



“UNDERSTANDING UNIFORM CIVIL CODE”

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ABSTRACT:

The Directive Principles of State Policy are established by the Indian Constitution and serve as a set of guidelines for the government's policies as well as the welfare of the population. The creation of a Uniform Civil Code for our nation's citizens is mentioned in these principles. Dr. B.R. Ambedkar attempted to modify Hindu laws in the 1950's by creating the Hindu Code Bill. The Code granted daughters inheritance rights, outlawed polygamy, and legalized divorce. The administration enacted a watered-down version of the measure in the face of strong public resistance. The Uniform Civil Code would address marriage, divorce, adoption, and inheritance. India is a country with varied cultures, traditions, and faiths. Religion did not have a binding effect on people in ancient India in order to exercise control over them; the caste system did.

When the British invaded India, they designed and implemented the 'Policy of Divide and Rule', in which religion was utilized as a tool to divide the population and deepen feelings of isolation and minority among them. Although it was beneficial to the British in terms of governing the colony, it was detrimental to the diversity of Indian society. Misinformation about the rule of majority over minority is a result of the same thought process, consequently impeding the country's intellectual growth and progress.

In this globalized world, the Uniform Civil Code is essential as if the country has a uniform system of laws governing its citizens, it will prevent disharmony in the country from being caused by the walls of personal legal guidelines and will play an important role in changing the status of women by conferring certain rights with legal backing and proper implementation. The importance of the Uniform Civil Code cannot be overstated. It can only become a reality if the social climate is appropriately created and the public is awakened to accept the change.

“Without a Uniform Civil Code, labelling India be Secular nation is just an illusion”

Keywords: Uniform Civil Code, Cultural diversity, Religion, Personal Laws.

INTRODUCTION

The word 'civil code' refers to the full corpus of rules covering property and personal rights, such as marriage, adoption, inheritance, and divorce. Different laws govern these issues for different communities in India. As a result, Hindu inheritance and divorce laws would differ from those of Muslims, Christians, and other similar religions. The desire for a uniform code entails combining all personal rules into a single set of "Secular Laws." Article 44 of the Indian Constitution aims to provide citizens with a standard civil code across the country.

Part IV of the Constitution, from Article 36 to 51, enumerates the Directive Principles of State Policy. This concept was drawn by the architects of the Constitution from the 1937 Irish Constitution. These ideas were regarded as 'new elements' of the Indian Constitution by Dr. B. R. Ambedkar. Granville Austin referred to the Directive Principles and Fundamental Rights as the 'Conscience of the Constitution.'

The directive principles were made non-justiciable and non-enforceable by the architects of the Constitution. Taking a pragmatic approach, the Constitution authors abstained from attaching teeth to these values because they believed more in awakening public opinion than in legal procedures as the ultimate sanction for the implementation of these objectives.

As a result, the framers placed authority in the hands of the people for speaking ideas that result in the transformation that the people living in the society believe has occurred. Within society, there is a similar demand for the restructuring of women's positions. India, as a culturally varied country, is the birthplace of several personal laws. Personal civil laws typically revolve around and have a direct impact on the women who practice that culture; as a result, the status of women is always at the mercy of shifting societal dynamics, resulting in the worsening of their position.

The Uniform Civil Code will be an empowering tool with legal ramifications for violations. It is difficult to change the fixed attitude of the people in India, which is a patriarchal country, and the Civil Code will be a catalyst that will ease and speed the process of change in the minds of the males within the society.

It should also be noted that, as declared by the Supreme Court in *John Vallatattom v. Union of India*, the premises underlying Article 44 are that there is no required relationship between religion and personal law in civilized society.

ORIGIN OF UNIFORM CIVIL CODE

The origins of the UNIFORM CIVIL CODE can be traced back to colonial rule in India where during the year 1840, a uniform law was enacted by the British for crimes, evidence, and annexures, while personal laws of Hindus and Muslims were deliberately left unattended, resulting in much inconsistency and complexity among both religions.

During the constituent assembly debates following independence from the British, the founding fathers of the constitution, such as Dr. B.R. Ambedkar, recommended a Uniform Civil Code to be included initially in Article 35 of the Constitution of India, 1949, and personal laws must be kept out of the ambit of Uniform Civil Code; however, he also acknowledged that such implementation of Uniform Civil Code must be voluntary.

HISTORY & EVOLUTION

During the Rigvedic period, the wife's position was revered, and women's roles were recognized, particularly in religious rites. Monogamy was a widely recognized custom, however, bigamy was also common, albeit limited to the aristocratic classes. The Rigveda recognized daughters' inheritance rights on their father's property but excluded married daughters.

The detailed rights also suggest that the marriage was a sacred connection rather than a contract. The women were respected members of their household and of society. Women were seen to be the creators, protectors, and educators of their children.

Women's status worsened with time, not only in society but also within the family. The lack of education and the fall in the age of marriage had a negative influence, decreasing the position and prestige of women. The land began to gain credibility and was seen to have an advantage over women. The development of feudal society reinforced the concept of property, particularly private property.

