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**ONE COUNTRY, ONE LAW: A TUSSLE BETWEEN THE PERSONAL LAWS AND  
UNIFORM CIVIL CODE**

**Edited By:**

1) **Saumya Tripathi**

(Editor)

[Saumya.judicateme@gmail.com](mailto:Saumya.judicateme@gmail.com)

+91 9044382618

**Publisher Details:**

1) **Saumya Tripathi**

+91 9044382618

Address: Vikas Nagar, Lucknow

Email Address: [Saumya.judicateme@gmail.com](mailto:Saumya.judicateme@gmail.com)

Student Editor Name

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## **ONE COUNTRY, ONE LAW: A tussle between the Personal laws and Uniform Civil code**

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*By Sonakshi Agarwal,  
From, University of Petroleum and  
Energy Studies, Dehradun.*

### **Introduction**

One among the booming industry in recent times in our country is the construction industry. Construction labour forms an important component of construction industry. The construction labour is generally composed of the young, married, illiterate and unskilled males belonging to scheduled castes, scheduled tribes, backward classes and the muslim community having high family dependency load.

Whenever, a question is asked to a labour law expert about the types of workmen i.e., what are the different types of workmen? The answer to the question jurisprudentially speaking is highly difficult for the obvious reason that broadly we come across to types of workers namely, the permanent workers and the contract workers. However, the workers may belong to different categories namely skilled, unskilled, manual,

supervisory, managerial, daily workers, casual workers, temporary workers, seasonal workers, contract workers and lastly organized and unorganized workers in broad manner. The definition of the term workmen is not uniform in major labour legislation, as a result the term 'workmen' especially used in I.D. Act, 1947 has been a subject matter of judicial interpretation.

Bulk of the construction labour is composed of contract labour who are normally migrant labour moving from place to place of construction sites. The construction labour is also composed of unskilled manual labour as a result of varied composition of construction labour there has been a need for varied legal compliance mechanism for addressing the welfare, social security and industrial relations issues.

One of the obstacle for the non-implementation of laws for contract labour in construction industry is that most of the construction firms are concerned with their costs of construction rather than the adhering to legal compliance for protecting the rights of contract labour, as a result there is more scope for research into the area of contract labour in construction industry.

Through this article the author wish to survey the general and special labour laws along with judicial response for protecting the contract labour involved in construction works.

## Concept of Contract Labour in Construction Industry

Construction industry is the second largest economic activity in India and plays an important role in the nation's economy. It is a vanguard activity of several other key sectors of economy whose performance is dependant on the satisfactory performance of this construction industry. A change in the level of construction activity affects GDP and manufacturing and the general employment and incomes of people.

Sec.2 (1) (d) define the term 'building' or 'other construction work' according to 'the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.' Sec.2 (1) (d) of the aforesaid act give a list of building and other construction works. While, Sec.2 (1) (e) define the term 'building worker' which means and includes a person who is employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or for reward, whether the terms of employment be expressed or implied, in connection with any building or other construction works. However, the building worker does not include managerial, supervisory, administrative capacity drawing wages exceeding 1600 per month. Sec. 2 (1) (b) of the Contract Labour (Regulation and Abolition) Act, 1970 define the term contract labour. A workman shall be deemed to be employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of principal employer.

## Salient features of the Contract Labour (Regulations & Abolition) Act, 1970

The Act applies to "every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labor."<sup>1</sup>

The Act provides for licensing of both the contractor and the principal employer, thus entrusting power upon the enforcement agencies and correlated liability on the part of the license seekers.

Section 20 provides power to the principal employer to recover from the contractor by deductions or as a debt payable, "if the contractor does not provide amenities under Sections 16 to 19 within the time prescribed". However no specific liability has been created upon the contractor thus creating a disjoint to deal with such a situation. Another structural problem is the lack of joint entitlement or liability of other stakeholder i.e., the enforcement agencies which is essential to deal with such a scenario. The resultant is the lack of facilities like canteens, latrines, urinals, rest rooms, crèches, washing facilities, and first aid for the workers though expressly provided in the Act.

Section 21 outlines duties of the contractor with respect to payment of wages to the workers. It bounds the contractor to pay wages timely and before representatives of principal employer, but no consequential right has been created in the Act per se to the workers in the event of breach of these provisions. Though power has been delegated to the principal employer to recover from the contractor by deductions

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<sup>1</sup> Section 1

when the contractor fails to pay wages or other entitlements to the workers<sup>2</sup> and jural power to enforcement agencies is implied, but a direct jural relationship (co-relative) between the contractor and the workers is missing, moreover like in section 20 there is a lack of joint entitlement between stakeholders like the principal employer and enforcement agencies, thus creating an unavoidable disability and consequential immunity to contractors. It may be due to this structural problem ingrained in the Act that most contract workers face delayed or short payment.

Under chapter III, rule 25 (2) (v) (a) of the contract labor (Regulations & Abolition)<sup>(II)</sup> central rules, 1971, it has been provided that “in cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer, the wage rate, holidays, hour of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer” (Kumar, 2012: 288). However while providing these rights to the workers no simultaneous duties have been created on the other parties by the Act itself. In fact, while making this provision in the law, it seems no serious attempt was made to make suitable provisions or co-relatives to ensure implementation.

