



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

PERSONAL LAW SYSTEM IN INDIA- NEED OF UNIFORM CIVIL CODE

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INTRODUCTION

The great figures of religion from India have been known to the world and India has also accepted the two global religions Christianity and Islam, emerged one after another, in recent past with open arms. The practice of both the religions for around 2000 years has made them an integral part of India's religio-cultural traditions. In fact, India is the only country in the world that may be called the home to all four major religions together. The people of India also consist of followers of other religions including Sikh, Jain, and Jew. The religious tolerance and values have had and will continue to have immense influence in the Indian culturally pluralistic and religiously diverse society. A society without the uniformity of the laws and rules of conduct governing social relationships generally have stability of norms and becomes rigid and behind the time. This is the reason why uniformity of law has been eternally stressed as the ultimate goal (Summum Bonum- according to which the values and priorities in social and inter-community relations are established in an ethical system) of all legal codes, in the past, present and future. Undoubtedly, the social disorder has been witnessed in different phases which has come out in form of discriminatory laws for governing different sections/communities of society and has been the reason of disruption of society. Indian society has demonstrated both the dimensions of governance i.e. uniform rules of social relationship and the norms which were affected by the discrimination and prejudices. The Uniform Civil Code (henceforth known as UCC) is an imperative in the Constitution of India, which has raised a long-lasting debate questioning various other principles like secularism, fundamental rights and fundamental duties. UCC has been affecting our nation in three contexts and these three contexts are Political, Social and Religious. UCC is a necessary to effect the

integration of a country as diverse as India by bringing all the communities together which does not form the essence of a single religion.

Uniform Civil Code (UCC)

Article 44 of the Constitution of India affirms that the “State shall endeavour to secure for every one of its citizens a uniform civil code all over the India”¹. This Article of the Constitution directs the State of India to frame and implement a common civil code for the entire country and no other provision of the Constitution speaks anything about the Uniform Civil Code.

A Uniform Civil Code advocates for a system of law as per which all the sections of society without any discrimination on the basis of religion shall be treated with equality according to a national civil code, which shall be applicable to all in a uniform manner. This gives emphasis on the idea that there is no connection between religion and law in the contemporary context.

The term ‘Uniform Civil Code’ (UCC) refers to a common set of rules of governance for all citizens of the country which aims at replacing personal laws based on scriptures and customs of each major religion getting followed in the country by different communities.² The code is an instrument for the realization of Article 44 of the Constitution of India, which lays down that the endeavour for securing a uniform Civil Code shall be made by the state in order to bring the uniformity of conduct and compliance by all the citizens throughout the territory of India.³

Uniform Civil Code is a set of the laws which will deal with the personal matters of people like marriage, succession, adoption etc. without any discrimination on any basis and irrespective of the religion of the people. There are many circumstances which are faced by the country and the need for the uniform code has been arisen again and again. But along with this it has to be making sure that there is no violation of the basic fundamental rights of the people.

Uniform Civil Code and the Personal Laws

In the secular and democratic state of India the debate is continuing on the topic of Uniform Civil Code. And still we do not get any conclusion from the debate. It became quite difficult to draw any conclusion from such debate as it a very vast and heated topic. All we can say is that the problems on this issue is very serious and should be taken into consideration.

¹ The Constitution of India, 1950

² Uniform Civil Code in India, <https://www.ncib.in/pdf/uniform-civil-code.pdf> (last visited on January 15, 2023)

³ What Is Uniform Civil Code, Available At <https://www.business-standard.com/about/what-is-uniform-civil-code> (last visited on February 05, 2023)

There are different opinions of the people on this topic. Some people support the idea of the Uniform Civil code while some stands against of this idea. There is a myth in the people's mind that if this uniform code will be applied their right of freedom of religion will be violated and to will be no longer able to promote their religion.

Article 44 of the Constitution of India provides that:

“The state shall endeavour to secure for citizens a Uniform Civil Code throughout the territory of India.”

There is a misunderstanding in the minds of people that Hindus have give up their rights for the sake of the Uniform Civil Code as they allowed many amendments in their personal laws and changed their customary practices.

The another misconception lies in the people is that Muslims are not ready to give up or surrender their rights and that is why they are creating problems in the way of uniform code. People have a thought that Muslims are favouring the gender inequality and Muslim Women are oppressed in the community. People think that they have to surrender all their personal rights for the sake of the Uniform Civil Code.

