

Uniform Civil Code in India: Navigating the Labyrinth of Secularism, Diversity, and Social Justice

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ABSTRACT:

This comprehensive research paper investigates the concept and implications of the Uniform Civil Code (UCC) in the Indian context. This paper tries to examine the basic essence of the Uniform Civil Code and what does it mean when we use the term UCC. This paper starts with an introduction of Uniform Civil Code in which it defines the concept of the Uniform Civil Code and also discusses about its origin. It briefly talks about the history of the Uniform Civil Code and then with a focus on constitutional provisions, socio-political dynamics, and legal ramifications, it explores the relationship between UCC and personal laws, analysing judicial precedents and discussing its impact on India's diverse religious and caste landscape. In this part it discusses how the formation of UCC will affect the personal laws operating in the country. It further discusses the need or desire for the Uniform Civil Code under this part itself, that whether the Uniform Civil Code should be implemented or it still falls in the category “desirable.” and what are the pros and cons of the same. As we proceed further, this paper discusses about the relationship of the Uniform Civil Code with the Secularism and discusses how implementation of the Uniform Civil Code may cause danger to the integrity of the nation and how this will lead to the breakdown off the peace and harmony among the people.

Then it further discusses about the Uniform Civil Code and the constitutional guarantees. It also discusses about the relationship between the Uniform Civil Code and the gender justice and human rights. This paper also takes note of the judicial orders and the take of the Indian Judiciary towards the Uniform Civil Code. Last but not the least, this paper concludes with certain sets of recommendations and conclusions.

INTRODUCTION

The Uniform Civil Code (UCC) is a proposed legal reform in India aiming to establish a common set of personal laws governing all citizens across the country, regardless of their religion, caste, or gender. Article 44 of the Indian Constitution, pertains to the idea of a common set of laws governing personal matters such as marriage, divorce, inheritance, and adoption for all citizens irrespective of their religion or caste. Apart from being an important issue regarding secularism in India & fundamental right to practice religion contained in Article 25, it became one of the most controversial topics in contemporary politics during the Shah Bano case¹ in 1985 leading to the debate on Muslim Personal Law, which is partially based on the Sharia law and remained unreformed since 1937, permitting unilateral divorce, polygamy in the country and putting it among the nations legally applying the Sharia law. The Bano case made it a politicised public issue focused on identity politics—by means of attacking specific religious minorities versus protecting its cultural identity. However

¹ (Air 1985 Scr (3) 844)

recently in Shayara Bano² versus Union of India Case the Supreme Court of India has now held the practice of Talaq-e-biddat or instantaneous talaq as unconstitutional.

SOCIO-POLITICAL AND CONSTITUTIONAL PERSPECTIVE

India being a secular state does not follow any particular religion which means there is no official religion of the country. Therefore the state shall not be dependent on any kind of religious institutions for taking sovereign decisions for the state, further it will not interfere with the religious matters and the religion will not interfere in the working of the state. India is a highly diverse country with so many linguistic, cultural and religious identities. This is also manifested in its federal political system. The Indian subcontinent has a long history of diverse legal systems based on religion and custom. The current system of personal laws in India can be traced back to the British Raj. Facing the challenge of governing a vast and diverse population, the British adopted a policy of non-interference in religious matters. This policy resulted in the application of each community's religious codes to personal law issues, leading to a system where Hindus, Muslims, Christians, Parsis, and others are governed by their respective personal laws. A vast majority of Indians, (over 93%) associate themselves with the religion. According to the 2011 census³ 79.8% of the population of India practice Hinduism, 14.2% adheres to Islam, 2.3% follows Christianity, 1.7% Sikhism, 0.7% Buddhism and adheres to 0.4% Jainism. There are also numerous minor tribal traditions, though these have been affected by major religions such as Hinduism, Buddhism and Christianity. It is in this diverse context that the concept of the Uniform Civil Code need to be analysed. Currently there are different personal laws for different religious people such as for the Hindus: Hindu marriage act, Hindu succession act, Hindu adoption and maintenance act, and also the Hindu guardianship act, for the different purposes such as the marriage, adoption, succession, guardianship etc. Muslims and Christians are governed by their separate personal laws and the reason why we have separate personal laws is that every religious group has different beliefs, customs and practices and it is possible that the practices and beliefs of one religion may contradict with the other one and so for the peaceful running of the society, we have different personal laws.⁴ While dealing with the personal laws we encounter many problems when the question of succession, marriage, divorce, inheritance, adoption, maintenance, guardianship etc. arise. The difficult portion of them arises because different situations demands different judgements and there is difficulty in the distribution of justice. Therefor the distribution of justice does not remain uniform in its application so to solve these decisive steps were taken towards the national consolidation in form of idea of uniform civil code which was for the first time mooted seriously in the Constituent Assembly in the year 1947.

