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A Mirror to Bias Personal Laws- Uniform Civil Code

Risham Verma and Prashant Goyal

ABSTRACT

A Muslim little girl born in a city of Uttarakhand was very fond of studying; got married to the Allahabad-based property dealer. But all her dreams broke when she endured domestic violence and physical torture at the hands of her husband and in-laws, in the starting years of marriage. Her father, a low-earning government employee, had made special efforts to arrange her marriage beyond his capacity. She was often beaten and kept hungry in a closed room for days. The final cut came, when her husband sent her a divorce note by speed post. The letter contained a pronouncement of Talaq thrice i.e. Triple Talaq. This shook her world; a sheet of paper destroyed her life. How fair is it to decide a woman's future on the basis of religious beliefs?

INTRODUCTION:

India is a diverse country with multiple religions and ethnicity living within its borders. This is reflected in our legal system in the form of religion-based personal laws. The Directive Principles of State Policy enjoin our leaders to implement a common personal law for all religions. The debate on implementation of Uniform Civil Code in India has been a hot topic for a very long time; and this caught fire when Bharatiya Janata Party (BJP) and its allies moved to put in place a Uniform Civil Code (UCC) on India's proud, plural, and diverse country and society. This is an old debate as it takes us 180 years back to the report of the Second Law Commission of 1835 which was the starting point of this momentous debate and has been debated and discussed widely, albeit intermittently, in public and political discourses ever since.

Religion is the bedrock of Indian society. This has been the norm from times that I and you can't remember. We have regulated our lives on certain social principles formulated by our religions and many of us are able to lead a lawful life, not because we know the constitution of India by heart but because we have been taught a few basic rules of humanity since our childhood. They have been so ingrained in our DNA that for many of us, such formulations have become commonsense. Once a rule becomes common-sense, it is almost impossible to credit the source. However, if religions of the world want to take credit for the tenets of love, peace, and truth, they also have to take the blame for despairing inequality between nationalities, religions, castes, gender and so on. That brings us to women's rights as seen through the prism of world religions.

Under the current situation, women do not enjoy equal rights in any religion. However, if the advent of a religion is studied, it is seen that the religion was never meant to decide the rights of men and women but to only attain the potential divinity. To put it more clearly, religion is a thing of individual. Equality and secularism being the two most important pillars of the Indian State have somehow become practically weak due to the male dominance, patriarchy, and male chauvinism which exists in India due to the religious differences which can be put to an end with the aid of Uniform Civil Code.

WHAT EXACTLY IS UNIFORM CIVIL CODE?

It is the common set of governing rules for all citizens of India which refers to replace the personal laws (based on religious scriptures and customs). These laws are famous from public law and cover marriage, divorce, inheritance, adoption and maintenance.

THE MISSION OF “ONE INDIA, ONE FLAG AND ONE LAW” IS INCOMPLETE IN THE ABSENCE OF UNIFORM CIVIL CODE FOR ALL INDIAN CITIZENS IRRESPECTIVE OF THEIR RELIGION.

A Uniform Civil Code is the sign of modern progressive nation. It is a sign that the nation has moved away from caste and religious politics. While we are consistently working toward optimal economic growth, it might be right to say that socially and culturally we have degraded to a new low. A Uniform Civil Code will help the society move forward and take India towards its goal of becoming a developed nation. A Uniform Civil Code will be an advanced and dynamic step as it will bring objectivity and practicality to the system by removing the extreme subjectivity of religious laws. I understand that all is easier said than done.

HISTORY OF UNIFORM CIVIL CODE:

The genesis of UCC dates back to British India when British government submitted its report in the year 1835 in which they stressed the need for uniformity in the codification of Indian law relating to crimes, evidence, and contracts. British government also recommended in it's report that personal laws of Hindu and Muslim should be kept out of purview of such codification.

Therefore the British government in the year 1840 on the basis of Lex Loci report had framed uniform laws for crimes, evidence , and contracts but intentionally left out personal laws of Hindu and Muslim.

As a result, in the end of British rule, there was increase in legislation dealing with personal matters which forced the British government to form a committee under chairmanship of BN Rau known as BN Rau committee in the year 1941 to codify Hindu Law. The committee, in accordance with scriptures, recommended a codified civil code for marriage and succession of Hindus which would give equal rights to women.

