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# Evaluation of Multiculturalism and Gender Equality in Family Laws of India from Uniform Civil Code Perspective

**Tejash Bhandari***

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**Abstract**

*In the last few years, the need and demand for UCC has amplified due to the increase in the politicization of religion. Also, the divide between communities has deepened which has posed a threat to the principle of Secularism embodied in the Indian Constitution. Both, religious minorities as well as majority, have expressed views against UCC because minorities think that the majority will exhaustively try to oppress the minorities and exert their influence by way of UCC and the majority thinks that the minorities will play the victim card and get away with their religious practices. Due to large number of personal laws, the curbing of evil practices has become very difficult. By the enactment of a uniform law, these evils will be easier to abolish and will promote gender equality. This paper deals with the question of how UCC can ensure gender justice in India. The paper scrutinizes the gender discrimination that exists in the family laws of India. Further, the relation between UCC and Gender justice in family laws of India has been established, followed by summarizing the judicial response received by UCC from the judiciary through various cases. Lastly, some suggestions, on the implementation of UCC to ensure gender justice without harming the sentiments or practices of religious communities, have also been incorporated in the paper.*

* Student, 3rd year, BA.LLB., KPMSOL College, Narsee Monjee Institute of Management Studies, Mumbai, India.

## Introduction

Indian society is divided on basis of caste, creed, religion, customs and region and is heterogeneous in every aspect of life. Therefore, the family laws which govern them also vary. Religion and customs are the main basis on which laws are formed and followed by different communities. Personal laws in India are divided into different factions for Hindus, Muslims, Christians, Parsis, etc. on the basis of marriage, succession, divorce, maintenance, adoption, inheritance and guardianship. All family laws differ on various aspects but a common thread between all of them is that they remain patriarchal in nature and treat women unequal to men. Given that the Constitution of India embodies the Right to Equality and the strong protection that Supreme Court (SC) has provided to Gender Equality (For example, the judgement of Supreme Court in the Sabrimala Temple case) it is astounding how the government has not taken the necessary measures to change these laws to keep them in line with our constitutional and moral values.

Though the government has taken a big step towards gender equality and against women oppression by criminalising triple talaq but similar changes have to be brought for all family laws as most of the family laws still reflect patriarchal dominance of men which was there at the time when these laws were framed. The defence which is time and again given by the religious communities for following these women oppressive laws is their right to religious freedom guaranteed by Article 18 of the Constitution. Parliament also does not want to reform these laws as their majority votes come from vote bank politics done on religion. These laws have served neither purpose, they do not protect the rights of the religious communities nor do they protect the rights of women of these communities. These separate family laws have divided communities internally as well as externally because some practices which are considered unacceptable in one religion are practiced in another religion very often. This has led to tensions between the communities as both oppose the views/practices of each other.

The Constitution makers always had in mind the idea of a Uniform Civil Code seeing the diverse population of India that is the reason Article 44 of the Indian Constitution also provides for a Uniform Civil Code (UCC) to be provided by the State for its citizens which shall be applicable throughout the territory of India. Constitution came into existence in 1949 but still the State has failed to provide a UCC even after 71 years have passed. The UCC debate has been opposed by all religious communities as they all consider that a uniform code would interfere with their religious practices. The present-day government which, in an informal way, is related to RSS (a right-wing organisation) has further increased the

possibility of a UCC being drafted in a way that might be unjust for other communities. If a UCC is to be drafted for it to be successful, it should be done by taking into account all the voices raised equally.

## Family Laws and Gender Discrimination

The women movement against gender discrimination can be traced back to a report which came out in 1974 that highlighted various discriminatory practices in India against women. The title of the report was "Towards Equality" and was authored by Vina Mazumdar and Lotika Sarkar, member of the 'Committee on the Status of Women in India' (1974-75). After the release of this report, all the issues of gender inequality came into the limelight. The government also started to bring in laws against such discriminatory practices. The report mainly criticized the British policy on personal laws brought in and termed them women oppressive.

