

One Nation, One Legislation: A critical study of Uniform Civil Code

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Abstract: *The inquiry concerning whether the following 70 years of the Constitution India is sufficiently ready to have a uniform civil code has been raised once more. The Uniform Civil Code (UCC) has consistently been funnelled as a viable instrument to acknowledge and impact the strengthening of the Indian society. This paper tries to evaluate the aspect of the UCC and its legal dimensions. It also examines the basic essence of the Uniform Civil Code (UCC) and the debate on its necessity as well as dubitation about its nature to find out the extent to which the question of social discrimination and equality gets addressed. Apart from that, it is also of utmost importance to review how the judicial authority and legislative authority have been trying to address the subject of gender parity and equality through the discourse Uniform Civil Code (UCC).*

Key Words: *The Uniform Civil Code (UCC), Fundamental Right, Secularism, Constitution of India.*

1. INTRODUCTION:

India is a land wherein different religions are followed like Hinduism, Islam, Buddhism, Jainism, Zoroastrianism, Christianity, Sikhism, and so on and due to that India has variety of family laws. The Christians are being governed by Christians Marriage Act 1872, the Indian Divorce Act, 1869 and the Indian Succession Act, 1925. The Jews have their own uncodified standard marriage law and in their succession matters they are administered by the Succession Act of 1925. The Parsis are governed by their own Parsi Marriage and Divorce Act, 1936, and their own different law of inheritance contained in the Succession Act which is to some degree not quite the same as the rest of the other Succession Act. Hindus and Muslims are governed by their own different not quite the same as the rest of the Succession Act. Hindus and Muslims have their own different personal laws. Hindu law has all things considered been secularized and modernized by statutory enactments. But, Muslim law is still principally unmodified and conventional its substance and approach. The nature of law is communal insofar because each community or religious group has its own distinct and unique laws to govern their domestic relations.

It is also personal insofar as each person carries his own law wherever he goes in India. It is likewise personal to the extent that every individual conveys his own law wherever he goes in India. The family law is somewhat statutory and mostly non-statutory. The present-day family law is therefore a labyrinth. There are no *lex loci* in India in issues of marriage, succession and family-relations. In this way it is confounding.

So as to accomplish consistency and uniformity of law, its secularization and making it even handed and non-discriminatory, the Constitution contains Art.44 of the Directive Principles of State Policy which states that; “The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India”.

2. OBJECTIVES OF THE STUDY: -

To know the Concept of Uniform Civil Code along with analyzing the lacunas affecting its implementation throughout India.

3. UNIFORM CIVIL CODE (UCC) AND THE PERSONAL LAWS: -

In most personal matters, women are considered inferior to men, particularly when it comes to discussing the topic of marriage or succession, adoption or even inheritance. Specifically under the Hindu Law, in the year of 1955 and 1996, the Hindu women did not enjoy equal rights with the Hindu men in terms of anything or any matter. Polygamy was prevalent among the Hindus before 1955. Except in the case of *Stridhan*, the Hindu women could not keep any property as their absolute proprietor. She had an only limited estate which on her death was passed on to the male owner's legal last full heirs, called *revisionary*. She had a limited interest, in the sense that she could not do it on her own whenever an issue arose for the desertion of the property and the mortgage or selling of the land. When it came to marrying a Hindu woman had no right to adopt a child by themselves. Throughout her husband's life, she could not be the good guardian of her children. These examples are sufficiently illustrative to show the patriarchal nature of Indian society. Despite the codification of Hindu law, some discriminatory provisions still exist even today. For Hindu coparceners, for example, a Hindu woman is not a coparcener except in a few states such as Andhra Pradesh, Maharashtra, Karnataka, and Tamil Nadu. Therefore she is not entitled to the coparcenary share. Thus it is forgetful that the codification of Hindus' personal laws has not resulted in eradicating gender inequality altogether.

