

## UNIFORM CIVIL CODE: THE REQUISITE AND THE LUDICROUNESS

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### **ABSTRACT:**

*The research regarding whether following 68 years of the Constitution India is ready enough to have a uniform arrangement of common law has been raised once more. The Uniform Civil Code (UCC) has dependably been channeled as a powerful apparatus to acknowledge and impact the strengthening of the Indian ladies and inspiring their status in the social foundations, for example, family and marriage. This paper attempts to assess the whole exchange around the UCC, the contentions on its need furthermore, the different questions on its inclination, in order to learn the degree to which the question of ladies gets tended to. It is absolutely critical to investigate how the legal and political intellectual elite have been endeavoring to address the subject of sex equality through the talk UCC.*

### **INTRODUCTION:**

Koenraad Elst said that "In the west, secularism gathers pinpricking religious distortion and grandiosity, anyway in India; secularists are the most understandable defenders of legend and religious government. Western vocabularies portrays secularism as nonappearance of religions, there comprehension of this term is very nullifying from Indian perspective. In India secularism does not mean wariness, it infers bounty of religions. The western explanation of 'secularism' can't win in a pluralist society like India. Secularism is accommodative and pluralist<sup>3</sup>. "Religion infringes on every human rights in the precedent-based law whether first experience with the world, destruction, marriage, isolated, of our social foundations<sup>4</sup>.

Uniform regular code or UCC, these three words are adequate to break the nation into depleted celebration and bothered crying. This regular code makes a situation which separates the nation

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<sup>4</sup> Romila Thapar ,lecture on Indian Society and Secularism at K. C. College in Mumbai.

politically, socially, religiously. There can be various illustrations of this code yet being a law understudy I should need to consider the legitimate consequences of UCC. I unequivocally support the battle for the use of UCC not in light of any tendency, however since it is the need of an hour. The open door has just traveled every which way that India have a uniform law overseeing divorce, marriage, movement, heritage and upkeep. Without a doubt the primary action taken by the superior court of India concerning UCC was in the year 1985, where S.C by virtue of Mohammad Ahmed Khan v. Shah Bano Begum<sup>5</sup> guided the parliament to bring UCC from the shadows where it was shrouded since its presentation in 1950. The issue was that whether a Muslim Woman is fit the bill for case upkeep under Sec. 125 Cr.P.C<sup>6</sup>. It was held that Muslim women are met all requirements for case to help under territory in 125 Cr.P.C. This is a typical course of action and the preferred standpoint is available to every occupant free of their position or religion, etc. It was moreover held that regardless of the way that the Muslim law obliges the life partner's hazard to suit upkeep of isolated from spouse to the season of Iddat, it doesn't look at the condition brought about by zone 125 of the code of criminal system. The court held that it would be mistaken and out of line to grow the above standard of Muslim law to case in which the isolated from mate can't care for herself. The then supervisor value Y.V Chandrachud saw that "A regular basic code will help the purpose behind national mix by ousting one of a kind loyalty to law which has conflicting conviction frameworks."

Shah Bano case made annihilation in the Indian culture and after the judgment there was some misery in the Muslim society. Along these lines, in aftereffect of that the Muslim women (security of rights on detachment) act , 1986 was passed which communicates that the life partner is committed to pay backing to the spouse in the midst of iddat. Regardless, this pain was settled by the Hon'ble Supreme Court in Daniel Latifi and distinctive Vs. Relationship of India<sup>7</sup>. Justice Kuldip Singh in the achievement judgment of Sarla Mudgal v. Relationship of India<sup>8</sup> similarly opined "that article 44 must be recuperated from the crisp amassing where it is lying since 1949".The talk turning around UCC has been secularism and chance of religion recognized in the constitution of India. In S.R Bommai v. relationship of India, as per Justice Jeevan Reddy,

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<sup>5</sup> Mohd.Ahmed Khan vs. Shah Bano Begum (1985)2 SCC 556.

<sup>6</sup> Section 125 in The Code of Criminal Procedure, 1973, Order for maintenance of wives, children and parents.

<sup>7</sup> Daniel latifi & others Vs Union of India 2001 Sc.