The main objective of these laws was to separate different communities on different grounds and prevent the feeling of unity among them. Britishers did not want to intervene in the personal laws of religious communities as they were not very well versed with these laws and did not want to have any sympathy towards women. This policy of non-intervention in the family law resulted in stagnation and lead to the outcome that "*the two systems could neither absorb nor adjust to socio-economic changes. Social tensions inevitably arise in situations when the law does not answer the needs arising from major social change*".[1]

In many religious practices, women are not considered equal to men and when one goes through personal laws of any religion it is certainly clear that these are laws are gender discriminate. Some examples of gender discriminate personal laws are:

### Muslim Law

Women in Islam have always been given equal status to that of men as far as the Holy Book of Quran is considered. However, Muslim wives have been given a secondary status and are considered inferior to men. The practice of Polygamy in Muslim law is the most brutal practice in any personal law. In Shia law, there is a concept of Muta marriage in which Muslim males can marry for a definite period of time to a female and there is no maximum limit on how many times a male can contract this type of marriage. Before Triple Talaq was criminalized by the Supreme Court, it was practiced widely in the Muslim community. It was a highly discriminatory practice that placed women inferior to men in

1 Towards Equality, Report of the committee on the status of women in India, (1974).

the matter of divorce. Divorce practices such as "*Talak-ul-Sunnat*" and "*Talak-ul-Biddat*" are discouraged in the Holy book of Muslims, as these practices give an upper hand to males and increase the chances of Muslim women being exploited.

Also, discriminatory practices can be seen in Muslim succession laws, wherein when two people of the opposite sex but of the same degree inherit the property of the deceased, the males are given three-fourth of the remaining property, whereas the females are only given one-fourth share of the remaining property. Muslims laws are more progressive than Hindu laws in terms of succession but discrimination still exists. As far as maintenance under Muslim personal law is concerned, it is only to be paid for the *Iddat* period and not beyond that but it can be claimed by the wife beyond the *Iddat* period under section 125 of the Code of Criminal Procedure.

In the famous case of *Mohd. Ahmed Khan vs. Shah Bano Begum*[2] , the Supreme Court held that the Uniform Criminal Code in India is also applicable to Muslims. As expected, the then-congress government overruled the judgement by passing the Muslim Women (Protection of Rights on Divorce) Act, 1986 due to the fear of losing Muslim votes. After the passing of this act, Muslim maintenance was no longer to be governed by CRPC and no maintenance was to be paid by the husband after the *Iddat* period.

**Hindu Law**

The law for Hindus was the same as it was for Muslims with regard to marriage before the Hindu law was codified in 1955. Polygamy was also allowed in Hindus before the codification of the laws. In Hindu Undivided Family (HUF) women were not coparceners and were only members of the family, except in a few states like Karnataka, Maharashtra, Tamil Nadu and Andhra Pradesh where an state amendment was brought to change this practice. With regard to such a practice, women were not given a share in the coparcenary property and were considered a liability on the family.

Women were also not allowed to be a Karta (head of the family in HUF) and only males could be the head of the family. Similarly, when the partition of property is done in an HUF, despite females being legal heirs, they have no right in the partitioned property. This position of law have changed after an amendment in the Hindu Succession Act, 1956. After the 2005 amendment, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son, and she will have a share in the property, at the time of partition, and can be a Karta if she is the eldest in the family.

2 Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1945 SC 1985.

In general Hindu law also, females do not hold any property apart from the "Stridhana". However, this rule has been changed by the Women's Right to Property Act, 1937 which gives women the right to hold property after the death of their partner. This legislation was introduced by the British after the abolition of *Sati pratha* as the number of widows increased. The Hindu Minority and Guardianship Act, 1956 states that a woman cannot be a guardian during the lifetime of her husband and the Hindu Adoption and Maintenance Act, 1956 does not give a woman the right to adopt children. Unlike Muslim law, the Hindu law is codified but still gender discrimination can be seen in these laws even today.

