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An Analysis of Desirability of Uniform Civil Code in the Context of India's Religious Personal Laws and Gender Equality

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ABSTRACT

A proposed legal framework called the Uniform Civil Code (UCC) seeks to standardize personal laws for all people. The relationship between gender equality and the UCC paints a complex picture full of implications, debates, and potential future paths. This article will look at the complex relationship between gender equality and the UCC, including its historical context, challenges, opportunities, and possible future paths. A UCC may improve society and help India achieve its goal of becoming a fully developed nation. Many aspects were examined such as the rationale behind implementing it and the necessity of those laws to govern citizens and other aspects which are still common in some castes and groups. The focus ought to be on the contentious issues that Indian society is facing.

Keywords: Uniform Civil Code, Secularism, Gender Equality.

I. INTRODUCTION

A just and progressive society is founded on the idea of gender equality, which states that all people should have the same rights, obligations, and opportunities regardless of their gender. Although it is a notion that cuts beyond social, cultural, and religious barriers, putting it into reality frequently presents difficulties due to deeply ingrained conventions and behaviors. Unaffected by a person's religion affiliation, the Uniform Civil Code (UCC) is a proposed legal framework that aims to harmonize personal rules for all individuals. The UCC and gender equality's interaction offers a nuanced picture that is rife with ramifications, discussions, and future changes. This Article will examine the historical backdrop, difficulties, opportunities, and future directions in the complex link between gender equality and the Uniform Civil Code.

(A) History

Since the beginning of time, social and legal reforms have made a substantial dent in the ongoing struggle for gender equality. However, many nations still rely on religious rules to make decisions about adoption, inheritance, and other private affairs like marriage and divorce.

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Women frequently experience different outcomes because of these policies, which frequently perpetuate gender-based inequality.² The UCC created in reaction to the differences of personal laws of Hindus and Muslims, which kept outside the codification, and it aims to create a unified legal framework that supports gender equality in personal issues. The B N Rau Committee was established by the government in 1941 to codify Hindu law because of an increase in laws addressing individual issues after the end of British rule.³ The Hindu Law Committee was tasked with examining whether common Hindu laws are necessary. The committee's recommendation, which are based on the scriptures, stated that under a codified version of Hindu law, women would be accorded equal rights. After reviewing the 1937 Act, the committee proposed creating a civil code for Hindu marriage and succession. However unfortunately it has not been implemented.

a. Pre- Independence (Before 1947)

Prior to India's 1947 declaration of independence, the country's legal system was a patchwork of personal laws that varied among religious groups. This historical legacy of complexity was a result of centuries of foreign rule and various cultural customs. It was obvious that personal laws needed to be changed since they frequently supported gender-based inequities. For instance, Sati and child marriage were widespread, and women's rights, especially in Muslim and Hindu populations, were severely constrained. In order to address these discrepancies, reformers like Raja Ram Mohan Roy and Ishwar Chandra Vidyasagar pushed for improvements in personal laws. The overall legal landscape remained characterized by diversity and inequalities, despite some legal reforms introduced by the British colonial administration, such as the Hindu Widow Remarriage Act of 1856⁴ and the Hindu Inheritance (Removal of Disabilities Act) of 1928⁵

b. Post Independence (After 1947)

The adoption of a secular constitution was a crucial turning point in India's post-independence history. The Constitution emphasized the significance of equal rights for all citizens, regardless of their religion or community, and codified the ideals of equality, non-discrimination, and secularism. The Uniform Civil Code (UCC), a Directive Principle of State Policy mandated by

² Frontline The Hindu, Uniform civil code- History, Implications and minority perspectives, July 18 2023 < <https://frontline.thehindu.com/the-nation/uniform-civil-code-history-implications-and-minority-perspectives/article67090521.ece> >

³ Amit Kashyap, Judgements in the criminal law, Foundation of Hindu code bill & Rau committee, July 15, 2020 < <https://judgementsincriminalaw.wordpress.com/2020/07/25/hindu-law-%C2%A7-part-6-foundation-of-hindu-code-bill-the-rau-committee/> >

⁴ Hindu Widow ReMarriage Act, 1856

⁵ Hindu Inheritance (Removal of Disabilities act) 1928

Article 44 of the Indian Constitution is intending to harmonize personal laws.

