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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **ROLE OF JUDICIARY IN REDUCING GENDER DISPARITY AND PROMOTING UNIFORM CIVIL CODE- AN ANALYSIS**

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## **Abstract:**

India is a diverse country with a multitude of religious communities. Each religious community has its own personal laws, which often result in differential treatment of individuals based on their religious affiliation. This differential treatment goes against the principles of equality and non-discrimination. By enacting a Uniform Civil Code (UCC), the state affirms its commitment to treating all citizens equally, irrespective of their religious beliefs. It ensures that individuals are not subjected to different legal standards based on their religious identity. The implementation of a UCC ensures that all citizens, regardless of their religious background, enjoy the same rights and protections under the law. It establishes a level playing field and eliminates the unequal treatment that arises from the application of different personal laws. By replacing religion-specific personal laws with a uniform set of laws, a UCC can help eliminate gender-based discrimination and ensure equal rights for women. It provides an opportunity to address regressive practices and promote gender justice in various spheres of life. The implementation of a UCC aims to eliminate disparities and ensure equal rights and protection for all citizens, regardless of their religious affiliation.

## **Introduction**

The uniform civil code aims to establish a unified set of laws that would be applicable to all religious groups in the country concerning personal matters like adoption, inheritance, and marriage. The term "uniform" denotes rules that would be applied impartially to all individuals, irrespective of their sexual orientation, gender, or religious affiliation. Article 44 of the Constitution speaks about Uniform Civil Code, which aims at "One Law One Nation". The aim of the Uniform Civil Code is to render a

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common Civil Code to all its citizens irrespective of diversities. The Uniform Civil Code has been kept under Part IV of the constitution, which comes under the title, Directive Principles of state policy. These Directive Principles are non-justiciable in nature.

Uniform Civil Code has not been implemented in India. In turn, people from different communities are governing by their personal laws. The personal laws are based on their religious scriptures and customs. The personal laws encompass various aspects such as marriage, divorce, inheritance, adoption, and maintenance, and they are distinct according to their religion.

### **Personal Laws and Gender Disparity**

In the modern world, gender is recognized as a diverse spectrum. Acknowledging the male and female is no longer considered sufficient. It encompasses various identities such as male, female, transgender, non-binary, and more. Unfortunately, many genders in society continue to face significant challenges related to their fundamental rights, recognition and identity. Women have historically been victims of gender inequality, not just in India but worldwide. To effectively promote gender equality, it is crucial to have appropriate laws in place. Laws have the power to transform rights into enforceable duties for citizens. Like many other countries, India is influenced by the patriarchal ideology. Gender bias is prevalent in Indian society. This bias has deep historical roots since 17<sup>th</sup> and 18<sup>th</sup> centuries. The initial form of bias experienced by women in India was related to their birth. The preference for son over the daughter has been a significant contributor to gender disparities. Patriarchy is a social or political system in which the father or eldest male is the head of the family, and lineage is traced through the male line. The Patriarchal Society resulted in the deprivation of Women's rights. Sons were given exclusive rights to inherit the family name and possessions, and they are perceived to hold a higher status within the family. Families traditionally believed that sons had greater economic utility, especially in an agrarian society like India, where they could provide additional labor.

Religious practices and rituals also played a role in perpetuating gender bias within society. For instance, certain religious customs mandated that only males perform specific rituals for their deceased parents. Additionally, the practice of dowry, which involved providing the groom's family with assets like land, money, or gold during marriage, was seen as a burden by many Indian households. These factors contributed to a bias against having female children in families, leading to



practices such as female foeticide and infanticide. Female foeticide refers to the intentional termination of a pregnancy upon discovering that the unborn child is female, typically through prenatal diagnostic testing. Female infanticide, on the other hand, involves deliberately causing the death of newborn female infants within their first year of life, often through suffocation or neglect. Another form of bias exists in education. Historically, girls received significantly less education compared to boys. While the literacy rate among girls has increased in recent years, it still falls behind that of boys. This educational bias stemmed from the belief in many Indian households that investing in the education of female children was a waste of resources. They perceived it as more beneficial to allocate those resources towards the education of male children. Moreover, families held the view that since female children would eventually marry into other families; their education would be of little value. In Indian society, women were primarily seen as housewives, caretakers, and mothers.