When it comes to discussing the Muslim Sharia, the women enjoyed a secondary role in Pre-Islamic Arabia because it has since been patriarchy. Since then the women have been viewed as secondary to men. The emergence of Islam has contributed a great deal to the Muslim women's decline and the worsening of their problems. The Holy Quran grants men and women equal rights and positions them in a position of reverence. This is in spite of the message given in the Holy Quran. This has been held void¹ and unlawful, recently in the Allahabad High court judgment.

Even in the rely upon succession, a Muslim lady has discriminated against the assertion of sure Muslim scholars that Islam in this regard is more innovative and liberal. The felony function is that when two students or residuary of opposite sex however of the same diploma inherit the property of the deceased, the Muslim male receives twice the share of the female. Even in the count of maintenance, the Muslim spouse is now not required to be maintained past the Iddat period.

The Criminal Procedure Code which imposes an obligation on the husband to require care of his wife including divorced wife until she maintains herself could also be a secular law and applies to all or any or any, however, there's a problem regarding the Muslim men following this provision.

In the famous case of Mohd Ahmed Khan v. Shah Bano Begum², the Supreme Court speaking through Y.V. Chandrachud, the then judge held that the Section 125³ of the Criminal Procedure Code is additionally applicable to the Muslims which even a Muslim husband is susceptible to maintain his divorced wife beyond the iddat period. The controversy began and therefore the parliament had passed the Muslim Women (Protection of Rights on Divorce) Act, 1986 to overrule the judgment within the Shah Bano Case. The effect of this act is that a Muslim husband isn't susceptible to maintain his divorced wife beyond the iddat period unless both the spouses undergo the court at the acceptable time that they might wish to be governed by the Criminal Procedure Code. This is often like having the supply but not using it for the sake of protection of the private law space and not giving enough justice to the lady who is suffering such a lot.

4. THE UNIFORM CIVIL CODE: CONSTITUTIONAL ASPECT: -

The main problem lays within the incontrovertible fact that if the Constitution makers had intended for a Uniform Civil code to be enforced in India, then they ought to not have placed it under Article 44 of the Constitution as a part of the Directive Principles of the State Policy (DPSP). The Directive Principles of State Policy contained within Part IV (Art. 36 - 51) of the Constitution of India because the name suggests are mere directions and guidelines to the State. They have not been mandatorily followed and aren't enforceable by the Court. They're merely positive obligations on the State which can help in good governance.

The Preamble of the Constitution of India obviously contends that India is a Secular, Democratic, Republic. This clarifies State has no religion. A mainstream state will not oppress anybody based on religion. Religion is simply concerned about the connection of man with God. It implies religion shouldn't be meddling with the ordinary life of a private person. The strategy for secularization is intimately associated with the objective of the Uniform Civil Code kind of circumstances and logical results. On account of S.R. Bommai v. Association of India⁴, according to the Justice Jeevan Reddy, it had been held that religion is that the matter of individual faith, conscience and can't be blended in with common exercises and can be managed by the State by authorizing a law. In India, there exists a thought of positive secularism as recognized from the teaching of secularism acknowledged by the United States of America and the European States, for example, there is a wall of separation between the religion and the state.

In India, positive secularism isolates mysticism with individual faith. the explanation is that America and the European States experienced the phases of renaissance, reorganization, reformation, enlightenment, and edification and in this manner, they can authorize a law expressing that State will not meddle with the religion. Despite what might be expected, India has not experienced any sort of renaissance or reconstruction and hence the duty lies on the state to meddle in the issues of religion in order to evacuate the obstructions in the administration of the express. The motivation behind why a nation like India can't experience a renaissance is exceptionally clear. The odds are that the contentions, rather than diminishing may continue expanding and demonstrating reverse consequences for the laws that are made. For example, a tradition or a custom in one's personal law might be worthy and acceptable but however, then again, it may not be adequate and acceptable to the individuals of other personal laws. Thus, in this way, when the traditions will be in practice, the nature of the conflict will transform itself from general differences to hardcore antipathy. Individuals think that it is hard to acknowledge or adjust to specific changes and with regards to the general public like India where religion characterizes the lifestyle, individuals associate themselves with their religion as opposed to understanding that it is the religion which is made by people and that people are not made by the religion. This idea ends up in the cemetery

¹ Shayara Bano vs Union of India And Ors., W.P. (C) No. 118 of 2016.