In the year 1946, constituent assembly was set up to draft the constitution of India. Constituent assembly contained both types of members:

- A. Those who were in favor of uniform Civil Code like Dr. B.R Ambedkar and
- B. Others were Muslim representatives as well as minority community who opposed the concept of UCC.

As a result UCC was added in the constitution under Article 44 of Directive Principal Of State Policy in Part IV which states that “state shall endeavour to provide for its citizens a uniform civil code (UCC) throughout the territory of India.”

CONSTITUENT ASSEMBLY:

Directive Principles of State Policy (DPSP): Article 37¹ of Constitution of India proclaims that the provisions contained in this Part shall not be enforceable by any court, 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.

As Uniform Civil Code is incorporated in DPSP ²under Article 44,³ therefore it can be said that they are neither enforceable in court of law nor state can go beyond it as minority community specifically Muslims feel that their personal laws are contravened by UCC.

HINDU CODE BILL :

Due increase in legislation dealing with personal matters a select committee under chairmanship of BR Ambedkar was established for the purpose of drafting Hindu code Bill .The Hindu code Bill

¹ Application of the principles contained in this Part-DPSP

² Directive Principles of State Policy

³ Uniform civil code for the citizens

drafted by BN Rau committee in 1941 was submitted to select committee chaired by BR Ambedkar. The draft came up for discussion in 1951 and while the discussion continued the Hindu code bill lapsed and was resubmitted in the year 1952.

The First general assembly election of India was held in the year 1951- 52.Nehru in their election manifesto declared that should the INC win he would succeed in getting it pass through parliament. Nehru split the Hindu code bill into four bills namely the Hindu Marriage Act⁴, the Hindu Succession Act⁵, the Hindu Minority and Guardianship Act⁶, and the Hindu Adoptions and Maintenance Act⁷ and get them passed one by one from the parliament between the year 1952-56.

Nehru despite the opposition from majority of Hindu's was able to pass the Hindu Code Bill on the basis of contention that 80 percent of population of India belong to Hindu community and it is necessary to unite them and action regarding other community will be taken later on.

As a result there was a codified civil law applicable to Buddhist, Sikhs, Jains as well as different religious denominations of Hindus. Codified hindu law allows right to divorce and inheritance to women, made caste irrelevant to marriage and abolished bigamy and polygamy.

Thus we can say that Nehru govt intentionally left codification of law relating to personal matter of other community namely muslims for the sake of coming into power again.As a result India is still struggling for the implementation of UCC. Moreover non implementation of UCC not only effected our nation but also divided our nation into two categories. For instance politically, the nation is divided as BJP promulgate the implementation of Uniform Civil Code (UCC) and the non BJP don't want to implement UCC and religiously, there is a difference of opinion between Hindu community who are in majority and minority community specifically Muslim community.

WHY IS UNIFORM CIVIL CODE IN NEWS?

Freshly Supreme court in case of Jose Paulo Coutinho vs Maria Luiza Valentina Pereira⁸, while deciding on issue Whether succession to the property of a Goan situate outside Goa in India will be governed by the Portuguese Civil Code, 1867 as applicable in the State of Goa or the Indian succession Act, 1925” held that:

⁴ 1955

⁵ 1956

⁶ 1956

⁷ 1956

⁸ 2019 SC

- the founders of the Constitution in Article 44⁹ in Part IV dealing with the Directive Principles of State Policy had hoped and expected that the State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territories of India, till date no action has been taken in this regard.
- Though Hindu laws were codified in the year 1956, there has been no attempt to frame a Uniform Civil Code applicable to all citizens of the country despite exhortations of this Court in the case of Mohd. Ahmed Khan vs. Shah Bano¹⁰ and Sarla Mudgal &Ors. vs. Union of India &Ors.¹¹
- Supreme Court also observed that Goa is a shining example of an Indian State which has a uniform civil code applicable to all, regardless of religion except while protecting certain limited rights. It would also not be out of place to mention that with effect from 22.12.2016 certain portions of the Portuguese Civil Code have been repealed and replaced by the Goa Succession, Special Notaries and Inventory Proceedings Act, 2012 which, by and large, is in line with the Portuguese Civil Code.

