to intervene in this domestic partnership. Female feminists first brought forward the proposal for a standardized civil code in the early twentieth century, with the goal of women's rights, democracy and secularism in mind. Until Independence in 1947, a few reforms to the law were adopted to improve women's condition,

Particularly widows of Hindu descent. The Hindu Code Bill passed by the Indian Parliament in 1956 despite significant opposition. While Prime Minister Jawaharlal Nehru, his followers and woman feminists, had made a case for a standardized civil code, they eventually had to consider the option of incorporating it to the Directive Principles due to heavy opposition.

## **MEANING**

<sup>6</sup>“In the most rudimentary sense UCC refers to a unilateral civil law system that applies to all citizens of a country. While this may seem a huge over-simplification, it helps us to understand

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<sup>5</sup>Shayara Bano vs Union of India and Ors., W.P. (C) No. 118 of 2016.

<sup>6</sup> Ms. Jorden Diengdeh Vs. S.S. Chopra (AIR1985SC935)

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a fundamental question, which the father of our constitution always responded to.

<sup>7</sup>The Uniform Civil Code means a uniform personal law for all citizens of the country. This code will replace the existing religious personal laws in India and have a uniform law that will cater to all the citizens, irrespective of their religion. This has been envisaged by the makers of our Constitution under Article 44.

Uniform Civil Code is the current topic of debate under Indian mandate to substitute personal laws based on the scriptures and practices of every major religious group in India with a similar set of rules regulating every resident. The purpose of the Uniform Civil Code in India is to replace personal laws based on the scriptures and customs of every major religious community. In a world where every individual is ruled by a common set.

For all people a [standardized] Uniform civil code would require a set of common personal laws. There are actually various personal rules to Hindus and Muslims for example. Land, marriage and divorce, property and succession are governed by personal law.”

### **SIGNIFICANCE**

<sup>8</sup>With respect to the first question, India as a country is a secular state, this country has its own belief, customs and traditions to follow. India is a place where different religions such as Hinduism, Islam, Judaism, Jainism, Zoroastrianism, Catholicism, Sikhism, and so on are practiced. India's secularism continues. It is enshrined in our Constitution and was included in the 1976.

<sup>9</sup>The “word' secular' means that the State will not practice any particular religion and that citizens will not be discriminated against because of their beliefs. This means giving people the freedom to practice every faith. This is also enshrined as a fundamental right under Articles 253 and 264 in our Constitution amble of the 42nd Amendment.

With regards to the regulation we have under the Hindu law, have its own inheritance of property and Hindu succession act, which actually talks about the Dayabhaga and the Mitakshara, as law differs to be prevailed. Mitakshara joint family in certain fundamental aspects, the primary among them is absence of a right by birth of a son. Dayabhaga law does not recognise the doctrine of survivorship. There is no distinction between separate and coparcenary property and the entire concept is based on inheritance, i.e., that the sons inherit the

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<sup>7</sup>Pradhan, Saxena Poonam. Family Law Lectures: Family Law II. LexisNexis, 2011.

<sup>8</sup>“The Need For Uniform Civil Code In India - Ipleaders.” Accessed January 28, 2020.  
<https://blog.ipleaders.in/need-uniform-civil-code-india/>

<sup>9</sup>Smt. Sarla Mudgal, President, Kalyani And Others Vs. Union Of India And Others (AIR 1995 SC 1531)  
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property of the father under a Dayabhaga coparcenary, his own son and grandson do not acquire any right in the property.”

“ARCHNA V. DEPUTY DIRECTOR OF CONSOLIDATION, [2015] 111ALR 63.

<sup>10</sup>With respect to the inheritance of property and the succession, Hindu has its separate set of laws which governs the set of rule with respect to Hindus in India. The Hindu law is one among the most historic and primitive laws which are still familiar in today's era and also regarded to the world at large. It is governed by the 1956 Hindu Succession Act, a codified law surpassed by the Indian Parliament associated with the Intestate (unwanted assets) to amend and regulate the Intestate and Testamentary Succession under Hindu law, but in a few cases, the Indian Succession Act plays a leading role.

Section 5-29 talks approximately the intestate succession related with the idea of women as a coparcener (a person who shares the inherited land equally) (Sections 6 & 7), male intestate and their order of succession.

(Section 8-13), woman intestate and their order of succession (Section 14-16), different relationships and rights (half-blood, full-blood, Child in a womb etc.) has been dealt under (Section 17-29) of the Hindu succession act. Part VI of the Indian Succession Act, 1925, starting from Section 57, expressly recognizes the right of a Hindu to get rid of his property consistent with the need made by way of him (Testamentary Succession). Schedule III offers for sections which are applicable to wills and codicils below Hindu regulation challenge to restrictions.

