

UNIFORM CIVIL CODE VIS A VIS PERSONAL LAW AND GENDER JUSTICE

RESEARCH PAPER BY: GARIMA

Student of Chandigarh University (Punjab)

ABSTRACT

"The State endeavour to ensure the citizen a Uniform Civil Code throughout the territory of India," reads Article 44 of Part IV of the Indian Constitution. However, the DPSP "must not be enforced by any court," according to Article 37 of the Constitution. Despite this, they are "essential in the country's government." The concept, idea, and discriminatory nature of personal laws in India have been the main topics of this study. Firstly, a brief history of the Uniform Civil Code, which has its roots in our nation in terms of religious freedom, is provided. After that, this essay will discuss gender justice. As we move forward, this report will address the efforts being made globally to end gender inequality. The issue of gender discrimination will next be discussed, including how it has existed in the past and continues to do so in both Muslim and Hindu personal law. The topic of discrimination against women in matters of divorce, marriage, inheritance, and succession will also be covered. Undoubtedly, a consistent civil code can be an excellent tool for ensuring gender equality. The article concentrated on the benefits and drawbacks of implementing a single civil code. This essay concludes with a conclusion and some recommendations.

INTRODUCTION OF UNIFORM CIVIL CODE

The concept of a single national law that covers all religious affiliations is the foundation of the Uniform Civil Code. The uniform Civil Code is based on idea of one nation, one law. According to a uniform civil code, everyone will be treated equally and the law will be implemented uniformly to all citizens, regardless of their religion or social standing. The word "Uniform Civil Code" is clearly included in Part 4, Article 44 of the Indian Constitution.¹ The Indian government's obligation to replace personal laws based on the scriptures and traditions of each significant religious community in India with a uniform body of laws regulating all citizens is known as the Uniform Civil Code. The Uniform Civil Code in India seeks to replace the distinctive personal laws of each significant religious group in the nation with a uniform set that applies to all citizens. A set of universal personal laws will be known as a uniform civil code. For instance, Hindus and Muslims currently have different personal laws. Property, marriage, divorce, inheritance, and succession are all covered by personal law. The argument for a uniform civil code has existed since India was a colony. In particular, the fields of crimes, evidences, and contracts were highlighted as needing uniformity in the codification of Indian law in the October 1840 Lex Loci Report. It was suggested, nonetheless, that Muslim and Hindu personal law not be included in any codification. With the queen's 1859 Proclamation guaranteeing complete non-interference in religious matters, the British allowed the Indian populace to enjoy the benefits of self-government in their own household affairs. Inheritance, succession, marriage, and religious rites are all covered under personal laws. The Queen's Proclamation of 1859 guaranteed complete non-interference in religious matters. In order to promote women's rights, equality, and secularism, women activists pushed for the creation of a unified civil code at the beginning of the 20th century. Numerous legal changes were made up to 1947, when India gained its independence. The directive guiding principles of state policy enshrined in Chapter IV of the Constitution serve as the foundation for the arguments in favour of a uniform civil code. In Article 44, it emphasises and commands the government to make efforts to have a uniform civil code in India. The Indian Constitution's founder, Dr. B.R. Ambedkar, thinks that both the legislative and executive branches must work hard to make Article 44 a reality. In 1985, the Shah Bano case made the Uniform Civil Code the political hot potato in India. The discussion then turned to the Muslim Personal Law, which has not seen any modification since 1937 and is partially based on Sharia Law, allowing for unilateral divorce and polygamy throughout the nation. The Supreme Court ruled in the Shah Bano case that Bano, a Muslim woman, should get alimony from her former husband. The court had stated in the context of that decision that during British Raj the first uniform personal laws were created, primarily for Hindu and Muslim citizens.²

UNIFORM CIVIL CODE AND GENDER JUSTICE

The Indian Constitution includes the UCC (Uniform Civil Code), which encourages the creation of a single body of law. UCC is a single legislation that applies to all Indian nationals. This law has to do with inheritance, divorce, marriage, child custody, and abortion. Its primary goal is the repeal of personal laws. In India's socio-legal perspective, the implementation of a uniform civil code and the issue of gender justice are intertwined. It is urgently necessary to empower women in key areas such social status, gender bias, health, security, and empowerment. India does not have a uniform civil code, but it does have a uniform criminal

code. All Indian people are equally subject to the Criminal Law. There is no uniformity in civil law, though, particularly when it comes to personal laws.¹

Different laws, such as the Hindu Marriage Act of 1955, the Hindu Succession Act of 1956, the Hindu Minority and Guardianship Act of 1956, and the Hindu Adoption and Maintenance Act of 1956, govern the personal affairs of Hindus. Muslims' personal affairs are governed by laws like the Shariat Act of 1937, the Dissolution of Muslim Marriage Act of 1939, and the Muslim Women Act of 1986, all of which are founded on the principles of the Holy Quran.³ The laws that apply to Parsis are also distinct. Thus, it is evident that there is no uniformity in personal laws.

