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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated 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: ASSESSING THE PRESENT SCENARIO

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Abstract

Uniform Civil Code (UCC) is the set of laws that administer personal matters for every citizen, irrespective of what religions they belong to UCC is the bill that has been proposed in India which will reinstate every personal law with sets of common laws that will be valid to all. There has been dissenting opinion to enforce UCC, while some favour the codification of personal laws and the other group reinstates the shortcomings it has to offer. In a country where secularism is accorded, enforcement of UCC remains an unfulfilled dream and remains a dead end. There is a conflict between the religious groups condemning the UCC enforcement as many fear that it's going to be a Hindu Cultural centric Code. Proponents of this codification see its modification to treat despairing inequalities existing in society and aim to bring in balance among nation and help in furtherance development of the same.

Key words: Personal laws, Uniform Civil Code, secularism

Introduction

As a democratic country, India has multi-religious and multi-languages. India being a diverse country with a number of citizens having their own culture, tradition, customs, religion, and belief, are governed by their own personal laws. There are different codes for different communities like Hindu Marriage Act, Hindu Succession Act, Hindu Adoption and Maintenance Act, Hindu Guardianship Act, and Muslims and Christians are governed by their personal laws. But due to the different codes and personal laws, it is at times difficult to distribute justice based on religion; therefore, decisive steps were taken towards national consolidation in form of idea of Uniform Civil Code, which was for the first time mooted seriously in the Constituent Assembly in 1947.

There is discrepancy in regards to personal laws and every religion has different form of religion to follow. The personal laws exploit the women in the society and poses huge gap between men and women. To combat such discrepancies the UCC is proposed to combat such gaps and ensure

a uniform policy throughout the nation. The Uniform Civil Code denotes an identical personal law for every citizen of the nation. This code will replace the existing religious personal laws in India and have the uniform law that will cater to every citizen, irrespective of their religions. This has been envisaged by the makers of Indian Constitution as per Article 44. But it sturdily opposed because it is a violation of Article 25.

Origin of the Idea of Uniform Civil code in India

The idea of UCC was introduced into the national political debate in 1940, when a demand for such a code was made by the national planning committee appointed by the Congress. The sub-committee for the 'women's role in planned economy' was specifically directed to study the role women would play in future independent India.

Need for UCC

India needs a UCC for two principal reasons.

First, a secular republic needs a common law for all citizens rather than differentiated rules based on religious practices. This was a key issue debated during the writing of the Constitution, with passionate arguments on both sides.

The Indian Constitution was eventually stuck with a compromise solution, a directive principle that says: "The state shall endeavour to secure for citizens a UCC throughout the territory of India." Several members of the Constituent Assembly disagreed vehemently with the compromise. Among them were the trio of Minoo Masani, Hansa Mehta and Rajkumari Amrit Kaur. As Kaur argued: "One of the factors that have kept India back from advancing to nationhood has been the existence of personal laws based on religion which keep the nation divided into watertight compartments in many aspects of life."

Later, in the first decade after independence, the opposition from Hindu conservatives to the Hindu Code Bill was eventually overcome. Nothing similar was tried when it came to Muslim conservatives. The political leadership of the day mistakenly decided to not take on conservative Muslim opinion just after the trauma of partition.

There is a second reason why a UCC is needed: gender justice. The rights of women are usually limited under religious law, be it Hindu or Muslim. The practice of triple talaq is a classic example. It is important to note that B.R. Ambedkar fought hard for the passage of the Hindu Code Bill because he saw it as an opportunity to empower women. The great Muslim social reformer Hamid Dalwai also made the rights of women a central part of his campaign for a UCC. It is unfortunate that the demand for a UCC has been framed in the context of communal politics. Too many well-meaning people see it as majoritarianism under the garb of social reform. They

should understand why even the courts have often said in their judgements that the government should move towards a UCC. The judgement in the Shah Bano case is well known, but the courts have made the same point in several other major judgements.

Reasons Why India Needs a UCC Fighting the British rule and winning our independence also helped in creating this nation we call India. It was known even at that time that to further unite India and make it a truly secular nation we would need a UCC. But even after 66 years of independence we haven't been able to do this.

