

**DE JURE NEXUS LAW JOURNAL**

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3<sup>rd</sup> Year, BBA LL.B.**ANALYZING FAMILY LAWS- A NEED OF AN EVOLVING SOCIETY****UCC****ABSTRACT**

*The research paper illuminates the issue relating to the uniform civil code and manages the legitimate perspective in India. The execution of uniform civil code (UCC) is one of the most debatable topics of the contemporary times. Uniform civil code (UCC) supplants personal laws based on scriptures, sacred writings, and customs of each major religious community in India with a typical set of rules governing every citizen. Uniform civil code (UCC) discovers its reference in our Constitution under Article 44 of Directive Principles of State Policy (DPSP) which expresses that it is the obligation of the state to verify for its citizens a uniform civil code (UCC) throughout the territory of India. Uniform Civil Code is an solution to every problem related to personal laws. Further, it would also help in promoting secularism, equality and gender justice. The paper intends to give its per user a definite knowledge of uniform civil code (UCC), the benefits that it will showcase upon it execution and the issues that is upsetting the usage of the equivalent. Authors here, have made an attempt to find an expedient way to deal with uniform civil code (UCC). The research depends on optional sourced information which incorporates books, magazines, journals and articles. They have been explored for the study.*

**INTRODUCTION:**

With a mélange of populace, India's diversity is extensive and has no end. It is a country with diversity in culture, customs, rituals, faith, religion and many more to count on. While the same criminal code is applied to all the citizens of the country regardless of their religion, race, caste, sex and place of birth, there is no such similar code controlling adoption, marriage, maintenance, divorce and succession which comes under the personal laws. The designer of the Constitution with the intention to execute uniformity in the personal laws consolidated Article 44 which states that the state shall endeavor to secure for all citizens a uniform civil code throughout the territory of India. Uniform Civil Code essentially seeks to supplant personal laws which depends on the customs of every religion and such laws fundamentally addresses five general classification: Marriage, Divorce, Maintenance, Adoption and Succession. The main purpose behind its implementation is to put an end to the discrimination based on religious ideologies, to promote the concept of secularism in the real sense and to eradicate the problem of gender biasedness. Basically, all it seeks to execute is that every citizen of the country be of any religion or any community or any gender is adjudged on the same platform, in regard to all civil matters and no citizen is governed by its own personal laws. Notwithstanding, numerous judgments deciding for execution of Uniform Civil Code (UCC), the issue is yet not enacted even after 72 years of Independence.

#### **NEED FOR UNIFORM CIVIL CODE:**

India, being a multilingual and multi-cultural society, possessed by different religions and customs and is known for its diversity. However, with the passage of time, these religions have become strict compartments, wherein the religious practices and customs restrict its followers in many different ways.

Marriage Institution is the basic unit, started by people, where two people, that is, a man and a woman unite together, become husband and wife to form a family. It has nothing to do with religion. To begin with the concept of inter-religious marriages have always been an issue in the Indian society. The thought of inter-religious marriages are seen as an interloper term which is not accepted by the society. The people who have undergone these inter-religious marriages are ostracized by their family members. They are not given an equal status in the society. They struggle to get equal status. There are as many personal laws as there are as many religions and they govern them separately.

Having different laws for every religion, it had created a divide among people. The people have been classified into compartments and groups. They are not treated as Indians first, but as Hindu, Muslim, Christian or Parsi. Not only marriage, there are many elements like divorce, maintenance, succession and adoption, which have created chaos and confusion as to which laws to follow.

In India, we have 55% of citizenry below 25 years of age. So, we can assert that half of the population is youth. In a country, where half of the populace is teenage, requires variations and unlikeness. The youth always aspire for new thoughts and solutions. At every generation, youth is the only stage who brings huge and observational changes in the society for the upliftment of the society.

This generation of youth requires changes that can help bring uniformity in the country. These are the people who have ability to bring about a shift in this effect. These are the people whose main objective is to bring a rational between inter-caste marriages and the society norms.

Thus, there is an urgent need to bring about a single code that could govern various religions, castes, class, rituals and even customs. There must a law that imposes penalty/punishment on those who protest inter-religious marriages. When a marriage has been solemnized with the free consent of both the parties, religious distinction between the two should not come in the way of a perfectly valid marriage.

