

**A Critical Study On Uniform Civil Code and Personal Laws in
India**



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Abstract

The question as to whether after 71 years of the Constitution India is ripe enough to have a uniform set of civil law has been raised yet again. This paper emphasizes on the idea of Uniform Civil Code and its viability and feasibility in Indian context, the meaning of the Uniform civil code has been explored to study its implications. This paper critically analyzed the implication of the uniform civil code as well as the strengths and weaknesses of UCC. The paper talks about the relationship of the Uniform civil code with secularism and personal laws. It also gives us insight about the judgments of apex court and the perspective of law pertaining to Uniform civil code.

This paper intends to evaluate the entire dialogue around the UCC, the arguments on its necessity and the various doubts on its nature, so as to ascertain the extent to which the question of personal laws. It is need of the hour to scrutinize how the judicial and political intelligentsia has been trying to address the subject of personal laws through the discourse UCC.

Key Words: *Uniform Civil Code, Art. 25, Art. 26, Sec. 125 CrPc, Portuguese Civil Code 1867.*

Introduction

The idea of Uniform civil code (UCC) has been laid down under Article 44 of the Constitution. It says that the state shall endeavor to secure a consistent uniform civil code for its citizens throughout the territory of India. Uniform Civil Code places a collection of laws to manipulate affairs of all citizens regardless of religion and is probably the requirement of the hour and ensuring that their fundamental and constitutional rights are protected, in other terms it means one country one rule.

India is a secular country, the term secularism was introduced into preamble within the 44th revision this implies that individuals have the choice to take after any religion. Such is indicated beneath the structure as a crucial right beneath Article 25 & Article 26. The term secularism holds a basic esteem among the individuals of India. The concept of faith has continuously been utilized as a procedure by the specialists and gatherings in conjunction with their administering bodies. In a nation like India laws are administered by diverse religions. Diverse Communities such as the

Hindus, Buddhist, Jains and Sikhs are represented beneath the Hindu Marriage Act of 1956. Such rules apply for them with respect to marriage, upkeep, separate, etc.

In a nation like India laws are administered by distinctive religions. Distinctive Communities such as the Hindus, Buddhist, Jains and Sikhs are administered beneath the Hindu Marriage Act of 1956. Such rules apply for them with respect to marriage, support, separate, etc. Christians take after rules built up beneath Christianity in the mean time Muslims take after their Islamic Laws. The three wide groups of private laws in India are: Hindu Law, Christian Laws and Islamic Law. A genuine issue begins with the exceptionally reality that In India, positive secularism isolates the person confidence, this will be since most of the western nations like America and Europe went through the stages of transformation and renaissance.

On the other hand, India failed undergo method of reconstruction or revival indicating weight on the sovereign state to trespass within the things of confidence in arrange to evacuate the impediments

that obstruct working of a state, the clarification why a natural like India cannot experience a renewal is greatly plain. There are chances that debate will rise in numbers instead of plummet causing back-peddling impacts on the rules that are made.

- A Muslim man can keep more than one spouse at a time but a Hindu or Christian cannot. But of course, no lady from Muslim, Hindu or Christian can have more than one spouse in our patriarchal society;
- Hindus can shape an undivided family (HUF) in arrange to oversee their resources way better & within the handle they tend to diminish their charge risk but not a Muslim or Christian;
- A Muslim marriage can be broken down only on the profession of Triple Talaq but not a Hindu or Christian marriage;
- A Christian lady cannot get a share in her perished child.

These perceptions separate the sufferance one goes through at distinctive stages of his/her life additionally separates the benefits an person appreciates at different stages of life. In the event that we compare our sacred arrangements with our personal laws it'll be reflecting the failure of our claim structure and thus the burden of our self-acclaimed individual. A uniform respectful code here alludes to a single law, pertinent to all citizens of India in their individual things such as marriage, separate, care, appropriation and inheritance. It is planning to supplant the framework of divided individual laws, which as of now oversee interpersonal connections and related things inside diverse devout communities.