GOA -A SHINING EXAMPLE

- The Portuguese who ruled Goa and Daman & Diu since the 16th century had separately codified local customs of each of these territories. Article 8 of the Royal Decree of 1869, by which the Portuguese had extended their two-year old civil code to their “Indian possessions”, had pointedly subjected its application to the three pre-existing codes of native customs. After liberating the territories in 1961 and integrating them into a Union Territory, the Indian government ruled that the Portuguese laws would continue until amended or repealed by a competent authority; among these was the Portuguese civil code. In 1987, Goa was separated from the newly formed Union Territory and made a state, but the civil code based on 19th century legal culture of Portugal was not thrown out.
- The Supreme Court on September 13, in the case of Jose Paulo Coutinho vs Maria Luiza Valentina Pereira, noted that Goa is a “shining example of an Indian state which has a uniform civil code applicable to all, regardless of religion except while protecting certain limited rights”. A bench of Justices Deepak Gupta and Aniruddha Bose in its 31-page ruling in a divorce case pronounced that the Portuguese Civil Code (PCC), 1867, shall govern rights of succession and inheritance in respect of properties of a Goan domicile located anywhere in the country. The PCC is applicable to Goa in

⁹ Uniform civil code for the citizens

¹⁰ Mohd. Ahmed Khan v. Shah Bano Begum [1985 SCALE 767 = 1985 SCR 844 = 1985 SCC 556 = AIR 1985 SC 945],

¹¹ Sarla Mudgal, President, Kalyani and Ors. Vs. Union of India (UOI) and Ors. 1995 AIR 1531, 1995 SCC (3) 635, JT 1995 (4) 331, 1995 SCALE (3) 286

many spheres. As per the Code, a Muslim man whose marriage is registered in the state cannot practise polygamy, a married couple shares property equally, pre-nuptial agreements are the order of the day and assets are apportioned uniformly between the man and woman while divorcing.

WHY GOA IS THE ONLY STATE IN INDIA TO HAVE COMMON CIVIL CODE?

Reason behind Goa having UCC is that 57 years ago when Goa was discharged from the Portuguese, people of Goa retained the Portuguese civil code, 1867 and The Goa civil code is largely based on the Portuguese Civil Code (*Código Civil Português*) of 1867, which was introduced in Goa in 1870. Later, the code saw some modifications.

So in nutshell we can say that Goa has a common civil code which differs from other Indian law in ways such as:

- A. In case of a divorce, each spouse is entitled to a half share of the assets.
- B. Parents cannot disinherit their children entirely. At least half of their property has to be passed on to the children compulsorily.
- C. Muslim men, who have their marriages registered in Goa, cannot practice polygamy. Moreover, there is no provision for a verbal divorce.

CONSTITUTIONAL PROVISION:

Article 44 of the Indian Constitution (Directive Principles of the State Policy) states that The state shall endeavour to secure for its citizens a uniform civil code throughout the territory of India.

This article has always been a subject of debate and such debate has also left the subject of this article i.e. uniform civil code staggering and whirling in an orbit on an axis on its own with the rotating public opinion .

The Constitution of India enshrines Article 44 of the DPSP with a view to achieve the uniformity of law, its secularization in order to make it equitable and non-discriminatory.

The preamble of the Indian Constitution which constitutes a Secular Democratic Republic which implies that there shall be no state religion and no state shall discriminate on the basis of religion. The

uniform civil code must strike a balance between the protection of fundamental rights and religious principles of different communities of personal laws of each religion that comprises of separate ingredients and are founded on different ideologies. It is often seen that Communalism breeds discrimination at two levels :

A.) Between people of different religions .

B) Between the two sexes .

It was only the Hindu law where its codification was taken forward that too in spite of great protest but till now codification of Muslim law is still a sensitized issue owing to its politization.

SECULARISM AND UNIFORM CIVIL CODE

India is a unique country, with geographic, religious and cultural diversity. The constitution of India makes repeated efforts to recognise and protect the diversity of social scenario and re-emphasises Unity in diversity.

- The term “Secular” means being "separate" from religion, or having no religious basis.
- A secular person is one who does not owe his moral values to any religion. His values are the product of his rational and scientific thinking.
- Secularism means separation of religion from political, economic, social and cultural aspects of life, religion being treated as a purely personal matter.

With the Forty-second Amendment¹² of the Constitution of India enacted in 1976, the Preamble to the Constitution asserted that India is a secular nation. In practice, unlike Western notions of secularism, India's secularism does not separate religion and state. The Indian Constitution has allowed extensive interference of the state in religious affairs. Secularism in India, thus, does not mean the separation of religion from state. Instead, secularism in India means a state that supports or participates in a neutral manner in the affairs of all religious groups.