1. **It Promotes Real Secularism** What we have right now in India is selective secularism which means that in some areas we are secular and in others we aren't. A UCC means that all citizens of India have to follow the same laws whether they are Hindus or Muslims or Christians or Sikhs. This is fair and secular.

2. **All Indians should be Treated Same Right now** we have personal laws based on particular religions, which means that while Muslims can marry multiple times in India, a Hindu or a Christian will be prosecuted for doing the same. This doesn't seem like equality. All the laws related to marriage, inheritance, family, land etc. should be equal for all Indians.

3. **It will Give More Rights to the Women** A UCC will also help in improving the condition of women in India. Our society is extremely patriarchal and misogynistic and by allowing old religious rules to continue to govern the family life we are condemning all Indian women to subjugation and mistreatment. A UCC will help in changing these age old traditions that have no place in today's society where we do understand that women should be treated fairly and given equal rights.

4. **Every Modern Nation has it.** A UCC is the sign of modern progressive nation. It is a sign that the nation has moved away from caste and religious politics. While our economic growth has been the highest in the world our social growth has not happened at all. A UCC will help the society move forward and take India towards its goal of becoming a developed nation.

5. **Personal Laws Are a Loop Hole** The various personal laws are basically a loop hole to be exploited by those who have the power, and they were never revised with change of time. By allowing personal laws we have constituted an alternate judicial system that still operates. A UCC would change that.

6. **It Will Help in Reducing Vote Bank Politics** A UCC will also help in reducing vote bank politics that most political parties indulge in during every election. If all religions are covered under the same laws, the politicians will have less to offer to certain minorities in exchange of their vote. Not having a UCC is detrimental to true democracy and that has to change.

7. **It Will Integrate India** A UCC will help in integrating India more than it has ever been since independence. A lot of the animosity is caused by preferential treatment by the law of certain religious communities, and this can be avoided by a UCC.

8. **Inheritance** An amendment to the Hindu Succession Act now gives daughters rights to ancestral wealth equal to that of the son. According to Muslim personal law, "daughter's share is equal to one-half of the son's, keeping in mind that a woman is worth half a man."

9. **Separation Personal** laws also make it difficult for couple to apply for divorce due to different marriage laws/act. The Bombay High Court in 2013 held that a Hindu married to a non-Hindu in accordance with Hindu rituals cannot seek divorce under the Hindu Marriage Act.

When Niranjani Roshan Rao 22 , a Hindu, approached Bombay High Court seeking divorce from her husband Roshan Pinto, the court rejected her petition on the ground that he was a Christian at the time of marriage and was professing the same religion till today.

Polygamy, the practice of having more than one wife, is another problem that UCC will address. According to conditional polygamy provision, Muslim men are allowed to have more than one wife.

In Mizoram, a Christian religious section, called the "Pu Chana pawl" or just "Chana", practices polygamy. The founder Ziona, 66-year-old man has 39 wives, 94 children and 33 grandchildren, everyone living under one roof.

In 2014, Bharatiya Muslim Mahila Andolan made fresh efforts by drafting a law that seeks a ban on polygamy. Aimed at further codifying Islamic legal provisions regarding marriage, it will make all polygamous marriages illegal.

BMMA co-founder Zakia Soman insisted that it would allow those fighting for gender justice to have the support of the law.

If a Common Civil Code is enacted and enforced: It would help and accelerate national integration; Overlapping provisions of law could be avoided; Litigation due to personal law would decrease; Sense of oneness and the national spirit would be roused, and the country would emerge with new force and power to face any odds finally defeating the communal and the diversionist forces. Israel, Japan, France, and Russia are strong today because of their sense of oneness which we have yet to develop and propagate. India has set before itself the ideal of a secular society and in that context achievement of a UCC becomes all the more desirable. Such a code will do away with diversity in matrimonial laws, simplify the Indian legal system and make Indian society more homogeneous. It will de-link law from religion which is a very desirable objective to achieve in secular and socialist pattern of society.