After a long time of discussions about and contentions with respect to the suggestion of Uniform Civil Code resulted is nullity. It is unfortunate that The Uniform Civil Code has been kept under Article 44 of Constitution which makes it non justifiable and unenforceable.

The thought behind the discussion for many individuals was that the application of UCC would offer assistance in building Indian national personality and annihilate those who supported caste and religion though for many it would devastate the social character of minorities.

Scope & Objectives:

The purpose of research paper is to make the reader aware of the current status and position of the Uniform Civil Code and its practical

implications when it will be implemented and adopted by the constitution. The tentative implication and adoption of the code have been studied on the basis of the following factors-

- Rules of Judicial in interpretation while dealing with the Uniform Civil Code and the efforts made by the ways of judicial pronouncements.
- To incorporate and embody the exhaustive relations between above body of rules & Uniform Civil Code and how it was encapsulated in the constitution.
- To study inter-relationship between of personal laws and the impact of such law in the form of religious values.

Research Methodology:

Research methodology is a systematic investigation to gain new knowledge about the phenomenon or problem in question. In its wider sense, methodology includes the philosophy and practice of the whole research process. It provides the standards which the researcher uses for integrating data and research conclusion.

The subject for this study has been selected in order to analyze the need of Uniform Civil Code for securing gender justice and to find out the suitability of Uniform civil code to the changing needs, ideals and aspirations of the contemporary society.

The researcher duly applied doctrinal method in the course of study. Materials are collected from the Secondary sources such as the law journals and reports including All India Reporter, Supreme Court Cases, Journal of Indian Law Institute and other journals, research publications in this area, major Acts, Governments publications, Constituent Assembly debate. The additional sources include authentic books, relevant publications, articles, features, reports of various commissions and unpublished work

Meaning of Uniform Civil Code

The Constitution of India under Article 44 mandates the state to strive to secure for the citizens of India a uniform civil code throughout the territory of India. The Constitution, however, nowhere had mentioned whether there shall be one single codified law to be applicable to different religious communities. The word "uniform" has been left undefined and it is very difficult to enact a single codified law to the large diverse population in India professing and practicing different religions. The word "Uniform" in Art 44 means that all communities must be

governed by the uniform principles of gender justice and human justice. We can't say that a uniform law necessarily means a 'common law'. It may be different personal law based on uniform principles of individual liberty and equality, only such uniformity is feasible & workable to sustain the diversity in law. To have better understanding of Uniform Civil Code it is required to go through the constitutional background of the provision Art.44 of the Constitution and to have a look upon the objectives behind its incorporation in the Directives Principles of State Policy.

In the Constituent Assembly objection was raised by the several Muslim members on the Uniform Civil Code on two grounds viz.- it confronts with the fundamental right to freedom of religion and secondly, it would be a tyranny to the minority . The first objection was met by pointing out that India had already achieved a uniformity of law over a vast area and that though there was diversity in personal laws, there was nothing sacrosanct about them. The secular activity such as covered by personal law should be separated from religion . Clause (2) of Art.25 specifically saves secular activities associated with religious practices from the guarantee of religious freedom contained in Art.25(1).

Regarding the second objection, K.M. Munshi, who was member of the Drafting Committee of the Constituent Assembly argued that the framing fathers of the Constitution are going to consolidate and unify the personal law in such a way that the way of life of the whole country as may in course of time be unified and secular. Further, he gave the example of Europe which have civil code and everyone who goes there from any part of the world and every minority, has to submit to the civil code. It is not felt tyrannical to the minority, and therefore there is no reason to feel that Uniform civil code is an attempt to exercise over a minority.

In the Constituent Assembly debate in support of UCC, Dr.B.R.Ambedkar said "I don't personally understand why religion should be given this vast, expansive jurisdiction so as to cover the whole life and to prevent the legislature from encroaching upon that field. After all, what we are having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequalities, discriminations and other things, which conflict with our fundamental rights.

