

# Gender just Civil code {UCC}: Silence breaks down

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**Abstract-** People in general perceive that for national integration all citizens of India should be given equal rights irrespective of caste and gender. There is a need for transformation of centuries old traditions of communities to flow with modern and civilized societies, because these practices carry no place and relevance in contemporary modern societies. Article 44 of the Constitution, {Directive Principles of State Policy}, has made the provision that the State must seek to ensure a uniform civil code for Indian citizens across India's territory. But UCC has been opposed on several fronts such as -Religious diversity, political opposition, lack of public awareness, Complex legal structure and lack of political will to bring legislative modifications. There are ideological and religious disagreement over uniform civil code, which is now gaining grounds for equality for women irrespective of religious background and cultural inheritance.

**Key words** -Uniform civil code, Article 44, Religious diversity, complex legal structure, political will, religious disagreement, cultural inheritance.

## INTRODUCTION

UCC-Commonly known as Uniform Civil Code is in news again when Safia, a Muslim woman from Kerala filed a petition asking for right to inheritance under Indian succession Act and not against Shariya laws<sup>1</sup> UCC is the code or set of laws that is uniform for all citizens of India irrespective of their religion. But there has been variations in laws relating to personal matters such as marriage, divorce, inheritance, adoption and succession in different religions. The UCC aims at replacing these dissimilarities existing today in other communities having different religious affiliations. Article 44 of the Constitution, {Directive Principles of State Policy}, has made the provision that the State must seek to ensure a uniform civil code for Indian citizens across India's territory. However, Article 37

states, directive principles are guiding principles for government policies and are not enforceable by courts. India having a population of more than 140 million, is the largest democratic nation in the world. There are six popular religious groups in India exerting their power control over governments -Hindu, Islam, Christianity, Sikh, Buddhism, and Jainism. In India religion is the basis of culture, custom, and tradition therefore it is difficult and challenging to give up centuries old customs and laws. That is why the issue of UCC has generated a lot of controversies and public debates on the grounds of existing gender inequalities among different religious communities . Opposition to UCC has been on several fronts such as -Religious diversity, political opposition, lack of public awareness, Complex legal structure and lack of political will to bring about legislative modifications and amendments to the constitution replacing existing personal laws

Besides these legal limitations there are ideological and religious disagreement over uniform civil code, which is now gaining grounds for equality for women irrespective of religious background and cultural inheritance. This article is an attempt to understand this concept from gender perspective - Gender just civil code ,should it be voluntary or involuntary by women and public in general .

Way back in 1947, while drafting of Indian Constitution, it was realized that many communities were governed by their centuries old personal laws which appeared impossible to restructure or change in one go. It was very difficult decision to take as the country was already suffering due to partition and for Nehru it was impossible to hurt Islamic beliefs and practices. The policy makers decided to leave the matter as an aspirational goal to be achieved later. Since then UCC has remained as an unsolved agenda subject to protests, political stress and criticism

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<sup>1</sup> <https://www.livehindustan.com/national/story-cjidy.....9880657.html>

Dr. Ambedkar though had realized the importance of Uniform Civil code but seeing different opinions in the constituent Assembly ,he opted for middle path of voluntary option for some time and letting future Parliament to make provisions with personal declaration by other religious communities whether they would like to be bound by UCC or not .So later the constituent assembly put this clause under directive principles of State policy rather than a fundamental right.

In India , Hindu Succession Act 1956, is applicable for Hindus ,Buddhists ,Jains and Sikhs which gives women equal rights to inherit property from their parents as their males counterparts. Both married and unmarried daughters are equal in the eye of laws and thus women are joint legal heirs for their ancestral property partition .For Christians, Parsis, and Jews, the Indian Succession Act of 1925 applies. Christian women get a predetermined share on the basis of presence of children. On the other hand Parsi widows receive an equal share as their children and half of the child's share goes to the deceased's parents, if they are alive. But in Muslim Personal Laws, women are entitled to have just  $\frac{1}{4}$  or  $\frac{1}{8}$ <sup>th</sup> share of their husband's property [Depending on the number of children and relatives]

#### FEW NOTABLE JUDGEMENTS TO THIS DISCOURSE

Since Independence there have been many interventions by civil society groups, legislature and judiciary to re examine and amend personal laws as women from different religious groups sought help from judiciary in protection of their lives and livelihood . Few cases which need our attention to think from victim's point of views include Mohd. Ahmed Khan v. Shah Bano Begum, Jordan Diengdeh v. S.S. Chopra, and Sarla Mudgal v. Union of India.

