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## UNIFORM CIVIL CODE- A RAY OF HOPE FOR GENDER EQUALITY

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Chalasanani Jainesh

BBA LLB (Hons), School of Law, Lovely Professional University

Dr. Seema Modi

Assistant Professor, School of Law, Lovely Professional University

### **Abstract**

India is the world's largest democratic country. As India is a secular state, it enables its citizens to practice and preach their own religions. But, the question is what cost will have to be paid for it. A religious interest should be within the border of one's comfort level and it shouldn't harm the interest of others. In India, the personal laws especially referring to civil matters such as marriage, divorce, property, inheritance, adoption were based on religious customs and applicable to only their religious population. The time has come to change this pattern and implement Uniform Civil Code. This isn't an alien proposal because the debate for the implementation of UCC is dated back to the proposal of First Legal Commission in pre-independence era and Article 44 of Indian Constitution which turned proposal into article in post-independence era. However, Art. 44 is not enforceable by law, as it is the part of the Directive Principle of State Policy. Uniform Civil Code is far away, even the common civil code has also not been implemented. Its cost has to be paid in the form of gender inequality where these personal laws have some biased provisions for men. For example, multiple marriages for men and no maintenance for wife is allowed in Muslim laws. In the same way, under the Hindu Minority and Guardianship Act the father and then, mother has been declared to be the guardian of child. This inequality can be eliminated only by implementation of Uniform civil code.

**Keywords:** Uniform civil code (UCC), Indian Constitution, Personal Laws, Gender equality.

### **1. Introduction**

Gender equality is one of the hottest topics that hits the hard reality to consider it for the establishment as a common point in the civilized world. But to achieve its agenda it requires the support of laws in the country. Not just laws but the nature of the thought process should also be generalized for achieving its complete objective. The nature of the thought process of the human being is always a subject of the culture and religion that the particular human being follows. Every religion teaches its followers to respect women. But it isn't an excuse of oneself to illustrate it as gender equality. Because being respected is one aspect of gender equality but not the whole concept of it. Gender equality is all about being respected, treated with equality, giving them their chances of being individual, considering their opinions and so on. No doubt, women has always been the victim of gender equality not just in India but throughout the world.

To achieve its objective, gender equality needs proper laws in the country. Because the law has the ability to turn a right into a duty of its abided citizens. In India, laws relating to personal matters such as marriage, adoption, inheritance, divorce etc., were based on religious customs and every religion has their separate laws in spite of the uniform civil law alike the western countries. This is something India has to look into its chambers for uplifting its objectives of achieving gender justice.

Uniform civil code (UCC) means a code consisting of common civil laws for all the citizens of India without any discrimination based on religion, caste, color, creed, race etc. As said by *Sathe*, "The word 'uniform' same law for all but it should mean similar laws for and similarity should be regarding equality and gender justice"

## **1.2 Statement of Problem**

India is a land of multi-cultural people where the caste, religion, language, creed, and customs are different from one another but the phrase "*We the people of India*" which is the starting point of our preamble brings all these divided branches under one roof called "secularism" which makes this sub-continent a very unique blessed land in the eyes of the world. But in the question of implementation and achieving the objective of the word called 'secularism', this country is bound to self-assessment. No doubt the quality of peace for following one's religion has never been an excuse to proclaim or question, but it can be said that its pampering of religious freedom and law are overbidding.

Religion should be a matter of one's personal conscience be the matter in court and laws. The making of different civil laws relating to marriage, property, inheritance, adoption and other issues with the view of religious customs and religious preaching is definitely a blackspot in Indian Judicial System. Civil Laws based on religion such as *the Hindu Marriage Act, 1955*, *the Indian Christian Marriage Act, 1872*, *the Hindu Succession and Adaptation Act, 1956*, etc has deprived the term oneness under the Law.

On the other hand, these laws are not just drawbacks in the context of secularism but in the context of gender justice as well. Especially, women being the victim of religious customs which have been supported and turned out to be matrimonial and property laws in the country are definitely subject to scrutiny for the betterment of future generations. Thus, the last hope for eradicating gender injustice in civil laws of the country is to bring Uniform Civil Code (UCC) into existence and make our judiciary more elegant.