<sup>8</sup> Sarla Mudgal v. Union of India , 1995 AIR 1531, 1995 SCC (3) 635.

it was held that religion is the matter of individual certainty and can't be mixed with standard activities. Normal activities can be constrained by the state by setting up a law.<sup>9</sup>

Article 25<sup>10</sup> and 26<sup>11</sup> of Indian constitution guarantees suitable to chance of religion. Article 25 confirmations to every individual the chance of still, little voice and the benefit to articulate practice and spread religion .But this benefit is at risk to open demand, significant quality and prosperity and to exchange game plans of part iii of the constitution. It is fought by various that UCC at whatever point brought enthusiastically could endanger the regular status in this country. The at first sight objective of UCC isn't to negate secularism or negligence article 25 and 26, it relies upon an incredibly direct thought that there is no critical relationship among religion and individual law in an acculturated society. The UCC won't and won't result in impedance of one's religious feelings relating mainly to upkeep, movement and inheritance. By virtue of Daniel latifi and others Vs. Relationship of India "It was held that condition (1-an) of portion 3 of the division exhibit, 1869 completes not compel the commitment of the life partner to pay upkeep only for the season of Iddat rather the commitment is to make the essential game-plans inside the Iddat time span anyway the plans must be made for the entire presence of the life partner until she gets remarried. Articulation (I-a) requires the Husband to make crucial plans for the life partner which suggests courses of action like her sanctuary and the near strategies however it in like manner requires the portion of Maintenance Which Implies portion of Money. There are two understandings one in which the portion, etc will be made only for the Iddat time span. This will render the game plans unlawful as it will dismiss Article 14 and 21<sup>12</sup>. So the blueprints must be set aside a few minutes outline anyway for the entire time allotment till she gets remarried. This will fill the need of Act better and will adjust it to the Cr.P.C .This Interpretation will be sought after that would render the goals Constitutional. In this Case it was in like manner focused on

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<sup>9</sup> *S. R. Bommai v. Union of India* ([1994] 2 SCR 644 : AIR 1994 SC 1918.

<sup>10</sup> "(1) Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. (2) Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law - a) regulating or restricting any economic, financial, political or other secular activities which may be associated with religious practice; b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

<sup>11</sup> "Subject to public order, morality and health, every religious denomination or any section thereof shall have a right- a) to establish and maintain institutions for religious and charitable purposes; b) to manage its own affairs in matters of religion; c) to own and acquire movable and immovable property; and d) to administer such property in accordance with law.

<sup>12</sup> Constituent Assembly Debates, Volume VII (Nov. 23, 1948).

that the Act of 1986 is only available to the isolated from woman and along these lines a woman who is so far having a subsisting marriage can't record an application under the Act. She needs to record it either under the individual law or the Cr.P.C<sup>13</sup>. It was held in Iqbal Bano vs. region of U.P.<sup>14</sup> and another "That the direct an intrigue under portion 125 can be recorded by a non-isolated from Muslim mate. Notwithstanding whether an intrigue has will recorded under region 125 by an isolated from Muslim life partner the Magistrate is permitted to view such demand of as an intrigue less than 1986 Act."<sup>15</sup>

### **UCC: EMPIRICAL STANCE IN THE MODERN INDIA:**

India has assortment of family laws. The Christians have their Christian marriage act 1872, the Indian division act, 1869 and the Indian movement act, 1925. The Jews have their uncodified standard marriage law and their movement matters they are controlled by the movement show of 1925<sup>16</sup>. The Parsis have their very own Parsi marriage and division act, 1936, and their very own diverse law of inheritance contained in the movement showing which is somewhat not equivalent to whatever is left of the movement exhibit. Hindus and Muslims have their own one of kind diverse individual laws. Hindu law had all around been secularized and modernized by statutory establishments. Of course Muslim law is basically unmodified and customary its substance and approach. This varying assortment in near and dear laws in like manner makes a state of non-consistency. The present-day family law is thus a maze. There is no lex locus in India in issues of marriage, movement and family relations. As such is overwhelming and jumbled for a layman to grasp the basic idea behind these laws. To achieve a consistency of law , its secularization and making it reasonable and non-one-sided, the constitution contains Art.44 of the request benchmarks of state plan which continues running as seeks after "the state will endeavor to check for the locals a uniform regular code all through the area of India"<sup>17</sup> The guideline objective of this uniform code is to get security the socialist and political case of living, bury alia .It will organize our nation as it bolster all paying little respect to any social isolation like religion, rank or sexual introduction. This uniform code will help in planning India more than it has ever been

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<sup>13</sup> John Vallamattom v Union of India, (2003) 6 SCC 611.