### **HISTORICAL BACKGROUND:**

#### **The Lex Loci report:**

The initiative for UCC first began in India in the 19th century by the feminists who demanded equal rights for women. The Lex Loci report of 1840<sup>1</sup> said that the Indian laws relating to criminal, contract and evidence should be codified while the personal laws for the country should be kept outside the reach of it. The British initially were analytical about the inclusion of religion into a uniform civil code. They refrained from interfering with the religious anthropology of the country, fearing a communal backlash. Uniformity was restricted only to the laws that excluded the matters of religion.

#### **Post-Colonial period:**

The framers of the constitution were convinced about the fact that there is a need of uniformity in the law prevailing the territory. Dr. B. R. Ambedkar being the epicenter of the drafting committee felt the need of a Uniform Civil Code that would govern the masses, while Pandit Nehru was convinced to an extent that the UCC needed modernization due to its communal sensitivity and it would be seen as an annexation into the cultural fold of the country. The country was still soaked in the blood of the victims of partition which also was a matter of concern for the government. The times changed but the dream of a uniform civil code still remains unrealized even after 72 years of Indian independence.

### **Present day scenario:**

UCC has been a hot topic of debate for the past 6 decades. Even today people are still unclear about the consequences of the implementation of the Uniform Civil Code (UCC). Many believe it to be a majoritarian agenda which will favour only a single community while others see it as a force that will unite the nation and bind it together. The ongoing debate is about the violation of the fundamental rights and the eradication of religious autonomy. The provisions of Uniform Civil Code (UCC) should relate to matters where human rights are violated and the autonomy of practicing the religion prevails<sup>1</sup>.

### **POSITION OF THE SUPREME COURT:**

The Supreme Court seems to have a divided opinion on the introduction of a Uniform Civil Code. On one hand, it has rejected attempts to do so through public interest litigation but on the other, it has recommended early legislation for its implementation.

In **Pannalal Bansilal v. State of Andhra Pradesh**<sup>2</sup>, it held that a uniform law though highly desirable, the enactment thereof in one go may be counter-productive to the unity and integrity of the nation. Gradual progressive change should be brought about.

Similarly, in **Maharishi Avadhesh v. Union of India**<sup>3</sup>, the Supreme Court dismissed a writ petition to introduce a common Civil Code on the ground that it was a matter for the legislature

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<sup>1</sup> <http://law.uok.edu.in/Files/5ce6c765-c013-446c-b6ac-b9de496f8751/Custom/UNIT%20-%204.pdf>.

<sup>2</sup> 1996 AIR 1023 1996 SCC (2) 498

<sup>3</sup> AIR 1991 All 52

and in Ahmedabad Women Action Group v. Union of India, the Supreme Court showed reluctance to interfere in matters of personal law.

But in **Sarla Mudgal v. Union of India**<sup>4</sup>, the Supreme Court directed the then Prime Minister P.V. Narsimha Rao to take a fresh look at Article 44, which the Court held to be imperative for both protection of the oppressed and promotion of national integrity and unity. It instructed the Union Government through the Secretary to Ministry of Law and Justice to file an affidavit, enumerating the steps taken and efforts made by the Government towards achieving a common civil code for the citizens of India. The Division Bench of Kuldip Singh and R.M. Sahai said that since 1950 a number of Governments have come and gone but have failed to make any efforts towards implementing the constitutional mandate under Article 44. It is based on the concept that there is no necessary connection between religion and personal law in a civilized society. No religion permits deliberate distortion. Marriage, succession and the like are matters of a secular nature and therefore can be regulated by law. Unfortunately, it was later clarified in an appeal that the direction issued by the Court was only an obiter dicta and not legally binding on the Government.

In John **Vallamattom v. Union of India**<sup>5</sup>, it was held that Articles 25 and 26 of the Constitution protect only those rituals and ceremonies which form an integral part of a religion, and that matters of a secular character cannot be brought under the guarantee enshrined under them. The Chief Justice of India firmly emphasized that enactment of Uniform Civil Code would end all such problems arising out of ideological conflict.

In **Danial Latifi v. Union of India**<sup>6</sup>, a very controversial question of political significance (in the background of a secular constitution and the concept of welfare state) was revisited i.e. whether or not a divorced Muslim woman after divorce post iddat period is entitled to maintenance by her husband. Here, the Supreme Court adopted a middle path and held that reasonable and fair provisions include provision for the future of the divorced wife (including maintenance) and it does not confine itself to the iddat period only.