### **1.3 Research Objectives**

1. To Understand the historical background and conversional circumstances in failure of implementation of Uniform Civil Code (UCC) in India.
2. To evaluate the existing Laws and their nature and scope towards the gender justice.
3. To critically analyze the Role of Judiciary in setting up the Uniform Civil Code.
4. To analyze the view point of contemporary government in bringing Uniform Civil Code (UCC) into existence.
5. To Analyze the need of implementation of Uniform Civil Code (UCC) in India with outline of gender justice with secular laws.

### **1.4 Research Questions**

- i. Can uniform civil code (UCC) come into existence in India, without hurting the religious sentiments and customs?
- ii. What is the relationship between uniform civil code (UCC) and gender equality and what are the changes require in personal laws?
- iii. What is the judicial overview on uniform civil code (UCC). Will it have any impact on government to bring UCC into existence through legislative framework?

### **1.5 Hypothesis**

Enabling gender equality through laws can be achieved through the implementation of the uniform civil code (UCC). Being called a secular country it is important to respect the religious customs and teachings of every religion but isn't necessary to have different personal laws based on religion. India to turn into a developed nation needs the change and that can attain through the implementation of uniform civil code (UCC).

### **1.6 Research Methodology**

The present research paper has adopted the doctrinal form of research as its research methodology. The doctrinal research method was used from the sources of books that are in from of print and pdf, articles that are printed, published online, published in newspapers, statues from bare acts, case laws from the online database such SCC online, Indian Kanoon, Lexis Nexis were used to get the information.

## **2. Historical Background of Uniform Civil Code**

All Indian laws which are prevailing today in India have the flavor of English laws. During their regime, the British were very positive in bringing the uniform set of rules to govern the laws of the country. This is very much evident in report of First Law Commission, 1840 which is said to be '*Lex Loci*' which means '*Law of the Place*' Report. The main objective behind the constituting this first law commission was to study the ground reality and feasibility of bringing the uniform civil code (UCC) into existence in the country.

But the final recommendation of the Commission has wiped out the hopes of implementation of uniform civil code (UCC) where the recommendation stated that there is a necessity for the codification of criminal laws such as the Evidence Act, the Contract Act, etc. But, on the other side for the personal matters such as marriage, maintenance, adoption, divorce. There is no need of any such codification. This is resultant of the policy consideration that was proposed by Warren Hastings in his mention of Administration of Justice Regulation, 1780. In this policy it was clearly mentioned that the disputes such as marriage, divorce or inheritance, people should be governed by their personal laws.

But, after the formation of Indian Constitution, the uniform civil code (UCC) has not been able to grab its hotspot. Though, Article 44 clearly emphasized the formation of the uniform civil code (UCC) in Indian territory.

Despite, all the recommendations and formations the uniform civil code (UCC) has become a dream yet to full filled for many social reformers and citizens because in the initial days the minorities has opined that their rights and laws relating to civil can be suppressed in the uniform civil code(UCC) and the majority religion that is Hinduism can have benefits by bringing large portion of their customary laws into existence via Uniform civil code (UCC).

While on the other hand this has led to a confusion for the newly formed government and first Prime Minister of India Shri Jawaharlal Nehru and his cabinet and in the year 1948, he constituted a sub-committee to draft a new code to dethrone The *Hindu Code Bill* and appointed Dr. B R Ambedkar as its head. This has resulted in suggestions of equality between men and women in the inheritance property. The maintenance for wife and so on.

On 23<sup>rd</sup> November, 1948, a member of Parliament who belong to the Muslim community has challenged the government for its implementation of code and he said '*India won't be same if this code comes into existence*'. On the other Nehru ji countered his party will resign if they fail to bring it into existence.

But, the saga of allegations and susceptions has led to many obstacles where the implementation of uniform civil code was been a roller-coaster ride for the framers of the constitution and members of the legislature as well. Where the final output was still the implementation was left a dream for many in the year 2022.

### **3. Existing Personal Laws and Their Role in Providing Gender Equality**

It is open secret that the personal laws in India were based on religious teachings and religious customs. Thus, the personal law matters such as marriage, divorce, adoption, inheritance, maintenance, etc., were

different from one person to another person based on their religion. In this chapter we will be discussing personal laws existing in India and their role in providing gender equality.