<sup>14</sup> In Iqbal Bano Vs. state of U.P. and another 2007 SC.

<sup>15</sup> Alka Bharati ,Uniform Civil Code in India –still a distant dream , American International Journal of Research in Humanities, Arts and Social Sciences.

<sup>16</sup> John Austin, the Province of Jurisprudence Determined (1832).

<sup>17</sup> Art 44 , constitution of India, 1950.

since independence. A lot of the hostility is realized by specific treatment by the law of certain religious systems and this can be kept up a key separation from by a uniform basic code. It will help in bringing every Indian, despite his position, religion or tribe, less than one national normal arrangement of standards<sup>18</sup>. Most predominately it will focus on women reinforcing. Everyone will be managed equal and it propels the veritable thought of secularism<sup>19</sup>. If we look to the countries in Europe which have a typical code, everyone who goes there from any bit of the world and every minority has to the regular code. It isn't felt to overbear the minority which is a huge test in India.

Our first issue and the most basic issue are to make national solidarity in this country. We may feel that we have national solidarity, yet there are various basic segments which still offer certified dangers to our national consolidation.<sup>20</sup> The most wide and as frequently as conceivable combat question is that how true blue will be the UCC? Moderately few understand that UCC exists in the little domain of Goa recognized by all systems. The Goa normal code everything considered called family laws, was enclosed and approved by the Portuguese boondocks rulers through various establishments in nineteenth and twentieth many years. After the opportunity of Goa in 1961, the Indian state dismissed all the pioneer laws and extended the central laws to Goa anyway put forth the unique defense of holding the family laws since all of the systems in Goa required it. The principle belief system behind the Portuguese common code was to reinforce the family as the foundation of society by teaching a soul of resistance among a couple and accommodating inbuilt protect treachery however one mate against the other.

The UCC so as to win ought to cut a harmony between insurance of essential rights and religious authoritative opinions of people. It ought to be a code which is valued by all and which is simply and appropriate as indicated by a man or standard reasonability, with no inclination concerning religious or political contemplations<sup>21</sup>. Here is a review of the basics of the UCC:

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<sup>18</sup> Dr. B.R. Ambedkar, *The Annihilation of Cast: The Annotated Edition*, 11 (Navayana Publication, New Delhi, 2014).

<sup>19</sup> H. L. A. Hart, *The Concept of law* (1961).

<sup>20</sup> Aariz nizam ansari , welmun'15 , a brief prepared for the simulation of the all India party meet.

<sup>21</sup> V. R. Krishna Iyer, *The Muslim Women (Protection of Rights on Divorce) Act*, 32 (Eastern Book Company, Lucknow, 1987).

**MARRIAGE AND DIVORCE:**

The individual laws of every religion contain diverse fundamentals of a legitimate marriage. The new code ought to have the fundamental things of legitimate marriage. The new code ought to force monogamy prohibiting different relational unions under any religion. Polygamy oppresses ladies and damages their essential human rights. Along these lines, monogamy ought to be forced, not on the grounds that it is the Hindu law, but since it holds fast to article 21 of the Indian constitution<sup>22</sup> what's more, fundamental human qualities. The following issue which will be thought about will be as far as possible so as to check kid relational unions. The base age limit for a male ought to be 21 years and for a female ought to be 18 years. Discipline ought to be endorsed for any individual abusing this arrangement. Likewise, discipline for different people associated with such a demonstration, similar to the relatives, ought to be recommended which would deterrently affect the general public. Another issue which requires due consideration is the enrollment of marriage ought to be made necessary. A legitimate marriage will be said to have solemnized when the man and the lady sign their statement of qualification before enlistment center and assent of both the gatherings must be taken regardless of any segregation<sup>23</sup>. This will resolve and kill the perplexity with respect to legitimacy of marriage. The rounds and system of separation ought to be set down explicitly. The grounds counted in the code ought to be sensible and system endorsed ought to accord the guideline of characteristic equity. There ought to be an arrangement for separation by shared assent.

