



UNIFORM CIVIL CODE IN INDIA: URGENT NEED OF HOUR FOR HARMONIZATION

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INTRODUCTION

The existence of a variety of cultures, linguistic multitude, numerous ethnic groups, so many religions or religious wings, communities etc. are the basic characteristics of India as a nation. All these groups and communities carry their own exclusive and unique identity and their co-existence makes India truly incredible in several ways.

India has her heart and soul in the religio-cultural diversity and the same has been a feature of India's identity in past, present and will continue to be in future. India has been the land for every religion in the world and no religion of the world is alien to India. 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 for around 2000 years has made both the religions 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.

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.

¹ The Constitution of India.

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 UCC 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

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. The uniformity brought by the norms and rules of the social conduct works as an instrument for checking the chaos and disorder in society. 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.

India is country with diversity of multiple religions and ethnicity. This diversity is also recognized by our legal system and the arrangement of religion-specific personal laws reflected the same. The Directive Principles of State Policy (DPSP) instructs members of legislature to construct and implement a common personal law which will be applicable to the people of all religions and this issue has been a matter of debate for decades. The 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.

The Constitution of India and Uniform Civil Code

Certain strong safeguards have been provided by our Constitution in Part III in order to protect individual rights given to all citizens of the country irrespective of their differences as to caste, creed, race, sex, place of birth and religion. This restricts the state from making any law in such a way which can create any kind of discrimination on the basis of any of the aforesaid ground. The extension of respect by the state to all religions in an equal manner is arranged under the basic feature of Secularism in India. This has also set every religion free with a discretion that they can frame their own personal laws and such laws would be free from the judicial clutch. Though, the incorporation of fundamental freedoms and rights in our Constitution seemed to be good and reasonable, especially in religious domain, in the beginning. But the situation turned up so drastically and women are now attaining awareness in all fields and they are not only demanding but also occupying the most respectful

² Uniform Civil Code in India, <https://www.ncib.in/pdf/uniform-civil-code.pdf> (last visited on March 15, 2022)

³What Is Uniform Civil Code, Available At <https://www.business-standard.com/about/what-is-uniform-civil-code> (last visited on April 10, 2022)

and challenging positions. Not only position of women has been changed but also the rigidity of personal laws has started posing problems for the unity and integrity of nation.

Article 25-28 of our Constitution has enshrined this principle providing religious freedom to all the citizens. This opened the way for incorporation of personal laws in accordance of a religion and culture. But, personal laws in India have come in constant conflict with other fundamental rights, which are provided in Articles 14-15 and Article 21 of the Constitution, under the guise of freedom of religion. Almost all personal laws clearly manifest certain discriminatory practices with other communities and fundamental rights in one way or the other. If we analyze Articles 14, 15 and 21 of our Constitution, we will find them working as a watchdog against any inequality, inhuman treatment, discrimination and violation of our all other basic rights on any ground of discrimination. But, on the basis of practical instances we have proved ourselves a failure as nothing satisfactory has yet been achieved in this regard. Part IV, Article 44 of the Constitution of India provides that, “The State shall endeavour to secure the citizen a UCC throughout the territory of India”.⁴ However, it is also cleared in the Constitution itself in Article 37 that DPSP “shall not be enforceable by any court”.⁵ But, the Constitution makes this clear also that DPSP are fundamental in the governance of the country.

Personal Law’s status in India

India is the land to a variety of customs and communities and this can be evident by the presence of numerous famous cultures and religions, found across the globe, in India. The law and customs have ensured the prevalence of religious diversity and establishment of inter-community tolerance in the country. India is a country where the principle of Secularism has been enshrined in the Constitution itself yet there exists a contradiction in the whole practice of secularism, especially when the concept of secularism is interpreted particularly in comparison to the personal laws of different religious communities.

