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## JUDICIAL STAND ON THE UNIFORM CIVIL CODE

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### ABSTRACT

The personal laws are always applicable to a particular community and mostly these personal laws are covering the religious principles and it might sometimes be arbitrary or discriminatory in nature. While applying these personal laws to the personal matters might do injustice. Certain personal laws might treat apply the laws to its community without any discrimination, and others might result in discrimination towards the certain sections of people. So the applicability of different personal laws are ended up in miscarriage of justice in many cases. In India it is argued that the Muslim personal laws are more discriminating in nature towards the women (For instance, Triple talaq). Muslim women are treated discriminatory than the men in the name of Muslim personal laws. So the government is trying hard to implement the UCC, which was imposed as its duty under article 44 of the Indian constitution. This paper will analyze the scope of the UCC in the Indian context. The nature of the Article 44 with special reference to Article 25 will be explained in this paper.

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### I. INTRODUCTION

Uniform civil code- plain meaning of this term is uniform civil laws for all the citizens of the state irrespective of their caste, culture and religion. Uniform civil code is a good perspective of the law which will end up in the justice to the maximum end. Because segregating the civil law from the scope of the personal law will eliminate the discrepancy, flaws and discrimination in the personal laws. Uniform civil code has successfully implemented in many countries like. India is a big country with huge population which are belonging to a diverse culture.

These norms and ideas of these various cultures are being reflected in various aspects of life. Right from the scratch of a person's birth up to the journey to cremation shed, the cultural norms are following us. India consists of the three major religions, Hinduism, Christian and Muslim as well as few minority religions like Sikhism, Jainism and Buddhism. Each of them has their own personal law to handle the civil matters like marriage, divorce, adoption, inheritance, succession

and guardianship. People will be governed as per the rules of their religion. So the problem here is that the personal laws in many of the cases are discriminating towards the vulnerable section of their community.

The one of the well known instance is 'triple talaq' system to divorce a woman by her husband as per Muslim personal laws. Most of the women are adversely affected by this various personal laws. So recently Modi's government is trying very hard to implement the uniform civil code in our country to eliminate such hardships. And the case regarding the implementation of the uniform civil code is pending in the honorable Supreme Court of India. In India, Goa is the only state which implemented the Uniform civil code to all of its people. This paper would analysis more on the constitutional aspect of the uniform civil code and with special reference to the current judicial view upon the implementation. In this paper researcher will concentrate the pros and cons of the implementation of the uniform civil code in our country.

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## II. EVOLUTION OF THE UNIFORM CIVIL CODE IN INDIAN CONTEXT

After the independence, during parliamentary debates in 1948, the first Prime Minister of India, Jawaharlal Nehru had the vision for the implementation of the uniform civil code in India along with the constitution itself. Ambedhkar also had strong view along with Jawharlal to introduce the uniform civil code in India<sup>1</sup>. But it was opposed by many Islamic leaders like poker shaheb and other regional sects and organizations. Due to various confusions and ambiguity. The constitution drafting committee understood the hardships of implementing the uniform civil code in that context. So it included the vision for the uniform civil code in the Directive Principle of State Policy. Article 44 has been added to the constitution in part IV of our constitution, which imposed the duty upon the state to implement the uniform civil code when its socio- political context of our country is suitable. Since we are in the 62th year of our independence, we are still not able to implement the uniform civil code in our country. After the long struggle only the central government is trying to bring out the uniformity in the applicable civil laws amid lots of opposition and the Case has been filed in the Supreme Court regarding the against the triple talaq system.

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## III. JUDICIAL VIEW TOWARDS MUSLIM PERSONAL LAW

The case was filed against many practices like Talaq, halala, polygamy of Muslim men by saira Bano in Supreme Court. The day by day centre is arguing vigorously against these practices. As Allahabad court already pronounced its strong opposition towards the certain practices of the muslim personal laws<sup>2</sup>. And it declared it as unconstitutional The centre, social activists, NGOs, women activists, feminists are against this system as they portrayed this is a purely discriminatory practice against women. Comparing to other religions the personal laws of

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<sup>1</sup> Sattwik Shekhar, *Has The Time Come For A Uniform Civil Code In India?*, Manupatra, available at <http://www.Manupatrafast.com/articles/PopOpenArticle.aspx?ID=77d942f9-1b04-4418-9c7b-78d495455b3d&txsearch=Journal:%20www.mightylaws.in>, last seen on 10/04/2017.

