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Uniform Civil Code: A Perspective Socio-Legal Study

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Abstract: ***The concept of a Uniform Civil Code (UCC) represents a vital yet contentious issue in the socio-legal landscape of India. Rooted in the principles of equality, secularism, and justice, the UCC seeks to unify personal laws governing marriage, divorce, inheritance, adoption, and succession across all religious communities. This study critically examines the socio-legal implications of implementing a UCC, addressing its necessity, challenges, and potential impact on the pluralistic fabric of Indian society. From a legal perspective, the study explores the constitutional mandate under Article 44 of the Directive Principles of State Policy, juxtaposing it against the fundamental right to religious freedom guaranteed by Articles 25-28. It delves into landmark judicial pronouncements and legislative efforts that have shaped the discourse on UCC, emphasizing its role in ensuring gender justice and equality. From a sociological perspective, the study examines the diverse cultural and religious practices in India, analyzing the concerns of various communities regarding identity, autonomy, and perceived threats to tradition. It also highlights the evolving societal attitudes toward personal laws and the increasing demand for progressive reform. The paper adopts a comparative approach, drawing insights from countries that have implemented uniform civil laws, to understand potential pathways and challenges for India. It further emphasizes the importance of a balanced, inclusive approach to drafting and implementing a UCC, ensuring that it reflects the nation's diversity while upholding constitutional values. By presenting a nuanced perspective, this study aims to contribute to the ongoing dialogue on UCC, advocating for a framework that harmonizes legal uniformity with respect for cultural pluralism.***

Key words : Uniform Civil Code, legal perspective, directive principles, socio-legal landscape of India

Introduction: Problem Profile-The problem of a civil code has been recurring problem throughout the history of the states. The newly emerging states have always been trying to acquire a civil code based on the successful civil codes of the other states e.g. Japan formulated civil code on the basis of German code. Sometimes new states which got independence from colonial power faced the same problem. India being a composite state has been trying for a Uniform Civil Code so as to tie over the major problems caused by diversities of different personal law systems invoked in the country for a last few centuries.

The issue of framing a Uniform Civil Code has been a subject of the continuing debate since 1950. Article 44 of the Constitution which is a directive principle lays obligation on the state to secure for the citizens a Uniform Civil Code through out the territory of the India. The bare reading of the Article makes it clear that it is an imperative duty of the state to make effort in this regard. The Directive Principles of State Policy lays down certain economic and social goals to be achieved by the various governments i.e. the Central Government and the State Government. These directives impose certain obligation on the state to take positive action in certain direction in order to promote the welfare of the people. Though these principles are "non-justifiable" but they are Constitutional directions which the state is supposed to abide by. Justice Mathew has aptly observed that the moral right embodied in part IV of the Constitution are equally an essential feature of it, the only difference being that the moral rights embodied in part IV of the Constitution are not specifically enforceable as against the state by the citizen in a court of law in case the state fails to implement its duty, but nevertheless, they are fundamental in the government of the country and all the organs of the state including the judiciary are bound to enforce these directives".

But even after passing of 50 years of Constitution this has not become a reality. No sincere efforts have been made to fulfill this obligation. This has promoted the Apex court to remind the legislators to fulfill their obligation under this said article. The courts have shown its concern over contradictions in the personal laws of various communities and emphasized the need to enact a Uniform Civil Code for all the citizens of India. Therefore, a comprehensive socio-legal study is required to examine the desirability of Uniform Civil Code in the present society.

Statement of the Research Theme: The Uniform Civil Code is a term originating from the concept of a civil law code. In legal terminology a code means a collection or compendium of various laws relating to a particular subject such as the civil procedure code or the criminal procedure code etc. where as civil means private rights and remedies of a citizens as distinguished from criminal law i.e. law pertaining to the ordinary life and affairs as a citizens as distinguish from ecclesiastical etc. Thus the Uniform Civil Code envisage the same set of civil laws to govern different people belonging to different religions and regions in

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relation to the personal laws of the parties i.e. in matters such as marriage divorce, succession, adoption etc. The framers of the Constitution clearly indicated the meaning of the word personal law in Entry 5 of list III of the 7th schedule of the Constitution which says:

"Marriage and divorce ; infants and minors, adoption; wills' intestacy and succession; joint family and partition ; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law".