### **3.1 Hindu Laws**

In India, majority of the population belongs to the Hindu religion, this religion is very ancient has a broad history according to the Hindu mythology. And the Hindu laws were not originated from one script but many scriptures and scripts that exist from many generations, the whole concept Hindu mythology is predominant on term called '*Dharma*' which in translation mean righteousness. On the other hand, the ancient Hindu history tells us about the '*Smriti*' and '*Shruthi*' which are based on *vedas*, *dharamsatras* and *puranas* which are considered as the sources of Hindu laws.

#### **3.1.1 Gender equality under Hindu personal laws**

In Hindu mythology women are considered more powerful and worshiped as goddess and respected with dignity and integrity. But this isn't the excuse to say that the Hindu women were treated equally with men. The art of inequality is existent in the Hindu personal Laws.

In the year 2005 the status of equal rights in possession was given to women. Earlier, Men has upper hand in possession and women were deprived of this right which proves that the inequality has prevailed in Hindu personal Laws. *Kirthi Singh*, a senior advocate at Delhi High Court in her interview with The Hindu Magazine says

"Among Hindus, the rules for inheritance of a woman's property are different from a man's property. If a woman dies intestate and has no husband or children her property will go to her husband's heirs and only if they are not alive, the property will devolve upon her father's heirs and only lastly to her mother's heirs, this method of succession was upheld by the Supreme Court even though it recognized the injustice of this provision."

Thus, the Hindu personal laws in civil matters of marriage, divorce, adaptation, guardianship, inheritance are primarily helpful in nature to safeguard the rights of Hindus according to their teachings and customs but kind of outdated with the present-day scenario. In today's world men and women were very much equal and every law governing rights should treat them equal.

### **3.2 Muslim Laws**

It is well known that Islam is one of the most followed religions in the World. In context of India, Islam seems to be bit different though the spiritual teachings are same with regard to world the Indian Islamic laws stand out of the box. Coming to the history and sources of the Muslim personal laws. They are mainly derived from the '*Quran*' their holy book besides Quran they have four schools for Sunnis who differs from

Shias. The four schools were Maliki, Hanafi, Sahafi and Hanbali. These schools were named after their religious heads who can be called as the Muslim jurists. The problem exists with Islamic law is that their laws weren't something that derived out with human moral ground but they were said to believe they were delivered from the words of God.

### **3.2.1 Gender equality under Muslim personal laws**

The concept of gender equality under Muslim personal laws is not a positive side of these laws. In Islamic laws women are always beyond men and never shared equal status. This is evident with every judgement that the Indian civil courts have dealt with Muslim cases.

In context of marriage, it is always the age that plays the factor where a girl who attains 18 and boy who attains age of 21 were legally bounded to get married under the eyes of laws. But, for Muslims the scenario is bit different. In *Yunusbai Usmanbai Shaikh v. State of Gujarat* In the above case Justice J.B Padiriwala has said that-

*“According to the personal law of Muslims, the girl, no sooner she attains puberty or completes 15 years of age, whichever is earlier, is competent to get married.”*

The other aspect that needs our attention is witness at time of marriage according to the Sunni's law the proposal for marriage and acceptance for the same should be done in the presence of two male witness or one male witness and two female witnesses. In the case of *Abdullah v. Beepathu* the court held that-

*“The marriage invalid as there were two female witnesses only. That means as per the above law a single man has an equal status to two women. A woman is half to a man which is nothing but sheer discrimination.”*

Thus, even the Islamic personal laws were not an excuse for the cause of gender inequality through the personal laws based on religious customs and preaching's. These laws make the implementation of Uniform civil code (Code) more necessary.

