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**SOCIOLOGICAL ANALYSIS OF UNIFORM CIVIL CODE**

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**Abstract** – India is a secular country and it is enshrined in our constitution i.e. Article 44, that India must endeavor to ensure a Uniform Civil Code throughout the territory of India. With the hype of triple talaq issue the U.C.C. has been again brought to the purview of Indian Parliament, it is not the first time that India has deliberated upon having a U.C.C., the same was also discussed in Shah Bano case and Shabnam Hashmi case. Thus the paper will try to analyze the sociological perspective of having a U.C.C. in three parts. Part I of the paper will deal with the meaning and pros and cons of having a U.C.C.. Part II of the paper will be comprehensively deal with the sociological analysis of U.C.C., mostly concentrating on Hindu and Muslim Law, further analyzing the special marriage Act and s.125 of code of criminal procedure. Part III of the paper will be focused on justifying the implementation of U.C.C. and briefly explaining the need of having a U.C.C.. Finally concluding the paper by conceding to the fact that U.C.C. must be implemented but first a legit draft of U.C.C. must be prepared and it must be open for public scrutiny before implementation.

**Key Words** – Shah Bano Case, Shabnam Hashmi case, S. 125 of Crpc, triple talaq, U.C.C (uniform civil code).

In India we decide the civil matters like marriage, adoption, property rights and divorce etc through personal laws. In both Hindu and Muslim personal laws there are still certain provisions which are discriminatory. The whole idea of law based on religion has fundamental defects. Religion may not necessarily be moral or beneficial to all the members of society. Religious rules are hundreds of years old and not in sync with modern era. In such case governing certain matters of an individual solely on the basis of religion can lead to problems. The amendment done to Hindu Succession Act, 1956 in 2005 gave daughters the right to coparcenary property.<sup>1</sup> This reform is limited in nature. It does not apply to self acquired property. It also reduces the share of mother and widow of deceased because of addition of new coparcenary. It puts daughter in a difficult position. They can be exploited by their husbands. They may be scared of conflict with brothers if they demand property. After this amendment male would use his will more to ensure that his self acquired property passes to his sons only.<sup>2</sup> Prevalence of 'Kafala' system in Muslim, which only recognizes guardianship and not adoption, further there are practices like Nikah Halala, Karewa and polygamy among Muslims.

Personal laws are gripped under the clutches of patriarchal system and practices of discrimination against women. Therefore the urge of U.C.C. is raised in the country; it is not only that with the hype of *Shiara Bano case* or triple talaq issue has been brought up for discussion, earlier too many attempts were made to introduce U.C.C. in the country like *Shah bano case*, *Shamim Ara case*, *Shabnam Hashmi case*.

Thus through this project work the researcher will try to analyze the sociological aspects of abolishing personal laws and introducing Uniform Civil Code. The effects of both the situations will be critically evaluated by especially considering the effects on Women and on people of different classes and caste.

<sup>1</sup> Section 6, Hindu Succession Act 1956.

<sup>2</sup> Reena Patel, *Hindu Women s Property Rights In Rural India*, 52 (2007).

## UNIFORM CIVIL CODE – MEANING AND ITS PROS AND CONS

### MEANING OF UNIFORM CIVIL CODE

Uniform Civil Code is enshrined in Article 44 of Constitution “*Uniform civil code for the citizens The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India*”. U.C.C. comes under the Directive Principles of State Principles unlike Fundamental rights which are enforceable in the court of law. The civil code, if enacted will deal with the personal laws of all religious communities relating to marriage, divorce, adoption, custody of children inheritance, succession to property etc. which are all secular in character of Indian state. U.C.C. is not required in matters like Contracts, Sale of goods Act etc. as it is already there, for the same.