### **Major Labour laws applicable to Contract Labours:**

#### **(I) The Employee’s Compensation Act, 1923**

Includes all workmen (except casual workers)<sup>3</sup> and specifically creates provision for the contract workers as the contractor or “managing agent”<sup>4</sup> has been included in the definition of an employer. No major exclusion has been made in the Act except that no liability lies upon the employer when the disablement to the worker is less than three days<sup>5</sup>. While imposing duty upon the employer for compensation in the case of job related disablement it creates rights to the workers for their legal entitlement.

#### **The Employees’ State Insurance Act, 1948**

Just like the Employee’s Compensation Act, the ESIC Act specifically makes provision for the contract workers as the contractor or “immediate employer”<sup>6</sup> has been included. The Act makes a clear distinction between the principal employer who is the owner or ‘occupier’ of the establishment and the contractor who is the intermediary. The Act imposes duty upon the employer for compensation in the case of job related disablement and creates co-related rights to the workers for their legal entitlement. The Act states that the principal employer at the first instance shall pay the contribution of both the employer and the employee<sup>7</sup> and later shall recover the same from the ‘immediate employer (contractor), and at other places uses the term ‘employer’ or ‘principal employer’ to impose jural relations.

<sup>2</sup> Section 21(4)

<sup>3</sup> section 2(n))

<sup>4</sup> Section 2 (e) & (f)

<sup>5</sup> Section 3(a)

<sup>6</sup> section 2(13)

<sup>7</sup> Section 40

### (III) The Maternity Benefit Act, 1961

As per section 3(o) of the Act, “woman means a woman employed, directly or through any agency” thus covering contract women workers. While creating rights for the workers, correlative duties have been created upon the employer who is the principal employer or an official who is in control of the establishment. Thus, the Act creates no joint jural relation upon the contractor who is the real employer of these workers. Moreover the Act provides for exclusion of those women workers who were employed for less than one hundred and sixty days in the twelve months period immediately preceding the date of their expected delivery<sup>8</sup>. The Act thus creates entitlements for the workers based on the duties enforced upon the principal employer who is neither their direct employer and nor can ensure their tenural conditions. The secondary liabilities on breach also fall upon the employer and not on the contractor. Thus, though the Maternity Benefit Act was enacted for providing better coverage to the working women, the Act could bring little relief to the contract women workers seemingly due to these structural issues.

### (IV) The Employees Provident Funds Act, 1952

The Act lays down provisions for the Employees’ Provident Fund Scheme, Employees’ Pension Scheme and Employees’ Deposit Linked Insurance Scheme and delineates the composition and functions of different bodies to run these

schemes. The EPF Act covers contract workers, as per the Act “employee means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the establishment”<sup>9</sup>. Similarly employers cover contractors also, as “employer means in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier”<sup>10</sup>. The Act like the ESI Act provides for contribution from the principal employer which shall be deducted from the contractor’s bill. The Act makes elaborate provisions for recovery of money<sup>11</sup> and for penalties<sup>12</sup> for the employers and the contractors in the case of default. The Act at the same time provides for certain exclusions which are uniformly applicable to both regular and contract workers, the Act is not applicable to those establishments where less than 20 workmen are employed, also employees getting wages more than Rs. 6500 per month may be exempted.

### (V) The Factories Act, 1948

The Factories Act interpret “worker” as a person employed, directly or by or through any agency (including a contractor<sup>13</sup>) with or without the knowledge of the principal

<sup>8</sup> section 5(2)

<sup>9</sup> Section 2(f) (i)

<sup>10</sup> section 2(e) (i)

<sup>11</sup> section 8

<sup>12</sup> section 14

<sup>13</sup> Added by the Factories (Amendment) Act, 1976.



employer<sup>14</sup>. The employer is termed as the “occupier” on whom the ultimate control over the affairs of the factory lies. Section 119<sup>15</sup> of the Act gives an overriding effect to the provisions of the Factories Act against the Contract Labor (R&A) Act wherever the provisions of the latter is inconsistent with the former. This section thus does not pronounce that the Contract Labor (R&A) Act would not apply but only provides for the precedence of the Factories Act. Unlike the other legislations the Factories Act is a predominantly a welfare legislation aimed at the health, safety, proper working hours and other entitlements of the workers. But from the contract workers point of view the Act suffers from serious structural anomalies. By adding ‘including a contractor’ in section 2(L), the amendment attempted to provide all benefits available in the Act to the contract workers as available to regular workers, however while creating the right structure to this category of workers, the duty structure was not amended. More so unlike the other Acts, the employer has been clearly identified and termed as “occupier”<sup>16</sup> in the Act and no joint jural relation has been established with the contractor who is the real employer of the contract workers. More so the liability on all cases of breach falls upon the “occupier” and not the contractor. Section-92 clearly states that, “if there is any contravention of any of the provisions of this Act or of any rules made there under or of any order in writing given there under, the occupier and manager of the factory shall each be guilty of an offence and punishable with

imprisonment”, similarly section- 88 provides for penalty upon the “occupier” in the case of accidents or work place injury to the workers and section 87 & section 102 relates to penalty provisions in the case of breach of welfare measures providing for the ‘occupier’ or manager as the sole party liable for proceedings. Section 111A which elaborates upon the right of workers imposes duties upon the ‘occupier’ and ‘the enforcement agencies’ and not upon the ‘contractors’. Thus, though the Factories Act by its’ landmark Amendment Act of 1976 provides for uniform entitlements to regular and contractual workers, but fails structurally in creating joint duties upon contractors.

