UNIFORM CIVIL CODE: A CRITICAL STUDY OF INDIVIDUAL RIGHTS AND THE ROLE OF SECULAR STATE

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ABSTRACT

The research project deals with the research about the problems arising on unavailability of a Uniform Civil Code. It discusses about the problems Country is facing nowadays and differential treatment of citizens, owing to their personal laws. India is a multi-religious and multi lingual country that is divided on many facets, yet united by nationalist spirit. All people are today governed by their personal laws with respect to marriage, succession, divorce, etc.

If we see at the preamble of the Constitution there is a term secular and the citizens are guaranteed their freedom of religion and being a secular State, it should not interfere in matter of individuals’ religion. Indian secularism imposes a negative command on the State to not to identify with any specific religion and treat its citizen with the spirit of “Sarva Dharm Sambhava” It has been argued by few scholars that the Indian society is not socially developed enough to utilize the “Uniform civil code” [Herein after UCC and thus UCC is still is a topic of discussion in Indian context]. The reason behind it, as the researcher has observed, is that India is a vast Country with diverse cultures, religion, etc. Enforcement of UCC can be seen as unnecessary imposition of State law, which would infringe many religious practices and cultures.

Unification of tribes will be another challenge, in case UCC becomes a reality. Indian still has a wide cover of tribal population which prefers to be governed by their customs and was promised freedom of such practice. Secular procedural laws and other piece of legislation also create an exception in this regard. To bring a UCC throughout the Country in recent times would need an exceptional consensus amongst the communities.

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INTRODUCTION

A UCC essentially means unifying all the “personal laws” to have one set of secular laws dealing with these aspects that will apply to all citizens of India irrespective of the community they belong to. Though the exact contours of such a uniform code has not been spelt out, it should presumably incorporate the most modern and progressive aspects of all existing personal laws while discarding those which are retrograde.

The “directive principles” laid down in the Constitution says: “The State shall Endeavour to secure for the citizens a UCC throughout the territory of India.” As the Constitution itself makes clear, the directive principles “shall not be enforceable by any court”. Nevertheless, they are “fundamental in the governance of the country”. This shows that although our constitution itself says that UCC should be implemented in some manner but its implementation is not mandatory. Hence, the debate on having a UCC for India still continues.

Constitutional Assembly debated UCC at length and some Muslim members did not agree to the inclusion of UCC in the Constitution. Mr. B. Pocker Sahib Bahadur questioned the meaning of term UCC and what it stood. Absence of any particular law which could be taken as the standard was a subject of concern for Muslim member as they wanted to avoid any imposition of majoritarian law. Unfortunately, this unwarranted concern prevailed over the need of a strong National Character of the Nation. The Muslim members opined that the word civil code should not cover strict personal law of a citizen. Allowing the fears of the members who questioned the connotation of the word UCC and the object of having such a provision in the Constitution, Shri K.M. Munshi said that, “the whole object of this Article is that as and when the Parliament thinks proper or rather when the majority in Parliament thinks proper an attempt may be made to unify the personal law of the Country”. The Chairman of the Drafting Committee, Dr. B.R. Ambedkar while replying to the questions on the provision of the UCC in the Constituent Assembly by the minority community said, “it was intended to have a Code which provided for uniformity of law in matters of marriages, divorce, succession etc. irrespective of religion, community” etc. Justice M.C. Chagla, while making

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3 Article 44, The Constitution of India
4 Article 37, The Constitution of India
a vehement plea for UCC wrote, Article 44 is a mandatory provision binding the government and it is incumbent upon it to give effect to its provision. The Constitution was enacted for the whole Country, and every section and community must accept its provision and its directives.  

The personal laws of the major religious communities had traditionally governed marital and family relations, with the Government maintaining a policy of non interference in such laws in the absence of a demand for change from individual religious communities. India is a land of diverse religions Hindus, Buddhists, Jains, Christians, Muslims, Parsees, and Sikhs form the Nation. Unity in diversity is the core feature of the Indian Nation. Each community has its own laws governing marriage and divorce, infants and minors, adoption, wills, and Succession. These personal laws go with an individual across the States of India where they are part of the law of the land, and the individual is entitled to have that individual’s own personal law applied and not the law which would be applied in the local territory. Personal laws are statutory and customary laws apply to particular religious or cultural groups within a National Jurisdiction. They govern family relations in such matters as marriage and divorce, maintenance and succession. India is a secular Country where every community is allowed its own personal laws.

