



Uniform Civil Code in Contemporary Indian Politics and Law

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ABSTRACT

India plural legal system accommodates demise personal law Based on religion, tradition and community identity. The state shall endeavour to secure for citizen a uniform civil code throughout the territory of Bharat However these personal law after come into tension with constitutional ideas of equality, dignity, gender , justice. How do personal law in Bharat perceptual gender based discrimination and inequality. To analyse discrimination provision in major personal law. This Article seeks to critically analyse and examine How Bharat can reconcile personal law system with constitutional mandate foe gender equality and protection by analysing legal intersection and condition among uniform civil. Analysis of constitutional provision , statues , act and landmark judgements case laws related to personal laws and gender justice.

INTRODUCTION

ARTICLE -44 – Directive principle of state policy, Indian constitution.

A uniform civil code is one where a common set of civil laws replace personal law important example laws that find their authority from customs , religious , scriptures for citizen of a country .personal laws deal with issues of adaption , Maintenance , Divorce , Marriage and Inheritance. Uniform civil code has been a point of contention for several decades, having emerged as a political tool to fuel election campaigns rather than a truly acted upon development agenda. while highly politicised debates surround it , a key issue that has emerged in the uniform civil code is the submergences of equal rights for women



under personal laws from highly patriarchal structure and women have historically not been emerged in their formation. While some effort has been emerged in their formation. While some effort has been made to bring greater uniformity and reforms in personal laws. Talk om uniform civil code have also not been able to account for needs and process to ensure gender justice without uniform civil code.

WHAT IS UNIFORM CIVIL CODE ?

In a simplest term we say uniform civil code is a “one law for one nation” 75 years since our independence our personal law are very fragmented in nature they differ from religion to religion and this cause a lot of problem so in india . A uniform civil code is conceptualized as a set of Laws that govern personal matter including Marriage, Divorce , Adaption ,and succession for all citizens regardless of their religion. It aims to replace the existing diverse personal law that vary based on religious affiliations. Uniform civil code toward gender equality . personal Law in india often discriminate against women , particularly in matter related to marriage , divorce , inheritance , and custody. A Uniform civil code would help to eliminate such discrimination and promote gender equality. Uniform civil code will eliminate the legal pluralism currently seen in personal law.

HISTORICAL BACKGROUND

The first ever law commission in india was establishment in the year 1834.The commission submitted the Lexi loci report in which it recommended implanting sustentative civil law of England as a uniform act. The led to the birth of Uniform civil code in india. In 1941 B.N Rau committee. To codify Hindu Law. In Roman civilization that all of roman are were governed by equal civil law irrespective of their religion and the Mesopotamian people also followed of urnamuh. This code of talked about creating of citizens as one family one equal family then if we take the example united states of America (USA) The founder of the USA Constitution did not state that all white men are equal they instead made all of equality applicable on all of the US Citizens. In india this is not a scenario on the bases on one hand we have Article -15 (1) which prohibit the state from discriminatory against the citizen only on the basis of caste gender ,sex ,place ,Birth. On the another we have this personal was which discriminate and partial against the minority community which are differentiate on the basis of gender then we have differentiation on the basis of sexual orientation as well as so they run even to the constitutional gurantee of equality. If we talk about specially in India. I take you back to the year 1834 what happened in the 1834 that the law commission was established Lex loci Report the beginning of uniform civil code in india so when now we came at the point when we got independence 1947 we Formed a constituent assembly in 1948 and making and from a India constitution and uniform civil code was hugely debated on the floor of



constituent assembly but they could not reach a common consensus because member opinion is different each others. The well known social reformer and Lawyer Dr B.R Ambedkar the chairman of our drafting committee. DR B.R Ambedkar who was a huge supporter and proponent of the uniform civil code and believed that only uniform civil code well reform the Hindu society and provide protection to Muslim women, who have little to no protection under the sharia law but after receiving a Lot of criticism, a lesser version of the bill was passed in 1956 And constituent assembly could not a reach a common concession and that is why they made the provision of ucc voluntarily. If we talk about our indian constitution uniform civil code is not a fundamental Right it is Directive principal of state policy (DPSP). It is made voluntarily so that the nation could accept then it is ready to accepted. The Hindu Law Bill Divided into 4 Laws. Hindu code Law , Hindu Marriage act , Hindu Adaption and maintenance act. Hindu minority and guardian act, Hindu succession act.

