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# WOMEN AND PERSONAL LAWS: A NEED FOR UNIFORM CIVIL CODE

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“The meaning and content of the fundamental rights guaranteed in the Constitution of India are sufficient amplitudes to encompass all facets of gender equality....”

*-Late Chief Justice J.S. Verma, Supreme Court of India, Vishaka v. State of Rajasthan*

## I. ABSTRACT

Although the Supreme Court and the Constitution of India provide for gender equality and gender justice, women still face so many injustices and inequalities throughout their lives. Different personal laws are used by various religions in India. The position of women under various personal laws is not favorable. They are subject to many forms of violence and discrimination such as dowry death, female infanticide, sexual crimes such as rape, modesty-related violence, and domestic violence. They faced oppression at home, at their workplaces, and in society. Religion has a significant place in a country like India but before religion, we all are human beings. From the ancient period, the women were considered as the men’s property. They were not considered as equal to men. They have no say of their own and must follow their husband in each aspect of their lives. There was a patriarchal society, and women had no sexual or economic freedom. As Manu stated from the very beginning of their life, women depend on someone. In childhood, she depended on her father after that she depended on her husband in youth, and later during old age she depended on her child. Thus, she is not free at all. Women were not provided any autonomy and were always considered inferior creatures.

Similar was the condition of the Muslim women. They have no legal status of their own before the advent of Islam. Even after the advent of Islam, the position of women was not that much improved. They were provided with

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legal status but were only considered inferior to males. As far as divorce is concerned husband can give a divorce to his wife by only saying “You’re divorced.” There is also one of the awful practices under Muslim law is *nikah halala* which is also known as *tahleel* marriage in which after being divorced by triple *talaq*, she must marry and sleep with someone else and get divorced again to be able to remarry her first husband. Thus, this cruelty against women was there from the very beginning. The same is the status of women in other personal laws too. Therefore, a uniform civil code is required to provide gender justice not only to women of a particular religion but to all women irrespective of their religion. This research endeavour strives to comprehensively study the inequalities under various personal laws, the legal position of uniform civil code, challenges in implementing uniform civil code, and comparison of different personal laws.

## II. KEYWORDS:

Article 44, Constitution of India, Directive Principles of State Policy, Uniform Civil Code, Personal Laws, Marriage, Divorce, Succession, Maintenance, Gender Justice.

## III. INTRODUCTION

India is a diverse country. It is home to thousands of small ethnic and tribal groups. Religion plays a key role in India. The total Population in India in 2011 was 121.09 crores out of which 96.63 crores (79.8%) are Hindu, 17.22 crores (14.2%) are Muslim, 2.78 crores (2.3%) are Christian; 2.08 crores (1.7%) are Sikh, 0.84 crores (0.7%) are Buddhist, 0.45 crores (0.4%) are Jain, 0.79 crores (0.7%) are Other Religions & Persuasions (ORP) and 0.29 crores (0.2%) are those whose religion is not stated.<sup>2</sup> Each of these communities has its laws and all of these personal laws are discriminatory against women. Personal laws in India deal with partition, marriage, divorce, inheritance, maintenance, guardianship, succession, etc.

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<sup>2</sup> “Census Tables” (Government of India) <<https://censusindia.gov.in/census.website/data/census-tables>> accessed August 21, 2024.

#### **IV. RESEARCH OBJECTIVES**

- 1) To comprehensively examine the inequalities under various personal laws against women.
- 2) To compare the provisions against women under various personal laws.
- 3) To examine the existing legal provisions of the Uniform Civil Code.
- 4) To critically evaluate the proposal for implementation of the Uniform Civil Code.
- 5) To identify the challenges faced in implementing the Uniform Civil Code.

#### **V. RESEARCH QUESTIONS**

1. How have personal laws in India failed to provide safeguards and equality to women?
2. What are the different provisions under various personal laws that caused gender inequalities?
3. What are the differences among various personal laws in India?
4. How can the Uniform Civil Code promote gender equality?
5. What are the different challenges in implementing the Uniform Civil Code?
6. What are the various drawbacks of UCC?

#### **VI. RESEARCH HYPOTHESES**

- 1) Personal laws in India have discriminated against women since ancient times, whether under Manu's code, Muslim law, or Christian provisions.
- 2) Many provisions under the various personal laws caused gender inequality such as provisions for succession, partition, marriage, divorce, etc.
- 3) Each of the communities in India has its laws which are different from each other.
- 4) The implementation of UCC will enhance gender equality in India and will remove all the biased laws against women under various personal laws.

- 5) Various challenges are there in the implementation of the Uniform Civil Code such as political, societal, and individual resistance, religious diversity, vote bank policy, etc.
- 6) The drawbacks of UCC are religious tensions and conflicts, loss of community identity, the burden on the judiciary, etc.