In the case of S.R.Bommai vs Union of India¹³, it was held by the court that religion is the matter of individual faith and cannot be mixed with the secular activities. Secular activities can be regulated by the State by enacting a law .

¹² 1976

¹³S. R. Bommai v. Union of India ([1994] 2 SCR 644 : AIR 1994 SC 1918 : (1994)3 SCC1)

According to Article 25¹⁴ and 26 of the Indian Constitution which guarantees right to freedom of religion, where Article 25 guarantees to every person the freedom of conscience, and the right to profess, practice and propagate religion. But such a right is subjected to some reasonable restrictions such as public order, morality and health envisaged in Part III of the Constitution of India.

The scope of Article 25 and Article 26¹⁵ extends to acts done in pursuance of religion and contains guarantees for ritual and observations, ceremonies and modes of worship which are the integral parts of religion .

In a civilized society, there is no necessary connection between religion and personal law. The UCC will not and shall not result in the intrusion of one's religious beliefs that relates mainly to maintenance, succession and inheritance which implies that under the UCC, a Hindu will not be compelled to perform Nikah and under Muslim law, a Muslim will not be compelled to perform Saptpadi. But there will be a common law in the matters of inheritance, maintenance, right to property and succession .

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 freedom 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.

“Religions must mainly be a matter of principles only. It cannot be a matter of rules. The moment it degenerates into rules, it ceases to be a religion as it kills responsibility which is an essence of the true religious act” -B.R.Ambedkar¹⁶

COUNTRIES HAVING UCC

First of all we need to understand the different composition of various nations. India is a homogenous society constituting of heterogeneous contents. This nation has always believed in the philosophy of

¹⁴ Freedom of conscience and free profession, practice and propagation of religion.-

¹⁵ Freedom to manage religious affairs.-

¹⁶ By Dr Bhim Rao Ambedkar

'Unity in Diversity'. The diversity and tolerance of India stand out in the whole world and is the beauty and strength of this country. There are European Countries, Middle East Nation and Latin America. The Middle East Nation majorly comprises of Muslim community. And in most of these nation Shariah law, which is equally applicable to everyone. Now come to European nation and Latin countries where there has never been this question and a common set of code has been prevalent from long time for both criminal and civil system for better administration and deliverance of justice. The instances of oneness and integrity are Israel, Japan, Russia and France.

The question of uniform civil code does not arise in most of the other countries. The reasons are:

1. No other country can boast of as wide cultural diversity as India can.
2. In other countries which are secular (like USA), the concept of secularism is much different from India. While India has a secularism in which the government actively promotes and protects (read "interferes") the different religions, other countries think of religion as a sphere distinct from the sphere of the state. Hence need for UCC doesn't arise.

LEGISLATIVE REFORMS IN INDIA:

The Hindu law discriminated against women by depriving them of inheritance, remarriage and divorce. Their condition, especially that of Hindu widows and daughters, was poor due to this and other prevalent customs. The British and social reformers like **Ishwar Chandra Vidyasagar** were instrumental in outlawing such customs by getting reforms passed through legislative processes. Since the British feared opposition from orthodox community leaders, only the **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 **Indian Marriage Act 1864** had procedures and reforms solely 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**, which in a significant move, permitted a Hindu woman's right to property. The call for equal rights for women was only at its initial stages in India at that time and the reluctance of the British government further deterred the passing of such reforms. The All India Women's Conference (AIWC) expressed its disappointment with the male-dominated legislature and **Lakshmi Menon** said in an 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 organisations demanded a uniform civil code to replace the existing personal laws, basing it on the Karachi Congress resolution which guaranteed gender-equality. The passing of the **Hindu Women’s right to Property Act of 1937**, also known as the **Deshmukh bill**, led to the formation of the **B. N. Rau committee**, which was set up to determine the necessity of common Hindu laws. The committee concluded that it was time of a uniform civil code, which would give equal rights to women keeping with the modern trends of society but their focus was primarily on reforming the Hindu law in accordance with the scriptures. The committee reviewed the 1937 Act and recommended a civil code of marriage and succession; it was set up again in 1944 and send its report to the Indian Parliament in 1947. The **Special Marriage Act**, which gave the Indian citizens an option 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** permitted Hindus, Buddhists, Sikhs and Jains to marry either under their personal law or under the act without renouncing their religion as well as retaining their succession rights.

