



UNIFORM CIVIL CODE

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INDIA as a diversified nation and consist of assortment of population in spite of language, ethnicity, culture and religion form a social institution. Human rights one of the golden key to a society goes hand in hand with the personal law. Religious and community customs are not always rational and equitable so the idea of the uniform code is felt and it is mostly within the framework of secularism. Uniform civil code is a mandatory provision to replace the personal law and set up a uniform code to the families which differs on rituals; scriptures and customs of different religious community .They mainly cover up aspects of marriage, divorce, inheritance, adoption and maintenance. The idea is to bring the spirit of secularism which merges the ideology with just and fair laws.

“ONE NATION ONE CODE”

KEYWORDS:

Historical Background, Rites and Ceremony, Gender Justice, Debates, Pros and Cons

INTRODUCTION

India is a secular state being a home for many famed religions and customs in the world. Religion has played a dominant role in the history of India. It not only has an impact in culture rather it had influenced a greater arm even on politics and societies in India. A diversified population in India is associated with religion. India follows the concept of secularism which is

apotheosize in our constitution and also included in the preamble in 42nd amendment act 1976. So the people of India are at liberty to follow any religions of their choices. However religion has used as a medium by the political parties to create a conflict among different religious groups from past. As India is a state of different religions and languages, the people belonging here are having their own personal laws from immemorial of time. Different religions have their own laws like Hindus are governed by Hindu marriage Act, Hindu succession Act ,Hindu Guardianship Act and Hindu Adoption and Maintenance Act to which are dealt with marriage, adoption, succession and guardian. Christian is governed by own laws and Muslims are governed by Islamic laws. The reason behind for holding different personal laws by different religious group is that, each group has its own unique customs, practices and beliefs. If one customs or practices is followed there may be a chance of confront with other personal laws, so in order to prevail peace among the society each religious groups have their own laws. But these personal laws very often face difficult situations in divorce, marriage, adoption, maintenance, intestate property and Guardianship. This arises due to pronouncing different judgments in different situations and there is a practical difficulty in rendering justice. Rendering of justice remain difficult in this situation so to rectify this, steps were taken towards national consolidation in form of uniform civil code for the first time which was originated in the constituent assembly, 1947.Uniform civil code means applying same set of laws to every civilians of India irrespective of religion and to assure fundamental and constitutional rights are being protected.



HISTORICAL BACKGROUND

➤ *British period*

During this period, Hindu and Muslim framed their own personal laws.

➤ *Beginning of 20th century*

Women activists first demanded for the idea of having uniform civil code. The reason behind the idea of demanding uniform civil code was for women's equality and secularism.

➤ *1940*

The idea of having a uniform civil code was introduced by the national planning committee appointed by the Congress in 1940. There was a subcommittee which examines the status of women and recommends the changes to be brought in personal laws in order to achieve gender justice.

➤ *1947*

Uniform civil code as a fundamental rights-DR .B.R. Ambedkar, Amrit kaur, Hansa Mehta was recommended UCC to be brought in fundamental rights.

➤ *1948*

Debates of uniform civil code by constituent assembly: Article 44 of constitution (I.e.) directive principle of state policy under part 4 added uniform civil codes for its implementation.

➤ *1950*

Reformers bill passed: Through this bill the Hindu women were entitled to property and right to divorce. Child marriage and bigamy practices were forbidden.

➤ *1985*

Shah Bano case-In this supreme court bought a Muslim woman under the purview of section 125 of CrPC act in which she was entitled to get payment even after her iddat period.

➤ *1995*

Sarla Mudgal vs. U.O.I-In this Kuldip Singh.J.stressed the parliament for the need of uniform civil code for the cause of national integration. Hence in this case Supreme Court urged parliament to implement uniform civil code as a matter of urgency.

➤ *2000*

Supreme Court stand on uniform civil code. In Lily Thomas vs. union of India case the Supreme Court utter that it will not instruct the centre regarding the introduction of uniform civil code.

GENDER JUSTICE

Gender justice refer to a world in which women and men, boys and girls are treated equally and they are able to share their knowledge, resources and powers in same manner. It is consider as a human rights and everyone should live with dignity and liberty without any sort of fear. It is away to attain human progress, poverty reduction and personal development. During the past decades, despite rapid advancement women were not treated equally. Women were still at the edge of economic, political and social rights. They remain under represented in democratic institutions worldwide. They were deprived of economic resources and dependent on men for their living. Women were socialized from their childhood days to be dependent on male. But after, it is believed that by strengthening women agency it is an essential initiative to achieve gender equality. Gender justice is necessary for the growth of political stability, economies and sustainable food security. Achieving gender justice is a key means of attaining fairer societies and overcoming poverty. Hence gender justice ensures by stopping inequalities between women and men in respect to family, community and state. According to social legal perspective the implementation of



uniform civil code and gender justice are closely connected to each other.