## **VII. RESEARCH METHODOLOGY**

This paper adopts a doctrinal research approach. Doctrinal research is also known as library-based research. This type of research approach involves the study and analysis of case law, academic writings, etc. It is usually used for understanding the theoretical and conceptual dimensions of law. There are two sources of this approach: primary sources include statutory materials, judicial decisions, and authoritative literature and secondary sources include commentaries, articles, etc. In the doctrinal approach, the existing literature in the form of Family law books including Hindu law and Muslim law books, Research papers, and dictionaries help me to get the conclusion. The books are both online and offline. For critically analysing this topic, case laws and statutes are helpful.

## **VIII. LITERATURE REVIEW**

This paper will provide a deep insight into the topic of the Uniform Civil Code and draw upon the key provisions of the Constitution of India and various personal laws such as the Indian Succession Act, 1956, Indian Marriage Act, 1955, Indian Minority and Guardianship Act, 1956, Special Marriage Act, 1954, etc. It deeply analyses the landmark cases that are related to the discrimination against women and the importance of UCC. These include cases like *Bai Tahira v. Ali Hasan Fassali, Daniel Latifi & Anr. v. Union of India, Abdul Kadir v. Salima, Liaqat Ali v. Karimunnissa, Shayara Bano v. Union of India & Ors.*, etc. The comparison between various personal laws is also provided in this paper which helps to deeply analyse the different practices among religious communities. There are so many impediments to the formulation of the

Uniform Civil Code which include ambiguity in the meaning of UCC, Article 25-28, vote bank policy, etc. However, the implementation of the Uniform Civil Code will bring progress in society by bringing gender justice, equality, and integrity to the country.

## IX. MEANING, DEFINITION & EXPLANATION

The term Uniform Civil Code consists of three words "uniform", "civil" and "code". The word Uniform means something same or not changing or different in any way.<sup>3</sup> Civil means something that relates to the private arguments between the people and is not a criminal matter.<sup>4</sup> According to the Black's law dictionary, civil refers to something relating to the relationships among individuals which is not criminal, administrative, military, or ecclesiastical. These include the subject like marriage, succession, divorce, maintenance, inheritance, etc.

Code means a set of rules about how to behave or do things.<sup>5</sup> According to section 2(1) of the Code of Civil Procedure, 1908, code refers to rules.<sup>6</sup> Thus civil code refers to the set of rules that govern the personal or private matters of the citizens and are accepted by the society. Therefore, a Uniform Civil Code is a set of rules that uniformly govern the personal matters of the citizens irrespective of their religion, gender, or caste. UCC is based on the idea of One Country, One Rule, to be applied to all religious communities.

## X. UNIFORM CIVIL CODE AND THE CONSTITUTION OF INDIA

All the criminal laws in India apply to all the citizens uniformly irrespective of their religion. But as far as civil matters are concerned, all the communities

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<sup>3</sup> Dictionary, C. (n.d.). *uniform*. English Meaning - Cambridge Dictionary. Retrieved August 25, 2024, from <https://dictionary.cambridge.org/dictionary/english/uniform>

<sup>4</sup> Dictionary, C. (n.d.-a). *civil*. English Meaning - Cambridge Dictionary. Retrieved August 25, 2024, from <https://dictionary.cambridge.org/dictionary/english/civil#>

<sup>5</sup> Dictionary, C. (n.d.-b). *code*. Meaning - Cambridge Learner's Dictionary. Retrieved August 25, 2024, from <https://dictionary.cambridge.org/dictionary/learner-english/code>

<sup>6</sup> Section 2(1), Code of Civil Procedure, 1908

have their laws. There is no uniform civil code in India. UCC is also not included under fundamental rights which are provided under article 12-35 of Part 3 of the constitution of India. But it is one of the Directive principles of state policy. Article 44 of Part 4 Directive Principles of State Policy" of the constitution of India provides provisions related to the Uniform Civil Code. It states that the state shall secure a Uniform Civil Code for the citizens throughout the territory of India.<sup>7</sup>

Although it is not one of the fundamental rights but still the state must consider all the provisions given under Part 4 of the Constitution of India which is Directive Principles of State Policy while making any laws governing the citizens of India. At the time, when the constitution was framed, India did not possess sufficient financial resources to include all the provisions under the Fundamental rights and implement it.