#### **Protective Legislation covering construction workers employed through contractors**

The construction sites are covered under the Contract Labour (Regulation and Abolition) Act. Workshops attached to the sites are covered under the Factories Act, 1948 and quarries under the Mines Act, 1952. Vehicles and other motorized fleet (except construction equipment) are regulated by the Motor Transport Workers Act, 1951. Contractors’ offices are covered under the Shops and Commercial Establishments Act. All these laws are intended to afford protection to workers at their workplaces, sites and related operations in regard to working hours, working conditions, health, safety, welfare and special measures for women and young persons, holidays and annual leave with wages. The aforesaid laws lay down various

<sup>14</sup> Section 2 (L)

<sup>15</sup> Included by the Factories (Amendment) Act, 1976.

<sup>16</sup> Section 119

obligations on the contractors, owners, principal employers, occupiers etc., as the case may be, and impose penalties for disregard of their obligations.

All these Acts require that the number of working hours of an adult should not exceed forty-eight hours a week or nine hours a day except with the previous approval of government. There are provisions for holidays and rest during long hours of work and for extra wages for overtime work. A female cannot be made to work for more than nine hours a day or except between 6 a.m. and 7 p.m. without the prior permission of government but in no case will she work between 10 p.m. and 5 a.m. A child below fourteen years cannot be required or allowed to work at any construction site. Every worker who has worked for 240 days or more during a calendar year is entitled to leave with wages in the following year at the rate of one day of leave with wages for every 20 days of work. In the interest of workers' welfare, the Acts require the provision for storing clothes, drinking water, rest, first-aid, canteen, shelters, lunch and restrooms, separate toilets and rest rooms for females and crèche for their children.

The Contract Labour (R & A) Act, requires contractors to provide living accommodation to workers at the specified scale and standard. The provisions of the Acts for securing safety of workers prescribe various precautions in regard to dangerous machinery, avoidance of lifting excessive weights, transport and handling of explosives, provision of fencing of moving parts, securing firm floors, steps, stairs, passage and gangways, avoidance of danger from flying objects, fall from

heights, injury by moving parts, proper parking of machinery and heavy equipment and prevention of occupational diseases caused due to working with chemicals and other harmful materials. These and other provisions are made effective through periodic inspections and filing of returns and by providing for penalties for default in compliance. While the immediate employer i.e. contractor is responsible for compliance, the ultimate responsibility is that of the principal employer -the owner or the client of the facility under construction. If a contractor fails to comply with any of the measures -say denying leave with wages to worker or nonpayment of wages, the workers will have to be paid their dues by the client or owner of the project.

The Building and the Other Construction Workers (regulation of Employment and Conditions of Service) Act, 1996 is yet another central legislation exclusively enacted for protection of the rights of construction workers at and outside their workplace. As per recent estimates there are around 11 million construction workers in our country. As a result the parliament felt it would be appropriate for having a comprehensive legislation for construction workers, and hence enacted the aforesaid Act. The said Act has following broad features:

1. Provision to cover to every establishment which employs or has employed on any day of the preceding 12 months, 50 or more workers in any building or other construction work.
2. Constitution of Central and State Advisory Committee to advise the

appropriate government on matters arising out of administration of the Act.

3. Registration of the establishment employing construction workers and appointment of registering officers.
  4. Registration of building workers as beneficiaries under the Act and provisions for their identity cards etc.,
  5. Empowering the central government to frame model rules for safety measures headed by Director General of Inspection at the central level and Inspector General at the State level.
  6. Provision for appointment of inspecting staff including Director General of Inspection at the Central Level and Inspector General at the State Level.
  7. Provision for penalties for contravention, obstruction, violation and offence taking cognizance by court of offence punishable under this Act and protection of action taken in good faith.
  8. Application of the Workmen's Compensation Act 1923 to building and other construction workers.
1. The Supreme Court in the case of *Steel Authority of India Ltd. V. Union of India*<sup>17</sup> held that Industrial Court have no jurisdiction to determine the question as to whether the contract labour should be abolished or not, the same being within the exclusive domain of appropriate Government;
  2. The Supreme Court in the case of *Rajesh Kumar v. Union of India*<sup>18</sup> held that On issuance of prohibition under section 10(1) of the Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conduct of service Industrial Adjudicator will have to be interpose on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage legislations so as to deprive the workers of the benefits thereunder;
  3. The Supreme Court in the case of *Gujarat Electricity Board v. Hind*

### **The Role of Judiciary in empowering Contract Labour and Construction Labour**

<sup>17</sup> AIR 2006 SC 3229

<sup>18</sup> 2003 (2) KKH 102 Del



- Mazdoor Sabha*<sup>19</sup> held that it is only the appropriate Government which has the authority to abolish contract labour system the not the court including the Industrial adjudicator;
4. The Supreme Court in the case of *R.K. Panda v. Steel Authority of India*<sup>20</sup> held that the primary object of the act is to stop exploitation of contract labourers by contractor or establishment. The Act does not purport to abolish contract labour in its entirety;
  5. The Supreme Court in the case of *FCI Class IV Employees' Union v. F.C.I.*<sup>21</sup> held that Provisional of section 10(2) of this Act are mandatory. Amendment Act No. 14 of 1988 cannot have retrospective effect;
  6. The Supreme Court in the case of *Tata Refractories Ltd. V. union of India*<sup>22</sup>, held that Consultation with the Central Advisory Board is mandatory;
  7. The Supreme Court in the case of *Deen Nath v. National Fertilizers Ltd.*<sup>23</sup> held that The Act does not provide for a total abolition of contract labour but it provides for abolition of contract labour in appropriate cases;
  8. The Supreme Court in the case of *Government of Andhra Pradesh v. Bhadarachalam Paper Board Ltd.*<sup>24</sup> held that The power of the appropriate Government under section 10 is not affected or curtailed in any manner by section 119 of the Factories Act, 1948;
  9. The Supreme Court in the case of *National Organic Chemical Industry Ltd. V. State of Maharashtra*<sup>25</sup> held that it is the scrutiny of individual establishment which is contemplated by section 10 of the Act. There is no hostile discrimination;
  10. The Supreme Court in the case of *Hussain Bhai Vs. Alath Factory, Tezbilali Union*<sup>26</sup> held that while interpreting the term 'Workmen' that the meaning of the term workmen i.e., provided in form of definition as per sec.2 (s) of I.D. Act, 1947 will be the same in respect of the workmen employed by the contractor as per the Contract Labour (Regulation & Abolition) Act, 1970. Further, the court also held that the principal employer under CLRA Act, 1970 would be employer under I.D. act in certain circumstances.

