

## A CONTEMPORARY STUDY ON THE UNIFORM CIVIL CODE

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### Abstract:

This paper primarily talks about the concept of the Uniform Civil Code and its legal dimensions. In this paper, the basic essence of the Uniform Civil Code is examined and what does it mean and its legal perspective and theories. This paper commences with the introduction to the Uniform Civil Code in which it defines the concept of the Uniform Civil Code and also discusses about its origin or where it has derived from. It further discusses the need or desire for the Uniform Civil Code under this part itself, that whether the Uniform Civil Code should be implemented or not and what are the pros and cons of the same. As we further proceed towards the approach of the research paper, this paper discusses about the relationship of the Uniform Civil Code with the Secularism and discusses how the implementation of the Uniform Civil Code may lead to the disintegration of the nation and how this will lead to the breakdown of the peace and harmony among the people.

Then it further discusses about the Uniform Civil Code and the constitutional guarantees. This paper also talks about the judgements and the take of the Indian Judiciary towards the Uniform Civil Code. Last but not the least, this paper concludes with certain sets of recommendations and conclusions.

The researcher has followed secondary data collection. This is a doctrinal study. The researcher has also utilized commentaries, books, treatises, articles, notes, comments and other

writings to incorporate the various views of the multitude of jurists, with the intention of presenting a holistic view. The researcher has made extensive use of Case Laws in this paper, so as to discern a trend in the judicial pronouncements.

**Keywords:** Uniform Civil Code, Personal Laws, Secularism, Constitution, Judiciary

### **INTRODUCTION:**

India is a land in which various religions are followed like Hinduism, Islam, Buddhism, Jainism, Zoroastrianism, Christianity, Sikhism, etc, to name a few. India follows secularism. It is enshrined in our Constitution and was included in the preamble after the 42<sup>nd</sup> Amendment in 1976. The term 'secular' means that the State will not follow any particular religion and neither will the people be discriminated because of the religion that they follow. This means that the people will be given the freedom to follow any religion. This is also enshrined in our Constitution as a fundamental right under Article 25<sup>3</sup> and 26<sup>4</sup>. In India, this term is extremely important because it is significant to note that the partition of India and Pakistan itself happened because of religion. Religion has forever been used as a weapon by the political institutions and has been a source of conflict since ages. The conflict in Israel is also because of religion.

In India, different personal laws govern different religion. For example, the Hindus, Sikhs, Jains and Buddhists are governed by the Hindu Marriage Act of 1956 in cases relating to marriage, divorce, maintenance, etc. The Christians are governed by the laws relating to Christianity and Muslims by the Islamic Law. These are three broad sects of personal laws in India - Hindu Law, Christian Laws and Islamic Law.

Now the problem exists in the fact that there are differences and discrepancies within the personal laws. There is no uniformity. Also, there has been instances where the personal laws denied the rights of women or did not even give them rights. To counter these shortcomings, the Uniform Civil Code can be enacted. The Uniform Civil Code means a uniform personal law for all citizens of the country. This code will replace the existing religious personal laws in India and

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<sup>3</sup> **Art. 25. Freedom of conscience and free profession, practice and propagation of religion:**

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

<sup>4</sup> **Art. 26. Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right:**

(a) to establish and maintain institutions for religious and charitable purposes;  
 (b) to manage its own affairs in matters of religion;  
 (c) to own and acquire movable and immovable property; and  
 (d) to administer such property in accordance with law

have a uniform law that will cater to all the citizens, irrespective of their religion. This has been envisaged by the makers of our Constitution under Article 44. But it has been strongly opposed because it is considered violative of Article 25 of the Constitution.

This paper aims to approach the concept of Uniform Civil Code in a more practical and pragmatic way to ensure that it can be properly implemented in India and to see if it is even suitable for a country like India. Its Legal Dimensions are kept in mind.

### **Research Methodology:**

The researcher has followed secondary data collection. This is a doctrinal study. The researcher has also utilized commentaries, books, treatises, articles, notes, comments and other writings to incorporate the various views of the multitude of jurists, with the intention of presenting a holistic view. The researcher has made extensive use of Case Laws in this paper, so as to discern a trend in the judicial pronouncements.

### **Research Question:**

Whether the Uniform Civil Code should be a blend of personal laws or be a new law?

