

Uniform Civil Code: One Nation, One Law

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Abstract:

This paper focuses on the topic “UNIFORM CIVIL CODE: ONE NATION ONE LAW”. Article 44 of the Indian constitution states that “The state shall Endeavour to secure for the citizens a uniform civil code throughout the territory of India”. A Uniform Civil Code comotes the idea of same set of civil rules for the citizens irrespective of their religion, caste, etc. the uniform civil code aims to simplify the Indian legal system and make Indian society homogeneous

In India earlier prevailed the personal laws for civil matters like Hindu personal laws and Muslim personal laws. India being a country with diversity there was a need of establishing a uniform civil code which would prevail so there is uniformity in law of the land relating to civil matters. The need of uniform civil code was a matter of argument for a long time. Though criminal law was codified earlier to the civil code.

Uniform Civil Code administers a singular set of secular civil laws to govern all citizens, Irrespective of their religions, caste or regions. The common areas covered by a civil code Include personal status, rights related to acquisition and administration of property and Marriage, divorce and adoption.

Key Words: *Constitutional provisions, Personal laws, Secularism*

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INTRODUCTION

The term civil code is used to cover the entire body of laws governing rights relating to property and otherwise in personal matters like marriage, divorce, maintenance, adoption and inheritance.

As things stand, there are distinctive laws overseeing these viewpoints for various groups in India. In this way, the laws overseeing legacy or separation among Hindus would be unique in relation to those relating to Muslims or Christians etc.

The interest for a uniform common code basically implies binding together all these "individual laws" to have one arrangement of mainstream laws managing these angles that will apply to all nationals of India regardless of the group they have a place with. In spite of the fact that the accurate forms of such a uniform code have not been spelt out, it ought to apparently fuse the most present day and dynamic parts of all current individual laws while disposing of those which are retrograde.¹

In India, we have a criminal code that is similarly appropriate to all, regardless of religion, standing, sex and home. In any case, a comparable code does not exist particularly as for separation and progression and we are still administered by the individual laws. These individual laws are fluctuated in their sources, theory and application. Subsequently, a noteworthy imperative emerges while bringing individuals

administered by various religions less than one rooftop.

Article 44 of the Constitution of India pronounces that "The State shall Endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India."²

A uniform common code controls the same arrangement of mainstream common laws to administer all individuals regardless of their religion, rank and tribe. This supersedes the privilege of nationals to be administered under various individual laws in view of their religion or standing or tribe. Such codes are set up in most cutting edge countries.

In spite of the fact that Dr. B.R. Ambedkar was a broad supporter of the Uniform Civil Code, he proved unable get it through more than a status of Directive Principle because of restriction from the individuals. This mandate guideline is intended to accomplish, slowly, as opposed to without a moment's delay, all the more sweeping correspondence for all natives. The state has been depended with this voluminous errand. Be that as it may, no critical strides have been taken by any administration till now.³

Recently, the Supreme Court of India again called for a UCC. The Supreme Court first directed the Parliament to frame a UCC in the year 1985 in the case of Mohammad Ahmed Khan v. Shah Bano Begum⁴, popularly known as the Shah Bano case. In this case, a penurious Muslim woman claimed for maintenance

¹ What's a uniform civil code, the economic times, July 28

² The Constitution of India, article 44

³ Need for uniform civil code in India, academike, December 27, 2014

⁴ Mohammad Ahmed Khan v. Shah Bano Begum AIR 1985 SC 945

from her husband under Section 125 of the Code of Criminal Procedure after she was given triple talaq from him. The Supreme Court held that the Muslim woman have a right to get maintenance from her husband under Section 125.⁵ The Court also held that Article 44 of the Constitution has remained a dead letter.

EVOLUTION OF UNIFORM CIVIL CODE

The idea of uniform common code is the idea of post autonomy. In past India was scattered into minor republics, which were, managed, directed and administered by the individual sovereigns or their delegates. With the political unification of India, after the approach of the Britishers, the need of precedent-based law administering all subjects of the sub landmass. Prior won the precedent-based law-common and in addition criminal, was ordered by the regional heads, as indicated by their traditions which they acquired from their past eras, having religious and moral sanctity. Be that as it may, ordinarily oppressive impulses beat legitimate morals. Every kingdom had its own law and organization. There was no consistency either in law or in method, as every state was sovereign and there was no strong bond which could cultivate consistency in the organization of equity.