### **NEED TO ABOLISH THE EVIL OF TRIPLE TALAQ:**

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<sup>4</sup> AIR 1995 SC 1531

<sup>5</sup> Writ Petition (civil) 242 of 1997

<sup>6</sup> Writ Petition (civil) 868 of 1986

Triple Talaq is an unreasonable and an inhumane concept. It has questioned the position and status of Muslim women in India. This concept of triple talaq was a deleterious weapon in the name of husband. There is no scope of compromise between the spouses. With the advent of new technology and communication methods, triple talaq have become more popular and this process can be done even by both oral and written communication channels. This approach not only abstains the Muslim women from the rights given to them under Holy Quran, but also makes them the figurine in the hands of husbands.

### **Shamim ara v. State of U.P.<sup>7</sup>**

In this case, the learned judge expressed disapproval of the statement that “the whimsical and capricious divorce by the husband is good in law, though bad in theology” and observed that such a statement is based on the concept that women were chattel belonging to men which the Holy Quran does not brook.

### **Shayara Bano v Union of India:**

The learned counsel for the petitioners put forward the following arguments:

1. Violation of the fundamental rights guaranteed under Article 14, 15 and 21 of the Constitution.
2. Ban on Triple Talaq in the Muslim majority nations around the world.
3. Talaq-i-biddat should be banned the same way the practices of Sati, Devdasi and Polygamy amongst Hindus were banned despite being prevalent for centuries.
4. Talaq-i-biddat gives to the husband the unilateral and unbridled power to divorce their wives and the latter have absolutely no say in the matter .This contention was supported with reference to the tradition of Sunni Muslims:

### **EFFECTS OF UNIFORM CIVIL CODE:**

Uniform Civil Code is still a debatable topic. It is not yet sure whether this would be implemented or not. But, on a very high note, it is very necessary to implement Uniform Civil Code in a country like India, where many religious groups have their personal laws that makes it stringent for a person to seek redressal. Secularism promotes the idea of coexistence. While

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<sup>7</sup> Appeal (crl.) 465 of 1996

secularization disregards religions as a whole, much similar to atheism. The issue of triple talaq has once again ignited the age-old debate on the desirability of the uniform civil code (UCC) in India. The outcomes will be in a very positive way that is in everyone favor and there will be the genesis of a new secular nation in which everyone will be treated equally without any discrimination between the citizens.

So the implementation of uniform civil code will be new life for the women who are not getting their rights. The Muslim women will be treated equally because then there will be common laws for everyone after its implementation as there will be common personal laws for everyone no discrimination. At present because of absence Uniform Civil Code (UCC), someone can marry with four girls which leads to forty kids. Now, these forty kids practically grow up without any father supervision. In animals, kids are grown by females of the species, in humans, male (Father) also take active role in bringing up of kids so if Uniform Civil Code (UCC) will be implemented we will have more father involved in bringing up of kids which will give more **Civilized Citizens to India Means Fewer Crimes**; More Educated Citizens will help in the development of the society as well as the nation. Sometimes family planning also plays an important role in the upliftment of the nation as well as society.

It will be a major sign of change for the whole nation because one or the other way it will be helpful for different sect of people in the society such as for women, religious groups, minorities, tribes etc. Women will never feel inferior in the society, their standard will be upgraded and there will be equal respect and honor for them too. In the other way, they can think of competing with men at every level and in every field. In changing the whole scenario there can be the great hands of Uniform Civil Code (UCC) which is only possible after its implementation.

### **CONCLUSION:**

India is a country with diversity. There is diversity in culture, faith, rituals, background and religion. Every different sect of people is driven by their own set of beliefs. And so is every different religion, which runs by its own personal laws. These rigid, unbending and sectionalized personal laws which cannot in any likelihood be influenced by others might have the propensity to strangle any form of social reform or social change. Thus there is a huge demand and need of the hour for Uniform Civil Code (UCC) to be implemented in the country. Implementation of UCC would be a symbol for a country as a modern progressive nation, flying high without any

strains of discrimination. It is a sign of divorcing from discrimination in all way and standing in favor of every citizen in every aspect irrespective of his gender or religion.



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