In the Shah Bano case ,the court had opined that uniform Civil code would set the path for national Integration by removing preferences or loyalties for

different religious laws which have been creating ideological conflicts among religious communities .<sup>2</sup> The legislature of the country should take initiatives if our constitution has to be live .Later in the Sarla Mudgal case {1995}, women from religious communities approached the Prime Minister for reexamining the provisions of Article 44, but this request was not entertained{ Ahmedabad Women Action Group Case (1997) and the Lily Thomas Case (2000) clarified government stand }.Even the 21st Law Commission expressed its views that UCC was not needed{ its consultation paper on "Reform of Family Law", August 2018}.The chairman ,former Supreme Court Judge Chauhan even observed that in the name of uniformity ,cultural diversity should not be compromised ,else it would become threat to National integrity .Even in states ,many chief ministers did not support the idea of Uniform Civil code . Former Maharashtra chief minister Uddhav Thackeray too felt that it will create problems for Hindus as well and not just for Muslims{the government is not able to stop cow slaughter till now then why to intervene in other sensitive matters}.Others and especially opposition named it desperation policy of the ruling party to win support for 2024 General Elections by setting up polarization politics .The Jamiat chief Arshad Madani too declared that they oppose the UCC but will not allow any conflicts in the streets of country against the Uniform Civil Code.They are already having their personal laws for the last 1,300 years and there is no need to look for any alternatives to it .If there was any protest, both Muslims and Hindus will drift apart ,helping the ill-intentioned people to serve their political interests. Others too perceive that the Uniform Civil Code issue is not being raised to bring uniformity but for political victory and moreover when UCC's blueprint is not ready also by now .

The 22<sup>nd</sup> law commission though had started its move seeking opinions and recommendations from various religious bodies , communities and public in general after receiving reference by the Ministry of Law and

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<sup>2</sup> Conservative Indian Muslim populations, were upset by the decision. This caused a great deal of uproar and debate across the country. The congress Government began to suffer a setback as a result of this court decision. The Rajiv Gandhi government fell under the pressure of the traditional Muslim population and passed the "Muslim

Women (Protection of Rights of Divorce) Act, 1986", After the enactment of the act, the apex court's decision in the Shah Bano case was declared null and void through this act.

Justice . The Law Commission of India considered it expedient to deliberate afresh over the subject keeping in mind the importance of the subjects and various court orders coming on this subjects repeatedly by Muslim's women . The Commission has felt and observed that it is a matter of discrimination and not difference that lies at the root of inequality. If examined carefully and after talking to my respondents I too feel that various aspects of prevailing personal laws are against women and the laws deprive their women. This is time to reconcile our diversity with universal and indisputable arguments on human rights. The Law Commission has given one month time to the respondents to present their views on the UCC. However, It should be noted that the Law Commission is just an advisory body and its suggestions are not binding on the government rather act as a reference for further decisions.

#### REFRAMING THE DEBATE ON UNIFORM CIVIL CODE

As a neutral and sensitive citizens of India, one can see many prospects for Uniform Civil Code-such as

1. Fostering a sense of community and a common identity among all citizens, thus promoting secularism and racial integration
2. Rationalizing and simplifying the legal system by eliminating the complexities and ambiguities existing in personal laws
3. Reforming outdated and Regressive Practices that violate the human rights and values outlined in the constitution {Triple Talaq[Earlier], poly gamy and child marriages}
4. And last but not the least ensuring Gender Justice and equality by removing the discrimination and repression that women encounter as a result of numerous personal laws. UCC would empower the women to face and combat patriarchal and unequal behaviors that violate their Human as well as fundamental rights.