<sup>2</sup>Prabhaskar K. Dutta, *Triple Talaq; what is behind Allahabad High court judgement*, intoday, available at <http://india.today.intoday.in/story/triple-talaq-allahabad-high-court-judgement-muslims/1/829841.html>, last seen on 12/04/2017.

muslim are more discriminating in nature towards the women<sup>3</sup>. As women belonging to Muslim community are more vulnerable due to many religious constraints. So the talaq system, halala, polygamy are doing injustice to gender equality and dignity of the women. All India Muslim Personal Law Board argues in favor these personal law practices. It argued that the muslim personal law is beyond the scope of the court to declare the practice as invalid. And it further argued that it is valid practice under the Islamic principles scope and it states that the right of the husband to divorce his wife by the triple talaq method is granted as per the Islamic rules, this right cannot be violated by the court at any cost and this is against the constitutional right guaranteed<sup>4</sup>. The Supreme court has put forward the question that the muslim population makes 13% population of the country's population and the largest minority community. Whether the regulating of the muslim personal laws which is discriminatory towards the women will amount to the violation of the constitutional right.<sup>5</sup>

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#### IV. CONSTITUTIONAL ANALYSIS

Article 25 of the Indian constitution ensures the rights to freely profess and practice the rights of your choice<sup>6</sup>. And all persons are guaranteed to freely propagate the religion. This constitutional right also ensures the right to practice the muslim personal laws for the civil matters. But as per the Article 25 it is not absolute right and it has certain limitations. During certain circumstances, this right can be excluded or suspended.

As per the preamble of our constitution, India and its people will follow secularism. If it is the case, then approaching the civil matters as religious oriented is absurd. If the secularism has to be fully implemented, then the common law for all regarding the implementation of the uniform civil code has to be done without hindrance.

Article 44 emphasis that state has the duty to implement the uniform civil code in the country. This is a duty of the state to ensure the uniform civil code for all its citizens<sup>7</sup>.

Here the Article 25 is enforceable and article 44 is not enforceable under courts of law. Is this mean article 44 can be overridden by the Article 25? As already stated Article 25 is not the absolute right and at the same time it will not override the Article 44. And Article 25 will also not hinder the state's duty to implement the uniform civil code under the article 44. Here there is no contradiction between article 25 and 44. Article 25 does not guarantee the absolute right to profess one's religion and it is subject to the limitations. So when the state is under the duty to implement the uniform civil code to all of its citizens, that cannot be curtailed by the rights guaranteed under article 25.

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<sup>3</sup> *Discriminatory Muslim laws against women*, ipleaders, available at <https://blog.ipleaders.in> › Women's rights, last seen on 10/04/2017.

<sup>4</sup> ANI, *Supreme Court to hear various petitions on triple talaq today*, indian express, <http://indianexpress.com/article/india/supreme-court-to-hear-various-petitions-on-triple-talaq-today-4467299/>, last seen on 12/04/2017.

<sup>5</sup> *Supreme Court to consider intervening in Muslim 'triple talaq' divorce law*, in. reuters, available at <http://in.reuters.com/article/india-muslims-divorce-supreme-court-idINKCN0ZF1FU>, last seen on 13/04/2017.

<sup>6</sup> Article 25 of the Indian Constitution, 1950.

<sup>7</sup> Article 44 of The Indian Constitution, 1950

At the same time Article 15 says state shall not discriminate anyone based on the religion, caste, sex, race or place of birth<sup>8</sup>. This also imposes the duty upon the state to ensure the equality among its citizens. Then allowing the discrimination among the citizens in the personal matters based on the personal laws is unconstitutional. This may cause the contradiction in between the Article 15 and Article 25. But harmonious constructions should be adopted. Both the Article should be interpreted in the harmonious manner so as to enforce in that sphere. Anyway Article 25 is not absolute right, so it can be suspended or cancelled out at the reasonable grounds.