But the reality is something different. It is not only Muslim Community who is not ready to give up their personal rights, Hindus also stand against it. If we see the history there were many people who were not ready to make changes in the Hindu traditional laws. The treatment to the Hindu women was very poor and inhuman in the history and their was the existence of the gender discrimination or gender inequality. Due to this reason the Bill was passed in the Parliament to make the amendments and to abolish such evils from the Hindu society. In the passing of the bill there were many threats but despite of all these threats the bill was passed.

Emerging Trends on Uniform Civil Code

The supreme court of India recently observed that no serious efforts have been taken to implement uniform civil code for all the citizens. The example of Goa has been highlighted by the Supreme Court; in Goa the UCC has already applied regardless of religion and it protect certain limited rights. The observation came while the supreme court of India was considering the validity of the Portuguese civil code 1867, to govern the rights of succession and inheritance even in respect of properties of Goan domicile situated outside Goa and anywhere in India.

The matter of UCC was raised earlier also as in Mohd Ahmad Khan vs Shah Bano and Sarla Mudgal vs. Union of India case the SC has suggested parliament to consider bringing in a UCC. Y V Chandrachud, former chief justice of India said that “A common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies”.

Reform in personal law was attempted by British by abolition of sati pratha and widow remarriage. In 1840 Lex Loci Report was submitted by a committee which has given emphasis on the importance and necessity of uniformity in the codification of Indian Law related to crimes, evidence and contract, but it was recommended by

the committee that personal laws of Hindus and Muslims should be kept out from such codification. Committee work on the theory of “Divide and rule” policy of Britishers as the committee had no interest in a common civil code for the Hindu and Muslim communities that might unite them. On the ground of administrative complications the common civil code was also opposed. In 1937 the UCC was pushed again. Hindu women’s Right to property act was passed on 1937 which led to the formation of the BN Rao committee, this committee was setup to determine the necessity of common Hindu laws. The committee suggested that UCC can be made that would give equal rights for women in keeping with the modern trends of society, but it has given focus on reforming the Hindu Law in accordance with the scriptures. After independence UCC was again pushed to implement but Jawaharlal Nehru rejected it by saying that country was not ready for the UCC. Agenda of UCC has been raised by Supreme Court many times but the recommendation to implement the UCC has never been taken seriously.

India is a country where exist innumerable communities and customs and where the roots of personal laws are deeply sowed. Presently, these personal laws have been a major reason of social disturbance, political instability and conflict among the citizens of the country. In the history of Independent India, it has been witnessed on several occasions that personal laws of some communities have violated and stood against the provisions of Constitution and for this reason a need is being felt to administer a common set of secular laws so that all the citizens irrespective of their religion, caste or region can be treated equally.

The principle of ‘Secularism’ as mentioned in the Preamble of the Constitution of India has always been abiding by the state. All religious communities in India have been managing and maintaining their civil matters according to their own respective personal laws. But, in the name of personal laws and religion, people have been subject to brutality and violation of rights, and no resolution has yet been provided to prevent such atrocities in the name of religion and communal pride.

By adopting the principle of secularism as a constitutional imperative, it has been clear by the state that India is a nation, which does not recognize any one particular religion as the official religion of the state. This denotes that the state there is no dependency of the state of any kind on any religion for seeking guidance in taking decisions and also state won’t tolerate any kind of influence by any religious community in the process of policy making. Also, the term ‘Secularism’ in the Constitution denotes that the state will not interfere with the religious matters of any person or community and no person or community will be allowed to interfere with the efficacy of the state. Religions in India not only serves the foundation of culture of the country but have had tremendous effect on politics and society in India. In India, religion guides the way of life for the different religious communities and has been an integral part of the entire traditional Indian cultural heritage. To compliment this diversity of India, the demand for a common civil code in order to bring uniformity of law in the society and among the people of different religious communities has raised.

Historical Perspective of the Debate on Uniform Civil Code

Pre-Independence or Colonial Era:-

In the Colonial period or during British times, first initiative was taken in form of introducing the Lex Loci Report in October 1840 which highlighted the significance and need of the codification of Indian Laws in a Uniform manner. The report gave emphasis on the uniform codification of basic laws addressing criminal offences, laws on evidence and laws of contract.

Although, the report did not include the personal laws based on religion in the consideration for such codification and recommended to maintain the freedom and autonomy of personal laws of Hindus and Muslims and suggested that these should be kept out of the codification. Keeping this in mind under the Queen's proclamation, it was extended and promised that the British administration respect the religious beliefs of the people of India, so, absolutely no interference will be made in religious matters.⁴ This way, while criminal laws were uniformly codified and common criminal laws were enacted for whole country, civil laws had sustained to be governed by exclusive codes of all the religious communities.

