

UNIFORM CIVIL CODE TOWARDS GENDER JUSTICE

Written by **Rahul Jain**

Ph.D. Scholar, Bennett University, Greater Noida, India

Orcid: 0009-0003-2096-3082

ABSTRACT

The paper is aimed at explaining the concept of “Uniform Civil Code towards Gender Justice.” A civil code may be a set of laws that governs the rights concerning property as in personal matters like divorce, marriage, adoption, inheritance, etc. Article 44 of the Indian Constitution mandates the implementation of uniform civil laws for personal laws. While enactment of this civil code is restricted under it being a non-binding Directive Principle of State policy and the jealous resistance of critics who cite the compromise of religious identities of minorities. This leads to overlooking objectivity and pragmatism during fervent deliberations on this code.

Despite the constitution’s emphasis on equality and justice for all, is a true sense of equality truly afforded to women? In India, women make up nearly half of the population but continue to face the effects of a patriarchal society that is upheld by tradition, religion, and culture. In Indian society, women were placed in a subordinate position to men due to traditional, religious, and cultural beliefs. As a result, women had to struggle for equality, liberty, and justice. Frequently, women are subject to victimization and neglect. Religion, however, has been a significant obstacle in acknowledging women's rights both within the family and in society. Women have been subjected to bias based on their gender, causing them to be marginalized. The Constitution upholds gender equality as an ideal that can be attained through specific affirmative measures.

This paper is an attempt to relate the question of gender justice and equality to the issue of the adoption of a uniform civil code, its need, and its relevance for enactment throughout the territory of India.

Keywords- Constitution, Egalitarian Society, Right to Equality, Gender Justice.

INTRODUCTION

The Constitution of India upholds the principle of Fundamental Rights, which includes the right to equality. This means that all citizens are considered equal before the law and are entitled to receive equal protection under the law, regardless of their caste, creed, religion, race, sex, or any other characteristicⁱ. Yet, there is a significant difference in the legal rights granted to men and women in personal laws. Despite the government's adoption of secularism, this issue has not been resolved.

“Achieving gender equality is not just a mere objective, but rather a necessary condition to effectively address poverty reduction, encourage personal growth, and establish effective governance.” – Kofi Annan.

In the pillar of humanity, women are exposed to various problems and risks simply because of their gender. Despite constitutional and statutory protections, women still face difficulties and there have been no significant results in terms of their protection.ⁱⁱ Although the Indian Judiciary has made significant efforts, there are limitations on its jurisdiction, and it is unable to perform the duties of other branches of the government. In this Connection, the Uniform Civil Code, which is a constitutional requirement, is yet to be enacted into law by the Indian Legislature. Its purpose is to ensure that women, who suffer from inequalities in personal laws, are granted equal status. The tyranny of India is that women are prima facie identified and governed according to their religion and personal law, such as Hindu, Muslim, Christian, Jew, or Parsi. This way of thinking is the fundamental reason for our underdevelopment, prejudice, and numerous societal problems. It is necessary to understand the importance of having a Uniform Civil Code, which is a tool used to bring together the various laws related to personal matters in order to achieve gender justice.ⁱⁱⁱ In today's environment giving women equal rights, independence and the capacity to make their own life decisions is more crucial. It is essential to modernize our views on gender equality as society advances in other areas and not to force one's own beliefs and traditions onto other people or groups. The pursuit of justice and equality for women frequently intersects with contemporary concerns about freedom, secularism, and religion. To empower women in all areas including social status, gender bias, health, and security, is needed. Article 44 mandates that the state must establish a Uniform Civil Code for all citizens in India.

The Uniform Civil Code (UCC) clause in the Indian Constitution seeks the creation of a single body of law. UCC has the efficacy to harmonize many personal laws and gender equality for women. For the time being, the criminal code is the only area of legislation that is consistently applicable to everyone, regardless of their religion. In India, personal matters such as marriage and succession, are subject to different rules based on religion and gender. For instance, different laws govern marriage, divorce, succession, adoption, and maintenance for Hindus, Muslims, Christians, Parsi, Jews, and others. This issue of uniformity has been a contentious topic for many years, with some political parties advocating for legislation to address it.