Several laws which discriminate between men and women have been challenged in the courts from time-to-time arguing that Article 14 of the Constitution makes discrimination on any ground invalid. In *Mary Roy vs. State of Kerala,* the Supreme Court held that the Indian Succession Act, 1925 superseded the Travancore Christian Succession Act, 1916 without touching upon the constitutionality of the Travancore act.[3]

## Gender Justice and Uniform Civil Code

There already exists a Uniform Criminal Code in India by which each and every person belonging to any caste and creed is governed. A Uniform Civil Code will also promote uniformity and unity in the nation, which will directly help India to become a full-fledged secular society as our Constitution makers had dreamt of. This code will also be impartial for all members of the society, belonging to different social statuses. Presently, all personal laws remain communal in nature and only extend to the people following those religions. They are not civil in nature and some of them are even not codified, for example a number of Muslim laws. These personal laws which are not codified are not bound by the Constitution as they are not passed by the Parliament.

The adoption of a UCC will ensure that such practices are abolished as they will be codified and no rights given by the Constitution shall be violated by the code. Although, there are many reasons for which a UCC is needed, but the most important of all is that it will ensure gender justice. Also, the people who have opposed UCC for various reason, to the contrary, have agreed that it will be very useful in achieving equality. The opponents of UCC claim that their respective personal laws are already very liberal and progressive. They argue that their laws are already gender neutral and ensure equality. The reality is quite different, there are gender discriminatory practices in all religions and therefore, UCC is necessary. The Parliament is trying to codify all personal laws to bring them under

3 Mary Roy v. State of Kerala, AIR 1986 SC 1011.

the Constitution, but due to the deep roots of these personal laws in the Indian Civilization, it will not be easy. The UCC debate has been opposed by all religious communities because they consider that a uniform code would interfere with their religious practices

In a developing world, a country like India which is the largest democracy in the world cannot let such discriminatory practices be followed. Equality, in all views, is a very important principle on which a nation is judged. Gender justice has been dealt by our Constitution in two parts: Article 39 which is the part of the Directive Principles of State Policy gives direction to the state to direct its policies to ensure gender equality and Article 14 which is part of Fundamental Rights gives the Right to Equality to all people living in India. Also, Article 44 which directs the state to provide UCC to all its citizen is a step towards ensuring gender justice. Laws that do not discriminate on the basis of gender may exist as they are even after the implementation of UCC, but laws that discriminate on the basis of gender have to be repealed. Politics, proceeded in the name of religion, will also come to an end when all the communities will be governed by a set of uniform laws. Today, the government has started many schemes to encourage women empowerment, but still these religious practices have become a major hindrance in achieving that goal.

## Uniform Civil Code and Judicial Response

Time and again judiciary has played a very important role in reminding the government of its duty to provide a UCC to its citizens through several judgements. Recently, the Supreme Court asked the Central government about its plan to bring a UCC because of the absence of uniformity in laws and which led to "total confusion" in marriage, succession, divorce, inheritance laws of different religious communities.[4] The Supreme Court also highlighted the failure of the State to provide a UCC to its citizens of , which our Constitution makers had dreamt of.

The apex court praised the state of Goa for implementing UCC across the state and also protecting the rights of religious communities.[5] The apex court in the case of *Mohd. Ahmed Khan vs. Shah Bano Begum*[6] had highlighted the importance of UCC and by resorting to

4 Correspondent, *SC declines to direct Parliament to form Uniform Civil Code,* India Today (Dec. 7, 2015), https://www.indiatoday.in/who-is-what-is/story/what-is-uniform-civil-code-why-is-it-in-news-275056-2015-12-07.

5 Krishnadas Rajagopal, *Government has failed to bring in Uniform Civil Code, says Supreme Court,* The Hindu (Sept. 14, 2019), https://www.thehindu.com/news/national/government-has-failed-to-bring-in-uniform-civil-code-says-supreme-court/article29412592.ece.

