



## Uniform Civil Code and Its Legal Dimensions

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**ABSTRACT:** *This paper primarily talks about the concept of the Uniform Civil Code and its legal dimensions. In this paper, we have tried to examine the basic essence of the Uniform Civil Code and what does it mean and its legal prospective 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 briefly talks about the history of the Uniform Civil Code and then discusses about the relationship of the Uniform Civil Code with the personal laws. In this part it discusses how the personal laws, play an important role when it comes to the formation of the Uniform Civil Code. 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 off the peace and harmony among the people. Then it further discusses about the Uniform Civil Code and the constitutional guarantees. As we further proceed, then it discusses about the relationship between the Uniform Civil Code and the gender justice and human rights. 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. This paper aims to spread knowledge and make the readers inquisitive about their approach on the topic of Uniform Civil Code and its Legal Dimensions.*

**Keywords :** 1. Uniform Civil Code, 2. Personal Laws, 3. Secularism, 4. Constitution Guarantees, 5. Judiciary

### I. RESEARCH METHODOLOGY

#### Scope And Objective Of The Study

The object of the study is to analyze the concept of the Uniform Civil Code, and make as many number of people aware about the concept of the Uniform Civil Code and let the people decide whether the implementation of the same will be beneficial for them or not. A study of the concept, including some research articles and papers along with some newspapers and the history book have been conducted to bring about a significant result that helps in improving the analytical concept of the Uniform Civil Code in the mind of the readers. It aims at providing deep knowledge of the subject matter. Its main objective is to provide a new source of information, knowledge and wisdom to the readers of this article. The critical analysis of the Uniform Civil Code, is a topic, which is otherwise understood to be something which has already been established in various different papers, as we see a lot of journals getting published on the issue of the Uniform Civil Code and the gender rights and the human rights and also the secularism and the Uniform Civil Code but this paper also analyses the constitutional perspective and the personal law plea, so as to understand that if we introduce the concept of the Uniform Civil Code ,it can have its own pros and cons and one needs to consider each of them while talking and discussing about the Uniform Civil Code. The vitality of understanding the concept of the Uniform Civil Code , is critical when it comes to the understanding of the Indian society and especially the effect of the Indian personal laws.

#### Research Methodology

This research article is completely original and does not in any way or by any means intend to plagiarise any material from the internet and does not intend to violate any individuals copyright. The methodology adopted is largely analytical and descriptive. Reliance has been placed largely on secondary sources like books and articles. The lectures and classroom discussion have been rich with valuable pointers and gave direction to the research.

#### Chapterization

This project has been divided in chapters. It consists of following chapters, Introduction (Chapter I), Uniform Civil Code and Personal Laws (Chapter II), Secularism v. Uniform Civil Code (Chapter III), Uniform Civil Code and the Gender Justice (Chapter IV), and Recommendations and Conclusion (Chapter V).

#### Research Questions

1. What is the Uniform Civil Code and where did it come from ?
2. What is the relationship of the Uniform Civil Code and the Personal Laws of the country and how do they effect each other?
3. What are the effects of the Uniform Civil Code on the concept of the Secularism?
4. What is the relationship between the Uniform Civil Code and the discrimination that the women face in day to day lives under the parameters of the Personal Laws in India ?
5. What is the effect of the Uniform Civil Code on the concept of Gender Justice ?
6. What are the recommendations and the conclusion drawn from the research done ?

#### Hypothesis

When researching about any topic, we have to be clear about the issues, so when it comes to talking about this topic, some of the major issues I found were that women were regarded as secondary in the patriarchal society that has existed in India since its very inception, but do the coming up of the Uniform Civil Code help the matter in any way. Another important issue that we found was that most of the times, we see to it in our day to day lives, that people often tend to talk about the uniform civil code, without knowing its real essence and the pros and cons of it. Some issues really need to be looked at because there are certain chances that even if the law prevails in the favour of the uniform civil code, the people pertaining to their lack of awareness and knowledge, do not consider themselves to be at the receiving end, but if we think about it, at the end of the day all of us be it any of religion, there will be regional and pious issues. Another important issue to be looked at is that the religious identities that exist in the country, should not feel like they are being overshadowed or dominated by a set of rules which are not even their own. These are some of the issues that will be dealt by us in the following paper.

#### Mode Of Citation

A uniform system of citation is followed throughout in the contents.

#### Ch-1 Introduction

India is a secular state and nation, which means that it does not follow any one particular religion or there is no official religion for the country. It means that the state will not be dependent on any kind of religious institutions for taking decisions for the state, it will not interfere with the religious matters and the religion will not interfere with the efficacy of the state. India is also, the world's largest democracy and the second most populous countries of the world and it is emerging as a major power since the 1990's. It has a strong military and has cultural influence over everything and its economy is fast growing and powerful. India is a highly diverse country with so many linguistic, cultural and religious identities.