CONCEPT OF UNIFORM CIVIL CODE

In India, various religious communities adhere to different personal laws. The main focus of Personal laws is on matters related to marriage, divorce, child custody, maintenance for divorced women, guardianship, adoption, succession, and inheritance. Religion discusses concepts such as immortality, devotion to God, pursuits of spiritual goals, and salvation, whereas personal law pertains to everyday worldly affairs. The Uniform Civil Code aims to standardize secular laws of a similar nature to govern all individuals equally, regardless of their religion, caste, or tribe. It restores the rights of the citizens who are subject to distinct personal laws according to their religion or caste. The civil code encompasses significant aspects such as the acquisition and administration of property, marriage, divorce, and adoption. Although the Uniform Civil Code is inserted in Directive Principles of State Policy under Article 44 of the Indian Constitution^{iv}, it is unfortunate that the courts cannot enforce it since it is considered to be a non-justiciable right due to various challenges.

This expression “Uniform Civil Code”^v consists of three terms “Uniform” refers to something consistent and unchanging in every circumstance, or a type of object that deviates from the norm. "Civil" is derived from the Latin word “Civilis” which signifies a citizen, while "Code" is derived from the Latin word "codex" which refers to the compilation of laws, which was initially written on wooden tablets coated with wax and later on parchment or papyrus sheets.

The implementation of the Uniform Civil Code is seen as a step towards secularizing personal laws, without any religious affiliations. The concept of a Uniform Civil Code in India pertains to a complete Civil Law Code that applies to all citizens, regardless of their religious background. Essentially, the concept of UCC has two components.^{vi}

1. To ensure that there is consistency and equality in the laws that govern different communities, regardless of gender
2. To ensure that there is equality and gender justice between men and women within these communities.

It is possible to have uniform civil laws just like we have uniform criminal laws. Personal laws that differ based on one's gender conflict with the principles of equality and justice. The Uniform Civil Code was a step of progressive change and was strengthened by the example of its success at Goa.

CONCEPT OF GENDER JUSTICE

In general, Gender justice pertains to the autonomous action made to secure freedom for women and promote their rights through judicial reforms and the involvement of women in social and economic policies. Gender equity can only be defined practically within an exclusive framework. Political ideology consists of beliefs about what is 'just' and 'good', in human interactions and how to achieve these outcomes.^{vii}

Gender justice encompasses more than merely highlighting the dynamics between men and women. It refers to a place in which women and men can be treated as wholly human and where strategies are developed to transform society as a whole to ensure fairness and equality. Additionally, it implies a transition from arbitrary to well-justified, balanced, and equitable social connections. Gender justice is a tool to lessen the disparities between men and women that result from women's subordination to males. It manifests a result of gender justice and also makes it easier to distinguish between what needs to be accomplished and how.

UCC HISTORICAL DEVELOPMENT

In the Middle period,^{viii} the Hindus had shastra whose interpretation was done by Brahmins and executed by the king. No matter what type the case is the answer for them all was given in the shastra. Similarly, the Muslims had Sharia law which was interpreted by the Kazis and the Nawabs had executed it. When the East India Company came, they enforced English Common Law on their English subjects for which courts were established. But when it came to solving

the dispute of the Indian subjects the question arose of which law should be followed. Both Brahmins and Kazis were called to interpret the Shastra and Sharia law. Afterward, In 1840, the British Government framed Uniform laws for crimes, evidence, and contracts based on the Lex Loci report. However, the personal laws of Hindus and Muslims were kept outside of this codification. Conversely, the British Indian Judiciary allowed British Judges to apply Hindu, Muslim, and English law. During that time, reformers were speaking out against laws that restricted women's rights under religious practices such as Sati, which discriminated against them.

The Hindu personal Laws were codified by the parliament in 1956 amidst significant opposition. This code Bill has been split into four different parts, which are as follows

- a) The Hindu Marriage Act, 1955
- b) The Hindu Succession Act, 1956
- c) The Hindu Adoption and Maintenance Act, 1965
- d) The Hindu Minority and Guardianship Act, 1956

Despite the insistence of Prime Minister Nehru and his supporters, as well as women's activists, for a uniform civil code, despite facing strong opposition, it was eventually necessary for them to concede and include it in the Directive Principles. Although the Indian Penal Code and Criminal Procedure Code both comprised comprehensive criminal laws that were in effect in the nation.

GENDER INJUSTICE AND UNIFORM CIVIL CODE CONFLICT

The fact that our nation discriminates based on personal laws is evident from its historical development. Personal laws govern aspects such as marriage, divorce, maintenance, succession, minority, and guardianship. These laws establish norms, rules, and regulations governing personal relations within families. However, the personal laws that apply to Hindus, Muslims, Christians, etc., are patriarchal leading to unjust and discriminatory treatment of women.