Judiciary from time to time has taken note of the importance of the Uniform Civil Code. In the case of Mohd. Ahmed Khan v. Shah Bano Begum<sup>8</sup>, the court observed that it is a matter of regret that the uniform civil code which is provided under Article 44 of the Constitution of India is a dead matter. The implementation of Article 44 will remove disparate loyalties of laws and bring national integration to India. The State must secure a Uniform Civil Code for the citizens throughout the territory of India. Similar was the observation of the court in the case of Ms. Jordan Deigndeh v. S.S. Chopra.<sup>9</sup>

The court stressed the need for a common civil code for the citizens of India. Again, recently in the case of Sarla Mudgal v. Union of India<sup>10</sup>, the court strongly advocated to need for the introduction of a Uniform Civil Code in India. It is the failure of the governments of India to not to implement the article 44 of the Constitution of India. Not only this, but the court also directed the Government of India to file an affidavit showing the steps taken and the

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<sup>7</sup> Article 44, Constitution of India,1950

<sup>8</sup> Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556

<sup>9</sup> Ms. Jordan Diengdeh v. S.S. Chopra, (1985) 3 SCC 62

<sup>10</sup> Sarla Mudgal v. Union of India, (1995) 3 SCC 635

effort made by the government to consider Article 44 of the Constitution of India.

## **XI. HISTORICAL BACKGROUND**

The topic of the Uniform Civil Code has always been under. The historical background of the Uniform Civil Code can be divided into:

### **1. Ancient period**

Under Hindu law, Manusmriti along with other Dharmashastras such as Yajnavalkya Smriti, Narada Smriti, etc played a vital role in shaping the Hindu personal laws. The women are considered as the property of the men. They were not considered as equal to men. They have no say of their own and must follow their husband in each aspect of their lives. There was a patriarchal society, and women had no sexual or economic freedom. As Manu stated from the very beginning of their life, women depend on someone. In childhood, she depended on her father after that she depended on her husband in youth, and later during old age she depended on her child. Thus, she is not free at all. Women were not provided any autonomy and were always considered inferior creatures.

As far as the Muslim laws are concerned, Arabian tribal customs governed the social and legal matters before the advent of Islam. They have no legal status of their own before the advent of Islam. Even after the advent of Islam, the position of women was not that much improved. They were provided with legal status but were only considered inferior to males. But after the introduction of Islam, the sources of law for them were the Quran, Hadith, Sunnat, Ijma, Qiyas, etc. Not only this, but Muslims were also divided into two sects - Sunnis and Shias and these two are further divided into four sub-schools, and three sub-schools, respectively. Both have their books and authorities.

### **2. Medieval period**



As most of the rulers during the medieval period were Muslims, hence most of the state laws were dictated by Islamic laws irrespective of the religion of the citizens. But as far as the personal laws are concerned, all the people of different religions were given the freedom to follow their traditions but only the people of Islam were not given any freedom and they needed to follow Islamic private laws.

### **3. Modern period**

#### **i. Pre-independence era**

During the British Colonial Rule in India, the British Government avoided interfering with the personal laws of the communities in India. They were allowed to follow their traditions, customs, and cultural practices. When the reformation movement started in India, reformists like Raja Rammohan Roy started campaigns against the evils under personal laws such as sati practices, child marriage, widow remarriage, etc. Before independence, many initiatives were taken by the government for the codification of personal laws such as the Indian Succession Act of 1865, the Indian Marriage Act of 1864, the Hindu Widow Remarriage Act Of 1856, etc.

#### **ii. Constituent assembly**

During the framing of the Constitution of India, UCC was one of the topics over which a lot of debates took place. Members like Jawaharlal Nehru, and Dr. B.R Ambedkar were the supporters of the Uniform Civil Code. They argued that it would promote equality and national unity. However, due to the difference in views of the members of the constituent assembly especially the religious leaders, UCC was included under Part 4 "Directive Principles of State Policy". Nehru has stated so many reasons supporting the concept of the Uniform Civil Code. He stated that India has a civil code, Transfer of Property Act, 1882, Indian Contract Act, 1882, etc and all these are uniform in their content and apply to the whole country.

#### **iii. Post-Independence era**

After the independence of India, the first prime minister of India Pt. Jawaharlal Nehru's government took the initiative of the codification of the Hindu personal laws. Thus, the Hindu Code Bills were passed which codified the laws related to marriage, succession, legalize divorce, etc. The laws that were part of the Hindu Code Bills were the Hindu Marriage Act (1955), the Hindu Succession Act (1956), the Hindu Minority and Guardianship Act (1956), and the Hindu Adoptions and Maintenance Act (1956). Before that, the Special Marriage Act (1954) was passed which is considered as the first step towards the implementation of the Uniform Civil Code in India. This act provides the provisions and allows marriage between the same and different religions. But Sucheta Kriplani at that time argued that Muslims were not prepared for such a change to the codification of their laws.