Today, with an extending of democratic views, every person and group is ending up more aware of its character and today our strategy is for the most part in light of these personalities. Legislators have been battling decisions fundamentally on the premise of communities and groups and have hence infuriated the feeling of these groups and their identities. For example In Rajasthan, “when Roop Kanwar submitted Sati, the Rajputs guarded it as an issue of their personality. The Rajput youth remained with swords to shield the dedication made”<sup>3</sup>. Further in U.P. in the event that an upper caste young lady weds a lower caste boy they are publically guillotined. Democratic country like India, with its pluralist tradition lasting over thousands of years cannot succeed without respecting pluralist ethos.

Mark Twain had famously once said- “In religion India is the millionaire. The one land that all men desire to see and having seen once by even a glimpse would not give that glimpse for all the shows of all the rest of the globe combined.” Such is the attraction and power that religion holds in this country, the only country where various religions and traditions merge together to form one nation. What accompanies these religions is a sacred promise a promise by the State that each individual is absolutely unfettered and free to practice ones religion and custom. A promise which embodies our secular nature and exhibits the strength of our unity in diversity. It is interesting to note that the west has discovered pluralism recently after Second World War and hence call it post-modernist phenomenon.<sup>4</sup> But India has known it even during the medieval ages. Modernization has brought new problems though we have begun to imitate the west yet we have failed to recognize the obstinate social structure; changes are embraced much more easily in the upper class economic elite in stark contrast to the masses. This is much more so as far as Muslims are concerned. There is much greater degree of poverty and illiteracy among them compared to other communities. There is a very weak middle class among them to advocate modernization and change. This is precisely why the priestly class, which itself comes from the poor strata, has a much greater hold over the community. Each caste has its own customs and traditions, which supersede all laws of the country. And no law, however ideal, can become acceptable to realities. A law has to be socially acceptable firstly.

Thus thinking of uniting each and every community’s practices into one practice is quite impossible for current scenario of the country, but if tried to unite the country into one then such a Law is possible. Moreover the word mentioned in the Constitution is ‘Uniform’ and not ‘Common’, therefore if one wants all the communities within one ambit then it should be

<sup>3</sup> Shabber Ahmed, Uniform civil code (Article 44 Indian Constitution), a dead letter, INDIAN POLITICAL SCIENCE ASSOCIATION, 67, 545, 555, (2006), [HTTP://WWW.JSTOR.ORG/STABLE/41856241](http://www.jstor.org/stable/41856241) , Accessed on 8th August 2017.

<sup>4</sup> Amrita Chhachhi, Farida Khan, Gautam Navlakha, Kumkum Sangari, NeerajMalik, Ritu Menon, Tanika Sarkar, Uma Chakravarti, Urvashi Butalia and Zoya Hasan, *UCC and Women's Movement*, ECONOMIC AND POLITICAL WEEKLY, 33 (9), 487,488 (1998)< <http://www.jstor.org/stable/4406473>> accessed on 8th August 2017.

‘Common Civil Code’ rather than ‘Uniform Civil Code’, U.C.C. strives for bringing uniformity which can be brought in different personal laws, like we have a uniform Hindu Code Bill.

### **Pros and cons of having a U.C.C**

Pros of having a U.C.C- the need for U.C.C has been there since independence and that’s why it is in Directive Principles of State Policy but still we are striving for having a U.C.C.

The absence of U.C.C gives rise to **piquant, unwarranted and ugly situation**.<sup>5</sup> For instance since monogamy is the law for Hindus and the Muslim law permits as many as four wives in India, errand Hindu husband embraces Islam to circumvent the provisions of the Hindu law and escape from penal consequence.<sup>6</sup> Other examples are that of age of consent, marital rape, Kafla system.

Since U.C.C is part of Directive Principles and thus the Directive Principles and **Fundamental Rights ought to be harmoniously constituted**, and whenever possible fundamental Rights should be adjusted, be given effect in accordance with or taking into consideration Directive Principle of State policy.

U.C.C is **not against Article 25** i.e. the fundamental right to religion (Article 25 i.e., "Freedom of conscience and free profession, propagation of religion), as UCC tries to achieve equality and uniformity complying with Articles 14 and 15.<sup>7</sup> Further counter argument is that Article 25 itself under Clause 2, where it is clearly indicated that “this article shall not effect operation of any existing law or prevent the country from making a new law”, thus if UCC comes into view it will not affect its functioning.