The decision to enact a UCC was left up to the governments discretion by the constitutions founders, who were aware of the nation`s diversity in terms of religion and culture. As a result , following independence, personal laws mainly remained unaltered, with various religious communities continuing to adhere to their unique legal systems for marriage, divorce, inheritance, adoption.

In the years following India's independence, the topic of a UCC is still quite divisive. Despite the potential of a UCC is being allowed by the constitution, the administration has taken a cautious approach to the issue. This warning is necessary in order to pursue gender equality and uniformity in legal concerns while also respecting the religious beliefs and autonomy of many communities. India has occasionally seen legal changes made to personal laws that are intended to remedy gender imbalances. For example, modifications to the Hindu Succession Act in 2005 gave daughters the same rights to ancestor property. Some facets of Muslim personal law have undergone similar modifications. These changes were only partial, and they did not result in the creation of a thorough Uniform civil code.

II. NEED FOR GENDER EQUALITY

More than just a catchphrase, gender equality is a fundamental human right recognized by international treaties like the Universal Declaration of Human Rights that is in article 1 which says that “All Human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards another in a spirit of brotherhood” Addressing discriminatory behaviors, dispelling misconceptions, and fostering an environment where everyone, regardless of gender, may reach their full potential are all necessary for achieving gender equality. Personal laws have a big impact on how people live their lives, especially women. This includes aspects of the economy, politics, and society. Gender equality is a crucial component of a (UCC). The main goal of a UCC is to harmonize personal laws across religious boundaries, ensuring that all citizens, regardless of faith, are treated equally. To correct the discriminatory practices ingrained in religiously specific legislation, such as triple talaq and polygamy, which disproportionately affect women, gender equality is essential within this framework. It makes sure that women have equal access to their rights, giving them the power to make wise decisions about their personal lives. In addition to being a question of justice, gender equality also complies with international norms, promotes social advancement, and shows a country's dedication to inclusivity and advancement. In essence, gender equality is a moral obligation that underpins the effectiveness of the framework and supports the UCC

III. GLOBAL PERSPECTIVE ON GENDER JUSTICE

The term "gender justice" simply refers to sex equality. In order to achieve gender equity, certain prerequisites must be met. These include social, economic, political, environmental, cultural, and educational issues. Since the realization that no state can fully advance if half of its population were held back, the cause of gender justice has become stronger globally. Globally speaking, the UN has a clear mandate for gender justice. Since the UN's foundation, gender equality and gender justice have been a major concern. A separate organization was established to work on the advancement of women in 1946. Since its founding, the Commission on the Status of Women has worked to gather information about the status of women in many countries, to advance women's human rights, and to increase public understanding of and support for women's contributions to development. Four world conferences on women (between 1975 and 1995) and the Decade for Women (1976–1985) both had a vital role in fostering a greater understanding of and commitment to gender equality and gender justice. The Beijing Declaration and Platform for Action was created in 1995 to provide as a framework for work at national level.

IV. RATIONAL BEHIND THE UNIFORM CIVIL CODE

In accordance with the UCC, all citizens will be subject to the same set of laws, regardless of their religious affiliation. Its supporters contend that it would result in a more egalitarian society by eradicating the disparities fostered by religiously particular laws. Marriage, divorce, property rights, and adoption are some of the major areas that the UCC has an impact on. The UCC seeks to advance gender equality by guaranteeing that women's rights are not susceptible to potentially regressive theological interpretations. If we look other aspects of UCC other than gender equality then there are many other things such as

- Equality and Non-Discrimination: The main goal of a UCC is to guarantee that everyone is treated equally under the law, regardless of their religion or culture. It aims to get rid of unfair practices seen in numerous personal laws that disproportionately harm women and certain groups of people in general. The UCC seeks to advance equality and non-discrimination by offering a unified legal framework, in line with the fundamental values entrenched in the Constitution.
- Secularism: The secular tenets of the Indian Constitution are in line with the UCC. It highlights the notion that a person's own laws shouldn't be influenced by or favor one particular religion over another. The UCC protects the secular fabric of the country by maintaining a uniform set of laws for all citizens, regardless of their religious convictions.