The Uniform Civil Code as envisaged in the Article 44 of the Constitution includes inter alia, entire gambit of family laws. There is no uniform civil code of law applicable to the marital relation of all, irrespective of ethnic or religious affiliations. So through Article 44, the modern State is called upon to perform its onerous responsibility of giving uniform civil code on the above subject, applicable to all the citizens of the country. The term Uniform Civil Code and its meaning itself came under intense scrutiny during the Constituent

² https://main.sci.gov.in/supremecourt/2016/6716/6716_2016_Judgement_22-Aug-2017.pdf

³ <https://pib.gov.in/newsite/printrelease.aspx?relid=126326>

⁴ <https://eastasiaforum.org/2023/08/24/reigniting-debate-on-indias-uniform-civil-code/>

Assembly Debates. During the drafting of the constitution, prominent leaders like Jawaharlal Nehru and Dr. B.R. Ambedkar pushed for a uniform civil code.⁵ However, they included the UCC in the Directive Principles of State Policy (DPSP, Article 44) mainly due to opposition from religious fundamentalists and a lack of awareness among the masses during the time.

The problem is that if we take anything standard out of the law of the religious majority, then the minorities will rebel and complaint and it will not be fair on the part of the legislature to do so because India is a secular country and the secular provision is the basic structure of the constitution and it cannot be amended in any manner. It is very wrong to set standards in a secular society and especially in a society like India where there is ethnic and religious and even linguistic plurality. The reason is that if we give importance to one, the others will rebel and it will lead to havoc in the society, which is very much evident in the history of the country. Giving importance to any one religion and setting standards which does not suit the other religions, is a call for the disintegration of the nation, disturbing the internal peace and security and the unity of the country. The country can face major disasters in a situation like this. The Constitution of India in Article 44 enjoins that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. It is 60 years or more, yet we have not been able to attain that level of sophistication to accept and adopt the constitutional mandate, and the basic reason behind this is that even though we talk about peace, harmony and brotherhood, when it comes to the relationship of the Hindu and the Muslim community, we often are traced back to the bloodshed that took place at the time of the independence and our opinions are often based on the hatred and enmity that prevails since a century now.

DECODING UNIFORM CIVIL CODE AND THE PERSONAL LAWS

The relationship between personal laws and the UCC is crucial, especially concerning issues of equality and discrimination, particularly against women. Historical patriarchal norms have entrenched gender disparities within personal laws, with examples from Hindu and Muslim laws highlighting unequal treatment. Despite attempts at codification, gender inequality persists in various aspects, such as inheritance and marriage rights⁶. When we conduct a study of the personal laws, we come to know that the women have always been considered inferior to the position of men and that India is a patriarchal society since the ancient times. The women are considered inferior in most of the personal matters as compared to men, especially when it comes to the discussion of the topic of the matrimony or the succession, adoption or even the inheritance. For example under the Hindu Law specifically, in the year 1955 and 1996, a Hindu women did not enjoy equal rights along with the Hindu men be it anything or any matter. Before 1955 even polygamy was prevalent among the Hindus. The Hindu women had no property rights except Stridhan. When it came to the matter of adoption a Hindu women did not have the right to adopt a child on her own. She could not be natural guardian of her children during the life of her husband. These examples are illustrative enough to show the patriarchal nature of the Indian society. And some certain discriminatory provisions still exist even today. *For example* a Hindu woman is not a coparcener in Hindu

⁵ <https://clpr.org.in/wp-content/uploads/2017/11/UCC-Part-1-Constitutional-History.pdf>

⁶ Frontline magazine (2019)

coparceners except in a few states like Andhra Pradesh, Maharashtra, Karnataka and Tamil Nadu.⁷ When it comes to discussing about the Muslim Law, in the Pre Islamic Arabia, the women enjoyed a secondary status because since then it has been a patriarchy since then. The women since then were considered secondary to men. The advent of Islam has contributed much when it comes to the deterioration of the Muslim women and the escalation of their problems. The Holy Quran gives equal rights to men and women and places women in a respectable position. However, there are certain aspects in Islam that render the position of Muslim women especially the wives insecure and inferior. In Islam, a man is allowed to marry four times whereas the women cannot and if they do they are treated as unchaste and impure.

. The Criminal Procedure Code which imposes an obligation on the husband to maintain his wife including divorced wife until she maintains herself is a secular law and is applicable to all⁸, however there is a controversy regarding the Muslim men following this provision. The landmark case of Shah Bano Begum vs. Mohammed Ahmed Khan (1985) exemplifies the challenges and potential benefits of the UCC debate. Shah Bano, a Muslim woman, was divorced by her husband after 42 years of marriage. He refused to pay her maintenance, citing provisions within Islamic law. The Supreme Court, in a landmark judgment, ruled in favor of Shah Bano, upholding her right to maintenance under Section 125 of the Criminal Procedure Code, 1973, which is a secular law applicable to all citizens regardless of religion. This decision sparked controversy, with some arguing it undermined Muslim personal law. However, it also highlighted the need for a more uniform legal framework that ensures equal rights for all citizens, irrespective of their religion