Ambiguity is created due to the presence of different laws governing different personal groups such as marriage, particularly in the case of polygamy and divorce. Also, possibility for separate law is a tough call as for Muslims marriageable age of girl according to Shariat Act is 15 years but this is not the case with Hindu’s and also Child Marriage Restraint Act. Thus UCC **will remove such ambiguities**.

Much delusion prevails about **bigamy** in Islam. Ironically, Islamic countries like Syria, Tunisia, Morocco, Pakistan, Iran etc have codified the personal law where polygamy has been either totally prohibited or severely curtailed to check the misuse or abuse of this obnoxious practice.

### **Against the implementation of UCC**

**Reformation required not uniform law** - All the personal civil codes have unjust laws pertaining to women and children and thus have to be changed, not on the principle of uniformity but on equality and justice to the unequal and oppressed. If all the communities can sit together and remove the injustices in their personal laws, uniformity will unavoidably come into view. As was seen recently in the case of Shaira Bano, where court ruled that triple talaq is unconstitutional. It is true that women are not getting Justice in Muslim personal law. But any reform has to come from Muslim society. In such a hostile situation, Muslim will not be able to accept a uniform civil code. Further unjust practices are there in even, Hindu laws even after codification, example- customs like karewa prevails, honor killing etc. , thus what one should concede to is reformation.

<sup>5</sup> Leila Seth, *A Uniform Civil Code: towards gender justice*, INDIA INTERNATIONAL CENTRE QUARTERLY, 31, 42, 45 (2005), <[HTTP://WWW.JSTOR.ORG/STABLE/23005979](http://www.jstor.org/stable/23005979)> accessed on 8th August 2017.

<sup>6</sup> Sarla Mudgal v. Union of India AIR 1995 SC 1531.

<sup>7</sup> Kumkum Sangari, *Gender Lines: Personal Laws, Uniform Laws, Conversion*, SOCIAL SCIENTIST, 27(5), 17,30 (1999) <<http://www.jstor.org/stable/3518142>> accessed on 8<sup>th</sup> August 2017.

**Failed attempt of implementing UCC in Goa-** in Goa UCC exists but still there is discrimination among the Catholics and other communities.<sup>8</sup>

**Educationally backward-** People in our country are educationally backward, thus government should concede to educating the society, if they are really concerned about equality and uniformity and thus should not touch the emotional issue of implementing a UCC.

The ideal of secularism cannot be achieved unless right to religion and certain laws based on religion give a place of preference and permanence to the directive contained in article 44 of the constitution. Therefore, it is the uniformity in social relations, which would be the foundation to build a unified, integrated and strongest democracy.

Uniform personal law is a bit **political** and I also concede to author's opinion that – “a communal weapon to chastise Muslim with false argument that Hindus have a code and to enforce Muslim to yield one”.<sup>9</sup> Further if UCC is introduced joint Hindu family have to give up on their institution thus depriving them of their tax benefits, in Muslims marriage with cousins is allowed and if UCC is introduced will it permit the same and will Hindus be ready to accept the same is ambiguous, further in Hindu custom like saptpadi and in Muslims majis e walid prevails, will UCC be able to compile the same, the answer to all these question is in a “no” for a current scenario of the country.

## SOCIGICAL ANALYSIS OF UCC

Law by itself could only be a pointer and not guide, thus before implementing UCC a study of society and various groups is to be taken into consideration. The cry for UCC is not for Hindu or Muslim or Christian or Parsi demands or laws—these are a cry for gender-just laws; for giving women their human rights and their mandated constitution.