This is also reflected in its federal political system, whereby power is shared between the central government and the states. Religions not only have been serving as the foundation of the culture of India, but have had enormous effect on Indian politics and society. In India, religion is a way of life. It is an integral part of the entire Indian tradition. A vast majority of Indians, (over 93%) associate themselves with the religion. According to the 2001 census 80.5% of the population of India practice Hinduism, Islam, Christianity, Sikhism, Buddhism and Jainism are other major religions followed by the people of India. There are also numerous minor tribal traditions, though these have been affected by major religions such as Hinduism, Buddhism and Christianity. It is in this diverse context that the concept of the Uniform Civil Code need to be analysed.

As it is already said that India has numerous religions and languages, the people of various religions have been governed by their own personal laws since time immemorial. It leads to a different treatment meted out to different classes of people in their personal laws. There are different personal laws for different religious people such as for the Hindus Hindu marriage act, Hindu succession act, Hindu adoption and maintenance act, and also the Hindu guardianship act, for the different purposes such as the marriage, adoption, succession, guardianship etc. Muslims and Christians are governed by their separate personal laws and the reason why we have separate personal laws is that every religious group has different beliefs, customs and practices and it is possible that the practices and beliefs of one religion may contradict with the other one and so for the peaceful running of the society, we have different personal laws. It can be seen often that the personal laws often face difficulty when the question of succession, marriage, divorce, inheritance, adoption, maintenance, guardianship etc. The difficult portion of them arises because different kind of judgement should be given in different situations and there is difficulty in the distribution of justice. The part of the distribution of justice does not

remain uniform in its application and faces a lot of difficulty and so to solve this decisive steps were taken towards the national consolidation in form of idea of uniform civil code which was for the first time mooted seriously in the Constituent Assembly in the year 1947.

The Uniform Civil Code as envisaged in the Article 44 of the Constitution includes inter alia, entire gambit of family laws. As far as the uniform legislation is concerned, we have almost covered every aspect of law except matrimonial laws. There is no uniform civil code of law applicable to the marital relation of all, irrespective of ethnic or religious affiliations. So through Article 44, the modern State is called upon to perform its onerous responsibility of giving uniform civil code on the above subject, applicable to all the citizens of the country.

The term Uniform Civil Code and its meaning itself came under intense scrutiny during the Constituent Assembly Debates. Muslim members were very defensive against this provision and did not shy speaking against it.

Mr. B. Pocker Sahib Bahadur wanted to know what did the term uniform civil code stand for and which particular law of which particular community were the framers of the provision going to take as the standard. This was really important and even if we talk about a uniform civil code today, we need to know about the standard provision of all the religions that we have right now in the country. The problem is that if take anything standard out of the law of the religious majority, then the minorities will rebel and complaint and it will not be fair on the part of the legislature to do so because India is a secular country and the secular provision is the basic structure of the constitution and it cannot be amended in any manner. The Muslim member's opined that the word civil code did not cover strictly personal law of the citizens .If it was Muslim law which was to be kept as the standard law, then the situation would have been that the minorities would have been ruling the majority and then the never ending quarrels between the Hindus and Muslims have been the talk of the town since time immemorial. It is very wrong to set standards in a secular society and especially in a society like India where there is ethnic and religious and even linguistic plurality. The reason is that if we give importance to one, the others will rebel and it will lead to havoc in the society, which is very much evident in the history of the country. Giving importance to any one religion and setting standards which does not suit the other religions, is a call for the disintegration of the country, disturbing the internal peace and security and the unity of the country. The country can face major disasters in a situation like this.

Mr. M.C. Chagla, a former Minister while making a vehement plea for uniform civil code wrote, Article 44 is a mandatory provision binding the government and it is incumbent upon it to give effect to its provision. The constitution was enforced and enacted for the whole country, which means every section and community has to accept its provisions and its directives.

The Constitution of India in Article 44 enjoins, that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. It is 60 years or more, yet we have not been able to attain that level of sophistication to accept and adopt the constitutional mandate, and the basic reason behind this is that even though we talk about peace, harmony and brotherhood, when it comes to the relationship of the Hindu and the Muslim community, we often are traced back to the bloodshed that took place at the time of the independence and our opinions are often based on the hatred and enmity that prevails since a century now.

## **Ch-2 Uniform Civil Code And The Personal Laws**

Under this part of the paper, we will be focussing more on the relationship between the personal laws and the Uniform Civil Code and how the personal laws will be affected by the Uniform Civil Code. In this part of the paper we will also be discussing about the various provisions in the personal laws that pose a serious threat against equality and are discriminatory in nature and that they give us a string reason for us to have a Uniform Civil Code.

When we conduct a study of the personal laws, we come to know that the women have always been considered inferior to the position of men and that India is a patriarchal society since the ancient times. 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. There have been various instances which petrify my opinion.

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 Talak is highly discriminatory. This is in spite of the message given in the Holy Quran. This has been held void 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.

In the famous case of Mohd Ahmed Khan v. Shah Bano Begum, Thee SC speaking through Y.V. Chandrachud, the then Chief Justice held that the Section 125 of the CrPC is applicable also to the Muslims and that even a muslim husband is also liable to maintain his divorced wife beyond the iddat period. The controversy began and the parliament has 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 CrPC. 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.