The above two paragraphs can also be noted as the reason of introduction of UCC in part IV of the Indian Constitution rather than any other enforceable part of the Constitution. The framers of Indian Constitution understood the importance of a UCC, but nevertheless could not make it a mandatory provision under the Constitution. Confederation of Indian States, during Independence was a very fragile combination that had diverse culture, religion and practices under its large sway. The fabrics of Indian Unity could have been disturbed in case of the then mandatory provision of UCC.

Like the concept of Democracy, Socialism, Unity and Integrity of the Nation, Secularism is also essential and inseparable which is enshrined in the preamble to the Indian Constitution.

7 Chagla, M.C. Plea for Uniform Civil Code, Weekly Round Table, March 25, 1973, p. 7.)
Law of a State must be uniform and regular in its meaning and application, enforcement of different laws, only on the basis of religion creates disparity in the uniformity of Law. It can be argued that equality is to be enforced only amongst the equals, but religion cannot be taken a sole ground of equality or inequality. In cases where the personal laws stand in derogation of basic human rights or are opposed to public policy, the need of Uniformity in such laws can be felt. A uniformity means, uniformity that could bring equal rights for every citizen in respect of basic human rights, guaranteed by municipal legislations and advocated by International law regimes.

The Preamble of the Constitution states that India is Secular, Democratic and Republic Country. This means that there is no State religion. A secular State shall not discriminate against anyone on the ground of religion. A religion is only concerned with relation of man with God. It means that religion should not be interfering with the mundane life of an individual. The process of secularization is intimately connected with the goal of uniform civil code like cause and effect. That is to say, religion of an individual should only determine which God or entity shall he worship and not what shall be laws governing him. Laws as such should not emancipate from religious understanding but from the Sovereign text of the Nation, in case of India that would be Constitution. Hon’ble Justice Jeevan Reddy while making an observation in *S.R. Bommai v. Union of India*10, held that religion is the matter of individual faith and cannot be mixed with secular activities and can be regulated by the State by enacting a law.

Secularism, in Indian context has a unique meaning and understanding, owing to its demography. Indian secularism cannot be compared with its meaning, as accepted in America and European State. One of the reasons for not making such comparison lays in the fact that America and the European countries went through the *stages of renaissance, reformation and enlightenment*. In West, thus, a law can be enacted stating that State shall not interfere with religion. In India, on the other hand there is a wall of separation between religion and State, secularism separates spiritualism with individual faith. The reason is that On the contrary, India has not gone through these stages and thus, the responsibility lies on the State to interfere in the matters of religion so as to remove the impediments in the governance of the State.

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10 *S.R. Bommai v. Union of India* (1994) 3 SCC 1
The word secular is not precise and has different shades in different contexts. It is opposed to
religion in the sense that the secular State cannot be a religious State. In this context, some
feel that a secular State is an anti-religious State. The State, which has no religion of its own,
does not necessarily mean an anti-religious State. It may be a State respecting all religions.
Though the term secular was added to the preamble by way of 42nd Constitutional
Amendment, secular spirit is infused in every fiber of the Constitution from its very
inception. This very secular spirit formed the foundation of fundamental right to equality
before law\textsuperscript{11} and right to practice Religion.

The personal law of the Hindus, such as relating to Marriage, Succession and the like have all
a sacramental origin, in the same manner as in the case of the Muslims or the Christians. It
would not be a wrong observation to note that, the Hindus along with Sikhs, Buddhists and
Jains have forsaken their sentiments in the cause of the National unity and Integration, some
other communities would not, though the Constitution enjoins the establishment of a “UCC”
for the whole of India\textsuperscript{12}.

UCC is a term referring to the concept of an overreaching Civil Law Code in India. A UCC
administers the same set of secular civil laws to govern all people, even those belonging to
different religions and regions. This supersedes the right of citizens to be governed under
different personal laws based on their religion or ethnicity. Such codes are in place in most
modern nations. There is no doubt that the idea of UCC is by and large, a child of
independent India\textsuperscript{13}.

**LEGISLATIVE EFFORTS MADE ON THE PART OF GOVERNMENT**

Though it was rightly pointed out in the Constituent Assembly that not all Hindus were in
favour of UCC. But, UCC has been permanently associated in the Indian mind with
opposition by the Muslims. They felt that the personal law of inheritance, succession, etc. is
really a part of their religion. If that were so, Indian women can never be given equality with
a man who is enshrined in Art.14 of the Constitution. Art. 15(1) provides that “the State shall

\textsuperscript{11} Art 14, The Constitution of India.