Since UCC is not into existence in India, but its need and urge is there, the effects of not having UCC on women and society are as follows-

### Loopholes in Hindu Law which paves way for unjust practices

Even after the enactment of Hindu Code bill 1955, equal rights were not granted to women. Though the bill prohibited bigamy among hindu's and also granted them adoption and property rights, but the Acts were flawed when it comes to gender justice. Bigamy was prohibited but the Hindu's started converting into Muslim and started entering into marriages, further second wife in Hindu's is just a keep, as Justice Katju also in one of his judgment said that second wife is just a keep, concubine or mistress. In 2005, in the Rameshchandra Daga vs Rameshwari Daga case, “the Supreme Court conceded that despite codification and introduction of monogamy, the ground reality had not changed much and that Hindu marriages, like Muslim marriages, continued to be bigamous.”<sup>10</sup> Thus if we really care for the interest of most vulnerable women in our heart then rather protecting the patriarchal system of marriage UCC must be paved way for. Another flawed point in the bill was that females were not given adoption right, which were introduced only after the amendment of 1976. Thus bringing the males and females at same pedestal, but still Hindu Adoption and Maintenance Act is a religion specific Act and not a secular one. Further the problem of property issues, female and illegitimate children were denied the rights in property earlier.

<sup>8</sup> Pakash Kamat, *Address commonalities of problem before UCC:experts*, THE HINDU, 21<sup>st</sup> February 2017 < <http://www.thehindu.com/news/national/other-states/address-commonalities-of-problems-before-ucc-experts/article17336116.ece>> accessed on 25<sup>th</sup> September 2017.

<sup>9</sup> Anveshi Law Committee, *Is Gender Justice Only a Legal Issue? Political Stakes in UCC Debate*, EPW, 33(9) 453,456 (1998) < <http://www.jstor.org/stable/4405147>> accessed on 26<sup>th</sup> August 2017.

<sup>10</sup> Amali Philips, *Sharia and Shah Bano: Multiculturalism and Women's Rights*, ANTHROPOLOGICA, 53 (2), 275, 278 (2011), < <http://www.jstor.org/stable/41473879>> accessed on 8<sup>th</sup> August 2017.

“The ritual of kanyadaan (sacrificial offering of the bride to the groom), an essential condition of a Hindu marriage, the notion of girls as paraya dhan (belonging to the other), the pious obligation of a Hindu father to marry off his daughter, which then gives proceed to dowry, and the view that Hindu marriages are sacramental, still dominate Hindu social ethos and judicial discourse.”<sup>11</sup>

Indeed, even after the authorization of Protection of Domestic Violence Act, 2005 still women from lower strata or from rural areas declined to invalidate their relational unions if looked with abandonment and mercilessness, this is going on account of much holy character of Hindu marriage dissimilar to Muslim marriage which is a contract. It is highlighted that divorce among Muslims is highest but it can be seldom pointed out that desertion among Hindu's is highest. There is a term used in Maharashtra for such a women known as “Parittyah Mahila”. The idea of sacrosanct and lastingness of marriage is not just constrained to Hindu individuals attitude, yet in addition unmistakable in prosecution in family courts where women are always suggested by judges to come back to home to spare their relational unions notwithstanding when they confront awful dangers. Women, too “believe that even if their husbands are abusive, it is better to remain married, since the symbols of marriage — the mangalsutra and sindoor — are perceived as marks of respect, status and protection against advances from other men.”<sup>12</sup> While among urban, middle and upper-class Hindus there is greater likelihood of women opting for divorce.

Hindu law is patriarchal and thus man tries to control woman and this gives way to many unjust practices like “honour killing”, even after allowing inter caste marriage in Hindu law, a girl is being killed by her parents if she transgressed her caste and class boundaries. The same was depicted in movies like NH10 and Sairat.

#### **Succession laws – Muslim and Hindu Law**

Sumner in his book Folkways and Mores explained the way people behave in a society. His concept of folkways and mores can help in studying the behavior of people and evolution of law in society. Folkways are the forms of behavior which are expected in a society and mores are customs which must be followed. These standards of behavior are not formed through thought. They are developed by practice and pass from generation to generation. Mores help in formation of law. Elite classes have always used mores to maintain status – quo.<sup>13</sup> Mores were seen as norms which promote welfare by previous societies. But with time the requirements of society change. Thus mores in the contemporary world end up in becoming a set of bad rules that are difficult to amend. Mores and folkways concept can be used to study personal laws. There are certain rules in personal laws which are comparatively easier to modify. These can be called folkways. They form the voluntary customs. But there are rules which have been crystallized and are difficult to be challenged. Inheritance of property by women and illegitimate children are such issues. Religious personal laws for long time denied women and illegitimate children from inheriting property. Illegitimate child has been painted as a wrong against society. He is not allowed to inherit in order to restrain people from further entering into illegitimate relationships. Inheritance of property by illegitimate children and women are the two aspects on the basis of which Muslim and Hindu law have been compared in this chapter.