It has become a complex arrangement in the society that Hindus, Muslims, Parsees and Christians are carrying their different personal laws governing civil matters such as marriage, divorce, adoption, inheritance of property, succession and maintenance etc. This may be varying in case of other such issues but in matters of marriage and divorce, almost every religious community in India follows their own set of personal laws. People of all the religious communities in India co-exist as people of one nation yet the laws governing their civil and family matters are different from each another. Therefore, the directions of social conduct under that particular religion they follow blindly, doesn’t matter how outdated and discriminatory they are. Some of the popular codified personal laws governing matters like marriage, divorce, inheritance and maintenance are listed below:

- The Indian Christian Marriage Act of 1872 (applicable throughout India except erstwhile Travancore- Cochin, Manipur and Jammu & Kashmir regions);

⁴ The Constitution of India.

⁵ Ibid.

- To govern Sikh marriages, the Anand Marriage Act, 1909;
- Muslim Personal Law (Shariat) Application Act, 1937 (Application of Shariat laws to Indian Muslims);
- Cochin Christian Civil Marriage Act of 1920 (applicable for Travancore-Cochin region);
- Hindu Marriage Act, 1955 (applicable on Hindus, Buddhists and Jains and also to any person other than a Muslim, Christian, Parsi or Jew, and who is not governed by any other law).⁶; and
- The Parsi Marriage and Divorce Act, 1937

It is provided by the Article 13(1) of the Constitution of India that “All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this part,⁷ shall, to the extent of such inconsistency, be void.” In the case of **The State of Bombay v. Narasu Appa Mali**,⁸ a question of immense importance was raised before the court that- ‘if at all, any Personal Law or any of its provision violates, any of the Fundamental Rights guaranteed in Part III of the Constitution of India, whether such Personal Law or its provision, to the extent of such inconsistency, is void?’

Article 44 is an important evidence of the fact that the Constitution recognizes and maintains the separate existence of the personal laws. It says that “**The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.**” Apart from these implications there are direct evidences which make it clear that, the Indian policy recognizes and maintains separate existence of the personal laws. For instance, with regard to Article 5(a)⁹ and 16(1)¹⁰ of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the government of India declares that “it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent.”¹¹ Kuldip Singh, J., in Sarala Mudgal requested the Government of India through the Prime Minister of India to have a fresh look at Article 44 and “endeavour to secure for the citizens a uniform civil code throughout the territory of India” and further directed the Government of India through Secretary, Ministry of Law and Justice to file an affidavit of a responsible officer in the Supreme Court indicating therein the steps taken and efforts made, by the Government of India, towards securing a “uniform civil code” for the citizens of India. Consequently, on behalf of the Government of India, it has been reiterated that, “the

⁶ AIR 1952 Bom 84

⁷ That is, Part III, dealing with the Fundamental Rights.

⁸ Ibid (6)

⁹ Article 5(a) of the CEDAW states that- State Parties shall take all appropriate measures to modify the social and cultural patterns of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority and superiority of either of the sexes...

¹⁰Article 16 of the CEDAW deals with the issue of marriage and family relations. It asserts equal rights and obligations of men and women with regard to choice of spouse, parenthood, personal rights and command over property.

¹¹ See, “Baseline Report on Rights of Women in Relation to Marriage in India”, prepared by Association for Advocacy and Legal Initiatives (AALI) and coordinated by International Women’s Right Action Watch (IWRAW) Asia Pacific, Kuala Lumpur, Malaysia, (Advanced Unedited Version), at p 3

Government would take steps to make a uniform civil code only if the communities which desire such a Code approach the Government and take the initiative themselves in the matter.”¹²

Therefore, **Chagla, C.J. and Gajendragadkar, J., in Narasu Appa Mali**, ruled that the personal laws are not ‘laws in force’ and hence they are not void even when they come into conflict with the Fundamental Rights.¹³ The view taken in Narasu Appa’s case has been confirmed by various High Courts¹⁴ and the Supreme Court¹⁵ though not agreed upon by several authorities.¹⁶

Strife between Personal Laws and Part-III of the Indian Constitution

There have been two scenarios without discussing which the conflict between Personal Laws and the Constitution of India is hard to be understood. These two scenarios work as the determinants of the conflict:-

- 1) The customary nature of Personal Laws has brought them in the conflict with the Part III of the Indian Constitution.
- 2) The conflict regarding reformation of Personal Laws seems to be unconstitutional with Article 25 of the Constitution of India.