## **XII. COMPARISON OF VARIOUS PERSONAL LAWS**

### **A. MARRIAGE**

#### **1. Under Hindu Law**

As far as Hindu marriages are concerned, there are eight kinds of marriage and among them, four are approved ones, these are Brahma, Daiva, Arsha, and Prajapati and four are disapproved, are Asura, Gandharva, Rakshasa, and Paishacha. After the enactment of the Hindu Marriage Act, of 1955, all the subjects related to marriage, divorce, etc. are dealing by the provisions of this act. The conditions for a valid Hindu marriage are given under section 5 of the act. The following are the conditions for a valid marriage:<sup>11</sup>

- a. Both parties must not have a living spouse at the time of marriage.
- b. Valid consent of both the parties.
- c. Bridegroom must have completed the age of 21 years, and the bride must have completed the age of 18 years.
- d. Parties must not be within the degree of prohibited relationship.

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<sup>11</sup> Section 5, Hindu Marriage Act, 1955

Section 7 provides the provisions as to the ceremonies required for the solemnization of Hindu marriage.<sup>12</sup> Section 8 provides for the registration of marriage. Under the Hindu Marriage Act, 1955 women are provided with many rights as a punishment for Bigamy (section 17) and the punishment for the contravention of any of the conditions for a Hindu marriage (section 18) is also there under the act. Section 15 of the act deals with provision as to when a divorced person can remarry which provides that any person can remarry when the decree of divorce has been pronounced and no right of appeal is there.<sup>13</sup>

## 2. Under Muslim Law

Marriage which is also called Nikah is considered a civil contract<sup>14</sup> between a Muslim man and woman accompanied by a dower under Muslim Law. Unlike Hindu marriage, marriage under Muslim law is not considered a sacrament. Under Muslim Law, the following are the conditions required for a valid marriage:

- a. Every person who has attained puberty is capable of marriage which is assumed as 15 years.
- b. A person must be of a sound mind.
- c. Proposal(ijab) and acceptance(qubul) must be there in the same meeting.

The solemnization of marriage takes place with the recitation of the Quran.

Marriage between a person of unsound mind and a minor can be contracted only by their respective guardians. Polygamy is allowed. A man can have up to four wives and the sanction for polygamy is there in Quran. There is no prohibition on interreligious marriages. But Shias considered this kind of marriage as null and void. Tyabji and Fyzee have talked about valid (sahih), void (bati), and irregular (faisd) marriage under Mohammadan Law.

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<sup>12</sup> Section 7, Hindu Marriage Act, 1955

<sup>13</sup> Section 15, Hindu Marriage Act, 1955

<sup>14</sup> Abdul Kadir v. Salima, (1886) 8 All. 149

There is also one more kind of marriage under Muslim Law which is practised by Muslims who follow the Ithna ashari school of Shias which is known as Muta marriage. The word Muta refers to enjoyment or use. It is a kind of marriage that is only for a limited period for the sake of enjoyment or use. The children of this kind of Marriage are legitimate ones. There is no right of divorce under this marriage.

### **3. Under Christian Law**

The marriage of the Christians is solemnized according to the provisions of the Indian Christian Marriage Act of 1872. Section 3 of the Act defines the term Christians as the descendants of native Indians who were converted to Christianity and the converts are also included.<sup>15</sup> Section 4 of the act provides that the marriage<sup>16</sup>:

- a. Can be solemnized by any person who has received Episcopal ordination by the rules, ceremonies, customs of the Church, or
- b. Can be solemnized by any clergy of the Church of Scotland by the rules of the Church of Scotland, or
- c. Can be Solemnized by any licensed minister of Religion under this act,  
or
- d. Can also be solemnized by a marriage registrar, or
- e. Can be solemnized by any licensed person under this act.

Unlike other religions, under this act time and place of the solemnization of marriage is also given under Section 10 which provides that the marriage must take place between 6:00 A.M. - 7:00 P.M. at the church.

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<sup>15</sup> Section 3, Indian Christian Marriage Act of 1872

<sup>16</sup> Section 4, Indian Christian Marriage Act of 1872

## B. DIVORCE

### a) Under Hindu Law

In ancient times, Hindu marriage was considered as indissoluble as the marriage was considered sacred. With the enactment of the Hindu Marriage Act, 1955, divorce is legally recognized under Hindu Law. There are three theories of divorce: the fault theory, the mutual consent theory, and the irretrievable breakdown of marriage. Section 13 of the act deals with the provisions related to divorce. The divorce can be sought by the husband or wife on fault grounds or by mutual consent. Different grounds are given under section 13 which are adultery, cruelty, desertion, conversion, insanity, venereal disease, renunciation, and presumption of death.<sup>17</sup> There are also certain special grounds on which the wife can only seek divorce, these are pre-act polygamous marriage, non -and resumption of cohabitation even after the order of maintenance and repudiation of marriage. The non-fault-based grounds for divorce are mutual consent (section 13B), irretrievable breakdown of marriage, and a long separation period. In the case of *Dastane v. Dastane*, the court held that the threat to commit suicide amounted to cruelty.<sup>18</sup>