Hindu Laws

- Gita Hariharan's case^{ix} challenged Section 6 of the Hindu Minority and Guardianship Act due to its discriminatory language that placed mothers in a subordinate position as guardians.
- The Supreme Court of India addressed the issue of the Uniform Civil Code in the case of Sarala Mudgal v. Union of India^x. It ruled that marriages conducted by Hindu men who converted to Islam intending to practice polygamy were not valid. If a Hindu man converted to Islam while his first marriage was still valid, his second marriage would be considered void as it would be unjust to his first wife.

According to CARA Guidelines on Adoption Regulations Act, 2017 a single male did not have the authority to adopt a girl child independently. Similarly, a single female has the authority to adopt a male child independently. But there should be a difference of 25 years between the child and the parent.^{xi}

Muslim Laws

- **In case of marriage:** Under Muslim law, a guardian has the authority to contract a marriage for their minor ward. However, there is a remedy called the "option of puberty" that allows the ward to repudiate the marriage upon attaining puberty but this option is even more restricted for females.^{xii} In addition, Shia Muslim males can enter into Muta marriages for an agreed time and there is no limit to the number of Muta marriages a Muslim male can contract whereas such practice is not recognized in Sunni Law.^{xiii}
- **In case of succession:** According to Shia laws, if a wife passes away and has a lineal descendant, the husband is entitled to 1/4th of the property^{xiv}. However, if there is no lineal descendant, then the husband takes 1/2 of the property but the wife receives only 1/8th. In cases where there is an intestate property, the daughter gets 1/2 of the property. But if there is a son, then the daughter becomes residuary and the son gets twice as much as the daughter. Before the Muslim Personal Law Act was implemented in 1937, women had no inheritance rights.
- **In Case of Maintenance:** The Shah Bano case brought about a significant change in Muslim personal laws where the Supreme Court ruled that women who were divorced by their husbands were entitled to maintenance under section 125 of the code of

criminal procedure. Before this milestone decision, Muslim women who were divorced received no financial support from their husbands as maintenance.

- **In the case of polygamy:** Although polygamy is illegal in India, Muslim men are allowed to have multiple wives. However, this privilege is not extended to women.
- **Special Marriage Act, 1954:** Even under the supposedly secular Special Marriage Act of 1954, gender bias is there, as it is in all current personal legislation. A Muslim, Christian, Parsi, or Jew has no longer access to the law of succession after entering into a civil marriage or a contract. On the other hand, a Hindu, Buddhist, Jain, or Sikh must follow the law of succession after entering into a civil marriage under the Special Marriage Act 1954.^{xv}

INDIAN CONSTITUTION AND UNIFORM CIVIL CODE

As we know Article 15^{xvi} of the Constitution prohibits discrimination based on race, religion, caste, sex, and place of birth.

Article 25 grants every individual the right to freely practice and propagate their religion, subject to public order, health, and morality while Article 26 allows religious denominations to manage their own affairs related to religion.

The citizens are granted basic fundamental rights that allow them freedom, which would be violated if UCC is implemented. However, the question remains whether religion and personal laws are interchangeable. These two factors are distinct and separate. Religion pertains to practices within religious communities, such as spirituality, worship, and religious rituals. Personal laws, on the other hand, deal with matters such as marriage, divorce, adoption, succession, and inheritance, and have no connection to religious practices.

IN WHAT AREAS DO WE NEED UNIFORMITY

There are some specific areas where we need uniformity in our laws. These are^{xvii}

First: In IPC'S section 494 which says that "while having a living spouse" if someone does a second marriage, then it is a crime.^{xviii} There is only one exception to this uniform law if a man is a muslim then he can do up to four marriages. That's an exception to our penal laws. Now,

uniformity cannot come here like that you can do as many marriages as you want. The progressive world is monogamous so uniformity will also come in that line.