- Simplification and clarity: The demand for clarity and simplicity is more important in the law. It can be confusing and difficult to navigate the law if different religious sects have different personal laws. Legal procedures can be made simpler by a unified legal framework, which also reduces ambiguity and makes it simpler for people to comprehend and use the legal system.
- Modernization: Many societies have personal laws that are based on customs and procedures that might not be appropriate or equitable in today's society. The UCC offers a chance to update old laws and bring them into line with changing social norms and values. This might result in more liberal and inclusive legal rules.
- It is evidence that caste and religion politics are no longer prevalent in the country. Our social growth has lagged behind, despite the fact that our economic growth has been tremendous. A UCC will advance society and propel India closer to its objective of being a truly developed country.
- Religious personal laws are by their very nature and by permitting outdated religious laws to continue to regulate family life, we are resigning all Indian women to a life of oppression and abuse. The status of women in India will also be improved by a standard civil code.
- All Indians should be treated equally under the law in regards to marriage, inheritance, family, land, and other matters and this can only bring through the way to guarantee that all Indians are treated equally by bringing the UCC.

V. DRAWBACKS AND WHAT IS STOPPING FROM IMPLEMENTING UCC

Due to the great diversity in our country, implementing the Uniform Civil Code is a difficult undertaking. Another obstacle to a single personal law is cultural variances between states and communities. State meddling in private affairs that is the right to practice any religion is guaranteed under the constitution. The breadth of the right to freedom of religion will be constrained by the codification of universal rules and their imposition and also Individuals from various cultures are unwilling to abide by secular rules that are distinct from personal laws. Therefore, forcing one group's traditions on another group is unfair. The emphasis should be placed on other, less divisive challenges that Indian society is dealing with.

- Preserving cultural and religious autonomy: Enacting a UCC would violate religious and cultural freedoms, lessening India's society's variety and to safeguard the distinctive identities of minority populations, personal laws must be preserved because they are profoundly entrenched in religious and cultural traditions.

- Complexity and practicality: The creation of a single comprehensive civil law that meets the varied needs of a large nation like India, according to critics, is a difficult assignment. There are questions regarding the practicality of a UCC because it would take a lot of administrative, legislative, and judicial work to implement and enforce it.
- Potential social unrest: Imposing a UCC is feared to cause social instability and anger among religious communities, which could result in societal splits. Personal laws have been ingrained in people's lives for a long time, thus any abrupt change could sour ties within the community and among its members.

VI. COURT STANDINGS

1) **Mohd. Ahmed Khan Vs Shah Bano Begum (1985)**

In Mohd. Ahmed Khan VS Shah Bano⁶ case Shah Bano, a 73-year-old lady, was denied support after her husband divorced her using the triple talaq method, which involves declaring "I divorce thee" three times. The District Court and the High Court found in her favor after she filed a legal claim. Her husband then filed an appeal with the Supreme Court, claiming that he had completed all of his Islamic law-related duties.

In 1985, the Supreme Court upheld her claim under the All India Criminal Code's "maintenance of wives, children, and parents" provision (Section 125), which was applicable to all residents regardless of religion. Additionally, This is the case which suggested that a standard uniform civil code should be established.