JUDICIAL OPINION /JUDGEMENTS ON UNIFORM CIVIL CODE:

1.) Shah Bano Case¹⁷

Shah Bano, a 62-year-old Muslim mother of five from Indore, Madhya Pradesh, was divorced by her husband in 1978. She filed a criminal suit in the Supreme Court of India in which she won the right to alimony from her husband. However, she was subsequently denied the alimony when the Indian Parliament reversed the judgement under pressure from Islamic orthodoxy. The judgement in favour of the woman in this case evoked criticisms among muslims, some of whom cited Qur’an to show that the judgement was in conflict with Islamic law. It triggered controversy about the extent of having different civil codes for different religions, especially for Muslims in India. This case caused the Congress government, with its absolute majority, to pass the Muslim Women (Protection of Rights on Divorce) Act, 1986 which diluted the judgment of the Supreme Court and, in reality, denied even utterly destitute muslim divorcées the right to alimony from their former husbands. It ensured that

¹⁷Mohd. Ahmed Khan v. Shah Bano Begum [1985 SCALE 767 = 1985 SCR 844 = 1985 SCC 556 = AIR 1985 SC 945],

muslim women had to remain under the clauses of Islamic law and the alimony had to be paid only till the period of Iddat which amounts to 90 days from the date of divorce.

2.) Daniel Latifi Case¹⁸:-

Muslim Women's Act (MWA) was challenged on the grounds that it violated the right to equality under Articles 14 & 15 as well as the right to life under Article 21. The Supreme Court while holding the law as constitutional, harmonised it with section 125 of CrPC and held that the amount received by a wife during iddat period should be large enough to maintain her during iddat as well as provide for her future. Thus under the law of the land, a divorced Muslim woman is entitled to the provision of maintenance for a lifetime or until she is remarried.

3.) SarlaMudgal Case:-¹⁹

In this case, the question was whether a Hindu husband married under the Hindu law, by embracing Islam, can solemnise a second marriage. The court held that the Hindu marriage solemnized under 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 (IPC).

4.) John Vallamattom Case:-²⁰

In this case, a priest from Kerala, John Vallamattom challenged the Constitutional validity of Section 118 of the Indian Succession Act, which is applicable for non-Hindus in India. Mr Vallamattom contended that Section 118 of the act was discriminatory against Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purposes by will. The bench struck down the section as unconstitutional

¹⁸DanialLatifi&Anr v. Union Of India, (2001) 7 S.C.C. 740, 743, 757.

¹⁹SarlaMudgal, President, Kalyani and Ors. Vs. Union of India (UOI) and Ors.1995 AIR 1531, 1995 SCC (3) 635, JT 1995 (4) 331, 1995 SCALE (3) 286

²⁰JOHN VALLAMATTOM AND ANOTHER V. UNION OF INDIA 1995 3 SCC 635

.IMPLEMENTATION OF UNIFORM CIVIL CODE IN INDIA MAY LEAD TO BREAKDOWN OF PEACE AND HARMONY AMONG CITIZENS OF INDIA:

Uniform Civil Code is the one of the most hot as well as controversial topic since its inception and in recent days it has become most debatable also, reason being there are many citizens who are in favour of the same and there are similar number of citizens who are against it.

The supporter of UCC argues that presence of different personal laws causes hardship and creates atmosphere of confusion for the citizens of India. On the other hand people who are against it argues that UCC is unconstitutional and takes away cultural and other rights of Citizens particularly minority communities which were promised to them by the founding fathers of the constitution.

Considering the background behind the UCC and the issue it tend to resolve, those people who are opposing the idea are:

1. Naga Community

The Naga community which is a minority community of India is against the idea of UCC. The argument given by the bar association of Naga community is that the concept of UCC may destroys their culture and dignity.

Therefore , in a letter to Prime Minister of India they said that:

“ Uniform Civil Code will cause so much hardship and social disorder to the Nagas as the personal and social life as well as cultures of the Naga community is entirely different from the rest of people in the country.”

2. Few Political Parties :

There are few political parties who are against the concept of UCC as they think that UCC is against the interest of minority community. Moreover ,they argue that it will be difficult to implement the UCC because of diverse Indian Culture.