² 1985 SCR (3) 844

³ S. 125. Order for maintenance of wives, children, and parents

⁴ 1994 SCC (3) 1

since certain individuals despite everything still believe in burning. There should be a uniform law that oversees and manage the conduct of individuals of a considerable number of religions and not any specific area of society.

The Preamble of the Constitution of India takes steps to establish a "Secular" Democratic Republic. This implies there is no religion of state or as it were the state doesn't work on anyone specific religion and will not segregate on the ground of religion. Article 25 and 26 of the Constitution of India as enforceable crucial fundamental rights ensure freedom of religion and opportunity to freedom to manage religious affairs. Simultaneously Article 44 which isn't enforceable in a court of the law expresses that the state shall endeavor to secure a uniform common code in India. Uniform common Code is the uniform technique or the uniform law that administers the individuals as a uniform law and doesn't separate based on any religion or faith.

As another doctrine develops and comes into the information of the individuals a few inquiries emerge and critique clear their path. In the unification of the personal laws, a significant inquiry that emerged was what will be the elements of the Uniform common code. Since the personal laws of every religion contain separate statutory provisions, their unification will bring only hatred, yet additionally hostility in people in general towards each other, in this manner the Uniform Civil Code should get such laws that find some kind of harmony between the safeguard of the fundamental rights and the religious standards of the various community that exist in the nation. Issues, for example, marriage, divorce, maintenance and so forth can be matters of mainstream nature and law can manage them.

5. THE INTENT OF THE JUDICIARY: -

In the case of *Mohammad Ahmed Khan v. Shah Bano Begum*⁵, popularly known as the Shah Bano case, the Supreme Court for the first time directed the Parliament to outline a Uniform Civil Code in the year 1985. For this situation, a penurious Muslim woman asserted for financial support from her better half under Section 125 of the Code of Criminal Procedure after she was given triple talaq from him. The Supreme Court held that the Muslim woman has a right under Section 125 of the Code of Criminal Procedure to get maintenance from her husband. The Court likewise held that Article 44 of the Constitution has stayed a dead letter. The then Chief Justice of India Y. V. Chandrachud saw that,

"A common civil code will help the cause of national integration by removing disparate loyalties to the law which have conflicting ideologies"

After the pronouncement of this decision, across the nation discussions, meetings, and agitation were organized. The then congress Government overturned the Shah Bano case decision through Muslim Women (Right to Protection on Divorce) Act, 1986 which abridged the right of a Muslim woman for maintenance under Section 125 of the Code of Criminal Procedure. The clarification given for executing this Act was that the Supreme Court had simply mentioned an objective fact for instituting the UCC; not authoritative on the legislature or the Parliament and that there ought to be no obstruction with the personal laws except if the interest originates from inside.

In the case of *Mary Roy v. Province of Kerala*⁶, the question arose before the Supreme Court was that certain provisions of the Travancore Christian Succession Act, 1916, were unconstitutional under Art. 14 of the Constitution of India Under these provisions, on the death of an intestate, his widow was entitled to have only a life interest terminable at her death or remarriage and his daughter. It was additionally contended that the Travancore Act had been supplanted by the Indian Succession Act, 1925. The Supreme Court abstained from inspecting the inquiry whether sexual orientation disparity in issues of succession and inheritance violated Art.14 of Constitution of India, but decided that the Travancore Act had been supplanted by the Indian Succession Act Mary Roy has been portrayed as a "momentous" decision toward guaranteeing gender equality in the matter of succession.