2) **Sarala Mudgal And Others Vs Union Of India (1995)**

In Sarala Mudgal vs Union of India⁷ case, the issue was whether a Hindu husband who had been wed according to Hindu law could perform a second marriage after converting to Islam. According to the court, a Hindu marriage that has been solemnized in accordance with Hindu law may only be dissolved on one of the grounds listed in the Hindu Marriage Act of 1955. A second marriage that is solemnized after converting to Islam would be unlawful under section 494 of the Indian Penal Code (IPC) as it would not automatically dissolve the Hindu marriage under the legislation.

3) **John Vallamatom Vs Union Of India (2003)**

In John Vallamatom vs Union of India⁸ case, a priest from Kerala named John Vallamatom

⁶ Mohd. Ahmad Khan Vs Shah Bano Begum, [1985 (2) SCC 556]

⁷ Sarala Mudgal Vs Union of India [AIR 1995 SC 1531]

⁸ John Vallamatom vs Union of India [(2003) 6 SCC 611]

questioned whether Section 118 of the Indian Succession Act, which applies to non-Hindus in India, is constitutionally lawful. Mr. Vallamatton argued that Section 118 of the Act discriminates against Christians by placing excessive limitations on their ability to leave property to charity or for religious purposes. The bench declared the clause unlawful and invalidated it.

So all these instances made government to look after the implementation of uniform civil code but unfortunately it is still not into consideration but set as a directive principle of state policy under article 44 of the Indian constitution. So can all these problems be solved without bringing UCC or without passing any law? The answer to this is yes still we can do it but we need to understand that state has a power of whole universe that they remove any social injustice. For example, when Hindu law was brought state removed all problematic parts then to modify Muslim law why UCC is needed? Even those laws can be changed but this can be a question mark. If you see national interest always come on the very first level and basic human rights and dignity of an individual are very important. Yes if only bringing UCC can solve this than state should take care of all personal laws and all those practices which are derogatory , discriminatory and against social justice should be removed and make them unconstitutional.

VII. WHAT ARE THE AREAS IN WHICH UNIFORM CIVIL CODE IS NEEDED?

Firstly we need to know in what areas uniform civil code is necessary then only we can introduce UCC likewise if we see

- Section 494 of Indian penal code which says that “While having a living spouse If someone does a second marriage, then it is a crime”⁹. There is only one exception to the penal law that is a Muslim man can marry up to 4 marriages, Now we cannot bring the uniformity in laws here saying that You can do as many marriages as you want but the progressive situation of monogamy can be brought down to all the people.
- Irretrievable breakdown of marriage in Hindu law which says that illiterate breakdown of marriage is not a valid ground for divorce where is a change in other personal laws and also in the equal share in a property for women in Hindu laws where as Muslim women can inherit only less than half the share and also Muslim women cannot grant for maintenance for a long time like other Indian women

If we see the other way around then is UCC a Hindu-Muslim debate? Is society being radialized by talking about UCC? But in simple way the whole issue is to remove such laws from society

⁹ Indian penal code, 1860, S 494

which are discriminatory and derogatory. Like for example we removed untouchability which was a social evil so while removing this social evil like untouchability if legislators were asking everyone that “we are removing untouchability its not harming your religion right? So how does it feel? So it is the time to realize that they are legislators not people pleasers.

VIII. CODIFICATION: WILL THE LEGISLATURE LOOK AFTER CODIFYING IT?

The drafting is the main challenge to implementing the UCC, other from reaching unanimity. Should UCC be a new law Conforming to the constitutional obligation or should it be a combination of all the personal laws? There is a ton of literature about UCC, yet no model law has been created. Many believe that everyone would be subject to Hindu law under the garb of UCC. Prime Minister Atal Bihari Vajpayee ruled out the prospect that UCC is simply a repackaged version of Hindu law when he declared that a new code based on gender equality and including the best provisions of all personal laws will be created. The UCC should strike a balance between upholding peoples' fundamental rights and their personal religious beliefs. It should be a code that is impartial toward political or religious reasons and is right and proper in the eyes of a man of ordinary judgment. Also according to me with the introduction of UCC or by supreme courts interference in personal laws there is no danger to diversity or it will not end any diversity, Like wise if we take uniformity does not mean that everyone will have to take 7 rounds to get married but uniformity in the sense can mean that from now on everyone will have to register their marriage which also make women more secure in all their personal laws.