PERSONAL LAWS

If a parsi women marries someone is not a parsi, their children are not accepted as a part of the parsi community However this does not apply to a parsi man marrying outside the parsi community. A non parsi community women who is married to or is the widow of a parsi man can not inherit on his death through their children can inherit. Hindu personal Law : If a married women dies without having any children, her property , under the Hindu succession Act, is inherited by the heirs of her husband and not her own. section 6(a) of the Hindu minority and Guardianship act gives the father the status of the natural guardian in the case of a legitimate child. The need for equality of right of natural Guardianship between both parents in Ignored. Hindu men are also allowed to practice bigamy under certain condition in goa, althought goa. Claim to be the only state to have a uniform civil code in place. Muslim person Law: The practise of Talaq -e- biddat (tripple talaq) allows for a Muslim man to divorce his wife instantaneously by uttering the word talaq 3 times in one sitting, a Muslim women must fellow a legal procedure after obtaining her husband consent to be able to get a divorce. Allow for a Muslim man to have multiple wives. The practice of Nikah Halala determines that a Muslim women is not allowed to remarry the husband who has Divorced her unless. She first marries another man and consummates that marriage.

The Goal of Article -44

Article - 44 of the Indian constitution is a Directive principal that calls for the state to create a uniform civil code to govern personal matter like Marriage, Divorce, Inheritance , and Adaption for all citizen, regardless of religion. The Uniform civil code also to create a single ,secular set of civil Laws, promote nation integration and gender equality and is not a legally enforceable rights but a guiding principle for



the Government. Secularism : The article is seen as a way to uphold the secular credential of the constitution by separating personal Law from religion. The uniform civil code is most important to our National Integrity and National unity by creating a common legal framework for all citizen. Gender Equality: its aims to ensure gender equality gender parity by providing a single. Consistent set of Law that can address loopholes and promote equality Goa id the First state in India that has uniform civil code. When the Portuguese civil code is 1867 Then recently uttarakhand Passed the uniform civil code of uttarakhand act, 2024 ,Making it the first state in independent its own uniform civil code. Other state such as Assam , Gujrat , are reportedly also working on implementing the uniform civil code.

DPSP WHY NOT ENFORCEBLE?

The DPSP are not binding and enforceable because there are not justiciable meaning they can not be enforced by any court of Law, as stated in article 37 of indian constitution. Article 37 of the indian constitution states that the Directive principle state policy (DPSP) are not be enforced by any court but are fundamental that it is the duty of the state to apply these principle when formality Laws and policies. The Main purpose : The goal of the DPSP Is to serve as a blueprint for achieving a welfare state and a social and economic Democracy. **Uniform civil code and Fundamental Rights and Landmark judgements, constitutional provisions and statues.** Article 44, yet it sparks Debate contradiction with critics concerned about Infringing on religion Freedom (Article 25 to 28) and minority rights, uniform civil code and personal Law creating a problem between Individual Rights, cultural Diversity and National unity and Integrity. Article 14 Guarantees the right to equality, stating the state shall not deny any person “equality before Law or equal protection of the Law within the territory of India. Article 15 prohibit the state from Discriminating against any citizen solely on ground of religion , Race , caste , sex ,or place of birth. Article 29 (1) Grants any section of citizen with a distinct Language, script , or culture the fundamental right to conserve it, protecting them from state Interference in preserving their unique Identity , applicable to both majorities and Minorities , ensuring Diversities. Article 30 (1) Establish and administer educational institution of their choice. Article 244 (1) Applies the 5th schedule provision for the administration and control of schedule Areas and Schedule Tribe to most Indian state , excluding Assam , Meghalaya , Tripura and Mizoram. Article 244(2) The 6th schedule it empower the president to declare an area as a schedule Area and outline Mechanism Including the tribal Advisory council for their Governance , ensuring tribal welfare through special provision for Laws, Finance and Administration. Article 371 (A) The Indian constitution grants special autonomy to Nagaland , protecting Naga customary Laws ,Social religious practice , Land ownership and civil and criminal justice. Making Acts if parliament on these subjects In applicable without the Nagaland Legislature Assembly resolution a key



part of the 1960 agreement Leading to statehood to preserve Naga Identity. It ensure parliament can't Legislate on Naga tradition and Land Resource without assembly consent, recognising Nagaland unique cultural Diversity and Historically context. Inserted by the 13th Amendment in 1962 following the 16 point Agreement with the Naga peoples convention. It was fundamental for Nagaland formation as a state in 1963.This act grant a degree of self Governance and autonomy with the Indian union ,reflecting asymmetric federalism