**SUCCESSION AND INHERITANCE:**

This are is a standout amongst the most imperative zone in close to home law which is blurred by obstinate issues and debate. There is no qualification between joint family property and self-procured property in Muslim law yet it exists in Hindu law. The Hindu unified family (huf) framed under Hindu law, run business and claim agrarian grounds. Under the UCC, this establishment of HUF, exceptional to the Hindus, must be annulled<sup>24</sup>. There are numerous arrangements which ought to be considered. Break even with offers to child and little girl from

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<sup>22</sup> Article 21 of The Constitution of India 1949: Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.

<sup>23</sup> M.C. Chagla, *Roses in December*, 160 (Bhartiya Vidya Bhawan, 2000).

<sup>24</sup> Madhu Kishwar, "Codification of Hindu Law: Myth and Reality" *Economic and Political Weekly*, Aug. 13, 1994. Available at <http://www.economicandpoliticalweekly.org/> (last visited on accessed on July 20, 2017).

the property of the dad, regardless of whether self-obtained or joint family property. There ought to be no segregation dependent on sex in the issues of legacy. The arrangements of the Hindu progression (Maharashtra change) act, 1994 can be taken as core values wherein the girl of a coparcener will by birth turn into the coparcener in her very own privilege in indistinguishable way from a child and have similar rights in the coparceners property as she would have had in the event that she had been a child, comprehensive the privilege to guarantee by survivorship and will be liable to same liabilities as the child<sup>25</sup>. Arrangements for legacy of the property of mother, which she has self-gained or procured through her dad or relatives must specified. The arrangement identifying with ought to be in consonance with the standards of value. There ought to be no constraints forced on the degree to which the property can be passed on, the people to whom such property by will for religious and magnanimous reason<sup>26</sup>.

#### **MAINTENANCE:**

Maintenance laws are distinctive for various religions. Aside from individual laws, a non-Muslim lady can guarantee upkeep under area 125 of code of criminal procedure<sup>27</sup>. aside from support of spouse, there are additionally arrangements for support of mother, assemble, child and unmarried little girl under different individual laws. The UCC must be very adaptable in this classification, a spouse ought to keep up the wife amid the marriage and furthermore after they have separated till the wife remarries. The measure of divorce settlement ought to be chosen the premise of the pay of the spouse, the status and the way of life of the wife. The child and girl ought to be similarly dependable to keep up the guardians. The purpose behind this being is that on the off chance that she guarantees measure up to share of the property of her folks, she should share the obligation to keep up her folks similarly<sup>28</sup>. Accordingly dependent on these major standards, an unprejudiced and reasonable UCC can be confined which will be in consonance with the Constitution.

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<sup>25</sup> M.P. Singh, "On Uniform Civil Code, Legal Pluralism and Constitution of India" 5 J. Indian L. & Soc'y (2014).

<sup>26</sup> MC Chagla, Plea for UCC, Weekly Round Table, Mar 25, 1973, page 7.

<sup>27</sup> MS Ratnaparkhi, Uniform Civil Code: An Ignored Constitutional Imperative, Atlantic Publishers and Distributors (1997).

<sup>28</sup> Professor Kusum, Family Law Lectures: Family Law I, (3rd ed, 2012)page xi.

**CHALLENGES CLOUDING UCC:**

The greatest deterrent in executing UCC, aside from acquiring an accord, is the drafting of this common code. Ought to UCC be a mix of every single individual law or would it be a good idea for it to be another law clinging to the established command? It was questioned by numerous individuals that UCC will be only just a repackaged Hindu law. The area of the country against the execution of UCC battles that in perfect occasions, in a perfect express, a UCC would be a perfect defend of natives' rights<sup>29</sup>. Be that as it may, India have moved a lot further from perfect than when the constitution was drafted 65 years back. UCC guarantees honesty of the country as well as annihilates a wide range of social inconsistencies. The vote bank legislative issues which resembles a plague to our Indian political framework, it will be relieved and India could take in the quality of much grew, a lot smarter and much fruitful country<sup>30</sup>. If all Indians have same laws overseeing them, at that point the government officials will have nothing to offer to any network in return of their votes. The Supreme Court has on numerous occasions repeated the significance of ordering a Uniform Civil Code. The Directive Principles of state strategy under the Constitution of India likewise express that the State will pass a Uniform Civil Code. Each cutting edge country which has genuinely grasped 'Secularism' has a Uniform Civil Code. It is time we have it as well. Thus article 44 gives a uniform code which is basic, both, for insurance of the abused and for advancement of national solidarity and solidarity.