It will create a national identity and will help in containing fissiparous tendencies in the country. The UCC will contain uniform provisions applicable to everyone and based on social justice and gender equality in family matters. According to the Committee on the Status of Women in India: "The continuance of various personal laws which accept discrimination between men and women violate the fundamental rights and the Preamble to the Constitution which promises to secure to all citizens equality of status and is against the spirit of national integration." The Committee recommended expeditious implementation of the constitutional directive in Art 44 by adopting a UCC.

The four cases of, Shah Bano Begum²³, Mary Roy²⁴, National Anthem, and Sarla Mudgal²⁵, expose the domination of religion over a community be it Muslim, Syrian Christian or Jehovites. It is a tyranny of the minority over majority. The unity of India would be at stake if religion is allowed to tighten its grip over

Indian society. We have been a Sovereign Socialist Secular Democratic Republic, and the State has no religion; it favours none and is a foe to none. Humanism is our creed and a Common Law for all Indian is our ideal. We believe and subscribe to rule of law and it is only a Common Civil Code that would help establish the rule of law. It is the panacea for all our ills.

THE PRESENT SCENARIO AND WAYS TO IMPLEMENT UNIFORM CIVIL CODE

The debate for a UCC, with its diverse implications and concerning secularism in the country, is one of the most controversial issues in twenty-first century Indian politics. In the country, demanding a UCC can be seen negatively by religious authorities and secular sections of society because of identity politics. Bharatiya Janata Party (BJP)—one of the two major political parties in India, had taken up this issue to gain Hindu support. The BJP was the first party in the country to promise it if elected to power.

Goa is the only state in India which has a UCC. The Goa Family Law, is the set of civil laws, originally the Portuguese Civil Code, continued to be implemented after its annexation in 1961.¹ Sikhs and Buddhists objected to the wording of Article 25 which terms them as Hindus with personal laws being applied to them. However, the same article also guarantees the right of members of the Sikh faith to bear a Kirpan.²

In October 2015, Supreme Court of India asserted the need of a UCC³ and said that, "This cannot be accepted; otherwise every religion will say it has a right to decide various issues as a matter of its personal law. We don't agree with this at all. It has to be done through a decree of a court".⁴

Amending the Constitution

Amending the Constitution In an effort to secure equality, Dr. Pratibha Jain⁵ suggests amending the Constitution as an alternative to the UCC.⁶ Her suggested amendment would make “the rights to practice religion and conserve culture subject to ensuring the right of equality between men and women,” definitively making all personal law subject to the Constitution. While this idea has its appeal and would make a nice runner-up if a UCC simply became impossible, its primary problem is that it raises the same concerns addressed

1 ["Call to implement Goan model of civil code"](#). New Indian Express. 15 May 2012.

2 [The Constitution of India, Right to Freedom of religion, Article 25](#) (PDF)

3 <https://indiankanoon.org/doc/1422425/>

4 <https://indianexpress.com/article/india/india-news-india/uniform-civil-code-supreme-court-asks-govt-why-cant-it-be-done-tell-us-your-plan/>

5 <https://www.legallyindia.com/lawfirms/nda-loses-3-senior-leaders-pratibha-jain-joins-everstone-in-delhi-as-adani-s-get-devaiah-simone-reis-rajesh-simhan-start-new-firm-20210405-12019>

6Jain, note 31, at 221–22

above regarding the Supreme Court's handling of personal law issues. The burdens on women who fight for their rights against community pressure, the inevitable piecemeal fashion in which cases are resolved, and the Supreme Court's tendency to offend minority groups will all continue as these cases reach the Court's bench. Even if Parliament could lighten the Court's load by voiding laws wholesale, there is no indication that such actions would be accepted by minority groups. Thus, for these reasons, even amending the Constitution to bring the religious personal laws under the Court's certain scrutiny is no substitute for replacing the entire religious personal law system with a UCC. If the Supreme Court cannot remedy the problems created by the religious personal laws, if Parliament cannot be trusted to put forward its version of a UCC, and if alternatives to the code are not sufficient to ensure gender equality and decrease inter-group tension, then from where should the solution come? It is the argument that a UCC is needed, and that resistance to its implementation relates more to the process than to the idea itself.