Discrimination against women has also resulted in disparities in wages and salaries. Even when women and men perform the same job and possess similar qualifications, women tend to receive lower wages. In the workplace, discrimination is evident in areas such as promotions, incentives, and bonuses, which are often biased in favor of male workers due to the entrenched belief in a patriarchal society that men are inherently more competent than women.

Gender bias also extends to property rights in society, despite laws that proclaim equality and provide women with the right to own and inherit property. Acts such as the Married Women's Property Rights Act of 1974 and the Hindu Succession Act of 2005 have been enacted to address this issue. However, men still tend to possess more land and exercise greater control over property due to the prevailing patriarchal ideologies that grant men greater authority over assets. Uniform Civil Code (UCC) is the only way to eliminate all these discrimination faced by the genders regardless of their religion, caste, color, creed, race, and so on. However, it is important to ensure that the term "uniform" signifies similarity in terms of equality and gender justice.

### **Judiciary's view on Personal Laws**

In the case of *State of Bombay v. Narasu Appa Mali*<sup>2</sup>, the case in which the legislative measures altering the existing Hindu law was disputed on the grounds that they violated Articles 14, 15, and 25

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<sup>2</sup> AIR 1952 Bom 84

of the Constitution. The Bombay Prevention of Hindu Bigamous Marriages Act, passed in 1946, was declared unconstitutional by the Bombay High Court. If a Hindu joined bigamous marriage, there were severe penalties. The validity of this Act was questioned on the grounds that it ignored the freedom of religion guaranteed by Article 25 and allowed the exclusive use of religious standards for classification, which is forbidden by Articles 14 and 15.

It was argued that the institution of marriage is a sacrament and that marriage is a component of Hinduism, which is governed by the Shastras. Furthermore, it was stated that Hindus marry in order to both associate with their spouse and to continue their family through the birth of boys. A Hindu man can only receive spiritual advantage through having a son after he passes away and from his ancestors' spirits; a sonless man has no place in heaven. For the sake of religious efficacy, the institution of polygamy was defended as a requirement for a Hindu to have a son. But, the court disagreed with the arguments previously made.

According to Gajendra Gadkar J, a sonless father can have a son not only through a second marriage but also through adoption. He was not willing to admit that legislative interference with the regulations of marriage constituted an infringement of Hinduism or religious practice. The state only safeguarded religious faith and belief, not all religious acts, according to Chagla C.J., who upheld the legality of the Bombay Act. He also asserted that polygamy was not an essential component of Hinduism. Gajendragadkar J. stated that:

“The State Legislature may have thought that the Hindu community was riper for the reform in question. Social reformers amongst the Hindus have agitated for this reform vehemently for many years past and the social conscience of the Hindus, according to the Legislature, may have been more in tune with the spirit of the proposed reform. Besides, amongst the Mahomedans divorce has always been permissible and marriage amongst them is a matter of contract. If the State Legislature acting on such considerations decided to enforce this reform in the first instance amongst the Hindus, it would be impossible in my opinion to hold that in confining the impugned Act to Hindus as defined by the Act it has violated the equality before law as guaranteed by Art. 14. In my opinion, therefore, the argument that Art. 14 is violated by the impugned Act must fail”<sup>3</sup>.

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<sup>3</sup> AIR 1985 SC 945

The court, thus submitting to the wisdom and supremacy of Legislature in a democracy kept its hand off from interfering with the prerogative of the Legislature

In the case of *Danial Latifi and another v. Union of India*<sup>4</sup>, the Court confirmed the legality of Sections 3 and 4 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, finding that they did not violate Articles 14, 15, or 21 of the Indian Constitution. A Muslim husband is required to make reasonable and equitable provisions for his divorced wife's future, including maintenance, under section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986. As a result, she is not eligible to lodge a maintenance claim under section 125 of the Cr.P.C. The Act's Section 4 allows a divorced Muslim woman who is unable to support herself after the iddat period to file a maintenance claim against her family members or the wakf Board. The Court observed that

“In interpreting the provisions where matrimonial relationship is involved we have to consider the social conditions prevalent in our society. It is a small solace to say that such a woman should be compensated in terms of money towards her livelihood and such a relief which partakes basic human rights to secure gender and social justice is universally recognized by persons belonging to all religions”<sup>5</sup>.