\textsuperscript{12} Smt. Sarla Mudgal, President, Kalyani and others v. Union of India and others, AIR 1995 SC 1531

\textsuperscript{13} Destha Kiran, Uniform Civil Code In Retrospect And Prospect 2 (Deep & Deep Publication New Delhi 2002).
not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.” Hindus have been comparatively more accepting towards a modern uniform law theory. Several laws have been legislated from British era till date, most recent amendment being in the succession Act, with respect to the coparcenary inheritance.

1. **During British Period:**

   Indian Succession Act 1865, which was also one of the first laws to ensure women’s economic security, attempted to shift the personal laws to the realm of civil. The Marriage Act 1864 had reform for Christian marriages. There were law reforms passed which were beneficial to women like the Hindu Widow Remarriage Act of 1856, Married Women’s Property Act of 1923 and the Hindu Inheritance (Removal of Disabilities) Act, 1928,

   The All India Women’s Conference (AIWC) provided its disappointment with the male-dominated Legislature this statement was given by the Lakshmi Menon in AIWC conference in 1933, “If we are to seek divorce in court, we are to state that we are not Hindus, and are not guided by Hindu law. The members in the Legislative assembly who are men will not help us in bringing any drastic changes which will be of benefit to us.” The women’s organizations demanded a UCC to replace the existing personal laws, basing it on the Karachi Congress Resolution which guaranteed gender-equality.

   The Special Marriage Act, which gave another option to the Indian citizens of a civil marriage, was enacted first in 1872. It had a limited application because it required those involved to renounce their religion and was applicable only to Hindus. The later Special Marriage (Amendment) Act, 1923 provided that Hindus, Buddhists, Sikhs and Jains to marry under their personal laws.

2. **After British period:**

   Hindu code bill: The first Prime Minister of the Indian republic, Jawaharlal Nehru, his supporters and women members wanted a uniform civil code to be implemented by this bill. The Hindu bill itself received more criticism and the main provisions

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opposed were those provision which is related to monogamy, divorce, abolition of women coparcenaries rights and inheritance to daughters.

The Hindu Code Bill failed to control the prevalent gender discrimination. The laws related divorce was giving both partners equal rights but majority of its implementation is initiated by the men. Since the Act applied only to Hindus, women from the other communities remained subordinated. For instance, Muslim women, under Sharia law, could not inherit agricultural land. Nehru accepted that the bill was not complete and perfect, but was cautious about implementing drastic changes which could stir up specific communities. He agreed that it lacked any substantial reforms but felt it was an “outstanding achievement” of his time.

The Special Marriage Act, 1954, provides a kind of civil marriage to any Indian citizen irrespective of their religion, thereby permitting every Indian to marry someone outside the religion. The law was applied to all of India, except Jammu and Kashmir. In many respects, the act was almost identical to the Hindu Marriage Act of 1955.

The Special Marriage Act allowed Muslims to marry under it and thereby retain the protections, generally beneficial to Muslim women that could not be found in the personal law. Under this act polygamy was illegal, and inheritance and succession would be governed by the Indian Succession Act, rather than the respective Muslim Personal Law.

3. After the passing of the Hindu Code Bill, the personal laws in India had two major areas of application: the common Indian citizens and the Muslim community, whose laws were kept away from any reforms. The frequent conflict between secular and religious authorities over the issue of uniform civil code eventually decreased, until the 1985 Shah Bano case. Bano was a 73 year old woman who sought maintenance from her husband, Muhammad Ahmad Khan. He had divorced her after 40 years of marriage by triple Talaaq (saying “I divorce thee” three times) and denied her regular maintenance; this sort of unilateral divorce was permitted under the Muslim Personal Law. She was initially granted maintenance by the verdict of a local court in 1980. Khan, a lawyer himself, challenged this decision, taking it to the Supreme Court, saying that he had fulfilled all his obligations under Islamic law. The Supreme Court
absolved her in 1985 under the “maintenance of wives, children and parents” provision (Section 125) of the Criminal procedure code, which applied to all citizens irrespective of religion. It is further suggested that a UCC be set up. Besides her case, two other Muslim women had previously received maintenance under the Criminal code in 1979 and 1980.

An independent Muslim parliament member proposed a Bill to protect their personal law in the parliament. The Muslim Women’s (Protection of Rights on Divorce) was passed in 1986, which made provision of Maintenance under Section 125 of the Criminal Procedure Code wherein would not be applicable to Muslim women.

A CRITICAL REVIEW ON AVAILABLE LAWS

The UCC is not a part of the fundamental right but it is part of Directive Principal of State Policy that’s why no special laws available about this matter. Some statute and law provides the provision related to the uniform civil code.