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<sup>19</sup> 1995 LLR 552 SC

<sup>20</sup> (1994) 69 FLR 256 SC

<sup>21</sup> 1994 II LLJ 102 P & H

<sup>22</sup> 1992 II LLJ 810 Ori

<sup>23</sup> 1992 LLR 46 SC

<sup>24</sup> 1990 76 FIR 58 AP

<sup>25</sup> 1989 II LLN 817 Bom

<sup>26</sup> 1978 AIR 1410, 1978 SCR (3)1073

11. The Supreme Court in the case of *Air India Statutory Corporation Vs. United Labour Union*<sup>27</sup>, while interpreting sec.10(1) of CLRA Act, 1970 holding that the CLRA Act 1970 nowhere contain provision including under sec.10(1) for automatic absorption of contract labour after the contract labour system is prohibited by the notification issued by appropriate government. However, the principal employer may require to treat the contract workers as permanent workers in special situations.

12. The Supreme Court held in the case of *Balwant Rai Saluja and another Vs. Air India Limited and other*<sup>28</sup> observed categorically the autonomous institution in our country have not yet made up their minds in the matter of regulation of the contract labour by way of providing required facilities and benefits has mandated by law. The court gave direction to the Air India Limited that it is high time for proper regulation of contract labour in Air India Limited.

13. The Supreme Court held in the case of *National Campaign Committee for Central Legislation on Construction Labour Vs. Union of India*<sup>29</sup> in regard

to construction workers while briefing the objectives of the 'The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 observed that that aforesaid Act has following objectives:

To confer various benefits to the construction workers like fixing hours for normal working days, weekly paid rest day, wages for overtime basic welfare amenities at site, temporary living accommodation near site, safety and health measures etc.,

Further the Supreme Court went on to hold that the Central Government has been given the power in appropriate cases to issue direction to the government of any state or to a board as to the carrying into execution in that state of any of the provisions of the Act.

### **The Contemporary Scenario of Construction Workers**

The current trends and contemporary scenario of Construction Workers is as follows:

- a. The construction workers are not aware of legal provisions and legislation enacted for their benefits;
- b. The wages are paid on weekly basis;

<sup>27</sup> 2001 7 SCC 1

<sup>28</sup> SC: (2013) INSC 1017

<sup>29</sup> 2010 9 SCALE 442

- c. The contract for work is until the completion of the construction project at the construction sites;
- d. No identity cards are issued to the construction workers as a result the said workers are not entitled for any legal benefits as per the legislation meant for construction workers;
- e. There are no toilets for female workers, as a result the female workers go to toilet in the late dark night and early morning in open areas. However, since the area is forest area and no movement of public, therefore a sense of safety is ensured to the female workers. The male construction workers also go to toilet in open nearby area;
- f. There are no crèches' for children of female workers.
- g. Overtime wages were paid for the workers but the rate of overtime wage was less when compare to bigger construction project in Bangalore City.
- h. Rest interval of 8 hours was given in event of workers working from 8 p.m. to 6 a.m.

are exploited by the contractors. As a result the researcher concludes by suggesting that:

1. The construction workers employed and contract basis should be regularly inspected by the inspecting staff appointed by the government;
2. The inspectors should personally take steps to issue identity cards and register the construction workers without insisting for unwanted documents except for producing voter identity card or AADHAR card;
3. The inspecting staff should vigilant in ascertaining the safety welfare and other facilities extended to the construction workers and should immediately instruct the contractors for extending the facilities, failing which the contractors/principal employer should be mercilessly penalized;
4. The non-governmental organizations and the law colleges should conduct legal awareness programs in university campus for providing legal awareness to construction workers employed as contract labours by assembling them at a common place in the university campus. Further, awareness should be created for prohibiting employment of child labour and more stress should be given for insisting the basic facility of separate bathrooms and toilets for male and female workers. Children of female workers should also be provided with crèches';

### Conclusion and Suggestions

Though the construction is a booming industry providing employment for more number of unorganized construction labour employed as contract labour yet the conditions of construction labour is not so satisfactory and in most of the cases they

5. The states in our country should take immediate step for establishing construction workers welfare board by framing appropriate rules for imposing Cess on construction works and ensure that the money is utilized for framing practically working welfare and social security schemes for construction workers.

have put an opinion forward that the process of bringing equality between men and women is far from over and it needs a lot of things to be done in order to achieve a true equality between men and women in India.