### **Review of Literature:**

The interdependence between law and religion prevents the Indian state from reforming the religious personal laws, and thus, this continues to deny legal equality to Indian women. [\(Parashar\)](#) Secularism has been integral to India's democracy, but currently, its uses and limits are being debated. Insightful analysis on the uncertainty of secularism in future has been given. [\(Agnes\)](#) Uniform civil code of India is a term that refers to the concept of an overarching Civil Law Code in India. The debate here is if the UCC governs all people, irrespective of their religion, does it supersede the right of citizens to be governed under different personal laws based on their religion or ethnicity? [\(Choudhary\)](#) A bill on the uniform civil code was introduced in the Indian parliament. But it never became an Act due to oppositions. One of the grounds on which the objection was raised was that Islam does not recognize adoption, and hence, it would be violative of Article 25 of the Constitution which provides the right to practice and profess any religion. However Art. 25 protect only such practices which are essential and integral part of any religion. The custom of adoption was prevalent even in pre-Islamic Arabia. Article 38(2) clearly tells that the State should strive to eliminate any inequality. Hence, a Uniform Law will only strive to eliminate the unequal status of a child adopted by a Hindu and a child adopted by a non-Hindu. [\(Sharma\)](#) This book explores the interplay between the issues of law, culture, and religion

in light of the various intra-community and inter-community disputes. A series of guidelines and considerations have also been proposed. ([Shetreet and Chodosh](#)) The author feels that the Uniform Civil Code has been kept unattended since long which has made India suffer. Hence, this article discusses the need for the same. ([Hazarika](#)) In this book, the author is of the opinion that uniform civil code is an ignored concept which must be revived and debated upon. The author insists that it is high time that importance is given to the uniform civil code and a path is crafted for the same. ([Ratnaparkhi](#)) This book deals in depth regarding the constraints in implementing a uniform civil code in India and why it is still a foreign concept. He speaks in detail regarding the challenges in the implementation of the same. ([Kumar](#)) In this book, the author proposes steps for a successful implementation of a uniform civil code and how it can be done so without disrupting peace and causing riots. ([Dhagamwar and Indian Law Institute](#)) In this book, the author draws a comparison between the uniform civil code and the Hindu and Muslim personal laws. The author studies the comparison objectively and determines if the amendments to the personal laws are adequate and if it is the need of the hour. ([Chavan and Kidwai](#))

**Objectives:**

1. To understand the practical problems in the implementation of uniform civil code.
2. To study if the uniform civil code is violative of Article 25 of the Indian Constitution.

**Hypothesis:**

The Uniform Civil Code is not violative of Article 25 of the Constitution of India.

**UNIFORM CIVIL CODE AND THE PERSONAL LAWS:**

The women are considered inferior in most of the personal matters as compared to men, especially when it comes to the discussion of the topic of the matrimony or the succession, adoption or even the inheritance. Under the Hindu Law specifically, in the year 1955 and 1996, the Hindu women did not enjoy equal rights along with the Hindu men be it anything or any matter. Before 1955 polygamy was prevalent among the Hindus. The Hindu women could not hold any property as its absolute owner except in the case of Stridhan. She had only limited estate which was passed onto the legal last full heirs of the male owner called revisionary on her death. She owned a limited interest, in the sense that whenever an issue came up for the desertion of the property and mortgaging or selling the property, she could not do it on her own.

When it came to the matter of adoption a Hindu women did not have the right to adopt a child on her own. She could not be natural guardian of her children during the life of her husband. These examples are illustrative enough to show the patriarchal nature of the Indian society. Even though the Hindu law has been codified, certain discriminatory provisions still exist even today. For example a Hindu woman is not a coparcener in Hindu coparceners except in a few states like Andhra Pradesh, Maharashtra, Karnataka and Tamil Nadu. Consequently she is not entitled to the share in the coparcenary. Thus it is oblivion to the fact that the codification of personal laws of Hindus has not succeeded completely in eradicating the gender inequality.

When it comes to discussing about the Muslim Law, in the Pre Islamic Arabia, the women enjoyed a secondary status because since then it has been a patriarchy since then. The women since then were considered secondary to men. The advent of Islam has contributed much when it comes to the deterioration of the Muslim women and the escalation of their problems. The Holy Quran gives equal rights to men and women and places women in a respectable position.

However, there are certain aspects in Islam that render the position of Muslim women especially the wives insecure and inferior. In Islam, a man is allowed to marry four times whereas the women cannot and if they do they are treated as unchaste and impure. Women are not even given the right to divorce their husbands, when particularly the method of divorcing the wife by the husband by pronouncing triple Talaq is highly discriminatory. This is inspite of the message given in the Holy Quran. This has been held void<sup>5</sup> and unlawful, recently in the Allahabad High court judgement.