A futile attempt was made in the direction of UCC by the judiciary through the Shah Bano verdict. But the Government of India went ahead in passing the Muslim Women (Protection of Rights on Divorce) Act, 1986 making sections 125-127, Criminal Procedure Code optional to divorce, Muslim Women muted law can’t be far ahead of the society which would lack social legitimacy. And for this, the mandate of Article 44 is that The State shall endeavour to secure which recognizes the fact that the different personal laws do exist in the country which needs to be uniform in its applicability. The Constitution of India in Article 44 enjoins, The State shall endeavour to secure for the citizens a UCC throughout the territory of India. It has been over 70 years, yet we have not been able to attain that level of sophistication to accept and adopt the Constitutional mandate.

The last fifty years have been a sad waste of time. There has been no collection of relevant information about the numberless semi-visible groups and communities, no exposure of the masses to the idea of the UCC. There has been no draft bill of it. The words UCC have not been considered properly. Do we want a Uniform Civil Code or a Common Code? Are these two same? Do we want to put together a Common Code which borrows all that is best from
existing personal laws in India? We have not put our minds to these questions. Moreover, is there an existing ‘perfect’ law to be taken as a standard for other personal laws to be legislated?

There is no clarity in the provisions of the Constitution itself as preamble makes India a secular state as the term “secularism” added by the 42nd Amendment in the Constitution and on other hand for its governance state has to interfere in the personal laws of the citizens as being a secular State it should not do this. And further more Our Constitution guarantees freedom of conscience and free profession, practice and propagation of religion and freedom to manage religious affairs by Articles 25 and 26. Article 44 also has been very cleverly worded in as much as it does not say that all personal laws should be abrogated and that the proposed UCC imposed on all citizens.

- There are so many controversial debate and opinions as the researcher found regarding UCC.
- The Indian society is not up to that mark which can utilize UCC.

**JUDICIAL INTERPRETATION WITH RESPECT TO UNIFORM CIVIL CODE AND SECULARISM**

Even after more the five decades from the faming of the Constitution, the ideal of UCC under Article 44 is yet to be achieved. However, efforts in this discretion continued as reflected in various pronouncements of the Supreme Court from time to time.

- In *Mohammad Ahmed Khan v. Shah Bano Begum*,\(^\text{15}\) popularly known as the Shah Bano’s case, the Supreme Court held that “It is also a matter of regret that Article 44 of our Constitution has remained a dead letter.” Despite section 127 of Cr.P.C. 1973 (which provides that if a woman has received an amount under personal law, she would not be entitled to maintenance under section 125 of Cr.P.C. 1973 after divorce) Muslim women would be entitled to maintenance if amount received by her as “dower” under personal law is not sufficient for her sustenance. Though the decision was highly criticized by Muslim Fundamentalists, yet it was considered a liberal interpretation of law as required

by gender justice. Later, on under pressure from Muslim fundamentalists, the Central Government passed the Muslim women’s (Protection of Rights on Divorce) Act, 1986, which denied right of maintenance to Muslim women under section 125 of Cr. P.C. The activists rightly denounced that it “was doubtless a retrograde step. That also showed how women’s rights have a low priority even for the secular state of India. Autonomy of a religious establishment was thus made to prevail over women’s rights.” 16

- In *Sarla Mudgal (Smt.), and others v. Union of India and others*17, Kuldeep Singh, J., while delivering the judgment directed the Government to implement the directive of Article 44 and to file affidavit indicating the steps taken in the matter and held that “Successive governments have been wholly remiss in their duty of implementing the Constitutional mandate under Art. 44. Therefore, the Supreme Court requested the Government of India, through the Prime Minister of the Country to have a fresh look at Art. 44 of the Constitution of India and Endeavour to secure for its citizens a UCC throughout the territory of India.” He also suggested the appointment of a committee to enact a Conversion of religion Act. R.M. Shahai, J., while agreeing with Kuldip Singh, J., too agreed that “Ours is a Secular Democratic Republic. Freedom of religion is the core of our culture. But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentiality civil and material freedoms, are not autonomy but oppression.”

- In *Danial Latifi and another v. Union of India*18, the Court upheld the validity of Sections 3 and 4 of the Muslim Women (Protection of rights on Divorce) Act, 1986, as not being violative of articles 14, 15 and 21 of the Constitution of India. Under section 3 of the Muslim Women (Protection of rights on Divorce) Act, 1986, a Muslim husband is liable to make reasonable and fair provision for future of divorced wife which includes maintenance also, so she is not entitled to claim maintenance under section 125 of Cr.P.C. Under section 4 of the Act, divorced Muslim woman unable to maintain herself after iddat period can proceed against her relatives or wakf Board for maintenance.