In the case of *Ms. Jorden Diengdeh v. S.S. Chopra*<sup>6</sup>, is the case for urgent need for a uniform civil code in India, as emphasized by the Constitution Bench of the Court in a judgment. The case involves a wife belonging to the Khasi Tribe of Meghalaya, who was raised as a Presbyterian Christian and was a member of the Indian Foreign Service. Her husband is a Sikh, and they were married under the Indian Christian Marriage Act in 1975. The wife filed a petition seeking nullity of marriage or judicial separation in 1980, citing the impotence of the husband as the ground for the declaration. The High Court rejected the nullity claim but granted a decree for judicial separation on the ground of cruelty. The wife appealed to the Supreme Court seeking nullity of marriage. For the Supreme Court, the issue at hand was, there was no way for the couple to obtain a divorce as neither mutual consent nor irretrievable breakdown of the marriage is recognized as grounds for divorce under the Indian Divorce Act. The Indian Divorce Act provides specific grounds for divorce, but they are limited to cases where the petitioner or respondent professes the Christian religion. On the other hand, other laws such as the Hindu Marriage Act and the Special Marriage Act provide a wider range of grounds for divorce,

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<sup>4</sup> (2001) 7 SCC 740

<sup>5</sup> *Ibid.*

<sup>6</sup> AIR 1985 SC 935



including irretrievable breakdown of marriage and mutual consent.

The comparison of the provisions of these different laws reveals a lack of uniformity in the grounds for obtaining decrees of nullity, divorce, and judicial separation. The Hindu Marriage Act allows for a joint application by the husband and wife for divorce by mutual consent, and a decree for judicial separation can be followed by a decree of divorce after a certain period of time if there has been no resumption of cohabitation. The Indian Divorce Act does not provide similar provisions. This case highlights the need for a uniform civil code that would provide a consistent set of laws for all citizens of India, irrespective of their religious affiliations. The lack of a uniform civil code leads to disparate treatment and difficulties in obtaining divorce for individuals from different religious backgrounds. The Court acknowledges the challenges in bringing together persons of different faiths and persuasions on a common platform but emphasizes the need to make a beginning in order to ensure justice for all. It also underlined the necessity of applying universal rules, such as irretrievable dissolution of marriage and mutual consent for divorce, in all circumstances, regardless of faith. The Court pointed out the necessity of creating the Uniform Code for marriage and divorce when it ordered that a copy of its ruling be provided to the Ministry of Law and Justice.

In the case of *John Vallamattom v. Union of India*<sup>7</sup>, a priest from Kerala named John Vallamattom filed a writ petition claiming that Section 118 of the Indian Succession Act<sup>131</sup> discriminated against Christians by placing arbitrary limitations on their ability to leave property to a religious or charitable organisation through their wills. The Section was invalidated by the court, and the court observed that: Article 44 provides that the State shall endeavour to secure for all citizens a Uniform Civil Code throughout the territory of India. It is a matter of great regrets that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A Common Civil Code will help the cause of national integration by removing the contradictions based on ideologies”<sup>8</sup>.

In the case *Shayara Banu v. Union of India*<sup>9</sup>, Shayara contested the constitutionality of divorce-related personal law, in particular triple talaq, and this opened the door to what is undoubtedly the most

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<sup>7</sup> AIR 2003 SC 2902

<sup>8</sup> Ibid.

<sup>9</sup> AIR 2017 9 SCC 1 (SC)

divisive and complicated subject of our time: a Uniform Civil Code (UCC) that supersedes personal and religious laws. Unilateral divorce and polygamy are permitted under Muslim Personal Law, which is partly based on Sharia law. Given the emphasis on identity politics, it is hardly surprising that this case has become political dynamite. It has sparked ominous images of an all-powerful monster state threatening religious minority who, in turn, are pretending to be just seeking to defend their cultural ethos. The middle ground represents the truth. The Supreme Court's five-judge panel ruled in favour of Shayara Bano 3:2 margin, it ruled the Triple Talaq custom unlawful and instructed the legislature to take action to end the mistreatment of women. The court in this case emphasised that even though the Hanafi School primarily practices triple talaq, it is immoral. The Court stated in its ruling that many other Muslim nations have already done away with this practice since it is not permitted by the Quran and was not promoted nor practiced by the Prophet. According to the Court, the practice violates Part III of the Constitution's fundamental rights. Personal laws are those that any religion or group has in place to regulate its members' private lives. For instance, while constitutional law is the law of the land and the supreme law from which every other branch of law derives, it also governs family concerns such as marriage, adoption, guardianship, etc. The Constitution of a given nation must be followed by all laws of that nation. The judges' most pressing concern in this case was whether some Muslim personal law practices were in conflict with the nation's constitution. One such practice is the triple talaq, in which the husband requests the divorce by saying the word "talaq" three times in a row.