The unified civil code has already been implemented in the religion of Hinduism. The different school of thoughts has been removed and unified law for the marriage (Hindu Marriage Act, 1955), Adoption (the Hindu Adoptions and Maintenance Act, 1956), Guardianship (the Hindu Minority and Guardianship Act, 1956), and for the succession of the property ( The Hindu Succession Act, 1956). And this law is governing all the Hindus irrespective of their schools. This is a step towards the uniform civil code within the particular religion. Extending the scope of the uniform civil code to the next level that is unified single for all citizens irrespective of their religion is harder than the earlier one. Already 80% of the citizens have been brought under the scope of the unified law. So bringing upon the rest of the minority population within the scope of uniform civil code will be less hard than the earlier<sup>9</sup>. Further, it is stated that the legislation is authority to decide the governing of civil matters and it is not the religion to decide the authority, So when it is needed the legislation can introduce the uniform civil code<sup>10</sup>.

In *Agnes Alias Kunjumol V. Regeena Thomas*<sup>11</sup>, in this case it is held that other two religions like Hindu and muslim have the statutory remedy regarding the maintenance during the subsistence of the marriage, whereas for the christaian no statutory remedy are available concerning the above said issue. For the removal of such discrepancy the uniform civil code should be implemented. This will ensure the uniformity in approaching those issues without any left over. The court further made it clear that the Article 25 and 26 of our Indian constitution does not act as an impediment to the promulgation of the uniform civil code.

In *Lily Thomas Etc v. Union of India*<sup>12</sup>, Here the women married a man under the Hindu personal law. Later the husband converted to the Muslim solely for the purpose of the divorcing his wife and to enter into the other second marriage. the court observed this as the one such way to desert vulnerable and dependent wife and to use this as a back door to enter into polygamy and it further insisted the appropriate government to analyze the political and social context of the country to implement the uniform civil code. On the implementation of the civil code will eliminate the context like abusing the religious principles for the self benefit. In the above case it is well established that the husband embraced the Islam just to desert his first wife and to do second marriage. Such kind of the malicious practices can be nullified only with the help of the uniform civil code.

<sup>8</sup> Article 15 of Indian Constitution, 1950.

<sup>9</sup> *Smt. Sarla Mudgal, President, ... vs Union Of India & Ors*, (1995 AIR 1531).

<sup>10</sup> *Ibid.*,

<sup>11</sup> *Agnes Alias Kunjumol vs Regeena Thomas* ( AIR 1996 SC 172).

<sup>12</sup> *Lily Thomas Etc v. Union of India*, (2000 (2) ALD Cri 686).



“A common Civil Code will help the case of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country<sup>13</sup>”

The Gujarat high court expressed its distress towards the government for delaying the implementation of the uniform civil code and it states that the country is in the urgent need of the uniform personal laws to eliminate the various discriminations<sup>14</sup>. And the court explained its inability in dealing with the polygamy. It stated until the implementation of the uniform civil code has been accomplished, it can't see all polygamous marriages as arbitrary and illegal and it should be decided based on the ground of the case.

While analyzing the judgement, bringing up the uniform personal laws is very much needed in the current scenario to address the problem relating to the bigamous marriage. The major distinction and differentiation in the personal laws, relates to the marriage institutions. The vulnerable women are adversely affected by such kind of personal law practices. The court is of opinion that it strongly oppose the bigamous marriage practice as it spoils the entire spirit of the gender justice but at the same time it also explained that it don't have the authority or power to eradicate it from all the community. It has to decide the issue with case to case basis and in some reasonable grounds it has to validate the bigamous marriage at the cost of the women's right and gender equality. This inability can be removed only when there is uniform civil code for the personal laws comes into force.

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## V. RELATION BETWEEN TRIPLE TALAQ SYSTEM AND UNIFORM CIVIL CODE

As recently clearly pointed out by the supreme Court, The removal of triple talaq system from the muslim personal law has no connection with the uniform civil code. Through this statement, we can understand that the concept of uniform civil code is widely misconstrued only with the norms of muslim personal laws. It is obvious that the triple talaq system is a discriminatory practice against the gender justice and this is one such main reason for the strong endorsement of the uniform civil code, but this alone does not convey the true meaning of the uniform civil code. And Supreme Court rejects the petition to hear the triple talalq issue along with the uniform civil code issue<sup>15</sup>.