Even in the matter of succession, a Muslim woman is discriminated against the assertion of certain Muslim scholars that the Islam in this regard is more progressive and liberal. The legal position is that when two scholars or residuary of opposite sex but of the same degree inherit the property of the deceased, the Muslim male gets twice the share of the female. Even in the matter of maintenance, the muslim wife is not required to be maintained beyond the Iddat period. The Criminal Procedure Code which imposes an obligation on the husband to maintain his wife including divorced wife until she maintains herself is a secular law and is applicable to all, however there is a controversy regarding the Muslim men following this provision.

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<sup>5</sup> Shayara Bano vs Union Of India And Ors., W.P. (C) No. 118 of 2016.

In the famous case of Mohd Ahmed Khan v. Shah Bano Begum<sup>6</sup>, the Supreme Court speaking through Y.V. Chandrachud, the then Chief Justice held that the Section 125<sup>7</sup> of the Criminal Procedure Code is also applicable to the Muslims and that even a muslim husband is liable to maintain his divorced wife beyond the iddat period. The controversy began and the parliament had passed the Muslim Women (Protection of Rights on Divorce) Act, 1986 to overrule the judgement in the Shah Bano Case. The effect of this act is that a muslim husband is not liable to maintain his divorced wife beyond the iddat period unless both the spouses submit to the court at the appropriate time that they would like to be governed by the Criminal Procedure Code. This is like having the provision but not using it for the sake of protection of the Personal law space and not giving enough justice to the woman who is suffering so much.

#### **UNIFORM CIVIL CODE AND THE INDIAN CONSTITUTION:**

The main problem lies in the fact that if the makers of Constitution had intended for a uniform Civil code to be enforced in India, then they should not have placed it under Article 44 of the Constitution as a part of the Directive Principles of the State Policy. The Directive Principles of State Policy contained in the Part IV (Art. 36 - 51), as the name suggests are mere directions to the State. They need not be mandatorily followed and are not enforceable by the Court. They are merely positive obligations on the State which will help in good governance.

The Preamble of the Indian Constitution clearly states that India is a Secular, Democratic, Republic. This means that there is no State religion. A secular state shall not discriminate against anyone on the ground of religion. A religion is only concerned with relation of man with God. It means that religion should not be interfering with the mundane life of an individual. The process of secularisation is intimately connected with the goal of uniform Civil Code like a cause and effect. In the case of S.R. Bommai v. Union of India<sup>8</sup>, as per the Justice Jeevan Reddy, it was

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<sup>6</sup> 1985 SCR (3) 844.

<sup>7</sup> **S. 125. Order for maintenance of wives, children and parents:**

(1) If any person having sufficient means neglects or refuses to maintain -

(a) his wife, unable to maintain herself, or

Explanation.- For the purposes of this Chapter,-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875 ); is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

<sup>8</sup> 1994 AIR 1918.

held that religion is the matter of individual faith and cannot be mixed with secular activities and can be regulated by the State by enacting a law. In India, there exists a concept of positive secularism as distinguished from the doctrine of secularism accepted by the United States and the European States i.e. there is a wall of separation between the religion and the state.

In India, positive secularism separates spiritualism with individual faith. The reason is that America and the European States went through the stages of renaissance, reformation and enlightenment and thus they can enact a law stating that State shall not interfere with the religion. On the contrary, India has not undergone any kind of renaissance or reformation and thus the responsibility lies on the state to interfere in the matters of religion so as to remove the impediments in the governance of the state. The reason why a country like India cannot undergo a renaissance is very clear. The chances are that the conflicts, instead of decreasing may go on increasing and showing reverse effects on the laws that are made. For instance, a practice or a tradition in one's personal law may be acceptable but on the other hand, it may not be acceptable to the people of other personal laws. So, when the traditions will be in practice, the nature of the conflict will transform itself from general differences to hardcore animosity. People find it difficult to accept or adapt to certain changes and when it comes to a society like India where religion defines the way of life, people connect themselves with their religion instead of understanding that it is the religion which is made by human beings and that human beings are not made by the religion. This thought finds itself in the graveyard because some people still believe in burning. There needs to be a uniform law which governs and regulates the behaviour of people of all the religions and not any particular section of the society.

The Preamble of the Indian Constitution resolves to constitute a "Secular" Democratic Republic. This means that there is no state religion or in other words the state does not operate on any one particular religion and shall not discriminate on the ground of religion. Article 25 and 26 of the Constitution of India as enforceable fundamental rights guarantee freedom of religion and freedom to manage religious affairs. At the same time Article 44 which is not enforceable in a court of Law states that the state shall endeavour to secure a uniform civil code in India. Uniform civil Code is the uniform method or the uniform law that governs the people as a uniform law and does not discriminate on the basis of any religion or faith.