UNIFORM CIVIL CODE AND PERSONAL LAW

There is no doubting that women are subjected to strict personal laws. In most private concerns, women are perceived as being less important than men, especially when it comes to talking about marriage, succession, adoption, and possibly inheritance. Despite changes, laws nevertheless face protracted legal disputes in almost every faith. However, the Triple Talaq ruling put this debate in the public eye.⁴ The discussion got underway by challenging Islamic law. The terrible practises of polygamy, unilateral divorce, and denying women support under Islamic law were all examined. Hindu women did not have equal rights to Hindu men until the codification of Hindu law in 1955 and 1956. Except in the case of Stridhan, Hindu women were not permitted to hold any property in their absolute ownership. A Hindu woman was denied the ability to adopt a child on her own when it came to adoption. She was unable to continue to be her husband's natural guardian of her children. These instances provide as good illustrations of how patriarchal Indian society is. Despite the fact that Hindu law has been drafted, discriminating clauses are still present today. The father is the primary natural guardian in accordance with Section 6 of the Hindu Minority and Guardianship Act. This inclination completely rejects women the role of natural protector. It goes against the basics contained in the constitution itself and reflects patriarchal ideas.⁵ Despite the fact that Hindu law has been codified, several discriminatory clauses are still in place today. For instance, except in a few states like Andhra Pradesh, Maharashtra, Karnataka, and Tamil Nadu, a Hindu woman is not a coparcener in Hindu Coparceners. She cannot, therefore, claim a portion of the coparcenary. It is clear from this that the codification of Hindu personal law did not totally eradicate gender inequity. On the other hand, Muslim society treats women harshly and discriminatorily. The status of women is delegated to them secondarily from the start. The husband is permitted to marry more than one wife in the Islamic religion, but the wife is not permitted to do so since she will be deemed impure. A Muslim man is allowed to wed up to four women at once. Muslim males who practise polygamy do so on their own volition and are not required to. Muslim women are in a less secure and inferior position than other women when it comes to divorce. It is quite discriminatory for the husband to divorce the woman by saying "Triple Talak."⁶ According to Muslim Personal Law, a Muslim man is only required to provide maintenance up to the length of Iddat and not after. In view of this personal laws, Indians, particularly women across the nation, have called for the introduction of UCC. They believed that the Uniform Civil Code was necessary to close the equity gap.⁷

WORLDWIDE EFFORTS TO ELIMINATE GENDER DISPARITY

Sexual orientation diversity is a global problem rather than a problem specific to one nation. Additionally, the International Covenant on Civil and Political Rights lays forth steps that might be taken to guarantee the right to correspondence. Every person is the same. I wonder how far we have actually advanced in the 21st century, which is already over two decades old. A black woman is running for governor of Georgia on the platform of a major party, and discrimination based on sexual orientation is outlawed in federally supported health care, employment, education, and housing in more than 20 states. This list might continue.

1. Show on the Political Rights of Women (1954): The goal of this programme is to institutionalise a crucial global standard for women's political freedoms.⁸ 2. Display the marriage consent, marriage age, and marriage registration information (1964) This programme calls for the establishment of a legal foundation for marriage, ensures the legalisation of marriage and validates the parties' joint consent to getting married.⁹ 3. Argentina's Gender Identity Law: Adopted in 2012, Argentina's law makes sex change surgery a legal right that is covered by both public and private insurance. It also permits legal gender recognition based purely on an individual's self-determination.⁴ 4. The Transgender Persons(Protection of Rights) Act of Pakistan: This new law, passed in 2018, forbids discrimination against transgender persons in medical care, public transportation, employment, and schools. Additionally, it enables individuals to select their gender and have that identity recognised on official papers like passports, national identification cards, and driver's licences.¹⁰ 5. Decriminalization of Sex Work in New Zealand: In 2003, New Zealand decriminalised sex work under the Prostitution Reform Act, which safeguards sex workers' rights under employment and human

rights law. 6. CEDAW (Clearing Up All Forms of Discrimination Against Women) Show (1979) This programme is regarded as a global women's bill of rights. It is a defining report in the field of sex equity work.¹¹7. Declaration of the End of Violence Against Women (1993) This show promotes the idea that women have the right to live their lives free from violence.⁸ Beijing Declaration and Platform for Action (PFA), which was agreed by governments at the 1995 Fourth World Conference on Women, outlines the obligations of lawmakers to advance women's rights.