While clarifying the purpose behind incorporating Article 44 in the Directives Principles, it was watched, "When you need to unite a network, you need to think about the advantages which may collect to the entire network and not to the traditions of a piece of it<sup>31</sup>. In the event that you take a gander at the nations in Europe, which have a Civil Code, everybody who goes there structures a piece of the world and each minority needs to submit to that Civil Code. It isn't felt to be domineering to the minorities."<sup>32</sup> Many legitimate researchers have contended that so as to present or actualize any dynamic law an appropriate climate must be made where all area feel safe to sit and talk about the essential establishment and separate out the most dynamic of their own laws.

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<sup>29</sup> M.S. Ratnaparkhi "Uniform Civil Code: An Ignored Constitutional Imperative", Atlantic; (1997).

<sup>30</sup> A Kumar, "Uniform Civil Code: Challenges and Constraints," Satyam Law International; (October 12, 2012).

<sup>31</sup> Partha S. Ghosh "The Politics of Personal Law in South Asia: Identity, Nationalism and the Uniform Civil Code", Routledge India; (October 8, 2007).

<sup>32</sup> Constitutional Assembly Debates Volume VII pg. 547.

**CONCLUSION:**

Article 44 plainly lays accentuation on secularism as it sets up no association among religion and individual laws. The logicians and scholars who gave negating sees on this common code neglected to recognize the way that article 25 ensures religious opportunity while article 44 looks to strip religion from social relations and individual laws. Religious practices which are violative of human rights and pride are not self-sufficiency but rather abuse. These practices makes a trepidation in the psyche of the general mass that this uniform common code would hamper their rights and would be predisposition towards their religion . This brought together code is basic both for security of the persecuted and advancement of national solidarity & solidarity. In the Indian republic there was to be just a single country Indian country and no network could profess to remain a different element based on religion<sup>33</sup>. The disagreeing view which expresses that that uniform common code would be impeding to the Muslim people group as it plainly supports Hindu people group is only a ruin made by different ideological groups so as to help their vote bank approach . In the event that we center around the intelligent status and lay accentuation on legitimate point of view of this brought together code than it is critical to see the remain of our legal executive on this issue, on account of *Mudgal v. Association of India* the pinnacle court gave an educational judgment by expressing the way that there is no avocation to overlook Art. 44 so as to ensure Muslim assessments specifically.

It further opines that –

“Article 44 depends on the idea that there is no fundamental association between religion and individual law in a basically polite and material opportunities are not self-rule but rather abuse. A brought together code is basic both for insurance of the persecuted and advancement of national solidarity and solidarity. In the Indian Republic there was to be just a single Nation-Indian Nation-and no network could profess to remain a different element based on religion”<sup>34</sup>. Article 25 of the constitution, which recommends secularism, obviously features the way that all religion will be equivalent in the eye of the and that the devotees of each religion will have similar rights to purport and practice their particular religions. Henceforth by expressing that uniform common code should just be connected to larger part of the populace and not to a specific religion isn't

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<sup>33</sup> Uniform Civil Code – A Legal Perspective, **Amit Abhyankar**.

<sup>34</sup> Parashar, Archana. Women and Family Law Reform in India: Uniform Civil Code and Gender Equality. 1992.

secularism, yet bare communalism. Consequently the entire country needs to escape this wrong hypothecation that the uniform common code is one-sided or could crush the very presence of their specific as this framework is need of great importance. On the off chance that we guarantee to be one incredible country which in obvious sense we will be, we have to remain against such disparities and respect the very idea of secularism at that point there is no choice to uniform common code. Since each huge advance requires time and precise arranging and India being the most expanded country can't acknowledge such framework on the double, an elective cure can be considered. Law commission can draft a far reaching code with the meeting with the minorities' bonus. Such code must value the cutting edge idea of human privileges of ladies and social equity. The announcement of Hassan Imam, an individual from Constituent Assembly, would be an ideal finishing up proclamation.

*“Talk of making India strong; ....it is all right and a very desirable thing to have a uniform law. It is a must thing because otherwise we would be guilty of making a nation within a nation, a community within a community”.*