UNIFORM CIVIL CODE

At present **“Society treats men and women are equally”** this has occurred due to many triumphs and challenges faced by women in their past during the practice of patriarchal form of society. Mostly women are humiliated in their personal laws in the respect to matrimonial disputes, succession, adoption and inheritance.

HINDU LAW

In Hindu Personal Law, before 1955 Hindu women didn't enjoy equal rights as of Hindu men. The practice of polygamy existed where women had not given any rights to hold the property except Stridhan property which is of limited estate which would pass to revisionary on her demise. A limited interest is created where crises arises for desertion or mortgage or selling of the property. In case of adoption women didn't have the right to adopt according to their desire by her own neither can be a natural guardian to her children's during the lifetime of her husband. Till today women are not considered to be a coparcener and also not entitled to the shares except in SOUTH INDIA (Andhra Pradesh, Maharashtra, Karnataka and Tamil Nadu) **“Though Hindu law is a codified one it is oblivious in gender inequality”**

MUSLIM LAW

During the pre Islamic reign women were given secondary position due to the patriarchal society. The debilitation of women and their proliferation

of their problem lead to the advent of Islam. The religious book Quran gives respectable and equal rights for men and women. But certain aspects in Muslim women (wife) are apprehensive and mediocre. A Muslim man can marry four wives where else a women cannot do alike and if so followed they are considered as obscene. Women are restricted to issue divorce to their husbands especially the divorce Women are not even given the right to divorce their husbands, particularly the method of pronouncement of Triple Talaq whose nature is highly differential. They are against the words said in holy Quran. Now it is been noticed by consider being void in Allahabad High Court judgment. Regarding succession women are discriminate where the chance of inherit the property is less compared to the male in the family who get twice the share of the women. With respect to maintenance, they are not looked after the Iddat period. Howsoever, the Criminal Procedure Code imposed the obligation that the women should be under the maintenance of their husband until she can carry by herself which is opposite to that of their Muslim law provisions. Thus a landmark judgment¹, “Sec 125 of CrPC also applies to Muslims “. Thus altercation arose and the parliament passed MUSLIM WOMEN (Protection of Rights on Divorce) ACT 1986 the crux of the act is that maintaining the wife until divorce given by proper application to court is mandatory and governed by CrPC.

“They are created for namesake so reduce conflict between people”

rites, rituals and ceremonies

According to Hindu law, a marriage is dignified only the customary

¹Mohd. Ahmed Khan vs. Shah Bano Begum And Ors AIR 945, 1985 SCR (3) 844

<https://indiankanoon.org/doc/823221/>



rituals had taken effect. Thus a change in rites is considered to be invalid. In respect to Muslim law, there is no special practice but the rites differ from Shia and Sunni Muslims.

Indian people who wish evade their personal law follow the special marriage Act, 1954 and Indian Succession Act, 1925 which constructs a legal framework for marriage, divorce, maintenance and succession.

The women organizations believed that B.N.RAU committee's report for stating uniform civil code for a replacement to their personal laws will promote gender justice to modern trends of the society. They claimed for common civil code of marriage and succession, where civil code for marriage gave a path for the formation of Special Marriage Act.

During the regime of Jawaharlal Nehru they failed to implement this law stating that Muslim society didn't agree for the change. But in 1985 Supreme Court landmark judgment Shah Bano "A Common Civil Code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies"². In spite of accentuation made by Supreme Court for the necessity of uniform civil code in several attune judgments in Denial Latifi, Iqbal Bano and Shah Bano case. The state wakf board will provide for maintenance of the women. The section 118 of Hindu Succession Act is unconstitutional and violate of Article 14.

² <https://www.ijariit.com/manuscripts/v2i6/V2I6-1279.pdf>

³ John Vallamattan v. Union of India

⁴ Uniform Civil Code - UCC Debate, Challenges & Article 44 Of Indian Constitution

The majority said that Article 25 and 26 have no application in case of disposition of property for religious and charitable uses and is not an integral part of Christian religion. The Chief Justice reiterated his view that Common Civil Code should be enacted in this case.³

GOA CIVIL CODE

Goa one of the union territories in India which framed a UCC relating to family disputes which was enforced by The Portuguese Civil Code in 19th century still remains in force and didn't be replaced after the liberation.

PECULIARITY

- * This law allows equal division of property and income between spouses and children.
- * Every person's birth, marriage and death have to be registered compulsorily but for divorce there are many provisions.
- * Muslims who registered the marriage in GOA can't practice polygamy or divorce through pronouncing of triple talaq.
- * During the years of togetherness, property and wealth acquired by spouse to be shared commonly between the spouses
- * In matter of death the ownership and property will be given to the existing spouses.
- * The parents should pass on the property to children which should be equally shared among them.