As political scientists our concern and main point of discussion shouldn't be whether India needs a UCC or NOT, irrespective of partisan politics, rather how to ensure that every Indian is governed by a Gender-just

civil code of their choice. Any woman from any religious background be Hindu's or any minority community needs respect and dignified life after divorce or separation or being a widow. The Pain, sufferings, Insult, disrespect, mental agony and uncertainty over livelihood are felt equally by women all over India ,irrespective of caste ,class and religious affiliations. In our patriarchal society despite of having so many laws in protection of women, suffering of a rape victim ,pain of being deserted and divorced stigma are killing experiences of women which can never be felt by men in India . Moreover women from lower class , caste and minority sections are doubly exploited because of their status /belonging and by being a woman. For woman from upper class and majority class, gender comes first and religion later. If they are living respectfully [after separation} then only they can be proud of their religious dharma and karma ,but if the amount of Mehr and compensation is too little ,they should be given right to ask for more money and protection ,which is not possible in their religious practices so asking for more money and protection under Hindu succession Act 1925<sup>3</sup>sounds just and humane.

So far as practice of existing of different religious rituals and laws are concerned ,it all started during colonial periods ,when Britishers in order to consolidate their power passed rules and regulations ,allowing Indian Hindu and Islamic communities to manage their affairs through their personal practices { laws}.And whenever periodical disputes arose the Britishers relied on powerful leaders of that communities and empowered them to enforce their opinions to control the emerging conflicts within their communities . As a result of which rules and faiths related to their personal matters ,whether Hindus or Muslim became rigid and binding on their communities. Later religious heads made their supremacy by using these practices.

In the 1950s and later, the codification of Hindu personal laws saw important progress when women's rights to inherit property was debated and later enforced also . It is in this context that periodic debates around UCC are being conducted. On one side, the argument goes that a secular State should apply Single

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<sup>3</sup> During my interview both Hindus and Muslim women shared the views,{on the condition of anonymity }

and uniform set of rules and not different sets of rules for different communities on the basis of religion, creed, or ethnicity. Secondly when criminal laws or contract laws are uniformly applicable to all, regardless of which religion they belong to then why not to follow uniform laws in their personal matter too. Why to make different laws in the name of personal laws.

On the contrary other arguments given by respondents were that UCC will change their dominant religious codes and norms into the universal ones, losing their identity of minority religious groups. They will be forced to assimilate themselves to other norms and culture by abandoning tenets of their faith. Few others affirmed that, UCC is just another instrument for asserting cultural hegemony in a State that is growing increasingly majoritarian Hindu state. Unfortunately this fear was found in both the communities -minority as well as majority. People /my respondents remembered the quotes used by the leaders to provoke religious sentiments. To me this appeared a serious threat to their association with the nation rather than talking of Uniform Civil Code as a policy matter.

#### FEMINIST PERSPECTIVE ON UCC{VIEWS EXPRESSED BY WOMEN RESPONDENTS}

Many women respondents from all communities argued that religious personal laws has been set down and interpreted by their men and no doubts they have been disadvantageous to women, [rights about marriage, rights to property, inheritance, and in succession] but they are scared of losing their cultural traits and religious believes. Some even admitted that due to their affiliation with the community and for others for faith in their religion they are accepting their religious practices as personal laws. Different narrations were given by women from majoritarian communities, that they also follow many laws and old practices which are against women gender<sup>4</sup>. The major arguments against UCC are due to cultural exclusivity over the rights of women.

The policy makers need to think of a gender just civil society, how to ensure and protect gender equality by having any law that gives security to women from all religious backgrounds related to their personal matters -marriage, divorce and property rights. Uniform civil

code has been a matter of debate and discussion since beginning but yielding no results, whatever may be the reason. It needs prior consensus on what constitutes gender equality in the context of the family. All religious communities have to reach to a consensus on what constitutes gender equality and fairness to women, then the additional idea of “uniformity” will have no purpose and no political benefits. A person should be free to choose his personal law or a non-religious civil code and thus allow the possibility of coexisting UCC and personal laws. Secondly in Shah Bano case the court had highlighted on maintenance issues for a divorced Muslim woman who was unable to work and support herself. But authoritative groups asserted that the decision was contrary to Islamic laws. However the Supreme Court gave a fair and unbiased judgment, so that citizens’ confidence and faith in their government was not shaken. Goa is the only state in India that follows UCC to all communities, regardless of caste, religion, or gender. Portuguese colonists had drafted this code keeping family laws in place. In Goa, property is equally divided between offspring of any gender and their parents as well as between husband and wife. And even Muslims who wed and register their marriages in Goa are prohibited from engaging in polygamy and Triple Talaq. Following a divorce, the husband and wife, each receives an equal share of the property. In Goa, marriage registration is also required.