### **INTRODUCTION**

Each and every religion that are practiced in India are governed by their respective personal laws. The personal laws also include in it the property rights of different religions. Many judgement have been delivered till now relating to the law of succession after the 2005 amendment of the Hindu Succession Act (hereinafter referred to as HSA). The amendment would be discussed later in the article. Since then there have been many opinions which may be characterized under two groups:

1. The first group of people supported the amendment but on the other hand also questioned that why this amendment which would help reduce discrimination not extended to the non-Hindus.
2. The second group of people have also supported the amendment and step taken by the government, but

But the drawback of all this is that not a single person has talked about the inequality and patriarchal society that existed for such a long time in India, be it in Hindus or Muslims. And no one has even talked about and threw light on the importance of Uniform Civil code (hereinafter referred to as UCC) in establishing equality among the laws of all the religion be it a Muslim or a Hindu, as it will be a great step towards establishing all the citizens of India irrespective of the religion.

On comparing the Hindu and Muslim religion, it can be said that in the present times it has become much easier for the Hindu's to accept any progressive changes that are taking place as compared to the Muslims. For example, the amendment that took place in the year 2005 was accepted by majority of the Hindus, whereas any such amendment that could be used for the betterment of the society has not been made in Muslims.

The Article would include a detailed explanation of the inheritance of property under Hindu and Muslim laws along with the amendments made under the concerned laws. By this the author tries to explain the difference in the rules of Muslim and Hindu laws of inheritance. Also the article would be dealing with the intricacies of the UCC. The author has also dealt in this article with the debate supporting UCC and against UCC.

### **HINDU LAW**

In this section of the article HSA of 1956, the 2005 amendment and the recent SC judgement on the same would be discussed.

#### **The Hindu Succession Act of 1956:**

The Parliament passed this act by borrowing the idea from the Mitakshara law for Hindus. Various law systems that were comprised by the Britishers did not at all depict the complete actuality of Indians. Whereas when the developments that were made based themselves on Shastras, they

tend to evolve on the basis of local needs, traditions and customs.

But the diversity bewildered the Britishers and in case of any conflict between the evolved system and the shastras, they always chose the latter. This as result, hindered the progress made by Hindu society and ultimately led to throwing it back by centuries.<sup>30</sup>

It was in 1956, that the codification of the Mitakshara law system took place and was codified as the HSA. Section 6<sup>31</sup> of the HSA is deals with devolution of the property.

#### **Some of the changes brought by the HSA, 1956 include:**

1. The Supreme court in the case of Uttam v. Subagh Singh<sup>32</sup> pronounced on March 3, 2016 stated that on a conjoint reading of Sections 4<sup>33</sup>, 8<sup>34</sup> and 19<sup>35</sup> of the HSA, 1956, it can be said that a joint family property ceases to be joint family property after the distribution of the joint family

<sup>30</sup> Arihant Pawariya, Say *No To UCC: What Hindus Need To Learn From SC's Verdict On Hindu Succession Act And Progressive Rhetoric Around It*, *swarajya* (Aug. 19, 2020, 06:30 PM), <https://swarajyamag.com/ideas/say-no-to-ucc-what-hindus-need-to-learn-from-scs-verdict-on-hindu-succession-act-and-progressive-rhetoric-around-it>.

<sup>31</sup> The Hindu Succession Act, No. 38 of 1956, INDIA CODE (1993), § 6.

<sup>32</sup> Civil Appeal no. 2360/2016.

<sup>33</sup> The Hindu Succession Act, No. 38 of 1956, INDIA CODE (1993), § 4.

<sup>34</sup> The Hindu Succession Act, No. 38 of 1956, INDIA CODE (1993), § 8.

<sup>35</sup> The Hindu Succession Act, No. 38 of 1956, INDIA CODE (1993), § 19.



property in accordance with section 8 has been done based on principles of intestacy. By this is meant that it is ceased to be joint family property in the hands of those persons who have succeeded to it as they hold the property not as joint tenants but as tenants in common.

2. The court in the case of Commissioner of Wealth Tax, Kanpur and Others v. Chander Sen and Others<sup>36</sup> held that the traditional view that a HUF would automatically come into existence if the inheritance of an immovable property from the paternal ancestors up to three degrees has been done, does not hold the legal position now in view of Section 8 of HSA, 1956.
3. The Supreme Court reiterated the legal position of the HUF property in the case of Yudhishter v. Ashok Kumar<sup>37</sup>. It was stated by the court in this case that after the enactment of Section 8 of HSA, 1956 a HUF property is not created by the inheritance of the ancestral property.

### **Coparcenary under the Mitakshara law-**

The concept of 'Coparcenary' comprised of only male members. Under this concept they would acquire interest as soon as they are born in the ancestral property of the Hindu family. By the term ancestral property it is meant that any such property which has been inherited from the father, father's father and father's father's father of that person.<sup>38</sup> The Mitakshara law of coparcenary is based on the idea of birth right of son, son's son, and son's son's son. This was also stated in the case of Venugopala v. Union of India<sup>39</sup>.

By this it can be said that the share of each member keeps increasing and decreasing with decrease and increase in the number male members of the family respectfully. This means that no person has a definite share in the property and cannot claim such for a definite share unless they decide to go for partition.

There are two ways under the Mitakshara system, by which devolution of a property can take place. First, by the way of survivorship in which a male member acquires an interest in the joint property at the very instant he is born. Survivorship

<sup>36</sup> (1986) 3 SCC 567.

<sup>37</sup> (1987) 1 SCC 204.