The matters specified in Entry 5 of list III of the Constitution were the matters which were governed by personal law under the Government of India Act 1935. Thus, the matters enumerated in this item are subject to legislation by the state, which include the personal laws. Article 246(2) clearly provides that parliament or the state legislature have power to make laws with respect to any of the matter enumerated in list III of the seventh schedule. Moreover, in a secular state personal laws relating to such matters as marriage, succession and inheritance could not depend upon religion but must rest on the law of the land. A Uniform Civil Code is accordingly necessary for achieving the unity and solidarity of the nation which was envisaged by the very preamble to the Constitution of India.

During the British regime, by regulation of 1781, the personal laws of Hindus and Muslims were made applicable in matters of inheritance, marriage etc. Lord Warren Hastings was of opinion that it would be a great evil to impose on Indian people a foreign legal system. But as rightly observed by Dr. U.C. Sarkar[3] that the British rulers began with policy of non-interference and generally allowed the then existent system of law to prevail; but gradually they began to assert themselves being of course, backed by a strong fraction of the public opinion. Later they enacted few laws which governed family relationships irrespective of the religion of the parties, i.e. The Caste Disabilities Removal Act 1850; The Special Marriage Act 1872; India Majority Act 1875; The Indian Succession Act 1925; The Child Marriage Restraint Act 1929; Muslim Personal Law (Shariat) Application Act, 1937 etc., but they did not show any pursuit to encourage the environment of uniformity of laws in India. On this approach of British rulers Chowdhry Hyder Hussain wrote that living under the British rule for about two centuries we have come to consider it only natural for Hindus to be governed by the Hindu law and Muslims to be governed by the Muslim law; but it is wholly a medieval idea and has no place in the modern India, therefore I would strongly urge the necessity of one single code to be named as Indian Civil Code applicable to every body living within the territory of Indian union irrespective of caste, creed or religious persuasions. This is juristic solution to the communal problem. It appears to be absolutely essential in the interest of the unification of the country for building up one single nation with one single set of laws in the country.

After the independence the concept of Uniform Civil Code for the first time was mooted in the Constituent Assembly in 1947. It was included as one of the Directive Principles of State Policy under Article 35 which was further renumbered as Article 44 of the Constitution which reads as :

"The state shall endeavour to secure for the citizens a Uniform Civil Code through out the territory of the India"

Justice Tulzapurkar in his Article also observed that the framing of Uniform Civil Code can not be done voluntarily. State has to do it, as it has done in the matter of the Hindu Code which was opposed vigorously by Hindus. The Constituent Assembly debate clearly shows that by Uniform Civil Code, the founding fathers meant a family code uniformly applicable to the members of all the communities living in the country. Any attempt to make the code voluntary or optional must be opposed as the moment it is made optional, it cases to be uniform .

All these circumstances were, however, forgotten by the national leaders. Every time the question of Uniform Civil Code was raised the Government of India opposed to it on the ground that to achieve it would be to hurt sentiments of Muslims. But such a stand of the government has been laid bare by various judgments delivered by the Supreme Court of India. The time has come to think of group interest and refuse to bow to the pressure of religion oriented personal laws. As A.K. Hegde rightly observed that "A society which is compartmentalized by its law can hardly becomes a homogenous society.

In the highlighted case of Mohd Ahmed Khan v. Shah Bano Begum the Supreme Court has drawn the attention of the parliament with full realization of the difficulties involved in bringing persons of different faith and persuasion on a common platform. In this case the court held that a common civil code will help the cause of national integration by removing disparate loyalties to law which has conflicting ideologies. While awarding maintenance to a divorced Muslims woman under Section 125 of the Criminal Procedure code, 1973 held that this keeping in view the Supreme Court's decision in Sarla Mudgal's case a public opinion was conducted on this issue among 2330 men and women of voting age group in the nine

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metropolitan cities namely Delhi, Bombay, Calcutta, Madras, Bangalore, Ahemadabad, Lucknow, Hyderabad and Cochin. The opinion poll results showed that an overwhelming majority (84%) of the respondents wants Uniform Civil Code for all citizens irrespective of their religion, where as 73 percent welcomed the Supreme Courts decision invalidating the second marriage of Hindu husband's converting to Islam. A sizable 64% do not agree with the prime minister that a uniform code should be introduced only if and when the minorities are ready for it. Moreover 61 % of the respondents favoured a unified law even if it means a loss of the Hindu undivided family privilege for Hindus which is a tax saving device under the tax laws. There are, however, certain city wise variations. In two cities Hyderabad and Bangalore more people disapprove of the Supreme Court's ruling against the second marriage of Hindu husband in contrast to the other seven cities, and Hyderabad is also the only city where the majority (57%) feels that the prime minister is right in saying that a Uniform Civil Code should be introduced only if minorities agree. The reasons are too obvious to be stated as the Muslims are in sizeable numbers in these states.