### b) Under Muslim Law

Divorce which is known as talaq under the Muslim law is declared as the worst among all the permitted things by the Prophet. There are many modes of divorce. These modes are categorized into three categories:

**A. By the death of the parties:** After the death of the wife, the husband can remarry immediately whereas in the case of the death of the husband, the widow cannot remarry before 4 months and 10 days and this period is called as iddat. In case, the widow is pregnant she cannot remarry until delivery.

**B. By the act of the parties:** It can be further divided into:

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<sup>17</sup> Section 13, Hindu Marriage Act, 1955

<sup>18</sup> *Dastane v. Dastane*, 1975 S.C. 1534

i. By husband which includes Talaq, Ila, and Zihar. Talaq refers to the repudiation of marriage or release from the marriage knot. The husband must have attained the age of puberty and, a sound mind and it must not be pronounced under some compulsion. It can be oral or in writing. There are different modes of talaq such as Talaq-ul-Sunnat, Talaq-ul-Biddat, Ila, and Zihar. Talaq-ul-sunnat is regarded as an approved form of talaq as it is based on the tradition of the prophet. It is a revocable one. It is also subdivided into Ahsan (the most approved one) and Hasan (good one). Talaq-ul-Biddat also called triple Talaq is the disapproved mode of talaq which is an irrevocable one. As soon as the words are pronounced talaq becomes irrevocable. Ila is a constructive divorce in which the husband takes an oath not to have sexual intercourse with the wife and he continues it for a period of iddat, after the completion of 4 months i.e., the period of iddat the marriage will be dissolved. Ila is not a practice in India. Zihar which is also a constructive form of divorce is a divorce in which the husband compares his wife to any woman within the prohibited degree and the wife will refuse any sexual intercourse with him till he has expiated to her and in the default for the same, she also has right to apply for judicial divorce to Mulla.

ii. By wife under the delegation of power by the husband: It is also called Talaq-e-tafweez in which an agreement is made either before or after marriage between husband and wife in which the husband under certain conditions delegates the power to his wife to seek divorce at any time.

iii. By mutual consent: It includes Khula and Mubarat. Khula means to take off the clothes. It is a mode in which the wife offers her husband for the repudiation of marriage and the husband accepts it with consideration for the release. Mubarat refers to the act of freeing. It is a mode in which the offer can be made from the side of either of the parties and after the acceptance by the other party, it becomes irrevocable divorce.

**C. Judicial divorce:** It includes Lian and judicial divorce under the Dissolution of Muslim Marriage Act, 1939. Lian refers to the false charge of adultery in

which the divorce took place when the husband falsely charged his wife with adultery and the wife filed a suit for the dissolution of the Marriage. According to section 2 of the act, there are 9 grounds of divorce under the Dissolution of Muslim Marriage Act, 1939 for women: absence of husband, failure to maintain, imprisonment of husband, failure to perform marital obligations, impotency of husband, insanity, cruelty of husband and the repudiation of marriage by wife.<sup>19</sup>

### **c) Under Christian Law**

The divorce of the Christian Marriage can be sought by the provisions of the Divorce Act, 1869. Any of the parties to marriage either husband or wife can file the petition to the District Court for declaring their marriage null and void.<sup>20</sup> There are four grounds given under section 19 of the act of the nullity of Christian Marriage. These include impotency of the other party, the party being within the prohibited degrees of consanguinity, lunacy or idiocy of the other party, and polygamy or polyandry.<sup>21</sup>

## **C. MAINTENANCE**

### **i. Under Hindu Law**

Maintenance refers to the means or the modes to survive or maintain someone who does not have sufficient means to sustain himself/ herself. Sections 24 and 25 of the Hindu Marriage Act, 1955 provide the provisions related to the maintenance and alimony. Section 24 of the act provides for the pendente lite which means the maintenance during the pendency of the proceedings.<sup>22</sup> It can be claimed either for the expenses of the proceedings or for the personal maintenance of the claimant. In the case of *Gita Chatterjee v. Prabhat Kumar*,

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<sup>19</sup> Section 2, Dissolution of Muslim Marriage Act, 1939

<sup>20</sup> Section 18, Divorce Act, 1869

<sup>21</sup> Section 19, Divorce Act, 1869

<sup>22</sup> Section 24, Hindu Marriage Act, 1955

the court held that while fixing the amount of maintenance the court will consider only the income of the applicant.<sup>23</sup>

Section 25 deals with the permanent maintenance and the alimony and it is a welfare legislation that provides for the provisions of permanent Maintenance claimed by either of the parties. Provided that the claimant must not have sufficient means to maintain himself.<sup>24</sup> Thus in the case of Krishna v. Padma, the court held that when the wife has no employment or other income the husband must provide maintenance to her irrespective of the fact whether she is highly qualified or not.<sup>25</sup> Hindu women have also one more provision under which they can claim maintenance under sections 125 -128 of the CRPC.