Since the enactment of the Constitution, this has been a dilemma for Indian Judiciary in deciding the relation between Personal Laws and Part III of the Constitution of India.

The conflict and connection can be well understood by throwing light on the landmark Judgment given in the **Narasu Appa Mali Case. State of Bombay v. Narasu Appa Mali**:- The Case was related to the Bombay Prohibition of Bigamous Marriage Act, 1946. In the case the validity of this act was challenged on the ground of validity of Article 14, 15 & 25 of the Indian Constitution. In the case, it was held by the court that: **1.** Personal laws are not included in the “law” referred to in Article 13 (3) and are not the “law in force” referred to Art. 372(3). **2.** Bombay Prevention of Hindu Bigamous Marriage Act, 1946 was found non-violative of Article 14 and it was stated by the court that the State was free to bring in social reforms in stages. **3.** If religious practices are opposed to public order, morality or a policy of social welfare, duty of which is upon the State, then the good of the people of the State as a whole will be preferred over religious practices.¹⁷ The court cleared it in the Judgment

¹² *Lily Thomas, etc. v. Union of India and others*, AIR 2000 SC 1650, Para 42, p 1661.

¹³ Concept of personal law in British India, Para 4.1.3.1, above, at p.112.

¹⁴ *Srinivasa Aiyer v. Saraswati Ammal*, AIR 1952 Mad 192; *Ram Prasad v. State of Uttar Pradesh*, AIR 1957 All 411; *P.E. Mathew v. Union of India*, AIR 1999 Ker 345.

¹⁵ *Krishna Singh v. Mathura Ahir*, AIR 1980 SC 707; *Ahmadabad Women Action Group (AWAG) & Ors. v. Union of India*, AIR 1997 SC 3614.

¹⁶ In *Sant Ram*, Supra note 62, the Supreme Court stated that, by reason of the word ‘includes’ in Article 13(3)(a), the definition should not be treated ‘exhaustive’. The Calcutta High Court in *Ezra v. The State*, AIR 1953 Cal 263, have held that ‘law includes personal law.’ The Supreme Court in, *C. Masilamani Mudaliar v. Idol of Sri Swaminath aswami*, AIR 1996 SC 1697, at p 1700 has observed: “Personal laws are derived not from the Constitution but from the religious scriptures. The laws thus derived must be consistent with the Constitution lest they become void under Article 13 if they violate fundamental rights....” The Supreme Court, in this case, while not referring specifically to the principle laid down in *Narasu Appa Mali*, (Supra note 30), has impliedly overruled the same.

¹⁷ Solanki S. and S. Manaktala, “Uniform Civil Code and Conflict of Personal Laws” *3 International Journal of Law* 9 (2017).

that people are not for religion but religion is for people and if it comes to the good of people, religious beliefs can be compromised.

While making of the Constitution the framers of the Constitution were focusing keenly on “**The Universal Declaration of Human Rights (UDHR), 1948**”. They included Human Rights enshrined in the UDHR in our Constitution in the form of Fundamental and Constitutional Rights and also inspired their implementation in the form of Directive Principles of State Policy. But, the reality is far from what was intended at the time of adding up these virtues because the state has yet unsuccessful in realizing these ideals of achieving the objective of realization of the rights. Religion is the above all the aspects of life people are concerned for and they generally argue that the origin of their personal laws is divine and that’s why these laws are unchangeable. This is not true because this way all the people professing one religion, such as Hinduism or Islam or Christianity, must be governed by same laws but the reality is that a Hindu from north has different set of laws, governing civil matters, then a Hindu from South. The inheritance rules of Sunni and Shia sects in Islam are completely different from each other. If “God” or “Allah” is one, then considering their followers different from each other is completely unjustified.

Most of the countries in the world, including many Muslims countries, have modified their personal law system and made it uniform for all the citizens. The legal system of any country must be dynamic and it shall be adaptive to the changes according to culture and demand of the society. The Constitution of India has completed seven decades of enactment but weaker sections of the society like women, children and tribal are still not included in the mainstream of the development. They are vulnerable and are suffering from grave injustice. This cannot be justified from any point of view and on any basis.