The same was continued till 1940, when the national planning committee had raised the demand for uniformity of all laws including laws governing civil matters of different communities.

Post-Independence Period:-

After Independence, when the process of Constitutional drafting was going on, prominent leaders of the country Jawaharlal Nehru and Dr. B.R. Ambedkar supported the idea of a uniform Civil Code for the people of the country. Comprehensive and heated debates were held in the constituent assembly but due to the opposition from religious fundamentalists, especially Muslim members of the assembly, Uniform Civil Code could not get a place in Part 4 of the Constitution, i.e. Directive Principles of State Policy, in form of Article 44. Some other non-Muslim members also opposed the codification of such a code and the reason for that was lack of awareness among the people at that time.

Some significant reforms were brought in the personal laws of specific religious communities after the enactment of the Constitution, those were:

The Hindu Code Bill-In order to reform Hindu Civil Laws, Dr. Ambedkar drafted this bill. Under the effect of this bill, the divorce was legalized in Hindu marriages, polygamy was opposed, and the rights of inheritance to daughters were extended. In the situation of intense criticism and opposition of the bill, a mitigated version of the bill was passed by the legislature through four different enactments- Hindu Marriage Act, Adoptions and Maintenance Act, Minority and Guardianship Act and Special marriage Act.

⁴Solanki S. and Shaivya Manaktala, "Uniform Civil Code and Conflict of Personal Laws", *3 International Journal of Law* 9 (2017).

Uniform Civil Code: Reasons of its Imminent Necessity

The idea of Uniform Civil Code is inculcated in our Constitution as a duty of the State. This reflects that somehow in nation's interest UCC is necessary to be implemented and the reasons being given on regular basis for its implementation are:

- **Necessary for National Integrity**

The restoration and protection of national integrity was the major concern of Constitutional makers after Independence and while drafting the Constitution, this concern was the most prominent determinant of deciding on the provisions targeting restoration of communal harmony of India. As India is country of numerous religions, traditions and customs, here exists a sheer need of maintaining communal harmony and cooperation among different communities. No other than a Uniform Civil Code can help us in a better way to maintain the integrity of nation. Such a code will bring uniformity and equality for everyone in the country and ensure equality before law irrespective of caste, religion or gender.

- **Personal Laws stand against Human Rights**

By giving acceptance to personal laws we have allowed the violation of Human Rights on the communal or religious grounds. Several provisions of personal laws of different communities provide scope to the violation of Human Rights. Gender Biased approach, holding religious malpractices and emphasis on communal pride usually contradicts the freedoms given by various Human Rights Charters to every human being in the world. The sensitive among these rights are right to life, liberty and equality.

- **Will Enhance Rights of Women**

The status of women in India and their condition is highly vulnerable and of peculiar level. Social structure in India is still male dominated and in such patriarchal and misogynistic conditions. By allowing centuries old religious rules to govern the family affairs we have been condemning the women in India to subjugation and exploitation. A Uniform Civil Code only can be effective in changing these ancient traditions based on religion as such discriminatory and outdated laws shall have no place in a society where we do understand that women also deserve fair treatment and entitlement of equal rights. Only a Uniform Civil Code can help in improving position of women in India.

- **UCC is a sign of a Modern Progressive Nation**

A modern progressive nation doesn't give importance to any factor aims at division of society on any basis. Such a nation is supposed to have moved away from the barriers of caste and religion based consideration and there is no place for caste and religious politics in such a progressive nation. Despite of securing the highest growth of economy we are far behind when it comes to social growth. This would not be wrong if we

say that we have degraded socially and culturally to that extent where calling ourselves modern is not justified at all. We are at a stage where we have already lost our traditional values and also we failed in inculcating modern trends. A Uniform Civil Code will help our society in adapting modern values and in moving forward to become a developed nation.

- **All Indians should be Treated Equally and in Uniformity**

In India, in the name of secularism, separate personal laws based on religions are governing and sustaining. These personal laws are not given equal weightage under law. While a Muslim man can marry multiple times, a Christian or a Hindu will be prosecuted for this act. As per the opinion of majority, the laws related to or governing the civil affairs like marriage, adoption, divorce, inheritance etc. should be equal for all citizens of India because this is the only way to guarantee that all Indians are equal in the eyes of law. This kind of arrangement can only be ensured by implementing a Uniform Civil Code.