Second: Hindu women inherit an equal share in property whereas Muslim women, compared to male relatives can inherit less than half of the share.^{xix}

Third: Muslim women cannot claim maintenance for a long time, unlike Hindu women.^{xx}

Fourth: Indian law requires a consistent minimum age for marriage for all religions, which is 18 years for females and 21 years for males. Marrying below this age is considered child marriage and is prohibited. However, there is an exception in muslim law. In Islam, the marriage of a minor who has attained puberty is considered valid. Each religion in India has its own distinct rules and regulations regarding marriage.^{xxi}

NEED FOR UNIFORM CIVIL CODE

It Will Integrate India

The implementation of a uniform civil code in India will bring about greater integration than ever before since independence. The existing biased treatment of certain religious communities by the law contributes to a lot of hostility, which can be avoided with a uniform civil code. This will ensure that every Indian, regardless of caste, religion, or tribe, follows the same national civil code of conduct.^{xxii}

It Will Help in Reducing Plebiscite Bank Politics

Enforcing a uniform civil code would help to reduce the practice of vote bank politics, which is commonly seen during elections by political parties. If all religions are governed by the same laws, public servants of the state will not be able to offer special favors to certain minorities in exchange for their plebiscite. The absence of a uniform civil code is harmful to true democracy and needs to be reevaluated.^{xxiii}

Personal Laws are a Loophole

The various personal laws are essentially a tool for those in power to exploit. Our panchayats persistents provide decisions that go against our constitution, and we fail to take no action to address it. Human rights violations such as honor killings and female feticide occur throughout our country.^{xxiv}

Every contemporary Nation has it

A contemporary and progressive nation is characterized by a homogeneous civil code, which indicates the country is far from caste and religious politics. Despite being a top performer in terms of economic growth, social progress has been lacking. We have regressed culturally and socially and are neither modern nor traditional. The implementation of a homogeneous civil code can aid in propelling society forward and bring India closer to its goal of becoming a developed nation.^{xxv}

It will Give More Rights to the Women

Implementing a uniform civil code can help improve the status of women in India. Our society is heavily biased towards men and by continuing to follow outdated traditions, we are allowing Indian women to be subjected to oppression and abuse. A uniform civil code can bring about a change in these traditions that are no longer relevant in today's society where we recognize the importance of treating women fairly and providing them with equal rights.^{xxvi}

All Indians Should be Treated equally

The personal laws in India favor specific religions, allowing Muslims to have multiple marriages while Hindus or Christians would face legal consequences for doing the same. This is not a fair and equal treatment of all citizens. All laws related to marriage, inheritance, family, and land need to be the same for every Indian citizen, in order to ensure that all Indians should be treated equally.^{xxvii}

It Promotes Real Secularism

Selective secularism is practiced in India, where some areas are secular while others are not. To ensure equality, a homogeneous civil code is necessary, where all citizens follow the same laws regardless of their religion. This approach is fair and unbiased. Implementing a uniform common code does not impede an individual's freedom to practice their religion, but rather ensures that everyone is treated equally under the law.^{xxviii}

ADVANTAGES^{xxix}

Gender equality

The implementation of a uniform common code across the country would allow for the elimination of gender discrimination. Currently, many religions and customs favor men over women, even though women are still fighting for equality after several years of independence. The laws of various religions are unfair toward women, particularly in matters of inheritance and succession. A uniform code would ensure equal treatment for both genders.^{xxx}

A lift to national integrity

The implementation of UCC would promote honesty on a national level. Despite the existence of diverse cultural values, having a unified set of laws that applies to all individuals regardless of gender, social status, religion, etc. would contribute to national unity.^{xxxi}

Foundation of Secularism

The preamble of our constitution clearly states that India is a socialist, secular, democratic country. Despite several years of independence, India still has separate personal laws for different religions such as for Hindus, Muslims, and Christians. For this reason, several doubts have been raised about whether genuine secularism can be achieved without implementing a Uniform Civil Code.^{xxxii}

Social changes

India is expected to undergo a significant social transformation in this century once the Uniform Civil Code (UCC) is implemented throughout the country. Currently, Muslim women in India are not granted individual rights to marriage and divorce, unlike in other Muslim countries such as Pakistan, Bangladesh, Turkey, and Morocco where women have structured individual laws. With the implementation of UCC, Indian women, including those from Muslim and Christian communities, will also have access to a structured individual law, which will serve as a stepping stone towards a new social change across the nation.^{xxxiii}

UNIFORM CIVIL CODE- CHALLENGES IN ITS IMPLEMENTATION^{xxxiv}

A threat to communal harmony

The idea of implementing a Uniform Civil Code has caused concern among various religions, especially minorities, due to potential misconceptions that it goes against their religious beliefs and values. To ensure the unity of the nation is not disrupted, those in power should first gain the trust of minorities before implementing the UCC.^{xxxv}