Under the Muslim community, they have their own respective laws regards to the inheritance of property and succession act. When we talk about the Muslim law, what we understand from it that it is an Uncodified law.

Under the Muslim law, there are two schools known as the Shia and Sunni school of law. Under the Shia law the property of the deceased person is divided as PER STRIP which also means per relationship they share in the family thus, the quantum depends upon the branch in which they are and also the number of people that are present in their branch while under the Sunni law, the heritable property is divided PER CAPITA which also means per head according to which they get equal share in the heritable property.

With respect to the succession under the Muslim law, it follow up and governed by the Shariyat , The Islamic law does not grasp the idea of different affiliations. For both male and female succession, the most powerful one property has the same trendy laws (including rule of

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<sup>10</sup>Archna V. Deputy Director Of Consolidation, [2015] 111alr 63.

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inclusion, rule of exclusion, rule of primogeniture, law of inheritance and spec successions); If a Muslim person dies by creating a will then, after the loss of life of a character in accordance with the law, the assets in his possession could be distributed to a number of legal heirs by deducting certain fees and liabilities from the remaining property also referred to as heritage. The Islamic Succession Laws constitute:"

1. The Quran,
2. The Ijma,
3. The Sunna,
4. The Qiya

<sup>11</sup>"In the case of MOHD. AHMED KHAN V. SHAH BANO BEGUM with respect to this case Eventually, the controversy between religious and secular authority over the UCC problem subsided, until the emergence of the case of Shah Bano in 1985[3]. This case was contentious in many ways, primarily because it permitted Muslim women beyond the Iddat (or waiting) time for alimony and maintenance.

In this case, the Supreme Court ruled for Shah Bano Begun under the provision of Section 125 of the Code of Criminal Procedure, which allows right to maintenance to a wife, and is applied to all citizens irrespective of religion.

"Under section 125 (1) (a), a person, who, having sufficient means, neglects or refuses to maintain his wife who is unable to maintain herself, can be asked by the Court to pay a monthly maintenance to her at a rate not exceeding five hundred rupees... 'wife' includes a divorced woman who has not remarried.

Shah Bano's case brought the need for a secular Uniform Civil Code into the limelight again. To date, however, individual Personal Laws based on religion are still in effect. The case remains a ground-breaking one in Indian divorce law and is often used as a benchmark by the courts.

For the Christian and Parsi we have Indian succession act of 1925 which gives The Succession Act applies to Parsis and Indian Christians for both testate and intestate succession. In the case of testate succession, the same rules apply to both Parsis and Indian Christians. However, the rules differ in the case of intestate succession.

In the given second question the reasons are as follows for the necessity of a common law [UCC], that it would bring communal harmony by promoting real secularism. All Indians

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<sup>11</sup>Mohd. Ahmed Khan vs Shah Bano Begum And Ors 1985 AIR 945, 1985 SCR (3) 844

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should be treated the same right now we have personal laws based on particular religions, which means a Hindu or a Christian will be prosecuted for doing the same while Muslims can marry multiple times in India. To me, this does not seem like equality. For all Indians, all the laws relating to marriage, succession, relatives, property etc. should be equivalent.”

## **CONCLUSION AND SUGGESTION**

Despite the challenges, India needs to find a way forward towards the path of development by adopting UCC. A vast number of interests and sentiments must be addressed while devising the rules. It should not be implemented at once.

“Bringing the UCC is a social transformation and needs to be done gradually, not at once. It is not necessary that only some people from the minority community will oppose it. Any section of society that is being deprived of benefits may protest. Such as an undivided Hindu family which gets tax benefits.

<sup>12</sup>We will need to build trust, make common cause, and create campaigns of awareness with social reforms rather than conservative religious leaders. As the situation is fragile, we should bring changes one by one, highlight one issue at a time and generate awareness about them. It might include strongly support the crusade for the implementation of the UCC and <sup>13</sup>homogenizing the personal laws. To support it, not because of any bias, but because it is a need of the hour. It is the high time that India must have a uniform law dealing with marriage, divorce, succession, inheritance, and maintenance. Uniform Civil Code is a must for a country where secularism is given great prestige in resolving outrageous problems of the nation. Divorce, marriage, inheritance, succession, adoption and so on.”

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<sup>12</sup>Kamra, Aakarsh. “A Cause Celebre on Article 44: An Attempt Towards Unifying Diversity in the Jungle of Personal Laws Prevailing in the Indian Democracy.” SSRN Electronic Journal, 2008. <https://doi.org/10.2139/ssrn.1320766>.

<sup>13</sup> India, legal Service. “Uniform Civil Code.” Legal Service India. Accessed January 29, 2020. <http://www.legalserviceindia.com/articles/ucc.htm>.

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