But at the same time we cannot completely deny the relationship between the triple talaq system and the uniform civil code. Because the triple talaq system is heard and decided as a separate issue, the consequence of that will be reflected upon the uniform civil code implementation process. If it is eradicated, then it is one step forward towards the uniform civil code and if it is accorded then, it is a step backward to the effective implementation of the uniform civil code.

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<sup>13</sup> *Ms. Jordan Diengdeh vs S.S. Chopra*, (1985 AIR 935).

<sup>14</sup> *Circulate Among The Judicial ... vs State Of Gujarat*, (2012 (1) SCR 145).

<sup>15</sup> *Uniform Civil Code and triple talaq are separate issues, says Supreme Court*, scroll in, available at <https://scroll.in/latest/829309/uniform-civil-code-and-triple-talaq-are-separate-issues-says-supreme-court> last seen on 14/04/2017.

## VI. ANALYSIS OF THE PROS AND CONS OF THE UNIFORM CIVIL CODE

As pointed out by the All India Muslim Personal Law Board(AIMPLB) strongly opposes the uniform civil code. It pointed out that the court doesn't have authority to abolish any norms and principles of the muslim personal laws<sup>16</sup>.

The core argument is that India is a land of diversified culture and home to many religions. All the personal should be respected and should be allowed to work on its own sphere. It should not be curtailed and this will amount to unconstitutional<sup>17</sup>.

The enforcement of the civil code will definitely encroach into the realm of the personal laws. And it might hurt the religious feelings of the certain people. But viewing the UCC apart from the perspective of the religious feelings, then it can be accorded for the reason that it will serve as a good way for the gender justice. This would treat all the citizens at the same level irrespective of their religion. This will ensure the gender justice and eliminate the discrimination based on the personal laws.

The implementation of the UCC at the initial stage may trigger confusion among the citizens and time will be taken for the effective implementation of UCC across the country. But once it is implemented it might ensures the single personal laws for the entire country.

## VII. CONCLUSION

Though the right to profess any religion freely is guaranteed under Article 25 of our constitution, it is not an absolute right. So for the benefit of the society as a whole, it is the duty of the state to implement the UCC . The duty is imposed upon the state to implement the UCC for its citizens, and now our country is in urgent trends to implement the UCC. India is a land of huge population and they are all belonging to different cultural and religious norms. But the personal laws of all these religions stand in different foot.

Certain religious principles are very discriminatory in nature towards the women. Then burden will be imposed upon the court to spend an ample amount of time to understand the nature of the personal law with reference to the case context. Already many apex courts have registered their voice in favor of the UCC, and they urged the government to take necessary steps to implement UCC in India. Due the constraints imposed by the personal laws, the courts are unable to go beyond the personal laws to decide a case and sometimes might result in the miscarriage of the justice.

This could be eliminated and eradicated only when the UCC is implemented. As opposed by many people, it might hurt the religious feelings of many communities. But ensuring the equality among the gender, eliminating the discrimination and for the benefit of whole society is much higher than the religious principles. And it doesnot mean it is going to eliminate all the opersonal

<sup>16</sup>*Muslim Law Board For Triple Talaq, Against Uniform Civil Code*, ndtv, available at <http://www.ndtv.com/india-news/muslim-law-board-for-triple-talaq-against-uniform-civil-code-1627918>, last seen on 15/04/2017.

<sup>17</sup>*AIMPLB to oppose government's move on triple talaq, Uniform Civil Code*, indian express, available at <http://indianexpress.com/article/india/india-news-india/aimplb-to-oppose-governments-move-on-triple-talaq-uniform-civil-code-4384462/>, last seen on 17/04/2017.

laws principles, it tends to widely covers all the aspects of the personal laws in order to ensure the justice in the civil matters. The main goal behind the uniform civil code is that to ensure the equality among the citizens in the personal matters and to eradicate the absurdity in the name of religion.

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