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17 *Sarla Mudgal (Smt.), and others v. Union of India and others* AIR 1995 SC 1531
18 *Danial Latifi and another v. Union of India* (2001) 7 SCC 740
• Rajendra Babu, J., on behalf of a five judges bench consisting of Patnaik, Mohapatra, Doraiswamy, Patil, JJ., And himself observed that: “In interpreting the provisions where matrimonial relationship is involved we have to consider the social conditions prevalent in our society. It is a small solace to say that such a woman should be compensated in terms of money towards her livelihood and such a relief which partakes basic human rights to secure gender and social justice is universally recognized by persons belonging to all religions.”

• In John Vallamattom v. Union of India 19 the Supreme Court in a PIL by a Christian Priest, John and other citizens of Christian community, challenging the validity of the section 118 of the Indian Succession Act, 1925, while striking down the said section as being violative of article 14 of the Constitution, and also concerned over the contradictions in marriage laws of various religions, in a historic judgments, emphasized the need for a Legislation by Parliament on common civil code. Stressing that there was no “necessary connection” between religious and personal laws in a civilized society, a three judge bench held that it was matter of regret that Article 44 of the Constitution, which provided for the state to ‘Endeavour’ to secure a UCC for its citizens throughout India, had not been affected. The Court further observed that “Parliament is still to step in for framing a UCC in the Country. A UCC will help the cause of the National integration by removing the contradiction based on ideologies.” It can be said that after mentioning the apex court view regarding the implementation of UCC that Art. 44 needs to be interpreted to sustain the plurastic character of the Indian community. It should be on the gender justice rather than on uniformity. Although the Supreme Court has not yet interpreted Art. 44. On all his decisions the Court enjoined upon the Parliament to enact a UCC without specifying what a UCC would mean. However, the word “uniform” should not mean the same law for all but it should mean similar laws for all and similarly should be regarding equality and gender justice.

• Shayra Bano v. Union of India 20: In a yet very recent judgment the Apex court while joining six petitions on the subject matter invalidated the practice of Talak-ul-Biddat. It has been a victory for Muslim women with respect to their basic human rights and right

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20 Shayra Bano v. Union of India Writ Petition [C No. 118 of 2107]
to equality guaranteed under the Indian Constitution. The judgment though cannot be held in favour of UCC in strictio sensio. The grounds of invalidating the said form of talak have primarily been the non mandatory and unapproved practice under the respective Holy text of Muslim. The bench did not go into the question of violation of Fundamental Right alone, mentioned in the Constitution. The answer to the question, whether a personal law can violate the Fundamental Right of any citizen seems to be in negative. In presence of such judicial precedent, every provision of the personal law needs to be studied on particular and specific level, that too, with respect to respective religious text and not Constitution.

CONCLUSION

After studying the facts, judgments and social history of our Nation and forming a holistic approach towards UCC, it can be concluded on following observations. Some provisions of Constitution makes implementation complicated as Art 44 of the Constitution talks about UCC for the citizens and on other hand Art 37 states that “the provisions of Part 4 shall not be enforceable in any Court...” in the next part, it seems to have created a duty on the State to apply these principles in making laws, by stating “...but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.” Therefore we can say that Art 37, makes a duty of the State to make UCC for its citizens because it became fundamental in the governance of the Country. It appears to be Duty against which there exists no legal right that can be enforced on the breach of such duty by the State.

If we see at the preamble of the Constitution there is a term secular and the citizens are granted freedom of religion and being a secular state, state should not interfere in matter of individual’s religion. On the other hand we can say that individual right does not affect the unity and integrity of India because religion is only matter of individual faith which cannot mixed with secular activities and can be regulated by the State enacting a law which is already held by the Supreme Court in the case of S.R. Bommai v. Union of India.

It can be concluded by saying that the UCC amounts to equal laws for all sections of society. All the people of India must be governed by one set of laws. For National unity and for
secularism, UCC is necessary. Our society is not up to that standard which can utilize the “UCC” and thus still UCC is awaited to be done. What is the reason behind it as the researcher observed India is a multi religion Country. Allot of cultures are there and such culture, tendency and the behaviour of the citizens is full of diversity. Though we say India offers Unity in Diversity but not in all respect otherwise UCC could have been enacted long back.
REFERENCES