The Constitution makers incorporated Uniform civil code in the Constitution with a view to

segregate law from religion and to promote equality among its citizens which ultimately will lead to establish India into a strong nation. However, issue of gender justice was not much prominent in the debate of constituent assembly. The observations made by the framing fathers of the Constitution have not lost their relevance in the present time but no solid steps have been taken by the State to provide a Uniform civil code. In absence of UCC, however, The Supreme Court of India in reliance of Art. 44 of the Constitution of India liberally interpreted many provisions of the personal laws of Hindu as well as Muslim to protect the rights of women in matrimonial cases.

Contribution of Judiciary in Developing Concept of UCC

During colonial period, judiciary played an imperative part for the usage of uniform civil code. Judiciary attempted to clear ways by making translation of changed individual laws of grouped communities and shaped them into one common law for all communities. Legal scholars of the High Court and Supreme Courts graced the preeminent crucial disobedient for progression relating to the suggestion of Uniform civil code. The judicial contribution can be summed up as follows-

In case of **Mohamad Ahmed Khan V Shah Bano Begum**, which is popularly known as Shah Bano's case, the parties were married for forty-three years the husband ousted the ill and elderly wife out of the his home & paid a meager amount of Rs 200 as maintenance per month up to 2 years. But when husband stopped making payment wife Shah Bano filed the petition against his husband and claimed for maintenance under S.125 of Cr.P.C. after which her husband given triple talaq. Madhya Pradesh High Court on revisional application enhanced the amount of Rs 25 to and Rs. 179.20 per month and directed the husband to pay the sum. Thereafter, husband had filed a petition to appeal before the Supreme Court claiming that Shah Bano is not his responsibility anymore because Mr. Khan had a second marriage which is also permitted under Islamic Law

Immediately after wife had filed maintenance petition, the husband Mohd Ahmad Khan had paid Rs 3000 as deferred Mehar and further sum to cover up maintenance for the Iddat period and contended that the petition be dismissed on the ground that wife Shah Bano had received the mount due to her on divorce according to the Muslim Law which was applicable to the parties.

The Hon'ble Supreme Court held that Muslim Women have a right to induce maintenance from their husband under section 125 and commented that Article 44(3) of the Constitution of India has remained in dead light. The court observed that the women, who managed to matrimonial home for 43 years and was incapable of taking up employment and supporting herself or re-marrying, managed with monthly allowances of Rs. 200 even though having 5 children from her husband, who was a successful advocate and received a monthly salary of 5000 and gave only 200 for the maintenance of her own wife and children who were in a desperate need of money to survive.

Thus, the key issue before the Supreme Court was to interpret the **Section 127(3)(b) of Cr.P.C.**- Whether in a case, where the Muslim husband who has paid the Mehr can be exempted from his liability under section 125 of Cr.P.C? The matter was then heard by a five-judge bench composed of **Chief Justice Chandrachud, Rangnath Misra, D. A. Desai, O. Chinnappa Reddy, and E. S. Venkataramiah.** On 23 April 1985, Supreme Court in a unanimous decision, dismissed the appeal and confirmed the judgment of the High Court.

Supreme Court concluded that "there is no conflict between the provisions of section 125 and those of the Muslim Personal Law on the question of the Muslim husband's obligation to provide maintenance for a divorced wife who is unable to maintain herself." After referring to the Quran, holding it to the greatest authority on the subject, it held that there was no doubt that the Quran imposes an obligation on the Muslim husband to make provision for or to provide maintenance to the divorced wife. Shah Bano approached the courts for securing maintenance from her husband. When the case reached the Supreme Court of India, seven years had elapsed. The Supreme Court invoked Section 125 of Code of Criminal Procedure, which applies to everyone regardless of caste, creed, or religion. It ruled that Shah Bano be given maintenance money, similar to alimony.