### **Ch-3 Secularism And The Uniform Civil Code**

The Preamble of the Indian Constitution 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. Bomai v. Union of India, as per the Justice Jeevan Reddy, it was 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 fath. 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. We have discussed above how there is prevalence of not only different religions in the country but also their own personal legislative laws. This is why 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 enmosity.

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 regulate 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.

#### **Ch-4 Uniform Civil Code And The Gender Justice**

As we have already discussed how the personal laws violate the rights of the women and do not consider them as equal to men and consider them secondary, we wish to convey that the Indian society is trapped in the vicious circle of the patriarchy dogma that they are not even able to see and respect the human rights of the women. There is a lot off controversy regarding the gender justice and the uniform civil code in being. There is a lot to consider before opting for a uniform civil code, we need to think whether or whether not to bring in the concept and a common civil law to everyone in the country, with so much of diversity and the legal pluralism existing in the country.

Women empowerment has always been the talk of the town since decades now and not much has been done when the question of the personal laws and the women arises. women empowerment in the core areas like the social status, gender bias, health, security and the main core empowerment are of exigent needs. The Indian state has infact encouraged codifying the tribal communities laws but there are problems with it, that they are ever evolving and keep on changing from time to time.

Article 44 of the Indian Constitution expects from the State to secure a Uniform Civil Code for all the citizens of India. There is no Uniform Civil Code in India but a Uniform Civil Code exists. There exists a uniformity in the law when it comes to the legal criminal procedures but when it comes to the personal law there is no uniformity and there cannot be any uniformity because of the prevalence of the diversity in the country. The laws relating to every religion, be it Hindu, Christian, Parsi and Muslims are different and vary from one religion to another.

Some people and researchers say that Uniform Civil Code should be implemented and brought in the Indian Constitution in practicality, however we argue against it and say that it is not only the problem of the gender justice, there are many other problems that wwill arise with the upcoming of the Uniform Civil Code in the country.

There are different personal laws for different purposes like the marriage, adoption, succession, inheritance, succession and guardianship and all of them differ with each other when it comes to different religious groups in the country. Therefore, an upcoming of the Uniform Civil Code, is not possible in a country like India for the various different reasons.

It is a known fact that in the personal laws of all the communities, gender justice is inbuilt and it is a result of the socio economic conditions under which they are evolved. That is why there is a need to reform the personal laws. When it comes to the personal laws women undergo many difficulties and experiences in their lives like the severe trauma in matters relating to the marriage, divorce and inheritance. Polygamy, desertion and triple talaq are just a few examples to show the possibilities of the harassment against women. Indian women are formally granted equality in political rights through Indian Constitution but due to the different personal laws, women experience inequality, deprivation and violence. Within the family their position is pitiable.

When it comes to the real sense of equality the Supreme Court in certain cases has opined a need for the legislation for a common civil code or a uniform civil code envisaged by article 44 of India's Constitution should be enacted. It said in Shah Bano's Case in 1985, in Sarla Mudgal Case in 1995 and in Vallamattam case in 2003. A critical look at the constitutional debate, legislative enactments and judicial decisions very clearly indicate the lack of seriousness in ensuring justice to women. Gender issues need to be addressed very seriously and therefore the personal laws can be amended and need to be amended rather than bringing up a whole new uniform civil code.

### **Ch-5 Recommendations And Conclusions**

When it comes to the question of someone asking us regarding the desirability of the Uniform Civil code, we strongly believe that there is no need of the Uniform Civil Code to be introduced and this opinion is based on several reasons which are opined below :-

\* The first reason why we would like to state that is, if the Uniform Civil Code is enacted and implemented, there are high chances of massacre, and riots like situations happening again which will lead to the disintegration of the country.

\* Secondly, the problem with the Uniform Civil Code and the personal laws will remain the same and there will be no difference because in the Uniform Civil Code, there will be a set standard of rules which will further not be able to cover each and every aspect of the personal law and which will led to even more problems that we have today.

\*Thirdly, when it comes to the question of setting standards of the Uniform civil code, which law will prevail over the other will create a major problem for the country.

\*Fourthly, even if the law is implemented, it will not be accepted by the people of the country and the reason behind this is the diversity in the country. Different people have different beliefs and opinions and when it comes to religion in India it is not just a way of life but it is considered as something supreme and above everything and in such a situation setting a common standard for all is an invitation to man-made havoc.

\* Fifthly, when the people are not willing to accept the code, then for whom is the code being made for. Like it is not justifiable to make laws and keep them documented in the particular sense and if this is only the case then there are personal laws too which are there for the documentation purposes.

\* It is easy to say that we will bring in the Uniform Civil Code, but an important question that arises is that no one has ever seen a temple and a mosque side by side whereas, the Temple, Gurudwara and the Church can be seen together.

Thus, we personally feel that there is no need for the codification of the Uniform Civil Code and the only need of the hour is to amend the personal laws.