6 Mohd. Ahmed Khan, *supra* note 2.

Section 125 of CrPC awarded maintenance to Shah Bano Begum. In this case, by resorting to Section 25 of CrPC, the court had clearly indicated the criminal law is applicable to all equally and is uniform, unlike civil law which differs from religion to religion. The Supreme Court, in the same case, held that it was the responsibility of the state to bring a UCC and not of the people or judiciary as only the state has the legislative competence to do so. The court observed that if a UCC is not implemented then the court has to do justice on a case-to-case basis, due to a lacuna in a legislation, injustice cannot be allowed to happen. Although, the court also observed that a uniform code for all the communities is a difficult task yet it is necessary for giving a better meaning to the constitution.

In yet another case of *Ms. Jordan Deigndeh vs. S.S. Chopra,*[7] Justice D.Chinnappa Reddy highlighted the urgent need of UCC and referred the judgement giving in Shah Bano Begum's case. In this case, the court observed that the non-implementation of UCC has led to problems as was seen in the present case. In the landmark judgement of *Sarla Mudgal vs. Union of India*[8] wherein a Hindu male converted to Islam to contract a second marriage, it was held by a two-judge bench of the Supreme Court that such marriage would be considered bigamous and void, and would attract punishment under section 494 of the Indian Penal Code.

The Supreme Court observed that if there was a UCC then such cases these could have been avoided. Furthermore, the court directed the central government to file an affidavit stating all the steps taken towards implementation of UCC. This direction was later treated as *obiter dicta* by the Supreme Court and in *Lily Thomas vs. Union of India and Others*[9] Justice Saghir Ahmad further clarified that no direction was issued to the Central government to formulate a UCC in the Sarla Mudgal Case, for this he took the support of the *Ahmedabad Women Action Group and Others vs. Union of India*[10] judgement. It was further advised by the court that if UCC is not brought, at least the Law Commission or the National Commission for Minorities can help communities develop these laws and then codify them. In 2003, a three-judge bench of the SC in *John Vallamattom and Anr. vs. Union of India*[11] delivered a judgement which was highlighted by media as a call by SC for UCC.[12] In this case, the Supreme Court dealt with the constitutionality of section 118 of

7 Ms. Jordan Deigndeh v. S.S. Chopra, AIR 1985 SC 935.

8 Sarla Mudgal v. Union of India, (1995) SCC 3.

9 Lily Thomas v. Union of India and Others, AIR 2000 SC 1650.

10 Ahmedabad Women Action Group and Others vs. Union of India, (1997) SCC 3.

11 John Vallamattom and Anr. Vs. Union of India, AIR 2003 SC 2902.

12 Vir Sanghvi, *Towards a Uniform Civil Code*, Vir Sanghvi (Jun. 02, 2014), https://virsanghvi.com/Article-Details.aspx?key=1066

the Indian Succession Act.

The main allegation of the petitioner was that this section discriminated between Christians and Non-Christians. The Supreme Court held that the section in consideration was unconstitutional. The Supreme Court has also stressed the need for codification in its various judgements. In *Smt. Seema vs. Ashwant Kumar*[13] the apex court dealt with compulsory registration of marriages in detail. In personal laws, procedural laws are also important along with substantial laws. If any procedure is not carried out with due diligence, then the weak party will suffer the most. The Supreme Court in this case issued directions to the Central and all the State governments to make registration of marriage compulsory. This case was decided by a two-judge bench of the Supreme Court which indirectly called for a uniform procedural law on marriages. When the position on registration of marriages was evaluated by the Supreme Court, the position was surprising. At that time, only four states provided for compulsory registration of marriages viz. Maharashtra, Gujarat, Karnataka, Himachal Pradesh and Andhra Pradesh and only five states viz. Bihar, Orissa, Assam, Meghalaya, and West Bengal had provisions providing voluntary registration to some religious communities.

Now, under the Special Marriage Act, 1954; Indian Christian Marriage Act, 1872; Parsi Marriage and Divorce Act, 1936; and Hindu Marriage Act, 1955 registration of marriage is compulsory. However, a marriage can be registered either before or after the completion of the customary practices i.e., at the discretion of the parties getting married.

