

TOPIC: UNIFORM CIVIL CODE v. PERSONAL LAWS: A CONTEMPORARY ISSUE

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ABSTRACT

The main focus of this paper is on the idea of the “Uniform Civil Code and its legal implications. The basic nature of the Uniform Civil Code is examined in this paper, as well as what it means and its legal interpretations and theories. This paper begins with an overview to the Uniform Civil Code, which outlines the definition of the Uniform Civil Code and explains its history and where it evolved from. It also explores the need or desire for the Uniform Civil Code in this part, including whether or not the Uniform Civil Code should be enforced and what the benefits and drawbacks are. As we move closer to the research paper's main point, this paper discusses the relationship between the Uniform Civil Code and secularism, as well as how the introduction of the Uniform Civil Code could lead to the nation's disintegration and the breakdown of peace and harmony among the citizens.

The Uniform Civil Code and fundamental rights are then discussed further. This paper also discusses the Indian judiciary's judgments and beliefs toward the Uniform Civil Code. Last but not least, this paper comes to a conclusion with a collection of suggestions and conclusions.”

Keywords: Uniform Civil Code, Fundamental Rights, Secularism, Constitution, Judiciary

INTRODUCTION

India is a land where Hinduism, Islam, Buddhism, Jainism, Zoroastrianism, Christianity, Sikhism, and other religions are practised. India is a secular country and it is incorporated into our Constitution and was added to the preamble after the 42nd Amendment in 1976. The word secular applies to the idea that the state will not follow any specific religion and that people will not be discriminated against because of their religious beliefs. This means that people will have the right to practise whatever religion they choose. This is also enshrined in our Constitution as a fundamental right under Article 25ⁱ and 26ⁱⁱ. “This word is extremely significant because it is important to remember that the division of India and Pakistan” was caused by religious differences. Religion has always been a source of controversy and has been used as a tool by political institutions. Religion plays a role in the Israeli-Palestinian conflict. Different religions “in India are governed by different personal rules. The Hindu Marriage Act of 1956, for example, governs Hindus, Sikhs, Jains, and Buddhists in matters of marriage, divorce, and maintenance. Christians are governed by Christian rules, while Muslims are governed by Islamic law. In India, there are three broad categories of personal law: Hindu Law, Christian Laws and Islamic Law.”

India is a secular country, which means it does not adhere to any particular religion. “It means that the state will not depend on religious institutions to make decisions for it, that it will not interfere with religious affairs, and that religion will not interfere with the state's” effectiveness. Since the 1990s, India has emerged as a major force. It is the “world's largest democracy and second most populous nation. It has a powerful military and a strong cultural presence, and its economy is rapidly rising and powerful. With so many linguistic, cultural, and religious identities, India is a very diverse country. In their personal laws, various religious groups have different personal laws that apply to different classes of citizens. Hindu Marriage Act, Hindu Succession Act, Hindu Adoption and Maintenance Act, and Hindu Guardianship Act are for different purposes such as marriage, adoption, succession, and guardianship. Muslims and Christians are regulated by separate personal laws, and the reason for this is that each religious community has different values, traditions, and activities, and it is likely that the practises and beliefs of one” faith might be confused for those of another, so we have separate personal laws for the peaceful functioning of society. It is clear that an individual's personal laws resolve

issues such as succession, marriage, divorce, inheritance, adoption, maintenance, guardianship, etc. A portion of them exists as a result of the complexity in distributing justice since different types of judgement should be rendered in different circumstances. The part of the distribution of justice that requires to be uniform in its implementation faces a lot of difficulty, so to address this, decisive steps towards national consolidation were taken in the form of the concept of Uniform civil code, which was first seriously mooted in the constituent Assembly in 1947.”

The Indian constitution states in article 44, Directive Principles of State Policy, that the state must aim to maintain a uniform civil code in the country for its citizens. .Even though we talk about peace, harmony, and brotherhood, when it comes to the Hindu-Muslim relationship, we are often traced back to the bloodshed that occurred during the independence and ousting of the British Raj.”