- **UCC will Promote Real Secularism**

A democratic system ensures uniformity of laws and entitlement of equal rights for all its subjects and these values are the prerequisite of any secular democratic state. India as the Constitution provides, is a secular democracy and Article 44 of the Indian Constitution establishes that- "*The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India.*" A true secularism in India can only be ensured by Uniform Civil Code. Despite of repeated suggestions and directions for its enactment by the Parliament of India, successive governments have been neglecting this constitutional imperative since independence. Secularism in India has divided the society instead of enhancing social and communal harmony. Indian version of secularism has created divide in the society and segmented the population into majority and minority. The Preamble of Indian Constitution proclaims the country to be a Secular Democratic Republic but the absence of a Uniform Civil Code has prevented the same from taking place. India still don't have a Uniform Civil Code despite the fact that we have Uniform Criminal Code which covers all citizens of India irrespective of their religion.

- **Will ensure a more Coherent Legal System**

A Uniform Civil Code can ensure the infusion of a much required parity between various religions in Indian Legal system in terms of different personal laws. A Uniform Civil Code will help building a more coherent legal system in India by codifying and unifying separated and distinctive personal laws of various religious communities. The existing confusion for judiciary in deciding that which personal law is to be prevailing will be reduced by enactment of a Uniform Civil Code and this will help in enabling an easier and comprehensively effective administration of laws in India.

The only reason for discarding Uniform Civil Code is the politics of **pseudo-secularism**⁵ in India. Despite of being provisioned in the Article 15(1)⁶ of the Constitution of India, which prohibits discrimination with the people on the basis of religion, Indian governments have been giving special rights and privileges to minorities and discriminating against Hindus.

The practice of pseudo-secularism has paralyzed the Indian system and is responsible for the division of nation between two classes i.e. majority and minority. It has also promoted and ensured the implementation of discriminatory laws, especially on gender basis, and compelled successive governments in India (both in centre and states) for regulating minority-appeasing policies.

Drafting of Uniform Civil Code: A Major Concern

The biggest and most prominent obstacle in implementation of Uniform Civil Code, apart from obtaining a consensus, is to prepare a draft of the code. There have been numerous discussions conducted and best of the studies framed but no model law has been drafted. It is a general perception in the minorities that under the guise of Uniform Civil Code, Hindu Law will replace all the other personal laws and Uniform Civil Code will impose Hindu personal laws. The absence of a draft code has caused this misconception and disappointment in the minorities. It has been opining that a Uniform Civil Code should be based on gender equality and comprising the best elements from all the personal laws prevalent in India. The Uniform Civil Code for India is expected to create a balance between protection of fundamental rights and assurance of freedom of religion to all. It should be a code, which is just and proper according to a man of ordinary prudence, without any bias with regards to religious or political considerations.

A bill on voluntary Uniform Civil Code is almost ready for introduction in the session of Parliament. A voluntary uniform civil code is a contradiction in terms. The moment it is made optional it ceased to be uniform. Any attempt to make the code voluntary or optional must be opposed. Instead of framing such optional civil code, the government would do well to take immediate steps to codify each set of personal laws incorporating therein the requisite reforms making them uniformly applicable to all the members of the concerned community. There is a great possibility of the UCC being abused, but this should not eschew the Parliament from enacting the UCC. The social welfare and benefits resulting from the implementation of UCC are far greater.

Uniform Civil Code: Challenges in its Implementation

The task of preparing a set of laws that will be capable of governing civil matters of all communities in India is a very intimidating and uninteresting one. Considering a vast range of interests and sentiments to be accounted for and extracting the best out of them in order to cater the whole population with so much diversity is quite a challenging thing. There are three major challenges in the implementation of UCC:

⁵ "True secularism demands a Uniform Civil Code" The Times Of India, 2 march 2018

⁶*Ibid*

- **Misinformation about Uniform Civil Code-** The absence of draft or the missing content of Uniform Civil Code has let the minorities perceiving and believing that UCC is actually a way of imposing majority views and rules on them.
- **Lack of Political Will-** Due to complexity of the subject successive governments since independence had been avoiding raising this issue on the political canvas of Indian politics. The involvement of religious beliefs makes Uniform Civil Code a sensitive issue which makes political parties and governments not touching or highlighting the need of the code.
- **Different Religious Communities-** Every religious community in India have been governed by a distinct set of personal laws and addressing these personal laws by the state lead to the politicization of the debate on Uniform Civil Code.

Opponents of Uniform Civil Code argue that personal laws are basically originated from religious beliefs. They says that it is better not to disturb the system maintained by personal laws as doing this may be followed by a great deal of animosity and tension between various religious communities. Also, India being a secular democracy provides its minorities the right to preserve their religion, customs and culture under Article 29 and 30 of the Constitution of India. The opponents of UCC says that if the Uniform Civil Code will be implemented it will be contravention with these articles.