<sup>38</sup> Mulla, Principles of Hindu Law, 289 (15th ed., 2018).

<sup>39</sup> AIR 1969 SC 1094.

means the way in which an ancestral property can be devolved from one generation to the next. This is also called unobstructed heritage.<sup>40</sup> Second, way is devolution of property by succession. Under this only that property can be devolved which is not an ancestral property and is acquired by a person on his own. This is also called obstructed heritage.<sup>41</sup>

In 1956, the HSA has given women some piece of the property. This share of property is not at all equal to that of a son and is given by way of succession.

#### **Amendment of 2005:**

A major amendment took place in HSA in the year 2005, in which daughters were also made coparcener at par with son. By this it is meant that, for example, if a person has inherited a 1,000 sq. ft. of a property and then goes on and have a son and daughter, in such a case after the 2005 amendment both become joint owners of the property and had rights from their birth.

Moreover, the fact that the father was alive at the time of amendment that is in 2005 is

immaterial and the daughter's right in ancestral property is given to her by birth, exactly same as the son. This came in the Section 6(1)<sup>42</sup> of HSA in An amendment in 2005 where daughter has been made a coparcener. This was stated in the case of Subhash Eknathrao Khandekar v. Pragyabai Manohar Birader<sup>43</sup>.

#### **MUSLIM LAW**

The property rights of Muslims in India have not been codified and are majorly governed by the two schools under the Muslim personal law which include – the Hanafi School and the Shia school. Only those relatives are recognised by the Hanafi School as heirs who is related through a male to the deceased. For example it would include: son's daughter, son's son and father's mother.<sup>44</sup> On the other hand there is no such discrimination under the Shia school. By this it is meant that all the people including those related to the deceased through a female would also be accepted as heirs.

In the present times Public Interest Litigations have been filed demanding the

<sup>40</sup> Paras Diwan & Peeyushi Diwan, *Family Law* (11<sup>th</sup> ed. 2018).

<sup>41</sup> *Id.*

<sup>42</sup> The Hindu Succession Act, No. 38 of 1956, INDIA CODE (1993), § 6(1).

<sup>43</sup> AIR 2008 Bom 46.

<sup>44</sup> Gunjan Piplani, *Examining a Muslim woman's Right to Property* (June 15, 2020, 7:47 PM), <https://www.makaan.com/iq/legal-taxes-laws/examining-a-muslim-womans-right-to-property>.

amendment in the Muslim Personal laws regarding inheritance. This is being done alleging that there have been discrimination with the Muslim women as compared to the male members in the matters related to sharing of property.

In the PIL it has been stated that bare examination of the laws related to inheritance in the Muslim Personal Laws it can be noticed that a Muslim wife should be entitled to 1/8<sup>th</sup> property of her husband after his death in case they have children. On the other hand wife is entitled to 1/4<sup>th</sup> property if they do have any children.

In case of daughter's rights, she is entitled to receive the half of the share of the son. In stark contrast, on the death of a wife a husband is entitled to receive 1/4<sup>th</sup> of the property if they have children.<sup>45</sup> On the other hand after the death of the wife husband is entitled to receive 1/2 of the property if they do not have any children. Also, a daughter receives half the share of the son.

It was further stated in the petition that the fundamental right of equality stated in Article 14<sup>46</sup>, 19<sup>47</sup> and 21<sup>48</sup> of the Indian constitution are being violated in case of

Muslim women as they are facing discrimination based on both statutory law as well as customary law.

Article 13<sup>49</sup> of the Indian constitution talks about personal laws which also include Muslim personal laws. Therefore all the Muslim women can demand for remedies under the constitution in case they face any kind of discrimination.

**Property rights of a daughter in Islam:** In Muslim law, son is entitled to get double the share of that of a daughter. In addition to this though daughter gets less share of property but she is the absolute owner of whatever property she inherits. In case there is no brother, daughter is entitled to get half the share of the property.

A contradiction is also present in the Muslim personal law. A daughter is fully eligible to receive gifts from the people she would be inheriting property from. This statement is in itself contradictory because a daughter is entitled to inherit only one-third of the man's share on the first hand, but she can get gifts without any hassle.<sup>50</sup>

All these laws clearly depict the discrimination that the Muslim women are

<sup>45</sup> *Id.*

<sup>46</sup> India Consti. art. 14.

<sup>47</sup> India Consti. art. 19.

<sup>48</sup> India Consti. art. 21.

<sup>49</sup> India Consti. art. 13.

<sup>50</sup> *Supra Note, 15.*

facing in the distribution of property under Muslim law. The sons clearly have more privileges as compared to the daughters and women. The women are mostly depended upon the sons or their husband for any kind of favours whereas it is not so in case of male members of a Muslim family.

**If we compare the Muslim women and daughters to the Hindu women and daughters, it can be clearly seen that Hindu females have more powers and privileges as compared to the Muslim females. For example after the 2005 amendment in the HAS, daughter are now coparceners in the Hindu joint family property whereas it is not so with the Muslim daughters. Also there have been no amendment for the same.**

#### **Difference between Hindu and Muslim laws:**

The major aim behind making and enacting laws is regulating the social, political, and cultural behaviour of the society and not to force anything upon the people. For meeting the purpose of regulating the society, both Hindu and Muslim laws are important for the society and play a vital role in shaping the society. It is the different ways of beliefs of people on their own religion that actually makes a difference.