Government's impedance into individual rights

Many people believe that the government's interference in personal freedom is a common occurrence. However, the Uniform Civil Code is solely aimed at safeguarding the rights of all citizens.^{xxxvi}

Not the right time for execution

The Muslim community is opposing the implementation of the Uniform Civil Code and states that it is not appropriate at this moment. They are also arguing that the matter should be considered along with other current issues such as the silence of authorities regarding the saffronization of schools, beef-related controversies, etc. They believe that these issues are alarming them and further state that it is a case of the majority overriding the rights of minorities.^{xxxvii}

Difficult because of India's diversity

Implementing a Uniform Civil Code is a challenging task due to the vast diversity present in our country. The existence of social differences among various states and communities adds another obstacle to establishing a unified law for all individuals.

LANDMARK CASES

Mohd. Ahmed Khan v. Shah Bano Begum^{xxxviii}

In 1985, the Shah Bano case challenged fundamental principles when a Muslim woman named Shah Bano, who was married to Mohammed Ahmad Khan, filed a petition at the local court in Indore under section 125 of the Code of Criminal Procedure. She requested a maintenance

amount for herself and her children. The husband used his right under Islamic law to give an irreversible divorce to his wife. He argued that since she was no longer his wife, he was not obligated to provide maintenance for her, except as prescribed under Islamic law, which amounted to Rs. 5400. The Supreme Court resolved the issue in favour of Shah Bano, who had been mistreated despite her faith, and it was finally settled under the Criminal Procedure Code. However, this decision caused some unrest within the Muslim community. As a result, the Muslim Women (Protection of Rights on Divorce) Act, 1986 was enacted, which stipulates that husbands must provide maintenance to their wives during the iddat period. In Shah Bano's case, the court awarded her maintenance. This demonstrates that laws apply equally to all religions.

***Smt. Sarla Mudgal v. Union of India*^{xxix}**

In Sarla Mudgal's case, the issue was that the husband had accomplished the second marriage while transforming into Islam but without disintegrating the first marriage. If the interpretation of sections 5 and 11 of the Hindu Marriage Act, 1955 is done then he can't be held liable under the Hindu Marriage Act for polygamy because section 5 uses the word, "If a marriage is criminalized between two Hindus." The Supreme Court has settled the issue by saying that if there is an altercation between two personal laws, then such law should triumph which is serving the purpose best. So, it was held that a conversion to Islam does not amount to automatic cessation of the marriage performed under Hindu law.

***Danial Latifi v. Union of India*^{xl}**

The Supreme Court of India has made a ruling in the case of Daniel Latafi, stating that a Muslim husband is responsible for providing Maintenance for his divorced wife even after the Iddat period, based on their interpretation of S.3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986. While acknowledging the challenges of creating a common code for individuals of different faiths, the Court expressed disappointment that Art.44 has not been implemented. They have called for the State to take action in enacting a Uniform Civil Code (UCC), as they have the legislative power to do so. Without such a code, some people are exploiting loopholes in Hindu personal law by converting to Islam to enter into second marriages. The Court has declared that such marriages are invalid under Sec.494 of the Indian Penal Code if the first marriage has not been dissolved, but they have not declared polygamy or certain aspects of Muslim personal law as void under Art.14 and 15 of the Constitution of

India. The Court has urged for a UCC to protect the oppressed and promote national unity and solidarity.

Lily Thomas and Others v. Union of India^{xli}

The court spurned the disputation that the decision in Sarla Mudgal vs. Union of India is violative of rights indemnified under Article 21 of the constitution. The verdict in the Sarla Mudgal case has either altered the procedure or generated any law for the of the person sought to have proceeded opposed for the alleged commission of offence beneath section 494 IPC.” So, if the Uniform Civil Code had been provided for the citizen as the constitutional mandate, then the problems which have arisen in the cases of Mohamed Ahmed Khan v. Shah Bano^{xlii}, Daniel Latifi & others v. Union of India^{xliii} would’ve not been there.

CONCLUSION

Although there has been a lot of talk about women’s rights and empowerment, very little has been done. The treatment of women in personal laws is an area of concern that needs attention. While the Hindu Code has undergone significant changes, Muslim laws remain strict and outdated, leaving women vulnerable to the whims of men. Therefore, it is crucial to implement a Uniform Civil Code that treats all genders equally and without bias. Justice Kuldeep Singh was correct in stating that personal laws and religion are not linked. Matters such as marriage and succession are secular and should not be subject to the Right to Religion.

ENDNOTES

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