Referred cases of the High Courts on Uniform Civil Code

There are various cases where High Courts gave their views on the Uniform Civil Code. Some of those cases are:

- (i) **Bishnu Charan Mohanty v. Union of India**⁷
- (ii) **Preman v. Union of India**⁸
- (iii) **Khuran Sunnath Society v. Union of India**⁹
- (iv) **Arya Samaj Education Trust, Delhi v. The Director of Education, Delhi Administration, Delhi**
- (v) **Data Ram v. Teja Singh**¹⁰
- (vi) **Swapna Ghosh v. Sadananda Ghosh (SB)**¹¹

Referred cases of Supreme Court on Conflict of Uniform Civil Code

⁷ AIR 1993 Ori 176.

⁸ AIR 1999 Ker. 93.

⁹ 2015 Lawsuit (Ker) 995.

¹⁰ AIR 1959 Pum.428 (Vol.46,C.131).

¹¹ AIR 1989 Cal.1.

- (i) **Mohd. Ahmed Khan v. Shah Bano Begum**¹²
- (ii) **Ms. Jordan Diengdeh v. S. S. Chopra**¹³
- (iii) **Sarla Mudgal, President, Kalyani v. Union of India**¹⁴
- (iv) **Ahmedabad Women Action Group (AWAG) v. Union of India**¹⁵
- (v) **Lily Thomas v. Union of India**¹⁶
- (vi) **Daniai Latifi v. Union of India**¹⁷
- (vii) **John Vallamattom v. Union of India**¹⁸
- (viii) **Shabnam Hashmi v. Union of India**¹⁹
- (ix) **Shayara Bano v. Union of India**

CONCLUSION AND SUGGESTIONS

In the end, after comparing everything we can conclude that somehow our constitution is failed in relation to the provisions of personal laws. And that is why a burden or stressed situation can be seen in the country. The uniform civil code is the code by which all the person will follow the same set of rules irrespective of their religion. No matter a person is a Sikh, Hindu, Muslim or Parsi they have to follow the same laws for the governance of their personal matters. For a secular state it is necessary that all the religion should be given equal status without any discrimination. If the uniform code is applied then India will be a proper secular state in which all the people of different religions will be treated equally.

It is the high time that India must have a uniform law dealing with marriage, divorce, succession, inheritance, and maintenance. Uniform Civil Code is a must for a country where secularism is given great prestige in resolving outrageous problems of the nation. This uniform civil code has social, political, and religious aspect. The UCC would carve a balance between protection of fundamental rights and religious dogmas of individuals. It should be a code, which is just and proper according to a man of ordinary prudence, without any bias with regards to religious and political considerations.

But to conclude, I would like to say that citizens belonging to different religions and denominations follow different property and matrimonial laws which is not only affront to the nation's unity, but also makes one wonder whether we are sovereign secular republic or loose confederation of feudal states, where people live at the whims and fancies of mullahs, bishops and pundits. I strongly support the crusade for the implementation of the UCC and

¹² AIR 1985 SC 945

¹³ AIR 1985 SC 935.

¹⁴ AIR 1995 SC 1531

¹⁵ AIR 1997 SC 3614

¹⁶ AIR 2000 SC 1650.

¹⁷ 2001(3)GLH 465.

¹⁸ AIR 2003 SC 2902.

¹⁹ (2014)4 SCC 1.

homogenizing the personal laws. I support it, not because of any bias, but because it is the need of the hour. It is the high time that India had a uniform law dealing with marriage, divorce, succession, inheritance, and maintenance.

The inequality may be defined differently from one community to other. It is necessary to set on the layers of gender based injustices and inequalities between men and women that work distinctly in one society than in the others. The personal law of one community, without a doubt is equipped with loopholes in many aspects which are contradictory to the spirit of gender equality existing in the society. The first step therefore is to vanish away those unjust practices which are endemic to that specific society. Instead of hurriedly building a common definition of injustice and inequality, which is the dominant point of view, it is necessary that all these societies first adopt the definition of inequality and injustice within their peculiar life sphere.

This positive side of the debate on Uniform Civil Code repeatedly reminds the people to think about the problems in their personal law system and transform them according to the contemporary times, by taking motivation from another community which might be far more progressive in some way. People must not forget that all this is a gradual process and unnecessary hurry would only result in failure rather than the positive change.

Keywords:- UCC, equality, uniformly, community, laws.

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