Very recently the Supreme Court of India in its latest judgment in John Vallamottom v. Union of India delivered by three judge Bench comprising of Mr. Justice V.N. Khare the Chief Justice of India and S.B. Sinha and A.R. Lakshmann J.J. which hit the headlines in the national press where in the court has emphasized the need to enact Uniform Civil Code as envisaged under Article 44 of the Constitution. This evoked a public debate in the country. In the instant case the Constitutionality of the Section 118 of Indian Succession Act 1925 was in question. It was contended that the said Section was discriminatory to the Christian community because it prevented a Christian from bequeathing his property for religious and charitable purpose. While delivering the judgment justice V.N. Khare, the Chief justice of India has made reference to Uniform Civil Code and two judges who heard the case also seem to have agreed with the learned Chief Justice. The Chief Justice confirms and fortifies this approach by abstracting a statement from Justice Benjamin Cardozo that the "Old Order may change yielding place to new" and as Albert Campus said that stability and change are the two sides of the same law coin. Bearing this dynamism in mind the chief justice Khare evaluated the provision of Section 118 of The Indian Succession Act 1925 and declared it discriminatory to the Christian Community .

Meaning and Definition: The Uniform Civil Code is a term originating from the concept of a civil law code. It envisages administering the same set of civil laws to govern different people belonging to different religions and regions. This supersedes the right of citizens to subject themselves different personal laws based on their religion or ethnicity. A code simply means systematic collection of regulations and rules of procedure or conduct. In legal terminology, a code means a systematic and comprehensive compilation of laws, rules or regulations that are consolidated and classified according to subject matter. It is a general collection or compilation of laws by public authority; a system of law; a systematic and complete, on any subject such as Civil Procedure Code, Code of Criminal Procedure, and Indian Penal Code etc. body of law. In its widest sense, code is body of legal rules expressed in fixed and authoritative written form. The process of consolidating the law of a country on any particular subject, or any portion of it into a code, whether that law consists of statutes, or case-,or customs, or all the three is called codification. In other words, it is an act of putting a body of laws so related to each other as to avoid inconsistency and overlapping. Code, in law, in its widest sense any body of legal rules expressed in fixed and authoritative written form. A statute4 thus may be termed a code. Codes contrast with customary law (including common law), which is susceptible of various nonbinding formulations, as in the legal opinions of judges. The earliest codes (e.g., the Roman Twelve Tables) met the popular demand that oral regulations be written down so that legal chicanery might be prevented. In later Roman law, however, the term code acquired its modern meaning of a precisely formulated statement of the principles underlying some branch of law (e.g., contracts) or an entire legal system. One of the greatest codes was the Roman Corpus Juris Civilis. In Europe, in the late 18th century, after the general adoption of civil law by the continental countries, jurists asserted that similar codes were needed, and the parent modern European codification, the Code Napoleon, appeared (1804) and was followed by many others.

Contents of the Civil Code:A typical civil code deals with the fields of law known to the common lawyer as law of contracts, torts, property law, family law and the law of inheritance. Commercial law, corporate law and civil procedure are usually codified separately . The older civil codes such as the French, Egyptian, and Austrian ones are structured under the Institutional System of the Roman jurist Gaius and generally have three large parts :

i. Law of Persons (personae);
ii. Law of Things (res);

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iii. Issues common to both parts (actiones).

The newer codes such as the ones of Germany and Switzerland are structured according to the Pandectist System :

I. General part;
II. Obligations;
III. Iii) Law of Real Rights;
IV. Family Law;
V. Law of Inheritance.

The civil code of the state of Louisiana, following the institutions system, is divided into five parts :

I. Preliminary Title
II. Of Persons
III. Things and Different Modifications of Ownership
IV. Of Different Modes of Acquiring the Ownership of Things
V. Conflict of Laws

Pandectism also had an influence on the earlier codes and their interpretation. For example, Austrian civil law is typically taught according to the Pandect System (which was devised by German scholars in the time between the enactment of the Austrian and the German Codes), even though this is not consistent with the structure of the Code. Administrative law refers to the body of law which regulates bureaucratic managerial procedures and is administered by the executive branch of a government; rather than the judicial or legislative branches (if they are different in that particular jurisdiction). This body of law regulates international trade, manufacturing, pollution, taxation, and the like. This is sometimes seen as a subcategory of civil law and sometimes called public law as it deals with regulation and public institutions.