## Suggestions

The suggestions mentioned below are to promote equality between people and abolish gender discriminatory practices. The government has to proceed step by step in order to ensure UCC is implemented in the right way. The following are the steps in which government can proceed:

The government has to reform all religious personal laws by involving people from all religions. Thus, the committee formed has to have gender-neutral participation. Different committees should be formed for different religious communities as all religions have different personal laws. All members should be appointed by means of elections which should take place at the national level and the members appointed should have the consent of the Parliament. A special majority in the committee would be required to introduce reform

13 Smt. Seema v. Ashwant Kumar, AIR 2006 SC 1158.

in any law. All debates over the reformation of personal laws should take place inside the community between the people who don't have any propaganda attached to it. The self-acclaimed representatives of a particular religion should not interfere in these debates by fighting amongst themselves. The committees would be required to take suggestions from every stratum of people in their community. These suggestions would then be placed before the parliamentary committee which will check that they comply with the Constitutional values.

After step one is completed, when all the committees give their respective reports the drafting of UCC should be started. The main concern of the minority groups is that a Hindu-majority parliament will formulate a UCC which will mainly reflect Hindu customs and traditions but if the committees in step one is formed from all religious communities this concern will not arise as all minorities will be in authority. At this stage, a Drafting Committee should be formed with the same standards as were there for committees formed in step one. At this stage, Parliament's role comes into the picture where it will codify the law and at the same time ensure no injustice is done to any community but at the same time make minimum interference in the code drafted by the drafting committee.

Once the drafting of UCC is completed, the government should start awareness campaigns to aware women of their rights and how to exercise these rights. A permanent Commission for Women should be formed which will do this work and also update UCC from time to time if there are any loopholes found in it that perpetuate gender injustice. This commission should be formed with the same standards as were there for Drafting Committee in Step two. Apart from the above functions, the commission will also handle all issues related to Gender discrimination even if they are internal matters of a particular religious community.

> "*This plan for the implementation of a uniform civil code aims to allay the fears of minority groups through its process of including a wide spectrum of voices in the discussion. It further aims to challenge the patriarchal assumptions about women by making gender equality the substantive goal of the code. By doing so, the hope is that the resulting uniform civil code will be accepted by all religious communities and that the constitutional promise of gender equality will, at last, be given effect. Finally, the continued monitoring of gender and religious concerns by the Commission should advance reforms that are necessary for women to take advantage of their newly achieved equality.*"[14]

14 Shalina A. Chibber, *Charting a New Path Toward Gender Equality in India: From Religious Personal Laws to a Uniform Civil Code,* 83 Indian Law Journal 695, 717 (2008).

## Conclusion

The basic meaning of UCC is a code that covers all civil laws of the society. This code will unify all family laws of all religions under a single code and will be applicable to all citizens in an equitable and fair manner. In a developing world, a country like India which is the largest democracy in the world cannot let such discriminatory practices be followed. Equality in all senses is a very important principle on which a nation is judged. In India, women are worshipped as goddesses and play a very important role in nurturing the future generations. Mothers inculcate values in children, but if women don't get proper rights, education, self-respect and good social status then how will they nurture the future generations.

There is famous quote given by Mahatma Gandhi, "*If you educate a man, you educate an individual, if you educate a woman, you educate the whole family, rather society.*" The laws which currently form part of our family laws are outdated and a generation gap is clearly visible in them. These laws have to be amended to bring an end to the patriarchal nature of the social system which India is following. A very progressive development towards gender equality was the 2005 amendment which was brought to Hindu Succession Act, 1956. Various judgements as discussed above, clearly indicate that the judiciary is in favour of a UCC, but it cannot direct the state to formulate and implement the same, because Article 44 which states that the State shall provide UCC to its citizens is given under Part IV of the Constitution i.e., Directive Principles of State Policy, which are not binding on the government.