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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

UNIFORM CIVIL CODE VIS-À-VIS THE INDIAN PERSONAL LAWS : RELEVANCE AND NEED

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Abstract

India is a varied country with numerous religions and languages. A diverse society, by definition, has different codes and personal laws for controlling the personal issues of each group, such as marriage, divorce, inheritance, and so on. Article 44, which provides for a Uniform Civil Code for India, is one of the Directive Principles of State Policy in Part IV of the Indian Constitution. The proposal for a Uniform Civil Code for India to replace the country's existing personal law systems has sparked endless debate. The Indian judiciary has often emphasised the necessity for a Uniform Civil Code and has instructed the Government of India to take appropriate action. Because it is a delicate subject, the path to a Uniform Civil Code in India is laden with difficulties. Some of these obstacles are related to India's fear of majority community rule, the non-relationship of present Uniform Civil Code provisions with gender equality issues, and so on.

This study examines the current significance of a Uniform Civil Code in India in relation to the Indian personal law systems. The study discusses the history of the Uniform Civil Code in brief. The study analyses some landmark Indian judicial pronouncements on the issue of Uniform Civil Code in a simple manner. The study also discusses the problems associated with the effective adoption of a Uniform Civil Code for India and strives to give solutions while keeping current events in India in mind. The study concludes that, given India's fragile communal relations, a Uniform Civil Code with clear and adequately revised rules would be most appropriate for India's interests in the current scenario.

Introduction

The debates and conversations in India around the Uniform Civil Code, or a common code applying to all communities regardless of caste, creed, religion, sex, etc., have developed in recent years. The primary objective under the Uniform Civil Code under Article 44 of the Indian Constitution is not a new invention. The Uniform Civil Code and the controversies around its applicability have been ongoing for nearly a century.

Indian law is divided into two categories: public law and private law. The former is concerned with the relationship, rights, duties, and responsibilities that exist between the state and individual citizens. The latter is concerned with the connection between private individuals in society. Constitutional law is one example of the former and also personal laws.

For the purposes of this study, you must understand the concept of personal laws. Personal law systems can be found all across the modern world and have been maintained by the majority of post-colonial republics. Personal law systems are never static, and states are always changing their personal laws as well as the legal and political structures that administer them. Personal law has been the topic of particularly heated legal debate and reform in India, a land of many faiths. The disparities of citizens' communal religious identities form the foundation of India's personal law system.

The UCC principle mainly involves the issue of secularism. Secularism is a principle that must be thoroughly examined. There are different conceptions of secularism, and the UCC is both lauded and criticised on the altar of all of these interpretations. Some in our culture perceive the UCC as anti-secular, while others see it as a sign of communal peace and secularism. The Indian state adheres to the notion of secularism, which means that the Indian state does not adhere to any one religion but will respect all religions and will not interfere excessively in religious matters.

This has fuelled concerns in India about the necessity for a Uniform Civil Code. It is not improper to refer to India as a secular republic *de jure* rather than a secular republic *de facto*. Even after more than 70 years of independence, the Indian judiciary continues to compromise between Fundamental Rights and State Policy Directive Principles, and India lacks a formal legislative and executive mandate for the implementation of the Uniform Civil Code.

It is possible that the topic of a Uniform Civil Code in India is difficult and would require more deliberation before being implemented by the Indian state.

The evolution of the Uniform Civil Code in India: An overview.

The dispute over the formation of a standard system of personal laws in India stretches back to the British Raj period. Prior to the colonial period, the state kept its hands off its inhabitants' personal laws. This was done to preserve peace and tranquillity among the various segments of Indian society, and therefore the ease of reigning over them.

Initially, the Warren Hastings Plan of 1772 stated that Hindus and Muslims should use their respective personal rules in conflicts involving inheritance, marriage, and so on. After solidifying their administrative position in India, the British overhauled the entire criminal law system and brought about the Indian Penal Code of 1860, which was intended to be consistently applicable throughout India. Various civil law issues were also purchased under the British legal system. Despite the fact that this resulted in the revision and interpretation of personal laws by foreign British judges with little knowledge of the Indian situation, the total unification of civil laws connected to family wasn't done.

Following India's independence from the British Raj in 1947, there were heated disputes about the use of a Uniform Civil Code to govern personal laws in the Indian community. The concept of equality offered in the Indian Constitution and Preamble, as well as the unequal personal laws of the Indian communities, were diametrically opposed. To address this issue, the authors of the Indian Constitution devised a complex compromise that included the concept of Uniform Civil Code in the Directive Principles of State Policy as Article 44. Article 44 stipulates that the Indian state shall make every effort to secure a Uniform Civil Code for citizens throughout India's territory.