Some political party feel that implementation of UCC is a conspiracy aimed at imposing Hindu personal law on all the citizens of India

3. Muslim Community:

All India Muslim Personal Law Board completely opposed the concept of UCC said that,

“Uniform Civil Code is against the spirit of the Constitution, which safeguards the right of citizens to practice their culture and religion and will destroy their culture and dignity as it will lead to social unrest”

Hence if UCC is implemented then it may lead to breakdown of peace and harmony among people or we can say that it will cause disintegration of nation because of diverse of opinion between two community one which is in majority and other who is in minority

PROBLEM/CHALLENGES IN THE IMPLEMENTATION OF UNIFORM CIVIL CODE:

Diverse culture and diverse personal laws: The first and foremost difficulty in the implementation of UCC is presence of diverse culture as well as diverse personal laws of various community in India. Presence of diverse culture and personal law makes it difficult to develop a uniform law on personal matters. It is very tough to find a common ground between different communities

1.) Violation of numerous Fundamental rights :

There is reasonable apprehension that UCC may be against Fundamental right guaranteed under:

Article 25:-the freedom to manage religious affairs.

Article 26:freedom of conscience of free profession, practice and propagation of religions

Article 29 guarantees right as to ‘culture and personal law form part of culture

2.) Political willpower:

Many political parties are against the concept of UCC as they think that UCC is against interest of minority community and it is difficult to implement UCC. Moreover government lack will power to face the consequence of implementing UCC as minority community who are against the concept of UCC will create violence in the country, as a result of which govt has to reconsider it's decision once again.

3.) Encroachment on religious freedom

Many communities particular minority community who are against UCC will think that UCC is encroachment on their religious freedom. They may feel that common code will neglect their tradition and culture and will impose rules and regulations being followed by majority community.

4.) **Opposition from the religious groups**

This is the biggest hurdle in implementation of UCC as various religious group like Muslim personal board are against the concept of UCC.

5.) **Sensitive task:**

UCC is most controversial topic since inception so it is need of the hour to deal with such issue very sensitively. Before finalizing the draft of UCC , rules and regulation relating to marriage , divorce , succession of various communitis should be taken into account so that interest of each and every community is protected and such draft is acceptable to the people of every community

6.) **False perceptions:**

Many people still do not know what UCC means as they are wrongly guided by various political party as well as media for the sake of votes as well as TRP

7.) **Socio Political Challenges**

Different religious communities have different personal laws which creates the politicization of the UCC debate.

Opponents of Uniform Civil Code argue that private laws are derived from religious beliefs. They maintain that it's prudent to not disturb them, as this runs the danger of engendering animosity and tension between various religious communities. Also, India is a secular country which guarantees its minorities the right to follow their own religion, culture and customs under Article 29 and 30. They argue that implementing UCC will contravene these articles.

Several political parties have different views in terms of implementation of Uniform Civil Code. India being a democratic country; the views and suggestions of the opposition play a significant role in the shaping of a country. Below are some of the views of political parties regarding implementation of Uniform Civil Code:

- A. Congress: It will be difficult to implement UCC in a country like India where various communities and groups are governed by personal laws
- B. BJP: The move is aimed at moving towards a progressive society
- C. CPM: Any move to push the agenda of UCC, as is being done by the government directly and through its institutions, is counterproductive for the rights of women. Uniformity is not the guarantee for equality
- D. SP: The issue of Uniform Civil Code should be left to religious leaders. On the issues of country and humanity everyone should be united
- E. BSP: BJP has been trying to impose the agenda of the RSS on the people ever since it came to power at the Centre
- F. JD(U): Why government was only focusing on Muslims. It is not the time to start such a debate
- G. Shiv Sena: The Muslim Law Board should support the UCC as it will help the community, especially the women to come out of misery
- H. AIMIM: Those pushing for UCC were not aware of India's pluralism and diversity. BJP is trying to impose a 'hindurashtra' on the country in the name of the Uniform Civil Code
- I. DMK: BJP was wearing a mask to come across as a party concerned about the rights of women and Muslim women in particular
- J. RJD: If BJP wants to apply the Uniform Civil Code, they should first apply that in Jammu and Kashmir as they are in power there
- K. TMC: The central government was "trying to ban triple talaq and impose uniform civil code in the country"

With such diverse suggestions and views the implementation of such a code becomes a very difficult task.

PROS AND CONS

Every coin has two sides; and to every black there is white. On the similar lines the implementation of Uniform Civil Code has pros and cons; both being equally important. The pros and cons can be subdivided in the following ways:

PROS:

1. Promote Equality

By implementing UCC we can implement many modern laws that couldn't be forced till now due to various religions and their beliefs. If all the citizens of the country are treated equally and have to follow the same rules then it wouldn't let politicians use religion as a weapon during elections (which they do) and will eventually reduce 'Vote Bank Politics'.