Amid the British time steps were taken to get consistency law which could oversee the entire citizenry of British India leaving the regal states. They were sovereign to the extent their organization was concerned. However the Britishers were aware of their own confinements in doing this activity. Also, , hence,

the individual law appropriate to every group was not meddled with. The British rulers attempted to accomplish consistency in common laws, for example, criminal methodology code, common technique code, proof act, law identifying with contract, property and so forth after autonomy the Britishers chose not to meddle with the religious slants of the locals and future guaranteed that their religion convictions and feelings would be conscientiously regarded.⁶

The Indian Parliament inspected the report of the Hindu law leading body of trustees in the midst of the 1948–1951 and 1951–1954 sessions. The essential Prime Minister of the Indian republic, Jawaharlal Nehru, his supporters and women people required a uniform normal code to be implemented. As Law Minister, B. R. Ambedkar was responsible for displaying the purposes of enthusiasm of this bill. It was found that the routine Hindu laws were relating just to a specific school and custom since monogamy, divorce and the lady's privilege to gain property were accessible in the Shashtras. Ambedkar endorsed the assignment of a Uniform Civil Code. Ambedkar's progressive attack on the Hindu laws and abhorrence for the upper stations made him detested in the parliament. He had done investigation on the religious messages and considered the Hindu society structure flawed. As showed by him, just law changes could save it and the Code bill was this opportunity. He consequently stood up to genuine input from the limitation. Nehru later reinforced Ambedkar's progressions yet did not share his negative point of view on Hindu society.

⁵ Code of criminal procedure, 1973, sec 125

⁶ Available at: <http://www.lawctopus.com/academike/needuniformcivildcodeindia/>

The Hindu charge itself got much input and the major courses of action confined were those concerning monogamy, divorce, invalidation of coparcenaries (women getting a common title) and legacy to young ladies. The essential President of the country, Rajendra Prasad, limited these progressions; others fused the Congress party president Vallabhbhai Patel, a few senior people and the Hindu fundamentalist social events. The fundamentalists called it "unfriendly to Hindu" and "against Indian"; as a conceding system, they asked for a uniform basic code. The women people from the parliament, who previously supported this, in a basic political move pivoted their position and supported the Hindu law transform; they feared banding together with the fundamentalists would realize a further hardship to their rights.

Consequently, a lesser version of this bill was passed by the parliament in 1956, as four separate acts, the Hindu Marriage Act, Succession Act, Minority and Guardianship Act and Adoptions and Maintenance Act. It was incorporated the use of a uniform normal code in Article 44 of the Directive gauges of the Constitution designating, "The State may endeavor to secure for nationals a uniform basic code all through the locale of India." This was repudiated by women people like Rajkumari Amrit Kaur and Hansa Mehta. As demonstrated by academic Paula Banerjee, this move was to guarantee it would never be tended to. Aparna Mahanta forms, "frustration of the Indian state to give a uniform basic code, dependable with its vote based standard and comrade declarations, further portrays the present state's settlement of the standard interests of a patriarchal society".

The cases like Shah Bano case and Supreme Court again directed the government of Article 44 was in the

case of *Sarla Mudgal v. Union of India*. In this case, the question was whether a Hindu husband, married under the Hindu law, by embracing Islam, can solemnize second marriage. The Court held that a Hindu marriage solemnized under the Hindu law can only be dissolved on any of the grounds specified under the Hindu Marriage Act, 1955. Conversion to Islam and Marrying again would not, by itself, dissolve the Hindu marriage under the Act. And, thus, a second marriage solemnized after converting to Islam would be an offence under Section 494 of the Indian Penal Code.⁷

UNIFORM CIVIL CODE AND SECULARISM

Secularism, in basic terms signifies 'partition of State and Religion'. That is, religious concerns won't manage State arrangements and the State won't meddle in religious exercises. This idea of secularism began in the European culture, required by the steady battle for force between the Church and the Monarchy. Secularism was in this manner, a one of a kind arrangement because of remarkable difficulties predominant in Western human advancement by and large and European culture specifically. India is presumably the main nation, wherein the idea of secularism is most distorted, both on a basic level and practice. After Independence, India, initially acquired this outsider guideline, without giving an idea in regards to its need and appropriateness in Indian culture, and afterward distorted it unimaginable to specifically execute it for frivolous political finishes, with heartbreaking results.