M.S. Ratnaparkhi, (1997): in the book titled “**Uniform Civil Code: An Ignored Constitutional Imperative**” has examined the need of a suitable legislation to bring in Uniform Civil Code in India. The book contains an analytical and judicious discussion on the Uniform Civil Code for all the citizens of India despite their religion, race or ethnicity. Examples from different Muslim countries have also given by the author wherein personal laws have been subjected to change as per the prevalent conditions.

Shimon Shetreet and Hiram E. Chodosh, (2015): “**Uniform Civil Code for India: Proposed Blueprint for Scholarly Discourse**” The book argues that the Constitution of India provides that state shall endeavour to secure a Uniform Civil Code for the citizens throughout the territory of India but even after seven decades, this imperative hasn’t been developed or implemented. The book contains and explores the interchange between disputes related to law, culture, and religion between various communities in India.

Nandini Chavan and Qutub Jehan Kidwai, (2006): “**Personal Law Reforms and Gender Empowerment: A Debate on Uniform Civil Code**”: The book presents the connection between reformation of personal law and gender empowerment particularly the rise in status of women in the society. The book was written with the

objective of exploring the scope of reforms in Muslim Personal Law and Hindu Personal Laws from the perspective of women's rights. The reformation of Personal laws is a long-term complex discourse and gender is the key factor in the whole discourse.

Ajai Kumar, (2012): “Uniform Civil Code-Challenges and Constraints”: The books presents the debate on the Uniform Civil Code in India. The author has examined an extremely relevant question that “whether we need to apply/implement the Uniform Civil Code with immediate effect or it can still be postponed for an uncertain period of time, as it had been till now, until people gets the immense consequences of not having it and themselves decides to adopt it. The author has presented the problem in an extremely effective way that for several decades that the mechanism for operating uniform law without having a uniform set of civil laws has been developed under our noses only and we couldn't stop it because most of us haven't realized it yet that the politicians and political parties have made it their agenda keeping their intent hidden from the people.

S. Jain, (2014): “Viewing the Constitutional framework of India from the mirror of Multiculturalism and Critical theories of Democracy with special focus on Personal Law”: the author addresses fundamental questions about the nature of personal law in India. The author argues that the subordination of personal law to fundamental rights embodied in part III of the Indian Constitution is based on a priori theoretical approach derived from Western liberalism and Hindu Majoritarianism. Abolishing the personal law of minorities or aligning it with the reformed personal law of the majority is not a positive step towards the adoption of a Uniform Civil Code. Rather, it would strengthen the "majority construction" of the personal law of minorities and would be marked as a serious erosion of the idea of introducing in the public domain a debate on the discriminatory nature of the personal law of the majority.

Varuna Chakraborty, (2018): “Challenging aspects Of Uniform Civil Code in India”: Part IV of the Constitution of India contains the Directive Principles of State Policy. In spite of the fact that these principles are non-enforceable yet are crucial in the administration of the nation. One such principle is given under Article 44 of the Constitution which makes an obligation on the state to establish a UCC. The need of great importance is to authorize a UCC yet that ought to be done gradually and steadily subsequent to making the general population particularly the minorities, understand about its scope and extent.

The present study raises some questions and concerns related to conflict between personal laws and UCC. Firstly, the clarity regarding the character of personal laws is yet not given and it's still uncertain whether personal laws are 'law' or 'customs with force of law'. Secondly, the issue of the reformation of personal laws has been untouched or vague for decades and whenever the reforms are proposed or initiated, they have been resisted by aggressive demonstrations by the religious denominations.

There has been a massive demand always, for the legislation regarding a secular common code or for the implementation of a UCC, whenever a controversy in relation with personal laws has emerged or rose. The issue of UCC has been politicized also and despite of being in our Constitution it has not been realized yet. The diversity in personal laws had brought complexity in laws and difficulty in enforcement and had delayed the administration of justice causing discontent among Indian citizens.