Conclusion – People in general perceive that for national integration all citizens of India should be given equal rights irrespective of caste and gender. There is a need for transformation of centuries old traditions of communities to flow with modern and civilized societies, because these practices carry no place and relevance in contemporary modern societies. The rationale behind implementing UCC should be understood progressively and should be received in a sensitive manner understanding its relevance in the interest of all religions. This receptive mindset should originate from religious groups and leaders who can avoid offending religious sentiments for the sake of power control and politics. The success of implementation of UCC depends on increased level of awareness, literacy among the people, meaningful debates and greater religious freedom to both men and

women from all communities .All parties need to produce positive results by winning confidence of minorities of not losing their identity and lessen fundamentalist resistance to have a Nation based on just and equal rights to all. The Uniform Civil Code should aim at preserving equity, unity, and integrity of Nation.

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\*Consultation paper by the Law Commission  
It presented a 185-page consultation paper on family law reform in 2018. According to the publication, "uniformity" is not always necessary for a nation to be united, and secularism cannot be in conflict with the pluralism that exists in the nation. According to the Commission, "secularism" only had meaning if it allowed for the expression of any kind of diversity. While stating that a UCC "is neither necessary nor desirable at this stage," the report suggested that unfair practices, stereotypes, and preconceptions that are specific to a particular religion, as well as its personal laws, be investigated and changed

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*Mohammad Ahmed Khan v. Shah Bano Begum, generally known as the Shah Bano case, was first presented before the Indian Supreme Court in 1985. In conjunction with the case, the court ordered Parliament to create a Uniform Civil Code. Shah Bano's case had her suing her husband for maintenance after she underwent triple talaq in accordance with Section 125 of the Code of Criminal Procedure. However, the Muslim Women (Right to Protection on Divorce) Act of 1986 gave the government the right to vacate the ruling in her favor. A Muslim woman was not allowed to ask for maintenance under the previous Act, according to this Act. Triple Talaq, often referred to as talaq-e-bidet in the community, had been ruled unconstitutional and unlawful by the year 2017.*

*# Sarla Mudgal vs Union of India*  
*Another notable case that attracted notice was the Sarla Mudgal Case, which brought up the subject of bigamy and disagreement over marriage-related matters under the current personal laws. According to the court, the Hindu Marriage Act of 1955 specifies that only one of the grounds listed therein may be used*

*to annul a Hindu marriage that has been solemnized in accordance with Hindu law. Section 494 of the Indian Penal Code (IPC) forbids second marriages following conversion to Islam because the Hindu marriage is not immediately declared invalid by the law.*

*#Pannalal Bansilal Patil vs. State of Andhra Pradesh (1996)*

*The Supreme Court of India ruled that while enacting a uniform law in one go is highly desired, it may actually work against the nation's unity and integrity. Order and change should be implemented gradually in a democracy with the rule of law. Legislators work slowly to enact new laws or change existing ones, trying to address the most pressing issues first.*

*#John Vallamattom and Ors. vs. Union of India (2003)*

*The Supreme Court of India ruled in John Vallamattom and Ors. v. Union of India (2003) that there is no necessary link between religious and personal law in a civilized society. There is no question that secular issues like marriage, succession, and similar issues cannot be covered by the constitutional protections outlined in Articles 25 and 26. Any law that includes secular succession and related issues within the scope of Articles 25 and 26 is questionable. Mary Roy Case Inheritance rights for Syrian Christian women in Kerala were a topic of discussion in this case. The Indian Supreme Court ruled that Syrian Christian women were entitled to an equal share in ancestral property, just like men. This decision was viewed as a constructive move in the direction of gender equality and justice*