LANDMARK CASES

1)SHAH BANO CASES (1985) :In 1978, shah Bano begum, a 62 years old Muslim women, sought Maintenance under section-125 of the CRPC (now Bhartiya Nagrik suraksha sahita, 2023) after being divorced by her Husband. This section ensures Maintenance for Dependents irrespective of religion. Husband contended that under Muslim personal Law , his obligation ended after the Iddat period (3 Months after Divorce) but the Madhya Pradesh High court Increased her Maintenance prompting him to appeal to the Supreme court. A 5 judge Supreme court constitutional Bench unanimously ruled in Shah Bano favour , declaring Section-125 Crpc a secular Law applicable to all Including Muslim women. The court Held she was entitled to maintenance beyond the Iddat period and cemented that Article-244 remained a “Deal Letter” Supreme court criticised the non implementation of article - 44 which calls for a uniform civil code. It referenced that quaran to support continued Maintenance post Divorce. Aftermath Backlash and Legislature response facing protests from conservative. Muslim protests from conservative Muslim groups, the Government passed the Muslim women (protection of Right on Divorce Act , 1986.This Act diluted the supreme court ruling by limited the Husband responsibility the Iddat period, shifting long term support to the women’s relative of waqf board. It restored Legal clarity strengthened access to justice ensured constitutional parity for muslim women, and reinforced the secular character of Indian Maintenance Law.The shah Bano case and later Law expose India’s struggle between personal Laws and constitutional equality. Despite political pushback, court upheld women’s maintenance Rights, under scoring ongoing tension over secularism, gender justice , and the need for reform and dialogue on a uniform civil code.

2)Jordan Diengdeh v. S.S Chopra (1985)

In this Landmark case Indian supreme court case Highlighting Legal disparities in personal Laws. Where a Christian woman (Diengdeh) sought Divorce from her Sikh Husband (Chopra) under the Indian Divorce Act, but faced obstacles due to different religion Laws, prompting the court to call for a uniform civil code for equal dissolution grounds like “irretrievable breakdown of marriage.



3) Sarla Mudgal v. Union of India (1995)

This is a Landmark judgement relating to the validity of 2nd marriage by a Hindu Husband after converting to Islam. This is a Landmark judgement that talk about the validity of second Marriage by a Hindu Husband after converting to Islam. This is a very important case that also Limelight on the Importance of Article 44 of Government of India which provide from uniform civil code.

4) ABC V. THE STATE (NCT OF INDIA)

In this Landmark case (2015) Indian supreme court case where an unwed Christian Mother challenged the requirements to name the Father for sole guardianship establishing that a single Mother can be the sole Legal guardian without the father cobsent, prioritizing the child welfare and recognizing maternal rights for children born out of wedlock , Making it a Milestone for single mother in india.

5) SHAYARA BANO CASE (2017)

In this Landmark case supreme court of India struck down tripple talaq as unconstitutional, leading to the enactment of the Muslim women (protection of right an marriage) Act, 2019 which criminalize Instant Divorce (talaq e biddat)

CONCLUSION

The Uniform Civil Code align with Principle that Citizenship, not religion Identity should Determine Civil Rights and Obligation. However , political Discourse has after framed the Ucc as a intrusion into religious Freedom , particularly under Article 25 , leading to resistance from Minority communities. The Uniform civil code under Article- 44 Symbolises the transformative potential of the Indian Constitution while its constitutional vision is grounded secularism , Justice , equality, political realities have constrained its realization. A Balanced, Inclusive and Reform oriented Approach is essential to bridge the gap between constitutional aspiration and Lived reality. Ultimately , the success of the Uniform Civil Code will depend on its ability to uphold Diversity while ensuring Dignity and equality for all citizen.

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