## ii. Under Muslim Law

It is also called Kharcha-i- pandan or nafaq. One of the unique features of Muslim law is that a man is under an obligation to maintain his ascendants, descendants, collaterals, or other relations. But he is not under obligation to maintain his Muslim wife. He will only maintain her in the case of dependency.

A wife can claim maintenance from her husband during the subsistence of marriage as well as after the dissolution of marriage. a. During the subsistence of marriage she can claim maintenance only when she has attained puberty, allow free access to her husband at reasonable times, and obey all the commands of her husband. The husband is under obligation to maintain his wife irrespective of whether she is Muslim or not.

**Dissolution of marriage:** After the dissolution of marriage, Muslim women can claim maintenance under the provision of sections 125-128 of the Criminal Procedure Code and the provisions of the Muslim Women (Protection of Rights of Divorce) Act, 1986. As far as this law is concerned, it only applies to Muslim divorced women. The act under section 3 provides that a Muslim divorced woman is entitled to fair and reasonable maintenance for the period of iddat

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<sup>23</sup> Gita Chatterjee v. Prabhat Kumar, 1988 Cal 83

<sup>24</sup> Section 25, Hindu Marriage Act, 1955

<sup>25</sup> Krishna v. Padma, 1968 Mys 226



and in case of pregnancy till the date of delivery.<sup>26</sup> She is also entitled to mahr or other properties given to her by relations, friends, husband, etc.

## **D. SUCCESSION OR INHERITANCE**

### **1) Under Hindu Law**

Before the Hindu Succession Act, 1956, the laws related to succession were governed by four different governing rules. These include Mitakashara law, Dayabhaga law, the School of Mitakashara, and the Matriarchically system. With the enactment of the Hindu Succession Act, 1956, all Hindus are governed by the provisions of this act only. This new act has amended the intestate succession and even the testamentary succession. It introduced the new concept of absolute ownership for Hindu women (Section 15) and made her marital status irrelevant to determining her right of succession.

This act provides for separate schemes of succession for male and female intestates. Section 7 of the act provides the list of heirs of a male Hindu which is divided into four categories: Class-1, Class-2, Class-3 (Agnates), and Class-4 (Cognates).<sup>27</sup> Sections 15 and 16 of the act deal with the Succession to the property of a female dying intestate. Although Hindu women's limited estate has been made absolute, yet for the intestate succession, the source of property is still material. The property of the women is divided into:

- a. Property Inherited from parents.<sup>28</sup>
- b. Property Inherited from husband or in-laws.<sup>29</sup>
- c. General property.<sup>30</sup>

With the Hindu Succession (Amendment) Act, 2005, the daughter is introduced as the coparcener to her paternal property.<sup>31</sup>

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<sup>26</sup> Section 3, Muslim Women (Protection of Rights of Divorce) Act, 1986

<sup>27</sup> Section 7, Hindu Succession Act, 1956

<sup>28</sup> Section 15(2)(a), Hindu Succession Act, 1956

<sup>29</sup> Section 15(2)(b), Hindu Succession Act, 1956

<sup>30</sup> Section 15(1), Hindu Succession Act, 1956

<sup>31</sup> Section 6, Hindu Succession Act, 1956

## 2) Under Muslim Law

The pre-Islamic rules of inheritance were based on the customs and usages that were prevalent among the Arabian tribes. The various features of inheritance were predominance to comradeship, male agnates were given importance, descendants over ascendants, and the females and cognates were excluded. With the revelation of the Quran, distinct rules of inheritance are there under Shia and Sunni laws. Unlike Hindu law, a single scheme of succession exists under Muslim Law. Under Sunni law, the heirs are divided into two broad categories: related heirs and unrelated heirs. Related are further subdivided into sharers, residuaries, and distant kindred.

There are twelve sharers, eight females, and four males. The shares of the sharers are fixed. Anything left after distribution among the sharers which is called residue goes to the next category called residuaries. In the case of no residuary, the property passes to the last category which comprises cognates only. Unrelated is further subdivided into successor by contract, acknowledged kinsmen, and universal legatee. As far as Shias are concerned, under Shia law the heirs are divided into two groups sharers and residuaries. There are nine sharers among which three are males and six are females. The doctrine of Aul and Radd is also there under Muslim law.