The procedural Law are rules and regulations found in an legal system that regulate access to legal institutions such as the courts, including the filing of private lawsuits and regulating the treatment of defendants and convicts by the public criminal justice system. Within this field are laws regulating arrests and evidence, injunctions and pleadings. Procedural law defines the procedure by which law is to be enforced e.g. Criminal Procedure Code and Civil Procedure Code. Socialist law is the term for civil law as practiced within states of the former Soviet Union and its satellites; as well as within the Laws of China, Cuba, North Korea, and Vietnam. With the end of the Cold War, most of these nations are incorporating laws compatible with private property and capitalism. Thus, a Uniform Civil Code is a systematic compilation of laws designed to comprehensively deal with the core areas of private law. The civil law code on the other also is an attempt to determine in advance what legal exigencies will arise and to furnish the means for meeting them. Basic legal principles (e.g., that contracts express the will of the parties) are worked out in systematic detail and great attention is given to consistency. It envisages administering the same set of civil laws to govern different people belonging to different religions and regions. The common areas covered by a civil code include personal status; marriage, divorce and adoption and rights related to acquisition and administration of property. The Constitution of India lays down the administration of a Uniform Civil Code for its citizens as a Directive Principle, but it has not been implemented till now.

The idea of codification emerged during the age of enlightenment, when it was believed that all spheres of life could be dealt with in a conclusive system based on human rationality. The first attempts at codification were made in the second half of the 18th century, when the German states of Prussia, Bavaria and Saxony began to codify their laws. The first statute that used this denomination was the Codex Maximilianeus Bavaricus Civilis of 1756 in Bavaria. It was followed, in 1792, by a legal compilation that included civil, penal, and Constitutional law, the Allgemeines Landrecht fur die Preussischen Staaten (General National Law for the Prussian States) (promulgated by King Frederick II the Great which never satisfied the standards of the modern law-codification movement . In Austria, the first step towards fully-fledged codification were the yet incomplete Codex Theresianus (compiled between 1753 and 1766), the Josephinian Code (1787) and the complete West Galician Code (enacted as a test in Galicia in 1797). The final Austrian Civil Code (called Allgemeines btirgerliches Gesetzbuch) was only completed in 1811. Meanwhile, the French Napoleonic code (Code Civil) was enacted in 1804 after only a few years of preparation, but it was a child of the French Revolution, which is strongly reflected by its content. The French code was the most influential one and was adopted in many countries standing under French occupation during the Napoleonic Wars, but it has lasting influence much beyond that. In particular, countries such as Italy, the Benelux countries, Spain, Portugal, the Latin American countries, the state of

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Louisiana in the United States, and all former French colonies base their civil law systems to a strong extent on the Napoleonic Code.

The 19th century saw the emergence of the School of Pandectism, whose work peaked in the German Civil Code (BGB), which was enacted in 1900 in the course of Germany's national unification project, and in the Swiss Civil Code (Zivilgesetzbuch) of 1907 . These two codes had a great deal of influence on later codification projects in countries as diverse as Japan and Turkey. In Europe, apart from the common law countries of the British Isles, only Scandinavia remained untouched by the codification movement. The particular tradition of the civil code originally enacted in a country is often thought to have a lasting influence on the methodology employed in legal interpretation. Scholars of comparative law and economists promoting the legal origins theory of (financial) development usually subdivide the countries of the civil law tradition as belonging either to the French, Scandinavian or German group (the latter including Germany, Austria, Switzerland, Liechtenstein, Japan, Taiwan and South Korea).