At long last, the Supreme Court has given directive guidelines to the Union of India in *Sarla Mudgal v. Association of India*⁷ to "endeavor" confining a Uniform Civil Code and report to it by August 1996. The Supreme Court opined that: "Those who preferred to remain in India after the partition fully knew that the Indian leaders did not believe in two-nations or three "nation theory and that in the Indian Republic there was to be only one nation- and no community could claim to remain a separate entity based on religion".

It is, in any case, to be noted what the Supreme Court contended in *Lily Thomas case*⁸. The Court said that the directives as enshrined in Part IV of the Constitution are not enforceable in courts as they do not create any justifiable rights in favor of any person. The Supreme Court cannot give directions for enforcement of the Directive Principles. Thus, to relieve all worries, it is reiterated that the Supreme Court had not given any directions for the codification of a Common Civil Code.

The Supreme Court's most recent reminder to the central government of its Constitutional commitments to frame a UCC came in July 2003, when a Christian cleric challenged the Constitutional legitimacy of Section 118 of the Indian

⁵ 1985 SCR (3) 844

⁶ 1986 SCR (1) 371

⁷ 1995 SCC (3) 635

⁸ (2000) 6 SCC 224

Succession Act⁹. The cleric from Kerala, John Vallamattom instituted a writ petition in the year 1997 expressing the Section 118 of the said Act was oppressive against the Christians as it forces absurd limitations on their gift of property for the religious or charitable purpose by will. The bench comprising of Chief justice of India V.N.Khare, Justice S.B. Sinha and Justice A.R. Lakshmanan struck down the Section declaring it to be unconstitutional. Chief justice Khare stated that,

"We would like to State that Article 44 provides that the State shall endeavor to secure for all citizens a uniform civil code throughout the territory of India it is a matter of great regrets that Article 44 of the Constitution has been given effect to. Parliament is still to step in for framing a common civil code in the country. Common civil code will help the cause of national integration by removing the contradictions based on ideologies".

Therefore, as observed above, the Supreme Court has on several cases directed the legislature to understand the Directive Principle cherished in our Constitution and the earnestness to do so can be derived from the same.

6. UNIFORM CIVIL CODE VIS-À-VIS SECULARISM: -

The spine of discussion spinning around UCC has been secularism and the freedom of religion enshrined in the Constitution of India. The Preamble of the Constitution expresses that India is a "secular democratic republic" country. This implies that there is no religion of the state. A secular State will not oppress anybody on the ground of religion. The State is just worried about the connection among the human being. It isn't worried about the connection of man with God. It doesn't mean permitting all religions to be practiced. It implies that religion ought not to meddle with the everyday life of a person.

In the case of *S.R. Bommai v. Union of India*¹⁰, Hon'ble Justice Jeevan Reddy contended that "religion is the matter of individual faith and cannot be mixed with secular activities; Secular activities can be regulated by the State by enacting a law".

In India, there exist an idea of "positive secularism" as different from the principle of secularism acknowledged by America and some European states for example there is a wall of partition among religion and State. In India, positive secularism isolates spiritualism with individual faith.

Article 25 and 26 assurance right to freedom of religion, Article 25 guarantees to each individual the freedom of conscience and the right to profess, practice and propagate religion. Yet, But this right is subject to public order, morality and health and to the other provisions of Part iii the Constitution, Article 25 additionally enables the State to regulate or restrict any economic, financial, political or other secular action, which might be related with religious practice and furthermore to accommodate social welfare and changes. The assurance of Articles 25 and 26 isn't restricted to issues of the doctrine of belief. It reaches out to acts done in the compatibility of religion and, accordingly, contains an assurance for custom ritual and observations, ceremonies and modes of worship, which are the vital parts of religion.