2. TO PROMOTE GENDER PARITY

It is commonly observed that personal laws of almost all religions are discriminatory towards women. Men are usually granted upper preferential status in matters of succession and inheritance. Uniform civil code will bring both men and women at par.

3. TO ACCOMMODATE THE ASPIRATIONS OF THE YOUNG POPULATION

A contemporary India is a totally new society with 55% of its population is below 25 years of age. Their social attitudes and aspirations are shaped by universal and global principles of equality, humanity, and modernity. Their view of shedding identity on the basis of any religion has to be given a serious consideration so as to utilize their full potential towards nation building.

4. TO SUPPORT THE NATIONAL INTEGRATION

All Indian citizens are already equal before the court of law as the criminal laws and other civil laws (except personal laws) are same for all. With the implementation of Uniform Civil Code, all citizen will share the same set of personal laws. There will be no scope of politicization of issues of the discrimination or concessions or special privileges enjoyed by a particular community on the basis of their particular religious personal laws.

5. Avoidance of overlapping of provisions of law

6. Litigation would decrease due to personal law

CONS

1. PRACTICAL DIFFICULTIES DUE TO DIVERSITY IN INDIA

It is practically tough to come up with a common and uniform set of rules for personal issues like marriage due to tremendous cultural diversity India across the religions, sects, castes, states etc.

2. PERCEPTION OF UCC AS ENCROACHMENT ON RELIGIOUS FREEDOM

Many communities, particularly minority communities perceive Uniform Civil Code as an encroachment on their [rights to religious freedom](#). They fear that a common code will neglect their traditions and impose rules which will be mainly dictated and influenced by the majority religious communities.

3. INTERFERENCE OF STATE IN PERSONAL MATTERS

The [constitution](#) provides for the right to freedom of religion of one's choice. With codification of uniform rules and its compulsion, the scope of the freedom of religion will be reduced.

UNIFORM CIVIL CODE & GENDER JUSTICE

The concept of UCC and issue of gender justice, are two socio legal issues that are closely related to each other in India. An attempt is made to co relate the issue of gender justice and implementation of UCC.

After analyzing all the personal laws , it can be said that women are considered inferior in comparison to men in almost all the personal laws and this thing can be justified by following examples:

Before the codification of Hindu personal laws ,polygamy was prevalent among Hindus , women was not able to hold property as owner except stridhana. Woman cannot be natural guardian of the child during lifetime of husband.

Even codification of Hindu personal law has not completely eradicated gender equality. Today also women can not claim right in coparcenary property. They also can't claim right to partition of dwelling house

Therefore we can say that codification of Hindu personal Law is not successful in completely eradicating gender inequality

Similarly in Muslim Law also woman are considered inferior and insecure as compared to women as in muslim personal law only muslim men can have four wives at a time..In the matter of divorce and succession muslim wives are highly discriminated.For example if brother and sister inherit the property as successors, the brother gets two shares whereas the sister gets only one share

Hence we can say that in muslim law also there is gender inequality which calls for implementation of UCC.

SC RESERVATION

Uniform civil code is about having a common civil code(Marriage, Adoption, Inheritance, Divorce etc.) for all religions/sections of society. It is about have same standards of review/judgement for the citizens of India, irrespective of their religion or religious laws.On the other hand; Reservation is about equality of opportunity; Reservation is a type of affirmative action provided to the disadvantaged groups.Reservation has no direct relation with Uniform civil code.

CURRENT STATUS OF UNIFORM CIVIL CODE:

BJP believes that there cannot be gender equality till such time India adopts a Uniform Civil Code, which protects the rights of all women, and the BJP reiterates its stand to draft a Uniform Civil Code, drawing upon the best traditions and harmonizing them with the modern times and merited a specific subhead in its manifesto for the 2019 Lok Sabha elections.

A uniform population policy for all communities irrespective of religious beliefs, social taboos, faith-related codes of conduct, and personal laws has been a long-pending demand. The BJP as well as its ideological fountainhead, the RSS, have been advocating for the Uniform Civil Code. The BJP's argument that after the abolition of triple talaq, the UCC will give more power and equal opportunities to Muslim women is reason enough for the other parties to oppose this move.

Similar to the demands like abrogation of Article 370 and Ram Mandir in Ayodhya, the UCC too got mired in the 'minority versus majority' controversy. In all likelihood, the Modi government could

consider this issue sooner or later and bring a bill at the appropriate time in the next session of Parliament.