The process of building consensus: The road to a UCC

In order to address the reactive culturalism occurring in the Muslim community and the deepened religious divide over the personal laws, a complete abrogation of the religious personal law system is necessary. Because this project is so ambitious, however, the government should proceed in stages that will keep religious groups involved in the process and on board with the ultimate objective of enacting a UCC under which all Indians can be governed. The central goal of the process described in this Part is to provide Indians of all religious communities a long, but defined, period of time in which (1) to reform their own personal laws, and (2) to contribute to the creation of a UCC. By involving both men and women of the different religious groups in the discussion and final outcome, this plan strives to legitimize the process by encouraging internal reform. This, in turn, will hopefully de-emphasize the focus placed on majority-minority tensions by making each group responsible for its own reform and equally a part of the process of drafting the UCC. The substantive component will be the requirement that all laws be consistent with the constitutional gender equality provisions. Ultimately, the result should be a UCC that ensures gender equality and reflects the values of minority and majority communities alike.

Step one - Update All Religious Personal Laws

Control over the substance of religious personal laws must be kept in the hands of the leaders of the religious communities in order to ensure their legitimacy within the various groups. However, unlike past situations when the state professed neutrality as it handed power over to the conservative—and all-male—religious leaders, here the power to revise personal laws would rest in the hands of both male and female leaders within each community. A committee would be formed for each religion that has its own distinct personal laws. Each committee would be comprised of its own religious members, and a quota system would be implemented to require that at least forty percent of the committee members be female with the same percentage requirement for males. In this way, neither gender dominates a committee, but a group need not concern itself with being exactly even. Members of the committees would be appointed through a system of nomination and confirmation by Parliament, and requirements would be in place at the national level to ensure representation from all parts of India. Appointment is preferred over election because religious leaders such as Muslim clerics have an incredible amount of control over their uneducated constituents. Under these circumstances, it is doubtful that an election would produce a committee with members who are independent of the clerics' influence. Furthermore, Indians are not alien to the process of appointing members to committees charged with drafting personal law, and they should not have trouble accepting the process of appointment over election. The appointed committees would agree to reformed laws by a supermajority of two-thirds and the resulting laws would go into effect without parliamentary interference at this stage. The primary goal of this stage of the process is to open up the debate over personal laws within religious communities. Rather than the entire debate taking place externally between bodies such as the BJP and the Muslim Law Board, forcing religious groups to take control over the substantive changes to their laws will hopefully “thaw” the internal dissent that is natural to all cultures. Committees would be required to tour communities and solicit input in the form of questionnaires from lawyers, judges, women's associations, and ordinary citizens.⁷ In this way, committees can draft revisions to the law that reflect the values of the community which are consistent with the equality provisions of the Constitution. The secondary goal of this stage is to change the climate surrounding the future of a UCC. Most scholars believe that Shah Bano was the turning point of the Muslim community's strong feelings regarding a uniform code. As discussed above, Muslims were angered over the decision because of its insulting tone toward Islam, and not necessarily because of the

⁷ <https://www.researchgate.net/scientific-contributions/Parashar-82820455>

maintenance order. By guaranteeing Muslims a role in the transition from personal laws to a UCC, this process should assuage the Muslims' fears that a code would only reflect majority values, thus encouraging them to take ownership of their contribution. If a guaranteed spot at the table is the carrot, a parliamentary committee to reform any religious law must be the stick in the event that a given group will not comply with this process. Members of the Constituent Assembly have "conceded that religious personal laws do not fall outside the competence of the State," and all religious groups should be reminded that there is no reason why the government cannot interfere in the realm of personal law. Ideally, minority groups will see it to their advantage to engage in reform within their own communities, and as a result, group members will accept their new laws as legitimate and Indian women will benefit immensely.