UCC isn't against secularism or won't abuse Article 25 and 26. Article 44 is base on the idea that there is no vital association among religion and personal law in an enlightened society. Marriage, succession and like issues are of secular nature and, in this way, the law can regulate them. No religion licenses intentional distortion. The UCC won't and will not bring about obstruction of one's religious beliefs relating, mainly to maintenance, succession, and inheritance. This implies that under the UCC a Hindu won't be constrained to play out a nikah or a Muslim be compelled to complete saptapadi. But in matters of inheritance, right to property, maintenance and succession, there will be a common law. The entire discussion can be summarized by the judgment given by Justice R.M. Sahai. He stated:

"Ours is a secular democratic republic. Freedom of religion is the core of our culture. Even the slightest of deviation shakes the social fibre. But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedom are not autonomy but oppression. Therefore, a unified code is imperative, both for protection of the oppressed and for promotion of national unity and solidarity."

7. CONCLUDING REMARK: -

The Uniform Civil Code isn't simply a question of gender inequality; it is additionally an issue of how a country obliges its assorted diversity. Aside from the Right to equality and non-discrimination Constitution of India ensures freedom of religion to all citizens of India. Rather than coming to indiscriminately or leaving cultures altogether to themselves, India's liberal multiculturalism finds some kind of harmony. It has been progressively prepared to change most of the practices while offering assurances to vulnerable people inside minority groups.

Is there a better path for India to arrange this? The normal view is that the Western majority rule systems are a layout for liberalism. In any case, how do the US and France conceptualize law and religious freedom, the harmony among majority and minority group rights? What do Canada and the UK do? However, the issue is that India can't have the Western Countries as a model in light of the fact that the conditions are not comparable. The vast majority of the western nations, regardless of professing to be common, will in general show an inclination towards Christianity and

⁹ John Vallamattom and another v. Union of India (Writ Petition (civil) 242 of 1997)

¹⁰ 1994 SCC (3) 1

the Middle East Countries plainly adhere to Islamic Law. Indeed, even as we push for a Uniform Civil Code, we should realize that law can't exist excessively far separated from social standards. Without social help or state abilities to actualize our own standards, we risk driving individuals into looking for alternative community justice, like sharia courts or khap panchayats. A Uniform Civil Code should be cautious in its decisions. At that point, there remains the topic of whether it ought to be compulsory, deleting all personal law, or whether it ought to permit Indians the choice of deciding to live under their own religious umbrellas, on the off chance that they like. In any case, it is time that we plot our goals and contradictions, in the quest for a fantasy regular common civil code. In the seven decades since the Constitution was enacted, there has been no genuine exertion to try and begin such an exchange.

It is additionally evident that Uniform Civil Code isn't violative of Article 25 and 26 of the Constitution. It ought to rather be another law and not the mix of personal laws. The issue in mixing personal laws is that there is an opportunity for bias to emerge. The Parliament ought to acquaint another code comparable with the Special Marriage Act of 1954 which doesn't expand any favors or predisposition towards any religion. What individuals must comprehend is that religion and laws are two unique ideas. This is on the grounds that the Constitution permits the individuals to follow their religion which will proceed regardless of the sanctioning of a uniform code. The uniform code will not control their entitlement to follow or affirm their religion. For instance, the religious sacred writings recommend disciplines for wrongdoings however the Indian Penal Code, 1860 is the only penal law that are followed in India. In this way, it is right time that individuals begin viewing religion and law as two distinct ideas and spotlight on the strengthening of all classes of individuals. There is a dire need to get uniform laws in India.

8. SUGGESTIONS: - The suggestions can be formulated in broad points which are following:-

- 1) A good environment for the Uniform Civil Code need to be prepared with the aid of the government authorities with the aid of explaining the contents and importance of Article 42 of the Constitution of India.
- 2) Social reforms should be brought slowly and steadily by the State.
- 3) It is the duty on the part of legislature to enact a model Uniform Civil Code embodying the best of all personal laws and it should be a synthesis of all the diverse personal laws.

REFERENCES: -

1. Constitutional Assembly Debates, Vol VII (1949)
2. Professor Kusum, (2012). Family Law Lectures: Family Law I, (3rd edition)
3. Jain, M.P (2014). Indian Constitutional Law, (7th edition).