



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

PERSONAL LAWS OR UNIFORM CIVIL CODE- THE ROAD AHEAD FOR INDIA

REMISH LAKRA

LL.M

CHRIST (DEEMED) TO BE UNIVERSITY

Abstract

India as a secular nation does not follow any religion for the country. This paper mainly talks about the personal laws or uniform civil code –The road ahead for India. It also discussed how secular civil laws which govern all citizens regardless of their religion, caste, language or tribe. In India, common codes for laws are been followed regard to the contract, transfer of property and other civil laws which are independent of religion. Directive principles of state policy, direct the state to make a uniform civil code. Though these principles are non –enforceable they play a crucial role in the administration of the nation. This paper discussed the personal laws and implementation of the uniform civil code with secularism. It also talks about the judicial decision given by the judiciary regarding uniform civil code.

INTRODUCTION

The concept 'Uniform Civil Code' refers to a plan to substitute Personal legislation based on the traditions and practises of each prominent religious population in the country with a single body of regulations that applies to all citizens. Without any kind of consistency in the codes of morality regulating different connections among individuals of a unified community, a civilization with consistent norms is just unimaginable. The universality of societal guidelines and rules of behaviour is always important in preventing chaos and disaster.

While referring to the nature of directive principles of state policy enshrined in chapter IV of the Constitution; Dr Ambedkar took pains to explain the nature of the directive principles of state policy established in Chapter IV of the Constitution, stating that¹ "Surely it is not the aim to incorporate these values in this part as mere pious assertions." The assembly intends that in the hereafter, both the legislature and the executive should not only pay heed to those values, but instead make them the foundation of every legislative and executive action taken in the topic of nation administration."²

¹ Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948

² MP Jain, Indian Constitutional Law, Justice Jasti Chalmeshwar, Eighth Edition, 4th Feb 2018, P.66

MEANING OF UNIFORMS CIVIL CODE

The concept of the 'Uniform Civil Code' is referred to by the term 'Indian Uniform Civil Code.' The term 'Uniform Civil Code' in India refers to the concept of an all-encompassing Civil Law, whereas the term 'Civil Law' refers to a legal system based on Roman law, in which laws are codified rather than chosen by judges, as in common law. Civil law aims to provide all citizens with an easily accessible and documented set of laws that are binding on all citizens, regardless of their status. Furthermore, the term 'code' refers to a set of rules for transforming data into a different form or expression, which isn't always the same.

Need of the Uniform Civil Code

Even the most homogeneous civilizations must seek solutions to disparities between and among their citizens. When it becomes impossible to maintain the disparate personal laws of many communities, which are unfair and discriminatory, particularly against women, when it comes to marriage, divorce, children, guardianship, adoption, succession, and property ownership, the desire for uniformity emerges.

The only thing that matters is that everyone, regardless of their beliefs, is treated equally. In all of this, law is crucial in giving objective expression to religious personal laws, stating them explicitly and making them enforceable. As a result, the only viable option is to codify all personal laws and combine them into a single Uniform Civil Code. A small step in the right direction would be to create a secular law for marriage, divorce, guardianship, succession, and other matters that adherents of any or all faiths could adopt. Furthermore, by enacting legislation to that effect, it is necessary to reform all or any of the personal laws. Reforming 'personal law' had a more neutral goal in mind.

“Article 44 of the Constitution in terms of achieving a ‘Uniform Civil Code’. A reformative Uniform Civil Code of personal law does not just require all personal laws to be stated in the form of a statute, but seek radically to transform - not just amendment them.” It is for the various groups to devise suitable reforms for their adherents under non-contention conditions.

Constitutional Provision

There's no denying that India is a diverse country, with Hindus, Muslims, and Christians all following their own set of personal laws that are vastly different from one another. Rather than preserving the country's unity and integrity, such laws encouraged separatist tendencies, which are detrimental to any developing democracy. Article 44 was incorporated into the Constitution by the Constituent Assembly with the national interest in mind. Article 44, which calls for the creation of a Uniform Civil Code and m proposed, states: "The state shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India." reads Article 44, which calls for the creation of a Uniform Civil Code and m mooted the idea to have one law for all the citizens of this country.