The Shah Bano judgment, as claimed, became the centre of raging controversy, with the press turning it into a major national issue.[19] The Shah Bano judgment elicited a protest from many sections of Muslims who also took to the streets against what they saw, and what they were led to believe, was an attack on their religion and their right to their own religious personal laws.[20] Muslims felt threatened by what they perceived as

an encroachment on the Muslim Personal Law, and protested loudly at the judgment.

To appease Muslim clerics, fanatics & secure Muslim votes the Rajiv Gandhi government has overturned the Shah Bano case's decision by enacting Muslim Women (Right to protection on Divorce) Act, 1986 which abridged the right of maintenance of a Muslim woman. The most disputed provision of the act was that it gave a Muslim woman the right to maintenance for the period of Iddat (about three month) after the divorce and shifted the obligation/ responsibility of maintaining her to her relatives or the Wakf board. Therefore, it can be validly said that according to Muslim personal laws Muslim husbands are not liable to pay maintenance to their divorced wives beyond the period of Iddat.

Again in the case of **Sarla Mudgal v. Union of India** SC expressed its concern for UCC, the question before SC was that Whether a Hindu husband who is married under the Hindu Law, by converting to Islam, can solemnise second marriage? The Court held that a Hindu whose marriage has been solemnized under the Hindu Law can only get the marriage dissolved on any of the grounds mentioned under the Hindu Marriage Act, 1955. Mere conversion to Islam and marrying again would not, by itself, dissolve the earlier Hindu marriage under the Act. And, thus, a second marriage solemnised after converting to Islam would be an offence under Section 494 of the Indian Penal Code.

Justice Kuldip Singh said to the extent that Article 44 required to be retrieved from the cold storage where it is lying since 1949. The Hon'ble Justice referring the codification of the Hindu personal laws held that, "Where more than 80 percent of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of the 'uniform civil code' for all the citizens in the territory of India."

The Supreme Court again recalled to the government of its constitutional obligations to enact a UCC in July 2003 when a Christian priest approached the Court challenging the constitutional validity of Section 118 of the Indian Succession Act. John Vallamattom a priest from Kerala, filed a writ petition in the year 1997 stating that Section 118 of the said Act was discriminatory against the Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purpose by will.

The bench comprising of Chief Justice of India V.N. Khare, Justice S.B. Sinha and Justice A.R. Lakshamanan struck down the Section declaring it to be unconstitutional. Chief Justice Khare stated that, "We would like to State that Article 44 provides that the State shall endeavour to secure for all citizens a uniform civil code throughout the territory of India It is a matter of great regrets that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies."

In case of **S.R. Bommai v. Union of India**, J. Jeevan Reddy held that religion is the matter of individual faith and cannot be mixed with secular activities. Secular activities can be regulated by the State by enacting a law.

In most recent case of **Shayara Bano v. Union of India** SC held *Triple Talaq* is violates fundamental rights of muslim women that have been guaranteed under article 14 & 21 of Constitution of India. The whole debate on UCC can be summed up by the judgment of Justice R.M. Sahai as he wrote "Ours is a secular democratic republic. Freedom of religion is the core of our culture. Even the slightest of deviation shakes the social fibre. But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms are not autonomy but oppression. Therefore, a unified code is imperative, both, for protection of the oppressed and for promotion of national unity and solidarity."

From the above judicial decisions, it can be stated that the courts remained reluctant to interfere with the matters fall within the realms of religion. Religion has however proved to be a formidable barrier to reform the laws in respect of marriage, divorce, adoption, succession, maintenance and guardianship. The best example in this regard is the case of Shah Bano Begum. In this case what was recognized by the Supreme Court of India through judicial interpretation that was sought to be nullified by the Govt. by enacting Muslim Women's Rights Act, 1986.

Major Conflicting Areas of Personal Laws

Marriage: Hindu marriage differs from Muslim marriage on following ideologies-

- **Aims and Ideals:** Hindu marriage is a religious sacrament because it is considered to be complete only when certain religious rites

are performed with the accompaniment of the sacred Vedic hymns. Religious sentiments play a dominant role here. Whereas marriage among muslims has nothing to do with religion. It is purely a social contract. Dharma is considered the primary aim of Hindu marriage followed by "Prajā" and "Rati". A Hindu gets married with the sole purpose of performing certain religious as well as household duties, while satisfaction of sexual urge and legalization of children are the main motives of Muslim marriage.