NATIONWIDE EFFORTS TO ELIMINATE GENDER DISCRIMINATION IN INDIA

Attempts have been undertaken to avoid sex segregation on a global scale, but also at the public level. Of course, it is included in the Indian Constitution itself.

1. The Equal Remuneration Act of 1976 Employers are required by this Act to pay men and women equally for similar labour. No employer has the right to discriminate against men and women when hiring, training, transferring, or paying employees based on the type of labour performed.¹²

2. The 2013 Sexual Harassment of Women at Work Act

When sexual harassment of women at the workplace was discussed and law was implemented as a result of the Vishaka case in 1992, the issue was first brought to light. Harassing women at work is against their fundamental rights, which are protected by Articles 14, 15, and 21 of the Indian Constitution.

3. The Hindu Succession Act, 1956

A certain alteration to the Hindu Succession Act of 1956 that was enacted in 2005 resulted in the removal of discriminatory restrictions. The Act eliminates women's position as "limited owners" by granting them ownership of all property acquired before or after the Act's signing.¹³

4. The Special Marriage Act, 1954

No matter what religion or faith the other person practises, a special type of marriage is allowed under the Special Marriage Act of 1954. The Old Act of 1872 was replaced by this Act.¹⁴

5. The Dowry Prohibition Act of 1961

The payment or acceptance of dowry as a condition of marriage is prohibited by this Act. Dowry-related offences are punishable by up to five years in prison, a fine of up to Rs. 15000, or both. Dowry-related offences are also punishable by up to six months in jail.

DISCRIMINATION AGAINST WOMEN UNDER PERSONAL LAWS

Hindu law governs the practises of Buddhists, Jains, Sikhs, and Hindus. Muslims are subject to Islamic law. Christian law governs Christians, and Parsi law is applicable to Parsis. Jews are subject to their own unique laws. There are several different personal laws in India. These regulations' applicability typically depends on the religion practised by various societies. Christians are subject to Christian law, Parsis to Parsi law, and Jews to their own personal law.¹⁵

UNIFORM CIVIL CODE IN GOA

Only the state of Goa in India offers UCC to all populations, regardless of gender, religion, or caste. The only state in India, Goa, has adopted UCC for each and every one of its citizens. Polygamy is not legal for Muslims who registered their marriage in Goa. Every person in Goa is subject to the same rules regarding marriage, succession, and divorce.¹⁶ Following a divorce, the husband and wife will each receive an equal share of the property. In Goa, marriage registration is required. All colonial laws were repealed when Goa was freed from slavery, with the exception of family law, which was a demand of all communities.¹⁷

SPECIAL MARRIAGE ACT, 1954

This Act was passed by the Indian Parliament to offer all Indians, regardless of their religious beliefs, a unique type of marriage. The main goal of this regulation was to ensure that people could get married without adhering to the traditions and customs of their own personal laws.¹⁸ This statute made polygamy illegal. The Indian Succession Act would apply to the divorce and succession. There are specific divorce provisions in Goa.

PROS OF UNIFORM CIVIL CODE

First, gender equality

Nation will be able to remove gender discrimination by implementing a unified civil code.

2. Strengthening of National Integrity

The creation of a uniform civil service will facilitate secularism and national integration. It will strengthen racial harmony.¹⁹

3. Promotion of women's standing

The advancement of women's standing will be the main benefit.

4. Simplification

The UCC in the Indian legal system will result in a decrease in lawsuits resulting from various personal laws.

CONS OF UNIFORM CIVIL CODE

1. Interference by the government with personal freedom.

2. As a result, the nation's population would grow hostile and confused.

3. It will be an issue when one law must take precedence over another in a certain circumstance.

4. The complexity of the Uniform Civil Code's application stems from the vast diversity of our country.

5. The scope of the right to freedom of religion will be constrained by the definition of standard rules and their imposition.

CONCLUSION

Women have been facing ill-treatment for centuries. Famous poet Rabindranath Tagore voiced his thoughts on women's issues in the following lines: "O Lord, why have you given women the power to control their destiny? The place of women in these personal laws is an area that needs concern and work. Women's rights and advancement have long been a topic of discussion; nevertheless, little action has been taken. The Uniform Civil Code is therefore urgently needed to eliminate gender bias. Even after Independence, citizens are still not truly free. The only piece of legislation required for a nation like India is the Uniform Civil Code. Personal rules from the Hindu, Muslim, Christian, and Parsi faiths are all codified in India. There is no uniform set of personal laws that apply to all Indian citizens. Furthermore, it is evident that Article 44 mandated that efforts be made to ensure that individuals had access to a unified civil code across India's whole territory. The approach to better the status of women in India is through the adoption of a uniform civil code. Unification of the Nation is strengthened by the uniform civil code, which benefits women as well.

IJRTI