### **3.3 Other Personal Laws**

Even the Christian personal laws were not an exemption for the gender inequality. Before 2001, a husband only needed to show the cause of adultery to obtain the divorce whereas the wife had been subjected to show bigamy, adultery, desertion etc to obtain divorce. However, after the amendment in 2001 it allowed equal gratifications for both men and women. In the case of *Mary Roy v. State of Kerala*

*“Mary Roy has challenged the discriminatory personal law of the Christians namely The Travancore Christian Succession Act 1916, almost forty-seven years after the commencement of the Constitution. As this Travancore Christian Act, was very biased as this Act put the rights of the daughter, one fourth shares of the son (Travancore Christian Succession Act, 1916)”*

Even the Parsi personal laws has the same old song where the gender inequality prevails in larger ration and is no exception. *“The children of a Parsi Zoroastrian man married outside the community can become Parsi,*

but the same is not true of the children of a Parsi woman married to a non-Parsi. Some women in the community have questioned the practice and taken the matter to the courts.”

### **3.4 Common Civil Law As An Alternative for Personal Laws?**

Once we take all the drawbacks in the personal laws it will be very much evident that these laws need a complete amendment to safeguard the rights of women and provide gender justice. India is a secular country which values the ideologies of every religion with greatest interest. But it is also evident that these can be a drawback for the future generations because the taught process of living nature and ideologies about the gender roles have been changed from our past generations. Thus, the need for change in law is also evident in nature.

Common civil code is never an alien subject because many western countries follow these common civil laws pattern. Common civil code in simpler terms can said as the common law for all the people irrespective of their caste, color, creed, religion. Customs, etc., this can emerge as a solution for these personal laws depriving the women rights. Many scholars were also insisting that these common civil laws can be very much helpful in making justice deliverance a positive sign in India by saving the time of court and making laws understandable for the public with easy access.

## **4. Judicial Perspective on Implementation of Uniform Civil Code in India**

The first voice of court about the uniform civil code (UCC) to confront with the government has come up in this case that is *Mohammad Ahmed Khan v. Shah Bano Begum* which is known as Shah Bano Case, the apex court held that “*It is also a matter of regret that the Article 44 of our constitution has remained a dead letter.*” However, the joy of the many people on the Court’s statement has evaporated as the central came with new regulation and laws for Muslim women based on religious customs and made it clear that the Muslim women were not entitled to maintenance after the divorce under section 125 of the Criminal Procedure Code (Cr.P.C) of India.

But in 1995 the hope for the implementation of uniform civil code (UCC) has once again raised its bars with judgement of *Smt. Sarla Mudgal, President, Kalyani and others v. Union of India and Others* where the apex court has addressed the government to take the effective measure in implementing the Article 44 of the Indian constitution and to present an affidavit stating the steps and measures taken in implementation of the Article 44. However, the joy didn’t last much time because the Apex Court delivered a reversed judgment in the case of *Ahmadabad Women’s Action Group (AWAG) v. Union of India* in which the court held that the part of removal of gender biasness and discrimination involves a state issues and the court has nothing to with these matters. This judgment was widely criticized by many activists who taught the implementation of uniform civil code (UCC) has fallen on track.

The Supreme Court stood firm with it uphold on Uniform Civil Code in the case of *Lily Thomas etc. v. Union of India and others* the court opined that the desirability of implementation of uniform civil code can be achieved by the mass awareness created by the statesmen and the change of taught process in the common man for the gender justice.

In the year 2006, the apex court in the judgement of *Naveen Kohli v. Neelu Kohli* has urged the government to look after Hindu Marriage Act and advised to add irretrievable break a ground to divorce for the concern of justice to both the genders.

Recent trend about the gender justice has come up with *Shayara Bano v. Union of India* which is known as triple talaq case this was a sensational case which came in ration of 3:2 judgement which outlined the gender injustice with the nominal principles of the religion.

So, under the Judiciary perceptive it has been a positive sign of implementing the uniform civil code (UCC) but it needs the help of legislature which is always a reason for delay. And it is open fact that judiciary had not forced or rubbed its opinion legislature it would have be more effective if the judiciary has extended its efforts in suggesting legislature for the implementation of uniform civil code (UCC).

## **5. Uniform Civil Code- Its Need for Implementation**

The debatable question the need for implementation of uniform civil can continued till the existence of thought process of the religious head and their followers who believe that if the uniform civil code (UCC) is implemented the common law under the uniform civil code (UCC) This thought process should be changed and the people should start looking out of the box rather than being surrounded by the orthodox thinking of religious thinking which is based on their time period and resources available. The implementation of uniform civil code (UCC) will strengthen the unity and make state a first place to be respected.