- **Endogamy Rules:** The endogamy rules restrict the Hindus to marry within their own caste but among the Muslims, marriage takes place between kiths and kins.
- **Exogamic Rules:** As regards the rule of exogamy, the Muslim community applies it to very near relatives; who are closely related to one another. But among the Hindus several types of exogamic rules prevail such as gotra exogamy, praver exogamy and sapinda exogamy which stipulate that the relatives of seven generations from the paternal side and five generations from the maternal side can't marry each others. Therefore the field for making matrimonial alliances in Hindu society is much more restricted than it is in the Muslim community.
- **Features of the Marriage System:** In Muslim marriage, the proposal comes from the boys' side and it has to be accepted in the same meeting by the bride in the presence of two witnesses. They also practice polygamy and have the consideration of irregular or void marriage. Shia community approve 'Muta' marriage Muslim also emphasize on the capacity of a person to contract marriage but Hindu law prohibits bigamy and don't have irregular or void or no provision for temporary marriage and do not have custom of proposal and acceptance and they do not believe in the capacity of making contract.
- **Marital Relations:** The Hindu marriage is indissoluble and is a permanent bond, which is believed to last even after death. At present the decision of the court is required for a dissolution of marriage. On the other hand Muslim male can divorce his wife at his own will simply by pronouncing talaq. Dissolution of marriages among the Muslims does not require the intervention of the court.

- **Practice of Dower:** In Muslim community we find the custom of dower, paid by the husband to his wife at the time of marriage or even after in respect of wife and the wife has absolute control over it. It is totally different from the dowry system of Hindu.
- **Nature of Marriage:** Muslim of women observe "Iddat" after dissolution of marriage but Hindus do not observe "Iddat" for contracting marriage Muslim widow is allowed to remarry after waiting for the period of "iddat" but in Hindu community though widow remarriage is legally accepted, in practice it is looked down upon by the Hindu community. Thus it is clear that Muslim women have not been given equal rights in marital status as the husband has the rights to marry several women at the same time where as the wife can marry only one man.

Divorce: In Hindu personal law it is found that divorce is given only when the spouses have been living separately for last one year or more. Under Christian personal law marriage is dissolved when petition is filed for divorce after two years or more whereas in Muslim law permits the man to divorce his wife immediately after pronouncing talaq thrice

Polygamy: Hindu law prohibits the practice of polygamy but still in certain rural areas it is accepted as the wives willfully approves it whereas polyandry has been traditionally permitted in few Hindu tribes. Christian law also prohibits polygamy but in Mizoram two particular section namely the Pu Chana pawl" and Chana practices polygamy. Muslim's differs from the rest as their law permits polygamy.

Adoption: Muslim, Christian and Parsis have no adoption laws and have to approach the court under Guardianship and wards act, 1890 whereas Hindu's are governed by Hindu Adoption and Maintenance act, 1956.

Inheritance: According to Hindu succession act the right of daughter in her ancestral property is equal to that of a son whereas a Muslim daughter share is one half to that of son and wife's share is half to man. A Christian woman cannot get a share in her deceased child's property while other communities have their own set of bylaws with respect to it.

Constitutional Barriers

Article 25 of the constitution provides liberty of conscience and free practice and propagation of religion.

Article 26 of the constitution equips entitlement to manage religious affairs.

These two articles providing freedom of religion and freedom to manage religious affairs gives a firm basis for strong opposition to UCC, however, these rights though being fundamental rights aren't absolute in nature, as they're subject to public order, morality and health as consistent with clause 1 of article 25 and 26 of the Indian Constitution.

As specified under sub-section 2 of Article 25- "Nothing in this article shall effect the operation of any existing law or prevent the State from making any law-Regulating or restricting any economic, financial, political or other secular activity which may be related to religious practice;" Hence, baseless implications in customary laws are often enacting by a law of the central government.