The spine of discussion rotating around uniform civil code has been secularism and the opportunity of religion identified in the Constitution of India. The introduction of the Constitution expresses that India is

⁷*Sarla Mudgal v. Union of India* AIR 1995 SC 153

a "mainstream majority rule republic" This implies there is no State religion. A mainstream State should not victimize anybody on the ground of religion. A State is just worried with the connection amongst man and man. It is not worried with the connection of man with God. It doesn't mean permitting all religions to be honed. It implies that religion ought not meddle with the commonplace existence of a person.⁸

In *S.R. Bommai v. Union of India*, as per Justice Jeevan Reddy, it was held that religion is the matter of individual faith and cannot be mixed with secular activities. Secular activities can be regulated by the State by enacting a law.⁹

In India, there exist an idea of "positive secularism" as recognized from principle of secularism acknowledged by America and some European states i.e. there is a mass of partition amongst religion and State. In India, positive secularism isolates mysticism with individual confidence. The reason is that America and the European nations experienced the phases of renaissance, reorganization and edification and consequently they can sanction a law expressing that State should not meddle with religion. Despite what might be expected, India has not experienced these stages and in this way the duty lies on the State to meddle in the matters of religion in order to evacuate the obstacles in the administration of the State.

Articles 25 and 26 guarantee right to freedom of religion. Article 25 guarantees to every person the freedom of conscience and the right to profess, practice and propagate religion. But this right is subject to public order, morality and health and to the other provisions of Part III of the Constitution. Article

25 also empowers the State to regulate or restrict any economic, financial, political or other secular activity, which may be associated with religious practice and also to provide for social welfare and reforms. The protection of Articles 25 and 26 is not limited to matters of doctrine of belief. It extends to acts done in pursuance of religion and, therefore, contains a guarantee for ritual and observations, ceremonies and modes of worship, which are the integral parts of religion.¹⁰

UCC is not contradicted to secularism or won't abuse Article 25 and 26. Article 44 depends on the idea that there is no fundamental association between religion and individual law in a socialized society. Marriage, progression and like matters are of mainstream nature and, accordingly, law can manage them. No religion licenses intentional twisting. The UCC won't and should not bring about impedance of one's religious convictions relating, for the most part to upkeep, progression and legacy. This implies under the UCC a Hindu won't be constrained to play out a nikah or a Muslim be compelled to complete saptapadi. In any case, in matters of legacy, right to property, support and progression, there will be a custom-based law.

Justice khare in the recent case said "It is no matter of doubt that marriage, succession and the like matters of secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution." The Chief Justice also cautioned that any legislations which brought succession and like matters of secular character within the ambit of Articles 25 and 26 is asuspect legislation. Article 25 confers right to practice and profess religion, while

⁸Ms chitraloungani, uniform civil code, Aug 22, 2016

⁹ *S.R. Bommai v. Union of India* (1994)3 SCC 1

¹⁰ Constitution of India, art 25- 26

Article 44 divests religion from social relations and personal law.¹¹

The whole debate can be summed up by the judgment given by Justice R.M. Sahai. He said, "Ours is a secular democratic republic. Freedom of religion is the core of our culture. Even the slightest of deviation shakes the social fiber. But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms are not autonomy but oppression. Therefore, a unified code is imperative, both, for protection of the oppressed and for promotion of national unity and solidarity."¹²

NEED OF UNIFORM CIVIL CODE

The requirement for uniform common code has been felt for over a century. India as a nation has as of now endured a ton without a Uniform Civil Code .The general public has been divided for the sake of religions, groups and sex. Indeed, even at present, in India, there are different laws representing rights identified with individual matters or laws like marriage, separation, upkeep, selection and legacy for various groups. The laws administering legacy or separation among Hindus are in this manner, altogether different from those relating to Muslims or Christians et cetera. In India, most family law is controlled by the religion of the gatherings concerned Hindus, Sikhs, Jains and Buddhists go under Hindu law, while Muslims and Christians have their own particular laws. Muslim law depends on the Shariat; in all other groups, laws are systematized by an Act of

the Indian parliament. There are different arrangements of laws to manage criminal and common cases, for example, the Criminal Procedure Code, 1973 and the Indian Penal Code, 1862. The diverse stations and ideologies and their arrangements of convictions or practices are bewilderingly confounding and no place is a situation like in India, of different individual laws jarring together, permitted.¹³