This act is done constructed in a strict manner because Hindu men had the right to bigamy where in other communities have prohibited the practice of polygamy.⁴

https://byjus.com/free-ias-prep/need-for-a-uniform-civil-code-in-a-secular-india/?utm_source=Google&utm_medium=CPC&utm_campaign=IAS_Dynamic_Traffic_Chennai_April_30&utm_term=&gclid=CjwKCAiAis3vBRBdEiwAH



NEED FOR UCC

Uniform civil code simply means a common civil code for all religion. The dissimilarity and outrage of women before and after marriage, the consequences of triple talaq across the country flash the need of uniform civil code to protect the rights of civilians. Almost all countries of globe are having a common civil code and the principle idea behind the implementation of uniform civil code is to put an end to discrimination based on religion. Personal laws have always played a role in raising discrimination based upon gender. Different set of civil law challenges the concept of unity in diversity and it serves against the credentials of secularism. At a time if reforms for strengthening of women positions is considered then the new civil code is considered as a matter of urgency to eliminate discrimination against women. Uniform civil code will definitely guarantee equality. From this implementation the discrete and estranging between various religions will come to an end and India will definitely turn up tenacious and integration of nation. The drive for implementing uniform civil code should get aid from all progressive thinking civilians of the country. It is a need of an hour. In addition to this it also need political unanimity to implement this code. It places all the religions into a common platform. Though the implementation of uniform civil code looks more complex but it is not unachievable. The government decision in scrapping of article 370 is an immense decision towards integration of nations. It is not only the duty of government to implement uniform civil code, if such laws are made there is a bounden duty of every

civilian to follow that code only then our country will be purely democratic.

DEBATES IN FAVOUR OF UCC

* Integrity Of India

It will unite all people from various cultural background, customs, practices, caste, greed, language and linguistics thus **“UNITED WE STAND DIVIDED WE FALL”**. A uniform civil code will help in integrating India more than it has ever been since independence.

* Reduction In Caste And Religious Politics

The increase in political party indulge people by going in favor of caste and religious base voting in their election manifesto but if UCC prevails they play a vital role where no votes will be casted in relation to religion and caste.

* Change In Personal Law

As many years pass by, still we are following the personal laws for certain disputes which stand as a barrier for the unity in our country which also moves in the aspect of gender injustice.

* Sign For A Developed Nation

It will help the people to promote the national goals of the country if a single code is governed without a dispute. Improvements to keep away caste and religious politics which made us to grow us economically and left behind with our socialistic works. UCC enable the society to move forward and take India toward.

* Up liftment of women

The condition and status of women will be developed and it is shared equally among the women of different caste and creed if UCC is followed. Religious laws

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are misogyny in nature towards women in the family which imposes mistreatment and restriction thus moves them towards victims in the society.

★ Promote secularism

UCC doesn't restrict any religious customs to be followed rather it promotes together among people to follow one code which is applicable to all irrespective of any religion. The unification and codification of variety personal laws produce a sensible set of laws which governs us.

★ Changes are things which never change

A Minority of people must not indulge in selecting their own laws which they have to be administered. Thus formulating the UCC many overcome the old crises and stands firm and erect to render justice.

AGAINST UCC

The rules which bind together all communities are redoubtable work and also a drudging one which should inculcate all religious belief within one code.

- ❖ Misjudges thoughts among people who are treated as minority in a country of majority people.
- ❖ Dearth of political will to indulge in framing laws
- ❖ The different religious customs and culture lags behinds which are difficult to tie into one single bundle.
- ❖ The strong religious belief from holy books is diverse in nature where they create a discreet not to decide them thus lead to

antagonism among the other religious groups.

- ❖ Being a secular state in become ultra vires according to our constitution which directly hits ARTICLE 29 AND 30.

INTIMATION

To ascertain the principle of DPSP and to main a common law for all the following allude can be included

- A forward and non-orthodox observatory must be emboldened among the people to cultivate the spirit of UCC.
- Education is an essential tool to break this blockage and create awareness among people.
- The UCC must be drafted keeping in mind the best interest of all the religions.
- A group of eminent jurists must constitute a committee to maintain uniformity and scrupulous must decide without hurting the religious sentiments of people all over the country.
- The motif being delicate in nature, is surpass the initiative comes from the religious groups.

CONSTITUTIONAL PROVISIONS

- Article 15- No discrimination on grounds of religion, race, caste, sex or place of birth.
- Article 25- Freedom of conscience and free profession, practice and propagation of religion, subject to reasonable restrictions on the grounds of public order, health and mortality.
- Article 25 (2)-provides for regulating secular activities associated with religious practices, social welfare and reform.



- Article 26- Right to establish and administer religious institutions.
- Article 27- Prohibits the state from levying a tax, proceeds of which are used for the benefit of a particular religion.
- Article 28- deals with the issue of religious instruction in educational institutions.
- Article 44- deals with UCC throughout the territory of India.