1. Indian Personal Law system is highly influenced by traditional religious norms.
2. Personal Law System exists in India is unfair and the majority of the citizens neither appreciate it nor satisfied with it.
3. All the personal laws promote patriarchy and are gender-bias and they have been causing grave injustice to females.
4. The continuity of personal law system in India is due to the politics of vote banks and identity politics which hasn't allowed any reforms in personal law despite of being contradictory to the fundamental rights.
5. Implementation of Uniform Civil Code will eliminate ill-practices which have been occurring due to usage of traditions and customs.

SIGNIFICANCE OF THE STUDY

The public sphere of people of different religious communities, whether Hindu, Muslim, Parsi or Christian, is governed by some laws and such laws have been influenced by their religious beliefs, practices, customs and culture. These laws governing and guiding social relationships and personal sphere of people for centuries are not compatible with the present time and conditions. In the contemporary times, elimination of discrimination on the basis of gender or religion of a person is a precondition for development and fostering the growing nature of a society and personal laws have a significant role in ensuring the equal treatment of all and promoting social integration. This scenario or condition makes this study significant because people belongs to different religious in India are still following their personal laws and being governed by them in their civil matters like marriage, divorce, Inheritance, adoption and maintenance and despite of so many conflicts within the community only, they are not ready to accept any reforms in their personal laws.

The Constitution of India promotes the spirit of equality of all and non-discrimination on any ground, but the existence and prevalence of so many personal laws is committed to build and maintain an unequal and unjust society. Keeping personal laws out of the effect of Article 13 (not-treating personal law as 'Law') paves way for the prevalence of patriarchy and without arranging any remedy against, ensuring unequal treatment to females. The present study aims at clarifying the status of personal law and proposing an alternative to create a substantive equality intended by the Constitution.

PERSONAL LAWS AND CONSTITUTION OF INDIA: CONFLICT OF VISION

The analytical and judicious discussion of the much debated and controversial issue of the need of common legislation for all the citizens of India irrespective of their religion or race or ethnicity in compliance with the Constitutional Mandate under Article 44. This is also be argued that in almost all the countries including many Muslim countries, personal laws have been subjected to suitable change in view of the prevalent local conditions. It is also be brought in consideration that unfortunately, the conflict between common law and personal laws has generated an unavoidable and spiteful controversy, which has been emerged not from reasons, but from misinterpreted religious sentiments.

UNIFORM CIVIL CODE- CHALLENGES AND CONSTRAINTS

The issue has been made sensitive by religious authorities and secular sections of our society. The main reason of this can be found in the identity politics. This issue of the need of UCC has recently resurfaced in India's Political Discourse. Since Independence, Indian political scenario has been a quest for identity for almost all the communities and all the political parties in India have been raising this issue for political benefits.

JUDICIAL RESPONSE TO THE CONFLICT ON UNIFORM CIVIL CODE

The judicial response to the conflict between various personal laws and UCC in India. Some of the well-known and most celebrated cases will be critically analyzed in order to know the judicial point of view on UCC. The Supreme Court of India in a leading case has already regretted that Article 44 has not been given effect to. How the Apex Court see the issue that, Indian Parliament is yet to step in for realizing the vision mentioned in Article 44.

CONCLUSION AND SUGGESTIONS

Indian Legislature needs to find a way forward towards the path of development by adopting Uniform Civil Code. A Uniform Civil Code embodies justice and there should be no compromise on it. One nation should have one civil code.

Article 44 of the Indian Constitution says, **“The State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India”**. Therefore, the UCC will integrate India. The UCC is a sign of modern progressive nation as the nation is reaching heights worldwide in other areas also. It will also help in reduce Vote Bank Politics. All Indians will be treated same under UCC. The will promote real Secularism. The existing personal laws are a Loophole.

Thus the UCC should act in the best interest of all the religions. Therefore, a progressive and broadminded outlook is needed among the people to understand the spirit of such code. Moreover, the matter being sensitive in nature and on basis of the sensitivity a committee of eminent jurists should be constituted to maintain uniformity and must keep an eye on not to hurt the sentiments of any particular community.

Keywords:- Therefore, Thus, Moreover, on the basis of.

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