The first civil code promulgated in America was that of Louisiana of 1804, inspired by the 1800 project of the French civil code, known as the Projet de I'an VIII (project of the 8th year); nevertheless, in 1808 a Digeste de la loi civile was sanctioned . In the United States, codification appears to be widespread at a first glance, but American codifications are actually collections of common law rules and a variety of ad hoc statutes; that is, they do not aspire to complete logical coherence. For example, the California Civil Code largely codifies common law doctrine and is very different in form and content from all other civil codes. In 1825, Haiti promulgated a Code Civil, which was no other than a copy of the Napoleonic one; while Louisiana abolished its Digeste, replacing it with the Code Civil de I'Etat de la Lousianne during the same year (1825). The Mexican state of Oaxaca promulgated the first Latin American civil code in 1827, copying the French civil code. Later on, in 1830, the civil code of Bolivia, a summarized copy of the French one, was promulgated by por Andres de Santa Cruz. The latest, with some changes, was adopted by Costa Rica in 1841. The Dominican Republic, in 1845, put into force the original Napoleonic code, in French language (a translation in Spanish was published in 1884). In 1852, Peru promulgated its own civil code (based on a project of 1847), which was not a simple copy or imitation of the French one, but presented a more original text based on the Castilian law (of Roman origin) that was previously in force on the Peruvian territory. Chile promulgated its civil code in 1855, an original work in confront with the French code both for the scheme and for the contents (similar to the Castilian law in force in that territory) that was written by Andres Bello (begun in 1833). This code was integrally adopted by Ecuador in 1858; El Salvador in 1859; Venezuela in 1862 (only during that year); Nicaragua in 1867; Honduras in 1880 (until 1899, and again since 1906); Colombia in 1887; and Panama (after its separation from Colombia in 1903). In 1865, the Canadian province of Quebec promulgated the Code Civil du Bas-Canada (or Civil Code of Lower Canada).Uruguay promulgated its code in 1868 and Argentina in 1869 (work by Dalmacio Velez Sarsfield). Paraguay adopted the Argentine code in 1876, and in 1877 Guatemala adopted the Peruvian code of 1852. In 1904 Nicaragua replaced its civil code of 1867 by adopting the Argentine code. Brazil enacted its civil code in 1916 (project of Clovis Bevilacqua, after rejecting the much superior project by Teixeira de Freitas that was translated by the Argentines to prepare their project), that entered into effect in 1917 (in 2002, the Brazilian Civil Code was replaced by a new text). Brazilian Civil Code of 1916 was considered, by many, as the last code of the 19th century despite being adopted in the 20th century. The reason behind that is that the Brazilian Code of 1916 was the last of the important codes from the era of codifications in the world that had strong liberal influences, and all other codes enacted thereafter were deeply influenced by the social ideals that emerged after World War I and the Soviet Socialist Revolution. European codes and its influence on other continents can be seen from the fact that Panama in 1916 decided to adopt the Argentine code, replacing its code of 1903. Many legal systems in Asia are also within the civil law tradition and have enacted a civil code; that is the case of Japan, Korea, Taiwan, the Phillipines and Macau.

The movement for codification, however, has been largely unsuccessful in countries where common law prevails, such as the United States. Despite the argument that the principles of common law are sometimes uncertain and often contradict one another, advocates of the common law assert that civil law makes possibly futile attempts to predict and control the course of developments. In the United States the term code is sometimes also applied to the statutes of a state or of the federal government that have been edited to eliminate duplication and inconsistencies and arranged under appropriate headings. Many states have published official codes of all laws in force, including the common law and statutes as judicially interpreted that have been compiled by code commissions and enacted by legislatures. The U.S. Code

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(U.S.C.) is the compilation of federal laws. The other important Civil Codes5 with Year of nactment are as follows6:

1. Mesopotamia Code of Hammurabi (ca. 1780 BC)
2. Bavarian Codex Maximilianeus bavaricus civilis (1756)
3. Prussian Allgemeines Landrecht (1792 -- "General Law of the Land"; an incredibly casuistic and thus unsuccessful code of 11000 Sections)
4. French Code civil des Frangais (1804) (later Code Napoleon and today Code civil)
5. Austrian Allgemeines biirgerliches Gesetzbuch (1812)
6. Louisiana Civil Code of the State of Louisiana (1825)
7. Serbia TpatjaHCKii 33kohmk (Civil Code) written by Jovan Hadzic (1844)
8. Chile Codigo Civil (Civil Code) written mostly by Andres Bello and the base of the codes of Colombia, Ecuador and other Latin American countries. (1855 [1])
9. Quebec or Civil Code of Lower Canada (1865) repealed and replaced by Civil Code of Quebec in 1994
10. Spain Codigo Civil in 1885
11. Japanese Mimpo(nn)(1896(Part l-lll) and 1898(Part IV and V))
12. German Burgerliches Gesetzbuch (1900)
13. Swiss Zivilgesetzbuch (1907)
14. Italian Codice Civile (1942)
15. Greek Acttikos Ku)5ikcx£ (Civil Code) (1946)
16. Egyptian <jiaj0fJ0tf)1948)
17. Portuguese Codigo Civil (1966)
18. Philippines Civil Code of the Philippines (1950) -- replacing the Civil Code of Spain which had been in effect from 1889 to 1949.

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