In Muslim law if it is difficult to prove the date and time of marriage then the child is aid to be legitimate if father acknowledges his legitimacy. But marriage is an essential criterion. If there is no marriage and the child is not from a slave then he or she cannot be legitimized.<sup>14</sup> The illegitimate child has no right to inherit property from father. In Hanafi school he has

<sup>11</sup> Flavia Agnes, *Gender Justice In fact*, INDIAN EXPRESS ( 17<sup>th</sup> November 2016, 12:00 A.M.), <http://indianexpress.com/article/opinion/columns/gender-justice-uniform-civil-code-hindu-muslim-marriage-discrimination-patriarchal-society-4379411/>.

<sup>12</sup> Ibid.

<sup>13</sup> Holmes, Lowell D. “Western Folklore.” *Western Folklore*, 20 (4), 281, 282 (1961).

<sup>14</sup> *Abdool Razzak v AGA Mohammed Jaffer*, (1894) 21 Ind App 56.



been given the right to inherit from mother only.<sup>15</sup> In Hindu law property was denied to illegitimate child till 1976. According to Mitakshara, illegitimate sons are entitled to maintenance only. However in Sudra, illegitimate son was given a limited right to property. Illegitimate child did not get right in property by birth. But he got the property on the death of his father. He could even claim for partition after fathers death.<sup>16</sup> In the 1976 amendment to Hindu Marriage Act the situation changed. Illegitimate child was given equal right to property. Supreme Court in the case of Revanna Sidappa v Mallikarjun<sup>17</sup> held that by the virtue of s 16(3) of Hindu Marriage Act an illegitimate child is entitled to inherit both ancestral and separate property of his parents. Thus Hindu law gives illegitimate child the right to property. In this aspect Hindu law is more equitable than Muslim law.

In Muslim law women can get only half the property as their male counterpart. Muslim law has no distinction between the joint family property and individual property. There is no presumption of jointness in Muslim law. Also a positive feature is that, the law restrains the power to bequeath property through will. According to it only 1/3 of the property can be disposed of by will. Rest of the property has to be devolved by the rules of succession. Thus Muslim men can't use wills to deny daughters their right to property.<sup>18</sup> Giving only half the property to daughter is discriminatory. But regulating testamentary power is an ideal feature.

In the case of Badrinarayan Shankar v Om Prakash Shankar<sup>19</sup>, Supreme Court explained the inheritance of daughters in Hindu law before and after 1956. Under Mitakshara school daughter was not a coparcenor. Under Dayabhaga school there was no concept of birth right to property and daughter was also seen as a coparcenor. Hindu Succession Act, 1956 was enacted by parliament in order to reform Hindu law according to the constitutional values. It applied to both the schools. But even under it, daughter was not given the right to be a coparcenor. Mother and widow were also not coparcenors but they would get a share out of ancestral property on partition. Daughter was not given the right to claim for a share. She could only get a share out of property of deceased. The Hindu Succession Act 1956 could not give equal rights to women. On 20 Dec 2004 an amendment bill was passed in Rajya Sabha. The bill said that daughter have been denied their constitutional right to equality by Hindu succession law. They have been discriminated on the ground of gender. Hence the Act should be amended and daughters should be included as coparcenors. Amended s 6 of Hindu Succession Act makes daughters coparcenors and thus they also get equal rights as that of son in succession of property.