The current issue stems from “the fact that there are disparities and inconsistencies in personal laws. There is no uniformity. There have also been cases where personal laws have denied or failed to grant women their rights. The Uniform Civil Code may be enacted to fix these deficiencies. The Uniform Civil Code is a collection of uniform personal laws that apply to all residents of India. This code would supersede India's current religious personal laws, creating a uniform rule that will apply to all people, regardless of religion. Under Article 44 of our Constitution, the framers intended for this to happen. However, it has been met with fierce opposition because it is thought to be in violation of Article 25 of the Constitution.

HISTORICAL BACKGROUND

The demand for women's rights, democracy, and secularism sparked the UCC movement around the beginning of the 20th century. A contrasting system of personal laws exists in a multicultural society like India. During the British Raj, personal laws were first drafted, mostly for Hindus and Muslims. Britishers gave legal exemption to certain particular topics in Hindu and Muslim laws because they felt that interfering in religious matters would be harmful to their friendly trade. The legal system in the early 19th century was a patchwork of different laws. Because of the perplexing state of law's applicability, it was necessary to organise and

rationalise the legal structure. As a result, they took the first step toward codification of rules. They found that the country's general law was in desperate need of revision. The purpose of codifications seemed to be to obtain certainty and uniformity.

Law codification was made possible thanks to the active participation of scholars from both cultures. “The next major historical venue for the UCC debate was during the constituent assembly debates, when the vision for a free India was forged. The decision to include it in the Directive Principles of State Policy, Article 35 in the draft, and Article 44 in the final Constitution was based on assurances from Nehru and Gandhi that the UCC's enactment would be postponed, but that it would remain a state goal. This compromise, however, was met with strong opposition, with critics claiming that personal laws based on religion create divisions within the country by segregating various aspects of life. UCC controversy in subsequent decades has taken place in the space created by the problem between individual rights and group rights, on how to reconcile the contrasting positions of inviolability that each set of right claim for itself.” Later on, during the first 10 years of Independence, Indian Government passed “Hindu Code Bill” even though it faced strong oppositions from conservative Hindus. It was the first major movement of democratic State. Until Independence in 1947, a few law reforms were passed to improve the condition of women; Dissolution of Muslim Marriage Act 1939 is an example.” In subsequent years, records of legislature “wing of the state in making efforts to unify the nation under a common civil code includes enactment of

- Special Marriage Act 1954
- The Hindu Code 1955-56
- Dowry Prohibition Act 1961”

UCC received major attention in the height of the “Shah Bano case” in 1985. It heads too many debates over the controversial issue of UCC.

Implementation of Uniform Civil Code

The founding fathers of the constitution proposed having one rule for all people of this country by including article 44 in the constitution, which provides for the creation of a Uniform Civil Code. “The state shall endeavour to secure for the people a Uniform Civil Code,” according to

Article 44 of the constitution. The clause is carefully worded, requiring the state to "encourage" rather than "enact" a uniform civil code. It isn't time-bound and doesn't have a sense of impending doom. This clause cannot be read in isolation from other constitutional clauses that guarantee equality before the law and equal protection under the law. However, the idea of UCC as a mere academic exercise or as a means to do away, prompted by ulterior motives, with a demonical character of the legal system can only be productive of more mischief than the benefits it seeks to confer. There is a need to shun away the will of the people to carry out the spirit of article 44. The true spirit of this provision is to establish a homogenous society which is pure and is not divided on religion and caste lines, in consonance with the other provisions of the constitution."

Fact is not denied that, India is a land of diversities and different religions follow their own personal laws in family matters, which largely differ, from one another. In the words of Krishna Iyer, "A common civil code is no ideal, it is a goal we must hasten slowly but not practice that the fine art of standing still. Our jurists and judges, our statesmen and leaders of communities must go to the good in every personal law and nationalize it."

Such a blend of principle and tactic will help establish the new dharma—a progressive, just, common, and family code. A common civil code is the manifestation of equalization in family relations among persons who hold different religious views, but are like-situated on temporal affairs. It is very unfortunate that even today after seventy years of independence that concept is still a dream, which "was considered by our constitution makers as a golden thread for unity and integrity of the country. Thus, at this point it is very important to know the opinion of various religious communities in this respect."