With regards to the Hindu Law, the issue emerging is with the enlistment of relational unions and in this way, the powerlessness to invalidate youngster relational unions. Youngster relational unions in for all intents and purposes all religious groups in India are acknowledged practices thus they can't be enrolled because of incompleteness of least time of marriage. The Supreme Court of India in *Seema v. Ashwani Kumar*, has guided all states in India to authorize rules for mandatory enrollment of relational unions regardless of religion, in a period bound period. This change has struck a dynamic hit to check kid relational unions, forestall relational unions without assent of gatherings, check plural marriage/polygamy, empower ladies' privileges of support, legacy and living arrangement, prevent men from forsaking ladies, and for checking the offering of young ladies under the appearance of marriage. The results of non enrollment of relational unions has made countless relinquished life partners in India left by alien Indians who continually live abroad.

¹¹ John Vallamattom v. Union of India AIR 2003 SC 2902

¹² Sarla Mudgal v. Union of India AIR 1995 SC 1531

¹³ Available at:

http://articles.economictimes.indiatimes.com/2003-07-28/news/27541538_1_uniform-civil-code-personal-laws-sarla-mudgal

Be that as it may, usage of the same is still undermined.¹⁴

With regards to the Muslim Law, it is the extra courts that make the issue. The Incomparable Court of India on *Vishwa Lochan Madan v. Union of India and others*¹⁵, issued notification to the focal government, State governments, All India Muslim Personal Law Board (AIMPLB) and Darul Uloom, an Islamic theological college, in the matter of the presence of parallel Islamic and Shariat Courts in the nation, which are representing a test to the Indian legal framework. A heading from the court was additionally tried to limit these associations from meddling with the conjugal status of Indian Muslim subjects or passing any judgments, comments, fatwas or choosing marital question amongst Muslims. Till as of late, the matter was all the while pending last mediation in the Supreme Court of India and no convincing last choice stands provided details regarding the said issue by the Supreme Court.

Comparative issue exists under the Hindu Religion also with the position Panchyats. They have assumed an effective part at the town level in a few conditions of the nation generally. Be that as it may, Khap Panchyats (rank based town gatherings) are not chose bodies and their choices are not enforceable by law, thusly extra constitutional bodies and have no sacredness or acknowledgment in law. They notwithstanding, get support from group acknowledgment. The deplorable violations conferred

by the Khap Panchyats under the pretense of Honor Killing are very much noted.

Muslim Law accommodates Mehr, a sum to be settled at the season of marriage itself, as a thought for the execution of marriage. This is on account of the marriage under Muslim Law is an agreement and the condition for enrollment is satisfied in the Nikah Nama itself. Notwithstanding, the law doesn't accommodate upkeep for the spouse. The Mehr sum itself is expected to deal with this perspective. Men can't forgo or decrease the Mehr. Just, the spouse is permitted. Along these lines the ladies' enthusiasm for the Mehr is secured. Be that as it may, different arrangements of the Muslim Law victimize ladies. Polygamy is permitted yet not polyandry. Muta relational unions can be embraced by the spouse. The triple declaration of "talaq" is sufficient for a man to give divorce. The lady needs to experience an exhausting technique for the same. This is not the situation under Hindu Law. Hindu Law under the Hindu Marriage Act itself accommodates upkeep for the spouse. Additionally, the grounds and system for separation are the same for both a couple.¹⁶

Individual Laws represent a disagreement. From one viewpoint, the constitution perceives the proceeded with presence of Personal Law, which is the reason Article 44 expects that India at some later date will have a uniform common code. Then again, there exist a few articles, for example, Article 14-19 which ensure break even with rights. Since individual laws for different gatherings are characteristically unequal, a divorced person in Muslim law is qualified for various

¹⁴ Seema v. Ashwani Kumar AIR 2006 SC 1158

¹⁵ *Vishwa Lochan Madan v. Union of India and others*, (2014) 7 SCC 707

¹⁶ Ms ratnaparkhi, Uniform civil code : an ignored constitutional imperative

things than in Hindu law; in this manner .Article 15 would appear to make individual law unlawful. Besides, Article 15 additionally requires nondiscrimination in light of "sex", though Muslim Personal Law favors the man much of the time, particularly in the issue of separation and in the issue of polygamy. These issues stayed uncertain in the constitution. Individual laws are conflicting with ethical quality and human rights also.¹⁷