Step Two: Draft a Uniform Civil Code

Updating the religious personal laws will provide protection both for religious groups and for the women in those groups, while the next, much slower part of the process ensues: the drafting of a UCC. Because minority groups' concerns about a UCC stem from the idea that it will be written by the Hindu majority, and therefore reflect Hindu values, the committee to draft the UCC must comprise the entire cross section of religious groups, while maintaining the same gender quota as in the previous stage. Essentially, equal numbers of members from each of the personal law revision committees will be appointed to a committee to draft a UCC—the Drafting Committee. This stage is designed to provide a comfortably long, but definite, time period for national debate on a UCC. Adjustment will no doubt take time, and there is no gain in pushing forward a plan on an unwilling public; the code must be wanted in order to be ultimately accepted. This stage may further be subdivided into distinct periods of information gathering, debate, and proposals to aid its transparency and legitimacy. The primary goal of this stage is to ensure legitimacy in the process by leaving no concerned voices out of the discussion.⁸ The Drafting Committee will have no majority religion. As long as gender equality is provided for, no single religion's values will be given special weight. Therefore, to obtain the required two-thirds supermajority, the religions will need to work together and form coalitions to achieve their objectives. Unlike the previous stage, Parliament will play a role in codifying the Drafting Committee's UCC. Parliament's obligation will be more procedural than substantive,

⁸ <https://www.jstor.org/stable/1147701>

however, and barring obvious inconsistencies with constitutional gender equality provisions, Parliament will pass the code into law for all Indians without interference. The secondary goal of this stage is to fulfill Article 44 of the Constitution. Following through on a UCC will demonstrate that India takes women's rights seriously. The UCC should serve as a vehicle for the realization of women's equality in India. According to Professor Parashar, when all religious personal law is replaced by a UCC that prioritizes gender equality over religious rights, there will be a two-fold effect of easing religious tensions and holding the state accountable for women's rights: For if a civil code enumerates legal rights without reference to the various religious personal laws, then no community can legitimately argue that its religion is being superseded by the religion of other communities. At the same time the State will no longer be able to justify legal inequality for women on the ground that it does not want to hurt the religious sentiments of some communities. Thus, the creation of a UCC will finally place the state in the position it has sought since the members of the Constituent Assembly abolished reserved seats for minorities on the grounds that separate treatment deepens the divide between religious groups. Furthermore, the government will no longer be able to hide behind the religious personal laws and shirk its duty to women. Through this process, women's equality will be protected by law, and all religious groups will have played a role in making that possible.

India's Constitution deserves praise for its forward-thinking commitment to gender equality. However, its provisions are hollow governing women's most intimate relationships. The state cannot continue to abdicate its duty to provide women with equal rights to men under the guise of protecting religious groups. What upsets minority religious groups' sentiments is not the idea of gender equality; it is the idea that the state will provide that equality by encroaching upon their rights and threatening their identity. But a process that envisions integral involvement by religious groups in the drafting of a UCC can dispel minorities' fears that their values will be ignored by the majority. By further involving both men and women of religious communities in the process and stipulating that their end product must conform to the constitutional equality guarantees, religious communities will be enabled to reform from within and group identity will lose its attachment to patriarchal personal laws. The UCC can therefore be legitimized by the populace and provide substantive gender equality. Both are needed for a UCC to have any chance of effecting positive change in the lives of real Indian women and promoting a secular state.

Way Forward

There are ways where this enforcement can be fruitful in the nation.

Dialogue and Consultation: Consultation with all stakeholders, including religious communities, legal experts, and civil society organizations, could help understand and resolve concerns regarding the Bill.

Public Education: Conducting public education campaigns to inform the public about the potential benefits of the Bill can help build consensus and garner support for its implementation.

Inclusivity: The success of the Uttarakhand UCC will depend on its ability to strike a balance between promoting uniformity in personal laws and respecting the diverse cultural and religious identities of its pluralistic society.

Monitoring and Evaluation: As and when the UCC is implemented, a mechanism should be established for monitoring its implementation, and evaluating its impact on society. This will help make necessary adjustments and smoothen the process of its implementation.

Political Will: Political leaders must demonstrate leadership and a strong will to navigate through the complexities and challenges associated with the implementation of the bill.

CONCLUSION AND

RECOMMEDATIONS

CONCLUSION

Our Constitution guarantees freedom of conscience and free profession, practice and propagation of religion and freedom to manage religious affairs by Article 25 and 26. Article 44 also does not say that all personal laws should be repealed and that the proposed UCC be imposed on all citizens. As rightly assured the Constituent Assembly by Dr. Ambedkar, that the citizens would be required to declare voluntarily that they would be governed by such code when enacted and not imposed on all citizens.