### XIII. BIASNESS AGAINST WOMEN UNDER VARIOUS PERSONAL LAWS

#### a. Under Hindu Law

From ancient times, there were laws against women. The women are considered as the property of the men. They were not considered as equal to men. They have no say of their own and must follow their husband in each aspect of their lives. There was a patriarchal society, and women had no sexual or economic freedom. As it was stated by Manu from the very beginning of their life, women depend on someone. In childhood, she depended on her father after that she depended on her husband in youth, and later during old

age she depended on her child. Thus, she is not free at all. Women were not provided any autonomy and were always considered inferior creatures. With the codification of the Hindu law, the status of women is improved but not that much. Under the Hindu Minority and Guardianship Act, 1956, women are given inferior position as compared to men. The act gives the mother a secondary status and it is only after the father that the mother is considered as the natural guardian of a Hindu minor.<sup>32</sup>

As far as the provisions for succession are concerned. They are governed by the Hindu Succession Act, 1956, and originally women were not considered as the coparcener in their father's ancestral property. It was only after the Amendment Act of 2005; that women were introduced as the coparcener.<sup>33</sup> As agricultural land is excluded from the application of the Hindu Succession Act; some states continue the gender description by favouring males over females in dealing with agricultural land.

However, the section 4(2) was omitted by the amendment act of 2005. Although Hindu women's limited estate has been made absolute, yet for the intestate succession, the source of property is still material. If a married woman dies intestate without having any children, then her property which she has inherited from her husband will be inherited not by her heirs but by her husband's heirs.<sup>34</sup>

#### **b. Under Muslim Law**

They were regarded as property and rubbish. The female and cognates were excluded under the rule of inheritance. As far as the nikah is concerned polygamy is allowed under Muslim law which means that a man can have four wives. Due to this, not only Muslim women are suffering but also women of other religions as what their husbands are doing after marriage, they convert to Islam and practice polygamy. On the other hand, polyandry is forbidden, and a Muslim woman cannot marry a second time so long as the first marriage

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<sup>32</sup> Section 6, Hindu Minority and Guardianship Act, 1956

<sup>33</sup> Section 6, Hindu Succession Act, 1956

<sup>34</sup> Section 15(1)(a), Hindu Succession Act, 1956

subsists.<sup>35</sup> A marriage of a Muslim female with a non-Muslim male whether he be a Christian or a Jew or a fire worshipper is irregular under Sunni Law and void under Shia law.<sup>36</sup>

The concept of triple talaq under Muslim Law is also discriminatory against women. In which the divorce took place only with the three pronouncements made during a single tuhr either in one sentence or in a separate sentence. The court had abolished and declared it unconstitutional in the case of *Shayara Bano v. Union of India*.<sup>37</sup> Later on, the Muslim Women (Protection of Rights on Marriage) Act, 2019, was passed by the government which criminalized the practice of triple talaq. Women are given inferior status to men as mothers came after fathers, and paternal grandfathers how high soever, brothers and other male relations on the father's side when it comes to guardianship in marriage (Jabr).

Even after divorce women must undergo through iddat period and they cannot be able to remarry immediately but this is not the case with husbands. He can remarry immediately after the dissolution of marriage. There is one more new type of evil against women which is called Muta marriage as there is no limit to the number of wives under it. The wife has no right of inheritance. There is no compulsion for registration of marriage under Muslim law. Earlier there was the rule under Muslim law was that a divorced woman is entitled to maintenance till the expiry of the period of iddat and in the case of pregnancy till the delivery. In the case of *Bai Tahira v. Ali Hasan Fassali*, the court held that section 125 of CRPC has no application in the case of a Muslim woman.<sup>38</sup>

Later on, in the case of *Daniel Latifi v. UOI*, the court upheld the constitutional validity of the Dissolution of Muslim Marriage Act, 1939, and held that the provisions of sections 125-128 of CRPC can also be maintainable.<sup>39</sup> The concept of dower which is called mahr (bride-price) shows that Muslim marriage is like

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<sup>35</sup> *Liaqat Ali v. Karimunnissa*, ILR 15 All. 396,398

<sup>36</sup> *Mohammedan Law by Mulla*, 18<sup>th</sup> Ed. pp. 287-88

<sup>37</sup> *Shayara Bano v. Union of India & Ors.*, (2017) 9 SCC 1

<sup>38</sup> *Bai Tahira v. Ali Hasan Fassali*, AIR 1979 SC 362

<sup>39</sup> *Daniel Latifi & Anr. v. Union of India*, (2001) 7 SCC 740

that of contract of sale and the wife is the property and the dower is the considered (price) for this property.<sup>40</sup>

#### **XIV. STATES WITH UCC**

Goa and Uttarakhand are the only states that have a Uniform Civil Code. Other than these states, the whole of India is governed through various personal laws. As far as Goa is concerned, there is a common civil code which is called the Portuguese Civil Code of 1867. There is the provision of compulsory registration of marriage and no gender bias is there as husband and wife both have equal shares in the common assets.