It should be mentioned that the Directive Principles of State Policy are the fundamental rules that the state should ideally consider when developing laws and regulations. The Directive Principles aim to construct a "welfare state," ensuring economic and social equality rather than political equality. The Directive Principles are designed to be unenforceable in court, despite the fact that they supplement citizens' Fundamental Rights. The Directive Principles are determined by the

state's economic capabilities and level of socioeconomic development. The hitch here is that Article 44, i.e. the Uniform Civil Code, cannot be enforced by Indian courts of law.

Indian Judiciary's stand on The Uniform Civil Code.

The Indian judiciary, particularly the Supreme Court of India, has frequently emphasised the necessity for a Uniform Civil Code and has been an outspoken advocate of it. It has frequently encouraged the legislature to write essential acts for the implementation of a Uniform Civil Code across India because the current Indian environment requires it.

The Supreme Court stated in the Bhagwan Dutt case that the religion-neutral sections of public penal laws shall apply to Indian nationals and that personal laws must be ignored in such cases. The consistency of the penal legislation prevents unnecessary confusion.

The subject of a Uniform Civil Code for India was brought up in the Shah Bano Begum case. In essence, this was a maintenance suit filed by a divorced Muslim woman against her husband. This was a classic case of disputes between personal law systems and territorial laws of the land. In this case, the court found that the interpretations presented in Muslim personal law textbooks about the duty to pay and the amount to be paid for maintenance during and after the iddat period were inadequate. The court further emphasised the religion-neutral and unambiguous nature of Section 125 of the Code of Criminal Procedure, 1973, and ruled that the aforementioned section's secular nature will supersede personal laws. The court also emphasised the importance of a Uniform Civil Code in order to achieve appropriate national unity.

For the Shah Bano Begum case, the Supreme Court relied on two significant precedents. In one of them, the V.R. Krishna Iyer, J. previously remarked that religious practises cannot be upheld at the expense of human rights and dignity, and that the civil common code is supposed to be a compilation of the best provisions and practises from every system of personal laws.

According to the researcher, the judgement in the Shah Bano Begum case was reasonable and logical. It is consistent with the Fundamental Rights to Life and Dignity enshrined in Article 21 of the Indian Constitution.

Personal laws of any religion cannot be hijacked to justify violations of citizens' Fundamental Rights. The judgement was not directed against Muslim personal laws, but rather at the

uncomfortable situations that sometimes arise as a result of inconsistencies between public and private rules. The court appears to have no obvious goal of undermining the significance of Muslim personal laws. However, given the political commotion produced by the judgement, the researcher believes that the court could have used more diplomatic wording while delivering the verdict.

The court's stance on the Uniform Civil Code was accurate. It is said that the Indian economy and socio political situation have significantly improved since 1947. The Indian state may have conceivably adopted a new uniform national statute embodying the best provisions of all faith organisations. This would have helped to reduce uncertainty surrounding personal law conflicts. The third and fourth petitions were submitted by two other women, who claimed that their respective husbands converted to Islam in order to facilitate multiple marriages and that the conversion should be ruled void under section 494 of the Indian Penal Code, 1860, which criminalises bigamy.

The court ruled categorically that a second marriage would violate the Hindu Marriage Act of 1955's principles of fairness, equity, and good conscience. Conversion to Islam and subsequent marriage under Islamic law, on the other hand, will not dissolve the marriage under Hindu law, but it will be a reason for divorce. According to the language and elements in clause 494 of the Indian Penal Code, the second marriage is void, and the apostate spouse is culpable under the aforementioned clause. The court also remarked that a Uniform Civil Code in the Indian legal system would prevent citizens from violating one another's personal laws. The court also ordered the Government of India to provide an affidavit detailing the actions taken by the Government of India to secure a UCC for Indian nationals.

According to the researcher, the aforementioned judgement is justified in light of the facts and circumstances. Giving personal laws precedence over the standard public laws of the land in every case poses the risk of legal instability and a breach of the citizens' uniform constitutional rights. The uniform public laws were created with the purpose of making them applicable to all segments of Indian society without discrimination, and so these laws are neutral in nature. The court's position on the Uniform Civil Code is likewise logical, as the court properly concludes that the Uniform Civil Code will prohibit the abuse of specific loopholes in the personal law systems. Misapplication of loopholes has the ability to undermine the fundamental concepts and values of any concerned personal law system.

In the John Vallamattom case, the Supreme Court ordered the repeal of Section 118 of the Indian Succession Act, 1925, which applied only to Christians. This decision suggested that a Uniform Civil Code for India would eliminate the utter confusion and potential injustice caused by the many personal laws that govern problems such as divorce, marriage, property succession and inheritance, and so on.