The actual problem lies in the concept of birth right over property. The concept evolved in feudal society. It is based on the feudal ideals of primogeniture and absolute control over land. But the amendment does not remove the concept of birth right. It rather makes daughter also the coparcenors without thinking about its effects. After it, the share of mother and widow gets reduced because daughters are added as coparcenors. This can lead to conflicts between women of the same family. In Indian society women were not given rights in property. In such a society this act gives women double benefit by giving daughters the birth right in property and by also allowing widows to have a share in the property. Society might see it as giving more benefit to women and thus unjust. This can further lead to a negative effect on its legitimacy. The amendment does not regulate the power of Hindu male to deal with his property through testamentary succession. After this amendment, testamentary succession has been used as a tool to ensure that daughters don't get any property.<sup>20</sup> There is a need to regulate the power of testamentary succession and abolishing the concept of birth right over property.

<sup>15</sup> Fyzee, *Outlines of Mohammedan Law*, 318(2010).

<sup>16</sup> Mulla, *Principles of Hindu Law*, 21<sup>st</sup> edition, 501(2012).

<sup>17</sup> RevanSiddappa v Mallikarjun, (2011)11 SCC 1.

<sup>18</sup> Flavia Agnes, *Family Law and Constitutional Claims*, 1, 64(2011).

<sup>19</sup> Badrinarayan Shankar v Om Prakash Shankar, (2014) 5 Mah LJ 434.

<sup>20</sup> Reena Patel, *Hindu Women s Property Rights in Rural India*, 53(2007).

From the above points it can be concluded that Muslim law was initially more progressive than Hindu law when tested on the two factors (property to women and illegitimate children). But Muslim law has not been reformed by state due to several social and political reasons. Hindu law has been reformed. Illegitimate child have been given a right to property in Hindu law. In Muslim law they still don't have the right. The Amendment Act of 2005, made daughters the coparceners. This amendment has been criticized because it does not abolish the feudal concept of birth right over property. It does not regulate the testamentary powers of male. Muslim law in this aspect was already more advanced than Hindu law. It regulates testamentary power and ensures that daughters are not denied of their right to property.

### **Existence of Optional UCC- Special Marriage Act,1954 and S.125 of Crpc.**

Many a times example of Special Marriage Act, JJ Act and S.125 of Crpc are given, that India already has an optional UCC in form of these Act and section but they are also ambiguous and does not do much in doing away the injustices prevailing in society.

Special Marriage Act was first introduced not in 1954 but in 1872 but was rejected by the citizens of the country as it asked them to renounce their religion if they wanted to marry under the Act, which was against Article 25 i.e. their right to practice and profess any religion. However this lacuna was covered up in Special Marriage Act, 1954. Though registration can be done in this particular Act when both the parties attain the age of 21 years but their marriageable age is not 21 years it is 18 years for girls and 21 years for boys. Further parties under the Act are to be governed by Indian Succession Act for the purpose of property matters.<sup>21</sup> Subsequently with the amendment of 1976 Hindu couples who under this were given the preference to not to follow Indian Succession Act and rather follow Hindu Succession Act,1956.

S.125 Code of Civil Procedure, 1973 is an optional code for Muslim women who are not satisfied with the mehr amount and who put forth the need for maintenance before the court were entitled for maintenance under this section and also because many a times the husband run away from the clutches of the law by setting a lower mehr amount and thus thereby refusing to maintain the wife by giving so meager amount and that too only till iddat period.

“S.125 - Order for maintenance of wives, children and parents.

If any person having sufficient means neglects or refuses to maintain-(a) his wife, unable to maintain herself, or (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself”

In the earlier cases like Shah Bano court tried to provide maintenance to Muslim women under this section but the attempts were crushed when Rajiv Gandhi government rendered the decision given in Shah Bano case as not binding by the enactment of Muslim Women (Protection of Rights on Divorce Act) 1986. Though still judiciary made various attempt to secure the right of maintenance to Muslim women which was quite evident in Daniel Latifi case. But the need of the hour is not for the cries for Judicial Activism but for the proper legislation like Uniform Civil Code.