UNIFORM CIVIL CODE AND THE PERSONAL LAWS

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. "Under the Hindu Law specifically, in the year 1955 and 1996, the Hindu women did not enjoy equal rights along with the Hindu men be it anything or

any matter. Before 1955 polygamy was prevalent among the Hindus. The Hindu women could not hold any property as its absolute owner except in the case of Stridhan. She had only limited estate which was passed onto the legal last full heirs of the male owner called revisionary on her death. She owned a limited interest, in the sense that whenever an issue came up for the desertion of the property and mortgaging or selling the property, she could not do it on her own.”

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. Even though the Hindu law has been codified, certain discriminatory provisions still exist even today. For example a Hindu woman is not a coparcener in Hindu coparceners except in a few states like Andhra Pradesh, Maharashtra, Karnataka and Tamil Nadu.” Consequently she is not entitled to the share in the coparcenary. “Thus it is oblivion to the fact that the codification of personal laws of Hindus has not succeeded completely in eradicating the gender inequality.

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. Women are not even given the right to divorce their husbands, when particularly the method of divorcing the wife by the husband by pronouncing triple Talaq is highly discriminatory. This is inspite of the message given in the Holy Quran. This has been held voidⁱⁱⁱ and unlawful, recently in the Allahabad High court judgement.

Even in the matter of succession, a Muslim woman is discriminated against the assertion of certain Muslim scholars that the Islam in this regard is more progressive and liberal. The legal position is that when two scholars or residuary of opposite sex but of the same degree inherit

the property of the deceased, the Muslim” male gets twice the share of the female. “Even in the matter of maintenance, the muslim wife is not required to be maintained beyond the Iddat period. 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 all, however there is a controversy regarding the Muslim men following this provision.

In the famous case of Mohd Ahmed Khan v. Shah Bano Begum^{iv}, the Supreme Court speaking through Y.V. Chandrachud, the then Chief Justice held that the Section 125^v of the Criminal Procedure Code is also applicable to the Muslims and that even a muslim husband” is liable to maintain his divorced wife beyond the “iddat period. The controversy began and the parliament had passed the Muslim Women (Protection of Rights on Divorce) Act, 1986 to overrule the judgement in the Shah Bano Case. The effect of this act is that a muslim husband is not liable to maintain his divorced wife beyond the iddat period unless both the spouses submit to the court at the appropriate time that they would like to be governed by the Criminal Procedure Code. This is like having the provision but not using it for the sake of protection of the Personal law space and not giving enough justice to the woman who is suffering so much.”

Uniform Civil Code and Constitution of India:

The main problem lies in the fact that if the makers of Constitution had intended for a uniform Civil code to be enforced in India, then they should not have placed it under Article 44 of the Constitution as a part of the Directive Principles of the State Policy. The Directive Principles of State Policy contained in the Part IV (Art. 36 - 51), as the name suggests are mere directions to the State. They need not be mandatorily followed and are not enforceable by the Court. They are merely positive obligations on the State which will help in good governance.”

The Preamble “of the Indian Constitution clearly states that India is a Secular, Democratic, Republic. This means that there is no State religion. A secular state shall not discriminate against anyone on the ground of religion. A religion is only concerned with relation of man with God. It means that religion should not be interfering with the mundane life of an individual. The process of secularisation is intimately connected with the goal of uniform Civil Code like a cause and effect. In the case of S.R. Bommai v. Union of India^{vi}, as per the Justice Jeevan Reddy, it was 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. In India, there exists a concept of positive secularism as distinguished from the doctrine of secularism accepted by the United States and the European States i.e. there is a wall of separation between the religion and the state.”