IMPLEMENTATION AT STATE LEVEL

Examination Even however an across the nation Civil Code is not yet set up, a positive stride in this course has as of now been taken. The condition of Goa has instituted a setoff „Family Laws“, which is pertinent to all groups; Hindus, Christians, Muslims and others. There is no segregation on the premise of religion, position or sexual orientation. The Goa common code is to a great extent taking into account the Portuguese common code of 1867, with a few adjustments in view of the Portuguese Decrees on Marriage and Divorce of 1910, the Portuguese Decrees on Canonical Marriages of 1946, and the Portuguese Gentle Hindu Usages Decrees of 1880. It incorporates laws administering marriage and separation, progression, Guardianship, property, habitation, ownership, and so on. Muslim fundamentalists restricted its institution in the mid 1980s however their endeavors to present Sharia law in Goa were eventually met with thrashing by liberal Muslims who demanded the continuation of the bound together polite code. Previous Chief Justice Y.V.Chandrachud communicated trust that the Goan Civil Code would one day "stir whatever is left of narrow-minded India and move it to copy Goa."There

are two vital parts of this code which expect incredible essentialness with regards to codification of Indian laws.

- Civil enrollment of marriage is compulsory. Around 98 percent of goa relational unions happen under group property law by the goodness of which, every mate consequently secures joint responsibility for resources as of now in their ownership and those because of them by legacy. These advantages may not be discarded or burdened in any capacity by one life partner without express assent of the other.

- The enlistment of births and passings is likewise obligatory. The offspring of expired guardians fall in the class of compulsory heirs. They can't be excluded whether male or female, except under remarkable circumstances. In the event that the perished has made a will , he may just discard 50 percent of the home. This is known as the portion disponivel . the staying 50percent must be separated similarly among every required beneficiary. For example, arrangement guarantees the only appropriation of benefits among all youngsters , whether male or female. ¹⁸

Goa is the main state in India that has uniform common code paying little heed to religion, sexual orientation, standing. Goa has a typical family law. In this manner Goa is the main Indian express that has a uniform common code. In Goa Hindu, Muslim, Christians all are bound with the same law identified with marriage, divorce, progression. At the point when the Goa turned into the piece of union region in 1961 by the ideals of the Goa Daman and Diu organization

¹⁷ The constitution of India

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Available

at:

<https://www.scribd.com/doc/138371394/Uniform-Civil-Code>

act 1962 the parliament approved the Portuguese common code of 1867 to Goa and should be changed and canceled by the equipped governing body.

In Goa relational unions is an agreement between two individuals of various sex with the reason for living respectively and constitute the authentic family which is register before the workplace of common enlistment center. Also, the specific tenets and control hosts to be trailed by the gatherings after that they can live respectively and begin their life yet there are sure limitations as indicated by which these classes of individual are restricted to perform marriage for instance: any companion sentenced conferring or abetting the homicide of other life partner might not wed.¹⁹

CONCLUSION

Article 44 of the Constitution of India requires the state to secure for the nationals of India a Uniform Civil Code all through the domain of India. As has been seen above, India is a one of a kind mix and merger of systematized individual laws of Hindus, Muslims, Christians, and Parsis. Be that as it may, there exists no uniform family related law in a solitary statutory

book for all Indians which is worthy to all religious groups who exist together in India. The inquiry is not of minority security, or even of national solidarity, it is basically one of treating every human individual with the pride that he deserves; Something which individual laws have so far neglected to do.

The rule is to treat every individual similarly and everybody be secured by simply, reasonable and unsurprising laws. Circumstances are different, social orders have changed and the opportunity has already come and gone that laws change. Training, financial flourishing, rural upgrades, cross outskirt movement and western impact has spread its hand over each niche and corner of Urban India. On the flip side, rustic settlements are as yet battling with adherence to standard and superstitious convictions in family matters. A uniform common code won't just change the whole impression of how families are administered additionally change the lives of millions by filling the lacunas in different religious laws. As Justice Y.V. Chandrachud, appropriately commented, a typical common code will likewise help in reinforcing the reason for national combination by evacuating clashing.

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Available at:

<http://www.lawctopus.com/academike/needuniformcivilcodeindia/>