- Uttarakhand panel chief which focused on rights of the women¹⁰ : The draft of the proposed Uniform Civil Code (UCC) for Uttarakhand, which will be submitted to the state government "soon," focuses primarily on "safeguarding the interests of women, children, and the differently-abled," and it addresses matters such as marriage, divorce, succession, guardianship, custody, and inheritance. So the legislature is trying to introduce slowly in every state and starting it from Uttarakhand and Justice Desai stated that the committee "painstakingly" looked into the numerous statutes and uncodified legislation, including the legislative framework in certain countries, and took into account all shades of opinion. Additionally, the committee has made an effort to comprehend the subtler distinctions between the many customary practices that are prevalent in different regions of the state.

¹⁰ Smriti khak Ramachandran, UCC drafts focuses on rights of women: uttarakhand panel chief, Hindutan Times, Sep 08 2023, < <https://www.hindustantimes.com/india-news/draft-of-proposed-uniform-civil-code-in-uttarakhand-to-focus-on-safeguarding-women-children-and-differentlyabled-101688149387228.html> >

- Numerous factors were looked at, including the need for legislation to regulate population growth and outlaw polygamy and polyandry, which are still prevalent in some caste and communities. The panel has not yet made a ruling regarding these issues. The panel has also looked into the possibility of regulating live-in relationships, inheritance laws for women from all castes, and raising the age at which women can legally be married. The committee heard numerous recommendations from women, some of whom even urged increasing the marriage age from the current 18 to 25.
- Passing of Uniform civil code Bill in Uttarakhand: On 7th February 2024 Uttarakhand passed UCC bill and became the first legislature in independent India. It focuses on the areas such as marriage, divorce, Live-in-relationships and other related matters for all the people irrespective of their religion. This process could clear all the doubts and even if it is implemented then also the consequences would be knowing for the future India.

IX. CONCLUSION AND THE WAY FORWARD

Hindus, Muslims, Christians, and Parsis all have specific personal laws that have been codified in India. There is no universal family law that applies to all Indians and is accepted by all the religious communities that coexist in India. The majority of them, however, agree that UCC is unquestionably desirable and would significantly deepen and consolidate Indian nationhood. Different people have different ideas on when and how it should be implemented. Political and intellectual leaders ought to work to forge a consensus rather than utilizing it as an emotional issue to advance their own political interests. The issue is simply how to treat every human being with dignity, not how to preserve minorities or even how to maintain national unity something which the personal laws have so far failed to consider. To grasp the spirit of the UCC, it is important to develop a progressive and open-minded view among the populace. Programs for education, awareness, and sensitization must be implemented for this. The best interests of all the major religions should be taken into consideration when writing the Uniform Civil Code. To maintain uniformity, a committee of distinguished jurists ought to be assembled and care ought to be made to avoid offending any one community's feelings. Since the subject is delicate, it is always preferable if the initiative originates from the relevant religious organizations. Any laws that included succession and other secular subjects within the scope of Articles 25 and 26 are questionable. While Article 25 grants the freedom to practice and proclaim a religion¹¹, Article 44 exempts religion from societal norms and the law. Any laws that included succession and other secular subjects within the scope of Articles 25 and 26 are questionable. While Article

¹¹ The constitution of India, 1949, Article 25,26

25 grants the freedom to practice and proclaim a religion, Article 44 exempts religion from societal norms and the law.

We live in a democratic, secular republic. The foundation of our civilization is religious freedom. Even the smallest deviation might cause social fabric to be shaken. However, religious practices that violate human rights and dignity and stifle fundamental civil and material freedoms are oppression rather than autonomy. Consequently, a single law is essential for both the protection of the oppressed and the encouragement of national solidarity, equality towards gender and togetherness.