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. On the contrary, India has not undergone any kind of renaissance or reformation and thus the responsibility lies on the state to interfere in the matters of religion so as to remove the impediments in the governance of the state. The reason why a country like India cannot undergo a renaissance is very clear. The chances are that the conflicts, instead of decreasing may go on increasing and showing reverse effects on the laws that are made. For instance, a practice or a tradition in one's personal law may be acceptable but on the other hand, it may not be acceptable to the people of other personal laws. So, when the traditions will be in practice, the nature of the conflict will transform itself from general differences to hard-core animosity. People find it difficult to accept or adapt to certain changes and when it comes to a society like India where religion defines the way of life, people connect themselves with their religion instead of understanding that it is the religion which is made by human beings and that human beings are not made by the religion. 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 the state does not operate on any one particular religion and shall not discriminate on the ground of religion.” Article 25 and 26 of the Constitution of India “as enforceable fundamental rights guarantee freedom of religion and freedom to manage religious affairs. At the same time Article 44 which is not enforceable in a court of Law states that the state shall endeavour to secure a uniform civil code in India. Uniform civil Code is the uniform method or the uniform law that governs the people as a uniform law and does not discriminate on the basis of any religion or faith.

As a new principle evolves and comes into the knowledge of the people several questions arise and criticisms pave their way. In unification of the personal laws, an important question that arose was 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.

***State of Bombay V. Narasu Appa Mali*^{vii}**

Relating to the “Bombay Prohibition of Bigamous Marriage Act 1946”, the validity of which was challenged on the basis of Article 14,15 & 25 of the Constitution of India, Major issues involving the case were:

- a) Whether the personal laws of Hindus is “law” within the meaning of Article 13(3) (b) and Article 372(3)?
- b) Whether an alteration of the personal law of one religious’ community, without a similar alteration in that of others, violates equality under law?”

It was held by the court that:

Personal laws are not included in the “law” referred to in Article 13(3) and are not the “law in force” referred to Article 372(3). Bombay prevention of Hindu Bigamous Marriage Act, 1946 was found not to be violative of Article 14 as the State was free to bring in social reforms in stages. If religious practices are opposed to public order, morality or a policy of social welfare, duty of which is upon the State, then the good of the people of the State as a whole will be preferred over religious practices.”

Special Marriage Act, 1954:

This form of marriage act provides a civil marriage of two person of different sex irrespective of their religion. “This law prevailed in Indian to have their marriage outside the customs of their personal law. This law is applied in all over the India except Jammu and Kashmir because

they have given the special status under article 370. His law is almost identical to the Hindu marriage act 1955 this law gives idea of how the law is secularized towards the Hindus. The special marriage acts all Muslim community people to marry under it. Under this act polygamy was illegal and the system of succession would be governed by Indian succession act even the system of divorced is also governed by this law. But for divorce there are certain provisions that are followed in Goa. Muslim community people that have register their marriage in Goa cannot take more than one wife according to this act and during the marriage time period all the property and wealth owned by the couple each spouse have right in the property the share half –half of the property and if spouse dies the half share of the property were goes to the other. And the other half property was divided between the children in the same ratio.”

SUGGESTIONS

The current trends indicate how little has been achieved in securing a UCC and how very stupendous a task is still ahead. “The following suggestions are made in this regard:

- A Uniform law though it is highly desirable, enactment thereof in one go perhaps may be counterproductive to unity and integrity of nation. In a democracy governed by rule of law, gradual progressive law should be brought about. The process of law can remedy the mischief of defect, which is most acute, at stages.
- A comparative study of the various personal laws should be made with a view to ascertain the similarities as well as dissimilarities between their provisions. A law of personal status based on those principles, which are almost identical under all the personal laws can then be enacted and enforced immediately.
- A family law Board should be up in the Union law Ministry in the pattern of the company law Board working under the Ministry of Industrial Affairs.
- The reasons for the ineffectiveness of the existing family legislation such as the Dowry Prohibition Act, The Hindu Code, and The Dissolution of Muslim Marriage Act should be investigated.”

- The solution to the problem under review seems to be the introduction of a transitory dual system of family law.

The personal laws of the religious communities may not be scrapped in one go, thus it must be perched of all unsatisfactory elements. On the other hand, we may enact a UCC based on the cream of modern family jurisprudence and put it in referendum. If the majority of members of a particular community work for its adoption, then it shall be made compulsorily applicable to them; otherwise it may be allowed to continue to be governed by its separate personal laws as reformed and modernized whenever necessary and if such a dual system has really virtue in it, the separate personal laws shall die out in the course of time. Hence, a successful completion of this task leading to a smooth materialization of the idea of Article 44 needs a wise exercise of its authority and a liberal use of its resources by its State.