With the arrival of Muslims in India during the medieval period, women's social mobility was restricted, and the custom of child marriage expanded throughout the community. Circumstances forced them to accept their inferiority and second-class status, and they became economically dependent on males.

In the 18th century, the Muslim era was succeeded by the British Raj, which was largely patriarchal. Women's status in India was at an all-time low at the time of their rule.

A significant transformation in the status of women occurred when Mahatma Gandhi led the Civil Disobedience cause and the Quit India Movement, in which women played an important role in the Indian national cause. Today though we are in the third decade of the twenty-first century, women have not achieved their rights, respect and position they deserve.

According to Swami Vivekananda, "Like a bird can fly in the sky by its two feathers, the society can also run by the same participation of male and female. "

BIRTH OF UNIFORM CIVIL CODE IN INDIA

In the year 1834, India's first law commission was constituted. It was established under Section 53 of the Charter Act of 1833, with Lord Macaulay as its first President. Non-Hindus and non-Muslims living in presidential areas were subject to their own laws. However, there were no regulations protecting non-Hindus and non-Muslims who lived in mofussil districts. This created much confusion about the application of substantive civil laws to Anglo-Indians, Armenians, and Christians. The commission submitted the Lex Loci Report, which proposed enacting substantive English civil law as a uniform Act. This act was supposed to apply to all non-Hindus and non-Muslims living in Mofussil. As a result, the Uniform Civil Code was founded in India.

The Shariat Law of 1937 was later passed as a result of pressure from the Muslim elite. All Indian Muslims are to be regulated by Islamic Laws on succession and inheritance, marriage, adoption, divorce, and support under this Act.

During the 1948-1951 and 1951-1954 sessions of the Hindu Law Committee, a discussion on implementing the Uniform Civil Code began. Dr. B. R. Ambedkar was a staunch proponent of Uniform Civil Code, believing that only Uniform Civil Code could improve Hindu society and safeguard Muslim women, who have little to no protection under Sharia Law. However, after much opposition, a weakened version of the measure was enacted in 1956. The Bill was divided into 4 acts namely, Hindu Marriage Act, 1955, Hindu Adoptions and Maintenance Act, 1956, Hindu Succession Act, 1956, and Hindu Minority and Guardianship Act, 1956.

DEMAND FOR UNIFORM CIVIL CODE

A Uniform Civil Code is becoming increasingly popular across the country. However, it comes with its own set of misconceptions. The most important aspect of personal laws is that they are impregnable and not subject to judicial examination. As a result, individuals consider that the Uniform Civil Code is the only remaining alternative for filtering out all discriminatory practices in personal laws. The truth is that all laws, whether personal, criminal, or financial, are judicially reviewable, and the judiciary has the authority to declare them potentially void if they violate Fundamental Rights.

The only exception to the current judicial review requirement is that the laws are not codified under Indian law and are derived from another legal system. Understanding Article 13 of the Constitution is critical in this situation. Article 13 of the Indian Constitution defines law and considers it void if it abridges, violates, or contradicts any Part III provision. Surprisingly, in the case of State of Bombay v. Narasu Appa Mali, 1952, the High Court ruled that personal laws are not "laws" in the sense of Article 13 and so do not fall under the scope of Fundamental Rights entrenched in Part III (Article 12-35) of the Constitution. What the decision ultimately does is shield personal laws that are arbitrary or violate fundamental rights from judicial review. The Supreme Court held the same concept in Krishna Singh vs Mathura Ahir in 1980, Maharshi Avdesh in 1994, and the Ahmedabad Women Action

Group in 1997. However, in the case of *Mudaliar*, a three-judge Supreme Court panel ruled in 1996 that personal laws are unconstitutional if they violate basic rights. Still, *Narasu Appa Mali's* decision has not been overturned, and the ghost of *Narasu Appa* lurks.

ISSUES SURROUNDING UNIFORM CIVIL CODE

- Different religions having different religious faiths which are based on the basic practices of the religion causes difficulty in implementing a basic platform of practices for every religion,
- By attempting to implement this policy, the parliament is only duplicating the western model of law,
- The misconception of minorities that Uniform Civil Code will destroy their religious practices and they will be compelled to follow the religious practice of majorities, i.e., Muslims, Sikhs, Christians, Buddhists, Jain, and Zoroastrians,
- The conflict of freedom of religion with equality before the law and the right to equality,
- The most significant issue is the unawareness of people regarding the objects of Uniform Civil Code, and the reason for such unawareness is the lack of education, fake news, irrational religious beliefs, etc.