The Hindu and Muslim laws are very different from each other in the following ways:

1. Polygamy that is practiced under Muslim law cannot be practiced under Hindu law. Under Hindu law bigamy and polygamy are punishable offences.
2. Adoption is legal and is allowed under Hindu law, whereas it is not allowed in Muslim.
3. Most importantly the Muslim law is not a codified law unlike the Hindu Law. The Hindu law is very clearly and briefly codified which contains different acts dealing with different laws such as- Hindu Adoption and Maintenance Act, Hindu Succession Act, Hindu Marriage Act, etc.
4. The concept of separate and ancestral property is only present in the Hindu Law. On the other hand under Muslim Law, only the concept of single or joint property is present.

#### **UNIFORM CIVIL CODE**

By UCC it is meant that a set of personal laws which would be common for all the people belonging to all the religions and following any custom. In the present times

there exists different personal laws for Hindus and Muslims. The subjects covered under the personal laws include: laws related to property, laws related to divorce and marriage, and also laws related to inheritance and succession.

The major aim of UCC in a diverse country like India is replacing the currently existing personal laws that are different for different religion and are based on scriptures and customs by a common set of rules that would be governing each and every citizen of India equally and would prevent discrimination.

**History of UCC:** Personal laws were for the very first time framed during the British Raj in India. And the personal laws then made were majorly for the Hindus and Muslims. After developing the laws there was very less intervention of the Britishers in these personal laws as they feared the opposition and criticism that they would face from the community leaders if they interfered with the personal laws.

The UCC came into debate and became a flashpoint in the Shah Bano Case<sup>51</sup> came in year 1985. Debates and discussions started in the Indian politics regarding this topic. The Supreme Court in this case held that

maintenance shall be given to the woman from his husband after divorce. In context of this judgement the court said that there is need of a uniform system of laws.

The women activists were the first ones to put forward the demand of a UCC. This was done in the beginning of the 20<sup>th</sup> century with the motive of achieving equality, secularism and equal distribution of all the rights. It is true that till 1947 many reforms were made in order bring equality and improve the condition of Hindu widows, but not much emphasis has been laid on the Muslim women rights.

The Parliament of India passed a Hindu Code Bill in the year 1956 which faced a heavy opposition. The actual demand which was made by the then Prime Minister Jawaharlal Nehru and his supporters including the women was of enacting a UCC, but they had to accept the offer of this being added in the Directive Principles of State Policy due to heavy opposition that it faced.

**UCC and the constitution of India:** The constitution of India contains a provision for the UCC in Article 44<sup>52</sup>. It is mentioned as a Directive principle of state policy and states that “The State shall endeavour to

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<sup>51</sup>AIR 1985 SC 945.

<sup>52</sup> India Consti. art. 44.



secure for the citizens a UCC throughout the territory of India”<sup>53</sup>.

Article 44<sup>54</sup> has been referred in a number of cases by the Supreme Court:

1. In the case of Sarla Mudgal v. Union of India<sup>55</sup> the court directed the government under Article 44. In this case it was held that adopting Islam for a second marriage would be considered as an abuse of Personal laws. By mere conversion into Islam to perform more than one marriage is unacceptable and thus will be an offense under Section 494(5)<sup>56</sup> of the Indian Penal Code.
2. In the case of John Vallamattom v. Union of India<sup>57</sup> the court held that Section 118 of the Indian Succession Act was unconstitutional as it was discriminatory against the Christians and imposed unreasonable restrictions on the property donation for the religious or charitable purpose by will.

### **PERILS OF UNIFORMITY**

Earlier, the society was *aatmanirbhar* (self-reliant) and was very well sufficient of innovating, reforming and adapting better practices according to its own pace and comfort.<sup>58</sup> Centralization would make the society extremely fragile that would even induce harmful change after grabbing power for a short time causing great damage in the long term.

India is a diverse country with a number of different cultures, religions and customs. Binding all the customs and religions under uniform law would not even fulfil the major drawbacks that were to be overcome. Instead it would further facilitate the introduction of harmful changes to the Muslim laws and Hindu civil codes.

For example, in 1956 concept of will was introduced by the HSA which was imported from the West and was totally an alien concept to Hindu law.

Also some of the thinkers were of the view that centralizing the concept 'one size fits all' is blind to realities of millions of women and is in fact quite elitist in nature. This is because more than 10 crore households are landless in India and many other people

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> 1995 AIR 1531, 1995 SCC (3) 635

<sup>56</sup> Indian Penal Code, ACT NO. 45 OF 1860, INDIA CODE (1993), § 494(5).

<sup>57</sup> Writ Petition (civil) 242 of 1997.

<sup>58</sup> *Supra Note*, 1.

have such small property that it doesn't even amount to anything.<sup>59</sup> By this it can be concluded that this law would only cover a very small percentage of Indians of giving so-called property rights to women caters to.

Some other people were of the view that it is a very bad idea to centralize the law and to apply a uniform civil law to the society as it is at contrasting and different levels of development. Overall, no one gains and no one loses but complexity is needlessly added.

In addition to all the above points prioritising uniformity would destroy the diversity of India which has been existing from time immemorial and which include a number of law systems which are comparatively more progressive. These law systems prevail in different parts India including Dayabhaga, Nambudari, etc.

### **NEED OF UNIFORMITY**

There are many drawbacks of the different laws and customs of different religions. For example Hindu law gives the right of coparcenary to the daughters whereas in case of Muslim personal law it is not so.

This discrimination happening between the women living in same country just because they are of different religion is purely wrong as the constitution of India gives the right to each and every citizen of India to be treated equally in the matters.