## **UNIFORM CIVIL CODE –A SOLUTION**

The profound established variety of personal law, religion, dialect, culture and custom are the genuine obstacles in establishment of Uniform Civil Code in India. The assorted varieties of family law of various groups, the tribal's own particular laws and traditions, the conviction of the general population that the wellspring of law and religion is the same and that confidence, law and religion are intermixed and interlaced, have incited individuals to restrict the Uniform

<sup>21</sup> Leila Seth, A Uniform Civil Code: towards gender justice, INDIA INTERNATIONAL CENTRE QUARTERLY, 31, 40, 45 (2005), [HTTP://WWW.JSTOR.ORG/STABLE/23005979](http://www.jstor.org/stable/23005979) accessed on 8th August 2017.

Civil Code from its very beginning. The Uniform Civil Code under Article 44 is only one of the few other order standards of state approach, while Articles 25, 26 and 29 which manage religious and social flexibility are the major rights and both (UCC and article 25,26,29) clash with each other. Mughals and Britishers saved the personal laws of the nation as a result of the prevailing perspective held that personal law were excessively related to the religion and culture of the general population. Yet, now is the right time to actualize a Uniform Law.

UCC should not be brought in a hurry. It should be brought in a series of steps. Succession laws and other personal laws like Marriage should be reformed first. It is because these laws have major economic and social impact respectively. The biggest contention against UCC is that the majority can use it in order to suppress minority culture. Right wing groups are strongly putting their demand for UCC. Often the Hindu parties blame Muslim law for being discriminatory when they claim for UCC. Triple talaq has been politicized and it is projected as the most evil practice. But this is not true, courts have made triple talaq less discriminatory. In order to prevent the political forces from effecting UCC a middle way has to be chosen. Both Hindu and Muslim laws should be analyzed. Positive factor from both the laws should be taken into consideration before enacting a new provision under UCC. For example, Muslim law denies illegitimate child the right to property. But Hindu law allows illegitimate child to have property after 1976 amendment to Hindu Marriage Act. Thus in the succession law of UCC, illegitimate child should be given property and the more liberal Hindu rule should prevail over the Muslim rule. In case of succession of property by females both the laws are not perfect. Muslim law gives only half the property to female. Hindu law has made daughter a coparcenor but it does not regulate the testamentary power. Muslim law on other hand regulates the testamentary power and it says that only 1/3 of property can be devolved by testamentary succession. Positive features from both the rules should be combined in order to enact a new provision of UCC. Thus the UCC provision should give women equal right over property and it should fix a limit on the testamentary power.

The Court cannot be expected to bring gender equality by changing personal laws as one case at a time. In litigation members of the community who have faced discrimination will have to go against their religious guidelines and file a case.<sup>22</sup> Personal laws are duty based and claim to derive their sanctity from the sacred texts itself. Thus it is very difficult to assume that an individual will violate his duty towards God and will go against his community in order to seek justice from an institution made by state. Moreover the person who suffers discrimination because of personal laws belongs to weaker sections of society. Most of the personal laws are discriminatory against woman and illegitimate children. This makes it very difficult for them to gather courage to file a case. Even if they file the case, the judicial process takes a lot of time. During this time they alone have to face the social pressure.

UCC is also a mandate of the constitution. Article 44 says that the “state shall endeavour to secure a uniform civil code for India”.<sup>23</sup> Article 44 is a directive principle and hence it is not enforceable in courts. “But still it is very important for governance of country. It represents the ideals of constitution makers. It should be given as much importance as fundamental rights.”<sup>24</sup> Article 21 of the constitution gives right to life and liberty. The right is to live life with dignity. Another, article 14 of Constitution gives right to equality before law. These articles taken together ought to be given inclination over article 25 which is the privilege to opportunity of religion. Indian court has utilized principle of basic religious practices to choose cases in which ideal to opportunity of religion is in conflict with other key rights. For the situation *Ratilal Panchanan Gandhi v State of Bombay*, Supreme Court utilized this regulation to determine the issue. The Bombay Public Trusts Act which was made to control

<sup>22</sup> Shalina A. Chibber, *Charting a New Path toward Gender Equality in India: From Religious Personal Laws to a Uniform Civil Code*, 83 Ind. L.J. 695, 718 (2008).