However, a section of people misinterpret this Article and urge the government to abolish the Muslim personal law and enact a UCC, thus, this has caused threat to the national unity or integration.

Not much progress has been made towards achieving the ideal of a UCC; the only tangible step taken in this direction has been the codification and secularization of Hindu law. The codification of Muslim law still remains a sensitive matter.

The very object of inserting Article 44 has already been achieved by the Special Marriage Act, 1954 and the Hindu code, which is applied to the majority of Indians. Those having any objection to their personal law can register their marriages under the Special Marriage Act and enjoy its benefits with regard to matters connected with marriage; and of Indian Succession Act, 1925 regarding succession to property.

There is no justification for denying this protection to the personal laws of those to whom the Hindu Succession Act, 1956, is not applicable, by the Legislature. Article 44 of the Constitution has lost all its significance and become redundant.

Thus to conclude we need to understand the importance and the need the urgent enactment of the UCC. The time has come to place all personal laws of all religions under a stringent check and discard all laws that are found to violate the Constitution. Personal laws of all religions discriminate against women on matters of marriage, divorce, inheritance and so on. There is an urgent need to carve out the just and equitable laws of all religions and form a blueprint for a UCC based on gender justice and to ensure the principle of equality enshrined by our Constitution and to alter laws which are discriminatory and biased. The Hindu code cannot be applied uniformly to all religions. On the other hand, triple talaq would have to go,

as would polygamy and all the advantages that accrue to Hindu undivided families in matters of property and inheritance.⁹

In this backdrop, one can say that in our country, personal laws continuously affect the lives and rights of a large number of women of all most all the communities and most importantly leave them in a very deprived position. Although various efforts are being initiated and taken by means of introducing international instruments, reforms of national laws, changing judicial trends, recommendations of Law Commissions and other social elite groups to ensure gender equality but still women in our country are not treated equally and discriminated in the field of family law especially in cases of marriage, divorce, maintenance, inheritance etc. In these situations, a gender-just code is the need of the hour for long. So a UCC is a very important step towards the protection of oppressed women, to protect their human rights, to remove discrimination against them irrespective of their religion or community to which they belong to and lastly to make our national laws in accordance with the international instruments which are legally binding on India through various international conventions and international Human Rights instruments which are ratified by India. The present time is ripe for us to try to bring into light the idea of having a UCC through. To sum up at last, it can be said for citizens belonging to different religions; it is imperative that for promotion of national unity and solidarity and to promote national integration a unified code is an absolute necessity on which there can be no compromise that one can afford to make. Different streams of religion have to merge to a common destination and some unified principles must emerge in the true spirit of Secularism. India needs a unified family law code under an umbrella of all its constituent religions. Whether it is the endeavour of the State, the mandate of the court or the Will of the people it is an issue which time only can decide.

The UCC is not just a matter of gender justice, it is also a question of how a nation accommodates its own diversity. In India, freedom of religion exists with other rights like equality and non-discrimination. Instead of reaching in indiscriminately or leaving cultures entirely to themselves, India's liberal multiculturalism strikes a balance. It has been more ready to reform majority practices, while offering protections to vulnerable individuals within minority groups.

Is there a better way for India to negotiate this? The common view is that the Western democracies are a template for liberalism. But how do the US and France conceptualise law

⁹ Shabana Azmi, Women, Stand Up For Your Rights, The Times of India, 7 July 2005

and religious freedom, the balance between majority and minority group rights? What do Canada and the UK do? But the problem is that India cannot have the Western Countries as a model because the conditions are not similar. Most of the western countries, despite claiming to be secular, tend to show a bias towards Christianity and the Middle East Countries clearly follow Islamic Law. Even as we push for a UCC, we should know that law cannot exist too far apart from social norms. Without social support, or state capacities to implement our own principles, we risk pushing people into seeking alternative community justice, like sharia courts or khap panchayats. A common civil code will have to be careful in its choices. Then there remains the question of whether it should be obligatory, erasing all personal law, or whether it should allow Indians the option of choosing to live under their own religious umbrellas, if they prefer.

Either way, it is time that we outline our ideals and disagreements, in the pursuit of a dream common civil code. In the seven decades since the Constitution was enacted, there has been no sincere effort to even start such a dialogue.