Such a discrimination could only be removed with the help of the Uniform civil code which would bring a common law that will be followed by every citizen of the country. The UCC is best suited in situations as:

#### **1. It Promotes Real Secularism<sup>60</sup>:**

The present practise in India is that of selective secularism that means secularism is only followed in some areas. A uniform civil code means that all citizens of India must abide same laws irrespective of their religion, whether they are Hindu or Muslim. By this it is not at all meant that it limits people's freedom to follow their religion, it just means that all people will be treated equally.

<sup>59</sup> *Id.*

<sup>60</sup> Krati Sachdev, *Uniform Civil Code*, [http://www.legalserviceindia.com/legal/article-773-uniform-civil-](http://www.legalserviceindia.com/legal/article-773-uniform-civil-code.html#:~:text=Meaning%20of%20uniform%20civil%20code&text=In%20India%20the%20purpose%20of,personal%20laws%20for%20all%20citizens.)

[code.html#:~:text=Meaning%20of%20uniform%20civil%20code&text=In%20India%20the%20purpose%20of,personal%20laws%20for%20all%20citizens.](http://www.legalserviceindia.com/legal/article-773-uniform-civil-code.html#:~:text=Meaning%20of%20uniform%20civil%20code&text=In%20India%20the%20purpose%20of,personal%20laws%20for%20all%20citizens.)

2. **All Indians should be treated Same<sup>61</sup>:**

Presently there are personal laws based on different religions. For example, Muslims can marry multiple times in India whereas in all other religions bigamy is a punishable offence. Therefore, all the laws that are related to marriage, inheritance, family, land etc. should be equal for all Indians, which is only possible by enacting UCC.

3. **It will provide More Rights to the Women<sup>62</sup>:** UCC would even facilitate in improving the condition of women in India. Indian society is extremely patriarchal and by continuing old religious rules of governing the family, all Indian women are being condemned to subjugation and mistreatment. A UCC will help in changing these old traditions and therefore would bring equality for women as they would be given equal rights.

There is a criminal code which is applicable to all the citizens of India irrespective of the case and religion of the people. At the same time each and every person has accepted that code and is abiding by that code. But there is no such code related to the marriage or divorce laws or the inheritance or

succession laws, they are only governed by the personal laws. Therefore there is a need of reforming the social system of India, which is full of discriminations and inequalities, in order to prevent the violation of Fundamental Rights of the citizens of this country.

For example the Tax laws applicable upon Hindus and Muslims are different. The Hindu Undivided Family is exempted from the taxes, on the other hand the Muslims have been given exemption from the stamp duty on gift deeds. By enacting UCC all these problems and difficulties in the current system could be prevented.

Secular Society is the ideal that is followed in India. And in that context enactment of a UCC becomes more important as such a code will settle the issue of discrimination and inequality occurring due to different religions and would do away with diversity in matrimonial laws. UCC would also simplify the Indian legal system which would result in making the Indian society more homogeneous. The UCC would contain uniform provisions that would be applicable to every one which would be based on social justice and gender equality in the family matters.

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

### **ANALYSIS AND SUGGESTIONS**

(1)After comparing all the factors regarding the perils of UCC and the need of UCC, some suggestions can be given by the author regarding the present system. The provision of Article is often understood by the people as they would all be governed by a common set of rules. Some of the thinkers' are of the opinion that this is a misconception and people have to understand the correct meaning of the provision of Article 44.

According to the thinkers different religions cannot be governed under one common code, instead the true meaning of Article 44 is that all the people of same religion have to be governed equally and there can be no discrimination among the people belonging to the same religion. The thinkers here apply the concept of similar people have to be governed equally and different people have to be governed differently.

In order to avoid this confusion and to prevent chaos the step that could be taken could be amending the provision of Article 44. By the amendment it could be made clear to the people that applying UCC would just mean that all the people belonging to a particular religion will be governed equally. Also the UCC would not

be forcing any person to go against their will and change their religion or behave in any particular manner.

(2)UCC cannot be imposed forcefully on people. This is because of the presence of the Article 25 in the Indian Constitution which states that the people have Freedom of conscience and free profession, propagation and practice of religion. In order to prevent the violation of Article 25 UCC cannot be imposed forcefully.

On the other hand what can be done in order to prevent this is that the UCC and Personal laws shall co-exist. This can be done as UCC cannot be ignored as it contains the progressive and modern incorporation for all the existing Personal laws. By this it is meant that though there are drawbacks of UCC, but it has many advantages also at the same time because of which it cannot be completely neglected.

### **CONCLUSION**

Different property and matrimonial laws are being followed by people belonging to different religions and customs. This prevents our country from taking any decisions in complete unity and also a huge time is exhausted in taking the approval of different denominations. Also in India most

of the people are living at the whims of different middlemen such as mullahs, bishops and pandits.

To prevent all these the author strongly supports the idea of centralising the Personal laws and implementation of the UCC. The implementation of UCC is the need of the hour in today's world. India shall have a uniform law that deals with the property laws, marriage laws, divorce, inheritance and succession laws. This is of major importance as in the present times secularism is the key in resolving the serious problems of the nation.

Author agrees with the fact that suddenly changing the system of personal laws into the UCC would not be easy and is very tedious task, but at the same time it is not at all unachievable. India has also seen the huge opposition of the triple talaq bill, but gradually it came to be a huge success in the lives of Muslim women. Similarly, though enacting UCC is a tedious task, it can be achieved and gradually it will also be accepted by the people of India.