BJP AND UCC

Unfortunately, Indian National Congress has all along **supported** the cause of pseudo-secularism and pro-minority politics. Therefore, it **does not support** the cause of UCC.

BJP has strongly supported the implementation of UCC. Its **Election Manifesto of 2014** contained the following words:“..... BJP reiterates its stand to **draft a Uniform Civil Code**, drawing upon the best traditions and harmonizing them with the modern times.”

However, from 2014 to 2019 BJP did nothing to fulfil its promise of UCC.

On the contrary, when in 2016, Dr Satya Pal Singh of BJP presented his **Bill Number 226** (in Lok Sabha) to treat Hindus **at par** with minorities in religious, educational and cultural rights matters **without depriving** minorities of their rights, BJP government did not pass this bill in Lok Sabha **though it had majority** in Lok Sabha. And the Bill lapsed.

Passage of this Bill would have helped the cause of UCC.

BJP's Election Manifesto of 2019 **re-affirms** its commitment to implement UCC by repeating the exact words of its 2014 Manifesto.

UNIFORM CIVIL CODE BILL

A Bill on the voluntary Uniform Civil Code is ready to be introduced in the session of Parliament, the moment such code is made optional, it ceased to be uniform. The government would do well to take immediate steps to codify each set of personal laws instead of framing such optional civil code

Personal laws relating to marriage, divorce, minority, guardianship, maintenance and succession are covered by this bill. The passing of this bill will repeal the Special Marriage Act, 1954. Proposal relating to the consolidation of the Indian Divorce Act and the Indian Christian Marriage Act into one statute

on the analogy of the Hindu Marriage Act, 1955 have been proposed by the Law Commission and has also suggested certain reforms in law.

BJP government after scrapping article 370 is planning to table UCC in parliament which mandates common set of rules for all the citizens of India. Sources said that drafting of UCC is underway.

The law commission in its recent report relating to ucc clarified that it would stay away from laws relating to Muslim marriage and divorces. This was done by the law commission to avoid interference with the SC as Sc has agreed to listen to pleas pertaining to polygamy Nikkahhalala, nikkahmutta and nikkahmisyar .

Chairman of law commission Balbir Singh Chauhan said that court decision would be binding on the commission.

GOVERNMENT'S PLAN WITH UNIFORM CIVIL CODE:

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LAW COMMISSION TO STAY OFF MUSLIM MARRIAGE LAWS IN UNIFORM CIVIL CODE?

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CONCLUSION

As we all know change is the only constant; our beliefs and thoughts must also change with time. If we go back to ancient times; women were not even allowed to leave their houses but in the present scenario, women are outshining in every field. This is because all of us have evolved in terms of our thinking and beliefs. We live in a country where people are free to follow any religion; and every religion teaches us a lesson of equality and no religion promotes inequality. While there is a common set of criminal laws applicable to all citizens, civil laws vary for different religious communities. Currently, Muslims, Christians, Parsis and Jews each have their own personal law while Hindus, Sikhs, Jains and Buddhists are governed by unified Hindu code.

Personal laws are often in conflict with the constitutional law and usually, due to their patriarchal nature, deprive women of their fundamental rights. India's two largest religious communities; Hindu and Muslim still carry out of unfair practices which are designed to benefit the male members, at the cost of female members.

UCC can act as a tool against such inequality. But bringing about such a transformation is not a one day game as it will shake the very foundation of our working system. Thus this tool must be used gradually in parts. Therefore, the government must adopt a **“Piecemeal” approach**. Government could bring separate aspects such as marriage, adoption, succession and maintenance into a uniform civil code in stages. It would mean, not a common law, but different personal laws based on principles of equality, liberty and justice.

Another reason behind the failure of its implementation is illiteracy and lack of knowledge. Government has to take steps towards increasing the awareness among the public, especially minorities, about the importance of having a UCC.

The UCC must carve a balance between the protection of fundamental rights and religious dogmas of individuals. It should be a code, which is just and proper according to a man of ordinary prudence, without any bias with regards to religious and political considerations.

“I do not expect India of my dreams to develop one religion, i.e. to be wholly Christian or wholly Mussalman, but I want it to be wholly tolerant, with its religious working side-by-side with one another”²¹ - By Mahatma Gandhi

²¹ M. K. Gandhi. Young India: December 22, 1927.