In the past, many women have fallen prey to such a pernicious practice since spouses would use the option of divorce arbitrary and unreasonable whenever they pleased. Women were forced to live in continual terror and submit to their husbands' whims, regardless of whether they were right or wrong. The most crucial fundamental right of equality was violated because only the husband had the authority to initiate this type of divorce, which was not something a wife could do. As most of the time, the husband refused to pay maintenance for her and the children, the atrocities and sufferings endured by women as a result of this form of talaq violated their right to life and personal liberty. Furthermore, it can be concluded from the Court's conclusions that the Prophet neither advocated for triple talaq nor did the Quran mention it. Most Islamic nations throughout the world have already done away with this particular form of talaq. If it had been a fundamental aspect of the Muslim faith, it would have been mentioned in the Qur'an and not prohibited in Islamic nations. A "UNIFORM CIVIL CODE" is one of the finest solutions to eliminate these because it will not only prevent this

but also eradicate some bad customs. It will be a positive move for the country's integrity. Although there has been much discussion about its establishment, it should now be put into practice rather than just discussed. People must realise that this won't cause turmoil and isn't a move against any one faith or community; rather, it will promote harmony through a shared codified law where every religion, its core beliefs, and community will have an equal voice.

In the case of *Satyaprakash Meena v. Alka Meena*<sup>10</sup>, the Supreme Court of India in the year 2015, which dealt with the issue of whether a daughter is entitled to inherit property even if her father died before the enactment of the Hindu Succession Act, 1956? The case revolved around the property dispute between the parties, who were siblings. The father had died in the year 1979, leaving behind his wife, son, and daughter. The father had inherited the property from his father, who died in 1951. The daughter, in this case, argued that she was entitled to an equal share in the property inherited by her father, even though he died before the enactment of the Hindu Succession Act, 1956. The son, on the other hand, contended that the property should be divided only between him and his mother, as the daughter had no right to the property.

The Supreme Court, in its judgment, held that the daughter was entitled to an equal share in the property of her father, even if he died before the enactment of the Hindu Succession Act, 1956. The court observed that the Hindu Succession Act, 1956, had amended the Hindu Succession Act, 1955, which was retrospective in nature and deemed to have come into force on 17th June 1956. Therefore, the daughter, in this case, was entitled to an equal share in the property inherited by her father, even though he died before the enactment of the Hindu Succession Act, 1956. The court also held that the provisions of the Hindu Succession Act, 1956, are applicable to all Hindus, including those who had died before the enactment of the Act. The court observed that the Act was enacted to remove gender discrimination and provide equal rights to daughters in ancestral property. It is an important judgment that has reaffirmed the equal rights of daughters in ancestral property, even if their fathers died before the enactment of the Hindu Succession Act, 1956. The judgment has been instrumental in removing gender discrimination in property rights and ensuring gender justice.

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<sup>10</sup> (2000) 8 SCC 587



In the case of Dr. Abdur Rahim Undre vs. Smt. Padma Abdur Rahim Undre<sup>11</sup>, a question was raised whether a marriage performed in England under the British Marriage Act of 1949 could be annulled under personal law by way of Talaq. The parties in the petition were citizens of India, with the husband being a Muslim and the wife a Hindu. They had married on May 6th, 1966 in England under the British Marriage Act of 1949, and the husband had given Talaq on April 20th, 1978. The husband then filed a case before the civil court in Bombay, seeking an injunction to prohibit his wife from entering into the residential premises and a declaration of divorce by Talaq. However, the City Civil Court dismissed the case, stating that the Paradise Flat was the matrimonial home of the wife, and she could use that premises for residence. Moreover, the court held that the marriage in England was a civil marriage and therefore still subsisting. The husband then filed an appeal before the High Court of Bombay, but the appeal was dismissed. Later, a patent appeal was filed before the Division Bench of Bombay High Court, which was admitted without giving interim relief. Against the order of the High Court, the husband filed a special leave petition before the Supreme Court of India, which directed the Bombay High Court to expedite the matter and decide within one month.