JUDICIAL DECISION ON UNIFORM CIVIL CODE

In the case of Mohammad Ahmed Khan v. Shah Bano Begum, also known as the Shah Bano case, the apex Court ordered the Parliament to develop a uniform civil code for the first time in 1985. After being given talaq by her husband, a penurious Muslim woman sued for maintenance under Section 125 of the Code of Criminal Procedure.³ The apex court ruled that under Section 125, a Muslim woman has the right to receive support from her husband. Article 44 of the Constitution, according to the Court, has remained a futile exercise. "A uniform civil code will help the cause of national integration by removing disparate loyalties to law that have conflicting ideologies," said then-Chairman of the Supreme Court of India, Y.V. Chandrachud.⁴

Following this course of action, there were country wide conversations, meetings, and unrest. By passing the Muslim Women (Right to Protection on Divorce) Act, 1986, the then-Rajiv Gandhi-led government overruled the Shah Bano case decision, which limited a Muslim woman's right to maintenance under Section 125 of the Code of Criminal Procedure. The reasoning given for enacting this Act was that the apex Court had merely made an observation for the purpose of implementing

³ Bare Act

⁴ Mohd. Ahmed khan v.shah bano begum AIR 1985 SC 945

the uniform civil code; it was not binding on the authorities or Legislature, and that personal laws should not be interfered with unless there is a desire from within.

In the case of the Supreme Court advised the government to follow Article 44 for the second time. In this case, the question was whether a Hindu spouse who was married under Hindu law may solemnise a second marriage by accepting Islam. A Hindu marriage solemnised under Hindu law can only be softened on one of the grounds stated in the Hindu Marriage Act, 1955, according to the Court. Changing to Islam and getting married again would not dismiss the Hindu marriage under the Act on its own. As a result, after converting to Islam, a second marriage would be illegal under Section 49 of the Indian Penal Code, 1860⁵

Article 44, according to Justice Kuldeep Singh, should be recovered from the cold storage where it has been since 1949. "Where more than eighty percent of the citizens have already been brought under the codified personal law, there is no basis whatsoever to maintain in abeyance, any longer, the implementation of the 'universal civil code' for all citizens in the territory of India," the Hon'ble Justice said.⁶

Another reminder to the government of its constitutional duty to adopt an integrated civil code came in⁷, when a Christian priest challenged the constitutional validity of Section 118 of the Indian Succession Act⁸ at the Supreme Court. In 1997, John Vallamattom, a priest from Kerala, filed a writ case 18 of the aforementioned Act was discriminatory against Christians since it placed baseless restrictions on their willed bequest of property for religious or charitable resolutions. The section was declared invalid by a bench consisting of Chief Justice of India V.N. Khare, Justice S.B. Sinha, and Justice A.R. Lakshmanan. Thus, as seen above, the apex court has on several instances directed the government to realize the directive principle enshrined in our Constitution and to the resolve to do so can be inferred from the same.

WHAT ARE THE PROS OF THE UNIFORM CIVIL CODE?

Pros of UCC:

- A. To guarantee that all citizens are treated equally. A secular democratic republic in the modern age should include common civil and personal laws for all citizens, regardless of religion, class, caste, gender, or other factors. To ensure that all citizens are equally looked . A secular democratic republic in the modern age should include common civil and personal laws for all citizens, regardless of religion, class, caste, gender, or other factors.
- B. To achieve gender balance It is widely acknowledged that practically all faiths' personal laws oppress women. When it comes to succession and inheritance, men are frequently given the upper hand. Both men and women will benefit from a uniform civil code.

C. To ensure the aspirations of the young population

With 55 percent of the population under the age of, contemporary India is a very different society. Universal and worldwide values of equality, humanity, and modernism have impacted their societal attitudes and goals. Their desire to abandon their religious identities must be seriously considered if they are to contribute fully to nation-building.⁹

All Indian citizens are already equal in the eyes of the law, as all criminal and civil laws (excluding personal laws) are the same. All citizens will be subject to the same set of personal laws once the Uniform Civil Code is implemented. There will be no opportunity for concerns of racism, concessions, or special benefits enjoyed by a specific community based on their religious personal laws to be political.

⁵ Sarla Mugdal V. UOI 1995 AIR 1531, 1995 SCC (3) 635, AUTHOR K Singh

⁶ Supra note 5

⁷ Jan 2018, Integrated Civil Code

⁸ Indian Succession Act, 1925, Bare Act

⁹ Pratik Som 2nd Aug, 2021 .

D. To evade the contentious issue of reform of prevailing personal laws

In all religions, existing personal laws are mostly founded on upper-class patriarchal views of society. UCC is typically requested by aggrieved women as an alternative for existing personal laws, as patriarchal orthodox individuals continue to believe that reforming personal laws will jeopardise their sanctity and reject it vehemently.

Conclusion:

To review, a secular India need a Uniform Civil Code in order to maintain and promote national unity and solidarity among its citizens. It's time to make a serious effort. In the country, an indigenous legislation that applies to all democratically coexisting groups is required. Compiling a code that accommodates the personal laws of all religions may be a difficult undertaking that takes time, but the government will eventually have to take on this onerous responsibility. In fact, the ultimate solution is the codification of a Uniform Civil Code.