It is also clear that UCC is not violative of Article 25 and 26 of the Constitution. It should rather be a new law and not the blend of personal laws. The problem in blending personal laws is that there is every chance for a bias to arise. The Parliament should introduce a new code similar to the Special Marriage Act of 1954 which does not extend any favours or bias towards any religion.

What the people must understand is that religion and laws are two different concepts. This is because the Constitution allows the people to follow their religion which will continue despite the enactment of a uniform code. The uniform code will nowhere curb their right to follow or profess their religion. For example, the religious scriptures prescribe punishments for crimes but the Indian Penal Code, 1860 is the only penal law that is followed in India. Thus, it is high time that people start viewing religion and law as two different concepts and focus on the empowerment of all class of people. There is an urgent need to bring in uniform laws in India.

But to conclude, I would like to say that citizens belonging to different religions and denominations follow different property and matrimonial laws which is not only an affront to the nation's unity, but also makes one wonder whether we are a sovereign secular republic or a loose confederation of feudal states, where people live at the whims and fancies of mullahs, bishops and pundits.

It is necessary that law should be separated from religion. With the enactment of a UCC, secularism will be heightened; the differences between various religious groups will disappear and India will emerge as a much more cohesive and integrated nation.

On the positive side, the UCC removes the concept of an ‘illegitimate’ child, that is a child born out of a void or voidable marriage. Now, any child born out of such wedlock will be treated in the same way as a child born out of a ‘valid’ marriage. Second, polygamy has been prohibited, thereby furthering one of the purported aims of UCC – equality for women. Third, there are increased rights of women in succession as opposed to Muslim and Christian personal laws.

On the other hand, there are several issues with this UCC. First, coparcenary rights in ancestral property as a concept have been abolished; therefore, on the face of it means Hindu giving up one way of succession. However, this reverses the 2005 Amendment to the Hindu Succession Act, 1956, which gave daughters an equal right to ancestral property. Second, the UCC could have inculcated the progressive practice under Muslim personal law of restricting the extent of property – only one-third – that can be given away under a will. This would have ensured that rightful heirs (especially daughters) would not miss out on a share in their property. This combined with the removal of coparcenary property means that Hindu fathers can will away their personal as well as ancestral property to their sons. Further, there is no clarity on whether Hindu Undivided Family (HUF) as a legal person (used especially for tax purposes, read: avoidance) can continue to exist when the underlying concept of coparcenary property loses legal recognition.

Third, the UCC misses out on the opportunity to allow queer marriage or even create civil relationships as the Supreme Court had suggested. Contrary to that, it has created a draconian system of registration of live-in relationships with no legal rights flowing from it. Fourth, the UCC continues with the regressive idea of ‘restitution of conjugal rights’, that is spouses (mostly men) can petition a court to ask the other spouse to return to the marital home and resume ‘conjugal relations’ with them.

RECOMMENDATIONS

- First of all, the marriages should be made compulsorily registrable. The registration of a marriage has a great evidentiary value to ensure the prevention of child marriage, checking illegal bigamy/polygamy, enabling married women to claim their right to live in the matrimonial house, maintenance etc., empowering widows to claim their

inheritance rights and other benefits and privileges which they are entitled to after the death of their husbands, deterring men from deserting women after marriage and preventing guardians from selling young girls to any person under the garb of marriage.

➤ Secondly, the UCC should be blend of all personal laws picking up the best elements from them and should adhere to constitutional mandate. It should be based on gender equality and impartiality with regard to religious or political consideration.

➤ The Special Marriage Act, 1954 is a good example of it. It provides for a marriage outside the realm of any specific religion. It applies to whole of India except the State of Jammu and Kashmir irrespective of the religion, community or caste etc. Under this Act, polygamy is illegal and succession is governed by the Indian Succession Act, 1925. Such law, with necessary modification if necessary, may be compulsorily applicable to all.

➤ Thus, the UCC is imperative for the country. It may successfully be made and enforced by reconciling the divergent laws and formulating a common code acceptable to all the communities. The State should do no more delay in formulating it and should take prompt action for it.