The legitimacy of a statute punishing bigamous marriage among Hindus was questioned in the NarasuAppa case. The court properly determined that the Act was consistent with the articles of the Indian Constitution relating to equality and the right to live with dignity. Furthermore, the cause of a Uniform Civil Code for India was advanced when the court ruled in this case that the government is entitled to adopt legislation involving religious views as long as they do not contradict any of the Constitution's Fundamental Rights.

The Uniform Civil Code in relation to India's Women Movement.

There is an urgent need to investigate the subject of the Uniform Civil Code and personal legislation from the standpoint of human rights. Women's equality and discrimination against women have long been a source of concern in India and around the world.

The Convention on the Elimination of All Forms of Discrimination Against Women is a one-of-a-kind international treaty that saw the need for a distinctive formulation that would assert, safeguard, and promote women's human rights. Regarding articles 5(a) and 16(1) of the Conventions, India says that "it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent." The State is empowered by Article 15(3) of the Constitution to create particular arrangements for the protection of women and children.

The Indian women's movement has frequently addressed and argued the importance of a Uniform Civil Code in India and its implications for gender equity. Women's rights campaigners argue that a Uniform Civil Code does not give them equal standing with males. The Uniform Civil Code is thought to be a Hindu nationalist plan intended to govern Indian Muslims.

The foregoing assertions are made on the basis of the fact that all personal law systems have components that violate Indian women's right to equality because personal laws were formed and later construed on the basis of patriarchy. Gender equality and national integration have been frequently invoked by proponents of a Uniform Civil Code in India. However, the arguments around the Uniform Civil Code have traditionally overlooked the actual realities and perspectives of many types of women. Without a societal consensus, social reform was as acute as a cotton bud.

The challenges in the way of adoption of a Uniform Civil Code in India.

- India features a distinct blend and fusion of codified personal laws of Hindus, Christians, Parsis, and, to a lesser extent, Muslims. However, there is no unified family law in a single legislative act that is acknowledged by all religious groups and communities that coexist in India. A single system of personal laws would not be acceptable to all groups and cultures. Different religious groupings' core foundations and origins are based on ideological disputes.
- In India, all communities' personal laws discriminate against women. While the Shah Bano controversy involved Muslim personal law, Hindu women have faced a variety of issues under Hindu personal law as well as other personal law systems. For example, Muslim Law recognises paternity and consequently the legitimacy of the kid, whilst others do not. Other differences exist in divorce, marriage, property division, and remarriage. Because personal law simultaneously enacts and perpetuates injustice, many feminists in India have focused on the need to alter this legal structure. However, little legislative progress has been made. The current proposals for a Uniform Civil Code and its contents appear to be an attack on a specific population rather than a tool for gender equity.
- In the absence of clarity on what all concepts and provisions should be made universal, there is a risk that if passed, it will be used to convert others to the majority ideology. A hazy Uniform Civil Code and illusions about a secular state constitute a national risk of civil war. The dominant community is concerned about tyranny over minorities.

Suggestions and Conclusion.

The current period has been highly challenging in terms of religious tolerance in India. The central government's recently passed Citizenship Amendment Act, 2019 (hereinafter CAA) and National Register of Citizens (hereinafter NRC) have sparked heated communal clashes in many parts of India, as it is claimed that the aforementioned provisions have used religion as an overt criterion for citizenship laws, resulting in discrimination against Indian Muslims. A number of additional communal tensions have arisen as a result of the events in the Ayodhya Ram Mandir issue and insurgency attempts in Kashmir.

In such circumstances, adopting a Uniform Civil Code in its current ambiguous form will only exacerbate communal tensions and the insecurity of Indian Muslims. This is not to be confused with the need for a Uniform Civil Code in India. The diversity of personal laws in India causes confusion and calls into question the concepts of equality and solidarity. However, strict regulation is essential for the same. The truth about India is its great cultural diversity, yet total heterogeneity in laws is equally undesirable. Under no circumstances may the provisions of a Uniform Civil Code be arbitrary.

One must determine what is driving the logic behind a Uniform Civil Code, whether it is national integration with the one nation-one people motto or the abolition of gender-based inequities embedded in all personal laws. They are significantly different from one another. The welfare of marginalised groups in society, particularly women, must be prioritised when developing a Uniform Civil Code.

In view of all of the above ideas, and with a focus on current communal developments in India, the legislature should take reasonable steps to draw a Uniform Civil Code by 44 of the Constitution.

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