Arguments in Favour of Uniform Civil Code

Uniform Civil Code will promote justice, equity and national integration which will enhance the gender equality and welfare of women, In the absence of uniform civil code judges interpret provisions according to their prejudices and opinions, Introduction of UCC will prevent such interference and will promote uniform provisions for welfare of women. The paramount objective of Unity and integrity of India given in the preamble could be achieved only when article 44 will be enforced. In India, secular laws such as Special Marriage Act, 1954, exists which shows that there is no reason why uniform civil code cannot be enforced in India.

Arguments against Uniform Civil Code

India is a land of diverse cultural and various religions which they have been practicing and professions from a very long time so it is not possible to blindly copy the west positivism central Legal trajectory. It at large focuses on the identity of Muslims as code favours majority population of Hindus rather being a uniform code it looks more like uniform Hindu code.

Impediments to Uniform Civil Code

The Hindu personal laws are incredibly progressive now because it had been amended by the Hindu marriage Act of 1955, based on the progressive Special Marriage Act of 1954. In a like manner the Muslim personal law also requires some amendments from within the community as we currently follow a really old act which doesn't keep rapidly with the current standards of gender equality.

India features a diverse personal law because our culture and tradition is diverse. Some cultures follow different systems of inheritance (the law takes that into account) some follow different ones in marriage (the law considers that as well). The Uniform Civil Code may be a good initiative, if the population is uniform enough. But as long as the personal law for every community is amended to the standards of the constitution.

It is supposed that after the banning of *Triple Talaq* and subduing the special status of Jammu and Kashmir under Article 370, the next big move under Modi government's agenda could be Uniform Civil Code.

In month of August 2018, the Law commission submitted a report "**Reform of Family Law**" which highlights about the diversity of Indian culture and raises concerns that the weaker sections of the society must not be "dis-privileged" in the process of reforms. The report suggests that the law commission dealt with laws that are discriminatory in nature rather than providing a uniform civil code which is neither necessary nonetheless desirable. There is a firm belief that the way forward may not be uniform civil code but the codification of personal laws, suggestive of the fact that that amendments in personal laws so that the stigma and prejudices attached to them would come to light & could be tested on the anvil of fundamental rights. This is a long-established fact that the opposition had been stalling the Uniform Civil Code bill.

A number of petitions has been raised regarding the urgent need to the Uniform Civil Code in order to promote national integration as well as gender justice, equality & dignity of women. The petitions also aim that the Uniform Civil Code would replace the personal laws, based on the scriptures and customs of various religious communities, with a common set of rules governing every citizen of the country.

Recommendations & Conclusion

Government of India must bring reforms in personal laws of backward communities & sects to bring uniformity so as to make India a progressive nation. The best example to quote here is of Goa, who adopted the Goa Civil Code also known as Goa Family Law, which is founded on Portuguese civil code 1867 was introduced in the year 1870.

Over the time the topic of Uniform Civil Code has been misused by political parties for their own vested interests and to gain political mileage, be it period of Shah Bano or Shyra Bano. If we analyze

Hindu Marriage Act, it is progressive in gender equality while the practice of marriage among Muslims is unequal & biased where woman treated as a property. The approach under Hindu Laws is modern and at par with societal advancements where law gives equal remedies to parties, whereas among Muslims it is full of orthodox as practices like Khatna, Burqua, Halala, Trippe Talaq, Liability of husband of maintenance of wife till Iddat period, Non recognition of Adoption, believe in 'illegitimate child is a child of nobody' are out fashioned and inhuman in nature that needs to be tailored afresh by codification in spirit of constitution. The outdated personal laws indeed must be reformed on modern and liberal lines. The clerics, fanatics, Maulana Ulemas should convince the communities that UCC is to bring reforms not to suppress them and it will never intent to interfere with the rights, rituals, ceremonies or religious beliefs of a community.

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