HOW SECULARISM IS RELATED TO UNIFORM CIVIL CODE

Secularism, as enshrined in the Indian Constitution, advocates for the separation of religion and state which means there is no official religion of the country. A religion is only concerned with relation of man with God. The process of secularisation is intimately connected with the goal of uniform Civil Code like a cause and effect. In S.R. Bomai v. Union of India, the honourable Justice Jeevan Reddy held that religion is the matter of individual faith and cannot be mixed with secular activities and can be regulated by the State by enacting a law. However unlike the United States, India has adopted the concept of "positive secularism." In India, positive secularism separates spiritualism with individual faith. The reason is that America and the European States went through the stages of renaissance, reformation and enlightenment and thus they can enact a law stating that State shall not interfere with the religion. But when it comes to a society like India where religion defines the way of life and where people connect themselves with their religion instead of understanding that it is the religion is also made by human beings. This thought finds itself in the graveyard because some people still believe in burning. There needs to be a uniform law which governs and regulate the behaviour of people of all the religions and not any particular section of the society. The Preamble of the Indian Constitution resolves to constitute a "Secular" Democratic Republic. This means that there is no state religion or in other words

⁷ Hindu Succession Act

⁸ Criminal Procedure Code by A.K Jain

the state does not operate on any one particular religion and shall not discriminate on the ground of religion⁹. While Article 25 guarantees freedom of religion, Article 44 emphasizes the state's role in promoting a UCC. The concept of positive secularism in India seeks to regulate religious practices within the framework of individual faith, separating spiritual beliefs from state affairs. In unification of the personal laws, an important question that arises is what will be the ingredients of the Uniform civil code. Since, the personal laws of each religion contain separate provisions, their unification will bring not only resentment, but also enmity in the public towards one another, therefore the Uniform Civil Code will need to bring in such laws that strike a balance between the protection of the fundamental rights and the religious principles of the different communities that exist in the country. Issues such as marriage, divorce, maintenance etc. can be matters of secular nature and law can regulate them.

RELATION BETWEEN UNIFORM CIVIL CODE AND THE GENDER JUSTICE

The relation between the Uniform Civil Code (UCC) and gender justice in India is intricate and multifaceted, reflecting broader debates about secularism, cultural pluralism, and women's rights. Women, who make up nearly a half of India, continue to demand for a gender just code to enjoy equality and justice irrespective of the community to which they belong. However, the ideal of Uniform Civil Code (UCC) is yet to be achieved in India. Since the Uniform Civil Code was a politically sensitive issue, the founding fathers of the Constitution arrived at a compromise by placing it under Article 44 as a directive principle of state policy.

As we have already discussed how the personal laws violate the rights of the women and do not consider them as equal to men and consider them secondary. There is a lot to consider before opting for a uniform civil code, we need to think whether or whether not to bring in the concept and a common civil law to everyone in the country, with so much of diversity and the legal pluralism existing in the country. Women empowerment has always been the talk of the town since decades now but not much has been done when the question of the personal laws and the women arises. The Indian state has in fact encouraged codifying the tribal communities laws but there are problems with it that they are ever evolving and keep on changing from time to time. Article 44 of the Indian Constitution expects from the State to secure a Uniform Civil Code for all the citizens of India. There exists a uniformity in the law when it comes to the legal criminal procedures but when it comes to the personal law there is no uniformity and there cannot be any uniformity because of the prevalence of the diversity in the country. The laws relating to every religion, be it Hindu, Christian, Parsi and Muslims are different and vary from one religion to another.

Some people and researchers say that Uniform Civil Code should be implemented and brought in the Indian Constitution in practicality, however we argue against it and say that it is not only the problem of the gender justice, there are many other problems that will arise with the upcoming of the Uniform Civil Code in the country. Polygamy, desertion are just a few examples to show the possibilities of the harassment against women. Indian women are formally granted equality in political rights through Indian Constitution but due to the

⁹Our Constitution (Subhash Kashyap)

different personal laws, women experience inequality, deprivation and violence. Within the family their position is pitiable.

In Shah Bano's Case, 1985 and in Sarla Mudgal Case, 1995¹⁰ and in Vallamattam case in 2003 Supreme Court has opined a need for the legislation for a common civil code or a uniform civil code envisaged by article 44 of India's Constitution should be enacted.. It said that gender issues need to be addressed very seriously and therefore the personal laws can be amended and need to be amended rather than bringing up a whole new uniform civil code.

RECOMMENDATIONS AND CONCLUSIONS

While a UCC has the potential to promote gender equality and empower women by establishing uniform legal standards, its implementation requires careful consideration of religious sensitivities, social dynamics, and the need to ensure justice for all citizens, regardless of gender or religious affiliation. By embracing inclusive dialogue and gender-sensitive reforms, India can navigate the challenges posed by its diverse society while advancing towards a more just and equitable legal framework. It is easy to say that we will bring in the Uniform Civil Code, but an important question that arises is that no one has ever seen a temple and a mosque side by side whereas, the Temple, Gurudwara and the Church can be seen together. Thus, we personally feel that there is no need for the codification of the Uniform Civil Code and the only need of the hour is to amend the personal laws.

¹⁰ AIR 1995 SC 1531