<sup>23</sup> Article 44, Constitution of India.

<sup>24</sup> M. P. Singh, *On Uniform Civil Code, Legal Pluralism and the Constitution of India*, J. Indian L. & Soc'y V, XII (2014).



religious trusts in Bombay was tested. The court held that the religious practice ought to be basic to religion. "Be that as it may if the activity of state is for social welfare and isn't against open ethical quality and wellbeing then it will be maintained. Such activity of state ought to beat even the basic religious practices test." This rule was utilized to sanction direction of trust. It can be reached out to more changes in personal laws. Contention against UCC that it damages article 25 can be countered by saying that if the governing made by state is for welfare of individuals and isn't against general wellbeing and profound quality at that point, the lead by state ought to be given inclination. On the off chance that UCC can help in accomplishing the objectives of article 21 and article 14 then it ought to be given need. Furthermore, despite the dynamic legal professions and juristic suppositions for completing the mandate under article 44 of the constitution, parliament has done nothing to accomplish this honorable ideal. At this juncture, Justice Kuldip Singh's observations are as follows –

“The traditional Hindu law - personal law of the Hindus – governing inheritance, succession and marriage was given a go by as back 1955-56 by codifying the same. There is no justification whatsoever in delaying indefinitely the introduction of uniform personal law. The learned judge proceeded further to observe that those who preferred to remain in India after partition, were aware of the fact that Indian leaders did not believe in the two nation theory and also that in Indian republic there would be only one nation – Indian Nation and no community could make a claim to be a separate entity on the basis of religion not only could the lawman, even a layman, appreciate this judgment”.<sup>25</sup>

Thus the need of the hour is implementation of Uniform Civil Code.

## CONCLUSION

Through this paper work researcher has analyzed the various personal laws. Further the loopholes in the laws are discussed and their impact on society especially women is brought to view. The way out of the unjust and discriminatory personal laws is being suggested in the form of Uniform Civil Code.

The research paper discussed in detail the effects of unjust laws like practices of talaq, kafala system, kanyadan and succession rights. For instance talking of succession it can be concluded that the law is not Islamic if it does not follow the basic ideals of Islam. Itijihad talks about progress with time. The rule of giving half the property to women and not to give any property to illegitimate child is not consistent with Itijihad. In Hindu law daughter has been made the coparcenor with the amendment to Hindu Succession Act. But this reform is limited in nature. It decreases share of mother and widow of deceased because of addition of new Coparcenary. It puts daughter in a difficult position. They can be exploited by their husbands. They may be scared of conflict with brothers if they demand property. The amendment does not regulate testamentary powers. The entire problem is in the concept that the property can be owned just on the basis of birth. Instead of removing this concept, legislature added daughters to this whole idea without thinking the negative influences it can have on woman. Muslim law has a unique feature according to which only 1/3 property can be willed away. Further concept of tax invasion given to joint Hindu family members, the preference given to Hindu Law in special marriage Act, that they can follow Hindu Succession Act instead of Indian Succession Act.

UCC should not be brought in a hurry. It should be brought in a series of steps. Personal laws should be reformed first. It is because these laws have major economic, political and social impact. Positive factor from various laws should be taken into consideration before enacting a new provision under UCC. Currently UCC is like Louis carol fabled snark, we do not know

<sup>25</sup> Shabber Ahmed, Uniform civil code (Article 44 Indian Constitution), a dead letter, INDIAN POLITICAL SCIENCE ASSOCIATION, 67, 545, 551, (2006), [HTTP://WWW.JSTOR.ORG/STABLE/41856241](http://www.jstor.org/stable/41856241) , Accessed on 8th August 2017.

what it looks like or what it is supposed to do, therefore a draft of UCC is the desired answer for doing away with the flaws in personal laws. Further the draft so prepared must be circulated in the society for people approval then only a UCC can be thought to be come into view.

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