The main issue before the court was which law should apply if there were more than one law applicable to the case. The Bombay High Court held that if two Acts are available for dealing with the case, then it should see which law is nearer to the marriage law. The court held that the British Marriage Act of 1949 and the Indian Special Marriage Act of 1954 are two laws that could be applicable in this case. However, the Indian Special Marriage Act, 1954 is closer to the marriage law, secular in nature, and in tune with Article 44 of the Indian Constitution. Moreover, if two interpretations are possible regarding the provision of law, then the law will have to be interpreted and applied in the perspective of Part IV of the Indian Constitution. The benefit of reasonable doubt must go to the weaker section, which in this case, is the wife. Thus, the Bombay High Court ruled that the marriage between the parties performed in England under the British Marriage Act of 1949 could not be annulled under personal law by way of Talaq. Instead, the court held that the Indian Special Marriage Act of 1954 was the law applicable to the case, and the benefit of reasonable doubt should go to the wife. The court's decision was based on the principle of equality before the law enshrined in Article 14 of the Indian Constitution, which prohibits discrimination on the basis of religion, race, caste, sex, or place of birth.

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<sup>11</sup> 1983 (1) Bom CR 395

## **Judicial emphasis for Uniform Civil Code:**

The importance of the Uniform Civil Code was emphasized in the landmark case of Mohammad Ahmed Khan v. Shah Bano Begum<sup>12</sup>, commonly known as Shah Bano's case. The Supreme Court observed that it is a matter of regret that Article 44 of the Constitution has remained a dead letter.

In the case of Sarla Mudgal v. Union of India<sup>13</sup>, Justice Kuldeep Singh noted that over 80% of citizens have already been brought under codified personal law, and there is no justification to keep the introduction of a Uniform Civil Code in abeyance anymore. He observed that the Article 44 is based on the concept that there is no necessary connection between religion and society in civilized society. Justice R.M. Sahai concurred with Justice Kuldeep Singh and stated that religious practices that violate human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms are not autonomy but oppression.

In John Vallamattom v. Union of India<sup>14</sup>, the Supreme Court expressed concern over the delay in the enactment of the Uniform Civil Code. The Supreme Court observed that a common civil code would help the cause of national integration by removing the contradictions based on ideologies.

## **Conclusion**

The current personal laws in India, which regulate personal issues such as marriage, divorce, maintenance, adoption, guardianship, succession, inheritance, will, gift, etc., vary from religion to religion, community to community and place to place. As a result, there is no equality of law for all citizens in terms of personal laws. Polygamy is not permitted in any personal law except in Muslim laws and some tribal communities, but it violates the right of the first wife under Muslim law and affects the upbringing of children. Similarly, Hindu law emphasizes the importance of marriage ceremonies and customs, which vary from place to place and community to community, creating confusion and complicating matters for women. In addition, neither Muslim nor Christian personal law recognizes child adoption, severely restricting the right of inheritance and going against international standards relating to adoption.

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<sup>12</sup> AIR 1985 SC 945

<sup>13</sup> AIR 1995 SC 1531

<sup>14</sup> AIR 2003 SC 2902

The judiciary has been instrumental in bringing about change in the attitude of the ruling class towards a uniform civil code, which would create equality of law for all citizens in terms of personal laws. The jurimetrics approach with respect to uniform civil code has been positive, and particularly the Supreme Court has come out in favor of it. The Supreme Court has successfully created a strong public opinion in favor of the uniform civil code by addressing unreasonable provisions in the personal laws. For example, under Hindu law, the provision on the restitution of conjugal rights violates fundamental rights to life, privacy, and equality, while under Muslim law, male heirs receive twice the property compared to female counterparts. The Supreme Court has also held that polygamy is not a compulsory practice of Islam and that adoption is not recognized under Muslim law. Overall, the judiciary has played a crucial role in promoting equality of law and eliminating unreasonable provisions in the personal laws of India. The judiciary has emphasized the importance of a Uniform Civil Code to eliminate the practices which are all against Gender Justice and promoting the goal of a Uniform Civil Code in India as per the Indian Constitution.