POSSIBLE SOLUTIONS TO THE ISSUES SURROUNDING UNIFORM CIVIL CODE

No empire is built overnight, and no legal process can be built overnight by simply enacting the pending Uniform Civil Code Bill in India's Parliament. The following are some potential Uniform Civil Code solutions:

- The government of India and people who believe that Uniform Civil Code will infringe their right to religion, both must work in cooperation with each other to upgrade the laws and society. This can be achieved after discussion with people who believe that Uniform Civil Code will violate their right to religion, by surveys, camps, etc,
- The government must boost effective awareness about the benefits of Uniform Civil Code among the concerned society,
- To upgrade the established Uniform Civil Code, the government must add new aspects like marriage, divorce, succession, and inheritance, etc in pieces.
- The government must come up with regular meetings with people who are against the implementation of Uniform Civil Code, and look into where the actual problem is lying,
- The Supreme Court of India has referred to as a 'Shining Example' due to the features it contains. The Uniform Civil Code in Goa has factors like compulsory marriage registration, prohibition of polygamy or bigamy, uniform age of marriage for men and women, consent of men and women to perform a marriage, consent of both men and women to attain lawful separation, etc. these features can be taken as a ground of implementing Uniform Civil Code at a national level,
- Constituting a high-level committee can be an ideal approach to tackle the problem of implementation of the Uniform Civil Code Bill. The committee must conduct awareness programs and unearth the root cause of the problem.

UNIFORM CIVIL CODE BILL AND OBJECTIVES

The Uniform Civil Law of India Bill, 2018 was proposed by the Bharatiya Janata Party in Lok Sabha in 2018 with the aim of enacting a common civil or customary law for all citizens living in India, irrespective of their religion, race or occupation. This is a bill proposed by such as the entire geographical area of India.

- Implementing the right to equality enshrined under Article 14 and the prohibition of discrimination on the grounds of religion, race, caste, sex, or place of birth enshrined in Article 15 of the Constitution of India.
- Eliminating personal laws which are established on the foundations of religious beliefs and provide a homogenous structure of laws.
- Abolishing any type of discrimination against women may arise due to the inadequate and dissimilar laws in the Indian legal mechanism.

WHICH LEGISLATIONS ARE DRAFTED TO ATTAIN UNIFORM CIVIL CODE

To attain uniformity in Independent India, Dr. B.R. Ambedkar proposed several amendments to the Hindu personal laws which are known as "Hindu Code Bills". The proposed amendments were intended at providing uniformity in legal provisions to all religions that are not Muslim, Parsi, Jews, and Christians. The Hindu Code Bills legislations which tend to provide Uniform Civil Code includes:

- Hindu Marriage Act, 1955
- Hindu Succession Act, 1956
- Hindu Minority and Guardianship Act, 1956
- Hindu Adoption and Maintenance Act, 1956

THE JUDICIARY ON UNIFORM CIVIL CODE

In the case of *Sarla Mudgal v. Union of India (1995)*, the Supreme Court of India directed the Ministry of Law and Justice to reflect the steps taken and efforts made, by the Government of India, towards securing a "uniform civil code" for the citizens of India.

In the case of **Mohd. Ahmed Khan v. Shah Bano Begum and Ors (1985)**, the Supreme Court of India held that Muslim women are entitled to maintenance under Section 125 of the Code of Criminal Procedure, 1973, and further ruled that “a uniform civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies” and directed the Government to enact a UCC.

In the case of **Pannalal Bansilal Patil v. State of Andhra Pradesh (1996)**, the Supreme Court of India held that “a uniform law, though is highly desirable, enactment thereof in one go perhaps may be counter-productive to unity and integrity of the nation. In a democracy governed by rule of law, gradual progressive change and order should be brought about. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute.”

In the case of **John Vallamattom and Ors. v. Union of India (2003)**, The Supreme Court of India held that there is no necessary connection between religious and personal law in a civilized society. It is no matter of doubt that marriage, succession, and the like matters of a secular character cannot be brought within the guarantee enshrined under Article 25 and Article 26 of the Constitution. Any legislation which brings succession and the like matters of secular character within the ambit of Articles 25 and 26 is suspect.

RECOMMENDATION OF LAW COMMISSION

According to the Law Commission, a Uniform Civil Code is “neither necessary nor desirable at this stage.” It believes that prejudice, rather than difference, is at the foundation of inequality. The Government of India 016 tasked the Law Commission with providing a view on UCC, and in its 185-page consultation document, it stated that in order to preserve the nation's cultural and social fabric, we must defend and preserve variety and plurality.

CONCLUSION

Moving forward, the government and citizens must realize that law and religion are not two sides of the same coin; they are distinct concepts, and one cannot serve as the foundation or driving force for the other. Social reformation is essential, which can be accomplished by the codification of personal laws, which aids in the fight against the widespread bias in the country. Uniform Civil Code is a vital need of the hour because it will only improve the country's secularism and democracy. Minorities and women have suffered as a result of the lack of Uniform Civil Code, and strengthening these segments of our society is how we can come together as a country.

Uniform Civil Code's principal goal is to achieve gender equality and to put an end to all discriminatory practices in all personal laws. As a result, authorities should ensure that women from all cultures have similar rights in areas of inheritance, child adoption, divorce, and so on. It is necessary to raise social awareness through significant legal revisions, as well as exorcise the ghost of Narasu Appa Mali. These steps will increase the impact and reach of the Uniform Civil Code in India.

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