### **5.1 State of Goa- An Inspiration**

Goa is the only state in country which uniform civil code (UCC) implemented in its state. The law is named as "*Goa Family Law*" which has its roots from the Portuguese ruling period i.e., *Civil code of 1876*, these set of civil laws brings some exiting set of rules and regulations these laws are applicable to all the people of Goa irrespective of their caste, religion, or their ethnicity. These laws include provisions such as income is shared equally between men and women and children and on the other side every event of birth, death and marriage should be registered compulsory its also has bring the scope of gender justice and equality where provisions state that Muslim men in state has no right of bigamy by pouncing '*talaq*' and after the divorce the property is shared equally.

The present government's minister Shri Rajnath Singh told that "*Whenever we talked of Ram Mandir people poked fun at us and said we didn't have any other issue to talk about but, we filled our promise. We also promised and fulfilled article 370 and triple talaq. We will do what we said about common civil code also*"



## **6. Suggestions**

The desirability of implementation of Uniform civil code (UCC) requires attention for some the suggestions. Because uniform civil code (UCC) is socio-legal subject which is highly ranked in nature of criticizers as well as people who are very firm on belief for its implementation. Many political parties have used this subject as a vote bank and failed to bring their promises into existence. After doing the whole study of the subject, the following suggestions may be given for actual implementation of the Uniform Civil Code:

### **6.1.1 Bringing Article 44 of the Indian Constitution into existence**

Article 44 which clearly says, “the state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India”. This should come into existence.

### **6.1.2 A Judicial committee for reviewing the demands of religious heads for making common law**

A judicial committee should be established within the inclusion of Judges, senior lawyers, legal Professors and highly scholars in matters of laws to have a word with the religious heads.

### **6.1.3 To draft uniform civil code (UCC) based on fundamental rights and moral status and give the religious customs and teachings a less importance.**

The upcoming uniform civil code (UCC) must be having the laws based on fundamental rights and moral status and likely less importance for the religious customs and their teachings.

### **6.1.4 To make gender equality a subject in academics.**

Gender equality should be a mandatory subject in schools for children. Because though we have laws like section 498A of IPC we fail to eradicate the existing problem. This can only be attained by knowledge and awareness among people.

### **6.1.5 To bring fast-track courts in civil matters for personal laws.**

The Uniform civil code (UCC) can make courts work more easier and the judgments can expect to more efficient and faster than usual because the courts were barking a hectic burden of reviewing personal laws which is different for every religion.

## **Conclusion**

Uniform civil code (UCC) is always an amplifying idea which needs to be brought into existence. But things turned out in favor of fortune for the religious laws which established themselves as the civil laws turned personal laws in the country. The concept of uniform civil code (UCC) has always been in consideration not just in post-independence era but its roots were traced before this era which included the colonial rule over the country. However, all these efforts have remained efforts rather than to turned out as an actions. This concept is not just the like hood of the framers of constitution or the few political leaders or experts or activists but the judiciary is also one among those.

The *Shah Bano* case has turned the tables with its judgement where it is involved of topic raised about the *Article 44* of the Indian constitution which states the implementation of uniform civil code (UCC) has been brought into lame light. Its is also followed by the events of cases and the recent judgment of *triple talaq* case also brings the positive signs that the Indian judiciary has opined on Uniform civil code (UCC).The question remains is that can this Uniform civil code (UCC) eradicate the gender inequality which is pursuant in the India society the personal laws which are based on the religious customs and religious preaching's and teachings has added more fuel to it.

Gender equality needs be abolished from the present-day society and the new generations should witness the concept of equality with the pure form. To make this happen the only way can be regarded as the implementation of the uniform civil code (UCC) the implementation of civil code isn't just the hope for the gender equality but the hope for oneness and one law for one nation. Gender equality isn't a question of right but is a question of taught. Man being a social animal has evolved throughout his journey the concepts of life has changed with one generation to other and such should also be an inspiration for the future generation's and that can achieve with the uniform civil code (UCC).

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