The 42nd Constitutional Amendment Act inserted the word 'secularism' in the preamble. In the S.R.Bommai vs. Union of India case, the Supreme Court held secularism as a basic feature of the constitution

PROS AND CONS

- ❖ In the modern era, a democratic secular country must have common personal laws for all its civilians so that all citizens will be treated with equal status irrespective of religion, caste, gender etc.
- ❖ It is found that almost all personal laws consider women as inferior and only given limited rights. So by adopting uniform civil code, gender parity will be promoted and men and women will be treated with par.
- ❖ The civilians of India are already treated equal before the criminal and civil laws except in some personal laws. By implementing uniform civil code all citizens will share same personal laws so that special privileges, concessions and discrimination to certain communities will be abolished thus it will promote national integration by this.
- ❖ By implementing uniform civil code, disputatious issues in existing personal laws can be resolved.
- ❖ Once the uniform civil code is adopted India will undergo another social reform .For example Muslim women in India were discriminated in marriage, divorce etc .but Muslim women in another country say

Pakistan, Bangladesh etc were enjoyed due to codification of personal laws. Once uniform civil code is adopted Indian, women too enjoy a codified personal laws. Therefore it acts as a stepping stone towards another social reform.

- ❖ In the absence of uniform civil code, judges will interpret according to their own prejudices and opinion. E.g. Muslim women in case of divorce and maintenance will be judged according to the judge opinion.
- ❖ Uniform civil code will help in attaining secularism.
- ❖ By introducing uniform civil code it will promote monogamy among all citizens including Muslim women so that it helps in bringing betterment in women.

CONS

- ❖ Potential misconceptions regarding uniform civil code creates a fright among people of minorities. Before the implementation of uniform civil code, the official should win the confidence among people otherwise it leads to menaces to communal harmony.
- ❖ The implementation of uniform civil code is a difficult task due to our nation's wide diversity.
- ❖ Some minorities considered uniform civil code as an encroachment of their religious freedom. It would violate own traditional practices.
- ❖ The Constitution of India provides provisions regarding right to freedom of religion of their own choice. Uniform civil code will violate these provisions.
- ❖ Uniform civil code is borrowed from different personal laws making changes in judicial proclamation, to satisfy gender equality and adopting interpretation on marriage, adoption etc is sensitive and difficult task. Government should be sensitive and unbiased in dealing with



majority and minority communities otherwise it leads to communal violence.

- ❖ There is already war of words regarding beef ban, love jihad, saffronization of school and college curriculum .At this moment if uniform civil code is introduced the situation became even worse as it would create an insecure among Muslims.

WOMEN RELATED SPECIFIC LEGISLATION

- ❖ The Muslim Women (Protection of Rights on Marriage) Bill, 2019 criminalize all forms of talaq including in electronic form or written. It states that if Muslim man declares talaq results in sudden and irrevocable divorce it is illegal and to be void. This act prescribes punishment for those who pronounce talaq have to undergo three years imprisonment and be levied fine. The pronouncing of talaq by any Muslim man is a cognizable offense and it is consider as offence only the information is given either by (1) the married woman (against whom the talaq has been declared) or (2.)By those persons who is related to that women by blood. A Muslim woman to whom the talaq is declared is entitled to receive allowance from her husband for herself and for her dependent children.
- ❖ The Immoral Traffic (Prevention) Act, 1956
- ❖ The Dowry Prohibition Act, 1961 (Amended in 1986)
- ❖ The Indecent Representation of Women (Prohibition) Act, 1986
- ❖ The Commission of Sati (Prevention) Act, 1987
- ❖ Protection of Women from Domestic Violence Act, 2005
- ❖ The Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL)Act, 2013

- ❖ The Criminal Law (Amendment) Act, 2013

Women related legislation (PROVISIONS)

- ❖ The Indian Penal code,1860
- ❖ The Indian Evidence Act, 1872

CONCLUSION

Implementation of uniform civil code binds the people towards national integrity. Uniform civil code is possible only when the government consider gender justice. The fore coming of Uniform civil code will strengthen gender justice which makes all civilians on an equal par. India has a peculiar blend of codified personal laws of Hindus, Muslims, and Christians etc. They don't have a uniform family related code in a **single book of record** so that all religious people will follow without any queries. People consider that UCC is a desirable one which will carry forward our country to the next stage where more unity in inculcated. The disparate of notion of time and manner should be ascertained. In spite of using UCC as an emotional issue to gain political advancement in their career by the political leaders they should take initiate to evolve a conclusion to the tedious issue.

“THERE IS BEAUTY AND POWER IN UNITY. WE MUST BE UNITED IN HEART AND MIND THUS LEADS TO ONE NATION AND ONE CODE”