CONCLUSION

As “a conclusion it would be right to conclude that a secular India needs a uniform Civil Code but urgent need to force any Uniform Civil Code on a population resistant to change is not necessary. Most of people are not truly ready to adopt secular laws different from religious customs. The Uniform Civil Code can be successfully introduced only once we achieve improved levels of literacy, awareness on several socio-political issues and legitimate discussions and increased social and religious mobility. The ultimate aim of reforming Uniform Civil Code should be for ensuring equality, unity and integrity of the nation and justice both men and women.

The Uniform Civil Code is not just a matter of gender justice, it is also a question of how a nation accommodates its own diversity. In India, freedom of religion exists with other rights like equality and non-discrimination. Instead of reaching in indiscriminately or leaving cultures entirely to themselves, India's liberal multiculturalism strikes a balance. It has been more ready to reform majority practices, while offering protections to vulnerable individuals within minority groups.”

While implementing the UCC “throughout the country we will have to take into light the consideration of the fact that the problems of the minority religious groups should be properly addressed including insecurity of complete loss of identify within Indian society. “It is because a Uniform Civil law cannot be successfully implemented until and unless it gets support and acceptance from all the concerned stakeholders and communities. At the same time while enacting the UCC only modern laws should be incorporated in it regarding the aggressive heads. Mobilization of Hindus, Muslims, Christians and Parsi opinion in this direction is sure to submit salutary results and reduce fundamentalist resistance.”

The common view is that the Western democracies are a template for liberalism. But how do the US and France conceptualise law and religious freedom, the balance between majority and minority group rights? What do Canada and the UK do? But the problem is that India cannot have the Western Countries as a model because the conditions are not similar. Most of the western countries, despite claiming to be secular, tend to show a bias towards Christianity and the Middle East Countries clearly follow Islamic Law.”

Even as we “push for a Uniform Civil Code, we should know that law cannot exist too far apart from social norms. Without social support, or state capacities to implement our own principles, we risk pushing people into seeking alternative community justice, like sharia courts or khap panchayats. A common civil code will have to be careful in its choices. Then there remains the question of whether it should be obligatory, erasing all personal law, or whether it should allow Indians the option of choosing to live under their own religious umbrellas, if they prefer.

Either way, it is time that we outline our ideals and disagreements, in the pursuit of a dream common civil code. In the seven decades since the Constitution was enacted, there has been no sincere effort to even start such a dialogue.

It is also clear that Uniform Civil Code is not violative of Article 25 and 26 of the Constitution. It should rather be a new law and not the blend of personal laws. The problem in blending personal laws is that there is every chance for a bias to arise. The Parliament should introduce a new code similar to the Special Marriage Act of 1954 which does not extend any favours or bias towards any religion.

What the people must understand is that religion and laws are two different concepts. This is because the Constitution allows the people to follow their religion which will continue despite the enactment of a uniform code. The uniform code will nowhere curb their right to follow or profess their religion. For example, the religious scriptures prescribe punishments for crimes but the Indian Penal Code, 1860 is the only penal laws that are followed in India. Thus, it is high time that people start viewing religion and law as two different concepts and focus on the empowerment of all class of people. There is an urgent need to bring in uniform laws in India.”

ENDNOTES

ⁱ Art. 25. Freedom of conscience and free profession, practice and propagation of religion: (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

ⁱⁱ Art. 26. Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right:

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law

ⁱⁱⁱ Shayara Bano vs Union Of India And Ors., W.P. (C) No. 118 of 2016.

^{iv} Mohd Ahmed Khan v. Shah Bano Begum 1985 SCR (3) 844.

^v Order for maintenance of wives, children and parents:

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself

^{vi} S.R. Bommai v. Union of India 1994 AIR 1918.

^{vii} The State Of Bombay vs Narasu Appa Mali, 1951 AIR 1952 Bom 84