Both the daughter and son have equal shares in the property of their parents. There is a total prohibition of polygamy for everyone irrespective of religion. The parties to the marriage are the joint owners of their spousal property which they acquired during the subsistence of marriage.

Uttarakhand was the first state of India to pass legislation on the Uniform Civil Code after independence. Uttarakhand Uniform Civil Code, Bill was passed in 2024 by the legislative assembly of Uttarakhand.

#### **XV. PROS OF THE UNIFORM CIVIL CODE**

##### **a. Bring equality**

The Uniform Civil Code will promote gender equality in society. There are so many inequalities against women which are present under the various personal laws particularly related to laws of marriage, succession, inheritance, guardianship, divorce, etc. Men are given superior positions as compared to females thus, UCC will bring both men and women at par.

##### **b. Ensure equal status to all citizens**

Various personal laws are there under different religions. Personal laws are also different within the religion for different sects like Shia and Sunni laws. A Uniform Civil Code will provide common civil and personal laws for its

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<sup>40</sup> Abdul Kadir v. Salima, (1886) 8 All. 149

citizens irrespective of their gender, religion, or caste thus, provide an equal status to all citizens.

**c. Promote National integration**

In India, as far as criminal laws are concerned, they are the same for all citizens irrespective of their gender, religion, or caste, but personal laws are different. With the implementation of UCC, a common set of rules will apply to everyone thus it will promote unity which would also ultimately help in reducing the divide between various religions.

**d. Bring and promote social justice**

Most of the personal laws are discriminatory against women such as Triple Talaq, polygamy, etc. The Uniform Civil Code will promote social justice by providing the same legal protections to all.

**e. Stop the politicization of issues based on religion**

India is a secular country with no official religion. Political parties often use religion for the sake of the vote bank and raise issues related to religion by supporting one religion over the other. Such as the issue of Triple Talaq was also politicized by the parties. But with the implementation of the UCC, no room will be left to the parties to politicize it.

## **XVI. CHALLENGES**

Not much progress has so far been made towards achieving the ideal of Article 44 of the Constitution of India. Following are the challenges that come in the path of implementation of the Uniform Civil Code:

**1. Fear of losing identity**

As India is a secular and diverse country with multiple religions and multiple cultures, minorities have always remained in fear of losing their identity. They are under the fear that the application of a uniform civil code will make India a Hindu nation and would take on a Hindu appearance.

## **2. Politicization of this issue**

The issue of implementation of the Uniform Civil Code has always been a hot topic, over which different political parties debate. They used it for the sake of their vote bank. This causes the polarization of the parties into two groups: one is the supporters, and the other is the opposition. Uniform Civil Code in India Bill 2018 was proposed by BJP in the year of 2018 in the Lok Sabha but due to the politicization of this issue, it was not passed.

## **3. Article 25 -28**

The right to freedom of religion is part of fundamental rights under articles 25-28 of the Constitution of India. The enactment of the Uniform Civil Code appeared to be a threat to religious freedom by minorities. They are not ready to accept the positive changes and want to carry on their way of life.

## **4. The meaning of the Uniform Civil Code is not clear**

There is a spread of misinformation among people that the implementation of the Uniform Civil Code means the imposition of the majority's view over minorities. Thus, its meaning is so ambiguous.

## **5. Lack of awareness and education**

Most of the people in India are unaware of the objects and pros of the Uniform Civil Code. Fake news adds fuel to this fire.

## **6. Issue of drafting and implementation**

India is a diverse country. It is difficult to draft a uniform code for the citizens of such a diverse country that would govern personal issues such as marriages, adoption, maintenance, etc. While drafting such a code, the state must take into consideration the aspirations of all the communities to make it acceptable to everyone. Not only this, but its implementation is also a complicated process.

## XVII. CONCLUSION & RECOMMENDATIONS

A Uniform Civil Court is the need of the hour. For a country like India which is secular, it must adopt a single and uniform set of rules for governing the personal matters of its citizens. It will promote integrity, fraternity, and secularism which are the key objectives of the Constitution of India. It will also end all the gender-biased provisions that are present under the personal laws and promote equal status to all. It will bring uniformity. The safeguard that the personal laws failed to provide to women will be provided under UCC. It will end all the differences which are present under various personal laws. It is required that the political parties must not make it an issue of their vote bank.

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