As a new principle evolves and comes into the knowledge of the people several questions arise and criticisms pave their way. In unification of the personal laws, an important question that arose was what will be the ingredients of the Uniform civil code. Since, the personal laws of each religion contain separate provisions, their unification will bring not only resentment, but also enmity in the public towards one another, therefore the Uniform Civil Code will need to bring in such laws that strike a balance between the protection of the fundamental rights and the religious principles of the different communities that exist in the country. Issues such as marriage, divorce, maintenance etc. can be matters of secular nature and law can regulate them.

#### **Uniform Civil Code in Goa:**

Goa is the only state in India that has uniform civil code regardless of religion, gender, caste. Goa has a common family law. Thus Goa is the only Indian state that has a uniform civil code. In Goa Hindu, Muslim, Christians all are bound with the same law related to marriage, divorce, succession. When the Goa became the part of union territory in 1961 by the virtue of the Goa Daman and Diu administration act 1962 the parliament authorized the Portuguese civil code of 1867 to Goa and shall be amended and repealed by the competent legislature.

In Goa marriages is a contract between two people of different sex with the purpose of living together and constitute the legitimate family which is register before the office of civil registrar. And the particular rules and regulation has to be followed by the parties after that they can live together and start their life but there are certain restrictions according to which these categories of person are prohibited to perform marriage for example: any spouse convicted of committing or abetting the murder of other spouse shall not marry.

#### **Special Marriage Act, 1954:**

This form of marriage act provides a civil marriage of two person of different sex irrespective of their religion. This law prevailed in Indian to have their marriage outside the customs of their personal law. This law is applied in all over the India except Jammu and Kashmir because they have given the special status under article 370. His law is almost identical to the Hindu marriage act 1955 this law gives idea of how the law is secularized towards the Hindus. The special marriage acts all Muslim community people to marry under it. Under this act polygamy was illegal and the system of succession would be governed by Indian succession

act even the system of divorced is also governed by this law. But for divorce there are certain provisions that are followed in Goa. Muslim community people that have register their marriage in Goa cannot take more than one wife according to this act and during the marriage time period all the property and wealth owned by the couple each spouse have right in the property the share half –half of the property and if spouse dies the half share of the property were goes to the other. And the other half property was divided between the children in the same ratio.

#### **CONCLUSION & SUGGESTIONS:**

The Uniform Civil Code is not just a matter of gender justice, it is also a question of how a nation accommodates its own diversity. In India, freedom of religion exists with other rights like equality and non-discrimination. Instead of reaching in indiscriminately or leaving cultures entirely to themselves, India's liberal multiculturalism strikes a balance. It has been more ready to reform majority practices, while offering protections to vulnerable individuals within minority groups.

Is there a better way for India to negotiate this? The common view is that the Western democracies are a template for liberalism. But how do the US and France conceptualise law and religious freedom, the balance between majority and minority group rights? What do Canada and the UK do? But the problem is that India cannot have the Western Countries as a model because the conditions are not similar. Most of the western countries, despite claiming to be secular, tend to show a bias towards Christianity and the Middle East Countries clearly follow Islamic Law. Even as we push for a Uniform Civil Code, we should know that law cannot exist too far apart from social norms. Without social support, or state capacities to implement our own principles, we risk pushing people into seeking alternative community justice, like sharia courts or khap panchayats. A common civil code will have to be careful in its choices. Then there remains the question of whether it should be obligatory, erasing all personal law, or whether it should allow Indians the option of choosing to live under their own religious umbrellas, if they prefer. Either way, it is time that we outline our ideals and disagreements, in the pursuit of a dream common civil code. In the seven decades since the Constitution was enacted, there has been no sincere effort to even start such a dialogue.

It is also clear that Uniform Civil Code is not violative of Article 25 and 26 of the Constitution. It should rather be a new law and not the blend of personal laws. The problem in blending personal laws is that there is every chance for a bias to arise. The Parliament should

introduce a new code similar to the Special Marriage Act of 1954 which does not extend any favours or bias towards any religion.

What the people must understand is that religion and laws are two different concepts. This is because the Constitution allows the people to follow their religion which will continue despite the enactment of a uniform code. The uniform code will nowhere curb their right to follow or profess their religion. For example, the religious scriptures prescribe punishments for crimes but the Indian Penal Code, 1860 is the only penal laws that are followed in India. Thus, it is high time that people start viewing religion and law as two different concepts and focus on the empowerment of all class of people. There is an urgent need to bring in uniform laws in India.

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